Applying the humanitarian principles: Reflecting on the experience of the International Committee of the Red Cross

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Abstract

Applying the humanitarian principles of humanity, impartiality, neutrality and independence in a relevant manner in concrete operational settings is a constant challenge for humanitarian organizations. Bound by this set of norms, the International Committee of the Red Cross (ICRC) has incrementally developed over the years a rational framework that allows its leadership and staff on the ground to act according to these principles while developing adapted solutions and pragmatic approaches. This article begins by describing the history and development of the humanitarian principles; it then explains how the strategic choices of the ICRC are informed by these principles, and what the consequences are for the organization's capacity to act in favour of victims of armed conflicts.

Keywords: humanitarian principles, impartiality, neutrality, humanity, independence, assistance, protection, humanitarian action.

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Over the past couple of decades, the humanitarian aid sector has experienced a wave of expansion and development and has made considerable strides towards professionalization. Over the same period, more and more has been written about the principles underlying humanitarian action – humanity, impartiality, neutrality and independence.[1] These principles have gained broad acceptance, and a consensus has more or less been reached on their overriding importance in humanitarian activities. But their relevance, aim and interpretation remain the subject of constant debate and discussion.

Paradoxically, one reason why the principles are so difficult to implement is their success. Humanitarian action has never taken place in a political vacuum – it has always been politicized and instrumentalized – but emphasizing the apolitical

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1 See, in particular, Larry Minear, "The Theory and Practice of Neutrality: Some Thoughts on the Tensions", *International Review of the Red Cross*, Vol. 81, No. 1, 1999, pp. 63–71; Nicholas Leader, *The Politics of Principle: The Principles of Humanitarian Action in Practice*, Humanitarian Policy Group (HPG) Report No. 2, Overseas Development Institute (ODI), London, March 2000; Humanitarian Practice Network, *Humanitarian Exchange*, No. 25: *Neutrality*, HPG, ODI, London, December 2003; Daniel Thürer, "Dunant's Pyramid: Thoughts on the 'Humanitarian Space'", *International Review of the Red Cross*, Vol. 89, No. 865, 2007, pp. 47–61; Antonio Donini, Larissa Fast, Greg Hansen, Simon Harris, Larry Minear, Tasneem Mowjee and Andrew Wilder, *Humanitarian Agenda 2015: Final Report. The State of the Humanitarian Enterprise*, Feinstein International Center, Medford, MA, March 2008; Caritas Europa, *Bridging the Gap between Policy and Practice: The European Consensus on Humanitarian Aid and Humanitarian Principles*, October 2011; Hugo Slim and Miriam Bradley, *Principled Humanitarian Action and Ethical Tensions in Multi-Mandate Organizations*, study commissioned by World Vision, March 2013; Ingrid Macdonald and Angela Valenza, *Tools for the Job: Supporting Principled Humanitarian Action*, Norwegian Refugee Council and HPG, ODI, October 2012; Yulia Dyukova and Pauline Chetcuti, *Humanitarian Principles in Conflict. Ensuring Humanitarian Principles are Respected in Armed Conflicts and Other Situations of Violence: ACF's Experience and Position*, Action contre la Faim, member of the ACF International Network, December 2013.

and near-sacrosanct nature of the principles has laid bare a number of tensions and paradoxes within the sector. These days, there are more and more agencies with competing interpretations of the principles. The ambitions of the sector have grown to include addressing not just the effects but also the causes of crises. Countries that have traditionally received aid now have a greater capacity to respond themselves and, consequently, a greater desire to control aid delivery. And aid is now playing a central role in global governance. These are but a few of the reasons why the principles are now being so fundamentally called into question.

Consequently, the International Committee of the Red Cross (ICRC) – commonly regarded as an authority on humanitarian principles[2] – decided to assess its own application of these four principles, which together with three others are known within the International Red Cross and Red Crescent Movement (the Movement) as the Fundamental Principles.[3] In late 2013 and early 2014, the ICRC carried out an in-depth study in seven of its delegations, which operate in very different settings. The study looked at how the Fundamental Principles were applied, what challenges their application presented, and how they shaped day-to-day decision-making. The aim was also to identify best practices.[4]

This article will first trace the history of the humanitarian principles and describe the contemporary political challenges in applying them. It will then examine the recurrent concrete operational challenges faced by the ICRC, reflect on best practices and give examples of the ways in which the organization itself has approached the application of the principles in different contexts. It will conclude by sharing some reflection on the relative utility of humanitarian principles to different brands of humanitarianism, from a relatively classic understanding limited to alleviating the suffering of people affected by crises to more transformative approaches that aim to address the root causes of vulnerability.

History of an ethical and operational framework guiding humanitarian action

Most people trace modern, organized humanitarian work back to the Battle of Solferino, in 1859.[5] Henry Dunant, horrified by the untold number of wounded

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2   Michael Barnett and Thomas Weiss have stated that "for many the ICRC's definition of humanitarianism is the gold standard: the independent, neutral and impartial provision of relief to victims of armed conflicts and natural disasters". Michael Barnett and Thomas Weiss, *Humanitarianism Contested: Where Angels Fear to Tread*, Routledge, New York, 2011, p. 9.
3   The other three Fundamental Principles are voluntary service, unity and universality. These are specific to the Movement and, for this reason, are not extensively discussed in the present article.
4   This study resulted in an internal report entitled "Snapshot of ICRC Application of Fundamental Principles", October 2014.
5   Peter Walker and Daniel Maxwell, *Shaping the Humanitarian World*, Routledge, New York, 2009; M. Barnett and T. Weiss, above note 2; Katherine Davies, *Continuity, Change and Contest: Meanings of "Humanitarian" from the "Religion of Humanity" to the Kosovo War*, HPG, ODI, London, August

left dying on the battlefield, mobilized the local population to care for them, whatever their race or nationality. His experience, recorded in the book *A Memory of Solferino*,[6] led to the founding of the ICRC in 1863 and the adoption of the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field – the first building block of international humanitarian law (IHL).

Over the following decades, the ICRC and its partners in the Movement built an ethical and operational framework underpinning their work, resulting in the adoption a century later of the seven Fundamental Principles of the Movement at the 20th International Conference of the Red Cross held in Vienna in 1965. The first four principles – humanity, impartiality, neutrality and independence – would heavily influence the normative development of the wider humanitarian sector. Indeed, the United Nations (UN) General Assembly adopted and recognized them as guiding principles for international humanitarian action under the UN system.[7] The ICRC and the Movement influenced the development of IHL and the principles underlying humanitarian work to such an extent that it prompted historian Katherine Davies to speak of a "master-narrative" providing the ethical, operational and legal foundations for modern humanitarian activities.[8] It is therefore worth examining those foundations as they are understood within the Movement.

Ethical foundations: Humanity as the ultimate goal

The ultimate and sole aim of humanitarian action, born on the battlefield of Solferino, is to prevent and alleviate suffering, protect life and ensure respect for the dignity of people in desperate situations as a result of conflict or disaster, regardless of their nationality or ethnic background, political or ideological views or social standing. This sole objective, contained in the principle of humanity, is the embodiment of a moral imperative that views the individual from an ontological perspective and refuses to take anything else into consideration. According to Jean Pictet, author of the Commentary on the Fundamental Principles of the Movement, humanity is the "essential principle" underlying the humanitarian endeavour and the only one whose nature is profoundly moral.[9] Humanity is crucial – it is what should keep recipients of humanitarian assistance from being reduced to their needs. It also recognizes every individual as simply

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2012; Jérémie Labbé, *Rethinking Humanitarianism: Adapting to Twenty-First Century Challenges*, International Peace Institute, New York, November 2012.

6   Henry Dunant, *A Memory of Solferino*, ICRC, Geneva, 1862.

7   UNGA Res. 46/182, 19 December 1991. This resolution stipulates that "[h]umanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality". The principle of independence was not recognized as a guiding principle for the provision of humanitarian assistance until 2003, in UNGA Res. 58/114, 5 February 2004.

8   K. Davies, above note 5, p. 1.

9   Jean Pictet, *The Fundamental Principles of the Red Cross: Commentary*, ICRC, Geneva, 1979, available at: www.icrc.org/eng/resources/documents/misc/fundamental-principles-commentary-010179.htm (all internet references were accessed in June 2015).

human. Logically, then, non-discrimination is inseparable from this moral imperative and is an integral part of the principle of humanity, even if more commonly associated with the principle of impartiality.

In addition, humanitarian action is not limited to alleviating physical suffering and protecting lives and health; it also strives to preserve human dignity. This involves listening to the victims of armed conflicts or natural disasters, respecting their cultural and religious sensitivities and understanding not only their needs but also their fears and aspirations. It is this ethical framework for humanitarian action that explains why the ICRC and its partners within the Movement have worked for so many years to build close ties with affected communities: so that they can assess situations as objectively as possible. Over the years, with that ideal in mind and drawing on its operational experience, the Movement has devised and adopted a set of strictly operational principles that allow it to achieve the ultimate goal enshrined in the principle of humanity, in situations that are by their nature chaotic and very often polarized.

Practical foundations: A pragmatic solution to operational challenges

If humanity and impartiality provide a moral ideal and an ethical framework for humanitarian action, neutrality and independence are above all the practical tools for making humanity and impartiality a reality. As Jean Pictet pointed out, they fall "within the domain of means and not ends" – the domain of professional ethos and not ethics.[10] They arose mainly out of the ICRC's practical responses to the operational challenges faced by the first modern humanitarians, particularly those working in conflict situations.

Pictet labelled impartiality a substantive principle (an objective) rather than a derived (or operational) principle, like independence and neutrality. But impartiality too has a practical side. Most humanitarian organizations agree that impartiality covers two ideas: non-discrimination, which is inseparable from humanity and thus from ethics, and proportionality, which dictates that assistance should be delivered according to the severity of needs and their urgency only. Recognizing that no organization can cover all needs, proportionality provides a logical and fair way of setting priorities. Impartiality is thus in part utilitarian.

The sole objective of the eminently pragmatic principles of neutrality and independence is to enable assistance and protection programmes to be implemented in an impartial manner in politically polarized situations such as armed conflicts. They have no intrinsic moral value. They were devised out of operational practice to facilitate dialogue with the parties to a conflict and win their trust: neutrality demonstrates that humanitarian work is not about favouring one party to a conflict over another or about backing a particular ideology; independence means determining needs and making operational decisions autonomously. In addition, these concepts are relative and not absolute,

10   *Ibid.*

in the sense that they must be interpreted and applied in light of concrete circumstances. Their relevance to an operation depends on how they are seen by a given party or authority. Far from being rigid and dogmatic, these principles can bend to fit the context, the forces at work and the sensitivities of the various groups. However, as we will see, they do require rigour and discipline and involve costs and limitations.

Legal foundations: Enshrining practice in IHL

In 1949, while the Fundamental Principles were still being developed and before their adoption at the International Conference in Vienna, the principles of humanity[11] and impartiality were already being incorporated into IHL via the Geneva Conventions. The Geneva Conventions recognize the right of "an impartial humanitarian body, such as the International Committee of the Red Cross", to offer its services to the parties to the conflict, whether the conflict is international or non-international.[12] The condition that humanitarian assistance must be impartial was strengthened by the two Additional Protocols to the Geneva Conventions, which state that "relief actions which are humanitarian and impartial in character and conducted without any adverse distinction" may be undertaken.[13]

The enshrinement of the principle of impartiality in IHL demonstrates that non-discrimination is a universal requirement.[14] It also implies that, for the States party to the Geneva Conventions, humanitarian action is acceptable if it is limited to providing assistance and protection to the victims of conflicts – the

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11   The Geneva Conventions employ a version of the Martens clause in their denunciation clauses (common Article 63/62/142/158) to make clear that if they denounce the Conventions, the parties will remain bound by the principles of the law of nations, as they result from the usages established among civilized peoples, the laws of humanity and the dictates of public conscience. Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950), Art. 63; Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950), Art. 62; Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950), Art. 142; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950), Art. 158. See Theodor Meron, "The Martens Clause, Principles of Humanity, and Dictates of Public Conscience", *American Journal of International Law*, Vol. 94, No. 1, 2000, pp. 78–89. See also Jean Pictet, *Development and Principles of International Humanitarian Law*, Martinus Nijhoff Dordrecht, and Henry Dunant Institute, Geneva, 1985.
12   Article 3 common to the four Geneva Conventions, on non-international armed conflicts. Common Article 9/9/9/10, which applies to international armed conflicts, stipulates that "the provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other *impartial* humanitarian organization may … undertake" (emphasis added).
13   Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I), Art. 70; and confirmed in nearly identical wording in Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978) (AP II), Art. 18.
14   As of 28 January 2015, 196 States have ratified the Geneva Conventions, making them essentially universally ratified.

essence of the principle of humanity – and "must not be affected by any political or military consideration".[15] As Kate Mackintosh notes, even though neutrality and independence are not mentioned explicitly in the Geneva Conventions, "the concept of non-participation (direct or indirect) in hostilities is at the core of the relief provisions [of the Geneva Conventions]".[16]

The International Court of Justice confirmed the idea of non-intervention, and thus tacitly recognized neutrality and independence as an approach, finding in a 1986 judgment that:

> if the provision of "humanitarian assistance" is to escape condemnation as an intervention in the internal affairs of [another State], not only must it be limited to the purposes hallowed in the practice of the Red Cross, namely "to prevent and alleviate human suffering", and "to protect life and health and to ensure respect for the human being"; it must also, and above all, be given without discrimination to all in need …, *not merely to [one party] and their dependents*.[17]

Even though neither neutrality nor independence are mentioned in the judgment, it is clear that, in the Court's view, assistance provided exclusively to one party would constitute intervention in the affairs of a State and thus would not be strictly humanitarian.

Current international order and challenges to humanitarian principles

There is a broad consensus on the theoretical and practical legitimacy of the humanitarian principles. But like any set of standards, they are confronted with the reality of the political and operational contexts in which they are applied, and their relevance is sometimes questioned or put to the test by outside events and developments. The authors will look at just a few of these.[18]

Changes in the international order: Polarization and radicalization

The events of 11 September 2001 and their consequences have played a large part in further dividing the world politically and culturally and bringing back the moral

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15 Jean Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. 1: *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, ICRC, Geneva, 1952, p. 109.

16 Kate Mackintosh, "The Principles of Humanitarian Action in International Humanitarian Law", Study 4, in *The Politics of Principle: The Principles of Humanitarian Action in Practice*, HPG Report No. 5, ODI, London, March 2000, p. 13.

17 International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment, *ICJ Reports 1986*, para. 243 (emphasis added).

18 For a more in-depth discussion on contemporary challenges to humanitarian action, see Claudia McGoldrick and Pascal Daudin, "The Future of Humanitarian Action", *International Review of the Red Cross*, Vol. 93, No. 884, 2011.

justification of war to replace the cold calculation of strategic interests. The notion of a "global war on terror" represents, in a way, the re-emergence of the "just war",[19] whereby the enemy becomes an offender, and security or military action taken against such an offender becomes righteous.[20] At the same time, aid organizations that "pick sides" and postulate that humanitarian activities should serve a greater good or should better civilization, such as by rescuing vulnerable populations militarily or restoring peace through various stabilization strategies, constitute a threat to other humanitarian organizations. Organizations which operate in very polarized environments need to set themselves apart sometimes from those engaged in transformative strategies in order to maintain impartial access to the people they want to assist.

These humanitarian organizations are also starting to see some of their principles work against them. Neutrality, for example, is sometimes seen as indifference or suspended morality, as giving up on change, or simply as a lack of courage or political intelligence. Refusing to take sides can be interpreted as putting all sides on an equal moral footing, because those that do so do not allow themselves to consider the justifications or the share of responsibility for the violence.[21] Critics of neutrality argue that by this logic, instances of suffering are "inevitable tragedies" about which nothing can be done. But, on the contrary, political neutrality is a position that allows organizations to work on behalf of all victims, including those for which the international community has little regard. As Jean-Hervé Bradol rightly said: "Humanitarian aid is primarily addressed to those whose demand to live clashes with the indifference or overt hostility of others."[22]

The ICRC does not believe that neutrality prevents it from taking steps to get perpetrators of IHL violations to stop their illegal actions. But the work of organizations such as the ICRC is only possible by making a clear distinction between *jus ad bellum* and *jus in bello*.[23] In no event is the legitimacy or morality of a conflict to be questioned, nor whether an armed intervention should be carried out to save communities in distress at the eleventh hour. The only concern of humanitarian organizations is how those interventions will affect their work.

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19 See, for example, Jean-Marc Flükiger, *Nouvelles guerres et théorie de la guerre juste*, Infolio Éditions, Gollion, 2011; and Michael Walzer, "The Politics of Rescue" (1994), in Michael Walzer, *Arguing about War*, Yale University Press, New Haven, CT, 2004.
20 Regis Debray, *L'Emprise*, Gallimard, Paris, 2000.
21 See, for example, Jacques Pous, *De Gandhi à Fanon, un religieux face à la guerre d'Algérie*, Golias Éditions, Villeurbanne, 2012. For a critique of humanitarian principles *per se*, see Thomas G. Weiss, "Principles, Politics, and Humanitarian Action", *Ethics and International Affairs*, Vol. 13, No. 1, March 1999, pp. 1–22.
22 Jean-Hervé Bradol, "The Sacrificial International Order", in Fabrice Weissman (ed.), *In the Shadow of "Just Wars": Violence, Politics and Humanitarian Action*, Cornell University Press, New York, 2004, p. 6.
23 The goal of *jus in bello* (law in war) is to limit the suffering caused by war by providing, to the extent possible, protection and assistance to the victims. It deals with the reality of conflict without taking into account the justifications for or legality of the use of force. Conversely, *jus ad bellum* (law on the use of force) determines the legality of the use of force.

Thus, the mere notion of "humanitarian intervention" leads to regrettable confusion between the purpose and principles of humanitarian action and political action taken to resolve crises. This ambiguity can and has resulted in tragic misunderstandings, especially when certain organizations more or less deliberately associate themselves with this kind of intervention. In addition, some radicalized movements declaring messianic goals and total war leave no or very little room for the very idea of humanitarian action. As the international community remains unable to quickly resolve conflicts and crises grow ever more complex, some humanitarian organizations are tempted to fill the social and political void, at times taking the place of governments.

Given these developments, neutrality and impartiality – requiring humanitarian actors not to take sides in political matters and to provide protection and assistance to all groups of victims of a conflict, without exception – have become problematic or at times even unworkable. It is becoming a crime to assist people who are presumed to support those whom the international community is fighting.[24] The notion that there are "good" and "bad" victims, and that the "bad" victims cannot or should not be saved, is a direct attack on the idea of humanity. Under such a notion, the principles would lose their intrinsic value and become inoperable.

The principles as an outgrowth of Western thought

Another common criticism of the humanitarian principles is that they are based on values that are not or are no longer universally held. Some critics are quick to point out the cultural limits of the standards underpinning some international instruments and claim that some foundations of humanitarian work are impenetrable or downright contrary to the frames of reference of some non-European societies.[25] Another variation of this criticism is that the same words do not carry the same meanings everywhere.

The question of whether the values underpinning the humanitarian principles (and the humanitarian philosophy in general) are universal or relative has been the subject of debate for many years. Inasmuch as the Movement's Fundamental Principles were adopted by each country and each National Red Cross and Red Crescent Society as part of a democratic and transparent process,[26] there is little doubt that they are universally applicable from a

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24   On the criminalization of aid and the impact of counter-terrorism measures on humanitarian action, see Naz K. Modirzadeh, Dustin A. Lewis and Claude Bruderlein, "Humanitarian Engagement under Counter-Terrorism: A Conflict of Norms and the Emerging Policy Landscape", *International Review of the Red Cross*, Vol. 93, No. 883, 2011, pp. 623–647; and Kate Mackintosh and Patrick Duplat, *Study on the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action*, independent study commissioned by the Office for the Coordination of Humanitarian Affairs (OCHA) and the Norwegian Refugee Council, July 2013. See also the article by Phoebe Wynn-Pope, Yvette Zegenhagen and Fauve Kurdani in this issue of the *Review*.

25   See the article by Stuart Gordon and Antonio Donini in this issue of the *Review*.

26   The Fundamental Principles were adopted at the 20th International Conference of the Red Cross. The States party to the Geneva Conventions attended alongside the components of the Movement.

"normative" standpoint. They have also been confirmed time and again by resolutions, treaties and other instruments.[27] IHL too has been similarly criticized even though its instruments have been universally ratified.

Naturally, the civil society viewpoint is not always aligned with international commitments. One cannot shy away from a moral and philosophical examination of the humanitarian principles, whose ultimate goal is, after all, to respond to the needs arising out of political crises and natural disasters. Moreover, the legacies of the Enlightenment and more generally of the philanthropic humanism of the nineteenth century, sometimes inspired by political or religious motives,[28] from which modern humanitarianism has in part descended are severely criticized – not so much for their substance, but rather for how they have been imposed at certain times in history. In addition, the religious and ideological radicalization of some conflicts is also a serious concern for those working to gain acceptance of the principles.

It must also be remembered that these concepts were created and adopted in a specific historical context, at a time when relations between nations were, without a doubt, different than they are today. Just because a global political framework is built on recognized ideals does not mean that all of civil society is in agreement. The universal value of the principles has naturally been questioned by the encouragement of the use of religious or philosophical frames of reference; the emergence of new groups, some of which are clearly opposed to these ideals; and the affirmation or reaffirmation of some cultural peculiarities. At times, the principles have even been labelled as ethnocentric universalism.[29] It is well beyond the scope of this article to embark on an anthropological criticism or historiography of humanitarian thought. However, some scholars have indeed argued that certain values are fundamentally incompatible (i.e., incommensurable) with other cultures or are not transferable from one culture to another.[30] The few scientific studies on non-Western humanitarianism[31] show that humanitarian work dates back to well before the Enlightenment period and

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Furthermore, Article 81 of AP I stipulates: "The Parties to the conflict shall grant to their respective Red Cross … organizations the facilities necessary for carrying out their humanitarian activities in favour of the victims of the conflict, in accordance with the provisions of the Conventions and this Protocol and *the Fundamental Principles of the Red Cross* as formulated by the International Conferences of the Red Cross" (emphasis added).

27 See, for example, European Consensus on Humanitarian Aid, 2008/C 25/01, Art. 2.1; Treaty on the Functioning of the European Union, 2012/C 326/01, Art. 214.2; and Economic Community of West African States, Humanitarian Policy, March 2012, available at: www.westafricagateway.org/files/Common%20Humanitarian%20Policy_0.pdf.

28 Maurice Tournier, "Humanitaire est-il apolitique de naissance?", *Mots*, No. 65: *L'humanitaire en discours*, March 2001, pp. 136–145.

29 Martin Hollis, "Is Universalism Ethnocentric?", in Christian Joppke and Steven Lukes (eds), *Multicultural Questions*, Oxford University Press, Oxford, 2003.

30 See, for example, Ruth Benedict, *The Chrysanthemum and the Sword*, Mariner Books, New York, 2005.

31 See, for example, Jasmine Moussa, *Ancient Origins, Modern Actors: Defining Arabic Meanings of Humanitarianisms*, HPG, ODI, London, November 2014. See also Hanna B. Krebs, *Responsibility, Legitimacy, Morality: Chinese Humanitarianism in Historical Perspective*, HPG, ODI, London, September 2014; Andrea Binder and Björn Conrad, *China's Potential Role in Humanitarian Assistance*, Global Public Policy Institute, Berlin, 2009.

has no clear geographic boundaries. The colonial legacy should not, however, be underestimated in the perception of humanitarianism.

Some of the above criticisms are valid, especially when the humanitarian principles are not understood or do not fit within the existing socio-cultural framework of specific groups or communities. Acknowledging this reality, the ICRC has held, since the 2000s, intensive discussions with religious authorities, militant groups and religious (especially Islamic[32]) humanitarian organizations in order to create a forum for discussing the common grounds and areas of convergence between the principles and other religious, philosophical and cultural frames of reference. It has also always tried to tie the principles more closely to operational settings and their challenges. In 2009, for instance, the ICRC commissioned the independent consultant and researcher Fiona Terry to carry out an internal study on its neutrality in Sudan and Afghanistan.[33] In 2013, it carried out another internal study – mentioned in the introduction to this essay – to identify difficulties encountered when applying the principles in various operational settings. Also in 2013, as part of the preparations for the Council of Delegates in Sydney, the ICRC, the International Federation of Red Cross and Red Crescent Societies and the British Red Cross consulted with the National Societies to gain insight into any difficulties the latter faced in applying the Fundamental Principles.[34] That same year, the British Red Cross carried out similar studies in Somalia and Lebanon (in Lebanon, in partnership with the ICRC).[35] These various initiatives demonstrate that both the ICRC and the Movement are well aware of the importance of understanding how the principles work in practice.

These studies and exchanges have brought to light certain differences in the primary motives of humanitarian action but have not as yet revealed a major cultural gap in the interpretation of the principles. However, it is clear that efforts need to be made to understand operational settings and adapt the principles

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32 See, for example, Ronald Ofteringer, "La dialectique de l'image, de l'acceptation et du travail humanitaire dans les situations de conflit et de violence organisée", in Caroline Abu-Sada (ed.), *Dans l'oeil des autres: Perception de l'action humanitaire et de MSF*, Médecins Sans Frontières, Editions Antipodes, Paris, 2011. See also the article by Ronald Ofteringer and Abdulfatah Mohamed in this issue of the *Review*.

33 Fiona Terry, *Research Project on the ICRC Practice of Neutrality*, internal document, ICRC, 2009. Some of the findings of this study were also discussed in Fiona Terry, "The International Committee of the Red Cross in Afghanistan: Reasserting the Neutrality of Humanitarian Action", *International Review of the Red Cross*, Vol. 93, No. 881, 2011, pp. 173–188.

34 See the "key findings of consultations" section of the report for the workshop on the Fundamental Principles held in conjunction with the 2013 Council of Delegates, a meeting gathering all components of the Movement that takes place every two years: Council of Delegates, "Outline of Workshop 1 – Fundamental Principles of the Red Cross and Red Crescent", CD/13/WS1, 2013, available at: www. standcom.ch/download/cod2013/wo/CD13_WS1_FP_outline_30Sept_clean_EN.pdf.

35 Sorcha O'Callaghan and Leslie Leach, *Principles in Action in Lebanon*, British Red Cross, ICRC and Lebanese Red Cross, London, 2012; Sorcha O'Callaghan and Jane Backhurst, *Principles in Action in Somalia*, British Red Cross and Somali Red Crescent Society, London, 2013. These two reports are available at: www.redcross.org.uk/About-us/Who-we-are/The-international-Movement/Fundamental-principles/Why-the-principles-matter-to-millions. See also Sorcha O'Callaghan and Leslie Leach, "The Relevance of Fundamental Principles to Operations: Learning from Lebanon", *International Review of the Red Cross*, Vol. 95, No. 890, 2013, p. 302.

accordingly. Neutrality does not take the same form in an international armed conflict as in a civil war or situation of violence in which a government may be fighting a multitude of groups, including criminals, or those groups may be fighting each other. Impartiality is a bit like fairness: we think we have an innate idea of what is fair or impartial, but when we go to apply it, we discover that the reality is actually far more complex. Each case is different. The ICRC operates in historically complex contexts where the notion of victim is also determined by the collective memory: it may be that the people who are vulnerable today were associated with the executioners of yesterday.

Contending that certain conflicts take place in closed societies that are isolated from the outside world and not part of the flow of ideas in no way reflects the historical or operational reality. Rather, the authors believe that rejection of the principles is based on universal political trends and is more of an ideological position than a cultural one; it is usually more grounded in political considerations than in cultural concerns. Wars and conflicts are extreme events that have a profound impact on the affected societies. They put people on the defensive and bring out identity-based and nationalist sentiments. They are not propitious for tolerance and acceptance of differences.

The desire to come to the aid of all people, regardless of which side they are on, is not so straightforward when it is those brandishing weapons whose voices are heard and the deadly consequences of the violence are unmistakable. Neutral and impartial humanitarian action is a challenge in all cultures, including Western ones. The current debate on terrorism is a clear example of how difficult it is to convince the authorities and the public of the need to help all people affected. It is often hard to get across why political allegiance cannot be a condition for the assistance provided to these vulnerable groups.

Paradoxically, the ICRC's insistence on always being impartial is limiting because it can make negotiations more difficult. It is a dilemma because if the ICRC were to give in to short-term pragmatism and agree to provide assistance to just one side, it could compromise its chances of being accepted and carrying out operations later on. In Syria, the ICRC has refused to perform cross-border operations without the consent of the State because it considered that doing so would jeopardize its capacity to reach larger segments of the population through negotiated cross-line operations.[36] In 1979, however, the ICRC stuck to its decision to maintain its cross-border operations through Thai territory, because this was the only way to reach displaced populations under Khmer Rouge control.[37]

Even in instances where an organization is allowed to analyze the humanitarian needs on both sides objectively, it remains extremely difficult for victims to tolerate the idea that the organization helping them would do the same for their enemies and would treat a wounded or captured soldier – who could be the source of their woes – the same as people displaced by the conflict.

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36 Pierre Krähenbühl, "There Are No 'Good' or 'Bad' Civilians in Syria – We Must Help All Who Need Aid", *The Guardian*, 3 June 2013.

37 Interview with François Bugnon, *Magazine Croix-Rouge Croissant-Rouge*, No. 1, 2015.

For instance, a government facing an armed rebellion is generally more than willing to let an organization work in the regions that it controls and on behalf of the people it considers loyal. But it is another matter altogether when the vulnerable people needing assistance and protection are in the rebel zone or are deemed resistant to authority. The same rationale would apply when an armed group is in a position to decide whether humanitarian assistance should be extended to populations that are not considered loyal. Thus, there is a big difference between the legal morality developed by lawyers and governments in peacetime, and putting this morality into practice on the ground in a context of violence. It is a constant challenge – one faced everywhere, across all cultures.

Expansion of the sector and growing ambitions

A few years ago, Michael Barnett asserted that the new international political order had led to a politicization and institutionalization of humanitarian efforts.[38] This is probably somewhat exaggerated, but the sector has indeed gradually broadened its ambitions – based on a more fine-grained understanding of conflicts and other humanitarian crises – and is pushing the limits of what can be called humanitarian action.[39]

For a long time, humanitarian endeavours were the preserve of just a few isolated organizations, but the massive aid mobilizations of the Bosnian War and other 1990s conflicts marked a turning point, and no doubt contributed to the sector's expansion. Since then, non-governmental organizations and UN agencies have progressively broadened the scope of their activities. This is the result of several factors, two of which are notable here.

The first was the feeling that humanitarian work was inadequate given how great and how complex people's needs and aspirations were. Faced with a lack of lasting political solutions and a growing number of protracted conflicts, a more system-wide aid response was required. As a result, humanitarian assistance has become at times a stopgap solution or even a substitute for failing governments in light of the international community's inability to find diplomatic or military solutions.[40]

The second factor was the sharp increase in the quantitative and qualitative expectations of the international community, and of donors in particular.[41] The role of aid workers has been transformed from rescuer to doctor. It is therefore not

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38 Michael Barnett, "Humanitarianism Transformed", in Michael Barnett (ed.), *The International Humanitarian Order*, Routledge, London, 2010.
39 There is no universally accepted definition for humanitarian action, but, traditionally, it is supposed to be of short duration and limited to covering basic needs. "Humanitarian assistance is the assistance and action designed to save lives, alleviate suffering and maintain and protect human dignity during and in the aftermath of emergencies": Oliver Buston and Kerry Smith, *Global Humanitarian Assistance Report*, Development Initiatives, Bristol, 2013, p. 11.
40 Jennifer C. Rubenstein, *Between Samaritans and States: The Political Ethics of Humanitarian INGOs*, Oxford University Press, Oxford, 2015.
41 Hugo Slim, "Global Welfare: A Realistic Expectation for the International Humanitarian System?", in John Mitchell, *ALNAP Review of Humanitarian Action: Evaluation Utilization*, ODI, London, 2006.

enough to ease suffering and deal with the immediate effects – the underlying factors have to be addressed as well. Rights have to be defended or restored, foundations for sustainable development laid, past grievances redressed and impunity combated.[42]

The integrated approach developed by the UN has evolved from classic peacekeeping to a global transformation project that combines policing, stabilization by incentives and force, establishing the rule of law, carrying out development programmes and providing humanitarian aid.[43] It strives to anticipate and prevent the problems that lead to armed conflict, to hasten the return to normality after armed conflict, and to integrate all the factors of vulnerability and human and societal development into its programmes. Sometimes the goal is also to transform societies that are deemed too archaic, pushing them to develop, changing their social structure and occasionally challenging the very roots of their traditions.

It is here that humanitarian assistance intersects with ideas of progress and universal justice.[44] The almost inevitable convergence of humanitarian efforts and the desire to improve society has detracted from efforts to meet basic needs. Previously, humanitarian work was, both philosophically and for expediency's sake, set apart from, if not in opposition to, politics. As humanitarian work has edged closer to social and political work, the friction with societies and governments has, unsurprisingly, increased. It is often not a big leap from the idea of social transformation to suspected neo-colonialism. Pushing for progress can breed mistrust. This fundamental shift towards a more global perspective on needs and aspirations is sometimes leading to a rejection of humanitarian efforts in the places where it would be easiest to agree on an emergency response – less ambitious, certainly, but also less limiting. As the scope of activities broadens, applying (real and perceived) independence and neutrality becomes ever more complex. As Peter Maurer rightly explained:

> In theory we all share the same aspirations for global peace, development and security, as well as the understanding about the limits of humanitarian action in addressing or preventing the causes of crisis. In practice however, our experience shows that emergency access to vulnerable populations in some of the most contested areas depends on the ability to isolate humanitarian goals from other transformative goals, be they economic, political, social or human rights related.[45]

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42 Joel R. Charny, "Upholding Humanitarian Principles in an Effective Integrated Response", *Ethics & International Affairs*, Vol. 18, No. 2, 2004, pp. 13–20.

43 Victoria Metcalfe, Alison Giffen and Samir Elhawary, *UN Integration and Humanitarian Space: An Independent Study Commissioned by the UN Integration Steering Group*, HPG, ODI, and Stimson Center, London, December 2011.

44 *Ibid.*

45 Peter Maurer, "Humanitarian Diplomacy and Principled Humanitarian Action", speech delivered at La Maison de la Paix, Geneva, 2 October 2014, available at: http://www.icrc.org/en/document/webcast-peter-maurer-humanitarian-diplomacy-and-principled-humanitarian-action. This speech is also reproduced in this issue of the *Review*.

Technological advances

The development and use of new technologies in humanitarian work when it comes to collecting and analyzing information, digitization (such as electronic cash transfers) and transport (e.g. drones) represents a real challenge for the future application of certain principles.[46]

These technologies do improve awareness and understanding of problems and the effectiveness of the humanitarian response, and can facilitate outreach and communication with affected people.[47] Communication technologies allow humanitarian actors to send undistorted messages and to receive first-hand information without interference by intermediaries, which may lead to greater independence and impartiality.

However, these technologies can also weaken the application of the humanitarian principles by fundamentally changing operational models. Organizations that use new technologies such as remotely operated aircraft could be seen as less neutral by authorities or the communities themselves because they associate such devices with military vehicles, due to their prevalent use by armed forces in some of the areas where humanitarians operate. And using or sharing data gained through invasive research techniques (e.g. satellite imaging, crowdsourcing) could also call organizations' intentions or their responsibility to protect their beneficiaries into question. In addition, focusing on people who are digitally connected could create discrimination and thus introduce significant ethical biases vis-à-vis *de facto* off-grid populations. Finally, the increasingly virtual nature of relations with recipients and the tendency to break down their vulnerabilities into measurable needs should prompt a re-examination of our duty of humanity, our commitment to close ties with the affected groups and our overall understanding of their suffering.

Operational challenges to principled humanitarian action

The humanitarian principles have been challenged not only on the basis of changes to the international political order and the expansion of the humanitarian sector, but also – and from the start – in the operational practice of organizations like the ICRC.[48] As discussed above, aid workers inevitably find themselves in complex situations and have to contend with the political divisions and radicalization

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46 See for example, *The Red Cross and Red Crescent's Principled Approach to Innovation*, American Red Cross, July 2015, available at: https://drive.google.com/file/d/0B6v07kjaKV-wTmJDWDNjZ0ctMHM/view; Alexander Betts and Louise Bloom, *Humanitarian Innovation: The State of the Art*, OCHA Policy and Study Series No. 009, 2014.

47 Patrick Meier, *Digital Humanitarians: How Big Data Is Changing the Face of Humanitarian Response*, CRC Press, Boca Raton, FL, 2015. See also Katja Lindskov Jacobsen, *The Politics of New Technologies*, Routledge, New York, 2015.

48 It is commonly acknowledged that, throughout history, there have always been attempts at manipulating and instrumentalizing humanitarian assistance and its guiding principles for political aims. See, for example, Antonio Donini (ed.), *The Golden Fleece: Manipulation and Independence in Humanitarian Action*, Kumarian Press, Sterling, VA, 2012.

inherent in armed conflicts. Ethical dilemmas, the weighing up of interests and negotiations with all groups are part and parcel of humanitarian work. The humanitarian principles are an ethical and practical guide – not a dogma – for navigating these troubled waters, and they shape operational judgement. While they provide a clear moral compass as defined by the principle of humanity, they do not lend themselves well to a "box-ticking" or "one size fits all" approach. They provide a framework that must be used with consistency (which contributes to predictability, an important element of trust-building), but also intelligence and creativity. Internal case studies clearly show, for instance, that the way neutrality is perceived – and presented – in situations of criminal or gang violence is different from situations of conflict that are more political in character.[49]

If applied with consistency and intelligence, the principles provide a formidable guide for delivering humanitarian assistance and protection in the most extreme circumstances, as demonstrated by the example of Afghanistan. In this context, the consistent application of the principles has allowed the ICRC to maintain its presence throughout decades of conflict and to operate across multiple frontlines. As Antonio Donini observed in 2010, "[s]o far, only the ICRC has been able to develop a steady dialogue on access and acceptance with the Taliban"; he further noted that "the World Health Organization, for example, needs to rely on the ICRC's contacts for its immunisation drives".[50] This acceptance and the access it made possible – at times benefiting other actors such as WHO – was not a straightforward process, however, as Fiona Terry emphasized in the study on ICRC neutrality in Afghanistan. Indeed, the ICRC faced multiple ups and downs, including the targeted murder of one of its staff in March 2003. The situation required perseverance, consistency and creativity in the way the ICRC applied the principles "to demonstrate to all sides the benefits of having a neutral intermediary in the midst of conflict".[51]

The ICRC's internal studies on the Fundamental Principles revealed a number of such challenges faced by its staff in the course of their work and showed how the principles are applied under these circumstances. The types of challenges and the examples given below illustrate the constant tug-of-war between competing priorities and objectives.

Challenges inherent to the humanitarian principles

A closer look at the operational reality of humanitarian organizations reveals a number of hidden dilemmas that are, to some extent, inherent to humanitarian

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49 A recently adopted ICRC policy on the organization's role in situations of violence below the threshold of armed conflict recognizes, for instance, the limits of the ICRC's "neutral intermediary" role in situations in which violence is predominantly criminal. See ICRC, "The International Committee of the Red Cross's (ICRC's) Role in Situations of Violence Below the Threshold of Armed Conflict – Policy Document, February 2014", *International Review of the Red Cross*, Vol. 96, No. 893, 2014, pp. 275–304, available at: www.icrc.org/en/international-review/article/international-committee-redcrosss-icrcs-role-situations-violence-below.

50 Antonio Donini, "Between a Rock and a Hard Place: Integration or Independence of Humanitarian Action?", *International Review of the Red Cross*, Vol. 92, No. 880, 2010, pp. 156, 152.

51 F. Terry, "The ICRC in Afghanistan", above note 33.

principles. At times, there can be tensions or even outright contradictions between them. Such has been the case with the moral imperative of humanity, which, through a semantic shift, has been used to justify political and coercive actions that have actually jeopardized humanitarian agencies' abilities to carry out their work. The so-called humanitarian imperative – whether in the form of the "droit d'ingérence humanitaire"[52] or the Responsibility to Protect[53] – has been invoked to justify military interventions. Such actions make it harder for (unarmed) humanitarian organizations to provide impartial assistance and protection, especially to the people associated with the group the intervention is targeting.[54]

The humanitarian imperative also creates moral dilemmas within aid agencies that can lead to other principles being compromised – almost always to the detriment of the people affected. For example, in a situation of famine in the Horn of Africa a few years ago, the ICRC allowed itself some leeway in its interpretation of impartiality. It undertook a project to repair and refurbish a canal in an opposition-controlled area, even though it was not able to determine exactly who would benefit from the canal and had a limited ability to monitor and evaluate the consequences. This decision was made in light of the severity of the situation, and with the goal of earning the armed group's trust and resuming dialogue with the said group in order to improve access to the area and to be able to respond to the pressing needs of the population – all in the name of humanity. However, this "trade-off" on the principle of impartiality did not result in improved dialogue and access as expected, and a precedent had been set regarding the ICRC's approach that was potentially harmful to the organization's ability to have this principle respected in the future. Conversely, on another occasion, the ICRC decided to suspend its activities when this same armed group demanded that it be allowed to carry out the aid distributions itself. The ICRC

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52 A concept developed by the French jurist Mario Bettati that can be translated to "right of humanitarian intervention" and which argues that States have a right to interfere in another State's internal affairs in case of massive violations of international humanitarian or human rights law. See Mario Bettati, *Le droit d'ingérence: Mutation de l'ordre international*, Odile Jacob, Paris, 1996.

53 The Responsibility to Protect – known as R2P – refers to the obligation of States toward their populations and toward all populations at risk of genocide and other mass atrocity crimes. The three pillars of the responsibility to protect, as stipulated in the Outcome Document of the 2005 United Nations World Summit (A/RES/60/1, paras 138–140) and formulated in the Secretary-General's 2009 Report (A/63/677) on Implementing the Responsibility to Protect are:
   ● The State carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement;
   ● The international community has a responsibility to encourage and assist States in fulfilling this responsibility;
   ● The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations.

54 See, for example, Fabrice Weissman (ed.), *In the Shadow of "Just Wars": Violence, Politics and Humanitarian Action*, Cornell University Press, New York, 2004; Bruno Pommier, "The Use of Force to Protect Civilians and Humanitarian Action: The Case of Libya and Beyond", *International Review of the Red Cross*, Vol. 93, No. 884, 2011, pp. 1063–1083.

felt that a "red line" had been crossed, as this was an unacceptable compromise of its independence and neutrality.[55]

These examples clearly show how the interpretation of each of the principles is always contingent upon the others. Even the essential principle, humanity, must be interpreted bearing in mind the other principles and the specific operational circumstances. The principles provide a framework to guide decision-making, but they can never be applied without first weighing up the pros and cons of abiding by them while considering people's best interests.[56] This weighing of interests often creates tensions between short- and long-term goals – between saving lives today with a few compromises, and maintaining the organization's ability to save lives tomorrow by remaining consistent and preserving everyone's trust. The principles are a compass for navigating these unavoidable dilemmas, for, in the words of Hugo Slim, "a moral dilemma is a choice between two wrongs".[57] The principles are difficult to apply because they involve critical (and not always satisfying) choices and require constant re-examination and reconsideration.

The question of whether the ICRC should participate in the UN's humanitarian coordination mechanisms highlights the potential tensions between impartiality and independence. In theory, the coordination of humanitarian activities allows the impartiality of the response to be more sector-wide and across the entire area affected by a crisis, and not just programme-based and at the local level. Coordination thus makes the combined response of all the aid organizations more impartial, compared to the level of impartiality that is achieved by each individual organization. However, the benefits of coordination in terms of impartiality and effectiveness must be weighed against the risk of damaging the organization's reputation and perception by associating with entities that may be considered politically biased or that support one party to the conflict. This explains why the ICRC has opted not to be formally affiliated with the cluster system,[58] which would mean being accountable to the UN system. Because of its political governance and peacekeeping role, the UN system is seen in some conflicts as favouring one side over another.[59] Not joining the cluster

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55 ICRC, above note 4.
56 Max Weber described this dilemma as two fundamentally differing and irreconcilably opposed maxims. An organization can either be oriented to an ethic of responsibility (*Verantwortungsethik*), meaning that it is accountable for the foreseeable consequences of its actions, or to an ethic of conviction (*Gesinnungsethik*), in which it is accountable only for applying its policy. See Max Weber, *Le savant et le politique*, Plon, 10/18, Paris, 1995.
57 Hugo Slim, "Doing the Right Thing: Relief Agencies, Moral Dilemmas and Moral Responsibility in Political Emergencies and War", in Hugo Slim, *Essays in Humanitarian Action*, Oxford Institute for Ethics, Law and Armed Conflict, University of Oxford, 2012 (e-book).
58 The cluster system was adopted as part of the United Nations Humanitarian Reform of 2005. The cluster approach coordinates humanitarian groups by sector, e.g. health, shelter or nutrition. See "Cluster Coordination" on the OCHA website, available at: www.unocha.org/what-we-do/coordination-tools/cluster-coordination.
59 See, for example, Jérémie Labbé and Arthur Boutellis, "Peace Operations by Proxy: Implications for Humanitarian Action of UN Peacekeeping Partnerships with Non-UN Security Forces", *International Review of the Red Cross*, Vol. 95, No. 891/892, 2013, pp. 539–559.

system does not, however, prevent the ICRC from taking a pragmatic approach and constantly reassessing the benefits of coordinating compared to the risks of damaging its capacity to operate. In fact, informed by the humanitarian principles, ICRC staff regularly meet and exchange with UN country team members either on a bilateral basis or by joining cluster meetings as observers, depending on the context and the associated reputational risks.

In addition, the ICRC weighs on a case-by-case basis the benefits to the affected people against the risks of damaging its reputation, and is quick to devise pragmatic and innovative approaches for mitigating those risks in order to allow for greater impartiality. Such was the case when displaced people sought refuge on a runway that was controlled by a multinational force and surrounded by the opposition group that the force was fighting. The ICRC and the local National Society were asked by the multinational force to set up a health-care centre in their compound to attend to the displaced people's medical needs, but had to decline due to the risk of being seen as affiliated with the force. However, they decided to set up mobile clinics that would go in and out of the compound to attend to the most pressing medical needs, while making sure to communicate clearly and transparently with the rebel group to explain their choices and their approach.

Finally, impartiality may be in tension with the principle of neutrality in particular circumstances. For instance, a rigid interpretation of the principle of impartiality might be counterproductive in terms of how neutral a humanitarian actor is perceived to be, and could hinder humanitarian action.[60] As Fiona Terry noted in her internal study on Sudan and Afghanistan:

> While neutrality as a concept has been understood … throughout the ICRC's presence in Sudan, the notion of impartiality has not, and the allocation of assistance in accordance with needs gives the impression of favouritism if the needs are not the same on either side.[61]

This can be the case, for instance, when humanitarian organizations focus on addressing the needs of internally displaced populations only, while completely ignoring the needs of the resident population, which can result in growing resentment and exacerbated tensions.

The ICRC always endeavours – in Sudan and other contexts – to tailor its response to the specific needs of different communities by conducting assessments on both sides of the frontline or in rival communities. Yet, it is because its staff fully acknowledge the potential for misperceptions about the ICRC's neutrality that they take special care in listening to all communities and explaining to them the ways in which the ICRC works. Such an interpretation of

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60 This was the case in Myanmar, for example, in a context of sectarian violence. Humanitarian assistance given to the Muslim minority generated resentment against humanitarian organizations among the Buddhist majority communities, even though the latter were less in need. See Dana MacLean, "Analysis: Myanmar's Rakhine State – Where Aid Can Do harm", *IRIN*, 3 July 2013, available at: www.irinnews.org/report/98351/analysis-myanmar-s-rakhine-state-where-aid-can-do-harm.

61 F. Terry, *Research Project*, above note 33, p. 37.

impartiality through the lens of neutrality ensures that the most severe needs are met, while accommodating in a relevant manner the needs of other communities who could resent and hinder an aid operation that they perceive as one-sided and could pose a real threat to the needier community or to ICRC staff.

Context-specific challenges to applying the principles

As shown above, some tensions between the principles are unavoidable. Others arise from particular circumstances, and require agility and creativity on the part of the ICRC. Studies by the ICRC showed, for instance, that security considerations and restrictions imposed by the authorities in charge of a country or territory could result in the ICRC adapting the way it operates, using the latitude allowed by the Fundamental Principles.

Whether to use armed escorts or protection is a good example of the kinds of dilemmas that arise out of operational circumstances. The ICRC's policy on this subject is categorical and follows from a strict interpretation of the Fundamental Principles: the ICRC does not use armed protection because, in armed conflicts or other situations of violence, it could be seen by one of the parties as a sign of collusion or even as siding with another party to the conflict, by extension making the ICRC a target. For the safety of its staff and operations, the ICRC relies mainly on the protection afforded by the emblems of the Red Cross and Red Crescent under IHL and on constant dialogue with all parties (made possible by the application of the principles) so that they understand, recognize and accept that protection.

However, there have been a few, rare exceptions to this prohibition on the use of armed protection – a concession on the part of the ICRC that specific circumstances can make it impossible to obtain sufficient assurances of safety. Such a decision to go against the prohibition is itself informed by the Fundamental Principles. Armed protection may only be used exceptionally and when security risks are related to ordinary crime, such as when there is widespread criminal violence due to a complete breakdown of law and order. The decision-making process – which is high-level and involves ICRC headquarters – takes into account a number of factors, such as perception risks among the parties to the conflict and the affected communities, the severity of needs and the organization's continued ability to provide impartial assistance based on objective needs assessments.

ICRC practice studies also showed that when the organization took the exceptional measure of using armed protection, the Fundamental Principles continued to guide decision-making, in order to alleviate the potential impact to its reputation and thus its ability to carry out its work. For instance, the ICRC adopted a low profile when working with armed protection in some contexts, such as by limiting the use of the Red Cross and Red Crescent emblem, to reduce the risk of being perceived as associated with armed entities. Along the same lines, the ICRC makes every effort to ensure that it selects security companies with flawless reputations. In using armed protection, the ICRC must not violate

the principle of neutrality and be seen as a party to the conflict, and armed
protection may only be used to protect against ordinary crime and if the practice
is accepted locally.

The armed protection example demonstrates that the Fundamental
Principles are the starting point for the internal policies of the institution and
provide guidance for determining when circumstances call for exceptions to the
rule. And when exceptions are made, the principles continue to guide decision-
making concerning how to lessen the potential impact. This illustrates the logic
behind the principles, which help to draw "red lines" that should not be crossed,
but also, given the complex nature of crises, provide a pragmatic framework for
making operational decisions. Ultimately, it is by showing consistency and
predictability in the way it applies its principles – but also adaptability to the
context – that the ICRC has managed to maintain its presence across front lines
in some of the most complex and insecure contexts in the world, from
Afghanistan to the Democratic Republic of Congo, Colombia and Iraq.

Institutional choices and challenges to applying the principles

Other factors, such as operational choices, strategic decisions or even an
organization's nature or purpose, could also lead organizations to compromise
the principles. For instance, an institutional decision to carry out programmes
to increase a community's resilience requires combining humanitarian and
developmental modes of action toward the same operational and strategic goal.
Yet, as Hugo Slim and Miriam Bradley point out, "while resilience strategies are
appropriate and uncontroversial in many natural disasters, they can undermine
the neutrality of humanitarian action in armed conflicts if the improvement of
political and economic structures is perceived to advantage one side against the
other".[62] The tensions between adhering to the principles and strategic and
operational choices are particularly apparent in multi-mandate organizations,
which may combine emergency humanitarian assistance with development aid or
advocacy for human rights or democracy.[63]

The ICRC's internal study on the application of the Fundamental
Principles shows that it is not exempt from such tensions. Some operational and
strategic choices are the source of recurrent challenges. The internal study
indicated that acceptance of the ICRC's impartial, neutral and independent
humanitarian action often depends on the existence of an armed conflict and the
applicability of IHL. This presents a challenge when the ICRC decides to operate
in a situation where the needs are great and are connected to armed violence, but
IHL is not applicable as the situation does not qualify as an armed conflict (e.g.
criminal armed violence or post-conflict situations). There may be significant

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62 As this quote shows, it is not the strategies for improving communities' resilience that could potentially
    impact neutrality, but rather the modalities under which these strategies are implemented that can make
    them seem political. H. Slim and M. Bradley, above note 1, p. 7.
63 *Ibid.*

need for humanitarian assistance in situations of urban violence when clashes break out between gangs and security forces, but it can be difficult to explain the ICRC's neutrality, both to the government authorities fighting the criminal groups and to the gangs themselves, who are primarily interested in the profits from their activities.[64] In post-conflict situations, impartiality and independence can be misunderstood by government authorities whose priorities are reconstruction and medium- and long-term development policies. The challenge for the ICRC is then to develop programmes that are relevant to and in line with a State's development plan – focusing for instance on the reconstruction and rehabilitation of particular areas that are strategically important for the authorities' efforts to consolidate peace – while continuing to assess the population's needs objectively and carry out its programmes independently.

There are also situations in which frictions arise between an organization's medium- or long-term strategic goals and the strict and immediate application of the principles. Such friction can arise, for instance, from the dual nature of the ICRC's work, which combines operational humanitarian action and promotion of IHL.[65] The emphasis placed on impartiality, neutrality and independence for carrying out assistance and protection activities in a given context can conflict with the strategic goal of engaging that country's government in a long-term dialogue on IHL. The ICRC must strike a balance between operational and strategic goals, but one that favours overall operational activities. This tension is not an insurmountable obstacle; rather, it forces the ICRC to convey a consistent message when explaining the tangible benefits of impartial, neutral and independent humanitarian action. In time, this could help further its strategic goals.

The cost of adhering to the principles

The internal study clearly illustrated the real and symbolic cost of impartial, neutral and independent humanitarian work, in addition to the challenge it represents for humanitarian organizations. Applying the principles is expensive. The principles of neutrality and independence – essential to impartiality in the circumstances in which the ICRC works – often mean that the ICRC has to have its own logistics and transportation. Where other humanitarian organizations would use the air transport made available by the UN, the ICRC sometimes has to charter its own airplanes so as not to be associated with the world body. This would happen if a peacekeeping force was or was perceived to be a party to the conflict or if being associated with the UN might jeopardize the other parties' or communities' acceptance of the ICRC.[66] By the same token, negotiations with corporate donors on the visibility of logos can be lengthy when there is a risk that the logo could affect the ICRC's perceived neutrality and independence. The ICRC has even

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64 For a discussion of the work carried out in such situations and the related challenges, see: ICRC, above note 49.

65 ICRC, *The ICRC: Its Mission and Its Work*, Geneva, March 2009, p. 6, available at: www.icrc.org/eng/assets/files/other/icrc_002_0963.pdf.

66 J. Labbé and A. Boutellis, above note 59.

repackaged some goods for distribution when their origin could be perceived
negatively in a given country.

The ICRC's strict application of the principles has also limited its
involvement in some activities that have a political or "transformative" element,
such as human rights campaigns, and conflict prevention, peacebuilding,
reconstruction and development activities. These activities could tackle the roots
of conflicts or prevent future crises, but they are generally political projects or
aim at social or economic transformations that not everyone supports and some
may even strongly oppose. The ICRC's involvement in these activities, no matter
how legitimate, represents a non-negligible risk for its future acceptance and
operations, and would ultimately get in the way of meeting the short- and
medium-term needs of victims of conflicts and other situations of violence. In
that sense, respect for the principles has a cost for the ICRC as it limits the
organization's ability to develop programmes aimed at addressing the root causes
of conflict.

Beyond the principles: Key lessons learnt

The study of how the ICRC applies the Fundamental Principles revealed that good
practice does not boil down to "neutrality plus independence equals impartial
humanitarian assistance". The reality is far more complicated. An organization's
ability to provide impartial assistance in fact depends on its ability to strike a
balance between competing priorities and perceptions in order to preserve trust
and acceptance. For instance, it must constantly manage the risk of being
associated with a party to a conflict, a political authority, a controversial ideology
or political programme, or anything or anyone else that could create friction.
Finding this balance is more of an art than a science. There is no universal
formula or manual, no predetermined checklist of activities, and there never
will be. If the principles are to remain dynamic and relevant in changing
circumstances, there must be a measure of discretion in the face of a given
situation. An optimal outcome requires that the principles be applied relatively
consistently and with a good knowledge not only of the situation at hand, but
also of the global context.

The study also highlighted a certain number of strengths, positive qualities
and good practices that allowed the ICRC to apply the principles for the most part
rigorously, consistently and with a measure of flexibility, enabling it to maintain its
presence and proximity with affected communities in the long term, sometimes over
several decades, while remaining agile and adapting to changing circumstances.

A multidisciplinary approach

The internal study underscored the asset that the broad range of the ICRC's
activities represents for overcoming certain challenges. The organization can call
on a wide array of methods to carry out its mission, which is divided into four

separate but complementary approaches. These are (1) protection – protecting the lives and dignity of victims of armed conflict by ensuring that the authorities and other groups involved abide by their obligations and respect individuals' rights; (2) assistance – covering the unmet essential needs of individuals and/or communities relating to health, sanitation, water, nutrition and economic security; (3) cooperation – coordinating and harnessing the full potential of the humanitarian efforts of the members of the International Red Cross and Red Crescent Movement; and (4) prevention – fostering an environment conducive to respect for people's lives and dignity by promoting IHL and other applicable bodies of law.[67] This multidisciplinary approach contributes to reinforcing the application of the Fundamental Principles, above all that of impartiality. Indeed, it allows the ICRC to offer services that are adapted to the disparate needs of various categories of victims, be they detainees, victims of sexual violence, farming and herding communities who have lost their livestock or children separated from their families.

The ICRC's wide range of activities also creates opportunities to speak with and offer relevant services to the parties to a conflict, affected communities and other groups involved. In her analysis of the ICRC's neutrality in Afghanistan, Fiona Terry pointed out that the ICRC was sometimes perceived as being too close to the Taliban because of the medical activities it had carried out in Taliban-controlled areas. The ICRC tempered this perception by providing first-aid training to the Afghan police force and showing that such training on both sides does not amount to interference in the conflict.[68] The ICRC's many activities bring it into contact with all groups involved: civilians when providing assistance, civilian authorities when planning sanitation projects, military authorities and armed groups during IHL awareness-raising programmes, prison authorities during visits to detainees, and judicial authorities when promoting the law.

Nurturing key institutional attributes and practices

Besides abiding by the humanitarian principles, the ICRC has also nurtured other practices and attributes that were essential for earning trust and gaining access to affected people in all the countries studied. These are transparency, confidentiality (i.e., discretion), consistency, proximity with affected people, and timely response to needs. The individual qualities of the staff were also critical to the ICRC's image. Adherence to the principles – neutrality and independence in particular – is as much about perception as actual practice. By projecting positive qualities, an organization can more easily apply the principles and earn the trust of authorities, communities and others and shape its image.

Transparency is particularly important in operational settings. Even if the principles are applied in good faith, humanitarian organizations would still need

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67   ICRC, above note 65, pp. 14–17.
68   F. Terry, "The ICRC in Afghanistan", above note 33.

to deal with misperceptions or even accusations of bias on a regular basis. Communicating transparently with all influential parties as a matter of course is critical for explaining the organization's goals and operational choices and the restrictions it faces.

Transparent communication with all stakeholders is also critical for explaining some of the ICRC's policies or practices that are at times subject to criticisms or misunderstandings, such as its confidential approach. This confidential, bilateral dialogue with parties to a conflict is another key practice that enables the ICRC to maintain the degree of acceptance necessary to nudge perpetrators of IHL violations toward a greater respect for the law and to gain the safe access needed to deliver impartial humanitarian aid.[69] Even for organizations that do not follow the ICRC's strictly confidential approach, some discretion on particularly sensitive or controversial subjects can help humanitarian organizations earn the trust of key players and strengthen the perception of these organizations as neutral and independent.[70]

Consistency is also crucial, particularly as it contributes to the predictability of an organization. The ICRC's consistency springs mainly from its specific mandate and its role as the custodian of IHL, which confers a certain objectivity; operationally, from its contacts and close ties with the parties to the conflict and the victims, which maintain its credibility; and from its application of the Fundamental Principles, which help it to be seen as strictly humanitarian. These three pillars (IHL, operations and Fundamental Principles) are the foundations of the ICRC's consistency and predictability, helping to maintain trust and, in turn, the acceptance needed for staff safety and humanitarian access.

Although some of these practices are specific to the ICRC and cannot be replicated elsewhere, all organizations can maintain some level of consistency and transparency. This can go a long way toward making application of the principles coherent, and ensuring that it is perceived as such.

The importance of adapting to the local context

Examination of ICRC operational practice has shown that adapting the Fundamental Principles to the circumstances also means ensuring that communication is context-appropriate. As argued above, the way neutrality is perceived – and presented – in situations of criminal or gang violence, for instance,[71] is different from situations of conflict that are more political in character. In one particular delegation, for example, the ICRC developed a creative communication approach, called "neutralizing the vocabulary", whereby

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69 For more information on the ICRC's confidential approach, see Memorandum, "The ICRC's Privilege of Non-Disclosure of Confidential Information", in this issue of the *Review*.

70 See HPG, *Humanitarian Advocacy in Darfur: The Challenge of Neutrality*, HPG Policy Brief No. 28, ODI, London, October 2007. This policy brief highlights the tensions and links between advocacy and neutrality in Darfur.

71 For an in-depth description of the role of the ICRC in such contexts, including a brief discussion on the ICRC's neutrality, see ICRC, above note 49.

ICRC delegates identified antagonistic words such as "hitman" and "drug cartels", the mere use of which could be perceived as reflecting a biased position, especially by some criminal groups. In this context, ICRC staff simply refrained from using such words, preferring more neutral phrases like "organized violence groups". Although mostly cosmetic in appearance, this subtle communication shift, informed by the principle of neutrality, considerably improved the dialogue with different stakeholders, resulting in greater acceptance of ICRC activities, better access and greater ability to engage communities and address their needs.

A similar approach has been taken by the Lebanese Red Cross. Given the religious tensions in Lebanon, the Red Cross encourages volunteers to use neutral nicknames that are devoid of religious connotations.[72] This practice has increased communities' acceptance of volunteers and the volunteers' ability to work throughout the country.

For its part, the ICRC has developed programmes to improve understanding of local and national cultures, customs and standards in order to identify the similarities and areas of overlap with IHL and to provide a better idea of the universality of the Fundamental Principles and whether they will strike a chord locally. In Algeria, an international colloquium on Emir Abdelkader and IHL was organized to explore the nineteenth-century leader's contribution to IHL and its underlying principles.[73] A few years ago, the ICRC delegation in Somalia examined *Biri-ma-Geydo* – a compilation of customary Somali rules – and *Shari'ah* rules that contain principles similar to those in IHL.[74] Initiatives such as these, aimed at putting the legal and operational framework of humanitarian activities in context, have led to a better understanding of these countries and have enabled the ICRC to adapt its institutional and operational message without altering the substance of the legal framework.

Finally, the ICRC's internal study showed that the local setting can also call for adjustments to human resources. Having ethnically or religiously representative staff helps project the neutrality and impartiality of an organization. The same can be said for international staff. Expatriates are often seen as less involved in a given situation and thus more likely to maintain the image of neutrality. However, there are some situations where this diversity can work against the organization, such as when a staff member is a citizen of a foreign power that is involved in or has a vested interest in a conflict.

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72 Sorcha O'Callaghan and Leslie Leach, "The Relevance of Fundamental Principles to Operations: Learning from Lebanon", *International Review of the Red Cross*, Vol. 95, No. 890, 2013, p. 302.
73 ICRC, "Algeria: International Colloquium on Emir Abdelkader and IHL", News Release No. 13/98, 27 May 2013, available at: http://www.icrc.org/eng/resources/documents/news-release/2013/05-27-algeria-abdelkader-foundation.htm.
74 ICRC, "Somalia: Using Traditional Law in Dialogues with Armed Groups", 10 November 2014, available at: http://www.icrc.org/en/document/somalia-using-traditional-law-dialogues-armed-groups. A similar exercise was conducted in the Pacific region: ICRC, *Under the Protection of the Palm: Wars of Dignity in the Pacific*, May 2009, available at: http://www.icrc.org/eng/assets/files/other/wars-of-dignity-pacific-2009.pdf.

Conclusion

There is a certain paradox between the apparent simplicity of humanitarian principles and the difficulties associated with their sound application in real-life situations. Operationalizing them is certainly more an art than a science. Applying principles means interpreting them in an evolving setting. After decades of experience, the ICRC is still confronted with contradictions, dilemmas and sometimes rejection in its efforts to deliver assistance and protection in conflicts or other situations of violence. Good intentions and careful planning do not necessarily guarantee positive results.

It is the parties concerned that ultimately decide whether an organization can operate. Applying the principles in good faith does not guarantee acceptance, access or safety in all situations. In addition, there is an inherent difficulty in attempting to serve all victims on an equal footing in the context of conflict narratives that are about determining victors and losers, righteous combatants and villains, legitimate and illegitimate parties. In fact, some openly partisan organizations might operate more freely than principled organizations in territory controlled by the side they support, since they will likely be welcomed with open arms by the authorities that control this area. However, the ability of such organizations to deliver humanitarian assistance or protection across front lines, in areas controlled by other belligerents, is questionable.

The ICRC recognizes that its traditional approach also has more strategic limits: principled humanitarian action is not aimed at tackling the root causes of conflicts or humanitarian crises and can be hard sometimes to reconcile with the development approach needed to give countries and communities the means to recover from these crises. Humanitarian principles are not adapted to the notion of transformative humanitarianism aimed at creating better societies.

Sometimes, it may be also necessary to use coercive actions, duly authorized by the UN, to save people in extreme circumstances. But any humanitarian organization that associates itself with such an operation risks losing its long-term capacity to operate in the same environment. Organizations genuinely committing to abide by and apply humanitarian principles must acknowledge and accept the limitations that doing so entails.

The ICRC advocates for better recognition of and respect for the various ways of working and, if needed, a better distinction between them in order to harness their complementary approaches. In the words of Peter Maurer, ICRC president at the time of writing:

> [The] ICRC's *modus operandi* is not the right way for everyone. "Neutral, impartial and independent" is not the solution to every problem or situation, but it is useful in specific contexts. It shows the need to implement distinct, complementary and separate activities and roles. [The] ICRC will strive to maintain its principled stand. This does not preclude others from engaging in

peace-building and human rights. Yet, distinction is needed and we should not confuse these different approaches.[75]

What is the future of the humanitarian principles? It seems fairly likely that the situations in which humanitarian organizations will be working in the future will take on new forms, as will the associated needs and vulnerabilities. The ICRC's vision of humanitarian work and what it considers moral, effective, pertinent and justified will also necessarily evolve. New configurations of conflict will lead organizations to seek out new strategies for applying the principles in relevant ways. These changes will no doubt put the principles to the test, as all changes over the past fifty years have done.

Beyond providing the right tools for the job, the principles represent an aspiration – a willingness to go beyond what is purely effective and utilitarian, a reminder that respect for the principle of humanity is still possible even when tragic circumstances would lead us to doubt or deny it.[76] The present authors wager that the values underlying the principles will be more relevant than ever in future crises. Meanwhile, the authors call on all organizations to be more honest and transparent in the scope of their ambitions and their resulting ability or intent to genuinely apply the principles. Indeed, while humanitarian principles prove extremely useful for impartially addressing urgent needs in a given territory affected by a crisis, they quickly find their limits if the objectives of humanitarian actors are more transformative in character.

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75 Peter Maurer, "At a Crossroads", speech given at a conference organized by the Norwegian Refugee Council, Brussels, 4 December 2012. See Norwegian Refugee Council, *Principles in Practice: Safeguarding Humanitarian Action*, Brussels, 4 December 2012, p. 11, available at: www.alnap.org/resource/9582.
76 On this point, it is fascinating to revisit Claude Lévi-Strauss, *Race et histoire*, Denoël, Paris, 1999 (first published 1952), pp. 19–26.