Meeting 8: Advocates or Aid Workers? Approaches to Human Rights in Humanitarian Crises

Speakers: Anneke Van Woudenberg, Human Rights Watch
Andrew Bonwick, Oxfam

Chair: James Darcy, Overseas Development Institute

Meeting Summary

The first speaker, Anneke Van Woudenberg, made the case for human rights being central to humanitarian assistance. Drawing on her experiences in the Democratic Republic of Congo, she argued that people are now demanding their human rights rather than simply accepting humanitarian assistance. Van Woudenberg stressed that humanitarian actors do not operate within a political vacuum and this makes neutrality inherently difficult and advocacy necessary. The changed context in which humanitarian assistance takes place also has implications for the most appropriate nature of that assistance. In conclusion, Van Woudenberg argued that humanitarian actors should support the promotion of both peace and justice.

For the second speaker, Andrew Bonwick, the fundamental question was not whether human rights are applicable in humanitarian crises but whether they are helpful. Whilst acknowledging the overlap between human rights and humanitarian agendas, Bonwick argued that the humanitarian agenda necessarily focuses on a much narrower set of concerns and this meant choices as to which human rights are prioritised. Humanitarian advocacy is seen as a fundamental part of humanitarian work but this operates on different timescales to direct assistance and does not need to be equated with human rights advocacy. Bonwick discussed the role of law in humanitarian crises, suggesting that it is a tool that humanitarians can use but it is an imperfect one.

The relationship between human rights and humanitarian need was a central theme in the discussion, with the suggestion that the Sphere Project can be a tool for a rights-based approach in practice. The example of women's rights was used to illustrate how a rights perspective and language can add value to an approach based on needs. Another topic of debate was whether or not there is a hierarchy of rights? Some argued that civil and political rights take precedence over economic and social rights in conflict environments. Others suggested that this is a false dichotomy and that it does not reflect priorities on the ground, which arise according to the specific context.

Anneke Van Woudenberg

This topic is one that hugely interests me having worked first for Oxfam and now for Human Rights Watch. It has been interesting to see the difference in approaches and, now that I am using human rights more in my work, I have given a lot of thought to the things that I wish I had done differently when I was a Country Director for Oxfam. I will therefore refer to some of the experiences that I gained in this position and, since it is the area that I know best, most of my concrete examples will be from the Great Lakes Region of Africa and, in particular, the Democratic Republic of Congo (DRC). As you would expect, I will be making the case for human rights to become much more central to humanitarian assistance. Even though there are differences, I would also often situate human rights people within the body of humanitarian organisations.

Rights not handouts

Let me begin by describing something that recently happened which was a great surprise to me. In December 2004, Rwanda troops staged a short reinvasion of the Congo. A town called Kanyabayonga in the Eastern province of North Kivu was the key frontline and there was massive fighting here for about four to five days as Congolese troops came face-to-face with the renegade soldiers. The UN became involved and their peacekeepers stopped the fighting and created a buffer zone. Aid agencies then arrived to provide assistance. However, for the first time that I am aware in Congo, people demonstrated in the streets of Kanyabayonga saying that they did not want aid or food, they wanted peace and to be able to live without people killing them or raping their daughters and wives. This was the first time I had seen a demonstration of literally thousands of people in the Congo and it is telling because, in my mind, it shows that the Congolese, and quite often people throughout Africa, are beginning to demand their rights rather than accepting just humanitarian assistance and food handouts. I believe that there is no alternative to using human rights in our humanitarian work. It raises many questions, such as what is the most effective way to do it and what does it mean in practice? However, the very principle of human rights being at the centre of humanitarian work is critical for me.

When we talk about human rights in chronic humanitarian conflicts, we predominantly talk about the worst abuses, such as the right to life, the right to be free of torture, rape, arbitrary arrest, etc. This does not mean that other rights are not equally important but most of the examples that I have personally seen as a humanitarian and human rights worker have been the most egregious cases. I think it is these that we should focus on today rather than other rights, such as the right to health, which are less well defined in practice.

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Neutrality versus impartiality

In order for us to talk about how human rights can become useful in humanitarian work, we need to talk first about what I would term the 'neutrality versus impartiality' issue. This has always been a major part of the debate for me and it is something that has prevented humanitarian agencies from being as effective as they might be in difficult situations. I will give you a few examples. The underlying point I want to make is that we do not work in a political vacuum and we are being naïve when we think that we do.

In places, such as the Sudan, Congo or Burundi, the political situation is extremely difficult and we cannot assume that we are neutral actors who are either above politics or able to ignore them. I think therefore that we must instead come out on the side of impartiality. This means that we should not take sides but that we must speak out when we witness things, whether this is rape, torture, deliberate killings or ethnic cleansing. It is important for both human rights and humanitarian agencies to speak out.

We should also not be naïve. I believe that humanitarian agencies are increasingly open to manipulation. It is because we do not work in a political vacuum that aid is becoming a tool that combatant forces frequently use. In this situation, a human rights-based approach can improve an agency's ability to resist manipulation. To provide an example, I will tell you the story about what happened in a place called Ituri in North-Eastern Congo a couple of years ago and which is continuing today.

The need for human rights advocacy

Ituri in North-Eastern Congo is often called its bloodiest corner because of the scale of the fighting. According to UN statistics, over 60,000 people have died through direct violence, though I suspect the number is much higher. Whatever the exact figures, the death toll is particularly high and these are not people who are dying of starvation. They are victims of direct violence, people who have been massacred, tortured or summarily executed. Two groups, representing different ethnic groups, are predominate in the fighting and, in 2002, one of them, the Hema UPC (Union of Patriotic Congolese) armed group, took control of the major town of Bunia. This was also the town where most of the aid agencies were based and the situation changed very suddenly for them because they now had to deal with an extremist group who were promoting an extremist mono-ethnic agenda.

The UPC armed group took a number of actions. Firstly, they stopped aid assistance going to the Lendu ethnic group, who they considered to be their enemy. Secondly, they used relatively sophisticated propaganda to taint humanitarian aid accusing aid agencies of supporting their enemies. This meant that the humanitarian

agencies needed to be much more careful in dealing with the UPC, including security considerations. Thirdly, the UPC directed aid to their preferred areas, which were predominantly areas where the Hema people lived. This excluded the Lendu people who were in many ways much needier. The Lendu were chased into very remote areas, which in any case was making humanitarian access more difficult, but it was clear that direct manipulation was occurring.

These events were accompanied by significant debates within the aid community about how to proceed: should we pull out, should we insist on going to areas of the highest need, or should we simply attempt to provide the best assistance that we can under the circumstances? As a human rights person (and with hindsight), I now feel that our reaction at the time was uncoordinated and, as humanitarian agencies, we failed to speak with one voice. There is also no doubt in my mind that aid agencies were manipulated during this time. Had we spoken with a more impartial voice, one that focused on the need to help both sides but also on the need to respect human rights and therefore to speak out against the manipulation that we were witnessing, I think the results might have been different. But we did not and, instead, the different agencies went in different directions and the results were destructive sadly. Tens of thousands of the Lendu died. Many of us knew it was happening. It should have been a time for greater advocacy, for speaking out about what was happening and denouncing the manipulation of aid, but we felt that it was very difficult to do this.

We have recently seen a similar situation in Sudan where there have also been difficult debates about whether humanitarian agencies should speak out or whether it is better to not do so publicly in order to continue giving aid, which may provide short-term assistance but does not help people in the long term. I think that one of the difficulties we face in a number of these situations is that advocacy becomes about humanitarian access and increasing aid flows. This tends to be a more traditional view of what advocacy can be in an extreme conflict situation. These are important issues but, as a joint human rights and humanitarian community, we have rarely gone further that this. I think that there is much more to be gained by doing so. Sudan has been an interesting example of where a more coordinated approach has occurred on a few occasions but everyone that works in these conflict situations can do more to promote such a coordinated view because we rarely speak out as one community.

The changed context of humanitarian assistance

Humanitarian actors also face difficulties as a result of the context in which we work today. Short-term life-saving assistance situations are rare. In Africa, we predominantly face complex long-term situations, such as Burundi, Congo, Sudan, Liberia and so on, where it is not about providing assistance for six months to save lives but, instead, a much longer-term programme is needed because the abuses are entrenched. In these situations we often start to become part of the scenery and this results in a different set of challenges, such as donor fatigue. Again, I think that a human rights framework could be used more often to change the nature and the terms of the debate. This would increase our potential impact.

Peace and justice

Finally, I would like to briefly touch on what is often called the 'peace versus justice' agenda or, what I would like to term, the 'peace *and* justice' agenda because, for me, they go hand in hand. In a number of complex conflicts today, we are coming across some very difficult questions, which we perhaps did not need to deal with a number of years ago, about how to promote justice in difficult conflict situations. Working within aid and humanitarian agencies, we frequently see things and collect information that becomes incredibly useful in terms of future justice, both short-term localised justice and much longer-term international justice.

The work of the International Criminal Court raises more difficult questions about what we do with the information that we collect. What do we do when we know that human rights have been abused? What do we do when we have documented such abuses, perhaps privately or for our agency, and this information becomes very important for the human rights agenda? I think that we are going to be forced to think more about such issues and it is important that agencies develop a clear policy in relation to this.

I would certainly promote humanitarian agencies becoming more active with respect to justice. This does not mean suddenly denouncing the military commander that you may have been dealing with for years in order to get humanitarian access, but it does mean finding private or public ways to make sure that information is not lost and that it is used to ensure that justice can one day be achieved. For me, this is very much part of the issue of making rights central to the work that we do in our agency, although I acknowledge that we must be careful in the way that we do this.

For Human Rights Watch, this is less of an issue because we write reports, we openly denounce abuses and we do local and behind-the-scenes advocacy. For organisations, such as Oxfam, Save the Children or Christian Aid, however, I can see that this debate and its solutions are more difficult. Nevertheless, I would argue that we cannot run away from these issues anymore and that it is absolutely essential that we start to use human rights much more in our public and private advocacy. I believe that they are complementary and that we need to find more ways for human rights and humanitarian agencies to work together. We would be naïve to think that we can ignore these issues because they have become part and parcel of the work that we do.

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Andrew Bonwick

I do not think there is any disagreement amongst lawyers that human rights apply in humanitarian crises. In its Nicaragua decision, the International Court of Justice actually said that international humanitarian law measures the extent to which human rights obligations are met in conflict situations. I think that this is something we can therefore accept as a given and move on. However, the key question is whether human rights actually help in humanitarian crises (and I am thinking primarily about conflict situations).

I will look at three things. Firstly, I will look at the human rights and humanitarian agendas. Secondly, I will look at humanitarian assistance and humanitarian advocacy. (I do not want automatically to equate humanitarian advocacy with human rights work because, although there is a clear overlap, they are not the same.) Thirdly, and this is perhaps when we are looking more purely at human rights. I will look at the utility of international law, in particular the use of human rights and international humanitarian law in conflict situations.

Human rights and humanitarian agendas
Firstly, I will talk about agendas. Anneke talked about the desire of the people of Congo for safety rather than food; the same situation arose in Srebrenica in 1995. When the people who had survived the massacre were asked whether they were hungry or thirsty, they replied that of course they were because they had been under siege for two years and most had spent several days in transit under very difficult conditions. However, when they were asked the broader question, 'what are your main concerns', the reply was two-fold: 'are we safe here?' and 'where is my family?'. It is very clear, and not new, that people are expressing the need for safety as their primary concern.

In a similar vein, Darfur is currently being described as a 'human rights crisis' but do the people of Darfur see their situation this way or are they also expressing the need to be safe? At times I find it odd that we equate widespread attacks on civilians, rape and the other atrocities that are occurring in Darfur with the right of an English schoolgirl to wear a particular type of school uniform. Does using the language of human rights cloud, rather than add clarity, to the issues?

We are told that all human rights are equally important. Human rights groups tell us that human rights are indivisible, inalienable and universal. They do cover the right of an English schoolgirl to choose what to wear to school in accordance with her religious values. The humanitarian agenda is much narrower, however, with its core comprising of basic subsistence and basic safety. We have to make choices and, for humanitarians, some rights are undoubtedly more important than others.

The place of justice
Where does justice fit into this? Anneke talked

about humanitarian agencies testifying to the International Criminal Court (ICC). However, whether or not they testify is actually not something humanitarian agencies can make a choice about because they are under obligation to do so if asked. The Rome Statute of the ICC makes an exception only for the International Committee of the Red Cross. But, when humanitarians look at the International Criminal Court (and Oxfam strongly supports its use), we see it primarily as a means to an end and not as an end in itself. Do we think that referral to the ICC will increase our ability to ensure the basic safety of the people of Northern Uganda? Even in human rights terms, justice is not a fundamental right but is instead one that is derogable. The whole area of human rights around due process and justice is optional in human rights terms and, I think, certainly as humanitarians, we should view it this way. So, the actual clash is not about what we should include in our humanitarian or human rights agendas but what we should consider more or less important for now and what we should leave out.

Human rights and humanitarian advocacy
Secondly, I will address how we should actually go about meeting the need for basic subsistence and safety. What is the role of humanitarian assistance and advocacy? In Rwanda, we were told that humanitarian action could not substitute for political action. Two weeks ago the UN released a real-time evaluation of their response in Darfur and they said exactly the same thing. And, as we have also seen in Darfur, political action is often a precondition for humanitarian action to be effective. Many aid agencies, in particular the UN, spent several months at the beginning of 2004 unable to gain access to provide even basic services – water, food, medical care –precisely because the government in Khartuom was denying access. The only way that access was secured was through political action, primarily through the UN Security Council and the subsequent international intervention.

However, we should not assume that humanitarian advocacy is only, or primarily, about public denouncement. It is as much about the negotiations that humanitarians carry out with, for example, a district officer to enable them to be able to work in a particular place. So, for me, humanitarian advocacy is a necessary part of humanitarian action but this does not mean that we are necessarily talking about human rights. I think we could question the effectiveness of advocacy and ask whether the work of the Security Council has actually increased the safety of people in Darfur. Humanitarians are an impatient bunch of people and when we ask these questions we are looking for quick results. We want to see improvements in public health, in food provisions and nutritional status over the course of a few weeks or months. The timescales of humanitarian advocacy are much longer. I actually worked with Anneke in the Congo and we spent three years lobbying for

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the deployment of a peacekeeping force to the North-Eastern Congo. These are the timescales which we are often forced to look at for effective humanitarian action. But, again, I do not equate that with human rights because it is a core part of our humanitarian work.

Neutrality and impartiality

What are the dilemmas associated with humanitarian advocacy? I do not see any conflict between the principles of impartiality and assistance based only on need and carrying this assistance out in an open manner. However, it is perhaps a little more difficult when we come to neutrality. If we look back at the Red Cross definition of neutrality, which is the authoritative statement on the subject, there is actually two parts to it. The first says that we shall not take a political side in a given argument and the second that we shall not take part in any controversy of a political nature. This is a little bit of a retort to George Bush's, 'are you with us or against us?'. For humanitarians there is no question of taking a party political side in a given argument. As humanitarian advocates, however, we necessarily have to take part in political controversies. This is not a case of whose side you are on because your side is those who are in need of basic subsistence and safety. It is therefore a little bit of a fallacy to say that humanitarian agencies need to be apolitical but they certainly need to not be party political.

Are there any dilemmas relating to humanitarian advocacy in practice? Towards the end of last year, Oxfam's director in Sudan was asked to leave the country because of a statement that Oxfam had made saying that the Security Council was being weak in its response to the Darfur crisis. There are therefore very real issues associated with speaking out. There are real issues relating to whether or not an agency is allowed to operate and having your country director thrown out of a country is actually not the most challenging to deal with because much more severe threats to the security of our staff are often made. People have been attacked and are putting their lives at risk as a result of taking very open positions on political decisions. When looking at humanitarian action and human rights, I think it is worth noting that, beyond the international agencies, the vast majority of human rights agencies, such as Human Rights Watch or Amnesty International, put their lives on the line in countries in which they operate on a daily basis in order to defend human rights. However, humanitarians are considerably more risk averse because we need to balance the ability of our organisation to continue working with our ability to speak out.

The utility of international law

Thirdly, I will briefly talk about international law. I have a book here by Rosalyn Higgins (1995) called *Problems and Process*. Higgins was the head of the law department at the London School of Economics and is now a judge at the International Court of Justice. She talks about international law as a process rather than a series of principles:

'International law is a process of decision-making with appropriate reliance on appropriate trends of past decision-making in the light of current context and desired outcomes'. She goes on to say that rules-based lawyers, including many humanitarian and human rights advocates, will be constantly frustrated if they simply look at the rules and decry their violation. In contrast, those people who view the law much more as a process have better opportunities to bring moral values into the law and to help the law reflect modern thinking.

Over the past couple of years, I think that we have seen international law being used to undermine humanitarian values. In response, the need for humanitarian and human rights agencies to defend the broader, and more humanitarian, view of the law has become apparent. But looking back over the past 15 years we have seen large chunks of the law move in the exact opposite direction. The Security Council refused to even look at the 1960s Biafra crisis because it said that it was within the domestic jurisdiction of the State of Nigeria, and thus not their concern. Today we do not even ask the question, it is a given that the Security Council should be involved in Darfur.

If we think that we have a role as humanitarians to help the law evolve, how do we think we should be using it? From my perspective, three uses of international law are important for humanitarian workers:

i. *The law is a benchmark.* It tells us what treatment people can expect to receive in a conflict situation. In some conflicts this is obvious. You do not need to be a lawyer to know that it is wrong to be raped, massacred, shot and so on. At other times it is more complex. For example, if we take the plight of a group of Iranian-Kurdish refugees in Iraq during the recent conflict. They gathered on the border with Jordan where they were not in physical danger but living conditions were terrible and they lacked the means of subsistence. Should they be allowed to cross into Jordan? In such instances, a fairly precise application of the law can help us to understand what is acceptable or not. It should also be remembered that law is a tool of states and, if we are trying to influence states, we need to be able to speak their language.

ii. *The law is very useful for finding out who is responsible* for a given state of affairs, locally, nationally and internationally. Whose actions or inactions are causing a crisis? Again, the law can help analytically because, if we are acting as humanitarian advocates, we need to know who we should be directing our advocacy towards and whether they accept that it their responsibility to act.

iii. *The law can be used to persuade*: 'You need to do this because the law says that you need to do it or because you have agreed to it in the past by becoming party to a treaty that says that you will act in a particular way'. This is an important argument but it is also a fundamentally weak one because few people actually like being told that they must behave

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in a certain way. Therefore, when we are using the law as an argument, we need to be able to complement it with political arguments (it is in your interest to do this) or moral arguments (it is the right think to do). The law is a tool we can therefore use in our humanitarian advocacy. Human rights are also a tool we can use in our humanitarian advocacy but it is a weak tool.

I am going to conclude here. To sum up, I think that there is a great degree of overlap between human rights and humanitarian agendas but it is not total. The difficulty for human rights and humanitarian agencies is in thinking about what to leave out rather than what to include, particularly with regard to justice. It is undisputable that advocacy is a necessary part of humanitarian action. Even those agencies that tend not to involve themselves in advocacy necessarily negotiate simply in order to operate in a given area. Of course, we need to think about the timescales for carrying out this advocacy, which could be several years, and this is difficult for humanitarian agencies because they like to think in terms of weeks and months. Finally the law can be used as a tool to help us reach the outcomes that we desire. However, there is also some danger in this because it can become an excuse for inaction. By this I mean that, if we are in position to save lives or to intervene effectively, even if this does step outside the human rights framework, as humanitarians we feel (and Oxfam certainly feels) obliged to go ahead anyway and not to wait for those responsible to carry out their duties.

Approaches to human rights in humanitarian crises

Lin Cotterrell*

1. Introduction

In recent years, an increasing number of humanitarian actors, including governments, official donors, UN agencies and NGOs, have adopted the language of human rights and human rights-based approaches (HRBA) in their policies and programming. In part, this trend is a response to criticisms that humanitarian action was failing to promote human rights. To date, however, there has been relatively little research on how far human rights can – or should – contribute towards humanitarian outcomes. There are also some very real questions about how far human rights instruments can be applied in situations of violent insecurity.

The first section of this paper examines the relationship between human rights law and international humanitarian law (IHL). It suggests that IHL is fundamentally pragmatic, intended to limit the suffering that war inflicts but not in itself to protect the more ambitious claims of human rights. Human rights law, on the other hand, deals primarily with the relationship between the individual and the state during peacetime. As a result, there is a risk that those suffering from human rights abuses during situations of conflict and violent insecurity may be left without effective protection in international law. This paper suggests that more needs to be done to adapt human rights instruments to these contexts, and draws on examples of recent legal initiatives to extend human rights protection to the victims of conflict and insecurity.

For operational agencies, the question of what to do in the meantime remains to be answered. The following sections consider the strategies available to agencies seeking to promote human rights in situations of violent insecurity, including political advocacy and HRBA to humanitarian programming. The paper suggests that whilst sharing a common core of concern, human rights and humanitarian agendas may at times conflict, so that difficult choices may have to be made. A clearer understanding of the trade-offs and limitations in pursuing a HRBA in humanitarian crises is vital to informing these real-time decisions.

2. Human rights, international humanitarian law and conflict

When faced with widespread human rights violations in situations of conflict, it is often assumed that what is needed is more effective enforcement of human rights law and principles. In reality, it may be that the legal framework for the protection of human rights in conflict situations needs to be revisited if it is to provide an effective basis on which to act or to advocate. The following sections explore the applicability of human rights law to situations of conflict; the scope of international humanitarian law in terms of protecting human rights; and the increasing convergence between these two bodies of law as attempts are made to bridge the protection gap in conflict-related crises.

Human rights law and conflict

Human rights are both a moral and a legal construct, formalised in the international system through a range of legal and diplomatic instruments. These instruments derive their authority directly from the voluntary agreement of sovereign states. The conventions themselves are not binding on those states which are not signatories and only the UN Convention on the Rights of the Child has been nearly universally ratified.

The human rights legal framework evolved as a means of limiting the arbitrary or excessive power of the state against the individual. The changing nature of war and the state in the post-Cold War world presents significant challenges to this. Particularly since the 1990s, the most acute threats may stem from lack of protection afforded by weak, failed or fractured states, and the arbitrary or excessive use of force by non-state actors. There is a need, therefore, to develop an effective framework of international law that can be universally applied – across contexts and across the increasingly blurred divide between peace and war. Central to this is the challenge of binding not only all states, but also non-state actors.

International human rights law is primarily concerned with the relationship between the individual and the state in times of peace; its direct application to situations of armed conflict or violent insecurity is limited (Dugard, 1998). Unlike under humanitarian law, states are permitted to derogate from certain civil and political rights under conditions of 'public emergency', except for a certain core of fundamental rights laid down in each treaty, including the right to life, the prohibition on torture and inhuman punishment or treatment, the prohibition on slavery, and the principle of non-discrimination. However, it could be argued that even fundamental, non-derogable rights, such as the right to life, are inevitably violated by war. Since human rights are not based on a particular context, determining what constitutes arbitrary deprivation of life requires a greater level of detail than the provisions of human rights law provide.

Human rights law constitutes a powerful political tool in structuring the relationship between the individual and the state.

However, in weak or failed states, or where part of the territory is contested, the capacity or will to fulfil the sovereign responsibility of protection may be absent. In such cases, the state may retain legal capacity but it has 'for all practical purposes lost the ability to exercise it … there is no body which can commit the State in an effective and legally binding way' (Thurer, 1999). As a result, states in which individual rights are most vulnerable to violation may be precisely those which are least able to offer protection (ibid.).

Furthermore, whilst human rights law includes both prohibitions and duties to act (including the provision of basic healthcare and education), these rights are subject to the state's capacity to deliver. The requirement that economic and social rights are to be realised progressively recognises the fact that it is not possible legally to require someone to do something which is beyond their means. Since human rights law requires strong and stable government, 'it seems impossible to envisage meaningful human rights protection in a failed state' (Kracht, 1999).

Perhaps the most pressing limitation of human rights law is that it is primarily concerned with the organisation of state power vis-à-vis the individual (Kolb, 1998). It therefore has little to say about the duties of other parties, including belligerents, non-state actors and humanitarian actors during conflict. In situations of violent insecurity, non-state actors are often the primary abusers of human rights. They may also be in de facto control of significant parts of the country or population, sometimes for prolonged periods, and yet not subject to the same legal obligations as state authorities to protect the human rights of civilians in areas under their control.

The difficulty for human rights organisations relying on legal remedy is that, in the face of gross violations, advocacy may be reduced to a mantra of 'stop doing that', without any provision to support the duty-bearer or to substitute for them. By the same token, economic and social rights have tended to be largely absent from the agendas of international human rights organisations. Whilst some have in recent years begun to address economic and social rights, the focus is on violations which can be address using the same methodology and criteria as for civil and political rights. This means being able 'to identify a rights violation, a violator, and a remedy to address the violation'.[1] In complex emergencies, this discourse leads more naturally to punitive than to remedial or palliative approaches. For their part, humanitarian actors tend to operate in contexts where the state lacks the will or capacity to remedy the situation, and their options range between assisting state actors (the duty-bearers) and substituting for them. Neither of these approaches, however, is adequate to address issues of civilian protection in situations such as Darfur, where agencies are having to look for new strategies to address protection issues in their advocacy and programming.

Humanitarian law and conflict

International humanitarian law is embodied in the Geneva Conventions of 1949, nearly universally ratified, and their Additional Protocols of 1977. The second Additional Protocol applies to situations of non-international conflict and builds on the provisions of Common Article 3 of the 1949 Geneva Conventions. Some of the Protocol's provisions constitute principles of customary law and so are binding on all parties to a civil war. Common Article 3 itself has customary legal status and provides a core minimum set of protective provisions for those who take no direct part in hostilities.[2]

Humanitarian law is designed specifically for situations of armed conflict but does not in itself protect human rights. This is because, firstly, it applies only to particular categories of people (prisoners of war, the wounded and sick, non-combatants and civilians), by virtue of their protected status under the law. It does not apply to all humans by virtue of their humanity. Secondly, human rights have never effectively been framed within the legal duties of humanitarian law (Saulnier, 2004). Rights conferred by IHL are derived from the duties which the law imposes and not the other way round; the focus is not on the rights of the individual but on the obligations of particular duty-bearers. Humanitarian law does not offer individual redress or compensation to individuals on the basis of rights. Perhaps most importantly, the scope of IHL is much narrower than human rights and it does not address many of the human rights enshrined in the Covenants.

Nonetheless, in many respects, IHL may be better placed than human rights law to realise basic rights in conflict. IHL includes, for example, a prohibition on starvation as a weapon of war, and a duty on those in control of a territory both to provide for a population's needs and to permit external relief.

IHL, unlike human rights law, applies to any party to a conflict: it can bind non-state actors.[3] The provisions of IHL provide specific, detailed rules governing both the conduct of belligerents and their duties towards those affected by the conflict. This level of detail is lacking in human rights law. For example, IHL clearly defines roles in relation to missing persons during wartime, yet human rights law is underdeveloped in terms of the duties of states to provide information about detainees or search for missing persons towards missing persons (Heintze, 2004: 795), offering limited means to address 'disappearances'.

Towards a convergence between human rights and humanitarian law

Neither IHL nor international human rights law alone provides an adequate legal framework for the protection of human rights during conflict. In recognition of this, agencies and advocates are increasingly drawing on both bodies of law to find the best legal means available. IHL, for example, has been used to interpret the meaning of human rights provisions during

conflict. For example, IHL provisions on the indiscriminate use of landmines or the use of chemical weapons have been used to interpret the human rights prohibition against the arbitrary deprivation of life. In this sense, IHL has been seen as a complement to human rights law (see, for example, Bruscoli, 2002).

In recent years, human rights organisations have also recognised the importance of IHL. Amnesty International used IHL to assess a government military action for the first time in 1996 in southern Lebanon (Brett, 1998). Since that time, much of the advocacy work of international human rights and humanitarian agencies has emphasised a convergence between the two bodies of law; the distinction between IHL and human rights law is no longer seen as particularly important.

However, to date, human rights courts have been at best ambiguous in how far they are prepared to employ IHL provisions in their rulings. In 2000, in a case concerning the execution of six unarmed civilians by the Colombian police, for example, the Inter-American Court overturned a position previously taken by the Inter-American Commission on Human Rights on the basis that it was not competent to apply international humanitarian law directly (The 'Los Palmeras' case, Inter-Am.Ct. H.R (Ser.C), No.67 (2000), cited in Heintze, 2004: 804).

Humanitarian law, even if fully utilised by human rights courts, is fundamentally pragmatic in its aims and modest in its ambitions. It does not seek to prevent or influence the course of war, or to judge the justness of its cause, but to set out rules and principles governing its conduct which aim to alleviate the worst of the suffering. Even if it currently offers the best protection available, IHL does not in itself ensure human rights. Recognition of this led the International Court of Justice (ICJ) to the opinion that, since human rights norms could not be applied 'in an unqualified manner' to situations of violent insecurity, human rights needed to be inserted into the structure of international humanitarian law (Heintze, 2004: 797). Given the much greater scope of human rights ambitions, it could be argued that, rather than requiring IHL to carry human rights on its much narrower shoulders, what is needed is an effective convergence of the two branches of law, so that the legal 'grey zones' between the law of peace and the law of war are 'filled by the cumulative application of human rights law and international humanitarian law, thereby guaranteeing at least minimum humanitarian standards' (UN Doc. E/CN.4/Sub.2/1991/55, cited in Heintze, 2004: 791).

This was the viewpoint advocated in the UN Declaration of Minimum Humanitarian Standards in 1990 which laid out a set of principles 'applicable in all situations, including internal violence, disturbances, tensions and public emergency, and which cannot be derogated from under any circumstances' (Doswald-Beck and Vite, 1993). However, this Declaration is advisory only and has no legal force. It may be that for human rights to take on a greater meaning in conflict situations, it will be necessary to develop human rights law rather than IHL, to incorporate explicit provisions governing the interpretation and application of human rights in situations characterised by violent instability, whether war or a state of 'emergency'. Such provisions may refer to IHL, or go much further in their requirements to apply the same standards of human rights to those affected by conflict. One example of such a development is the UN Convention on the Rights of the Child (CRC) of 1989 and its Optional Protocol relating to armed conflict.

The CRC is one of the only human rights instruments that formally recognises a complementarity between human rights and international humanitarian law. It makes explicit reference to IHL – specifically the provisions of Additional Protocol I, which state that children are exempt from involvement in combat up to the age of 14 years. This provision did not, however, go far enough for the CRC, which aims to secure the 'best interests' of the child up to the age of 18. Thus, the Optional Protocol to the CRC, ratified in 2000, called on state parties to take 'all feasible measures' to ensure that members of their armed forces below the age of 18 took no direct part in hostilities, and that under-18s were not subject to compulsory recruitment. The Optional Protocol is a recognition that humanitarian law may not in itself remove the need for an explicit articulation of how human rights are to be applied in conflict. There are two unusual characteristics of the CRC which make it a model worth following. Firstly, it cross-references IHL, so that parties to the Convention agree also to be held accountable to the relevant provisions of humanitarian law through the treaty's enforcement mechanisms. Secondly, it attempts to adapt the provisions of a human rights treaty explicitly to situations of conflict, so that both the rights of the child and the duties of relevant parties in these contexts are clearly stated.

The CRC has proven to be a particularly useful tool in denouncing human rights violations and persuading belligerents (both state and non-state actors) to change their behaviour. No comparable instrument exists which guarantees the same degree of human rights in conflict. This suggests that further attempts to incorporate the realities of conflict into the normative and legal framework for human rights could carry significant benefits, both in terms of the enforcement of human rights and in offering legitimacy and a clear basis for advocacy.

However, not all advocacy is human rights advocacy, or necessarily employs a human rights framework. Humanitarian advocacy may include an explicit focus on human rights abuses, but its primary aim is what the International Committee of the Red Cross (ICRC) terms 'responsibilisation' – holding duty-bearers to account for the obligations which international law imposes on them. It may also relate to action on the part of those with the power to assist, redress or enforce – whether states or specifically mandated agencies.

Under IHL, the ICRC has a specific mandate in each of these areas, as well as in the dissemination and development of the law itself. The ICRC and the Movement it forms part of adhere to certain fundamental principles, including humanity, impartiality, independence and neutrality. The Office of the High Commissioner for Human Rights can also play an important role in advocacy, for example in urging the UN Security Council to take action in response to widespread human rights violations. The role of operational agencies, however, is less clear. Whilst Unicef receives a special mention in the CRC, and the UN Secretary General's reform programme has included efforts to mainstream human rights throughout all the UN's agencies, their specific role and relationship to international legal instruments remains only weakly articulated. Agencies are left to determine what their specific role in relation to the pursuit of human rights should be in their emergency programmes, and interpretations of what is meant by a human rights-based approach remain highly varied.

3. Human rights-based approaches to humanitarian action

The past decade has seen an increasing number of international NGOs and agencies adopt a HRBA to their work, and many agencies have been active in developing both policies and guidelines for operationalising HRBAs. To date, however, much of the focus has been in relation to development cooperation and programming.[4] There are very few policy statements or agency articulations of what constitutes a HRBA to humanitarian programming, how it would relate to humanitarian principles, or how to overcome the specific difficulties of applying it in situations of conflict.

UNICEF formally adopted a HRBA to programming in 1998, amongst the first UN agencies to do so. The approach means that all UNICEF programmes focus on the realisation of the rights of children and women and are guided by human rights and child rights principles. Programmes focus on developing the capacities of duty-bearers at all levels, as well as the capacities of rights-holders to claim their rights. Equal emphasis is placed on outcomes and the process by which these are achieved, so that participation, local ownership, capacity-building and sustainability are essential characteristics of a HRBA. These are not easy processes to manage in highly fractured, unequal or divided communities, or during emergency situations. By its own admission, the agency still has some way to go in terms of applying a HRBA to its humanitarian programmes.

Save the Children has the longest tradition of a HRBA, first framing its mandate in terms of child rights in 1922. The agency was actively engaged in the development of the CRC and particularly since its ratification in 1990, human rights and humanitarian action have been seen as twin approaches towards the same overarching rights-oriented objectives, each with the common goal of protecting and promoting children's rights in emergencies. For this reason, advocacy is written into Save the Children's work as a core part of programming. This includes identifying and drawing attention to human rights violations, and awareness-raising at the local and international levels. In practice, this carries significant risks and dilemmas for operational agencies, many of which continue to be navigated on a case-by-case basis in the field.

Other multi-mandated NGOs, such as ActionAid, CARE, the Lutheran World Federation and Oxfam have adopted a HRBA in recent years. For these, human rights have been regarded as the necessary link between development and humanitarian work. A HRBA has been seen as a way of addressing root causes and structural issues of marginalisation and poverty. It has also been seen as offering a better framework for analysis and for thinking about and responding to the political, social and economic causes of acute vulnerability and humanitarian need. To this extent, human rights and humanitarian agendas are regarded as essentially compatible and mutually reinforcing, with a HRBA providing the basis for a stronger set of claims by those affected by humanitarian crises: as rights-holders rather than as beneficiaries of charity. Nonetheless, in practice, agencies face a number of difficulties in operationalising both humanitarian principles and a HRBA in crisis environments.

Some of these difficulties are not specific to situations of conflict. For example, the 'indivisibility' of human rights presents significant challenges in terms of resourcing, so that in reality some rights have to be prioritised over others. In emergency settings, given the pressure on agencies to respond quickly and to meet immediate needs, this is even more challenging. Ironically, since all human rights are equal in value, decisions about which rights to prioritise are made effectively by reference to humanitarian need, so that in practice, adopting a HRBA may change little in terms of the content of humanitarian assistance in the immediate term.

Secondly, rights may make conflicting demands, meaning that they cannot be achieved at the same time or that the promotion of one right may be at the expense of another (Freeman, 2002: 5). For example, the increasing tensions between security and liberty rights since 11 September 2001 are testimony to the fact that deciding how to strike a balance between various 'indivisible' rights cannot be settled by reference to rights alone (Saulnier, 2004).

There may also be questions about sequencing, since the fulfilment of some rights is likely to be a prerequisite for being able to meaningfully exercise others. For example, health and nutrition may be necessary for a child to benefit from schooling, and basic literacy and education may be necessary in order to take advantage of certain civil and political rights.

As the previous sections have shown, the challenges of promoting and protecting human rights are even greater in

situations of conflict or violent insecurity. At the legal, policy and programmatic levels, the relationship between a HRBA and humanitarian principles remains one of the most contentious. Both make a set of fairly uncompromising demands on operational agencies. The human rights principle of non-discrimination equates broadly to the humanitarian principle of impartiality, but other aspects of the humanitarian agenda, such as neutrality or the need to secure access to affected populations, may not always imply the same course of action or form of response.

To take an obvious example, throughout the 1990s there was a growing awareness of the potential, first noted in Biafra in the 1960s (Rieff, 2002), for relief aid to become integrated into processes of violence and oppression, feeding into war economies (Angola, Sudan) or playing into the hands of military strategies aimed at forced displacement (Ethiopia, Bosnia). This leads to questions as to whether it is possible to provide humanitarian assistance without supporting abuses. However, as Omaar and de Waal (1994: 19) acknowledge, withholding relief on this basis may be 'tantamount to using starvation as a weapon' and is not only morally unacceptable but illegal under the Geneva Conventions. To date, most agencies do not have formal policies or guidelines available for field staff on what a HRBA to humanitarian action should entail in these situations, and how to make these real-time judgement calls. Whilst it is unlikely that there are any blueprint solutions for this dilemma, this is an area which could undoubtedly benefit from further policy development as well as frank discussion about options available to field staff witnessing violations, and the limitations and risks of various approaches. As Omaar and de Waal conclude, 'Clearly, there is a balance to be struck … There is no easy resolution of the dilemma – what is important … is to recognise that the dilemma is real' (ibid.: 9).

For similar reasons, Rieff (2002) argues that what he sees as the increasing marriage of humanitarian and human rights agendas since the birth of modern humanitarianism in Biafra is an historic mistake. Surveying the increasing complexity of humanitarian engagement in complex crises, the crucial lesson is that not all good objectives can be reconciled (Rieff, 2002: 325). An obvious example is the tension between human rights advocacy and the neutral and impartial provision of relief. The decision facing the ICRC half a century ago – between speaking out about what it knew to be happening to Jews in Nazi-occupied territory, or maintaining its strict interpretation of neutrality – appears in retrospect so clear a failure to respect human rights that it constitutes 'a permanent stain' on the organisation's moral authority (Moorehead, 1998). In Biafra, the same dilemma (between speaking out and maintaining access) led to the formation of Médecins Sans Frontières, yet turned out in retrospect to be much less clear cut (see Edgell, 1975).

Whilst 'responsibilisation' of duty-bearers forms a core part of the humanitarian agenda, the concern is with immediate life-saving interventions to alleviate suffering and protect lives and livelihoods. For this reason, humanitarian action also includes 'assistance' to the duty-bearer to deliver on obligations and 'substitution' for duty-bearers where they are unable or unwilling to comply with obligations. In situations of protracted internal conflict, substitution in the form of large-scale relief operations has often become the norm.

Attempts to resolve contradictions between human rights and humanitarian (or other) agendas have sometimes been made by extending rights to cover neglected moral claims. This underlies, for example, efforts to advocate a right to humanitarian intervention, or a right to relief. It has also been argued that the provision of relief is rights-based in the sense that it fulfils or protects a set of human rights claims (for example, the right to life or survival, food, healthcare, shelter, and so on.) Clearly, the agendas of concern overlap. However, such relief is provided not on the basis of social and economic rights but according to need. The crucial distinction is between the content of a right, such as education, basic health provision or food and sanitation, and the right on the part of the recipient to claim it.

Perhaps the more complex part of the debate is less how and whether humanitarian action relates to human rights, and more the extent to which people's claims to rights can be made effective and on what basis (Darcy, 2004a). In protracted crises, humanitarian agencies have sometimes become the primary providers of welfare services for large sections of a population over long time periods. Recognising this relationship between a right and an effective claim against a duty-bearer, humanitarian organisations have sought to assert the right to a certain standard and quality of assistance, for example through the Sphere Minimum Standards, to which agencies will hold themselves accountable. Such rights are modelled along the lines of consumer rights or patients' charters in public service provision, and have been argued to constitute a form of quasi-contractual rights (Darcy, 2004b).

There is an obvious value in mechanisms to increase accountability, standards of performance, and awareness amongst other parties of the minimum relief requirements of affected populations. What is less obvious is the extent to which being able to claim certain standards from relief providers relates to human rights. Sphere probably represents the most comprehensive attempt to date to operationalise economic and social rights in the absence of state provision. However, the detailed content of the minimum standards was drawn up with reference not to international law (which lacks quantified welfare provisions) but to agency best practice in meeting basic humanitarian needs. Sphere, as a voluntary code developed by humanitarian agencies, applies primarily to the relationship between agencies and beneficiaries in the context of existing interventions and does not constitute a basis for effective claims in areas where agency presence is limited or absent. Its potential as a tool to 'responsibilise' the state or other duty-bearers is probably under-explored. Neither does it reflect the

indivisibility of rights, or the choice of the rights-holder about which rights they want to claim. The point is not that such initiatives are not valuable, or even vital, but that calling a code 'rights-based' does not necessarily imply that it carries the full force of the rights in question.

The protection of civilians, despite being largely absent from Sphere, is another core area in which humanitarian agencies have sought to incorporate human rights concerns. There have been many valuable initiatives in this area over the past few years, particularly since Rwanda.[5] To date, however, there is limited consensus amongst agencies about what protection activities entail, and whether the objective is to ensure the security of recipient populations or the wider aim of protecting the human rights of individuals in crisis-situations. As a result, it is not always clear what agencies are doing differently in relation to protection as a result of adopting a HRBA, and what is simply a matter of better programming in situations of violent insecurity. Nonetheless, both raising awareness of protection issues and mainstreaming these within humanitarian programming are welcome developments.

4. Punitive justice and international intervention

There are two further ways in which agencies have sought to protect and promote human rights in situations of conflict and violent insecurity. These are through the mechanisms of punitive justice, including international criminal tribunals and trials, and through advocating for international military intervention to halt massive human rights abuses in the immediate term.

The ICJ handles disputes between states in relation to major international treaties, including the Genocide Convention. Until the establishment of the International Criminal Court (ICC) in 1998, there had been no comparable international mechanism for bringing individual war criminals to justice. The Rome Statute of the ICC includes provisions from both bodies of law, and has been heralded as a major development in enforcement of IHL and human rights in conflict. Whilst the ICC has not removed states' obligations to bring perpetrators to justice, it can function independently of states in cases of wide-scale and systematic human rights abuses or crimes against humanity. It can thus arbitrate on matters of humanitarian and human rights law where national trials of rights abusers may be hampered a weak or under-resourced judicial system.

The emphasis that human rights organisations place on judicial process is not necessarily shared by humanitarian actors. To hold that formal justice makes a difference to humanitarian outcomes necessitates certain assumptions about the impact of such processes on human rights violators, such as a positive correlation between violations and impunity, or between justice and peace. Such correlations have on occasion been highly contested. In countries such as Cambodia and Mozambique, there has been considerable discomfort about, and resistance to, the idea of criminal trials for crimes committed during these countries' protracted internal wars (Hayner, 2001: 195-99, 201). By contrast in Argentina, mothers of the disappeared marched weekly in the public square demanding information; in Guatemala, national NGOs pursued a strong information and advocacy campaign for a truth commission in advance of the peace negotiations (ibid.: Ch. 12).

Ownership and agency are central to human rights. This requires a conception of moral agency which recognises that the choice of whether or not to claim or exercise a right at the expense of some other valued end is an essential part of having it, as opposed to being the subject of it. However, international human rights organisations have tended to view the process of justice pursued by international courts and tribunals as necessary to peace, even where such processes have been seen by some to threaten a cessation of violence or to be irrelevant to peace and reconciliation. For humanitarian agencies, the process of formal justice has tended to be valued insofar as it is instrumental in improving humanitarian outcomes. For many, the work of the ICC and the dilemmas about how (or even whether) to provide information in support of its investigations has begun to challenge this neutral stance.

Perhaps the most pressing difficulty for operational agencies is that humanitarian crises involve immediate humanitarian needs; timescales for effective legal remedy are likely to be much longer. Where rights are violated and those responsible are not susceptible to pressure and cannot be held immediately to account, both human rights and humanitarian actors are faced with a dilemma of what to do in the meantime. Where the state is both duty-bearer and the violator of human rights, this dilemma may be seen to underlie calls for immediate punitive measures, from sanctions to 'humanitarian' intervention, in the name of rights. The debate about the rights and wrongs of such action is beyond the scope of this paper, but there are two points of particular relevance.

Firstly, human rights law does not distinguish between peace and war, nor in itself authorise enforcement through military means. As a result, interpreting and applying its provisions, the grounds for legitimacy (if any), and the duties of respective parties can only be achieved through recourse to other frameworks and bodies of law. Military intervention is usually justified according to drawn from 'just war' theory, which requires not only a 'just cause' and 'right intention' but also the likely 'effectiveness' and 'proportionality' of the means employed, as a 'last resort' and with 'proper authority' (Brown, 2002). Human Rights Watch uses similar criteria in determining its position in relation to military intervention (ICHRP, 2002). By contrast, Amnesty International has refused to advocate or oppose military action 'under any circumstances, whether or

not that intervention is aimed at preventing human rights abuses' (ibid.).

During almost all of the high-profile human rights crises of the 1990s, international advocacy groups criticised the UN and major states for failing to act decisively (ibid.). At the same time, in terms of taking a position on military intervention, principles and frameworks available left international NGOs with a quagmire of moral confusion. Even after the turn of the decade, and half a dozen military interventions in the name of human rights, a meeting of international NGOs concluded that overall, 'there is plenty of confusion and no shortage of contradiction in NGO responses' (ibid.).

Secondly, using the language of human rights may not be helpful in devising solutions unless the limitations of what humanitarian agencies can achieve in this regard are taken into account. The failure of UN troops, mandated to protect relief supplies, to protect the lives of those in the Bosnian 'safe areas' demonstrated the limitations of a right to relief in the absence of protection of the 'right to life', in terms of safeguarding either human rights or humanitarian outcomes. The Responsibility to Protect report of the International Commission on Intervention and State Sovereignty concluded the need to cast the debate in different terms, not as 'right to intervene' or 'right to relief', but as 'responsibility to protect'. This applies both to the state concerned and – where this state is unable to provide protection or is itself sponsoring human rights abuse – to other states to 'react' to and 'prevent' abuses and to 'rebuild' after an intervention (ICHRP, 2002). In September 2005, the UN World Summit endorsed this concept, representing the first time outside a specific treaty context that states have signed up in a general way to any significant limitation on state sovereignty. The establishment of this principle provides the basis for a fully fledged norm of international customary law.[6] For many agencies, a decade on from the UN's failure to intervene in Rwanda, this represented a remarkable achievement.

The Summit did not, however, agree the specific criteria governing the use of force. The focus also provides little guidance for NGOs on either their specific role in relation to protection, or how to navigate the operational dilemmas of delivering assistance in a politicised and military environment in which their perceived neutrality and independence from governments (which are simultaneously donors and belligerents) cannot fail to be affected. NGOs have an important role to play in pushing for agreement in both of these areas.

The limitations of a classic human rights lens are also relevant to decisions about the most appropriate form of intervention in cases involving protracted internal conflicts and a proliferation of non-state actors (Somalia, Kosovo, Afghanistan). Here the concern is less about protecting the rights of the individual against the state than with the tendency towards increasing fragmentation of power, identity and groups. In Todorov's words, perhaps increasingly, it is not tyranny which is the greatest evil, but anarchy (Todorov, 2002) – characterised by weak, failed or predatory states which lack both the consent or obedience for effective sovereignty and a rule of law capable of ensuring protection within its borders. This is a very different problem statement and necessarily implies a different solution. How effective punitive measures such as sanctions or military intervention are likely to be in such circumstances is not always clear. In such contexts, rights need to be protected not only against the state, but also through action which serves in the longer-term to strengthen, not further fragment or erode, the state's capacity for effective governance. This does not imply simply bolstering or reconstructing a predatory state, but rather efforts to support what remains of the public service infrastructure, or taking account of and utilising alternative channels for providing security, protection and the underlying conditions of peace (Menkhaus and Prendergast, 1995: 14).

These kinds of considerations must also form part of agencies' thinking on whether to advocate for military intervention; concern for the likely chances of success in improving the situation on the ground has formed part of the reasoning of both humanitarian and human rights organisations, for example, in relation to military intervention in Iraq.[7]

5. Conclusion

Over the past decade, human rights and advocacy organisations' increasing attention to IHL has been an extremely valuable development in promoting human rights in situations of violent insecurity. However, the protection afforded to people in these situations under both human rights and humanitarian law remains imperfect. Human rights law is limited in its application to such contexts and lacks the necessary level of detail in its provisions. Humanitarian law does not in itself protect human rights. Recent developments such as the CRC and the ICC suggest some examples of ways to bridge these gaps. Further investment could also be made in increasing awareness amongst agency staff of international humanitarian and human rights law and mechanisms, with more detailed guidance on their implementation in situations of conflict.

Legal protection, however, even where applicable, may not in itself ensure humanitarian outcomes within the timeframes necessary, let alone guarantee the fulfilment of rights. The latter depends on functioning and effective mechanisms of enforcement, incentive or redress, and on political responsiveness to the claims of rights holders. These prerequisites cannot be assumed to exist in situations of armed conflict; other courses of action may be required in the immediate term. Endorsement of the 'responsibility to protect' agenda represents a potentially historic development in the international community's commitment to responding to massive human rights abuses, including genocide and ethnic cleansing. In order to respond effectively, continued pressure to promote and develop the agenda, including criteria governing the use of force,

and strengthened capacity at the international or regional levels, will be crucial to the success of future interventions. Humanitarian assistance has been criticised for negatively impacting on the political contract between rights-holders and the state. Such action in the form of 'assistance' to or 'substitution' of the duty-bearer, however, is not a denial of the importance of the political contract, but recognition that in certain contexts the state may be unable or unwilling to protect or provide for its own people. The aim of humanitarian action in such contexts is immediate life-saving intervention, to allow at least for the survival of individuals deprived of effective rights. As such, humanitarian assistance may be seen as attempting to fill the void between the rhetoric and the reality of human rights, for example, through filling gaps in basic healthcare in the absence of an effective claim. What it does not and cannot do is ensure the protection of rights themselves.

Furthermore, at an operational level, there may be conflicts between speaking out about human rights abuses and maintaining access to affected populations. In the absence of well developed policies or guidelines on implementing a HRBA in crisis situations, there is a risk that the easy conflation of rights and humanitarian agendas may serve to obscure some very real tensions between these agendas in practice. It may also conceal the need for choices to be made about the most appropriate strategies and priorities for international response. Acknowledgement of the dilemmas and increased awareness of the strategies available would seem to be priorities in developing a realistic HRBA to humanitarian programming.

Ultimately, if we are serious about a commitment to human rights in humanitarian crises, we need to recognise the limitations of various frameworks and strategies through which human rights are articulated and applied, and invest in exploring examples of good practice at the legal, policy and programmatic levels so that the continuing challenges and dilemmas can be navigated in the most effective way.

Endnotes

* At the time of the meeting series, Lin Cotterrell was a Research Officer in the Humanitarian Policy Group at the Overseas Development Institute.

1 See http://www.hrw.org/doc/?t=esc.

2 Though not couched in rights terms, Article 3 is roughly equivalent in scope to the protection afforded by the core non-derogable human rights.

3 Thus, the UN's Special Rapporteur on Sudan used common Article 3 of the Geneva Conventions in an assessment of the conduct of the Sudan People's Liberation Army (SPLA), including indiscriminate attacks on civilians, rape, mutilation and looting (UN Doc. E/ EC.4/1994/48, cited in O'Donnell, 1998). The SPLA subsequently agreed to respect Protocol II of the Conventions, which relates to non-international armed conflict, even though it had not been ratified by the Sudanese government. The reports of Special Rapporteurs on torture, extrajudicial executions and violence against women in Colombia in the late 1990s also employed   humanitarian law as the necessary basis for addressing violations by non-state actors (O'Donnell, 1998).

4 See for example UN (2003).

5 A fuller discussion of the protection agenda is regrettably beyond the scope of this paper. See Darcy (2005), Protecting civilians: exploring the scope and limitations of humanitarian action, HPG Report (forthcoming)

6 Presentation by Gareth Evans at a meeting organised by the OneWorldTrust on the responsibility to protect, 15 September 2005.

7 See e.g. Human Rights Watch World Report (2004).

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