

Cracking the code: the genesis, use and future of the Code of Conduct

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This paper reflects on the genesis of the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief, on the tenth anniversary of its adoption. The origins, usage and future of the code are examined with respect to three debates, current at the time of its inception, namely: the debate about the core content of humanitarianism; the debate about coherence and the consensual nature of the humanitarian community; and the debate about the need for, and the ability to demonstrate, accountability. The paper concludes that although the Code of Conduct was very much a product of its time, its content remains relevant today. However, its future application hinges on the capacity of those who purport to follow it to realise true accountability, and on proving that the code, written essentially for natural disasters, is relevant to contemporary complex emergencies.

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The genesis of the code

Many strands of action and thought came together to create the *Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief*. Its usage and future continue to be shaped not only by the environment in which it exists, but also by three critical debates, current at the time of its inception, and still valid today, namely: agreement—or lack thereof—on the core content of humanitarianism; coherence and the consensual nature of the humanitarian community; and the need for, and the ability to demonstrate, accountability.

The code, like many initiatives in the humanitarian field, was a product of its time—in the early 1990s, the Cold War had just ended, and there was still talk of a peace dividend. The figures on humanitarian aid spending seem to support this, having increased every year in the decade between 1984 and 1994. The genocide in Iraq and US President George H.W. Bush's Gulf War triggered the mass exodus of Kurds over the mountain passes into Turkey in early 1991. The next year saw massive flooding in Bangladesh and the substantial involvement of Western Coalition military forces in relief operations, as naval ships made their way home from the Persian Gulf. United Nations (UN) Secretary-General Boutros Boutros-Ghali published his *Agenda for Peace* and Francis Fukuyama proclaimed the end of history.

With hindsight, two particularly important political incidents stand out. First, in the winter of 1991, then UN Secretary-General Perez de Cuellar in his last annual report to the organisation and, for the first time in the world body's history, called on the UN to 'reinterpret [the] charter principles of sovereignty and noninterference in domestic affairs to allow for intervention on humanitarian grounds' (Chopra and Weiss, 1991).

In 1992, the Security Council met at the heads of state level. In January, the president of the Security Council issued a concluding note calling for the report that later became the *Agenda for Peace*. It also stated that: 'The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security. The United Nations membership as a whole, working through the appropriate bodies, needs to give the highest priority to the solution of these matters' (UNSC, 1992). For the first time ever, issues of humanitarian concern could and should be brought to the Security Council's attention (Van Baarda, 1994).

The world was changing and the low profile humanitarian aid sideshow was being thrust into the foreign policy vacuum. Humanitarian initiatives would, for better or for worse, become more prominent in international relations.

Although humanitarian initiatives were moving centre stage, there was, in the early 1990s, remarkably little debate about the core precepts and content of humanitarianism. Most NGOs did not work in conflict situations. Their focus was on rural development and disaster relief, which usually meant natural disasters or the servicing of refugee populations. Two debates dominated NGO thinking in the disaster field. First, the debate over the disaster–development continuum, which emphasised the need for disaster relief work to be built on a foundation of good disaster preparedness and to lead to good disaster rehabilitation and thence normal development work. Disasters were seen as containable blips on the development curve. Second, the debate over developmental relief (IDS, 1994). Here, the ability to operate on a quick in and out basis was viewed with scepticism. Disaster victims should not have to wait for normality to return before more nuanced and sustainable development approaches could be adopted. Relief programmes should incorporate concerns about livelihood support, sustainability, democracy and accountability.

The essence of both of these debates was that relief work was temporary and always a poor substitute for development work, wherein lay the true path to the alleviation of suffering and the promotion of universal human rights. The Code of Conduct's construct clearly reflects agreement with these two lines of argument. Article five, *we shall respect culture and custom*, article six, *we shall attempt to build disaster response on local capacities*, article seven, *ways shall be found to involve programme beneficiaries in the management of relief aid*, and, in particular, article eight, *relief aid must always strive to reduce future vulnerabilities to disaster as well as meeting basic needs*, all make relief a substitute for development, which must echo and support the development credo.

The code, drafted by development NGOs that also engaged in relief work, reflects this prevailing belief that relief can and should be done in a developmental way.

In contrast, in the early 1990s, the International Committee of the Red Cross (ICRC) and Médecins Sans Frontières (MSF) were really the only independent agencies working in conflict zones and for them relief was not the poor cousin of development. Assistance and protection, to the civilian population caught up in conflict, in order to alleviate the immediate and most acute suffering, was their driving ethos. Derived from the founding principles of the ICRC, later built into international humanitarian law (IHL) and subsequently captured in the seven Fundamental Principles of the International

Red Cross and Red Crescent Movement (Pictet, 1979), protection and assistance were an end in themselves. Relief work, in this construct, had value in and of itself.

The optimism of the early 1990s, the rapid increase in funding and the opportunity for NGO disaster/humanitarian action combined with a sense that civil society and especially NGOs could fill the vacuum left by the demise of the world peace movement (now redundant) and international socialism (now discredited) all boded well for the growth and coherence of the international NGO community. There was a real feeling in the early years of that decade that humanitarian NGOs could and should act coherently and on a grander scale, that they should have a seat at the international policy table and that their actions in the field made a difference. Ideas were being floated to find ways of bringing large NGO groupings, such as InterAction in the US and the Steering Committee for Humanitarian Response (SCHR) in Geneva, Switzerland, closer together. The 'NGO community' had seats on the UN's Interagency Steering Committee (IASC), but tellingly not one seat, allowing it to speak with one voice, but two—InterAction and SCHR. The underlying assumption, certainly within the agencies that initially drafted the Code of Conduct, was that there existed a relatively coherent international humanitarian NGO community just waiting to be stimulated into coherent action.

The Code of Conduct was not the only initiative seeking to unify humanitarian behaviour at the time. Two others deserve mention.

At Brown University in the US, Tom Weiss and Larry Minear had launched, in 1991, the Humanitarianism and War Project. Based on field observations and a 1991 brainstorming workshop involving a wide range of practitioners, they developed a set of eight principles (dubbed the Providence Principles after the hometown of Brown University) for humanitarian action, or, as they termed them, 'humanitarian guideposts'. The process and the meaning of the principles are described in two of their early books (Minear and Weiss, 1993; 1995). Six of the principles are, in effect, parallels of those in the Code of Conduct and a seventh is captured in its annexes. The one principle not in the code they label 'nonpartisanship', in an effort to avoid the confusions associated with the similar concept of neutrality.

Jon Ebersole was driving a similar process within the non-secular NGOs in the US at the World Conference on Religion and Peace. Following a consultation in Mohonk, New York, involving mostly faith-based agencies, the Mohonk Criteria were published in 1993 (Ebersole, 1995). The result was, again, a listing of principles for humanitarian action, evidencing considerable overlap with the Code of Conduct and the Providence Principles. Of course, all three initiatives borrowed from each other. What is significant is that so many agencies and researchers were concerned with the same issues at the same time.

These independent but converging processes, all under way simultaneously in the early 1990s, add further weight to the argument that agencies felt they were in the ascendancy: that their fields of work and influence were rapidly expanding and they had an opportunity to act coherently and as a global phenomena. This contrasts starkly with the prevailing mood of today, which is essentially defensive and divergent.

The theme of personal and agency accountability was also on the rise in the 1990s. Implicit too was an examination of agency legitimacy. Agencies were beginning to understand the multifaceted nature of their accountability obligations. They had long recognised the need to be accountable to their donors and to their agency mission statement or principles, but the 1990s also witnessed calls for agencies and their field workers to demonstrate accountability to programme beneficiaries, to the communities they came from and to the host authorities in the countries in which they operated. The Code of Conduct and similar initiatives sought to be more explicit about who agencies should be accountable to and what that accountability should look like.

The code also makes a clear statement about the presumed legitimacy of agencies. It is written with the assumption that agencies and their staff are recently arrived guests in a crisis-affected community. Slim (2002) argues that the legitimacy of the voice of an agency is directly related to its closeness to the affected population. Agencies that are of the people—community self-help groups, for instance—have a great deal of legitimacy as they talk from direct and personal experience. Agencies that stand ‘with the affected people’ have slightly less legitimacy, but can still talk with authority because they have stood side by side with victims through the suffering. Agencies that speak ‘about’ the victims have a much harder time being credible. They need to be much more rigorous in providing supporting evidence, in ensuring they quickly build trusting relationships with the affected community. The code is implicitly written for these sorts of agencies; for people who are essentially recent guests in someone else’s country.

Formally, the Code of Conduct was born in 1991. In that year, at the Council of Delegates of the International Federation of Red Cross and Red Crescent Societies (IFRC) and the ICRC, the French Red Cross sponsored a decision calling on the IFRC to ‘set up a group of experts to study the possibility of elaborating a Code of Conduct relative to humanitarian aid in situations of natural and technological disasters’ (ICRC, 1991). Initially the idea was explored with the UN, through the office of the United Nations Disaster Relief Organization, the precursor to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), but it showed little interest.¹ Following this disappointment, the IFRC chose to approach the issue via a small but well respected group of independent agencies. The idea for a code was taken to the SCHR, which then consisted of CARE, Caritas Internationalis, Catholic Relief Services (CRS), the IFRC, the Lutheran World Federation (LWF), Oxfam, Save the Children and the World Council of Churches (WCC). The SCHR endorsed the project and charged Peter Walker (from the IFRC) and Tony Vaux (from Oxfam) with drafting the code. At that time, the ICRC was not part of the SCHR, but nevertheless, towards the end of the process, it was called in and helped to draft language concerning the use of the code in conflict situations.

Once drafted and endorsed, the SCHR made acceptance of, and adherence to, the code a mandatory criteria for agencies wishing to be members of the SCHR. This proved important later, in the late 1990s, when both the ICRC and MSF were invited to join.

By the mid-1990s, aid agencies were beginning to see a decrease in post Cold-War euphoria. They were starting to feel threatened and felt that if they did not act in

self-defence they would witness the erosion of their principles, and themselves. This latter concern was one of the main reasons why the code was then taken, in 1995, to the 26th International Conference of the Red Cross and Red Crescent, which involved some 1,200 delegates representing 143 governments, 166 Red Cross and Red Crescent Societies, the ICRC and the IFRC, as well as 68 UN and NGO observers. This in effect raised the code from a somewhat parochial issue to one of international standing, involving nation states.

The resolution passed by the conference on the code was carefully worded. The conference ‘[took] note of and [welcomed] the Code of Conduct and further [invited] all States and National Societies to encourage NGOs to both abide by the principles and spirit of the Code and consider registering their support for the Code with the International Federation’ (ICRC, 1995).

The hope was that states would *endorse* the code, thus giving it some clout. By 1995, however, humanitarian assistance was officially on the foreign policy agenda and, as a member of the US government delegation commented at the time, ‘we are not going to endorse *anything* we have not been part of creating’.

Did it have any effect?

On individuals and agencies

Since 1995, the code has been used in two ways—although it should have been used in three. It has been employed as a personal code, as a set of principles to guide the behaviour of aid workers. At this level, the code seems to have had some success. It has served as a reference point, a base line, one that is now accepted as standard rhetoric, if not doctrine. In 2000 and 2001, the British Red Cross carried out systematic training of the UK agencies that are members of the Disasters Emergency Committee in both basic IHL and the Code of Conduct. A review of this training, carried out in 2001, showed that most agencies had planned to institute training in IHL and the code, had ‘enabled individual agencies to explore the importance of IHL and the Code for their own organization and [to] prioritize it accordingly’ and had ‘raised individual staff awareness of IHL and the Code significantly in several agencies’ (Slim, 2001).

At the institutional level, meanwhile, it has had a mixed effect. In one sense, its biggest success has been to pave the way for the Sphere Project, its humanitarian charter and standards.²

In retrospect, the initial enthusiasm for the code belied a naivety, or at least undue optimism with regard to the commitment of agencies to ‘walk their talk’. The international resolution that called for agencies to register their support for the code with the IFRC was the only tangible form of accountability envisaged.

For the first few years of the code’s existence, the IFRC published the list of registered agencies in the *World Disasters Report*. In parallel, a number of country-level aid coordinating bodies expected their memberships to register their support for the code. Some donors, mostly in Scandinavia, required agencies receiving their humanitarian funds to register with the IFRC. One surprise in those early years was how many

southern-based small agencies registered with the IFRC. It was all about promises to one's peer group. But in 1996, the system was tested and found wanting. The SCHR received a confidential but formal complaint from one agency, detailing the behaviour of a larger agency, which was registered as supporting the code. If the complaint was accurate, the latter was clearly in violation of the code.

The SCHR had no agreed mechanism for dealing with complaints and the IFRC as repository of the register certainly had no authority to make any judgment. In the end, the complaint was passed on to the accused agency, and the accuser and accused were invited to get together and discuss the issue. This salutary experience led directly to the hesitancy seen in the Sphere Project over establishing any sort of policing arrangement and in turn gave rise to alternative approaches to accountability, including the Humanitarian Accountability Project, which is seeking to develop compliance mechanisms.

Despite these limitations, a 2004 survey of the now 289 signatories discovered that of the 105 signatories that took part in the survey the vast majority found the code still to be useful and relevant (Hilhorst, 2004). Over 70% of respondents utilised it in their organisational development and programme planning and on average 50% of respondents said that they used it regularly in their lobbying, coordination and negotiation work.

The real missed opportunity of the code lies in its annexes. The three annexes speak to donor governments, host governments and UN agencies. Remember, at the 26th International Conference of the Red Cross and Red Crescent in 1995, 143 states and their governments welcomed the code and encouraged NGOs to use it. Sixty-eight observers, including all of the main UN agencies, did likewise. Used correctly this could have been a tremendous platform for advocacy. Annex one of the code places prime responsibility for humanitarian action with host governments, which is where it should lie. Annex two calls on donor governments to 'provide funding with a guarantee of operational independence'. Annex three promotes local and international NGOs as partners, not contracted implementers with UN agencies.

When one looks back now from the perspective of Afghanistan, the Democratic Republic of the Congo (DRC), Iraq and Kosovo, it is clear that agencies missed a vital advocacy opportunity. It is doubtful whether they will get such a chance again.

If the big-picture opportunity was missed with states, the code did open up unexpected opportunities at the local level. In Ethiopia in 1999 (CRDA, 1999), in Botswana in 2001 (NGO, 2001) and in many other countries, agencies worked out local codes of conduct, almost always informed by the *Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief*.

The case against the code

So far, the case for the code has been presented. But there is also a case to be made against. In fact, there are three. First, that it initiated a process of defining—with states—the nature of humanitarianism and thus opened another route for states to impinge on the independence of aid agencies. Second, that it legitimises illegitimate behaviour in conflict zones. Third, that it effectively opened the door to the deregulation and distortion of humanitarian action in conflict zones.

The first concern is one that is more often associated with a critique of the Sphere Project and has been well described by Jacqui Tong from MSF-UK (Tong, 2004). The second and third cases have been less systematically explored.

In 1992, when the code was first drafted, the drafters were actually concentrating on disaster relief, not humanitarian aid. The code was focused on how agencies and their workers behaved when responding to floods, famines and earthquakes in someone else's country. As the drafting process advanced, and the wars in Iraq and then the Balkans unfolded, the naivety of assuming two separate worlds of conflict and non-conflict seemed clear and the code drifted, in the mind of its sponsors and drafters, to become a code for all disasters. Hence the incorporation of the ICRC at a late stage in the code's development. With hindsight, treating conflict-related assistance as essentially a footnote was a grave error. A glance at the statistics reveals why. Technological and natural disasters were reported to have killed some 752,000 people in the 1990s (IFRC, 2001). Over the same period, conflict is estimated to have claimed the lives of between 822,000 and 2.9 million people (Murray, 2002). So, even according to the most conservative calculation, wars are far more lethal than disasters and may kill up to four times as many people. They are no footnote.

The critical issue, though, is that the code omits any specific reference to neutrality and its implications. Humanity, impartiality and independence are all there, but neutrality is not. Principle three of the code, '*aid will not be used to further a particular political or religious standpoint*', alludes to neutrality in the action of agencies but fails to apply a similar logic to the advocacy of agencies. At the time of drafting, some of those NGOs that saw themselves primarily as development- and justice-driven were very clear about the fact that they could not subscribe to a code that required them to be neutral. Does the code therefore legitimise actions that would previously have been seen as illegitimate?

The code reflected the reality of the day—that is, that two previously very different approaches to the alleviation of suffering were being combined and distorted. On the one side was the tightly defined and constrained approach of the ICRC. It was clear that its mission was to alleviate suffering here and now and to do so in a manner that shied away from any actions that might cause warring parties to regard them as partisan.

On the other side was relief as an extension of community-based development, an approach more in tune with the ideology and products of the NGO community. For many NGOs, the ideals of justice, democracy, human rights, sustainable development and relief of suffering, constitute a logical package. In this approach neutrality is rarely mentioned, and in its place is a concern to address causes, to seek to remove people from future vulnerability.

It is not that one approach is right and the other wrong. Both are legitimate, but they are not the same thing. The 'developmentalist' approach accepts a participatory role for the aid agency in the local struggle, thus allowing it to engage in justice issues and disaster and conflict prevention. However, it also means that, as participants, such aid agencies have lost their neutrality and are as much a part of any ongoing conflict as any other party on the ground. As Slim points out in a 2004 opinion paper on Iraq, 'there is a considerable overlap of moral ends between the Coalition, humanitarian, human rights and development agencies in Iraq and Afghanistan' (Slim, 2004). With such an overlap neutrality is a non sequitur.

Writing in the *World Disasters Report 2003: Focus on Ethics in Aid*, Slim further outlined the dilemma succinctly:

[The Code of Conduct] characterizes the humanitarian imperative (immediate relief of suffering) as the priority, while the subsequent principles of impartiality, non-political action and independence help ensure this can be achieved. But the Code also commits its signatories to respect culture, build local capacities, encourage participation, reduce vulnerabilities and be fully accountable. This is much more ambitious than simply alleviating suffering.

But deeper engagement with people's lives brings moral risks. During conflicts, encouraging participation may mean negotiating with armed groups, which puts agencies' neutrality or independence at risk. In natural disasters, addressing vulnerability can mean addressing land rights and political exclusion – again, threatening neutrality. Agencies also risk promising local people more than they can deliver (Slim, 2003).

The strict humanitarian approach shies away from root causes, justice matters and political rights and concentrates only on the alleviation of present suffering and the protection of war victims. As Harroff-Tavel of the ICRC put it in a 2003 article, 'It is because we [the ICRC] refuse to accept a world torn apart by conflicts of interest, ideology and civilization that we strive to convince all parties that our action is impartial and cannot in any way be construed otherwise. This is our way of building bridges in a highly polarized world. People are not born neutral, they choose to become so' (Harroff-Tavel, 2003).

The doctrine is constructed to gain the trust of all and thus gain access to war victims.

And here is the crux of the problem. When the ICRC and MSF (which operates in accordance with a very similar philosophy) were the only ones seeking to transport humanitarian aid into war zones, the methodology worked. However, now that there are many agencies, of many persuasions, seeking to work in war zones, it has become increasingly difficult for warring parties and local communities to distinguish between neutral humanitarians and partisan or justice-driven actors. Trust breaks down, access is deigned and the alleviation of suffering is sacrificed for the greater good of long-term solutions.

The question we need to ask is: can we have our cake and eat it? Can we have both approaches to aid being carried out by expatriate-based organisations in the same arena and yet preserve the trust and access needed to provide immediate relief from suffering? Maxwell (1999) makes a persuasive case—based on CARE's work in 'chronically vulnerable areas' of East Africa, where communities fluctuate between conflict and less conflict, between emergency and non-emergency interventions—that many of the root causes of vulnerability can be addressed without jeopardising one's trust-based relationships with warring parties. Maxwell also demonstrates that this approach requires a high degree of understanding of the culture and politics of a conflict zone.

The overarching principle of humanity, as originally articulated by Pictet (1979), which calls on the Red Cross to 'prevent and alleviate suffering' (emphasis added), has been read by some as a justification for a greater role in addressing the causes of suffering. Pictet, though, was reflecting on the work of the Red Cross in its totality, not specifically in relation to the provision of assistance in war zones.

Finally let us look at the third critique of the code, which claims that far from ‘cleaning up’ the humanitarian act, it effectively deregulated it. Nicholas Stockton, now the Executive Director of HAP-International, has articulated this argument well in a series of papers and presentations (Stockton, 2000; 2002).

Prior to the emergence of the code, humanitarian aid—meaning assistance *and* protection in war zones—was (and still is) regulated by IHL and specifically the Geneva Conventions. The first Convention of 1864 was very specific in its wording, requiring that ambulances and hospitals—the humanitarian assistance of the day—should be neutral and that that neutrality should be respected. In the 1949 Convention, the word neutrality is not used. In its place, the Convention, in Common Article 3, asserts that ‘an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict’ (ICRC, 1949), and goes on to say in Common Article 9 that it may, ‘subject to the consent of the Parties to [the] conflict concerned, undertake actions for the protection of wounded and sick, medical personnel and chaplains, and for their relief’. The Convention makes it clear that the concept of neutrality is part and parcel of the post-Second World War definition of impartiality.

The point to take away from this is that the Conventions presuppose neutrality to be a prerequisite of agencies engaging in humanitarian action, and that humanitarian action is understood to have limited and specific goals. The 1977 Second Additional Protocol, which deals with non-international armed conflicts, reiterates this theme. ‘If the civilian population is suffering undue hardship . . . relief actions for the civilian population which are of an *exclusively humanitarian and impartial nature* and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned’ (ICRC, 1977).

Harroff-Tavel has drawn attention to the 1986 case of the International Court of Justice (ICJ) regarding military and paramilitary activities in and against Nicaragua. The ICJ’s judgment refers to non-discrimination in defining humanitarian assistance limited ‘to the purposes hallowed in the practice of the Red Cross’, that is, to prevent and alleviate humanitarian suffering. Harroff-Tavel concludes from this that: ‘Humanitarian action, does not need to be “neutral”, but to have a precise objective and to be given without discrimination. Neutrality, as it is currently used, applies to actors’.³

Thus, until the end of the Cold War, Boutros Boutros-Ghali’s *Agenda for Peace* and the Code of Conduct, humanitarian action was a tightly defined and highly regulated endeavour. Then, as Stockton puts it, ‘The publication of the Code of Conduct . . . represented an important step in re-writing the quasi-official rules of “humanitarianism”, as these now appeared to allow peace-builders, human rights campaigners and all manner of development workers to shelter under the protective umbrella of International Humanitarian Law, the maintenance of which is the duty of states and “controlling authorities”’ (Stockton, 2002).

This deregulation made it possible for former US Secretary of State Colin Powell to declare that he was ‘serious about making sure we have the best relationship with the NGOs who are such a force multiplier for us, such an important part of our combat team’ (Powell, 2001).

One wonders why nation states would sanction, as they appeared to do at the 26th International Conference of the Red Cross and Red Crescent in 1995, such a free-for-all of the largely northern-based NGOs. Well, actually, there was a caveat. The preamble to the resolution welcoming the code reaffirms ‘the right of humanitarian agencies—abiding by the principles of humanity, *neutrality*, impartiality and independence—to have access to victims’ (emphasis added) (ICRC, 1995).

The reality is that agencies, and selective governments, have used the code and their acceptance of it, almost as a certificate of authenticity and competence. Its very wording invited deregulation: ‘*wherever possible* we shall base the provision of relief aid upon a thorough assessment’; ‘*Notwithstanding* the right of NGHAs [non-governmental humanitarian agencies] to espouse particular political or religious opinions’; and ‘*Endeavor* not to act as instruments of government foreign policy’.

The code today

Where does this leave us now: older and wiser, with ten years of hindsight? Today, I believe that we need the code more than ever before, although we need to take account of its shortcomings and to reinforce it to deal with the complexity of the contemporary operating environment and what many perceive as the growing threats to independent and impartial humanitarian action.

The code was put together in a context where the main threat to humanitarian legitimacy was perceived as internal. It was about cleaning up our act. That challenge remains, but today humanitarianism also confronts mounting external threats. Three key concerns can be discerned.

The challenge to universalism

First, humanitarianism is premised on the belief that all peoples have the same right to life-saving assistance and protection in crises. That is, in conflict and crisis there are innocent parties that deserve protection from the chaos around them. The Frankenstein-like distortion of Islam by al-Qaeda and the distortion of libertarianism by the administration of US President George W. Bush challenge that notion. Humanitarians need to resist fiercely the doctrine of ‘you are either with us or against us’. Their allegiance should be to those caught in the middle. The murder of 18 US Marines in Somalia in 1993 and its coverage on television encouraged the US public to see people affected by famine and crisis as populations that should be considered dangerous to Americans.

Humanitarians have to fight this depiction—by both sides—tooth and nail. There are universal values and rights, there are universal norms of humanity, and it is the absolute duty of humanitarians to stand up and defend them.

The challenge of normalcy

The second challenge, alluded to above, is that of normalcy. This takes two forms, both of which are essentially the province of the cynic. The first holds that suffering is inevitable,

that the 'basket case' of Africa will always be with us, that progress will have its casualties but in the long run will serve the greater good, and that even if you feel uncomfortable about all the suffering you see on the television, you cannot do anything about it. Western populations' steady disengagement from, and disillusionment with, their political systems, witnessed by the ever decreasing voter turnout rate and a sense of inevitability with respect to economic cycles, are gradually disempowering the natural support base of humanitarian action. The code makes a point of highlighting the vital role of the voluntary support of concerned individuals in humanitarian action. If humanitarians want to retain this backing, they need to show that agencies can and do make a difference, that suffering only happens because humanity allows it to occur. It is significant that the outpouring of compassion for the victims of the December 2004 tsunami was triggered by a disaster that required little political analysis and one in which the victims were undoubtedly not to blame for their plight. The many millions who have died and suffered in the DRC have witnessed no such outpouring of compassion. The cynics have not won entirely.

The second point of cynicism holds that all institutions are fair game for manipulation. In Afghanistan today, there is hardly a single local institution, village committee, police unit or marketing system which is not influenced in one way or another by warlords (Mazurana et al., 2003). The collapse of Enron offers a similar example in the West. Lasch argues that democracy in the US is most threatened today not by terrorism but by the increasingly global and mobile elites who refuse to accept the limits and ties of nation, state and community. They isolate themselves in their gated communities, private schools and clubs, abandon the middle class and betray the basic ideals of a democracy of, for and by the people (Lasch, 1996).

Occidentalism

Finally, we are beginning to see today an inevitable backlash against corporate growth, against the urban elite and the glossy unattainable world of the television advert, and the championing of what, in another time, we would have called bourgeois values. Buruma and Margalit, in *Occidentalism: the West in the Eyes of its Enemies*, do an excellent job of unpacking the history, the nature and the rather frightening possibilities for this backlash in future (Buruma and Margalit, 2004). As they show, this is not just an anti-capitalism rant. It is about the dehumanising nature of poverty-stricken city slums, the perceived mediocrity of Western life with its lack of heroism and the ability of scientific thought to reduce everything to numbers but to see nothing of the spiritual, the dismissal of gods and faith, replaced by prosperity and cynicism. This backlash, which manifests itself in explicit and tacit support for al-Qaeda and the more extreme fringes of the anti-globalisation movement, is violent, nihilist and without mercy. It is a warring party that is not open to negotiation, and is not interested in reaching compromise or allowing a secondary humanitarian agenda.

It is here where the most urgent and fundamental challenge to humanitarianism lies. Humanitarianism is cast in the mould of the West. It may hold that its values are universal, but funding, staffing and methods are predominantly Western. The challenge

is to unhitch humanitarianism from its Western moorings and to demonstrate through consistent independent, impartial and neutral action that it seeks to serve the victim and only the victim.

A redrafting of the code?

For all of these reasons, for the good it has done, for the critiques it has shouldered and the external challenges it faces, the time is ripe to reappraise the Code of Conduct.

At an international conference in The Hague, Netherlands, in September 2004, over 100 aid agencies came together to reflect on present usage and the future shape of the code. Their conclusions fall into three groupings.

First, the conference expressed real concern about redrafting the code. With nearly 300 signatories in place and 10 years of familiarity, redrafting would most likely weaken, not strengthen, the code and its application.

Second, agencies recognised that the code has many weaknesses: it makes no reference to protection; it passes lightly over gender issues and skirts around the dilemma of respecting local culture while also respecting universal human rights; and it makes no specific reference to the place of neutrality in humanitarian assistance during conflicts and thus avoids the apparent paradox of agencies wishing to be both justice-driven and neutral in conflict situations.

Third, although the code can be said to be 'owned' by the agencies that have signed it, and possibly by those at the 1995 conference that welcomed it, it really has no home and no mechanisms for reviewing the integrity of its signatories with respect to their actions.

Updating the code will not be easy. How, for example, does one reconcile multi-mandate agencies that wish to work in disaster relief, and maybe conflict relief, guided by the code, and carry out justice- and development-based activities in the same country at the same time? Will they have to make choices about which programmes to forego? Can they switch from being justice-driven in peacetime to neutrality-driven in a time of war? How does one address the belief system of an Islamic response agency that sees no philosophical boundaries between charitable acts, theology and the body politic? And, more important, how can humanitarians reconcile the almost universal desire to free humanitarianism of its ex-patriot trappings through the inclusion of local capacities and organisations with the near impossible goal of remaining neutral when the conflict is in your country and killing your family members and friends?

One approach, ongoing in 2005, which may be able to resolve the dilemma of updating the code while not altering its text, is being undertaken at the behest of the International Council of Voluntary Agencies (ICVA) and the SCHR. The ICVA and the SCHR have commissioned a commentary to the code, modelled on Jean Pictet's commentary to the Red Cross Fundamental Principles (Pictet, 1979). Such a commentary would allow for the issues cited above to be unpacked and elaborated upon, and for the inclusion of guidance on how to use the code, while not altering its wording or content.

The more thorny issue of validation of usage of the code remains a challenge. The code needs a body whose job it is to protect the integrity of the code. At present, the

IFRC acts as a repository for the code's signatories, much as the Swiss state acts as a repository for the Geneva Convention signatories. Unlike IHL, however, the code has no world body, in the shape of the UN, to call its signatories to account, and little history of peer pressure among signatories to hold each other to account. Ultimately, the lack of such a mechanism, or simply such a recognised obligation on the part of code signatories, will lead to its demise.

This is not a thinly disguised call to go back to the 'good old days', when only the ICRC worked in conflict zones, natural disaster relief had a definite end point and development was a whole different ball game. Nor is it a call for the regulation and constraint of NGO action. Rather, it is an attempt to ensure that future war victims have the chance to receive effective life-saving assistance and protection, that natural disaster victims receive assistance that is predicated on both the alleviation of suffering and building a better future, and that those agencies that have the motivation to carry out development, peacebuilding and democracy initiatives in war zones, do so with due diligence, while being fully aware that they do not have the protection of IHL but do have the freedom to fight for justice, liberty and their vision of a better future.

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Endnotes

- ¹ The author of this paper, Peter Walker, was the officer within the IFRC charged with developing the code, and went on to be one of the principle drafters of the final Code of Conduct.
- ² The Sphere Project (<http://www.sphereproject.org>) developed specific standards, indicators and guidelines regarding the minimum acceptable standards of humanitarian action.
- ³ Personal communication with the author, 2004.

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