In Conflict Part II:

Humanitarianism/Human Rights Defined

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In the first part of this series on humanitarian operations, *In Conflict: Humanitarian NGO and Military Cooperation*, we looked at the issues that present themselves for both organizations when operating together in Complex Humanitarian Emergencies (CHE). We concluded that while it is important to NGOs and the military that they succeed, failure is actually a matter of life and death for those who are being served. In Part II we are going to take a closer look at the historical development of humanitarianism/human rights, the organizations that are involved, and the current issues that they face.

Origins of Humanitarianism/Human Rights

*The Beginnings*

Many authors would have you think that the concept of humanitarianism is a modern western construct from the enlightenment period based upon the development of human rights that were born out of John Locke’s *Two Treatises of Government* and his discussions about life, liberty, and property. (Henkin & Cleveland & Helfer & Neuman & Orentlicher, 2009, p. 50) However, historical records of humanitarian actions go back to the twenty-third century BCE in Upper Egypt where the inscriptions on a governor’s tomb proclaims his efforts in giving food to the hungry and clothes to the naked. In the 4th century BCE, a Greek colony in present-day Libya sent grain to communities in Greece that were suffering from a famine. In the middle-east, one of the five Pillars of Islam, founded in the early fifth century, is zakat - dutiful, charitable giving. In Islam, this is not viewed as charity, but as part of their social system. Additionally, 8th century BCE codes in China show that they created support systems for widows and orphans in their society. (Walker & Maxwell, 2009, p. 14) Finally, in 18th century Europe, we do see what is
considered by many one of the first real international humanitarian aid efforts when both the British and Spanish crowns sent aid to Lisbon, Portugal which had been destroyed by an earthquake in 1755.

*The Red Cross*

Humanitarianism in its modern form began with Jean Henri Dunant and the Battle of Solferino in 1859. Dunant, a Swiss citizen, witnessed the aftermath of the battle between France and Austria in this Italian town. Appalled by what he saw, Dunant organized the town’s people, negotiated access to the wounded, and provided care to the 40,000 wounded soldiers from both warring countries. Though it would be another four years before it was officially formed, what Dunant did on that June day in 1859 was create the beginnings of what we now know as the International Committee of the Red Cross (ICRC). In 1864, just one year after the ICRC was founded, the first Geneva Convention was held and the beginnings of what is now coded as International Humanitarian Law was created.

The ICRC is an independent, neutral organization that has a unique standing in the world. It has its own mandate under International Humanitarian Law from the Geneva Conventions “to take impartial action for prisoners, the wounded and sick, and civilians affected by conflict” (Walker et al., 2009, p. 109). National chapters of the Red Cross are now located in almost every country in the world. They are separate organizations from the ICRC, and can be formed only if the country is a signatory of the Geneva Conventions and that country also has created a law that establishes it “as an autonomous, yet auxiliary, body to the state” (Walker et al., 2009, p. 110). Finally, the International Federation of Red Cross and Red Crescent Societies (IFRC) was created after World War I as an international federal structure for the national chapters.
structure provides a public voice for the chapters, as well as being a centralized point for coordination and cooperation between the national chapters. (Walker et al., 2009)

*The Conventions and Covenants*

International Humanitarian and International Human Rights Law are both founded and based on a series of conventions over the last 150+ years. International Humanitarian Law focuses on wartime issues under the view of the Law of Geneva and the Law of the Hague. The Four Geneva Convention Treaties – 1864; 1906; 1929; 1949 - and its three additional protocols deal specifically with the protection of noncombatants, to include prisoners of war, the wounded, the sick, and civilians. Additionally, it empowered the ICRC under a body of rules as the enforcement agency for these issues. In 1899 and 1907, a separate series of conferences were held at The Hague which became known as the Hague Conventions. While the Law of Geneva dealt with people, specifically noncombatants, in wartime, the Law of the Hague focused on how war was carried out through the use of weapons and tactics, creating the basis for what are now known as war crimes. These two sets of laws were the basis utilized for the first time with the International Military Tribunal at Nuremberg after World War II. These trials looked at three crimes: 1) War Crimes; 2) Crimes Against Peace; and for the first time ever, 3) Crimes Against Humanity. This set the stage for later criminal tribunals, to include the International Criminal Tribunal, Yugoslavia; and the International Criminal Tribunal, Rwanda; and ultimately the Rome Statute which created the International Criminal Court.

World War II also led to the formation of the United Nations. The UN Charter, approved on June 26, 1945 had a strong focus from the beginning on Human Rights and with its subsequent conventions has become a center piece of International Human Rights Law. The
Universal Declaration Human Rights (UDHR) was passed in 1948 and recognized for the first time:

“What have come to be called ‘economic and social rights’, among them rights to social security, to work with just compensation, to rest and leisure, to an adequate standard of living including food, clothing, housing, health care and social services, to education, to participation in cultural life” (Henkin et al., 2009, P. 147).

Along with the UDHR, the UN adopted the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) which went into effect in 1976. These three documents have become collectively known as the “International Bill of Rights” (Henkin et al., 2009).

Human Rights Law has also been strengthened by other conventions that add to the UDHR, ICCPR and ICESCR. These include the Convention on the Prevention and the Punishment of the Crime of Genocide; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the elimination of All Forms of Discrimination Against Women; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child. Additionally, there have been regional organizations that have come out with documents protecting human rights: the American Convention on Human Rights; the European Convention for the Protection of Human Rights and Fundamental Freedoms; and the African Charter on Human and People’s Rights.

Generational Rights

Human Rights have been divided up into three generations. First Generation Rights, also known as Negative Rights, are considered individual rights that a government cannot do or take
away. These rights are protected under the ICCPR and include a series of rights that cannot be taken away under any circumstance, to include war, such as: the right to life, no genocide; no torture; no slavery; no debtor’s prison; no ex post facto laws; recognition as a person before law; and freedom of thought and religion. Second Generation Rights, also known as Positive Rights, are considered individual rights that the government must provide. These rights are protected under the ICESCR and include: equal rights for males and females; right to work; right to food; and the right to health. Third Generation Rights are group rights that would include self-defense, peace, development, and a clean environment. These rights have not been agreed upon in any covenant at this point in time. Supporters believe that they build upon existing rights and are universal, while those who are opposed to them as human rights believe that group rights would endanger individual rights and would only duplicate the already existing First and Second Generation Rights (Henkin et al, 2009).

The Actors

*States*

States are involved in humanitarianism/human rights on up to three levels. First and foremost, they are responsible for their citizens and the protection of their human rights. This includes the states reaction to internal humanitarian crisis, such as an earthquake, tsunami, or other natural disaster. Additionally, states are the largest donors when it comes to international humanitarian aid. These donations are made typically either as a monetary donation, or as a food donation. The total value of humanitarian assistance and long-term development by states in 2006 was $104.4 billion, with $9.4 billion of that being direct funding (Walker et al, 2009 p. 117). State funding has three routes that it may take: donations to the United Nations (UN); donations to non-governmental organizations (NGO); and donations to the government in need.
Additionally, through multiple food programs, states provide food the UN and NGOs to countries that have either an emergency need through some sort of humanitarian emergency, or for longer-term developmental programs. Food has traditionally been the largest single category of humanitarian aid (McCleary, 2009).

The third way that States are involved in humanitarian/human rights is by being a responder. This response can be a political response either as in individual state, through the UN, or through a regional organization such as the Organization of American States, or the European Union. Additionally the third option for States could be an actual military intervention. This could be done on an individual basis, if there had been a direct request from the other government to intervene, but is usually done with the approval of and under the guise of the UN. The UN Security Council can authorize the use of troops as either a peacekeeping or a peacemaking operation under the authority of Chapter VI (peacekeeping) or Chapter VII (peacemaking) of the UN Charter. Only the UN Security Council has the authority to authorize either a Chapter VI or VII operation under Article 37 – the power to settle disputes; and Article 39 – the power to maintain or restore international peace and security (Henkin et al, 2009; and Walker et al, 2009). More recently, the UN has been looking at the concept of Responsibility to Protect (R2P). This new concept first brought forth in a 2001 study by the International Commission on Intervention and State Sovereignty:

challenged the long-standing notion that sovereignty trumped human rights in international affairs, and suggested instead that where states could not or would not provide adequate safeguards to the human rights of their citizens, the international community was not only authorized to intervene, it was obliged to do so (Walker et al, 2009, p. 76).
**Intergovernmental Organizations – The UN; the Red Cross; and the ICC**

As mentioned above, the Security Council of the UN has the authority to authorize peacekeeping or peacemaking missions. However, when it comes to most humanitarian/human rights issues, there are multiple other avenues that the UN can take. The UN is home to many of the best known humanitarian agencies in the world. These organizations, such as UNICEF, the UN High Commissioner for Refugees (UNHCR), the UN High Commissioner for Human Rights (UNHCHR), the World Food Program (WFP), and the Office for the Coordination of Humanitarian Affairs (OCHA) have been leading from the front in almost all humanitarian operations happening around the globe. In the most recent years, the UN has spent between $10-12 billion per year on humanitarian aid assistance. Most of this funding comes directly from donor governments, or as in the case of UNICEF, from private donations. (Walker et al, 2009)

There are currently multiple efforts going on to improve/reform UN humanitarian assistance, and specifically how these different agencies coordinate with each other and outside agencies. This is part of an overall review of the entire humanitarian system that has been on-going ever since the genocide in Rwanda.

The Red Cross, as discussed earlier, is composed of three different systems, the ICRC, the IFRC, and the individual national societies. What is key about the Red Cross is that it falls somewhere between the UN and being an NGO. It operates independently of any state, but has a mandate from the states “under international humanitarian law to take impartial action for prisoners, the wounded and sick, and civilians affected by conflict” (Walker et al, 2009, p. 109). This mandate allows the Red Cross to maintain its independence, and to act neutrally in all of its activities. It provides assistance based solely upon need, making it an impartial actor in the
global humanitarian system. The concept of impartial, neutral, and independent that many NGOs espouse developed from how the Red Cross operates (Barnett & Weiss, 2008).

The ICC is the newest member of this group of Inter-governmental Organizations, and in many cases, is still finding its space within the international community. Created with the drafting of the Rome Statute in 1998, it opened in March of 2003 after the 60th state had ratified it the previous year. All but eight countries have signed and ratified the Rome Statute at this time. The ICC was developed out of the series of ad-hoc criminal tribunals from the 1990s and was created to try people for Crimes Against Humanity; War Crimes; Genocide, and Crimes of Aggression (Henkin et al, 2009).

**Non-governmental Organizations**

We had discussed NGOs in-depth in *In-Conflict: Humanitarian NGOs and Military Cooperation* so will not cover the same ground here, except to add some additional detail. First, to make a point of clarification NGOs are not part of the Red Cross, thus, they do not have the same relationships with states that the Red Cross does. This means, that NGOs do not have any mandate under international humanitarian law, nor have the states that they reside in passed any laws that make them “an autonomous, yet auxiliary, body to the state” (Walker et al, 2009, p. 110). Though they do not have this status, many NGOs say, or attempt to operate under the same impartial, neutral, and independent standard that the Red Cross does.

While many people think of the US or Europe when they think of NGOs, one of the largest growing sectors in the NGO community is the Islamic NGOs, however, their total contribution to humanitarian assistance, and their sizes are hard to judge since they have different reporting requirements to their government. (Barnett et al, 2008) What can be judged, is by looking at the US, who does have the largest amount of NGOs, around 500 registered with
USAID, the top 35 of which received over 50% of their revenue from the US Government (McCleary, 2009, p. 108). Also, historically, up until the 1980s, in areas where the US military operated, had been subordinate to military authority. This was the model “during and after World War II, the Korean War, and the Vietnam War” (McCleary, 2009, p. 139). In the 1980s that changed as the military was used more for emergency disaster assistance, specifically with their logistics and medical capabilities. It is very possible during this time, which also was a major growth period for NGOs that they began to feel they had the same rights under international humanitarian law that the Red Cross did and that as complex humanitarian emergencies moved back more towards the conflict side in the 1990s and 2000s, NGOs were not only reluctant to be subordinate to military authority again, many people within the field were not aware that up until the 1980s, that had been the standard.

Current Issues

*Legitimization*

While International Humanitarian and International Human Rights Law have developed over the last 100 years, there is still a question about its legitimacy especially as it applies to the sovereignty of other states. This is a key issue that surrounds the concept of *Responsibility to Protect* and the fear that states may use that as a tool to use military force instead of diplomatic measures in issues that are not really humanitarian or human rights centered (Barnett et al., 2008). Also, even though there are only eight countries that have not signed and ratified the Rome Statute, one of those countries is the United States. The US had been a key player in the drafting of the Statute, and it had originally been signed by President Clinton, however, President Bush revoked the signature and refused US participation in the International Criminal Court. With the US not participating in the ICC, some may believe that it is only a matter of time before the ICC
is considered irrelevant. Additionally, the ICC has had legitimacy issues brought forth by African nations, since up to the fall of 2009, all the cases and investigations that had been focused on African nations. This changed in the fall of 2009, when the special prosecutor announced he would be investigating issues in Afghanistan, but to date, nothing has come out of that investigation (Barnett et al, 2008).

*The United Nations and NGOs*

As explained earlier, due to the failures seen in Rwanda, there have been many studies and reports done on the effectiveness of the UN and its humanitarian organizations. The UN has begun to reform its operations, creating “clusters” based around functions and expertise that can be called upon to provide better and more efficient aid. Additionally, the Secretary-General ordered a report done titled *Delivering as One* which focused on the UN becoming more proficient in its mission with greater centralization and consolidation of functions and activities (Walker et al, 2009).

NGOs have been going through a similar soul searching process since Rwanda, and the ensuing wars in Iraq and Afghanistan. Governments that had been providing large funding to these different NGOs, and private donors, have been calling for more accountable operations that can also provide result driven data on their mission efficiency. This drive for the professionalization of the NGO space by outside forces have brought about new organizations like the Inter-Agency Standing Committee to help create a more cooperative effort amongst NGOs. Also, the Red Cross created a code of conduct for itself and NGOs that became an international standard in the mid-1990s. The *Sphere Standards* were also developed around the same time, and updated in 2004 by the Steering Committee for Humanitarian Response. These “standards are accepted and used by donors, UN agencies, host governments, NGOs and on
occasions, military forces wishing to have NGOs work more closely with them” (Walker et al, 2009 p. 131).

The biggest issue that still remains unsolved for NGOs is their relationship with the military, and whether or not they should remain neutral, impartial, and independent. In the UK, they have tried to answer this question by introducing the idea of a “New Humanitarianism”. This New Humanitarianism:

- recognized that all aid is “political” in some sense;
- took human rights violations as seriously as meeting basic human needs;
- was aware that humanitarian interventions could cause harm;
- was more accountable;
- dealt both with causes and symptoms;
- finally, and perhaps most controversially, was “coherent” or aligned with other objectives (of donors) so that all resources could be brought to bear on the problem at hand (Walker et al, 2009, p. 138).

Conclusion

Is this New Humanitarianism the way to move in the future? Is the idea that NGOs can be neutral, impartial and independent like the Red Cross really one that cannot be sustained? Will the refusal of the United States on joining the ICC be its downfall? All of these questions bear more research and further investigation. What we have seen here, is that international humanitarian and human rights law have become part of the global structure through treaties, conventions and actions. Additionally, through the development of organizations such as the United Nations and with the support of outside agencies to include the Red Cross, and NGOs, the world has accepted that there is a global standard for humanitarianism and human rights. How
we get there, and how we ensure that those standards are being met is still a challenge. What is certain is that there is room for all involved in the process to improve, and re-evaluate how they operate.
References

Ithaca and London: Cornell University Press

