

**THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY**

**Review Meeting**

**September 2001: Impacts on Human Rights Work**

**Oxford, 20 February 2002**

**CLAIMING A HUMANITARIAN IMPERATIVE:  
NGOs AND THE CULTIVATION OF HUMANITARIAN DUTY\***

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1. Reflecting on the turmoil of his age from his country estate in the late 1570s, the great founder of the modern essay, Michel de Montaigne, observed how the number of people writing and the sheer volume of their output seems to increase inordinately at times of social and political crisis when brutality, collapse and change are on the rise. “Scribbling seems to be one of the symptoms of an age of excess” he wrote. “When did we ever write so much as since the beginnings of our Civil Wars?”<sup>1</sup>
2. The 1990s and the first two years of this new century have similarly been a time of deep change resulting in many parts of the world in the extreme violence of civil war. And, within the humanitarian field at least, Montaigne seems to have been proved right. The last 10 years have indeed produced a mass of new “scribbling” about humanitarianism, probably to levels unprecedented in the modern history of the humanitarian movement for restraint in war. This great wave of writing has swelled so large because so many new people have found it so important to address the critical problem of the limits to human violence in armed conflict, and because the international community has frequently been in agreement about the need to intervene.
3. This analysis of the causes of contemporary armed conflicts and of urgent policy making around international response to them has led to a large new literature on war and humanitarian action. While a small core group of scholars, international lawyers and humanitarian practitioners have always written on the subject, they have now been joined by many more. The greater part of recent humanitarian literature has grown out of an extraordinary confluence of different streams of academic study that have simultaneously converged on the question of war and international

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\* Paper presented at the Seventh Annual Conference of Webster University on Humanitarian Values for the Twenty-First Century, Geneva 21-22 February 2002.

<sup>1</sup> Michel de Montaigne, On Vanity, in Michael Screech (ed.) *The Complete Essays*, Penguin, London, 1991, p1071).

policy since the early 1990s<sup>2</sup>. The academic and professional context for the discussion of armed conflict and humanitarianism has widened dramatically. Scholars and policy analysts from the large and well-resourced fields of security studies, political science, economics, international law, international relations and psychology have turned their attention to these questions. So too have military analysts, peace studies specialists and human rights scholars as well diplomats and NGO activists from a variety of different traditions. In the last 10 years, all these different disciplinary groups have found themselves attending conferences together, reading each other's journals and contributing alongside one another in edited volumes. In this process, the fundamental values of the humanitarian ethic and the principles of its practical application have been "rediscovered", held up to the light, scrutinised, dismissed or reaffirmed.

4. One very important part of this re-writing of humanitarianism has been lead determinedly by the community of international NGOs concerned with humanitarian action. Since the early 1990s, while scholars have been theorising and arguing, a core group of international NGO activists have sought to re-affirm the humanitarian ethic in three particularly important documents which have almost come to operate as "soft law" in the NGO community: the Code of Conduct; the Humanitarian Charter, and the SPHERE Minimum Standards in Disaster Response. Although initially seen as a rigorous attempt to "put their house in order", this process of humanitarian writing has resulted in a deeper process of explicit re-commitment to humanitarian values. The resulting documents remain contested within the NGO community itself. But they form an important - possibly vanguard movement - of a distinct interpretation of the humanitarian ethic based on rights and, as this paper will argue, increasingly on duties.
5. Recognition of an explicitly rights-based expression of humanitarian values has been gathering pace in recent years<sup>3</sup>. But such debates are often preoccupied with arguing for or against rights rather than exploring their resulting duties. Analysis of the humanitarian ethic in terms of deontological and consequentialist moral positions has also been increasingly made in recent years in the English tradition<sup>4</sup>. This paper seeks to contribute further to these discussions by observing - on paper at least - the determination of international NGOs to emphasise universal duty-based humanitarianism. In some ways, these key NGO documents seem to have stolen a march on the rights debate by focusing very practically on duties. Starting with the Code of Conduct's idea of the "humanitarian imperative", the paper will explore the emerging ideology of international humanitarian duty, obligation and responsibility that lies at the heart of much of the current written confessions of humanitarian values by NGOs.
6. In looking at this NGO writing or re-writing, it is important to recognise the perennial distinction between paper and practice. Writing things is not the same as doing those things; nor does writing something mean that the things one writes about actually exist. Also, of course, one's readers might get the wrong impression of what one writes or deliberately chose to interpret it at odds with the intention of the writer. As any human rights activist or humanitarian lawyer will testify, writing rights and detailing duties is no short-cut to the realisation of those rights and the meeting of those duties. Yet, the wonderful thing about writing is that it can sometimes be the beginning of things. In writing new formal documents about humanitarian duties and responsibilities in war, NGOs may just help to bring these obligations

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<sup>2</sup> See Hugo Slim, *The Humanitarian Ethic in the 1990s*, PhD submission by published work, Oxford Brookes University, March 2002, chapter one.

<sup>3</sup> See for example Hugo Slim, *Not Philanthropy But Rights: The Proper Politicisation of Humanitarian Philosophy*, *International Journal of Human Rights*, Vol. 6(2), 2002, Frank Cass, London.

<sup>4</sup> Mark Duffield, *Global Governance and the New Wars*, Zed Books, London, 2001, ch.4; Des Gasper, *Drawing a Line: Ethical and Political Strategies in Complex Emergency Assistance*, *European Journal of Development Research*, Vol. 11(2), Frank Cass, London, 1999; Hugo Slim, *Doing the Right Thing: Relief Agencies, Moral Dilemmas and Moral Responsibility in Political Emergencies and War*, *Disasters* Vol. 21(3), Blackwells, Oxford, 1997.

into political existence, or at least to ensure that the perpetually fragile sense of their moral reality is kept alive for a new generation.

## THE NEW EMPHASIS ON ETHICAL IMPERATIVE AND DUTY

7. The first document to emerge from the international NGO community in the 1990s was the 10 point Code of Conduct<sup>5</sup>. This was prepared jointly by the International Federation of the Red Cross and Red Crescent Society and the ICRC in consultation with the members of the Steering Committee for Humanitarian Response (SCHR)<sup>6</sup>. Although the Code of Conduct was envisaged primarily as relating to relief in natural disasters, it has always been seen to apply to NGO humanitarian work in armed conflicts too. It is now increasingly used as a criterion in the planning and evaluation of NGO programming in and around war and is also regarded as a central measure of NGO performance by the new Humanitarian Accountability Project. The first four articles of the Code are key restatements or re-workings of the first four principles of the Red Cross. The last six articles are more in the nature of statements of good practice in relief methodology. For the purposes of this paper, it is the first article of the Code that is of particular interest - emphasising more than ever before the notion of humanitarian duty:

“The Humanitarian *imperative* (my italics) comes first - the right to receive humanitarian assistance, and to offer it, is a fundamental humanitarian principle which should be enjoyed by all citizens of all countries. As members of the international community, we recognise our *obligation* (my italics) to provide humanitarian assistance wherever it is needed. Hence the need for unimpeded access to affected populations is of fundamental importance in exercising that *responsibility*” (my italics)<sup>7</sup>.

8. Long before 1992 when the Code began to be developed, the originally French tradition of *sans frontier* humanitarianism had advocated a *droit d'ingérence* but the new “imperative” form of humanitarian ethic with its emphasis on compulsory obligation burst on the ears of many humanitarians as strident and even extreme. Some of those who were used to delicately negotiating humanitarian access found it strangely imperious while others who were becoming increasingly aware of the ambiguity of humanitarian aid and its sometimes dangerous consequences found it reckless and lacking in operational nuance<sup>8</sup>.
9. Those choosing the phrase “humanitarian imperative” were obviously determined to reinstate emphatically the principle of humanity which they saw as being so undermined in practice around the world - first by the perpetrators of its violation, secondly by reluctant donor governments and finally, perhaps, by more consequentialist observers emphasising the potentially harmful effects of humanitarian aid in certain situations. But in their attempt to emphasise humanitarian values they may also have begun to transform the humanitarian ethic in a significant way. Their determination to revitalise humanitarianism with a sense of ethical imperative began a moral shift towards a categorical insistence on humanitarian aid and protection that affirmed it as much as a supreme duty as a right. In doing so, they also began to identify themselves and others as particular duty-bearers. In the body of the Code they identify their own “obligations” and “responsibilities” in universal and absolutist terms and then spell

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<sup>5</sup> Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, in SHERE handbook, pp312-322, Oxfam, Oxford, 2000. The Code has 160 NGOs signed up to it as at February 2002.

<sup>6</sup> Members Include: Caritas Internationalis, Catholic Relief Services, International Federation of Red Cross and Red Crescent Societies, International Save the Children Alliance, Lutheran World Federation, Oxfam and The World Council of Churches. The International Committee of the Red Cross has observer status.

<sup>7</sup> Code of Conduct, op cit., article one.

<sup>8</sup> See for example Hugo Slim, *Relief Agencies and Moral Standing in War: Principles of Humanity, Impartiality, Neutrality and Solidarity*, Development in Practice 7(4), Oxfam, Oxford; Thomas Weiss and Cindy Collins, *Humanitarian Challenges and Intervention*, Reinner, Boulder, p.99.

them out in principle in the following articles. In the three Annexes of the Code they then identify other duty-bearers (affected governments, donor governments and inter-governmental organisations) and also spell out their duties in general terms.

10. In the SPHERE minimum standards that followed, the same core group of international NGOs then canvassed many other NGO and academic personnel to produce precise and quantifiable standards to describe what their humanitarian duty would look like in practice. The resulting standards focus on the five key “life-sustaining” fields of water and sanitation; nutrition; food aid; shelter and site planning, and health. These standards seek not simply to ensure people’s survival but to enable a “life with dignity”. The elaboration of these technical standards and their many “key indicators” served to develop the idea of humanitarian duty still further. It complemented the identification of key *duty-bearers* in the process of humanitarian action by specifying the actual *content* of particular humanitarian duties. Sphere standards are not just the stuff of general moral obligation but present very precise latrine-based ethics. As many have observed, this is an extraordinary attempt too specify rights and duties that is unprecedented in international law around human rights, humanitarian law and refugee law.
11. If the Code of Conduct asserts the moral imperative of humanitarian duty and the Sphere standards specify the content of some of that duty, then the Humanitarian Charter underwrites both with rights and responsibilities set out in law - international law - so acknowledging the idea of legal duties<sup>10</sup>. The Humanitarian Charter (once again drafted by that same core group of international NGOs and then discussed with others across the NGO spectrum) is rooted firmly in human rights law, humanitarian law and refugee law which give explicit legal status to its humanitarian values of restraint and protection in “calamity or armed conflict”. And while these values are expressed in terms of rights, there is once again a resounding emphasis on the notion of duty in its text. The Humanitarian Charter is:

“based on agencies’ appreciation of their own *ethical obligations* (my italics), and reflects the rights and *duties* (my italics) enshrined in international law in respect of which states and other parties have established *obligations* (my italics) ...and reaffirms our belief in the humanitarian imperative and its primacy”.

12. The Charter explicitly emphasises “a corresponding duty on others” to take steps to preserve life where it is threatened. In Section 2 on “roles and responsibilities” the duties of states or warring parties are given primary status and humanitarian agency duties only kick in when such parties either cannot or will not meet their humanitarian obligations under law.

## THE IMPLICATIONS OF ETHICAL IMPERATIVES

13. The fundamental moral tone of these three NGO pronouncements on humanitarianism casts humanitarian values and humanitarian actions as morally absolute. The term “humanitarian imperative” reverberates with Immanuel Kant’s famous idea of the “categorical imperative”. As a result, it might be wise to look at what such imperatives mean in moral terms and to get a sense of the kind of ethical position with which many international NGOs are aligning themselves in their recent humanitarian statements.
14. Kant’s view is that moral imperatives are necessary in human affairs because they are essential in guiding a wayward human nature which all too often tends towards something other than what is good. Kant begins his theory of morality with the idea of the “will” and the “principle of

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<sup>9</sup> Sphere Project, Humanitarian Charter and Minimum Standards in Disaster Response, Oxfam, Oxford, 2000.

<sup>10</sup> The Humanitarian Charter, in Sphere Project op cit. pp 6-10.

volition”.<sup>11</sup> Only those good actions that we really and unambiguously “will” have true moral worth. But not many of us have the kind of nature that is able to will good actions on a consistent basis. So, when what we “would” do is not always what we should do then we need the help of imperatives that tell us clearly what we “ought” to do. We need what Kant calls a “categorical imperative” to instruct us. But Kant’s particular “oughts” are distinctive because they are absolute. They are what he calls “unconditioned oughts”.

15. Kant’s idea of duty determines that something is always good to do regardless of any conditions. These imperatives are supreme moral principles that make for absolute duties and obvious oughts. Their goodness is not dependent on their outcomes. This is moral thinking governed by a categorical “must” not a hypothetical “if”. Operating on imperatives means that I do something because it is always good not because I think that “if” I do it then good may come. Kant sums up the difference as follows:
16. “Now all imperatives command either hypothetically or categorically. The former represent the practical necessity of a possible action as a means for attaining something else that one wants (or may possibly want). The categorical imperative would be one which represented an action as objectively necessary in itself, without reference to another end.”<sup>12</sup>
17. From this brief encounter with Kant, it is fairly obvious how international NGOs who have signed up to these three documents understand humanitarian values today. They claim clearly that being humanitarian is a categorical imperative. It is an end in itself. It is an unconditioned ought and must never be subject to conditions. There are no “ifs” in the humanitarian imperative. From this moral reasoning flows the idea of humanitarian duties that always exist regardless of circumstances or of aspirations around other competing moral ends. In other words, a Kantian humanitarian would have a lot of problems with the suspension of a humanitarian programme as a hypothetical means to leverage a good political outcome on democracy or women’s rights. Equally, in the context of the new “war on terrorism”, such a humanitarian would also find grave moral flaws in any strategy that stopped or compromised humanitarian action on the basis of some wider hypothetical arguments around counter-terrorism imperatives.
18. Also from this idea of the humanitarian imperative flows the notion of duty-sharing so prominent in the Code, the Charter and Sphere. If a person, a government or an organisation cannot or will not abide by a humanitarian duty then that duty automatically falls to others. As a categorical imperative, humanitarian duty is boundless. We all ought to do it.
19. The explicit and categorical commitment to humanitarian values in these three professions of humanitarian faith is commendable in its frankness. These NGO documents certainly make a stand. This is in contrast to much recent academic and policy “scribbling” that has often focused on critical analysis without presenting a truly alternative vision of humanitarian action. Nevertheless, such an imperative approach to humanitarian duty does raise some questions that require quite urgent answers if this duty-based position is not to be stereotyped and misrepresented. Three particular questions come to mind:
  - First, is this imperative approach really some sort of blinkered humanitarian fundamentalism?

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<sup>11</sup> Immanuel Kant, 1785, *Grounding for the Metaphysics of Morals*, translated by James Ellington, Hackett, Indianapolis, 1983, p13.

<sup>12</sup> *Ibid.* p25.

- Secondly, is this NGO approach likely to colonise humanitarian responsibility still further and institutionalise such duties within a select group of powerful humanitarian organisations?
  - Thirdly, does such an explicit emphasis on duty make it any more likely that governments and non-state actors will actually do their humanitarian duty in armed conflict?
20. The rest of the paper will try and give some satisfactory answers to these questions but does so in full realisation they are not the only questions that can be levelled at the imperative position as it stands.

### **HUMANITARIAN FUNDAMENTALISM?**

21. If fundamentalism is best understood as a very contemporary and innovative reaction to the challenges of modernism by making a radical appeal to an exaggerated tradition, religious texts, strict rules and moral absolutes, then are these three NGO documents the expression of a new humanitarian fundamentalism?<sup>13</sup> Has modern or post-modern humanitarian work just got so complicated and disorientating that some simple radicalism is required? Some might think that the absolutist tone of the Code's first article is positively extremist. It might be possible to consider the detailed standards of the Sphere standards on excreta disposal and personal hygiene to be as religiously prescriptive as some of the bizarre codes of the Taliban. The constant insistence on personal responsibility and the endless citing of chapter and verse texts in the Humanitarian Charter might be reminiscent of a Christian TV evangelist. And the exacting demands of Sphere's nutrition standards could read as something straight out of the food laws in Leviticus!
22. Perhaps the main charges of humanitarian fundamentalism could be levelled by humanitarian pragmatists and ethical consequentialists who see the humanitarian imperative and its specification of humanitarian duties as being deliberately blind to the variety and complexities of their operational context. The pragmatist criticism claims that these NGO documents have become simultaneously obsessed with universals and minutiae to claim an equivalent moral and technical response in every situation<sup>14</sup>. Instead, they would argue that humanitarian action must always be carefully judged within the very specific political, practical and strategic choices available in every operation. This necessarily nuanced operational approach is unlikely to result in the idealised uniformity of the new documents. Alongside this pragmatic critique is that of the consequentialists – humanitarians and policy-makers who judge it ridiculous to talk of a consistent humanitarian imperative that takes no account of how humanitarian work can be used instrumentally to play into the greater good or to increase the harm in a given situation.
23. These two main criticisms are important but they are easily rebuffed. A careful reading of the documents makes it clear that the writers of these texts are very much alive to differences in operational contexts. The introduction to Sphere is explicit in the fact that the “ability to achieve the minimum standards will depend on a range of factors, some of which are within their control, while others such as political and security factors, lie outside their control...availability of sufficient financial, human and material resources is also essential”.<sup>15</sup> This recognition is also

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<sup>13</sup> For such an understanding of fundamentalism, see Youssef Choueiri, *Islamic Fundamentalism*, revised edition, Pinter, London, 1997.

<sup>14</sup> For an excellent summary of the range of criticisms levelled against Sphere etc see Koenraad Van Brabant, *Regaining Perspective: The Debate Over Quality Assurance and Accountability*, Humanitarian Exchange, October 2000, ODI, London.

<sup>15</sup> Sphere, *op cit.* p2

repeated in the Humanitarian Charter<sup>16</sup> and is the basis of the differentiation of humanitarian responsibility in section 2. So, it would be wrong to present the idea of the humanitarian imperative and its specification of duties as absurdly idealistic and resistant to context. It is well aware of context and of the limits of what “can” be done. But it is equally well aware of what “ought” to be done and so what ought to be “willed”. In Kantian terms, actively striving to will what ought to be done is highly valued. Indeed, to Kant, there is no greater moral worth than genuinely willing the good regardless of its effect:

“Even if, by some especially unfortunate fate or by the niggardly provision of stepmotherly nature [or one might add by the constant violations of warring parties], this will should be wholly lacking in the power to accomplish its purpose; if with the greatest of effort it should yet achieve nothing, and only the good will should remain (not, to be sure, as a mere wish but as the summoning of all the means in our power), yet would it, like a jewel, still shine by its own light as something which has its full value in itself. Its usefulness or fruitlessness can neither augment nor diminish this value.”<sup>17</sup>

24. For Kantian NGO humanitarians, the fact that their documents spell out what ought to be done and seek to activate humanitarian will in this direction is morally important. It does not mean that they are not realistic or pragmatic in a given context. It does not mean that they do not recognise that other Kantian reality of their “imperfect power”.
25. Neither do these texts lay their signatory NGOs open to the consequentialists’ charge that their humanitarian imperative implies that they think it right simply to dish out aid regardless of the consequences. The imperative position means that they have an unconditioned humanitarian ought but it need not be a careless one. Indeed, what Des Gasper has described as “an ethics of virtue” and “an ethics of care” in humanitarian work is crucial to the three documents in question. Gasper describes this ethics of care “a combination of general rules [acting as] prompts and guidelines that must be selected and used intelligently and with a good spirit”<sup>18</sup>. Kant would tend to agree with this idea of complementing imperatives with the cultivation of practical virtues like courage and prudence. He sees virtues as the “moral strength” that enables a person (or an organisation) to see through ethical imperatives and so implement duties<sup>19</sup>.
26. The three NGO texts are full of a demand for “an ethics of care” in humanitarian work. Articles 2-10 of the Code of Conduct are all concerned with careful (and not just caring) humanitarian action. The core humanitarian operating principles of articles 2-4 (impartiality, the avoidance of political bias and independence) are all practical ways of being careful in doing what one ought to do as one responds to the humanitarian imperative. Judicious care in matters of culture, participation, mitigation, transparency and the representation are all taken very seriously in articles 5-10. Similarly, a duty of care is explicitly invoked around implementing the humanitarian imperative in the Humanitarian Charter and Sphere. Section 2.4 of the charter notes how the failure of warring parties to respect humanitarian operations and so to abuse aid may:

“potentially render civilians more vulnerable to attack, or may on occasion bring unintended advantage to one or more of the warring parties. We are committed to minimising any such adverse effects of our interventions in so far as this is consistent with the obligations outlined above”.<sup>20</sup>

27. This is the Do No Harm clause of the Charter that shows the influence of the work of Mary Anderson and others exploring methods political economy analysis of aid in war.<sup>21</sup> It is repeated

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<sup>16</sup> Humanitarian Charter op cit. p9.

<sup>17</sup> Kant, op cit., p8.

<sup>18</sup> Gasper, op cit.

<sup>19</sup> Immanuel Kant, *Metaphysical Principles of Virtue*, 1797, translated by James Ellington, Hackett, Indianapolis, p64.

<sup>20</sup> Humanitarian Charter, op cit. p8.

in the introduction to the Sphere standards. The notion of an ethics of care also runs throughout the standards themselves – particularly the analysis standards that embody particular care-taking in implementing the humanitarian imperative. For example, the food aid analysis standards particularly emphasise an attention to “the impacts of food aid programmes...as critical” and specifically affirm that “agencies have a duty to monitor how food aid and programme funds are used”.<sup>22</sup>

28. This all seems to suggest that any consequentialist critiques of the imperative approach are not really justified. With such an ethics of care complementing the imperative approach to humanitarian duty, it is not possible to characterise NGOs that take this approach as deontological fanatics giving out aid with their heads buried in the sand or their eyes blinkered to the nature of their actions. Instead it shows that, although an ethical imperative, this view of humanitarian action is still careful in the best sense of the word. But such care does not make this form of humanitarianism *de facto* consequentialist. Operating carefully is very different to operating conditionally in the light of some other good. This kind of ethic which is prepared to make humanitarian action a hypothetical imperative (in Kantian terms) conditional on a greater good of peace or political progress is of a very different order ethically.<sup>23</sup> Mark Duffield has wisely warned against “the rise of consequentialist ethics” around humanitarian action especially as operated by western donor governments.<sup>24</sup> Such a morality that always focused on what it regards as greater political goods than humanitarian goods, makes the humanitarian ethic conditional and instrumental rather than an end in itself. The good thing about the duty-based formulations of the Code, the Charter and Sphere is that they reject both consequentialism and carelessness in humanitarian ethics.

#### COLONISING OR DE-COLONISING HUMANITARIAN RESPONSIBILITY?

29. Several people have observed how these three documents may actually function to restrict future understanding and ownership of humanitarian responsibility<sup>25</sup>. By generating this kind of soft law around themselves so emphatically, it is felt that NGOs may in fact over-identify themselves with the humanitarian imperative and its specific humanitarian duties so that, far from framing it as a duty for others, they will end up colonising the humanitarian ethic as their duty alone. By spelling it out so precisely and writing it down by themselves, they might easily be manoeuvred into taking sole responsibility for it. Rather than passing the buck of humanitarian duty, they will be left holding it. Fiona Terry has summed up this concern: “From Sphere, through the Codes of Conduct and finally to the Ombudsman, the onus of responsibility for assisting vulnerable people shifts from states to humanitarian organisations, and finally to the victims themselves”<sup>26</sup>.
30. Such a view cannot be argued from the texts themselves which at every turn bend over backwards to emphasise the primary humanitarian responsibility of others. Yet, it may still be that the political effect of the texts is that they do indeed run the risk of focusing humanitarian responsibility on NGOs to the exclusion of states and non-state actors. If this is the result, then it will not be because NGOs have not shared their humanitarian responsibility with others but

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<sup>21</sup> Mary Anderson, *Do No Harm: How Aid Can Support Peace or War*, Reinner, Boulder 1999; for a range of see also Philippe Le Billon, *The Political Economy of War: What Relief Agencies Need to Know*, HPN Paper 33, ODI, London, 2000.

<sup>22</sup> Sphere, *op cit.* pp 135 and 142.

<sup>23</sup> See Thomas Weiss, *Principles, Politics and Humanitarian Action*, Ethics and International Relations, Vol. 13, Carnegie, New York, 1999.

<sup>24</sup> Duffield *op cit.*, pp 90-95.

<sup>25</sup> See for example Fiona Terry, *The Limits and Risks of Regulation Mechanisms for Humanitarian Action*, Humanitarian Exchange 17, October 2000; also Hugo Slim, *Sharing A Universal Ethic: The Principle of Humanity in War*, International Journal of Human Rights, 1998.

<sup>26</sup> Fiona Terry, *op cit.* p21.

because they have not done so radically enough. The texts may be clear (and even radical) but they are still written by and built around an elite aristocracy of humanitarian agencies. This is reform rather than radical change. In an important sense, Terry's concerns about the shift of humanitarian responsibility "to the victims themselves" is misconceived. Her fears about where all this obligation might end up - with the people themselves - is in reality where the whole thing needs to start. As many of the NGO leaders of this process admit, the impetus that generated these three significant documents and their vital reaffirmation of the humanitarian ethic has been top-down and predominantly white. But for the important ethics and ideas in the documents to really take place, this top-down process must be joined by a groundswell of popular support for the humanitarian ethic and its duties.

31. The great challenge for the humanitarian ethic and its operating system in the 21<sup>st</sup> century is to de-colonise. There is no doubt that humanitarian action functions in neo-colonial ways. Still largely in the hands of former or current imperial powers (Britain, France and the USA), much humanitarian policy and practice must relinquish some of its power and be challenged by other movements of the humanitarian ethic. While the texts certainly do not intend to colonise humanitarian responsibility and humanitarian action, the power structure behind the texts is still largely neo-colonial. It still tends to dangle the buck of humanitarian duty just beyond the reach of the people. Real ownership of the ethic and resources of the humanitarian imperative needs to be spread more broadly throughout the societies that need it most.

#### CULTIVATING WIDER HUMANITARIAN WILL

32. This naturally brings us on to the last question: does such an explicit emphasis on duty make it any more likely that governments and non-state actors will actually do their humanitarian duty? In other words, is this a form of ethics that just makes humanitarians feel better about the nature of their mission? Or is it a kind of ethics that effectively results in the improved protection of people who have experienced, or imminently face, extreme violations of their rights in armed conflicts? Do the new texts work any more than the old ones?
33. Not surprisingly, Kant has much to say about the doing of duty and sets out four basic approaches to it<sup>27</sup>. The first is simply that you don't do it. The second is that you do your duty but not because you really will yourself to do it but because you are "impelled" to do it for other self-interested reasons. For example, you might pay your tax because you do not want to be fined but not because you want to pay your tax. The third is similar to the second but with a positive rather than negative motive. You do your duty not because you really want to but because you are "inclined" to do it anyway as it is closely aligned with your interests as they stand at the moment. For example, one does not commit suicide because one is happy or you do not commit adultery because you currently have a gorgeous and loving husband who makes you very happy. Kant concludes of the second and third approaches that people operate "in accordance with duty but not from duty".
34. Thus, it is the fourth approach to duty that is the only one of real moral worth according to Kant. This is when you do your duty purely out of duty, on the basis of a good will and in the face of many inclinations *not* to do it. Kant uses the example of suicide again - considering the imperative not to commit suicide as an absolute duty. A person who is in deep despair, overcome with hopeless sorrow and eagerly wishing for death, but who preserves his life without loving it out of duty rather than fear, has a real "moral content" to his duty.
35. These four approaches to duty obviously have direct parallels when thinking about humanitarian duty. If - as their three documents suggest - many NGOs are keen to cultivate humanitarian

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<sup>27</sup> Kant, *Grounding for the Metaphysics of Morals*, op cit. pp 9—11.

duty in a wide array of people, governments, armed non-state actors, social organisations and business corporations, then it is likely that they will be relating to all of the above approaches. Basically, working from Kant, humanitarian NGOs have two types of approach to the cultivation of humanitarian duty in others. First, they can work deeply and determinedly to foster a truly good humanitarian will in these groups and their individuals so that they obey the humanitarian imperative from the goodness of their will and in spite of their other inclinations or compulsions. Many theologians, not least St. Paul, might see this approach as the domain of God rather than NGOs. Yet, an interesting approach of this kind is currently being undertaken in a process to engage non-state actors (NSA) in a land-mine ban. This process seeks to use dialogue, persuasion, support and monitoring to generate a “moral commitment” in NSA decision-makers<sup>28</sup>. Secondly, NGOs can focus on identifying the particular self-interest that might “incline” or “impel” these groups to obey their humanitarian duty. This more tactical approach is perhaps the one most usually pursued.

36. Working to either strategy, the duty-based approach of the humanitarian imperative may have some advantages. Although it is framed in rights terms, the emphasis on duty gives a clear moral commandment which might more easily resonate with human will as well as human interest. Expressed as a moral duty, the humanitarian ethic may travel further across class and culture than more elaborate constructions of rights or principles. But being also based in a framework of rights and law, the idea of humanitarian duty can equally draw on the normative power of law to try and incline or impel in certain situations. Therefore, it seems to be able to express humanitarian values both morally and legally with equal ease. Being ambidextrous in this way may be an enormous advantage when dealing with groups who are prepared to discuss ethics and morality but are not necessarily prepared to respect international law or are wary of the interests in which that law is deemed to function. Yet, the legal framework of duties is appropriate for some groups. Recent experience in making big business more responsible for human rights has shown that the development of a corporation’s good will is slow and not guaranteed. There is thus a need to work on approaches that go “beyond voluntarism” to make people do their duty<sup>29</sup>. Similarly, the recent international commission on humanitarian intervention has also emphasised the notion of state responsibility rather than human rights alone to emphasise a duty to intervene<sup>30</sup>.
37. As Kant has observed, self-regulation is extremely problematic when “everywhere we come upon the dear self” or when we are always building moral projects with “the crooked timber of humanity”. But in the international arena, the power of law to enforce duty is still very problematic. It seems, therefore, that humanitarians will have to continue to work on a mixture of will and self-interest in the cultivation in others of humanitarian duties that they have so clearly affirmed. Ideally, the emphasis would be on making genuine humanitarian will a central ingredient of political will. The ability of NGOs to shape and organise public opinion on humanitarian values and to build globally networked social movements on the limits of war will be crucial to this effort.
38. While they can no doubt cultivate some humanitarian will and encourage the doing of some humanitarian duties, NGOs will only ever be able to do a bit. Nevertheless, in these new documents they have firmly stated their particular moral project and sought to describe it in unprecedented detail. They have set out clearly to do their humanitarian duty for a new generation. Others will have to do theirs. The great advantage of the imperative approach is that it places moral responsibility for humanitarian values on everyone.

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<sup>28</sup> Engaging Non-State Actors in a Landmine Ban, Full conference proceedings, published by the Conference Organisers, Quezon City, Philippines, 2001, pp 6-7.

<sup>29</sup> Beyond Voluntarism: Human Rights and the Developing International Legal Obligations of Companies, International Council of Human Rights Policy, Geneva, 2002.

<sup>30</sup> The Responsibility to Protect, Report of the Commission on Intervention and State Sovereignty, ICISS, 2001.