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Report

The Politics of Principle:
the principles of
humanitarian action in
practice

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Study Notes

This report is one of four from ODI study entitled 'The Politics of Principle: The Principles of Humanitarian Action in Practice'. The other three reports are 'The Joint Policy of Operation and the Principles and Protocols of Humanitarian Operation in Liberia: Study 2', 'The Agreement on Ground Rules in South Sudan: Study 3' and 'The Principles of Humanitarian Action in International Humanitarian Law: Study 4'. A critical review, which summarises some key findings and issues in a much shorter form is also available from ODI.

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Acronyms

ACF	Action Contre la Faim
ALNAP	Active Learning Network on Accountability and Performance
CRC	Convention on the Rights of the Child
CRS	Catholic Relief Services
DHA	Department of Humanitarian Affairs
ECHO	European Community Humanitarian Office
ECOWAS	Economic Community of West African States
ECOMOG	ECOWAS Monitoring Group
HPP	Humanitarian Principles Programme
HRW	Human Rights Watch
HPU	Humanitarian Principles Unit
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
INGOs	International NGOs
IGAD	Inter-Governmental Authority on Development
IGADD	Inter-Governmental Authority on Drought and Development
JPO	Joint Principles of Operation
JRRC	Joint Relief and Rehabilitation Committee
LoU	Letter of Understanding
MSF	Médecins Sans Frontières
NDA	National Democratic Alliance
NPFL	National Patriotic Front of Liberia
NSCC	New Sudan Council of Churches
OCHA	Office for the Coordination of Humanitarian Aid
OLS	Operation Lifeline Sudan
PCVC	Programme Compliance Violations Committee
PPHO	Principles and Protocols of Humanitarian Operation
SCF (UK)	Save the Children (UK)
SCHR	Steering Committee for Humanitarian Response
SEOC	Sudan Emergency Operations Consortium
SPLM/A	Sudan People's Liberation Movement/Army
SRRA	Sudan Relief and Rehabilitation Association
SRSg	Special Representative of the Secretary General
SSIM/A	South Sudan Independence Movement/Army
UNCERO	United Nations Coordinator of Emergency Relief Operations
UNHACO	United Nations Humanitarian Assistance Coordination Office (for Liberia)
UNDHA	United Nations Department for Humanitarian Affairs
UNDP	United Nations Development Programme

UNICEF	United Nations Children's Fund
UNHCR	United Nations High Commissioner for Refugees
UNOMIL	United Nations Observer Mission in Liberia
USAID	United States Agency for International Development
WFP	World Food Programme

Executive Summary

The idea of humanitarian principles is simply that war has limits. The way in which soldiers and politicians choose to wage war should be limited by a concern for humanity. This report is the synthesis of an ODI study into humanitarian principles, in particular what they mean for humanitarian agencies, and what impact field level experiments in a 'principled approach' have had on agency practice and the behaviour of belligerents. The study investigated the Joint Policy of Operation (JPO) and the Principles and Protocols of Humanitarian Operation (PPHO) in Liberia, the Agreement on Ground Rules in South Sudan, and the legal basis for the principles of humanitarian action. Separate reports are available for each component of the study.¹

Humanitarian principles are not new; they have existed at many times and in many cultures. But how they are expressed, and the extent to which they are respected, is historically determined. Determining the limits of war is an intensely political process and thus will reflect the politics of the time. It is a process largely determined by politicians and soldiers, not humanitarians. The modern expression of this idea is found most clearly in International Humanitarian Law (IHL). It is predicated on the international political system at a certain point in its evolution, and so on the nature and function of warfare in that system. As such it assumes war to be a political process fought by, or for control of, states.

A small, but significant, component of this modern expression of humanitarian principles is the right of impartial, humanitarian organisations to provide assistance to, and promote the protection of, those outside the limits, i.e. non-combatants. However implementing this is ethically complex. Humanitarian action, indeed the notion of humanitarianism itself, has always been prone to manipulation. In order to cope with these ethical and political complexities, the Red Cross movement developed an ethical framework known as its 'fundamental principles', (or the principles of humanitarian action), in particular the well known ideas of impartiality, neutrality and independence. This framework can be seen as a 'deal' whereby the belligerents agree to respect humanitarian principles, and humanitarians will not interfere in conflict. Thus the principles of humanitarian action are in a sense dependent on broader humanitarian principles, as such they too are subject to change and negotiation.

Several developments in recent years have led to the questioning of this ethical framework. Most importantly, in many current wars belligerents appear to have rejected the very notion that war has limits. Direct attacks on civilians and other abuses of IHL are often a deliberate strategy. Much recent analysis attributes this development to adaptations by political actors in the South faced with the declining power of

the state, declining aid flows, and other features of globalisation. This analysis sees war as the 'continuation of economics by other means', a project in which the primary actors neither seek nor require political reciprocity or legitimacy.

This analysis has profound consequences for the idea of humanitarian principles. It implies that the combatant-non combatant distinction, on which the idea of humanitarian principles rests, is not blurred, as in liberation struggles, rather made irrelevant. In this type of conflict the category of 'non-combatant' simply does not exist, it is not a category relevant to this form of activity; in effect there are no limits. Alongside this development, there has been a decline in the interest of powerful states in 'un-strategic' wars, a weakening of absolute notions of state sovereignty, and a tendency for humanitarian action to substitute for international political engagement. Humanitarian agencies are themselves now significant actors in many conflicts and in international political arenas. Taken together, these changes present a powerful challenge to the classical notion of humanitarian principles, and thus to the principles of humanitarian action. A new 'deal' is being negotiated.

This is a political process. At a conceptual level three broad humanitarian responses to these developments can be identified, determined largely by the understanding of the relationship between humanitarian and political action, and thus the nature of what might be called 'humanitarian politics'.

- *Neutrality elevated* – a position which sees humanitarian action as for the relief of suffering only, which emphasises universal legal principles, and which sees humanitarian politics as tightly bound by rules of impartiality and neutrality. Thus the manipulation of humanitarian action by political actors should be minimised through operational rules.
- *Neutrality abandoned* – a position which argues that humanitarian action should be subordinated to (good) political goals, as this will reduce suffering in the long run, and this may mean taking sides.
- *Third-way humanitarianism* – a position that seeks a middle way. It emphasises the role of humanitarian aid for developmental relief, peace-building and dealing with root causes. These are in effect political objectives, but this position resists taking sides. It thus tends to be most unclear about the nature and rules of a humanitarian politics.

All the positions though represent two important developments. First, principles are becoming something humanitarians are trying to impose on belligerents, rather than, as in the original 'deal', the other way round. Second, the perception of the

potential for political impact, negative or positive, has in effect qualified the humanitarian imperative. This represents a shift away from an absolute towards a utilitarian ethics as the foundation of humanitarianism. Much of the debate and controversy in humanitarianism in recent years is due to the fact that the 'calculus' required to implement this utilitarian approach does not exist. Who is to say that the long-term benefits of withholding aid outweigh its short term results, and based on what criteria, and on what analysis?

At the field level the situation is less clear cut; the JPO, the PPHO and the Ground Rules all demonstrate both the conceptual and ethical diversity of the humanitarian system, and its need to coordinate. The mechanisms represent innovative, field-led attempts to develop an explicit, inter-agency 'principled approach'. The study examined them in terms of their impact on: governance and protection, assistance and manipulation, and securing agency space. Given that inter-agency voluntary codes are increasingly the mechanism of choice for the regulation and accountability of the system, compliance with the mechanisms by agencies was examined.

A variety of strategies were attempted to promote greater respect by the belligerents for the rights of non-combatants. These included: the signing of the 'Ground Rules' between the UN and rebel groups in South Sudan, humanitarian conditionality, human rights advocacy, and capacity building. Broadly, the mechanisms had little impact in this regard. This was because the incentives and disincentives for abuse of non-combatants by the belligerents were determined by factors over which humanitarians had little influence, notably political, military and economic developments. There were some limited successes. But these occurred *only* where agencies were politically astute enough to capitalise on pre-existing political, military and economic processes that were already reducing the incentives for abuse. The findings indicate that an approach based on promoting protection by the authorities was more successful than the use of conditionality as a lever. But it was only successful where the belligerents had already decided it was in their interest to be, or be seen to be, more respectful of the rights of non-combatants. Conditionality appears to have been an ineffective lever due to the nature of the belligerents and their relationship with civil populations under their control. Importantly, in both cases, the opportunities for promoting respect for rights waxed and waned as the conflict moved through different stages and the belligerents adapted their tactics and strategies to changing circumstances.

In terms of reducing the manipulation of assistance, the 'principled approach' represented by the mechanisms had patchy success. Two broad approaches can be identified; stopping working, and changing working methods. Withdrawal and suspension obviously reduced manipulation, however, the calculations of

likely impact, positive and negative, were undermined by a weak understanding of the political economy and of the impact of humanitarian work. There were some changes in ways of working, though in fact these were modest. In most cases, existing agency procedures and ways of working tended to dominate over any commitments made in the mechanisms, analysis of food diversion for instance was not instituted. This was in part due to lack of agreement between agencies over key concepts and how they should be implemented. But all the mechanisms did to an extent improve co-ordination over issues of principle and raise their profile in agency thinking.

The mechanisms were most successful in terms of securing what might be called agency space (i.e. the freedom of agencies to operate) as opposed to humanitarian space (which implies a broader respect by the belligerents for humanitarian principles). This is not unimportant, assistance requires agency space, but it should not be confused with humanitarian space. In both cases the mechanisms had some success here. This demonstrates the importance of agencies negotiating with the belligerents jointly, or at least from a common position, the importance of negotiating from principles rather than just for access, and for the importance of negotiating as high up the chain of command as possible.

Compliance with the mechanisms by individual agencies was highly variable but, broadly, agencies abided by the mechanisms to the extent that they saw it was in their interest to do so. This is why the mechanisms have been most useful in terms of collective standards of behaviour in defence of agency space, as this is where collective action is most likely to be beneficial to individual agencies. This tendency is what lies behind the fact that the emphasis of the agreements shifted over time from instruments for the protection of non-combatants to instruments for the protection of agency space.

In conflicts where the belligerents routinely flout humanitarian principles, and where there is ineffective international political pressure to stop this, the principles of humanitarian action will be stretched to breaking point; the principles assume at least an acceptance of the idea that war has limits, that the belligerents are concerned with political legitimacy, and that all states have an interest in preserving respect for IHL. At a general level, a key challenge for the future is thus to better conceptualise and implement a 'humanitarian politics' for when this assumption does not hold, while maintaining an ethical base in the rights of non-combatants. Humanitarian action has always been a form of politics, but one that was tightly circumscribed by self-imposed rules of impartiality and neutrality and a focus on the relief of suffering. It was thus a form of politics for which the pretence of being non-political was essential, and this was a fiction that soldiers and politicians were prepared to accept, within limits. The changing nature of conflict, the retreat of

international politics from many ongoing conflicts, and the very size of the humanitarian system have all challenged this accommodation. This is why humanitarian action is increasingly being 'politicised' - by donors, belligerents and increasingly by humanitarian agencies themselves.

While this situation presents opportunities for promoting a humanitarian agenda, there is also a threat that the rights of non-combatants to protection and assistance will be compromised by a humanitarian politics that has a confused ethical base. Humanitarians need to develop ways of operating in broader political arenas, while maintaining the core values of humanity and impartiality that make humanitarianism a distinct and valuable form of politics. In many cases, given the relative insignificance of humanitarian agencies in terms of altering the incentives for abuse, and the significant impact they can have on reducing suffering, this may mean continuing to assert that they are non-political while looking for 'political' opportunities to promote respect for IHL. The signing of the Ground Rules is a good example. The trick, then, will be not to believe their own 'non-political' propaganda.

More specifically, the findings of the research suggest the following:

- An ethical framework is necessary for humanitarian action if it is to maximise the ability to meet humanitarian need and minimise the potential for manipulation. While differences between agencies are inevitable, and not necessarily dysfunctional, the key point is that such a framework must be an explicit part of decision making for all agencies. Without this, institutional interest will dominate over principle. Such a framework should be grounded in the rights of non-combatants to assistance *and* protection.
- Agencies should not try to regulate conflict themselves through mechanisms such as conditionality. But they should be aware of, and politically astute enough, to capitalise on, developments in political processes that provide openings for promoting respect for international law. Such opportunities are more likely to arise through diplomatic and political initiatives than the use of aid resources, but grasping them will depend on the ability of humanitarian actors to maintain perceptions of their neutrality and impartiality. This cannot be done without greater investment in staff, notably keeping staff in the field with sufficient experience and knowledge to operate in broader political arenas.
- Negotiations with the belligerents for agency space should as far as possible be conducted jointly, or at least from a common position, and should be based on principle.

- Agencies need to improve the internal management, and external co-ordination, of principles - from ethical framework through to administrative procedure - in order to minimise the potential for manipulation. Implementing principles is a management task for which managers need to be held accountable. An important part of managing principles is establishing, and sticking to, a 'bottom line' beyond which it is impossible to work in a principled way.
- A better understanding of the political economy of conflict and of the likely impact of humanitarian action, and inaction, on the rights of those affected by conflict is needed. This requires *systematic* monitoring over time of, for example, abuses of IHL and the manipulation of assistance, particularly the abuse of food aid.
- Current accountability mechanisms are weak, and there is an uneasy tension between institutional interest and issues of principle. Standards such as Sphere and the Red Cross/NGO Code of Conduct have been agreed, but there is little cost to agencies in not meeting them. Thus, in order to improve the performance of the system over the long term, agencies should voluntarily institute real-time monitoring of humanitarian operations by an independent body according to these agreed principles and standards.

In short, in order to promote respect for humanitarian principles, agencies need to be sure of their own principles, and to ensure that they live by them.

Section 1 of the report gives a brief overview of the issues and the research objectives and methodology. Section 2 looks in more detail at the idea of humanitarian principles and how it has changed as a result of recent political developments. Section 3 examines conceptual and organisational aspects of the principles of humanitarian action. Section 4 provides a comparative analysis of the conflicts in Liberia and South Sudan. Section 5 looks in detail at the mechanisms and presents the findings of how they operated in practice. And section 6 provides overall conclusions and recommendations.

1. Introduction

1.1 The Study

This report is the synthesis report of an independent study by ODI into humanitarian principles. In recent years there has been an outpouring of reflection on principles by humanitarian agencies, and attempts in several countries by groups of agencies to develop a more explicitly 'principled' approach to working in conflict (Leader, 1998). In the light of these developments, the purpose of the study was to investigate three broad questions:

- What do humanitarian principles mean to agencies?
- What difference does the adoption of an explicitly principled approach make to agency decision-making and behaviour?
- What impact does this approach have on the behaviour of the warring parties?

In order to investigate these questions two field studies were carried out in countries where inter-agency agreements to promote a principled approach have been adopted, South Sudan and Liberia. In Liberia two mechanisms were studied, known as the Principles and Protocols of Humanitarian Operation (PPHO) and the Joint Policy of Operation (JPO) (Study 2: Atkinson and Leader, 2000). In Sudan we looked at what is known as the 'Ground Rules' (Study 3: Bradbury et al, 2000). An investigation was also made into the legal foundations for principles in International Humanitarian law (IHL) (Study 4: Mackintosh, 2000). A separate report has been produced for each of these three studies in which the detail of the research is contained.² This synthesis study draws on the case studies, additional research, and the broader literature on these issues to present some overall findings and conclusions. It also presents some policy recommendations that the authors argue follow from these findings.

The remainder of this section presents an introduction to some of the key issues dealt with in the study. Section 2 looks in more detail at the origins of humanitarian principles, the nature of conflict, and the international system's response to it. Section 3 examines recent conceptual and organisational developments regarding principles. Section 4 looks in more detail at Sudan and Liberia and presents an analysis of the context in which the JPO, the PPHO and the Ground Rules were operating. Section 5 presents some of the findings of the field studies, and Section 6 presents some overall conclusions and policy recommendations.

1.2 The idea of Humanitarian Principles

The idea of humanitarian principles is simply that war has limits. It is an idea as old as war itself – as is its regular violation. In the twentieth century this idea is expressed in the detailed commitments made by state signatories to the Geneva Conventions and Additional Protocols; in essence, IHL sets out, in considerable detail, the limits of war.

Particularly since the Second World War, the humanitarian idea has met, cross-fertilised with and been challenged by a variety of other ideas, notably the more politically radical ideas behind much thinking on Third World development and the idea of universal human rights (Slim, 1999). Indeed, after the Second World War, the legal framework of IHL has been further buttressed by the development of human rights law, notably refugee law, the genocide convention and more recently parts of the Convention on the Rights of the Child (CRC). In legal terms at least, the victims of conflict now enjoy an elaborate framework of protection.

The real significance of the idea of humanitarian principles is the obligations it places on belligerents to limit the way they fight war. However, one particular element of this modern expression of the humanitarian idea, the right of humanitarian agencies, notably the International Committee of the Red Cross (ICRC), to offer assistance to, and promote the protection of, those beyond the limits of war, has recently taken on a much greater prominence. Indeed, the idea of a secular, universal, organisation with a specific mandate to protect those beyond the limits, rather than the development of the law itself, is in many ways the most distinctive contribution the twentieth century has made to the humanitarian idea. But the reality of humanitarian action in 'other people's wars' is neither straightforward nor uncontroversial; where the limits should be drawn is inevitably disputed by the warring parties, the limits are regularly transgressed, and there is always the possibility of humanitarian action being perverted to inhumane ends.

In order to cope with these problems, the ICRC developed an ethical framework known as its fundamental principles³ (Pictet, 1979), what might be called the principles of humanitarian action. The well known ideas of neutrality, impartiality, independence and the rest serve to legitimise ICRC's intervention in conflict, to position it in respect to the actors in a conflict in a way that is both ethically justifiable and politically possible, and to guide staff negotiating the complexities of working in the midst of violence. Pictet, one of the high priests of this ethical framework, described ICRC as a swimmer, up to his neck in politics, but who must keep his head above water to survive. For ICRC, the fundamental principles are what keep it afloat; they are a means to a greater end – the mitigation and prevention of human suffering.

In short, this study is about the changing relationship between the humanitarian principles that belligerents

chose to respect, and the principles of humanitarian action humanitarians adopt as a result.

1.3 Recent Developments

The complex processes accompanying the post-colonial era, the ending of the Cold War and the development of globalisation, have exposed changes in both how wars are fought, and how humanitarians respond. Famously, the founders of Médecins Sans Frontières (MSF) felt that ICRC's strict observance of its fundamental principles critically hampered its ability to provide assistance in Biafra (Moorehead, 1999: 625). More recently, war economies have become embedded in parts of the world in ways that challenge conventional notions of war as being the 'extension of politics by other means' (Keen, 1998). In this context, conventional notions of the state, of peace and war, relief and development, and of civilian and combatant on which the ICRC position is predicated appear to have broken down. In a parallel development, the relaxing of sovereignty and the 'privatisation' of aid brought a massive growth in the number of NGOs and UN agencies working in conflict alongside ICRC (Borton et al. 1994).

These developments mean that there is now a greater variety of agencies working in conflict than ever before, and a corresponding variety of ethical frameworks. Unlike ICRC, many of these approaches are not grounded in the universal legal principles of IHL. There has also been a widening realisation of the ethical and political complexities of working in conflict, notably of the possible negative effects of humanitarian aid (Macrae and Zwi, 1994). Much of this was, of course, in large part due to the experience of the Rwanda conflict and the Goma camps. The lone voices in the 1970s and 1980s that had been accusing agencies of fuelling conflict, feeding killers and of being much more equivocal agents of change than their fundraising or self-image had allowed, became a chorus in the 1990s. This chorus has been heard and picked up on by the mainstream media, and there has recently been a perceptible shift in the media portrayal of aid workers. Serious questions about the accountability and performance of agencies have been raised (de Waal, 1997).

It is also increasingly apparent that this crisis of confidence came at a time of significant change within the international political system. Amongst the security and diplomatic establishment, the heady interventionism of the immediate post-Cold War era in the early 1990s has dissipated, to be replaced with a more considered assessment of strategic interest and the deployment of scarce resources and political capital in defence of the national interest (Weiss, 1999). This growing crowd of humanitarian actors is frequently exposed to the chill wind of conflict without the shield of military and diplomatic interest.

The combination of these processes has produced, both within and without the humanitarian system, an unprecedented bout of questioning. A range of by now familiar criticisms of humanitarian assistance have developed:

- that it often strengthens the predatory forces that sustain conflict. Resources are diverted to support the war effort through looting or taxation; the provision of assistance in areas controlled by factions can strengthen their dominance over populations, or facilitate ethnic cleansing; and factions can use negotiations with aid agencies to claim legitimacy and publicity (Macrae and Zwi, 1994; Prendergast, 1996);
- that it undermines, or prevents, the emergence of a social contract: aid allows factions to divert resources away from welfare demands they would otherwise have to meet towards prosecuting war, and so reduces the need for factions to be politically accountable to the people they claim to represent (de Waal, 1997; Anderson, 1996);
- that it destroys local capacity and causes dependence: flooding resource-poor areas with external resources can reduce the incentives for local producers and can encourage refugees, for example, to become dependent on external supplies;
- that it provides a smokescreen or even substitute for the inactivity of powerful states: in the initial years of the war in Bosnia, for example, Western governments were able to present their funding of and support to humanitarian action to their publics as a response, while doing little to bring the war to an end;
- that the 'humanitarian system' is too chaotic, and agencies are market-driven and unaccountable: agencies compete for media exposure but can get away with shoddy service delivery as their beneficiaries cannot hold them accountable (de Waal, 1997). The urge to be the first to get the convoy through is more important than ensuring aid is delivered in a principled fashion (Short, 1998);
- that agencies ignore rights and protection issues in favour of access: agencies are too ready to sacrifice the moral imperative to speak out about abuses to the god of access, fearing that without access they will have no publicity.

In short, the implication of many of these criticisms is that the humanitarian system is self-serving and is part of the problem and not the solution.

The criticisms have sparked an intense search for new ideas, approaches and ways of working. Some of the key policy questions are: How can humanitarian agencies intervene in conflicts where there is little or no accountability, without strengthening the actors causing the conflict in the first place? What should be the role of humanitarian actors in prolonged conflicts where there is little international will to force a settlement? How should agencies providing relief assistance respond to mass violations of human rights? Can intervention strengthen civil society and local 'capacities for peace'? And what should be the relationship between humanitarian actors and international political actors who are trying to force a settlement?

A variety of different strategies have been proposed and attempted, some organisational, some conceptual.

- A number of approaches, inspired by the participatory approaches common to developmental thinking, emphasise building the capacity of local communities, such as the idea of developmental relief, the relief to development continuum, or the idea of 'local capacities for peace' (Anderson, 1996).
- Another approach seeks to promote accountability by establishing codes and standards to which agencies should aspire and which will make them more accountable for improved performance. Initiatives include the Red Cross/NGO Code of Conduct,⁴ the Sphere project,⁵ the Active Learning Network on Accountability and Performance (ALNAP),⁶ and the Humanitarian Ombudsman project.⁷ There has also been a marked increase in the number of external evaluations of humanitarian agencies (OECD, 1999).
- Some agencies have adopted a stronger emphasis on protection and human rights work, emphasising the role of humanitarian agencies as witness and of bringing the suffering of conflict victims to the attention of international political actors (MSF-H, 1998; ICRC, 1997).
- A number of agencies, such as Oxfam and SCF are increasingly seeking to make the notion of human rights the philosophical foundation of their work, and see promoting realisation of the rights laid out in the various UN Conventions as the essence of their work.
- Another approach, seeks to integrate humanitarian action into an overall response to a complex emergency, encompassing a political goal, human rights development and relief concerns. An example is the Strategic Framework for Afghanistan.⁸

The very variety of strategies proposed reflects the extreme heterogeneity of the humanitarian system. Common to all of these approaches, however, is the desire to develop 'a principled approach', in other words a practical ethical framework for humanitarian action suitable for the current political context. Hence the recent rediscovery by many humanitarian agencies and academics of the original Red Cross principles and the debate about their meaning and significance.⁹

Thus, in the same way that ICRC has physically had to make room for other agencies in conflict zones, its notion of its fundamental principles too is now subject to a variety of competing approaches. A number of the ICRC fundamental principles are being challenged and reinterpreted from different perspectives. The notion of neutrality is challenged by capacity building ideas that seek to achieve development in conflict and the human rights tradition that seeks to make public condemnations. The idea of independence is challenged by approaches that seek to incorporate humanitarian assistance into broader political approaches to build peace. The idea that humanitarian assistance is unconditional is challenged both by the human rights tradition (that seeks to use aid as a lever to promote respect for rights) and a political tradition (that seeks to use aid in the search for political solutions). In short, there is not a single, coherent ethical position held by those intervening in conflict, but rather a network of associated ideas.

This in itself is not necessarily a bad thing; the humanitarian idea needs to evolve, develop and adapt if it is to retain both its power and fidelity to its ideals (Slim, 1999). The question, however, is when does a development become a corruption, when does it lose a humanitarian core? It is not just humanitarian action that can be co-opted and perverted to inhumane ends, but the very idea of humanitarianism itself. Indeed, as argued in Section 2, part of the survival of humanitarianism can be attributed to its usefulness to those who regularly violate its ideals.

1.4 The case studies: The Ground Rules, the JPO and the PPHO

This network of ideas is reflected in the three field-based policy innovations that were selected as case studies: the Ground Rules in south Sudan, and the JPO and PPHO in Liberia. These mechanisms represent, on the one hand, a common desire to develop a more principled approach; yet they also reflect a variety of ethical approaches to the dilemmas of working in conflict, drawn from humanitarian, human rights and developmental traditions.

Importantly, these mechanisms represent a collective attempt by agencies, not just to react in a principled way to their environment, but to attempt to influence it as well. They have attempted, in different ways, to promote greater respect for IHL by the warring parties.

ICRC has always seen as part of its role the promotion of respect for the limits of war contained in IHL, and has disseminated the law and engaged in confidential advocacy to this end. However, inspired in part by other traditions, the JPO, the PPHO and the Ground Rules have also introduced several new strategies to achieve this end. These have included: humanitarian conditionality, the idea of ‘critical engagement’, capacity-building, human rights monitoring, and public information and advocacy. Whereas the ICRC approach in effect relies on consensus and a recognition by the combatants that they should respect the law, these newer strategies go beyond this and have moved into territory that comes close to an attempt at coercion.

This study is an attempt to examine these experiments in field ethics and practice represented by the mechanisms. It will describe and analyse what they were, and the impact they had on what we have called the ‘framework of respect’.

1.5 The ‘framework of respect’

The sphere of action of humanitarian agencies is commonly referred to as ‘humanitarian space’. As the term implies, it usually has a primarily geographical connotation and is talked about as expanding and contracting; it is often synonymous with access. It also tends to promote the idea of a kind of apolitical space within which agencies work.

What we are trying to capture by the use of the term ‘framework of respect’¹⁰ is not so much the geographical area that humanitarian agencies are able to work in, but rather all those factors in a given context that determine the extent of respect for applicable norms of international humanitarian and human rights law. Thus in a particular conflict the determinants of the framework would be: the particular nature of the warring parties, their objectives and strategies; civil institutions and organisations; cultural mores and rules; the regional and international dynamics of the conflict; the levels of interest and attention of the major powers; and the impact of humanitarian organisations. Each element will play a role in determining at any time the overall level of respect for IHL, though some are obviously much more important than others.

The purpose of using this notion is:

- To emphasise that in any conflict there are applicable international norms in IHL and human rights law against which the behaviour of all the actors involved should be judged, and which are primarily concerned with the responsibility of the authorities for the protection of people under their control, not humanitarian action;
- to shift the emphasis away from humanitarian organisations and the idea of their ‘space’ as some kind of politics-free zone and on to the

broader political framework within which agencies work;

- to make clear that the primary determinants of respect for legal norms are not humanitarian agencies but other much more powerful forces and organisations, such as political, economic and military actors and broader processes of globalisation;
- to get away from the simplistic, geographical notion of ‘humanitarian space’ expanding or contracting; the framework of respect is dynamic and shifts over time in complex ways that are simultaneously negative and positive. As fortunes on the battlefield rise and fall, as internal political strategies change, as international powers become more or less interested, the framework changes and new opportunities or threats emerge or decline.

A more practical reason for using this notion is that this framework of laws and rights provide a solid basis for the complex ethical judgements that relief agencies have to make. This point will be developed further in Section 6.

1.6 Organisations and principles

Much writing on humanitarianism concentrates on the international and national political and military context. However, a number of themes emerged during the course of the research to do with the nature and behaviour of organisations that have so far received less attention.

First, the nature of organisations, the way they interact, adapt and evolve. Secondly, the idea of rules at all levels, moral, legal and procedural, and why individuals and organisations follow them. Thirdly the notion of accountability, which in a way brings organisations and rules together, namely the idea that by following certain rules organisations will be accountable to the people they claim to represent or in whose interest they claim to be acting. And fourthly, the idea of organisational adaptation and innovation. One of the most interesting aspects of these themes is that they are relevant to both the key groups of actors important to this study – the belligerents and the humanitarian agencies.

1.6.1 Organisations

By and large, all significant humanitarian and military action is carried out by organisations; it is the activities of organisations that largely determine the particular pattern of the framework of respect in a particular context. The shifting patterns in the framework can be seen as a result of the interplay of a bewildering variety of organisations as they attempt to fulfil their objectives in the face of the opportunities and constraints placed in their way. Thus the study has attempted to develop

some tentative typologies of aid and military organisations, based on such categories as their objectives and resource base.

1.6.2 Rules

Many of the problems associated with conflict are expressed in terms of rules, the breakdown of traditional rules of conduct in a society, or an organisation's failure to obey the rules of war. This goes both for the failure of warring parties to respect their obligations under IHL, and humanitarian agencies' failure to respect principles of humanitarian action or professional codes as expressed, for example, in the Red Cross/NGO Code of Conduct. All the mechanisms under study here are sets of rules intended to regulate agency behaviour and, in the case of the Ground Rules, warring party behaviour.

As mentioned above, at the heart of the framework of respect is that set of rules which international human rights and humanitarian law has laid down for the behaviour of the belligerents in conflict. However, as is commonly lamented, respect for this law is in effect voluntary. Enforcement mechanisms, such as the various tribunals or the International Criminal Court (ICC), are by themselves inadequate and military humanitarian intervention is very ad hoc. There is a parallel between this law and the 'quasi-law' of humanitarian regulation such as the Red Cross/NGO Code of Conduct or indeed the JPO; they too are voluntary agreements with no mechanism to enforce compliance. A further problem is that agencies often work in states where the rule of law has effectively broken down. An effective regulatory framework for most actors in many conflicts is thus minimal or altogether absent.

Important questions arising from this are: what are the rules, how did they emerge, what is their purpose, and in particular why, and to what extent, do organisations respect them? Externally to the organisation what combination of moral force, self-interest, compulsion, fear and authority is involved? And internally what procedures, guidelines, discipline, threats, rewards and organisational culture make individuals respect rules?

1.6.3 Accountability

Again, many problems of conflict, for both humanitarian organisations and warring parties, are expressed in terms of accountability. The abuse of civilians by some warring parties is often argued to result from their lack of political accountability. This is contrasted with liberation movements which are seen as more accountable, such as the Eritrean People's Liberation Front (EPLF) (de Waal, 1997) or democratic regimes such as India where democratic politics has made famine a thing of the past (Dreze, J., Sen, A. 1989). Democratic accountability and conflict have a long relationship, indeed some would argue that many of the key elements of the Western liberal democratic state, in

particular universal suffrage and social welfare, are themselves products of a long process of rulers extracting resources for pursuing conflict and the compromises with various social groups they had to make as a result (Tilly, 1990).

In a similar way, many of the failures of humanitarian organisations to follow rules are said to be because they lack accountability to those whom they are meant to assist. Thus the notion of accountability has crept into most statements of principles of humanitarian action, including country-specific ones such as the Ground Rules. Many of the reforms currently proposed or being developed, such as Sphere, ALNAP and the Humanitarian Ombudsman, are essentially ways of making agencies more accountable.

1.6.4 Adaptation and innovation

Existing organisations need to adapt to changing circumstances in order to survive. New forms of organisation emerge as individuals combine in innovative ways to exploit changing circumstances. The Ground Rules, the JPO and the PPHO are field-based innovations by a number of organisations to cope with particular circumstances. The military groups these agencies faced are also often highly innovative and adaptive. The SPLA/M, for instance, has been active since the early 1980s, and has adapted effectively to several changes of external circumstance. Charles Taylor in Liberia is credited with a highly innovative approach to developing military doctrine (de Waal, 1996). This raises a number of questions about why organisations adapt and innovate, what drives this process, and what makes some organisations more innovative than others.

1.7 Method and methodological problems

The two field studies in Liberia and Sudan were carried out in mid to late 1998. The basic method was open-ended interviews with agency personnel, donor and diplomatic representatives, and members of the affected communities, both individuals and representatives from civil society groups. The researchers made particular efforts to interview representatives of the various armed groups, but were not as successful in this as had been hoped. Documentary collection and analysis supplemented this information. The findings of the field research have been supplemented for the purposes of this synthesis paper by an extensive review of the literature and interviews with humanitarian actors in New York, Geneva and London.

The research objectives posed a number of methodological and conceptual problems common to research into humanitarian operations. This study has run into many of the problems normally encountered in trying to understand the impact of a certain course of action by humanitarian agencies, only more so. The JPO, PPHO and the Ground Rules are all in effect a kind of policy, rather than a project or even a

programme. And they are collective instruments, which involve multiple actors and interests often with different and even conflicting objectives in signing up to them. This means that agencies' objectives are often vague and contradictory and impact is diffuse and often quite subtle, making the usual problems of establishing causation particularly complex. It also means that different actors report very different pictures of the same process. A related problem has been that all the instruments were part of inter-agency and agency/faction politics, most notably the Ground Rules which are still being used as a regulatory mechanism. This has meant partial and distorted reporting by some actors. There has also been a problem in separating out individual intention from structural factors in explanation. It was notable, for instance, that many interviewees attributed much of the development of the instruments to the leadership of a few individuals, but failed to observe the structural opportunities and constraints that affected them.¹¹

A particular difficulty has been establishing any kind of 'baseline'. If it is assumed that the two broad goals of both instruments were, on the one hand, to reduce manipulation of aid by warring parties and, on the other, to improve their respect for IHL, attempting to determine impact means establishing changes in, say, diversion rates of food and human rights abuses. Neither of these is monitored in a systematic or consistent way by humanitarian agencies, particularly not food diversion, the existence of which is often in fact denied. So, rather than saying if the JPO, the PPHO or the Ground Rules have 'worked', we have attempted to identify and describe their various effects, many of which were not necessarily intended by their authors.

1.8 The problem of counterfactuals

The standard of proof in many of the disputes about humanitarian aid is generally not high, on all sides of the question. For instance, many of the criticisms of humanitarian action have counterfactuals that are, at best, unprovable, at worst downright implausible.¹² The claim, for instance, that aid has prolonged a war implies that, all else being equal, no aid would have meant a shorter war. The obvious response to this kind of statement is: *how do you know?* To justify this statement a level of detail needs to be produced on the quarter-mastering of the belligerents over a considerable period of time, the importance of aid supplies in this, and the possible alternative supplies they could have drawn on if aid had stopped, that is beyond the wildest dreams of most conflict researchers. Only very rarely is this kind of detailed, high-quality research undertaken.¹³

Analysis of similar circumstances to provide a counter example also seems unlikely to support such a claim; many wars have continued perfectly well with no aid at all, others have been comparatively short and received quantities of aid. At the level of generalisation of this

kind of statement, it is hard to see that it is meaningful at all; it is certainly not subject to proof or disproof. A more specific claim, for instance that a certain garrison town would have fallen had it not been for aid supplies, should be easier to substantiate. But here too, the details of supply and the various options available to the belligerents are rarely produced to justify such claims. Testimonies by some of those involved, even those diverting the aid, are surely not a sufficient level of proof, given the seriousness of the claim.

On the other hand, the supporters of aid frequently resort to claims with similar problems. The claim in a thousand end-of-project reports that 'the project saved thousands of lives and reduced suffering for many more', or even more problematically the claim that 'without aid thousands will die' is similarly difficult to prove. Aid agencies are often unable to provide the kind of detailed analysis of public health risks and alternative survival strategies to predict convincingly the 'with' and the 'without' aid scenarios.

This lack of empirically based theory causes three problems:

- it makes explanation in terms of causation very problematic. What could be simply association (e.g. aid delivered in conflict) is attributed the power of causation (either, depending on choice, the lengthening of the conflict, or the saving of thousands of lives);
- given the low standards of proof that the proponents of debates on these issues seem prepared to accept, attributing causation is more the result of dogma and ideology than a spur for more detailed research. Dialogues, such as they are, are often dialogues of the deaf;
- perhaps most importantly, it is impossible to predict the likely impacts of different courses of action. It may be, for instance, that in a certain situation the option that will reduce mortality most effectively is the suspension of aid, or alternatively the flooding of a local market with food despite its certain diversion. In the absence of predictive ability, decisions are based on faith, not reason.

This study makes no claim to get beyond this problem – we too were hampered by the logistical security, methodological and financial constraints of researching in conflict. However it does, we hope, recognise these limitations.

2. Humanitarian Principles in a Changing World

The humanitarian impulse may be universal and timeless, but the rules and institutions through which it is expressed, and the extent to which these are respected, are historically determined. Humanitarian principles can best be seen as a compromise between military-political necessity and the dictates of conscience and humanity, or put another way, between soldiers and the people they fight over. As such, they are one part of the broader set of the 'rules of war'.

The terms of this compromise are constantly renegotiated; they change over time as the nature of warfare changes, as technologies change, and as ideas of what is acceptable behaviour change. One of the striking aspects of this compromise is that the military hold most of the cards. Unless obeying the rules is in the interest of the military, humanitarians have little except moral persuasion to fall back on. The humanitarian idea is thus both uniquely powerful and acutely prone to abuse and manipulation.

What we refer to in the phrase 'humanitarian principles' is in fact the modern expression and instrumentalisation of this compromise, chiefly of course through the development of IHL and the ICRC. In many current discussions of humanitarian principles there is a tendency to confuse the modern expression with the universal ethic. This is unhelpful, as it is ahistorical. The key point is the need to understand the particular incentives and disincentives for soldiers and politicians to respect the limits of war at different times, in other words to understand the nature of the compromise in a particular time and place and the forces that condition it. In recent years this compromise has undergone significant developments. Processes such as globalisation, the ending of the Cold War, the development of electronic media and the 'CNN factor',¹⁴ and the expansion of the humanitarian system have all contributed to a shift in the nature of the compromise, and it is this that has produced such tensions in the idea of humanitarian principles. Importantly, these developments represent significant opportunities as well as threats for the humanitarian agenda.

Key to the nature of this compromise is the nature of war itself: who fights whom, how, and why. Some of the broad developments in recent times relevant here, and their implications for humanitarianism, will be sketched out very briefly in this section and the next. Section 4 looks at these questions in greater detail for Sudan and Liberia.

2.1 Principles, states and treaties

The modern version of humanitarian principles, so famously initiated by Henri Dunant after he witnessed the Battle of Solferino in 1859 and contained in the first

Geneva Convention of 1864, needs to be seen in the context of its contemporary political and military developments: the wars between relatively small, competing nation-state armies within the post-Westphalian international state system which developed in the nineteenth century. Humanitarian principles in this context were an expression of the Enlightenment ideal of the progressive 'humanisation' of war, leading to its eventual withering away as a means of solving disputes between states (Hutchinson, 1996).

A key factor in this particular compromise was the developing nature of political accountability between the controllers of the armed forces of liberal nation-states during the late nineteenth century and the populace that makes up the common soldiery in a nation-state army. Humanitarian principles in this expression can be seen in part as an extension to soldiers of ideas of accountability between state and citizen represented more recently by the idea of the welfare state. They can be seen as 'An attempt...to extend the decencies of nurture and memorial beyond the aristocratic warrior elite to the common man, the new masters of the age' (Ignatieff, 1998: 114). This is partly why most of the 'laws of war' dealt with the treatment of soldiers and not civilians; armies need soldiers to fight and the need for improved treatment of injured soldiers was part of the motivating force of humanitarianism in the nineteenth century (Hutchinson, 1996). More altruistically motivated humanitarians, chiefly in the ICRC, may have promoted and facilitated this compromise, but it would not have got far if the elites had not seen that it was in their interest or politically necessary.

The political counterpoint to this liberal-democratic idea of principles is found in the version of humanitarian principles in the philosophy of Maoist liberation struggles.¹⁵ It too is recognition of political realities and the need for political reciprocity in order to maintain continued support in an armed struggle.

However, greater political accountability does not necessarily translate into respecting the rules of war in terms of dealing with opponents. In the twentieth century, the changing nature and technologies of war proved to be a massive setback to the humanitarian agenda of the nineteenth-century idealists behind the ICRC. The need to mobilise vast conscript armies, as opposed to smaller-scale professional armies, plus the development of technologies capable of long-range destruction, and the demonisation of 'the other side' during the 'wars of religion' of the twentieth century led to the mass killings of civilians by all sides (Hobsbawm, 1997). Indeed, the significant post-war developments of IHL, the four Geneva Conventions of 1949, with the fourth Convention for the first time concentrating on civilians, can be seen as a reaction to the massive abuse of humanitarian ideals in the Second World War.

In recent years, there have also been significant changes that will impact on the way this compromise develops. The modern expression of humanitarian principles has been tied up with nation-states, their armies and their system of political accountability. As states become less important in the international system, as war between liberal democracies becomes increasingly inconceivable, and as nation-state armies merge – in the field at least – in multinational operations fighting for ‘international peace and security’ rather than national glory or defence, new accommodations will need to be reached. A hint of this was displayed in the extreme unwillingness of NATO’s political leaders to risk combat casualties in Kosovo, but yet to use the language of humanitarianism to justify the war. That the deaths of ‘enemy’ civilians in a ‘humanitarian war’ were guaranteed by NATO jets flying high to avoid missiles reflects a further shift in the complicated compromises over humanitarianism. Humanitarian principles are a deal between soldiers, not between policemen and criminals.

2.2 Humanitarians and their principles

Humanitarians, notably of course the ICRC, played a role in promoting and codifying these principles, though a circumscribed one. A part of the overall compromise is that the authorities allow a specialist organisation – ICRC – to suggest how to define the law and to help them meet their commitments to their soldiers. But it can do this *only as long as it respects certain conditions*, i.e. neutrality, impartiality, etc; in other words as long as it does not get involved in wars or question states’ right to fight them. States recognise that ICRC needs strict independence in order to fulfil this role. Its good offices serve certain useful functions in terms of communicating between the belligerents, and, for instance, in helping get captured soldiers back.¹⁶

In other words, what are now commonly referred to as ‘humanitarian principles’, notions such as neutrality and impartiality, were in fact only *the conditions imposed on humanitarian agencies by the military elites of states in return for respecting which agencies would be allowed to operate*. The essence of these principles is thus *non-interference* by agencies in conflict. However, as belligerents in recent wars have increasingly chosen to ignore humanitarian principles, humanitarians have been forced to rethink the principles of humanitarian action, in effect to challenge this imposition of non-interference.

2.3 Understanding conflict

That many recent conflicts have created large numbers of civilian victims is indisputable.¹⁷ But accounting for why this should be so is controversial. There are, of course, many accounts of conflict; those relevant here the accounts which are prevalent in humanitarian and

development agencies, as their models of conflict goes some way to determining their response.

Duffield (1998a) identifies two broad conceptions. First that conflict is a result of poverty and underdevelopment¹⁸, ‘within mainstream thinking conflict is understood in terms of multiple causes that stem from a developmental malaise compounded by ignorance and sectarian manipulation. It is essentially irrational, backward looking and associated with various forms of scarcity or breakdown’. A number of recent writers however promote an alternative understanding of conflict that sees it not as temporary deviation from an inevitable path, or as irrational barbarism, but as the result of adaptation by rulers in the South to the process of globalisation and post-Cold War diplomatic and security adjustments. Variations of this analysis are found in writers such as Duffield (1998), Keen (1998), Reno (1996) and Richards (1996).

Globalisation, the argument goes, has challenged the competence of the state, producing new, more diffuse and less hierarchical forms of authority and decision-making – a shift from government to governance (Duffield, 1998a). Some Southern rulers, especially in weak states, have to cope not only with the declining competence of the state, but with a declining conventional economy and declining development funds as well (ibid: 47). And in the post-Cold War world many rulers, or would-be rulers, in weak states are no longer able to depend on external patrons for support (Rufin, 1996). This has led to the development of new survival strategies by elites that include dismantling welfare bureaucracies, violent predation, and forming links with the international grey economy. Such rulers often justify these political projects, and also seek support, by means of appeals to group interests, and so are often associated with ethnic separatism. These processes often lead to the high levels of violence and violent extraction characteristic of complex political emergencies and which are labelled ‘humanitarian crises’. ‘Post nation-state war economies often involve campaigns of immiseration and violent population displacement as an essential precondition of asset realisation. Such developments therefore are not an unfortunate but indirect consequence of conflict, they are usually its intended outcomes’ (Duffield, 1998a: 58). They have also led to structural changes to the nature of warfare (de Waal, 1996).

Crucially, these projects no longer depend on any kind of consent from or accountability to society; there is no necessity for any kind of social contract. In short a ‘governance gap’ has emerged between rulers and the ruled, ‘Such ruler strategies challenge the conventional association between government and the public interest’ (Duffield, 1998a). This account does not see conflict as intra-state war, since that is associated with conventional views of the state. Rather, it emphasises the emergence of political projects, including qualified state systems, which no longer seek, or even need, to establish territorial, bureaucratic or consent-based

political authority in the conventional sense. This is summed up by Keen as ‘to paraphrase Carl von Clausewitz, war has increasingly become the continuation of economics by other means’ (Keen, 1998:11). The increasing distinction between war and violence is accompanied by a weakening distinction between combatant and non-combatant.¹⁹

War has always been brutal, civilians have always been killed and plunder is hardly a recent phenomenon. However, these theories have profound consequences for the idea of humanitarian principles. As argued above, the modern notion of humanitarian principles rests on the modern notion of the state, not just as a legal entity but as a consent-based and accountable political formation. Thus rebel movements aiming for legitimacy often espouse a form of humanitarian principles, and indeed have sometimes declared their intention to abide by the Geneva Conventions. Humanitarian principles also rest on the Clausewitzian notion of war as politics by other means. As such, despite the frequent and widespread violations of the idea that there is a morality to war ‘the truth is that one of the things most of us want, even in war, is to act or to seem to act morally’ (Walzer, 1977: 20). Another way of putting this is that, despite frequent violations, ‘War is a “moral theatre”’ (Ignatieff, 1998).

However, if, as argued by Keen, conflict is no longer about ‘politics’ but about ‘economics’, and if we are seeing the emergence of stable political projects that no longer need or seek consent and accountability, where does that leave humanitarian principles? A key element of war as a moral theatre, and thus of humanitarian principles, is that there are boundaries. In other words some idea of non-combatant immunity, there are limits to war. Without this, there is no difference between war and slaughter. The boundaries of this immunity may be drawn differently at different times in history, the point is that there are boundaries. However, if war is ‘the pursuit of economics by other means’, and these projects have no need of accountability, then maybe there are no boundaries, maybe the idea of non-combatant immunity is simply not relevant. The problem is not – as commonly put – that it is often difficult to distinguish between civilians and combatants, that the distinction is ‘blurred’; *it is that this is not a relevant distinction at all, it is a distinction relevant to war not economics*. And as there is no distinction, so there is no non-combatant immunity. ‘The crucial point is that there are rules of war though there are no rules of robbery (or of rape or of murder)’ (Walzer, 1977: 128). If these theorists are right, then in this kind of war, calling on, or expecting, the parties to ‘respect humanitarian principles’ is like calling on a gang of armed muggers to fight by the rules of boxing; it is not just laughable, it is irrelevant. It confuses one type of activity with another.

2.4 New wars, new principles?

A particular understanding of the nature of conflict has implications for humanitarian, and human rights, policy. Duffield (1998a) argues that many recent innovations in humanitarian thinking, such as ‘developmental relief’, ‘linking relief to development’ and ‘local capacities for peace’, rest implicitly on the first model of conflict outlined above.

The policy implications of the second model of conflict for humanitarian agencies are not so clear. However, one consequence is that many humanitarians are questioning the principles of humanitarian action. Where the belligerents refuse to acknowledge the limits of war, many humanitarians are questioning whether they should still respect the condition of non-interference imposed on them. Many have decided they should not (hence the debates about the relevance of neutrality) and are looking for ways to impose principles themselves; in the short term by coercion (for example strategies such as conditionality and ‘shaming’) and in the longer term by attempting to restructure conflict-affected societies in order to re-introduce a political contract (developmental relief, local capacities for peace). This will be examined in more detail in Section 3.

2.5 The advance and retreat of the international security system

It has become familiar to contrast the heady days of UN interventionism in the early 1990s with the much greater reluctance and caution of the present. In the early post-Cold War years the numbers of UN peace-keepers around the world was about 10,000 and they had budgets of hundreds of millions of dollars. In the early 1990s with interventions in Iraq, Somalia and Bosnia authorised by a series of ad hoc Security Council resolutions, this rose to 70–80,000 blue helmets and a budget of \$4 billion in 1995 (Weiss, 1999: 22).

In recent years however this trend has gone into reverse, and numbers and budgets had plunged by two-thirds by 1997. This is no doubt in part because of the perceived UN failures in Bosnia and Somalia, notably the killing of US troops in Mogadishu. 'The conventional wisdom in policy circles is now to refrain from robust involvement by the military in humanitarian crises' (Weiss, 1999: 3). The 1999 intervention in Kosovo may seem to belie this, but, given its importance to the stability of Europe, it in fact accords with this pattern.

The ending of the Cold War, while perhaps not changing the international landscape as much as was anticipated by some, did lead to a realignment of strategic priorities for the West. Jones (1998) identifies three main concerns for the security establishment: destabilisation in Russia resulting from economic collapse, an expansionist China in Asia, and the uncontrolled spread of weapons of mass destruction. The brief rise of interventionism in the early 1990s is accounted for as due to these threats being in temporary abeyance; 'Civil conflict in Africa was briefly on the radar of the strategic mainstream because of the absence of immediately pressing alternatives: it is rapidly falling off the radar' (Jones, 1998). In other words the regions of the world are categorised according to their strategic significance, and interventions into wars of survival and wars of choice. Importantly, the types of process identified in the section on conflict above are developing in both strategic (i.e. the criminalisation of the economy in Russia) and non-strategic (i.e. Sierra Leone) areas.

Similarly, Hoffman (1999) identifies a geographic differentiation of arenas of intervention by powerful states that identifies a first tier where terrorist activity, migratory movement and criminality directly affect the intervening states, such as Chechnya or Kosovo, a second tier where these things are not so important and where stabilisation is the main goal, such as Tajikistan or Cyprus, and a third tier of countries with little strategic interest where primary responsibility is delegated to the UN. The post-Cold War process of strategic disengagement from what are now unstrategic areas has been matched by declining official aid flows. 'US direct aid to Africa fell from a yearly average of \$1.5

billion in 1985 to an average of \$210 million between 1994 and 1996' (Reno, 1999). Kosovo, because of the mass expulsion of Kosovan Albanians, has risen from the second to somewhere near the first tier, but even so it is hardly a 'war of survival'. Hence the extreme reluctance to commit ground troops and the fact that NATO flew only 1,700 air sorties in the first ten days of the attack on Yugoslavia, 1,100 fewer than on the first day of the Gulf War alone (Norton-Taylor, 1999).

2.6 The growth of the humanitarian system

Aid and aid agencies have also been affected by these developments. During the late 1980s and 1990s the increase in conflict, the gradual erosion of sovereignty and the privatisation philosophy of the time created an opportunity for aid agencies to expand their role in conflict dramatically. By the mid 1990s many more agencies were working in conflict in ways only ICRC, and perhaps MSF, were able or willing to do ten years earlier. However, the role of the agencies, and their relationship to national and international political actors, has become very different in the different tiers identified above.

In some areas, notably Africa, the growth of agencies, the 'complete abandonment of strategic attention to those parts of the world highest on the development agenda' (Jones, 1998), combined with the processes of violent predation and the cutting of state welfare bureaucracies identified above, has left aid agencies with new roles in two important areas: as de facto political actors, and as substitute providers of state welfare. In Sudan for example, Operation Lifeline Sudan and the recurrent famines are often the focus and spur for external diplomatic involvement. OLS southern sector too is in effect having to fulfil the welfare and social functions of the state, providing health, education and food to large numbers of the population. It is even, according to the OLS Review, trying to regulate the war itself through a mechanism like the Ground Rules (Karim, et al. 1996). In Sierra Leone NGOs are also providing many of the state's welfare functions and some, such as International Alert, have even been involved in peace negotiations.

In Rwanda, the Joint Evaluation of Emergency Assistance to Rwanda (Eriksson, 1996) identified the essential problem, as being a political vacuum that aid could not fill. It is regularly said that aid should not act as a fig leaf for the lack political policy for dealing with conflict. In non-strategic countries the reluctance to commit political and diplomatic capital and the blurring of development and security concerns have produced the pressure for aid to be used in a more politically constructive way, hence the increasing accusations that aid is becoming 'politicised'. In non-strategic areas it is rapidly becoming apparent that aid is not a substitute for policy, it is the policy. Humanitarian agencies were carried up with the interventionist flood-tide, but have been left beached on

the shores of a problem they are not equipped to deal with.

In areas where the major powers are engaged the role of humanitarian agencies is different. In the Kosovo conflict, by contrast, the agencies were firmly limited to short-term welfare provision alone, as part of the stabilisation of the refugee population in surrounding countries to prevent mass refugee movements. It is unlikely that the services of International Alert would have been called on to facilitate negotiations between NATO and Milosevic. And in North Korea, a country of some strategic significance given its ability to destabilise the region, agencies are in part a conduit for food intended to stabilise the country (RRN, 1999) – in itself no doubt a worthy objective, but hardly the role of impartial and neutral humanitarian agencies.

2.7 Principles and politics

This re-negotiation of humanitarian principles is a continual process, determined by larger forces, but in turn having some impact on those forces. It is, of course, an intensely political process. Despite the massive abuse of humanitarian principles being almost a constant of the twentieth century, there is an argument to say that at the moment the re-negotiation is entering a new phase, and one that requires a new response from humanitarians.

Of particular importance has been the ending of the Cold War and the impact that is having on perceptions of security in Western states. On the one hand, many conflicts are now unimportant in geo-strategic terms where once they would have been significant. On the other, definitions of human security are broadening to include peace and development (Boutros-Ghali, 1992). Secondly, the entrenchment in parts of the world of war economies, and the elites that benefit from them, has massive social costs. And lastly, the very success of humanitarian agencies, at least in terms of growth, and the fact that they have been used as political cover, has left them as major players on the international scene. They have grown far beyond the original idea of them as auxiliary to the authorities, in great part, it must be said, willingly. The resources and the public attention they command are now significant; it is no accident that NATO's intervention in Kosovo was called the 'first humanitarian war'.

These developments have pushed humanitarian agencies, and humanitarianism itself, on to the political stage, whether they like it or not. Like children at a school concert, some are willing some unwilling, some precocious, some backward. Some have not even realised it. However, agencies too have little real political accountability to the people they are meant to be helping. The modern version of humanitarian principles has fallen into the 'governance gap', and it is this that is at the root of the various ethical dilemmas confronting humanitarian action today.

Humanitarianism has probably always been a form of politics, just not a very important one. These processes combined have pushed humanitarianism by default into becoming a more important form of politics; as a fig leaf, as local political actor, as witness, as conduit of resources to military groups, or as quasi-welfare bureaucracy. But the principles of humanitarian action were not designed to cope with this role, which is why they are under such stress. And if some of the newer theories about conflict are right, this is likely to be a constant feature of agency futures and something that has to be adapted to; the agencies are themselves part of the negotiation and networks of governance that make up a globalised world.

The question facing agencies is thus not whether to be political, but how. Saying that humanitarian action is political is like saying orange is a colour, true, but not very illuminating. The important question is how is it that we can distinguish orange from red or yellow? We agree that they are different, yet we cannot tell at what stage one becomes the other. In other words, how can genuinely humanitarian politics distinguish itself from *realpolitik* and the politics of national, or agency self-interest?

3. Principles and Organisations

Just as the ethics of war are complex and disputed, so too are the ethics of humanitarian action.²⁰ What is not disputed is that some sort of ethical framework is necessary. The principles of humanitarian action, which provide this ethical framework, must be understood within the broader set of humanitarian principles; the way in which soldiers fight wars is the context against which humanitarians must determine their ethical framework. Unsurprisingly, the Red Cross movement has been the main source of ethical reflection and principles for humanitarian intervention since its foundation in 1864. Many newcomers have looked to it for inspiration, but most have added new ideas and adapted the old. In recent years indeed, as a result of the processes elaborated in Section 2, there has been much debate around principles.²¹ Where belligerents reject humanitarian principles, humanitarians have questioned the principles of humanitarian action. This debate is usually couched around the question of what a 'principled approach' might be.

An often overlooked aspect of this subject has been the relationship between principles and organisations. Principles are often debated in isolation, as if the structure, objectives and culture of the implementing organisation were immaterial. This section will examine the conceptual developments around principles of humanitarian action, and the various interpretations of what a 'principled approach' comprises. It will then touch on some related organisational issues.

3.1 Conceptual developments

3.1.1 The Red Cross principles

What the Red Cross calls its 'fundamental principles'²² are in effect an ethical framework for humanitarian action in conflict. As argued in Section 2, they amount to a self-imposed condition of non-interference; they assume the reality of military necessity, but also that war has limits. They allow the Red Cross to point out those limits to the belligerents, and to provide help to those beyond the limits in a way that does not interfere with the conflict. For ICRC, principled humanitarian action, or a principled approach, means simply following these principles. They are though, it must be remembered, a means to an end. The seven principles, despite their near religious status, were not in fact formulated as such and written down until the 1960s, around a 100 years after the ICRC was formed (Hutchinson, 1996: 346); they represent a codification of a way of working that has evolved over many years.

But as the organisation most intricately linked with modern humanitarianism, in many ways it has been ICRC that has been most seriously challenged, both organisationally and conceptually, by the developments outlined in Section 2. Thus, on the one hand it is often admired as the most professional and effective humanitarian organisation. But, on the other, it has also

been seen as reluctant to intervene in conflicts unless its principles are observed. Indeed in many ways the development of non-ICRC humanitarian organisations, notably MSF in Biafra, is in part because ICRC stuck to its principles. The 'principled approach' of the Red Cross approach was seen by some as inadequate in dealing with the problems of modern conflicts (Borton et al. 1994), the flexibility of NGOs, in other words their flexibility over principles, is sometimes perceived as an advantage over the more rigid approach of ICRC.

3.1.2 The legal status and obligations of humanitarian actors

The fundamental principles of the Red Cross are based on, rather than codified in, the Geneva Conventions. The Geneva Conventions are addressed to and signed by states and the relevant customary principles are binding on non-state parties involved in an internal conflict. Strictly therefore, they do not confer rights or impose obligations on humanitarian agencies; rather the articles which concern civilian relief describe situations in which states must allow assistance to be delivered, and the conditions they are entitled to impose on such delivery. However, the concepts 'humanitarian', 'impartial' and 'neutral' clearly exist in international law and they are thus important to agencies for two reasons: particularly because agencies abiding by the conditions are entitled to insist on access to populations in need, and, in terms of the current discussion, because they represent the most detailed compromise yet achieved between military necessity and humanitarianism.

The principles of impartiality and neutrality in IHL accord with some current practices of humanitarian action, but not with others. Impartiality, for instance, is seen by almost all actors to be a key principle, but it can be interpreted as meaning that no distinction should be made between beneficiaries, whether they are individually 'good' or 'bad'. However, many called for this distinction to be made during the Rwanda crisis, hence the emotive expression 'feeding killers'. Indeed, the statutes of UNHCR explicitly require it to discriminate against certain classes of people, those who are not entitled to claim refugee status (Study 4: Mackintosh, 2000: 3.2). Though the term 'neutral' does not in fact appear in the Geneva Conventions, the concept of non-interference it represents is crucial to the conditions under which relief provision is permitted. Article 23 of the Fourth Convention for instance talks of the need for humanitarian organisations to have 'effective control' of resources. And the obligation to permit free passage of relief goods applies only if a party has 'no serious reason for fearing':

That a definite advantage may accrue to the military efforts or the economy of the enemy through the substitution of the above-mentioned consignments for goods which would otherwise be

provided or produced by the enemy or through the release of such material, services or facilities as would otherwise be required for the production of such goods.

This is a remarkably similar concern to the arguments over substitution in recent times, and a provision that could be interpreted as ruling out economic development work in some cases (Study 4: Mackintosh, 2000: 3.4).

3.1.3 Principles and other humanitarian organisations

As other organisations have increasingly become involved in conflict, they have naturally looked to the Red Cross for guidance on ethics and principles; the example of the Red Cross has thus had a profound impact on wider humanitarianism. What other organisations have adopted however, and what they have added, depends more on the needs and philosophy of organisations doing the adopting than on the need for coherence and consistency. Other agencies have usually borrowed selectively, and only from the principles without examining the organisational implications of their adoption.

Slim (1998), in an 'audit' of the principles of British agencies, has pointed out that the principles that have been adopted most readily are those of humanity and impartiality. There is widespread agreement on what the Red Cross NGO/Code of Conduct calls 'the humanitarian imperative', the idea that human suffering demands a response. This is a fundamental idea and one that derives from an absolute morality that people in need should be assisted simply because that is the right thing to do; it is an expression of the fundamental dignity and value of all individuals and thus something that fits easily with most charitable organisations. Its current expression is the assertion that there is a right to assistance. Impartiality – in other words that response should be guided by need alone rather than political or any other criteria – is a logical consequence. These two principles 'fit' most easily with other types of organisations, such as those working on development and social justice (Slim and McConnan, 1998).

The principles of neutrality and independence have also been borrowed, though more equivocally and by fewer organisations. Few agencies accept the ICRC approach to neutrality.²³ And few are able to be as independent. Unlike neutrality, which has attracted considerable reflection, the principle of independence has in fact received very little reflection outside of the ICRC. A number of principles have also been added, such as a 'developmental approach', drawn from the development origins of many of the organisations doing the borrowing.

This composite set of principles is now best represented in the key statement of principles, the Red Cross NGO/Code of Conduct. This is the most widely

approved statement of principles, and the one seen as being most widely applicable. There is thus a very broad, though selective, agreement on what it is to be principled. As more organisations have joined in, and as problems of working in conflict become more apparent, the consensus has become increasingly shaky however. In their adoption and manipulation by a range of other organisations, the principles have also become increasingly stretched, disputed and often plainly misunderstood. It is a precarious consensus and as demonstrated in Section 5, one that is easy to upset: as a result it often breaks down in the field where abstract principles have to be turned into operational decisions. Not surprisingly, the Red Cross principles, modified and transplanted into other organisations lose their internal consistency; hence the debates over capacity-building versus neutrality for instance (Macrae et al. 1997). In this process of abstraction, the Red Cross principles have also become detached from their organisational moorings, the procedures and ways of working that make them real. These processes have further loosened their already tenuous grounding in IHL.

3.1.4 Are principles relevant?

However, the biggest challenge to the Red Cross formulation of the principles of humanitarian action has been the developments in the nature of conflict and in the international system that were sketched out in Section 2: namely, the development of forms of conflict in which the belligerents have little or no incentive to respect humanitarian principles, the retreat of the international security system from many parts of the world, and the growth in size and number of humanitarian agencies. Together, these factors make the implementation of a 'principled approach', as understood by ICRC, very difficult:

- In genocidal or ethnically driven conflicts the very idea of universal humanity, or that war has limits, is denied by the belligerents.
- In a situation where attacks on civilians are the objective, merely supplying aid to civilians is perceived as political rather than humanitarian as it frequently runs counter to factional objectives.
- Impartiality is difficult at the local level where access is denied. At the global level donor priorities skew resources towards areas of security concern, such as Kosovo, and away from countries in much greater need, such as Sudan or Angola.
- Independence is increasingly difficult now that many agencies are dependent on government funding. Governments increasingly appear to want to use aid as part of broader foreign policy goals (Macrae and Leader, 2000).

- Division and competition between agencies, both financial and conceptual, makes their manipulation that much easier.

The essential point is that, in this changed context, a 'principled approach' based on the classical Red Cross principles is considered by many to be inappropriate, maybe even impossible. The primary problem is seen to be that humanitarian aid can have a negative impact on conflict (Anderson, 1996; de Waal, 1997), principally by strengthening the forces that cause it. And if it is having a negative political impact, maybe the goal should be to ensure that it has a positive political impact instead, beyond its purely humanitarian role of relieving suffering. Thus the most significant discussions, disagreements, confusions and conceptual developments have been around the idea of neutrality, i.e. of non-interference.

3.1.5 The problem of neutrality

The ICRC definition of neutrality has two components: ideological neutrality and non-participation in hostilities (Plattner, 1996). Though neutrality is not actually mentioned in the Geneva Conventions,²⁴ the idea of non-interference permeates the ICRC approach and is elaborated on in other parts of the Fourth Convention (e.g. Article 23). It is however a pragmatic principle intended to ensure access to victims of conflict.

'Complete' neutrality is, of course, impossible, as was recognised by the drafters of the Conventions. The ICRC commentary on Article 23 states that 'It is true that any consignment of medical and hospital stores, food and clothing, always benefits the receiving Power in one way or another... there must be some "definite advantage" [i.e. to justify blocking free passage].²⁵ The idea of 'humanitarian space' as some kind of 'politics-free zone' in which agencies work is senseless and has always been seen as such. It is a fiction, useful for promoting a humanitarian agenda that politicians and soldiers have been prepared to tolerate in certain circumstances. The difficulty of course is deciding what constitutes a 'definite advantage'.

From the point of view of an absolute morality it could be argued that it does not matter if aid influences a war; humanitarian aid, it could be argued, should be judged by its moral rather than its practical impact, it is simply the right thing to do and that is enough, aid is a value not a policy. After all, the argument that providing aid is wrong in that it will allow a war to continue after it might otherwise have finished can also be made about the rules of war in general. Some have argued that having rules for war also prolongs it and that thus the 'kindest' approach to fighting a war is the use of maximum brutality as that is what is likely to end it quickest. There is a 'long history of impatience' (Walzer, 1977: 47) with the idea of rules in war for this reason. This attitude is not now generally accepted by the Security Council.

Although this absolute morality was the implicit moral underpinning of humanitarianism for many years, it is not now the position taken by most humanitarian agencies. Most organisations would take the view that ethical responsibility now means that they must somehow judge the 'net benefit' (Bryer and Cairns, 1997) of their work. This is a very significant development in the philosophy of humanitarianism, *it represents the introduction of a utilitarian ethic into what was hitherto an absolute morality*. It is one of the ethical consequences of agencies becoming part of the 'governance network' referred to in Section 2. Many of the current dilemmas of humanitarian action are the result of the wrestling between these two ethics.

All this has had a very significant, but often unremarked, consequence for the principles of humanitarian action in recent years; *the humanitarian*

imperative has been qualified. The perceived risks of negative impact, and the possibility of positive political impact, have in effect combined to condition what was previously considered an automatic humanitarian response to suffering. However, once a utilitarian ethic is introduced, agencies are presented with a serious problem; they do not have a calculus or formula that such an ethic requires. As argued in Section 1.7, except in the broadest terms, the ability to weigh up positive and negative impacts, or judge what a 'definite advantage' might be, is currently beyond the capacity of humanitarian agencies.

3.1.6 Neutrality and politics

Given the centrality of the problem of neutrality, different approaches to humanitarianism, or to what it means to take a 'principled approach', can be categorised by how they understand it. Not surprisingly, the key point is the conceptualisation of politics and what constitutes political activity. Broadly there are three approaches. The descriptions that follow are ideal types; they are often confused in implementation, or within the same organisation.

The first could be called 'Neutrality elevated': the principle is shifted from the pragmatic Red Cross principle of 'we won't interfere if you give us access', namely a principled imposed by the belligerents, to an absolute principle 'we will not take sides, intentionally or unintentionally, particularly not to support the forces sustaining conflict'. In other words, it becomes an absolute principle that agencies have imposed on themselves. This approach is often accompanied by a strong emphasis on human rights and protection. There are, to be sure, differences about what is done in terms of human rights advocacy, public shaming versus quiet persuasion, but the difference is one of tactics rather than principle. In this conception, humanitarian politics is conceived of as action in support of promoting the rights of non-combatants in relevant international law (Forsythe, 1977). If, for example, one side is assisted more than another as a result of attacks on 'its' civilians, this may have a political impact but this is acceptable as it is upholding the rights of civilians, as opposed to deliberately trying to influence the outcome of the war which is not. Similarly, if denunciations of abuses are made that negatively effect the international perception of a belligerent, this too is acceptable for the same reason.²⁶ Impartiality rather than neutrality is the key concept. Typically, agencies adopting this position see humanitarian aid as for the relief of suffering only rather than also having a developmental or peace-building role.

The second might be called 'Neutrality abandoned'. A number of writers, if not agencies, have been advocating an undefined 'political humanitarianism' (Weiss, 1999; Ryle, 1998; Prendergast, 1997; Ignatieff, 1998). They argue that, as humanitarian action has such significant political consequences, humanitarians are obliged to articulate, and contribute to, (good) political

objectives. Humanitarian action needs to be part of a political strategy to manage conflict and enhance the political accountability of the belligerents to their populations. Humanitarian action, it is often said, is no substitute for political intervention, so humanitarian action should be more explicitly political. 'Political humanitarianism is a legitimate response to the recognition that humanitarianism is not enough and cannot replace robust diplomatic and military action' (Weiss, 1999: 215). Writers adopting this position often imply that advocates of a classically principled approach are politically naive, and humanitarians have to 'get real' (i.e. get involved in realpolitik). One strategy often advocated is the explicit use of conditionality, and also the integration of humanitarian action with other levels of political action to solve a particular crisis. Sometimes explicitly taking sides, or the cessation of all intervention, is advocated on the grounds that wars will 'burn themselves out', or that it is better in the long run for a victor to emerge, even if it is an unpleasant one (Ignatieff, 1998). This approach has recently been expressed in the proposal by the United States to use food aid to support the SPLA.

A third approach might indeed be called 'Third-way humanitarianism'. As the name implies, this approach is less well conceptualised and tries to accommodate both of the above positions. This position is not so well articulated but would include concepts such as 'new humanitarianism' (DFID, 1999), 'Do No Harm' (Anderson, 1996), and the Strategic Framework for Afghanistan (UN, 1998b). It rejects the 'Neutrality elevated' position as it wants to be involved in constructive social change, but yet rejects also the idea of taking sides sometimes advocated in 'Neutrality abandoned'. It is typically held by agencies with a development and social justice agenda and emphasises capacity building, the relief-development continuum, and the role of humanitarian aid in dealing with root causes and conflict resolution. The conceptualisation of politics in this position is the hardest to pin down. While claiming to recognise the importance of politics, it is unwilling to recognise the implications of a more political approach to humanitarian aid. Thus it tends to emphasise de-politicised concepts such as 'civil society' 'development' or in the case of Do No Harm the idea of 'connectors' and 'dividers' (Anderson, 1996).

However, the essential point is that, for all positions, *the principles of humanitarian action have shifted from being conditions imposed on agencies by elites to conditions agencies are trying to impose on the belligerents*. Neutrality in the sense of non-interference is not accepted by any position, with the possible exception of ICRC. All approaches are thus in a sense 'political' but, crucially, they have different conceptions of what 'humanitarian politics' would look like that 'all aid is political' kind of statement conceals. The 'Neutrality abandoned' position argues for active engagement, for determining and working towards an acceptable political goal, even for taking sides, it tends to be more ad hoc and 'pragmatic' (Weiss, 1999). The politics of the 'Neutrality elevated' position is more

passive, impartial and based on universal legal principle. It is non-partisan, yet political in that it attempts to get belligerents to change their policies and is prepared to take up confrontational positions to try and effect this. As pointed out, the politics of 'Third-way' humanitarianism is as yet ill-defined.

3.2 Organisations and principles

As mentioned above, principles are inextricably linked with organisations; a principled approach has profound implications for the nature of an organisation and how it interacts with other organisations, be they humanitarian or political. The idea of a 'principled approach' thus raises certain organisational issues which are dealt with in this section. First, what might be called the 'political economy' of the humanitarian system, namely how the funding of agencies and their relationship to donors and their home constituencies affect the attitude and implementation of principles. Second, what the implications of a more principled approach are for an individual agency, i.e. in terms of staffing, procedures, management, etc. The humanitarian system is made up of a myriad of different organisational types and structures. Can they all be equally principled? And third, almost all humanitarian action in the field is conducted by groups of agencies working together, and this too has implications for the co-ordination of principled approaches. This issue has recently been addressed by means of Codes of Conduct such as the Sphere project and the Red Cross/NGO Code of Conduct itself.

3.2.1 The 'political economy' of the humanitarian system

The humanitarian system is a loose network of organisations with widely different philosophies, mandates, resources and structures. It has become common for writers to exhort agencies to understand their political context better; this analysis should also cover the political economy of the aid system and the wider international political system of which it is a part. In broad terms, the defining characteristics of this network over the past few years have been proliferation of agencies and the parallel shift from bilateral government funding to funding of NGOs. This has been driven partly by governments putting increasing amounts of money into humanitarian emergencies, but also by the growing professionalism of agency fundraising in their domestic constituencies and the growth of Western media coverage of overseas wars.

The relationship between these processes and the development of ethical frameworks for humanitarian action is complex. Both proliferation and privatisation have effected the doctrinal development of principles. Proliferation of agencies has led to the proliferation of principles and much of the confusion generated by different agencies working out their own interpretation of the Red Cross principles. In a sense this process has

meant that principles have been 'privatised' away from the Red Cross, their original guardian.²⁷

The growth in government funding, either to NGOs directly or via UN agencies, has also given rise to what has been termed a 'contract culture', which might imply a move away from principles. de Waal (1997) makes a distinction between agencies' 'hard' interests, their survival needs, manifested in their institutional need for resources and media profile, and their 'soft' interests, or the need they feel to be principled. 'Hard' interests, it is argued, inevitably dominate 'soft'. This approach however probably underestimates the complexity of the 'soft' interests and the way they play out in different countries, organisations and structures. Action Contre la Faim (ACF) for instance, founded as a specifically emergency organisation and part of a particular French approach to humanitarianism, relies heavily on donor finance but still takes a principled approach very seriously, indeed it played an important part in the development of the JPO in Liberia and was one of its primary defenders. World Vision by contrast, with a different mandate and with a large amount of funding from private sources was widely perceived as uninterested in the JPO.

The relationship of donor governments to principles is similarly complex. States play a variety of roles in this 'political economy', not all of which are consistent. The fundamental dichotomy is often portrayed as that of a state with foreign policy goals versus the state as humanitarian donor, but again this masks a considerable complexity. States act as donors to individual NGOs and UN agencies, European states put money through the European Community Humanitarian Office (ECHO) into agencies, and donor states often sit on the executive boards of UN agencies in which the state/donor relationship is not always so clear. Donor states often form ad hoc 'donor support groups' either for individual agencies such as the Office for the Coordination of Humanitarian Assistance (OCHA), or for specific countries such as the Afghan Support Group. They also act politically as states in the Security Council and through bilateral diplomatic relationships. This raises the question as to what principles governments should be observing in their disbursements of funds for humanitarian purposes. The UK's Department for International Development (DFID) has recently adopted a set of ten principles intended to guide its disbursement of funds (DFID, 1999). These principles bear a striking similarity to the Red Cross principles, yet DFID is still an inherently political body. Indeed, the principles display the qualification of the humanitarian imperative noted above, arising from the danger that aid might 'do harm'. This of course leaves a considerable amount open to interpretation as determining when aid might 'do harm' is an inexact science, to say the least. Where there is room for manoeuvre without transparency, there is also room for the suspicion that humanitarian aid is subject to foreign policy, not humanitarian, considerations.

Until recently, principles have played a relatively unimportant part in the donor government/agency relationship. Evaluations and accountability to donors were expressed largely in financial terms and through the achievement of specific, often technical, objectives by an agency. Concern for principles played little role; for instance, donors rarely ask agencies to demonstrate that their projects are principled. ECHO's original framework agreement with NGOs for example said more about 'Visibility' (Article 27) than it did about principles (ECHO, 1993).²⁸ The situation is also reflected in the relationship between UN agencies, such as UNHCR, and their subcontractors. The extent to which an agency takes these issues seriously has thus been to a large extent up to the agency itself.

Internal organisational features of principles: ICRC has always recognised that its principles have profound implications for the way that it organises itself.²⁹ Many of what some outsiders perceive as negative characteristics – its secrecy, its hierarchy, its aloofness, the dominance of Swiss nationals – stem in part from the organisational requirements of implementing a principled approach. The principles and the organisation together form an internally logical and coherent whole. This is a large part of the effectiveness of ICRC that form follows function.

3.2.2 Regulation, codes and accountability

The regulative apparatus for humanitarian agencies within their areas of operation is not well developed. In many conflicts legal standards are disputed,³⁰ and the state apparatus for monitoring and enforcement of standards often destroyed. The Geneva Conventions do in fact give the authorities some rights to suspend the delivery of aid if they think it is not 'humanitarian'.³¹ But the legitimacy of the authorities to regulate aid is often denied by agencies, especially if it is seen as abusive. In terms of IHL, as pointed out above, the legal responsibilities of humanitarian agencies contained in the Geneva Conventions are vague. International systems for the regulation of agencies are also weak and essentially voluntary. There is some external pressure from the media, but it is very sporadic. That fact that much humanitarian action takes place in 'failed states', the weakening of the notion of sovereignty, and the assumed 'right of interference' by humanitarians do not encourage regulation and greater accountability amongst humanitarian agencies. The picture is further confused by the proliferation of agencies in the 1990s, itself in part inspired by the anti-regulation and pro-private sector philosophy of the time.

This shift from an idealised picture of strong states with a single global humanitarian agency (ICRC) strongly rooted in principles signed up to by those states in IHL, to the current variety of agencies, working in weak states, with little accountability or regulation, is part of the broader shift from government to governance

outlined in Section 2 (Duffield, 1998). This is paralleled in a shift from respect for the principle of non-interference enshrined in conventional conceptions of sovereignty to a more ad hoc series of decisions by the Security Council (and recently NATO) on humanitarian intervention, effectively making law as they go along.

While this process is part of broader global changes, it has both positive and negative features. On the positive side, ICRC cannot possibly meet all humanitarian need, and a variety of agencies both increases capacity and provides flexibility of response. On the negative side, there is danger in a retreat from universal principle. The ICRC model, while not necessarily appropriate in all cases, did at least have the merit of an in-built accountability to its own ethical framework for humanitarian action, which is in turn grounded, if not contained, in IHL. The shift to a variety of ethical positions held by different agencies, whose principles are varied, seldom grounded in IHL, and which have no comparable accountability mechanism is potentially problematic; according to some observers it has reduced the accountability of humanitarian agencies to the point where they act with 'humanitarian immunity' (de Waal, 1997).

The proliferation of agencies in the 1990s, and the criticisms of poor performance in Rwanda in particular, has produced much innovation in terms of regulation and accountability. The model chosen by the system has been that of self-regulation through voluntary codes. The original code was the Red Cross/NGO Code of Conduct (1994). Since then, there has been a proliferation of different codes. There are headquarters codes, such as the People in Aid Code and the Sphere project, and a number of field codes such as the JPO and PPHO in Liberia, the Ground Rules in South Sudan, and other codes in Sierra Leone and Democratic Republic of Congo (Leader, 1999). All seek to regulate agencies through their voluntary signing up to a specific code of practice. A notable feature of all these codes is that they have no systematic mechanism for monitoring, let alone enforcing, compliance. The extent to which this matters is as yet unclear as many of the codes are reasonably new; more will be said on this issue in Section 5. However, research on the use of codes as a tool for promoting ethical behaviour in business indicates that it does matter. 'Monitoring is the key thing. Even the best codes are worthless if there is nothing to back them up' (Cowe, 1998).

4. Sudan and Liberia Compared

One of the conclusions of our research is (naturally) the importance to aid agencies understanding the specificity of a particular conflict; the objectives of the warring parties, their constraints, strategies, resources, etc. Different opportunities for promoting humanitarian principles present themselves at different times during a conflict, and many of the successes and failures of the Ground Rules, the JPO and PPHO are due as much to the changing strategies of the warring parties as they adjust to new circumstances as they are to the strategies of the agencies. What worked at one time and place would not have worked at another. This places limits on generalisations; Sudan and Liberia exhibited some of the features of conflict sketched out above, and not others. It will therefore be necessary to examine the two conflicts before looking at the impact of the mechanisms. This section will provide a brief chronology of each conflict before going on to examine some key themes of both.

4.1 Liberia

In many ways Liberia is the paradigm of post-modern conflict and as such it has figured extensively in the work of authors who have been developing the analysis, such as Keen, Duffield and Reno. Established by freed American slaves in the nineteenth century, Liberia has always retained close links with the United States and during the Cold War was one of the largest recipients of American aid in Africa. The hegemony established by the Americo-Liberian elite who ruled in Monrovia was not effectively established in the hinterland 'up-country' however. In 1980 Samuel Doe, a former army sergeant from 'up-country', came to power in a bloody coup. Doe was the first of the country's warlords. He was able to perpetuate his brutal rule partly because of US support, but US aid fell from \$105 million in 1986 to \$55 million in 1989 (Reno, 1999).

In 1989 Charles Taylor, who was previously a member of Doe's government but who had been for several years in exile, mounted an invasion at the head of the National Patriotic Front of Liberia (NPFL). He had little more than 100 men and the objective of removing Doe. This was to be the start of a war that drew in the region and was to last until elections were held under international supervision in 1997, which Taylor won with a large majority. Out of a pre-war population of about 2.6 million, the war cost the lives of 150,000 and forcibly displaced over a million and a half people (Armon and Carl, 1996:13).

One of Doe's strategies had been 'a particularly poisonous form of ethnic manipulation' (Ellis, 1998:156), and initially many of his victims flocked to Taylor's standard. Taylor in turn exploited these hatreds and set off a cycle of ethnically based massacres which led to mass movements of refugees to Sierra

Leone and Guinea, populations from which Taylor's opponents would later recruit their support. During the initial stages of the war Taylor was able to establish control over much of Liberia outside of Monrovia. He established a nominal government, with a cabinet of ministers, for what was known as 'Greater Liberia' or 'Taylorland'.

Many Liberians hoped for US intervention, but the international community, led by the US, delegated direct intervention to the Nigeria-dominated Economic Community of West African States (ECOWAS) (Study 2, Atkinson and Leader, 2000: 1.1.1). The Nigerian Government, operating under the umbrella of ECOWAS, organised a force known as ECOMOG, which arrived in Liberia in late 1990. This intervention 'internationalised the Liberian Conflict without putting a stop to the war' (Ellis, 1998:156). Taylor was supported by Francophone states such as Cote d'Ivoire and Burkino Faso, which were in opposition to the Anglophone, Nigerian-dominated ECOMOG. The UN backed the actions of ECOMOG, even to the extent of the Special Representative of the Secretary General (SRSG) giving explicit support to the ECOMOG bombing campaign in Greater Liberia (Study 2, Atkinson and Leader, 2000: 1.2.2). As the welfare capacity of the Rump State in Monrovia collapsed, the humanitarian system took over and considerable quantities of food were distributed by the UN in the Monrovia enclave. At one point the SRSG tried, without success, to establish a humanitarian embargo of areas controlled by Taylor (ibid: 1.1.1). This UN strategy had the effect of causing lasting divisions and hostilities within the small community of humanitarian agencies. It also made the NPFL suspicious of the aid community (Scott et al. 1995).

ECOMOG, unable to defeat Taylor, encouraged the proliferation of anti-Taylor factions, and Liberia degenerated into 'a place of armed networks and factions rather than of parties and armies. War became a form of business and a way of life, rather than an instrument for furthering any coherent ideological or even ethnic interest' (Ellis, 1998:157). Humanitarian needs were consequently great but operating conditions extremely difficult, with the intimidation of aid workers and the looting of aid commonplace. Divisions amongst the agencies did not help them to establish common 'rules of engagement', thus making manipulation of aid by the factions all the easier. Thirteen peace agreements came and went. The recognition of faction leaders by ECOWAS at the negotiating table if anything increased the incentive for controlling land and people (Study 2, Atkinson and Leader, 2000: 1.3).

In 1995 Taylor and the Nigerians, looking for a way out of the stalemate, held a series of secret meetings, the result of which was a peace treaty known as Abuja I. This was signed in August 1995 and was based on the sharing out of government positions on the basis of factional strength. Abuja I collapsed in an orgy of violence and looting in April 1996 during which

Monrovia, hitherto largely protected from the fighting, was sacked by fighters of various factions. The humanitarian agencies, increasing numbers of which had arrived in the relative peace after Abuja I, lost large quantities of resources to the looters. Most international staff were evacuated for several weeks. The balance of power shifted back to Taylor, and with the international community putting increasing pressure on the warlords through the introduction of personal political conditionality,³² a new political process took shape resulting in an Abuja II. This peace agreement led to the disarming of the factions and elections in 1997. Most of the warlords turned themselves into presidential candidates, but Taylor won with a handsome majority (ibid: 1.3.1).

4.2 Sudan³³

The civil war in Sudan is the longest running in Africa. It began in the 1950s and has displayed at various times the characteristics of a colonial liberation struggle, a proxy conflict in the Cold War, and also a 'post-modern' conflict. Its latest phase began in the early 1980s when a number of disparate rebel groups withdrew to Ethiopia, where, under the patronage of Mengistu, they were formed into the SPLA/M under John Garang. Until the late 1980s the SPLA/M made significant progress against government forces and militia and was able to move freely in rural areas and contain the government's forces to the main towns. Refugee camps in Ethiopia, controlled by the SPLA/M under the protection of Mengistu, provided significant reserves of manpower and food. Despite widespread destruction and abuse (broadly the government attempted to starve the countryside, and the SPLA/M the towns), the conflict received little international attention. In 1988 the cumulative effects of the war, notably the raiding of Dinka pastoralists by government sponsored-militia, were aggravated by drought and resulted in a terrible famine in Bahr-el-Gazal which claimed the lives of hundreds of thousands of people (African Rights, 1997; Keen, 1994). Internal and external pressures led to the creation by the UN in March 1989 of Operation Lifeline Sudan (OLS). Brokered with the belligerents by UNICEF, OLS pioneered the idea of negotiated humanitarian access and was based on the idea of corridors of tranquillity rather than an outright cease-fire. A coup in Khartoum in June 1989, however, put paid to any hope of peace.

In the late 1980s the progressive depopulation of the southern countryside (many Southern Sudanese sought refuge from the fighting in Khartoum) and the need for external political credibility caused the SPLA/M to switch its obstruction of relief towards a more supportive policy. By 1991 the SPLA/M was at the height of its military ascendancy, controlling much of the south and its borders and all but a few large towns. But in May 1991 the collapse of Mengistu's regime led to the expulsion of the SPLA/M from its Ethiopian bases. This in turn precipitated a split in the SPLA/M, which was to lead to a proliferation of factions as various

armed groups formed, split and regrouped, increasingly on ethnic lines. Factionalisation led to a cycle of raids and massacres which further deepened the humanitarian crisis, creating famine in what became known as the 'hunger triangle' in 1992. The SPLA/M also lost its military initiative, with Khartoum arming and supporting several of the breakaway groups that were responsible for much of the destruction.

In 1993 a regional forum, the Inter-Governmental Authority on Drought and Development (IGADD), embarked on a peace process. This was unsuccessful but underlined the increasingly regional character of the war, with Uganda and Eritrea in particular becoming increasingly anti-Khartoum. Indeed, the SPLA/M was operating in part from northern Uganda. It also began a process, which was to lead to the signing of the tripartite agreement (between Khartoum, the SPLA/M and the UN) which is the formal basis of the UN OLS operation. In 1995 the SPLA/M began to regain the military initiative, partly as a result of the realignment of regional and international powers against Khartoum, with the US increasingly providing support to the anti-Khartoum forces. Internally, anti-government forces combined in the National Democratic Alliance (NDA) with Garang in overall command of its forces. Some attribute the SPLA/M's resurgence, or at least the inability of Khartoum to defeat it, to the SPLA/M's support for, and development of, civil administration structures in the areas it controls (Johnson, 1998).

During 1997 the SPLA/M continued to make gains in the south, helped by splits in the Khartoum sponsored anti-SPLA/M southern forces, some of which rejoined the SPLA/M in 1998. In 1998 however, the combined effects of government-sponsored raiding, drought and the denial of access for humanitarian assistance precipitated the worst famine in Bahr-el-Gazal since 1988. Partial cease-fires were established in some areas, but the war continues and civilians continue to die. The OLS-managed relief response attracted considerable criticism for being too little too late and for allowing the diversion of considerable quantities of food to the SPLA/M.

4.3 Common themes

4.3.1 The framework of respect

As outlined in Section 1, the individuals, organisations and states involved in a conflict are subject to a complex set of rights and duties laid down by IHL and human rights law. The elements and forces which combine to determine the extent to which these rights are respected or not are termed 'the framework of respect', the predominant determinants of which are the objectives and strategies of the warring parties. It is equally important however to understand the 'structural features of the settings in which they [i.e. the warring parties] operate' (Clapham, 1998:9), in particular the sort of long-term processes such as the adaptation to

globalisation sketched out in Section 2. Other local determinants are specific cultural and social institutions, which can serve both to express and to moderate violent behaviour. More broadly, the regional and international powers are also important. Humanitarian agencies play a role, though a limited one; the powers they wield are limited in the face of long-term economic and social processes and political and military powers.

The complex interactions of these different actors and the structural constraints they face lead to distinct and shifting patterns in the framework of respect. It is important to remember that the framework changes over time as actors react to new threats and opportunities by adjusting their objectives and strategies. It is also important to recognise that each of these actors often wields simultaneously both positive and negative influences on the extent to which rights are respected: a faction can simultaneously be committing human rights abuses in areas it does not control and supporting local justice structures in areas it does; an agency can be feeding both malnourished children and soldiers; an external power can be providing both arms and humanitarian aid. The rest of this Section compares Liberia and Sudan across some of the various elements making up the framework of respect. One thing should be noted at the outset; there is not a great deal of information available to the humanitarian community on the political, economic and especially military characteristics of warring parties such as the SPLA/M or the NPFL. This is remarkable given that this analysis is so important for the business of humanitarian agencies.³⁴

4.3.2 Origins

The origins of both conflicts lie in the complex patterns of attempts by elites in centres of power, Khartoum and Monrovia, to incorporate a 'stateless' hinterland. More recently there have been attempts by those elites to cope with shifting threats and opportunities in the international sphere, both political and economic, notably the decline in aid opportunities but the rise of trade, including, especially in Liberia, extra-legal trade. Opposition, though, has taken very different forms in Sudan and Liberia.

4.3.3 Objectives and ideology

A movement's objectives are obviously key to understanding its actions and motivations, but establishing them is seldom easy for external observers. Not only are stated objectives often not the truth, but leaderships can be divided. Objectives also change as leaderships react to events beyond their control.³⁵ Observers, notably aid workers, are often divided on how to interpret a movement's objectives; the humanitarian community in South Sudan for instance contains a wide range of opinions on the SPLA/M from support to outright hostility.

The SPLA/M's overriding objective has been, according to one analyst, 'to defend the integrity of the south in the face of attempts by a succession of central governments to dismantle Southern administration and subordinate the south politically, culturally and economically'. (Johnson, 1998:71). But whereas the leadership has stated that it wants to reform the Sudanese state, many of the rank and file want secession. Less sympathetic observers, pointing to the SPLA/M's human rights abuses and disregard for the population it claims to represent, see it as a brutal elite dedicated mainly to its own self-preservation and enrichment through conflict. In the late 1980s the movement was certainly highly centralised and dominated by military concerns. The support of Mengistu meant that it did not need to cultivate support from the population it claimed to represent and this often led to a dismissive and predatory relationship between the military and the civil population; in the words of one observer it was 'Afro-Stalinist' (African Rights, 1997). Following the 1991 expulsion from Ethiopia and subsequent split, the rhetoric has gradually changed. A reform process has been embarked upon, ostensibly to increase the power of 'civil society' and make the movement more reciprocal. This was probably forced on the movement, given its lack of external support, but some attribute its very survival to this process. The extent to which the reform process is real or rhetoric is a matter of great debate, both within the movement and amongst the humanitarian community, a debate into which the Ground Rules deliberately played.

Charles Taylor, on the other hand, part of the Monrovia elite himself, is widely seen as a much more cynical force. His professed aim was to remove Doe, and in the early days of the war Doe's unpopularity ensured him some support, but the brutality of his tactics and his manipulation of ethnicity for his own ends meant this did not last long. In some ways the war in Liberia can be seen as one long presidential campaign. Other faction leaders, often sponsored and supported by ECOMOG, appear to have had little more than survival and enrichment as their goals, being anti-Taylor rather than anything else. Ideology, or even opposing political manifestos, played almost no role in the conflict (Ellis, 1998; Keen, 1998).

4.3.4 Strategies

Apart from its objectives, perhaps the key determinant in a warring party's choice of strategies is its constraints and opportunities for mobilising resources of money and manpower. Both Taylor and the SPLA/M had considerable support from and links to other regional powers; indeed part of the personal success of both Taylor and Garang in terms of maintaining their leadership has been their ability to monopolise the channels of available external support. Up to 1991, the SPLA/M had access to an external base and support from Mengistu. Taylor too had external support both in terms of supply routes through Burkino Faso and

financial support and backing from Cote d'Ivoire. However, Taylor was able to establish an independent source of revenue within Liberia based on his control of exportable resources such as hardwood and diamonds. In contrast, the expulsion from Ethiopia and the lack of such exportable resources in South Sudan has meant that the SPLA/M has been unable to follow such a strategy, this has made it more 'aid-dependent' (Duffield, 1998). Arguably, this has partly forced it to develop greater reciprocity with the civil population than Taylor ever attempted

However, both Taylor and the SPLA/M became increasingly predatory after suffering serious military setbacks and the growing factionalisation and fragmentation of the conflict – a deliberate strategy of their enemies. Taylor's advance on Monrovia was prevented by the intervention of ECOMOG, whose sponsoring of opposing factions Taylor, with the growing predominance of economic motives in the war, brought increasing predation and human rights abuses by all sides. The SPLA/M also suffered a severe setback with the collapse of the Derg in 1991. This was followed by a series of splits fomented by Khartoum, often on ethnic lines, which led to increasing internal predation and asset stripping, again often on ethnic lines. In recent years however, for the SPLA/M 'asset stripping has given way to promoting parallel trade and the covert taxing of aid' (Duffield, 1998b: 85). Both Taylor and the SPLA/M attempted to establish 'enclaves' within existing state borders, often based on ethnic lines, which would serve as a location for military bases and as reservoirs of resources and manpower. In these 'home' areas they also made some attempt to provide rudimentary government services such as justice and welfare, in contrast to raids and predation on civilian populations controlled by opposing factions. Defence of these areas by local people becomes both a motive for recruitment into the armed forces and a contribution to growing factionalisation and localisation of the conflict (de Waal, 1996).

4.3.5 Military doctrine and structure

Again, structure and doctrine are significantly determined by objectives, ideology, and resource constraints. de Waal (1996) has pointed out the importance of Maoist thinking in African military doctrine, and also of US counter-insurgency approaches such as the deliberate use of destabilisation and attacks on civilians. He and others have also pointed out the considerable innovations in doctrine by African military leaders such as Savimibi, Museveni and Taylor when confronted with superior military forces, for instance in the use of child soldiers and the deliberate use of terror (Richards, 1996; Keen, 1998). Taylor, it must be remembered, managed to fight the Nigerian army, the largest and best equipped in West Africa, and its surrogates to the negotiating table. The SPLA/M has also proved remarkably resilient against a powerful enemy, if unable to clinch a decisive military victory.

Little detailed research has been carried out in this area but the military structures of the SPLA/M and the NPFL appear to have been quite different. The SPLA/M was originally built on the centralised Afro-Stalinist model of Ethiopia, which, in theory, made for a relatively structured and disciplined model, almost a conventional army. Recruits received extensive training, up to six months, in Ethiopian bases (African Rights, 1997). However, as noted above, there was little respect for civilians; supplies came from the barrel of a gun. And in reality, the huge distances in South Sudan, and the fact that the payment and supply of soldiers were left to 'local arrangements', have meant that discipline and central command have not been particularly effective. There is in theory a military penal code, but it is seldom used or even available to field commanders. Human rights abuses were in effect ignored by the central command in order to preserve the loyalty of commanders (African Rights, 1997). In Liberia many units, especially of the anti-Taylor factions, resembled roaming bandits rather than military formations, there was little training, and structures were often diffuse and undisciplined (Ellis, 1998). Taylor did on occasion discipline some generals. Here too, however, it is important not to underestimate the resilience and capability of an apparently unstructured force.

Another difference is in recruitment, particularly of child soldiers. Soldiers the basic resource of an army, and the way they are obtained and treated says much about the nature of such a force. Judgements are complex; on the one hand the Convention on the Rights of the Child (CRC) bans the use of child soldiers. On the other, the traditions of both Sudanese and Liberian society contain elements of martial behaviour as part of the initiation of young men, though the warring parties have exploited these traditions for their own ends. The SPLA/M has relied on both forced and voluntary recruitment. The Dinka areas often agree to provide a certain number of young men. Forced recruitment though has often occurred in non-Dinka areas. The SPLA/M has also recruited child soldiers and has been accused of warehousing up to 20,000 minors in preparation for military training (Human Rights Watch, 1995:75). It has been very sensitive to criticism in this area, however, and agreed to the incorporation of the CRC into the Ground Rules.

In Liberia the use of child soldiers was developed much further with the formation of special child soldier units, often before initiation, and their deliberate brutalisation and control with drugs. Taylor indeed had a bodyguard of child soldiers. Child soldiers have a number of advantages over adults in the type of warfare fought in Liberia; they are more loyal as the unit replaces family ties, they can handle the low technology used, seldom demand pay, they can be more brutal, and they are less likely to want to return to farm during the harvest (de Waal, 1996). In Liberia they were often used as shock troops.

A further difference is the deliberate use of terror as a tactic. In one sense, from a human rights point of view a massacre is a massacre. But abuses are committed by people for complex reasons, the particularity of which needs to be understood. In Liberia, Taylor promised 'carnivals of blood' to terrorise and intimidate. Another innovative exploitation of terror and the modern media was the making and circulation of a video of Doe's torture and death by Prince Johnson in order to prove that it was he, and not Taylor, who had killed Doe. The SPLA/M has not indulged in such deliberate use of terror as a weapon, though has committed raids and massacres.

It is also important to realise that reasons for abuse can change over time, reflecting changing strategies as factions react to changing situations. In Liberia in the early stages of the war, for example, much of the motive for human rights abuses was a reaction to Doe's oppressive regime and that this was used and exploited by Taylor as a military tactic. Whereas in the period between 1992–1995, reflecting the changing objectives of the warlords, much violence derived from economic motives (Study 2: Atkinson and Leader, 2000: 1.2). Apart from loot, one abuse for instance was the use of forced labour on rubber farms and in mines. In Sudan too, after the SPLA/M was forced out of Ethiopia, it has been argued that asset stripping of opposing communities replaced the lost economic resources from the camps (Duffield, 1998b: 85).

4.3.6 External powers

The nature of a belligerent's relationship with external powers contributes to its choice of strategies, and so its respect for non-combatant rights. External political involvement has been an important element in shaping both conflicts, but again in both cases this shifted significantly over time. Both Taylor and Garang proved themselves adept at playing off regional conflicts to gain support for their insurgencies. Taylor was able to exploit the Anglophone/Francophone split in West Africa to get support from Cote d'Ivoire and Burkino Faso. The SPLA/M has been able to capitalise on the fact that many of Sudan's neighbours feel increasingly threatened by Khartoum's militant Islamism, and has received support from Ethiopia and Uganda. As noted above, the SPLA/M was very dependent on Ethiopia whereas Taylor, perhaps as a result of his ability to establish independent sources of revenue, has been less affected by the vicissitudes of regional politics and was able to stand up to the regional coalition represented in ECOMOG. In that external support loosens a faction's need for internal accountability it could be said to be negative, especially, as in the case of Liberia, in the absence of any kind of political ideology that might serve to encourage accountability to civil populations.

In the absence of domestic ways of ensuring accountability, external powers can moderate abusive behaviour by making its costs greater than its benefits (as NATO did with Milosevic in Kosovo, for example).

Both countries show a pattern of rising and falling donor/great power interest. As the US came to regard Liberia as no longer strategic in the post-Cold War situation, it felt able to delegate the maintenance of security to ECOMOG, which turned out to be perhaps the single biggest factor in prolonging the war (Ellis, 1998). ECOMOG was deployed in effect to stop Taylor, but after six years of war he was elected President. During the 'warlord' phase of the conflict, from 1992–1995, great power interest was minimal and was only resurrected after the shock of the sacking of Monrovia in 1996. After that, however, international pressure, in the form of sanctions against individual warlords who failed to comply with the terms of the peace process and threats of instituting a war crimes tribunal, is seen by many to have improved respect by factions for human rights and helped to end the war (Study 2: Atkinson and Leader, 2000: 3).

Strategic interest on the part of the major powers also contributes to the nature of the relationship between aid and politics. The main concern of the major powers in Liberia was peace, rather than victory for a certain party; thus in the early years it was the UN rather than the major powers that was accused of manipulating aid for political reasons. When resolution became possible, the major powers were relatively even-handed in their pressure and did not use humanitarian aid as a tool. In Sudan, however, the US has moved from a position of supporting Khartoum against communist Ethiopia to support for the SPLA/M as a counter to the spread of radical Islam from Khartoum. Some argue that this is one factor behind the shift in overall expenditure from OLS northern to southern sectors (Study 3: Bradbury et al, 2000: 1.5). An interesting development has been the US-funded STAR project, which is a grassroots capacity-building project in south Sudan, interesting in that it represents the linkage of foreign policy and humanitarian interests (ibid.: 1.5). More broadly, the overall consent by the warring parties to OLS' operations is directly related to the extent of donor interest and pressure, and it waxes and wanes as donor pressure does (Karim, et al. 1996).

4.3.7 The humanitarian system

Despite its high visibility to outside observers, it is easy to overestimate the role of the humanitarian system in establishing the framework of respect. Its primary positive impact has been in terms of meeting physical needs, i.e. promoting the realisation of the right to assistance. A major problem, however, is that it is often very hard to quantify this, and even harder to quantify what its absence would have meant; it is therefore difficult to gauge positive impact. As with all elements of the framework, there are also complex unintended political and economic consequences of humanitarian action that impact on the framework both positively and negatively, through diversion for instance. Trying to assign relative importance to the different elements in the framework is difficult, but it would seem that the impact of humanitarian assistance on longer-term issues such as the causes of the war or the objectives of the parties is considerably less than the long-term political and economic factors discussed above.

It is important here to recognise the particularity of the humanitarian system in various conflicts. As with conflict, there are some broad characteristics of the system that hold true in most places. But, despite the apparent universality of flags and agencies, the system in fact evolves in quite particular ways in different circumstances. The nature of the system was very different in Liberia and south Sudan, which accounts for a number of the differences in terms of developing a 'principled approach'.

A key difference was the role of the UN, and the approach key donors to the UN took to its role. In Liberia, from the early stages the Secretary General appointed an SRSG with a political and peace-building mandate, and ECOMOG's military intervention was sanctioned by the Security Council. At least one SRSG was to take an explicitly anti-NPFL line in his search for peace and worked openly to restrict aid going to NPFL territory. This explicitly partial behaviour, as well as deepening suspicion of the UN in the NPFL, led to a split between the UN and humanitarian NGOs and the ICRC, with the ICRC at one point even accusing the UN of 'deliberately causing hunger' (The Independent, 22nd November 1993).

In Sudan, on the other hand, there has been no SRSG with a political role, and the UN approach has been to negotiate access to all sides from an explicitly humanitarian and neutral stance. This was done originally by James Grant, significantly the head of an operational agency, UNICEF, rather than part of the political structure. Neutrality is a key principle in the OLS agreement and can be seen as the quid pro quo to Khartoum for the government ceding partial sovereignty to the UN over the registration of agencies in opposition-controlled areas. The Ground Rules would not have been possible without this overarching UN structure within which it could evolve.

Whether or not a more impartial approach by the UN in Liberia would have made access outside Monrovia easier is open to conjecture, but certainly the bulk of the food was for many years distributed in and around Monrovia. The UN's approach also meant that negotiation for access to NPFL areas by agencies wanting to reach other parts of the country was ad hoc, individual and disorganised. This in turn encouraged a number of agencies to barter access for food delivered to commanders or handed over at check points. In Sudan UNICEF's lead role in terms of relationships with the forces and registration of agencies allowed a more systematic approach to develop. This was to lay the ground for the introduction of the detailed Ground Rules that were to apply to all agencies in OLS. OLS's leadership was buttressed partly by its control of registration and logistics (through the World Food Programme (WFP)) but also by its, at least in theory, neutral stance. Another difference was that, whereas in Liberia, both security and Human Rights officers came under the management of the SRSG, thus giving a political slant to their work, in Sudan both responsibilities have come under OLS. Again, this has promoted a more impartial approach in Sudan, notably to human rights issues, than in Liberia where reports by the human rights monitors were sometimes suppressed by the UN for political reasons (not upsetting the peace process). The introduction of DHA into Liberia (as the Humanitarian Assistance Coordination Office, or HACO) in late 1995 tempered this tendency by giving the humanitarian agencies more of a voice, and so to an extent a more impartial approach. But it was at the cost of greater disunity within the UN system.

4.3.8 Aid and manipulation

In both countries, humanitarian aid was provided in the midst of an ongoing war, into which, inevitably, aid and aid agencies were incorporated in various ways. In both countries there has been great concern over the manipulation of humanitarian action by all the warring parties for their own ends, almost from the start of the conflict. Indeed, this concern underlies the development of all the mechanisms under study here. However, there have been few detailed empirical studies into the contribution of aid to the broader war economy and the goals of the parties. In Sudan for instance, if, as claimed, Khartoum spends \$1m a day on the war (Study 2: Bradbury 2000: 4.4.1), the contribution of OLS is small in comparison. In Liberia too Taylor is reported to have made \$400–450 million a year from his economic activities (Reno, 1996, quoted in Duffield, 1999b: 87), again significantly more than the total value of aid.

Despite a lack of detailed understanding of how aid is incorporated, that it is incorporated in some way is undeniable. But the particularity of each case needs to be stressed; the distinct pattern of manipulation in each country is a factor of the resources available to the factions, their political strategies (especially their relationship with the civil population), military

structures and discipline. It is also partly determined by the particular formation the humanitarian system took in each country. Importantly, as these factors change over time, so does the pattern of manipulation.

A key difference, for instance, is that Taylor had independent access to hard currency from international trade, but the SPLA/M does not, and Taylor did not have to develop a large, centralised, almost conventional army like that of the SPLA/M. Hence with the diversion of food aid for example, the SPLA/M has, broadly, been far more systematic – from the camps in Ethiopia through to the ‘Tayeen’ imposed on relief distributions in recent years – reflecting its need for organised food supplies for mounting large-scale offensives. In Liberia much of the diversion was more ad hoc and opportunistic, and more for the purpose of feeding small bands of fighters ‘living off the land’ (or rather the people). Patterns of manipulation have also changed, reflecting differing strategies as the factions react to events. In Liberia, looting reached its peak during the warlord period when the conflict was highly factionalised and economic motives were significant. The lack of UN-led negotiated access and the consequent ad hoc arrangements of individual agencies fed into this process. For the SPLA/M too the nature of their manipulation has changed with external events. During the 1980s relief was diverted from the Sudanese refugee camps in Ethiopia (African Rights, 1997), but during the period after the expulsion from Ethiopia and the split there was considerable asset stripping by all factions. In more recent years, as their control over parts of the south has been reasserted, the SPLA/M has moved to a more ‘governmental’ system of ‘taxation’ of relief and has called for assistance to be directed more at economic development, presumably in part because that will promote taxable economic activity.

Manipulation is practised by actors other than the belligerents, notably donor governments. Or in the case of Liberia, the UN and ECOMOG in their attempts to block aid to NPFL areas in the early 1990s.

4.3.9 The ‘governance gap’

An important element in determining the nature of the framework of respect is the nature of the relationship between the warring parties and the populations they claim to represent. This relationship is important both for the potential for promoting humanitarian principles, and the reality of their abuse. As the above analysis has sketched out, this is a complex and variable relationship, influenced by a number of factors, both internal and external. It is also not a relationship measurable on simple ‘good/bad’ lines: otherwise largely predatory forces can have a positive impact on the framework of respect in that they sometimes provide some minimal justice, security and welfare functions. Of particular importance is that in both countries the nature of this relationship, in particular the levels of accountability between faction leaders and the population, changed over time as factions adapted

their strategies to cope with political and military developments. The ‘governance gap’ is not fixed but changeable.

Important indicators of this relationship are governmental functions such as administration, justice, and welfare (and part of this is the attitude to foreign relief). The quasi-governmental functions of insurgent groups in conflict is an important but understudied area (Clapham, 1998); such activities are often not seen, let alone understood, by agencies since they involve areas of ‘beneficiary’ life, such as justice, or defence, in which agencies are not involved.

It is particularly important for agencies to realise that there are times in a conflict when political and military developments mean that there can be greater need on the part of the belligerents to respect humanitarian principles. In Sudan for instance, in its first years the SPLA/M concentrated solely on military victory, ignoring welfare, justice and other functions. It can be argued that the SPLA/M’s expulsion from Ethiopia, which meant that it had to establish its base in the South, combined with a need to be acceptable to US supporters, strengthened the hand of reformers in the movement and forced it to make itself more accountable to the people it claims to represent in order to survive. This is what lies behind the series of conventions on democracy, separation of civil and military structures, etc. As the SPLA/M becomes more of a government, and less of a movement, its attitude to aid can be expected to change.

In Liberia in the early phases of the conflict Taylor did a limited form of government. Most of the ECOMOG-supported factions, however, made no attempt at government at all as their only function was to attack Taylor, (as with the Khartoum-sponsored warlord Kerubino, whose only aim for years was to attack the SPLA/M and its civilian support). Taylor initially tried to set up ‘Taylorland’ and installed a cabinet, organised power supplies in some areas. He also established a relief agency, NEROL, used to distribute rice from a ship captured in 1991. But the little external aid going in meant that there was no point in developing an SRRAtype organisation as an interlocutor between the agencies and the NPFL; instead agencies dealt directly with Taylor’s ministers. However, faced with ECOMOG and its proxy forces during the ‘warlord period’ Taylor resorted to violence and predation to ensure survival. During the elections following the Abuja II peace accord however the warlords were threatened with debarring from the process if, amongst other things, they abused aid – a factor many observers credit with improving the humanitarian situation. And Taylor’s eventual election victory is also attributed in part to his attempts to govern during the war and that Taylorland was relatively peaceful and productive for part of his rule.

For agencies, apart from the considerable problem of understanding this relationship, the important question

is the impact on it of their activities. For south Sudan, for example, some observers have argued that the availability of external resources in the form of aid loosened reciprocity and undermined the transparency and frankness between SPLA/M and the civilian population that are the basis of the democratic contract (African Rights, 1997:314). As the next Section argues in more detail, it is the extent to which agencies, and the mechanisms that they developed to promote principles, played into existing processes that were already encouraging greater respect for humanitarian principles by the belligerents, that determined their success.

5. A Principled Approach: The Ground Rules, the JPO, and the PPHO

This section will examine the various impacts of the Ground Rules, the JPO and the PPHO, developed by humanitarian agencies in order to promote a more co-ordinated and principled approach. Section 5.1 provides a brief introduction to the mechanisms themselves. Then section 5.2 will examine their impact on governance and protection issues, 5.3 will examine assistance and manipulation, 5.4 securing agency space, and 5.5 the extent to which agencies complied with the mechanisms. Section 5.6 will look briefly at the role of donor governments.

Separating out the various impacts has not been straightforward. As policies rather than projects, they did not have specific or measurable objectives; and there is no 'baseline' of, for instance, human rights information or food diversion against which impact might be judged. As inter-agency agreements there were also wide differences in interpretations of what the mechanisms were about and interviewees were partial and sometimes deliberately re-interpreted events. Access to reliable information about the behaviour and strategies of the warring parties were also difficult.

5.1 The mechanisms

5.1.1 The JPO and the PPHO

The Principles and Protocols of Humanitarian Operation (PPHO) were developed in Liberia in late 1995 by UN and NGO humanitarian agencies in response to three broad problems: the lack of solidarity amongst agencies, the continual problems of security and harassment, and concerns about aid 'fuelling conflict'. Two factors which facilitated the process of development were that there were relatively few agencies present and that the initiative had the active backing of the donor government representatives who were present. A deliberate decision was taken not to involve local NGOs. The document draws heavily on the Red Cross principles, indeed the Red Cross/NGO Code of Conduct was used as a source text, but it makes many adaptations. It also introduces the idea of locally devised protocols, or rules for a particular place.

The document focuses heavily on promoting co-operation and uniform behaviour among agencies in order to prevent manipulation, particularly non-payment at checkpoints. It also stresses the importance of assessment and targeted assistance. It had no formal status, but was signed by local heads of agencies. It also had no compliance mechanisms until the summer of 1996 when the Programme Compliance Violation Committee (PCVC) was developed by UNHACO. This was a committee comprising representatives of UNHACO, some NGOs and the donors. It was primarily a mechanism to promote the adherence of the faction leaders to the humanitarian principles spelt out

in the Abuja II accords, but which also had a remit to monitor compliance by agencies to the PPHO.

The Joint Policy of Operation (JPO) was drawn up exclusively by, and for, NGOs after the looting of Monrovia in April 1996. In essence, it amounted to a restriction of NGO activities and capital inputs (such as vehicles) to their most minimal, what was termed Minimal Targeted Lifesaving Assistance. It was intended to pressurise the war lords into respecting the agencies, and humanitarian principles; in other words it was as a form of humanitarian conditionality, directed at the warlords, and an attempt to reduce the opportunities for aid to 'fuel conflict'. It was based on a mixture of Red Cross principles and, more loosely, on the 'Do No Harm' approach (Anderson, 1996) and ideas about 'smart relief' (Richards, 1996). It too has no formal status or compliance mechanism, other than peer pressure. In 1997 a Joint NGO advocacy facilitator was appointed by the NGOs involved in the JPO to work on human rights advocacy.

5.1.2 The Ground Rules

There were two versions of the Ground Rules, the focus of the research was the second. The first Ground Rules were a one-page security document which essentially imposed security conditions on the SPLA/M for the resumption of OLS Southern sector operations, which had been suspended after the killing of a journalist and three expatriate aid workers in October 1992. Alongside these first Ground Rules, OLS established a security and evacuation system that was to evolve into an important element in the ability of agencies to continue to operate within a war zone (Karim, et al. 1996).

Negotiations between OLS Southern sector and the SPLM/A on the development of the second Ground Rules started in late 1994 and they were signed by the OLS Southern sector Co-ordinator and John Garang in mid-1995. Leaders of other Southern military movements signed separate Ground Rules agreements with OLS, though with identical texts, but because of insecurity the research team was unable to access those areas. This section will therefore concentrate on the workings of the agreement in SPLA/M territory. This is in itself important; a mechanism such as the Ground Rules requires that the signing authority should be in sustained control of significant territory.

As in Liberia, much of the motivation behind the Ground Rules was the continuing insecurity caused by SPLA/M troops, despite the first Ground Rules. But a number of new ideas were to make the second version a very different document. The second Ground Rules were a much more comprehensive document than the first, and draws on a number of sources including the Red Cross/NGO Code of Conduct, the growing importance of human rights thinking, IHL, and ideas about developmental relief and capacity building. The Ground Rules were intended to represent a joint commitment by the SPLA/M and OLS to respect humanitarian principles and to certain ways of working,

in other words a restructuring of the relationship between them. The SPLA/M committed itself to respecting the Geneva Conventions, the CRC, the neutrality and impartiality of aid, and agency property and staff. OLS in return committed itself to neutrality and impartiality, to high professional standards, and to consultation and participation.

Alongside the Ground Rules OLS Southern sector set up a Humanitarian Principles Unit (HPU) to promote and disseminate the agreement and, more generally, respect for humanitarian principles. The Ground Rules were also incorporated in the Letter of Understanding (LoU) between OLS and the NGOs in Southern sector, so in theory therefore all UN and NGO agencies in OLS Southern sector are beholden to it. The Ground Rules agreement also has no formal compliance mechanism; violations should be dealt with at local level or in negotiation between the parties. The use of conditionality by OLS in response to violations is explicitly ruled out. Dissemination of the Ground Rules is carried out through a series of workshops in SPLA/M areas, conducted jointly by the HPU and the SRRA.

5.1.3 Common themes and broader issues

The mechanisms arose at similar times but in very different country and institutional contexts. The similarities and differences between them are instructive, illustrating how the nature of the humanitarian system that had evolved in each place, and the nature of its interaction with the warring parties, determined the kind of policy evolutions that were 'thinkable' and feasible. The differences also illustrate how, in the context of a lack of global consensus on an ethical framework for working in conflict, ad hoc, field-led innovation assumes greater importance.

All three mechanisms were inspired by similar problems: insecurity for agency staff and assets, a fear of aid fuelling conflict, and widespread and systematic abuses of IHL and human rights law by armed groups. All three are thus in part attempts to increase respect for civilians and agencies by the warring parties. Both countries are of little strategic significance, and it could be argued that in both cases agencies were forced into this concern by the lack of pressure from external powers on the warring parties to respect international law. The big question for all three mechanisms was how to get the warring parties to respect both agencies and civilians. An important difference is that in southern Sudan the OLS Southern sector approach was to get the rebel groups to participate in the development of, and then sign up to, the Ground Rules. This it was hoped would generate some voluntary commitment on the part of the signatories. In Liberia this was not an option, given the much more strained relationship between agencies and belligerents and the ill-disciplined, unstructured nature of some of the armed groups. The JPO took a different approach in that it was an attempt to impose conditionality on the warlords, in other words to force them into greater

respect. But the context in Liberia, a peace agreement backed by international powers, gave the agencies political 'cover' not available in Sudan where OLS remains the prime vehicle for donor involvement.

In both countries there was also a lack of agreement between the agencies about the principles of engagement, in the conflict itself or with the warring parties, which was seen as worsening both insecurity and manipulation. The mechanisms are thus attempts to lay out a set of common principles that agencies should abide by. None, though, have formal compliance mechanisms, a fact that is reflected in their rather broad brush language-commitments a court of law would have great difficulty interpreting precisely enough to compel adherence. They all thus rely on voluntary commitment.

All draw on a variety of conceptual traditions, including Red Cross humanitarianism, developmentalism, and human rights activism. This conceptual melting pot was innovative and produced some interesting ideas. But it also tended to weaken the initial drive for a common set of values and principles, as it led to internal conceptual tensions and in turn disagreements between agencies, over, for instance, capacity building versus neutrality, or denunciation of abuses versus discretion.

Of particular importance for the UN was the general loosening of the importance of sovereignty; that a UN agency in Sudan could sign an agreement such as the Ground Rules with a rebel organisation would have been unthinkable in a previous era. The establishment of a more explicitly 'neutral' and impartial DHA operation in Liberia (UNHACO) in 1995, as opposed to the earlier pro-government SRSG, shows a similar development. Another difference is the existence of an NGO-only mechanism in Liberia, reflecting the UN's lack of leadership. This contrasts with the strong leadership role in 1994-5 of OLS Southern sector.

5.2 Governance and protection

As argued in Section 2, agencies have been forced into tackling governance and rights issues by the changing nature of conflict, the delegation in powerful countries of conflict management issues in non-strategic areas from 'high' to 'low' politics, and the emergence of the 'governance gap'. The Ground Rules, the JPO and PPHO all follow this pattern. All were in part inspired by such problems and all led to a variety of different strategies by the agencies intended to promote greater accountability of the factions and greater respect by the factions for the norms of IHL and human rights. The strategies included: the suspension of programmes and the development of humanitarian conditionality, capacity-building with both authorities and civil society, human rights monitoring and advocacy, both public and private, and dissemination of human rights norms.

Some of these activities have their roots in development or humanitarian work, but in this context they have a broader set of objectives than would strictly be called protection³⁶ and strayed into issues of governance and accountability. This is much more obviously political than much humanitarian work since it involves, in effect, working to change power relations. As a result this is the most political, most controversial, and probably the most difficult and equivocal area of agency activity.

This area of activity is also the hardest to make definitive statements about. The problem is similar to that which confronts the evaluation of human rights activity. Given that the aim is to prevent abuses in the future, results are necessarily non-existent; it is impossible to measure a human rights abuse that did not happen or attribute a decline in abuses to human rights advocacy. The cause-effect linkage in advocacy work is harder to determine than in, say, a malaria control programme, as one is dealing exclusively with human agency and intention rather than with a parasite which operates in known and predictable ways. Assuming that human rights abuses serve as a good proxy indicator for governance, and assuming that a kind of 'epidemiology' of human rights data were to exist, which it does not, a reduction in abuses could be due to any number of factors other than a protection or 'good governance' strategy. There is also no consistent monitoring of abuses and even less analysis of the reasons for them.

5.2.1 Humanitarian conditionality; withdrawal and suspension

In effect, both the JPO and the PCVC developed a form of humanitarian conditionality – in other words, withholding assistance in an attempt to influence the behaviour of the factions. One of the objectives of the restriction of activities to 'life-saving only' in the JPO was to pressure the warlords into respecting agencies and civilians, the idea being that, once they did respect them 'normal service' would be resumed. The caveat 'life-saving only' preserves a humanitarian flavour, but with little going on in terms of development, it is a form of conditionality nonetheless. As one of the faction leaders correctly pointed out to the NGO delegation sent to present the JPO to him, 'You NGOs are now doing politics, You NGOs are there to supply aid, continue to do that, Why are You putting questions?'. The PCVC is explicitly a 'Mechanism for ensuring Compliance', that will address 'Violations of the PPHO by the Government and factions', and reserves to itself the right of 'enforcing compliance' by, amongst other things, 'Suspension of humanitarian operations' (UN, 1998), in other words a threat of humanitarian conditionality.

Importantly, both these mechanisms were developed in the context of the international community putting increasing pressure on the warlords after the shocking events in Monrovia of April 1996. This included the

development of political conditionality, such as threats by the major powers to prevent foreign travel, freeze overseas bank accounts and institute a war crimes tribunal if the faction leaders did not comply with the terms of the peace agreement, Abuja II. In this context, the humanitarian agencies, led by the UN Humanitarian Co-ordinator, were able to lobby for the inclusion of respect for IHL in the peace agreement, thus giving them some leverage over the warlords. The PCVC was meant to be a mechanism to monitor such violations, and so promote respect for the accord.

Whereas the threat of donor political conditionality probably did have some impact on the faction leaders, there is little evidence that the humanitarian conditionality of the JPO and the PCVC had much impact at all. A press release was issued by the agencies and the JPO was explained to some faction leaders, but it seems to have made little impression on them, it is very doubtful they cared much at all. This is unsurprising given the analysis of strategies and objectives outlined in Section 4, in particular the importance of the war economy and the export of commodities. Welfare provided by external agencies had been an unimportant part even of Taylor's strategy, the most far-sighted and politically astute of the leaders; its reduction was unlikely to do him any damage at all.

Apart from the lack of political analysis that lay behind it, the JPO suffered from a conceptual confusion between conditions and conditionality. There is an important difference between withdrawing or suspending activities if it is not possible to work in a principled way, if diversion is too great, for example, and using that suspension as an instrument of conditionality vis-à-vis the authorities. The conditionality approach in effect puts agencies in a position where they have to negotiate. This confusion showed in the lack of thought given to how a conditionality strategy might actually work in practice. According to one interviewee,

The whole idea of Minimum Targeted Lifesaving Activities was not to revert to normal emergency operations until the warlords respected humanitarian principles, but that was supposed to be a secret, nobody was supposed to know we would only do MTLA for two months, as we didn't think we could hold it together that long anyway. We had a secret time frame that we would evaluate the strategy after two months but that was between us. The warlords were supposed to respect humanitarian principles before we resumed normal activities. But we never defined what that was, that was a problem.

The successes of the PCVC were due to threatening leaders where they were vulnerable, namely in terms of their public image in the media, rather than through

imposing humanitarian conditionality. This is discussed in section 5.2.3.

In Sudan, the Ground Rules have been criticised for being essentially unenforceable in respect to compliance by the SPLA/M (compliance by the agencies is discussed in Section 5.5). Some observers have argued OLS could use an conditionality as a way of enforcing compliance (Ryle, 1998), but there are a number of problems with this approach. The authors of the Ground Rules considered it to be a violation of the humanitarian imperative and the right to assistance, the principle on which the Ground Rules is founded. It would also go against the whole approach of the Ground Rules, which relies on negotiation, dialogue and a joint commitment. It would, they felt, also be unjust to apply conditionalities based on non-compliance to the Ground Rules in the South and not to Khartoum, but that is not possible given that Khartoum has not signed them. A further problem is the variable support OLS receives from donors who, in fact, probably have a much greater chance of influencing the SPLA/M than OLS. OLS itself represents a negotiated humanitarianism and, as the OLS Review showed, it is only as strong as the political support it receives from donors (Karim, et al. 1996). The OLS Southern sector approach of joint commitment and a rejection of sanctions could in fact be seen as an intelligent way of making a virtue of out of its weakness.

The OLS Review did recommend conditionality on OLS support to SRRA structures rather than on humanitarian aid itself (ibid.). But this was rejected by OLS for fear of jeopardising relations, illustrating perhaps that OLS needs the SRRA as much as the SRRA needs OLS.

The Sudan case study identified only one instance of humanitarian conditionality in south Sudan, the refusal of agencies to set up in Labon after the expulsion of ACF by the SPLA/M. The SPLA/M maintained that ACF breached security regulations, ACF consider the expulsion was because it was about to uncover evidence of widespread food diversion. Either way, the SPLA/M refused to give evidence or provide an explanation. Other agencies did not take over ACF's work, despite requests by the SRRA. The SRRA, probably rightly, interpreted this as a form of humanitarian conditionality. However, its impact is uncertain as no explicit demand was made by the agencies; rather it was a passive refusal to step into ACF's place as that would in effect be handing the power of veto over the agencies to the SPLA/M and accepting its argument that it did not have to justify itself. The US is widely seen as the power with the most influence with the SPLA/M, however, despite pressure from ECHO and the EU, the US did not attempt to use its influence to persuade the SPLA/M to allow ACF back. Again this demonstrates the importance of political backing.

5.2.2 Capacity building³⁷ and governance

The Ground Rules contain a statement that makes capacity building of local structures a principle for all OLS agencies.³⁸ Drawn originally from developmentalist approaches the idea of capacity-building became the focus of a number of different concerns held by different actors – donors, agencies and some in the SPLA/M itself, a fact that has made the concept somewhat difficult to pin down. Agencies and donors were concerned to move away from relief inputs to more developmental approaches at a community level; the UN was concerned to strengthen local relief delivery structures; donors were concerned to reduce so called dependency; agencies and some South Sudanese intellectuals wanted to develop Sudanese NGOs; some donors, notably the US wanted to develop better governance in SPLA/M held areas as part of their anti-Khartoum political goals; and the HPU wanted to strengthen 'civil society' institutions that would be able to hold the SPLA/M to account and thus make humanitarian principles and human rights more of a reality.

This approach led to a number of capacity-building initiatives by the HPU with Sudanese institutions, such as resourcing the SRRA,³⁹ the creation by OLS of Joint Relief and Rehabilitation Committees (JRRC) to oversee the operation of the Ground Rules at a local level, and supporting the New Sudan Council of Churches (NSCC), the South Sudan Law Society and a number of other Sudanese NGOs. The essential idea was that building the capacity of civil society to hold the SPLA/M to account would serve as a check on its abuses. OLS has not however directly supported the judiciary.⁴⁰

The success of these various initiatives has been patchy. The JRRCs, for example, one of a number of community-based committees created by OLS, are weak and have patchy coverage, their primary function has tended to be facilitating distributions in major relief centres. Successful South Sudanese NGOs too have ended up more as relief delivery agents than agents of social change. Capacity-building has certainly had some positive impact: it has pressed the SRRA into organisational improvement, led to the creation of some durable (though financially dependent) Sudanese NGOs, and increased the awareness of the importance of Sudanese participation. But as a means of strengthening the ability of civil society to hold the SPLA/M to account its successes are more doubtful. Institutions built around aid have shown themselves to be weak and oriented to the needs of external aid organisations rather than indigenous priorities. In many ways the two institutions that have taken most readily to rights and principle issues are the NSCC and elements in the military itself, in other words pre-existing institutions rather than those created by the humanitarian operation.

Another problem with capacity building is its obvious tension with another principle of humanitarian action, neutrality. In many ways this lies at the heart of the

tensions between developmentalist, human rights and humanitarian ways of thinking. Protection even more than welfare is a responsibility of the authorities, but it requires effective legal institutions to become a reality. If these are weak, the question becomes to what extent humanitarian organisations should build up their capacity; to do so might result in greater protection, but would also be a violation of neutrality in that humanitarian aid would be strengthening the capacity of a warring party to govern, and an implicit recognition of the legitimacy of its right to do so. This is what lies behind the OLS decision not to give help directly to the judiciary.

The ICRC approach to this dilemma has been that the role of a humanitarian agency is only to point out what international legal obligations are; implementing them is the responsibility of the authorities. The approach taken by OLS is that increasing respect by the authorities for rights is an obvious good and capacity building directed to this goal should not therefore be seen as a violation of neutrality. The problem for OLS, however, is that no way has been established of measuring that capacity-building is in fact leading to greater respect for rights, or that the SPLA/M as a whole, as opposed to individuals within it, is indeed committed to this as a goal.

In Liberia, the JPO/PPHO never promoted a role for the agencies in terms of developing the ability of the authorities to become more accountable. The widespread suspicion of the authorities on the part of the NGOs and operational UN agencies, and the lack of any sort of legitimacy of many of the factions, precluded this kind of relationship. Indeed, the courts seem to have been seen by the agencies primarily as a nuisance, an arena in which aggrieved employees could bribe corrupt judges to make inconvenient judgements against them. In recent times, bilateral donors, most notably the US, have been very wary of strengthening Taylor's elected government.

In terms of strengthening the ability of civil society groups to hold their leaders to account too little was done, despite the rhetoric of the JPO on this subject. Little was done, for instance, to strengthen local human rights organisations (Study 2: Atkinson and Leader: 3.3.2). One agency did attempt to build a relationship with a Liberian human rights organisation, but withdrew when they realised its leader had political ambitions – a good example of the difficulty of this kind of work and the problematic nature of the civil society/government distinction inherent in much developmentalist thinking.

5.2.3 Human rights monitoring and advocacy

In Liberia, during the latter part of 1996 UNHACO compiled and circulated lists of abuses committed by the factions; for instance, it publicised incidents of hostage-taking and the Sinje massacre in press releases and a daily radio broadcast. This was an explicit

strategy designed to affect the public image of the leaders since it was thought that, as potential presidential candidates during the elections, they would be vulnerable to this kind of pressure (Study 2: Atkinson and Leader: 3.3.1). There is some evidence that this worked in some specific cases; for example, when abuses committed by one leader, Kromah, were publicised on the BBC World Service on the basis of information supplied by UNHACO it led to an immediate cessation. These few examples show the capacity of a carefully planned information strategy to influence the strategies of belligerents. However, the context is critically important; concurrently with the publicity there was political pressure from donors on the factions to comply with the terms of the peace agreement, and an election process in which their media image was important to the faction leaders.

It is also a good counter-example to the commonly held assumption that humanitarian agencies cannot carry out public human rights advocacy without being denied access. Importantly however, it was carried out by UNHACO, not by individual agencies, which gave some protection. Again, the context was crucial; at other times it is likely that publicising abuses would have been ineffective, even counter-productive. The impact was also limited; serious abuses continued, for example in Western Liberia, until the end of the disarmament process. The Sinje massacre in September 1996, when about 30 people were killed and relief supplies stolen after a food distribution, demonstrates the limits of publicity if there is no political ambition or discipline on the part of the abusing organisation (Study 2: Atkinson and Leader, 2000: 3.3.1).

Human rights monitoring and reporting were often seen as 'too political' by some agencies, donors and the UN political apparatus (ibid: 3.3.3). The division of responsibility between the SRSG and the UN Humanitarian Co-ordinator left the UNOMIL human rights monitors reporting to the SRSG. This introduced a political sensitivity and control to their work which UNHACO, working from a more impartial humanitarian mandate, did not suffer. The SRSG instructed the UN human rights monitors to look only at ECOMOG, and little action was taken by the UN on, for example, the report its own monitors compiled on the Sinje massacre. Human rights issues were not pushed, as it was felt that to do so would 'rock the boat' of the peace process, and that getting a peace deal was more important. Thus in some ways the humanitarian community was more active than its human rights counterpart in terms of monitoring and advocacy.

Human rights monitoring by NGOs was also plagued by indecision, ad hocery and mandate questions. The NGOs issued a joint press release about the JPO, and went to the warlords to lobby, in part, on protection issues. But after that, advocacy efforts on rights issues decreased. There was also little systematic monitoring of abuses. This was unfortunate. The importance of monitoring was demonstrated by the example of the

Sinje massacre; some felt that if more attention had been paid to abuses in the area in the weeks before the distribution it could have been avoided by a different approach to distribution. (Study 2: Atkinson and Leader, 2000).

A potentially interesting initiative was the joint appointment of a NGO Advocacy Facilitator in 1997, an initiative which also came out of the JPO process. In the event, however, the amount of advocacy work the facilitator was able to do on human rights issues was limited, largely because there was no consensus amongst the NGOs on what advocacy was, or on NGOs responsibility for human rights issues; many continued to see it as 'too political'. The Advocacy Facilitator ended up primarily conducting advocacy for agency space rather than human rights. Important as this is for maintaining agency freedom to engage in humanitarian action, it is a different goal from the promotion of respect for the rights of non-combatants.

In Sudan, the incorporation into the Ground Rules of respect for the Geneva Conventions and the CRC by the SPLA/M represented one of its most innovative aspects, and brought protection issues into a programme hitherto dominated by problems of supply. The problem, of course, is monitoring and enforcing compliance to these commitments if they are to be more than paper commitments. The Humanitarian Principles Unit (HPU), set up as guardian of the Ground Rules, has done some monitoring of human rights violations. It maintains a regular log of Ground Rules violations, however it is dominated by violations of agency space, rather than violations of IHL or the CRC.

The HPU also conducted two major investigations of massacres by the SPLA/M and the SSIM, in 1995 and 1996 respectively, and presented reports to the respective organisations. These proved to be very controversial with many in the movements and damaged relationships with OLS, demonstrating the common tension between operationality and public rights advocacy. The HPU's right to do this was challenged and it was accused of leaking information to the press in order to damage the movements. Perhaps more significantly, the SPLA/M made no response to the reports and took no action as a result. For these reasons further reports have not been undertaken.

Many NGOs, however, have failed to take on their theoretical responsibility for monitoring violations of the Ground Rules, and thus of IHL and the CRC, under the LoU. This is for several reasons, but largely because most see the Ground Rules as primarily a tool for protecting agency space (see Section 5.4). Some also see human rights issues as beyond their mandate, and as being too political. The HPU workshops on the Ground Rules do not cover their use as a protection instrument but primarily deal with the administrative procedures of agency-counterpart relations. The reporting forms produced by the HPU for agencies to report abuses have fallen into disuse.

This has meant that the approach to human rights monitoring has in effect been left up to each agency; the agency mandate determines their approach rather than their commitment under the Ground Rules and there is little consistency of reporting or analysis. Child-focused agencies, for example, have developed ideas such as giving children identity cards to protect them from recruitment and have been encouraging the SPLA/M to submit reports to the CRC Committee. Save the Children Fund (SCF) argues that its long-term, community-based approach enables it to undertake local-level protection work more effectively than high-profile publicity. A non-confrontational, confidential approach led to the reunification of 100 abducted children in 1997 in Bahr-el-Ghazal. WFP staff are supposed to report violations, but there is no systematic debriefing of monitors to record them.

The only comprehensive monitoring has been done by human rights organisations such as Human Rights Watch (HRW) (1999; 1994) which have no operational presence. However these organisations work to a different agenda from that of humanitarian organisations, often focussing on particular areas of concern rather than the kind of regular surveys that humanitarian agencies need in order to monitor patterns of abuse over time; though comprehensive, they are not systematic.

Given that these problems with the monitoring of human rights, attempting to assess the impact of human rights advocacy, either confidential or public, is difficult. As a result there is little consensus. Some detect positive signs. Human Rights Watch, for instance, in a recent report is positive about some developments:

[The] introduction of human rights language and concepts to a wide spectrum of southern Sudanese society, together with other programmes to aid civil society, has had a positive impact on the conduct of the SPLA/M, according to Human Rights Watch's own observations. It is too early to say whether these changes are permanent....(Human Rights Watch/Africa, 1999:40).

However, what this positive impact might be is not elaborated on and the report also identified the SPLA/M as a 'famine agent'. Some long-time observers also say that, in general, abuses peaked around 1994 and since then the SPLA/M has improved.

One particular area where some have detected an improvement is in child rights, notably recruitment of children and reunification of families. The SPLA/M was initially indifferent to reunification but since signing the Ground Rules and the considerable lobbying on the issues by child-focused agencies and

the NSCC, it appears to have been more supportive. HRW judges that forced recruitment of children has also diminished in recent years, though it still goes on, and some church leaders argue that it will do so as long as the war continues.

Others strongly disagree that the SPLA/M has improved, pointing, among other recent abuses, to the looting of civilians fleeing Wau in 1998 and the diversion of relief food, actions that contributed to the famine. Many consider that the SPLA/M talks the language of rights for purely public relations reasons, as a government-in-waiting and in order to continue to obtain support from the US where the language of human rights is important. Some interviewees attributed any improvement not to human rights advocacy by outsiders but to the reform process within the SPLA/M, driven by its need for greater internal legitimacy after the expulsion from Ethiopia, and its splitting of civil and military administration, a factor which many close to the SPLA/M say is more important than what the aid agencies do or say.

Some in the SPLA/M acknowledge that respecting the laws of war can have a pay-off in terms of both external and internal political legitimacy. But one commander who, when interviewed, said 'if you are always hostile to the population you will not win the war, and will be termed murderer not liberator' was described by aid workers as 'a nasty piece of work', responsible for lootings and summary executions. Good treatment of prisoners of war is also thought to improve the image of the movement and encourage government soldiers to surrender rather than fight to the death.

5.2.4 Dissemination

The impact of dissemination too is notoriously hard to determine. For the ICRC dissemination is directed primarily at soldiers and is seen as a preventive tool; by making soldiers more aware of the laws of war you can reduce their violations. In Sudan, however, the Humanitarian Principles Programme, reflecting the developmentalist thinking behind the Ground Rules, disseminates to communities on the grounds that people need to know their rights if they are to hold the authorities accountable for them. Dissemination is an explicit responsibility of the signatories to the Ground Rules and is carried out jointly by the HPU and the SRRA. Over 50 workshops have been held, reaching over 14,000 people (Study 3: Bradbury et al.; 4.6.2). The workshops have sessions on traditional values, humanitarian principles including the Geneva Conventions, and the mutual obligations contained in the Ground Rules. Many representatives from the community attend, including women, elders, local administration officials and the local military. The workshops are often held in areas where agencies have not worked before, or in response to security problems. Workshops are also held for new OLS staff on a regular basis.

In 1997 the strategy was adapted and OLS started negotiations with the SPLA/M to disseminate directly to the military, but this took 18 months and the first workshop was not until 1998. The seminars cover the Geneva Conventions, the CRC and other human rights conventions. The process is seen by some in the military as part of the overall reform process, and of an overall military goal to professionalise the army; 'an undisciplined soldier is a rebel dog', one commander explained. It is an explicit attempt on the part of OLS to promote the reform process in the SPLA/M. This style of dissemination is very similar to that of ICRC's, indeed it was undertaken in part because at the time ICRC had withdrawn due to a security incident, and was not engaged in dissemination.

In Liberia, attempts at dissemination were much less structured. The information strategy did raise the profile of rights issues somewhat in the national media, but it would be difficult to say this helped their realisation. One problem was the division between UNHACO and UNOMIL. UNHACO was concerned with humanitarian issues, and at times prepared to publicise abuses, but was also concerned about access. UNOMIL was mandated to deal with human rights issues but was also concerned with the peace process. However, dissemination, at least to the military, requires that the military has decided that it is interested in following the rules; in Liberia, for much of the conflict, this was simply not the case.

5.3 Assistance and manipulation

In both countries, one of the objectives of the mechanisms was to maximise the humanitarian impact of assistance while minimising negative impact, principally 'fuelling conflict'. Preserving the humanitarian imperative while trying to reduce negative impacts is a key challenge for humanitarian agencies. Again, a variety of strategies were attempted, from withdrawal to building the capacity of local humanitarian actors.

This section will concentrate on food aid in particular. Many of the problems and disputes that agencies in both countries were attempting to deal with through the JPO, the PPHO and the Ground Rules revolve around food. In both countries it dominated distributions. And of all the commodities humanitarian agencies handle food is perhaps the most valued by fighters, particularly fighters in military organisations, which rarely, if ever, distribute rations – as they say in Liberia 'an empty bag cannot stand'. It is the use of food by agencies to buy access, the use of armed escorts to guard food convoys, and what is seen as turning a blind eye to food diversion, that caused many of the problems and disputes, internally amongst the agencies, and externally amongst commentators. The significance of food is expressed in the common accusation that agencies in Rwanda were 'feeding killers'. Food distribution is without doubt the most difficult humanitarian operation in which to implement a

principled approach.⁴¹ In terms of developing a principled approach, food distribution is the biggest problem, but also the greatest motive.

5.3.1 Reduction, suspension

Decisions about withdrawal are some of the hardest that agencies can make. On the one hand, withdrawal or suspension obviously prevents manipulation. But on the other, it prevents any positive impacts as well; in effect, it abandons the humanitarian imperative.

In Liberia, after the massive lootings of 1994 the ICRC significantly reduced its operations on the grounds that the conditions did not exist for it to work in a principled way; it considered that there was too great a risk of loot being used by the factions. This desire to reduce to a minimum inputs that might be diverted was also one of the principal objectives of the JPO, hence the idea of 'minimum inputs and maximum outputs'. This led to the JPO restricting NGO imports of capital inputs, such as cars and radios, and the concentration on 'life-saving' programmes only. This meant that some programmes, such as seeds and tools distributions and school feeding, were ruled out. One agency, the CRS, even diverted a ship bound for Monrovia as its cargo of seeds and tools were not thought to be in line with the JPO restrictions.

There were two main problems with this. First, as a voluntary agreement the JPO had no sanctions against agencies who 'broke' it and imported cars or undertook 'forbidden' programmes. This was made worse by the fact that agencies often could not always agree on what was, or was not permissible. The turning back of a ship showed an unusual commitment to the JPO that other agencies often lacked. What one agency deemed to be essential for its operations others thought a luxury; for example, agencies with large numbers of expatriate staff considered they needed more cars, radios and computers than those who did not, for example. What was or was not an acceptable import or programme caused numerous rows between NGOs. This situation got worse as more agencies arrived in-country, with WFP encouraging some NGOs to carry out programmes, such as school feeding, which were forbidden under the JPO.

Secondly, there was no calculation of the possible negative effects of not carrying out programmes. For instance, the restriction on programmes was one reason behind a number of agencies not getting engaged with the disarmament and demobilisation campaign, a core part of the peace process. While this was undoubtedly a controversial programme, not engaging in it also had a number of consequences; for example it forced the UN and the European Union to use less competent agencies as implementors, and, in the case of the EU, to become operational itself. Not distributing seeds and tools also presumably had an impact on food production and thus household recovery.

5.3.2 Food aid and principles

A commitment to a 'principled approach', and a commitment to the principles in the mechanisms being examined here, has a number of implications for agency procedures and ways of working at the project level. However, these are rarely spelt out in detail, with the commitment left at the level of the general principles, as in the Red Cross/NGO Code of Conduct. This vagueness about issues of principle contrasts strikingly with the level of detail elaborating the technical standards contained in the Sphere project. As with the disputes over the JPO restrictions on capital imports discussed above, this lack of agreement and of specificity meant that each agency in effect assumed that what it was doing was in line with the principles, and so there was considerable variation in practice. In what follows, elements of the 'project cycle' are examined to see what impact the 'principled approach' elaborated in the mechanisms had at that level.

Proper needs assessment is central to the principle of impartiality; without an accurate picture of needs it is impossible to work on the basis of need alone. Assessment of food needs in recent years has undergone considerable technical sophistication, particularly in South Sudan with the development, for instance, of the Food Economy Approach in OLS, intended to improve the geographical targeting of food aid. In Liberia too some attempts were made to co-ordinate assessment amongst food agencies. Greater joint assessments and some work on shared methodologies were an achievement of a more explicitly principled approach. However, much of the improvement in assessment and targeting made by WFP in 1995 and 1996 in Monrovia was the result of pressure from donors who felt WFP was swamping Monrovia with food. Thus it arose out of concerns about finance rather than principle.

In neither case were these explicit links to principles or to the commitments made to these principles in the mechanisms. It is also notable that the mechanisms affected assessment in terms of encouraging better co-ordination rather than conceptual input. Food assessment remained more a matter of determining what could be transported given the security problems, or at best a technical matter, rather than an issue of principle. The Food Economy Approach, pioneered in South Sudan, is interesting in this regard, as it is some ways conceptually advanced; yet it still tends to neglect social, military and political dimensions of food security. These are questions a more principled focus might have introduced but, because the conceptual link with principles was not made, it did not happen. The most comprehensive military and political information in South Sudan is held by the security officers, who record incidents and thus have a comprehensive chronology and analysis of how the war is being fought, but with the purpose of staff security not vulnerability assessment. In fact, it forms a more comprehensive

record of abuses by armed groups than the HPP file on abuses of the Ground Rules, yet it is not for that purpose. Protection needs too have never been an explicit part of needs assessment procedures; if violence is the main cause of food insecurity then likelihood of attack should be a prime focus of assessment. A further problem has been competing definitions of vulnerability between the individualistic 'poorest of the poor' approach of aid organisations and, for example, the more group-orientated approach of the Dinka (Harragin and Chol, 1998).

A principled approach also has implications for distribution methodologies. Impartiality, for instance, requires that food only goes to those who need it, and neutrality implies a degree of control to ensure this. Capacity building, by contrast, requires that the beneficiaries and local power structures should be involved. In Liberia, before the adoption of the mechanisms, the food agencies were often accused of bad practice. WFP, for instance, was said by one interviewee to run convoys at any cost through anything to try and get food to wherever, and in a famous comment at a co-ordination meeting in early 1995 the WFP representative argued that 60 percent 'losses' were acceptable as that meant 40 percent got to the civilian population. WFP would also leave food in bulk at distribution points for distribution by the authorities, usually, of course, in effect the military, rather than supervise the distribution itself. In Sudan too WFP procedures were unable to control, or properly monitor, diversion (Jaspars, 1999; SPLM/RRRA & OLS, 1998). However, the adoption of the instruments committing agencies to a principled approach appears to have made little impact on the approach of food agencies to distribution. In Liberia, innovations such as wet feeding and distributing weekly as opposed to monthly rations were tried by some NGOs as a way of reducing potential diversion; however, this was often led by ACF which was not directly involved in bulk food distribution. In Sudan, there is little evidence of innovations in method that attempt to reduce diversion as a result of the Ground Rules agreement.

Post-distribution monitoring also is a requirement of a principled approach, but here too there is little evidence that a commitment to a principled approach has fed through to innovations in policy or procedures. In Sudan both the 1996 OLS Review and the joint OLS/SPLA/RRRA Task Force in 1998 came to the conclusion that systems of monitoring and evaluation were inadequate, and a further study found that such systems as were in place were unlikely to identify diversion or the exclusion of certain groups. In Liberia too there was little improved monitoring by WFP as a result of PPHO. As already mentioned, the improvements in efficiency of the Monrovia operation were made under donor pressure; up-country the WFP attitude was that it was sufficient 'just to get it there'. A noticeable absence in both cases is the lack of attempts to monitor and analyse diversion. This is a controversial area; many agencies are unwilling to discuss diversion to the military openly (African Rights, 1997:299), as it is

seen to threaten an agency's image and thus its fundraising potential. Monitoring forms, for instance, usually talk only of 'losses', which covers all losses and damage. This 'functional ignorance' reduces the ability of agencies even to see, let alone assess, possible negative impact and so effect the implementation of a principled approach.

Given the lack of analysis of diversion in both cases, it is impossible to discover whether the adoption of a principled approach had any impact on it at all.

5.3.3 Capacity building

In both countries building up the capacity of local organisations was promoted as a way of improving the delivery of relief as well as developing the organisations. Capacity building is put forward as a principle in both the Ground Rules and the JPO. It derives from a more developmentalist approach and thus sits uneasily with more classical principles, notably of independence and neutrality. The Geneva Conventions make no provision for 'capacity-building'; indeed they can be read as explicitly ruling out activities geared towards economic development, as that might affect the course of a war (Study 4: Mackintosh, 2000:13). Few agencies in conflicts in poor countries today would dispute the importance of saving livelihoods as well as lives. The ICRC, for example, now undertakes some economic rehabilitation, such as seeds and tools programmes, as well as relief. The problem, though, is whose capacity is built up: individuals, groups and communities? And how do you do this without feeding into a war economy in which the co-option of civilian structures by malign political forces is the norm (Macrae et al. 1997)?

In both Liberia and South Sudan, agencies, in particular the UN, have found the need to develop local partners with whom they can work. In Sudan the SPLA/M established a relief wing, the RRRA, in 1984. In Liberia, Charles Taylor did set up an NGO but, given that the UN was then working against him it did not get much support and the UN, especially WFP, concentrated on local NGOs. Special Emergency Life Food (SELF) was set up to distribute food for WFP in Monrovia in 1992, when there were few international agencies present. Liberians United to Save Humanity (LUSH) was established up-country a little later, in territory outside the government's control.

Despite these differences, however, the problems have been remarkably similar, and have much to do with the conceptual tensions mentioned above. In both countries several local agencies have been the focus of accusations of corruption, and particularly of co-operating in the diversion of food to the military. Indeed, some see the RRRA as having been set up specifically for that purpose, and argue that until the SPLA/M has a coherent social programme and a less militaristic philosophy the RRRA will not be able to be anything more than a go-between for the international agencies and the SPLA/M (African Rights, 1997).

Certainly, the 1998 joint report into the famine (OLS/SPLM/SRRA, 1998) established that SRRA officials, if not the SRRA itself, had been involved in diversion. In Liberia too this type of accusation was made regularly but not properly investigated (Weissman, 1996).

Whatever the truth of the accusations, it is inevitable that they will arise, given the closeness of local organisations to local power structures in a conflict, if only for protection. This is particularly the case with the SRRA, which was set up as the 'relief wing' of the SPLA/M⁴², but it was also the case in Liberia. For a UN agency to provide money to an organisation, which is officially connected, to a warring party shows how far the UN is from the traditional Red Cross approach. The paradox of the UN position, though, is that it is uncomfortable dealing directly with armed groups, yet is happy 'capacity-building' a group that will be controlled by those armed groups. Perhaps the real reason is that, despite the capacity-building rhetoric, donors, the UN and NGOs need local organisations both as cheap distributors of food, with local staff who can take risks forbidden to international agencies, and as go-betweens with local officials and fighters. Again, this contrasts with the usual ICRC approach of negotiating directly with armed factions but distributing directly to civilians.

It would seem that many local agencies have provided cheaper alternatives for food distribution than the UN, sometimes in areas where international agencies will not work, and they have also often acted as effective go-betweens for international agencies. However, the capacity-building impacts of both these exercises are uncertain. As argued above, the local organisations supported by external agencies have tended to be formed in their image and have responded to what the external agencies wanted rather than acting as genuine and sustainable local voices. This is a miserly and limited form of capacity building and one with serious risks in terms of strengthening malign local power structures. However, they have provided non-military income alternatives for capable people, and to an extent they have been protected by international agencies. Maybe, as argued by African Rights, humanitarian agencies, UN or NGO, should leave capacity building to solidarity agencies and movements (African Rights, 1995).

5.3.4 Food and health agencies

Very broadly, it is possible to locate most humanitarian agencies on an idealised spectrum, with, at one end, preventative, community-based, partner-orientated, faith-based, developmental, food delivery agencies, and at the other, emergency, objective/scientific, operational, curative, secular, 'health' agencies. In terms of the mechanisms, there are a number of differences between the two groups.

The 'health' agencies were on the whole more interested in, and articulate about, issues of humanitarian principles and often took the lead in the development of the mechanisms under discussion. The bulk of food distribution, however, with the exception of the ICRC, was in the hands of agencies towards the other end of the spectrum. The bulk food distribution agencies, UN or NGO, were less concerned with, or interested in, the mechanisms, with the notable exception of the CRS which took a particular interest in the JPO. WFP, in both cases, was notably uninterested in them. In Sudan, the Ground Rules, for instance, played no role in its contractual relationships with NGOs and WFP staff see them as being primarily an instrument for protecting their ability to work uninterrupted rather than as a tool for promoting the protection of civilians. In Liberia, WFP was part of the PPHO, but actively undermined the JPO by offering NGOs contracts for types of activities that were forbidden by it. It is also notable that the 'health' agencies were generally more concerned with legal and rights issues, and they are also more concerned about protection issues. Despite (or perhaps because of) food delivery being the biggest problem in terms of developing a principled approach, it is the health agencies that are the most vociferous in calling for the implementation of principles in food distribution.

There is also something of a difference in approach to the assessment of vulnerability between the two groups, and thus of who gets the food, with the first group relying more on local organisations and community and religious leaders for assessment, and the second on supposedly objective and scientific measurement. Distribution too is handled differently. The ICRC, for instance, following the conventions, is rigorous in its control mechanisms such as registration, and will have expatriate staff present at distributions in most cases. In Liberia it was the only agency that had a reputation for not giving out food at checkpoints and for always carrying out registration (Study 2: Atkinson and Leader: 2). The food agencies, though, often work through partners and favour a much more devolved approach, with less strict control and supervision. It is notable that one of the innovations in Liberia intended to reduce the possibility of diversion, the use of wet feeding, was undertaken by ACF, one of the 'health', not the 'food', agencies. The differences in approach between these two groups are not to be found in manuals or procedures, however, but have much more to do with organisational culture and philosophy. In many ways they are cultures that never meet.

5.4 Securing agency space

A useful distinction can be made between 'agency space', the conditions an agency needs to operate, and 'humanitarian space', which implies a level of protection for civilians as well. In many ways, it is in the area of securing and protecting *agency* space that the JPO, the PPHO and the Ground Rules have been most effective. Indeed, it is this function that most field

workers saw as their primary purpose, rather than promoting the protection of civilians. This function is not unimportant; for agencies to be able to operate they need to be present and denying them access, or attempting to manipulate them in other ways, is a way of denying and manipulating aid. But it is a different goal from that of promoting respect for civilians.

5.4.1 Negotiations, dialogue and access

Negotiations and dialogue with the authorities for initial access and for ongoing working arrangements, be they governmental or non-governmental, are a key function for agencies. They are also a key area for establishing common principles; lack of principled co-ordination can easily lead to the manipulation of agencies, both of resources and of the legitimacy conferred by negotiation.

OLS provides the original model of non-military, UN negotiated, humanitarian access. The Government of Sudan has effectively surrendered part of its sovereignty to the UN in areas in the South which it does not control, in return for a guarantee of neutrality by the UN that is explicitly recognised in the OLS tripartite agreement. It also, of course, regularly blocks air access for its own ends.

In Liberia no such framework was established and access was much more ad hoc and shifting, reflecting the less dominant role of the UN agencies and the shifting and highly factionalised nature of the war. UN access was also politically determined, in that in the early days of the operation it did not extend to Taylor-held areas for political reasons, something that was to create a lingering suspicion of the UN in the Taylor camp (and a good example of the importance of a neutral and impartial approach for negotiating access for humanitarian assistance).

The Ground Rules, the JPO and the PPHO all had significant impacts on negotiations and dialogue between agencies and factions. They had perhaps three broad impacts: they encouraged agencies to engage with the authorities at higher levels than before, to negotiate from a position of principle rather than just to get access, and to negotiate in a co-ordinated fashion. All were by and large positive, in terms of reducing the potential manipulation of agencies by factions and of improving agencies' understanding of factions.

In terms of promoting contact at higher levels, the existence of the mechanisms of itself encouraged agencies to contact higher levels within the structures: if you have principle instruments, you have to do something with them, and there is no point in talking with lower ranks. The Ground Rules, for instance, were negotiated at progressively higher levels with the SPLA/M until reaching Garang himself two drafts before the final version. The JPO, once the NGOs had developed it, was taken round and presented to faction leaders, as was the PPHO. In Liberia contact between

agencies and factions had previously tended to be ad hoc, problem-specific, and often at lower levels in the military.

Before the adoption of the agreements, much of the contact and negotiations tended to be concerned with immediate problems of access rather than issues of principle. All the instruments, however, meant that dialogue was established at higher levels and was concerned with principle issues and not just getting access. Particularly in the case of the Ground Rules this helped reinforce a principled framework for negotiations, culminating in a commitment by the SPLA/M to respect the Geneva Conventions and the Convention on the Rights of the Child and not to divert food aid. The formation of the Humanitarian Principles Unit has meant that this contact and framework have been institutionalised through the Technical Working Group, a group chaired by the Humanitarian Principles Officer and on which NGOs and the relief wings of the factions are represented. The approach in Liberia was different but the presentation of the JPO and PPHO to the faction leaders again stressed agency principles and rights issues.

However, in both cases, this principled framework needed to be maintained by constant pressure at a number of levels, and by both agencies and donors, and was weakened to the extent that the humanitarian system was not speaking consistently, for instance over the expulsion of ACF in Sudan, or the partiality of the UN in Liberia. The more formal structure of OLS, comprising both UN and NGOs, probably facilitates the maintenance of the 'principled framework', as the Ground Rules are used as a reference point at all levels of interaction.

There were also significant benefits to be had through joint negotiation to which all the instruments contributed rather than by individual agencies. The PPHO, for instance, assisted the development of a co-ordinated and principled framework for interaction with the factions (Study 2: Atkinson and Leader, 2000:3.2.1); it was presented to them jointly by the agencies in September 1995. Access did improve in late 1995, but largely due to peace following the Abuja 1 accord, but the PPHO helped the agencies maintain a united stance and establish ground rules such as non-payment for access. Greater co-ordination amongst agencies on these issues helped in their negotiations with the factions.

Despite the relative success of the instruments, however, the determining factor in negotiations remains the nature of the warring party being dealt with. A Ground Rules type agreement would not have been possible or desirable there. This was partly because of the more fragmented nature of the humanitarian system in Liberia, and the previous hostility of the UN to Taylor. But it had more to do with the nature of the conflict and the warring parties. Many of the factions in the conflict, and Taylor's NPFL for much of the time,

had no interest in any kind of social welfare or development strategy for the people they controlled. In the early days of the war, when Taylor's NPFL was more interested in governance, some kind of agreement might have been possible, though at that period the humanitarian system itself was probably not united enough to achieve this. The SPLA/M, though, or at least some elements within it, have recognised the importance of this. It gives them the self-interest needed to make some kind of agreement necessary. As pointed out in Section 1, the idea of humanitarian principles relies to an extent on the warring parties seeing some level of self-interest in respecting them.

5.4.2 Agency space

Agencies require certain minimum security and administrative freedoms to continue working, and in most contexts protecting this 'agency space' takes a great deal of continuous effort on their part. In some cases the strategies agencies have used to achieve this, such as paying armed guards in Somalia or using food to buy access in Liberia, though expedient in the short term, are both unprincipled and probably counter-productive in the long run. Both the PCVC in Liberia and the Ground Rules in Sudan were quite effective in terms of protecting agency space. In fact, there appears to be a tendency for inter-agency mechanisms to 'degrade' to this 'lowest common denominator' role of defending space and collective self-interest.

In Liberia the PCVC, despite the interesting work on publicity mentioned above, was seen by NGOs primarily as a way of dealing with pressure from the interim government, rather than as a mechanism for the promotion of IHL. It was effective in negotiations as it enabled agencies to negotiate from a common position, 'problems were being dealt with in a joint fashion'. After the disarmament process it became almost a trade association and was concerned almost exclusively with issues such as taxation. Another mechanism which was originally intended to promote respect for rights, the NGO Advocacy Facilitator, also ended up with an important role as a spokesman and focal point for managing NGO relations with other actors, principally the government but also the UN, rather than, as originally intended, an advocate on human rights issues.

In Sudan, the situation is similar; according to one informant, '99 per cent [of agency staff] would say that the Ground Rules are to protect me and my compound'. Ground Rules workshops are often organised in response to problems agencies experience in their relations with the local administration or military. Tellingly, the vast majority of Ground Rules violations recorded by the HPU are complaints by agencies over violations of agency space, not human rights violations. The HPU has thus become a kind of trouble-shooter for agencies, which get into problems with local authorities.

5.5 Codes and compliance

All the mechanisms under study here set out commitments made by agencies to observe certain principles and ways of acting and to abjure other ways of acting; they are in effect sets of rules intended to regulate agency behaviour. The very name of the 'Ground Rules' reflects this. A key question, then, is to what extent agencies have obeyed these 'rules' and why. Externally to the organisation what combination of moral force, self-interest, compulsion, fear or authority is involved? And internally what combination of procedures, guidelines, discipline, threats, rewards and organisational culture?

An immediate problem in answering this question is that agencies do not systematically monitor, either internally or externally, the extent to which they abide by the agreements or not – in itself an indication of how seriously they have taken them. There were also disagreements and disputes among agencies over the extent to which each was or was not respecting them. However, broadly, as far as this research was able to establish, respect for the agreements by agencies was highly variable; some agencies respected some parts and not others, some respected parts at one time but not at another, some seemed barely aware of them, some very keen on them, some were strong on the agreements at headquarters but less interested in the field, some the reverse.

Given this diverse pattern it is difficult to generalise, but broadly, it would seem, agencies abided by the rules to the extent that they saw it was in their interest to do so. What is meant by interest though is complex. de Waal makes a distinction between 'hard' (i.e. institutional) and 'soft' (an agency's stated aims) interest (de Waal, 1997). Another way of looking at it is in terms of costs and benefits both to organisations and the individuals working in them. Organisations reward individuals who enhance the organisation's 'hard' interests, but also those who promote its philosophy and approach, which may involve compromising 'hard' interests. This has much to do with nebulous but important ideas of organisational culture and values.

As collective instruments, the agreements 'worked' i.e. were generally respected, where agencies saw that it was in their collective interest to abide by them, and they did not where it was not. This is why they have been most useful in terms of collective standards of behaviour or action in defence of agency space and negotiations, since it is in this area that collective action and respect for the rules are most likely to be beneficial to individual agencies. Thus, for instance, in Liberia the payment for access by an individual agency, specifically forbidden in the PPHO, tended to cause problems and raise the prices for all agencies. The restriction on programming that was the core of the JPO was perhaps the most dramatic self-limitation studied and could be said to be a counter-example to this process. But the JPO should be seen as the product of a specific event,

the looting of Monrovia, which forged a common view of agency interest in restricting activities that later dissipated as the event faded from the collective memory and agency interest gradually reasserted itself. In Sudan, the collective use of the Ground Rules by the agencies in the negotiations for agency space with the SRRA or the local authorities is similar.

This process is what lies behind the tendency for all the agreements to end up as instruments for the protection of agency space rather than the promotion of respect for rights. The Ground Rules, the PCVC and the NGO Advocacy Facilitator have all ended up as instruments for the collective defence of space.

Conversely, agencies tended not to respect the agreements when they considered it not in their interest to do so. Thus in both cases agencies failed to live up to their theoretical commitments on human rights monitoring, partly out of fear of its being 'too political', partly because it was not considered a priority by many organisations. Similarly, in Liberia, individual agencies 'broke' the agreement over types of programmes to be implemented or the importation of goods when they felt they needed to, particularly as the collective spirit that characterised the first few months after the looting dissipated.

More broadly, the mechanisms constitute a very selective list of the implications of a principled approach for agency conduct. The Liberia agreements, for instance, after some vague general statements of principle, focus on a very limited range of activities to be covered by this collective approach: checkpoints and armed escorts in the PPHO and the type of programme allowed in the JPO. Areas of operation that would be significant for an individual agency or small group of agencies in terms of implementing principles, but the non-performance of which would not damage the collective, are not dealt with. In no case, for instance, did agencies follow through the logic of commitments to neutrality in food distribution by collectively developing the more rigorous assessment and monitoring procedures they imply.

There are a number of reasons for this: the organisational and conceptual diversity of the system, the lack of detail in the agreements, the failure of agencies to internalise them, the lack of a systematic monitoring mechanism, and perhaps most important of all, the little, if any, cost to an agency of not respecting them. First, the nature of the humanitarian system itself de Waal argues that one of the effects of the privatisation of relief and the increase in agencies seeking money for humanitarian work has been to decouple 'hard' and 'soft' interests. Agency success is dependent on media profile and quantities of money raised and inputs delivered, as opposed to actual impact and upholding principles. Hence his 'humanitarian Gresham's law' whereby, in the absence of external regulation, 'good aid drives out bad'. In Liberia, the gradual dissolution of the JPO and the

willingness of some agencies to undertake contracts can be seen as embodying this process. de Waal also argues that, while this law militates against co-operation 'One thing that all agencies agree on is the right of "humanitarian access", and they will unite whenever this is threatened' (de Waal, 1997:140). Again, this seems to be born out by the tendency identified above to unite over collective defence of agency space.

However, there are other factors too, for instance, considerable conceptual confusion. All the agreements rely on the assumption that, as one interviewee put it, you need to 'articulate everything around the issue of principle', they therefore assume a community of shared values that will promote consistently principled behaviour, and all draw heavily on the notion of 'humanitarian principles' as the core of this. The assumption is that these shared principles and a sense of solidarity and mutual responsibility will ensure appropriate restraint and the development of a principled approach by every agency. However, the variety and number of humanitarian organisations that make up this system, and the range of conceptual approaches they represent, in fact belie the fact of a community of shared values.

Indeed, the very existence of the mechanisms themselves can be seen as evidence of this lack of community. In the mid-late 1980s the predominant model of NGO intervention in conflict was a consortia of a few large agencies. This model was replaced by the co-ordination of multiple individual agencies in the 1990s. Amongst the smaller agencies involved in consortia there could be said to have been a kind of unspoken set of core values, 'this was what allowed consortia to develop as a model. The expansion in the 1990s however, undermined this 'community of values'. The mechanisms can be seen as attempts to re-establish the self-regulation lost in this period of deregulation. This is done partly by attempts to re-establish a community of values through a multitude of workshops at which basic concepts are endlessly re-defined and debated. In Liberia certainly the prolonged discussions over the PPHO and JPO had this effect for agencies. In Sudan too the HPU holds workshops on humanitarian principles for agency staff, which are in part attempts to ensure that agencies and agency staff new to the country 'sign up' to the values of the community.

This proliferation of agencies has resulted in the conceptual and ethical melting pot that the mechanisms represent. All contain elements of classical Red Cross principles, developmentalism and human rights; they represent a kind of negotiated set of principles from the multiplicity of agencies involved. This causes considerable internal conceptual tensions between the various principles: capacity-building versus neutrality for instance, or human rights advocacy versus access. However, this problem is not addressed and so there is considerable lack of specificity in terms of what the agreements mean in detail.

This vagueness is partly functional; more detailed commitments would expose the tensions and differences that general principles do not. All, then, can be said to lie in the interpretation⁴³. This, in turn, allows each agency to assume that what it is already doing is in line with the agreement and to emphasise its own particular principles. With food distribution for example, despite signing up to a common set of principles, a huge variety of ways of working exist in practice. The ICRC interprets its commitment to neutrality to mean detailed assessment, registration and monitoring. Other agencies, however, choosing to emphasise capacity building, have much laxer procedures and make extensive use of local organisations and community leaders. Both approaches consider themselves to be principled. This failure to work out the specific commitments that the principles imply is not surprising, given these different approaches, and would probably be impossible to negotiate, unlike commitments to vague and general principles.⁴⁴

This lack of specificity, in turn, makes the agreements unhelpful as internal management tools. The implementation of a policy on, say, gender equity within an organisation would be expected to be carried out by means of training, setting benchmarks, etc., in other words, through a strategy for its implementation. However, the policy commitments represented by the agreements did not produce anything like this. There was little evidence that agencies consistently used the agreements as internal management tools, in terms of, for instance, working out what they meant for agency procedures, decision-making or managing staff according to how they respected them. In South Sudan, few agency staff had a clear idea of the detail of the Ground Rules, except in so far as they were meant to protect them.

There is also a problem with compliance mechanisms. In a similar manner to the nature of international law signed between states, the mechanisms are in effect voluntary agreements which the assenting organisation has the responsibility for honouring; if it fails to comply there is little the other signatories can do, as there is no enforcement mechanism in the event of an agency not fulfilling its obligations. However, unlike IHL, respect for which is monitored by a mandated agency, the ICRC, there was no monitoring mechanism⁴⁵. In Sudan, signing up to the Ground Rules is necessary to join the OLS mechanism and failing to comply with them could in theory result in expulsion from OLS. The OLS structure, however, on which the Ground Rules are predicated, can be seen as the product of an earlier era of organisation and regulation in the humanitarian system. It is unlikely that something similar will evolve and the Liberia model of equals appears to be more common now. Even so, no agencies are monitored for their observance of the Ground Rules. In Liberia, compliance was enforced by peer pressure, often reduced to strength of personality in meetings and

‘starring contests’. Indeed, some agencies saw the JPO as a means of some agencies enforcing their dominant position over others.

In short, there was thus little ‘cost’ to individuals or agencies in ignoring the agreements in areas where it was not in their interest to respect them. The benefits from respecting them were nebulous, relying more on individual perceptions of their responsibility to implement what they saw as principles. The importance of this should not to be underestimated, but in the absence of managerial initiatives to ensure consistent implementation, this depended on the individual.

5.6 The role of multilateral and bilateral donors

In terms of the mechanisms themselves, donor support was mixed. In Liberia both the JPO and the PPHO received considerable donor support. In South Sudan however, the Ground Rules have not received much attention from donors; notably with regard to protection issues, donors have tended to see the Ground Rules as a way of protecting ‘their’ agencies rather than the South Sudanese. And in both countries donors have funded operations that existed outside the mechanisms, especially in South Sudan. In Liberia, the European Union was forced into establishing its own operational presence, as most NGOs did not want to get involved in the disarmament, demobilisation and reintegration (DDR) campaign because of the programme restrictions in the JPO and a belief that it was a flawed process (though some did ‘break ranks’). And in South Sudan, the US in particular has funded NGOs outside OLS and which are therefore not signatories to the Ground Rules.

One of the differences between the two countries concerns donor unity. In Liberia, where post-Cold War the country ceased to have any strategic importance, donors were reasonably united both in terms of sanctions against the warlords in the peace process and aid policy. In Sudan, however, the US sees the regime in Khartoum as a strategic threat to it and its allies in the region, a position not held to the same degree by the Europeans. US policy in recent years has been more explicitly pro-SPLA/M, and this has taken it into initiatives such as the Star project of capacity building for local institutions, where the developmentalist language of governance and capacity-building is being used to justify a political goal. This compares sharply with combined donor policy in Afghanistan, where any kind of capacity building work in Taliban areas is ruled out by the donors. Why the SPLA/M’s human rights record makes such an approach acceptable in Sudan but not in Afghanistan is not clear.

Another key donor role concerns the type of humanitarian system they fund and encourage in a particular location, and the way it interacts with political and diplomatic interests. In Sudan, it is

unlikely that the Ground Rules could have evolved without the superstructure of OLS already being in place. OLS plays in theory a regulatory role for NGOs, though in practice it rarely exercises it. In Liberia, on the other hand, the donors were prepared to accept a far more deregulated environment and an SRSG who was openly using humanitarian aid as a tool in the political process. The JPO was an NGO-only instrument, the UN was not involved or even invited to the initial meetings. The NGOs were not encouraged to do so by donors; indeed the EU, itself almost a competitor of the UN, was often unhappy with the UN's performance and encouraged the NGOs. This probably undermined the UN's legitimate co-ordination function and set up rival co-ordination mechanisms within the humanitarian community.

6. Conclusions

6.1 A principled approach

The primary responsibility for ensuring respect for humanitarian principles in conflict rests with the warring parties. It is their actions, which primarily determine the framework of respect, and they who decide what will be the 'limits of war'. International and regional political and economic actors also play a key role in terms of providing incentives and disincentives for abuse. There are thus policy reforms in terms of developing a principled approach in foreign policies, the role of regional powers in conflict, the development of IHL and the ICC, the role of multinationals, the use of sanctions, the regulation of the arms trade, and the criteria for the use of force that are much more significant in terms of positively influencing the 'framework of respect' than the activities of humanitarian agencies. In terms of enforcing greater respect for humanitarian and human rights principles humanitarian organisations play a relatively minor role.

In return for the authorities assuming their responsibility for humanitarian principles, the Red Cross adopted its own principles of humanitarian action, principally non-interference in the conflict. These principles are intended to guide and position humanitarian agencies in this narrow role, in assisting and protecting those outside the limits of war in ways that are both ethical and practical. However, perhaps the most striking feature of all the mechanisms under study here is that *they represent humanitarian agencies attempting to influence collectively the behaviour of the belligerents, in effect to regulate the conduct of war*. The ICRC has always done this to the extent that it has both assisted in defining the limits of conflict (i.e. through the law) and promoted its respect through dissemination and other means. This approach depends on persuasion and thus on consensus, on the belligerents believing it is in their interest to respect the rules. However, the agencies studied here have developed a new range of approaches, such as human rights advocacy, humanitarian conditionality, and critical engagement, which go beyond the strictly defined role of the ICRC and which come close to coercion. Rather than reacting to the framework, agencies are taking on responsibility for shaping it as well; they are trying to impose on the warring parties the limits of war.

Thus the idea of principles of humanitarian action is shifting from something that was intended to regulate agencies, and was thus imposed by the belligerents, to something agencies are trying to use to regulate the belligerents. This, in effect, is what 'a principled approach' has come to mean. This is why so many people are unable to distinguish between 'humanitarian principles' and the 'principles of humanitarian action'. There is a parallel here with the phenomenon of agencies increasingly substituting for state welfare

services in collapsing states. Via a similar process, akin to being sucked into a vacuum, humanitarian agencies are attempting to regulate war itself. Thus by a subtle process of colonisation (Slim, 1998), protection is increasingly becoming the responsibility of humanitarian agencies, rather than of the authorities. In 1975 Davis noted that relief agencies were 'akin to spectators in a stadium running down on to the field while a football game is in progress so as to reduce the incidence and severity of the tackling' (Davis, 1975). In recent years it appears that agencies are trying to become the referee as well. But in many cases, not only are they woefully ill-equipped for this role, they have also mistaken the nature of the game and are trying to apply rules in which the participants are not interested.

The impulse for this broadening of the humanitarian agenda has different causes. On the one hand, agencies have willingly expanded into new areas of operations, seizing opportunities for growth. But on the other, the growth of war economies that destroy any kind of contract that might encourage accountability, and the repositioning of powerful states in the post-Cold War security adjustments, have created a 'vacuum of regulation' in many conflicts into which agencies have been sucked. The interest of the major powers in resolving the conflicts in Sudan and Liberia was not great. It is notable, for instance, that strategies such as the Ground Rules or the JPO have not developed in Kosovo, where responsibility for protection is where it should be, in the hands of the major powers. It is this expansion of the mandate of humanitarian agencies that is the main factor behind the current confusion over 'humanitarian principles' and the emergence of different ethical positions ranging from 'classical' humanitarianism to 'political humanitarianism'. If anything, this trend is set to continue. Principles are a means to an end. If there is not even consensus over the ends of humanitarian action, between, for instance, relieving suffering, peace-building, and trying to influence the conduct of a war, there is unlikely to be agreement over the principles. The debate over principles has become as much as anything a search for legitimising new forms of humanitarian action.

The obvious policy question, and the question that has underlined much recent debate on the topic of principles, is which of these various ethical positions 'works' best. The very variety of approaches is a result of the classical Red Cross approach being seen as no longer appropriate, MSF's criticism of the ICRC, for instance, or the developmentalist criticisms of the humanitarian tradition. There are two problems with this question however. First, there is a range of different types of conflict in which humanitarian action takes place. Just as no single model is likely to capture the range of conflicts in which agencies work, it would be unlikely if the same ethical approach were to work in South Sudan, Kosovo and Colombia. Secondly, the different approaches rest in part on moral and ethical positions about the role of outsiders, the legitimacy of violence, and the objectives of intervention that are not

subject to empirical investigation⁴⁶. Indeed, much of what passes for empirical debate is in fact about ethics, something that has confused both. This situation is made much worse by the comparatively low standards of empirical investigation and theoretical modelling that the humanitarian system has so far developed. If there is an agreement about what it means to take a principled approach, it is firstly that humanitarian action should promote respect for rights, including the right to assistance, and secondly that it should not undermine those rights.

The mechanisms under study here were in essence about regulation, of both the belligerents and the agencies themselves. The assumption was that better regulation of the latter would lead to greater regulation of the former. The mechanisms sought to regulate the belligerents in terms of their behaviour towards civilians, and the defence of 'agency space'. They sought to regulate agencies in terms of obtaining protection and the delivery of assistance.

6.2 Opportunities for promoting respect for principles

Overall, the findings of the field research would indicate that there are opportunities for humanitarian agencies to promote respect for humanitarian principles by belligerents, but that they are severely limited. The research would also indicate that agencies can only succeed in promoting respect for humanitarian principles by warring parties, or more broadly promoting accountability between factions and the civil population, *to the extent they are able to capitalise on existing political processes that are already reducing the incentives for abuse*. These processes may originate in a variety of ways. They may be primarily internally driven, as with SPLA/M and its need to develop its legitimacy with the south Sudanese people after the expulsion from Ethiopia. But there can be important external contributions, as with the pressure brought to bear on the Liberian warlords through the donor-driven peace process and their resulting need for political legitimacy in the presidential elections. Or alternatively the SPLA/M's need for political legitimacy in order to get support from the US, itself a result of changing US policies towards Khartoum. In all cases it was only when it was in the interest of the faction to be, or at least be seen to be, more respectful of principles that there was any chance of humanitarian agencies promoting them.

Crucially, *these opportunities changed over time as the actors responded to changing circumstances; there were points in both conflicts when the incentives for factions reducing abuses were greater than at others*. The success of the agencies, such as it was, in terms of promoting respect has occurred where their strategies have coincided with these existing processes encouraging accountability. This would imply that humanitarian action, at least as conducted in these two countries, cannot of itself kick start these processes. Humanitarian aid is probably not

a good tool for closing a 'governance gap' opened up by long-term international economic and political processes. As pointed out in the joint Rwanda evaluation, humanitarian action cannot substitute for political action by the international community.

However, *in most cases, the ability of agencies to promote respect for rights by factions through direct influence was limited*. This was the case where there was no accountability at all between factions and people, and where the faction had no interest or need to be accountable or to respect any limits to war. In both case studies this had much to do with the fact that the factions did not need internal support because of externally available financial or military resources. It was also the case where faction objectives were primarily economic rather than political. In situations where factions committing abuses have no concern for political legitimacy at all, or where there is no political goal, only an economic one, it is likely that only superior force will prevent abuse. In these cases the scope for promotion of respect for rights by humanitarian agencies is non-existent in terms of direct interaction with the factions. The only chance lies with strategies that work indirectly by influencing those who can influence the abusers.

6.3 Strategies for promoting respect for principles

Faced with situations where the warring parties have no interest in principles or rights, humanitarian agencies have developed new strategies to promote them. These draw on various traditions and there is a range of ideas, such as public human rights advocacy, critical engagement, capacity building and conditionality. The implications of the above analysis, however, is that the effectiveness of different strategies depends above all on the political context rather than the strategy; publicising abuses, for instance, worked at some times, but not at many others.

6.3.1 Politics and 'politicisation'

The ICRC approach to promoting respect for principles rests on developing, promoting and disseminating the law; in other words, it assumes that the actual protection of civilians is the responsibility of the belligerents. It thus relies on some sort of consensus about the limits of war and the need to respect them. For the ICRC, then, 'humanitarian politics' is about promoting humanitarian values within the overall policy of the belligerents (Forsythe, 1977). In order to pursue this particular politics, the ICRC has hit on the particularly effective and intelligent approach of describing itself as strictly non-political and acting according to a strict set of rules (its fundamental principles) in order to preserve this impression. This is effective, since it gives a non-political shield to what is in fact a political activity, though the limits of this politics are in fact quite tightly drawn. Most humanitarian agencies have followed the ICRC

approach and declared themselves to be non-political, or at least non-partisan, and have adopted a version of these principles. Apart from anything else, this approach makes good practical sense if you are trying to get access to someone else's war.

It is thus not surprising that it is around this newer array of strategies, developed where there is no consensus that most debates about the 'politicisation' of humanitarian action have been held. Attempting to influence factions by, for instance, imposing conditionality or public 'shaming' is clearly a more political activity than quiet persuasion. As the response to the conditionality in the JPO from one of the Liberian warlords demonstrates ('why are you agencies now doing politics?'), this distinction is not lost on the warlords themselves. A longer-term approach of, for instance, attempting to restructure society through capacity-building, developmental relief, or boosting what 'Do No Harm' calls 'connectors' and not 'dividers' is also at root political, as it aims to shift power balances in a society.

'Politicisation' of humanitarian aid is usually an accusation humanitarian agencies throw at donor governments; in fact however much of the politicisation of humanitarian action has come from humanitarian agencies themselves using these strategies. What agencies mean by accusing donors of politicisation is that they dislike being manipulated by donors, or that they disagree with the political goals rather than about the political nature of humanitarian action per se. The confusion is over the type of politics, rather than it being political. Humanitarian agencies have yet to conceptualise their own type of politics in opposition to that of the donors and belligerents, probably because they believe their own propaganda and continue to think of themselves as in some ways non-political. They thus continue to de-politicise inherently political notions such as capacity building or fail to capitalise on positive political processes.

This is not a reason to fail to pursue these more overtly political strategies, but it is a reason for caution and clarity. This is particularly important in non-strategic countries, where donors are more likely to want to use humanitarian assistance for foreign policy goals, and in areas where opportunities for influencing the behaviour of the factions is limited by their destructive nature. In some situations it is probably better simply not to try, in part for fear of detracting attention from those who can make a difference.

It is also a reason for agencies to rethink the common position that they are 'non-political', to conceptualise a 'humanitarian politics' in contrast to that of donors and belligerents. Attempting to promote respect for principles is a different kind of politics from taking sides in a war, but it is political nonetheless and requires political analysis and, more importantly, political calculations. This is a very different way of thinking for most humanitarians who are much more comfortable in the absolute and uncompromising

morality of their traditions rather than the utilitarian morality of politics which involves making alliances, deals, moral compromises, and accepting small advances when possible⁴⁷. It also assumes the inviolability of the principle of impartiality, the idea of need and need alone being the deciding factor for the allocation of resources – a key element of humanitarian action and something that marks it off from the politics of donors.

In some, maybe many, conflicts the best 'political' strategy may well be to assert, as loudly and consistently as possible that one is totally non-political. The trick then is not to believe one's own propaganda.

6.3.2 Conditionality

There is an important distinction to be made between establishing whether the conditions needed to work in a principled way exist or not and trying to use conditionality to bring those conditions about. The first approach says 'the conditions for us to work in a principled way no longer exist in this situation; we will therefore withdraw until such time as we can work again'. The second says 'we cannot work in these conditions and we will only resume if you, the authorities, do the following things'. They are two distinct positions; the second is what is meant by conditionality. The two are often confused by humanitarian actors, though probably not by the belligerents. The evidence of the research suggests that *humanitarian* conditionality⁴⁸ is a tool of limited potential in terms of forcing factions to respect rights. It is probably even less good at forcing a political outcome. Withholding externally provided welfare provision would not appear to have been much of a threat to the type of armed groups in the case-study countries. Their power and legitimacy have little to do with a relationship with their subject population that depends on welfare provision; rather, it is about extraction. Paradoxically, the more concerned a group is about the welfare of its constituents, the more vulnerable it might be to conditionality, but the less likely it might be to commit abuses.

There are, however, a number of other problems with humanitarian conditionality. Perhaps two are most important. First, there is real tension between the principles of humanitarian action, notably the humanitarian imperative and impartiality, and the use of conditionality. Most people would probably agree that if the use of conditionality would certainly 'save more lives' than the unconditional provision of aid, there would be little argument. The problem, though, is that the mathematics and the powers of prediction of humanitarian agencies, or donors, to make this kind of calculation are simply not available. Thus the use of conditionality replaces a solid principle with shaky judgement; it risks certainly denying the right of beneficiaries to receive aid in the short term in exchange for an uncertain probability that things will improve in the long term. Conditionality will also be

seen as a violation of the principles of humanitarianism by those receiving the aid as much as by those giving it; the JPO, for instance, was not popular with the many Liberians who knew about it, since they interpreted it as agencies unilaterally reducing aid to their country when it was in great need. This is not an insignificant consideration in terms of agencies maintaining their legitimacy in a foreign community.

Secondly, conditionality in effect forces humanitarians to negotiate over what should be non-negotiable, namely, respect for principles. This is compounded by the common problem with conditionality of the inability of agencies to formulate demands. If conditionality is to be worth anything, suspension of aid has to be conditional on something, i.e. some kind of performance standard by the faction concerned, and any kind of deal has to have measurable standards. None of the agencies studied was able to formulate anything but the vaguest demands, if any at all. And if they had been able to produce any, they would then have been in effect forced to negotiate over them. If the demand is to respect rights under IHL, what is the response to be, even assuming it could be measured, if the faction says 'OK we have respected half of them'? This problem is compounded by the disunity of the humanitarian community. Unless there is a guarantee that the community will hold firm with no breaking of ranks, an unlikely scenario, the negotiating position is very weak.

The above arguments are not to rule conditionality out completely as a strategy, rather to argue that success is likely to be limited to a few situations. Conditions for its effective use might be:

- that the armed group is politically vulnerable to the withdrawal of external assistance
- that the demands are specific, measurable and within the power of the group to fulfill
- that the humanitarian and donor community is united

These conditions suggest that its effectiveness is more likely to be local and tactical, and in respect to agency space and security, rather than at a broader level of respect for rights.

6.3.3 Human rights monitoring and advocacy

The research also indicates that human rights monitoring and advocacy, private or public, may be a more effective strategy than humanitarian conditionality. But only in circumstances where the targeted group is concerned about legitimacy. For any faction concerned with political legitimacy, a reputation for human rights abuse is more likely to be a concern than the withdrawal of external aid. This is certainly the case internationally, and may be the case internally. A faction which uses the argument that it has no resources for welfare, or needs to concentrate its resources on 'the struggle', can still be damaged by the

publicising of its human rights abuses. However, again it must be stressed that, with many armed groups, their political legitimacy is simply not a high concern, particularly if their aims are economic, not political. In this respect, advocacy directed at the international community, i.e. shaming governments about their lack of action, not the abusive faction, is the only avenue, and local advocacy is likely to be ineffective.

The problem for human rights advocacy of being seen as 'political' is the same as that for conditionality. However, the research suggests that there is more possibility for this kind of work than is often assumed. One strategy that reduced this problem in Liberia was the issuing of condemnations and publicity by a central body, the PCVC, rather than by individual agencies.

However, whatever is done with the information, the implications are that agencies *should systematically monitor, record, and analyse abuses of IHL and human rights law in a conflict*. Leaving aside the opportunities for advocacy, this information is vital to understanding the nature of the conflict, the objectives of the armed groups, and their impact on civilian populations. It is also necessary in order to monitor the unintended negative impacts of assistance, something that is often not measured by information collected with a focus on assistance delivery alone.

The relationship of humanitarian agencies with human rights organisations in this regard needs to be critically reviewed. The information human rights organisations collect and publicise is not necessarily the same as that needed by humanitarian organisations. The latter need systematic, consistent monitoring over time, almost a kind of 'epidemiology' of abuses. Human rights organisations, though, work in different ways and in the countries studied were often not present for long periods or produced reports of single issues in depth. Relationships between the two need to be built on a thorough understanding of their respective needs, capacities and positions. The role of human rights organisations, for instance, will require publication of information, that of humanitarian organisations only in certain circumstances.

6.3.4 Dissemination and civil society

The research indicates that dissemination of humanitarian principles and the principles of humanitarian action was important, but more in terms of enhancing the legitimacy of the agencies in the eyes of local communities than in terms of enabling them to hold factions to account. This is not unimportant. With the exception of the ICRC few agencies take the trouble to explain to communities the principles upon which they work, something which helps sustain suspicion and confusion. *Agencies should therefore consider promoting more systematically the principles on which they work to local communities.*

In both case-study countries there were local groups – Justice and peace in Liberia and the NSCC in Sudan – that were effective in terms of at a minimum keeping the issue of rights alive. In both countries, though, they were pre-existing groups with strong foundations, not groups ‘capacity-built’ into existence by humanitarians. There were also in both cases significant problems with capacity-building work, in that the capacity of groups close to factions was built up. Again, this is not necessarily a reason for not embarking on this work, rather that it should be done critically and on the basis of a critical political analysis and a realistic expectation of what is likely to be achieved.

6.4 Assistance

In terms of assistance, the key policy aim of all the mechanisms was to maximise the assistance provided, i.e. the humanitarian imperative, while minimising its diversion and manipulation. If the opportunities for aid agencies to influence the behaviour of the belligerents positively were limited, the opportunities for belligerents to influence the aid and aid agencies negatively were numerous. In many ways, this is the most significant policy challenge. Not doing everything possible to reduce manipulation represents a failure to implement a ‘principled approach’. There are perhaps two key questions here: when to work, or rather when to stop, and secondly how to work.

6.4.1 When to work: suspension and withdrawal

The original deal on principles ensured that agencies would be allowed to work without interference, subject to their respecting certain conditions – the principles of humanitarian action. The Red Cross famously does not work unless those conditions exist, for example, that it can work on both sides of the conflict. But in conflicts where the deal does not operate, the conditions for humanitarian action often barely exist, if at all. There is, of course, a vast grey area here; humanitarian action can be carried out in the midst of appalling conflicts, but it is a grey area in which it is easy to get lost. The point is that there is a bottom line, below which it is impossible to work in a principled way; but agencies are often unwilling to define it.

There are two problems here: one practical, one philosophical. In practical terms, agencies often do not know how to define the bottom line because they are not looking for one. The negative impacts of aid are rarely monitored by agencies; food diversion, for instance, is not systematically monitored, let alone analysed. *Agencies need to determine a bottom line in specific contexts, which will trigger suspension or withdrawal.*

The philosophical problem is more difficult. The suspending of aid marks, in effect, a move from an absolute to a utilitarian morality. It marks a shift from ‘we are helping these people as they need help now and it is the right thing to do’ to a morality based on some

kind of calculus (‘we can save more lives by stopping aid’) that assumes that a prediction is made about alternative future courses of action. This is not to say this is an unacceptable shift; it is a shift in moral logic demanded by working in conflicts in which there is no deal. It is, however, a significant shift. It risks undermining the moral basis of humanitarianism, which after all rests on the value of individual life for its own sake. It also means that, for the decision to be ethical, the calculus needs to be made explicit and to be accurate. *Using the framework of IHL and human rights law, agencies need to be explicit about the costs and benefits of continuing or suspending aid for their beneficiaries.*

When the JPO restricted programmes, it certainly reduced the resources going into Liberia and therefore the potential for manipulation. But it also reduced the ‘good’ that the assistance could have done. At no time was an attempt made to weigh up the impact these different options would have had. The science and maths available for making these calculations, let alone the predictive power, are sketchy to say the least. But they have to be attempted if the shift in moral logic is made. Otherwise, the decision is subject to mere opinion, and this in turn is open to influence by factors other than the imperative to provide aid to people who need it.

There is a remarkably similar argument over the laws of war themselves. A number of moralists have argued that using the maximum brutality is likely to make wars shorter and that the idea of limits to war will only prolong wars (Walzer, 1977:47). An argument could be made that even if aid does prolong wars, it may make them less costly in terms of lives or suffering. It is doubtful that many of the people willing to suspend aid on the grounds that it prolongs wars would be willing to suspend the laws of war for the same reason.

6.4.2 How to work: managing principles

One of the most striking features of the mechanisms was their lack of organisational ‘depth’. This is true not only of the mechanisms under study but also the Red Cross/NGO Code of Conduct and to a lesser extent the Sphere project. By this is meant that they made little impact on internal organisational factors such as procedures of assessment, distribution and monitoring of food delivery or ways of working such as capacity-building. In all cases these organisational ways of working went on unexamined in the light of the mechanisms committed to.

In the case of food, for example, a commitment to neutrality might be expected to imply a revision of procedures to assess, distribute and monitor in ways that might minimise the potential for diversion while maximising the meeting of needs. The ICRC, for example, has interpreted this commitment, in line with the Geneva Conventions, to mean an approach, which emphasises control⁴⁹. Other organisations, signed up to

the same principle, conduct their food distribution in very different ways. This is partly to do with organisations emphasising different principles, such as capacity building, but also has to do with the fact that using local organisations is cheaper and easier in terms of moving food. It also has much to do with the fact that the potential negative impact of food delivery is rarely systematically monitored.

In short, in many organisations the conceptual links between the principles of working in conflicts and organisational ways of working are not made or examined. It is too often assumed that 'what we do is already in line with the principles'. This is one of the reasons that, for instance, the Red Cross/NGO Code of Conduct is still relatively unknown to field workers⁵⁰. Principles, if they are to mean anything, imply an adherence to some ways of working and rule out others. The process of working this out is often not undertaken. The Sphere project, for instance, says very little about conducting and monitoring food distribution in ways that will minimise manipulation. The tensions between, for instance, capacity building and neutrality were rarely examined by agencies. This is not to argue that one approach is better than another, rather that it is a context-specific decision and that the detailed implications of each approach needs to be worked out in each context, both in terms of organisational practice and the potential impact of each way of working. The situation is worsened by the lack of monitoring and evaluation, which means that negative implications are often not picked up until too late. Monitoring and evaluation approaches, for example, rarely look at issues of principle.

Perhaps the most important implication for how to work is the need for more systematic calculations of the likely impact of humanitarian action on the realisation of rights by beneficiaries. The logic of 'humanitarian politics', of being in effect part of the governance network, is that these calculations need to be made. At the moment this is not done, partly because the absolute morality of humanitarianism rules it out, partly because the conceptual tools do not exist. Such tools as do exist depend on public health models, which do not take proper account of political crimes as a cause of disasters or political impacts as a result of humanitarian action⁵¹. Political humanitarianism weighs up likely outcomes in political terms, such as the success of a particular party. A more humanitarian framework is needed, one which rests on rights, and which can weigh up the likely impact on the realisation of the different rights in international law, as opposed to only physical health, by different courses of humanitarian action.

6.5 Agency space

The mechanisms worked best in terms of defending agency space; this is not unimportant in terms of maintaining access and assistance, but it is not as significant a goal as protecting the victims of conflict. The reason for this was that agencies co-operated best

when it was in their collective interest to do so, at least for the short term.

Both cases demonstrate the value of a neutral and impartial stance in terms of negotiating access to opposing sides (Liberia, of course, in the negative, given the problems an anti-Taylor stance by the UN caused for UN access). However, as pointed out above, this does not completely rule out 'impartial' human rights advocacy, at least in some carefully defined circumstances. What is much more problematic is being seen to side openly with one or other side, as in Liberia.

The use of a structured, signed agreement with a belligerent, like the Ground Rules, to define and protect agency space was useful *in the Sudan context*. It would have been inappropriate, not to say impossible, in Liberia. This is because the Ground Rules assume a number of factors, principally the stable control of large areas and populations and a movement at least elements of which are seeking greater reciprocity with the civilian population. One of the key aspects of the Ground Rules was that they recognised the responsibility of the authorities for establishing the conditions for aid, but at the same time recognised the role of agencies, not just for assistance but also for promoting protection. They also depended crucially on the negotiated structure of OLS and the lead role and mandate that OLS gave to UNICEF.

In terms of negotiating agency space, perhaps four lessons stand out. First the importance of negotiating from a principled position, rather than only to get access. This does not necessarily imply a united approach, but it does imply a set of common standards on simple things as, not paying at checkpoints, paying taxes, employing staff, etc. Secondly, the importance of agencies negotiating from a common position where possible. This makes it more difficult to 'pick agencies off' and ensures a common stand on issues of principle. The third lesson would be the importance of negotiating as high up the ladder of the armed group as possible and as quickly as possible, and attempting to set a framework at higher levels, rather than working up from lower levels on local issues. Obviously this is easier with more structured groups. Fourthly, there are the benefits of staff continuity. Maintaining agency space, as all field workers know, is a constant process, not a one-off negotiation. Having senior staff in place over long periods is important for this maintenance.

Greater understanding of the internal dynamics and objectives of the armed groups will obviously help considerably in terms of negotiating for access. A group unconcerned about the welfare of the people it controls is less likely to negotiate from a position of good faith than one which is so concerned.

6.6 Codes

In many conflicts humanitarian agencies are working in what is in effect an unregulated environment. Indeed, it is precisely the absence of respect for rules of any kind, including the rules of war, and of effective accountability mechanisms between factions and people, which is the key problem. Many agencies regularly lament that the rules of war are not respected and that there is little way of enforcing them. However, this same environment means that humanitarian agencies too are unregulated and thus, formally at least, unaccountable to the people they are attempting to assist.

Accountability has become an increasingly important issue in humanitarian operations in the past few years, notably in the wake of the Joint Evaluation in Rwanda (Eriksson, 1996). Many of the recent reforms in the system attempt to address this problem. A number of mechanisms are under trial: the Red Cross/NGO Code, the Sphere project, the establishment of the Active Learning Network on Accountability and Performance (ALNAP), the increasing use of independent consultants in post-hoc evaluations⁵², the People in Aid Code, and the Humanitarian Ombudsman are all at root attempts to increase accountability and performance. All of these ideas centre on the idea of a voluntary code.

The mechanisms under study were also in part an attempt to address this vacuum of regulation for agencies and to set standards for their conduct. The codes can be seen as an attempt by agencies to re-introduce self-regulation after the privatisation and proliferation of the early 1990s. They consciously draw on the example of previous Codes, such as the Red Cross/NGO Code. However, *the mechanisms were respected most fully only in areas of collective self-interest*, where, in the words of one interviewee, 'one stupid action could damage all the agencies', or where collectively standing up to the authorities served to expand or defend collective agency space. By and large, they were not respected where perceived agency interest was contrary to the mechanism. There was also considerable ignorance of the detail of the codes, and little attempt to implement them, to 'manage' them, or to monitor compliance. There was also no serious enforcement mechanism in the event of non-compliance. In short, as with all the other voluntary codes, there was little cost to not respecting them.

A similar case could be made out for the Red Cross/NGO code of conduct. A study of British agencies in 1998, four years after the Code's introduction, found that there was 'little knowledge and internalisation of the Code' and that it 'remains unused as a means of guiding or auditing their work in terms of humanitarian principles' (Slim and McConnan, 1998:13,14).

The above comments do not, of course, mean that the agencies were universally 'unprincipled', but rather that voluntary codes are unsatisfactory as means of

regulation. This is, after all, the conclusion many of the same NGOs involved in the mechanisms under study here have reached in terms of the compliance of companies to voluntary codes of conduct on such issues as the marketing of baby milk⁵³. And it is the same lament many humanitarian agencies have made about the ultimate voluntary code, the Geneva Conventions themselves; hence their support for the establishment of the International Criminal Court.

This is not somehow morally to equate NGOs with companies or armed groups, but rather to point out that there are processes in terms of organisational survival, adaptation and development that are analogous for all organisations. Just as the factions in Sudan and Liberia moderated their abusive behaviour only when it became in their interest to do so, so agencies respected the codes to the extent that respect was in their institutional interest. Of course the objective of the factions was frequently anti-humanitarian and that of the agencies the opposite. But as Slim has pointed out (1997:2), purity of motive is not a guarantee of positive impact. And to assume an identity between agency institutional interest and the interest of the people they are trying to assist is surely a step even the most arrogant of agencies would hesitate to make.

In a study of the adaptability of the US and British military to coping with counter-insurgency, Avant (1994) argues, using institutional theory,⁵⁴ that 'military organisations will be responsive to civilian goals when military leaders expect to be rewarded for that responsiveness'. While codes and standards remain voluntary, and there is no cost to the organisation for ignoring them, the managers of relief programmes will be most responsive and accountable to the goals of their organisation, and these may not always coincide with the best interests of the people they are trying to assist. Unless relief managers and organisations are held accountable for their performance in terms of helping the victims of conflict, poor performance and unprincipled behaviour can be expected to continue. And voluntary codes would appear to be ineffective accountability mechanisms in terms of putting the needs of the victims first.

This would imply that further progress in terms of improving accountability and performance requires an external monitoring agency, and a serious enforcement mechanism. This is, after all, only what agencies have proposed for many company codes. This proposal has been made before,⁵⁵ but has not been taken up, presumably because it is felt that people of good will and a humanitarian motive are sufficient. The point, though, is that, despite motive, individuals work in institutions that impose their own logic and reward and punish their staff according to criteria not necessarily identical to the best interests of the victims of conflict. It is in the long-term interest of the sector, let alone the beneficiaries, to submit voluntarily to the inspection, and occasional castigation, of an independent

inspectorate mandated to monitor relief programmes as they are happening.

6.7 Principles and food

Food is the commodity most sought after and most abused by belligerents. It is the abuse of food that has done most to tarnish the image of the humanitarian system (hence phrases such as ‘feeding killers’ and ‘fuelling conflict’). However, with the exception of the ICRC, most of the bulk food delivery is carried out by agencies with an organisational approach and an ethical framework that are derived from natural catastrophe and community development work, not conflict. This must in part explain the often noted dominance of a supply-driven, commodity-based approach to much humanitarian work. The approach to commodity control is noticeably different. Whereas the ICRC emphasises control because lack of control could prejudice non-interference and thus neutrality, the food agencies tend to emphasise control in terms of financial accountability; hence the use of the accounting term ‘losses’ to cover everything from looting to damage suffered in transit.

The dominance of commodity supply may also explain why these agencies were also on the whole less concerned with issues of rights and protection than the ‘health’ agencies. Humanitarian action in this model is conceived in terms of assistance, not protection. With some notable exceptions such as the CRS in Liberia, the food agencies were the agencies least interested in the mechanisms. WFP notably in both countries was not involved to any significant degree⁵⁶.

6.8 The role of bilateral donors

Donors play multiple roles within and outside the humanitarian system. Perhaps unsurprisingly, in terms of humanitarian principles, these roles are not always consistent. On the one hand, as states, donors are key guarantors of humanitarian principles, both legally and financially. Financially they control and allocate funds for humanitarian purposes to the UN, the Red Cross and increasingly to NGOs. Donors always differentiate humanitarian assistance budgets from development assistance, and apply different standards to each, an implicit recognition of the unconditional nature of the humanitarian imperative and its distinction from foreign policy goals; the ICRC notably receives considerable sums with relatively few ties. Legally they are also the guarantors of IHL, both as state signatories and in the sense that they have an interest in seeing the ‘rules of war’ respected. However, they are also, of course, members of a competitive state system with foreign policy goals, which are frequently in tension with the goal of promoting humanitarian values in the international system. Reflecting these broader concerns, donor actions that affect the framework of respect take place at a number of levels.

The role of donors in terms of promoting principled behaviour is thus ambiguous. On the one hand, they have pressured and encouraged humanitarian agencies to be more principled, with support to the JPO, for example, or the Strategic Framework in Afghanistan. And the UK Department for International Development, for example, has gone so far as to devise its own set of principles in the interests of transparency (DFID, 1999). But on the other hand, as with agencies, donors do not themselves agree what principled behaviour in a specific context is; hence the disagreements between ECHO and the US in South Sudan. They also use the funding of humanitarian action, and thus agencies, for foreign policy goals, which is a violation of humanitarian independence and impartiality.

While agencies welcome a more political approach on the part of donors for the purposes of conflict resolution, in the context of a blurring between humanitarian and political intervention and the ‘retreat’ of donors from some parts of the globe, there are many dangers here, not least to the very notion of humanitarianism itself. While acknowledging that humanitarian action is a form of politics, this does not mean that it should be a form of foreign policy. Without a way of distinguishing between the two, conceptually and organisationally, the risk is that humanitarian aid will be politicised rather than foreign policy being made more humanitarian.

6.9 Adaptability and innovation

All the mechanisms under study here were policy innovations developed in the field by groups of agencies to cope with specific problems. The Ground Rules in particular were a notably imaginative initiative. Why should these innovations come about at these particular times and places? What conditions make for innovation? This is a difficult problem but some comments may be hazarded.

All the mechanisms relied on relatively small groups of people who spent considerable amounts of time and effort developing ideas and selling them to their colleagues. In many cases, but not all, these people had considerable experience of the country they were working in and also the backing and encouragement of their managers. Interestingly, almost all were from what we have termed the ‘health’ agencies rather than the ‘food’ agencies. It might be speculated that the culture of these agencies ‘rewarded’ initiatives to deal with the problems of working in conflict in ways not undertaken by other agencies. Another feature might be that the development of the mechanisms required a political ‘nous’ that is uncommon in many humanitarian agencies; indeed, their non-political rhetoric positively discourages the development of such skills. The idea of getting the SPLA/M to sign the Ground Rules, or the inclusion of respect for the PPHO by the warlords in the Abuja peace accords, both demonstrated a certain

political sophistication and understanding that is uncommon.

The ICRC, despite not being formally involved in any of the mechanisms, also played a subtly influential role at a number of points, from being the only agency in Liberia with the actual text of the Red Cross/NGO Code of Conduct when the PPHO was being written, through to providing the model of a voluntary commitment to observing humanitarian rules plus confidential monitoring employed by UNICEF in the Ground Rules.

More generally, all the mechanisms were in response to severe problems – the first Ground Rules in response to the killings of aid workers, the JPO to the looting of Monrovia. Indeed, both the Red Cross/NGO Code and the Sphere project also resulted from perceptions of poor performance⁵⁷. It seems the system as a whole needs to be kicked into serious reform rather than being able to anticipate the need for change (another argument for independent, real-time monitoring?).

6.10 Humanitarian politics or political humanitarianism

A distinction is sometimes made between political humanitarianism and humanitarian foreign policy (Weiss, 1999; Bonino, 1998). The question though for proponents of both positions, is: *how can you tell the difference?* As argued above, humanitarianism is a form of politics, but a form of politics heavily circumscribed by ethical rules, principally humanity and impartiality; it is adherence to these rules that mark humanitarian politics apart from other forms of politics. The confusion over the humanitarian/political divide comes from the fact that humanitarianism is a form of politics in which it is useful to assert that one is non-political. The implication of this study is that, in the new circumstances of a post-Cold War, globalising world, humanitarian actors need to get more involved in the broader political arena, and to think more like political actors. As the deal over humanitarian principles is reformed anew, humanitarian actors need to be aware of possibilities as much as threats. Despite the problems, the development and signing of the Ground Rules by OLS is a good example of imaginative ‘humanitarian politics’. However, such a role, if anything, requires an even greater appreciation of the core principles, values and rules that distinguishes and sustain humanitarian action.

Endnotes

¹ The other reports are Bradbury et al, (2000) on the Ground Rules, Atkinson and Leader, (2000) on the JPO and PPHO, and Mackintosh, (2000) on the legal issues.

² Where significant, reference is made in this report to the specific study and section number where the detail of the research can be found.

³ Humanity, impartiality, neutrality, independence, universality, voluntary service and unity.

⁴ The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (shortened hereafter to 'Red Cross/NGO Code of Conduct') is a 10 point, voluntary code that seeks 'to guard our standards of behaviour'. It is sponsored by members of the Steering Committee for Humanitarian Response (SCHR), Interaction, and ICRC (SCHR, 1994).

⁵ The Humanitarian Charter and Minimum Standards in Disaster Response, known as the Sphere project, is a project of SCHR and Interaction, supported by ICRC, VOICE and ICVA. It aims to promote the rights of people affected by disasters through specifying minimum standards in disaster response that those providing humanitarian relief should aim to uphold (Sphere Project, 1998). See <http://sphereproject.org/>

⁶ Formed in 1997, ALNAP is a network that aims to improve the quality and accountability of humanitarian assistance by providing a forum for the identification and dissemination of best practice and the building of consensus on common approaches. The secretariat function is provided by ODI.

⁷ The Ombudsman Project, currently in the pilot stage, is a non-governmental, inter-agency initiative to establish a Humanitarian Ombudsman to act as an impartial and independent voice for people affected by disaster and conflict. See <http://oneworld.org/ombudsman>.

⁸ The Strategic Framework for Afghanistan is a mechanism that is attempting to develop greater coherence between the UN's assistance and, political and human rights objectives in Afghanistan (UN 1998b).

⁹ See for example Disasters Vol 22, No 4, 1998, for a number of papers on this issue and papers by Jackson and Walker (1999), Macrae (1998a), Slim (1996, 1997a, 1999) and Weiss (1999).

¹⁰ This notion has been adapted from the notion of 'framework of consent' in Lautze et al, 1998.

¹¹ In Liberia in 1995 and Sierra Leone in 1998, for example, agencies argued about the pros and cons of

armed escorts. The same agencies, but different people, argued for and against the same positions.

¹² Nicholas Stockton, pers comm.

¹³ An example might be Keen, 1994

¹⁴ Though it was probably the invention of the telegraph, rather than the television, that marked the real shift in the popular and political impact of journalism. 'The Crimean war, though fought far away in 'the East', was literally brought to the breakfast tables of Western Europe by the telegraphed reports of journalists in their new role as war correspondents'. Hutchinson, 1996: 26.

¹⁵ 'An army which fails to maintain good discipline gets into opposition with the popular masses, and this by its own actions dries up the water' from Mao's Military Principles, quoted in Freedman, 1994: 321.

¹⁶ In the First World War ICRC's 'role became that of a clearing house for gifts, correspondence and information about not only the wounded but prisoners of war' (Hutchinson, 1996: 282).

¹⁷ See UNHCR's annual 'State of the World's Refugees' for statistics on forced displacement.

¹⁸ See for example DAC, 1997.

¹⁹ In Kosovo, for instance, war was not formally declared by NATO, though it was by Former Yugoslavia.

²⁰ Despite some striking similarities in ethical dilemmas, there has been little published by humanitarian agencies that consciously attempts to draw on the large body of literature that has developed around the ethics of war. The problem of unintended impact, for example, is a question long debated by those interested in military ethics (Walzer, 1977). It might be a little unfair to argue that 'Almost the only coherent ethical defence of the agencies' actions [in response to the 1994 Rwanda crisis] has been given by Hugo Slim' (de Waal, 1997: 197), but not by much.

²¹ See for instance Disasters, Vol 22, No 4, 1998, for a number of papers on this issue and papers by Jackson and Walker (1999), Macrae (1998a), Slim (1996, 1997a, 1999) and Weiss (1999).

²² Humanity, impartiality, neutrality, independence, universality, voluntary service and unity.

²³ See Plattner, 1996 for a detailed account of ICRC's approach to neutrality.

²⁴ See Study 4: Mackintosh, 2000: 14

²⁵ It goes on to say 'It will be agreed, generally speaking, that the contribution represented by authorised consignments should be limited: in the majority of cases,

such consignments will be hardly sufficient to meet the most urgent needs and relieve the most pitiable distress; it is hardly likely, therefore, that they would represent assistance on such a scale that the military and economic position of a country was improved to any appreciable extent.'

²⁶ See, for example, a remark by an ICRC delegate to the second Wolfsberg forum: 'we cannot remain silent when international humanitarian law is blatantly flouted. This is a form of advocacy that does not involve politicisation' (ICRC, 1997b: 2).

²⁷ This study itself is an example of that process.

²⁸ The sole reference to principles is in the 'Provisions' section: 'To this end, the humanitarian interventions envisaged by this contract will acknowledge humanitarian principles, the right of victims to assistance, and the right of impartial organisations to initiate humanitarian operations.' (ECHO 1993: 4). What ECHO understands by these principles is not made clear.

²⁹ For example 'The Movement's mission and its activities are built on the Principles' (ICRC, 1989)

³⁰ In South Sudan, for example, the rejection of Islamic law from Khartoum is an important factor in the war.

³¹ E.g. Article 23, Fourth Convention.

³² This included visa restrictions and threats to freeze bank accounts and set up a war crimes tribunal for Liberia.

³³ Due to insecurity, the Sudan case study was only able to examine the working of the Ground Rules in SPLA/M areas, and not in areas controlled by the other movements which signed them. This section thus concentrates on the SPLA/M.

³⁴ The exception would seem to be ICRC, which by common consent generally has the best understanding of military issues. This comes from recognition that neutrality requires this type of understanding. More practically, it comes from the regular contact ICRC has with military forces through activities such as dissemination, prison visiting and prisoner exchange. Many UN and NGO personnel will have an understanding of the political economy of a conflict but are often ignorant of basic military concepts and structures.

³⁵ The changing and changeable nature of political and military objectives (politics as the art of the possible) make an interesting contrast with the apparently immutable and changeless objectives of humanitarian action (humanitarianism as the art of the impossible?).

³⁶ ICRC's approach to its protection work consists mostly in bringing violations of IHL to the attention of the

authorities, who have the responsibility for protection themselves (ICRC, 1998: 22), indeed 'only international military or police forces can act as substitutes for the authorities in this sphere' (Bonard, 1999: 25, fn 40). What seems to be happening to the idea of protection though is that it is becoming a responsibility of humanitarian agencies, a parallel process to the assumption by agencies of state welfare responsibilities.

³⁷ Capacity building for relief provision is dealt with in section 5.3.3 below. This section will concentrate on capacity building in terms of civil society and governance.

³⁸ Article A6 of the 'Statement of Humanitarian Principles' in the Ground Rules.

³⁹ Dissemination to the SPLA/M is dealt with below.

⁴⁰ See Study 3: Bradbury et al, 2000, Section 4.11.7 for a discussion on the relationship between the Ground Rules and south Sudanese institutions.

⁴¹ The special significance of food in terms of affecting the course of a conflict was recognised by the drafters of the Geneva Conventions. Article 23 of the Fourth Convention makes a distinction between medical supplies, which are for all civilians, and food, which is only for 'children under fifteen, expectant mothers and maternity cases'.

⁴² The SRRA was officially separated from the SPLA/M in 1994 but retains significant influence.

⁴³ In a separate study of UN co-ordination in Afghanistan, the present author heard the frequent phrase 'we agree about the principles, just not on their implementation'.

⁴⁴ This contrasts with the highly detailed commitments entered into by government signatories to the Geneva Conventions where the opposite strategy was adopted and the general commitment to observe humanitarian principles has been spelt out in enormous detail.

⁴⁵ The PCVC, despite a reference to agency compliance in the text, was used to monitor compliance by faction leaders and the government, not agencies. Only once was it used in reference to an agency, WHO.

⁴⁶ 'Do No Harm', for instance, tends towards a condemnation of the use of violence, compared with the ICRC position which explicitly takes no position on the use or justice of violence.

⁴⁷ A classic example of the differences between the two approaches is the attitude to amnesty for abusers as part of a peace deal. Humanitarian and human rights actors will usually call resolutely for no amnesty while political actors are prepared to accept one in the interests of peace.

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⁴⁸ I.e. conditionality applied by humanitarian agencies for humanitarian goals. This is contrasted with political conditionality.

⁴⁹ It is interesting to quote from the ICRC commentary on Article 23 of the Fourth Convention in this regard. This Article is to do with conditions under which relief supplies are to be allowed through a blockade, but the spirit is of non-interference, i.e. neutrality. 'Supervision must be carried out on the spot, at the very place where the goods are handed over to the beneficiaries: constant surveillance is necessary to ensure that the articles are in actual fact received by those for whom they are intended and that any illegal trafficking is made impossible. Receipts for individual consignments, frequent spot checks in depots and warehouses, periodical verification of distribution plans and reports and other measures of supervision will make it possible to avoid abuses, the consequences of which would be borne in the first instance by those categories in the greatest distress and who could not possibly be held responsible for any unlawful acts which may have been committed.' (Pictet, 1958). Thus is a principle turned into a procedure.

⁵⁰ 'There is little real knowledge of and reflection on the Code of Conduct in most agencies' (Slim, 1998:3). This finding was confirmed by the field studies.

⁵¹ For example medical or food economy analysis.

⁵² For instance: a compulsory, post-hoc, independent, evaluation has recently been written into the procedures of the Disaster Emergency Committee (DEC), the collective fundraising mechanism British agencies use for fundraising from the public in the event of major emergencies.

⁵³ The Baby Milk Action Group, for instance, funded in part by SCF UK and Oxfam GB, monitors the compliance of baby milk producers with the WHO code on the marketing of milk powder. Similarly, the World Development Movement has argued for an International Investment Agreement with an independent monitoring body and an enforcement mechanism to regulate Transnational Companies: 'meaningful self-regulation is still the preserve of only a few companies. Moreover its enforcement is dependent on the continued vigilance of consumers, investors and campaign groups. Increasingly 'ethical' companies are also concerned that lack of mandatory regulations allows less scrupulous competitors to undercut them.' (WDM, 1999).

⁵⁴ Avant summarises this as 'Institutional theory assumes that actors will behave so as to ensure (or enhance) their institutional power' (Avant, 1994: 2)

⁵⁵ For instance in the Joint Evaluation of Rwanda (Eriksson, 1996) and in de Waal, (1997).

⁵⁶ See also the findings of a report by WFP into recurring challenges in food provision which pointed out that 'There has been little formal discussion of these issues [i.e. principles and ethical dilemmas] within WFP and staff who are regularly confronted with them in the field have received little guidance.' (Ockwell, R, 1999: 64).

⁵⁷ In Sudan in the 1980s and in Goma in 1994 respectively