

HPG Working Paper

From the Spanish civil war to Afghanistan

Historical and contemporary reflections on humanitarian engagement with non-state armed groups

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1 Introduction

In order to reach individuals in need of aid amid conflict, aid agencies must engage with all belligerents. Dialogue with non-state armed groups (subsequently referred to simply as armed groups) is therefore required to facilitate access to affected people, as well as to promote protection and acceptance of international humanitarian law (IHL). Gaining acceptance from armed actors to operate is integral to effective humanitarian operations today, from Afghanistan and Somalia to Sudan and Syria. Yet the dilemmas inherent in negotiating with armed groups are as old as humanitarian action itself. Between 1863 and 1899, just 39% of the conflicts in which the Red Cross/Red Crescent movement operated were international in nature, while 55% of its operations were carried out in contexts involving the ‘equivalent of modern-day armed groups’ (Gillioz, 2012). However, historically, as now, engagement with armed groups, including their political wings, has been extremely delicate and often shrouded in secrecy. The lack of institutional memory and documentation that characterises humanitarian negotiations is, from this point of view, not simply a question of neglect.

This Working Paper seeks to understand the key contemporary challenges to humanitarian engagement within the broader history of humanitarian action. It argues that a better understanding is needed both of influences on humanitarian negotiations and of their historical development. Acknowledging past compromises can be as difficult as acknowledging current ones and, to some degree, amnesia can be functional. Moreover, as the following historical survey suggests, many of the challenges surrounding humanitarian negotiations with armed groups derive from factors beyond the control of humanitarian actors. This reality will not change. In such a situation, humanitarian actors should not aim to be spared ‘politicisation’, but rather work to limit the risks of instrumentalisation while defending their own priorities and integrity.

1.1 Overview

This Working Paper draws on historical case studies to explore contemporary challenges to humanitarian engagement with armed groups. It does not claim to

offer a comprehensive history of this engagement, nor does it explore all of the myriad challenges inherent to humanitarian dialogue with armed groups. After a discussion of relevant legal frameworks, it focuses on three core challenges: counter-terrorism laws and policies; stabilisation and counter-insurgency; and coordination among humanitarian actors in negotiating with armed groups. These issues were selected based on wider HPG research on humanitarian negotiations (described below). Historical case studies are contrasted with contemporary ones, in order to understand the challenges to effective engagement with armed groups, and what can be done to mitigate them.

The literature on past and present negotiations remains very partial and focused on the most prominent actors or conflicts, with only limited reflection on the means and implications of contact between humanitarian actors and armed groups. Yet the need to work within civil conflicts, and therefore the need to engage with armed groups, has long been a pressing concern for humanitarian actors. This is shown by the experience of the Red Cross/Red Crescent movement, longer-standing and better documented than many other humanitarian actors. From their earliest years in the nineteenth century, the International Committee of the Red Cross (ICRC) and National Societies sought to promote respect for the Geneva Convention, and where possible to provide care and assistance alongside armed groups. Key figures in the movement also called for a convention by which governments and armed groups would ‘solemnly agree that their struggle will be conducted according to the customs of war between civilised nations’ (Kennett-Barrington, 1895: 159).

From the late nineteenth century onwards, humanitarian actors have been talking to armed groups in the name of both combatants and civilians, whether in officially acknowledged civil wars, in resistance to occupation, in anti-colonial wars and wars of secession and in the conflicts of the late twentieth and early twenty-first centuries. These experiences are an analytical resource for those seeking to improve humanitarian engagement with armed groups today. However, agency histories have often shied away from in-depth scrutiny of the motivations, conduct and outcome of discussions

with those with influence over relief and protection activities. The fragmentation and obscurity that inhibit understandings of humanitarian negotiations are thus mirrored in historical studies on this subject. As noted in a review of engagement with armed groups by the UN High Commissioner for Refugees (UNHCR), with engagement ‘typically ... undertaken in the absence of written rules’, much documentation relates to armed non-state actors as security threats rather than as interlocutors’ (Keogh and Ruijters, 2012). There is very little historical literature on the role of the relief wings of armed groups, even as viewed from the perspective of humanitarian actors.

In order to challenge this tendency and promote the adoption of more historically grounded strategies for engagement with armed actors, this report focuses on four key areas of importance to humanitarian action today. Chapter 2 provides an overview of engagement and access in law and practice: the tenets of IHL that lay the groundwork for humanitarian dialogue with armed groups, as well as the limits of this framework. Common Article 3 of the Geneva Conventions (1949) allows impartial organisations such as the ICRC to offer its services to all parties to a conflict, and Article 18 of Additional Protocol II (1977) stipulates that humanitarian access cannot be arbitrarily denied and obliges belligerents to allow impartial organisations to provide materials essential for civilian survival. These mechanisms and norms for structuring engagement with armed groups are themselves a result of negotiations: their meaning is not innate but a matter of contestation, deriving from and channelling competing interests, and they have faced opposition and resistance from governments and armed groups alike.

Chapter 3 examines the legal implications of ‘talking to terrorists’, drawing on historical examples from Algeria as well as contemporary challenges in Somalia and Gaza. The dramatic impact of contemporary counter-terror legislation on humanitarian action has been recognised by a number of commentators. As Pantuliano et al. (2011) explain, the logic behind such legal regimes is fundamentally at odds with humanitarianism, which is based on an ‘implicit agreement’ with all belligerents that ‘provided humanitarian action is carried out in a neutral and impartial manner, the parties allow humanitarian actors to operate and respond to needs’. However, viewing terrorism from a historical perspective throws these issues into relief. The chapter highlights that the deployment of the terrorist label has a lengthy history in efforts to criminalise and marginalise armed groups,

and to justify the use of extreme violence in campaigns against them.

Chapter 4 looks at the difficulties that result from attempts by donors and host states to co-opt humanitarian action into ‘stabilisation’ approaches, emphasising parallels between the US war in Vietnam and the conflict in Afghanistan. Many Western governments have used stabilisation initiatives in their efforts to co-opt humanitarian actors and action into these broader development and foreign policy efforts (Collinson et al., 2010). With the growth and professionalisation of the humanitarian sector in the 1980s and 1990s, and the greater number of humanitarian actors working in conflict zones, the number of potential contact points between humanitarian agencies and stabilisation measures increased in step. After 9/11, the overt nature of stabilisation approaches, and their frequently military character, raised new concerns about the impact of such approaches. Yet striking similarities between stabilisation in Afghanistan and pacification in Vietnam are a reminder that overstating the novelty of stabilisation today can encourage the repetition of past mistakes.

Chapter 5 looks at the role of coordination and collaboration in access negotiations. For a limited but influential period, the UN played a leading role in collective negotiations. However, many aid agencies working in fragile or conflict-affected contexts no longer view the UN as an appropriate interlocutor. The section compares the high-profile jointly negotiated access strategies that characterised the immediate post-Cold War period, including Operation Lifeline Sudan (OLS) and the Humanitarian Assistance Coordination Unit (UCAH) in Angola, with the current lack of cooperation and general fragmentation of engagement with armed groups. Refusing to view current trends as a foregone conclusion, it highlights that past experience, like the few contemporary cases of coordinated negotiations, can be used to develop more effective strategies for engagement with armed groups.

1.2 Methodology and terminology

In 2011, HPG began research on aid agency engagement with armed non-state actors, and how this engagement affects access to protection and assistance for vulnerable people. The work seeks to illuminate this engagement through case studies in complex political and security environments, to learn from productive

experiences of dialogue with armed non-state actors and investigate the dangers and risks inherent in this engagement, including the moral dilemmas that often arise in negotiations and the compromises agencies make in order to gain access. This paper aims to highlight the key issues and summarise key findings from that research in historical context.

While ‘humanitarian engagement’ is used to refer broadly to dialogue and negotiations with armed groups pertaining to both access and aid provision as well as to protection concerns, the report focuses more on humanitarian negotiations over access and the provision of relief. Protection concerns cannot be easily separated from obtaining access and providing relief to civilians (and, in many of the cases discussed, were part of the humanitarian dialogue undertaken with armed groups), but aid delivery and programming was a more prominent focus of humanitarian engagement in many of the case studies. This is not to overlook or undermine the important work of agencies such as Geneva Call or others, past and present, which have focused on engaging armed groups to further compliance with international law and the protection of civilians (for more on these issues, see Bellal and Casey-Maslen, 2011).

An extensive desk review of relevant literature and key informant interviews on humanitarian negotiations and armed actors were conducted in 2011 and provided background and framing for the overall project. In 2012 and 2013 field research was conducted focusing on understanding the attitudes of armed groups towards humanitarian actors, and individual case study reports were published on Afghanistan, South Kordofan and Darfur in Sudan and Somalia. A historical survey of the literature was conducted on humanitarian engagement with armed groups since the First World War, along with interviews with key informants. While primary sources were included, the research focused on secondary literature and did not involve archival research; a limited number of interviews were conducted in relation to more recent history.

Several limitations arise from seeking to compare past experiences with the present. While these do not preclude comparison, they must be acknowledged in the resulting analysis. Issues around terminology arise from the changing use of language. This report has largely adopted the current terminology in order to aid the integration of the material. Nonetheless, it is important to acknowledge that terms such as ‘armed non-state actor’ derive from recent discourse and

were not used widely, if at all, in some of the periods discussed in the analysis. Research methodologies also differ and affect the way findings are presented. Basing historical analysis primarily on published literature and aid agency accounts already in the public domain enables specific aid agencies to be named. This allows for more disaggregated accounts of agency positions, though it is restricted to what is already on record. Conversely, analysis of contemporary contexts was based primarily on interviews, and the risks to those involved necessitated guarantees of confidentiality. The aid agencies involved are rarely named and details that might allow readers to identify aid agencies have been obscured, with the notable exception of the ICRC and Médecins Sans Frontières (MSF), both of which tend to be more public in their dealings with armed groups.

Box 1: Terminology and definitions

‘Humanitarian negotiations’ refers to negotiations undertaken by aid actors, including members of appropriately mandated agencies such as UN agencies or representatives, the Red Cross/Red Crescent and national and international NGOs, conducted in situations of armed conflict with parties to that conflict, who are responsible for the conduct of hostilities, the treatment of civilians and the distribution of assistance. They are undertaken for humanitarian objectives, such as securing access, conducting needs assessments and providing access to assistance or protection, as set out in IHL.

‘Aid agencies’ refers to both humanitarian and multi-mandate not-for-profit aid organisations, including the UN, the Red Cross/Red Crescent and international and national NGOs, that espouse recognised humanitarian principles in that they aim to save lives, alleviate suffering and maintain human dignity during and in the aftermath of crises and disasters. They should be guided by the principles of humanity, impartiality and independence. Some will be guided by neutrality.

‘Armed non-state actors’ (ANSAs) are defined as groups that: employ violence to achieve political and/or ideological aims; are not part of formal military structures of states or inter-governmental organisations; and are not under the control of the state(s) in which they operate. For the purposes of this research, criminal groups are not included.

2 Legal frameworks governing engagement with armed groups

This chapter provides an overview of the historical evolution of the legal and normative frameworks that govern humanitarian engagement with armed groups, as well as how legal restrictions have been used to obstruct dialogue. It may be tempting to view the development of international law as a narrative of normative expansion. To an extent this is true, as legal frameworks for the protection of non-combatants and civilians and the provision of relief were fashioned over time. However, these developments have not meant a process of humanisation of the conduct of war or a linear improvement in the provisions for humanitarian action.

Firstly, IHL remains fragmented and insufficient, and the degree to which it can effectively compel respect for humanitarian engagement with armed groups is weak. It does not guarantee the right of humanitarian actors to negotiate access to areas under belligerent control and the provisions relevant to internal armed conflicts remain ‘rudimentary’ when compared with those pertaining to international armed conflicts (Mack, 2008: 10). At best IHL provides an enabling framework. Secondly, as the discussion of IHL in this chapter highlights, these efforts have been met with resistance by governments and undermined by national laws and policies aimed at obstructing contact (through the proscription of armed groups, counter-terror restrictions and the outright denial of access to areas under the control of armed groups). Developments in other areas of international law, such as the establishment of the International Criminal Court (ICC), have also affected humanitarian negotiations.

2.1 Civil conflict and international humanitarian law

Those concerned with the legal frameworks of humanitarian action have long sought solutions to allow emergency assistance and protection during civil conflicts. In 1912 a draft convention on the role of the Red Cross in times of civil war or insurgency was

submitted to the 9th International Conference, but was not discussed. At the 10th International Conference in 1921, as a result notably of internal conflict in Russia, Resolution XIV was passed affirming the right to relief of victims of civil wars, revolutions or social disturbances. The ICRC was mandated to work in situations of civil war, and the resolution makes no distinction between victims on the government side or on that of the rebels (Yung, 1938). Although the text refers to unidentified political parties and leaders, its provisions were largely directed towards the governments of conflict-affected states rather than directly addressing rebel groups. For more than 25 years, despite its shortcomings, Resolution XIV was the only basis for Red Cross involvement in civil conflict.

The ICRC’s first official mission in a situation of civil war, also in 1921, was to Upper Silesia, a contested territory subject to both international claims and armed uprisings. In addition to prisoner exchanges and assistance to victims of the conflict, the ICRC promoted the use of the red cross as a protective emblem by medical services on both sides for the first time in a civil conflict (Cramer, 1931; Yung, 1938). Later experiences during the Spanish Civil War (1936–39) highlighted the need for more robust legal mechanisms to enable the operational role of humanitarian actors in civil conflict and minimise atrocities and human rights violations. Following a military coup led by General Francisco Franco, the Republican Front government chose not to recognise the rebel troops as belligerents, which would have allowed for the application of IHL. In the early months of the conflict, prior to any request from the Spanish National Society, an ICRC delegate was sent to seek support for the application of IHL. He obtained a guarantee for the respect of the Red Cross emblem, permission for the establishment of an information service on prisoners of war and civilian detainees and openness to relief (Junod, 1951). Some NGOs managed to work on both sides of the conflict, although the scale of needs and style of work differed between the

two areas, and a number of agencies worked only in government-held territory or amongst refugees in neighbouring countries (Pretus, 2011; Brown, 2002). The civil war was characterised by widespread brutality and violations of the laws of war, human rights and humanitarian principles. Ultimately, despite attempts to promote respect for the Geneva Conventions and Hague Laws, they were not formally applicable and the ICRC's efforts to establish an agreement between the Republican government and the Nationalist rebels came to nothing. Based on these experiences, as well as similar ones in Ireland, the ICRC circulated a report and a proposed resolution on civil conflict at the 16th International Conference of the Red Cross in 1938. However, disputes about how to proceed meant that it was not discussed and only a watered-down text encouraging the ICRC to continue its studies was passed. Over time, several attempts to enshrine the principle of humanitarian action within civil conflicts would be pared back in this way.

The decisive expansion of legal protections for civilians in non-international armed conflicts came with the Geneva Conventions of 1949. The scale of suffering during the Second World War (1939–45), which featured intra-state as well as international conflict, galvanised efforts to expand the coverage of IHL.¹ Common Article 3 of the Conventions provides minimum protections for civilians and detainees in non-international armed conflicts, and is considered binding on both states and armed groups. Its text refers to 'parties to the conflict' without specifying whether they are states or other armed groups. Given its challenge to state sovereignty and the wide range of situations potentially included in its reach, Common Article 3 provoked the longest deliberations and most passionate debates of the 1949 Conventions (Bugnion, 1994). What eventually made an agreement possible was the decision to construct Article 3 as a limited number of provisions applicable to all non-international armed conflicts, instead of seeking to apply *all* existing IHL to civil conflicts that exceeded a particular threshold – an approach that looked likely to result in a threshold so high that no conflict would have met the requirements. Common Article 3 was first applied in Guatemala in 1954 and, with clearer recognition, in Hungary in 1956 (Veuthey, 2003).

1 During the Second World War the ICRC was active within supposedly 'civil' conflicts and on behalf of armed groups not representing the armed forces of any recognised government, such as partisans in the former Yugoslavia and in territories occupied by Germany (ICRC, 1947; Durand, 1978: 467–80).

Colonial conflicts also challenged the limited coverage IHL provided for engaging in civil conflicts and with armed groups. Colonial rule over overseas territories was viewed as part of internal politics by the colonial powers; any conflict in these territories was therefore treated as an internal matter. The rise of armed anti-colonial movements after the Second World War prompted the ICRC to renew reflection on its capacity to work in these conflicts. Cases such as Malaya during the communist insurrection and Kenya during the Mau Mau rebellion showed that Article 3 was widely disregarded by sovereign states fighting independence movements (Hacker, 1978).

With decolonisation and the entry into the UN General Assembly of a large number of newly independent countries in Africa and Asia, national liberation movements gained state backers and new platforms were developed for engaging with these movements. A key moment in this process was the Additional Protocols to the Geneva Conventions in 1977. Eleven liberation movements were consulted in their drafting (see Box 2), on the basis of recognition by the League of Arab States (LAS) and/or the then Organisation of African Unity (OAU), and they were full participants in the debates of the Diplomatic Conference, although they were not granted voting power (Higgins, 2004). The Additional Protocols expanded the basis for engagement with armed groups in two ways. Firstly, Protocol I added wars of liberation to the category of international armed conflict, providing a further legal basis for engagement with national liberation movements. As a result, unlike other types of armed groups, national liberation movements have a specific legal identity in IHL and those that qualify in this category hold a distinctive position. Defence of a people against a colonial power has been seen as a legitimate cause for recourse to arms (see Daboné, 2011). Despite expanding the remit of IHL, therefore, this was a challenge to the universality of the laws: wars of liberation were defined as those against colonial domination, alien occupation or racist regimes, affording protections to certain non-state combatants which others not involved in wars of liberation could not claim. While it applied to ongoing conflicts in Namibia and East Timor, for instance, it did not cover the full range of armed belligerents in non-international armed conflicts, including the Revolutionary Armed Forces of Colombia (FARC) and the Sandinista National Liberation Front (FSLN) in Nicaragua.

Box 2: Liberation movements and the Additional Protocols

The 11 groups present at the Diplomatic Conference were: the African National Congress (South Africa) (ANC), the African National Council of Zimbabwe (ANCZ), the Angola National Liberation Front (FNLA), the Mozambique Liberation Front (FRELIMO), the Palestine Liberation Organisation (PLO), the Panafricanist Congress (South Africa) (PAC), the People's Movement for the Liberation of Angola (MPLA), the Seychelles People's United Party (SPUP), the South West Africa People's Organisation (SWAPO), the Zimbabwe African National Union (ZANU) and the Zimbabwe African People's Union (ZAPU). A proposal to include the Provisional Revolutionary Government of South Vietnam (PRG) was voted down after strong opposition from the US (see Hacker, 1978).

Secondly, Protocol II addressed the question of the protection of victims of non-international armed conflict. It stipulates in Article 18 that humanitarian access cannot be arbitrarily denied and obliges belligerents to allow impartial organisations to provide materials essential for civilian survival. The two clear cases in which its applicability was recognised by both governments and armed groups were El Salvador in 1988 and the Philippines in 1991. However, as had been the case in other attempts to establish legal mechanisms for involvement in civil conflict, concerns about the erosion of sovereignty led to a higher threshold of applicability of the Protocol than some had originally called for. Its first article specifies that it does not apply to 'situations of internal disturbances and tensions'. As a result of these practical limitations and the political ones of Protocol I, Common Article 3 of the 1949 Geneva Conventions has remained a fundamental mechanism for enabling humanitarian action in civil conflict.

The expansion of IHL into internal conflict has been gradual and opposition armed groups have never had standing equal to that of government forces. The current state of IHL, including the privileged position of national liberation movements compared to other armed groups, is a result of the conditions under which the law was progressively negotiated. As international law is a product of inter-state agreements, sub-state groups have legal personality – that is, they are legally

recognised as capable of rights and duties and entering into contracts – only to the extent that this has been accorded to them by states (Daboné, 2011: 397). Nonetheless, despite the limited body of law on their obligations, 'IHL recognises that these actors are often critical to protection of civilians', and allows for them to enter into agreements that aim to limit the impact of conflict on civilians (Bruderlein et al., 2011: 5; see also UN Secretary General, 2010). Yet, as one ICRC delegate famously commented in the 1930s, with specific reference to the Italian invasion of Abyssinia and the Spanish Civil War, 'it was always necessary to draw on factors other than international law and authority to make a convincing humanitarian argument [and] merely evoking the law has never been enough' (Mancini-Griffoli and Picot, 2004). The continuing elaboration of IHL since then has not changed this basic reality.

2.2 Applications and limitations of IHL in practice

The practical application of IHL and other frameworks for humanitarian negotiations is far from straightforward. A range of incentives and disincentives can have a substantial impact on whether humanitarian action is welcomed or even tolerated by parties to a conflict, and humanitarian actors have little recourse in situations where this is not the case. For this reason, IHL must be viewed as part of a range of tools when dealing both with armed groups and with the states that often seek to limit external contacts with these groups.

In combination with other negotiating tactics, IHL can be used strategically, particularly with armed groups seeking international legitimacy and recognition. The hope of positive recognition arising from being seen to abide by international law and enabling humanitarian access can be a powerful motivating factor for some armed groups seeking to prove that they are able to govern (Bangerter, 2011). However, in some instances a 'rights-based' discourse may feel divorced from the reality that many humanitarian negotiators encounter on the ground, where IHL simply is not the most persuasive argument. Awareness of and willingness to acknowledge obligations under IHL differs among armed groups – much as it does among sovereign governments – and whatever other obligations beyond IHL may exist, for example under International Human Rights Law (IHRL), are highly contentious.

Special agreements have long been used to encourage respect for IHL in situations where the applicability of the law is contested or not recognised. The ICRC has again played a leading role in this respect, although a similar mechanism can be seen in a number of collective negotiations in the 1990s. Such agreements were used in the Spanish Civil War, in Palestine under British mandate rule and in Yemen in the 1960s. A special agreement was used in Afghanistan, where the ICRC signed separate (but identical) documents with the Soviet-backed government and with the armed opposition relating to the treatment of prisoners, and in the former Yugoslavia in the 1990s, and the ICRC managed to secure a short-lived agreement with General Mohamed Farrah Aideded to visit a US soldier held in Somalia (Veuthey, 2003). Geneva Call has gone a step further, developing a *Deed of Commitment*. Growing out of efforts to ensure armed groups complied with the Landmine Ban Treaty, the deed promotes respect for a range of IHL and IHRL provisions by creating a formal agreement for armed groups that cannot be signatories to international agreements (see Bongard, 2013).

Beyond compliance with international law, other incentives exist for armed groups (and states) to limit the impact of conflict and/or allow relief operations. External actors, including states, regional organisations or diaspora networks, may be able to influence behaviour. Cultural norms, too, have a crucial bearing on the conduct of conflict and the behaviour of armed groups, as well as national militaries. From this perspective it is important to look beyond the historical narrative of codified IHL to other instances of the promotion and adoption of humanitarian values and practices. For instance, during the nineteenth century the Algerian military and political leader Abd al-Qadir promoted the humane treatment of prisoners when fighting occupation by France (Woerner-Powell, forthcoming 2014). During the Chinese Civil War (1927–50), the People's Liberation Army (PLA) adopted a number of measures related to the conduct of war and treatment of prisoners intended to maintain popular support as well as military discipline (Xiaodong, 2001). The PLA and other armed groups in a wide range of countries have articulated codes of conduct, often without reference to IHL. In some cases general statements of international law have been found to be less effective with regards to humanitarian concerns than more locally relevant rules (Bangerter, 2012), underpinning calls to 'move beyond the superficial universality of legal instruments, too often perceived as

imposed by Western powers, and poorly implemented in too many cases' (Veuthey, 2006: 112).

Compounding these concerns, the extension of international justice has at times presented an additional challenge for humanitarian actors in civil conflicts. The entry into force of the ICC in 2002 was felt by many to be one such case. Early enquiries into events in Ituri in the Democratic Republic of Congo (DRC), northern Uganda and Darfur in Sudan brought the ICC's investigators into situations where humanitarian actors had been working, often in precarious situations, with both states and armed groups. Fearful that this would jeopardise their work and expose aid workers as well as affected populations to additional threats, commentators noted that 'On a pragmatic level, and sometimes on a principled one, humanitarian organisations are feeling the need to put some distance between themselves and the agents of international justice' (Mackintosh, 2005). The ICRC has arranged an exemption from the obligation to testify but it does not apply to NGOs. While cooperation with the ICC could be seen as overlapping with the advocacy practices of some NGOs, they are extremely reluctant to become associated with the Court's activities. As its cases have progressed, 'Aid agencies have been forced to walk a careful line between adherence to humanitarian principles and supporting abstract notions of accountability and justice without explicitly collaborating with the UN-mandated war-crimes investigators' (Geis and Mundt, 2009: 2).

In situations where the host state seeks to restrict access to areas under the control of armed groups, humanitarians continue to have little recourse. Host governments may actively seek to limit humanitarian engagement with armed groups, fearing that such engagement will confer legitimacy or otherwise benefit the armed group. A host government may argue that the violence in question does not constitute an internal armed conflict, negating the applicability of IHL. Alternatively, the host government may declare a state of emergency or enact a ban on access to areas affected by violence, effectively blocking humanitarian organisations.

This has long been a feature of civil conflicts. ICRC offers of assistance in Ireland during the 1920s were rebuffed by the British Foreign Secretary in a brusque telegram stating that 'we refuse to discuss measures deemed necessary by my government to repress rebellion ... external aid in no way necessary'

(cited in Yung, 1938: 103). Similarly, during the Rif War in northern Morocco (1921–26) the ICRC was unable to work in rebel-held territory due to the opposition of the relevant ruling power, Spain. To take a contemporary example, the government of Pakistan has repeatedly obstructed humanitarian access to areas under the influence of the Pakistani Taliban. It does not acknowledge the existence of a non-international armed conflict inside its borders and characterises its military operations against armed opposition groups as ‘law and order enforcement campaigns’, denying the applicability of IHL, rejecting the possibility of contact between the Pakistani Taliban and humanitarian actors and restricting or preventing relief and protection work (Ferris, 2012; Whittall, 2011).

Often host governments do not issue outright bans on access but rather seek to restrict it through time-consuming and extremely complicated bureaucratic procedures. The outcome has the effect of denying access to assistance, but without the same level of negative publicity and political pressure that would arise from an outright ban. The Syrian government has severely restricted access to areas under its control during the conflict there. While official government policy allows for humanitarian aid to flow freely, in practice assistance is hampered by bureaucratic regulations and processes. As a result the location, activity, beneficiaries and staffing of aid agencies are constantly ‘negotiated and are sometimes dictated’ (Parker, 2013). Few agencies have been granted visas for their international staff and approval for projects requires several checks from various government entities. Some areas of the country, in practice, are completely sealed off.

2.3 Denial of access in Sudan

While some, such as Hugo Slim, have argued that it is ‘ethically compulsory’ for aid to be delivered in situations of extreme need even where the state denies access (Labbé, 2013), IHL does not expressly allow humanitarian actors to enter sovereign territory without the permission of the state. During both the Biafra/Nigeria Civil War and the Ethiopian Civil War, aid agencies pursued cross-border access without the authorisation of the governments in question, but in cooperation with armed groups. In most instances, however, aid agencies are reluctant to deliver aid across borders without the consent of the state concerned. Aid workers who do so may face risks to their own personal safety or liberty, and aid agencies may face expulsion.

These concerns, when faced with seemingly intractable opposition from governments and the isolation – whether externally enforced or self-imposed – of armed groups, can result in humanitarian actors renouncing IHL-based negotiations in favour of a politics of compromise. Few contemporary contexts illustrate these challenges as clearly as Sudan – despite the strong history of negotiated access in the country (including OLS, discussed in Chapter 5, and the Nuba Mountains Programme Advancing Conflict Transformation (NMPACT), discussed below). In the case of Darfur, the majority of aid agencies were initially denied access to rebel-held areas after the conflict began in 2003 until the government eased restrictions in May 2004. Between 2004 and 2006 near daily negotiations with rebels (often coordinated through the UN Office for the Coordination of Humanitarian Affairs (OCHA) and the UN Department of Department of Safety and Security (UNDSS)) enabled discussions of IHL and allowed largely unfettered access to rebel-held territories. Access to rebel areas was again cut off in 2009 after the ICC issued an arrest warrant for Sudanese President Omar Bashir, and 13 international NGOs and three national organisations were expelled on the grounds that they had provided evidence to the ICC. By 2011, it was clear that the government wanted all aid agencies out of rebel-held or contested areas, and by 2012 there was less access to areas beyond government control than in 2003. Rebel groups have largely stopped trying to engage with aid agencies, and aid agencies have done the same (Loeb, 2013: 31).

Perhaps having learned from its experiences in Darfur, the Sudanese government has taken a profoundly more restrictive stance since the renewed outbreak of conflict in Southern Kordofan and Blue Nile in 2011. It has repeatedly stated that it will not allow any international aid organisations to operate in rebel-held areas, and requests from agencies seeking official permission to conduct assessments or provide assistance in areas held by the Sudan People’s Liberation Movement-North (SPLM-N) have been consistently rejected. UN in-country engagement with the SPLM-N on access proposals and modalities has been minimal. High-level diplomatic engagement is also lacking, with donor governments largely preoccupied with the broader unresolved political negotiations between Sudan and South Sudan. When access is not denied outright, the government employs delaying tactics that have the effect of regulating the behaviour of aid agencies and preventing them from publicly criticising the government. By pushing the focus onto the behaviour

of aid agencies, while simultaneously refusing to provide specific justifications for the denial of access, the government of Sudan has shifted the discussion away from the right of affected populations to receive assistance and its own obligations within IHL. The reactions of aid agencies to this situation show some of the tendencies that it is hoped may be addressed through a greater use of historical analysis. Some agencies have agreed to provide aid to government areas even while access to areas under SPLM-N control remains blocked. Many avoid activities the government may see as suspicious or offensive: some have chosen not to provide aid in refugee camps for people from Southern Kordofan and Blue Nile in South Sudan for fear of being perceived by the government of Sudan as supporting the SPLM-N. While SPLM-N frustration with the international community grows and many within the SPLM-N believe that the UN has been infiltrated with government spies, some aid agencies hold out hope that the government can still be persuaded through private advocacy or 'good behaviour' on the part of aid agencies. The debate and division among agencies on which approaches work best is based on little more than anecdotal evidence and rumours around what might have given particular aid agencies room for manoeuvre with various levels of the government.

The sad irony in South Kordofan lies in the fact that, in the past, negotiated access to rebel-held areas was genuinely successful. Sustained diplomatic efforts from key Western countries, including the US, brought about

the Nuba Mountains Ceasefire ending the previous aid blockade and conflict in 2002 and subsequently NMPACT, which delivered aid to these areas. The failure to draw upon this previous experience is especially striking in the case of Sudan, as it is one of the few contexts for which extensive material on past operations is gathered together and easily accessible. Archival reports and analysis of NMPACT, OLS and other operations in Sudan and South Sudan are available online and constitute an essential resource for strategies around current humanitarian negotiations.² Aid agencies struggling to gain access to civilians in need in Sudan should be trying to learn from this history and applying the lessons of past operations, but many have instead reverted to self-censorship and extremely conservative approaches for fear of expulsion.

As Sudan and other cases highlight, the mere existence of IHL has never been able to guarantee the role of humanitarian action in civil conflicts. The scope and application of IHL have evolved through repeated tests and innovations in practice and gradual expansion on paper. Concurrently, legal frameworks and norms have been subject to wider political forces such as decolonisation, ideological change and counter-terrorism. As the next chapter indicates, these political contexts have had a profound impact on the capacity of humanitarian actors to engage armed groups.

2 The Sudan Open Archive is available at www.sudanarchive.net.

3 Counter-terrorism and engagement with armed groups

This chapter focuses on the challenges to engaging with armed groups labelled by host states or donors as ‘terrorists’, illustrating the issues with reference to efforts by France to obstruct humanitarian engagement with the National Liberation Front (FLN) in Algeria, as well as the difficulties posed by counter-terror laws and policies in contemporary Somalia and Gaza. Establishing dialogue with groups labelled ‘terrorists’, in the past as much as now, presents distinct and profound dilemmas for aid agencies. As much as the context-specific proscriptions and restrictions create operational difficulties, the mere application of the label itself presents profound obstacles.

By labelling an opposing party to a conflict as a terrorist, belligerents are often aiming to portray such actors as beyond redemption and to effectively dehumanise them. During the Mau Mau rebellion in Kenya in the 1950s, to take one notable example, contemporary observers consistently described Mau Mau fighters as terrorists, gangsters or thugs, their violence as brutal and animal and their motivations as evil, even Satanic. ‘Terrorism’ is seen as in direct violation to the laws of war, and as such many of those who seek to combat terrorism argue that the traditional rules should not apply. Humanitarian access is routinely blocked, humanitarian dialogue with armed groups is often proscribed and even fundamental rules, such as those governing extrajudicial killing and torture, are routinely and purposefully violated. For recent examples, one need look no further than the US government’s assertion in 2002 that Common Article 3 did not apply to its treatment of detainees suspected of terrorist acts (the position was overturned by the US Supreme Court in 2006). From this perspective, humanitarian dialogue encounters the most resistance in precisely those instances where it is most needed.

3.1 Defining and fighting ‘terrorism’

While there are various definitions of terrorist acts, definitions of what ‘terrorism’ is and who precisely is ‘a terrorist’ are highly fraught. Its usage and meaning

has changed over time, but the label has historically been deployed subjectively and strategically to further political or military objectives – not unlike the contemporary use of the word. The application of the label functions as an instrument of moral condemnation (Barbelet, 2008). The focus is shifted towards the tactics a group employs, rather than its aims and objectives, and its political platform is reduced to spreading fear.³ As Barbelet (2008: 47) points out, ‘by isolating violence as a defining variable, any ideological or political agenda that the group may have is hidden behind the type of violence used, making any groups branded as “terrorist”, actors with no agenda or broader objectives than spreading terror’. In this way, the application of the label ‘terrorist’ undermines the rationale for humanitarian engagement. Negating the internal logic of an armed group and its aspirations and depriving it of any objectives beyond spreading terror obfuscates meaningful analysis.

In its terminology, ‘terrorism’ derives from the Reign of Terror in post-revolutionary France (1793–94), although as Chaliand and Blin (2007: viii) point out terrorism was ‘a constant of earlier eras and has also been prevalent ever since’. As a modern political ideology it dates from the nineteenth century, notably used in opposition to the Tsarist regime in Russia and in the early twentieth century by the transnational anarchist movement and Indian anti-colonialists. Later, in the 1940s, it would be associated with Jewish tactics against the British mandate authorities in Palestine. The 1960s and 1970s saw the rise of terrorism in Western Europe and the Americas. It not only affected states host to self-determination movements, such as the Irish Republican Army (IRA) in Britain, but others too: in 1977–78, for instance, Italy experienced over 2,000 terrorist incidents (Kupperman and Trent, 1979: 4). Revolutionary left-wing politics informed many of these movements, but radical nationalist or separatist movements were also an important current and the two often overlapped and shared causes, as seen by the close

3 For an example of this attitude, see Garrison, 2004.

links between the German Red Army Faction (RAF) and the Palestine Liberation Organisation (PLO).

The changing forms of terrorism have been accompanied by different forms of counter-terrorism legislation. The first anti-terror laws were developed in France in the late nineteenth century in response to anarchist movements. These laws represented a serious affront to freedom of speech because they banned not only direct or indirect participation in acts of violence themselves, but also expressions of any kind of support or apology for them. During the 1930s, the League of Nations attempted to develop the first international anti-terrorism convention. From the 1960s onwards, a number of national, regional and international laws were passed to ban acts associated with terrorism.

These laws have proliferated further since the 1990s and there is now a wide range of both international and national laws governing 'terrorism' or 'terrorist acts'. The laws' potential application to the use of coercive violence by states is often left open, though they have become primarily associated with non-state armed groups. Crucially, there is no single, legally binding, internationally accepted definition of terrorism or terrorist acts (ICRC, 2010b). Most contemporary legal definitions feature: a) an objective element, that is the commission of a specific violent crime (such as the use of an explosive in a public place); and b) a subjective element, acknowledging a certain motivation or intention on the part of the perpetrators (for example to intimidate civilians or compel governments to undertake certain actions) (Walter, 2004). However, the difference between talking about 'terrorism' and talking about 'terrorist acts' is significant. Some legislation, especially earlier laws, preferred to focus on particular acts without offering a definition of what might be called the nature or ideology of terrorism in the abstract. The 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft is one example. Despite dealing with the issue of hijacking, which many would consider a terrorist act, it does not use the word 'terror' or any of its derivatives or try to define them.

More recent legislation has tended to use the language of terror, with increasingly broad definitions. The most widely referred to depiction is articulated in UN General Assembly Resolution 49/60 (1994), which describes terrorism as: 'criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes'. The Convention on the Suppression of Financing of Terrorism (1999) refers to terrorism as acts 'intended to cause death

or serious bodily injury' to civilians and non-combatants. This is a more restrictive definition than many currently in use, which tend to include violence against objects and installations. When no definitions or definitions with a very limited scope are given, it was possible to argue for a restrictive interpretation of where 'terrorist' law applied; however, when definitions have been intentionally constructed to allow a wide scope of applicability, it becomes difficult to argue for a narrow interpretation (Walter, 2004). Put simply, the trend has been towards vague definitions of terrorism which could be applied to many acts and actors. This is not an accident: it helps to maximise the potential reach of counter-terror measures and what can be done in their name.

3.2 Applying the terrorist label: the case of Algeria

During the Algerian War (1954–62), France's description of anti-colonial armed groups as terrorists and its refusal to recognise the existence of war increased the obstacles to the provision of assistance and protection. Torture was systematically practised by the French authorities and acts of terror used by the FLN, the independence group that provided the main political and military resistance to France. Algeria was considered by the French far more as an integral part – indeed a province – of France than a colony, intensifying the desire not to relinquish control. French authorities persisted in considering the conflict a matter of internal law and order and banned the use of the term 'Algerian war' (the phrase was not officially endorsed by the French parliament until late 1999). Instead, they spoke of a 'rebellion' or 'insurrection', and the state of emergency declared in April 1955 was presented as a campaign against 'outlaws' and 'terrorists'.

Applying the label 'terrorist' was above all a way of delegitimising the FLN as part of a broader strategy to criminalise the Algerian opposition (reducing their actions during conflict to merely criminal acts) and to open the way for the use of 'special measures' to suppress armed opposition.⁴ In an analysis of how the recourse to torture by the French military was eased by reference to the fight against pro-independence 'terrorists', Branche

⁴ The British government made a similar attempt to portray armed opposition as simple criminality rather than part of a political campaign when it removed Special Category Status from imprisoned members of the IRA in 1976.

(2007) demonstrates that the combination of moral justification and tactical urgency, when combined with the difficulty of distinguishing ‘terrorists’ from the civilian population, brutalised the war. As the threat of terrorism was seen to be extraordinary, so the application of violence could move beyond normal ideas of proportionality. Recognising that the application of the terrorist label to the FLN helped to justify the severity of the campaign against it does not preclude criticism of the FLN’s use of violence. It does, however, highlight some of the dangers of counter-terror and counter-insurgency strategy, dangers seen more recently, for instance, in Sri Lanka and Chechnya, where conflict has involved grave violations of IHL and human rights, and in the treatment of prisoners held at Guantanamo Bay.

For the ICRC, the situation in Algeria presented acute challenges. The political aims of both the French government and the FLN required the ICRC to walk a very tight path, often subject to manipulation, not only between the FLN and the French government but also between the authorities in Paris and those in Algiers (Branche, 1999). In 1955 the ICRC received authorisation from Prime Minister Pierre Mendès-France to visit detention sites and offer aid to detainees’ families. The permissions granted stopped short of the ICRC mandate and were not cast as duties under IHL; they were also treated with suspicion by the civilian and military authorities in Algiers, which viewed the ICRC as manipulated by the FLN and a sort of proxy for surveillance by Paris. Nonetheless, with concentration camps a key part of French strategy, resulting in the detention of nearly a quarter of the Algerian civilian population by the end of the war, even an imperfect mechanism for visiting prisoners was a notable achievement. Five years into the war, the commander-in-chief of French forces in Algeria recognised Algerian prisoners as ‘considered equivalent to members of an enemy army’ (cited in Branche, 2007: 546).

The ICRC also engaged with the FLN. In the first year of the conflict it approached the FLN to encourage the organisation and its National Liberation Army (ALN) to respect the Geneva Conventions. The mediation of the Libyan ambassador in Switzerland was crucial to this process (Veuthey, 2003), and the main meetings between the ICRC and representatives of the nationalist movement took place in Egypt and Morocco. Communication from the FLN was forthcoming due to its desire to have the situation recognised as an international armed conflict. In 1957, the FLN sponsored the creation of the Algerian Red Crescent (CRA), with which the ICRC agreed to

work in partnership despite not being able to recognise it as a National Society due to Algeria’s colonial status (see Onyedum, 2012). The Committee was also able to visit French prisoners held by the ALN, albeit after significant delays and on a very limited basis. To do so, delegates travelled from Tunisia into Algeria without the ICRC formally requesting permission from the French government, instead informing local military authorities and suggesting – in the words of a contemporary meeting of the ICRC Presidential Council – that they ‘close their eyes to the clandestine crossing of the border by its delegates’ (cited in Perret and Bugnion, 2011: 726). The ICRC subsequently received lists of names of detainees, and in October 1958 the ALN decided to hand over the first four prisoners. By the end of 1959, 45 prisoners had been released.

IHL and human rights became one of the battlegrounds of the Algerian War (see Klose, 2013). The FLN sought to engage with IHL, but it did not always follow up on its promises. In 1960 it released a *White Paper on the Application of the Geneva Conventions of 1949 to the French-Algerian Conflict* which explained why it believed the Geneva Conventions to be applicable to the war and denounced French violations (Klose, 2013: 127).⁵ Coming in the midst of new negotiations between France and the FLN’s government-in-exile, the Provisional Government of the Republic of Algeria (GPRA), this declaration helped to bring international attention to the conduct of the war but did not ensure respect for the Conventions by either side. For instance, the ICRC was unable to obtain any protections after the war for those Algerians, known as *harkis*, who fought on the French side. While some *harkis* and their families were able to reach France (usually in spite of, rather than thanks to, French policy), many were killed in reprisals and often subjected to torture before or during execution. The ICRC had to accommodate French sensitivity about the affront to sovereignty perceived in its requests to enter Algeria, visit prisons, support detainees and their families and engage with the FLN. Although its position gradually evolved, for several years France entirely refused to acknowledge the applicability of IHL. Lists of detainees were never made available (although conditions

5 In addition, the ALN ‘Ten Commandments’ included a requirement to ‘Follow the principles of Islam and international law in the destruction of enemy forces’ (cited in Bangarter, 2012: 74). The FLN’s willingness to declare adherence to the Geneva Conventions is not an isolated case; at various times the ANC, SWAPO, the PLO and the Kurdistan People’s Party (PKK) have publicly or to the ICRC declared an intention to adhere to the Geneva Conventions (Veuthey, 2003).

improved) and doctors were prosecuted for offering medical treatment to the rebels.

Nonetheless, ICRC historians have argued that it was a 'pioneer' during this early African decolonisation conflict: 'the ICRC did not hesitate to deal with those whom the Western world rejected as purely criminal ... and paved the way for further developments of IHL' (*ibid.*: 736). Although the ICRC had only limited success in promoting respect for IHL, it was quick to seek a role and engage with a group widely regarded as a terrorist organisation. NGOs such as Secours Populaire Français (SPF) also engaged with the FLN in order to provide assistance and worked to defend the rights of its members (Brodiez, 2006). French supporters of the FLN and critics of the war in Algeria were pursued in the French criminal courts and subjected to censorship, although as the French government moved closer to accepting Algerian independence, denying legitimacy to the FLN became unsustainable; 'talking with terrorists' was, ultimately, the way the conflict ended.

The case of Algeria highlights three key points with regards to terrorist organisations as governing authorities. Firstly, the decision to apply the terrorist label can allow greater dehumanisation of a conflict and discourage the respect of IHL, increasing its impact on combatants and civilians alike. Secondly, counter-terrorism restrictions are most problematic when an organisation described or designated as terrorist controls territory. This is when humanitarian engagement is often most needed on issues of protection and required to gain access to populations in need of assistance or to prisoners of war. Finally, as Chaliand and Blin (2007:10) remind us, 'many movements that have later become legitimate have used [terrorism]'. The following section considers how the second and third points in particular are affected by the current network of counter-terror restrictions, as aid agencies' concern that their actions may put themselves or their staff at risk of prosecution impacts upon their approach to humanitarian negotiations.

3.3 Terrorist organisations as governing authorities: the case of Gaza

To a certain extent, the problem of 'terrorists' as governing authorities occurs anywhere a designated group becomes the de facto authority through control

of territory. With Al-Shabaab's expansion in Somalia from 2008 onwards, for instance, negotiations, either directly or indirectly, were required to gain permission to access areas under Al-Shabaab control. Where it permitted aid agencies to work, Al-Shabaab sought to extract 'registration fees' and additional 'taxes' according to the type of project being implemented. During the 2011 famine, which mainly affected areas held by Al-Shabaab, many aid agencies were faced with an impossible choice: submit to Al-Shabaab's demands and risk being in violation of counter-terror laws and measures, or withdraw amid a deepening humanitarian crisis. The bureaucratic restrictions and requirements on providing aid to areas where Al-Shabaab was active included 'pre-vetting finance checks, racking systems, real-time monitoring, verification of partners' shareholders, a bond system (requiring a deposit of 30% of the value of goods transported) and the contractual assumption of 100% financial liability for shipments lost or stolen by contractors' (Pantuliano et al., 2011: 9). The resulting burden of compliance was heavy, and yet there was – and remains – a lack of clarity within donor agencies about what the regulations meant and how aid agencies were expected to comply with them. Despite some easing of counter-terror restrictions, this has resulted in self-regulation and extreme caution by many agencies, despite informal assurances from donors that agencies 'acting in good faith' would be unlikely to be punished for circumstances beyond their control.

These problems do not stop when a 'terrorist' group is no longer strictly non-state in nature, but democratically elected to government. This is clearly illustrated by the case of Gaza, following Hamas's win in the 2006 parliamentary elections. The US, Canada, the EU and others continue to list Hamas as a terrorist organisation. Restrictions vary across countries: some have 'no contact' policies only on political issues, while others have imposed them on funding recipients. With some donors, the bureaucratic impositions are extreme: US grantees in Gaza must theoretically apply for Office of Foreign Assets Control (OFAC) licences in Gaza on a project-by-project basis and provide information about partners and prospective beneficiaries (Pantuliano et al., 2011). As with Somalia, there is often confusion among aid agencies about what exactly is permitted and the consequences of falling afoul of the rules are stark: funding may be terminated and agencies may be required to repay the grant. In 2008, the Holy Land Foundation for Relief and Development, a US-based NGO, was prosecuted and found guilty of

supporting Hamas through its contributions to West Bank *zakat* committees.⁶ The lack of clarity and fear of consequences has led to some agencies stopping programming or withdrawing entirely.

Both prior to entering the government and afterwards, Hamas has shown a willingness to engage with aid agencies. This is undoubtedly driven in part by its desire to achieve international legitimacy, as well as dependence on support from the population, many of whom benefit from humanitarian and development assistance. Engagement has not been without difficulties – Hamas has also sought to regulate aid agency activities and movements – but Hamas’ desire for recognition and legitimacy and popular support has arguably created an opportunity through which humanitarians have been able to negotiate more favourable terms of access, at least in a few cases (Galli, 2013). At times when Hamas has requested beneficiary lists, agencies that felt able to directly engage with Hamas resolved the issue relatively quickly through dialogue. But those agencies that feared the consequences of direct engagement were either forced to (temporarily) suspend programming or wait until others could intercede on their behalf (Galli, 2013).

A critical difference between the Gaza and Somalia cases is that in Gaza the UN has pursued direct engagement with Hamas on humanitarian issues, despite a comparatively cautious approach on political engagement. The obstructions on engagement with Hamas, unlike with Al-Shabaab in Somalia, do not emanate from UN Security Council Resolutions and there is a level of UN support for humanitarian engagement with Hamas that does not exist with regard to Al-Shabaab. From 2008 onwards, the Access Coordination Unit, a joint project under the guidance of the Resident Coordinator/Humanitarian Coordinator (RC/HC) supported by OCHA and UNDSS, has played a vital role in negotiating cross-border access with Hamas – often on behalf of agencies that may otherwise be hesitant to do so for fear of violating counter-terror restrictions. In response to Hamas’ attempts to impose travel restrictions (entry and exit permits) on aid agency

national staff in 2013 the Access Coordination Unit worked with aid agencies, including ones that could not engage directly with Hamas due to donor restrictions, to approach Hamas to negotiate a compromise.

The work of the Access Coordination Unit provides a useful, albeit limited, counterpoint to a pattern by which the broad range of counter-terror laws, varying donor attitudes and the uneven application of restrictions in different contexts have resulted in confusion and anxiety amongst humanitarians and, often, timidity and self-regulation with regard to engaging armed groups. These pressures, combined with insecurity and other factors, have led some agencies to reduce their presence in or withdraw from ‘terrorist’ areas. Those agencies that remain face high risks and have little assurance of protection from the potential legal consequences.

Recent examples of this pattern in Sudan and Somalia, as well as elsewhere,⁷ have been set in historical perspective not to suggest that there was ever a golden age for humanitarian engagement, but to suggest that consulting past experience can help to shed light on current dilemmas and to think through what strategies might be most effective. Even before the establishment of the current counter-terror regime aid agencies had to navigate legal, political and financial restrictions on their activities. They had to seek ways to promote humanitarian action when faced with government opposition and a lack of respect for international humanitarian law. These experiences can serve as precedents or as warnings. Past engagements and operations should not be forgotten, not least because political and military actors often have longer memories than humanitarians. A stronger collective memory will not sweep aside all obstacles and put an end to all mistakes – understanding history cannot change human nature – but it can offer much more solid ground for critical analysis. It is, as the following discussion of stabilisation will argue, necessary if aid agencies wish to maximise their ability to confront some of the challenges inherent to humanitarian action.

6 While the case is currently being appealed, the organisation was dissolved and its directors were sentenced to up to 65 years in jail.

7 For more details of the findings on which this analysis is based, see reports on Somalia, Sudan and Afghanistan produced by the HPG project ‘Talking to the Other Side: Humanitarian Engagement with Armed Non-State Actors’, available at www.odi.org.uk/hpg.

4 Stabilisation, counter-insurgency and engagement with armed groups

Donors channelling humanitarian and development funding in support of their political and military objectives is hardly new, and is often matched by the efforts of armed groups to co-opt aid for their own objectives. Both sources of pressure present serious challenges to humanitarian neutrality, impartiality and independence, and ultimately the ability of aid agencies to remain present in conflict situations. The challenge for humanitarian actors is to navigate and negotiate these pressures and tensions in a manner that still enables them to reach individuals in need of their assistance.

While politicisation has long been a feature of the aid landscape, stabilisation presents a distinct and particularly difficult challenge for aid agencies. Stabilisation approaches, implemented by the US and other governments seeking to combat internal disturbances, are premised on an assumption that weak governance, instability and poverty are a threat to their strategic interests and global security more broadly. While there is no agreed definition of what stabilisation actually entails, stabilisation theory assumes that weak governance and conflict pose a threat to international peace. Conflicts are seen to be fuelled by underlying grievances towards the state, driven by neglect and poverty – the corollary being that development projects, particularly ones that provide services and offer economic opportunities and improved governance, can ‘stabilise’ conflict situations. When military strategy is guided by counter-insurgency principles, similar thinking drives the theory that the state’s provision of services and opportunities will help it maintain or win back popular support.

Humanitarian action and development assistance are not seen as neutral or independent in stabilisation discourses, but rather as supplementing military strategies aimed at winning over the population and acting as a bridge between government and people (Lischer, 2007). This has long been the case; in Algeria, for instance, the Sections Administratives Spécialisées (SAS) worked in rural areas considered potentially sympathetic to the FLN, and sought to promote ‘pacification’ by supporting or directly

undertaking administrative, agricultural, medical and social work to benefit the local population (Fremeaux, 2002). Many of the areas SAS worked in had long been neglected by the French authorities and some services, particularly in health and education, appear to have been well received. The SAS recruited heavily from the army and also participated in policing and military activities, further blurring an already hazy line and in some cases directly contributing to intelligence gathering. Another example is the use of relief during the British counter-insurgency campaign in Malaya in the 1950s. According to the British military commander, General Gerald Templer, ‘the answer lies not in pouring more soldiers into the jungle, but rests in the hearts and minds of the people’ (quoted in Charters and Tugwell, 1989: 195). Aid was primarily provided by military forces, with small teams of troops embedding themselves in Malay villages, providing medical care and trading goods with villagers, while military engineers were deployed to provide infrastructure and improve water supplies (Mills, 1964).

A comparison between the US war in Vietnam from 1955–75 and the current conflict in Afghanistan illustrates the ways in which aid agencies have been co-opted into vaguely defined ‘stabilisation’ efforts. The two examples present striking parallels. Then as now, the failure of aid agencies to defend their neutrality and impartiality, called into question by these approaches, profoundly undermined effective dialogue with armed groups. Yet the Vietnam case also illustrates, more so than any of the other historical examples analysed, the poor memory of many aid agencies, which just three decades later in Afghanistan repeated many of the mistakes made in Vietnam.

4.1 Pacification and counter-insurgency in the US war in Vietnam

Although stabilisation assumed its current form in Western foreign policy after 9/11, its origins can be traced to classic counter-insurgency theory. The

cooperation of NGOs had been a feature of US military involvement in the Second World War and during the Korean War (1950–53). However, the passing of Public Law 480 in 1954, followed by the establishment of the Office of Food for Peace in 1960, laid the groundwork for the concerted use of aid for stabilisation objectives, then called ‘pacification’, in Vietnam.

Vietnam had been divided into North and South in 1954 following the end of the Indochinese War and independence from French rule. A number of aid agencies entered South Vietnam in the late 1950s as refugees, many of them Christians, fled from the Soviet-allied North. The government of President Ngo Diem emphasised the communist threat and encouraged its US allies to offer support, playing host to rising numbers of American military advisors. In the early 1960s, fighting a proxy war with the communist North, the US attempted to reduce support for the northern-allied National Liberation Front (NLF, or Viet Cong) through a population transfer campaign known as the Strategic Hamlet Programme.

The increase in the US military presence and aggressive US campaigns against the armed opposition placed humanitarian organisations in an uncomfortable position. While some were relatively untroubled by their proximity to Washington and to Diem’s government, others were more cautious. The Mennonite Central Committee (MCC), for instance, refused to show the USAID symbol on its relief supplies (Bush, 1999: 15), though this did not prevent an MCC hospital from being attacked in 1962. Medical supplies were looted and three members of staff abducted. Rather than encouraging distance from the US presence in Vietnam, however, such incidents pushed American agencies towards a greater reliance on the military for security and logistics.

The escalation of the war effort after 1965, when the first US ground troops were introduced, saw concerted attempts to build aid agencies and operations into the military strategy. In 1967, the Civil Operations and Revolutionary Development Support (CORDS) was created, introducing a civil–military cooperation structure and formalising the role of civilian US government agencies, including the Central Intelligence Agency (CIA), the State Department, military services and USAID, in integrated pacification efforts (Nagl, 2005). Comprising 5,500 personnel, CORDS sought to coordinate rural development, administrative training, agriculture and public works programmes across South Vietnam (Porch, 2013). As part of this initiative,

operations were restructured so that the programmes of both USAID and NGOs in South Vietnam reported to the office of the US commander, General William Westmoreland (McCleary, 2009: 31).

US agencies had no illusions about the political nature of their role in Vietnam. Agency staff on a tour of the country conducted by US officials were told that ‘You Voluntary Agency people can do a lot to help us show the refugees that the US wants to help them ... and that they should be on our side’ (cited in Bush, 1999: 12). A 1965 report from the American Council of Voluntary Agencies in Vietnam (ACVA), which brought together the main NGOs working in the country, noted that refugees would henceforth be considered a ‘military asset’, and that there were few prospects of the US government allowing assistance to refugees in areas held by the Viet Cong. However, it still recommended the scaling up of programmes due to the escalation of the conflict (Flipse, 2002: 251).

Agencies viewed their role in Vietnam in different ways. The most vivid examples of cooperation with stabilisation objectives came from Catholic Relief Services (CRS) and to a lesser extent CARE, which were strongly committed to the anti-communist campaign and saw themselves as supporting the US government’s position in Vietnam. CRS in particular had well-established links with Diem’s government due to a shared Catholicism and anti-communism. In the second half of the 1950s, when refugees from North Vietnam were the focus of relief efforts in the South, CRS channelled over half of the total humanitarian and development assistance to South Vietnam. From 1966–69, it shipped 95% of all US-donated food to enter Vietnam, supporting an estimated 1.3 million IDPs (Flipse, 2002: 252). In 1967, its largest programme involved food distributions to the US-allied Popular Forces militia and their dependents, begun at the instigation of Westmoreland.

Revelations about the Popular Forces food programme in August 1967 gave rise to a robust public debate about the appropriate role of CRS and humanitarian action more broadly. While critics of CRS programmes saw them as ‘hawkish’, CRS leaders defended them on the grounds that the ‘needs of the poor in Vietnam cannot be met by any agency without the cooperation of the US and Vietnamese government and military’ (cited in Kauffman, 2005: 242). In a pattern repeated since, the different sides of debate ‘talked past each other, basing their case in radically different moral

contexts' (Kauffman, 2005: 261). In the event, however, responsibility for the programme was transferred without fanfare to the US military; indeed, with CORDS the military took over control for 'pacification' generally, and from a high of \$14.5m in 1967–68, CRS contracts with USAID fell to \$250,000 by 1971–72 (*ibid.*: 264).

Other agencies, while still obliged to cooperate with stabilisation objectives, attempted to resist US government pressure. In September 1967 three senior staff of the ecumenical group International Voluntary Services (IVS) resigned in protest against American policy in the country, and 46 of its personnel signed an open letter to President Lyndon Johnson protesting against the instrumentalisation of humanitarian assistance. The IVS' contracts with the US government were not renewed, and there were threats of legal action on the grounds of treason. The Vietnam Christian Service (VNCS), which was led by the MCC, along with Church World Service (CWS) and Lutheran World Relief (LWR), also resisted attempts to bring their work under US government control. In 1967, MCC turned down a USAID offer to run a large-scale food programme for refugees (Bush, 1999: 15). Volunteers working with the Service were troubled by their implication in US military objectives and subsequently recalled the difficulties VCS had in maintaining an independent identity.⁸ As a key figure in MCC's operations summarised:

We did make unnecessary compromises in our use (later discontinued) of US military transport and US government food supplies. We were too slow in our reaching out to 'the enemy,' the people in North Vietnam and Viet Cong areas of the south. Most of all, despite some good attempts, we were too hesitant and anemic in our witness to Washington (Martin, 1999: 73).

Despite proximity to the US government, some contact with the Viet Cong was possible, though for US agencies based in South Vietnam it could only ever be extremely circumscribed. MCC members in particular contacted the armed opposition several times, and two expatriate personnel visited rebel-held territories. But this move did not come until 1970, and engagement with the Viet Cong was not extended to all volunteer field staff but kept at a higher level. Contact appears to have been reliant on the personal relationships of specific

individuals, who often spoke Vietnamese and had lived in the country for several years. Such engagement would not have been possible, or perhaps desirable, for the most openly anti-communist NGOs.

Confronted in Vietnam with an armed opposition that identified Western actors with foreign military objectives, those humanitarian organisations that sought to distance themselves from US goals found that these efforts were not always recognised or understood by civilians or armed groups and did not ensure their safety. At times they were directly undermined by a reliance on American logistical support. This 'lesson' from historical experience remains a problem without a clear solution, despite the increased attention that has been devoted to it in recent years – another issue often approached, as Dandoy and Pérouse de Montclos (2013) argue, without reference to historical perspective. It is another example of how the acceptance of a functional amnesia, allowing the avoidance of difficult realities at the cost of institutional memory, works against the possibility of more effective policies and practices.

Experiences in Vietnam resonate with the more recent challenges that have faced humanitarian actors in places like Afghanistan, Iraq and Somalia. While the ideological stakes are different, many of the operational and ethical dilemmas remain. The association between Western liberal democracy and humanitarian organisations was and remains extremely strong. It is a historical reality – at the origins of the formal humanitarian system and its key players – and it has also been recognised by humanitarian actors themselves, which have understood their role, as CRS and CARE did in Vietnam, as part of the promotion of democracy. As discussed below, this was explicitly the case in Afghanistan after 2001.

4.2 Stabilisation and counter-insurgency in Afghanistan

In Afghanistan and other 'unstable' contexts where Western (particularly US) foreign policy interests are at stake, humanitarian actors once again find themselves under increasing pressure to contribute to stabilisation and counter-insurgency. The success of stabilisation efforts relies on an integrated approach that, according to the US Army Counterinsurgency Manual, extends well beyond the military: 'gaining and maintaining popular support presents a formidable

⁸ See the collection of documents and interviews available at <http://civilianpublicservice.org/storycontinues/vietnam>.

challenge that the military cannot accomplish alone. Achieving these aims requires synchronizing the efforts of many nonmilitary and HN [host nation] agencies in a coordinated approach' (Department of the Army, 2009: 69). The manual lists 'likely participants' in counter-insurgency operations as 'US military forces, Multinational (including HN) military forces, US governmental organizations, Intergovernmental organizations (IGOs), Nongovernmental Organizations (NGOs), Multinational corporations and contractors [and] Indigenous population[s] and institutions (IPI)' and specifically mentions several aid agencies, including the World Food Programme (WFP), MSF and Save the Children.

As in Afghanistan's past periods of conflict, aid agencies have struggled to remain neutral and impartial. The government of Pakistan's manipulation of aid in Afghan refugee camps in the 1980s, in an attempt to increase support for and control of the *mujahedeen* parties that it supported, is well documented. Much of this aid was driven by political objectives. The UN, based in Kabul, was perceived as siding with the government, while NGOs working in Pakistan or inside Afghanistan were widely seen to be working with *mujahedeen* groups (Donini, 2007). The few agencies that worked across the border in Afghanistan did so clandestinely, without permission from the government in Kabul, and were reliant on support from *mujahedeen* forces.⁹ Cooperation, and in some cases sympathy, with the Afghan forces ran so deep that one French doctor remarked that it was possible to become 'the personal doctor of the mujahideen, completely caught up with them in their struggle and accepting of that' (Augoyard, 1985, in Davey, 2011). For MSF, *témoignage* (bearing witness) about the Soviets' conduct of the war was seen as an important part of its work. Yet the agency did so at significant risk: the Soviets bombed hospitals and imprisoned volunteers in retaliation, accusing them of aiding 'counter-revolutionaries' (Girardet, 1985).

There were attempts to regain a perception of neutrality and impartiality. In 1988, a UN-led 'humanitarian consensus' was negotiated with the government and several *mujahedeen* groups enabling cross-border and cross-line work. However, the Soviet withdrawal that began the same year made the consensus difficult to

9 Although some NGOs, such as the Swedish Committee for Afghanistan, had established small projects, many agencies did not consider it safe enough to work inside Afghanistan until around 1986.

implement. By 1992, the government had collapsed and civil war erupted among the *mujahedeen* factions. When the Taliban emerged in 1996 there was once again little consensus or coordination among aid agencies. Some, such as the World Health Organisation (WHO), accommodated the Taliban's requests, for example to exclude women from its programming, hoping that engagement would gradually soften these restrictions. Others, such as WFP and Oxfam, adopted a much more rigid stance and refused to yield to Taliban demands. Still others paid lip service to Taliban demands or met some while refusing others. Among UN agencies, the negotiating position became more consistent with the development of the UN Strategic Framework in 1998, but implementation was plagued by internal politics and infighting (Johnson, 2002).

At the outset of the current war in Afghanistan, then-US Secretary of State Colin Powell famously declared that 'NGOs are such a force multiplier for us, such an important part of our combat team' (Powell, 2001). Stabilisation assumed near-fanatical support among Western governments, transforming the approach and structure of both military and civilian agencies. Of particular concern to aid agencies was the involvement of military actors, such as Provincial Reconstruction Teams (PRTs), as well as the use of private contractors to implement development projects aimed at winning 'hearts and minds'. The central arguments aid agencies made against PRTs and the broader stabilisation agenda focused on concerns that these approaches eroded the distinction between civilian aid workers and belligerents in the eyes of local people and armed groups. Agencies feared that the inability to differentiate between aid workers and the military would lead to the targeting of aid workers. They also objected to the ways this assistance was delivered: there was an explicit expectation of providing intelligence or showing loyalty to pro-government forces in return, forcing civilians to make an impossible choice between badly needed assistance and their own safety. Finally, both military-led aid as well as funding to humanitarian actors was concentrated in areas that were deemed insecure, reinforcing a general association of aid programming with security objectives.

While many aid agencies expressed concerns, there was little consensus among them. Few aid agencies regarded Afghanistan as a conflict environment in the early years of the international intervention and many publicly supported the presence of foreign troops. While objecting to PRTs, many aid agencies still felt

the presence of NATO forces was required for security. Eighty aid agencies, including CARE, Oxfam and others, publicly petitioned NATO and the UN, which authorised the force through the Security Council, to expand the International Security Assistance Force (ISAF)'s presence throughout the country in 2003. Citing security threats posed by warlords and 'Taliban fugitives', the letter asked the international community to 'expand the ISAF mandate and provide the resources needed to secure Afghanistan so that democracy can flourish' (ICVA, 2003).

As security deteriorated after 2006, PRTs, contractors and anyone associated with the projects they initiated were considered legitimate targets by the Taliban. Interviews with the Taliban in 2011 demonstrate how profoundly the lines had been blurred. Commanders and fighters often conflated PRTs and aid agencies, in some instances referring to them as one entity, 'PRT NGOs' (Jackson and Giustozzi, 2012). The co-option of aid activities into military strategies clearly exacerbated Taliban suspicions of aid work and made it harder for agencies to gain the trust they needed in order to work in the areas they controlled. Many aid agencies responded by distancing themselves from Western donors, and some refused to take funds from governments involved in the conflict. But, as Donini (2010) highlights, there has been no humanitarian consensus. At one end of the spectrum, the ICRC and MSF consistently engaged with all parties to the conflict – as they had all along – and steadfastly avoided activities that could be construed as supporting pro-government and military efforts. At the other, there was significant pressure on aid agencies to support the Afghan government and the international military. In 2008, the President of the ICRC was criticised by senior UN officials after making public statements about the conflict and humanitarian conditions which they viewed as 'too negative' (Terry, 2010).

Few agencies could afford to take such a stand. Many remained heavily dependent on funding from governments involved in the conflict, which in turn attempted to influence the behaviour of aid agencies. Even

some of those critical of PRTs accepted funding from the development agencies of PRT lead nations or directly from PRTs themselves. Some felt that accepting funds from donor governments engaged in the conflict was acceptable in 'peaceful' provinces where the international military and PRTs played more of a 'peacekeeping' function, but not in more insecure ones, where they engaged in overt stabilisation and combat. Others continued to take funds from donor governments in areas where troops were present, but attempted to limit logos, branding and visits in the hope that this would protect perceptions of their impartiality. USAID and other donors pressed for agencies to share information with military forces, or insisted that aid agencies work in 'target' districts identified by the military.

Many agencies were reticent to talk directly to the Taliban for fear of the consequences. However, some were able to balance these pressures more successfully than others. One DFID- and USAID-funded agency with extensive operations in Taliban areas engaged, quietly, with the Taliban at multiple levels, from the senior leadership *shura* to mid-level commanders and local fighters. Many agencies that were able to do this had been present for a number of years, and maintained consistency and transparency and prioritised needs identified by the community in their programming. However, where aid agencies had implemented projects poorly or were perceived to have different priorities than those of the community, underlying suspicion of their 'true motivations' was reinforced.

As Vietnam demonstrates, pressure on aid agencies to contribute to the war efforts of one side of a conflict are hardly new. However, the post-9/11 focus on stabilisation and counter-insurgency marked a new form of co-option of humanitarian action into broader political and military strategies that has, to varying degrees, tainted humanitarian action in the eyes of armed groups and local populations. It has also exacerbated divisions among aid agencies, reducing their ability to effectively coordinate and pushing many away from the UN, which is seen as no longer able to play a productive role in humanitarian dialogue.

5 Coordination and engagement with armed groups

This chapter examines the role of coordination and collaboration among aid agencies involved in engaging with armed groups, seeking to shed light on the internal and external factors that enable aid agencies to work together – or act to their detriment. For a short period characterised by the easing of superpower rivalry and the collapse of the Soviet Union, the UN played a lead role in negotiating with armed groups on behalf of the wider humanitarian community, and took a prominent role in attempts to resolve conflicts. Collectively negotiated access was often achieved under UN leadership.

The large-scale, high-profile collective operations seen in the 1980s and 1990s are rarely in evidence today. Participants at an HPG roundtable on humanitarian space in 2010 noted that ‘many humanitarian operations used to be governed by sets of ground rules, yet this is no longer the case’. They felt that ‘operations today are frequently characterised by fragmentation rather than coordination’ (HPG, 2010b: 6). Over the past decade, humanitarian engagement with armed groups has once again been marked by bilateralism. But the notion that such approaches need necessarily be fragmented is false; new forms of collaboration and coordination are emerging, and provide opportunities to increase the ability of humanitarian actors to gain access and remain present.

5.1 Collective negotiations, global change and the UN role

The model of collectively negotiated access took many forms and achieved varying degrees of success; often, agreements focused on access and assistance, with a heavy emphasis on logistics for the transport of food or other commodities as well as the safety and security of staff. Consent was often fragile and subject to constant renegotiation, and many governments were unhappy about the sovereignty implications of UN agreements with insurgencies they were attempting to quell, or the de facto legitimacy conferred by contact

with NGOs and other international actors. There were also instances where negotiations, both collectively and when pursued by individual agencies, largely failed to enable access to relief or improve protection for vulnerable populations.

NGOs were at the forefront of large-scale collective cross-border initiatives for the relief of Eritrea and Tigray, both then provinces of Ethiopia. Cross-border operations focused almost entirely on delivering aid to areas controlled by armed groups and were possible due to the tacit support of the Sudanese government, motivated by the backing rebel movements in southern Sudan were receiving from Addis Ababa. Chief among the cross-border operations was the Emergency Relief Desk (ERD, 1981–93), a consortium of organisations providing aid in areas controlled by the main secessionist movements, the Eritrean People’s Liberation Front (EPLF) and the Tigrayan People’s Liberation Front (TPLF).¹⁰ ERD accounted for more than half of the total cross-border operation from Sudan into Eritrea and Tigray (Duffield and Prendergast, 1994: 6).

Operationally, the ERD was dependent on the relief wings of the EPLF and TPLF to deliver assistance; while constitutionally separate from the rebel fronts they were in reality difficult to distinguish and closely integrated in practice with fighters and commanders. The relief wings were consistently described in ERD documents as ‘implementing agencies’, and as late as 1989 the names of the participating NGOs were ‘kept confidential’ to allow ERD to act as ‘a discrete “buffer” which major donors and international NGOs utilize to support crossborder activities, without endangering programmes already established on the government side’ (Hendrie,

¹⁰ The members were Brot für die Welt (Germany), Christian Aid (UK), Danchurch Aid (Denmark), Dutch Interchurch Aid (the Netherlands), International Coordination Committee for Development Projects (the Netherlands), Lutheran World Relief (US), Norwegian Church Aid (Norway), the Sudan Council of Churches (Sudan) and Swedish Church Relief (Sweden). Other cross-border operations into Eritrea and Tigray also existed which were not linked with these networks.

1989: 354). For its part, the UN Emergency Office for Ethiopia (UNEOE), established in late 1984, ignored the existence of the cross-border operation and showed staunch support for the Ethiopian government.

Important shifts began to occur within the international aid system with the waning of the Cold War. Funding channelled to aid agencies by states, through UN agencies and from international foundations increased significantly in the decade after the fall of the Berlin Wall (Reimann, 2006). By the end of the 1990s, funding for humanitarian assistance was more than ten times its 1989 total of \$800m (Weiss and Hoffman, 2007). Much of this new funding was absorbed by contexts in which negotiated access played a major role in facilitating humanitarian action.¹¹ The period also witnessed ‘the start of complex, system-wide forms of international intervention’ – namely the radical transformation and expansion of UN peacekeeping operations (Duffield, 2007: 77). For the first 45 years of its existence, UN peacekeeping was based on principles of impartiality, consent and minimum force to support agreed ceasefires. Since the 1990s, however, the UN has endorsed a series of interventions for ‘humanitarian’ purposes, encompassing military peacekeeping, peace enforcement, post-conflict peace-building and relief and protection operations. The number of peacekeeping operations also rapidly expanded. Between 1992 and 1994, the number of military and police personnel serving as UN peacekeepers increased from 12,000 to nearly 80,000 (MSF, 1997; Slim, 1995).

Alongside this ‘military humanitarianism’ there was a renewed emphasis on the UN’s role in humanitarian engagement with armed groups – a role it had previously shied away from, particularly since the Congo crisis of the early 1960s, in large part due to concerns about sovereignty. In 1991, General Assembly Resolution 46/182 formalised the UN’s role in engaging armed groups in humanitarian dialogue, granting UN actors operating under the Emergency Relief Coordinator permission to negotiate with parties to conflict for humanitarian aims, including ‘actively facilitating, including through negotiation if needed, the access by the operational organizations to emergency

11 This is not to suggest that the majority of this ‘new’ money went directly into humanitarian programming. As Duffield (2007) points out, the rapidly expanding UN operations consumed much of this funding and a large share of it went to the complex operational, logistical, security and other demands associated with supporting staff and humanitarian operations in war zones.

areas for the rapid provision of emergency assistance by obtaining the consent of all parties concerned, through modalities such as the establishment of temporary relief corridors where needed, days and zones of tranquillity and other forms’. The UN Secretary-General continued these efforts in 2001 by asking the Inter-Agency Standing Committee (IASC) to compile a manual for humanitarian negotiations with armed non-state groups, published in 2006 (see McHugh and Bessler, 2006).

One of the UN’s first experiences with the ‘negotiated access’ model was in 1989, with the establishment of OLS. OLS was initially conceived as a short-term temporary measure to address the famine in Bahr-el-Ghazal. Managed by the UN on behalf of its agencies (most prominently the UN Children’s Fund (UNICEF)) and international NGOs, OLS aimed to ensure access to populations in both government and opposition-held areas, respectively referred to as the northern and southern zones. Its first iteration, OLS I (1989–92), was largely based on unsigned agreements negotiated by the UN Development Programme (UNDP) and UNICEF on behalf of UN agencies and international NGOs, focused on establishing ‘corridors of tranquillity’ to facilitate the delivery of aid to famine areas. The relationship established between an armed non-state group, the SPLM, and the international community through OLS’s work in SPLM areas was exceptional at the time. In essence, the Sudanese government ceded sovereignty to the UN in the southern zone. While the government of Sudan was initially hesitant and consistently suspicious of OLS, consent was obtained through significant pressure from donor governments.

Not all agencies participated in OLS and some, notably the ICRC, chose to operate independently of it. It was a highly complex and, at times, fraught operation. Interviews with individuals who worked in OLS placed strong emphasis on the role of personalities, rather than structures or institutions, in its inception and in making the operation work on a day-to-day basis. While UNICEF was ostensibly selected to lead OLS for its humanitarian mandate and capacity, many credit James Grant, the head of UNICEF who became UN Special Envoy for Sudan and director of OLS at its start, with pulling agencies together and summoning the political will to bring the operation into being.

The northern and southern zones operated nearly autonomously, with different staff and little communication between them. As lead agency in the southern zone, UNICEF provided shared services and

coordination. Participating agencies signed letters of understanding with UNICEF agreeing to operate under its rules, and in turn UNICEF led on securing access under OLS principles and assisting with logistics and transport. OLS activities were in part funded through a UN appeal. As OLS evolved, its focus on capacity-building – targeted in no small part at the relief wings of armed groups and their proxies – enhanced the efficiency and legitimacy of the civilian apparatus of opposition groups. By contrast, a review of OLS found little evidence of such capacity-building efforts in the government-controlled northern zone, though this may have been due to the higher level of state development and functioning in government-held areas (Karim et al., 1996).

Political considerations were a critical enabling factor for the operation, with corridors of tranquillity intended to lay the groundwork for conflict resolution by building confidence among the warring parties (African Rights, 1997). As the response evolved from famine relief to longer-term efforts to address the underlying causes of chronic poverty in the southern zone, political support for OLS remained strong: between 1992 and 1996, donors devoted over half a billion dollars to the operation (Karim et al., 1996). Yet donor funding fell by half as the Inter-Governmental Authority on Drought and Development (IGADD) peace process stalled (Bradbury et al., 2000). As support for OLS was grounded in political objectives, it unsurprisingly had profound political and military consequences. It fed soldiers on both sides as it fed civilians, helped keep military supply routes open and sustained garrison towns. Arguably, OLS prolonged the conflict (de Waal, 1995).

Some aid agencies attempted to use OLS as a vehicle to regulate the behaviour of opposition groups – as well as that of aid workers. A striking feature of OLS II (1992–95) in the southern zone was the signing of ‘Ground Rules’ by leaders of the major opposition factions, in response to rising insecurity and attacks on aid workers in opposition-held areas. The Ground Rules were also negotiated as OLS was expanding to include greater numbers of NGOs, making it increasingly difficult to maintain consistency among aid agencies. The Ground Rules laid out basic operating principles for OLS as well as statements of support for the Geneva Conventions and the Convention on the Rights of the Child. But more than this, they affirmed the ‘right to receive and offer assistance as a basic humanitarian principle, and the denial of assistance or its use for non-humanitarian purposes as a breach of humanitarian principles’ (Bradbury et al., 2000: 10; Levine, 1997).

A similar model was pursued in Angola, through the Special Relief Program for Angola. When the UN issued an appeal for funding that addressed only government-held territories in May 1990, one of the main armed opposition groups, the National Union for the Total Independence of Angola (UNITA), requested the use of secure corridors that would allow aid to be delivered to rebel areas as well. After conditional government approval, the Emergency Coordination Unit (ECU) of UNDP drew up a document to regulate operations. This document, the SRPA Plan of Operations, laid out six principles, including neutrality, aid provision guided by needs (impartiality) and the provision of resources that were purely humanitarian in nature. Four corridors were defined for humanitarian access, three of which provided access to government-held territory and the fourth to areas in the south-east controlled by UNITA (Richardson, 2000). However, the Angolan government insisted that UNITA could not be treated as a legitimate or equal partner, and therefore denied it any right to modify draft agreements. Although UNITA raised no significant objections to the SRPA, implementation was fitful and plagued by tensions between UNITA and the party in government, the Popular Movement for the Liberation of Angola (MPLA).

The SRPA was disbanded after peace talks started in 1991, but conflict resumed the following year and in 1993 a new entity, the Humanitarian Assistance Coordination Unit (UCAH), was set up. The Head of UCAH reported not only to the Special Representative of the Secretary-General (SRSG) but also to the Under Secretary-General for Humanitarian Affairs in New York, in an attempt to emphasise the independence of the humanitarian wing of the UN effort in Angola, and it dealt with the government of Angola and UNITA separately from the political arm of the UN. Eschewing control in favour of coordination, UCAH solicited input from UN agencies and NGOs on a daily basis, ran joint needs assessment missions, circulated the information to which it had access and provided a service for communication between other organisations. As with OLS, the role of personalities and individual leadership appears to have been critical: the leadership of the first Head of UCAH and Humanitarian Coordinator for Angola, Manuel Aranda da Silva (formerly the head of WFP in Sudan during OLS and a former government minister of Mozambique), is widely seen to have played a critical role in UCAH’s success (Richardson, 2000). The decision (as in the SRPA) to divide agency responsibilities by service rather than

by geography – so that, for example, UNDP was in charge of communications and WFP managed logistics and food delivery – fostered collaboration amongst the UN agencies involved. NGOs were brought into UCAH's structures, and were required to sign a 'Letter of Affiliation' that laid out the roles and responsibilities of all parties. Signing this agreement gave NGOs access to UCAH's operational resources, including air support and communications equipment. The registration cards that were then provided to individual aid workers had the secondary benefit of serving as proof of identity when staff were confronted with roadblocks or hostile members of the two armies.

In contrast with the UN's leading role in Sudan and Angola, access negotiations during the first Liberian civil war (1989–96) were led primarily by NGOs. There were two key initiatives: the Principles and Protocols for Humanitarian Operations (PPHO) and the Joint Policy of Operations (JPO). At the time, the UN was in disarray following the forced resignation of the coordinator for the UN Special Coordinator for Emergency Relief Operations in Liberia (UNSCOL) in 1993. The UN Secretary-General subsequently appointed a Special Representative with both a political and peace-building mandate. At least one of the individuals who filled this position explicitly opposed the National Patriotic Front of Liberia (NPFL) and worked openly to restrict aid to NPFL territory (Atkinson and Leader, 2000). In the absence of any neutral or independent humanitarian leadership from the UN, agencies individually negotiated access to NPFL areas on an ad hoc basis. Although a more explicitly 'neutral' and impartial operation was established in Liberia in 1995 (the UN Humanitarian Affairs Coordination Office (UNHACO)), it played a less prominent role than the UN had done elsewhere.

The PPHO originated from efforts initially led by MSF and ICRC, and the other initiative, the JPO, was developed as an NGO-only mechanism. Both initiatives covered a limited range of specific activities that aimed to keep humanitarian workers and beneficiaries safe from harm. Neither entailed a formal agreement with the government or armed groups, nor were they mechanisms for aid delivery, as the OLS Ground Rules and ERD had been. Armed groups were consulted in the drafting of the PPHO and both documents were disseminated to warring parties, but they were not signatories to either. In essence, the PPHO and JPO were codes of conduct based on the premise that 'if all agencies apply the same principles and base their

operational activities on them, a much stronger front for negotiating and maintaining access to populations would be created' (PPHO, 1995).

The PPHO and the JPO also sought to force the hand of belligerents by establishing a collective bargaining position and set of 'red lines'. The agencies involved set limits on what they felt they could ethically and safely provide: 'Minimum Targeted Lifesaving Activities'. Those involved hoped that these limitations would be punitive enough to force belligerents into respecting the activities of humanitarian agencies. Activities were categorised according to their nature, with some, such as therapeutic feeding, clearly lifesaving. Others were 'borderline' and assessed on a case-by-case basis, while others, such as school feeding, were ruled out altogether. The JPO stated that agencies would resume a wider spectrum of activities if the belligerents began to respect humanitarian principles. The institution of such limits was contentious but appeared effective; harassment of aid workers decreased in subsequent months and activities were expanded.

5.2 Integration or fragmentation?

The development of collective negotiating agreements by NGOs in Liberia stands in contrast with other contemporary contexts where the UN took a leading role. But neither of these two models has really continued: NGO responses have become fragmented and UN leadership of humanitarian negotiations has significantly diminished. While UN bodies and representatives at various levels continue to publicly acknowledge the importance of engagement with armed groups, little contact actually occurs.¹² Part of this shift lies with the UN's continued evolution and the expansion of peacekeeping missions, limiting the space and support agencies could once utilise in the service of humanitarian objectives. Greater stress has been placed on the need for coherence within the international responses to crises and conflict, particularly in the wake of Bosnia and Rwanda, and the operational separation of the humanitarian UN from the political UN, one of the key factors in the success of UCAH in Angola, is rarely in evidence today.

12 This is not to minimise what has been done by the UN in this area, but merely to place its current role in historical context. The UN has tried to contribute to humanitarian dialogue with armed groups, notably publishing a manual on the topic in 2006 (see McHugh and Bessler, 2006).

While there is general agreement among humanitarian actors over the need for better coordination, many feel that the quest for coherence and integration has eroded the distinction between humanitarian and political objectives and ultimately subordinated humanitarian concerns to political ones. Consequently, fears that association with the UN may taint perceptions of their neutrality, independence and impartiality have led many NGOs to seek separation. The greatest source of tension in recent years has been over UN integrated arrangements. The policy of integration was first introduced in 1997 to enhance cooperation between UN agencies and increase mission coherence in peacekeeping operations. The aim of integration is to ‘maximize the individual and collective impact of the UN’s response, concentrating on those activities required to consolidate peace’ with all components of the UN ‘operating in a coherent and mutually supportive manner, and in close collaboration with other partners’ (UN, 2008). At country level, integration may take various structural forms but should facilitate shared objectives and aligned planning. Guidance from the UN Secretary-General notes that integrated arrangements ‘should take full account of recognised humanitarian principles, allow for the protection of humanitarian space and facilitate effective humanitarian coordination with all humanitarian actors’ (*ibid.*).

Many aid actors oppose UN integration arrangements on the ground that they ‘blur the distinction between humanitarian, military and political action, subordinate humanitarian priorities to political prerogatives and therefore place humanitarian action at significant risk’ (Metcalf et al., 2011: 1). In Afghanistan, NGOs formally rejected collective access negotiations proposed by OCHA in 2011, in part because OCHA was part of an integrated mission (Jackson, 2012). In Somalia, NGOs have argued that the UN’s support for the government has undermined their ability to negotiate access with Al-Shabaab and other anti-government groups. Despite long-standing opposition a new integrated mission, the UN Assistance Mission in Somalia (UNSOM), was established in May 2013.

The placement of humanitarian functions under political leadership, which may be mandated to support a government in opposition to armed groups, has potentially serious consequences for the engagement of UN humanitarian actors with these groups. In the words of one aid worker in the DRC, ‘it’s difficult to create a relationship [with the Democratic Forces for the Liberation of Rwanda] when MONUSCO is partnering

with the Congolese army to hit them on the same day’ (IRIN, 2012). Political actors, whose mission is to support the host government, may also be reluctant to support humanitarian engagement with armed opposition movements. A recent study of integrated arrangements identified instances ‘where UN mission leaders used their authority in the UN integrated presence to limit humanitarian engagement with non-state armed actors when this was deemed to be detrimental to political objectives at a particular time’ and found significant confusion among UN and non-UN actors about whether UN policies prohibited engagement with armed groups (Metcalf et al., 2011: 30). Where engagement was not obstructed or discouraged, it was ‘limited, particularly at a senior level’, undermining ‘efforts to obtain the security guarantees necessary for accessing populations in need and limiting opportunities to undertake humanitarian advocacy, including on protection of civilians’ (*ibid.*: 31).

The roots of this tension are deeper than the structural elements of the UN presence in a given country. As member states, namely the US, focused on the ‘Global War on Terror’, the UN was used to legitimise interventions focused on counter-terror objectives (for example with the UN Security Council authorisation of the mandate of the NATO-led ISAF in Afghanistan and through counter-terrorism sanctions). Elsewhere, UN peacekeeping missions have become increasingly interventionist; in the DRC, for example, UN Security Council Resolution 2098 established a 3,000-strong ‘intervention brigade’ ‘with the responsibility of neutralizing armed groups’.

As other humanitarian actors seek to distance themselves from the UN in volatile environments, they are once again pursuing engagement with armed groups bilaterally. The diversity of approaches and objectives, coupled with the proliferation of actors involved, has further undermined trust and a sense of common purpose. Research for this project in Afghanistan, Sudan and Somalia found relations among aid agencies on these issues often characterised by fear and mutual mistrust. In Afghanistan and Somalia, agencies negotiating with the same local commanders in the same areas often did so separately, without sharing information or even an awareness of what the other was doing. Agreements on ‘red lines’, such as the PPHO and JPO in Liberia, have rarely been pursued, and where they have actors on the ground have not adhered to them because they see them as too restrictive or out of step with the operational reality. In Somalia in 2009, for example, members of the Somalia NGO Consortium

agreed operating principles governing engagement with the parties to the conflict. Similar efforts included the IASC 'Negotiation Ground Rules' and the UN Humanitarian Country Team Policy on Humanitarian Engagement. Many of these agreed 'red lines' appear to have been intrinsically unfeasible given the conditions Al-Shabaab sought to impose in the areas it controlled. Yet without a common agreement on minimum standards of operation there is a risk that humanitarian agencies will be played off against one another by armed groups aiming to obtain arrangements that best meet their objectives. In Somalia, varying practices among agencies with regard to accepting demands to pay 'tax' to Al-Shabaab made it exceedingly difficult for individual actors to refuse to do so or negotiate more favourable terms (Jackson and Aynte, 2013).

Despite the persistent evidence of fragmentation, it is important to highlight examples where greater coordination and collaboration has enabled more effective engagement with armed groups. Notwithstanding its more fraught position in certain contexts, the UN has managed to play a critical role in facilitating humanitarian engagement with armed groups in some contexts. The work of the Access Unit in Gaza, discussed above, is one example (Galli, 2013). Similarly, in the early years of the conflict in the Darfur, OCHA and the DSS played a leading role in negotiating on behalf of UN agencies and NGOs. However, in both instances the relatively large degree of separation of UN humanitarian entities from political concerns, combined with resources dedicated to engagement, were essential in allowing the UN to take up this role.

The presence of these two enabling conditions is rare in most contemporary operating environments. Where this has been lacking, NGO-only information and coordination bodies, such as the Afghanistan NGO Safety Office (ANSO) (now an international entity, the International NGO Safety Office (INSO)) and the NGO Safety Programme (NSP) in Somalia, have partially filled the gap. These initiatives have sought to encourage information sharing through joint reporting and providing independent security analysis.

Usually, however, when donor government attempts to co-opt aid agencies into their foreign policy objectives are most prominent and the UN – its political bodies and its operational agencies – is as a result more partial, coordination and collaboration in engaging with armed groups suffers. Ironically, these are situations where a united humanitarian voice and common purpose are most needed to push back against co-option and make the case for humanitarian engagement. In practice, aid agencies appear more distrustful of one another and unwilling to work together or share experiences.

To highlight the historical factors which have encouraged or undermined negotiations with armed groups is not to view them as entirely determinant. Instead, this awareness should aid the development of strategies for engagement with armed groups and the positioning of humanitarian actors more generally. Here, as in the other examples highlighted in this report, the consultation of past experience must be proactive and should serve the specific needs and priorities at hand.

6 Conclusion

David Lewis (2009: 33) has remarked that aid agencies operate in the ‘perpetual present’, characterised by ‘frequently changing language and “buzzwords”’ and the ‘frequent discussion of new approaches that promise better chances of success than those currently in use, and by a strong – and in many ways understandable – sense of wanting to look forward rather than back’. Escaping the ‘perpetual present’ is particularly difficult in humanitarian operations in volatile environments. Staff turnover is high and institutional memory is preserved in ‘lessons learned’ documents that are soon forgotten. This nearly ahistorical state has many hazards, chief among them the failure to draw upon past experiences when confronted with contemporary challenges. However, these are precisely the contexts where memory is most important because the ability to compare between new developments and earlier ones can aid tactical decisions and the recognition of major changes. It is only ‘by shedding light on the factors that have encouraged or inhibited changes in practice and in the normative frameworks that make practice possible, historical analysis can inform reflection upon the changes that may take place now and in the future’ (Davey et al., 2013: 1). As the comparative history presented here demonstrates, the core challenges to engagement with armed groups are often not novel, and history may have important lessons to teach us about overcoming them.

Humanitarian negotiations with armed groups have always been deeply contested. Just as the willingness of armed groups to allow aid agencies to operate in areas under their control is driven by self-interest, so too is the willingness of donors and host governments to allow that engagement. This helps to explain why aid agencies’ engagement with armed groups varies so much according to external circumstance, political will and donor government interests. This is reflected in many of the formidable challenges to engagement discussed in this report, including the development of IHL and other legal frameworks, attitudes to sovereignty and the willingness of aid agencies to join or dissociate themselves from counter-insurgency, state-building or other ideological projects. The task, then, for aid agencies is not to avoid politicisation – an ultimately impossible goal – but to be politically astute enough

to navigate the dangers and opportunities presented by attempts to coopt humanitarian action.

Each age has had its counter-terrorism laws and policies. The common thread is the nebulous and subjective ways in which terrorists are categorised. While terrorist acts may be easy to condemn, so-called ‘terrorist’ groups are rarely monolithic. Just as the label ‘terrorist’ negates these features and inhibits understanding of these actors, so too it undermines arguments for engaging them on humanitarian grounds. For humanitarians, however, the aims of an armed group and indeed whether they are categorised as ‘terrorists’ is not the primary concern. The primary concern, as with all other armed groups, is the wellbeing and safety of civilians – a point which the ICRC was willing to stand by in Algeria, but one which other aid agencies have been hesitant to publicly voice in contemporary crises in Somalia and Gaza, where they are under significant pressure to support counter-terror objectives and limit contact with these groups.

The politicisation evident in counter-terror restrictions is mirrored in stabilisation efforts that seek not only to force aid agencies to limit contact with the ‘enemy’, but also to take sides by actively supporting pro-government ‘stabilisation’. From the US war in Vietnam to Afghanistan and Somalia, aid agencies have a profoundly mixed record in adhering to their principles. It is here, perhaps more than any of the other contexts examined, that the striking parallels between the past in Vietnam and the present in Afghanistan demonstrate the importance of learning from history. Geopolitical agendas are difficult, if not impossible, for aid agencies to influence. However, one hopes that, unlike Vietnam, aid agencies present in Afghanistan will critically reflect upon the compromises they have made, that the lessons will not be so soon forgotten and the mistakes not repeated.

Even where there were conducive circumstance for engaging armed groups (such as ERD or OLS), they were deeply tied to the political interests of donors. Where donors support engagement with armed groups to further political aims, aid agencies must be careful to remain independent and impartial. Like donors,

the willingness of armed groups to engage with aid agencies is often premised on self-interest. Biafra and to a lesser extent ERD illustrate the perils of aligning aid efforts with the ‘other side’. Similar to those aid agencies aligning themselves with stabilisation efforts in Vietnam and Afghanistan, aid agencies siding with rebels in Biafra allowed themselves to be coopted and manipulated in ways that ultimately limited those who needed their help. In a different way, engagement with Al-Shabaab in Somalia provides an extreme example of this dilemma. When Al-Shabaab demanded cash payments and compromises on core principles (for example threatening the ability to reach women by excluding female staff, thus damaging impartiality) in exchange for access, aid agencies were forced to choose between ceding to these demands or withdrawing support and leaving famine victims without assistance.

Coordination amongst aid agencies, though perpetually problematic, is integral to principled engagement. Where coordination appears to work, it is based on information sharing, common advocacy agendas and communication. While communication and information sharing is critical, it is important to distinguish this from integration and coherence. Coherence and integration simply may not be as valuable as a diverse array of actors with varying approaches. While the ICRC publicly states its refusal to pursue cross-border assistance in Syria, for example, other agencies believe that the severity of the situation has created a humanitarian imperative that trumps sovereignty concerns. The diversity of agency philosophies and ‘red lines’ complicates communication and coordination, but it may also mean a more effective division of responsibilities according to what each agency has the capacity and willingness to pursue. In pursuing

joint advocacy for common objectives, for example in pressuring the government of Sudan to open up access to South Kordofan and Blue Nile, a unified effort and consistent messaging will have greater power than conflicting messages or unilateral approaches. This does not dictate common approaches or joint planning of programming, only solidarity and agreement that impartial and independent humanitarian action is required to reach affected populations. Collective bargaining can be important, and in some instances it may be the only way to tackle the challenges posed by states and armed groups that are hostile to humanitarian agencies.

In these negotiations, aid agencies are often caught up in the conflict, pressured and manipulated by the belligerents and facing profound ethical and legal dilemmas. There are few right (or perhaps even ‘good’) choices. As the current conflict in Syria illustrates, aid agencies simply do not possess sufficient leverage to influence the constraints on principled humanitarian action. However, within the realm of those factors aid agencies can control, case after case demonstrates that the single most important factor in effectively engaging with armed groups is a very simple one: institutional commitment and resources. Access is hard-won and must be diligently maintained through consistent and comprehensive engagement. This requires significant resources and training to support staff on the ground. It also requires institutional commitment up and down an organisation, as evidenced in clearly articulated internal strategies for engagement and systems that support this engagement. Without such rigorous strategies for engagement and the resources to support them, there is little hope of effectively negotiating and maintaining access to populations in areas where armed groups operate.

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