

Abstract

Humanitarian medical associations emerged in France in the 1970s, working first in the developing world and then within their own country. Médecins Sans Frontières (Doctors Without Borders) and Médecins du Monde (Doctors of the World) have been active in the debate concerning the boundaries of international humanitarian law. Some of the many associations which now exist around the world have put the "right of interference"—redefined by the United Nations as "the right of access to victims" (Resolution 43-141)—into practice, while others strongly oppose it. This article, contributed by a witness to some of the most severe crises in recent history, from Biafra to Rwanda, provides a history of humanitarian action and examines the roles of states, churches, and nongovernmental organizations both with respect to their humanitarian missions, and in the interpretation of international humanitarian law. How can "interference" in the face of the unacceptable be reconciled with the concept of state sovereignty? How can genocide be prevented and ruthless dictators barred from disposing of their populations with impunity? This article suggests the current limits, and perhaps even a retreat in humanitarian thinking given the context of a new world order.

L'émergence d'associations médicales humanitaires oeuvrant dans les pays en voie de développement et dans leur propre pays a eu lieu dans les années 70 en France. Médecins Sans Frontières (MSF) et Médecins du Monde (MDM) ont participé à la réflexion sur le droit international humanitaire. Des associations se sont développées dans le monde entier et ont mis en pratique le "droit d'ingérence," qui s'est traduit aux Nations Unies par le "droit d'accès aux victimes" (résolution 43-141), alors que d'autres s'opposent résolument à ce droit. Cet article rédigé par un témoin des plus grandes crises de l'humanité (de Biafra au Rwanda), révèle l'historique de la mise en place de l'action humanitaire à travers les temps, ainsi que la place des États, des églises, et des organisations nongouvernementales dans la mission et le nouveau droit international humanitaires. Comment faut-il concilier l'ingérence face à l'inacceptable tout en préservant la souveraineté des États? Comment empêcher les génocides et les dictateurs de disposer impunément de leurs populations? Cet article montre aussi les limites voire les régressions de cette partie humanitaire d'un nouvel ordre mondial.

Las asociaciones médicas humanitarias emergieron en Francia en la década de los setenta trabajando primero en países en desarrollo y después en su propio país. Médecins Sans Frontieres (Médicos sin fronteras) y Médecins du Monde (Médicos del mundo) han estado activas en el debate concerniente a la amplitud del derecho humanitario internacional. Algunas de las asociaciones que existen alrededor del mundo han puesto en práctica el 'derecho de interferencia'—redefinido por las Naciones Unidas como 'el derecho del acceso a las víctimas' (Resolución 43-141), mientras que otras lo oponen fuertemente. Este artículo, contribuido por un testigo de algunas de las crisis más severas en la historia reciente, de Biafra a Ruanda, provee una historia de acción humanitaria y examina el papel del estado, de la iglesia y de las organizaciones no gubernamentales con respecto a sus misiones humanitarias y a su interpretación del derecho humanitario internacional. ¿Cómo puede la 'interferencia' en la presencia de lo inaceptable estar reconciliada con el concepto de la soberanía del estado? ¿Cómo se puede prevenir el genocidio e impedirle a los despiadados dictadores la posibilidad de disponer de sus pueblos sin impunidad?. Este artículo muestra los límites y quizá aún el retroceso en el pensamiento humanitario en un nuevo orden mundial.

A HISTORICAL SURVEY OF HUMANITARIAN ACTION

Patrick Aeberhard, MD

We have to move outside of ourselves, live on the verge of tears and in the orbit of famines, if we want something out of the ordinary to happen...

René Char, Poet and Philosopher, 1907-1988

From the truce of God in the Middle Ages to the Red Cross at the dawn of this century, humanitarian action is far from a novel idea; in its contemporary, familiar form, however, it goes back no more than 25 years.

Ancestors of Humanitarian Organizations

Humanitarian organizations are groups organized to try to affect change by working beyond the governmental framework. Their threefold mission has been described by Claude Bontemps:

1. Humanitarian organizations are created in order to defend special interests and to oppose governments.
2. They can also be created to realize missions that governments do not want to carry out themselves, whether it be diplomatic or social, national or international.
3. They can be created to carry out tasks that governments cannot or will not organize, but which they will be able to take over one day.¹

Humanitarian organizations can generally be grouped into four types; structures competing with the State; struc-

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tures paralleling the State; structures pre-existing States' interventions; and structures of the State itself.

Structures Competing with the State

- Religious structures: Catholic religious orders (the first were the order of Cluny and the Cistercians) played a very important role in the Middle Ages, taking on an international dimension and firmly opposing the French monarchy. Over the centuries they continued to develop and to play a moral, social, humanitarian and political role. Originally Catholic, they sometimes espoused Reformist doctrine.

In modern times, the humanitarian role of Protestant structures in the Nordic countries and in the United States was considerable, especially in matters of philanthropy. The Protestant structures were primarily American and English evangelical missionary movements which, both at home and abroad, added a dimension of development activity to their apostolic endeavors.

- Merchant structures: In the twelfth century, the Hanseatic League associated merchants in northern Europe's largest cities against the legal order of feudalism. Thus, they created privileged loci of freedom that led to de facto political autonomy.

- Workers' structures: The International Workers' Union emerged in the nineteenth century and formed a structure that is relatively close to modern international nongovernmental organizations (NGOs). Due to its multinational reach, it became a significant force of opposition to existing States.

Structures Parallel to the State

In the seventeenth century, the first mission of the newly created Lazarist congregation was to negotiate the liberation of Europeans held hostage by the Barbaresques, as the monarchy preferred intervention by a religious order to that by official ambassadors. Thus, a true complicity developed between the State and the Lazarists. Similarly, numerous NGOs today are subsidized entirely by the State—so much so that they have sometimes been called “Faux nez de l’Etat” or “the State in disguise.”

Structures Pre-existing States' Interventions

With regard to humanitarian medicine, the most famous structures were the ones created by Dominique Larrey, a surgeon in Napoleon's armies, and, more prominently, the Red Cross, founded by Henry Dunant in 1863.² Thus, the negligence of states that could not or would not intervene to save their injured or recover their dead on the battlefield, led to a form of relief independent from any religious motivation.

Ancestors of contemporary NGOs, these structures share certain characteristics: they are international and private, their members are often volunteers, and always strong advocates.

State Action

For a long time, States mutually assisted one another when catastrophes occurred, mostly for reasons of international politics and alliance opportunities.

In 1812, the young United States democracy put the notion of international humanitarian aid into practice by helping earthquake victims in Venezuela.³ The nineteenth century witnessed a multiplicity of such actions: leading political powers from a variety of states supported Greeks during the 1821 war against the Ottoman Empire, aided Ireland during natural catastrophes and famines, and without political interests at stake, assisted during a famine in the Cape Verde Islands.

Humanitarian Action on the Battlefield up to the Nineteenth Century

International humanitarian law, like the Geneva Conventions, may be taken for granted today, but it should not be forgotten that since ancient times, wars were ferocious to the point that the injured received no legal protections, and were likely to be either massacred or enslaved. As recently as the beginning of the nineteenth century, Clausewitz could still write, "In a matter as dangerous as war, errors due to kindness are precisely the worst possible thing...." The rare measures that could be taken were ad hoc, and military surgeons often tried to protect the injured.

Dominique Larrey

In 1792, at the time of the conquest of Spire by the Army of the Rhine, no humanitarian convention existed to ensure even a minimum of protection to the injured. Health officers and their auxiliaries, as well as ambulances (where first aid was given and emergency surgery carried out), had to stay a distance from the battlefield and wait for the battle to end before intervening. Thus, the injured could generally be helped only 24 to 36 hours after the start of a battle and those who survived were, not surprisingly, likely to be in a pitiful state.

Revolted by this situation, a young French surgeon Dominique Larrey, proposed to create "Equipes Volantes," or "Flying Teams," who would be able to move close to the battle to provide first aid on the spot and evacuate the injured, first on the backs of donkeys and later with "mobile ambulances." He followed Napoleon on all of the general's campaigns, was surnamed "la Providence des Soldats," or "Guardian Angel of Soldiers," and performed surgery on the injured of both sides. Although his actions were really a precursor to the work which has followed, they were not generally imitated in the nineteenth century where aid for the injured remained a dire need. There were a few exceptions, however, such as Florence Nightingale who, in 1854, looked after the injured of the Crimean War with remarkable courage and energy.

Henri Dunant and the Red Cross

It was in this context that Henri Dunant founded the Red Cross.⁴ It is fortuitous that in June 1859, this businessman found himself on the Solferino battlefield. He improvised a field hospital in a church, where he enlisted the help of local women to care for the injured of both sides. Shocked by the experience he had just lived through, he wrote *Memoires of Solferino*, a book in which he denounced the unacceptable abandonment of the injured. Dunant then founded the Red Cross and convened the first meeting of the International Committee of the Red Cross (the famous ICRC), on 17 February 1863, in Geneva.

Comprising prominent Geneva personalities, the Committee opted for a policy of discretion in its relationships with warring states. Very quickly, this took hold as the principle

of neutrality. On 22 August 1864, the first Humanitarian Convention of Geneva was signed by the 12 most important powers of the time. The symbol of this movement, a red cross on a white background, would become the universal crest of first-aid workers.

Though generous, Henri Dunant was far from conformist and was at one time banned from the Red Cross for shocking Genevan society. It was only in 1901, a few years before his death, that he was given due honor and received the Nobel Peace Prize.

Moreover, all he envisioned eventually became reality: indeed, he had imagined what would one day become the League of Nations, the International Court of Justice, and even the United Nations. Already in 1872, in some of his lectures, he had outlined the theory of preventive diplomacy. The Red Cross was founded on seven principles: humanity, impartiality, neutrality, independence, voluntarism, unity and universalism.

Today, the Red Cross and Red Crescent are omnipresent. They form an international organism comprising of the International Committee of the Red Cross (ICRC) and national societies, such as the French Red Cross and the Jordanian Red Crescent. In times of peace, national societies play a daily role in their respective countries; in times of war, they become auxiliaries to the military health services. Their independence from political authorities ultimately depends on their country's degree of democracy.

The national societies are linked by a federal organism, the International Federation of Red Cross and Red Crescent Societies, headquartered in Geneva. To be recognized by the ICRC, a necessary condition for admission to the Federation, a national society has to belong to a country that recognizes the Geneva Conventions. There can be only one national society per country.

The ICRC is a private, neutral, and independent institution composed exclusively of Swiss citizens and governed by Swiss law. An NGO housed in Geneva, its funding comes mostly from the States who have ratified the Conventions. As a humanitarian institution, the ICRC intervenes in cases of armed conflict to diminish the horrors of war, and, where

possible, to play the role of neutral intermediary between warring parties. It can cross the front lines to help victims on both sides. It has a Central Search Agency to trace persons reported missing during conflicts. More generally, it attempts to diffuse and enforce the Geneva Conventions. This system has developed today into a fairly complex organization employing more than 3000 paid field staff and several million volunteers. Every four years, the International Conference convenes, bringing together the leaders of the ICRC and the Federation, as well as representatives of the signatory States to the Geneva Conventions.

The ICRC is considered the guarantor of international humanitarian law. It does not oppose war directly: rather, it gives it a certain structure and order. It may consider the killing of a fellow human being to be legitimate because that person is a military enemy, it attempts to use the authority of the Geneva Conventions to force the belligerents as well as all signatory States to respect its provisions and implement the penal sanctions laid down since 1949.

Its neutrality, which in principle protects its activities, sometimes leads to an attitude which can seem close to complicity. The ICRC was the first organism to propose, in 1864, a multilateral treaty of humanitarian law; however, by the very fact of imposing the notion of respect among combatants, it also sanctions the notion of combat itself! Pacifists never fail to seize the opportunity to accuse the ICRC of merely humanizing slaughter.

Humanitarian Action Between the Two World Wars

The initial development of humanitarian aid in Europe, was primarily a result of the work of a veritable contingency of Americans including private citizens, churches, the federal government, and also the American Red Cross, which was by far the most developed and active Red Cross. For the ICRC, the First World War provided an opportunity to sharpen its mandate, in that it seemed that, given sufficient good faith and conscience, with simple rules one could solve all problems. It was in this climate that in 1921 an immense famine struck Russia.⁵ The international community proposed food assistance. Lenin exploited the situation, taking his own

people hostage and using them as exchange currency in order to force the world—starting with the United States—to recognize Soviet Russia.

The 1929 economic crisis slowed U.S. activities abroad for much of the next decade. In the late 1930s, antifascism seemed an obvious stance for the United States. This was especially true during the Spanish Civil War, and later, with the Europe of Hitler and Mussolini, when the United States came first and foremost to the rescue of democracy. The ICRC found itself in an impossible situation, as its policy of recognizing State sovereignty and its refusal to denounce Nazi savagery created a situation of complicity.⁶

In the period of reconstruction immediately following World War II, countless relief organizations flourished, most of them religious: Catholic (Catholic Relief Services), Jewish (the Joint Distribution Committee), and Protestant (the Lutheran Council). The Cooperative for American Relief Everywhere (CARE) was the first big lay association, while the Marshall Plan, set up to reinvigorate the European economy, can be considered something like a gigantic state NGO. It was also in this period that the large UN agencies were created.

In the 1950s, humanitarian organizations began to do work in the Third World, where the need for efficient economic development was becoming more apparent. President Kennedy of the United States resuscitated the U.S. Agency for International Development (USAID), and created the Peace Corps. In Europe, a movement of radical thought—Third-Worldism—led to the creation of religious organizations such as CIMADE (*Comité intermouvement auprès des évacués, service oecuménique d'entraide*), and CCFD (*Comité catholique contre la faim et pour le développement*), as well as lay organizations such as *Terre des Hommes*, *Frères des Hommes*, and OXFAM.

In hindsight the effects of this period were disappointing, if only because of the uncertain results of so many efforts. By May 1968, however, a new humanitarian generation had begun to emerge.

The “Without Borders” Phenomenon or the “French Doctors”

A group of doctors, nurses, and logisticians exchanged their white uniform for jungle outfits and decided to throw themselves in the heart of catastrophes and conflicts that were tearing apart the Third World. By 1971 they were known in the West as “Doctors Without Borders,” and received a different surname in the field: the “French Doctors.” They had only one stated objective: to help victims everywhere without any concern for political rifts or borders.

Humanitarian Intervention

Three main periods can be distinguished in the development of large-scale humanitarian aid stemming from this movement: initiation, independence, and intervention.

- **Initiation:** The Biafra war, one of the worst genocides of this century—even if somewhat forgotten today—was the first experience and true beginning of this third generation of humanitarian relief. A few physicians, united around Bernard Kouchner, found in action the answer to their political dissatisfaction or even their religious engagement. They violated the pledge they had given to the International Red Cross, to “abstain from all communications and comments on its mission...”; they bore witness to what they found intolerable. The memory of the silence that had surrounded the horror of the Nazi camps remained with them, and they could not accept the thought that another genocide would occur in this century. Without making a conscious decision to do so, they were laying the groundwork for the future political dimension of humanitarian relief: “There is no medical solution to the problem of Biafra. All the pictures of atrociously emaciated children must evoke a political consciousness.”⁷

They saw that the majority of donations, earmarked for the Biafra enclave, were actually being distributed among the Nigerian people living outside the enclave, and they were unable to stop it. They were horrified to see the ICRC ignore the massacre of a team of Yugoslavian doctors (in Okigwi) without a word of protest and prepare to let a replacement team of French doctors meet the same fate.

- **Independence:** Upon their return to France, these vol-

unteers spoke out regarding the 2 million civilians, mostly women and children, who had lost their lives in the Biafran conflict. The victims had been killed by bombs dropped by an unlikely Anglo-United States-Egyptian-Soviet coalition. Their testimony was met with general indifference. In response, the physicians created the Committee for the Struggle against Genocide in Biafra, then the Groupe d'Intervention Médico-Chirurgicale d'Urgence (GIMCU, or in English, the Group for Medical and Surgical Emergency Intervention), and finally in December 1971, Médecins Sans Frontières (MSF, or in English, Doctors Without Borders).

These organizations were initially created almost in opposition to the Red Cross, which at the time appeared ineffective, lacking updated medical structures, and motivated by an outdated concept of diplomacy. The explosion of these NGOs has led to a thorough reform of the ICRC, which has since set up an extremely efficient medical structure, and has even been willing, under certain circumstances (for instance in Lebanon and Iraq), to speak out. Ultimately, the complex relations between these NGOs and the ICRC has enhanced the effectiveness of these largely complementary organizations.

- **Intervention:** From domestic conflict to international conflict, from massacres to earthquakes, NGOs have learned to reduce their organizational framework to a minimum. At different times, MSF, International Medical Assistance (AMI), and later Médecins du Monde (MDM, or in English, Doctors of the World)—born out of the Committee “A Boat for Vietnam” in 1978—have confronted the needs of the moment.⁸ Unfortunately, there has been plenty of work for everyone: Black September in Jordan (1970), earthquakes in Peru (1970) and Nicaragua (1972), the end of the war in Vietnam (1973) and the fall of Saigon (1976), cascading wars in Lebanon (1975-91), refugee camps in Thailand (1978-late 80s), Maquis warfare in Eritrea (1971-79) and the Sudan (1983-86), the Kurdish struggle (1974 to date), Boat People (1977), the civil war in Afghanistan (1978-88), assistance to Poland (1980-82), civil wars in El Salvador (1979-92) and Nicaragua (1978-79 & 1983-90), protection for the indigenous peoples in Brazil, medical intervention in South Africa (1970s-90s) and in the Occupied

Territories of the West Bank and Gaza (early 1990s), famine in Ethiopia (1984-88) and the Sudan (1988-91), and that which has become described as the Fourth World in the heart of France. Sinister as it may appear, this enumeration does not even have the merit of being exhaustive. In the face of increasing disasters, many organizations created during the 1970s, especially the AICF (Action Internationale Contre la Faim), applied what was then called, for lack of a better term, the "ethics of high emergency." To help victims of all conflicts was also a way to speak out and hopefully to prevent the recurrence of some of the early genocides of the 20th century, such as those of the Armenians, Jews, Gypsies, and Biafrans.

The Lawmakers

Around the French philosopher Michel Foucault, some of these humanitarian doctors outlined what would become known as the doctrine of the "duty to interfere." Providing assistance to all victims of all conflicts and all disasters had to become both a public cause and a right in the texts, an absolute right, a new, distinct and substantive chapter of international law.

Already in 1978, the Committee, "A Boat for Vietnam," had brought together Raymond Aron and Jean-Paul Sartre to "extend a helping hand to those who were drowning."⁹ In 1984, MSF decided to withdraw from Ethiopia in order not to become the accomplice of the régime of General Mengistu. In 1985, MDM proposed to adapt the Hippocratic oath to reflect the new demands imposed by international humanitarian action. Whereas Hippocrates had said, "Allowed inside the home, my eyes will not see what happens; my tongue will not speak of the secrets confided to me," they affirmed, "Where the dignity of man is violated, where horror is hidden...I pledge to speak out."

In 1987 at the colloquium "Droit et Morale Humanitaire" (Law and Humanitarian Ethics), Bernard Kouchner proposed that the French government adopt the concept of the duty of interference.¹⁰ In 1988, as French Secretary of State for Humanitarian Action, he succeeded in having the "right of access to the victims" recognized by the

United Nations in cases of natural disasters or “similar situations” (UN Resolution 43-131).

Legitimized by this new approach, French voluntary organizations were the first to penetrate Soviet Armenia after the great earthquake in 1988. MDM also then began to concern itself with a wide set of issues. It supported the ratification of the Convention of the Rights of the Child, adopted by the General Assembly of the UN, denounced the scandal of HIV-infected orphans in Romania, and in collaboration with the French organization AIDES, took part in the definition and elaboration of the rights of people living with HIV/AIDS.

Interference, in French called “ingérence,” nonetheless remains an unacceptable concept to many—as unacceptable as the situations in which its necessity arises. For those who engage in this action, it is essentially a private and personal notion which concerns confronting, case by case, exceptional situations, the urgency of which commands that taboos be broken.

Losses and Gains

Such a field of action and such ambitions are obviously not without risk of errors, disturbances, unfortunate improvisations, or internal rifts. However uncertain the course of action chosen by modern humanitarian medicine may have been, the balance of its 25-year existence nevertheless remains positive.

Thanks to these NGOs, thousands of doctors, nurses, logisticians and others have been able to extend assistance to the Third World. In France, three successive governments of the Fifth Republic have set up a State Secretariat, first for Human Rights, then for Humanitarian Action. Thanks to constant and permanent denunciations, public opinion is day by day taking on a rather new habit: that of not forgetting. Concurrently, makeshift structures set up in the Third World at the instigation of NGOs have proven to be better adapted to the situation of impoverished countries than the large and overly complex supranational machineries.

By applying the same level of scrutiny to France as to the Third World, humanitarian action has revealed the existence of a Fourth World. Throughout its 18 years of medical

care, MDM has spoken out regarding the one million people in France who fall outside a medical system ironically renowned as one of the best. In response to incessant challenges, two successive governments—one right-wing, the other left-wing—each created a research committee leading to the establishment of a guaranteed minimum wage (RMI). As privileged observers of the consequences of these measures, MDM continued to provide medical care to those who fell outside the system, the “excluded of the excluded”: drug users, people with HIV/AIDS, immigrants, and youth adrift in neglected suburbs.

A considerable accomplishment—yet what about the bitterness of missed opportunities, for those who could not act in Cambodia during the genocide by the Khmer Rouge, or in Timor, the forgotten island?¹¹

What about the fact that the denunciation of the permanent scandal long represented by South Africa was not accompanied by the denunciation of similarly revolting and common practices in most countries of francophone Africa?

What about the inability to denounce and ensure the timely prevention of the use of HIV-infected blood for transfusion in France?

What about the failure to penetrate Iraq at the height of the Gulf War, where access to the civilian population had to wait until all combat had ceased?

What about the strange sense of limitation caused by the drama in the former Yugoslavia: a place teeming with competent physicians who were active in the various camps; a place where the international press fulfilled their testimonial role as never before; a place where international organizations and foreign governments participated in humanitarian action on a large scale, even when they did not make any progress in solving the conflict or in preventing the massacres and obscenity of ethnic cleansing; a place where, even as a remarkable report by Tadeusz Mazowiecki for the Human Rights Commission of the UN denounces the executioners by name, and France proposes to set up an international tribunal to prosecute the authors of crimes against humanity, the savagery did not diminish by a single iota?

It is in this place that the NGOs, which have been present since the first days of conflict, close to the martyred popula-

tions, watch the media, international organizations, and States mimic their habitual tasks. This may be a formidable success; this may be the envisioned objective: to render humanitarian action natural and self-evident. By playing their role, NGOs may have outlived their purpose. In their current form, they may have become useless.

Cherished Freedom

What is more, NGOs are daily confronted with the problem of their real independence—first and foremost with regard to States, even when they work together in an efficient and loyal manner. Nobody, for instance, would consider it an offense that a national navy picks up drowning refugees, or that an air force deploys massive logistics in order to help two million Kurdish refugees in the mountains of Turkey and Iran. One should not forget, however, that States have a spontaneous inclination to intervene first where it clearly is in their own interests to do so.

The successive cataclysms in Bangladesh in the 1970s and 1980s aroused a derisory response from the international community, despite the dire needs created by a disaster of such magnitude. Having no means at their disposal to intervene in a material manner, NGOs were still left with the opportunity to make indifferent States admit, and maybe even understand, that there is a duty to act even when there is nothing directly to gain.

NGOs' freedom of expression also presupposes financial independence. When MSF or MDM accept that close to half and one-third, respectively, of their funds come from the European Union, it is difficult to ignore the danger that one day they will have to submit to a political will not always consistent with humanitarian logic. It might seem natural that in a true democracy a collaboration should take place between NGOs and the State: the State benefitting from NGOs' know-how, the latter taking advantage of the State's assistance to realize their mission, including that of bearing witness.

In this sense, NGOs are right to accept money that makes it possible for them to work. But they must not forget that their destiny embodies a contradiction: to be efficient, they have to integrate; to contest, they have to rebel.

Having begun free and without means, NGOs must maximize their means while remaining free—not a simple task. Only two options seem possible: to return to their roots, the small, simple, and informal structures of the humanitarian guerilla; or to structure and federate themselves, gaining prominence in society and making it impossible to ignore them, thereby forcing States to respect the duty of humanitarian assistance, which so far has been used only selectively, in all cases.

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