



Noble Human Rights Defender or International Band-Aid? On Contemporary Humanitarianism

By Kurt Mills

The Humanitarians: The International Committee of the Red Cross by David P. Forsythe. Cambridge: Cambridge University Press, 2005.

In David Forsythe's The Humanitarians: The International Committee of the Red Cross we see a microcosm of the internal and external struggles and dilemmas that human rights and humanitarian organizations face today. We see a picture of the International Committee of the Red Cross (ICRC) as both the “heroic leader” and the “marginal social worker” (282). We see an organization at one time quite satisfied with its principles and ways of doing things, but also a movement which is internally divided and incoherent in many ways. We see an organization which is seemingly both incompatible and complementary with other human rights and humanitarian organizations. We see an organization firmly tied to states while also in opposition to them. We see an organization clinging to, and attempting to propagate, rules governing warfare in the face of many recalcitrant states, while at the same time setting aside the letter of the law when necessary.

The ICRC is a strange beast which raises not only questions for those engaged in the struggle for human dignity but also for those trying to understand the role of non-state (or at least partially non-state) actors in global politics today. This essay will proceed in two steps: first, it will examine the ICRC (and the broader Red Cross Movement) as an actor itself; second, it will place the ICRC within the much broader realm of humanitarianism today, pointing to numerous questions related to the contemporary practice of humanitarianism.

First, a word on definitions is necessary. The ICRC is labeled as a *humanitarian* organization. This obviously is because it helps to provide relief and protection to those caught in conflict—both to civilians in need of food, shelter and medical supplies; and to soldiers after they have been injured or captured. Yet, it is also a *human rights* organization insofar as it promotes human dignity generally. Others, such as David Kennedy (2004), use the term humanitarian to describe activities undertaken during conflict as well as those outside of the conflict arena. In one sense, these are conceptually distinct categories. Yet, there is certainly overlap between the norms found in international humanitarian law and international human rights law (and, indeed, with international refugee law) to such an increasing extent that it sometimes may become meaningless to say, for example, that one is engaging in humanitarian action but not protecting human rights. In fact, Forsythe points out that one can talk about assistance protection as well as attempting to intervene with public authorities to help, for example, individual prisoners. This is a (non-)distinction that other actors like the U.N. High Commissioner for Refugees (UNHCR) also grapple with. The UNHCR talks about legal

protection (i.e., trying to get states to uphold their obligations under the refugee convention), but it actually spends a lot more of its time and money providing on-the-ground assistance. Besides the obvious benefits provided by UNHCR action, such as food and medical care, the UNHCR also argues that its mere presence on-the-ground can be a disincentive for states or non-state elements to harm refugees (some very publicized cases to the contrary notwithstanding). Other organizations, like Amnesty International or Human Rights Watch, very obviously fall at the *human rights* end of the continuum since they are not operational. As discussed below, the sometimes very real practical distinctions between *humanitarian* and *human rights* or between different types of protection can lead to tensions within an organization like the ICRC or between different organizations.

The ICRC

As Forsythe points out, the ICRC is an organization very few people know much about. This is partly because of the secrecy inherent in the organizational culture and generally low profile it keeps, perhaps partly because, as an independent organization with strong ties to states and with a legal mandate provided by states, it does not fit within the theoretical and conceptual boxes to which we are accustomed. The ICRC has its conceptual and practical roots almost 150 years ago when it was formed by a small group of Swiss notables. It has remained a Swiss organization in both its upper management¹ and temperament. Regarding the latter, by “Swissness” Forsythe means to convey the qualities of “liberalism and democracy, collective policymaking, emphasis on personal integrity/honesty, managerial expertise, attention to detail, careful financial accounting, slowness to regard women as fully equal, unilateralism/alooftness, discretion/secrecy, conservatism and risk aversion, aversion to public moral judgments, and stolid public demeanor” (241). I will not engage here on whether or not this is an accurate description of the Swiss psyche and national character, but to the extent that it is accurate, the ICRC certainly seems to fit the mold. As Forsythe maintains, the ICRC has liberal goals and conservative means. It is fully embedded in Western democratic liberalism (as are pretty much all humanitarian/human rights organizations) but goes about promoting its liberal goals in a slow (sometimes frustratingly slow for many observers), methodical, non-confrontational way. Because most of its upper management and governing body come from the governing/economic elite of Swiss society, the ICRC has, at times, represented Swiss nationalism and reflected the goals of Swiss foreign policy in ways that would appear unseemly for an independent organization (this was particularly the case during World War II). However, Forsythe maintains that, with a few unfortunate examples (in particular while the Swiss government was trying to prevent a Nazi invasion), it has conducted itself with admirable independence.

This reputation for independence is all the more impressive given how closely the ICRC is tied to states. After all, the ICRC is formally given the role of protector of international humanitarian law (IHL) in the Geneva Conventions and given the right (not necessarily always implemented) to conduct rather intrusive visits of prisoners of war. One could argue that because it has a mandate from states—and states provide bulk of its funding—the ICRC would be much more beholden to states. While it has acted agonizingly slow at times, it has not shied away from publicizing abuses by

¹ There are no foreigners on its board and no foreigners have served at the top of the bureaucracy, although the overall staff is now 50 percent non-Swiss.

states—including very powerful ones who provide it with much of its funding. Maintaining the independence is much harder for the other two parts of the Red Cross Movement (the 180+ National Societies and the umbrella International Federation of Red Cross and Red Crescent Societies). The National Societies have ended up being quasi-governmental organizations and thus, when a state is involved in activities that the ICRC might not approve of, the National Society would be hard-pressed to do anything but follow the lead of its patron government. Although there is talk of a “Red Cross Movement,” it is sometimes hard to discern coherence within this movement. One might expect some tension and disagreements among disparate parts of a broader movement, but here we see rather bitter infighting and schisms periodically among the various Red Cross organizations. The ICRC is very protective of its status as the pre-eminent humanitarian organization and at times has tried to keep a significant distance between itself and the National Societies/Federation. For example, apparently the ICRC was not in favor of the Federation gaining permanent observer status at the U.N. (which the ICRC already had). During the run-up to the first Gulf War, the Indian Red Cross delivered assistance into Iraq without telling the ICRC beforehand, even though the ICRC is supposed to be the lead Red Cross actor in conflict situations. A few months later the Federation tried to pull out on an agreement which mandated a coordinated approach and tried to start its own appeal for funds (104). Such rivalry has partially, but perhaps not completely, been tempered by agreements on how to split up responsibilities for conflict and non-conflict situations, as well as cooperation on the Sphere Project, an initiative of the Federation, the ICRC and a number of NGOs which attempts to create standards for humanitarian assistance (Sphere Project).

The ICRC and the Red Cross Movement are defined by the Red Cross Principles which were not officially enshrined as doctrine until 1965. They are the following: humanity, impartiality, neutrality, independence, unity, universalism, and volunteerism. The first one goes with the territory of being a humanitarian organization, but it is the following three which really define ICRC ideology. They are frequently confused and folded into one another. Impartiality means providing protection (or resources) without regard to one’s nationality or other personal characteristics, while neutrality entails not taking sides in a conflict, and independence requires not being at the beck and call of any particular state or other entity. The ICRC clings to these principles fiercely and, with a few notable exceptions, seems to do a good job of upholding them within the context in which it operates. Yet, while this is the public face and ingrained ideology, the ICRC is as pragmatic as it is ideological, frequently trying to determine what will do the most good for victims rather than what is the ideologically pure thing to do (remarkably these seem more often than not to be the same).

A final characteristic of the ICRC, which has already been alluded to, is that it is the official protector of international humanitarian law. What this means in theory is vague, given that a private organization has been given this public international mandate by states. In practice, it means that it tries to get states to abide by IHL, mostly through private communications, but it will publicize a situation when it feels it will help the victims in question, although the time it takes to get to the public phase can seem quite long to many observers. It has also been entrepreneurial but not pushy in developing and furthering core IHL and related international law and norms, functioning as a drafting secretariat in many instances, while leaving the final negotiations up to states, which reflects its paradoxical relationship with states.

The ICRC in Context

From the above we see an organization which is liberal but conservative, entrepreneurial but slow moving, highly principled but also pragmatic, having a coherent philosophy but also part of a sometimes highly fractured movement. It is but one (prominent) organization, however it exists in a broader context of humanitarian actors and issues. The following will place the ICRC within the much broader humanitarian milieu, teasing out issues that the entire humanitarian movement faces. I will begin by looking at the main types of actors in the humanitarian realm through the lens of three main core principles mentioned above—impartiality, neutrality, and independence.

Impartiality

The other main types of humanitarian organizations are those associated with state-based organizations like the U.N., and nongovernmental organizations such as OXFAM and Médecins Sans Frontières (MSF). For the former, I will refer primarily to the UNHCR; for the latter, one must recognize a vast diversity of organizations, although I will, to a large extent, be referring to general issues faced by all NGOs.

The ICRC aims to be impartial. For the most part it will deliver humanitarian assistance to whoever needs it in the midst of conflict. Sometimes it will bend to the will of a state or other combatant, given that for reasons of security it requires consent to gain access to a population, but such bending does not happen often. This impartiality can get it into trouble. In 2001, the ICRC was operating in the Ituri province in northeastern Democratic Republic of Congo, in the midst of a conflict between two groups—the Hema and the Lendu—exacerbated by a Ugandan presence in the area. It pre-positioned humanitarian aid in the dominant Hema region for logistical reasons. After further surveys, it decided that the need was much greater in the Lendu areas and moved much of the resources there. Soon after, six ICRC personnel—two expatriates and four local Congolese—were murdered. As a result, the ICRC left the region. To the ICRC, impartiality meant deploying the resources to where they were most needed. The Hema, however, saw it differently. Moving resources away from them and giving them to their enemies looked like the exact opposite of impartiality (Mills 2006: 266). But what choice did it have? Although this is not an entirely new trend, it is certainly the case that the contemporary conflict environment is marked by the manipulation of resources and security threats that make it extremely difficult to gain access to affected populations, and to do so securely. In Somalia, the ICRC worked with U.S. military forces and hired armed guards to protect their personnel and convoys, new innovations for the organization which were seemingly in contradiction with its propensity to remain above the fray and away from the combatants, but necessary since it was clear that its reputation for impartiality could not protect it from the various armed groups operating in Somalia (118-120).

The UNHCR faces this situation even more acutely. Given that it is part of the U.N., and that the U.N. has intervened in situations clearly on one side or the other, parties to a conflict are quite likely to perceive it as being neither neutral nor impartial, thus raising significant security issues. Further, given its very high-profile status, it gains the attention of many actors who would like access to its resources. It faces the dilemma that some of its aid may be siphoned off by group. Thus, as with its decision to hire people who were also likely combatants to provide security, the ICRC must grapple with whether to essentially make side payments to groups to allow its aid convoys to get

through to affected populations. Although it is a part of the U.N., frequently it cannot rely on U.N. peacekeepers to provide security and ensure that it gets to where it needs to go.

NGOs also frequently find themselves in situations where the impartiality principle can be called into question, leading to difficult choices for the organizations. In eastern Zaire, after the Rwandan genocide, humanitarian organizations provided food aid and other assistance to more than one million Hutu refugees. Among these refugees were tens of thousands of *genocidaires* and other militants who were carrying on raids back into Rwanda. Humanitarian organizations were thus helping to feed some of those who continued to fight and spread instability across the region, and were very conflicted about whether to stay to ensure that those in need were provided for, or to leave so as not to play a role in supporting combatants through the provision of food and medical aid. This debate fractured MSF, as MSF France left the region, feeling that its presence undermined its broader humanitarian and ideological mission. MSF Holland and MSF United Kingdom stayed because they felt their humanitarian ideology demanded this (Mills 2005: 173). This split within the MSF movement would seem to parallel the splits which sometimes occur within the ICRC movement. Both have an ideologically-based humanitarian mission—for the ICRC it is its basic principles, and for MSF it is *témoignage* (bearing witness). Such ideologies, like almost all political ideologies, have a tendency to splinter as different members of a movement interpret the ideology in differing ways. This is particularly the case in situations where those involved see themselves on the side of Good, with a capital “G.” Feelings of inherent morality seem to lend themselves to schism, or at least significant disagreement.

Neutrality

Neutrality and impartiality are inherently linked. If one is viewed as being partisan, one’s actions will inevitably be seen through that filter. Thus, even if one is being scrupulously impartial in the delivery of humanitarian assistance, various combatants will not perceive such actions as being impartial.

This is a major problem for state-based organizations like the UNHCR, which frequently acts in situations where U.N. peacekeepers or other Western militaries are operating. If the U.N. takes a position on a conflict, either through words or actions—as it did in the Former Yugoslavia, or as it has now in Darfur (however weak that position might be)—it is hard for UNHCR to shed the stigma of that decision.

Many NGOs try to be neutral in their approach to a conflict, but with the development of rights-based humanitarianism, this has become less prevalent (Chandler 2001; Slim 1997). In rights-based humanitarianism, international humanitarian organizations (IHOs) look at human rights in the context of conflict, the broader rights of those affected by war, and the human rights situations that lead to conflict in the first place. They thus take a more holistic approach to humanitarianism, and will frequently identify a party (or parties) to a conflict or a political/economic/social situation as being responsible for a humanitarian crisis. They may also lobby for specific actions against such parties, such as military intervention. Governments and other combatant groups obviously do not like being the target of such criticisms, and such outspoken behavior can seriously impede the viability of an organization’s operations on-the-ground.

MSF is one such organization which, as mentioned above, sees its mission as bearing witness in a conflict, which frequently means being outspoken in condemning those it views as responsible. Thus, unlike the ICRC, which maintains a stance of neutrality in order to maintain its presence on the ground, MSF (and many other organizations) are decidedly not neutral. During the genocide in Rwanda, both the ICRC and MSF stayed in the country. However, as Forsythe (122) notes, the ICRC ended up having to protect MSF personnel on the ground, incorporating them into the ICRC mission. They had to wear the ICRC emblem and refrain from denouncing the mass human rights violations going on, certainly a blow to its mission of *témoignage*. The ICRC would see this as a vindication of its policies, since it was able to help around 50,000 Tutsi (122). Would the ICRC have been able to save more of the 800,000 people who were killed in the genocide if it had spoken out and perhaps called for military intervention, thus probably making its position on the ground untenable? Probably not, given that the major players on the U.N. Security Council seemed perfectly willing to allow the genocide to continue. This evaluation, however, can only be made in hindsight. If it had spoken out, this might have affected how it was perceived globally, thus making its job in other countries much more difficult.

This illustrates a major tension between humanitarian and human rights organizations. One of the greatest assets that on-the-ground humanitarian organizations have is information. They sometimes have a better idea of what is actually going on on-the-ground in a conflict than state intelligence agencies. They need this information just to do their jobs. In fact, much of what the ICRC does is gather, develop, and use what the CIA would call intelligence in order to know what the needs are, who the players are they must deal with, and what areas to stay away from. In the course of gathering such intelligence and just by virtue of being on-the-ground in the middle of a conflict, IHOs witness many horrible things. They then face a dilemma in what to do with this information. A first impulse is to tell the world—go straight to the international press in hopes of publicizing an atrocity and pushing the international community to get involved. Doing so could endanger their status in a country—they could be kicked out of a country by a government, or threatened or killed by the offending party. Some organizations, such as MSF, may see losing access to a population as a small price to pay to publicize human rights abuses and uphold an ideology of “witnessing.” Others see the costs as too great. Many may talk in the background to journalists or Western government officials to get important information out. However, this still risks being traced back to them and endangering perceptions of their neutrality, which is sometimes one of the only things an organization can depend on to be a player in a conflict (along, of course, with the resources it might bring to a region). IHOs may also risk being used and manipulated by foreign states who desire the information an organization may have access to. One informant NGO or other IHO perceived as being non-neutral can affect the reputations of all IHOs in a region. As the world moves toward an information economy, and as IHOs become more deeply embedded in local and regional conflicts, information becomes more important to them. How they use this information can affect both their access to affected populations and the course of a conflict itself.

Human rights organizations do not face the same issues. Yes, they may need access to countries to gain information, but they may also have other sources beyond their personnel and they do not need the kind of access IHOs need. Further, it is usually their job to publicly denounce human rights violations, thus hoping to either shame a government into changing its practices or getting other states to put pressure or even intervene to stop the most egregious violations. The ICRC walks a fine line because it acts as both an IHO and a human rights organization. But, it does not act like

most other human rights organizations in that it generally does not resort to public denunciations. There is complementarity between humanitarian and human rights organizations, although this complementarity is being eroded by rights-based humanitarian organizations which sometimes act like human rights organizations. The ICRC also blurs the distinction between the two, although in a different manner. But it seems evident that some distinctions and divisions of labor are necessary and will continue. One needs those organizations willing to go public, but one probably also needs the organizations who keep their own counsel and, as a result, are able to gain access to populations others cannot—but which also, on occasion, see that restraint as counterproductive.

Independence

Reference has already been made to episodes where the ICRC has been beholden to Swiss nationalism and foreign policy. On the whole, however, it has acted in a remarkably independent manner, given that most of its funding comes from states—and in particular a few powerful states. The same cannot always be said for state-based organizations like the UNHCR. It has, at times, acted independently, and has been able to expand its mandate and resources beyond what states initially envisioned, and has been able to influence states through its lobbying for the implementation of state responsibilities under the Refugee Convention. Yet, because it is so successful, it is a ripe target for state manipulation, by those who provide it with almost all of its resources (98 percent of its funding comes directly from states and is thus discretionary, while 2 percent comes from the general U.N. budget). Many NGOs depend upon the major donor states individually, the European Union, and U.N.-based organizations (particularly the UNHCR). States may thus try to use the UNHCR and other IHOs (both state- and non-state-based) for their own ends, and in particular to avoid doing something, like intervening in a conflict.

While the international community failed to do anything to stop the genocide in Rwanda, it did pour a lot of resources into providing humanitarian aid after the conflict. However, as noted above, this humanitarian aid actually contributed to continuing instability because nothing was done to address the presence of the militants in the refugee camps, particularly in eastern Zaire. Thus, states used the UNHCR (and other IHOs) as a façade to divert attention from the fact they did nothing to stop the genocide and were doing nothing to address the post-genocide security situation. At the same time, they criticized the UNHCR for helping foster a dire security situation along the Rwanda/Zaire border. The UNHCR was being blamed for contributing to a situation that was quite threatening to Rwanda—and other states—by setting up refugee camps in eastern Zaire, thus providing a base from which Hutu militants could conduct raids against the new government in Rwanda. The fact that all the states involved left it with no choice does not undermine the fact that the UNHCR, by following its humanitarian mandate—and state directive—helped change the facts on-the-ground. If those camps had not existed, the Hutu rebels would not have been able to hide in the camps and the entire central African region might have experienced its first continental war. And if those camps had not existed, thousands, probably tens of thousands if not hundreds of thousands more people might have died. Humanitarian actors are thus caught in a vicious circle embedded within the logic of modern war and the precepts of humanitarianism. Their humanitarian mandates—and sometimes states—force them to act, but by acting they are caught in the middle of circumstances they cannot control, even as they affect them in sometimes profound ways,

sometimes undermining the very independence for which they strive.

Inter arma enim silent leges?

Is the law indeed silent during war? The actions by many parties to the recent conflict in Lebanon and the rest of the Palestinian territories might indicate that there is little concern with international humanitarian law or, as the U.S. military refers to it, the law of war, by many actors involved in conflict (although Lebanon—and other states—expressed concern for violations on the part of both Israel and Hezbollah). Guantanamo Bay, Abu Ghraib, and other actions taken by the Bush administration during its “war on terror” would seem to lend further credence to this supposition (although one might observe that U.S. actions might have been at least partly different under different leadership). Certainly the refusal to apply the Geneva Conventions and other protections to detainees, and attempts to redefine torture so as to give U.S. interrogators maximum maneuvering room while not opening them up to criminal liability, suggest that whatever the force of these laws in the past (and they certainly have been violated by almost all fighting forces in almost every conflict since first introduced), they are not necessarily perceived as quite as relevant today (at least by certain current civilian leaders). However, the global outcry against U.S. actions should indicate that the laws of war still hold relevance.

The ICRC played a significant role in developing the Geneva Conventions and other legal documents that attempt to constrain states in their conduct of war. They have helped to educate about, and socialize militaries into, international humanitarian law, but must still be quite disappointed by the lack of restraint in armed conflict. However, Forsythe provides a glimmer of hope for the protectors of IHL. He points out that war today is significantly rule-governed (258). Indeed, U.S. military lawyers are quite involved in making many targeting decisions. And military officers will take professional pride in adhering to IHL/law of war. They have no interest in engaging in more violence and killing more people than is necessary, and thus will plan operations accordingly. Military discipline and a focus on the technical aspects of modern warfare mesh well with the rules found in the laws of war (although, as Kennedy [2004: 288-91] points out, frequently elements of the law of war, such as proportionality and necessity, are perceived more as a “zone of discretion rather than limitation”). They also recognize an element of self-interest and reciprocity—if the U.S. does not treat prisoners badly, it is more likely that a U.S. soldier taken by an enemy will also be treated more humanely.

Yet, Forsythe also argues that while the law may not be silent, it may be just a whisper. While a military professional may not want to use more force than is necessary, there are, in fact, no clear guidelines on how one decides where the line is between proportionate and disproportionate force, or between a civilian and military target. There might be an honest difference of opinion among observers about what the law requires (as there might be in other legal settings). The heat of combat may also override such rational calculations. And while military professionals may be indoctrinated with IHL, their civilian masters frequently are not (Condoleezza Rice’s dismissal of “illusory ‘norms’” is certainly instructive here [Rice 2000: 48], as is Alberto Gonzales’ [2002] description of certain provisions of the Geneva Conventions as “quaint”), and may have significantly different agendas. Further, with the nature of modern weaponry today—the claims about “smart” weapons notwithstanding—the destructive power available to a soldier at the touch of a button certainly

problematizes the concept of humane war. The imperatives to minimize one's own casualties may also override one's obligations to minimize civilian casualties, as witnessed in the high-level bombing campaign during the conflict in Kosovo. Finally, IHL may not even whisper to some combatants in today's asymmetrical wars who see the infliction of civilian casualties as their best, and possibly only, weapon.

Law by itself is certainly not enough to constrain states' behavior during war and war-like situations. If the underlying ethos of the law is not ingrained in the minds of policymakers and those who the policymakers send out to fight, then there is little prospect of significant changes in the way war is fought. The nature of war itself may doom grand schemes to transform war. Yet, the ICRC's goals are much more modest, and its relationship to IHL more complex than one might imagine. Although the public face of the ICRC is all about developing, spreading, and implementing IHL, and IHL provides a legal basis for its work—many of its activities are more diplomatic than legal. It can be quite pragmatic when attempting to ensure that civilians and those *hors de combat* are treated humanely. Diplomacy, rather than the issuance of legalistic statements, may be more useful in gaining access to affected populations to provide food and medical assistance. Behind the scenes negotiations may, at times, gain the ICRC access to prisoners of war. Its modest goals mean that it can be creative and entrepreneurial in implementing its core mandate to relieve suffering. The law is obviously very important, but it does not completely define the ICRC or how it operates.

The Humanitarian Paradox

These modest goals make the ICRC such an enigma. It is concerned about what goes on during war, but does not make pronouncements on the institution of war itself as a tool of states. The extensive legal framework of which it is the formal protector tries to soften the edge of war, but the official ICRC ideology does not attempt to legislate war out of existence (although Berry [1997] claims differently). It, like other humanitarian organizations, is a band-aid. It tries to cure wounds but does not try to stop the wounding (although its work on the landmine treaty was an attempt to outlaw a class of weapons that wound and kill many of those who are supposed to be exempted from attack). Other organizations, however, attempt to not only dress the wounds but also prevent wounds in the first place by speaking out about war and human rights abuses. This latter activity frequently gets in the way of their ability to aid the wounded. Are these loud and brash players more heroic than the discrete, conservative ICRC? How much suffering has been averted by the use of public pressure to stop a government from committing heinous acts or to get the international community to intervene to stop such acts? It is impossible to calculate, but given the Rwandas and Bosnias and Darfurs of the world, one must be conservative in estimation. The ICRC has obviously alleviated a lot of suffering, and its delegates have engaged in heroic acts in the face of violence and human devastation, but do its low profile activities allow conflicts to continue, thus leading to more suffering? Again, it is very difficult to come to any definitive conclusions. The world probably needs both the conservative ICRC and the aggressive MSF. Both can help to alleviate suffering in the world, sometimes in complementary ways and sometimes conflictually. Certainly the 50,000 Tutsis protected by the ICRC in Rwanda would cast a vote for the ICRC. Would the 800,000 who died do the same? Does it matter? The ICRC would say no.

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