Humanitarian Assistance in Modern Conflicts: Neutral Humanitarian Aid under Pressure

A mini thesis submitted in partial fulfilment of the requirements for the LL.M Degree, University of the Western Cape

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DEDICATION

This thesis is dedicated to all the women and men who are helping people in need during armed conflict while risking their own lives.
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<th>Abbreviation</th>
<th>Full Form</th>
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<td>Central Command</td>
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<td>Chief Executive Officer</td>
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<td>Civil Affairs</td>
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<td>Civil-Military Cooperation</td>
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<td>Civil Military Operation Centre</td>
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<td>Coalition Humanitarian Liaison Centre</td>
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<td>Coalition Joint Civil-Military Operations Task Force</td>
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<td>Commonwealth of Independent States</td>
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<td>Conference of Defence Associations Institute</td>
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<td>Department of Defence</td>
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<td>Disaster Assistance Response Team</td>
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<td>European Union</td>
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<td>Forced Migration Review</td>
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<td>Humanitarian Operations Centre-Kuwait</td>
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<td>Humanitarian Practice Network</td>
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<td>Integrated Regional Information Network</td>
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<td>Inter Press Service</td>
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<td>International Committee of the Red Cross</td>
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<td>International Humanitarian Law</td>
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<td>International Review of the Red Cross</td>
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<td>International Security Assistance Force</td>
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<td>Iraq Assistance Centre</td>
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<td>The Journal of Humanitarian Assistance</td>
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<td>Médecins sans Frontières</td>
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<td>National Institute for Research</td>
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<td>Non-governmental organization</td>
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<td>North Atlantic Treaty Organization</td>
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<td>Office of Reconstruction and Humanitarian Assistance</td>
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<td>Prisoner of War</td>
<td>PoW</td>
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Provincial Reconstruction Team  PRT
United Kingdom  UK
United Nations  UN
United Nations Children’s Fund  UNICEF
United Nations High Commissioner for Refugees  UNHCR
United Nations Institute for Training and Research  UNITAR
United Nations Joint Logistics Centres  UNJLC
UN Office on Drugs and Crime  UNODOC
United States  US
United States Agency for International Development  USAID
Verband Entwicklungspolitik deutscher Nichtregierungsorganisationen  VENRO
World Food Programme  WFP
World Health Organization  WHO
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Providing humanitarian assistance is one of the core tasks and responsibilities of the International Committee of the Red Cross (ICRC) and other humanitarian aid organizations. Historically, humanitarian assistance was provided by humanitarian organizations more or less without interference by the armed forces. Responsibilities were strictly divided. However, during the last 15 years one could observe a new trend whereby military forces were assigned humanitarian roles and mandates as a means to use humanitarian assistance in a broader political sense, such as development and state building. This trend weakened the perception of humanitarian aid workers as neutral and impartial in the eyes of the combatants and the civilian population. While humanitarian aid is provided by armed forces or by civilians closely linked to military efforts, humanitarian workers are perceived as part of the armed forces and as such, perceived as legitimate targets. Contemporary conflicts such as in Afghanistan and Iraq seem to confirm the validity of these concerns. Humanitarian aid workers are under threat and under ongoing attacks.

Humanitarian aid in armed conflicts was based on the principles of neutrality and impartiality. In the last 15 years (very much intensified in the last 5 years) these principles came under pressure by policy-makers and the military. Armed forces in recent conflicts tried to use humanitarian aid in order to build support for their political and military aims. Humanitarian aid provided by the military serves often as a means of influencing the public opinion through the media. Sometimes, aid deliveries are selective and are only used to win the “hearts and minds” of the civilian population, or in order to use it as a means of bringing pressure to bear either on belligerents or on the civilian population itself. Thus, the very core of humanitarian work, which was supposed to be neutral, is under threat. This neutrality, which is indispensable for the work of the ICRC, is at stake. Without confidence by the parties in the ICRC and without neutrality, the ICRC cannot fulfil its work, such as visiting prisoners of war, etc. Even the personal safety of humanitarian aid organization staff members is at risk. The deteriorating security situations in Afghanistan and Iraq forced many humanitarian assistance organizations to withdraw their staff from these countries. The

1 Colin Powell, the former US secretary of state, found in: Remarks to the National Foreign Policy Conference for Leaders of Nongovernmental Organizations, [www.state.gov/secretary/rm/2001/5762.htm](http://www.state.gov/secretary/rm/2001/5762.htm) [accessed on February 27, 2005], October, 26, 2001.
majority of the non-governmental organizations (NGOs) saw the solution in a strictly neutral stance. On October 27, 2003, suicide bombers deliberately attacked the ICRC compound in Baghdad, killing 18 civilians and wounding dozens more. While the attack on the United Nations (UN) was in a way comprehensible for some analysts, this terrorist act was startling. The ICRC, as the example of a neutral and impartial organization, had a long history of providing humanitarian assistance in Iraq and was, as a well-established and well-known organization with its clear mandate under International Humanitarian Law (IHL), accepted in previous conflicts in Iraq. Hence, it still has to be shown that the policy, which tries to link humanitarian assistance with political efforts, is responsible for the actual malaise and that strict neutrality can avoid safety problems in modern conflicts. Some new emerging conflicts produce new safety problems to staff members that might pose other threats to humanitarian work, which might not be resolved with adopting a strict neutral stance. This situation could deteriorate with the new emerging types of conflict in the next decades. While trying to find solutions, the specific characterization of the conflict has to be taken into consideration.

Hence, for the purpose of finding a way out of this crisis, recent conflicts, belligerents and NGO policies and underlying principles have to be examined.

The investigative assumption, which this mini-thesis will examine, is whether the further political takeover of humanitarian assistance will catalyse further deterioration of the situation of humanitarian aid organizations and whether the notion of strict neutrality could be the way out of the dilemma. To this end, chapter 2 presents the examination of the principles of impartiality and neutrality, which will guide the analysis in this mini-thesis. Chapter 3 elaborates on the development of humanitarian assistance from before the Balkan wars to the Iraq war. With this framework of analysis, the emerging problems for neutral humanitarian assistance will be considered: chapter 4 considers the issues of blurring responsibilities and staff security. Chapter 5 develops the proposed solutions to these emerging problems and the US / NATO’s point of view and the ICRC / NGO’s stance will be introduced. Chapter 6 will set the background to the debate with an analysis of the new conflicts and their attributions asymmetry and terrorism. In order to bring a sense of calm to the ongoing passionate discussions, chapter 7 will examine the legal basis of humanitarian assistance. Finally, chapter 8 attempts to conclude the previous chapters and will formulate some appropriate recommendations.

In the chapter which is to follow, the principles of impartiality and neutrality will be examined.

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2 BBC, Baghdad Terror Blast Kills Dozens, October 27, 2003.
CHAPTER 2: PRINCIPLES OF HUMANITARIAN ASSISTANCE AND THEIR AIMS:

IMPARTIALITY AND NEUTRALITY

“We do not ask a suffering man what country he comes from or what his religion is, but say simply that he is in pain, that he is one of our own and that we will give him relief.”

The notions of impartiality and neutrality are the fundamental principles of humanitarian organizations. They should thus be the guidelines for humanitarian aid work. Nonetheless they are in contention and thus in the centre of every discussion on humanitarian assistance. Yet, they are often used without further clarification of their content, in spite of the fact that the outcome of a discussion depends in large part on the understanding of the respective notions. In some cases, neutrality and impartiality have been regarded as two terms for the same principle. In other cases, these principle have been regarded as too narrow and not flexible enough for the problems that humanitarian assistance must face in modern conflicts. In order to enhance further analysis and discussion, these notions have to be defined. Their aims will accordingly be examined and whether the respective objectives have been reached through the application of these principles. Furthermore, the origins of these principles will be examined. Since these principles come continuously under pressure, the ensuing critique has to be taken into consideration. To this end, the most common critics will be introduced and briefly assessed as to whether justified.

2.1. Impartiality

Impartiality has been one of the guiding principles for humanitarian organizations. At the beginning of the development of this principle, it was the ICRC that established it for the purpose of humanitarian aid. Even today the ICRC’s understanding of impartiality is crucial and leading. Therefore, the ICRC’s interpretation has here been taken as a starting point for definition, description and analysis. Later, the notion of impartiality as used in IHL will be examined.

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5 See paragraphs 2.1. and 2.2.
6 See paragraph 2.2.1.
8 See paragraph 2.3.
9 Plattner (D.), ICRC neutrality and neutrality in humanitarian assistance, IRRC 1996.
10 See paragraph 2.1.1.
11 See paragraph 2.1.2.
2.1.1. ICRC’s Impartiality

In *The Proclamation of the Fundamental Principles of the Red Cross* impartiality is defined in the following terms:

“It [the ICRC] makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours only to relieve suffering, giving priority to the most urgent cases of distress.”

This entails three different ideas which could have be divided into three principles: non-discrimination, proportionality and impartiality. Each of them has to be analysed in order to assess the full meaning of this principle.

In regard to non-discrimination, the Proclamation of the Red Cross states that it “is ready to come to the help of each individual, equally and without any form of discrimination.” It is forbidden to discriminate on the basis of nationality, race, religious beliefs, class or political opinions. The way of providing relief, that is to say the assets used and the time spent for a person, has only to be determined by the suffering of a human being. Different treatment for victims cannot be based on anything else than human need caused by his suffering.

Thus non-discrimination does not mean that all victims have to be treated in the same manner. There has to be a difference in treatment where the suffering is different. The treatment must be guided by proportionality. It ensures that relief is accorded to the degree of suffering. The principle of proportionality found also its way to IHL. The Geneva Conventions of 1949 forbid any diverse distinction than that of the suffering of a victim.

The third component is impartiality itself, which is a “personal quality of an individual called upon to make a judgment or choice. Impartiality, correctly construed, manifests itself in applying established rules, recognized as valid, without taking sides, either for reasons of interest or sympathy.” Thus impartiality is a quality required of the agents whose responsibility it is to act for the benefit of those who are suffering. If they do not observe this impartiality, they violate the trust accorded to them.

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14 ICRC Proclamation 1965.
15 According to Arts. 3, 10 and 59 of the Fourth Geneva Convention humanitarian activities have to be impartial. This impartiality is understood as the ICRC’s impartiality which entails this principle of non-discrimination.
17 Pictet 1979.
For the ICRC, these established rules are, generally speaking all IHL regulation regarding humanitarian assistance and specifically three principles: humanity, non-discrimination and proportionality.\(^\text{18}\)

Thus, J. Pictet observed that “we cannot say someone who does not act is impartial – for this would be confusing impartiality with neutrality – but we can say that he is impartial who, in taking action, does so without prejudice”.\(^\text{19}\)

\[\text{2.1.2. Impartiality in IHL}\]

The ICRC’s understanding of the principle of impartiality also found its way into IHL. In what follows, one regulation that utilize this notion will be examined in depth in order to clarify its meaning.

Art. 70 of Additional Protocol I to the Geneva Conventions of 1949 requires relief actions to be “humanitarian and impartial in character” and “conducted without any adverse distinction”. In this regard the Commentary to the Additional Protocols states:

“The humanitarian character of the action is fulfilled once it is clear that the action is aimed at bringing relief to victims, i.e., in the present case, the civilian population lacking essential supplies. What matters most of all is to avoid deception, that is to say, using the relief action for other purposes.”\(^\text{20}\)

And in regard to impartiality:

“Impartiality presupposes the existence of recognized rules which must be applied dispassionately and without prejudice. Such rules conform precisely with the principles of non-discrimination and proportionality”\(^\text{21}\) and “relief action must observe: the principle of non-discrimination, including the principle of proportionality […] (and) impartiality.”\(^\text{22}\)

Thus the principle of impartiality in IHL is used in exactly the same way than in the principles of the ICRC. All three components of impartiality have to be respected. Other regulations, such as Arts. 3, 10 and 59 of the Fourth Geneva Convention utilize the term as well and even name the ICRC as the example of an humanitarian and impartial body. Their understanding of impartiality is accordingly the same.

\[\text{\(^{18}\)}\text{Pictet 1979.}\]
\[\text{\(^{19}\)}\text{Pictet 1979.}\]
\[\text{\(^{21}\)}\text{Sandoz, Swinarski, Zimmermann 1987:818.}\]
2.2. Neutrality

To understand the principle of neutrality one has to take into consideration its origin and what it entails. The different connotations of neutrality in regard to different “neutral” entities have to be considered. The neutrality of states, of a United Nations mission, of the ICRC and other NGOs might be different and could have different problems with regard to application.

2.2.1. Neutrality of States

During the development of international law different nuances of neutrality with different duties evolved. At the very core of neutrality is the duty not to take part in hostilities, that is to say, military neutrality. Neutrality differs from the notion of non-participation insofar as “a neutral State plays no part in them [hostilities] because it is precluded from doing so by virtue of its status; and a non-belligerent State because it has so decided”.23 According to D. Plattner (in reference to other authors), state neutrality entails three elements: abstention, prevention and impartiality.24 Abstention implies a duty not to provide military assistance to the conflicting parties; prevention obliges neutral States to prevent belligerents from using its territory for bellicose purposes or committing from its national territory acts that are contrary to neutrality; and finally impartiality is the duty to apply equally to both sides those rules which it has set itself in regard to its relations with the conflicting parties.25

2.2.2. Neutrality of a United Nations Mission

The neutrality of the UN depends on the nature of its actions. In an armed operation undertaken or authorized by the Security Council, the role of the UN cannot be neutral.26 Even humanitarian assistance protected by UN troops using force against one or more of the parties to an armed conflict cannot be neutral.27 But under certain conditions the UN are neutral, for example in the case of the employment of blue helmets, securing an armistice or a border after consent of all parties to the conflict.

23 Plattner 1996.
24 Plattner 1996.
27 Boutros Boutros-Ghali found in: Plattner 1996.
Another question relates to the perception of UN missions as neutral. Even in situations where the UN have a neutral stance and position, it risks to be regarded as taking part in a conflict. It is rather difficult for an international organizations which acts constantly under political constraints and in politically loaded situations to be perceived as neutral.

### 2.2.3. Neutrality of the ICRC

The ICRC’s neutrality derives from two different sources. On the one hand, IHL (The Geneva Conventions of 1949 and Additional Protocol I of 1977) describes the ICRC as an impartial humanitarian body. On the other hand, the Statute of the International Red Cross and Red Crescent Movement as well its principles refer to the ICRC as a neutral and independent institution. Thus, the question at issue relates to what it means for the ICRC to be neutral. The ICRC itself defines these notions in reference to state neutrality. This reference comes from the fact that the states themselves endowed the ICRC with legal personality under international law and with the component parts of a neutral state.

As we have seen above, there are three components of a neutral state. Thus, the question arises whether these components are also valid for the ICRC. The duty of abstention is not different from its application in regard to a non-state entity such as the ICRC. This duty demands not to take part in hostilities (which means to be militarily neutral), and not to take part in political disputes between belligerents (which means to be ideologically neutral). The element of prevention is not applicable for the ICRC, but the principle of impartiality is. Translated from a state duty into the field of ICRC activities, this means that the ICRC will adopt the same attitude to all parties to the conflict. This attitude is therefore determined by certain established rules.

Besides these components of neutrality, there is the notion of independence, which does not form part of the definition of neutrality, but stands in supportive relationship to the ICRC’s neutrality. Some regard it as a principle on its own, others regard it as linked to and as an integrative part of

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29 Pictet 1979; Plattner 1996; Harhoff-Tavel (M.), *Neutrality and Impartiality: The Importance of these Principles for the International Red Cross and Red Crescent Movement and the Difficulties Involved in Applying them*, IRRC 1998.
30 Plattner 1996.
31 See paragraph 2.2.1.
32 Plattner 1996.
33 Plattner 1996.
34 See above paragraph 2.1.1.
35 Plattner 1996.
36 Plattner 1996, citing the Statutes of the Movement. Plattner regards all the principles as interrelated.
the principle of neutrality.\textsuperscript{37} Independence is regarded as crucial to serve the interests of all victims.\textsuperscript{38} Independence means in this regard to be free of any influence of or pressure by states.\textsuperscript{39} Another specificity of the ICRC is the fact that it is made up of physical persons and not of states, who normally do not have any interest in supporting a party of a conflict, which guarantees further neutrality.\textsuperscript{40} The neutrality of the ICRC’s host state Switzerland furthermore enhances the neutrality of the ICRC.\textsuperscript{41}

The ICRC’s neutrality can also be deduced from IHL, although it is not expressively mentioned. For example, Art. 59 of the Fourth Geneva Convention states that the ICRC or any other “impartial humanitarian organization” has the right to undertake relief schemes. The same expression has been used in Arts. 3, 10 and on other occasions in this Convention, including Art. 70 of the two Additional Protocols. The ICRC is mentioned “both on account of its own special qualifications and as an example of a humanitarian organization whose impartiality is assured”.\textsuperscript{42} Thus neutrality is not defined, but two conditions closely associated to neutrality are mentioned.\textsuperscript{43}

In regard to independence, IHL itself remains silent. This means that there is an absence of a regulation relative to donors, but “the immensity of the needs will make it desirable to accept the co-operation of any person, organization or institution which can lend assistance, provided that such assistance is not used for purposes of political propaganda.”\textsuperscript{44}

It could therefore be concluded that the ICRC is a neutral body.

\subsection*{2.2.4. Neutrality of Humanitarian Organizations}

The neutrality of a humanitarian organization is something which has to be agreed upon. It is a decision of its members to adopt neutrality in its statutes or not. There is no obligation to be neutral. Still, neutrality and impartiality are conditions, according to IHL,\textsuperscript{45} that have to be met, if an organization wishes to gain access to war victims. Therefore, humanitarian organization often choose neutrality in order to gain access to war victims and thus in order to become operational on

\begin{footnotes}
\footnotetext{37}{Pictet 1979, who regards independence as an aspect of neutrality, whereby the difference to the former position is minimal.}
\footnotetext{38}{Sommaruga (C.), keynote address at the UNITAR/IPS/NIRA Conference in Singapore, February 24, 1997; found in Sassoli (M.), Bouvier (A. A.), \textit{How does law protect in war?}, Geneva 1999.}
\footnotetext{39}{Pictet 1979; Plattner 1996.}
\footnotetext{40}{Plattner 1996.}
\footnotetext{41}{Plattner 1996.}
\footnotetext{43}{Efforts to find a definition of neutrality of humanitarian assistance under IHL in: Plattner 1996.}
\footnotetext{44}{Pictet 1958:321.}
\end{footnotes}
the spot. Belligerents will not allow organizations to operate in their territories as long these criteria are not fulfilled. In guidelines and declarations of intent humanitarian organizations commit themselves to be neutral.\textsuperscript{46} NGOs commit to “formulate [their] own policies and implementation strategies and … not seek to implement the policy of any government, except in so far as it coincides with [their] own independent policy.”\textsuperscript{47}

2.2.5. Neutral Humanitarian Assistance: A Look on IHL and other Regulations

Neutrality of humanitarian assistance differs from the neutrality described in the previous parts (neutrality of states, of a UN mission, of the ICRC and of humanitarian organizations) insofar that neutrality has to be applied to a form of international action and not to an entity. The content and understanding of neutrality has therefore to be different, too.

IHL regulations in regard to assistance entail the Arts. 23 and 55-63 of the Fourth Geneva Convention and 70 of Additional Protocol I for international armed conflicts and common Art. 3 of the Geneva Conventions and Art. 18 of Additional Protocol II for non-international armed conflicts. The duties of Arts. 23 and 55-63 of the Fourth Geneva Convention apply only to the relations between one state and another, as in Art. 23, or between a State and a population other than its own, as in the provisions regulating relief operations on occupied territory.\textsuperscript{48} According to Art. 59 Fourth Geneva Convention, relief schemes may be undertaken either by States or by an impartial humanitarian organization such as the ICRC. Common Art. 3 of the Geneva Conventions employs the same formula.

The obligation of a State concerning assistance to its own nationals entail the two Additional Protocols. Art. 70 of Additional Protocol I obliges a state at war to agree to a relief action which is humanitarian and impartial and conducted without any adverse distinction, and if the civilian population in its territory is insufficiently supplied with essential goods. Art. 18 of Additional Protocol II shows the same formulation.

Neither the Geneva Conventions nor the Additional Protocols utilizes the notion of neutrality. They only mention two conditions closely associated with neutrality: impartiality and non-

\textsuperscript{45} For example Art.10 of the Fourth Geneva Convention; Art.70 Additional Protocol I.


\textsuperscript{47} International Federation of Red Cross and Red Crescent Societies for the ICRC, Annex IV: \textit{The Code of Conduct for the International Red Cross and Red Crescent Movements and NGO’s in Disaster Relief}, at principle 4.

\textsuperscript{48} Plattner (D.), \textit{Assistance to the civilian population: the development and present state of international humanitarian law}, IRRC 1994, p.249.
discrimination. As soon as these respective conditions are met, the State in question has to give its agreement to the relief supply and if the State refuses to give the agreement, the relief supply cannot be regarded as interference. Meeting these conditions is therefore the key to gain access to the civilian population and provides a certain protection under these IHL regulations.

None of the texts offer a definition of neutral humanitarian assistance. D. Plattner attempts to provide a basis for a definition through formulating a number of elements drawn from current law. Neutrality is regarded as a principle of humanitarian law, “which implies inter alia that ‘humanitarian assistance is never interference in a conflict’.” In order to be neutral, humanitarian assistance has to be non-discriminatory, humanitarian and impartial; and as such, neutral humanitarian assistance cannot be regarded as interference or as an unfriendly act (even if protected by armed escorts and without former agreement by the State). D. Plattner concludes that the providing of humanitarian assistance can be regarded as neutral even if the body providing it is not, since the neutrality of humanitarian assistance is an autonomous notion.

Other regulations name the principle of neutrality explicitly. For instance, United Nations General Assembly resolutions in regard to coordination of humanitarian aid refer to the principle of neutrality. Also the guiding principles of humanitarian aid, annexed to resolution 46/182 of 19 December 1991, entail the principle of neutrality. Even though General Assembly resolutions are not binding, they could indicate the opinio iuris of states and as such, can indicate development towards customary law. Many other texts cite the principle of neutrality as well, which emphasizes the importance of this principle for humanitarian assistance. A principle that serves as a means to get access to the civilian population is an indispensable condition for humanitarian work.

2.3. Critique of the Principles of Impartiality and Neutrality

The principles of impartiality and neutrality have been under attack since the beginning of humanitarian assistance. Former discussions focused on the content of these principles and if they

49 Plattner 1996.
51 Plattner 1996.
53 Plattner 1996.
54 Plattner 1996; which can be contested, since in that case the perception of such a body as non-neutral might hinder the humanitarian activity and endanger Staff security.
55 43/131 of 8 December 1988; 45/100 of 14 December 1990; 48/57 of 14 December 1993; 49/139 of 20 December 1994; etc. …
could be amended in one way or another. Today, some scholars openly demand that these principles be abandoned. These principles are accordingly under pressure as never before. This critique has to be taken seriously. In what follows next, the most common critics will be introduced and their views will be analyzed.

2.3.1. Passivity or Indifference to Suffering?

As described above, neutrality entails an attitude of abstention. But, if the principle of neutrality entails abstention, one could regard this attitude as passivity. And how could one remain passive during a conflict where millions of civilians are suffering? Even though this is a legitimate question, it shows a misunderstanding of the principle of neutrality. To be neutral does not mean to be passive or indifferent to suffering. As J. Pictet states:

“Although neutrality defines the attitude of the Red Cross towards belligerents and ideologies, it never determines its behaviour towards the human beings who suffer because, in the first place, the wounded do not fight each other.”

Thus, neutrality determines the ICRC’s attitude at the level of belligerent parties and their military politics. In regards to human suffering the approach of the ICRC and many other NGOs is “to act and not to remain passive.” This neutrality towards the conflicting parties is only a means to gain access to victims, so as to act for the benefits of the victims. To be passive on one level enables an organization to become active on another. To be active on one level (towards the conflicting parties) would render active engagement on the other impossible, that is to say, it would block the access to the war victims. Neutrality is the key, necessary for getting access to the civilian population. It is not an end in itself. It is only a means to achieve certain purposes, a necessary to tool which makes humanitarian work possible.

Neutrality in this regard means especially to refuse a judgment about the belligerents respective causes. This abstention, even if it is hard to follow, derives from the general distinction between *ius
in bello and ius ad bellum\textsuperscript{61} (and in the case of the ICRC, from its given mandate which demands abstention by the ICRC in regard to questions of ius ad bellum).\textsuperscript{62} The very nature of IHL and of humanitarian assistance in situations regulated by IHL is not to be related to ius ad bellum. Regardless of the cause of one’s war, IHL is applicable.\textsuperscript{63} The same principle of distinction between ius ad bellum and ius in bello is valid for humanitarian assistance: regardless of the cause of a war, it is the human suffering that is to be alleviated. As J. Pictet rightly observes: “Each side in a conflict believes, that his cause is the only just one and it is rare to find that one party is completely right and the other completely wrong.”\textsuperscript{64} But the abstention of judgment is not only due to this knowledge, it further serves certain purposes.\textsuperscript{65} If the ICRC would articulate judgments, the ICRC would risk loosing access to prisoners of war or to the civilian population (which has to be taken into consideration by all humanitarian organizations).

This abstention in ius ad bellum questions came under further pressure with the revival of the notion of a “just war”.\textsuperscript{66} In a war where one side is fighting for a just cause, being neutral could even be regarded as fighting against this just cause. The formula that entails this argument and which is nowadays often used, is the expression of “whoever is not with me is against me”. But, these political statements are nothing new. The problems with that formula for neutrality have already been recognized by J. Pictet: “If anyone presents the Red Cross with the well known and destructive dilemma embodied in the phrase, ‘whoever is not with me is against me’, may it always reply, ‘I am with all those who suffer, and that is sufficient’.”\textsuperscript{67} Belligerents seldom do not regard their cause as just. Both sides are claiming to fight a just war. The notion of a just war has therefore no ramifications on the reasons for being neutral. The arguments for further abstention are still valid and the advantages of this stance remain the same.

In order to complete the criticism that neutrality means passivity, former discussions by Médecins sans Frontières (MSF) about the content of neutrality have to be presented. Yet, with the difference of the actual discussions, no one sought to abandon the principle of neutrality as a whole. These discussions were about whether to remain silent in the face of gross human rights and IHL violations or not. This question has been at the center of discussions on humanitarian assistance since the Biafra wars in Nigeria. NGOs like Médecins sans Frontières decided to adopt a policy of

\begin{itemize}
\item \textsuperscript{61} Ius ad bellum is the right to make war, which is today prohibited by International Law (Art. 2(4) UN Charta, with its exceptions). Ius in bello consists of the rules of behaviour in war. The distinction between them implies that IHL (ius in bello) is applicable whenever there is an armed conflict regardless of its qualification under ius ad bellum.
\item \textsuperscript{62} See above paragraph 2.1.1.
\item \textsuperscript{63} Sassoli (M.), Bouvier (A. A.) 1999, p.84.
\item \textsuperscript{64} Pictet 1979.
\item \textsuperscript{65} See above paragraph 2.1.1.
\item \textsuperscript{66} Harroff-Tavel (M.), Does it still make sense to be neutral, Humanitarian Exchange, Number 25, December 2003.
\end{itemize}
speaking out wherever these violations occur. But this is only feasible for an organization with a different mission than the ICRC. For the ICRC this cannot be an option if it wants to remain operational in all its working fields. The ICRC’s preferred approach is persuasion and confidentiality. Only as a last resort the ICRC will go public if there really is no other way to stop an IHL violation. Even speaking out about IHL violations does not reflect a departure from a neutral stance in conflict. It is only a different approach on how to work on the spot. Médecins sans Frontières claim to be a neutral organization although they decided to publicize cases of IHL violations. Only speaking about the justness of a conflict means abandoning neutrality. It remains difficult to see how one could speak about the justness of a conflict while becoming involved in humanitarian activities on the ground or how could simultaneously be judge and party to the conflict. 

2.3.2. Misguided Even-handedness and Failure to Recognize Differences

A further issue regarding impartiality is the question whether humanitarian organizations should provide assistance to persons who might have murdered, tortured or committed other crime. As M. Harroff-Tavel formulates: “Why should the guilty be fed”? The problem here is that humanitarian organizations cannot work as a tribunal. Humanitarian organizations cannot have or provide the proof of one’s guilt. NGOs cannot and should not judge the people who are supposed to be helped by them. As we have seen before, impartiality entails the principle of non-discrimination, which means that nationality, race, etc. cannot determine the amount of aid delivered or whether aid should be delivered at all. Only the degree of a victim’s suffering should serve as a determinate. The reason for this is the very core of humanitarianism: the dignity of each and every person must be respected. Regardless of the crime one has possibly committed, each human being, as a member of the human race, has the right to be treated humanely. Yet, providing assistance to all suffering human beings does not mean that these organizations would oppose prosecutions of perpetrators of human rights or IHL violations. It is simply not the task of a humanitarian organization to judge and punish individuals.

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68 Harroff-Tavel 2003.
69 Which is part of Médecins sans Frontières’s philosophy, practiced from Chechnya to Sudan; see http://www.doctorswithoutborders.org/aboutus [accessed on March 15, 2006]
70 Pictet 1979.
71 Harroff-Tavel 2003.
72 Harroff-Tavel 2003.
There is another point of criticism regarding even-handedness. Its proponents claim that it would often be wiser to allow a war to run without interference, such as humanitarian assistance or peacekeeping missions. At the end of such a war there would be a more “natural” situation of victory or exhaustion that enables a peace that could be easier held. But this way of thinking runs against the very core value of humanitarianism, namely that each human being is a value that has to be protected. Calculations of how human beings would be sacrificed are inhumane per se and cannot serve as basis for activities that wish to be called humanitarian. This point of view misunderstands one very important fact: providing or omitting humanitarian assistance is not a means to resolve a conflict. The playground of an armed conflict, if it cannot be avoided, has to be the battlefield. Even though relief can have a certain influence on a conflict situation, it cannot be deemed a catalyst of conflict resolution. However, it should also be taken into consideration that conflicts resolved on the battlefield are seldom conflicts that are resolved forever. The desire of revenge is a too real a threat for such a resolution. Another problem is that some conflicts do not come to an end by establishing a civil war economy that lives from war and does not seek a resolution of the conflict. And finally, there are much more elaborated (and more civil) ways of conflict resolution than those reached by sword and blood.

Another version of this criticism is to say that the involvement of humanitarian organizations should only take place on one side of the conflict, i.e. to favour one side, in order to enable a quick end to the conflict. Humanitarian assistance should be decisive in order to end a conflict as quickly as possible. Even if the suffering would be aggravated for a certain time on one side, at least there would not be a protracted conflict which would claim even more victims. The purpose is thus to save lives by ending the war. The counter-arguments are the same as mentioned above in this paragraph. They should be repeated in order to emphasize once again the core of humanitarianism. Each and every human being is a value that has to be protected, thus proscribing calculations of human suffering. As C. Thornberry rightly points out, who will be so resolute as to decide that the ultimate common good requires that some siege not be lifted, vulnerable groups not be relieved, leaving them alone with their fate in order to let them die?

73 Luttwak (E. N.), Give War a Chance, Foreign Affairs July/August 1999; http://isuisse.ifrance.com/emmaf/base/give_war_a_chance.html [accessed on January 29, 2005]
74 For example negotiation, mediation or jurisdiction.
76 Jennings 2003.
Humanitarian assistance cannot work as part of a strategy of conflict resolution. The only way to avoid simmering post-war disorder is by taking political action, for example through resolute peace-keeping or peace-enforcement missions.78

### 2.3.3. Neutrality as a smokescreen79

Supporters of this critique regard neutrality merely as a means to open doors in order to pursue political ends at a later phase. Neutrality would be in that case the Trojan Horse, which hides political forces seeking to topple a government, exercise political opposition, etc. Admittedly, there are “humanitarian organizations” which use the label “humanitarian” and “neutral” as a key to get access to certain countries.80 But this does not mean that all organizations are following a political agenda. It does not mean either that all organizations exploit neutrality. Therefore, it is not a problem inherent to the principle of neutrality. The problem is the exploitation of the principle for other purposes. Since this exploitation can pose threats to other neutral organizations, a way has to be found to avoid a mingling of all organizations. The principle of neutrality does not, therefore, have to be abandoned.

### 2.3.4. Naivety: Providing Humanitarian Assistance can never be Neutral

Historically, being neutral was regarded as being apolitical. NGOs stated that humanitarian action and political action are at odds, ignoring the underlying issues of its actions and the impact of its work on a conflict.81 One of the most often voiced criticisms is therefore that providing humanitarian aid is a political act, and as such cannot be apolitical or neutral. Humanitarian action channels resources and power in a specific way with a specific purpose and as such is political. To further the protection of the civilian population through the four Geneva Conventions was clearly a political step.82 Hence, to say that providing assistance is apolitical and neutral could be described as ignorant and naïve. But today, humanitarian organizations are conscious of the political character

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79 Harroff-Tavel 2003.
80 Russia and some former CIS states are complaining about either American/European NGOs working in their countries or about local NGOs financed by the US and EU. Occasionally they play important roles after elections and following transition processes. See the international press regarding the situations in Georgia, Ukraine, Azerbaijan, etc…
81 Harroff-Tavel 2003.
of its missions and they accept this fact.\textsuperscript{83} They admit that assisting the civilian population in a situation of conflict is a politically charged act and that providing humanitarian assistance has necessarily an impact on the political dynamics of a conflict.\textsuperscript{84} N. De Torrente, Executive Director of \textit{Médecins sans Frontières}, states that “(n)eutrality does not mean that the impact of humanitarian action will be neutral in the way that a neutral compound, when inserted into an ongoing chemical reaction, does not affect it.”\textsuperscript{85} But this fact does not mean to abandon the principle of neutrality as a whole. The questions are to what extent an operation has political impact and how political an operation can be without losing neutrality. The principle of neutrality serves certain purposes and even if assistance is politically charged, as it was the case from the beginning of providing assistance, it can still serve these purposes. Whoever admits the fact that assistance is political, does not have to abandon neutrality as a whole. Therefore, humanitarian organizations emphasize that providing humanitarian assistance may be politically charged, but it is not a political project.\textsuperscript{86} And only as such, humanitarian organization are allowed to have access and are tolerated by belligerents. Humanitarian organizations are allowed to introduce resources into a conflict, since they are neutral in the sense that they do not want to win the war.\textsuperscript{87}

Finally, it has to be pointed out that NGOs do not reject political action as such. While holding humanitarian action to be in opposition to political action in the framework of political projects and trying to keep humanitarian agenda and political agenda apart, humanitarian organizations recognize the merits of political action.\textsuperscript{88} They acknowledge that political action has to be taken into consideration in order to resolve conflicts and even warn of taking humanitarian action as a substitute of political action.\textsuperscript{89}

In conclusion it can be emphasized that criticisms are often carried too far. There are even today a number of good reasons to keep the principles of impartiality and neutrality as a basis for humanitarian work. They serve particular purposes, which are still important for NGO to work on

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\textsuperscript{84} Jennings 2003; De Torrente 2004:5.
\textsuperscript{85} De Torrente 2004:5.
\textsuperscript{86} De Torrente 2004:5.
\textsuperscript{87} Slim (H.), \textit{Is humanitarianism being politicised? A reply to David Rieff}, The Dutch Red Cross symposium on ethics in aid, 2003.
\textsuperscript{88} Plattner 1996.
\textsuperscript{89} ICRC 1998, found in Sassoli (M.), Bouvier (A. A.) 1999, p.482.
\end{flushleft}
the spot. Even though adjustments might be necessary, a complete departure from these principles seems exaggerated and not justified.

In order to explain how these principles came under pressure, it is important to examine some recent conflicts with a special focus on humanitarian assistance. To this end, chapter 3 will examine development of humanitarian assistance and its principal actors before the Balkan wars, in the Balkan wars, in Afghanistan and in Iraq.
CHAPTER 3: DEVELOPMENT OF HUMANITARIAN ASSISTANCE IN THE LAST 15 YEARS: THE POLITICAL TAKEOVER OF ASSISTANCE

“As I speak, just as surely as our diplomats and military, American NGOs are out there serving and sacrificing on the front lines of freedom.”

This chapter will endeavour to digest the recent history of humanitarian assistance within the last 15 years. After the end of the Cold War, which paralysed the UN in many cases, the UN and its security council became increasingly engaged in the resolution of conflicts. At the same time, NGOs expanded their activities. The UN and the NGO activities attempted to address more than the mere political causes of conflict. Humanitarian and developmental issues became more important. Western governments, well aware of the importance of these activities, became increasingly involved in these activities through donations and spending practices. These changing patterns of humanitarian assistance in the context of changing international politics and conflicts will be presented in this chapter. Institutional as well as other changes, such as in language, belligerent’s and NGO’s policies will be examined.

3.1. Humanitarian Assistance before the Balkan Wars

Most of the UN peace-keeping missions prior to the Balkan wars did not have mandates which expressly conferred humanitarian tasks. Even though these missions had an underlying humanitarian purpose, to support peace and security for the population, humanitarian tasks have not been in the main focus. But even at that stage, humanitarian aid was often “dispensed by the UN military in order to win hearts and minds.” In the early nineties the pattern of UN missions had changed. Several new responsibilities have been delegated on UN missions, such as political, civil or humanitarian tasks. These multi-task, multi-component peace-support operations – “third

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92 Paragraphs 3.1., 3.2., 3.3. and 3.4. will deal with these issues.
93 Thornberry 1996.
94 Thornberry 1996.
generation peace-keeping”⁹⁵ - have been carried out in conjunction with relief and development operations.⁹⁶

Coordination between UN peacekeepers and humanitarians was crucial under these conditions. Humanitarian assistance got often even more difficult in a situation where there was no peace to keep and the fighting continued. Humanitarians work often depended on protection provided by UN peacekeepers. New types of relationships between humanitarian organizations and peacekeeping soldiers have had to be developed, often under difficult conditions, for example without former instruction and under the eyes of the media.⁹⁷ Yet there was a huge advantage inherent to this relationship: it was unlikely to produce conflict between the mandates of UN political and humanitarian organizations, since peacekeeping operations fully endorsed humanitarian goals.⁹⁸ The situation is different, with often conflicting mandates, in peace-enforcement situations under Chapter VII of the UN Charter or in situation without UN backing at all, as we will see in later developments.⁹⁹ In Iraq in 1990, for example, UN agencies could not uphold the image of a neutral and impartial broker. The image of UN relief agencies suffered greatly from association with the UN Security Council decision to use force which “transformed UN agencies into complicit parties favouring a belligerent.”¹⁰⁰ Also the close work of UN agencies with the coalition forces was not in favour of a perception of these agencies as neutral. The enforced and militarized humanitarian assistance to the displaced Kurdish people in Northern Iraq serves as an example.¹⁰¹ The only UN agency which was working in a neutral and independent manner was United Nations Children’s Fund (UNICEF). This UN agency organized a convoy with medical supplies, without coordination with or permission from the coalition forces, from Iran through a “fire-free zone”.¹⁰² By doing so, UNICEF demonstrated that its actions were not linked to the peace-enforcement operation.

The ICRC endeavoured to distance its operations in Iraq in 1990 from any UN or coalition humanitarian operation. But sometimes the ICRC experienced difficulties, as in every conflict, not to get involved in the conflict. The public statement of the British government, that jeopardized the neutrality of the ICRC in stating that: “any response to its (the population’s) humanitarian needs

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⁹⁶ Jennings 2003; Thornberry 1996.
⁹⁷ Thornberry 1996.
⁹⁸ Thornberry 1996.
⁹⁹ Thornberry 1996.
¹⁰⁰ Lemieux 2002.
¹⁰¹ Lemieux 2002.
¹⁰² Lemieux 2002.
depends on Iraq living up to its obligations under the Geneva Conventions and allowing the Red Cross to visit PoWs”, serves as an example.\textsuperscript{103}

But even though NGOs often tried to distance themselves from the not-neutral entities on the spot, it became obvious that with the engagement of ever more players in the humanitarian field, coordination of their efforts became very important. For instance, during these operations even the ICRC (as the autonomous and independent body \textit{per se}) sought to enhance the coordination efforts in relation to the UN missions through holding civil-military seminars and by producing training workshops.\textsuperscript{104}

Besides the growing need for coordination, patterns of warfare also changed. Starvation and terror under the civilian population have become a predominant method of warfare.\textsuperscript{105} In these situations, the humanitarian organization’s mandates often run directly counter to the objectives of the conflicting parties.\textsuperscript{106} Even though the UN bodies and most of the NGOs regard themselves as impartial and neutral, they became increasingly more involved in these conflicts. Another phenomenon of these conflicts has been the conflict-prolonging effect of humanitarian assistance. In war-torn societies where the belligerents are not trying to win the war, but rather to draw out the war since it provides parties to the conflict with their income, the only influx of goods was provided by humanitarian organizations. This conflict-prolonging effect was for some time in the centre of discussion between humanitarians.

Further changes took place. Notions of humanitarianism found more and more access in discussions about international politics. In the 1990s, Western governments translated regional wars into humanitarian emergencies.\textsuperscript{107} Humanitarian assistance was infused with development, conflict resolution, human rights advocacy and state-building agendas.\textsuperscript{108} Western governments often employed humanitarian assistance as a substitute for political action and then invoked humanitarian objectives in order to legitimize military interventions.\textsuperscript{109} Another very important development was the changing funding practice of governments, influencing the independence of humanitarian organizations. If Western governments only tolerated humanitarian activities before, they now, after recognizing the importance of these activities, gained increasingly more influence and control in the

\textsuperscript{103} Lemieux 2002 citing Leonard Doyle, Crisis in the Gulf : Food aid linked to care of PoWs, 1991:3.
\textsuperscript{104} Thornberry 1996.
\textsuperscript{105} Smock (D.R.), \textit{Humanitarian Assistance and Conflict in Africa}, The Journal of Humanitarian Assistance, 1997; see also chapter 6.
\textsuperscript{106} Thornberry 1996; see also to this discussion: Perrin (P.), \textit{The Impact of Humanitarian Aid on Conflict Development}, IRRC 1998.
\textsuperscript{107} Greenaway 1999.
\textsuperscript{109} Gordon 2003.
humanitarian field of activities. In most of the cases this occurred through the funding of NGOs by
governments. Donor states thus became the main “customers” buying humanitarian services and
have driven an enormous expansion in the sector.  

3.2. Humanitarian Assistance in the Balkan Wars

During the Balkan wars the interlink between humanitarian organizations and the military further
developed. It was characterized by intents to institutionalize the co-operation. Yet, there are
differences in regard to this institutionalization, depending on the conflict. In Bosnia Herzegovina
the United Nations High Commissioner for Refugees (UNHCR) was in control, but in Kosovo (as
was the case before in Somalia) the military enjoyed a hegemonic position. The
institutionalisation has been increasingly marked by a military-driven approach to Civil-Military
Cooperation (CIMIC), emerging from the Somalia and the Kosovo intervention. CIMIC was
provided through Humanitarian Operations Centres. This concept originated first in Somalia
1993. But in Somalia, the US military played only a small part in the running of humanitarian
programmes which were largely managed by the UN civilian staff with the military only in a
supportive role.

In the conflict in Bosnia and Herzegovina, UNHCR has been in charge of the coordination of
humanitarian efforts. Institutional overlapping and hegemony by the military has therefore not been
such an issue and did not pose a threat to the neutrality of humanitarian organizations. Yet, neutral
humanitarian assistance came under pressure. Besides the politicization of humanitarianism through
language, other threats to neutrality emerged.

The omnipresent problem in Bosnia and Herzegovina was situated around the question as to
what humanitarians should do in the absence of the parties’ consent. Should they, for example, try
to achieve their goals by means of force with the help of UN troops? Discussions about the
necessity of armed protection of humanitarian action and its impact on neutrality of humanitarian
assistance consequently became the centre of discussion.

110 Greenaway 1999; for example all the NGOs of the umbrella organization InterAction in the US; these NGOs were
engaged by the US for their activities in Iraq.
111 Krähenbühl (P.), Conflict in the Balkans: Human Tragedies and the Challenge to Independent Humanitarian
Action, IRRC 2000.
112 Pugh (M.), Civil-military relations in peace support operations: hegemony or emancipation?; seminar on aid and
113 Pugh 2001:2.
116 See the citation before chapter 1 and the first citation to chapter 4.
States have a duty to respect IHL, which compels them to agree to humanitarian action. But in Bosnia and Herzegovina political bargaining over humanitarian relief had developed, and as such the politicization of humanitarian action continued. Politics and humanitarian actions were “linked”. According to the UNHCR “linkage occurs when the parties to a conflict condition humanitarian activities upon other humanitarian actions or the progress of political or military events. The acceptance of linkages by humanitarian or military actors violates the principles of humanity, impartiality and neutrality.” The UNHCR called for independence of humanitarian and military actions. To this end, each should avoid interference into the other’s working field, otherwise operational paralysis would result. But still, the conflicting parties did not respect IHL in this regard. Humanitarian organizations had to confront the most complicated situations every day. One of these situation occurred during the Bihac blockade. Krajina Serbs obstructed the delivery of aid to their adversaries in Bihac to mainly Moslems areas. The UNHCR decided to impose pressure to achieve a humanitarian objective, namely the delivery of aid to Bihac. The UNHCR thus wrote to the Krajina leader, informing him that because his followers were obstructing the delivery of aid to their adversaries, humanitarian assistance to Serbs elsewhere would be suspended. While doing so, the UNHCHR probably abandoned the principle of impartiality, becoming more embroiled in politics. Yet this could be construed as a defensible solution, since it reached its desired objective. However, this should not become the standard practice, but only an exception. Belligerents should be enforced to respect IHL by other means. Another example of the loss of impartiality occurred in a situation which was part of the daily life of humanitarian workers. One belligerent only allowed relief to its enemy’s population if its own population, even if not in need, would receive the same amount of relief supplies. And there are numerous other examples where humanitarian aid organizations had to negotiate access while leaving IHL principles behind. Thus “linkage” was a every day reality for most of the humanitarian organizations and it was often the only way to reach humanitarian goals. And they reached these goals in a satisfactory way. As the World Health Organization (WHO) surveys and analyses confirm, the delivery of aid had been very effective. The crucial question, mentioned above, has been answered in the case of Bosnia by giving the resolution of negotiation. If humanitarian

117 Art.10 of the Fourth Geneva Convention and Art.70 Additional Protocol I; agreement has to be given if NGOs meet certain conditions, such as impartiality and humanitarianism.
118 Thornberry 1996.
119 Thornberry 1996.
121 UNHCR 1995:12,14,17.
122 Thornberry 1996.
123 Thornberry 1996.
124 Jennings 2003.
125 Thornberry 1996.
organizations do not accept fierce protection measures and the fighting through to the civilian population, negotiation is the only way to get access to people in need. Thus political bargaining by the conflicting parties became the way of dealing with humanitarian relief.

The ICRC’s policy in Bosnia and Herzegovina was to emphasize its distance to the UN. It warned against a subordination of humanitarian action under political objectives of UN missions. Humanitarian activities and UN peacekeeping activities should be kept separate. Otherwise confusion results out of such a situation, which had an adverse effect on the acceptability of humanitarian action and thus threatened the security of neutral and impartial humanitarian workers.

During the Kosovo campaign certain changes as compared to former conflicts occurred. North Atlantic Treaty Organization (NATO) became a belligerent and at the same time NATO governments were the most important funder of humanitarian aid. The use of humanitarianism as a reason for intervention and the use of humanitarian language during the conflict served to place pressure on the neutrality of humanitarian organizations.

The institutional civil-military interlink during the Kosovo conflict was provided by US Central Command (CENTCOM) in Florida, where information was shared in order to avoid the bombing of relief convoys.

The ICRC had to work in extremely hostile environment during the Kosovo war campaign. Humanitarian relief convoys came under fire on many occasions. The ICRC maintained transparent channels of communication to all belligerents, for example, it provided information to NATO about intended relief convoys with times of departure, intended routes, number and nature of vehicles. But it was not only the ICRC that experienced problems in that conflict. Médecins sans Frontières (MSF), UN agencies and other NGOs found themselves unable to maintain a sense of independence from all parties, with the result that some withdrew from the territories of Serbia and Kosovo.

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126 See for example: ICRC, Comprehensive review of the whole question of peacekeeping operations in all their aspects, Statement by the ICRC at the United Nations General Assembly’s 52nd session, New York 1997.
127 Thornberry 1996.
129 US, UK, France, Germany, Italy, Canada and Norway.
130 Lemieux 2002.
131 Lemieux 2002.
As a response, UNHCR stated that its aid workers would only return once Yugoslav forces had withdrawn and international peacekeepers had been deployed.\textsuperscript{133} In the view of M. A. Lemieux, this statement “immediately disqualified UNHCR from Article 59 status as an impartial relief agency because it made the agency sound like it was working for NATO”.\textsuperscript{134} Even though UN agencies send a humanitarian needs assessment team to Yugoslavia, it was not until the withdrawal of Yugoslav forces that UN relief action took place.\textsuperscript{135}

Humanitarian assistance become further politicized, for example, through the Greek dispatch of relief convoys, where even the relief coordinator stated that the operation succeeded in its political intention of distancing Greek from its NATO members by adopting a humanitarian approach.\textsuperscript{136} But all NATO states have been under constant pressure by the media and their respective civil societies to show that this was a humanitarian emergency operation rather than an armed conflict.

In the aftermath of the Balkan conflicts,\textsuperscript{137} the international community’s efforts were focussed on the nation-building of the former conflicting parties. International engagement has often been developmental in nature and humanitarian assistance has been regarded as a first step in this whole process. This idea of the humanitarian assistance’s role was not new. W. B. Wood points out that “[t]he post-conflict interventions of the 1990s seemed to be naively designed as variations of a relief-to-development model that dated back to the 1960s, when experts boldly predicted that foreign assistance would pave the way toward self-sustained economic growth and democratic governance.”\textsuperscript{138} As the next conflicts have arguably shown, this relief-to-development model can have negative impacts on the neutrality of humanitarian assistance.

### 3.3. Afghanistan: The Integrative Approach

Humanitarian activities in Afghanistan can be divided into three different phases: before, during and after the armed conflict. Humanitarian organizations have been employed in Afghanistan long before the conflict in 2001. Since the conflict in 1979 and its aftermath, humanitarian organizations provided assistance and gathered experience on the ground. The events of 11 September 2001 put

\textsuperscript{133} Lemieux 2002 citing Douglas Hamilton, Brussels – No air drop, no convoys for Kosovo stranded, Reuters, 14 April 1999.
\textsuperscript{134} Lemieux 2002.
\textsuperscript{135} Lemieux 2002.
\textsuperscript{136} Lemieux 2002.
\textsuperscript{137} Expectations for this phase have been formulated by: Meggevand Roggo (B.), \textit{After the Kosovo Conflict, a Genuine Humanitarian Space: A Utopian Concept or an Essential Requirement?}, IRRC 2000.
an abrupt end to these activities. The Taliban decreed the departure of foreign humanitarian workers after these events. As a result, the majority of the humanitarian organizations had to organize their relief actions from outside the country.

The civil-military liaison during the conflict took place in Florida between the United States Central Command (CENTCOM) and UN agencies, where the UN Joint Logistics Centres (UNJLC) had a liaison officer in order to coordinate the use of military assets for airlifting of relief and in order to provide the information about relief convoys to the coalition. This liaison also took place at Coalition Humanitarian Liaison Centres (CHLC’s). A CHLC opened in Islamabad in late October 2001. Its task was to provide security information on safe routes to aid agencies and its offices were staffed with British and American military personnel. The civil-military cooperation was not always trouble-free. Not all NGOs wanted to work that closely with the coalition. Some have even been reluctant to the US initiative. The ICRC did not want to send its liaison officers to Florida, since they were already stationed in offices in Washington and New York. Another problem related to the issue of information-sharing. For instance, some storage facilities for humanitarian supplies have been hit by coalition air strikes. As a consequence, the humanitarian organization “CARE” called for better information sharing with the CHLC. On the other hand, the coalition wanted to know every movement of humanitarian relief convoys with its exact Global Positioning System (GPS) references, etc. This approach was criticized by MSF, stating that “this liaising was more of a one-way channel, for the military to know where any aid trucks were headed than for relief agencies to learn anything about military operations.”

But also problems other than institutional ones emerged. The general principle of distinction in IHL has not always been respected. Some coalition military-units used civilian four-wheel drive vehicles and soldiers wore civilian clothing while they pretended to be aid workers. This cross-dressing could undermine humanitarian activities in general. This practice could even be regarded

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139 Lemieux 2002.


141 Lemieux 2002.

142 Lemieux 2002.

143 Lemieux 2002.

144 Lemieux 2002.

145 Lemieux 2002.

as perfidy and brings humanitarian work into disrepute. In other cases US military members in civilian clothing used humanitarian cover for intelligence gathering and other secret operations while pretending to be assessing humanitarian need. However, the coalition forces were not the only belligerents with this practice. The Taliban also moved in non-military commercial trucks and foreign aid agency vehicles which they had commandeered or stolen.

Another issue of content was the simultaneous dropping of yellow-wrapped food rations and bombs containing hundreds of yellow bomblets by the US military. After deadly accidents, where children looking for the rations have been killed by these bomblets, the Pentagon announced a colour change of the aid rations. The US military claimed that these food rations played a critical role in avoiding a humanitarian disaster. In reality, the rations were only 0.25% of the required food relief for the Afghan civilian population. Another result was the fighting of regional warlords over the control of the rations and the consequent selling thereof for the profit of these warlords and the encouragement of civilians into dangerous areas. This practice was widely criticized, since relief supply must be properly distributed to be effective and in any case it has to avoid the endangering of people.

In spite of all these difficulties, the ICRC managed to maintain confidential relation to all belligerent and could remain in cities targeted by the coalition airstrikes which enhanced the perception as neutral and impartial.

After the liberation of Kabul in early December 2001, the Coalition Joint Civil-Military Operations Task Force (CJCMOTF) was established. It was held responsible for the strategic command of Civil Affairs (CA) assets, and after the end of military operations and fighting, humanitarian work was pressed into a broader concept of reconstruction efforts. Therefore, US Civil Affairs Teams or Provincial Reconstruction Teams (PRT’s) deployed into far regions in order to engage in humanitarian and reconstruction projects. This was highly criticized by NGOs for

147 Perfidy invites the confidence of an adversary to lead him to believe that he is obliged to protection under IHL; Art.24 of the Hague Regulations and Art.40 of Additional Protocol I.
149 Slim 2003.
151 Lemieux 2002.
152 Lemieux 2002.
153 Lemieux 2002.
154 Lemieux 2002.
155 Lemieux 2002.
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161 Lemieux 2002.
162 Lemieux 2002.
164 James 2003.
distracting from the military’s principal duty of ensuring security and for its erosion of transparency, independence and impartiality. The Civil Military Operation Centres (CMOCs) were created as an integral part of a PRT in order to coordinate the military reconstruction efforts and humanitarian organizations projects. In many ways they functioned as the CMOCs in the Balkan wars, but were not that open to the public nor that visible as in the Balkan wars. The cooperation was provided by military civil affairs officers. Another development was to use a wide range of partners in the humanitarian efforts, for example, the using of commercial partners to provide essential services such as health, water, education, etc.

Militaries therefore describe the work done by humanitarians as complementary to the work done by the military:

“[T]he functions of the CMOC is to make sure that our projects don’t interfere or can build upon the projects of other agencies. Specially we go to places that they cannot go, and that is an ideal situation for us.”

And

“The NGOs and international organizations and military, coalition, ISAF, seem to me all [having] the same objective. Because we have the same objectives – whether we work together or not – we are going to be working for the same objective irregardless of what coordination happens between those groups.”

Thus, in regard to the objectives, the US military tried to bring civil organizations and the military together, not recognizing NGO’s fears of losing neutrality. Neutrality seems not worth defending, since humanitarians and the military are on one side of the conflict, if they choose to or not.

Besides all these problems, the biggest problem in the aftermath of the fighting became the security situation. Attacks on humanitarian workers increased from one a month in late 2002 to almost one a day one year later.

Yet, some analysts have been optimistic after the Afghanistan experience, stating that the civil-military information sharing offered some hope for future operations. Extensive information-sharing was the only way to ensure the safety of humanitarian workers on the ground. Even though

161 Branhagen 2004; James in 2003 calls them Coalition Humanitarian Liaison Cells (CHLC’s).
162 James 2003.
166 O’Brien 2004:34.
167 Lemieux 2002.
this was more “a one way-channel”\textsuperscript{168}, it served a particular purpose. It is appreciated that the military is reluctant to give information about ongoing operations to civil agencies. Humanitarian work do not depend on the knowledge of military operations. The biggest problems arose more in regard to distinctiveness between the military and civilian agencies, which will be discussed later.\textsuperscript{169}

\textbf{3.4. Humanitarian Assistance in the Iraq War}

Even before the conflict in Iraq,\textsuperscript{170} humanitarian assistance seemed already highly politicized. For instance, one of the reasons put forward to argue against the war in Iraq was the negative impact of the war on the civilian population. On the other side President Bush added urgency of humanitarian aid to the civilian population to the reasons in favour of the war. Thus the fate of the Iraqi people became “a key issue in the battle for public opinion about the war’s legitimacy.”\textsuperscript{171} Thus, the credibility and independence of humanitarian organizations were under pressure even before the war began.\textsuperscript{172} Thus humanitarian assistance became a very important issue. In order to win this battle for public opinion the US, underlining the importance of this issue, made assistance a part of its war plans.\textsuperscript{173} As a consequence, the US government included funding provisions for aid within the war budget.\textsuperscript{174} On the other side, some European governments were reluctant to support humanitarian organizations in its preparations to the Iraq war. The governments of, for example, France and Germany did not want to appear to be accepting the inevitability of the war.\textsuperscript{175} Thus, even before the war commenced, humanitarian endeavours were already highly politicized.

Another step towards the political takeover of humanitarian activities has been at the institutional level through the creation of the Office of Reconstruction and Humanitarian Assistance (ORHA) within the Pentagon. Besides politicizing humanitarian assistance it had the effect of diminution of the UN’s humanitarian coordination role.\textsuperscript{176} Military personnel as well staff from civilian organizations worked there together under the military’s leadership, in part reflecting legal

\textsuperscript{168} Lemieux 2002.
\textsuperscript{169} See paragraph 4.1.
\textsuperscript{171} President George W. Bush, Remarks by the President in Address to the Nation March 17, 2003, \url{www.whitehouse.gov/news/releases/2003/03/20030317-7.html} [accessed on February 3, 2005].
\textsuperscript{172} De Torrente 2004:6,7.
\textsuperscript{173} De Torrente 2004:7.
\textsuperscript{174} Press Release, Office of the Press Secretary, Supporting our Troops and Increasing Safety at Home, \url{www.whitehouse.gov/news/releases/2003/03/20030325.html} [accessed on January 17, 2005].
\textsuperscript{175} De Torrente 2004:7
\textsuperscript{176} Gordon 2003.
responsibilities under the laws of occupation.\textsuperscript{177} The ORHA was designed by Department of Defence (DoD) planners in order to coordinate directly assistance efforts and military operations. The military command was in charge of this task and was supposed to control these activities.\textsuperscript{178} Event though the State Department was much more cognisant of the need for humanitarian independence, the DoD wanted to see the military taking the lead and to limit the UN’s role to humanitarian action rather than political transition.\textsuperscript{179} Finally, the structures of the ORHA reflect the DoD’s position.\textsuperscript{180} The ORHA was designed to lead the already existing civil-military coordination structures. It was supposed to hand over its responsibilities to the newly established Iraqi Ministries.\textsuperscript{181} The humanitarian crisis did not occur. A difficult situation evolved in regard to issues related to political transition. The ORHA, more engaged with these transition issues, relied on the military civil affairs capabilities to discharge key reconstruction and humanitarian functions. The effect was the militarising of the reconstruction and humanitarian efforts.\textsuperscript{182} Another point of contention on the institutional level was the role of the Humanitarian Operations Centre-Kuwait (HOC-Ku). Humanitarian Operations Centres existed already in former conflicts. But by contrast, the centre in Kuwait was completely dominated by the military who, appeared to be the institution which had the competence to authorise humanitarian action in Iraq.\textsuperscript{183} NGOs needed former permission by the military to enter Iraq through the Kuwaiti border. This process was administered by the HOC-Ku.\textsuperscript{184}

During combat, Disaster Assistance Response Teams (DARTs) were created in order to assess need for relief on the ground in military secured areas.\textsuperscript{185} However, these efforts have not been particularly successful in creating effective mechanisms of needs assessments as planned.\textsuperscript{186} Furthermore, US Army Civil Affairs (CA) units were assigned to support conventional units.\textsuperscript{187} Their primary task was to reduce civilian interference of combat operations, to assist displaced persons and finally, to liaise with civilian organizations.\textsuperscript{188} They also endeavoured to find civilian

\begin{itemize}
\item \textsuperscript{178} Press Briefing, Office of the Press Secretary, Briefing on Humanitarian Reconstruction Issues, February 24, 2003.
\item \textsuperscript{179} Gordon 2003.
\item \textsuperscript{180} Gordon 2003.
\item \textsuperscript{181} Gordon 2003.
\item \textsuperscript{182} Gordon 2003.
\item \textsuperscript{183} Gordon 2003.
\item \textsuperscript{184} Gordon 2003.
\item \textsuperscript{185} Press Briefing, Office of the Press Secretary, Briefing on Humanitarian Reconstruction Issues, February 24, 2003.
\item \textsuperscript{186} Gordon 2003.
\item \textsuperscript{187} James 2003.
\item \textsuperscript{188} James 2003.
\end{itemize}
resources for military use. After the “liberation” of Baghdad, the Coalition implemented its own rehabilitation and humanitarian projects, usually through local contractors. These humanitarian projects competed sometimes directly with humanitarian organizations’ initiatives, as was the case in Afghanistan. The institution, responsible for the coordination of these humanitarian projects, is the Iraq Assistance Centre (IAC), established by the Coalitional Provisional Authority. On the ground, the Coalition deployed twenty-one Civil-Military Operation Centres (CMOCs) across Iraq. In addition, they are required to support Coalition combat teams. Unlike many of the peace operations of the past, CMOCs are located within fortified areas, with approximately half of them being co-located with headquarter units. Even though many similarities to the situation in Afghanistan exist, humanitarian organizations have to face in Iraq some important differences. The presence of humanitarian activities in Iraq is relatively new. Only a few humanitarian organizations had prior experience in Iraq. Another difference was that the infrastructure in Iraq is much more developed than in Afghanistan, which should enhance humanitarians work. Also the expected humanitarian emergency did not take place. These two positive facts for humanitarian organizations have been outbalanced quite soon by the deteriorating security situation on the ground.

One of the most remarkable facts in the Iraq war in regard to humanitarian assistance is that whenever assistance was most needed by Iraqis, it had been extremely dangerous and difficult for humanitarian organizations to provide it. For instance, in the combat phase, providing assistance where it was most needed (that is to say, support of Iraqi medical services) was nearly impossible. The reasons for this shortcoming were the withdrawal of humanitarian organizations before the war, the sanctions regime, the missing of communication with hospitals on the spot and the restrictions imposed on humanitarian organizations by the Iraqi government. Only a few humanitarian operations could be executed. Those operations that did occur, for example humanitarian efforts in occupied territories, were highly publicized through the embedded media. Relief operations by

189 McConnell, Kathryn, Goal of Army Civil Affairs Unit is Minimal Uprooting of Iraqis, http://usinfo.state.gov/regional/nea/iraq [accessed on February 22, 2005].
192 James 2003.
194 James 2003.
196 James 2003.
198 De Torrente 2004:2,12: one of the reason was the fear of Western spies being infiltrated through humanitarian NGO’s.
199 De Torrente 2004:12.
200 De Torrente 2004:15; embedded media means combat correspondents being placed within military units.
the military and by NGOs in Southern Iraq “served to highlight the ‘humanitarian’ intentions of the coalition.”

Thus, the delivery of water by British soldiers, as well as the treatment of Iraqi civilians by US military field hospitals were widely reported. The first convoys of water and food sponsored by the Kuwaiti government were highly publicized as was the case with the arrival of a resupply ship in the harbour of Umm Qasr. Japan and South Korea tried to emphasize in the media their humanitarian role through providing medical and food supplies. Neighbouring countries made humanitarian gestures, which have been covered by the media, but without former need assessment or distribution plans. And ORHA even required press releases about projects to be approved by the Pentagon’s Office of Public Affairs.

In regard to the UN it must be stressed that they had to choose between cooption and irrelevance. Without a UN resolution authorising military action, the usual preparatory interagency and intergovernmental communication and planning process was disrupt. But still the question remained what kind of role the UN should assume. As explained before, the US government wanted the UN to be involved with the coordination of humanitarian action and not with issues of political transition. This would avoid a diversion of military assets in humanitarian activities. The US government sought, through the UN’s involvement, to discharge its responsibilities as an Occupying Power. Such a strategy is not only enormously difficult, but also very expensive. Consequently, the only limited UN involvement was not in any way a threat to the broader US strategy, since this UN task was finite and could not be linked to issues of political transition. Yet it has to be emphasized that the Occupying Power cannot discharge its responsibilities under IHL. The Secretary General of the UN, K. Annan, recognized the inevitability of the ORHA and did not dispute the need for this body. The NGO’s argued for a UN leadership role in humanitarian activities and in issues of political transition. As a result, “a tremendous degree of ambiguity in terms of the division of labour between ORHA, the UN and the coalition military” existed. The ORHA’s failures, the deteriorating security situation and the ongoing opposition to the war itself,

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202 De Torrente 2004:15.
204 De Torrente 2004:15.
205 For example Syria and Iran.
206 Gordon 2003 citing James Jennings.
208 In this same paragraph 3.4.
209 Gordon 2003 who says that the ORHA was established for this purpose.
211 CARE in Gordon 2003.
forced the US to rely more and more on the UN, which reflects Security Council Resolution 1483 of May 22, 2003.\textsuperscript{214}

Problems of a different nature emerged for the NGO community. At the beginning of the conflict, a consensus existed both within the humanitarian community and the military that relief should be provided by civil agencies.\textsuperscript{215} The military would only serve a supportive role to civilian agencies.\textsuperscript{216} However, during the conflict humanitarian assistance was supervised by the military, with physical proximity of coalition troops to the distribution process itself and sometimes with the military even controlling this process.\textsuperscript{217} This rendered it impossible for NGOs to deliver aid independently and distinctions between the military and the civilian agencies blurred. This increased the probability that NGOs would be regarded as sub-contractors of the military. This problem could not, even after the conflict, be resolved. The deteriorating security situation after the official end of hostilities rendered the work increasingly difficult so that the military had to either deliver supplies directly or protect NGOs while they deliver supplies.\textsuperscript{218} The necessity of this step was accepted in the humanitarian community.\textsuperscript{219} But this practice of military and NGOs working together on the spot was supposed to take place only in a short transitional period, before the civil agencies could work without the military.\textsuperscript{220} This transitional period was protracted, however, and thus the military provided assistance alongside humanitarian organizations. This deteriorated the security conditions for humanitarian workers. Thus a connection between humanitarian assistance and the military, which already occurred in pre-war propaganda, was further deepened. A further problem occurred in regard to the military leadership in civil-military coordination efforts. These efforts were widely accepted under American NGOs. Only some American NGOs were reluctant and demanded a UN leadership in humanitarian assistance efforts.\textsuperscript{221} But the majority of European NGOs opposed the US government’s reasoning in public, which rendered the NGO’s work often impossible. As a consequence, the NGO community found itself caught, as did the UN, between

\begin{footnotesize}
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\item \textsuperscript{213} Gordon 2003.
\item \textsuperscript{214} \url{http://daccessdds.un.org/doc/UNDOC/GEN/N03/368/53/PDF/N0336853.pdf?OpenElement} [accessed on March 21, 2005].
\item \textsuperscript{216} Press Briefing, Office of the Press Secretary, Briefing on Humanitarian Reconstruction Issues, February 24, 2003.
\item \textsuperscript{217} Gordon 2003.
\item \textsuperscript{218} Gordon 2003.
\item \textsuperscript{219} Oxfam 2003:3. Failures by the Occupying Power in delivering relief was regarded by some NGO’s as niches to be filled by NGO’s while other NGO’s wanted to hold the occupant accountable for that failing and rejected to work in these niches; Gordon 2003.
\item \textsuperscript{220} Gordon 2003.
\item \textsuperscript{221} See for example: Letter from Mary E. McClymont, InterAction President and CEO to President George W. Bush on December 20, 2002.
\end{itemize}
\end{footnotesize}
choosing cooption or irrelevance.\textsuperscript{222} Another problem in this regard evolved in Iraq (and for some NGO’s already in Afghanistan). Most of the NGO’s have to interact with forces whose intervention is seen as illegitimate.\textsuperscript{223} But not only the NGO’s themselves have doubts as to the legality. It after all the civilian population on the spot that regarded the intervention as illegitimate, which does not improve the security situation as a whole in the particular region.

After the end of combat the US experienced difficulties in fulfilling its duties as an Occupying Power.\textsuperscript{224} Many hospitals did not have enough medical supplies for the proper treatment of the wounded and generally without the necessary protection, necessary to prevent looting.\textsuperscript{225} There was still no proper functioning hospital in Baghdad one month after the end of the conflict, since hospitals did not receive assistance by the Occupying Power necessary for the treatment of the large number of wounded and sick.\textsuperscript{226} The US administration focused its efforts on reconstruction, such as the re-establishing of ministries, etc. and not on live-saving assistance.\textsuperscript{227} Thus the politicization of the reconstruction process affected also the choice of projects to be supported, the manner in which it was done and by whom.\textsuperscript{228} The US government engaged several NGOs and private contractors as well as UN and governmental agencies in order to win hearts and minds of the civilian population. Through skilful public relations techniques the US government portrayed humanitarians as “implementers of the assistance program it promised in the wake of its expected military victory.”\textsuperscript{229} But even after the end of combat, reconstruction remained difficult, since the security situation did not ameliorate. As a result, the overall situation of the Iraqi civilian population deteriorated. Many Iraqis regarded the coalition forces as responsible for this situation.\textsuperscript{230}

The US government also did not remove the US sanctions barring humanitarian assistance, which complicated NGO activity on the ground.\textsuperscript{231} They were kept in place for a month after the Iraqi government was toppled with the effect that during this period only programs funded by the US government were legally authorized.\textsuperscript{232}

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\textsuperscript{222} Gordon 2003.
\textsuperscript{224} De Torrente 2004:16.
\textsuperscript{225} De Torrente 2004:16.
\textsuperscript{226} De Torrente 2004:17.
\textsuperscript{227} De Torrente 2004:17.
\textsuperscript{228} Gordon 2003.
\textsuperscript{229} De Torrente 2004:9.
\textsuperscript{230} Gordon 2003.
\textsuperscript{231} Gordon 2003.
\end{flushleft}
In the aftermath of the conflict humanitarian assistance remains complicated. The ongoing fighting and the terrorist attacks have the biggest impact on humanitarian activities in Iraq. The deteriorating security situation directly affects reconstruction and humanitarian efforts. The dilemma is that in this situation, more humanitarian assistance is needed while it is becoming increasingly more difficult to deliver it.\(^{233}\)

As seen before, the US government tried to render humanitarian assistance a part of its overall strategy. Yet, the gap between the objectives articulated before combat and the reality after the conflict is striking.

As analyzed in the whole chapter, international politics and therefore the humanitarian environment changed and developed during the last fifteen years. The most important development has been in the area of civil-military relation. If the military controlled more and more the civil-military relations in the conflicts during the nineties, then this trend can be seen as complete in Afghanistan and Iraq.\(^{234}\) The global “war on terrorism” increased the pressure to subordinate civil-military cooperation into military strategy based institutions. Such pressures also increased the politicization of humanitarian assistance and begun to “unpick the Balkan consensus” of a comprehensive approach.\(^{235}\) This development causes increasingly more problems in regard to humanitarian assistance. These problems will be discussed in the next chapter.

\(^{233}\) De Torrente 2004:21.
\(^{235}\) Gordon 2003.
CHAPTER 4: EMERGING PROBLEMS: NEUTRALITY, BLURRING RESPONSIBILITIES
AND STAFF SECURITY

“The boundaries between the occupying force and the U.N. and the humanitarian community in Iraq is the most blurred it’s ever been, anywhere we’ve worked.”

Even though a considerable number of problems for humanitarians emerged already before the nineties, they often affected individual organizations and certain operations. The actual problems for the humanitarian community though, are regarded as “global and community-wide in nature.”

The civil-military relation can pose serious problems to neutral humanitarian assistance, depending on its realization. In this new context, the humanitarian principles of impartiality and neutrality are increasingly under pressure. The current chapter focuses on the four major problems. One of these problems is distinction. Combatants are held to be distinguishable from civilians, wish seems to be problematic when humanitarians and soldiers are working too closely.

Another issue is independence, which means here financial independence. In the new context of massive government spending for NGOs, humanitarians have problems to appear as neutral and independent actors. This is the reason why NGOs sometimes have concerns about taking funding from belligerent governments. The next point is the manipulation of humanitarian language and finally, the use of assistance to serve war aims will be addressed.

4.1. Distinction

The problem that worries most NGOs is the blurring of the lines of distinction between humanitarians and the military in the field. This problem has many facets and various different issues therefore have to be discussed. Often, distinction is not a matter of fact, but more a question

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237 De Torrente 2004:22 citing Brendan Cox, Oxfam’s spokesperson.
238 Donini, Minear, Walker, 2004:261
239 Kelly (A.), Neutrality in Jeopardy, the Mail & Guardian, December 17, 2004.
240 This issue will be addressed in paragraph 4.1.
241 See paragraph 4.2.
243 See paragraph 4.3.
244 See paragraph 4.4.
The issue of distinctiveness has been highly controversial in Afghanistan and in Iraq, where the general IHL principle of distinction has not always been respected. The use of civilian four-wheel drive vehicles and the cross-dressing by the military presented serious problems with a negative impact on the perception of distinction in general.

But also on the institutional level, distinctiveness could not be upheld. The military took more and more the leadership in coordination and cooperation efforts and in many instances one institution was at the same time responsible for military and for civilian tasks. For example, some NGOs criticized the Provincial Reconstruction Team (PRT) concept in Afghanistan, saying it was mixing military with aid activities and questioned their neutrality. But also in general, concepts of Civil-Military Operations Centres (CMOCs) and other institutional linkages have been widely criticized. Yet it has to be stated that sometimes these very close working relationships were due to deteriorating security situation. The problem of too tied relations is that they might undermine the neutrality and impartiality of humanitarian actors if these actors cooperate with a belligerent or if they oppose a conflict since it might generate civilian victims. Thus the politicization of humanitarian assistance and the absence of clear distinctions between the US government and humanitarian organizations has created the perception that all assistance is part of the US agenda.

As N. de Torrente rightly observes:

“This perceived unity has increased the vulnerability of all organizations, irrespective of their position or actions. In effect the bombings and threats indicate that all humanitarian aid groups are being viewed […] as an arm of the US government.”

Another problem is the perception of humanitarian organization as Western or Northern NGOs fighting for Western and Northern style objectives. This perception makes NGO’s especially vulnerable in conflicts where culture and religion play an important role. The character of NGOs is predominantly Western, which is evidenced by their history, the locations of their headquarters, the origin of the funding and the nationality of their staff, which increase their vulnerability in conflicts with radical opposition to Western military and political objectives.
4.2. Independence

One of the greatest challenges of humanitarian organizations is their independence. Aid organizations rely heavily, sometimes exclusively, on donor governments that may be part of a conflict.\(^{252}\) Such a relationship between donors and humanitarian organization became more and more difficult in the case of a donor’s involvement into an armed conflict. But even without a donor’s involvement the link could become difficult. The donors as the clients want to see results and an outcome of their investment. This results in pressure, which inhibits often a rational analysis of a conflict situation and thus hinders a rationale decision as to whether a organization should employ its assistance on the spot or maybe not. The NGOs are simply under the constraint to deliver something to their donors. As A. Donini, L. Minear and P. Walker rightly observe:

“As in Goma in 1994 and Kosovo in 1999, the fear of dropping out of the public eye\(^{253}\) pushes agencies to seek involvement in all major crisis, regardless of whether there is actually a substantial humanitarian need to meet or a fit between an agency’s competence and the needs on the ground. ‘Our clientele pushed us into action’, say Chief Executive Officers who, should they keep their distance, would have some explaining to do to constituencies that expect them to be prominently visible on the frontlines in every major emergency.”\(^{254}\)

This problem gets even more complicated in a donor’s role as a belligerent in an armed conflict. In such a case, NGOs became often simply contractors for government interests.\(^{255}\) A. Donini, L. Minear and P. Walker state that humanitarian organizations face a complicated situation in Iraq: “[the NGOs] have to work with an occupying power who is also their prime funder, the most powerful and active political player on the international stage, and the prime driver of multilateral organizations.”\(^{256}\) This is a fundamental change for NGOs in the conflicts of recent years: Their governments are involved in these wars.\(^{257}\) A difficult situation which humanitarian staff in other countries had to face every day, when Northern NGOs often argued that they are too involved and could be biased.\(^{258}\)

US NGOs recognized the danger of close relationships with the military for the perception of their activities by the local population, yet the US government was their most important funder.\(^{259}\) US NGOs tried to find a way out of this dilemma through loyalty to the humanitarian principles of

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\(^{252}\) James 2003.

\(^{253}\) In regard to the role of the media, see: Boegli (U.), *A Few Thoughts on the Relationship between Humanitarian Agencies and the Media*, IRRC 1998.

\(^{254}\) Donini, Minear, Walker, 2004:262.

\(^{255}\) James 2003.

\(^{256}\) Donini, Minear, Walker, 2004:261.

\(^{257}\) As Slim 2003, a British humanitarian, puts it: “it is now ‘our’ military forces who are the belligerents.”

\(^{258}\) Slim 2003.

\(^{259}\) De Torrente 2004:19.
neutrality and impartiality. They refused to work under the direct control of the military, but still accepted the funding. They preferred to work with US civilian organizations in order to avoid perceptions of working too closely with the military. The question arises as whether this solution provides the necessary distinctiveness from the military. Scholars are very sceptical in this regard, since the US NGOs “‘solution’ chose to ignore the basic fact that all US agencies are part of the same government waging war and exercising military occupation.”

But also the US administration was not that pleased with NGO’s efforts to distinguish themselves from the military and government. A United States Agency for International Development (USAID) administrator stated that by accepting US government money, the became “an arm of the US government” and that NGOs should openly declare where their money comes from, as private contractors do, or the US would have to find new partners in its humanitarian efforts.

The close funding relationship is not only a problem for distinctiveness. The close relationship to one of the belligerents of a conflict weakens also the possibility of NGOs to speak out humanitarian law infringements of all belligerents. Scrutinizing and criticizing the belligerent’s action might be hampered, which reinforces the perception of humanitarian organization as not neutral and thus the association to one belligerent can have serious security implications.

4.3. Civil-Military / Humanitarian-Political Problems

Yet the question remains whether the military and humanitarians can work together. How could the aim of winning a war go together with the aim alleviating human suffering? Their core missions seem to be at odds. Another problem is the lack of understanding each other, a lack of familiarity. Aid workers are often suspicious of the military and the feeling is reciprocated. To resolve this conflict, coordination is needed. Even though it has to be taken into account that the military and the humanitarian organizations operate differently, their roles are often not entirely incompatible. Whatever is chosen as a way out of the current situation, coordination will be very

265 See Siegel (A. B.), Civil-Military Marriage Counselling: Can this Union be Saved?, Special Warfare 2002; Rana (R.), Contemporary Challenges in the Civil-Military Relationship: Complementary or Incompability?, IRRC 2004.
266 Thornberry 1996.
267 Thornberry 1996.
important. Even with a strict neutral stance, communication and sometimes coordination can be crucial for the safety of humanitarian workers, as is the case during military air campaigns. It is also very important for some IHL instruments and other International Public Law instruments, which could be helpful for humanitarian assistance, such as neutralized and demilitarized zones\(^\text{269}\), safe havens and no-fire-corridors.\(^\text{270}\)

But it is not only an issue between the military and humanitarian organizations. It is also the question as to which point state action in general and humanitarian action can go hand in hand. NGOs have often doubts as to the legitimacy and real motives of state actors.\(^\text{271}\) Doubts regarding the real commitment of states to the humanitarian cause derive from the theory of realism in international relations.\(^\text{272}\) Advocates of this tradition are uncomfortable with the idea that states and might develop a genuine interest in a value goal such as humanitarianism.\(^\text{273}\) But one has to admit that in general a change of patterns in international relations can take place and thus that humanitarian considerations can find their way into foreign policy. Even if these humanitarianism are a value, it could be translated into specific interests, such as serving a state’s further goal of security and stability in other regions (for example for the promotion of purposes such as trade, investment and others).\(^\text{274}\)

### 4.4. Humanitarianism in Politics / Politics in Humanitarianism

In the past, human rights and humanitarianism in general became more and more part of the agenda in international politics.\(^\text{275}\) After a first phase of active involvement, which ended with the failure of the UN mission in Somalia,\(^\text{276}\) governments, then more reluctant in involvement, often used aid delivered by humanitarian organizations in permanent emergencies as a substitute of political action.\(^\text{277}\) This changed again during the Balkan wars, where humanitarianism became the reasoning for the whole war and where Western governments have been keen in showing their engagement in humanitarian issues. This development went further in Afghanistan and in Iraq. As

\(^{269}\) Neutralized and demilitarized zones, such as other protected zones under \textit{ius in bello}, aim at protecting war victims from the effects of hostilities, but they do not protect from falling under the control of the enemy. Sassoli, Bouvier 1999:172.

\(^{270}\) Safe havens and no-fire-corridors are created under Chapter VII of the UN Charter, which is to say they fall under \textit{ius ad bellum}. Their purpose is, in contrast to those protected zones under \textit{ius in bello}, to avoid certain areas and the war victims found there from falling under enemy control. Sassoli, Bouvier 1999:172.

\(^{271}\) Greenaway 1999.

\(^{272}\) Greenaway 1999.

\(^{273}\) Greenaway 1999.

\(^{274}\) Greenaway 1999.


\(^{276}\) James 2003.

\(^{277}\) James 2003.
the first quotation in this chapter shows, providing humanitarian assistance may be an important tool in winning conflicts. This is true in two regards. First, a democratic belligerent depends much on public opinion, on national as well as on international level. One way of influencing this “battle” about opinion is by demonstrating the goodwill of a belligerent, for example, through showing successes of provided humanitarian assistance. Thus the media covered every relief effort by the coalition forces in Iraq. Still, it has to be emphasized that the provision of relief is not humanitarian action but part of the duties of an Occupying Power under the Geneva Convention. Second, it is one thing to win a war on the battlefield, but is another to win the battle about the support of the civilian population of an occupied territory, necessary for pacification after conflict. A means to win this support is through humanitarian assistance. Relief can be the tool for winning the “hearts and minds” of the civilian population. Only with its support a broader strategy of nation-building or democratization will be successful. Thus, humanitarian assistance became too important to be left to the humanitarians. The problem hereby is that a belligerent is often not lead by impartiality, but by a strategy to win support. For instance, the fact that the US government did not lift the sanctions on humanitarian assistance, which provided the US with a monopoly in providing assistance, was probably not based on impartiality, but might be interpreted as one of its efforts to win the war over “hearts and minds”. Another problem is that with such an approach, humanitarian purposes, when in conflict with the broad strategy, have often to step back in order to give way for these political purposes. For instance, reconstruction projects have often started even before the security situation this admitted. This practice followed clearly a certain political purpose, that is to say to show progress after the conflict while risking humanitarian workers life.

In order to bring humanitarian assistance into this broader strategy, institutional measures have to be taken, which happened more and more in recent conflicts. These measures are taken by States. In order to have influence on the NGO’s policies, dependence have to be created, which happened through extensive funding.

Another step in this regard is the use of humanitarian language for political purposes and vice versa. Statements, where humanitarian organizations are regarded as part of a combat force and

278 Slim 2003. But is not only an aspect of modern conflicts. The importance to win a war by winning the hearts and minds was already known before. Marcus Aurelius reminded his generals that “benevolence is a great weapon in war”; found in Slim 2003.
279 See above paragraph 3.4.
280 See below paragraph 7.2.
283 See above chapter 3.
where these NGOs are fighting in the front line, clarify this use of language.\textsuperscript{284} Through all this politicization neutral humanitarian work is rendered increasingly impossible.

Another issue which deserves attention in this regard is the linking of humanitarianism to development efforts. Humanitarian work is therefore only regarded as a first step in a broad reconstruction and development concept, a revival of former discussions in the 1960s. The problem here is that development might be one of the explicit goals or reasons for starting a conflict, for example in a concept of nation-building. And as such, development becomes highly politicized and is opposed by the other conflicting party. A further question that arises relates to whose development we are talking about, according to whose definitions and parameters. Therefore, development is too political a concept, to be bound to humanitarian work.

These institutional and political changes go hand in hand with a change in the mandates of NGOs. Since they are funded by governments which changed their policies, even the NGOs had to adjust their own policies and tasks according to their “clients”, which is to say the governments. Funding is increasingly linked to certain conditions set by governments and thus tied to foreign policy objectives.\textsuperscript{285} Humanitarian organizations had to include new humanitarian agendas, such as conflict prevention, conflict resolution, peace-building, good governance and others, which go significantly “beyond the core functions of assistance and protection”.\textsuperscript{286} And sometimes political NGOs use humanitarian label deliberately as protection or to hide their partisanship.\textsuperscript{287} Thus highly political tasks came more and more into the NGO’s working field. As A. Donini, L. Minear and P. Walker put it:

“The more deliberate linking of humanitarian action and a justice-driven perspective is a major departure from the concept of humanitarianism enshrined in the Solferino tradition.”\textsuperscript{288}

Politics became even more important because of advocacy policy. Humanitarian organizations stood in contrast to human rights organizations, since they did not seek to influence government policy by advocacy efforts. In the ICRC tradition IHL abuses have not been dealt with in public (with some exceptions, for example, \textit{Médecins sans Frontières}). Today, NGO’s policies are shifting. They speak out about the legitimism of a conflict and about the way the war is conducted.

\textsuperscript{284} See, for example, the quotation of footnote 89.
\textsuperscript{285} Donini, Minear, Walker, 2004:266.
\textsuperscript{286} Donini, Minear, Walker, 2004:263.
\textsuperscript{287} Donini, Minear, Walker, 2004:264.
\textsuperscript{288} Donini, Minear, Walker, 2004:263.
NGOs often regard these issues as universal and above the political fray, without noticing that these advocacy efforts often intersect with their operational activities.  

In crises such as Kosovo, Afghanistan and Iraq, humanitarian organizations with these broader agendas became extensions of the foreign policy objectives of the North. The engagement in these conflicts questions already the impartiality and universality, based on human needs, of humanitarian organizations. Huge donor funds have been available for Iraq, 2,2 billion US$ for nine months, while at the same time the UN has difficulties to raise money for even the basic needs in other conflicts. A. Donini, L. Minear and P. Walker call this a glaring reminder of the triumph of donor pressure and agency operationalism over principle. In other crisis with not so many issues at stake for the Northern governments, the delivered aid is minimal, even though the suffering might be more. On the other hand, only in during these crisis that are not so political laden more principled humanitarian action may still be possible and allowed. This issue leads to another question: whose humanitarian assistance exactly are we talking about? The combining of foreign policy and humanitarian action as well as the involvement of governments in NGO’s agenda setting by funding them results in the fact that the “humanitarian enterprise is that [...] of the North”. Hence, aid agencies are often regarded as pioneers or outposts of the Northern power. As A. Donini, L. Minear and P. Walker put it:

“The humanitarian apparatus is the conveyor belt of Western thought, values, and economic interests, with aid-induced stabilization making countries ‘safe for capital’ for what M. Duffield has called ‘liberal space’. The intrinsic linkages between northern politics, economics, and values on the one hand, and aid, dependency, and tranquillity [on the other] are not new either. Yet the fact that aid workers are seen as ‘the enemy’ by some in Islamic countries (and beyond) has brought this reality into much starker relief.”

This particular problem and the “either with us or against us” rhetoric results thus in a perception of NGOs as “them” at the other side of the conflict.

Contributing to this problem has been a massive failure of humanitarian organizations to set up a dialogue with insurgents in Afghanistan and Iraq. Either they are not there to talk to or the NGOs

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are unwilling or unable to talk them.\textsuperscript{297} In any case, this problem does not enhance the perception of neutral and impartial bodies in a conflict. The question to raise is whether the composition of the NGOs hinders a dialogue with all conflicting parties. Or as A. Donini, L. Minear and P. Walker rightly put it: “How many Arabic speakers did the UN have in Baghdad? […] Did they interact with Iraqis beyond the walls of UN compounds?”\textsuperscript{298}

In conclusion it can safely be argued that politics became part of the humanitarian enterprise. With political agendas it became more and more difficult for NGOs to both be and to be perceived as neutral. This problem can have a serious impact on staff security. There is also an operational dilemma linked to the civil-military relation. In the next chapter, some of the proposed solutions of this problem will be presented.

\textsuperscript{297} Donini, Minear, Walker, 2004:267.
\textsuperscript{298} Donini, Minear, Walker, 2004:267.
“In a pluralistic world, and in the complexity of conflict situations in particular, there cannot be one and only one approach to humanitarian action. Nobody has a monopoly on humanitarian concerns and goals.”

The last fifteen years were in a certain way an experimental phase for humanitarian activities. All the actors of the humanitarian sphere proposed and/or applied different policies in regard to humanitarian assistance. Some actors attempted to find a solution to the emerging problems, analyzed in the previous chapter, while other actors might have provoked or aggravated the problems. In a first step, these recent developments in humanitarian assistance will be analyzed from a theoretical viewpoint. Two approaches are opposed: on the one hand the integration model with an deepened cooperation and linkage of humanitarian NGOs and the military, and on the other hand the distinction model with more separate roles for these two actors. Then, in a second step, the proposed solutions will be described in detail. The focus is put on US, UK, NATO, NGO and ICRC policies.

5.1. Theoretical Approach

The development of humanitarian assistance in recent conflicts shows that there exists basically two different approaches. These are respectively known as the integration and the distinction models. All proposed solutions by players in the humanitarian field can be categorized into these two models. However, the proposed solutions have some amendments and adjustments or combinations of the models. A discussion of these follow next.

5.1.1. Integration Model / Integrated Approach

The UN and Western governments have promoted throughout the 1990s a model of civil-military relations called the integrated or coherence approach. Documents such as ‘An Agenda for Peace’
and the Brahimi report reflect and describe this model, which could be defined as “efforts by governments and international organizations to coordinate diplomatic, military developmental and humanitarian action with the purpose of preventing, reducing or resolving conflict.” The goal of this approach could also be described as to direct international aid and interventions towards a common objective: “to make, maintain or build peace and security based on justice [...] and sustainable development.” In order to reach this goal, the underlying causes of conflict should be addressed through concerted efforts by a variety of international actors. Even humanitarian organizations pressed for this approach, which is based on the assumption that a joint approach will be more likely to keep peace and resolve conflicts than an approach with independently acting entities. Humanitarian assistance should be placed within the pursuit of a higher goal, such as peace-building and should, together with political responses, address the root conflicts of conflict. Thus, humanitarian assistance should only be within a broader framework of conflict resolution and promotion of human rights.

The integrated approach has been highly criticized. Humanitarian organizations fear that integrated organizations would lose their ability to criticize and to hold governments accountable for fulfilling their legal responsibilities. NGOs are afraid of becoming targets in armed conflicts while losing distinctiveness to the military. The political nature of this approach could also pose problems, since humanitarian issues when in conflict to political goals would have to give way to the political objective. Humanitarian action would be transformed from a fundamental right of those in need into another tool of foreign policy. And finally, political endeavours are often contrary to humanitarian, neutral and impartial endeavours. An example of humanitarian assistance serving political purposes while losing impartiality and neutrality is the humanitarian activity and the money spent in Iraq, while at the same time other crises tend to be forgotten, although they would need much more financial support.

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305 Gordon 2003.
307 The majority of NGOs did so, see for example : Braumann (R.) former MSF president in an interview with the Carnegie Council: [http://www.carnegiecouncil.org/viewMedia.php/prmid/4997](http://www.carnegiecouncil.org/viewMedia.php/prmid/4997) [accessed on February 25, 2006].
5.1.2. Distinction Model / Comprehensive Approach

The distinction model has been called the comprehensive approach. It limits the role of the military to ensuring a safe environment whilst leaving enough neutral space for the other international actors in an international intervention. Humanitarian and military space are separate and should only occasionally link together.

This approach was chosen by NGOs in former conflicts and has been reinforced as a counterproposal to the integrated approach. This approach has been criticized because it has not been adjusted to modern conflicts, where security cannot be ensured easily, that is to say where humanitarian work needs military protection. Humanitarian assistance would not be enough to ensure peace. Sometimes it even prolonged a conflict. The underlying reasons of a conflict have not been addressed with this approach. Therefore an integrated approach became necessary, so it is argued. And finally, humanitarian assistance would require more coordination and leadership to be effective.

5.2. Recommendations by Different Players in the Humanitarian Field

Policies of different international actors are examined in order to exemplify the theoretical thoughts in the previous paragraph. Changing patterns and policies of these actors during recent conflicts are here described and evaluated.

5.2.1. US Military’s Stance / British Military’s Stance / NATO’s Policy

The transformation of the security agenda in the scope of the global war on terrorism enhanced the placing of humanitarian action into an overall strategy. The result is the subordination of humanitarian action to processes of political transition and a greater emphasis on reconstruction efforts. Humanitarian assistance should only be a tool for promoting democracy and peace through addressing the underlying causes of a conflict. Humanitarian assistance need coordination by military or political leadership in order to become as effective as possible.

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311 So argued by the UN and the US government; Gordon 2003.
The British military committed itself to not becoming a humanitarian agency coordinating under its leadership all humanitarian activities.\(^{315}\) It focused more on creating a secure environment for others, necessary for all kind of humanitarian activities.\(^{316}\) Thus the British doctrine followed the comprehensive approach.\(^{317}\) This approach was also developed by other NATO states. This approach could thus be regarded as reflecting a fragile consensus between NATO states.\(^{318}\)

5.2.2. UNO

The attack on the UN headquarter in Baghdad in August 2003 underscored, in the UN’s opinion, the importance to carve out effective space for its humanitarian operations.\(^{319}\) In early 2004, the UN was preparing to return to Iraq and demanded security guarantees, a clearly defined role, and assurances that the mission could work independently of the US occupation authority.\(^{320}\) But, even though the UN regarded itself as impartial and apolitical, the political importance and value of UN missions was already widely accepted under academics.\(^{321}\) The question in Iraq was whether the UN presence would legitimize American actions and the UN would solidify US dominance. The UN itself did not want to legitimize anything, but rather to modify American unilaterism. But once again it is more a question of perception than of institutional distinction. The UN was aware of this dilemma, and therefore a difficult decision was to be taken: either participate and giving the image of the UN as an instrument of US policy, or stand aside without the possibility to influence the situation on the ground. Political space for independent action was crucial. The UN believed that they could create this space through presence and diplomacy.\(^{322}\) Several difficulties had to be encountered. It was not the biggest problem to work in an occupied territory and in the shadow of the US as the Occupying Power.\(^{323}\) That position did not let the UN seem as an instrument of the occupying power, as the example of the UN in the Palestinian territory occupied by Israel after the 1967 war shows.\(^{324}\) The UN and its subdivisions have a large humanitarian presence there.\(^{325}\) The UN mission has fought to protect its neutral space and it has not been targeted for attacks, which stands in striking contrast to the UN in Iraq.\(^{326}\) Terrorism is the major weapon against the

\(^{315}\) Slim 2003.
\(^{316}\) Slim 2003.
\(^{317}\) Gordon 2003.
\(^{318}\) Gordon 2003.
\(^{319}\) Klüsmeier, Suhrke 2004.
\(^{320}\) Klüsmeier, Suhrke 2004.
\(^{322}\) Klüsmeier, Suhrke 2004.
\(^{323}\) Klüsmeier, Suhrke 2004.
\(^{324}\) Klüsmeier, Suhrke 2004.
\(^{325}\) Klüsmeier, Suhrke 2004.
\(^{326}\) http://www.palestine-un.org/ [accessed on March 07, 2006].
occupation in both Iraq and Palestinian territories. Nevertheless, the UN has become a victim of terrorist attacks only in Iraq.\textsuperscript{327} The question arises as to the reasons for these differences. The type of action in Iraq and in Palestinian territories seem quite similar. However, the starting point of the UN missions was different. The UN has never formally approved Israeli control over the territories it occupied after 1967, refused to recognize the occupation authority as such and the Security Council even called for withdrawal of Israeli armed forces.\textsuperscript{328} The situation in Iraq was different. Even though the Security Council did not authorized the invasion, it effectively endorsed the invasion as a fait accompli through recognizing the authority of the US and the UK in the Security Council Resolution 1483, which even went further by welcoming the willingness of Member States to contribute personnel, equipment and other resources to the occupying powers.\textsuperscript{329} As D. Klusmeyer and A. Suhrke put it:

“By recognizing the occupation authority—although as a temporary measure—and the regime it installed, the UN indirectly endorsed the intervention. This interpretation is further supported by the fact that neither the Security Council (understandably in view of US veto power) nor the General Assembly has collectively and formally questioned the legality of the invasion. Given that staring point, it would require extraordinary skills on the part of the UN to portray the organization as neutral and independent in relation to the occupation authority.”\textsuperscript{330}

In contrast to the UN’s policy in Iraq stands its involvement in East Timor, where the UN, while taking the position that the Indonesian invasion was illegal following consistent legal standards, could be perceived as a neutral broker.\textsuperscript{331}

To this problem came the UN’s legacy in Iraq of its former involvement by its sanction’s regime, which had as a consequence that many Iraqis did not regard the UN as neutral or without criticism.\textsuperscript{332} Also the UN endeavours for humanitarian assistance worldwide show that its engagement did not follow neutral and impartial guidelines, since Iraq garnered % 56 of the actual funding received by UN agencies in 2003 and the UN appeal for Iraq was % 43 of the total 2003 worldwide appeal.\textsuperscript{333}

\textsuperscript{327} Klusmeyer, Suhrke 2004.
\textsuperscript{328} \url{http://www.palestine-un.org/} [accessed on March 07, 2006].
\textsuperscript{329} Klusmeyer, Suhrke 2004.
\textsuperscript{330} Klusmeyer, Suhrke 2004.
\textsuperscript{331} Klusmeyer, Suhrke 2004.
\textsuperscript{332} De Torrente 2004:22.
5.2.3. Different NGO Policies

All NGOs involved in humanitarian assistance have different policies, coming from the whole scale of possible policy stances. Their policies in regard to neutrality and civil-military relations therefore vary as well.

An organization’s willingness to co-operate with political actors is primarily determined by their understanding of neutrality: the perception of their own neutrality defines an organizations position towards politics and political actors. N. Leader distinguishes three different types of dealing with neutrality. There are NGOs with a classical conception of neutrality, that is to say, neutrality as a means to provide relief and to protect non-combatants. Other NGOs abandoned neutrality and affiliated deliberately with political actors in order to contribute to political objectives. The third group consists of NGOs which try to initiate constructive social change while upholding the imperative of not taking sides. These organizations understand neutrality as simply not taking side in hostilities while trying to co-operate with political actors (which could be evolved in the conflict). The problem here is that even if theses organizations regarded themselves as neutral, the perception of neutrality might become more difficult.

In the following paragraphs, some examples are provided of how NGOs dealt with the particularities of recent conflicts.

Oxfam, MSF and CARE declared already before the war in Iraq that they would not accept grants from either the US or the UK. During the conflict and after the official end of the war in Iraq, the US government provided money for humanitarian projects. Only American NGOs could apply for this money. Nevertheless, CARE, World Vision and the International Rescue Committee did not apply for this US funding. Several reasons have been given, such as “continuing security problems [...] that are hampering their existing relief efforts, discomfort with oversight from occupying military officials, and the need to direct staff and resources to more pressing humanitarian crisis elsewhere in the world.”

Oxfam, as many other NGOs, argued that, even if the Occupying Power has the responsibility to supply relief for the civilian population, it does not mean that the occupant should provide relief directly. This would be the task of NGOs under a UN’s leadership. The main task for the military would be to ensure a safe environment. The UN would be responsible for coordination and

335 Schloms 2005.
communication between the military and civilian agencies.\textsuperscript{338} Thus Oxfam clearly followed IHL regulations in regard to the duties of an Occupying Power and therefore promoted the distinction model.

MSF follows the so-called “acceptance” approach.\textsuperscript{339} It regards it as the most reliable means of minimizing safety risks.\textsuperscript{340} It entails the establishing of transparent relationships with local authorities and communities based on an unambiguous humanitarian identity and on the effective delivery of assistance.\textsuperscript{341} MSF has been highly critical towards the US humanitarian policies. For example, \textit{Médecins sans Frontières} Executive Director N. de Torrente stated that:

“The manner in which the US-led coalition made the […] provision of relief for Iraqis an integral part of its political and military agenda contributed significantly to the hostility towards humanitarian action and those who deliver it.”\textsuperscript{342}

And:

“The US efforts to associate assistance with its political objectives have jeopardized the ability of humanitarian organizations to distinguish themselves from all parties and to provide aid based solely on need during times of crisis.”\textsuperscript{343}

In Afghanistan, MSF had to withdraw its staff after several terrorist attacks. MSF stated that the US governments policy was responsible for these developments.\textsuperscript{344} A severe judgment, which does not seem to take the changing nature of the conflict into mind.\textsuperscript{345}

But not only MSF, but also other NGOs have been afraid of developments in Afghanistan and Iraq where US leaders regarded humanitarian organizations as ‘force extenders’ and emphasized the need for their independence.\textsuperscript{346} To ensure a perception of humanitarian organizations as neutral, NGOs demanded a clear distinction between the roles and missions of military and humanitarians.\textsuperscript{347} In Afghanistan, clear recommendations were forwarded to the Coalition.\textsuperscript{348} Since a secure environment is crucial for the NGO’s work on the field, they demanded a reemphasis of the military to classical activities such as arms collection, demobilization and ensuring security in
general, thus clearly following the distinction model. The Agency Coordinating Body for Afghan Relief argued that the military should only deliver humanitarian relief in cases of emergency, insecurity or other exceptional situations. Thus a clear distinction in the respective missions was the NGO’s objective. However, these recommendations have not taken effect because of a lack of donor and political will. Political actors tended to politicize humanitarian action and to diminish the humanitarian space for NGOs.

All these NGO efforts aim to carve out the necessary neutral space for humanitarian work. But not all NGOs regard the principle of neutrality as sacred. A. Donini, L. Minear and P. Walker cite a NGO official who regards neutrality as a “head in the sand approach which refuses to take into consideration new realities which may justify new practices not consistent with sacred texts.” Even though this stance is not a general opinion, there are NGOs that believe that the traditional principles of humanitarian assistance can not be applied in modern conflicts such as Iraq. Organizations should be more pragmatic with these principles and say that these principle only serve as reference points, that could be abandoned, as the situation requires. These NGOs said that it is not up to them to define that space, but for the political players in that environment. In this regard it would be more reasonable to accept this fact and to engage in the political debate in order to get more influence over the process of defining humanitarian space, the argument goes.

Thus, these NGOs support openly the integrated approach, while sometimes even openly giving up neutrality and impartiality. They try to participate “in what many view, overall, as a positive agenda promoted by Western States.” Even though such a stance could deliver valuable services, effectively covering some of the needs of some populations, it has to be taken in mind that this would be the work of a service provider, not of an humanitarian actor, which would have its own advantages, but could never provide assistance in a humanitarian manner, that is to say, where the need is the greatest.

349 James 2003.
351 James 2003.
352 Donini, Minear, Walker, 2004:263.
354 O’Brien 2004:34.
355 Those giving up neutrality are to be categorized under the second type, and those, who work with a belligerent in an integrated approach while upholding the principles of neutrality and impartiality are to be categorized under the third type of NGO’s, according to Macrae, Leader; see footnote 278.
The ongoing terrorist attacks forced all NGOs to reconsider their policies.\textsuperscript{358} The response of all kinds of humanitarian organizations in Iraq to the worsening security situation and to the attacks directed against their staff and equipment was to minimize direct exposure by scaling back programs and staff presence.\textsuperscript{359}

\subsection*{5.2.4. ICRC}

The ICRC has always been reluctant to forge too close ties with belligerents.\textsuperscript{360} It has been the strongest supporter of a strict neutral and impartial stance. These principles were the basis for their humanitarian work with all facets in an armed conflict, necessary for fulfilling its duties under IHL. The ICRC tried in all conflicts to carve out a neutral space. Only in situation of an unsafe environment the ICRC sought armed protection, as a last resort. Normally, neutrality provided already the necessary protection for its field staff. But still, the terrorist attack in Baghdad on the ICRC compound occurred. As a response, the ICRC, in official statements, reinforced the validity of the principles of neutrality and impartiality. ICRC staff often warned of mingling with the military and of blurring responsibilities. These warnings were aimed at all the NGO’s, which had too close ties with belligerents. Indirectly, they hold other NGOs responsible for the blurring responsibilities, under which even the ICRC had to suffer. Therefore, the ICRC tries to emphasize the importance of genuine neutral humanitarian work, valid for all humanitarian organizations.

The proposed solutions differ to an important degree. Where the military often attempts to take the leadership in the civil-military relation, the NGOs, in most cases, try not to mingle with the military in order to carve out a neutral humanitarian space. However, all proposed solutions have to take the changing character of conflict into mind. The next chapter will address this issue.

\textsuperscript{357} De Torrente 2004:28.  
\textsuperscript{358} De Torrente 2004:21.  
\textsuperscript{359} De Torrente 2004:21.
CHAPTER 6: THE NEW CONFLICTS OF THE 21\textsuperscript{st} CENTURY - ASYMMETRY AND TERRORISM

“Here, suicide and murder are two sides of the same system.”\textsuperscript{361}

Too many humanitarian workers already lost their lives in the deteriorating security situations in Afghanistan, Iraq and elsewhere. Practical solutions to this problem are needed. In order to provide solutions, one has take the changing patterns of modern conflicts into consideration. At a time when international relations are undergoing deep changes without precedents, military responses to political problems have to be completely reconsidered. For two centuries, military theory was dominated by the hypothesis of C. von Clausewitz that war was the continuation of politics by other means.\textsuperscript{362} This classical notion of war is disappearing. New types of conflicts have already been fought during the Cold War in the periphery of the two superpowers. Nevertheless, a new form of conflict emerged after the end of bipolarity. These new conflicts are characterized by clashes between tribal, ethnic and religious factions, by the absence of sophisticated armaments and by the abandoning of the distinction between civilians and combatants. This chapter will analyze these new conflicts\textsuperscript{363} and its most important components asymmetry and terrorism.\textsuperscript{364} The last paragraph of the current chapter elaborates on IHL regulations in regard to terrorism.\textsuperscript{365}

6.1. The Notion of “New Wars”

Historians and war analysts use a variety of terms in order to describe the changing patterns of conflict.\textsuperscript{366} But they all agree on the fact that the nature of war is changing. This phenomenon became apparent in the 1990s. Increasingly more states were in a process of disintegration. The concept of failed states emerged and was widely discussed.\textsuperscript{367} The warring factions often enjoy the

\textsuperscript{360} On the issue of civil-military cooperation: Studer (M.), The ICRC and Civil-Military Relations in Armed Conflicts, IRRC 2001.
\textsuperscript{361} Camus (A.), found in: Berman (P.), Terror und Liberalismus, Bonn 2004, original title: Terror and Liberalism, 2003, p.7.
\textsuperscript{363} See paragraph 6.1.
\textsuperscript{364} See paragraph 6.2.
\textsuperscript{365} See paragraph 6.3.
\textsuperscript{366} Civil war, low intensity war, wild war, small war, neo-hobbesian war, etc…; to the notion of new wars see also: Hermann (I.), Palmieri (D.), Les nouveaux conflits: une modernité archaïque?, IRRC 2003.
\textsuperscript{367} The concept was discussed by political scientists and by lawyers, see for example Thürer (D.), The “failed state” and International Law, IRRC 1999.
necessary resources at their disposal provided by links to the international market, even though UN embargo policy often tries to mitigate against this.\textsuperscript{368} Even some of the resources provided by humanitarian organizations are used by the belligerents. In most of the cases these wars are non-international conflicts of long duration and often of low intensity.\textsuperscript{369} These low intensity wars often go hand in hand with the privatization and commercialisation of the violence through the engagement of mercenaries, warlords and child soldiers.\textsuperscript{370} All these characteristics can be found on both sides of a conflict.\textsuperscript{371}

Those conflicts where one of the conflicting parties is characterized by a highly modernized and superior army are of a different nature. The only way for the inferior faction of winning such an asymmetric conflict is by using guerrilla tactics and terror. These were the lessons learned from the conflicts in Vietnam,\textsuperscript{372} Afghanistan, Lebanon and Somalia.\textsuperscript{373} The primary reason for this asymmetry today is situated in the unmatchable technological, military and economical superiority of the US.\textsuperscript{374} Asymmetry is regarded as one of the developments of war and asymmetric wars are regarded as an example of the new generation of wars.

Since the most striking problems for humanitarian organizations occurred in Afghanistan and Iraq, the next paragraph will address asymmetric wars, i.e. the “war on terror” and the terror itself. Only the aspects linked to humanitarian assistance will however be examined.

6.2. Asymmetric Wars\textsuperscript{375} and Terrorism\textsuperscript{376}

Asymmetry has not been a feature only of modern conflicts. Guerrilla tactics and partisan warfare have been employed by several belligerents in the last century. Mao Tse Tung developed these tactics\textsuperscript{377} which were then adapted in many conflicts. Even terrorist acts have been utilized in

\begin{footnotesize}
\textsuperscript{368} Münkler (H.), \textit{Die neuen Kriege}, Hamburg, 2002, p.22.
\textsuperscript{369} Van Crefeld 1998:36.
\textsuperscript{370} Münkler 2002:33.
\textsuperscript{371} Münkler 2002:33.
\textsuperscript{372} The experience of guerrilla warfare in Vietnam made the US reject Protocol I. One reason was, that, in lowering previous standards by which combatants were required to distinguish themselves from civilians, the ambiguity favoured protection of terrorists and their struggles, the US said. Lemieux 2002 citing Gardam J. G., Noncombatant Immunity and the Gulf Conflict.
\textsuperscript{373} Münkler 2002:51.
\textsuperscript{374} Münkler 2002:55.
\textsuperscript{375} For problems for IHL in asymmetrical wars: Pfanner (T.), \textit{Asymmetrical Warfare from the Perspective of Humanitarian Law and Humanitarian Action}, IRRC 2005.
\textsuperscript{377} Mao Tse Tung, \textit{Theorie des Guerillakriege}, Hamburg, 1966.
\end{footnotesize}
several conflicts, whereby different questions emerge in regard to the concept of terrorism. In a situation of armed conflict, belligerents tend to name certain adversary actions terrorist acts in order to de-legitimize these actions. What is called a terrorist act might be a legitimate action against an illegitimate occupant. It is therefore necessary to find an appropriate definition of terrorism.

Terrorism can be regarded as an application of violence, which aims at reaching a certain objective through its indirect effects. A terrorist strategy does not aim in the first place at physical destruction, but rather at its psychological consequences. The aim is not the destruction itself, but the terror of the civilian population and the exposure of the enemy’s vulnerability. Terrorism has also been described as a communication strategy, which aims at conveying a message to the enemy and to a third party (often the terrorist group’s own civilian population).

Besides these social scientific definitions, there exist legal definitions as well. Many international lawyers regard terrorism as a crime against humanity. However, this consideration does not deliver a workable definition of terrorism. Twelve international conventions have already been signed, but each of them covers only a specific criminal activity. Efforts to come to an broader definition have been in vain since no consensus on whether the term terrorism should apply to the actions of states in the same way that it applies to the actions of non-state actors. The UN General Assembly suggests a definition. It states:

"that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them."

378 Terrorism is an asymmetric tactic, but differs from other asymmetric tactics, such as guerrilla tactics and partisan warfare, see: Münkler (H.), The wars of the 21st century, IRRC 2003, p.11; another problem is the application of IHL on terrorists, Stein (T.), How Much Humanity Do Terrorists Deserve? 1991.

379 Münkler 2002:175.

380 Münkler 2002:175.

381 Münkler 2002:177.


385 Cassese (A.), Terrorism is Also Disrupting Some Crucial Legal Categories of International Law, EJIL 2001, p.994.


388 GA Res. 51/210 of 1999: Measures to eliminate international terrorism.
If such a definition is accepted, certain actions in the Palestinian Westbank can be regarded as terrorist acts as well as certain actions in Afghanistan and Iraq. If these actions have the same legal qualification and are of the same nature, one has to wonder why terrorists are attacking humanitarian workers only in Afghanistan and Iraq. One answer could be the loss of neutrality in these conflicts. Another might be the changing character of the terrorist acts and the terrorist actors. If this is true, a strict neutral stance might not be a guarantee for humanitarian workers’ safety in Afghanistan and Iraq.

Terrorist attacks by al Qaeda and its allies are regarded as a new form of terrorism. P. Berman sees the difference between “old” and “new” terrorism to be situated in the following: where the terrorists formerly accepted a certain ethic, the new terrorist are seeking to kill as much innocent persons as possible. H. Münkler, in turn, considers the change of the communication strategy of the new terrorists. Whereas terrorists previously addressed a third party through its acts, new terrorists aim at creating this third party. P. Haine emphasizes the new dimension of terrorism: new terrorists attack members of a despised and bedevilled way of living. Also the horizontal structure of new terrorist organizations and the area of operation are different. Instead of a hierarchical structure, the new terrorists employ a linear structure with small groups which are only loosely tight to each other.

Bearing these characteristics in mind, it is important to “translate” the conveyed message of the terrorist attacks. In the case of the occupied territories in the Westbank, the message is quite clear: anything from Israel, irrespective of whether it is of a military or a civilian nature should leave the occupied territory, otherwise it becomes a target. In the case of Afghanistan and Iraq the enemy seems to be the “West”. The attacks on the UN, NGOs and the ICRC sent a clear message that “all organizations providing assistance were now considered targets, and that international staff were not welcome in Iraq.”

The terrorist attacks seem to be part of an overall strategy by extremists to deepen divisions and intimidate anyone not supporting their cause. As N. de Torrente

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389 Which would be the ICRC’s view.
390 Berman 2003:147, a definition which is not very elaborated, since no one is innocent, according to the absolute categories employed by the terrorists, see the following paragraph.
391 Münkler 2002:182.
392 Heine (P.), Terror in Allahs Namen, Freiburg, 2001, p.61.
393 Heine 2001:118.
394 Heine 2001:118.
395 The example of Palestine is taken in order to show that not all Muslim terrorists are acting in the same way. This clarification is necessary, since some analysts regard Muslim terrorists as people attacking anything, which is not Muslim. A statement which has to be encountered, since the Red Cross and Red Crescent agencies did not come under attack in this conflict. Regarding the general relationship between Islam and IHL see: Benthall (J.), Humanitarianism, Islam and 11 September, Humanitarian Policy Group Centre Paper, 2003; Cockayne (J.), Islam and International Humanitarian Law: From Clash to a Conversation between Civilizations, IRRC 2002; Ghandour (A.-R.), Humanitarianism, Islam, and the West, Humanitarian Policy Group Centre Paper, 2002.
remarks: “(T)he reverse application of President G. W. Bush’s famous warning: Either you are with us or with the terrorists.” The terrorists message, in turn, might be: either you are with us or you are with the Western occupiers. A neutral organization is thus regarded as the enemy. The distinction between categories such as combatant and civilian, neutral or not, does not exist. Either you are “with us or against us”. No space for neutrality is left in such a situation of absolute categories.

6.3. Terrorism and IHL

The question emerges as to how IHL deals with terrorism. The Conventions and Protocols containing IHL do not define terrorism, but they prohibit those acts committed during an armed conflict that would commonly be considered “terrorist” if they were committed in peacetime. According to the basic principle of distinction, combatants in armed conflict must, at all times, distinguish between civilian objects and military objects. Deliberate attacks against civilians and civilian objects are therefore prohibited. IHL also prohibits hostage taking. Furthermore, IHL prohibits “measures of terrorism” and “acts of terrorism.” Both Additional Protocols to the Geneva Conventions also prohibit acts aimed at spreading terror among the civilian population. The aim of these regulations is to emphasize that the civilian population cannot be subject to collective punishments, which obviously induce the spread of terror. However, IHL regulations are only applicable in armed conflict. An armed conflict to be considered as such requires the existence of “parties” to this conflict. The parties to a conflict are two or more states in an international armed conflict and either states and armed groups - for example, rebel forces - or just armed groups in a non-international armed conflict. A party to an armed conflict is characterized by a military-like

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398 Even though terrorists might know that these distinctions exist, they are just not respected. The distinctions are different, which becomes apparent in the order of Bin Laden to kill Americans wherever there are and in some fundamentalist’s view of a battle between the Muslim world and the crusaders. Berman 2004:190,229.
399 Art. 48 of Additional Protocol I.
400 Art. 34 of the Fourth Geneva Convention; Article 3 common to the Geneva Conventions; Article 75(2c), Additional Protocol I; and Article 4(2c), Additional Protocol II.
401 Art. 33 of the Fourth Geneva Convention.
402 Art. 4 Additional Protocol II.
403 http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList74/0F32B7E3BB38DD26C1256E8A0055F83E [accessed on March 15, 2006].
404 Art. 2 common to the Geneva Conventions.
405 http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList74/0F32B7E3BB38DD26C1256E8A0055F83E [accessed on March 15, 2006].
formation with a certain level of organization and under responsible command and, therefore, the ability to respect and ensure respect for IHL.\textsuperscript{406}

IHL applies equally to all parties to an armed conflict, irrespective of whether it is a rebel group or a state. Accordingly, it is for all parties prohibited to attack directly civilians or civilian objects. This basic equality among the parties to the conflict as well as the intensity of violence involved and the means used, which distinguishes warfare from law enforcement.

Despite the labelling of actions against terrorists as “war on terrorism”, the applicability of IHL has to be considered for each of these actions.\textsuperscript{407} IHL is only applicable if the conditions, previously evoked, are fulfilled. The war waged by the US and its allies in Afghanistan in October 2001, after the attacks against the United States on 11 September 2001, is an example of an armed conflict as defined under IHL.\textsuperscript{408} IHL was fully applicable to that conflict, involving the US-led coalition, on the one side, and the Taliban forces and their allied armed forces if carrying arms openly, on the other side. However, much of the ongoing violence committed by terrorists in other parts of the world is perpetrated by loosely organized groups or networks that often only share a common ideology. It is therefore doubtful whether these groups and networks can be characterised as a “party” within the sense of IHL. Nevertheless, these acts are subject to law. When IHL does not apply to such acts, domestic or international criminal law might be applicable.\textsuperscript{409} But neither the anti-terrorist measures taken by states do amount to armed conflict. These measures can cover intelligence gathering, police and judicial cooperation, extradition, criminal sanctions, financial investigations, the freezing of assets or diplomatic and economic pressure on states accused of aiding suspected terrorists.\textsuperscript{410} These actions are commonly not considered as acts of war.

Another very contentious issue is the status of detained persons in the fight against terrorism. During the legitimate fight against terrorism states may arrest and detain persons suspected of terrorist acts. However, the detention must always fulfil clearly defined national and/or international legal standards.\textsuperscript{411} The detention or / and capture of persons in relation to an international armed conflict, as it was the case with Afghanistan until the establishment of the new government in June

\textsuperscript{406} See for these requirements for example Art. 1 of Additional Protocol II.
\textsuperscript{407} \url{http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList74/0F32B7E3BB38DD26C1256E8A0055F83E} [accessed on March 15, 2006].
\textsuperscript{408} RONA (G.), \textit{When is a war not a war? - The proper role of the law of armed conflict in the “global war on terror”}, Official ICRC Statement, Geneva 2004.
\textsuperscript{409} \url{http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList74/0F32B7E3BB38DD26C1256E8A0055F83E} [accessed on March 15, 2006].
\textsuperscript{410} \url{http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList74/0F32B7E3BB38DD26C1256E8A0055F83E} [accessed on March 15, 2006].
\textsuperscript{411} Such as Arts. 3, 5, 8, 9, 10, 11 of the Universal Declaration of Human Rights; Arts. 6, 7, 9, 10, 11, 14, 15, 16 of the International Covenant on Civil and Political Rights.
2002, is regulated by IHL applicable to international armed conflicts. Combatants have the prisoner of war status (PoW) and can be held in detention until the end of active hostilities in that particular armed conflict.\textsuperscript{412} PoWs cannot be tried for their participation in hostilities, but they may be tried for war crimes they may have committed.\textsuperscript{413} If the PoW status of a prisoner is in doubt the Third Geneva Convention foresees that a competent tribunal should rule on the issue.\textsuperscript{414} Civilians enjoy the protection provided for in the Fourth Geneva Convention, if detained for security reasons by the Occupying Power.\textsuperscript{415} Those combatants who do not fulfil the criteria for the PoW status, for example combatants who did not carry arms openly, or civilians who have taken a direct part in hostilities in an international armed conflict are protected by the Fourth Geneva Convention provided they are enemy nationals.\textsuperscript{416} These persons can be tried under the domestic law of the Occupying Power for the committed unlawful acts, as well as for any criminal acts they may have committed.\textsuperscript{417}

Persons detained in a non-international armed conflict waged as part of the fight against terrorism are protected by Article 3 common to the Geneva Conventions and the relevant rules of customary international humanitarian law.\textsuperscript{418} But also the rules of international human rights apply to them. Detained persons in a non-international conflict are thus entitled to the fair trial guarantees of IHL and international human rights law.\textsuperscript{419} Only those persons detained outside of an armed conflict are without an IHL protection, since it is not applicable. Nevertheless, these persons are protected by the domestic law of the detaining state and by international human rights law. These bodies of law protect detained persons, if tried for any crimes they may have committed, by the fair trial guarantees which they entail.\textsuperscript{420}

In conclusion of this chapter, it can be stated that the changing character of conflict has an impact on humanitarian assistance, which has to be taken into consideration so as to formulate a workable solution. The next chapter will seek to clarify the legal basis of humanitarian assistance.

\textsuperscript{412} Art. 118 of the Third Geneva Convention.
\textsuperscript{413} Third Geneva Convention, Art. 70 of the Fourth Geneva Convention.
\textsuperscript{414} Art. 5 of the Third Geneva Convention.
\textsuperscript{415} Art. 78 of the Fourth Geneva Convention.
\textsuperscript{416} Arts. 70-77 of the Fourth Geneva Convention.
\textsuperscript{417} Art. 71 of the Fourth Geneva Convention.
\textsuperscript{418} http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList74/0F32B7E3BB38DD26C1256E8A0055F83E [accessed on March 15, 2006].
\textsuperscript{419} Rona 2004.
\textsuperscript{420} http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList74/0F32B7E3BB38DD26C1256E8A0055F83E [accessed on March 15, 2006].
Where discussions about terrorism and humanitarian assistance can become very emotive, a strictly legal stance might show the way out of the crisis.

“Everyone who has experienced war, particularly the wars of our times, knows that unleashed violence means the obliteration of standards of behaviour and legal systems. Humanitarian action in a war situation is therefore above all a legal approach which precedes and accompanies the actual provision of relief.”

Since discussions about the very nature of humanitarian assistance are getting more and more passionate (certainly driven by political interests and motivations), an assessment of the legal basis of humanitarian assistance may engender a degree of calm and could provide workable solutions. This chapter will examine the legal framework of humanitarian assistance in the four Geneva Conventions of 12 August 1949, in the Protocols Additional to the Geneva Conventions of 1977 and in other IHL treaties. Thus, the present chapter will seek to determine, describe and analyze the rules that regulate humanitarian assistance in armed conflicts.

Not only rules generally dealing with humanitarian assistance are therefore important, but also the duties of Occupying Power in regard to relief operations. Even though the rules concerning relief in occupied territories form part of the regulation of humanitarian assistance as a whole, special attention will be given to this aspect. This focus on the duties of an Occupying Power is also necessitated due to the fact that in this particular situation the military has to work together with (or at the side of) humanitarian organizations. Problems of distinctiveness and overlapping of responsibilities are therefore not uncommon. Regulations in this regard are all too often forgotten, but could serve as a resolution for the actual dilemma. Certain rules clearly state to what extent a specific behaviour is legitimate or not and often show and emphasize where distinctive assistance could and should be taken. A strictly legal stance could therefore provide solutions to the actual malaise.

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421 Maurice (F.), an ICRC delegate, found in: Sassoli, Bouvier 1999:70.
422 See paragraph 7.1.
423 See paragraph 7.2.
7.1. Humanitarian Assistance in IHL

The body of law relative to humanitarian assistance is largely contained in the Geneva Conventions of 1949 and their Additional Protocols of 1977. The characteristic feature of IHL regarding humanitarian assistance is that the rules are not the same for different categories of war victims. The wounded and sick, prisoners of war and the civilian population are all subject to different rules. The different legal treatment arises from different situations in which the victims find themselves; they are the product from long experiences of humanitarian organizations on the field, such as those of the ICRC. The rules in regard to these particular groups of victims provide regulation for the different phases of humanitarian activity. In what follows next, only the most important regulations will be considered.

The Geneva Conventions contain an important provision, valid for all Conventions, authorizing the ICRC and other organizations, subject to the consent of the parties to the conflict, to undertake any humanitarian initiative considered useful for the protection of the victims of armed conflicts and for their relief. This right of initiative enables the ICRC and others to undertake any humanitarian activity not already provided for by the Conventions. A condition for this activity is the impartiality of these organizations.

The basic principles of humanitarian assistance are delineated in Art. 23 of the Fourth Geneva Convention. This regulation ensures free passage of medicinal supplies and objects necessary for religious worship, which can be send to the population as a whole, and the free passage of food supplies for especially vulnerable groups, such as children. The relief consignments could be sent by States, private persons or by humanitarian organizations. The article’s broader scope distinguishes it from the more specific case of an occupied territory. Art. 23(2) and 23(3) of the Fourth Geneva Convention provide some safeguards for the conflicting parties, for example, the right to inspect the contents and verify the destination of the relief supplies. Paragraph 4 regulates the forwarding of the delivered goods. Art. 23 of the Fourth Geneva Convention applies only to the relations existing, by reason of war, between one State and another.

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424 Jakovljevic (B.), *The right to humanitarian assistance*, IRRC 1987, p.475.
428 Jakovljevic 1987:475.
429 Art. 9 of the first three Conventions and Art. 10 of the Fourth Convention.
431 Sassòli, Bouvier 1999:182.
433 See Arts. 59, 60 and 61 of the Fourth Geneva Convention.
An important development of the right to humanitarian assistance was provided by Additional Protocol I. Its Art. 70 obliges a State to agree to relief action (as long as they are humanitarian and impartial and conducted without any adverse distinction),\textsuperscript{435} if its own population is not adequately supplied with goods essential to its survival. But Art. 70 contains a limitation: it demands the consent of all the parties concerned. However, today this regulation is read as implying that the government has to give its consent when the stipulated conditions are met.\textsuperscript{436} The fact that the population is national explains why this regulation is not imperative compared to Art. 59 of the Fourth Geneva Convention.\textsuperscript{437} As a further development of the Geneva Conventions, the Protocols seek to bring the nationals of a belligerent into the scope of protection, since they have not been protected under Section III of the Fourth Geneva Convention.

Art. 70 of the Fourth Geneva Convention, together with other IHL regulations, serve as a starting point for establishing the right to humanitarian assistance.\textsuperscript{438}

The regulations regarding humanitarian assistance in internal armed conflicts are contained in common Art. 3 of the Geneva Conventions and in Art. 18(2) of Additional Protocol II. Art. 18(2) stipulates consent by the government, similar to Art. 70 of the Fourth Geneva Convention. However, it is not yet widely accepted to read this article as implying that the government has to give its consent as soon as the conditions are met.\textsuperscript{439} In this research more emphasis will be placed on the regulation of humanitarian assistance in international armed conflicts, since recent problems of blurring responsibilities emerged in these particular conflicts.

Another part of the law concerning humanitarian assistance is the series of rules relating to the conditions, status and activities of the various institutions and organizations, such as the ICRC and other humanitarian and relief organizations.\textsuperscript{440}

7.2. Duties of an Occupying Power

Humanitarian organizations do not have a monopoly on providing humanitarian assistance.\textsuperscript{441} On the contrary, the provision of essential services to the civilian population in an occupied territory is the responsibility of the Occupying Power. It has the duty, according to Arts. 55 and 56 of the

\textsuperscript{435} See above paragraph 2.2.5.
\textsuperscript{436} Sandoz, Swinarski, Zimmermann 1987:819,820.
\textsuperscript{437} Plattner 1994; see also below paragraph 7.2.
\textsuperscript{438} See for example Torrelli (M.), From humanitarian assistance to “intervention on humanitarian grounds”, IRRC 1994.
\textsuperscript{439} See the Commentary; Torrelli 1994 sees it otherwise.
\textsuperscript{440} Jakovljevic 1987:475; see also above paragraphs 2.2.2., 2.2.3. and 2.2.4.
\textsuperscript{441} De Torrente 2004:3.
Fourth Geneva Convention, to ensure that the civilian population receives adequate medical and food supplies. If this is impossible, the Occupying Power has the duty to permit relief operations by third States or by an impartial organization. The said Power has even to facilitate such operation, according to Art. 59 of the Fourth Geneva Convention.

These regulations could be helpful to analyze in detail how IHL endeavours to enhance and even to guarantee humanitarian aid in this particular situation. The importance of this analysis cannot be overstated, since the end of a conflict often result in an occupation of territory. This was the case in Afghanistan and Iraq, where, as a result, the regulations of the Fourth Geneva Convention concerning occupied territory were applicable.

An analysis of IHL regulations concerning occupation could be useful in order to clarify the linkage between humanitarian assistance efforts by the Occupying Power on the one hand and by humanitarian organizations on the other hand. This analysis tries to demonstrate distinctions between the different players on the field as foreseen by IHL. It therefore has to be examined whether IHL regulations in this regard are sufficient and if they could serve as guidelines for future conflicts.

The duties of an Occupying Power are laid down in the Fourth Geneva Convention of 1949, in the two Additional Protocols to the Geneva Conventions and in the Hague Regulations of 1907. A definition of the notion “occupation” is given in Art. 42(1) of the Hague Regulations of 1907. Territory is considered occupied when it is actually placed under the authority of the hostile army. According to Art. 42(2) of the Hague Regulations, the answer to the question as whether a territory is occupied has to be based on facts and the Hague Regulations only apply to situations where an authority has been established and, as a matter of fact, can be exercised.

The basic principle of IHL applicable to occupied territories is that life should proceed as normal as possible. This applies to economic and social conditions. The majority of the regulations are designed to provide protection to the civilian population. In order to make sure that life continues as normally as possible, the Occupying Power, in terms of Art. 43 of the Hague Regulations, has the duty to restore law and order.

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442 For the problems of application of IHL to these organizations: Vite (S.), L’applicabilité du droit international de l’occupation militaire aux activités des organisations internationales, IRRC 2004, p.9.

443 Sassòli, Bouvier 1999:156.

The basic principle and general rule of conduct for the occupant regarding the protection of the civilian population is enshrined in Art. 46(1) of the Hague Regulations.\footnote{Levie (H. S.), \textit{The Code of International Armed Conflict}, Vol. 2, London, Rome, New York, 1986, p.722.} This article states that “(f)amily honour and rights, the lives of persons, and private property […] must be respected.”

These basic rules regarding occupied territories have further been developed in the four Geneva Convention, with especially the Fourth Geneva Convention focusing on occupation and protection of civilians. Also the Additional Protocols added duties for the Occupying Power and thus further developed the already existing regulations.

According to Art. 50(1) and (4) of the Fourth Geneva Convention, special provision has to be made for the care of children. Even preferential measures in regard to humanitarian aid to children have to be respected under certain circumstances. This provision underlines the importance of aid for children, because of their vulnerability in a situation of military occupation. This provision places a “real and heavy burden on the Occupying Power”\footnote{Levie 1986:725.} to ensure assistance and protection through affirmative requirements.\footnote{Art. 50(1) and 50(4) of the Fourth Geneva Convention.} Yet, efforts in this regard should be executed in co-operation with national and local authorities. Thus the Occupying Power is not solely responsible. The task is also one for the competent services of the occupied country itself.

Even though the Occupying Power has many duties in regard to the delivery of humanitarian aid,\footnote{See below in this same paragraph.} it has also the possibility of appeal to the charity of the inhabitants to collect and care for the wounded and sick.\footnote{Art. 50(1) and 50(4) of the Fourth Geneva Convention.} The said Power has even the duty to permit these efforts by inhabitants and relief organizations.\footnote{Art. 18(1) of the First Geneva Convention.} That is to say, humanitarian organizations have the right to give assistance to the wounded and sick spontaneously and with impunity.\footnote{Art. 18(2) of the First Geneva Convention.} Art. 18(4) of the First Geneva Convention makes clear that these efforts do not relieve the Occupying Power of the duty to provide assistance to the population. The purpose of this regulation was “to prevent an Occupying Power from making voluntary aid given by the inhabitants a pretext for evading its own duties, and omitting to take the necessary action to provide for the care of the wounded. The Occupying Power continues to be entirely responsible for the fate of the wounded.”\footnote{Pictet (J.), \textit{The Geneva Conventions of 12 August 1949 – Commentary, Convention I}, ICRC Geneva 1952, first reprint 1995, p.191.}

Health is another pressing issue. Several articles endeavour to secure the provision of health services. Art. 15(3) of Additional Protocol I requires that civilian medical personnel have to be
enabled to provide their services. Every assistance shall be afforded to them. In regard to the
treatment of persons, the personnel has to be impartial and medical reasoning shall lead its
decisions.

Other regulations, notable Art. 57 of the Fourth Geneva Convention and further developed by
Art. 14 of Additional Protocol I, set limits to the requisition of hospitals and medical services and
supplies.\footnote{Levie 1986:735.} This is also valid for requisition of any kind or service.\footnote{Art. 52 of the Hague Regulation of 1907.}

But the most important regulation of the occupant’s duty to deliver relief supplies is contained in
Art. 55 of the Fourth Geneva Convention. It places an obligation on the Occupying Power to
provide relief in order to ensure that the population has sufficient food and medical supplies. The
occupant has to maintain the material conditions at a reasonable level.\footnote{Pictet 1958:310.} The use of these goods for
the occupant is only allowed if the needs of the civilian population have been met. This already
limited right is further restricted. The second paragraph of Art. 55 of the Fourth Geneva Convention
prohibits the requisition of food and medical supplies coming from the occupied territory in order to
use them for the Occupying Power’s own civilian population (which often occurred during World
War II).\footnote{Levie 1986:733.}

The Protecting Power has the right of verification of the state of food and medical supplies,
which serves as a further safeguard for the civilian population.\footnote{Pictet 1958:312.} If there are not enough supplies
available for the civilian population, the occupant has the duty to bring the necessary goods in, but
only to the fullest extent of the means available. This escape clause tries to take into consideration
cases where the occupant is just not in a position to comply with its obligation. Yet, this escape
clause can not be used in order to avoid an occupant’s basic obligation. As J. Pictet rightly observes
that the Occupying Power is under the obligation to utilize all the means at its disposal for relief
supply.\footnote{Pictet 1958:310.} Thus the duty to ensure supplies is further reinforced.

But the Fourth Geneva Convention is silent about the method of delivering aid from outside.
Therefore, it is up to the occupant to decide how to proceed, as long as the delivery is ensured.
Pictet states in this regard:

“\textquote{It should be noted that the Convention does not lay down the method by which this is to be
done. The occupying authorities retain complete freedom of action in regard to this, and are thus in
a position to take the circumstances of the moment into account.}”\footnote{Pictet 1958:310.}
The Occupying Power may therefore contract civil agencies and private contractors.\textsuperscript{460} It is an occupants choice to delegate the delivery to civilian organizations or to do it by military units or to find any other way of dealing with this issue, as long IHL is generally respected. Since it is the occupants choice of how to fulfil its duty, providing relief by military units could well be allowed under IHL. The establishment of civil-military coordination centres is not prohibited either. Another question relates to whether the occupant’s role of delivering relief can be delegated to another institution as a whole, for example to the UN.\textsuperscript{461} The law seems unclear in this regard, but the help of the UN does not diminish the occupant’s responsibility, nor does the UN assume responsibility for this on it’s part.\textsuperscript{462}

If the regulations on occupied territories are silent on the delivering method, general rules of IHL have still to be respected. One of the most important principles is the principle of distinction. It is the fundamental obligation of combatants to distinguish themselves from the civilian population.\textsuperscript{463} Translated into the case of delivering relief, military units have to maintain distinctiveness to humanitarian organizations. This is valid in regard to institutional issues as well to the employment on the spot. It is unlawful for combatants to divest themselves of their uniforms or to take on civilian clothing during service. Combatants cannot provide assistance in civilian cars with civilian clothing. Such a behaviour can amount to perfidy.\textsuperscript{464} Distinctiveness is also an institutional issue. The merging of humanitarian workers and military personnel under one and the same (military) entity does not promote the perception of distinctiveness.

Since no special regulation deals here with mechanisms of import and of the delivery of relief, Art. 23 of the Fourth Geneva Convention should be applicable.\textsuperscript{465} Free passage has therefore to be granted under the conditions of this article.

This responsibility of the Occupying Power to provide relief is further expanded in Art. 69 of Additional Protocol I. This article adds clothing, bedding means of shelter, and other essential supplies as well as objects necessary for religious worship to food and medical supplies. Art. 69 of Additional Protocol I has the same escape clause as Art. 55(1) of the Fourth Geneva Convention. But some scholars regard the escape clause in Additional Protocol I as a “positive and complete

\textsuperscript{460} De Torrente 2004:3.
\textsuperscript{461} Gordon 2003.
\textsuperscript{462} Kofi Annan in: Gordon 2003.
\textsuperscript{463} Sassoli, Bouvier 1999:121.
\textsuperscript{464} See paragraph 3.3.
\textsuperscript{465} Pictet 1958:310.
obligation”\(^{466}\) that goes beyond the obligation of Art. 55(1) of the Fourth Geneva Convention. For State Parties to the Additional Protocols it should be more difficult to invoke the escape clause.\(^{467}\)

Art. 56(1) of the Fourth Geneva Convention has the same obligation (than Art. 55(1) of the Fourth Geneva Convention) but in regard to medical and hospital establishments and services, etc. Art. 56 of the Fourth Geneva Convention has also exactly the same escape clause. But here, the Occupying Power is not alone responsible for hygiene and public health. It is also a task of the national and local authorities, which resembles the regulation in Art. 50 of the Fourth Geneva Convention in regard to children’s care.\(^{468}\)

The most important regulations for humanitarian organizations are found in Arts. 59 and 60 of the Fourth Geneva Convention and Art. 70 of Additional Protocol 1. These regulations provide relief workers with the legal basis, crucial for their work on the spot.\(^{469}\) Art. 59 makes it obligatory on the occupant to “agree to relief schemes” and to “facilitate them by all the means at its disposal” if the occupant can not fulfil its duty to supply enough relief to the civilian population. This obligation to accept is unconditionally in all cases where the occupied territory is inadequately supplied. Such schemes may be undertaken by States or by impartial humanitarian organizations such as the ICRC.\(^{470}\) The duty to facilitate relief schemes by all the means at the occupant’s disposal entails an obligation to “co-operate wholeheartedly in the rapid and scrupulous execution of these schemes.”\(^{471}\) For that purpose they have many and Several means are for that purpose at the occupant’s disposal, such as transport, stores, facilities for distributing and supervising agencies.

According to Art. 60 of the Fourth Geneva Convention, the provision of relief does not in any way relieve the Occupying Power from its duty to supply assistance to the population under Arts. 55 and 56 of the Fourth Geneva Convention. Thus humanitarian assistance is not supposed to be the normal source of supply.\(^{472}\)

To summarize the duties listed in Arts. 55 and 59, it can be stated that the Occupying Power has to supply the civilian population properly and if in spite of this obligation the population is still inadequately supplied, the Occupying Power is obliged to agree to relief schemes. Thus, humanitarian organizations provide assistance in cases when the occupying power is not in charge or in the case of the Occupying Power’s failure to carry out its duties.\(^{473}\)

\(^{466}\) Sandoz, Swinarski, Zimmermann 1987:813.  
\(^{467}\) Levie 1986:763.  
\(^{468}\) Pictet 1958:313.  
\(^{469}\) Pictet 1958:320.  
\(^{470}\) Levie 1986:762.  
\(^{471}\) Pictet 320.  
\(^{472}\) Pictet 323.  
\(^{473}\) De Torrente 2004:3.
Art. 61 of the Fourth Geneva Convention establishes basic rules for the carriage and distribution of humanitarian relief. Relief supplies are to be distributed with the co-operation and under the supervision of the Protecting Power. The method of distribution is by National Red Cross Societies, supported by the ICRC.\textsuperscript{474} Co-ordination with other humanitarian organizations was needed and often ensured through the establishment of coordinating committees.\textsuperscript{475} The Protecting Power’s duty of supervision can be delegated to a neutral State, to the ICRC or to “any other impartial humanitarian body”.

Finally, Art. 62 of the Fourth Geneva Convention deals with individual relief consignments.

Art. 63 of the Fourth Geneva Convention is crucial for the work of National Societies and other humanitarian organizations is also. As long as these organizations are recognized by its government and as long as they work in accordance with the Red Cross principles they are allowed to continue their activities. Still, the work may be suspended by “temporary and exceptional measures imposed for urgent reasons of security,” in order to protect legitimate interest of the occupant.\textsuperscript{476} The question may arise as to whether this article has any ramifications on the actual situation such as in Iraq. What are the consequences for organizations that depart from these Red Cross principles? In such instances, it is up to the Occupying Power to allow their activities. Since in recent conflicts the occupant promoted the departure from the Red Cross principles, it will not hinder their activities. It has even the choice to integrate humanitarian organizations in its own efforts to provide relief according to its duty under Art. 55 of the Fourth Geneva Convention. The Occupying Power could, for example, subcontract a NGO in order to fulfil its duty under Art. 55 of the Fourth Geneva Convention.

In conclusion: a certain level of communication and coordination between the military and humanitarian organizations is inevitable. In some instances the same tasks are carried out by these different players on the spot, for example, where the military and NGOs provide assistance. On other occasions NGOs can work for the Occupying Power under Art. 55 of the Fourth Geneva Convention and also under its own auspices in terms of Art. 59 of the Fourth Geneva Convention. Problems of blurring responsibilities are an inherent issue regarding these regulations. Thus the more general regulations regarding the duties of an Occupying Power can only serve as a legal framework and guideline for a solution to the actual dilemma. Often regulation remain silent as to the method of providing humanitarian assistance. Therefore, general principles become more

\textsuperscript{474} Pictet 326.
\textsuperscript{475} Pictet 326.
important and crucial for any activity on the spot. They have to be taken into consideration in order to find ways out of the crisis. The next chapter will attempt to take these general principles into consideration in order to formulate recommendations and to find a workable solution to this dilemma.

\[476\] Pictet 1958:333.
CHAPTER 8: CONCLUSIONS AND RECOMMENDATIONS

This chapter will seek to first assess the conclusions drawn from the previous chapters where after it will attempt to formulate recommendations for humanitarian assistance in modern conflicts.

8.1. Conclusions

Impartiality and neutrality are the fundamental principles of humanitarian assistance. They should thus be the guidelines for humanitarian aid work.\(^\text{477}\) Nonetheless they are in contention and thus, in the centre of every discussion on humanitarian assistance.\(^\text{478}\) The critique of the principles of neutrality and impartiality tries to exhibit the orthodoxy and stubbornness of the principles. According to this position, these principles should not be sacrosanct and are no longer useful in modern conflicts. Supporters of this stance argue that the traditional approach cannot do justice in modern conflicts. These criticisms are often carried too far. A number of good reasons exist to uphold the principles of impartiality and neutrality as a basis for humanitarian work. They serve particular purposes, which are still important for NGO to deliver aid on the spot.\(^\text{479}\) Even though adjustments might be necessary, a complete departure from these principles is not justified and might engender more problems than it could resolve.

As analyzed in chapter 3, international politics changed during the last fifteen years,\(^\text{480}\) which also had an impact on the humanitarian environment. The most important development has been the change in civil-military relations. The military controlled increasingly the civil-military relations during the nineties, a trend which could be regarded as complete in Afghanistan and Iraq, whereby the global “war on terrorism” increased the pressure to subordinate civil-military cooperation into military strategy based institutions.\(^\text{481}\) Such pressures also increased the politicization of humanitarian assistance and the comprehensive approach was abandoned. This development causes many problems in regard to humanitarian assistance.

Chapter 4 focused on the four major problems for humanitarian assistance: distinction, independence, manipulation of humanitarian language and finally, the use of assistance to serve war

\(^{477}\) See paragraphs 2.1. and 2.2.

\(^{478}\) See paragraph 2.3.

\(^{479}\) See paragraphs 2.1., 2.2. and especially 2.2.5.

\(^{480}\) See paragraph 3.1. for the period before the Balkan wars, 3.2. for the period of the Balkan wars, 3.3. for the war in Afghanistan and 3.4. for the Iraq war.

\(^{481}\) See paragraphs 3.3. and 3.4.
aims. As to distinction, an operational dilemma linked to the civil-military relation appeared.\textsuperscript{482} In the new context of massive government spending for NGOs, humanitarians have problems to appear as neutral and independent actors.\textsuperscript{483} At the same time, politics became part of the humanitarian enterprise.\textsuperscript{484} This development made it difficult for NGOs to be and to be perceived as neutral. This problem can have a serious impact on staff security.

After the Cold War the actors of the humanitarian sphere applied different policies in regard to humanitarian assistance. Two approaches have been proposed: the integration model\textsuperscript{485} with an deepened cooperation of humanitarian NGOs and the military, and the distinction model\textsuperscript{486} with more separate roles for these two actors. The military and some governments attempted to take the leadership in the civil-military relation, whereas humanitarian NGOs, in most cases, tried not to mingle with the military in order to carve out a neutral humanitarian space. In some instances, certain actors might have provoked or aggravated the problems.

Any solution has to bear in mind the changing character of modern conflicts.\textsuperscript{487} These modern conflicts are characterized by asymmetry and terrorism. Terrorism can be understood as a communication strategy.\textsuperscript{488} Therefore, it is important to “translate” the conveyed message of terrorist attacks. The attacks on the UN, NGOs and the ICRC in Afghanistan and Iraq sent a clear message that international staff, in the eyes of terrorists representing the “West”, was not welcome in the respective country. Terrorists followed an overall strategy of deepening divisions and intimidate anyone not supporting their cause. Even a neutral organization is thus regarded as the enemy. The distinction between categories such as combatant and civilian, neutral or not, ceased to exist. No space for neutrality is left in such a situation of absolute categories. The changing character of conflict has therefore a deep impact on humanitarian assistance, which has to be taken into consideration so as to formulate a workable solution.

In this difficult situation the legal basis of humanitarian assistance can provide useful solutions. The legal framework of humanitarian assistance is provided by the four Geneva Conventions of 12 August 1949, by the Protocols Additional to the Geneva Conventions of 1977 and by other IHL treaties. Rules generally dealing with humanitarian assistance\textsuperscript{489} and the duties of Occupying

\textsuperscript{482} See paragraph 4.1.
\textsuperscript{483} See paragraph 4.2.
\textsuperscript{484} See paragraphs 4.3. and 4.4.
\textsuperscript{485} See paragraph 5.1.1.
\textsuperscript{486} See paragraph 5.1.2.
\textsuperscript{487} See paragraph 6.1.
\textsuperscript{488} See paragraph 6.2.
\textsuperscript{489} See paragraph 7.1.
Power\textsuperscript{490} in regard to relief operations are helpful in this regard. In the particular situation of a military occupation the military has to work together with humanitarian organizations, which often results in problems of distinctiveness and in overlapping of responsibilities. A strictly legal stance could therefore provide workable solutions to the actual problems. In any case, a certain level of communication and coordination between the military and humanitarians is inevitable. The same tasks might be carried out by these different players. NGOs can also work for the Occupying Power under Art. 55 of the Fourth Geneva Convention and also under its own auspices in terms of Art. 59 of the Fourth Geneva Convention. Problems of blurring responsibilities thus are an inherent issue regarding these regulations. The regulations regarding the duties of an Occupying Power can therefore only serve as a legal framework and guideline for a solution. This is the reason why general principles become more important and crucial for any humanitarian activity. They have to be taken into consideration in order to find ways out of the crisis.

One has therefore to bear in mind the different tasks of different NGOs. It will not be possible to find principles for every organization. Yet this reality is not lamentable. Humanitarian NGOs are conscious of the fact that these approaches might be combined. Each of the approaches might offer an effective solution, depending on the situation.\textsuperscript{491} The question whether this fact could be accepted and whether this could result in a general policy that puts both approaches together, but in complementary. These different approaches are not only inevitable, but also useful.\textsuperscript{492} However, the principles of neutrality and impartiality should not be abandoned in the future of humanitarian assistance. They are not objectives themselves. These principles are only means to reach another goal.\textsuperscript{493} These principles are only a modus operandi to support more fundamental ideas of humanitarianism.\textsuperscript{494} It is crucial for the work of humanitarian organizations to have the trust of all conflicting parties, otherwise those in need can not be reached.

**8.2. Recommendations**

Recommendations for the conservation of neutral and safe humanitarian assistance are considered in this part. They are made on a strictly legal basis in order to find a way to a coherent and complementary humanitarian assistance policy. However, the focus of every resolution should

\textsuperscript{490} See paragraph 7.2.

\textsuperscript{491} Donini, Minear, Walker, 2004:269.

\textsuperscript{492} Donini, Minear, Walker, 2004:271.

\textsuperscript{493} Pictet 1979.

\textsuperscript{494} Donini, Minear, Walker, 2004:267.
be the individual in need, rather than the institutions involved. It thus has to be evaluated how humanitarian action could be best practiced and enforced in order to deliver assistance and protection to the most needed.495

To find solutions to the current malaise one has to bear in mind the underlying causes for the change of the situation in the humanitarian field:

“The instrumentalization of humanitarian action, dramatized in Iraq but present in Bosnia, Kosovo, and Afghanistan as well, may be inevitable consequence of the move in northern state foreign policy from an approach governed by Cold War and post-colonial imperatives to a more unilateral set of positions driven by national security, political, and commercial interests.”496

As a result of this long-term development, often even instigated by NGO activities, it is unlikely that changes in this regard will occur in the near future. As rightly H. Slim observes: “peace operations in the future will be characterized by forces providing humanitarian assistance, armed escorts, protection of civilians, demobilization management, information sharing and civil engineering expertise.”497 Thus the humanitarian organizations have to find a way to accommodate its activities with further state action in this regard. To follow the principles of neutrality and impartiality will not be easy498 in this politicized environment, since humanitarian assistance and protection for those in need might get in conflict with political power’s interests. As a result, humanitarian NGOs are necessarily in a tense relationship with political actors, even if they seem to be benevolent.499 In war, publicity through media becomes normally the conscience of the belligerent, while lessening the space for military operation. Another institution in holding the military accountable for IHL abuses is the humanitarian community. Therefore, this foreign presence in the form of relief agency workers, which is not highly preferred by the military, works as conscience, thus limiting the military space of action.500 The relation between humanitarian organizations and the military will therefore often be tense. Every proposed solution must reflect this fact.

First of all, a line has to be drawn between situations with a safe environment and those without, because the whole problem of blurring responsibilities and distinctiveness vanishes in situations without the kind of safety problems NGOs have been confronted with in Afghanistan and Iraq. In a

496 Donini, Minear, Walker, 2004:262.
498 Which is the reason why some NGO’s want to give up neutrality.
500 Lemieux 2002.
safe environment it would not pose any problem to accept government funding and to be associated with an Occupying Power. In such a situation it would not be dangerous for NGOs to work closely with their government. However, these activities, in an already safe environment, would often tend to be more of a reconstruction nature. Many NGOs would not be prepared to do this, since it is out of the scope of genuine humanitarian assistance. And not all NGOs should go this way, since this could even bring ramifications for later conflicts.

Therefore a line should be drawn between humanitarian and reconstruction NGOs. Genuine humanitarian NGOs should not be engaged in reconstruction efforts. They should only concentrate on some issues, which could enhance the effectiveness of their work, augment the understanding of their work in local communities and finally enhance their security.501 A focus on genuine humanitarian assistance does not mean that reconstruction efforts should not take place. On the contrary, humanitarian organization acknowledge the importance of these efforts, but they should not mingle with genuine humanitarian work.502 NGOs do not have the experience and expertise in both fields and a clear division of labour in this regard could therefore enhance distinctiveness and perception thereof. Since it will not be easy (or even possible) to coalesce all NGOs under fundamental principles, the whole humanitarian movement should splinter into these component parts with different tasks: some could provide relief within the principles of the ICRC and some in an explicitly reconstruction context, which is developmental in nature.503 Yet, the question remains whether this way of dividing into humanitarian and developmental NGOs is feasible. Since perception of NGOs is very important, one could doubt if NGOs with different approaches seem different on the spot for the civilian population. Their work and their tasks are often overlapping. It will be difficult for people to know whether the NGO that works in their village is humanitarian or developmental. The question is whether both approaches may coexist without devaluing each other. To ensure distinctiveness between these different groups of NGOs, they should ideally not work on the same spot at the same time. Developmental NGOs would have to take the lead after the humanitarian’s work is done and the environment allows reconstruction efforts. Humanitarian NGOs should only be deployed during an armed conflict.

But still the issue remains as to how humanitarian organizations ought to be defined and how they are to be differentiated from developmental NGOs. The difficulty is to find a way to limit the definition of ‘humanitarian organization’. What kind of criteria should therefore be used? At the

502 In answer to O’Brien 2004:32.
centre of discussion lies the controversy over the meaning of humanitarian assistance. Some scholars demand moral boundaries. Another proposed solution is to formulate definitions on what could be regarded as humanitarian action. Should such a definition be based on activities or on motives and agents? A clearer definition of terms is needed. One has to differentiate between development assistance and humanitarian assistance. Development assistance is inherently political and transformative in nature. Humanitarian assistance, according to IHL, has to be neutral and impartial. The ICRC is the given example for an impartial humanitarian organization. Guidelines, given by the humanitarian community itself, reflect these principles and therefore show the accepted need for them. In regard to the humanitarian action itself, the examples of foodstuffs, medical supplies and clothing are mostly given in IHL, whereby consignments need not to be restricted to those items but must have the character of relief supplies. Anything which goes beyond impartial relief supply cannot be regarded as humanitarian assistance.

There is nearly no unanimity as to recommendations for providing assistance on the spot during an armed conflict. Distinctiveness between an belligerent and humanitarian organization is essential. Anything, which could threaten this distinctiveness should be omitted. The practice of aid drops, utilized in Afghanistan, and the cross-dressing of military personnel have to be stopped. The instrumentalization of humanitarian assistance for purposes of intelligence gathering or exercising pressure on belligerents or on the civilian population infringes IHL and has to cease. Any intent to utilize humanitarianism in language and for propaganda purposes should be avoided (which is, admittingly, unlikely to happen in an highly politicized environment, such as a war). Creation of humanitarian space through humanitarian corridors etc., which the US even rejected considering in Iraq, could enhance neutrality and impartiality. Other ways are the enforcement of no-fly zones, safe heavens backed by the UN Security Council or established according to IHL.

Since it will always meet deep suspicions when military forces deliver relief supplies, and since humanitarians have more experience and better skills, it should only be in an exceptional case that soldiers provide assistance, even if they are fulfilling an Occupying Power’s duty. Reasons for this division of labour are diverse: in a situation of war it might be difficult to take something from

505 Slim 2003.
the enemy, since the acceptance of relief might cause a feeling of humiliation and distrust. For these tasks someone neutral might be better equipped. As M. A. Lemieux rightly observes: “the direct use of military logistics cannot substitute for effective, impartial, long-term, culturally-sensitive, ground-coordinated and capacity-building relief operations by experienced agencies coordinating with other regional efforts.”

The very important relationship between NGOs and the civilian population on the ground has to be re-evaluated. Humanitarian assistance should not be imposed against the will of the population and therefore gaining and maintaining the trust and support of the civilian population will be crucial. And perhaps of even greater importance, humanitarian assistance has to be culture-sensitive. Communication is therefore crucial and can often only be ensured through national staff and/or experienced and well trained staff. This would not only change the humanitarian NGO’s Western image, but also promote mutual understanding. This cultural sensibility and understanding is also crucial for relations with all belligerents. None of the NGOs in Iraq appear to have the necessary communication with the insurgents forces. At least channels of communication to all conflicting parties have to be open.

Distinctiveness is not only an issue for humanitarian work on the spot. It is also about humanitarians’ relations to governments and belligerents. On the institutional level mingling have to be omitted and military’s leadership of this relation must be avoided. The military ought not to control this relation, but coordination and communication between entities with equal rights must be ensured. A neutral space for humanitarian assistance is necessary. Coordination of humanitarian work can also be ensured through civil institutions and through communication between the humanitarian organizations. However, since perception is crucial, one has to take into consideration whether people on the ground care about the distinctions between humanitarians and the military. Even though clear distinctive lines could be drawn by legal considerations in regard to the institutional framework, the line is often not that clear for the civilian population. They often regard them as one and the same, since all kinds of relation and ties between belligerents and NGOs have an impact on the perception of a NGO’s neutrality, impartiality and independence. Hence, in future conflicts NGOs should take a clear stance. Either they work openly with one belligerent and,

513 Lemieux 2002.
514 De Torrente 2004:23.
515 See above paragraph 4.1.
516 Which might be quite complicated in the case of terrorist groups linked to al Qaeda, since they do not negotiate. Azzam, a high ranking al Qaeda leader said: “no negotiations, no conferences and no dialogue”; Berman 2004:153.
while doing so accept loosing their neutrality, which unfortunately could have negative impacts on neutral NGOs and should thus be avoided. Or they remain neutral, impartial and independent through refusing belligerents money and refusing too close ties with it.

In regard to independence, which for present purposes means financial independence, it is unlikely that the flow of governments’ donations will end. Governments will also in the future spend money for NGOs engaged in their conflicts and the whole bunch of NGOs will not be operational, without this money. To leave NGOs without money means to leave the humanitarian work for private contractors and the military. Thus, if donations are a reality, it has to be ensured that they do not have a negative impact on NGO’s perceived neutrality. Even though all funding from governments and international organizations follow certain political objectives, the acceptance of government money does not necessarily have to go hand in hand with losing neutrality. Nevertheless, a NGO risks loosing neutrality if it accepts money from a government, which is actually fighting the war where the NGO acts. Therefore, humanitarian organizations as well as governments have to be more sensitive regarding negative impacts on donation practices. One first step in this regard was the Stockholm good humanitarian donorship initiative, a meeting of donors convened by Sweden in June 2003. At this conference guidelines related to the behaviour of donor governments in the financing of humanitarian action have been approved. For instance, according to these guidelines, humanitarian action should be guided by the principles of humanity, impartiality, neutrality and independence and humanitarian NGOs strive to ensure that funding of humanitarian action in new crises does not adversely affect the meeting of needs in ongoing crises.

Still the question remains whether a strict neutral stance would indeed prevent attacks on humanitarian workers. Supporter of this solution suggest that NGOs were targeted because of a loss of neutrality and lack of distinctiveness. But it seems unlikely that a strict neutral stance would bring the attacks on humanitarians to an end. The belief that the ICRC and other neutral humanitarian organizations have been attacked, because their did not seem neutral in the eyes of

517 Which was the case in Afghanistan, James 2003.
518 See also paragraph 2.2.3.
520 What O’Brien takes as an argument to accept funds even from belligerents, see O’Brien 2004:37.
terrorist organizations, underestimates terrorists’ awareness of facts and their intelligence gathering. The terrorists who attacked the ICRC in Baghdad and other humanitarian workers, seemed to know exactly whom they were causing harm. Even though terrorists does not seem to distinguish between civilians and combatants, they are aware of distinctions made in this regard by IHL. Taking the particularity of asymmetric wars and terrorism into mind, one has to consider that these attacks are supposed to deliver messages and are part of a broad strategy. To translate this into a message would be that everything that is foreign or western is a legitimate objective, a western soft target and that foreigners should leave the country or otherwise they will be attacked. If the aim of the insurgents was to transmit this message, it would even be better for them to attack neutral NGOs in order to include every Western element, even if neutral according to IHL. Humanitarian aid policies are regarded as a smokescreen, devised to divert from the real play of power politics. To leave humanitarians in, means to let the enemy in. After all humanitarian activities in regions with other than a Western background, regard humanitarian policies as symptomatic of Western “patronizing, not to say patriarchal, ways of thinking about the poor,” which has to be rejected from their point of view. Thus to find a way out of this problem, one has to change the perception of humanitarian assistance as Western. Establishing links to all belligerents through communication and building trust is therefore crucial.

A solution to this problem could be found in a global and multilateral mechanism. As A. Donini, L. Minear and P. Walker rightly state:

“One obvious way of expanding the consensus around humanitarian action, at least at the UN to begin with, is through some form of assessed contributions from all member states. Such contributions are obligatory for peace operations; why not for humanitarian work?”

With such an approach a much more universal policy can be reached. Humanitarian assistance would no more be “Northern” or “Western”. All UN members would have a duty to contribute and thus would have a voice in decision processes. A more impartial stance would be the result and humanitarian activities could be employed in places where need is most needed. This has to go hand in hand with a general approach to integrate “Southern” humanitarian efforts into the whole humanitarian policy.

524 James 2003.
527 Greenaway 1999.
The problem with this approach is situated in the fact that in some conflicts the UN is regarded as the foreign element which has to be attacked. The attack on the UN headquarter in Iraq is a case in point. To avoid this perception, the UN itself have to revise certain policies. Perceptions of legitimacy have to be taken seriously.\textsuperscript{530} This perceived legitimacy of the UN derives in many parts of the world from the UN’s willingness to respect principled legal positions, which are independent from the national interests of any particular state.\textsuperscript{531} The General Assembly could therefore play a crucial role. The UN needs to take a clear stance on the legality of occupations and other conflicts. In other conflicts, such as in East-Timor or in Palestine, the UN did not accept the occupation and spoke out about their respective legality, without having been attacked, even though terrorist attacks are part of warfare in these conflicts. Thus, even if a refusal to authorize or endorse an occupation might limit the role of the UN on the spot, it might render its involvement as a neutral body possible.\textsuperscript{532} Even though this stance might seem based on strictly legal principles, it is at the same time pragmatic, since it could render a mission both possible and effective.

If the above do not improve the security situation, other options have to be taken into mind. These may include the distribution of aid by commercial means in unmarked trucks, a manner which has been successfully used by the ICRC and the World Food Programme (WFP) in Afghanistan.\textsuperscript{533} As a last resort, NGOs may withdraw and thus attempt to bring pressure to bear on the Occupying Power to fulfil its duty of ensuring security.

Too many humanitarian workers already lost their lives in the deteriorating security situations in Afghanistan, Iraq and elsewhere. Hopefully, workable solutions will bring this unacceptable situation to an end soon.

\textsuperscript{530} Klutmeyer, Suhrke 2004:283.  
\textsuperscript{531} Klutmeyer, Suhrke 2004:283.  
\textsuperscript{532} Klutmeyer, Suhrke 2004:283  
\textsuperscript{533} Lemieux 2002.
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