Humanitarian Policy Group

Human Rights and Humanitarian Action:
A review of the issues

A background paper prepared for the workshop on Human Rights and Humanitarian Action convened by the IASC Sub-Working Group and co-hosted by UNICEF, the UN High Commission for Human Rights and ICVA

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Comments on this paper would be welcome, and will help inform the writing of a fuller HPG report on the same subject. Please contact j.darcy@odi.org.uk

Contents

1. General and Conceptual Issues

1.1 Approaches to the subject

There are broadly speaking two ways of approaching the subject of human rights and humanitarianism. The first is *analytical*. It involves exploring the 'fit' between humanitarian and human rights agendas, and asking whether the demands of human rights doctrine are consistent with the demands of humanitarian principles. This approach considers questions of competing priorities and 'structural' tensions between these agendas. The other approach could be described as *operational*. This takes as a given the fit between these agendas, and focuses on 'what works' for the protection of rights in political-humanitarian crises. Human rights and humanitarian actors are taken to be working to substantially the same ends in situations like that currently in Darfur in west Sudan. The humanitarian *protection* agenda, in particular, is understood to overlap with (perhaps even to be equivalent to) the human rights protection agenda in such situations.[1] The important questions, on this view, are about means rather than ends, about strategy and complementarity of action. How can a diverse range of actors and mechanisms work best for the protection of individuals who face severe threats to their fundamental well-being?

The Geneva Workshop on the Development of Human Rights Training for Humanitarian Workers, co-hosted by ICVA and OHCHR in November 2001, adopted the second approach while perhaps under-emphasising the first.[2] The two approaches are linked, of course, and both are essential. Without the analytical approach, the operational approach is likely to produce results that are at best unrealistic, at worst potentially damaging. Unless the ground is cleared around such issues as definitions and organisational goals, then progress towards more complementary programming is likely to be continually hampered. On a more practical level, there is a range of questions about whether the strategies adopted by different actors are complementary or in tension.[3] To be confident of the answers, we need to ask these questions not just in the abstract, but in relation to real cases – and especially to tough cases. We need to look at the evidence. And we need to be aware of the organisational 'givens', the management and policy parameters within which decisions are actually taken, including those concerning the security of staff and interlocutors in the field.

This paper attempts to bridge the analytical and operational approaches. It considers the questions that demand resolution if the second approach is to make real progress. For the purposes of analysis, it takes the humanitarian agenda as its starting point, and considers how the rights agenda relates to it.[4] The paper does not attempt to cover the

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[1] See for example the consensus definition of protection from the ICRC-sponsored workshops between humanitarian and human rights actors (below). This takes *protection* to encompass 'all activities aimed at ensuring full respect for the rights of the individual...' Others see it as a narrower agenda.

[2] For proceeding and background papers, see the ICVA website: www.icva.ch

[3] A number of previous and current initiatives have involved discussion of these questions. These include the ICRC-sponsored series of workshops from 1996 to 2000, which brought together humanitarian and human rights actors to discuss their common concern with protecting civilians in war. Central to these discussions was a concern with complementarity of action. For a synthesis report of this process, see Giossi Caverzasio, S. (2001).

[4] The starting assumption here is that the coexistence and interaction between these agendas may have either positive or negative implications for the pursuit of each.

operational ground, which has received growing attention in recent years.[5] Nor does it aim to defend a particular position, but rather to identify the questions that humanitarians, human rights actors and those concerned with related areas of international policy need to answer when formulating protection-related strategies.

1.2   A convergence of agendas?

The past few years have seen the concept of rights – and specifically *human* rights – increasingly invoked by humanitarian actors. The apparent shift from a focus on the meeting of *needs* to the defence and fulfilment of *rights* is taken to be a defining feature of what has been called the 'new humanitarianism'.[6] This involves an apparent conceptual and perceptual shift under which 'victims' or 'beneficiaries' become rights-holders, and humanitarian agencies become their advocates.[7] This shift, while not universal in the humanitarian sector, is widely observable in organisational policy formulations. It has occurred in parallel with (and influenced by) evolving development theory in the 1980s and 1990s, and it shares many of the characteristics of its developmental equivalent: it is said to be people-centred, empowering, universal, dignified, anti-charity, and (on one view) anti-state – in the sense both of being concerned with protecting people against the state, and of challenging the state-centric view of the world.[8] The idea of human rights, in its origins a revolutionary philosophy, was given new life when the deeply polarised world of the Cold War gave way to the broad consensus on human rights reached at the Vienna Human Rights Conference of 1993.[9]

In parallel with these developments, and reflecting their increasingly direct engagement in conflict zones, humanitarian agencies and donors have placed new emphasis on the concept of *protection* alongside relief assistance, though with varying interpretations of what this entails. At a minimum, a concern with the safety of civilians from attack is recognised as central to the humanitarian agenda; though in contrast to the relief assistance agenda, it is often far from clear what 'protective' role is envisaged for agencies. In general terms, there is a shared perception post-Bosnia and post-Rwanda that relief can create a 'smokescreen for political inaction'[10]; and that the protection of civilians is necessarily a function of political action.[11]

The increasing use of rights as a frame of reference is not restricted to agencies, but has been a feature of institutional change and policy re-definition across a wide range of governmental and multilateral bodies. In the UN, mainstreaming human rights throughout the organisation has been a core part of the Secretary General's reform

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[5] For examples of the operational approach, see *Growing the Sheltering Tree: Protecting Human Rights Through Humanitarian Action*, IASC 2002; Frohart, Paul, & Minear (1999); Slim & Eguren (2003)

[6] For a discussion of 'new humanitarianism', see Duffield, M. (2001: Ch. 4); Macrae, J. (2002).

[7] An alternative formulation sees beneficiaries as 'clients' and agencies as (more or less accountable) service providers. This view involves a concept of rights that are quasi-contractual.

[8] Chandler, D. (2002). See Chapter 2 on *Human Rights-Based 'Humanitarianism'*.

[9] This consensus brought back together the civil/political and economic/social rights, and declared them indivisible and interdependent. Arguably, the new consensus made this a safer, less obviously 'political' territory for agencies to venture into. Rights were no longer revolutionary. Some argue that the rights (and humanitarian) agendas need re-radicalising.

[10] Urs Boegli, ICRC – quoted in *Growing the Sheltering Tree op .cit*

[11] The central message from the Joint Rwanda Evaluation was that humanitarian action cannot substitute for political action.

programme. In governmental foreign and aid policy formulations, the concept of rights has increasingly featured as a guiding and often a central principle, providing for some an ethical core to foreign policy, for others an organising principle for their aid programmes.[12]

Exploring the reasons for these shifts is beyond the scope of the current paper, but various aspects of the rights concept helps explain its appeal. A rights approach appears to serve the purpose of providing a conceptual link and a sense of coherence between relief and development agendas – an important point, given that most organisations forming part of the international humanitarian 'system' are also development actors. For some, the appeal to rights puts the humanitarian enterprise on a firmer ethical and legal footing, and provides a legitimate basis for political engagement.[13] Certainly it appears to provide a basis for identifying legal and political responsibilities for human welfare, though leaving open questions about the capacity and will of the state and government in question. Some see the rights framework as providing a basis for defining international responsibilities, and here the current debate is dominated by disputes over the use of rights arguments to justify the use of armed force or other forms of coercive intervention.[14] Critics fear that, apart from being used as a basis for justifying 'armed humanitarianism' (a contradiction in terms for traditional humanitarians), a rights approach opens the door to forms of conditionality and subordination to wider agendas that are at odds with the humanitarian ethic. This and other lines of criticism are considered below.

While the rights concept has gained currency in humanitarian and other areas of international policy, international human rights agencies for their part have made deliberate efforts to broaden their agendas to encompass areas of concern that have traditionally been the preserve of humanitarian agencies. These include issues of forced displacement, the protection of civilians, and a concern with the application of international humanitarian law.[15] A look at the pages of ReliefWeb, the virtual home of humanitarians, shows the extent to which the human rights and humanitarian discourses now coexist. Pages relating to Afghanistan, Iraq, Sudan and a host of other contexts, contain human rights reports which cite the Geneva Conventions and which (*inter alia*) describe the relief assistance needs that result from rights abuses.[16]

The mission statements of humanitarian organisations show some common threads. MSF '*sets out to alleviate human suffering, to protect life and health and to restore and ensure respect for human beings and their fundamental human rights*'.[17] Those organisations (the majority) that combine humanitarian with other – usually developmental – objectives vary in the extent to which they invoke the concepts of rights and justice. Some are unequivocal. UNICEF does what it does '*because children have rights*'; Save the Children, similarly, '*fights for children's rights*'. Both

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[12] See for example the Swedish Government's formulation: '*A concern for human rights and the defence of human rights principles is an integrated and central element of Swedish foreign policy.*'

[13] For an articulation of the case for a rights approach to humanitarianism, see Slim, H. (2001)

[14] See Chandler, op.cit.

[15] See 1.3 below

[16] See, for example, the reports of Human Rights Watch and Amnesty International on the current situation in Darfur.

[17] The difference, of course, is significant in this case. MSF was founded in reaction to the perceived failure of the ICRC to speak out in condemnation of what some construed as genocide in Biafra.

are able to appeal to the almost universally ratified Convention on the Rights of the Child of 1989. UNHCR states its primary purpose as being '*to safeguard the rights and well-being of refugees* – including but going beyond the right to seek asylum. Others have a broader agenda. Oxfam's goal, for example, is '*a just and safer world, in which people take control over their own lives and enjoy their basic rights'*. CARE has developed a rights-based conceptual framework for programming.

Not all use the language of rights. The ICRC tends not to, but refers to international humanitarian law. Some of the faith-based organisations, like World Vision, appeal rather to the tenets of their faith and the texts of their holy books. The UK-Based charity Islamic Relief cites the Qur'an (5:32) *"Whoever saved a life, it would be as if he saved the life of all mankind"*.

2. Conceptual and Strategic Issues

2.1 Comparing goals, principles and modes of operation
There is evidently a significant overlap of the two agendas here, a shared concern with many of the same contexts, the same people, and the same threats to their well-being. To establish the extent of this overlap, and to consider questions of compatibility and complementarity in the way each agenda is pursued, requires some consideration of respective ends, means and principles. [18]

Comparing goals
For those humanitarian agencies that espouse a rights-based approach, it is not always clear whether this represents a change in the goals pursued, or in the means adopted to achieve existing humanitarian goals. If it implies an expansion of the humanitarian agenda to include (for example) issues of social justice, this clearly marks a significant expansion beyond traditional humanitarian goals. But if it is interpreted as using rights as a basis for achieving *existing* humanitarian goals, this raises different questions – about, for example, effectiveness and compatibility of strategies. To what extent can the humanitarian agenda can be (re-)defined in rights terms, and advanced using rights instruments and arguments?[19]

Central to humanitarian action is the attempt to avert certain outcomes, and to promote others, with a view to reducing human suffering. This agenda is *palliative* (relieving immediate suffering), *remedial* (restoring health, dignity, the ability to cope) and *preventive* (of exposure to certain threats, usually within short timeframes). It is essentially forward-looking, although the outcomes it tends to prioritise are those likely to occur within days and weeks rather than months or years. It is concerned with alleviating the symptoms of suffering and tackling their proximate causes. While different actors would see the humanitarian role as extending more or less far up that chain, a concern with root causes (say, of a given conflict) is generally taken to be beyond the scope of humanitarian action *per se*. Perhaps for that reason, a concern with *justice* (or injustice) is not generally taken to be a defining characteristic of the

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[18] Clearly, some of the questions around human rights and humanitarianism depend on what is understood to constitute the proper business of humanitarian action. This is a matter of live debate.
[19] On one view, the humanitarian agenda is properly seen as a sub-set of the human rights agenda; but many would resist this interpretation, in part because it fails to capture the concern with direct response to the suffering of fellow human beings, regardless of formal considerations of rights and duties.

humanitarian agenda – although it features in some formulations of 'new' humanitarianism.

The human rights agenda, by contrast, is centrally concerned with root causes and with justice. It too is concerned with outcomes, though these may be of a different kind to those described above including, for example, the bringing to justice of perpetrators of abuse. A formal concern with respect for law, due process and the dictates of justice – including a determination both to prevent abuse and punish abusers – sits alongside less abstract formulations.[20] A broad distinction can be made between human rights approaches that stress issues of social justice and the fair distribution of goods (roughly, the economic and social rights agenda); and approaches concerned with protection from abuse and with corrective justice (part of the civil and political rights agenda). The latter agenda dominates in the situations of political crisis, and has been the traditional focus of the international human rights campaigning organisations.

The human rights agenda is both forward and backward looking. Human rights doctrine stresses the importance of putting on public record evidence of abuse, almost regardless of further outcome. The exposure of abuse is both a requirement in itself and a means to an end. A forensic concern with collecting and documenting evidence of abuses is characteristic of one kind of human rights approach, the logical conclusion of which may be a process of corrective justice.

Humanitarian organisations have an ambivalent attitude to the justice agenda. Some would argue that an increasing concern with protection (including deterrence) demands that humanitarian agencies re-evaluate this position. It is an open question as to whether the protection agenda (as construed by humanitarians) demands greater engagement with the processes of justice – and what the nature of that engagement should be. Whether to systematically gather evidence of abuse, play an active witness role, and provide testimony in whatever form, are all part of the necessary considerations for humanitarian agencies. At the very least, this constitutes a key element of the necessary dialogue between humanitarian and human rights actors.

These actors may sometimes disagree over priorities, but it is not hard to construct a common core agenda around (for example) the non-derogable civil and political rights on the one hand, and the provisions of Common Article 3 of the 1949 Geneva Conventions on the other. We can all agree that murder, rape, torture and deliberate degradation form an agenda of common concern.

Comparing principles
To what extent are the principles which govern human rights and humanitarian action mutually consistent? The core principles are contained in the bodies of international law that serve as the main point of reference for each: human rights law, on the one hand, and humanitarian law (with refugee law) on the other.[21] A distinction can be made between those principles that have universal application (such as the principle of non-discrimination, or of non-combatant immunity), and those that relate

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[20] The language of 'protecting rights' (rather than, say, 'protecting civilians') reflects this more formal, abstract cast of thought.

[21] The question of convergence between these bodies of law, and their interpretation, is beyond the scope of this paper. For a discussion of this topic, see Warner (1997)

specifically to human rights or humanitarian *action*. Related to the latter are evolving codes of professional ethics concerning standards of 'good behaviour' and performance. The humanitarian sector in particular has been active in developing such codes in recent years.[22]

The principles that relate to humanitarian action are normally taken to be a sub-set of the principles of the Red Cross Movement: humanity, impartiality, neutrality, and independence.[23] The principle of *humanity* might be said to represent the clearest point of convergence between the humanitarian and human rights doctrines. From our common humanity derives the shared ethics of universality and equality. The principle of *impartiality* has a direct counterpart in human rights doctrine, the principle of non-discrimination. But it requires relevant differences to be taken account, stipulating that assistance be given on the basis of and in proportion to need, and need alone.

Perhaps more than any other part of humanitarian doctrine, it is the principle of *neutrality* that lies at the heart of debates about rights-based approaches to humanitarianism. It is a principle that not all humanitarian agencies espouse or adhere to, and it is variously interpreted: as not engaging in matters of political controversy, or taking sides in a given conflict. Neutrality of *effect* requires that humanitarian actors should not assist the war aims of one or other party by their intervention. In practice, the *perception* of neutrality may be the determining factor in whether an agency is granted access by the warring parties. The principle of *independence* is related to this: a humanitarian agency whose agenda is perceived to be linked to (and perhaps funded by) foreign governments who are conducting an armed campaign or other coercive strategies, is unlikely to be seen as either independent or neutral.

Human rights agencies, too, stress their independence and impartiality (or non-discrimination). In many cases, they will not accept funds from governmental sources. They may also, as the formulation used by Amnesty International would suggest, espouse a version of neutrality:

[Amnesty International] is independent of any government, political ideology, economic interest or religion. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights....[24]

While this seems close to the concept of humanitarian neutrality (not supporting or opposing 'any government or political system ... or the views of victims') in practice public human rights advocacy is rarely *perceived* as neutrality. Some human rights actors focus their scrutiny almost exclusively on the actions of one (usually governmental) party, thereby undermining claims to impartiality or neutrality. Yet, as suggested above, the tensions that may arise between the rights and humanitarian

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[22] Among the more significant are the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief; the Sphere Humanitarian Charter and Minimum Standards in Disaster Response; and People in Aid.

[23] For a full discussion on humanitarian principles and their application in practice, see Leader (2000)

[24] Source: Amnesty International website

agendas are less to do with a clash of principles, or even competing priorities, than with associated doctrine and its application in practice.

One potential clashes of doctrine should be mentioned here. This concerns the concept of *prioritising* and constructing a hierarchy of concerns. Humanitarianism in effect says: some needs take priority over others. In triaging our responses, we will prioritise life-saving over other interventions. Beyond that, there are further priorities. Human rights doctrine, on the other hand, provides no obvious basis for priority setting. Indeed, rights are said to be 'indivisible and interdependent' and must be considered as a package. In practice, of course, situations are accorded different degrees of priority according to severity of abuse and its implications for people's well-being. But the potential exists for divergence over the question of priority concerns, and whether one agenda takes natural priority over another.[25]

Comparing modes of operating

Allowing that for most there is at least a significant overlap of goals and principles, a further set of questions surrounds the compatibility of means adopted and strategies pursued to achieve those goals. These questions, which will form part of the discussion in Geneva, have been explored elsewhere.[26] Many concern the compatibility of public and adversarial forms of advocacy – 'shaming' through the exposure of abuse – with more private and diplomatic negotiation over access and secure humanitarian space. These are questions that the humanitarian organisations themselves have debated internally. How does the business of influence relate to the business of relief delivery – and does their ability to influence at various levels depend on their field presence?

The influence that humanitarian actors seek to exert may be on other humanitarian actors, local groups, government, or other actors. The need to maintain presence may dictate their chosen mode of influence. Depending on the context, this may rule out public advocacy or open association with those who pursue it. The language used by different actors is relevant here. Human Rights Watch use the language of solidarity and opposition: they 'stand with', 'investigate and expose', 'challenge', 'bring to justice', 'enlist support'.[27] This is not language that most humanitarian organisations (except perhaps MSF) would feel comfortable with.

2.2   *Traditional and rights-based humanitarianism compared*

Traditional humanitarianism is based on a belief in a universal duty to act in the face of human suffering. Deriving from a sense of compassion and common humanity, it is governed by an ethical principle sometimes articulated as the 'humanitarian imperative'. It is governed by other rules too, most obviously by the provisions of international humanitarian law (IHL) which extend the humanitarian concern to the political arena, by setting humanitarian limits on what is permissible in the conduct in

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[25] The much debated question as to whether and how rights claims themselves conflict is beyond the scope of this paper.

[26] See for example *The Challenges of Complementarity: Report of the fourth workshop on protection for human rights and humanitarian organisations*, ICRC (2000)

[27] See the Human Rights Watch website.

war. Traditional approaches to humanitarian action are needs based.[28] The principle of impartiality is central, but stress is also put on neutrality and independence. Traditional humanitarianism is apolitical and wary of co-option. It sees 'humanitarian war' as a contradiction in terms, and takes no view on (say) the legitimacy of war on Iraq, only on the way it is conducted. The traditional humanitarian agenda is a strictly *limited* agenda with relatively modest goals.

Rights-based humanitarianism is more ambitious. It looks to human rights to provide its universal ethic, enshrined in legal terms that go beyond the narrower confines of IHL. Arising in the post-Cold War era, some interpretations of it are pro-interventionist, accepting that armed force may be necessary to achieve humanitarian ends. More generally, this approach accepts that political engagement is both a proper and necessary part of humanitarian action. It tends to see coherence between humanitarianism and a range of other agendas including development and conflict reduction. It construes the humanitarian problem in a different way: 'somebody is responsible for this suffering'. It concerns itself with tackling root causes as well as symptoms, with structural injustices, even power imbalances. Emergency and development work can and should be reinforcing, on this view, and rights provides the analytical framework that unites them.

In practice, of course, humanitarian actors do not divide neatly into camps, and many would endorse aspects of both of the above descriptions. Moreover, a distinction should be made between the general use of the rights concept to underpin the humanitarian agenda, and the adoption of specific rights-based approaches to humanitarian programming.

Deep differences of view exist as to what degree (if any) of political engagement is appropriate for humanitarians. Jean Pictet of the ICRC cautioned the Red Cross to 'beware of politics as they would of poison, for it threatens their very lives.'[29] By contrast, a rights approach seems to imply a willingness to engage in the political arena. In the view of Michael Ignatieff, 'Human rights activism means taking sides, mobilizing constituencies powerful enough to force abusers to stop. As a consequence, effective human rights activism is bound to be partial and political.'[30]

These views are hard to reconcile. It is however possible to agree that humanitarianism depends on certain forms of political engagement without agreeing that this should be on the basis of a rights agenda.

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[28] While a distinction is sometimes drawn between needs and rights approaches, this seems a false dichotomy. See Darcy & Hofmann (2003), Chapter 2
[29] Cited in Chandler, op.cit., p.24
[30] Ignatieff (2001), p.9. He qualifies this view by adding that human rights activists must 'discipline their partiality...with an equal commitment to the rights of the other side.'

2.3   *Critiques of rights-based approaches to humanitarianism*

Not everyone is happy with the apparent convergence of agendas, with the conflation of humanitarian and human rights language, or with the use made by humanitarians of the rights concept.[31] The main lines of argument might be roughly grouped as follows:

Politicisation of humanitarian space. This argument says that, whatever its apparent attractions, a rights-based approach to humanitarianism inevitably introduces a political Trojan Horse into the neutral and apolitical humanitarian arena, and for that reason is to be viewed with suspicion, or rejected altogether. This is a pragmatic argument as much as a principled one An alliance with human rights activism, it is said, threatens the very space within which humanitarian action can take place, since such activism is inevitably perceived to be partisan, and depends on a *modus operandi* of denunciation and shaming that is incompatible with the careful negotiation, constructive engagement and relative discretion required by humanitarian action. Human rights organisations, it is noted, do not work on the ground, and are not threatened by the consequences of speaking out.

Mutual incompatibility. This extends the argument above to one about the *mutual* compatibility of the two agendas. On this view, just as a human rights approach may sit uneasily with a humanitarian approach, so too the human rights agenda may be hindered by the demands of operational humanitarianism. As Rieff argues: *'In practice...what Afghanistan under Taliban rule seemed to demonstrate was the degree to which upholding human rights norms got in the way of humanitarian work, and vice versa.'* [32] For some this is a matter of conflicting priorities rather than simply a conflict of means.

Co-option by political actors. Related to the above but broader, this argument concerns both the possibility of independent humanitarian action, and the dangers of political 'hijacking' of the humanitarian agenda. Critics point in particular to the use made of rights rhetoric, combined with the language of humanitarianism, to produce a hybrid justification for actions such as the bombing of Kosovo or the invasion of Iraq. They see the association of humanitarian agencies with such actions and their rationale as excluding the possibility of independent action, undermining the basis of humanitarian action, and simultaneously corrupting the concept of rights. While this argument is not only about the use of rights, the apparent inconsistency with which rights are invoked leads (on this view) to selective patterns of engagement based on political rather than humanitarian priorities.

'Technicalisation' of rights. This argument is the mirror image of the previous ones. It says that, while humanitarians should indeed concern themselves with human rights, the problem lies rather in the tendency to *de*-politicize rights issues, to 'technicalize' them, and to treat them as susceptible to technical fixes by agencies through relief and

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[31] Among the more prominent critics are Rieff (2002) and Chandler (2001).There may be similar critiques of the 'humanitarianising' of the rights agenda, but if so, these are less prominent.

[32] Rieff, D. (2002) p.246. He counsels humanitarians against the seductive 'utopianism' of human rights, and urges a re-grouping around the relatively modest and 'anti-utopian' standard of international humanitarian law.

development programmes.[33] This can lead to strange distortions, a view of the world in which agencies themselves purport to be able to protect people – a dangerous and misleading claim.

'Instrumentalisation' of rights Related to the above is a concern that 'dabbling' in rights, or using the language to bolster a humanitarian case without the commitment to justice that rights demands, undermines the rights agenda. (Some argue that precisely *because* of the nature of engagement that a rights approach implies – including, for example, a willingness to testify at tribunals – humanitarians should think twice before they adopt such an approach.) The broader argument here is that rights are in danger of being instrumentalised in political agendas, and that humanitarians may be complicit in this. Related to this is the *selectivity* of engagement noted above: rights are invoked when it suits the political case to do so, but are otherwise seen as a nuisance.

Irrelevance. This line of criticism concerns the nature of the situations within which humanitarian action is undertaken. These, it is argued, are typically situations in which the political contract between people and government has broken down. The invoking of rights in such contexts is a largely rhetorical exercise, since the primary duty-bearer (the state) has proven itself unwilling or unable to fulfil its obligations, and may indeed be the chief threat to people's welfare. Even allowing that individuals may have a right to humanitarian assistance, and may have claims on the wider international community, the language of rights in such situations tends to obscure rather than expose the (often anarchic) reality. In such circumstances, humanitarian action fills the gap between rights and reality.[34] The real concern is anyway not with rights *per se*, but with human suffering.

Inflated and unrealistic aims This critique is based on the assumption that a rights-based approach to humanitarianism entails taking the whole spectrum of rights as its proper agenda. The charge here is one of inflation of aims, and of setting unachievable objectives. What it takes to establish and defend rights – say, of women in Afghanistan – may involve processes of social and political change that can only be envisaged over the course of many years. That is not to say that humanitarians should simply accept obviously abusive policies or practices; but rather that, with the instruments available to them and in the timeframes with which they are primarily concerned, they cannot hope to correct fundamental (structural) injustices and should not attempt to do so. They must work in situations as they find them to achieve humanitarian ends.

The fact that inequities may themselves lie at the root of the crisis in question, and may be a crucial determinant of vulnerability, does not (on this view) change the argument. Humanitarian action is properly concerned with the symptoms of suffering and their proximate causes; it overreaches itself when it attempts to tackle root causes, and risks losing its identity. Worse than this, since tackling root causes inevitably involves entering arenas of political controversy, humanitarians risk losing their

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[33] See Duffield, M. op. cit. The Sphere Project is criticised by some on these grounds. See forthcoming article in the journal *Disasters*, *Locating Responsibility: The Sphere Humanitarian Charter and its Rationale,* by the author of the current paper.

[34] Francoise Boucher-Saulnier of MSF made this point in a talk given in London in February 2004 titled 'Beyond the Limits of Human Rights'.

perceived neutrality. This is the stuff of human rights campaigning, education, and forms of sustained pressure and engagement over many years. Humanitarians are not social engineers, nor are they political campaigners. They have a strictly limited agenda and should stick to it.

3.   Rights and Humanitarian Approaches in Practice

3.1   *The political context for rights claims*
The significance of the use of rights concept depends in part on the context in which it is invoked, the nature of the rights and responsibilities involved, the party advocating and the party being lobbied. So, for example, formulating a rights-based argument for adequate governmental relief assistance to earthquake victims in India– invoking existing civil codes, i.e. statutory rights – is quite different to invoking human rights in support an international protective intervention. Some of the relevant differences relate to the nature of the governing authority, its capacity, and the nature and strength of the political 'contract' it has with its own people. Making a rights case in a democratically responsive country, with a politically aware electorate, is different from making it in non-democratic country or one governed by a totalitarian regime. Rights arguments, while they share the same basis, may have a different purpose in Ghana or Zimbabwe, India or North Korea.

Typically, in the contexts we are most concerned with in this workshop, the purpose of formulating rights arguments is to bring an end to abusive practice by securing a change of behaviour or policy. The practical application of rights theory depends on identifying and holding responsible those who hold the corresponding duties; yet in many of the contexts of greatest humanitarian concern, the primary duty bearer – the state and its government – is either impotent or is itself the cause of the threat to people's welfare. While the responsibility to protect is central to the notion of state sovereignty, the last century saw a recognition that this left people vulnerable to events potentially as extreme as the Holocaust and the Rwandan genocide.[35] Recent years have seen the emergence of various interpretations of an *international* responsibility to protect, but this remains hotly contested in theory and highly inconsistent in practice. In any event, for most of those that need it, the effective locus of protection is likely to remain the local and national level; and for refugees, at the level of the host state. Here, the changing climate of opinion has seen policies on asylum become more restrictive, setting an agenda of common concern for rights and humanitarian actors.

Recent global changes, including the global 'war on terror' and related changes in national security agendas, have a bearing on the climate within which rights claims are made. So too does the increasing engagement of global institutions like the World Bank in situations of protracted crisis and post-conflict reconstruction. Here, humanitarian and rights actors may have common cause, but may also diverge in their priorities.

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[35] For an articulation of this, see the report of International Commission on Intervention and States Sovereignty (*The Responsibility to Protect*).

3.2   *Approaches to protection in different contexts*
It is worth considering in brief some of the ways in which the humanitarian and rights agendas are interpreted in different kinds of situation. The following are examples only, and open to alternative interpretations. They are intended to highlight some of the situations in which strategic dilemmas arise for those concerned with protection.

Situations of live conflict / ceasefire/ peace process
Examples: Democratic Republic of Congo, Sudan, Sri Lanka
These are all situations in which a concern with the protection of civilians coexists with a political process (peace talks) designed to bring an end to the conflict. Various tensions can exist within and between these agendas. These include a tension between the protection agenda – the need for pressure to be brought to bear on parties to the peace talks to stop abusive practice – and a concern not to jeopardise the peace process and any related ceasefire.[36]

In any situation where the civilian population is in danger, the humanitarian and human rights actors may share common cause, but their *priorities* may be different and the strategies they adopt may conflict. The humanitarians are likely to wish to maintain access, and may 'hide' behind the human rights agencies pursuing more high profile and condemnatory approaches. They may also choose to pass them information. The question is whether these approaches are mutually reinforcing or undermining. It is perhaps unwise or impossible to generalise, as this may depend on context and local perceptions, but the question needs to be asked in each case – and strategies reviewed accordingly.

Transition and insecurity
Examples: Afghanistan, Iraq, Somalia
These are among a number of 'transitional' situations which are sometimes misleadingly described as 'post-conflict'. This is a class of situations in which national governmental authority and capacity to protect is weak or non-existent; where international actors may fulfil some of the functions of the state and provide a degree of protective presence, but may also be waging war against political opponents. What constitutes an effective protective regime in such circumstances? Are the means adopted to enforce law and order 'protective' or 'abusive'? It is not clear that humanitarian and human rights perspectives tend to the same conclusions on these issues, or that they point to the same priority concerns. Restrictions on freedoms, in particular, are more central to human rights than humanitarian concerns. What is the shared protection agenda here?

Counter-insurgency/terrorism
Examples: Indonesia (Aceh/Papua), Russia (Chechnya), Colombia, Israel/Palestine (Occupied Territories)
These are situations where the global security agenda has arguably changed the international climate of opinion. Counter-insurgency programmes – increasingly re-

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[36] See for example the ICG report on Darfur 'The international reaction to the crisis has been woefully inadequate. The IGAD peace talks have been prioritised at the cost of holding the government accountable for its actions in Darfur.' (*Darfur Rising: Sudan's New Crisis,* International Crisis Group, 2004: 24).

defined as counter-terrorism programmes – involve strategies that directly threaten the security of the civilian population. The tactics of the insurgents themselves may be equally (or more) destructive, raising the question of how the rights agenda relates to non-state actors. The tension between national security and human security agendas has humanitarian and rights dimensions. Here the need to maintain or secure access may be a central motivation for humanitarian actors. Do they depend on the perception of neutrality to do so, and what does this mean for their association with human rights actors? How do they pursue a protection agenda in such circumstances?

Repression, discrimination, food crisis
Examples: Zimbabwe, North Korea
These are situations in which there is no open conflict but high levels of state-sponsored violence, repression and discrimination. Here, discrimination and fear of violence has direct humanitarian consequences, including famine. Again, the priority for humanitarians may be to maintain access. But in doing so, are they complicit in the abusive policies of the governments in question? Similarly, in situations involving forcible displacement or other forms of mass coercion, agencies face dilemmas in deciding whether and how to provide assistance. Some would argue that the humanitarian and human rights perspectives conflict here; others, that they point in the same direction.

4.   Conclusions

It is apparent from this discussion that the humanitarian and human rights agendas overlap to a substantial degree in situations involving severe and widespread threats to people's welfare. The humanitarian approach emphasises the duty to act in the face of the actual and potential human suffering in crisis situations, and is constructed around an agenda that is palliative, remedial and preventive. It is essentially concerned with present and future outcomes, normally in the relatively short-term. The human rights approach, on the other hand, tends to highlight the aspects of such situations that relate to current or past breaches of relevant legal obligations, such as to constitute abuse or denial of rights. This approach focuses on the question of political responsibility, and gives rise to a justice-oriented agenda that is both corrective and preventive, concerned both with exposing past abuse and preventing future abuse.

Although traditional humanitarianism is more obviously duty-based than rights-based, there is no inconsistency in principle between human rights and humanitarian goals. Both are concerned with protecting people from the threat of violence, coercion or deliberate deprivation, though the humanitarian agenda is perhaps based on a higher threshold of severity. Both invoke the law designed to protect people against such threats, and to hold the parties concerned responsible. And both are governed by broadly compatible principles.

It is in the relative priorities of each agenda, and in the means by which they are pursued, that a potential divergence arises. Often, the task for humanitarians and human rights actors is to identify ways of ensuring maximum synergy between their activities. Sometimes they find themselves on the same side in a debate over competing political priorities – a situation familiar to staff in integrated UN missions.

Both agendas are in a sense 'absolute' ones that do not sit happily with political compromise. Both make priority claims on the political agenda. It is important to be aware of the potential tensions between these claims, and between different approaches, and to manage them as far as possible. Sometimes, of course, they cannot be reconciled and this means making hard choices.

The questions that need to be addressed in each case might be summarised in broad terms as follows:

A. What is the agenda of common concern?
What are the common goals of humanitarian and human rights actors in the situation in question? Depending on the context and the actors involved, this may be a more or less restricted agenda. A core protection agenda is likely to include preventing all forms of violence against civilians; forced displacement and some other forms of coercion like child recruitment; and deprivation of the means of subsistence, including destruction of crops and water sources, or denying access to relief.

Depending on what the common agenda consists of, different forms of collaboration will suggest themselves.

B. Are there 'structural' or 'operational' tensions arising from competing priorities and conflicting approaches? These should be acknowledged, not ignored.

The structural questions might include asking whether the demands of the justice agenda are consistent with the humanitarian imperative in a given case. Under what circumstances should constructive engagement with government be prioritised over a strategy of overt pressure?

The operational questions include asking: under what circumstances is humanitarian space threatened by high profile and adversarial human rights campaigns? What can be done to minimise this risk in practice?

C. Complementarity of action
What forms of common or complementary approaches will best serve to advance the common goals identified?

In practice, each context is different, and the answers to these questions will vary accordingly. What is important is that they are consistently addressed, and that organisations make mutually informed decisions rather than (as at present) managing conflicts as they arise, and achieving synergy by accident.

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