

The inclusion of Human Rights in humanitarian assistance

The difficult but necessary way between theory and practice

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Executive summary

With the end of the Cold War, one of the most important developments has clearly been the recognition of the universal

value of human rights and of the need to effectively respect and promote them at all levels of international relations. Among the priority areas, humanitarian action in conflict situations was then to be considered particularly important, with a clear objective of contributing for peace.

However, observing the scenario of humanitarian assistance especially in the second half of the 90s, these aspirations seem to have been contradicted by some concerning and challenging realities, such as the trends suggesting a proliferation of man made disasters in many parts of the world and consequently an also continuing need for humanitarian assistance in the future and the fact that the main obstacles in providing it tend to arise from an increasing and general disregard for the applicable international humanitarian and human rights law.

Showing concern for these facts, this thesis analyses the negative consequences of the attempts to bring human rights concerns to the centre of humanitarian assistance through the practice of conditionality and defends the need for the inclusion of a more transversal human rights dimension in humanitarian assistance and in particular, of specific human rights oriented projects. Recognising the intrinsic link between both dimensions and their increasing importance, and touching the difficulties implied by such approach, it is suggested that this would be a more appropriate way to effectively promote human rights within humanitarian work, simultaneously contributing for enhanced and less controversial humanitarian assistance.

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«Humanitarian assistance is much more than relief and logistics. It is essentially and above all about protection-protection of victims of human rights and humanitarian violations.»

Sadako Ogata
Former UN High Commissioner for Refugees

1. Introduction

The end of the Cold War provoked significant shifts and changes in all areas of the international arena, bringing with it new challenges which we all had to face. The tensions between the process of globalisation and the assertion of national identities, interests and sovereignty have been constantly present during this period, which has not yet been labelled. The fields of humanitarian assistance and human rights were no exception to this shifting background and they too have undergone considerable change.

The classic principles of international relations, such as state sovereignty, intangibility of frontiers, non-interference in internal affairs of other states, were significantly challenged by values and principles that are perceived as increasingly important by the international community. It became increasingly difficult for states to undertake massive human rights violations within its own territory, without being held accountable and/or condemned by the international community. In the context of these developments, humanitarian assistance, proclaiming human uniqueness and defending that every human being has the right to be saved and defended from suffering, has also been affected. Different factors, such as the growing role of the media in the public opinions and governments, the interest of states in reaching a «minimum common denominator» to their answers (mostly through humanitarian aid) and the bigger visibility of humanitarian assistance in relation to other actions such as development assistance and co-operation, led to a significant consolidation of the role of humanitarian assistance in the international scene.¹ At the same time, new and different entities have emerged, particularly interest groups and NGOs within civil society,

economic actors, paramilitary groups, private armies and groups of organised crime, directly or indirectly affecting its dynamics and processes.

Furthermore, the increase of conflicts, mainly of an internal character, all over the world led to an also increasing need and number of humanitarian assistance missions undertaken by NGOs, states and international organisations, and called for a more active and rapid answer by the international community. At the same time, and with a renewed commitment and interest of donor states for humanitarian assistance, the classic concept of humanitarianism led mainly by humanitarian agencies and NGOs, such as the International Committee of the Red Cross (ICRC), Médecins Sans Frontiers (MSF), etc, and based on the traditional basic humanitarian principles of neutrality, impartiality and independence, with the sole aim of saving lives and alleviating human suffering of the victims of the conflicts, started being even more challenged and criticised than they already had been in the previous decade and particularly in the mid 80s. In fact, in face of the somehow negative and unsatisfactory results and consequences of such humanitarian assistance missions, donors, academics and even some NGOs realised that by applied and based in such principles, humanitarian assistance was in fact and in practice often contributing to the extension of conflicts, being blind to human rights violations by the warring parties and thus having very adverse and contrary effects.

Through the recognition of the political causes of humanitarian crises and the political and economic functions they usually served, and through an increasing awareness of both political and economic impact of relief aid in war, the 90's marked the emergence of a new conception of humanitarianism— the so-called «new humanitarianism». Unlike before, relief aid and humanitarian assistance start being seen as a highly political resource and the manner in which it is distributed and given becomes a concern of donors. Neutrality and impartiality principles become under intense criticism and humanitarian assistance becomes just another instrument of foreign policy of donors.

In this context, and in a time of relatively strong commitment by the international community to condemn gross

¹ F. Rey, V.CURREA-LUGO, *El debate humanitario*, Barcelona, Icaria, 2002, p. 24.

human rights violations and calls for promotion of human rights, a question emerged concerning what room, if any, was reserved in humanitarian assistance missions and projects for the respect of these same human rights? The «new humanitarianism» somehow tried to answer this question and show the existing link between these two dimensions, by adding a new characteristic to the already mentioned politicisation of assistance: conditionality. From then on, human rights became a condition to the provision of assistance in complex political emergencies and therefore necessarily linked to each other. The problem, however, is that as a consequence, current international responses to such humanitarian emergencies (mainly man made ones) have become marked mainly by two paradoxes: first, the link between humanitarian assistance and human rights has been dominantly punitive, in the sense that people whose governments are violating their rights are likely to get even more victimised by the withdrawal of the assistance aid; secondly, when assistance is aimed at promoting human rights, priority is given to the protection of conventional notions of democratisation and civil and political rights, rather than to the protection of social, economic and cultural rights.

This becomes a particularly concerning situation, since it not only challenges and questions the importance that should be given to the whole range of human rights in the current international action and thinking, but also undermines the undeniable and necessary relation between human rights and humanitarian assistance. This is an interesting question that deserves special attention. Sharing these concerns, and aware of the negative implications they may have, I believe this is a question that deserves especial attention, especially in a time when human rights and humanitarian action are increasingly at the centre of international agendas. For these reasons, rethinking and reconsidering the relation between these two dimensions in order to find ways to better conciliate them and contribute to their enhancement, gains increased importance in this context.

In this sense, and keeping in mind that one of the aims of humanitarian assistance is ultimately the promotion and protection of human rights, the *main hypothesis of this thesis will be that, instead of using such conditionality, human rights would be better affirmed and more effective through the inclusion of a more transversal human rights dimension and awareness in humanitarian assistance and through the*

elaboration and implementation of specific projects and programs oriented at promoting the protection and respect for human rights.

Therefore, and having as a point of departure an analysis of the evolution of the notion of humanitarianism, the first chapter of this thesis will compare both its classic and new conceptions, mainly presenting their characteristics and implications. In the second chapter I will, from a human rights perspective, present a critical view of the main characteristics of the new humanitarianism, namely the political use of humanitarian assistance, the challenge of humanitarian principles, the increasing militarization of assistance and above all, the use of negative conditionality as a way to include human rights in its assistance programs and projects. Using the concrete cases of Afghanistan and Bosnia as examples, I will attempt to demonstrate that using and envisaging the respect for human rights as a condition to provide assistance, often in situations characterised by weak governments unable or unwilling to respond to such conditions, has had very negative effects and has undermined the need to effectively use humanitarian assistance to promote and protect human rights through its projects and programs; at the same time, reference will also be made to the implications and consequences that the events of the 11th of September and the consequent «war against terrorism», had for this conception of humanitarian assistance.

Lastly, in the third chapter, it will be suggested that human rights are an intrinsic part of humanitarian assistance, reason for which that should be the basis to the necessary inclusion of a transversal human rights dimension to humanitarian assistance, and to envisage their promotion and protection as an objective towards which humanitarian projects should be oriented. Aware, however, that this is not an easy or linear process and that possible problems and obstacles may arise, the most controversial issues and implications will also be analysed and considered, such as the debate between meeting needs and defending rights, the tensions between human rights advocacy and the neutrality principle, the degree of co-operation and coordination between humanitarian and human rights organisations (both explicit and implicit), or the role of NGOs.

Nevertheless, and in the attempt to suggest that the future of humanitarian assistance could be given more effectiveness and contribute to longer term sustainability and peaceful

development of conflict and post-conflict populations through the promotion of human rights oriented projects, I will also try to demonstrate and illustrate the above hypothesis by making reference to concrete and specific cases in which human rights were envisaged both as a condition for the provision of humanitarian assistance or as a goal of assistance itself, and comparing them in their effects and consequences. Also referring to how the theoretical framework of main humanitarian agencies considers the relations between humanitarian and human rights, some conclusions will be drawn as to what regards the best practices in this context, i.e., which efforts have been undertaken to integrate a human rights dimension in humanitarian work and which kind of projects had better results and which failed. The last part of the chapter will focus on some important ideas and recommendations that should be taken into account in this process, namely the need for: a) re-conceptualised humanitarian principles and its adaptation to the context in which they are applied (suggesting that neutrality must not imply «blindness» in face of gross human rights violations which may be in the origin of victims' suffering); b) a more active role of the so-called «progressive» organisations (which, while exposing the limitations of the current international humanitarian system, attempt to maintain a certain degree of independence in relation to the politics of donors and are concerned for human rights issues); c) increased co-operation and co-ordination between all agencies involved; d) respect for the notion of indivisibility of human rights, among other implications.

Finally, and although adopting a critical view of the «new humanitarianism» and the way in which it placed human rights, the more positive aspects of such approach to humanitarian action will also be acknowledged.

These are, then, the main issues and questions that will be raised and debated in order to conclude that there is actually a pressing need to effectively include human rights concerns in humanitarian work. It becomes even more important given the great challenges that the current war against terrorism is posing for the future of humanitarian assistance.

The idea that humanitarian is at odds with human rights respect is a wrong one; both actions were never divided in the first place and they have simply been distorted with the introduction of conditionality. Maybe humanitarian action is not

enough to guarantee and promote human rights respect and maybe these are not the sole way to improve humanitarian assistance. Nevertheless, mutually reinforced and linked in the correct way, both may be enhanced. The underlying idea is that one of the aims of humanitarian assistance is exactly the promotion and respect of human rights and therefore it should never be used as a bargaining chip to secure such respect.

There is then a pressing need to put an end to this false contest between human rights and humanitarianism and to improve the quality and standards of humanitarian assistance while, at the same time, making human rights an integral part of such action.

2. Humanitarianism: the «old» and the «new»

During the last decade, and especially after the end of the Cold War, the world assisted to a significant increase of humanitarian assistance missions, due, not only to the increase of «natural» disasters, but specially of the so-called complex emergencies, in which armed conflicts are linked together with massive human rights violations, famine, etc. This change, together with a certain «abuse» of the word «humanitarian», has created a certain confusion regarding the true character and purpose of humanitarian action. Some factors can be identified as having contributed to this somehow distorted image of what is «humanitarian», such as the blurring between operations based on international security interests and action of a humanitarian nature, the contrast between the tendency to massive public opinion response in the face of natural disasters and the lack of immediate and urgent commitment towards forgotten conflicts constituting clear humanitarian disasters, among others.

Somehow accompanying the world's evolution, the concept of «humanitarian» itself experienced significant changes and interpretations and its use as been often abused. At the same, it became also more complex and fragmented, referring to a much varied range of situations and serving many different purposes.

In this context, and as suggested by Hugo Slim, it is also important to clarify that humanitarian activities became no longer limited to humanitarian agencies. In fact, besides the

traditional humanitarian agencies (such as the ICRC or UNHCR) which are by principle concerned with humanitarian work, an increasing number of other organisations, agencies and NGOs have also included humanitarian concerns in their mandates, although not being solely devoted to it.²

Involving, then, an increasing number of players, the words *Humanitarian/humanitarianism* have become all-purpose terms that can be magical and deceptive by turns: magical when every possible virtue is attributed to it in cases of success, particularly in the eyes of diplomatic circles and the media, and deceptive when it is seen as being in collision with the particular political and strategic interests or as a smokescreen for a *laissez-faire* attitude.³ Also comprising a range of activities and legal principles seeking to restrain and limit violence, humanitarianism is characterised by a specific legal basis that comprises norms of international humanitarian law, human rights law and refugee law to be applied in the context of armed conflicts. This legal basis gives humanitarianism a special concern for protecting the lives and dignity of all those not taking part in the conflict—civilians, refugees, etc, and ensuring its respect by all the combatants.⁴

In a more classic approach there are, however, some conditions upon such humanitarian activities, such as the provision of relief and protection without putting one of the parties to the conflict in a disadvantage situation. In this sense, the need that such action is guided by an impartiality principle becomes clear, in order to ensure that everyone is assisted in equal footage and in the basis of their needs only. As defended by Jorge Castilla, «the goal of humanitarian assistance is to preserve human life and dignity. Its area of operation is specifically in war settings but do also operate in other situations where human life and dignity are at risk. Aid is provided taking into account only the needs and disregarding political, ethnic, religious or any other type of interests and considerations»⁵

In theoretical terms, the ideology that motivates the assistance/emergency actors can be resumed in the need to bring an answer here and now to protect the vital needs of the individuals without having consequences in the future situations. The main idea is that everyone deserves to be protected and saved, since it means saving a part of humanity.⁶

This is, in fact, the basis of the ICRC thinking, according to which, humanitarian action is limited by the objectives to which it must respond, but also by its own nature and intentions. It's a modern way of charity, seeking to alleviate the suffering of persons and, through preventing the emergence of behaviours contrary to certain principles of law and humanity, to prevent future suffering.

Moreover, in the classic paradigm, humanitarianism does not refer only to what is done but also to how it is done. In fact, humanitarian assistance is not only about providing care and relief but above all do it in impartial, independent and non-discriminatory way. In short, provide relief and prevent human suffering without distinctions of any kind. This humanitarian system was traditionally based upon three key assumptions: separation between relief and development, recognition and acceptance of the limitations of operations imposed by sovereignty and conception of humanitarian aid as neutral, impartial and independent from political and military objectives.

Although generating agreements and disagreements, humanitarian action has, ever since its origin, been justified and legitimised by some distinctive features, such as the defence of a number of ethical values and principles and of a vision of the human being separated from political ideologies.⁷

Based on these assumptions and shared principles, actions by civil society in the 80's in matters of humanitarian assistance, although often shaming donor governments, gave relevance to the view that it should be regarded as a universal and unconditional right.

² H. SLIM, *Military intervention to protect Human Rights: the humanitarian agency perspective*, International Council for Human Rights Policy, MARCH 2001, p. 5.

³ J. Moore, *Hard Choices: Moral dilemmas in humanitarian intervention*, Oxford-New York, Rowman and Littlefield Publishers Inc., 1998, xii.

⁴ H. SLIM, *op. cit.*, p. 4.

⁵ J. Castilla, «Ayuda Humanitaria suministrada por los ejércitos: el ejemplo del lanzamiento desde el aire de raciones humanitarias en Afganistán», in *Cuadernos para el debate 14*, Barcelona, MSF, Ed. Dirección General MSF-E, 2002, p. 16.

⁶ C. Pirotte *et al*, *Entre emergencia y desarrollo: cuestionamiento de las prácticas humanitarias*, Barcelona, Icaria, 2002, p. 65.

⁷ F. REY; V. De CURREA-LUGO, *op. cit.*, p. 27.

Placing humanitarian issues above political considerations or any other bureaucratic constraints (thus, a right in itself), a movement emerged, constituting, in Mark Duffield's words, «a compelling critique of the inhumanity of the rigidities of the Cold War».⁸ There was the emergence then of a neutral, impartial and progressive humanitarianism with widespread public support, as exemplified by the Operation Lifeline Sudan in 1989. Marking a new phase of this neutral, negotiated access relief programmes and working across the lines in ongoing conflicts, it opened the way to new ways of working between UN agencies and NGOs, based on security arrangements agreed by many parties to allow impartial aid agencies to provide humanitarian assistance to populations.⁹

With the end of the Cold War, however, and as a «new world order» started emerging in the beginning and mid 90's (characterised by significant geopolitical changes, increasing number of conflicts and humanitarian crises of a different nature and the blurring of the traditional distinction between combatants and non-combatants, civilians and military), significant change occurred also regarding this traditional view of humanitarianism and humanitarian assistance.

In fact, by 1993 there were about 50 «new» wars, mostly internal and defined by the United Nations as «complex (political) emergencies», i.e., major humanitarian crisis of a multi-causal nature, all-encompassing and involving every dimension of a society and the lives of the whole population.¹⁰ Among UN agencies, a complex emergency is understood as denoting a conflict-related humanitarian disaster involving a higher degree of political, economic and cultural breakdown and social dislocation and, reflecting this condition, requiring a system-wide aid response from the international community.¹¹

However, the responses to these conflicts tended to be often confused and ill-conceived, reflecting an international community concerned with alleviating human suffering, but at the same time unprepared, not used to face such situations and

sharing different priorities and interests. All these factors contributed to complex situations of a mix of «paralysis» and wrong responses by the international community in the face of catastrophic humanitarian crises.

As a consequence, during the course of the 90's, intense criticism of humanitarian assistance in conflict situations arose. This accusations (which had already been experienced regarding the crisis of Sudan and Ethiopia in the end of the 80's), were related especially to the failed humanitarian actions in Somalia, Bosnia, Sierra Leone or Rwanda in the 90's and, more specifically, to its palliative and unsustainable impact, lack of effectiveness and professionalism and the fact that it often ended fuelling conflicts through misappropriation and allocation of aid resources.¹² (In Bosnia, for example, aid agencies were often accused of facilitating the very ethnic cleansing they condemned by providing transport and shelter.)

At the end of the 90's, claiming to correct the wrongs of the past and constituting a radical rupture with the classic conception of humanitarian assistance, a new and more political conception of humanitarianism emerged, gaining increased importance and being adopted by most donor governments, multilateral agencies and many NGOs.

This so-called «new humanitarianism» clearly challenged the classic paradigm, considering that, giving this changed conflict and post-conflict circumstances, the traditional objectives of saving lives and relieving human suffering were insufficient and merely temporary. The basic idea was that humanitarian assistance should have longer term objectives such as peace building, human rights protection and promotion and, in a last stage, development. This tendency was related to the idea of the need for a linkage between emergency and development assistance which, although already debated since the mid 80's as a response to natural disasters, gained an increase support and strength within the framework of this new humanitarianism and has been applied in the context of armed conflicts during

⁸ M. DUFFIELD, *Global Governance and the New Wars: The Merging between Development and Security*, London and New York, Zed Books, 2001, p. 77.

⁹ *Ibidem*, p. 78.

¹⁰ According to the UNDP 1994 *Human Development Report*, in 1993 42 countries experienced 52 major conflicts and 37 countries experienced political violence. Only 3 of 82 conflicts between 1989 and

1992 were of intrastate nature. In 1993-94 alone there were 4 million deaths, mostly civilians, as a result of ethno-political wars.

¹¹ T.G. WEISS, *Military-civilian interactions: intervening in Humanitarian crisis*, Lanham, Maryland, Rowman and Littlefield Publishers Inc., 1999, p. 20.

¹² K. PÉREZ, *La vinculación ayuda humanitaria-cooperación al desarrollo. Objetivos, puesta en práctica y críticas*, Vitoria-Gasteiz, Cuadernos de Trabajo de Hegoa, n.º 33, 2002, p. 6.

the mid 90's. The main argument, as put by Anderson and Woodrow, was that too often, far from contributing to longer term development objectives, emergency aid was merely serving efforts to bring things back to normal and not having a positive contribute to the future. It was, therefore, necessary and possible to conceive and undertake emergency assistance interventions which could contribute, in the longer term, to development and peace.¹³

This debate about a necessary linkage between humanitarian and development assistance was itself focused on two main strategies: a first one consisting of a number of continuous phases in time starting from an emergency situation, through rehabilitation and ending in the development stage, the so-called *continuum*; and a second one, the *contiguum*, which emerged in part through a critics to the previous one, defending a combination, at every moment, of the different forms of intervention, suggesting an integral and coherent strategy aimed at reducing the vulnerabilities of the affected population and enhancing their own capacities.¹⁴ Both focus on linking relief with development have some similar implications: clear analysis of the contexts in which are being applied, avoid negative impacts, combination of immediate needs with future development, reinforcement of local services and structures, empowerment, participation and enhancement of the populations' capacities, human rights promotion and protection (including gender issues) and contribution to peace building.

Within this context, and far from neutral, the new humanitarianism emerged, as Adam Roberts defends, «as an answer, or even as a substitute or a supplement to the liberal, democratic ideology».¹⁵

In part as a consequence of its limited and apparent success, the new humanitarian policy started shifting towards conflict resolution and post-conflict reconstruction, developing tools and institutions able to undertake transformations that would lead to violence reduction and conflict prevention, instead of

focusing on humanitarian assistance *per se*. This association of conflict with underdevelopment and instability that could undermine and risk the world's peace and stability helped blurring security and development concerns. In other words, and as argued by Duffield, the promotion of development has become synonymous with the pursuit of security, while at the same time, security has become a prerequisite for sustainable development.¹⁶

In this sense, the use of «humanitarian» rhetoric becomes another instrument of foreign policy at the service of states and reflecting the growing politicisation of humanitarian assistance, contributing, at the same time, to a weakening of its specific mandate and objectives. Clearly contrasting with the classic humanitarianism, which tended to ignore political contexts and its possible effects on it, this new conception emerged in fact characterised by a much more political dimension of humanitarian assistance, no longer aimed at responding above all to the victim's needs and suffering, but instead to stimulate more political and social processes. «Aid must be "political intelligent and conscientious" of the context in which it is used, in order to contribute to such objectives».¹⁷

In this debate, Thomas Weiss has distinguished four main agency positions in relation to politics and humanitarian action¹⁸: the classicists, associated with the ICRC's principled approach; the maximalists, defending humanitarian action as defensible when associated with efforts to address the root causes of conflicts through a comprehensive political strategy, going beyond compassion and charity aimed at promoting wider objectives, such as development and peace; the minimalists, for whom humanitarian assistance is worthwhile if efforts to relieve suffering do not make matters worse and can be sustained locally, opinion also shared by Mary Anderson; and the solidarists, defending a political and partisan humanitarian aid aimed at supporting liberation fights of the oppressed parties.

¹³ M. ANDERSON, p. Woodrow, *Rising from the Ashes: development strategies in times of disaster*, USA, Westview Press and UNESCO, Boulder, 1989, p. 2. (reedited in 1998 by Intermediate Technology Publications, London).

¹⁴ K. PÉREZ, *op. cit.*, p. 13.

¹⁵ A. ROBERTS, *Humanitarian action in war*, in «Adelphy Paper», n.º 305, London, Oxford University Press, 1996, p. 13.

¹⁶ M. DUFFIELD, *op. cit.*, p. 37.

¹⁷ K. PÉREZ, *op. cit.*, p. 6.

¹⁸ T. WEISS, *Principle, Politics and Humanitarian Action*, in «Ethics and International Affairs», vol.XIII, 1999, available at http://www.hwproject.tufts.edu/publications/electronic/e_ppaha.html.

In general, the new humanitarianism tends to be associated more to both minimalist and maximalist positions. The idea is that, since in today's conflicts humanitarian aid is increasingly tied to political interests, properly conceived politically motivated assistance objectives must be broader, but pursued only according to its consequences and the degree of cooperation and obedience by the recipient government.

Moreover, the traditional principle of «humanitarian imperative» as the basis to respond to human suffering, was progressively substituted by a so-called «consequentialist ethics», according to which humanitarian assistance was not a universal right and good in itself and, therefore defending that action should be undertaken, or not, merely according to its effects and its contribution to established objectives.¹⁹

Humanitarian assistance becomes, then conditional on assumptions regarding future outcomes: should do no harm, nor entrench violence (as often argued by Mary.B.Anderson) while attempting to ameliorate its effects, mainly through a reinforcement and re-emergence of earlier policies of linking relief to development and conflict resolution and social reconstruction. Associated with this logic, the failure of preventive humanitarianism in cases like Bosnia or Rwanda marked the beginning of a period of conditionality and regional selectivity of interventions in which the provision of humanitarian assistance was subjected to compliance, by recipient governments, with different conditions such as respect for human rights or specific political changes. From then on, donor governments gained the initiative and control of the humanitarian agenda, leaving behind the mobilisation of public concern to humanitarian issues by independent aid agencies.

It becomes also clear that, within this new humanitarianism, the traditional principles of neutrality, impartiality, independence and universality of humanitarian assistance become under intense criticism, thus questioning and eroding the notion of an autonomous «humanitarian space» due to a crescent politicisation and militarization of humanitarian action.²⁰ This concept relates to the need of a space in which the work of

humanitarian action, protection and access to victims is possible without being subordinated to military, political or other sort of constraints, based in neutrality and impartiality principles.

Following these shifts that occurred in the latter half of the 90's, not only have new forms of international governance come to the fore, but NGOs and humanitarian agencies have also been forced beyond operational neutrality in their encounter with complexities.²¹

This new circumstances obliged most agencies to address more directly the contested neutrality and political nature of their actions; at the same time, despite the growing fashion for rights-based approaches on policy, in many operating environments agencies had to adjust to what is a legal vacuum.²²

The new humanitarianism, by breaking with the classic conception and embodying a merging of development with security concerns, has given global liberal governance an expensive and inclusive political logic. Leaving often aside humanitarian concerns and principles (which were, before, at the core of humanitarian assistance missions) and replacing them by longer term, developmental and conflict resolution goals, this new framework marked a rupture with the classic conception. It embodied a merging of development with security concerns, giving global liberal governance an expansive and inclusive political logic, with repercussions at whole levels of humanitarian assistance. As a way to adapt itself to these difficulties and to the complexity of new humanitarian crisis and subsequent ethical and operational dilemmas, the new humanitarianism adopted a more flexible mark of action according to the circumstances and the predicted consequences.²³ In fact, as a consequence, a number of humanitarian agencies and NGOs faced difficult and uncomfortable dilemmas in their work due to the increase difficulty in separating their traditional humanitarian and development activities from such new and wider aims and implications.²⁴

¹⁹ K. Pérez, *op. cit.*, p. 7.

²⁰ *Ibidem*, p. 7.

²¹ M. DUFFIELD, *op. cit.*, p. 90.

²² H. SLIM, *Doing the right thing: relief agencies, moral dilemmas and moral responsibility in political emergencies and war*, Studies on Emergencie

and Disaster Relief, Report n.º6, Uppsala, Sweden: The Nordic Africa Institute, 1997.

²³ K. PÉREZ, *op. cit.*, p. 26.

²⁴ M. Duffield, *op. cit.*, p. 259.

Although progressively defended in theory and applied in practice especially by donor states, this new framework began to raise some problematic ethical questions and concerns, related for example to how do aid agencies and concerned individual manage to undertake independent forms of humanitarian assistance activities or to what extent this new conception doesn't undermine the essence of humanitarianism and humanitarian assistance? Therefore, and after a period of a certain success and optimism (which was never exempt from disagreements), began itself to be challenged on its often distorted effects and subject to acute criticism by some academics, humanitarian organisations and NGOs. A (brief) analysis of the content and arguments of such critics to the new humanitarianism will be the subject of the next chapter.

3. Critics to the «New Humanitarianism»: a Human Rights Perspective

With the objectives of humanitarian assistance shifting from providing a palliative assistance to the most vulnerable to embracing developmental and conflict resolution goals, humanitarian assistance and principles became, again and even more, under question, with humanitarian decisions being, from then on, based less on need and more on political and developmental criteria. It has been in this changing scenario and in the context of complex emergencies and conflicts that the main critics to the new humanitarianism and its apology to the linkage between humanitarian assistance and development have arose, focusing on its main risks and problems: political instrumentalisation of humanitarian assistance, conditionality, challenging and/or oblivion of neutrality and other classic humanitarian principles, «privatisation» of aid through subcontracting of humanitarian organisations by states, among others.

From a human rights perspective, the new humanitarianism also raised important questions involving the adequacy of its strategies and decisions to the promotion of human rights goals and broader developmental objectives. The attachment of

human rights conditions to the provision of humanitarian assistance, to which governments had to respond and obey, in reality has proven not to be very effective, and has even resulted in adverse results, thus justifying the criticisms considering it a wrong strategy of promotion and protection of human rights.

We shall now look at the content of each of these critics separately, attempting to demonstrate and illustrate them, when convenient, using the concrete examples of Afghanistan and Bosnia, two cases that bring into focus many of the challenges and dilemmas faced by the international community in this somehow «new world disorder».²⁵

3.1. Political Instrumentalisation of Humanitarian Assistance

Certainly it can be argued that humanitarian assistance has always been considered a highly political activity. Because of this somehow inherent political character of humanitarian action, humanitarian actors have, since the beginning, sought to define a set of rules to guide their relationship with warring parties, and by implication with donor governments. Embodied in the International Humanitarian Law (IHL), the rules of impartiality and neutrality implied a separation of «humanitarian policies» from the more partisan attitudes and the foreign policy interests of other states. In donor countries, this separation was marked by institutional and funding arrangements that often underscored the independent and unconditional character of humanitarian assistance.²⁶

Nevertheless, also the relationship between aid and politics has experienced important changes, with humanitarian aid increasingly being seen as an integral part of donors' strategy to transform conflicts, decrease violence and promote human rights. This new humanitarianism, with its focus on political analysis and integrated liberal development notions characterised essentially by models of market economy, participative democracy, among others, was put in place as a new way to govern, and somehow control, the «borderlands»,

²⁵ M. ATMAR, J. GOODHAND, *Coherence or Cooption?: Politics, Aid and Peace-building in Afghanistan*, in «Journal of Humanitarian Assistance», July 2001, available at <http://www.jha.ac/articles/a069.htm>.

²⁶ J. MACRAE, *Politics vs Aid: is coherence the answer?*, January 2001, available at <http://www.id21.org/insights/insights39/insights-iss39-coherence.htm>.

given the changes in the global context and the perceived failure of traditional humanitarianism.²⁷

The problem is that this broadening of humanitarian objectives has not been matched by revitalised and effective international engagement in preventing and addressing conflicts in the poorest countries. Instead, humanitarian assistance is now seen as the primary form of political engagement marked by the commitment to conflict resolution and reconstruction of societies as a whole, including their beliefs and attitudes, in way to avoid conflict.

Here again one can identify the tendency for the blurring and convergence between development and security that emerged during the 90's, characterised by the assumption that underdevelopment is one of the main causes of conflict, threatening international security, and therefore, only through such liberal development model, could conflicts be prevented and international peace and stability ensured. The basic idea is that security and development should be thought as interdependent and mutually reinforcing. Simultaneously, and regarding NGOs, this convergence of development and security has meant that it becomes difficult to separate their own developmental and humanitarian assistance activities from the pervasive logic of the North's new security concerns and objectives.²⁸ In this context, attempts by aid agencies to promote development in these new frameworks of assistance characterised by combinations of multiple actors, have only contributed to reinforce their subjugation. The increasingly overt and accepted politicisation of humanitarian aid is therefore but one more or less obvious outcome.

Moreover, within the new humanitarianism and its emphasis on using humanitarian action to help solve conflicts and reconstruct war-torn societies, the politicisation of aid is made complete. It is, as Duffield defends, a tool of international regulation obeying the new strategic interests, and embedded in the emerging complex structures and networks that make up these models of liberal development and peace.²⁹ From this new blurring between politics and humanitarianism and as opposed

to some critics who have objected that humanitarian intervention is a substitute for political action, humanitarian action is now in fact seen as *that very action*.³⁰ This seems to be an actual and problematic trend which may have serious implications at the level of humanitarian assistance, but also at the level of relations between donor and recipient countries and the consequent perceptions, eventually damaging, of humanitarian assistance within the international community.

Duffield expresses this same concern by affirming that political humanitarianism is thus seen more as a restatement of technocratic authority in a mechanical universe rather than as a way of addressing complex and mutating systems³¹. In other words, instead of a coherent use of the potentials of humanitarian assistance as a way to ensure beneficial changes in such complex scenarios, there is in reality a use of humanitarian rhetoric as a new form of control by the developed countries, imposing conditions and behaviours on recipient countries which are unable or unwilling both to react to such authority or to definitively address their own problems independently.

As a consequence, strong criticism to the effectiveness and ethical dimension of this approach has emerged, especially based on the view of humanitarian assistance as a limited instrument that should be used to prevent human suffering, but not designed to prevent wars.³²

The negative effects of such strategy are many, justifying the view of politicisation as a wrong substitute for effective, timely and politically committed action to prevent or address mainly politically caused conflicts, leading instead to unequal distribution of aid and greater loss of lives. As shall be analysed below, in Afghanistan for example, some argue that aid was a «fig leaf» to political inaction, and in the Balkans, selective aid is said to have directly harmed some refugees, as also shall be seen.³³

There are also other opinions shared by some authors, like Duffield, who argue that, to some extent, the critique of

²⁷ D. CURTIS, *The Context of the current form of politicisation of humanitarian action*, in «Politics and Humanitarian Aid: Debates, Dilemmas and Dissension», Humanitarian Policy Group Report 10, London, ODI, April 2001, p. 7.

²⁸ M. DUFFIELD, *op. cit.*, p. 16.

²⁹ *Ibidem*, p. 88.

³⁰ M. CUTTS, *Politics and Humanitarianism*, in «Refugees Survey Quarterly», 17(7), 1998, pp. 1-15.

³¹ M. DUFFIELD, *op. cit.*, p. 76.

³² Macrae, *op. cit.*

³³ D. CURTIS, *Is Humanitarian aid failing?*, May 2002, available at <http://www.id21.org/zinter/id21zinter.exe?a=9&i=S10bdc1g1&u=3e91763f.html>.

politicisation of aid by the new humanitarianism is essentially related to the argument that policy decisions are regarded as political in the sense that aid is seen as making difference and being able to alter outcomes. The result is the «transformation of politics into a type of donor-approved soul-searching among enmeshed NGOs that either supply or withhold relatively small amounts of aid». According to this view, the main problem of politicisation of aid is related to the fact that humanitarian agencies have been making the wrong decisions all the way and that, in this sense, humanitarian agencies and NGOs correctly run the risk of being perceived as a resource conduct and a mechanism for providing aid dependent on political will of donors.³⁴

Many humanitarian agencies and actors (both NGOs and international organisations), on the other hand, have still tried to sustain that humanitarian action can never be a substitute or an instrument to political action. Although many times repeated, the argument is that there are neither humanitarian solutions for mainly political problems, nor the use of humanitarian assistance for foreign policy purposes should be allowed.³⁵ The argument is that humanitarian assistance may face many limitations and difficulties in practice, but still its supporting values and principles, even though not always seen as absolute, should never be mistaken with political interests.

Even though the intention of this more political humanitarianism is not immobilisation or fatalism in the face of difficult moral dilemmas, but on the contrary, to find new systemic methods of prioritising problems, analyse outcomes in order to make better choices and decisions, the problem is that, as Slim argues, the resulting actions may involve hard choices between greater or smaller evils.³⁶

In some humanitarian situations, moreover, doing nothing may be one of the choices in offer. The ethical core of the new humanitarianism lies, thus, in the ability to demonstrate good

faith in how difficult decisions are reached and requiring transparency in relation to the assumptions and expectations that guide the decision making process.³⁷ Again in this context, it can result that this humanitarian thinking will sometimes mean leaving people in need and without aid, taking the view of the wider good for the long term interests of people. According to the International Development Committee, for example, there are circumstances in which the moral imperative cannot be obeyed and relief must be suspended or delayed until certain conditions are met.³⁸

What makes this conception a «suspicious» and uncomfortable one is mainly its willingness to sacrifice lives today on the promise of development tomorrow, under the argument that if the right conditions are not in place, then no action will be undertaken.

A clear example of the negative effects of such politicisation of humanitarian assistance is the case of Afghanistan, which, until recently at least, was, as Boutros-Ghali once noted, «one of the world's orphaned countries— the ones that the West, selective and promiscuous in its attention happens to ignore in favour of Yugoslavia».³⁹

According to Mohammed Hanneef Atmar, although there has always been a complex historic relation between aid and politics in Afghanistan, this is an obvious case showing how current humanitarian assistance policies and practices are determined by Western policy goals. It is also an example of the negative consequences of such politicisation, in which donor governments, hostile to the fundamentalist Taliban regime and its poor human rights record, contributed to a clear marginalisation and exclusion of the victims in need of help, by using a conditionality policy.⁴⁰

This politicisation can be identified in the different forms the involvement and engagement of western donor countries in the afghan conflict has taken. One example is related to the minimal

³⁴ M. DUFFIELD, *op. cit.*, pp. 96-97.

³⁵ F. Rey, *Visiones de la Acción Humanitaria en 1997*, in *Guerras Periféricas, derechos humanos y prevención de conflictos*, Anuario CIP, Barcelona, Fundación Hogar del Empleado, Icaria, 1998, p. 187.

³⁶ H. SLIM, *op. cit.*

³⁷ M. Duffield, *op. cit.*, p. 91.

³⁸ T. OMP's evidence, *Conflict Prevention and Post-Conflict Reconstruction (volumell) Minutes of Evidence and Appendices*, report elaborated by IDC, House of Commons, London, 1999.

³⁹ Cited in M. FIELDEN, J. GOODHAND, *Peace making in the New World Disorder: A Study of Afghan Conflict and Attempts to Resolve it*, IDPM-Manchester/INTRACT-Oxford/DFID-funded research project, unpublished, 2000.

⁴⁰ M. Atmar, *The Politicisation of humanitarian aid and its consequences for Afghans*, in «Disasters», vol.25, number 4, 2001, p. 321.

responses to the war, based essentially in narrow domestic and foreign policies, and almost ignoring the precarious humanitarian conditions rather than concerned with trying to find comprehensive and coherent political solutions to the conflict. Instead, the focus was on isolating the Taliban at any cost, and leaving to the UN the responsibilities for peacemaking, without any clear commitment by the major powers to this task and with the establishment of one sided arm sanctions. The result, also recognised by Atmar, has been obviously negative with a prolongation of the conflict and undermining UN's role as impartial and effective peacemaking actor.⁴¹

This politicisation and subsequent imposition of conditions varied itself in nature. It ranged from security concerns— due to the increasing difficulties of work for humanitarian agencies which led most donors to cuts on the humanitarian aid in order to guarantee the safety of their expatriates and humanitarian personnel—, to development, capacity-building and life-sustaining issues; here, the main reason for imposing conditions and withhold also necessary development aid was the illegitimacy of the Taliban regime, their discriminatory policies and the ongoing conflict. In practice, the application of this conditionality resulted in a shift on the focus of aid from state to community structures, from long term development to short-term palliative assistance and from engagement for capacity building of the state welfare functions to confrontational disengagement.⁴²

Another cited example of this criticism to the new humanitarianism has been the humanitarian and political strategy used in the Balkans conflict. In this case, political interests and conditions by the Western aid policy led to distinctions between vulnerable groups that did not correspond to their level of need, thus creating patterns of inclusion and exclusion. Some donor governments interpreted humanitarian assistance to Serbia as being opposed to their foreign political interests, fearing that aid would be re-channelled into the hands of the government. As Skuric-Prodanovic notes, Western governments had great difficulties separating the notion of

humanitarian assistance from the political situation. But even when assistance was provided to Serbia, there were examples of inclusion and exclusion, with a clear differentiation being made between people who had been displaced from Kosovo in 1999 and 2000, and people who had been displaced before in 1992 and 1996, even though these were living in the same (or worse) conditions often in the same refugee camps. It was also known that while some urban areas in Serbia were receiving large amounts of humanitarian aid, other more remotes were simply excluded of such assistance because of being under control of the Serbs.⁴³

With this concrete examples, one can better understand the critics made to the new humanitarianism, and conclude that a political use of humanitarian assistance, especially in the context of complex humanitarian emergencies, can run the risk of having very negative effects and somehow endanger impartial and effective humanitarian assistance.

3.2. Conditionality and Human Rights

As analysed before, there are clear problems posed by the increasing and more explicit political nature and use of humanitarian assistance. Nevertheless, this is not the only aspect of the new humanitarianism that puts humanitarian actors in face with these kind of problematic decisions, such as negotiation or withdrawing of aid according to its impact on the longer term objectives or its effects in the continuation of conflicts. The consequent inclusion of conditionality as another feature of the new humanitarianism also implied such dilemmas, thus becoming also subject to several criticism.

It has been an established practice that donors place conditions on development and security assistance. But with development aid declining since the end of the 80's as a result of recessionary pressures, it was up to western humanitarian and emergency assistance to become an increasingly important form of states' support.⁴⁴

⁴¹ Ibidem, p. 322.

⁴² Ibidem, p. 327.

⁴³ S. PRODANOVIC, *Exclusion in Serbia*, in D. CURTIS (ed), *Politics and Humanitarian Aid: Debates, Dilemmas and Dissension*, HPG Report 10, ODI, April 2001, chapter 3, p. 10.

⁴⁴ J. MACRAE, A. ZWI, M. DUFFIELD (eds), *War and Hunger: rethinking international responses to complex emergencies*, London, Zed Books in association with Save the Children Fund (UK), 1994, p. 60.

As the boundaries between humanitarian assistance and politics blurred, it also became more legitimate for aid policy actors to concern themselves with the internal situation of recipient states. Economic and political conditionality on aid are a sign of it, progressively pursuing conflict management, prevention and peace building goals and assuming that objectives of aid, diplomacy, military and trade policies are necessarily compatible. The basic assumption is that foreign policy is humanitarian at the same time as humanitarian action serves foreign policy functions.⁴⁵

By sustaining this possibility of using conditionality, the new humanitarianism has also been identified as a major source of normalisation of violence and complicity with its perpetrators, either because it tends to make images of people suffering and in need look «banal» and a price to pay to guarantee compliance by the perpetrators or because of meaning remaining passive in the face of the continuation of violence and human rights violations if the conditions are not the ones previously agreed on and viewed as appropriate. This type of attitudes means undermining and often denying and/or rejecting, internationally recognised human rights norms.

In fact, another important critique to the new humanitarianism is related to the way it envisages human rights protection and promotion and to how and where these norms are placed within its new aid framework

Although traditionally exempt from such conditionality (especially in areas not thought to be of vital strategic importance by donor states), humanitarian assistance, as a major outside resource for many war-torn countries and shifting towards wider developmental aims, started itself to be subject to such conditions. By pursuing such longer term political objectives, humanitarian assistance becomes managed on the basis of a strategy of «sticks and carrots», with which donor governments reward or punish recipient countries according to their human rights practices and response to donors' policies.⁴⁶

The human rights records of Third World countries became, thus, under intense scrutiny and serving as an indicator for levels and models of democracy and development. To this extent, the new humanitarianism marks the rejection of the universal right to humanitarian assistance and relief in times of war, since the response to human suffering will be conditional on achieving not only human rights but especially wider political objectives, somehow replacing the notion of «humanitarian imperative» by a need to link conditional assistance with peace building and development.⁴⁷

This conditionality was evident in some public debates about responses to such crisis. For example, during the 1998 famine in Sudan, Britain's voluntary humanitarian agencies were openly criticised and castigated for raising money for provision of humanitarian relief, when what was considered necessary by the donor governments, was political action, in this case a cease fire, to end the crisis.⁴⁸

As a consequence of all these factors, it becomes more or less evident that an inevitable tension emerges between the use of humanitarian assistance aid with a longer term strategic view towards addressing conflict causes and stimulating development, on one side, and the imperative character of humanitarian assistance, as an obligation to provide relief on the basis of the need and protect the victim's human rights, on the other side.⁴⁹

However, the problem with this type of humanitarian response is essentially based on the fact that if a right is alienated from a person and conditional on a certain outcome, it is no longer properly a right, thus challenging the idea of a right to receive humanitarian assistance.

Furthermore, this shift in the main concerns of humanitarian assistance by donors, supported by a consequentialist ethics can often make a bad situation even worse. In fact, not providing aid and abandoning victims in need and suffering not only inevitably create moral problems but above all results in doubtful effectiveness.⁵⁰ Evidence has shown that move

⁴⁵ J. MACRAE, N. LEADER, *Apples, Pears and Porridge: The Origins and Impact of the Search for «Coherence» between Humanitarian and Political Responses to Chronic Political Emergencies*, in «Disasters», vol.25, number 4, 2001, p. 295.

⁴⁶ K. PÉREZ, *op. cit.*, p. 25.

⁴⁷ F. FOX, *A New Humanitarianism: A New Morality for the 21st Century?*, in «Disasters», vol. 25, number 4, 2001, p. 280.

⁴⁸ *Ibidem*, 2001, p. 280.

⁴⁹ K. PÉREZ, *op. cit.*, p. 34.

⁵⁰ *Ibidem*, p. 7.

towards humanitarian conditionality has yet to provide the desired outcomes.⁵¹

What happened in Afghanistan with the inclusion of mainly punitive humanitarian and human rights conditionality is again a good example, since they clearly ended up punishing (even more) the people already suffering extreme poverty and famine, rather than the main target of those conditions.

The main reasoning was that without changes in human rights policies (or better, disappearance of the Taliban regime), no peace would be achieved and therefore no aid should be provided to undertake development goals. The problem was that this shift, especially to relief aid, was not based on a clear and effective evaluation of the humanitarian situation and needs.

Finally, and perhaps the most controversial issue of conditionality from a human rights perspective in its relation to humanitarian assistance, donors focused on gender equality claims on the part of the Taliban regime as a condition for the provision of humanitarian assistance. It is true that maybe in no other country have gender and wider women's rights issues raised such a strong debate and international reaction, as a consequence of strict restrictions on women's work, education and other rights.

However, the reaction to such human rights violating practices has definitely not been the most appropriate or effective. Committed to punish the regime and lacking other type of policy instruments, donor governments saw humanitarian assistance as the primary, if not the only, mean to fight gender discrimination. What followed was, in the words of Atmar, massive politicisation in the form of ill-informed conditionality by donors and aid agencies. The World Food Programme, for example, made part of its food provision conditional upon the Taliban's change of policy and practice to respond favourably to UN appeals on basic rights for women. As a consequence, several food programmes were restricted or simply curtailed because of the inability or unwillingness of the regime to fulfil the conditions imposed. A second example is related to UNICEF's commitment to principles; in face of Taliban's

restrictions on girl's access to education, as well as its own inability to continue its work based on the impartiality principle, this agency decided to discontinue its national-level support that it had been undertaking for the education of Afghan boys only. The results have worsened the situation even more, since the Taliban's decided to expand the restrictions nationwide. This has raised difficult ethical dilemmas as to whether it was allowable to protect the rights of girls to education by violating the right of boys, especially given the ineffectiveness of the policy in changing the Taliban's attitudes and policies.⁵² One final example relates to Oxfam's decision not to undertake their clean water programme because it would be impossible to do it according to their human rights principles and policies, and which resulted in the death of about 2000 lives as Afghans were forced to drink polluted water after the suspension of the programme.⁵³

These are only a few examples, but somehow representative of the problems and dilemmas posed by the politicisation and conditionality of humanitarian assistance.

No matter what the form it has taken, the truth is that this type of conditionality has put obvious limits not only to the independent, impartial work of NGOs and humanitarian agencies in the field, but also to the notion of humanitarian assistance as a universal right. At the same time, these measures were in no way helpful for the promotion and advancement of human rights and peace. On the contrary, the reluctance of donor governments to provide timely and effective humanitarian assistance to the people suffering extreme famine and poverty has proved ineffective, unhelpful and has cost many lives, especially children and women.

The strategy of imposing of conditions has thus then taken the form of a one-way dialogue omitting international responsibility for improving the global environment within which national policy must operate. Greater emphasis is usually put on conditions regarding macro-economic reforms than on concerns to protect human rights.⁵⁴

Even when such concerns exist, they have either a punitive character, in the sense that instead of aimed at their effective

⁵¹ M. DUFFIELD, *op. cit.*, p. 95.

⁵² *Ibidem*, p. 326.

⁵³ F. FOX, *op. cit.*, p. 283.

⁵⁴ J. MACRAE, A. ZWI, M. DUFFIELD (eds), *op. cit.*, p. 23.

promotion and protection they often result in furthering human suffering, or are too focused in civil and political rights, which are exactly the ones still prevailing in the Western conception and in the international system. Donors practicing conditionality then actively choose not to honour some rights as a means of securing others, clearly undermining the victim's social, economic and cultural rights.⁵⁵

The underlying idea is that conditionality, especially of a negative and punitive character, cannot be considered a correct or effective way to assure positive changes at the human rights levels, not only because it tends to ignore the fact that the expected social, political and economic and cultural change takes time, but also the fact that in the meantime people must be given the conditions to survive, learn and be able to enjoy their human rights. Furthermore, all this happens at the expense of humanitarian assistance, which has exactly the opposite objectives.

3.3. Challenge and Oblivion of Humanitarian Principles

Also by gradually taking hold of humanitarian aid, politicisation and conditionality in the name of peace and human rights tend to violate the only absolute principle of humanitarian action— impartiality, which dictates that humanitarian aid obeys no other imperative than that of human or individual need. In Bosnia for example, and although the somehow legitimate concerns of donor governments of distortion of aid by the Serbs, such conditionality totally questioned the humanitarian principle of impartiality, leaving too many people in need without any sort of assistance or relief. This has led the Serbs to see humanitarian assistance and also aid agencies as a tool of Western governments, rather than as neutral and impartial, complicating even more their already difficult mission and work.⁵⁶ Also in the case of Afghanistan, politicisation of humanitarian assistance led to a clear challenge and erosion of the principle of impartiality, through a determination of the purposes and extension of humanitarian

response based on political goals and needs instead of humanitarian needs alone.

It must be recognised that impartiality is also a universally agreed principle, including the notions of non-discrimination, attention on the basis of the need and priority care to those in most need, without differing between individuals.⁵⁷

In the context of this new humanitarianism, it also results that both the notion of «humanitarian imperative» and theory and practice of all humanitarian principles became seriously questioned especially regarding neutrality and the notion of a universal right to humanitarian assistance. The risks of creating a moral hierarchy of victims deserving or not assistance are one of the consequences of such politicised impulse of aid.⁵⁸

For some time, the two most essential humanitarian principles, neutrality (not taking side with warring parties) and impartiality (non discrimination and proportionality) have been relatively uncontroversial, as has the key operating procedure of seeking consent from belligerents. However, a number of already mentioned events in the 90's have altered this attitude toward humanitarian action, resulting in a collective identity and operational crisis among aid workers in war zones as well as among those who analyse such efforts.

Although the representation and positioning of humanitarian values and principles in conflict has never been easy, the proliferation of relief and development agencies working in today's emergencies and claiming an humanitarian role seems to make things even more difficult. As argued by Slim, this proliferation of NGOs in particular, a clear consequence of the new Western donor policies, has led to wide differences in the ethical maturity and political sophistication of various organisations which are competing to work in the same emergency.⁵⁹

Nicholas Leader has noted that «while upholding and respecting humanitarian principles is the responsibility of states and warring parties, the respect for the principles of humanitarian action is the responsibility of humanitarian

⁵⁵ This debate over the indivisibility of human rights is subject to further analysis in chapter 3.

⁵⁶ S. PRODANOVIC, *op. cit.*, p. 10.

⁵⁷ F. Rey, V. Currea-Lugo, *op. cit.*, p. 30.

⁵⁸ K. PÉREZ, *op. cit.*, p. 34.

⁵⁹ H. SLIM, *Relief agencies and moral standing in war: principles of humanity, neutrality, impartiality and solidarity*, in «Development in Practice», vol. 7, number 4, 1997, p. 344.

agencies.⁶⁰ Even if sometimes donor governments and the UN have emphasised the importance of impartiality and neutrality, many relief agencies have argued that strict adherence is all but impossible due to unpredictable operating conditions.⁶¹ As a consequence, because adherence to such principles is voluntary, non compliance by one agency alone can influence other agencies to reject them as well.

On the contrary, the ICRC has argued that where impartiality and neutrality are not respected, humanitarianism is but a façade. Where such principles are absent, partisan politics will dictate the nature and scale of external assistance and inevitably, a «humanitarian action» effectively becomes a «political action».⁶² In this line of thinking, humanitarian action is of course limited by the objectives to which it must respond, but also by its own nature and intentions, being widely accepted that principles of neutrality, impartiality and independence provide an important ideal, although one which is elusive and faced with many contradictions and dilemmas in modern complex emergencies. As argued by Rey and Currea-Lugo, although this emphasis on ethical values and principles may be sometimes interpreted as «humanitarian fundamentalism», given the radical changes occurred in the humanitarian discourse and practice and the increasing number of actors appropriating themselves of it, its defence must be seen as a risk one should take.⁶³

However, and as shall be analysed in the following chapter, strictly abiding by these principles without considering their adaptation and reconceptualisation taking into account the complex context of emergencies may not always be the most useful or appropriate way to undertake humanitarian work. In such sensitive and problematic circumstances, it may be better to see principles not as absolute morals, but fundamental objectives upon which humanitarian action should be oriented.⁶⁴

⁶⁰ N. LEADER, *Proliferating principles, or How to Sup with the Devil without Getting Eaten?*, in «Disasters», vol.22, number 4, ODI, 1998, pp. 289-290.

⁶¹ In chapter 3 the debate around humanitarian principles is also further developed and applied to the concrete working hypothesis.

⁶² J. MACRAE, N. LEADER, *The Politics of Coherence: Humanitarianism and Policy in the Post-Cold War Era*, in «Humanitarian Policy Group Briefing, number 1, 2000.

⁶³ F. REY, V. CURREA-LUGO, *op. cit.*, p. 27.

3.4. Militarisation of Humanitarian Assistance

Another controversial and problematic feature of the new humanitarianism has been the explicit and direct involvement of military forces in humanitarian assistance. Although this had been already occurred since the early 1990s, it became increasingly common from the mid 90s onwards as a complement of the political use of aid. In the context of the new humanitarianism, and regarding the new wars, the rationale is that the military is expected to create the necessary conditions to allow aid agencies to get on with the task of conflict resolution and social reconstruction.⁶⁵ As a consequence, external military and peacemaking forces have assumed varying degrees of «humanitarian» aid delivery roles in many of the large-scale emergency operations, for instance in Iraq, Somalia, Bosnia, Kosovo, East Timor or more recently, in Afghanistan.

However, this new trend and encroachment in what has traditionally been seen as «humanitarian space» raises significant issues of principle, as well as policy and operational questions for humanitarian agencies, but also for the international community as a whole. In fact, this situation not only clearly undermines the existence of different roles between the military and humanitarian agencies and organisations, but also questions the need for impartial assistance as a response to an urgent and inalienable right, since military actors inevitably have a partial and political mandate.⁶⁶

Another problem is related to the different cultures that military and aid agencies represent and to the fact that while NGOs often regard military too bureaucratic and inappropriate, military regard aid workers as undisciplined, disorganised and resistant to military coordination.⁶⁷ Furthermore, in the context of humanitarian action, blurring of roles and confusion of local perceptions of humanitarian agencies and military forces can endanger and undermine the purpose and aim of the activities

⁶⁴ L. MINEAR, T. WEISS, *Humanitarian action in times of war*, Colorado, Lynne Rienner Publishers, 1993, available at http://www.hvproject.tufts.edu/publications/electronic/e_habs.html.

⁶⁵ M. DUFFIELD, *op. cit.*, p. 58.

⁶⁶ Development Co-operation Directorate, *Aid responses to Afghanistan: lesson from previous evaluations*, DAC Senior Level Meeting, 12-13 December, 2001, p. 5, available at http://www.who.int/disasters/hbp/case_studies/_hbp_DAC_Afgh_final.doc.

⁶⁷ M. DUFFIELD, *op. cit.*, p. 60.

of humanitarian personnel. This has been a concrete concern in the context of the intervention in Afghanistan, where population tend to associate humanitarian actors with military forces and vice-versa.

In reality, all these questions make even more sense and have become more usual and uncomfortable after the war in Afghanistan following the attacks of September 11, and the increasingly explicit linkage of military, political and humanitarian roles that it has engendered materialised in the dropping of food by coalition forces while simultaneously bombing military targets, as part of the strategy to win «the hearts and minds» of civilians. Authors like Barry and Jefferys consider this merging of roles and goals inevitable and desirable for the better achievement of conflict resolution and peace-building objectives.⁶⁸ However, with the attempt to bring political, military and humanitarian objectives within the same framework, there is a danger that humanitarian objectives and principles will be totally compromised by a strategy that makes aid delivery a means of achieving politico-military objectives and by a blurring that creates increased security risks for the humanitarian workers in an already highly insecure environment.

In these complex circumstances, it becomes necessary to rethink the role and place of the military in humanitarian assistance, acknowledging that, although in contexts where fighting has just ended and where the capacity of aid channels is not enough, the military may play a useful role in immediate restoration of vital infrastructure, the primary role of the military forces should be limited to the provision of security and protection rather than aid delivery.

3.5. Conclusive Remarks on the Critics

As seen before, since in the last decade it has become clear that coordination among humanitarian actors needs to be strengthened both to address the failure of political action and to distinguish it from that action, a concern grew also with the

view of such coordination as an integrated approach, seeking to merge the humanitarian with more political, military and economic agendas.

What can be concluded with this analysis is that, more and more, policy makers, diplomats and aid workers are struggling, with difficulty, to develop appropriate responses in a context characterised by state breakdown, competing military structures, a growing black economy and widespread destruction and humanitarian distress. But what comes out very clearly with the responses in Afghanistan, for example, is that the international community does not know yet how to deal with such dysfunctional states, particularly those which have limited strategic interests.⁶⁹

Without undermining its potential positive contribution to peace and stability in the longer term, one must be aware that the assumption that humanitarian assistance is the answer to underdevelopment and conflict may not be so linear and may entail some dangers. In the absence of effective, coherent and committed political efforts and mechanisms by the international community to solve complex political emergencies, the simple intervention in internal ongoing conflicts using humanitarian assistance may, as proved, be problematic and is definitely not enough.

In fact, although the significant changes in the international context and in the type of crisis requiring large scale intervention by the international community made necessary a renewed and adapted notion and practice of humanitarianism, the results achieved and implications of the new humanitarianism, however, do not appear globally tempting or satisfactory.⁷⁰

What has been experienced with the new humanitarianism, is essentially a misconception of the need for humanitarian assistance by an international system that at the same time denies its own role in sustaining or addressing complex emergencies and threatens further the capacity of victims of conflict-related disasters to have access to humanitarian assistance and to the enjoyment of their human rights.

⁶⁸ J. Barry, A. JEFFERYS, *A bridge too far: aid agencies and the military in humanitarian response*, Network Paper 37, Humanitarian Practice Network Papers, ODI, February 2002.

⁶⁹ M. ATMAR, J. GOODHAND, *Coherence or Cooption?: Politics, Aid and Peace-building in Afghanistan*, in «Journal of Humanitarian Assistance», July 2001, available at <http://www.jha.ac/articles/a069.htm>.

⁷⁰ K. PEREZ, *op. cit.*, p. 29.

In Afghanistan, for example, it would have been possible to provide effective humanitarian assistance for those in suffering while pursuing all other political, diplomatic and economic ways to address human rights violations. One cannot forget that people were already suffering from the regimes' brutality. Instead, international efforts to use punitive conditionality not only proved ineffective in influencing the Taliban, but were even pursued despite evidence of the negative impact on the welfare of the whole population.

In that sense, it is necessary to overcome the idea that conflict resolution derives solely from development, as usually assumed. Today's complex emergencies call for more active political will by the international community to face and challenge the power structures benefiting from violence and conflict, using further reaching solutions and avoiding the use and involvement of the military as providers of humanitarian assistance. This becomes even more important in the context of the present «war against terrorism», which, as Nicolas de Torrenté correctly affirms, has presented a number of challenges for independent humanitarian action at several levels: by seeking to subordinate humanitarianism to the conflicts' broader purpose, thus undermining the impartiality of humanitarian assistance, by questioning the applicability of humanitarian law due to fundamental restraints on the conduct of conflicts that clearly weakens the protection and assistance to which civilians are entitled and creates categorisation of victims, and finally by shifting attentions and making it harder to respond to the crises at the margins perceived as not important or non-existing.⁷¹ In short, it tends to reinforce even more the more concerning aspects of the new humanitarianism.

From a human rights perspective, however, and relating this debate to the hypothesis of this thesis, the main critic to the new humanitarianism is not so much related with the possibility or not of humanitarian assistance having more developmental and conflict resolution aspirations, but essentially to the way human rights respect and promotion have been included and envisaged within this aspirations.

As shown above, conditionality policies usually seek to reward «good governments» and those who fail to conform donor criteria are likely to be subject to cuts or suspension of aid until suitable reforms. The policies exercised by most western donor especially after 1997, was clearly one based in this type of conditionality, with its funding for humanitarian relief becoming increasingly tied to the observance of human rights. Despite the good governance and human rights rhetoric, the introduction of human rights conditionality for the provision of humanitarian assistance, marked essentially by a punitive character, has served to increase, rather than decrease, the vulnerabilities of the already dispossessed and their capacity to exercise and enjoy such rights. What seems to compromise humanitarian outcomes is not solely the dilution of humanitarian principles through broadening intervention and developmental objectives, but rather the application by donors of pure conditionality and a failure by agencies to appreciate the specific, dynamic political contexts for intervention and its consequences and to address the broader human rights dimension of humanitarian assistance.

In this sense, and despite the «good faith» aim of promotion of human dignity and rights, conditionality must never be employed at the expense of the humanitarian objectives of meeting basic human needs and saving lives. As defended by Alistair Dutton, an emergency Officer for a leading relief and development agency, the dignity of each person, while undoubtedly of great value, presupposes the life of that person and consequently may never be considered to be prior to it.⁷² Although one must recognise that some of the developed operational and theoretical instruments for the promotion of development, peace and human rights can be useful⁷³, it appears that its positive aspects result undermined by this type of conditionality that transforms humanitarian assistance in an instrument of political pressure instead of a universal right, and in bargaining ship for the respect for human rights instead of a means to promote them and make them enjoyable by the affected populations. As the Afghan example clearly shows,

⁷¹ N. TORRENTÉ, *The war on terror's challenge to humanitarian action*, in «Humanitarian Exchange», ODI HPN, number 22, November 2002, p. 44.

⁷² A. DUTTON, *The Moral Legitimacy of «Conditionality» in Humanitarian Relief*, in «Journal of Humanitarian Assistance», 2001, available at <http://www.jha.ac/articles/a070.htm>.

⁷³ *Ibidem*, p. 29

even though donors may have legitimate foreign policy concerns, the main point, however, is that they should not simply shape humanitarian assistance to achieve their own objectives. Moreover, blaming abusive authorities for the consequences may be justifiable but it is not enough reason for abdicating humanitarian responsibility at a time when most donor states claim to uphold human rights as a key principle of the foreign policy.⁷⁴ In a world in which bilateral aid is increasingly being restricted to countries not obeying western political and economic structures, the maintenance of an aid space free of political conditions becomes even more necessary.⁷⁵ It is a fact that apart from its core purpose of humanitarian action of saving lives and ending suffering, humanitarian assistance also aims at protecting and promoting victims' human rights. It must, therefore, be reaffirmed that when people are actually suffering, the primacy of humanitarian imperative must prevail over political aims, at the same time as there should be an attempt to search for an adequate relation between humanitarian action and political action and for durable and coherent solutions for the conflicts, avoiding, though, the subordination of humanitarianism to politics.⁷⁶

In this context, there is a pressing need to overcome the idea that wider development objectives, human rights respect and promotion are inseparable from conditionality and that those can only be achieved at the expense of a distorted notion and practice of humanitarian assistance.

As shall be proposed in the following chapter, possible ways to overcome this misconception and rethink the human rights dimension and capacities of humanitarian assistance range from the integration of a more transversal human rights dimension in humanitarian assistance and a recognition of the necessary relation between both, to the inclusion of human rights oriented projects in the dynamics of humanitarian assistance. We now turn to the possibilities, implications and possible advantages and criticisms of such proposals, trying, as much as possible, to draw conclusions on the basis of the evaluation of efforts and developments being made in the context of this debate and of best practices and less positive results of some humanitarian projects that have been undertaken in this field.

4. Giving humanitarian assistance a human rights dimension: Obstacles, possibilities and implications

As seen in the previous chapter, the attempts to make human rights progressively part of humanitarian assistance have not always been the most appropriate or effective ones. All the above mentioned critics to the new humanitarianism have been well funded, through the analysis of the impact of these new conceptions of humanitarian assistance in the organisation and basis of the humanitarian system, as well as through case studies assessing its applicability and consequences on the ground.

In this context, and after decades of negative conditionality practices and a too narrow focus on civil and political rights by donor governments, humanitarian agencies and workers have progressively recognised the importance of acknowledging the link between these two dimensions —human rights and humanitarian assistance— and above all the need to reconceptualise and redefine their relation.

Increasing evidence, evaluation and experience have shown, therefore, that including a greater human rights dimension in humanitarian assistance at the same time as developing and ensuring the capacities of the latter to promote and protect human rights is not only desirable in the context of today's complex emergencies, but also possible.

Bearing this mind, the aim of the present chapter is basically to: a) demonstrate the close link between humanitarian assistance and human rights; b) review the debate around this issue, potential obstacles and arguments that may be raised against and in favour of a rights-based approach; c) and analyse the process and efforts to integrate human rights in humanitarian assistance, as well as the different strategies adopted, advantages, best practices, failures and ways to enhance such integration. In this context, and sharing the view that this is a crucial need for present and future humanitarian assistance work, other ways of promoting and contributing to this process will also be suggested, such as the integration of human rights oriented projects within the framework of humanitarian action, paying

⁷⁴ M. ATMAR, *op. cit.*, p. 324.

⁷⁵ F. FOX, *op. cit.*, p. 288.

⁷⁶ F. REY, V. Currea-Lugo, *op. cit.*, p. 25.

greater attention to gender rights and recognition of the vulnerability of particular groups-children, refugees, etc. The main idea is that since human rights violations are increasingly at the heart of most of today's conflicts, it is even more important to recognise that human rights are part of humanitarianism. In this sense, through humanitarian assistance, the enhancement of human rights knowledge and awareness of populations in conflict situations, but at the same time more attention to this human rights issues and advocacy by the international community, would eventually be a possible and positive outcome, ultimately contributing for peace.

4.1. *Human Rights, Humanitarianism and Humanitarian Assistance: What links?*

The creation of the United Nations in 1945 represented a major advance in the effort to enshrine and promote human rights in international relations and law. The UN Charter in its article 1(3) states that one of the UN's primary purposes is «promoting and encouraging respect for human rights». Articles 55 and 56 of the Charter require UN Members States to «take joint and separate action» to promote «universal respect for, and observance of, human rights and fundamental freedoms for all». ⁷⁷ In the decades after the creation of the UN, the promotion of human rights has evolved and involved a series of efforts to expand the principle that human rights are a legitimate concern for all, namely with the adoption of the Universal Declaration of Human Rights in 1948, or the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights of 1966. From then on, both sets of rights should become an integral part of all UN's activities and a concern for the whole international community.

The field of humanitarian assistance was no exception and has not been exempted from this progressively increasing

debate around the idea that human rights should underpin the delivery of humanitarian assistance. Increasing is also the number of those who view humanitarian assistance as one of the number of ways in which fundamental human rights can be affirmed and promoted. As Karen Kenny defends, for example, humanitarian action should be pursued as an intrinsic dimension of human rights work. According to this view, human rights, which are indivisible and interdependent, form the framework for assistance activities. ⁷⁸ This is an idea that deserves to be stressed in this debate.

In this current international context and debate, one can say that there is somehow an agreement on the idea that humanitarianism is not only about immediate care or poverty relief, although it obviously includes elements of such actions. For the simple fact of making reference to the respect for all men and women and for all that constitutes a human being, humanitarianism is incontestably related with several other issues and dimensions such as human rights, since both have, as a point of departure, the concept of human being as holders of universal and inalienable rights.

At the same time, evidence departing from humanitarian agencies documents and NGOs reflexions clearly supports the idea that humanitarian assistance does not, by its own, meet all needs originated by complex political emergencies, in which gross and systematic human rights violations are an objective and not only a consequence of the conflict. ⁷⁹

Humanitarian action should then be understood as the group of activities of protection and assistance in favour of the civil and non-belligerent victims of natural disasters or armed conflicts and its direct consequences, aimed at alleviating suffering, guaranteeing subsistence and protecting human rights. In this sense implying also the guarantee of access and enjoyment by the civil population to such goods and dignity, as well as their protection, humanitarian assistance is much more than humanitarian aid, understood as the provision of emergency material goods and services. ⁸⁰

⁷⁷ For complete wording and content of the articles, please see the United Nations Charter.

⁷⁸ K. KENNY, *When needs are rights: An overview of UN efforts to integrate human rights in humanitarian action*, occasional paper 38, Providence (USA), The Thomas J. Watson Jr. Institute for International Studies, 2000, p. vi- viii., available at http://hwproject/tufts.edu/publications/electronic/e_op38.pdf.

⁷⁹ F. REY, «Perspectivas de la ayuda humanitaria en la ayuda oficial al desarrollo», in *La Acción humanitaria: nuevos enfoques, métodos y desafíos*, Hegoa, 2001, p. 16.

⁸⁰ F. REY, V. CURREA-LUGO, *op. cit.*, p. 53.

It is also true that the term «human rights» evokes a wide variety of reactions. Many of those working in international development and diplomatic institutions regard human rights as highly political and confrontational intrusions on their activities. Many in the international assistance community and the military view human rights as a threat to «neutrality» that may undermine access to populations needing assistance or the success of peacekeeping operations.⁸¹

At the same time, there is also a more positive view and «trust» on human rights, especially held by the international civil society, which increasingly and more openly condemns practices that constitute flagrant human rights violations, such as genocide, ethnic cleansing or use of starvation of civilian population as a weapon of war, at the same time as calls for the respect and dissemination of internationally recognised human rights norms, to be applied also in humanitarian assistance. Furthermore, when the 1993 UN World Conference on Human Rights held in Vienna finally agreed to support the creation of an office of High Commissioner for Human Rights, it opened the way for developing a more balanced partnership between the UN's humanitarian and human rights wings. This clearly shows that human rights are an essential element in peace-making and peace-building efforts and should be addressed in the context of humanitarian assistance and action.⁸² Given all these important developments, there are reasons to believe that there is a pressing need to give a broader and transversal human rights dimension to humanitarian assistance.

However, in reviewing the progress of humanitarian actors and agencies towards an effective integration of a human rights dimension in humanitarian assistance, there are some elements which are essential and should be taken into account, such as the recognition of applicable international law, identification of the common human rights goals, adaptation of action to achieve such goals, and construction of a management systems approach for doing it. In this context, the most relevant norms of international law are mostly drawn from human rights law, treaty law and law of international organisations. The

arguments that are drawn from these norms reflect essentially the inherent nature of human rights, reason for which they should be directly part of the legal framework applicable to the work of humanitarian actors, but also the fact that humanitarian actors are seen as stepping in to assure respect for human rights in situations in which the state is unwilling or unable to do so.⁸³ Finally, the UN Charter itself sees human rights as being an intrinsic purpose with legal obligations resulting for all the components of the system. A sign of this have been UN's efforts in promoting and facilitating the drafting and adoption of treaties designed to protect specific groups. The main ones and of more immediate relevance to humanitarian workers, are the Convention on the Elimination of all forms of Discrimination against Women (1979) and the Convention on the Rights of the Child (1989), since they include the whole range of human rights, underscoring thus their interdependency and mutual reinforcement, and are relevant to relief and development activities for population at risk.⁸⁴ Reinforcing this arguments are the principles of indivisibility and interdependence of human rights, which were ratified and recognised in the already mentioned Vienna Conference of 1993, requiring thus recognition that humanitarian assistance concerns human rights, whether it is the right to food or to physical security.

4.2. *The Existing Debate Between Meeting Needs and Defending Rights*

The increasing recognition of this close relation between humanitarian assistance and human rights has not, however, been easy or exempt of critics, given the many constraints and limitations traditionally associated and imputed to humanitarian action, such as its underlying needs approach which tends to associate humanitarian assistance simply to an immediate relief action, or its guiding principles, especially the one concerning neutrality. As a consequence, a very interesting debate has resulted, characterised by voices stressing the need and

⁸¹ W. G. O'NEILL, *A Humanitarian Practitioner's Guide to International Human Rights Law*, occasional paper 34, Providence (USA), The Thomas J. Watson Jr. Institute for International Studies, 1999, p. 1, available at http://hwproject/tufts.edu/publications/electronic/e_op34.pdf.

⁸² J. STREMLAU, «People in Peril: Human Rights, Humanitarian Action, and Preventing Deadly Conflict», in *Journal of Humanitarian Assistance*, May 1998, available at <http://www.jha.ac/articles/a032.htm>.

⁸³ K. KENNY, *op. cit.*, p. 5.

⁸⁴ W.G. O'NEILL, *op. cit.*, p. 16.

importance to maintain this traditional approach, while others proposed the incorporation of a human rights dimension in humanitarian assistance missions and projects, including advocacy and denounce, under the argument that aid agencies and workers who define their activities within the context of this important international human rights framework are more likely to reinforce the legitimacy of their work and also enhance their effectiveness. There are, then, contradictory views and arguments on this matter within the humanitarian community that deserve being discussed in this context.

The importance of maintaining the needs-base dimension prevailing in the classic concept of humanitarian assistance is usually used as a basis for the arguments against the adoption of more transversal human rights dimension in humanitarian assistance, mainly referring to its negative implications for the humanitarian principles and to the different specific mandate of humanitarian organisations. The main critics to the rights-based approach are basically that it is a form whereby humanitarian aid transforms people, institutions and societies at the image of the West, and especially that it means abandoning neutrality. Moreover, and as defended by Fox, human rights concerns and objectives should not be a part of humanitarian work and should be left to specialised organisations such as Amnesty International or Human Rights Watch.⁸⁵

Defenders of a rights —based approach to humanitarian assistance, on the other hand, see it not only as necessary and fundamental to an effective human rights dimension, but also as a way to better rethink and adapt humanitarian principles to the new needs. The distinctive feature of a rights-base approach is exactly its legal foundation. If it is to be effective, a legal apparatus must be created to monitor the respect, promotion, protection and fulfilment of human rights.⁸⁶

In this sense, authors like Slim see human rights as the appropriate basis for the legitimacy of humanitarianism, moving

thus away from the more paternalistic view of humanitarianism as charity. According to him, and in this sense this is an idea that must be recognised as valuable, basing humanitarian action in rights and duties makes the values of humanitarian work more explicit to everyone, and gives humanitarianism a more explicit moral and legal framework to affirm universal rights and values.⁸⁷

It is also true, however, that adopting such an approach is likely to challenge the existing classic conceptions and principles of humanitarian assistance, especially the ones concerning neutrality. From the beginning, neutrality has been at the heart of some organisations' mandates, like the ICRC's, and the main argument for maintaining it in all circumstances is that it is crucial to gain access to all victims, claiming that becoming involved in public discussion undermines the humanitarian space that has been traditionally granted to neutral humanitarians. Moreover, it is affirmed that truly neutral relief workers are not indifferent, unprincipled and vacillating persons, but have rather a determined commitment to a particular ideal. They have already taken a position and for them neutrality is ultimately the operational means to achieve their humanitarian ideals within a context which is hostile to such ideals.⁸⁸

On the basis of these arguments, opponents of a rights —based approach claim that including and addressing such sensitive, and more political, human rights concerns within humanitarian assistance certainly challenges the maintenance of these principles, undermining their value and questioning the whole humanitarian work.

However, and reflecting the growing frustration among many humanitarian agencies, and perhaps donors, with limits they perceived to be placed on their action by the concept of sticking to neutrality, critics have aroused, questioning if complete neutrality could still be possible or even ethically just in the current complex contexts of humanitarian assistance and in the face of gross human rights violations.⁸⁹

⁸⁵ Fox's contribution to a conference on new dimensions in the relationship between humanitarian assistance and politics organised by ODI, POLIS at the University of Leeds ad CAFOD, London, 1 February 2001, summed up in D.Curtis (ed.), *Politics and Humanitarian Aid: Debates, Dilemmas and Dissension*, HPG Report 10, ODI, April 2001, p. 15.

⁸⁶ Danida, *Report on Danish Humanitarian Assistance (1999)*, chapter 3: *The Changing Context*, available at <http://www.um.dk/danida/evalueringsrapporter/1999-9/1999-9-1/c3.asp>.

⁸⁷ Slim's contribution to a conference on new dimensions in the relationship between humanitarian assistance and politics organised by ODI, POLIS at the University of Leeds ad CAFOD, London, 1 February 2001, summed up in Curtis, D. (ed.), *Politics and Humanitarian Aid: Debates, Dilemmas and Dissension*, HPG Report 10, ODI, April 2001, p. 15.

⁸⁸ H. Slim, *op. cit.*, p. 347.

⁸⁹ F. BOUCHET-SAULNIER, *The theory and practice of «rebellious» humanitarianism*, in «Humanitarian Exchange», number 19, September 2001, p. 15.

These critics are essentially based on the belief that neutrality in such circumstances is irresponsible and even inhumane and on the argument that also by deciding where and when to intervene, agencies are inevitably taking sides, fact that has serious consequences for those cases not chosen to receive assistance. Another argument used is that neutrality is not an exigency for the work of NGOs in the context of internal conflicts; in fact, IHL refers only to «impartial humanitarian organisation».⁹⁰ As a consequence, some organisations have chosen to adopt a more active role, speaking out in the face of human rights violations and condemning those responsible. MSF is an example.

The will or duty to speak out against gross human rights violations witnessed by humanitarian staff in the course of their duties has always been a very problematic and discussed issue. In this context, there is a dual vision between those who claim that maintaining good relations with authorities to achieve and maintain access is in contradiction with denouncing those authorities, and those who sustain that there can be no international «silent witnesses». This situation poses also difficult dilemmas: on the one hand, once an agency publicly denounces one party over another, it is likely to assume a more partial and political, and therefore, less humanitarian, role. In such circumstances when agencies believe they are compelled to denounce human rights violations, humanitarian assistance becomes a political tool and substitute for political action, especially at the eyes of parties, and it can result in deprivation of assistance to victims, as was the case in Ethiopia in the mid 80's when MSF was expelled for being too vocal against the Government's policies.⁹¹ On the other hand, when relief agencies abide too strictly by the neutrality principle for fears of expulsion or security risks, by deliberately avoiding even institutional proximity to the public protest of human rights agencies, they are not giving the deserved attention and consideration to human rights in their work. In this case, MSF is a good example of a humanitarian agency showing non-acceptance of civilian mistreatment and restriction of

humanitarian access without punitive consequences and evidence of the positive aspects of such position. In Angola, for example, MSF held a series of press conferences and released a report in late 2000 that was very critical of government and rebel abuse of the civilian population; this action drew little official reaction and it even had unforeseen benefits, such as inviting more open expression of public opinion, and the use of the report's findings to advocate for improved conditions.⁹² The basis behind this attitude is that when a humanitarian agency is outraged by human rights violations, a rationalised silence can be a particularly cruel and uncreative way to react. Unaccompanied by action to address such violations, the silence and passive, resigned presence of international agencies in an abusive context may convey the wrong message that violation of human rights of civilians will be tolerated or condoned. The humanitarian imperative based on principles becomes then a non-negotiable moral absolute, and all other inalienable rights are regarded as secondary.⁹³

The existence of such divergent opinions and positions in relation to neutrality and access and denounce of human rights violations in humanitarian assistance makes it a particularly sensitive issue in the needs vs. rights debate.

Another issue in which the needs vs. rights debate have raised divergent opinions regards accountability. While opponents of the rights-based approach sustain that it makes accountability more difficult, its supporters defend that, on the contrary, a basis on human rights and international humanitarian law are useful tools to bring donor governments and agencies accountable. In the case of the UN system, for example, the absence of a common understanding among officials of their human rights roles and responsibilities in humanitarian assistance, the fragmentation of policymaking and the lack of a mechanism providing system-wide accountability and direction has made it difficult to develop comprehensive and coherent policy to guide its component parts with respect to human rights.⁹⁴ Moreover, the «sub-contracting» tendency

⁹⁰ F. REY, V. CURREA-LUGO, *op. cit.*, p. 33.

⁹¹ M. PARRY, «Phyrric Victories and the Collapse of Humanitarian Principles», in *Journal of Humanitarian Assistance*, 2002, available at <http://www.jha.ac/articles/a094.htm>.

⁹² G. MARTONE, *The compartmentalisation of humanitarian action*, ODI HPN Report, 2003, available at <http://www.odihpn.org/report.asp?ReportID=2448>.

⁹³ *Ibidem*.

⁹⁴ K. KENNY, *op. cit.*, p. 21.

introduced by the new humanitarianism, has meant that donor agencies are usually not the implementers of their own programs and projects, leaving that function to other humanitarian organisations and especially to the increasingly involved NGOs, selecting them as their prime partners in humanitarian disasters.

This situation has raised some suspicion and concerns in relation to its impact in humanitarian assistance. The great competition for humanitarian funds (and more generally for access to development funds) and the risk of getting important financial incentives provided by donor governments, which have their own political agenda demand low cost and high quality assistance, may result in the questioning of the quality of NGOs' work.⁹⁵

Reflecting this concerns and the desire to improve the quality and standards of humanitarian assistance, and conscious of its variable impact in the context of conflicts, a number of initiatives have emerged in efforts to establish frameworks to clarify humanitarian agencies and NGOs' professional and moral obligations during a humanitarian assistance, as well as their accountability. Examples of such operating frameworks are the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, the Sphere Humanitarian Standards and Charter, the Humanitarian Accountability Project⁹⁶ and also the UN strategic frameworks, designed to make humanitarian assistance part of a broader project including respect for human rights or the restoration of peace.⁹⁷

In short, and given this debate, it can be said that the value of rights —based approach lies then in the fact that it is a constant reminder that all of us as human beings are entitled to certain basic rights and that much more than ensuring that food and shelter are available, humanitarian assistance is also a way to help people achieve what is rightfully theirs, the right to live with dignity and self worth. It contributes to provide a standard against which aid workers can hold themselves accountable, and reminds us that «falling short» and providing only the minimum is not good enough.

⁹⁵ Danida, *Report on Danish Humanitarian Assistance (1999)*, chapter 3: *The Changing Context*, available at <http://www.um.dk/danida/evalueringsrapporter/1999-9/1999-9-1/c3.asp>.

4.3. *A Transversal Human Rights Dimension in Humanitarian Assistance: Possibilities and Implications*

The integration of a more clear and transversal human rights dimension in the humanitarian work is thus an increasingly debated and agreed need in today's world. The main question, then, is not so much if it should be done, but rather how it should be effectively undertaken in the field and what would be the implications.

The possible ways to do it are varied and the ones here suggested range from adopting a more human rights aware and protective strategy by the part of humanitarian agencies and actors in the undertaking of their missions and work, to the elaboration and definition of specific humanitarian projects aimed at promoting human rights and tackling issues such as non-discrimination, gender, children and minorities' rights, etc. Nevertheless, both possibilities should be seen as closely connected and mutually reinforcing.

We shall now look at each of these possible ways, their implications and to what extent and with which results have they been applied in current humanitarian work.

A) ASSISTANCE VS. PROTECTION: THE NEED FOR A CLOSER RELATION

More broadly, inserting a more human rights aware transversal dimension to humanitarian assistance means adopting strategies and programs which tackle the question of protection and imply reconsidering its place in the current prevailing assistance approach in humanitarian work. Indisputably, the changing character of both conflicts and humanitarian assistance has highlighted the tensions and relations between traditional assistance activities and protection needs.

The consensus definition of protection, as given by the ICRC, for example, is basically any activity which prevents or puts a stop to a specific pattern of abuse and/or alleviates its immediate effects. Although many of today's conflicts are

⁹⁶ For more information on this specific Project, please see <http://www.oneworld.org/ombudsman>.

⁹⁷ F. BOUCHET-SAULNIER, *op. cit.*, p. 15.

characterised as «protection crises», protecting human rights is still too often seen as being at odds with humanitarian assistance, since relief assistance tends to focus on the aspect of protection related to the immediate alleviation of suffering, and does not address directly protection or human rights violations at their source. This tendency emerged during the Cold War, when humanitarian and human rights organisations developed and evolved separately, each protective of its own agenda; while relief providing organisations had their own rules and mechanisms for monitoring the effects of their efforts, human rights NGOs based much of their criteria for monitoring on provisions of international law. Moreover, and as already seen, humanitarian agencies tended to see conflicts arising between the responsibility to help and have access to the affected population and to raise concerns about violations of human rights, whereas human rights advocates accused humanitarian agencies of willing or unwilling neglecting the protection dimension of their work. The separation of human rights into two baskets has also been at the heart of these tensions between humanitarian and human rights organisations. Whereas the humanitarian organisations have been traditionally concentrated on economic, social and cultural rights (although not always framing their actions in rights language), human rights organisations have tended to focus more on civil and political rights, to the exclusion of essential human needs.⁹⁸

Despite the current increasing recognition of the importance of protecting and promoting human rights in humanitarian assistance and efforts to undertake it, as well as the countless situations in which both organisations consequently have to operate, the tendency is still for both to interact only accidentally or socially. There is then, in the words of Martone, a compartmentalisation peculiar to humanitarian action that distinguishes as completely different activities that are in fact interdependent and interrelated.⁹⁹ To a certain extent, this compartmentalisation and categorisation between assistance and protection can be considered obsolete and even dangerous, and its relation should be reconsidered.

In fact, although the physical and legal protection of civilians is regarded as subordinate to the humanitarian commitments,

one cannot ignore that suffering frequently comes from the loss or denial of physical and legal protection, for which humanitarian assistance offers no remedy.

Responding to the increased criticism that they are implicated in the «well fed dead» scenario (a common expression used in the context of the conflict in Bosnia, referring to the situation in which the population was being provided with large amounts of food aid, but no protection assistance at all), aid practitioners themselves concede the limited utility of sustaining life, but are not willing to have it jeopardised by repressive authorities or renegade elements. The problem is that the imperative to assist, framed in isolation from the imperative to protect, can limit an effective humanitarian action.¹⁰⁰ Although in some spheres assistance and protection actions are viewed as separate, the approach should be one that recognises both as complementary and interdependent. As recognised by the Danish governmental humanitarian agency, protection is part of the mandate of every agency operating in the field, yet agencies sometimes neglect it in favour of what they see as more urgent matters, like the provision of food and shelter. It must be given a higher priority than it enjoys at present.¹⁰¹

Therefore, to avoid the negative effects of such limited view, humanitarian programmes should not be defined too narrowly, especially where they include rehabilitation, development or peace building objectives, as is increasingly the case. Protecting human rights in today's complex emergencies should also be an essential part of humanitarian assistance, since it occupies a very important place among key international policy issues.

It must also be noticed that there are different dimensions of protection, which can involve ensuring compliance with existing legal safeguards or concern practical measures to enhance the security of individuals and populations in danger, seeking to prevent human rights violations. Protection in its practical aspects, in particular, comprises a multiplicity of activities and dynamics, such as promotion of voluntary return of refugees and displaced persons to their homes, providing protection and assistance in temporary relief centres, assisting besieged populations unable or unwilling to move from their homes, etc.

⁹⁸ W.G. O'NEILL, *op. cit.*, p. 11.

⁹⁹ G. MARTONE, *op. cit.*

¹⁰⁰ M. FROHARDT, D. PAUL, L. MINEAR, *op. cit.*, p. vii.

¹⁰¹ Danida, *Report on Danish Humanitarian Assistance (1999), Chapter 5: Evaluation Results*, available at <http://www.um.dk/danida/evalueringsrapporter/1999-9/1999-9-1/c5.asp>.

Some relief activities may take on a more intentional and active character in the service of protection objectives. For example, aid staff providing relief in cases of physical or psychological trauma may watch for evidence regarding patterns of human rights abuses.¹⁰²

In great part due to the new character and implications of complex emergencies, and to the fact of seeing themselves deeply involved in such context and even though the need for material assistance in the form of emergency food and shelter continues to be crucial, humanitarian organisations have developed an important awareness of the priority of protection. In this context, in great part due to the idea often associating aid to exacerbation of human rights violations, international aid agencies and workers are trying to find ways to reconsider their basic humanitarian reflex and face the challenge of assessing better the threats to human rights, defining more effective protection strategies.¹⁰³

Many NGOs are themselves taking a new look at the interrelationships between the delivery of relief assistance and the protection of fundamental human rights, also reviewing their relations with UN agencies and donors.¹⁰⁴ They are also trying to better define the connections between social and economic rights and civil and political rights, as well as exploring new ways of collaborating across institutional lines to ensure that the humanitarian challenges in both their protection and assistance dimensions are met.

In the context of UN system, the agencies and organs involved in humanitarian activities differ widely in how they identify their human rights roles. Some, such as the Office of the High Commissioner for Human Rights (OHCHR) or the United Nations Development Programme (UNDP) have taken an «add-on» approach, adapting and renewing existing activities with a human rights component, but leaving unaffected the nature and goals of humanitarian action and not reviewing the impacts of their actions in terms of human rights; on the other hand, others like the United Nations Children's Fund (UNICEF) or the United Nations High Commissioner for Refugees

(UNHCR) have adopted a «transformative» route, approaching the integration of human rights as an opportunity to reconceptualise and undertake their activities in order to reflect the human rights goals of the UN as a system.¹⁰⁵

With the creation of the Office for the Coordination of Humanitarian Assistance (OCHA) such concerns were more explicitly included in humanitarian activities, bringing higher visibility to human rights and protection concerns in relation to the assistance mandates of the agencies.¹⁰⁶

Given the political sensitivity of human rights issues and the often intimate involvement of political authorities, implementation of protection strategies must be coherent and concerted, reflecting as much as possible a common purpose and understanding of human rights issues between all the actors involved in humanitarian work. According to some authors, this can be achieved for example through the creation of protection working groups organised in the field and linked to the regional level of the agencies involved, and should include humanitarian and human rights organisations and NGOs.¹⁰⁷

Another element in the implementation of practical protection strategies involves the design, placement and content of humanitarian/relief activities so as to deter human rights abuses. Programs with a home-visit component or a strong community based service delivery system may facilitate daily contact with isolated vulnerable groups, minorities, etc. Since programs of social care to these vulnerable groups are likely to be better accepted by authorities, humanitarian programs can be used as points of entry to areas where populations are more at risk.¹⁰⁸

Protection of human rights, and in particular of International Humanitarian Law, has historically been part of the work of classic humanitarian organisations like ICRC. The defence and protection of human rights is today a decisive tool for the promotion of reconciliation and post-conflict reconstruction processes, but also for the defence of the interests, empowerment and development of the most vulnerable sectors of society.¹⁰⁹

¹⁰² M. FROHARDT, D. PAUL, L. MINEAR, *op. cit.*, p. 1-3.

¹⁰³ *Ibidem*, p. 26.

¹⁰⁴ K. KENNY, *op. cit.*, p. vi-vii.

¹⁰⁵ *Ibidem*, p. vi-viii.

¹⁰⁶ M. FROHARDT, D. PAUL, L. MINEAR, *op. cit.*, p. 33.

¹⁰⁷ M. FROHARDT, D. PAUL, L. MINEAR, *op. cit.*, p. 41.

¹⁰⁸ *Ibidem*, p. 44-45.

¹⁰⁹ K. PÉREZ, *op. cit.*, p. 24.

It should therefore be seen as a positive development that its active defence has been increasingly defended and incorporated by NGOs and other organisations as one of the elements of humanitarian action, since the majority of today's humanitarian emergencies are likely to constitute gross human rights violations, including genocide, forced displacement, among others.

B) HUMAN RIGHTS ORIENTED PROJECTS AND A FOCUS ON VULNERABLE GROUPS, GENDER, PARTICIPATION AND EDUCATION

In general, today's conflicts tends to further exacerbate injustice in society and create new «root causes» of future wars, increasing the number of people in poverty, accentuating differences between those who suffer most and those who suffer least. Despite this reality, it is also recognised that, in such contexts, humanitarian actors working to protect vulnerable groups and populations must often do so in situations in which the prevailing humanitarian and human rights legal framework or practice does not function in ways that respect human dignity.

Recognising the need for broadening their work's dimension, field-based humanitarian staff who observe violations of human rights, humanitarian or refugee law should therefore not only be clear about their organisation's expectations and their own obligations for reporting such abuses, but also be familiar with such law as it applies to the situations in question.¹¹⁰

Simultaneously, since many of the moral dilemmas of humanitarian assistance arise from a tendency for aid to result in long term dependency because too focused in materialistic needs, placing the beneficiaries of aid in a passive and merely accepting role and undermining local capacities for change and

address of problems¹¹¹, the first step in effective humanitarian programming should involve then a thorough assessment of the needs, rights and capacities of vulnerable people in need of assistance and protection. In this sense, participation should be central to a human rights approach to humanitarian assistance which must be a process aimed at achieving human rights-civil, political, social, economic—, emphasising the fundamental human right principle that people are subjects who must determine and freely pursue their development and well-being.¹¹² Related to the need for a bigger focus on beneficiaries and include populations in assistance projects, the concept of participation is definitely an important one in this context of humanitarian programming. According to a report specifically dedicated to this issue elaborated by the Active Learning Network for Accountability and Performance in Humanitarian Assistance (ALNAP), the concept of «shared social learning» has been developed and applied to refer to processes of working with people to discover and understand their own social and cultural ideas, realities and actual practices of meeting immediate survival needs in times of sever stress, such as coping mechanisms adopted including through relief provisions.¹¹³ Although the complexity of the various issues pertinent to the doing and application of shared social learning in emergency situations is an intrinsic aspect, it can also provide an important way to include a broader human right dimension in humanitarian assistance.

Moreover, effective human rights protection and promotion, requires more than presence or data collection about needs or human rights abuses. For this reason, it becomes very important to define programs and projects that include and may effectively help to the dissemination of the principles of international law and the promotion of human rights information in its broader dimension, thus creating awareness

as an entitlement guaranteed by international law. In this sense, article 8.2 of the UN Declaration on the Right to Development urges states to promote participation by the population in all spheres as an important factor to development and for full realisation of all human rights. F. Gomez, *Derecho al desarrollo*, in K.Pérez de Armiño (dir.), *Diccionario de acción humanitaria y cooperación al desarrollo*, Barcelona, HEGOIA y Icaria Editorial, 2001, p. 151.

¹¹³ R. APHORPE, p. Atkinson, *Towards Shared Social Learning for Humanitarian Programmes: A synthesis study*, ALNAP, July 1999, p. 5.

¹¹⁰ M. FROHARDT, D. PAUL, L. MINEAR, *op. cit.*, p. 39.

¹¹¹ *Ibidem*, p. 40.

¹¹² It is important to note in this context, that active and meaningful participation of the people involved and targeted, should be seen as an important requisite and criterion for effective realisation and enjoyment of human rights. A. FRANKOVITS, E. SIDOTI, p. Earle, *The right way to development*, February 2003, available at <http://www.id21.org/society/S6bes1g1.html>.

In fact, and as stressed by Felipe Gómez, participation is an especially essential element for an effective realisation of the right to development

of the rights to which everyone is entitled and that range from the rights to life or basic freedoms and liberties, to the right to food, education, women's and children's rights, among many others.

The main idea is that each of these rights is of central significance for the effective delivery of humanitarian assistance and since they engage with essential human rights considerations, effective action by the humanitarian community should take appropriate account of their human rights dimensions.

Recognising this need, and since it is not possible to address and develop, in the present thesis, the whole range of rights that must be included, the following analysis will focus on the rights of women, children, refugees and education considering them as some of the most important rights that should be addressed in the context of humanitarian crisis; I am also certainly conscientious of the fact that in immediate and acute crisis situations there are other rights that may seem more important, such as right to food, health or housing. Nevertheless, the choice done has mainly to do with the actual importance of the rights of women, children and refugees as rights specifically referring to the most vulnerable groups in humanitarian crisis situations and in which such rights to food, health or housing are already incorporated and implied; and still they are often not recognised or addressed as they should and in accordance with their importance. As for the right to education, it is also very important as a basis to link relief to longer term development objectives, particularly in cases of prolonged crisis, and somehow constituting more stable situations of humanitarian assistance, and to which little attention is usually given within humanitarian programming. In such context, the aim is then to take them also as examples of how and why these and other internationally recognised human rights must be promoted and respected and seen as an objective towards which humanitarian work and projects should be always be oriented.

i. Gender and Women's Rights

In the context of the evolution and development of internationally recognised human rights, special attention and

importance has increasingly been given to gender and to respect for women's rights. This is well reflected not only in the presence and recognition of such concerns in almost all the developed human rights instruments, of a more general nature, such as the UN Charter, the Universal Declaration on Human Rights or the two International Human Rights Covenants, but especially in all the resolutions, declarations and conventions specifically aimed at promoting and protecting these rights, like for example the 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In all these instruments, there is a call of attention for the principles of equality and non-discrimination as a fundamental basis for the respect of rights of men and women. The idea of equality is fundamental to the very notion of human rights, by implying that all human beings have inherent human rights for the simple fact that they are human. However, and since equality means much more than treating all persons in the same manner, the CEDAW specifically imposes duties and obligations on states to take measures ensuring the «full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on an equal basis with men»¹¹⁴. The underlying idea is that there are aspects of life that are common to women and men, and clearly women should be accorded equal opportunity in those areas, and therefore need to be made visible, stressing thus the importance of women's rights at the international level.

Therefore, also in the complex context of humanitarian assistance, responding in a gender-sensitive manner becomes then not only one of the most important challenges, but a crucial need in planning human rights programs. The dramatic social changes resulting from conflicts in many parts of the world have profound effects on social relations, especially for women and girls, who constitute the majority of the world's groups in need. Women are particularly vulnerable in such contexts, because they have fewer resources in their own right, becoming the most affected by the violence and displacement through rape, torture, fear of destruction of homes and livelihoods.¹¹⁵

¹¹⁴ *United Nations Convention on the Elimination of All Forms of Discrimination against Women*, 1979, available at <http://www.unhcr.ch/html/menu3/b/e1cedaw.htm>.

¹¹⁵ IASC, *Mainstreaming gender in the humanitarian response to emergencies*, Background Paper on the Sub-Working Group on Gender and Humanitarian Assistance, p. 2.

However, although this vulnerable group is often portrayed as helpless victims and emphasis is placed on their need for assistance, also too often in the rush to provide such assistance, relief operations tend to overlook the importance of consulting with women and getting alternative perceptions and information on their needs and strategies. For example, registering only male household heads in refugee or IDP camps for food distribution can directly reduce women's positive influence over the production and provision of food within the family and undermine their position within the household. At the same time, little or no account is taken of existing coping mechanisms and strategies created by women.¹¹⁶

A common excuse by humanitarian agencies for not addressing gender issues in emergencies is that there is no time to carry out the necessary research to identify women's particular needs or endure in projects aimed at promoting their rights and potentials. This is however an untenable argument, since disaster preparedness should always include social research to identify and effectively target population groups at risk. In fact, if humanitarian programme planning is not based on and aimed at an awareness of these gender differences, women's vulnerabilities can be increased and their strengths and capacities undermined. For example, in a refugee camp where women are not present and actively helping, it has been observed that camp managers have difficulty arranging some of the basics of camp life such as food distribution and preparation—an activity traditionally managed by women.¹¹⁷

Moreover, current research and analysis has identified some major areas in which the issue of gender-based rights in emergency situations is particularly important: violence against women, access to health care, evolution of new nationalisms and fundamentalisms and participation of women in planning and programming.¹¹⁸

It is especially in this context that it makes sense to define human rights oriented programs within humanitarian assistance, in order to more effectively address these problems and create awareness for the need to respect women's rights. Apart from ensuring the actual application and promotion of

the various human rights legislation that applies in this specific context, humanitarian agencies and personnel should also undertake all efforts to ensure the implementation of these concrete projects. Possible ways to do it have already been identified. On the one hand, by taking into account the project's impacts on women and their specific rights in setting up refugee, IDP camps and other settlements, and planning camps' layout in order to secure their movement, access to water and food supplies and health services, undertaking separate registration of men and women, ensuring training and sensitisation of local police, legal and other authorities to these rights, among others; on the other hand, and perhaps more important in this context, by actively integrating women as active agents in the assistance projects, undertaking close consultation to assess specific needs and promoting effective participation.

The basis of these humanitarian women's-rights and gender sensitive programs should then always be the recognition and respect for the concepts of equality and non-discrimination and for the broader women's rights. This is crucial, especially in societies in which women tend to be culturally and socially undermined, a situation that is not only reflected in individual relationships but also permeates all institutions. It can help clarify the various ways in which men and women are accorded power and resources through their different identities and entitlements. At the same time, it enables the examination of the differential impact of crisis on men and women and of the impact of interventions on gender relations through, for example, highlighting both men's and women's capacities, indicating where opportunities are missed by humanitarian agencies for targeting effective strategies to support and enhance women's skills and capacities.¹¹⁹

In short, it is important that humanitarian programmes include the requirement and ability to treat their beneficiaries and affected populations more as subjects of rights than as objects and to respect those same rights, with a basic intention to demonstrate that, since human rights are essentially active, they should not only be promoted and protected, but also experienced and practised.

¹¹⁶ Ibidem, p. 3-4.

¹¹⁷ M.B. ANDERSON, p. Woodrow, *op. cit.*, p. 15.

¹¹⁸ IASC, *op. cit.*, p. 3-4.

¹¹⁹ IASC, *op. cit.*, p. 3.

ii. Children's Rights and Education

Another important human rights issue that should be more effectively considered in terms of concrete humanitarian projects concerns children and their rights, since this constitutes one of the most affected and vulnerable groups in conflict situations. Given this vulnerability, and bearing in mind the wide range of specific rights to which children are entitled and the existence of important internationally recognised human rights instruments for their protection, specifically the 1989 Convention on the Rights of the Child, humanitarian projects can play an important role in the promotion and implementation of these rights, and should undertake all efforts to do it.

In this context, UNICEF has been the main agency focusing on the promotion of children's rights and framing its work and policy explicitly in human rights terms. As mentioned in its 1996 mission statement, «UNICEF is guided by the Convention on the Rights of the Child and strives to establish children's rights as enduring ethical principles and international standards of behaviour towards children.»¹²⁰ This agency has, thus, the prime responsibility to ensure that the promotion and respect for these rights are effectively a part of humanitarian projects. And it must be recognised that it is actually playing a very important role at this level, despite the practical limitations and obstacles that often exist. But of course much remains to be done and improved.

One potential area of action in this context is education, which is an also recognised human right. Wars deprive millions of children of an education and yet education in emergencies has not traditionally occupied a prominent role in humanitarian work or thinking. No one dies from not going to school, and other life-threatening needs - for food, water, shelter at first glance seem more pressing. Often in the context of conflicts and crisis, education programming has been viewed as a luxury and a task for the development community only. However, education becomes particularly important especially, in cases of prolonged crisis or of established refugee camps, which

somehow constitute a more stable context, reason for which there should be a reappraisal of the position of education in humanitarian programming. Many authors suggest that, as protection in conflict emerges more clearly as a legitimate humanitarian concern, so the role of education as a tool of protection must be more clearly understood. One of the arguments is that education may enhance psychological protection of children in conflict and post-conflict situations and in emergency situations, ensuring access to educational institutions is likely to be of great importance.¹²¹

Therefore, in developing humanitarian programmes, special consideration should be given to educational needs and facilities as well as to longer term developmental needs of children, but also particular attention should be given to strategies targeting girls and children from minorities and disabled groups.

Education in emergencies is still in early stage and not very much applied, because although its status as a humanitarian concern has gained legitimacy in recent years, it has yet to be fully accepted and incorporated by the humanitarian community. Given the spectrum of rights and law (from human rights to refugee), and the obligations imposed on such a wide range of actors, the Convention on the Rights of the Child offers an important potential resource to the humanitarian workers. Moreover, enjoying near- universal ratification, it should become a powerful tool in advancing the realisation not only of the right to education but of all human rights for a large and very vulnerable portion of the world's population, especially in complex emergency settings.¹²²

More broadly, humanitarian programs may also contribute for the enhancement of the potential of education in the dissemination of human rights. In conflict or post-conflict situations, in which human rights violations are more likely to occur, civic education and information about human rights tends to be rarely adequately disseminated, especially among disadvantaged groups. Education is itself a basic right that is denied to many millions of people by virtue of war, their gender or social status. The result is a complete ignorance of their rights

¹²⁰ K. Kenny, *op. cit.*, p. 14.

¹²¹ S. NICOLAI, C. TRIPLEHORN, *The role of education in protecting children in conflict*, Network Paper 42, Humanitarian Practice Network Papers, ODI, March 2003.

¹²² W.G. O'NEILL, *op. cit.*, p. 21.

in international law which increases people's vulnerability to abuses and impedes their capacity to seek redress. In general education can help and enable people to be more confident about defending and asserting their rights, and recognising those of others, thus constituting also an essential element through which humanitarian assistance can be better linked to longer term development

These are just a few examples of areas in which humanitarian projects can include human rights oriented objectives, thus contributing for the enhancement of both human rights situation and humanitarian results, but also of the relation between both dimensions.

C) UNDERTAKING CONCRETE EFFORTS: THE THEORY AND THE PRACTICE

The need to include a human rights dimension in humanitarian assistance practical work is pressing in the way that in these war-torn countries, this notion tends to be ignored, or refuted by the population itself. One example of this situation was experienced in a session of dissemination of humanitarian principles and human rights held by the ICRC in 1993 in Burundi, targeted to students who had molested and beaten civilians, many of whom had lost family members during the violence in the country. What happened was a complete rejection of the ICRC message about basic human rights and mutual respect, based on the arguments that outside people do not understand because they did not experience such violence.¹²³

Humanitarian assistance agencies must therefore understand and recognise these problems and design their programs in ways that do not worsen these divisions but help people overcome them.

Conscious of these pressing needs, some aid agencies are actually increasingly more active in adopting and planning activities and projects specifically aimed at reaching vulnerable groups like at risk minorities, women, children, among others, promoting the respect and awareness of their own rights.

Analysis of the results of these efforts in recognising the closer relation between human rights and humanitarian

assistance can be made both at the level of the theoretical framework of the main humanitarian agencies and organisations, and of the practical and concrete projects that have been undertaken.

At the theoretical level, and in the case of the UN system, for example, in recent years there has been a great concern to ensure the integration of a gender perspective into all aspects of humanitarian policy and programmes. At the same time, a number of resolutions and reports increasingly contain recommendations to ensure a gender-sensitive orientation in all aspects of protection and humanitarian activities involving children and conflict, recovery and rehabilitation, by all the UN system. This call for gender awareness is also present in programmes for humanitarian assistance and protection of refugees and IDPs, through particular attention to the special needs of the most vulnerable groups among them, including women and children.

The Inter-Agency Standing Committee, created in 1991 by a General Assembly resolution, is also a particularly significant forum for the integration of human rights in humanitarian action, bringing together major humanitarian actors from within and outside the UN system, promoting shared analysis of humanitarian emergencies, facilitating interagency decision making and collaborative donor responses. Specific strategies include involving claims holders in the planning, designing and implementation of all aspects of emergency programs, producing human rights sensitive studies and projects and developing guidelines for human rights impact. Also the Consolidated Appeals Process (CAP), a programming process designed to facilitate coordinating planning by the agencies and coordinated resource mobilisation by the donors, is seen as a significant tool in focusing attention on the human rights dimension of humanitarian concerns and activities.¹²⁴

Moreover, nowadays there is in general considerable experience to draw on, and since a number of agencies such as UNHCR, UNICEF, and organisations like Oxfam, Care and others have already developed special guidelines and policies on protection issues in order to effectively address and take in consideration women's vulnerabilities, capacities and rights.¹²⁵

¹²³ M.B. ANDERSON, *You saved my life today but for what tomorrow? Some moral dilemmas of humanitarian aid*, p. 109.

¹²⁴ K. KENNY, *op. cit.*, p. 44.

¹²⁵ IASC, *op. cit.*, p. 8.

In the case of actors specialised in certain rights holders, such as UNICEF or UNHCR, the trend has been towards an increasing inclusion of concerns for the promotion of human rights of specific groups, namely women, children and refugees, through the incorporation of human rights into various sets of operational guidelines.¹²⁶In relation to refugees rights, UNHCR, ICRC, UN's IASC have all published practical field guides for NGOs, and initiatives such as the Reach Out refugee protection training project provide a useful base of protection parameters particularly relevant to aid workers. The International Rescue Committee and a few other NGOs have established departments with mandates to address advocacy, public policy and protection within humanitarian work.¹²⁷

As for agencies specialising in certain rights, such as WFP, for example, human rights have also been given more attention, through a more gender sensitive approach to its activities in emergency situations. There are also efforts being undertaken in order to have WFP policy reflect the human rights nature of food and give bigger operational content to it, rather than concentrating on programming issues of a more logistical and technical nature.¹²⁸

Furthermore, since 1997, the UN has worked to integrate human rights concerns with assistance and peacemaking efforts in its Strategic Framework policy, in which a key element was the so-called Principled Common Programming including the protection and advancement of human rights with particular emphasis on gender. The first of such Frameworks was implemented in Afghanistan.

According to the UN, it was an umbrella under which a strategy incorporating political, aid and human rights dimensions can be developed. It set out a new role for the UN that involved greater coherence between the political and aid missions in order to maximise the opportunities for peace, which was, as seen previously, one of the characteristics of the new humanitarianism. Human rights were always integral to SFA, but it was not until later that they were distinguished as its third

institutional pillar. The SFA did not require these three pillars to merge or be brought under common management. Rather, it advocated that political, assistance and human rights actors should inform and be informed by each other. In 1999, a Human Rights adviser was appointed with a primary task of helping assistance agencies address human rights concerns. Together with a Thematic Group of donors, NGOs and UN agencies, work to date includes the creation of consultative mechanisms to facilitate a dialogue and joint action on human rights, the development of a training programme tailored to the needs of aid personnel in Afghanistan. In 2001, the programming priorities of this Group included the improvement of human rights knowledge within the aid community and to advance rights-based programming through the development of appropriated training tools, at the same time as enhancing the protection of civilians in armed conflict settings and developing greater coherence and effectiveness between grass roots and other human rights initiatives concerned with Afghanistan.¹²⁹

The UN-led Strategic Framework for Afghanistan did not realise its full potential as an aid coordinating system, failing to overcome institutional obstacles that worked against a viable strategy for promoting human rights. The problem was not so much with individuals or objectives-human rights were accepted by most to be an integral part of the SFA— but with efforts to implement human rights principles in a culture ill-equipped to deal with competing priorities. Efforts to advance human rights protection in the field were also undermined by the fact that the OHCHR was left out of the original SFA and had little involvement in Afghanistan.¹³⁰

At the European Union level, ECHO is also looking at how humanitarian assistance can contribute to the protection of human rights and at how human rights can be integrated into humanitarian assistance in practice. With this analysis, ECHO is taking an important step to better understand the inter-relationship between human rights and humanitarian assistance

¹²⁶ K. KENNY, *op. cit.*, p. 13.

¹²⁷ G. MARTONE, *op. cit.*

¹²⁸ K. KENNY, *op. cit.*, p. 17.

¹²⁹ *Human Rights Programme Afghanistan*, available at http://www.pcpafg.org/organizations/Human_rights/introduction.htm.

¹³⁰ C. JOHNSON, *The Strategic Framework Review: lessons for post-Taliban Afghanistan*, in «Humanitarian Exchange», number 20, ODI, March 2002, p. 20.

and its consequences, aware that this is part of an ongoing process of learning from experience and contributing for more effective humanitarian responses and for addressing its root causes.¹³¹ As a result, ECHO has increasingly made efforts to improve its response to humanitarian emergencies, by promoting quality humanitarian aid through systematically mainstreaming cross-cutting issues into its operations. According to its Aid Strategy for 2003 Report, alongside continuing efforts on horizontal issues like protection, gender and human rights, ECHO felt that donors need to make more progress regarding other important issues, such as the transition gap between relief and development and better targeting of the most vulnerable, in particular children (for example through children-related activities aiming at protecting and promoting their rights).¹³²

In practical terms, there are also examples of positive results deriving from the adoption of a more transversal human rights dimension through the implementation of projects aimed at protecting and promoting specific human rights.

CARE International, for example, is currently carrying out programmes of gender training for humanitarian personnel¹³³ and also funding educational work for the victims and families of human rights abuses, most of whom may have limited levels of education.¹³⁴

Another example of good practice, which was both culturally sensitive and gender aware, has been Oxfam's work in the Turkana District of Kenya. This builds itself on earlier programme experience in Uganda and elsewhere in Kenya during the late 80s and early 90s, in which mechanisms had been developed to inform and involve food aid recipients, and specifically to take account of women's key role in food management within Turkana society. In this case, food distribution systems are designed to recognise women's responsibility at the

individual household level by registering women, and determining the number of rations according to the actual number of dependants for whom they are responsible. The food is distributed through the women, but in the presence of elder's committees, in this way avoiding the danger of setting up parallel or competing systems of authority and reflecting both human rights concerns and respect for culture.¹³⁵

Another case in which efforts to include promotion of human rights in financed projects were undertaken with relatively good results has been a Danida's project in Bosnia, implemented through Save the Children, to establish kindergartens and day-care centres, assisting and providing them with pedagogical methods enabling them to better address and help refugee children and their mothers, to promote reconciliation and especially the Convention on the Rights of the Child.¹³⁶ In Sudan, with the Operation Lifeline Sudan, some progress was also made in strengthening local authority structures as part of the relief operations. Women-led distribution planning structures are now functioning in some localities. This emphasis on female leadership sometimes conflicts with local tradition, but it is consistent with women's predominant roles in household and food economies. Human rights monitoring has also been introduced. Although the success of such measures will have to be evaluated over time, they do represent important progress in the field of humanitarian assistance and human rights.¹³⁷

However, and despite the value and importance of these concrete efforts, evidence and developments have still been little, showing that there is still a lot more to do and improve in this matter. Examples of lack of human rights awareness projects and concerns for this human rights issues or simply inability to undertake them still abound in current humanitarian work.

¹³¹ C. BRUCKNER, *ECHO Tackles Humanitarian Aid and Human Rights*, ODI HPN Report, 2003, available at <http://www.odihpn.org/report.asp?ReportID=1075>.

¹³² EC/ECHO, *ECHO Aid Strategy 2003*, Brussels, 2002, p. 2.

¹³³ D. EADE, S. WILLIAMS, *The Oxfam Handbook of development and relief*, UK and Ireland, Oxfam, 1995, vol.1, p. 184-185.

¹³⁴ *Ibidem*, p. 55.

¹³⁵ D. EADE, S. WILLIAMS, *op. cit.*, p. 892.

¹³⁶ DANIDA, *Report on Danish Humanitarian Assistance (1999)*, Annex 4- *Executive Summary of the Former Yugoslavia Case Study*, available at <http://um.dk/danida/evalueringsrapporter/1999-9/1999-9-5/summary.asp>.

¹³⁷ D. SMOCK, *Humanitarian Assistance and Conflict in Africa*, in «Journal of Humanitarian Assistance», June 2000, available at <http://www.jha.ac/articles/a014.htm>.

For example, in the Annual Report on Humanitarian Aid elaborated by the European Commission for the evaluation of ECHO's humanitarian assistance projects of 2000, there is only one reference to a case in which humanitarian assistance programming explicitly made efforts to include local women in the implementation of projects. It was in Afghanistan and in the context of a strategy to intensify ECHO's fight against the vulnerability of the urban population.¹³⁸

Another negative aspect of humanitarian programming concerning human rights has been experienced for example within ECHO's Global Plan for Sierra Leone in 2001. This Plan included the financing of a project to support the UNHCHR in order to promote human rights and provide human rights training to the various actors in the humanitarian sector. This project ended up not being implemented by the partner.

The lack of attention given to gender in humanitarian assistance is also explicitly recognised by DANIDA, in its evaluative report of 1999. Although stressing the attention to gender analysis in its development programmes, it is also recognised that at the humanitarian level, such issues have not been subject to serious reflection or even been a main concern in the field. The evaluation teams which covered Sudan and Afghanistan reported that although they had questioned a number of officials, they came across no evidence that these cross-cutting issues are applied to humanitarian assistance.

Gender was not mentioned directly in the country evaluations except in the case of Afghanistan, where the aid agencies have continued, at the time, to work at finding the most appropriate way to engage with the Taliban authorities, while taking a principled stand on women's rights. As seen in previous chapters, within discussions of conditionality, gender has become a major international issue since the Taliban came to power. Probably in no other country has the issue sparked so much debate and international humanitarian and political reaction. DANIDA itself expresses concern of a potential danger that because gender has become an international political issue,

practical work in programmes on the ground to improve women's conditions may have been over-shadowed. It is also recognised, though, that not envisaging gender as an important issue in times when women are such an important «target» of humanitarian assistance is a problematic and worrying issue.¹³⁹

In general, there has also been little strategic analysis of individual protracted emergencies by Danida itself or by its implementing partners, and as a consequence, the Danish agency was not visibly pro-active in promoting the protection agenda or in moving agendas from relief to development.¹⁴⁰

Nevertheless, despite this limitation that deserves some concern, the fact that Danish policy in humanitarian assistance does at least recognise the importance of protection in humanitarian assistance must be acknowledged and seen as important, especially considering the fact that most humanitarian agencies do not even recognise it. These situation and examples are, thus, illustrative of the fact that human rights considerations are still not very entrenched in humanitarian concerns and projects, namely on the part of donor states and agencies.

4.4. *Enhancing Integration: Conclusive Remarks and Recommendations*

As analysed before, due to the realities of current complex emergencies, the separation of human rights and humanitarian assistance has, in a sense, limited a more adequate response to this type of crisis. Therefore, the issue became no longer whether there should be a rights-based approach to humanitarian assistance, but rather how to give effect to it, since without such an approach the response is likely to be apart from the causes of the emergency itself and ill-adapted to its resolution on a durable basis. It has also been shown that current developments in this matter are still not enough.

¹³⁸ EC, *Annual Report on Humanitarian Aid 2000*, COM(2001)307, Brussels, June 2001, p. 11, available at http://www.europa.eu.int/eur-lex/en/com/rpt/2001/com2001_0307en01.pdf.

¹³⁹ Danida, *Report on Danish Humanitarian Assistance (1999)*, chapter 5: *Evaluation Result*, available at <http://www.um.dk/danida/evalueringsrapporter/1999-9/1999-9-1/c5.asp>.

¹⁴⁰ Danida, *Report on Danish Humanitarian Assistance (1999)*, Chapter 6: *Recommendations*, available at <http://www.um.dk/danida/evalueringsrapporter/1999-9/1999-9-1/c6.asp>.

In this sense, the aim of this chapter has been to give some suggestions for the inclusion of a human rights dimension in humanitarian assistance, by demonstrating the close and always existing relation between human rights and humanitarian assistance—essentially in their common concerns for protecting and promoting human dignity and integrity—and seeing it as an argument to justify and legitimate the need to combine them in practical humanitarian assistance work. Based on the assumption that both human rights and humanitarian assistance are mutually reinforcing, and that the prevailing and counter-productive practice of *negative conditionality* can and should be replaced by a more *positive conditionality*, the aim is basically to envisage humanitarian assistance itself as an effective means for the promotion of human rights, at the same time as these would be seen as a fundamental matrix for the elaboration, application and evaluation of assistance programmes and policies.¹⁴¹

Aware, however, that this is not an easy process, the implications and obstacles it can face were addressed as well, thus demonstrating the still existing debate around this sensitive issue. It obviously implies dealing with, and often overcoming, one of the most controversial issues that have marked much of the discussion around the changing nature and objectives of humanitarian assistance, concerning whether responding to needs or upholding rights should be the basic approach governing the work of humanitarians, and whether humanitarian principles, namely neutrality, should or not be strictly respected in face of gross human rights violations.

As seen before, this is a particularly important and sensitive issue that must be taken into account if one is to defend the inclusion of a transversal human rights dimension in humanitarian assistance. If that is the case, and assuming and accepting that human rights must be part of humanitarian assistance and that rights violations should not be ignored, the question tends to be, then, how can humanitarian agencies overcome these dilemmas, continuing to do their work without completely renouncing to important guiding principles, while at the same time tackling/addressing human rights issues which have been identified as closely related to humanitarianism?

There are, of course, no absolute answers for this question and they obviously depend on, and should be considered at the light of, the contexts in which humanitarian organisations are working. Still, some **suggestions** and **recommendations** can be made of practical and more effective approaches that aid organisations can successfully include in their field programmes in a way that upholds humanitarian values, while at the same time standing up for, promoting and protecting the rights of populations they serve, based in some experiences and attempts by some organisations.

A) RETHINKING AND REDEFINING HUMANITARIAN PRINCIPLES

One first recommendation relates to a need to rethink and redefine of humanitarian principles, especially the one concerning neutrality. As seen in previous chapters, although sometimes difficult to respect and observe, humanitarian principles have been an important guarantee to legitimate aid at the eyes of conflicting parties. Nevertheless, one must also recognise that in conflict and post-conflict situations, context changes rapidly and poses real practical obstacles to a strict commitment to principles, reason for which it should be taken in more consideration when undertaking humanitarian work and programs.

In this sense, as a response and as a way to avoid this principle connoted to abstention and abandonment (instead of the necessary engagement and involvement in human rights issues), agencies are increasingly replacing neutrality and beginning to promote a renewed emphasis on the principle of impartiality, which may prove a more enduring guiding principle for humanitarian assistance. It is seen as offering more scope of action and justification of a strategy of speaking out while at the same time maintaining humanitarian values. The MSF movement for example, has also sought to emphasise that impartiality need to be passive or condone human rights violations, by adhering to a more refined expression of such principle known «active impartiality». This active dimension of MSF's work refers to the fact that they will address and act in relation to human rights violations,¹⁴² while ensuring that

¹⁴¹ K. PÉREZ, (Dir.), *Diccionario de Acción Humanitaria y Cooperación al Desarrollo*, Bilbao, Icaria, Hegoa, 2000. p. 186-187.

¹⁴² H. SLIM, *op. cit.*, p. 349.

impartial assistance is allocated in such a way that it does not discriminate on the basis of nationality, race or religion.

Rethinking humanitarian principles can also mean trying to define other principles that may be more helpful and useful in such circumstances. As a consequence, another principle that has gained increased support within debates about humanitarian positioning is that of «solidarity», representing the stance to those not willing to abide impartiality or neutrality. Organisations like African Rights have even affirmed that in situations of complex emergencies, and although it clearly implies taking sides and it may also be easier when the sides are clearly drawn (which is not always the case), this notion may well be a more appropriate guiding principle around which relief agencies could align their operational position.¹⁴³ It is another suggestion to take into consideration in order to improve humanitarian work and overcome limiting dilemmas, based on the idea that human rights may help replace the notion of charity by solidarity, thus advancing on the way to the victims' right to receive adequate assistance.

The basic idea is that, although important, classic humanitarian principles should not be immutable, although this is frequently overlooked. They are norms toward which one should strive and means to achieve certain ends but never the ends in itself. It has to be recognised that their application may not be possible in every situation, and that it should be possible to adapt and rethink them if necessary to reflect the changing nature and context of war and humanitarian needs and goals.¹⁴⁴ This situation and recent humanitarian experiences tend thus to reinforce need for case by case analysis.

In this context, it becomes very important that relief workers know where their organisation stands and what position is taking. Their own contribution must make sense as a moral and active one within the violence around them, and such activity must be clearly explained in terms of what principles are being pursued and adopted.

B) STRENGTHENING CO-OPERATION AND CO-ORDINATION

One second recommendation is based on the recognition that with the great number of different organisations working in the field, divergences around them and the principles applied are also likely to exist and increase. In order to help address and overcome this inherent tensions in combining humanitarian assistance with human rights advocacy, it becomes useful and important to strengthen co-operation and co-ordination strategies between both types of organisations working in the field, not only in matter of information sharing, but also at the level of implementing human rights oriented projects.

It has already been mentioned that, beyond steps taken by individual agencies to change this situation, the picture is in fact, still negative, since each actor tends to view its particular human rights mandate in partial terms and the recurrent pattern is for many organisations and agencies to disregard co-ordination and co-operation mechanisms when it does not suit their own interests.

This tendency must however be overcome, not only because the failure of cooperation between aid agencies may originate unintended messages and affect local perceptions of the role of external assistance negative ethical messages to the recipient community (as if it was not necessary to cooperate when different mandates and perceptions are in conflict), but also because humanitarian organisations may benefit from the expertise of human rights and vice-versa while undertaking their work.¹⁴⁵

Besides having a common aim, namely to alleviate human suffering and restore and ensure respect for human dignity, both humanitarian and human rights concerns are inextricably linked by a common responsibility in defining new strategies so as to better mobilise public opinion and generate political will for international action. There are then identifiable areas in which cooperation between both types of organisations can and should be enhanced, such as the collecting, sharing and passing on of information, lobbying, campaigning and training.¹⁴⁶

¹⁴³ Ibidem, p. 349.

¹⁴⁴ T. WEISS, *op. cit.*

¹⁴⁵ Dutch Interchurch Aid, *The Right to Humanitarian Assistance in conflict situations*, 1993, p. 25-26.

¹⁴⁶ E. SCHENKENBERG VAN MIEROP, *No longer an option but necessity: cooperation between humanitarian and human rights organisations*, ODI HPN Report, 2003, available at <http://www.odihpn.org/report.asp?ReportID=1130>.

Co-ordination and co-operation become then vital in complex and sensitive contexts where disjointed assistance is likely to be less effective and where large-scale responses are likely to generate multiple, overlapping co-ordination mechanisms. It must address first and foremost the need for the humanitarian community, including UN agencies and NGOs, to act in an efficient and complementary manner to reduce human suffering and enhance the protection of populations in danger.¹⁴⁷ At the same time, effective co-ordination and co-operation relation must be based on transparency, as well as involve training in human rights and humanitarian law, especially in the case of humanitarian workers. There are some examples of positive co-ordination undertaken in cases like East Timor or in Rwandan refugee camps in Tanzania where strong leadership by agency personnel was reinforced by an ability to exercise control over physical access by agencies and their ability to access financial resources.¹⁴⁸

Bearing this in mind, several humanitarian organisations are currently attempting to improve these co-operation and co-ordination mechanisms and reviewing the extent to which the information on human rights violations generated in the process of assistance activities should be shared throughout the wider family of agencies working in the field. Oxfam, for example, which has rarely been directly involved in disseminating information or lobbying on human rights violations, does not exclude that it may be in a position to provide or facilitate briefings for journalists or human rights specialised organisations, where and when appropriate.¹⁴⁹ This is very important in the sense that while there is always information that is only useful for one organisation or certain sensitive information that should not be shared widely, there is a great deal of the information collected in the field by a variety of actors that could be useful to other humanitarian field organisations and vice-versa. Effective information arrangements should then be quickly and effectively put in place among the wide array of institutional actors. A balanced approach may also

ask for discretion. Another possible solution to overcome such inherent tension in combining humanitarian assistance with human rights advocacy is to disseminate the information through a third party that does not reveal its sources— the UN for example.¹⁵⁰

Whether the strategy chosen is done by addressing these concerns to the local authorities or national government or by providing information to specialised human rights organisations, may solely depend on the working rules, position or strength of the organisation. What is important is that human rights, as fundamental values to international relations, do not fall outside the scope of humanitarian agencies, as these are also fundamental to all humanitarian work. Increasingly, and as some authors rightly affirm, in the current international context of emergencies, cooperation between humanitarian and human rights organisations is no longer merely an option but a necessity.¹⁵¹ In this changing scenario, successful co-ordination has thus to be built on debate and facilitation, respecting different approaches and opinions as long as the humanitarian mandate is held in common. Co-ordination efforts are time consuming but important and so must be conducted in a professional manner.¹⁵²

Today, a better balance with assistance exists in the assessment, planning, and implementation of protection strategies. Efforts are underway to develop a set of human rights indicators for use by aid agencies in monitoring potential crises and a set of guidelines for planning practical protection strategies. Yet there is still room for improvement as, for example, in more systematic exchanges of information between assistance and rights organisations to enhance the capacity of each to understand and address the problems faced by endangered populations.¹⁵³ As Slim correctly affirms, the best way to do it is to work together with the laws and principles already existing, especially with the IV Geneva Convention, and to concentrate on how to improve them.¹⁵⁴

¹⁴⁷ R. VILA SAN JUAN, *Speech to the UN by the MSF Secretary General and Chair of the Steering Committee for Humanitarian Response*, 2002, available at <http://www.msf.org/content/page.cfm?articles>.

¹⁴⁸ Development Co-Operation Directorate, *op. cit.*, p. 4.

¹⁴⁹ D. EADE, S. WILLIAMS, *op. cit.*, p. 56.

¹⁵⁰ E. SCHENKENBERG VAN MIEROP, *op. cit.*

¹⁵¹ M. FROHARDT, D. PAUL, L. MINEAR, *op. cit.*, p. 94.

¹⁵² Danida, *Report on Danish Humanitarian Assistance (1999)*, chapter 3: *The Changing Context*, available at <http://www.um.dk/danida/evalueringsrapporter/1999-9/1999-9-1/c3.asp>.

¹⁵³ M. FROHARDT, D. PAUL, L. MINEAR, *op. cit.*, p. 95.

¹⁵⁴ H. SLIM, *op. cit.*, p. 351.

C) ASSUMING THE VALUE OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Moreover, this approach of closer co-operation and co-ordination can also help address and overcome another common critique to the rights-based approach, concerning the question of which rights should be included in humanitarian concerns and projects. At this level, it is of fundamental importance that the answer lies in the international human rights themselves and in their underlying notion of indivisibility, which can be enhanced by joining efforts in addressing and promoting human rights.¹⁵⁵

Efforts to include a human rights dimension in humanitarian work must therefore not only stress the indivisibility of human rights and their basic principle of non-discrimination, but above all effectively assuming economic, social and cultural rights and putting them in practice. The underlying idea is that if civil and political rights and economic, social and cultural rights are inextricable and mutually reinforcing, activities undertaken in support of such rights must reflect this reality. Such task is challenging and obviously requires innovative and concerted efforts by all organisations and actors involved in humanitarian emergency contexts.

D) ENHANCING ACCOUNTABILITY

Finally, in a context in which a proliferation of actors has occurred, namely of NGOs, whose involvement in humanitarian assistance has grown very quickly over the last decade, ensuring their true commitment to integrating human rights in their humanitarian work is certainly not always easy. For this reason, different agencies involved in humanitarian work must be even more committed and encouraged in their efforts to achieve higher standards of accountability and effectiveness. Some examples of concrete efforts at this level have been mentioned; although they are subject to different interpretations, which makes that most of them enjoy only marginal respect, and are still in the process of improvement, it must be recognised that these developments provide an important and necessary step towards a more accountable and human rights aware humanitarian assistance. It also demonstrates that agencies and

NGOs are taking the criticism seriously and having increasing recognition of the need to improve their knowledge and understanding of human rights standards and of including them in practical projects.¹⁵⁶ However, one must take in consideration that not all humanitarian aid contributes for the promotion of human rights, reason for which, impact evaluation on human rights systems must be undertaken before the implementation of such projects and programmes. And also here some important developments have been made and put in place. One of them was the «benefits-harms» analysis developed by CARE International, an approach that aims to help relief (and development) organisations hold themselves responsible and informed of the overall impact of their programmes on people's human rights. At the same time, by borrowing heavily from the human rights field, which provides the moral mandate of work, this approach also offers a set of tools, that range from political, security and economic impacts and can be used in the field to help identify and address the overall human rights impacts of emergency interventions, both positive and negative. This is very important in the senses that, adopting such an approach, agencies are more able to design programmes that simultaneously avoid having negative impacts in the enjoyment of human rights of the recipient populations and help promote and protect those same rights.¹⁵⁷

In short, it is true that, in the last decade, conflicts of a different nature and a number of other factors have had serious impact in humanitarian assistance often making the implementation of international humanitarian and human rights law and principles extremely complicated. In this context, the aim of this analysis and recommendations has been exactly to suggest that beyond all the debate and despite the obstacles, there are possible and concrete ways to overcome these problems and include a necessary and more transversal human rights dimension in humanitarian assistance. Even if, as a result, humanitarian organisations have had to reconsider their missions, setting increasing numbers of parameters for quality or becoming more diversified in the interpretation of principles, for example with different approaches to neutrality each

¹⁵⁵ D. CURTIS (ed.), *op. cit.*, p. 15.

¹⁵⁶ W.G. O'NEILL, *op. cit.*, p. 2.

¹⁵⁷ p. O'BRIEN, *Benefits-harms analysis: a rights-based tool developed by CARE International*, ODI, HPN Report, 2003, available at <http://www.odihpn.org/reports.asp?ReportID=2413>.

implying different strategies and approaches for humanitarian action,¹⁵⁸ there are reasons to believe that this process can have positive implications, eventually and ultimately contributing to a much more effective and less controversial humanitarian response.

5. Conclusion

The end of the Cold War, with the fall of the Berlin Wall and the collapse of communism clearly resulted in radical changes at all levels of international relations, opening the way to very important and positive developments such as a progressive erosion of the notion of state sovereignty, greater democratisation, expansion of the civil society and most importantly an increased attention to, and understanding of, human rights issues as well as the roles of the various international actors in safeguarding them. Moreover, in this changing context, new opportunities also seemed to be offered for humanitarian undertakings.

However, and as has been seen before, the beginning of the 90s experienced also an upsurge in the number of conflicts around the world, with a radical change in their nature, a marked increase in the distress of civilian populations and an undeniable upturn in the activities of humanitarian agencies, thus confronting them with formidable challenges and limitations to the undertaking of their work.¹⁵⁹ As a result, classic notions and practice of humanitarianism based mainly on the principles of neutrality, impartiality and independence, started being challenged and criticised on the basis of their ineffectiveness and even contribution to the continuation of conflicts, progressively being replaced by a renewed conception of humanitarianism. This new conception had an initial «merit» of at least bringing some important issues to the international policy arena. By defending a close link between relief and development, for example, it actually appeared to offer positive contributions to humanitarian assistance, focusing on its potential to ultimately contribute to peace-building and conflict

resolution. This is, to a certain extent, a positive aspect based on an argument, on which many agree, among them, Duffield, that if humanitarian aid often ends aggravating conflicts, it can also help promoting peace, if placed on the right hands and undertaken in an effective way.¹⁶⁰ Besides this, one of its main concerns was actually to respond to complexity, by trying to provide some sort of guidance in relation to many pressing issues and questions that have not been encompassed by classic operational neutrality, such as physical security and protection of populations, combination of humanitarian action with advocacy, among others.¹⁶¹

However, this «new humanitarianism», with all its resulting concerning characteristics and implications¹⁶² and an intrinsic political nature, which were reinforced with the current the «war against terrorism», rather than moving humanitarian assistance beyond politics, has made it a substitute «tool» of political action in the context of complex political emergencies. The resulting effects of such strategy in practical humanitarian work have, in general, proven very disappointing, especially from a human rights perspective. In fact, due to the consequent inclusion of a negative and punitive conditionality, envisaging human rights as a condition for the provision of assistance, and in which assistance can be reduced or simply cut until changes in the human right situations of a given country take place, this new approach to humanitarianism became itself under intense and justifiable criticism.

Bearing in mind these developments and critics, a first part of the main hypothesis of this thesis has been that conditionality is not the most appropriate way to place human rights within humanitarian assistance. From the analysis that has been made, by reference to some cases of humanitarian emergency during the 90s, such as Afghanistan or Bosnia in which such conditionality has been used, it has been possible to somehow corroborate this idea. In fact, it has been concluded that, such discretionary and arbitrary strategy, focused mainly on civil and political rights and ignoring the importance of recognising and

¹⁵⁸ L. MINEAR, T. WEISS, *op. cit.*

¹⁵⁹ These challenges and limitations can be explained mainly by the fact that until then, the humanitarian system was more used to respond and act in crises resulting from natural disasters than in the context of such complex political emergencies.

¹⁶⁰ M. DUFFIELD, *op. cit.*, p. 76.

¹⁶¹ M. CUTTS, *op. cit.*

¹⁶² Namely aid conditioned to geopolitical interests of donor states, blurring between the civil and military spheres, total oblivion of almost all humanitarian principles and, above all, disrespect for human rights and humanitarian law principles.

putting in practice the necessary economic, social and cultural rights has, in most cases, mainly affected the already vulnerable population, contributing even more to the worsening of their human rights and humanitarian situation.

For this reason, the second part of the hypothesis has been exactly that human rights would be better and more effectively affirmed through the inclusion of a more transversal human rights dimension and awareness in humanitarian assistance and through the elaboration and implementation of specific projects and programs oriented at promoting the protection and respect for human rights. This approach is essentially based on the defence of an inherent and close link and relation between human rights and humanitarian assistance and that the respect for the former is a necessary condition for the effectiveness of the latter. It has also been shown, however, that undertaking the suggested necessary developments at this level, implies a shift in the needs approach underlying humanitarian assistance towards a more rights-based dimension and overcoming some obstacles and challenges.

Nonetheless, from the analysis of some concrete rights to which more attention should be given, such as women's and children's rights or education, and using them as examples of how the broader range of human rights could effectively be promoted while undertaking humanitarian work, it has been possible to conclude and demonstrate that this process of integration is actually a necessary development for the enhancement of humanitarian assistance in the context of today's complex emergencies and also a more appropriate way to recognise and address these human rights concerns as an intrinsic part of humanitarian work. In this sense, although rights-based programming in conflict situations is a relatively new idea, it has been one of the first attempts to formally integrate human rights (namely education, health, children's rights, women's rights, right to food, etc.) in practical humanitarian assistance settings.

From the evaluation made of some practical projects already undertaken by some agencies and organisations, it is possible to conclude that, in general, the areas in which most important developments have occurred and in which projects have achieved better results have been women's and children rights,

with particularly important role of organisations like Oxfam, CARE or agencies such as UNICEF. To a certain extent, these positive developments clearly reflect an increased recognition of the importance and need to make more explicit and effective the human rights dimension of humanitarian assistance.

Furthermore, besides recognising that critics and dilemmas may result, it can also be affirmed that such approach itself offers and leaves room for alternative ways and responses to overcome such problems and challenges, either stressing the need for rethinking principles, for closer co-ordination and cooperation between humanitarian and human rights organisations, greater accountability mechanisms or the defence of the notion of indivisibility of human rights. Actually, in recent years, there have also been good signs of development of a more nuanced approach and greater understanding of the complementary nature of the tasks of the different organisations. In fact, humanitarian NGOs, bilateral and multilateral organisations and UN agencies, are more aware of the human rights protective dimension of their work, implicit if not explicit, inasmuch as their efforts are now intended to improve and tackle acknowledged economic, social and cultural right in connection to civil and political rights. Conversely, human rights organisations have at least showed an interest in moving beyond their well-known interest in civil and political rights and their traditional activities of fact-finding and denunciation.

However, and although the international legal regime underpinning humanitarian action continues, as some argue, to evolve in the face of changes in the nature of modern conflicts and the practices of state and non-state entities,¹⁶³ there are still many examples and reasons to conclude and acknowledge that human rights concerns are not as deeply entrenched as they should in humanitarian field and projects. Furthermore, and contrasting with the development sphere, the human rights nature and dimension of humanitarian action has been the subject of relatively little attention, situation that can be, in part, explained by the fact that each actor still tends to have a distinct policy approach to, and interests in, a human rights framework into their work.

¹⁶³ W.G. O'NEILL, *op. cit.*, o.55.

Reflecting this reality and from this analysis, it can therefore be concluded that much more effort and commitment is required, namely on the part of donor states and agencies, in framing and defining their humanitarian agenda and projects on the basis of a positive rather than negative conditionality, envisaging the promotion and protection of human rights as an objective and not as a condition for the provision of aid.

Observing the state of humanitarian assistance in internal conflicts in the second half of the 90's, two other conclusions can be drawn: one is that the difficulties faced in providing it are largely caused by the disregard of combatants and the international community for much of the applicable international human rights and humanitarian law; a second one is that, in such circumstances and since trends suggest a proliferation rather than a containment of major man-made crises in many areas of the world, humanitarian assistance is likely to be even more necessary. In this context, it is important to stress that it will remain essential not only to save lives and help people to enjoy the most basic rights such as food, shelter and water, but also equally important rights to health and education, equal opportunity and a say in the future, which are reflected in international human rights law, setting out the indivisibility of all human rights.

In this context, and recalling the previously suggested recommendations, there are some ideas that must be stressed. A first one is that, although neutrality is an important principle that should, whenever possible, be applied and respected —especially to avoid the negative politicisation of humanitarian assistance—, the truth is that its usefulness has been seriously questioned by some humanitarian organisations, due to the implications it may have for a more human rights aware assistance and protection. One must be aware that in order to achieve effective humanitarian assistance, principles like this should not be seen as absolute ends, but rather as guides that should be adapted to the complex contexts in which they are applied. A second idea refers to the fact that in today's emergency settings, co-operation, co-ordination and combination of complementary expertise between different actors —humanitarian agencies, NGOs, human rights organisations, local organisations—, have

become indispensable for responding effectively and dealing with difficulties arising from practical work or complex decision-making processes. This is even more important in a time when human rights advocates, aid personnel and refugee practitioners literally stumble into each others while undertaking their activities, when mandates overlap and competition for resources and visibility is great. Lastly, and in connection to the previous point, there must also be awareness of the need to reinforce the notion of indivisibility of human rights and their interdependent nature. Although violations of civil and political rights are extremely important, they cannot and should not be considered in isolation from unrealised social and economic rights. In fact, it is important to stress that the effective realisation of civil and political rights can only be achieved and only makes sense if the basic rights to food or health are themselves also previously respected and met.

As Sanahuja correctly affirms, in the collective imagination, humanitarian assistance is one of the most direct, effective and immediate forms of expression of the principle of solidarity and compromise with life and dignity of human beings, calling for generous and equal aid.¹⁶⁴ By providing it, donor governments and humanitarian agencies and organisations are, in some sense, giving people hope that the circumstances can improve, that they will be able to enjoy their rights and participate fully in their own development and future well being.

It is then essential that the various obstacles posed today must not be seen as detracting from the value of humanitarian assistance, but rather as offering an opportunity to seize the positive developments occurred and contribute to the enhancement of its potential and effectiveness and to the need of linking human rights to its agenda, but without establishing negative conditionality. In this sense, the suggested approach for the integration of human rights concerns in humanitarian assistance, based on the inclusion of a more transversal dimension and of specific human rights projects, becomes a possible and effective way to do it.

It is true that in a time and context, characterised by a «war against terrorism» that is being waged by all means, and that

¹⁶⁴ J. A. SANAHUJA, *Guerras, desastres y ayuda de emergencia: el nuevo humanitarismo internacional y la respuesta española*, Barcelona, Intermon Oxfam, Icaria, 2002, p. 7.

poses so many important challenges to effective humanitarian assistance, undertaking such approach seems to be hardly feasible or at least likely to face many obstacles. Nevertheless, it must be noted that it is exactly because of such challenges and in this difficult context that makes more sense to defend this new human rights dimension in humanitarian assistance and to join efforts to effectively achieve it. In fact, even though it may not assure the complete cessation of human rights abuses, it may nevertheless be more likely to contribute to address them and foster an environment in which relief agencies will be allowed to provide more effective and complete humanitarian assistance to respond to those in need and to their legitimate expectations, eventually enhancing its contributions for peace.

It is important to always keep in mind that one of the ultimate aims of humanitarian assistance should be to make it unnecessary. Effectively protecting and promoting human rights seems to be the one of the most appropriate ways to help achieving it.

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