

**The New Politics of Protecting Humanitarian Space:
A Private Security Revolution in Humanitarian Affairs?**

by

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Abstract

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Over the past twenty years humanitarian agencies are increasingly encountering security problems in delivering assistance to victims of armed conflict, and consequently they have searched for new security solutions that protect humanitarian space. The usual methods of gaining access to distressed populations and creating a safe area in which aid is provided—invoking obligations under international humanitarian law; adhering to neutrality, impartiality and independence; and, seeking the consent of states that host crises—has frequently failed, thereby pushing agencies to consider of unconventional approaches that deviate from traditions of “humanitarian culture” that crystallized in the late 19th century. One direction these alternative security tactics may pursue is to scale back operations or simply operate more discreetly, such as lowering the profile of humanitarian agencies, relying exclusively on locals to carry out relief work, or even withdrawal. However, other unorthodox approaches seek the use of force to set up and secure humanitarian space. Despite humanitarians’ core value of operational independence, acting in conjunction with the armed forces of states or international

organizations is one possibility. Humanitarian agencies, however, have also employed private security contractors to achieve humanitarian outcomes. But working with for-profit armed actors raises profound issues of the means and ends of humanitarian action. This study asks, why and how have humanitarian agencies come to view hired guns as morally palatable agents for protecting humanitarian space? It examines how the norm of security contractor usage by humanitarian agencies that arose since the start of the 1990s are the result of the influences of politics (an ideology of a maximalized version of humanitarianism that addresses the root causes of crises and a willingness to work with actors with an avowed political interest), force (conjoining humanitarian operations to military ones and looking to security tools to protect aid work), markets (competition within the humanitarian sector for funding and the incorporation of for-profit actors into humanitarian activities), this study takes up the issue of change to inquire whether the spread and formal acknowledgement of this practice constitutes a “revolution in humanitarian affairs.”

Preface

Politics is a sensitivity akin to our physical senses, such as taste, feel, smell, sight, and hearing, or perhaps more similar to more abstract senses such as rhythm, aesthetics, time, history, or humor. Just as the artist who is born with an innate vision and struggles to articulate its message, those with a keen sense of the political devote considerable energies to comprehend and communicate what they perceive. In the field of international politics, the palette is based on power and values, albeit in different shades and shapes, to help paint interpretations of phenomena.

My own political sensitivities have always been provoked in the deepest manner by the overlap of violence and justice: I am transfixed at how profoundly wrong the act of killing is and at the same time how justifications for this wrong are propounded. The prospect of force and human loss do not thrill me—on the contrary, I despair at the extent to which much of the violence in the world is gratuitous—but that its stakes have come to be framed in moral terms does give me some hope. Although some major thinkers are resolved that power determines morality, how do they explain that even the most powerful feel compelled explain why they engage in force? It is because moral values are crucial to understanding the road to legitimate violence; that empirically, the latter needs to former. The axiom “might makes right” represents a sort of tunnel vision; in fact, “right” is might in its own right.

This realization is born of out of my own ruminations on a variety of political quagmires where violence was either unable to solve anything and was essentially

counter-productive, but nevertheless force was used and justifications were endlessly expounded. A litany of deadly debacles coupled with tiresome platitudes has haunted me since my own political conscience took shape: from the tail end of the Vietnam War era that authored the lamentable notion of having to “burn down the village to save it” to the mindless post-9/11 bluster of “with us or against us” that brands anyone who questions or opposes the United States as a terrorist. Behind these rhetorical flourishes is an attempt to hypnotize with what is presented as an ethical certainty designed to bring us in lockstep with power. Fortunately, the “might makes right” paradigm has been discredited time and again, though sadly its persistence and return are likely inevitable.

Humanitarianism presents a different twist on violence and justice, though one also entirely fraught with politics. In the conventional interpretation, humanitarianism embodies justice in response to violence: an act of force that produces death, destruction, and displacement is reacted to with an act of mercy that puts human welfare first. But a closer examination of the phenomenon reveals that what is frequently viewed as basically a distribution of assistance to victims misunderstands that this aspect is only the corporeal expression of the far more fundamental social relationship between aid workers and aid recipients. The establishment and preservation of this relationship as one predicated on justice is central to humanitarian ethics and the place of humanitarianism in the world. In contemporary armed conflicts, however, where belligerents who perceive humanitarian efforts as a threat often target aid agencies and relief operations, humanitarianism confronts the problem of what can justice do in the face of violence?

At the level of ethics or philosophy, the school of “Just War” theory addresses the general conditions for using force, but it does not consider or come to terms with what

the practical implications are for humanitarian agencies who are stuck between the rock of the pursuit of justice (the value of bringing aid to victims) and the hard place of violence (the material conditions of dangerous environments). However, “Just War” theory does point to a maneuver of logic in the connection between means and ends. And, herein lies politics because aid workers must reconcile their understandings of what their work is about (the activities that constitute humanitarian action qua humanitarian action) with the understandings of others (perceptions of humanitarian aid workers). Therefore, the issue unfolds into greater complexity than a superficial equation of giving aid: Where the security of humanitarian workers and operations is in doubt, will the use of force to protect undermine humanitarian objectives? Does fighting the insecurity problem create bigger political problems, or can justice and violence comfortably go hand-in-hand?

The commodification of force raises a second element of this justice-violence nexus. Beyond the contentious morality of acts of violence, are certain purveyors of violence inherently unjust? This sort of inquiry has usually been pejoratively tied to mercenaries, but a new breed of profit-oriented militarized actors with a corporate profile, private military and security companies, also begs the question. The strangest political tangle of them all—weaving together ethical paradoxes and practical consequences—is the occurrence of humanitarian agencies hiring security contractors.

By investigating the origin, nature, and impact of the interactions between aid agencies and hired guns from the point of view of humanitarians speaks to a recent and important alignment of violence and justice with real-world repercussions. This phenomenon also entrances me in that it is a Rorschach test of sorts: how it is beheld indicates a great deal about the eye of the beholder, and thus this study offers insight into

the psyche of humanitarians as well as the predicaments and positions of humanitarian agencies, and, in the end, their politics and their place in world order. How we feel about violence and justice says something valuable about who we are, and therefore this study is not just about the challenges of the security tactics of humanitarian agencies but, for me, it is a window into our very souls.

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The opportunity for my political sensitivities to be sparked by justice and violence has been realized due to the support I have received from many individuals. The African aphorism that “it takes a village to raise a child” applies no less to this brainchild of mine—it would not have been possible to write this dissertation without the generosity of family, friends, mentors, and colleagues. I would like to express my sincere gratitude to the following individuals:

Let me begin by acknowledging several friends who have seen me through not just this project, but in fact, much of my life. Robin Allday, John Blum, Michael Jacobs, and Stanley Jason Zappa have each been close friends of mine for well over twenty years. They have been stimulating and stalwart in friendship. Their respective talents amaze me, their wits comfort me, and their surprising earnestness exhilarates me. They have steadied me when I have lost my balance and spurred me when I have been complacent. They are true friends.

Though administrators are too often overlooked in the big picture, I will strive to rectify this by giving thanks to several who have made my life easier. Foremost on my list is Nancy Okada, Associate Director the Ralph Bunche Institute for International Studies, who always knows who to call to open bureaucratic doors and does so readily and kindly. Nomvuyo Nolutshungu, also of the Ralph Bunche Institute, via mail and email kept me connected to New York City even as I reside in suburban Philadelphia. Barbara Burns of Bryn Mawr College deftly eased my juggling of teaching responsibilities and scholarly endeavors.

I also want to extend special appreciation to my dissertation committee. I've long admired the work of Peter Romaniuk, the second reader. His fluency in security issues, intellectual rigor, and measured eloquence instantly commanded my attention the first time I heard him give a talk, and in following up by reading his publications I remain an avid devotee. I was very pleased when Robert Jenkins agreed to serve as first reader. Rob is an impressive fellow, insightful and jovial, he is unabashed in sharing his opinions and wryly stripping the veil from myths of academia and international organizations alike. Last, but by no means least, I owe a tremendous debt to my supervisor, Thomas G. Weiss. To me, Tom is a one-of-a-kind, once-in-a-life-time mentor. First, Tom is an incredible scholar, immeasurably knowledgeable and unbelievably prolific. Most of us are lucky if we have one or two good books in us; within Tom is a veritable library of classics. His work ethic and pace is truly staggering, he is the only person I know that returns from vacations with new manuscripts. Also, Tom should be nicknamed the "velvet cattle prod" for his genial, good-natured goading techniques—his light-hearted teasing and wise appeals continually stoked my dissertation work. It's been a great honor

to study with him, and I am most fortunate to have had him as a role model, colleague, and friend.

Finally, I am above all most grateful to my family. My parents, Rochelle and Gary Hoffman, gave me their unqualified love and laid the foundation for me to follow my interests. Although my father did not live to see the completion of this project, I hope that enough of his shrewd methodical style rubbed off on me that it comes through here. My mother's passion for reading and learning has influenced me and continues to do so. My dear brother, Brian, has also been instrumental in this and, indeed, in all that I have achieved in my life. Brian's intellectual ability is unparalleled—his capacity to retain, process, and apply information in innovative and penetrating ways leaves me breathless. Only Brian can simultaneously explain the Renaissance, the stock market, and the vagaries of the Red Sox, and have it all make perfect sense. He was my first teacher and my favorite one; he has given me an appetite for knowledge and been a constant font of encouragement not to mention information, the debt I owe him is insurmountable.

My highest order of thanks goes to the two most important people to me: my wife, Zeynep, and my son, Sam. Zeynep is electrifying in her brilliance and beauty, bedazzling in her sensitivity and intuition, magnetic in her humor and elegance, soothing in her warmth and charm (I hope I didn't leave anything out!). Compassionate, supportive, and generous, without her in my life this dissertation is not written and, moreover, as a person I am so much less. I can not rightly articulate the vitality and meaning she has brought to my life, only by drawing a parallel can I begin to express this; how does one thank the Sun for its life-sustaining rays? She is that precious to me. On top of that, she has given me Sam. As I put the finishing touches on this manuscript, Sam is still too young to talk,

though he has no problem whatsoever communicating. The curiosity in his eyes as he observes the world around him is awe-inspiring and to witness his benevolent, free spirit is supremely invigorating. For all the love they have given to me, as well as that which they have nurtured in me, I dedicate this work to Zeynep and Sam.

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Acronyms

AMIS	African Union Mission in Sudan
AU	African Union
CAP	Consolidated Appeals Process
CERF	Central Emergency Response Fund (UN)
CRS	Catholic Relief Services
DPKO	Department of Peacekeeping Operations (UN)
DRC	Democratic Republic of the Congo
ERC	Emergency Relief Coordinator
GWOT	Global War on Terrorism
IASC	Inter-Agency Standing Committee
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
IRC	International Rescue Committee
IR	International Relations
ISOA	International Stability Operations Association
KLA	Kosovo Liberation Army
MSF	Médecins Sans Frontières (“Doctors without Borders”)
NATO	North Atlantic Treaty Organization
NGO	non-governmental organization
NSA	non-state actor

OAU	Organization of African Unity
OCHA	Office for the Coordination of Humanitarian Affairs (UN)
OFF	Oil-for-Food Program
OLS	Operation Lifeline Sudan
OOTW	operations other than war
PMC	private military company
PMSC	private military and security company
POW	prisoner of war
PSC	private security company
RHA	Revolution in Humanitarian Affairs
RMA	Revolution in Military Affairs
RPF	Rwandan Patriotic Front
SMI	Security Management Initiative
UN	United Nations
UNAMA	United Nations Assistance Mission for Afghanistan
UNAMI	United Nations Assistance Mission for Iraq
UNAMID	United Nations/African Union Mission in Darfur
UNAMIR	United Nations Assistance Mission for Rwanda
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations Children's Fund
UNITAF	Unified Task Force (UN)
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIS	United Nations Mission in Sudan

UNOSOM	United Nations Operation in Somalia
UNPROFOR	United Nations Protection Force
US	United States
USSR	Soviet Union
WFP	World Food Programme (UN)
WMD	weapons of mass destruction

Introduction

“Military power holds the ambiguous role in world politics of being simultaneously the decisive threat to life and order and the instrument of protecting both.”

— J. Bryan Hehir¹

After the extremists who engineered the 1994 genocide in Rwanda had been defeated and fled to refugee camps in the eastern portion of the Democratic Republic of the Congo, the head of United Nations (UN) peacekeeping at the time, Kofi Annan, faced a hard choice as to how to disarm the militants and deliver relief. To bring to bear the force required to facilitate the process would not be easy as few states were willing to commit military assets to the task. A private sector option presented itself when Executive Outcomes, a military services firm, offered to lease troops to provide the security component of the operation. At the heart of the decision lay a tension between legitimacy of ends and means—can private security attain humanitarian goals? Annan ultimately figured that the “world may not be ready” for the international organization to privatize security.²

However, since then the idea of humanitarian agencies using security contractors for

¹ J. Bryan Hehir, “Military Intervention and National Sovereignty: Recasting the Relationship,” in *Hard Choices: Moral Dilemmas in Humanitarian Intervention*, ed. Jonathan Moore (Boulder, CO: Rowman & Littlefield Publishers, 1999), 33.

² Kofi Annan, “Intervention” (Ditchley Foundation Lecture XXXV, June 26, 1998), <http://www.ditchley.co.uk/page/173/lecture-xxxv.htm>.

protection services has lingered as a programming option and been the subject of fierce debate. The core puzzle is why and how humanitarian agencies have turned to private security companies to address problems of protection?

Humanitarianism is recognized as an act of assistance and protection, but more than that, it is the expression of a social relationship between providers of aid and recipients. Accordingly, dangerous operating environments challenge humanitarian agencies to find means that do not jeopardize ends—i.e., to access victims, distribute relief, and stave off violence or other manipulations, and do so without provoking local populations. Over the past twenty years seven security tactics have been posed to address physical safety. Traditionally, agencies have looked to international humanitarian law to protect humanitarian space and framed their actions to gain the consent of local populations where they work, and, therefore, the first two options are *legal* remedies and *acceptance*.³ This tactic is predicated on a notion that those who might threaten agencies respect the neutrality of agencies and refrain from targeting aid operations.

However, in instances where international humanitarian law is ignored and consent is not granted, agencies consider a third tactic, *lower profile*—taking steps to call less attention to their work. A fourth tactic involves removing international staff and relying exclusively on nationals. *Localization* may foster greater acceptance because its modalities will not aggravate fears of foreign control. Yet, this may not actually decrease threats, but rather transfer exposure to local workers. When violence is rampant or the level of the systematic targeting of aid workers is severe, agencies may contemplate a

³ Koenraad Van Brabant, *Operational Security Management in Violent Environments: A Field Manual for Agencies* (London: Overseas Development Institute, 2000).

fifth tactic, *withdrawal*. Leaving the war zone altogether while a crisis persists is rare, usually only occurring where efforts are seen as blatantly counterproductive to the overall objective of relief.

As agencies are loath to abandon victims in even the most hazardous war zones, other tactics fourth tactic for operating in non-permissive environments are deliberated. Humanitarian organizations that cannot meet their protection needs through other means must look to security providers. This leads to a sixth tactic, *working directly with the soldiers of states or international troops*, such as UN peacekeeping troops. However, these forces may be uncertain providers because they rely on receiving the necessary mandate and adequate resources in a timely manner. Furthermore, overt ties to these sources of security weaken the independence of agencies.

Another form of security providers that humanitarian agencies have considered bargaining with and sought protection services from are local militia groups. Such an option was briefly pursued in the late 1980s in Somalia when “technicals” were hired to guard international assistance. This arrangement permitted the movement of some aid resources, but it ultimately did not address, or even worsened, the security problem by effectively legitimating and rewarding those who took up arms. Therefore, humanitarian agencies turned their search for security away from those that were active belligerents in the armed conflicts and towards corporate entities.

Accordingly, this has instigated a seventh tactic, *contracting private security companies*. This option is controversial; some agencies argue that such forces and their use by humanitarians is intrinsically antithetical, whereas other agencies make the case that in certain situations safety concerns can only be tackled by hiring protection.

Security contractors (agents of force employed through corporate entities) are of special concern to agencies because their status under international humanitarian law is nebulous, and traditional apprehension about mercenaries as a parasitic tool of imperialism.

Since the mid 1990s, when Kofi Annan deliberated and then dismissed using security contractors, the debate has grown considerably. A number of inter-governmental and non-governmental organizations have investigated the potential, and a myriad of opinions among agencies has surfaced. An early example of endorsing the idea is a 1999 Canadian-government funded study, “Mean Times.”⁴ And in 2001, conferences of agencies, such as the Humanitarianism & War Project’s NGO Forum, “The Politicisation of Humanitarian Action and Staff Security: The Use of Private Security Companies by Humanitarian Agencies,” and the symposium, “Humanitarian action and private security companies,” sponsored by International Alert also are illustrative of normative evolution.⁵ The latter demonstrated significant variation in approaches to security, and above all, an absence of consistent practices regarding the hiring of security contractors:

In a recent review of twenty aid agencies it was revealed that, while security management had, on the whole, improved in recent years, by and large no policies

⁴ Michael Bryans, Bruce D. Jones, and Janice Gross Stein, “Mean Times: Humanitarian Action in Complex Political Emergencies,” *Coming To Terms* 1, no. 3 (January 1999).

⁵ Angela Raven-Roberts and Damien Lilly, *The Politicisation of Humanitarian Action and Staff Security: The Use of Private Security Companies by Humanitarian Agencies* (Medford, MA: Feinstein International Famine Center at Tufts University, April 23-24, 2001); Tony Vaux, et. al., *Humanitarian action and Private Security Companies: Opening the Debate* (London: International Alert, 2001).

existed for the use of private security companies. Where some experience has been translated into guidelines there, have generally not been formalized nor the ethical and management dimensions of using private security companies been fully thought through.⁶

Nevertheless, although there has been a change in norms, controversy still persists as illustrated by the distillation offered by a 2008 study of humanitarian agency usage of private security contractors:

In the highly sensitive and sometimes polarised debate on the issue, two contrasting opinions are often heard. One side sounds the alarm that the privatisation of security seen in military and diplomatic ventures has begun to creep into relief assistance, evoking images of armed international mercenaries and the prospect of a highly militarised, unprincipled and unaccountable humanitarian response. The other side dismisses it as a non-issue or at best a ‘sideshow’, arguing that humanitarians’ use of these entities is minimal and too circumscribed to warrant attention.⁷

At a practical level, normative variation can be seen in the diverse practices of agencies. Presently, while some such as Médecins Sans Frontières (MSF) refrain from working with any sort of armed forces, let alone security contractors, others view such interactions as an unlikely but permissible last resort and now focus their efforts on codes of conduct. For instance, in the fall of 2007, the International Committee of the Red

⁶ Vaux, et. al., *Humanitarian action and private security companies*, 8.

⁷ Abby Stoddard, Adele Harmer, and Victoria DiDomenico, *The use of private security providers and services in humanitarian operations*, HPG report 27 (October 2008), 1.

Cross (ICRC) promulgated a new policy signaling a change in views on security contractors, from refusal to regulation.⁸ Within the UN there is also debate. Most at the UN are contemptuous of armed contractors, viewing them as politically destabilizing, as typified by the November 2007 report of the UN Working Group on the Use of Mercenaries.⁹ The UN Department of Safety and Security (UNDSS), which is charged with handling security for its aid agencies, rejects security contractors—registering the aforementioned complaints but also emphasizing that they undermine the UN, and UNDSS specifically, as a focal point for security. However, some United Nations humanitarian agencies, such as the United Nations High Commissioner for Refugees, have expressed interest in the option.¹⁰

⁸ “Privatization of War,” International Committee of the Red Cross, accessed December 1, 2011, <http://www.icrc.org/eng/war-and-law/contemporary-challenges-for-ihl/privatization-war/index.jsp>.

⁹ United Nations, “Private Security Companies engaging in new forms of mercenary activity, says UN Working Group,” news release, November 6, 2007, http://www.unwg.rapn.ru/en/news/ln_1.htm.

¹⁰ Executive Committee of the United Nations High Commissioner for Refugees, “Security and the Civilian and Humanitarian Character of Refugee Camps and Settlements: Operationalizing the ‘Ladder of Options,’” UN Document EC/50/SC/INF.4, June 27, 2007.

In sum, an escalation of security problems over the past twenty years has compelled agencies to be visionary in crafting security solutions. As Hugo Slim¹¹ observes in proposing the sharpening of “humanitarian cunning,” “It is the time to get decisive about where we can and cannot operate and to get innovative about how we do things... It is the time to be creative about humanitarian agency rather than to wallow in humanitarian agony.” How did the innovation of humanitarian agencies hiring security contractors develop, how has it spread, and how has it fared?

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This study examines how humanitarian agencies have come to view security contractors as viable instruments for protecting humanitarian space. It argues that the establishment of this practice as a norm is the result of a combination of the influences of politics, force, and markets. This explanation speaks to and is steeped in several fields of scholarly and policy analysis, but can primarily be located in the “New Humanitarianism” literature that came to prominence in the 1990s.¹² A spate of armed conflicts following the Cold

¹¹ Hugo Slim, *A Call to Alms: Humanitarian Action and the Art of War* (Geneva: Centre for Humanitarian Dialogue, February 2004), 16 and 2.

¹² Examples include David Rieff, *A Bed for the Night: Humanitarianism in Crisis* (New York: Simon & Schuster, 2002); Fiona Terry, *Condemned to Repeat? The Paradox of Humanitarian Action* (Ithaca, NY: Cornell University Press, 2002); Mark Duffield, *Global Governance and the New Wars: The Merging of Development and Security* (London: Zed Books, 2003).

War featured militarized non-state actors, a high proportion of civilian casualties, and complex war and aid economies, the so-called “New Wars.” Many within the humanitarian sector felt these operating conditions warranted a rethinking of traditional practices. The “New Humanitarianism” approach—which should really be plural, “new humanitarianisms,” because within this school there are several strains—of agencies and academic literature has three main areas of concern: political constraints (what should be role of humanitarian action), relations to military forces (the use of force to protect humanitarian space), and resource competition among agencies (the political economy of humanitarian sector).

Humanitarianism is inspired by a moral impulse to respond to victims, but humanitarian action has been achieved principally due to politics. When the international humanitarian system was formally established in the late 19th century, the prevalent politics of the period—interstate relations of European powers—reached a compromise regarding the parameters of humanitarian action. The cornerstone of this agreement was the principles of neutrality, impartiality, and independence: on-the-ground agencies would limit their activities to avoid taking sides, and state military forces would respect humanitarian space. This has always been a precarious compromise; belligerents have frequently viewed any form of assistance to their enemies as suspicious. Also, agencies have often agonized over whether to accept limits and remain neutral in order to facilitate access, or be more outspoken and differentiate in the distribution of assistance so as to promote a particular political outcome.

The “new wars” of the 1990s saw spectacles such as the “well-fed dead” in Bosnia (those who had received relief but not protection, who were sufficiently nourished

but killed) and raised political hackles regarding impartiality to new heights.

Furthermore, there were worries about negative economic impacts of assistance in war zones, nurturing dependency and perpetuating violence.¹³ In reaction to these sorts of aid manipulations, many humanitarian agencies adopted more consequentialist orientations—operations should not be pursued where systematic diversions of relief exacerbated armed conflict—and a diversity in agency principles emerged.¹⁴ This “Do No Harm” school of thought suggests that agencies should consciously leverage their activities to address the root causes of disasters by using aid to alter those political conditions that create victims.¹⁵ In addition to limits on relief, many humanitarians sought to expand the scope of action from a straightforward logistical exercise of aid delivery to the much more complex and contentious activity of physical protection. Lastly, agencies also began to more readily embrace collaborative efforts with states. This shift to more politicized activities and working with political actors contrast with the tradition of neutrality and independence and evidence the new thinking of humanitarian agencies.

¹³ David Keen, “Incentives and Disincentives for Violence,” Paul Collier, “Doing Well out of War: An Economic Perspective,” and David Shearer, “Aiding or Abetting? Humanitarian Aid and Its Economic Role in Civil War,” in *Greed or Grievance: Economic Agendas in Civil Wars*, eds. Mats Berdal and David Malone (Boulder, CO.: Lynne Rienner, 2000), 19-41, 91-111, and 189-203.

¹⁴ Thomas G. Weiss, “Principles, Politics, and Humanitarian Action,” *Ethics & International Affairs* 13 (1999): 1-22.

¹⁵ Mary Anderson, *Do No Harm: How Aid Can Support Peace—Or War* (Boulder, CO.: Lynne Rienner, 1999).

Military force has also shaped, and continues to shape, humanitarian agencies. Following the Cold War, the upsurge in the targeting of civilian casualties and high profile attacks against aid workers altered the needs and space of humanitarian operations. With world powers drawing a greater connection between humanitarian crises and threats to global security, coercive capabilities have been used to halt atrocities and protect local populations. Within the humanitarian sector this development has fueled a reconsideration of the relationship between agencies and military forces. This sensibility is informed by a few episodes in the 1990s. For instance, the realization that the insertion of a relatively small armed force would have saved substantial numbers of lives during the intense period of the Rwandan genocide in April 1994 and recognizing how NATO's 1998 bombing campaign against Serbia halted ethnic cleansing in Kosovo were powerful sources of inspiration. Hallmark of this thread of "new humanitarian" logic was the development of the "responsibility to protect" in 2001—an initiative to build international political consensus for intervention when a state commits mass human rights violations against its own population.¹⁶ Similarly, many within agencies called for military means to secure humanitarian space. Interactions with military forces have traditional been considered taboo among humanitarian agencies, but the capacity to compel access and protect the vulnerable has changed this norm.

¹⁶ The International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001); Thomas G. Weiss and Don Hubert, *The Responsibility to Protect: Research, Bibliography, and Background* (Ottawa: International Development Research Centre, 2001).

Markets also mold the humanitarian sector by fostering incentive structures connected to economic interests. The “New Humanitarianism” literature examines how this is propelled by a new public administration agenda that desires to transplant the efficiencies of the private sector into the humanitarian one. All agencies need money to operate but with few donors and a small pool of resources for humanitarian action, the marketplace has become competitive. Furthermore, in order to be more efficient with funds—which in addition to allowing more money to be devoted to relief supplies, is also attractive to donors—agencies confront influences to economize. As such there are pressures to adopt strategies that mimic business models. The “New Humanitarianism” literature points to a growth of marketization at two levels. First, humanitarian agencies are more engaged in a “NGO scramble” for market share than ever before, with many competing for resources much as businesses pursue a profit-motive.¹⁷ Second, the purchase of goods and services by humanitarian agencies also establishes a market that attracts for-profit actors. The spread of the neoliberal philosophy to non-governmental and inter-governmental organizations and an increase in the number of agencies has motivated a stronger focus on economic bottom lines and opened the humanitarian sector to hiring contractors.

This dissertation makes a scholarly contribution by explaining how the processing of the influences of politics, force, and markets has produced a new norm on humanitarian agencies’ use of security contractors. However, the fact that the entire

¹⁷ Alexander Cooley and James Ron, “The NGO Scramble: Organizational Insecurity and the Political Economy of Transnational Action” *International Security* 29, no. 1 (2002): 5-39.

sector has not universally shunned or embraced usage suggests that each agency possesses distinct decision-making power. The study contends that the ideas of respective humanitarian agencies matter because they filter sector-wide influences and in the case of security arrangements, they crystallize to form norms regarding security contractors.

A second area where this dissertation contributes to scholarship can also be seen in appreciating how the emergence of this new norm reconceives humanitarian action. That is to say, the hiring of security contractors by humanitarian agencies constitutes a *revolution in humanitarian affairs*. In the world of warfare there is often talk of a “revolution in military affairs” to correspond to new forms of force projection and deployment that echo changes in technology and organization. By extension it is not far-fetched to speak of a revolution in humanitarian affairs, a change in the norms of humanitarian agencies that fundamentally alters their behavior and outcomes. In the case of the usage of security contractors, such a revolution may be in the making because not only are new policies (e.g., codes of conduct) in place but also the political, and at times violent, reaction to such arrangements foment a political rift within the humanitarian sector and also suggests a reconfiguration in the relationship between local populations and humanitarian agencies.

A third scholarly contribution of this dissertation regards underscoring the power of ideas, as opposed to emphasizing solely material conditions, in determining outcomes. Here the Constructivist school of analysis in International Relations Theory is substantiated in two ways. First, idea-based variation among agencies is presented as an explanation for the diversity in security arrangements, including the use of private sector

providers. In selecting their own means and ends agencies express “constitutive power.”¹⁸ Second, humanitarianism is interpreted as resting on a social relationship between agencies, belligerents, and victims. Traditionally the “inter-subjective understanding”¹⁹ of humanitarian space has advanced neutrality as the means to protect operations. But, as this study discusses, with agencies switching to other tactics in some situations—use only locals to staff operations, withdraw from the war zone, or hire security—this agreement bends, and perhaps even breaks. To illustrate the consequences of the power of agencies to self-define coupled with socially constructed notions of what their legitimate behavior should be the dissertation introduces the concept of a “revolution in humanitarian affairs.” When a change in agencies’ ideas and practices leads to a refashioning of the broader social relationship behind humanitarianism, this is a significant transformation. Thus, in examining whether there is a “private security revolution in humanitarian affairs” at hand, this study addresses theoretical questions of idea-based change in International Relations Theory.

In short, this dissertation addresses a lacuna in elucidating the causes, extent, and consequences of humanitarian agency-security contractor interactions. There are studies of general changes in international politics that impact humanitarianism, but there is very little to explain what drives the phenomenon from within the humanitarian sector. In other words, the push factors of interactions (such as the needs created by security risks

¹⁸ Michael Barnett and Martha Finnemore, *Rules for the World: International Organizations in Global Politics* (Ithaca, NY: Cornell University Press, 2004), 7, 30-31.

¹⁹ Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press 1999), 371.

or the capacities presented by the availability of security resources on the market) have been somewhat analyzed, but the pull factors of agency views have not been adequately documented. This dissertation provides a historical narrative and idea-based explanation for why humanitarian agencies turn to security contractors—i.e., the study is a historical map of normative development. Furthermore, in the conclusion, the dissertation offers an analysis of change in humanitarian action which factors in agency behavior, social relationships with local populations, and collective action mechanics. The analytic device of “revolutions in humanitarian affairs” is innovative method for assessing meaningful transformation in the humanitarian sector because it enables understanding agency norms and interpreting reverberations of changes in norms.

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Changes in and variation among the ideas of humanitarian agencies relating to security represent and usher along an on-going transformation in the meaning and significance of humanitarian action. The origins of the norm of humanitarian agencies hiring of security contractors, the breadth of acceptance of these norms within the humanitarian sector, and the repercussions of these norms are analyzed in six chapters.

Chapter 1, “Norms and Change in the Study of Humanitarian Action: Politics, Force, and Markets,” lays out the theoretical concerns and foundations of the dissertation. This chapter mainly situates this study within three relevant literatures: the “New Wars,” the “New Humanitarianism,” and International Relations Theory. It identifies six sets of normative influences that are essential to understanding humanitarian agencies:

maximalization, collaboration, militarization, securitization, marketization, and commercialization. Social science scholarship has addressed some aspects of change, but as this chapter shows, a more thorough explanation of the role of ideas in shaping the behavior of agencies is needed. Lastly, the chapter suggests that hired guns guarding humanitarian space raise the prospect of significantly transforming humanitarian action, and therefore, the study of the phenomenon yields insight into issues of change and problematizing a “revolution in humanitarian affairs.”

Chapter 2, “Normative Touchstones and Trajectories of the International Humanitarian System From the Nineteenth Century to the Twenty-First,” depicts founding principles and other core ideas that have influenced humanitarian agencies. It begins by examining traditional frameworks and then concentrates on key experiences of the 1990s—Somalia, Bosnia, Rwanda, and Kosovo—and their normative legacies. In particular this chapter sketches the rise of the “new humanitarianisms” and ends with an analysis of change in the international humanitarian system from its establishment in the 1860s up until 2001.

Chapter 3, “The Origins of Security Contractors and Usage Norms: Theory, History, and Law,” provides an overview of the development of guns for hire, investigating why they exist, how they have come about, and what is their legal status. The chapter starts with a review of the historical antecedents of contemporary security contractors. It then proceeds to describe the expansion of the military and security services industry in the 1990s and illustrate their growing role in war zones. Next, the legalities of security contractors under international humanitarian law and other

significant international agreements are discussed. The chapter concludes with an outline of the dilemmas encountered in hiring security contractors.

Chapter 4, “Contemporary Configurations of Humanitarian Space and Hired Guns,” looks at how humanitarian action has played out since the terrorist attacks of September 11, 2001. This chapter paints a picture of the operations of humanitarian agencies and security contractors primarily in Afghanistan and Iraq, but also takes up Darfur (Sudan) and Somalia. Its conclusion examines trends of the past decade in the humanitarian sector in order to lay the groundwork for explaining changes in the norm of humanitarians employing security contractors.

Chapter 5, “The Security Problems and Solutions of Humanitarian Agencies: Risks, Tactics, and Practices,” considers the situation of humanitarian agencies and examines different methods for addressing security. The first part parses the sources and severity of dangers to humanitarian workers and especially why casualties have increased in recent years. Second, the chapter details the tradeoffs of seven sorts of security tactics: *legal, acceptance, lower profile, localization, withdrawal, force from states and inter-governmental organization, and contract force*. Third, the chapter then studies the practices of specific agencies; those of the International Committee of the Red Cross, Médecines Sans Frontières, humanitarian agencies within the United Nations system, and several other non-governmental humanitarian organizations. It also exhibits how widespread the hiring of security contractors has become throughout the humanitarian sector. Finally, this chapter analyzes changes in the views of agencies in order to explain the birth of the norm of employing security contractors

Chapter 6, “Conclusions: From Coaxing Consent to Contracting Coercion? Evaluating the Private Security Revolution in Humanitarian Affairs,” reflects on the power of norms to dramatically change humanitarian action. Here the overall argument is assembled: First, the theoretical components of the importance of norms and how norms are internalized explain how ideas become action. Second, the heat of humanitarian responses where providing relief, not confronting threats, is the primary focus agencies are described as a background to the decision to retool security tactics. Third, how these changes constitute a revolution in humanitarian affairs is analyzed. The chapter then looks at the consequences of the growth of humanitarian agencies hiring security contractors—i.e., how has the practice been received within and outside the sector, and what reactions have resulted. In reflecting on the present situation, the chapter speaks to contemporary debates, and presents a research agenda for improving understanding of the phenomenon.

Humanitarianism is a powerful idea; it moves people to save war victims. We know a good deal about, and indeed often celebrate, the noble aims of humanitarian action, but much less are known about the actors and their ideas about their operational methods. This dissertation tells a norm-based story of humanitarian action to explain the dawn of humanitarian agency-security contractor interactions, the unevenness of the practice, and how the politics of protection are impacting the humanitarian sector. In doing so, this study also tackles the question of transformation: How profound in substance and scope are these changes? When hired guns guard humanitarian space is humanitarian action blurred but marginally and momentarily or do such instances lay at

the cusp of a fundamental reformulation, a “private security revolution in humanitarian affairs”?

Chapter 1:

Norms and Change in the Study of Humanitarian Action:

Politics, Force, and Markets

- The “New Wars” Studies
- International Relations Theory
- The “New Humanitarianisms” Critique and Literature
- Tracing the Norms of Humanitarian Agencies and the Roots of Revolutions in Humanitarian Affairs

This analysis of the revolution of humanitarian norms in explaining the hiring of security contractors by humanitarian agencies and transformative tripwires in the humanitarian sector invokes a wide swath of scholarly and policy literatures. There is no one specific literature pertaining to humanitarianism—there is no discipline of humanitarian studies or established science of humanitarian action. Instead there are several groupings of literatures throughout the social sciences that examine different aspects. Moreover, it should be noted that the study of this field is constrained by the limits of data collection on this value-laden enterprise.¹

¹ For more on a more detailed discussion on evidence and methodology that explicates the dearth of research and the orientations of the research that has been collected on the humanitarian sector see Appendix: Data Collection and the Value-Laden Enterprise.

This chapter discusses scholarship that informs the premise of analyzing humanitarian intellectual history and agency practices as a means to apprehend the phenomenon of hired guns guarding humanitarian space. Three sets of scholarly literature are germane to humanitarian agency-security contractor interactions: First, the “New Wars” materials illuminate key background components, including security risks to civilians and aid workers on the one hand, and the mechanics of security providers on the other, especially the emergence of market-based actors relative to the role that in the last few centuries has been the exclusive domain of public security authorities (soldiers and police). Second, International Relations Theory takes up the power of ideas; which ideas are embedded in agencies and how they help to explain the behavior of these organizations (i.e., norms). IR Theory also considers the nature of change, its sources and significance. Third, research on and interpretations of the “New Humanitarianism” is the major contributor to this dissertation. This literature documents the disasters and challenges of the 1990s and illustrates the new thinking of agencies, particularly their departure from neutrality and their turn to the use of force, including contracting out for it. After the literature review, this chapter concludes by distilling and synthesizing the influences of politics, force, and markets on the norms of humanitarian agencies: The theoretical model used in this study is spelled out and its contribution is situated with respect to an emerging field of humanitarian studies.

The “New Wars” Studies

A first body of literature applicable to this study is from the field of security studies; it investigates debates over changes in warfare and has led scholars to postulate a “new wars” paradigm. While not every change in warfare is important to this study, two areas of the “new wars” literature are particularly pertinent: The first area dissects the characteristics of armed conflicts of the 1990s, particularly the growing proportion of civilian relative to military casualties in war zones and also struggles for resources in the context of poverty and war induced scarcity. The second area takes up the role of security providers and especially the conspicuous advent of private military and security contractors in contemporary armed conflicts—how they evolved militarily, economically, and politically.

Security Risks

The role of war in creating the demand for humanitarian goods and in shaping the security environment for humanitarian operations is essential background to this study. Military scholars such as Martin Van Creveld analyze changes in war that govern the workings of military forces.² IR scholars have also followed this line of inquiry to emphasize new patterns of war, notably changes in actors (combatants), victims (killed, wounded, and displaced), economies (the power and role of markets in war), and technologies (hardware that enable war).

Much of the “new wars” research centers on economic resources and scarcity in war (including humanitarian aid) as a primary instigator or whether it merely accentuates

² Martin Van Creveld, *The Transformation of War* (New York: Free Press, 1991).

armed conflict—the “greed or grievance” debate.³ Works by David Keen, Mary Anderson, Michael Maren, Alex de Waal, and Linda Polman examine the significance of aid manipulation.⁴ Mark Duffield similarly demonstrates how aid is diverted into corrupt “shadow economies.”⁵ As will be discussed in section below on literature of the “New Humanitarianism,” some agencies began to reconsider their positions as indiscriminate deliverers of assistance and means for addressing the security problem that comes from conflicts over the resources humanitarians inject into crises.

In addition to this dynamic of insecurity that sometimes results from humanitarian relief, the nature of violence itself is also important in recognizing the increased need for humanitarian aid as well as the increased role of humanitarian agencies. The deliberate targeting of non-combatants as a strategic goal, especially by armed NSAs that do not

³ Mats Berdal and David Malone, eds., *Greed and Grievance: Economic Agendas in Civil Wars* (Boulder, CO: Lynne Rienner, 2000).

⁴ David Keen, “Incentives and Disincentives for Violence” in *Greed and Grievance*, eds. Berdal and Malone; Mary Anderson, *Do No Harm: How Aid Can Support Peace—Or War* (Boulder, CO: Lynne Rienner, 1999); Michael Maren, *The Road to Hell: The Ravaging Effects of Foreign Aid and International Charity* (New York: Free Press, 1997); Alexander de Waal, *Famine Crimes: Politics and the Disaster Relief Industry in Africa* (Oxford: James Currey, 1997); Linda Polman, *The Crisis Caravan: What’s Wrong with Humanitarian Aid* (New York: Metropolitan, 2010); Linda Polman, *War Games: The Story of Aid and War in Modern Times* (New York: Penguin, 2011).

⁵ Mark Duffield, *Global Governance and the New Wars: The Merging of Development and Security* (London: Zed Books, 2001), 136-160.

respect international humanitarian law, looms large in depictions of contemporary armed conflicts. Edward Newman and Mary Kaldor each problematize the “new wars” slightly differently, but they both register a surge in the proportion of civilians in total battlefield casualties.⁶ However, the data on the “new wars” is not always definitive and not all scholars agree on the precise character of these armed conflicts. For example, Stathis Kalyvas disputes the uniqueness of these features and argues that there may be more continuity than change.⁷ Nevertheless, as an influence on humanitarian action, the violence of the “new wars” establishes a key influence on agencies to develop security responses.

Security Providers

A second pertinent area of “new wars” literature examines the evolution of security contractors and the development of private military companies. Traditionally force has been the exclusive purview of the state and scholarship on large-scale violence has primarily been centered on the state. Max Weber emphasized that the state had a legitimate monopoly on violence, and ever since then force and the broader notion of

⁶ Edward Newman, “The ‘New Wars’ Debate: A Historical Perspective is Needed,” *Security Dialogue* 35, no. 2 (June 2004): 173-189, especially 174-175. Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Stanford: Stanford University Press, 1999).

⁷ Stathis N. Kalyvas, “‘New’ and ‘Old’ Civil Wars: A Valid Distinction?” *World Politics* 54 (October 2001): 99-118.

security has been understood and essentially linked to states.⁸ But, “new wars” analyses consider a wider range of actors, which relates to this study in three ways: the demand for services, the capabilities of providers, and reservations and restrictions on use. As to need and in some cases the preference for market-based force, Sarah Percy has charted the rise and fall of norms relating to the use of mercenaries.⁹ Moreover, Deborah Avant has illuminated this history and investigated the more recent embrace of private military and security contractors (PMSCs) to explain how economic issues have reframed political debates.¹⁰ Concerns over the suitability of PMSCs have also been influenced by the media’s portrayal of “new wars” that elicits sympathy for victims although also scares off commitments by national military forces. The perception that many “new wars” are ungovernable wastelands, fed by journalists such as Robert Kaplan and his thesis of a “coming anarchy,” makes states consider intervention to maintain order but are reticent to

⁸ See Max Weber, “The Profession and Vocation of Politics,” in *Max Weber: Political Writings* (original 1919) (Cambridge: Cambridge University Press, 1994), 310: “[A] state is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory.” In regard to the centrality of the state to studies of security see Stephen Walt, “The Renaissance of Security Studies,” *International Studies Quarterly* 35, no. 2 (June 1991): 211–40; Richard Betts, “Should Strategic Studies Survive?,” *World Politics*, 50, no. 1 (October 1997): 7–33.

⁹ Sarah Percy, *Mercenaries: The History of a Norm in International Relations* (Cambridge: Cambridge University Press, 2007).

¹⁰ Deborah D. Avant, *Markets for Force: The Consequences of Privatizing Security* (Cambridge: Cambridge University Press, 2005).

take a huge risk for a small chance of success in attaining uncertain gains.¹¹ By not creating a “body bag” effect that requires politicians to explain the caskets of soldiers from distant conflicts, security contractors suit the interests of states.

The question of the abilities of security contractors—whether small-scale, highly skilled market-based armed forces can make a difference—is another key piece for this study. For example, Peter W. Singer’s comprehensive study of the private military industry develops a typology of firms, distinguishing between support, training, and combat services.¹² In terms of humanitarian-private security interactions such distinctions are crucial, as some humanitarian agencies may be more inclined to hire contractors to make assessments of risks or provide instruction as to how to operate in threatening environments rather than use them to deploy armed forces to protect aid workers, assistance, or victims.

Finally, much research on private military and security companies examines the propensity for human rights violations and the absence of accountability. Singer’s work is again illustrative, as he reiterates a perennial criticism that contractors are unreliable security providers because they are motivated more by money than a sense of mission. However, as Robert Mandel indicates, those who hire security contractors often do not

¹¹ Robert D. Kaplan, *The Coming Anarchy: Shattering the Dream of the Post-Cold War* (New York: Random House, 2000).

¹² Peter W. Singer, *Corporate Warriors: The Rise of Privatized Military Industry* (Ithaca, NY: Cornell University Press, 2003).

have sufficient information when making decisions regarding contracts.¹³ As to usage by non-governmental organizations (NGO), Avant provides an instructive analysis, such as the World Wildlife Fund’s hiring of security contractors for conservation and anti-poaching programming in East Africa.¹⁴ However, there is no systematic study of the motives and material circumstances of humanitarian agencies that inform decisions regarding employing security contractors.

The “New Wars” literature is important to this study for two reasons: First, a breakdown of the elements of an armed conflict—who are the armed belligerents, who are their victims, what economic agendas does each party possess—spells out the scale and nature of humanitarian challenges. Second, the surfacing of security contractors as prominent players in contemporary war zones establishes another possible security provider for humanitarians. Therefore, this literature is a crucial point of departure for this study despite its limitations; scholars of the “new wars” do not agree as to the degree of change or the nature of its consequences, and scholarship on the private military and security industry basically examines humanitarian agency use of security contractors only from the perspective of companies.

¹³ Robert Mandel, *Armies without States: The Privatization of Security* (Boulder, CO: Lynne Rienner, 2002).

¹⁴ Avant, *Markets for Force*, 204-215.

International Relations Theory

The second group of literature essential to framing this study is International Relations (IR) theory. Although IR theory is not specific on the position of humanitarianism in international politics, it addresses two important aspects: the power of ideas and the nature of change. This section begins by looking at how major schools of IR have sought to explain humanitarian action, and in particular discusses the importance of norms. Then it considers the question of change, both how it occurs and how to discern significant change from minor shifts.

The Power of Ideas

The major divide of IR theorists in this area centers on whether humanitarianism is simply symptomatic of a world order grounded on power or is itself a potent factor in shaping international politics. The conventional power-based perspectives see humanitarianism as a tool of governance and analyze the phenomenon to see what the big powers that permit and engineer assistance gain from the transaction. This accepts the gruesome realities of a world at war and, though offering aid to victims, does not contest victimization. Idea-based views concentrate on the message and the medium to consider how such values may be instilled globally and thus change the world. As Hindu Prince Gautama Siddhartha, founder of Buddhism, wrote, “We are what we think. All that we are arises with our thoughts. With our thoughts we make our world.” By contrast to material-based approaches, idea-based perspectives critique and resist a construct of humanitarianism as a form of control arguing that humanity can stop what it has started. These two disparate traditions, which in IR literature are often referred to respectively as “neo-utilitarian,” “problem-solving,” or “orthodox” on the one hand, and “critical” or

“radical” on the other.¹⁵ These traditions underpin the three major schools of IR theory: realism, liberalism, and constructivism. A brief review of these approaches yields insight into their explanations of humanitarianism.

Realism, the most common analysis of international politics, is predicated on linking the distribution of political power to outcomes. Typically it claims that dominant states establish norms and shape their application. For example, Hans Morgenthau argues that international norms are only meaningful when states have a discernable national interest in adhering to them.¹⁶ Stephen Krasner suggests international systems for governing an issue area, such as humanitarianism, are the product of a convergence of interests among states.¹⁷ John Mearsheimer sees international institutions as fronts for state interests.¹⁸ Hence for Realists, it is the material power of states that makes international and non-governmental organizations viable.

¹⁵ Robert Cox denotes this divide as between theories that accept the international order and strives to perfect the functioning of institutions, and those that seek to understand the origins and properties of international order. “Social Forces, States, and World Order: Beyond International Relations,” in *NeoRealism and Its Critics*, ed. Robert Keohane (New York: Columbia University Press, 1986) 204-254.

¹⁶ Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (New York: Knopf, 1985).

¹⁷ Stephen Krasner, *International Regimes* (Ithaca, NY: Cornell University Press, 1983).

¹⁸ John Mearsheimer, “The False Promise of International Institutions,” *International Security* 19, no. 3 (Winter 1994/1995): 5-49, especially 7-9.

In the case of humanitarianism this would mean that the structure of the international humanitarian system and behavior of agencies are contingent upon the predilection of states. Indeed, certain periods of history provide evidence for this interpretation. The early neutrality of formal humanitarian organizations—identifying them as non-belligerents in wars—is the result of negotiations among states. For the first approximately eighty years of the international humanitarian system (roughly from early agreements of the late 19th century until the end of World War II), international politics revolved around competition among states and this order structured humanitarian organizations and action. The bipolarity of the Cold War created a slightly different set of circumstances for humanitarianism, leading to the creation of some new mechanisms (law and agencies) and also influencing the scope of humanitarian activities. After the crumbling of Cold War tensions in the late 1980s and early 1990s, the major powers turned inward and humanitarianism was seen as a means for managing conflicts without having to intervene militarily. Moreover, the normative stamp of “victim,” implying a person deemed morally worthy of receiving assistance, is suggestive of power. In Realist reckoning, only those who have been granted that title by the most powerful states are the ones who have gained access to resources in the international humanitarian system. Proponents of Realism, most notably those who are diplomats and donors, have given weight to the role of power in understanding humanitarianism, and therefore preach an instrumentality in approaching the phenomenon. Fundamentally, Realism explains the subservient behavior of humanitarian agencies by comparing actions to state interests but such analysis founders in trying to explain outcomes that depart from a straightforward

equation of the balance of power among states determining levels of humanitarian assistance.

Liberalism disputes the exclusivity of states as actors, and argues that world order is not merely the sum of states but includes international organizations and non-state actors that are inspired more by ideas than calculations of raw power. Accordingly, this school concentrates on the role of institutions to highlight how certain actors are able to shape norms and material outcomes. Indeed, humanitarianism itself challenges the pursuit of power upon which Realism is premised.¹⁹ Liberalism concedes that states often provide a necessary backbone for organized humanitarianism to take form but the international humanitarian system itself improves the efficiency, governance, and humanity of wars through the creation of rule-based institutions.²⁰ Moreover, according to this school of thought, these organizations can mature into independently powerful actors and that better explanations of humanitarianism can be found by analyzing humanitarian organizations than abstract international political processes. It should be noted that ascribing power to organizations raises the issue of how they choose to use that power and here is where the power of ideas becomes vitally important—as seen below, this is a line of reasoning picked up by Constructivism. Advocates of Liberalism also view agencies as a vital mechanism to cope with victims and also nurture a web of political ties among states that support world order. Michael Ignatieff considers the

¹⁹ Adam Roberts, “The Role of Humanitarian Issues in International Politics in the 1990s,” *International Review of the Red Cross* 81, No. 833 (March 1999): 19.

²⁰ For example, Inis Claude, *Swords into Plowshares: The Problems and Progress of International Organization*, 4th ed. (New York: McGraw Hill, 1984).

interest in improving the plight of war victims as part of a blossoming “revolution of moral concern” and thus embeds humanitarian concerns into a wide-ranging project of political transformation of relations between states and societies, and ultimately mankind.²¹ However, power continues to be present in operationalizing Ignatieff’s revolution as he sees states, order, and force as indispensable ingredients in realizing humanitarian action. In brief, Liberalism maintains that institutions can act justly, but they require power to have an impact. For analyses of humanitarianism this has meant that organizations offer a window into understanding humanitarian action but constraints from international political conditions are an essential element to ascertaining outcomes.

Constructivism examines the role of meaning (or ideas, identities, and “intersubjective understandings”) in explaining outcomes, and furthermore posits these elements as the key to change in international politics. More of a framework than a theory Constructivism focuses on the unique attributes and the politically defined role of humanitarianism. Although Liberalism also emphasizes a role for ideas and institutions, it does not ascribe the degree of power to them that Constructivism does. In the Constructivist model, world polity, a political community at the global level, impacts international politics and ideational power is decisive in explaining outcomes. Alexander Wendt notes that Constructivism seeks to “reclaim power and interest from materialism by showing how their content and meaning are constituted by ideas and culture.”²²

²¹ For more on this concept, see Michael Ignatieff, *The Warrior’s Honor: Ethnic War and Modern Conscience* (New York: Henry Holt Company, 1998).

²² Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press 1999), 371.

Moreover, organizations, as embodiments of ideas, can develop a degree of autonomy in spreading and implementing their ideas because, as Robert Cox points out, “Institutions take on a life of their own.”²³

While later chapters detail humanitarian norms, for now its important to get a sense of how the Constructivist tradition has influenced this study: A host of Constructivist analyses showcase the power of norms. To begin with whereas ideas can be seen as vague or purely sources of inspiration, norms are more specific and connected to conduct. Norms can be defined as “collective expectations for the proper behavior of actors within a given identity.”²⁴ Liberalism does not see substantive power in norms, categorizing them as “‘intermediate factors,’ or ‘intervening variables’ between fundamental characteristics of world politics such as the international distribution of power.”²⁵ But norms are important because they demarcate the range of expected action. Judith Goldstein and Robert Keohane have shown how ideas can “serve as roadmaps,” and suggest the embrace of certain norms constricts an actor’s range of a state’s foreign

²³ Cox, “Social Force, States, and World Orders,” 219.

²⁴ Peter J. Katzenstein, “Introduction: Alternative Perspectives on National Security,” in *The Culture of National Security: Norms and Identity in World Politics*, ed. Peter J. Katzenstein (New York: Columbia University Press, 1996), 5. Robert Keohane similarly emphasizes notions of anticipated action; see Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984), 57.

²⁵ Keohane, *After Hegemony*, 64.

policy behavior.²⁶ Yet norms also exist in conjunction to material conditions. As Martha Finnemore puts it, norms “are not divorced from power or interests.”²⁷ Furthermore, norms are acknowledged as justified or proper by the context in which they appear. Ann Florini observes that, “a norm acquires legitimacy within the rule community when it is itself a reasonable behavioral response to the environmental conditions facing the members of the community.”²⁸ That is to say, norms are ideas that not only embody a vision of the world but in most instances also represent the pressures of the real world on ideas.

The study of the impact of norms has been pursued in many areas of international politics. For example, on issues of economic development, Louis Emmerij, Richard Jolly, and Thomas G. Weiss analyze the thinking of the UN to argue that the intellectual history of organizations (and the people who work for them) sheds light on practices and politics

²⁶ Judith Goldstein and Robert O. Keohane, “Ideas and Foreign Policy: An Analytical Framework,” in *Ideas & Foreign Policy: Beliefs, Institutions, and Political Change*, eds. Judith Goldstein and Robert O. Keohane (Ithaca, NY: Cornell University Press, 1993), 12-17.

²⁷ Martha Finnemore, *The Purpose of Intervention: Changing Beliefs about the Use of Force* (Ithaca, NY: Cornell University Press, 2004), 5

²⁸ Ann Florini, “The Evolution of International Norms,” *International Studies Quarterly* 40, no. 3 (September 1996): 376.

because, “Ideas matter.”²⁹ Likewise, though specific to the issue of force and the power of norms, Finnemore remarks:

New beliefs about social purpose reconstitute the meaning and rules of military intervention, and ultimately change intervention behavior... By creating new social realities—new norms about intervention, new desirata of publics and decisions makers—new belief create new policy choices, even policy imperatives for intervenors. Thus understanding belief about the legitimate purposes of intervention is not ‘mere description,’ since belief about legitimate intervention *constitute* certain behavioral possibilities and, in that sense *cause* them.³⁰

It should also be noted that Constructivists have examined the process whereby ideas become embedded—that is how norms are established. Martha Finnemore and Katherine Sikkink list three stages or “life cycle” of normative development.³¹ First, there is “appearance” as “norm entrepreneurs” give birth to an idea. But not all ideas are readily received favorably, “new norms never enter a normative vacuum but instead emerge in a highly contested normative space where they must compete with other norms and perceptions of interest... Efforts to promote a new norm take place within the standards of ‘appropriateness’ defined by prior norms.”³² In other words, ideas are

²⁹ Louis Emmerij, Richard Jolly, and Thomas G. Weiss, *Ahead of the Curve? UN Ideas and Global Challenges* (Bloomington: Indiana University Press, 2001), 214.

³⁰ Finnemore, *The Purpose of Intervention*, 14-15.

³¹ Martha Finnemore and Katherine Sikkink, “International Norm Dynamics and Political Change,” *International Organization* 52, no. 4 (Autumn 1998): 887-917.

³² *Ibid.*, 897.

debated and frequently must be understood as rooted in an existing tradition (are “appropriate”) before becoming new norms. Second, is “acceptance,” a moment when the idea is popularly received. The third step is “internalization,” when the idea becomes a fixture and routinely informs action. The rapid spread and embedding of a norm Finnemore and Sikkink call a “norm cascade.” This study examines the prospect for a norm cascade within the humanitarian sector regarding using security contractors, and also problematizes it because normative configurations and influence may vary among and within agencies. Peter Haas has popularized the concept of “epistemic communities” to show how knowledge influences policy.³³ Here the concern is with humanitarian agencies as a form of epistemic community and the life cycles of the ideas within it—i.e., the impact of beliefs among humanitarian agencies.

In terms of understanding how humanitarian action actually takes shape there is belief (ideas) but there is also the bureaucratic sphere. James March and Johan Olsen bring beliefs and bureaucracy together in discussing the behavior of institutions. They maintain that institutions operate according to norms derived from their present circumstances as well as their background: “[I]nstitutional development depends not only on satisfying current environmental and political conditions but also on an institution’s origin, history, and internal dynamics.”³⁴ Michael Barnett and Martha Finnemore pursue this line of inquiry further in *Rules for the World* by specifically taking up the unique

³³ Peter M. Haas, “Epistemic Communities and International Policy Coordination,” *International Organization* 46, no. 1 (Winter 1992): 1-35.

³⁴ James March and Johan Olsen, “The Institutional Dynamics of International Political Orders,” *International Organization* 52, no. 4 (Autumn 1998): 955.

place and nature of international organizations.³⁵ First, they pinpoint the unique types of authority that organizations such as humanitarian agencies possess:³⁶ that which is delegated from states (as they have frequently ceded relief work to aid workers), the moral authority of representing shared principles (aiding victims of war), and specialized expert knowledge (experience in responding to disasters). In each of these authority is consent-based and founded on the notion that agencies serve no interest other than the public one, meaning that the jurisdiction of agencies in this area has been socially constructed and on the basis of the belief that agencies are not political. Second, Barnett and Finnemore indicate how the authority assigned to international organizations translates into power because it gives organizations the autonomy to define rules thereby creating a “zone of discretion.”³⁷ As a result these organizations have agency, and analysis of how they operate and change should concentrate on organizational culture (“the logic of the bureaucracy”) and not merely consider external stimuli in determining outcomes as per conventional black box formulations of international organizations.³⁸

The influence of the bureaucracy is expressed in the prescribed action of an organization, shapes its worldview, and develops its niche and identity as a unique actor.³⁹ Norms are windows into understanding the bureaucracy and the way

³⁵ Michael Barnett and Martha Finnemore, *Rules for the World: International Organizations in Global Politics* (Ithaca: Cornell University Press, 2004).

³⁶ Ibid, 20-24.

³⁷ Ibid, 3-4.

³⁸ Ibid, viii and 9.

³⁹ Ibid, 17-19.

organizations operate. Barnett and Finnemore discuss how norms illustrate pathologies; they show when failures or dysfunction of the organization is the product of internal culture.⁴⁰ In short, international organizations perform three essential roles in regulating and constituting world order:⁴¹ First, they frame issues by creating categories of problems, actors, and actions. Second, they define or fix their meaning in the social world through interpreting their own roles, sometimes elaborating on them (i.e., “mission creep”). Third, they distill and diffuse new norms. After delineating their theoretical concerns and model of the importance of organizational culture Barnett and Finnemore explore several cases, including two branches of the United Nations, the Department of Peacekeeping Operations (DPKO) and the High Commissioner for Refugees (UNHCR).⁴² Roland Paris posits a similar research agenda on organizational culture in his analysis of peace operations.⁴³ This examination of the norms and conditions that frame humanitarian agencies interactions with security contractors follow in the footsteps of models of organizational culture. In short, Constructivism is a mainstay of this inquiry because it argues that ideas are instrumental in showing what is possible, influencing the behavior of agencies, and transforming humanitarianism.

Lastly regarding Constructivism, some scholars of and practitioners within the humanitarian sector exemplify this tradition; they target norms as a way to create or alter

⁴⁰ Ibid, 39.

⁴¹ Ibid, 31.

⁴² Ibid, chapters 4 and 5.

⁴³ Roland Paris, “Broadening the Study of Peace Operations,” *International Studies Review* 2, no. 3 (Fall 2000): 27-44.

power. For them Constructivism suggests that there is a social and interpretive aspect that is central to explaining humanitarianism's development and role in international politics. For example, Jean-Hervé Brodel argues that the structure of international politics is fundamentally grounded on violence (i.e., states use coercion to establish and maintain governance), and that this structure compels inequality that is expressed through the creation of victims by armed conflicts.⁴⁴ The resulting "international sacrificial order" determines who is entitled to humanitarian assistance and who is a forgotten victim. For Brodel and the similarly minded, the execution of humanitarianism requires not only humanitarian action to physically relieve distress but also political action to challenge the roots of disasters. Other Constructivist-type norm-centered analyses critique that the ideas expressed by humanitarianism are purely to stop and alleviate suffering, but instead have other more sinister motives. Mark Duffield, for instance, dismisses the "epistemic community" template as useful to understanding the role of humanitarian agencies and instead contends that they are fundamentally part of Western power and represent its interests. Duffield goes as far as characterizing humanitarianism as "the laboratories of the new liberal imperium."⁴⁵ Two other critics who interpret humanitarianism as a crutch, Michael Hardt and Antonio Negri, denounce it as "powerful pacific weapons of the new

⁴⁴ Jean-Hervé Brodel, "The Sacrificial International Order and Humanitarian Action, in *In the Shadow of "Just Wars": Violence, Politics, and Humanitarian Action*, ed. Fabrice Weissman (Ithaca, NY: Cornell University Press, 2004), 5.

⁴⁵ Mark Duffield, *Development, Security and Unending War: Governing the World of Peoples* (Cambridge: Polity, 2007), 135; Duffield, *Global Governance and the New Wars*.

world order.”⁴⁶ This debate is documented more prominently in the literature that analyzes the “New Humanitarianisms,” and is examined below.

Overall, the major approaches of IR theory differ greatly in their estimation of humanitarianism—as a product of international politics (a result of state actions), a mechanism for states that attains a norm-based role in world order (an idea embedded in autonomous institutions), or an arena for resisting power (actions that criticize and attempt to change that which produces violence)—and therefore produce radically different explanations. None alone provide a persuasive explanation of humanitarian-private security interactions. Realists mostly ignore non-state activities or see them as unimportant; Liberals recognize the importance of institutions but are perhaps weak in incorporating political contexts, particularly those that challenge the foundations of a state-based international order; and Constructivism’s emphasis on social interactions may underestimate the influences of material power in shaping interactions. Nevertheless, the analytic focal point of each of the major approaches in IR theory informs this study: Issues of political power, institutions backed by states, and norms and social relations will each play a role in the analysis of humanitarian agencies use of security contractors. However, it should be noted that fundamentally this dissertation’s approach is rooted in norms and the Constructivist tradition, while acknowledging the salience of Liberalism given its focus on institutions.

⁴⁶ Michael Hardt and Antonio Negri, *Empire* (Cambridge, MA: Harvard University Press, 2001), 36.

The Nature of Change

A final aspect related to IR theory that must be incorporated into this study is the issue of change. Social science has struggled with the concept of change in three ways—measurement, causality, and consequences. Most of IR theory focuses on political power, not humanitarianism, and their models of change have limited applicability in explaining changes in the norms of humanitarian agencies or the meaning of humanitarianism. However, for years there has been debate within the humanitarian sector as to whether the very nature of humanitarianism is undergoing cosmetic or existential changes, and lately some scholarship has taken up the subject.

A majority of IR theory ferrets out change through an analysis of the international system. From the Realist school, the most influential scholar on the international system, Kenneth Waltz, sifts the tradition into a more rigorous and scientific framework to fashion Neorealism and posits a system of self-help predicated on state units.⁴⁷ According to Waltz, change in the international system can appear in two ways: Primarily this is seen in the form of shifts in the distribution of power that would alter which states were ascendant and which were in decline. However, to a lesser extent he also pointed to a deviation from states as the principal actors in international politics although he thought such an occurrence highly unlikely in his formulation of a world based on state competition. Nevertheless Waltz's recognition of states as the exclusive unit of international system suggests that a shift away from a state-centric order dramatically changes the system. Robert Gilpin also offers a Realist interpretation of change, and though he discusses what he calls "system change" (change in the nature of the actors),

⁴⁷ Kenneth Waltz, *Theory of International Politics* (New York: McGraw Hill, 1979).

he is more concerned with “systemic change” (change who controls international politics) through armed conflict (“hegemonic war”).⁴⁸ John Ruggie critiques Waltz, Gilpin, and the approach of their neo-utilitarian brethren for mostly ignoring the issue of fundamental change in the international system. Ruggie proposes that shared political ideas—such as sovereignty—profoundly structure world politics.⁴⁹ For Ruggie ideological power can propel political changes in the material world, and thus popular ideas can shape political outcomes.

Other IR literature contends that the nature of change in international system hinges on the function, relevance, and power of states as types of organizations for regulating international politics. Representative of this sort of analysis Stephen Krasner terms the international system composed of states “organized hypocrisy,” pointing out that sovereignty was the product of political compromises among the powerful and it has been regularly violated.⁵⁰ Sovereignty was never absolute; state power was predominant but incapable of asserting complete control over increasing and more complex connections and flow between populations in different territories. Similarly, Janice Thomson assesses the authority and capacity of the state with reference to other types of political and military actors primarily in the 16th through 19th centuries to show the

⁴⁸ Robert Gilpin, *War and Change in International Politics* (Cambridge: Cambridge University Press, 1981), 39.

⁴⁹ John Ruggie, *Constructing the World Polity* (London: Routledge, 1998) 25-27, and 191-199.

⁵⁰ Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999).

political consequences wrought by the establishment of state sovereignty.⁵¹ In analyzing more recent fluctuations in power associated with globalization, Jessica Matthews underlines a “power shift” away from states and toward markets and civil society.⁵²

A third group of IR theory literature examines norms as the basis for international system-wide changes. For example, Daniel Philpott argues that ideas are key to the consolidation of sovereignty as the bedrock of interstate relations.⁵³ Although this indicates a fixation on change and how it can be seen at the unit level in the international political system, IR theory has yet to fully extrapolate its implications for humanitarianism. More specifically, in theorizing changes in notions of sovereignty and the larger normative landscape of international politics there is little clarity about how this impacts the role of humanitarian agencies.

Theories centered on the evolution of organizations offer a more fertile avenue for modeling how humanitarian agencies have changed. Paul DiMaggio and Walter Powell

⁵¹ Janice E. Thomson, “State Sovereignty in International Relations: Bridging the Gap between Theory and Empirical Research,” *International Studies Quarterly* 39, no. 2 (June 1995): 213-233. Thomson examines this with regards to military force in *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe* (Princeton: Princeton University Press, 1996).

⁵² Jessica T. Matthews, “Power Shift,” *Foreign Affairs* 76, no. 1 (January-February 1997): 50-66.

⁵³ Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton: Princeton University Press, 2001).

delineate three sources:⁵⁴ First, “coercive isomorphism,” or external constraints that compel certain behaviors. Second, “mimetic isomorphism,” or organizations that face challenges decide to look to emulate other organizations that appear as more successful. Third, “normative isomorphism,” or personnel within the organization adopt changes. Although this study mostly looks at the role of the third one (norms) because there has been such little scholarship on the beliefs of humanitarian that resort to employing security contractors, it also incorporates the first two (external influences on the sector and mirroring behavior). Changes in the norms of humanitarian agencies, and in particular the variation in changes of different agencies, must be contextualized. Therefore, this study considers the “path-dependency” of humanitarian agencies by asking, how durable are the norms of these organizations? What causes change and how different agencies respond to change?

Part of the challenge of apprehending change in regards to humanitarian agencies is that social science has not grappled with parsing the meaning of different characteristics of change. Numerical data on changes in the international humanitarian system—such as funds spent or aid recipients—may capture part of the story and say something important, but how to tabulate transformation is not clear. A movement in resources can easily be measured, but a redefinition of norms cannot necessarily be quantified. The link between these two types of changes in international politics and measuring it is often a blind spot for IR theory. In considering this proposition Kalevi

⁵⁴ Paul DiMaggio and Walter Powell, “The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields,” *American Sociological Review* 48, no. 2 (April 1983): 147-160.

Holsti notes, “This is the Hegelian and Marxist problem: at what point does quantitative change lead to qualitative consequences?”⁵⁵ In other words, when is what is characterized as “new” in fact a tipping point where quantitative change is so substantial that it constitutes something qualitatively “new”—the threshold between incremental growth and a substantive transformation.

Early social scientific attempts to make sense of interactive systems between units and structures often appeared in IR as trying to connect the behavior of states and the significance of war to changes in domestic and international politics. A good example of scholarship deducing political and economic factors at both domestic and international levels that combine to shape complex international political outcomes is *The Great Transformation* by Karl Polanyi. He looks at political and economic changes within and between states, and specifically at the impacts of a shift from market economies to market societies.⁵⁶ Polanyi argues that the breakdown of welfare states and national market economies are tied to the end of the gold standard and the balance of power system. For him, World War II was the obvious outcome of contrasts in the interests of liberal democratic, socialist, and fascist states.

⁵⁵ Kalevi J. Holsti, *Taming the Sovereigns: Institutional Change in International Politics* (Cambridge: Cambridge University Press, 2004), 8.

⁵⁶ Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston: Beacon Press, 1944).

In the context of humanitarianism, the most complete attempt to theorize system level change is Michael Barnett's article, "Humanitarianism Transformed."⁵⁷ In his formulation of change, he implicitly underscores the importance of evaluating change qualitatively and asserts that two transformations are seen: politicization and institutionalization. The former characterizes a movement towards harnessing humanitarian aid to address the root causes of armed conflicts, and the latter refers to the professionalization of aid work in the humanitarian field. Taken together Barnett suggests these two transformations have re-fashioned humanitarianism into something more powerful as well as something intrinsically Western. He contends that "coercive isomorphism" explains this, that the process of change has been donor-driven.⁵⁸ However, other than financial strings he does not substantially incorporate into his model of change other external pressures, such as the actions of states and other armed actors. The contribution of mimetic isomorphism (imitation) and normative isomorphism (ideas of personnel) is essentially set aside. Moreover, he does not specifically examine agency security arrangements; either why they change or changes in them have consequence for a particular agency, the sector broadly, or the very premise of the undertaking.

Seminal social scientific studies demonstrate that change must be understood in two ways: types and degrees. An aspect of a phenomenon may change but to what extent and with what implications for the totality are the significant questions—that is, is change a modest modification or a total transformation? When does morphing produce a

⁵⁷ Michael Barnett, "Humanitarianism Transformed," *Perspectives on Politics* 3, no. 4 (December 2005): 723-740.

⁵⁸ *Ibid.*, 729.

metamorphosis? As will be seen, this perennial issue of IR Theory is taken up by identifying an area of humanitarian programming, security arrangements, that is leading to a substantial qualitative change in humanitarian action.

The “New Humanitarianisms” Critique and Literature

The “new humanitarianisms” literature highlights significant normative developments in humanitarian agencies and international politics during the 1990s and assigns substantive power to humanitarianism. As discussed above, this literature is built on the traditions of Liberalism and Constructivism, but its critiques and recommendations concretely epitomize specific ideational shifts of agencies that in the end reconstitute the enterprise—ideas can shape the behaviors of international organizations and this change can alter outcomes.

To begin with, although the welfare of people in war is central to humanitarianism, there are a number of principles that elaborate on the main premise. For instance, the question of whether to respond segues into the issue of how to respond. Jennifer Rubenstein enumerates ten distributive principles: need, harm reduction, efficiency, address intentional violent harm, local participation, aid for recipients in equal amounts, diversity (ethnic, cultural, etc.) among recipients, special duties towards certain groups, *coup de coeur* (those that “move the heart”), and desert (a lesser obligation to

those responsible for their plight).⁵⁹ However, agencies vary in their ideas about distribution and this leads to difference in priorities that effectively determine the sorts of activities they will engage in.⁶⁰ Therefore, while there may be a consensus on general principles, there are a diversity of norms.

Moreover, the popularity or adoption of particular norms is not constant and may change over time. For example, Thomas G. Weiss, reflecting on the rise and decline of the norm of using force for human protection purposes marks both a “sunrise” and “sunset.”⁶¹ Since the start of the 1990s certain disasters have been termed “complex humanitarian emergencies,” crises which fall under the mandates of and require the capacities of numerous kinds of agencies, not only humanitarian ones. In such instances, humanitarians have reconsidered existing norms regarding their role and activities and thus taken up a broader agenda than the logistical exercise of delivering relief and ventured into other areas of programming such as development and security. This has led to great soul-searching about what defines humanitarian action, and a generation of

⁵⁹ Jennifer Rubenstein, “The Distributive Commitments of International NGOs,” in *Humanitarianism in Question: Politics, Power, Ethics*, ed. Michael N. Barnett and Thomas G. Weiss (Ithaca, NY: Cornell University Press, 2008), 219-232.

⁶⁰ Margaret McGuinness, “Legal and Normative Dimensions of the Manipulation of Refugees,” in *Refugee Manipulation: War, Politics and the Abuse of Suffering*, eds. Stephen John Stedman and Fred Tanner, (Washington D.C.: Brookings, 2003), 137; and, Fiona Terry, *Condemned to Repeat?*, 20 and 220.

⁶¹ Thomas G. Weiss, “The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era,” *Security Dialogue* 35, no. 2 (July 2004): 135-153.

critics coalesced around transforming humanitarianism into something more than emergency relief. Joanna Macrae notes the abundance of angles and groups that took issue with the traditional *modus operandi* of agencies by the end of the 1990s: “anti-imperialists” arguing that aid lets national political actors off the hook), “realpolitickers” proposing nonintervention and isolationism,” developmentalists” decrying aid as a road to dependency that does not tackle the long-term issues of conflicts, a “neo-peaceniks” condemning relief as a means to make war).⁶²

The criticisms found in the “new humanitarianisms” literature make three sorts of interrelated arguments. First, humanitarian action is inherently political. Critics present the principle of neutrality as dated, constraining, and in some cases ends up neglecting the overarching goal of saving the largest numbers of lives in the long run. Moreover, humanitarianism as a discreet action is challenged, with many in the sector advocating for an approach that maximizes the influence of humanitarian action by pushing for operations to be integrated into larger political responses to armed conflicts. A change in programming is necessitated these critics contend because of the role humanitarian assistance has come to play in the political economy of contemporary war zones—potentially fostering war or dependency. Second, critics of traditional humanitarian principles have argued that force and agencies working directly with militarized actors may serve humanitarian goals. According to them, the need for protection has warranted a different relationship to the use of force. Third, observers have pointed out that the

⁶² Joanna Macrae, “The Death of Humanitarianism? An Anatomy of the Attack,” *Disasters—Special Issue: The Emperor’s New Clothes: Charting the Erosion of Humanitarian Principles* 22, no. 4 (December 1998): 310-315.

economic and other organizational interests of agencies trigger severe collective action problems that impact the efficiency of humanitarian action and undermine its effectiveness.

The culture within a humanitarian agency guides its actions—a set of beliefs about the ends and means of humanitarian action determines behavior.⁶³ Each agency represents a unique subculture but is also a part of a wider community of agencies that share a common culture, although they prioritize and interpret values differently, sometimes diametrically. A brief review of “new humanitarianisms” scholarship expounds on the debates of agencies during the 1990s and clarifies the seeds and significance of contention.

The Role of Politics in Humanitarian Action

A major controversy within the culture of humanitarian agencies regards the role of politics, both political influences on humanitarianism and humanitarianism as an instrument of politics. Henri Dunant, founder of the Red Cross, believed that the humanitarian mission could easily be compromised by political entanglements and only

⁶³ In this study “humanitarian culture” refers to the values, attitudes, and practices endemic to those who work in the humanitarian sector. Like any culture, that of humanitarians has myths (moral narratives), iconic symbols (such as the Red Cross emblem), special language (terms like “mercy” or “justice” have particular meaning in the humanitarian context), a particular mode of dress (in crises they don garb or insignias to differentiate them from other actors), and distinctive customs (for instance placing human welfare at the center of interests). Veteran humanitarians transmit this culture to new members who enter this field.

by creating a separate organization and space for operation, unconnected to the military or political goals of belligerents, would the enterprise be respected and lives be saved.⁶⁴ More recently, a former head of the ICRC, Cornelio Sommaruga, maintains that neutrality remains the bedrock principle of the agency.⁶⁵ Following that logic, several humanitarian agencies continue to espouse a “back to basics” strategy by keeping humanitarian aid separate from what are seen as more provocative types of activities.

In contrast to the Dunantist tradition—the Red Cross model prioritizes neutrality and requires the cooperation of belligerents to gain access and protect civilians—are other strands of humanitarianism, i.e., agencies with divergent practices. These other agencies have reacted to glaring episodes of the 20th century, such as the Holocaust during World War II and the Rwandan genocide, where neutrality and other operating principles have limited humanitarians from speaking out against atrocities, allowed for the manipulation of assistance, and led to unintended and skewed results. Sarah Kenyon Lischer explains the basis for deviating from the orthodoxy of the ICRC, “[H]umanitarian assistance may be delivered with impartial and neutral intent, but the effects of the

⁶⁴ Henri Dunant, *A Memory of Solferino (Un Souvenir de Solférino)* (Geneva: International Committee for the Red Cross, 1986), accessed December 1, 2011, [http://www.verwonderenenontdekken.nl/uploadedfiles/15-Henri%20Dunant%20\(1862\)%20A%20MEMORY%20OF%20SOLFERINO%20\(Pdf%2047%20blz.\).pdf](http://www.verwonderenenontdekken.nl/uploadedfiles/15-Henri%20Dunant%20(1862)%20A%20MEMORY%20OF%20SOLFERINO%20(Pdf%2047%20blz.).pdf).

⁶⁵ He takes this stance in many pieces, for example, Cornelio Sommaruga, “Humanity: Our Priority Now and Always—Response to ‘Politics, Principles, and Humanitarian Action,’” *Ethics & International Affairs* 13 (1999): 23-28.

humanitarian actions always have political, and sometimes even military, repercussions.”⁶⁶ This notion is supplemented by David Kennedy’s criticism that a blind emphasis on relief without a calculation of consequences constitutes “the dark sides of virtue.”⁶⁷ In response to failures associated with neutrality and impartiality Mary Anderson has promoted a model of humanitarian action akin to the Hippocratic oath of “do no harm,” which explicitly calls for weighing the influence of relief in impacting outcomes, particularly as it pertains to how responses to disasters can distort local economies.⁶⁸

Others have shared the frustrations of the “new humanitarians,” though have come to accept the politics that define traditional humanitarianism; agencies can engage in relief for a short-term period but only when consent is given. Notably David Rieff has characterized humanitarian work that offers aid without addressing root causes of armed conflicts as a “bed for the night.”⁶⁹ In many ways Rieff’s commentary demonstrates the

⁶⁶ Sarah Kenyon Lischer, “Collateral Damage: Humanitarian Assistance as a Cause of Conflict,” *International Security* 28, no. 1 (Summer 2003): 82.

⁶⁷ David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton: Princeton University Press, 2004).

⁶⁸ Mary Anderson, *Do No Harm*. Also, Fiona Terry considers the effect of the scarcity commonly seen in war zones and points out that the importance of humanitarian aid to war economies as proportional to the resource base of warring parties, see *Condemned to Repeat?*, 218.

⁶⁹ David Rieff, *A Bed for the Night: Humanitarianism in Crisis* (New York: Simon & Schuster, 2002).

agony felt by many aid workers in contemplating responses to disaster that unfolded in the 1990s. On the one hand, Rieff presents this description derisively, suggesting that this level of assistance is paltry, on the other hand, he ends his polemic with the belief that to do otherwise and offer more is a politicized, and therefore unsavory, humanitarianism distinct from its original intent and identity.

Exemplifying a departure from the Dunantist model is the French Doctors movement that gave birth to organizations such as Médecins Sans Frontières (MSF)—an agency devised in reaction to the strict neutrality practiced by the ICRC during the Biafra crisis of the late 1960s and early 1970s. MSF maintains that impartiality and independence retain value but bearing witness and advocating for change are part of their mission. In the post-Cold War period, other agencies have broached the politics debate in humanitarian culture and explicitly practiced political principles in delivering aid. Mark Duffield explains the emergence of this new normative outlook:

Towards the end of the 1990s, a new or political humanitarianism emerged, claiming to correct the wrongs of the past. Rather than humanitarian assistance as a universal right and as a good thing in itself, the new humanitarianism is based on a consequentialist framework. Assistance is conditional on assumptions regarding future outcomes: especially, it should do no harm, nor should it entrench violence while attempting to ameliorate its effects.⁷⁰

This sort of diversity in approaches appears in many types of organizations. March and Olsen, who studied international institutions but not humanitarian ones per se, stress the difference between organizational behavior driven by the “logic appropriateness” versus

⁷⁰ Duffield, *Global Governance and the New Wars*, 75.

the “logic of consequences.”⁷¹ The former posits that certain behaviors are acceptable in the context of certain values, whereas the latter contends that the actual results, regardless of intentions, should dictate behavior. A central divide within the humanitarian sector is to what extent agencies embrace consequentialism.

Scholarship on the growth and diversity of the international humanitarian system showcases rifts in humanitarian culture regarding the degree of engagement with politics. For example, Thomas G. Weiss illustrates the range of humanitarian operational principles; he frames the spectrum as running from classicist or minimalist (basic assistance) to solidarist or maximalist (tied to political interests) as does Jonathan Goodhand.⁷² Abby Stoddard similarly frames the divide as the Dunant-Wilson debate, or what should the relation of humanitarianism to political power be, and notes that it continues to be a source of tension among academics and aid workers.⁷³ And, Michael Barnett distinguishes “alchemic” agencies that incorporate human rights into their work

⁷¹ March and Olsen, “The Institutional Dynamics of International Political Orders,” 948.

⁷² Thomas G. Weiss, “Principles, Politics, and Humanitarian Action,” *Ethics & International Affairs* 13 (1999): 1-22, especially figure on 4; and, Jonathan Goodhand, *Aiding Peace? The Role of NGOs in Armed Conflict* (Boulder, CO: Lynne Rienner, 2006), 2.

⁷³ Abby Stoddard, *Humanitarian Alert: NGO Information and Its Impact on US Foreign Policy* (Bloomfield, CT: Kumarian Press, 2006), 7-17. Woodrow Wilson who espoused that international assistance (including humanitarian action) should be part of a larger project to transform war torn areas.

from “emergency” oriented ones solely predicated on the delivery of relief aid.⁷⁴ Joanna Macrae points out the significance of this by observing that without agreement on the goals and purposes of humanitarian action the aggregate effect of agencies’ actions may render the net of humanitarian activities incoherent.⁷⁵

The Role of Force in Humanitarian Action

Aside from contention in the culture of humanitarian agencies over key political positions on neutrality, impartiality and independence, a second debate found in the “new humanitarianisms” literature in the 1990s relates to the role of force and working with the military to achieve the goals of humanitarian agencies. Debates over the use of force for humanitarian purposes are contentious within the humanitarian sector. Indeed, some humanitarians even espouse the logic that has been so concisely expressed by Mohandas K. Gandhi, that force is in itself dangerous: “I object to violence because when it appears to do good, the good is only temporary; the evil it does is permanent.” But other humanitarians argue that there are times when force can play a purposeful role, which is the philosophy behind Just War Theory—i.e., criteria under which violence can be justified. This tradition stretches back to St. Augustine, Thomas Aquinas, De Vitoria, and Hugo Grotius to name but a few of the major thinkers who have taken up these issues.⁷⁶

⁷⁴ Michael Barnett, “Evolution Without Progress: Humanitarianism in a World of Hurt,” *International Organizations* 63, no. 4 (Fall 2009): 625.

⁷⁵ Joanna Macrae, “Understanding Integration from Rwanda to Iraq,” *Ethics & International Affairs* 18, no. 2 (Fall 2004): 35.

⁷⁶ Theodor Meron, “Medieval and Renaissance Ordinances of War: Codifying Discipline and Humanity,” and “Common Rights of Mankind in Gentili, Grotius, and Suarez,” *War*

Since the late 1970s this school of thought has been rearticulated and applied to modern conflicts by Michael Walzer.⁷⁷ Humanitarian agencies have mostly focused on provision of relief and not authorizing force, and thus been able to basically shy away from such issues. However, Just War principles, such resorting to force only in self-defense or to achieve humanitarian ends, continue to influence views on when and how agencies should use coercion to protect their operations.

As to working with military forces, despite the traditional opposition of humanitarians to such arrangements, militaries are often well positioned as gatekeepers to disasters, and, moreover, possess the organizational resources to tackle them. Nevertheless, throughout most of the 20th century humanitarians operated at arms length from military forces, accepting the space that was allocated to them. Humanitarian action by military forces is by no means unprecedented; for example, the Berlin Airlift featured US and UK air force planes bringing in humanitarian aid to inaccessible areas after the initiation of a blockade by Soviet armies, but such instances were exceptional.

However, during the course of the 1990s the specter of the “well-fed dead”—the fate of victims who receive aid without protection—which had been witnessed in the

Crimes Law Comes of Age: Essays (New York: Oxford University Press, 1998), 1-10 and 122-130; St. Thomas Aquinas, “War and Killing,” Francisco de Vitoria, “On the Law of War,” and Hugo Grotius, “The Rights of War and Peace,” in *Morality of War: A Reader*, eds. David Kinsella and Craig L. Carr, eds., (Boulder, CO: Rienner, 2007), 66-69, 70-79, and 80-87.

⁷⁷ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd ed. (New York: Basic Books, 2000).

Holocaust and was again returning, humanitarians began to rethink the wholesale rejection of military power. The case of Northern Iraq (1991) raised the debate, experiences in Rwanda (1994) and Bosnia (1992-1995) cemented focus on the issue, and the intervention in Kosovo (1999) galvanized supporters of the militarization of humanitarian action. By the end of the decade many agencies were advocating the use of force to protect aid deliveries and vulnerable populations as is typified by Oxfam's endorsement of force in the late 1990s to stop violence in Kosovo.

Beyond fashioning humanitarian space for relief operations, some proponents pushed for force to enforce human rights, which David Rieff refers to as a policy of "rescue."⁷⁸ This mentality is typified by the findings of the International Commission on Intervention and State Sovereignty and encapsulated in their report, *The Responsibility to Protect*.⁷⁹ However, while many humanitarians see value in force to ensure access or perhaps militarily defeating belligerents, as renowned aid worker Fred Cuny suggested

⁷⁸ Rieff, *Bed for the Night*, 201.

⁷⁹ The International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), and Thomas G. Weiss and Don Hubert, *The Responsibility to Protect: Research, Bibliography, and Background* (Ottawa: International Development Research Centre, 2001).

agencies worry that when military forces directly engage in humanitarian work it erodes the independence, position, and reputation of humanitarian action.⁸⁰

Agencies were not and are not passive subjects in this process. In fact, “new humanitarianisms” literature on the role of force frequently extols different operational arrangements between soldiers and humanitarian personnel. For example, Weiss depicts the role of agencies in building “military-civilian interactions” in the 1990s.⁸¹ Indeed some proponents of the “new humanitarianisms” illustrate the depth to which the use of force has become engrained in humanitarian culture. This is exemplified by Michael Ignatieff, who advocates for a “humanitarian empire” to take up military interventions to bring order and security and that he sees as part and parcel of the duties of Western states.⁸²

The Role of Markets in Humanitarian Action

A third critique found in this literature involves economic dimensions to the work of humanitarian agencies—a sort of “humanitarian-industrial complex”.⁸³ This sort of

⁸⁰ Fred Cuny, “Dilemmas of Military Involvement in Humanitarian Relief,” in *Soldiers, Peacekeepers, and Disasters*, eds. Leon Gordenker and Thomas G. Weiss. (London: MacMillan, 1991), 56-62.

⁸¹ Thomas G. Weiss, *Military-Civilian Interactions: Humanitarian Crises and The Responsibility to Protect*, 2nd ed. (Boulder, CO: Rowman & Littlefield, 2005).

⁸² Michael Ignatieff, *Empire Lite: Nation Building in Bosnia, Kosovo, and Afghanistan* (Toronto: Penguin, 2003), 17-19.

⁸³ I use this term to distinguish agencies acting as businesses and engaging business along with actual businesses selling services to agencies. I derive it from the classic formulation

condemnation of humanitarianism originates from a Marxist perspective that argues that any sort of aid undercuts demands for overthrowing capitalism.⁸⁴ In the 1990s, one poignant criticism that has been brandished, and routinely posited by Mark Duffield, is that aid agencies see war as necessary to their political economy, that it armed conflicts give them a *raison d'être* and produce funding.⁸⁵ However, the “new humanitarianisms” analyses go beyond this broadside and consider two levels in which markets specifically influence humanitarian action. First, this commentary spotlights that see these organizations become concerned with their market share and brood about donors and funding; a market for humanitarian services. Second, these appraisals examine business interests in humanitarian action; the market for humanitarian services that has economic opportunities for for-profit organizations. Another type of political economy analysis that

of the economic interests underlying the production of war material as a “military-industrial complex” as posited by U.S. President Dwight D. Eisenhower in his farewell speech of 1961. See reprint in Richard D. Heffner, ed., *A Documentary History of the United States* (New York: Mentor, 1976), 314. Similarly, in reference to humanitarian crises Naomi Klein uses the expression “disaster capitalism” to describe the economic ideology and business model behind companies paid to provide emergency services. See Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (New York: Metropolitan Books, 2007).

⁸⁴ In *The Manifesto of the Communist Party*, Karl Marx and Friedrich Engels denounce “humanitarians” as their efforts in essence contribute to the saving of capitalism. See Robert C. Tucker, ed., *The Marx-Engels Reader*, 2nd ed. (New York: Norton, 1978), 496.

⁸⁵ Duffield, *Global Governance and the New Wars*, 161-201.

could also be placed here within this framework of the critiques raised by “new humanitarianisms” is that of the distorting economic effects of aid on local economies, however that body of research has been considered above as part of the “New Wars” literature (particularly the research concerning the “greed or grievance” debate) and also is part of the earlier discussion in this section on the relation of agencies and politics, consequentialism, and the “do no harm” ethic.

Turning to the literature on the study of the market for the services of humanitarian agencies, among the earliest scholarly examinations of international aid organizations, *Lords of Poverty*, brought attention to how organizational pathologies can skew inputs and impact outputs.⁸⁶ In the late 1990s, Alex de Waal brought greater clarity to this type of analysis by pointing to the tension between the “soft interests” (relief) versus the “hard interests” (organizational survival and prosperity) of humanitarian agencies.⁸⁷ More recently, as noted earlier in the section on International Relations Theory, Constructivist scholars Michael Barnett and Martha Finnemore have studied the sources of dysfunction in international organizations.⁸⁸ As stated above, they underline instances of pathological behavior to argue for an appreciation of the special constitutive powers of international organizations, i.e., the ability to self-define goals. The main focus of this sort of critique found in the “new humanitarian literature” is akin to scholarship on

⁸⁶ Graham Hancock, *Lords of Poverty: The Power, Prestige, and Corruption of the International Aid Business* (New York: Atlantic Monthly Press, 1992).

⁸⁷ de Waal, *Famine Crimes*, 64-65.

⁸⁸ Barnett and Finnemore, *Rules for the World*, 36-42.

business management; it examines the bureaucracy to understand policy failures and successes.

With respect to humanitarian agencies, the pursuit of funding may disconnect them from victims. The eruption of disasters attracts agencies and in the heat of the moment sector-wide responses are often uncoordinated—what John Arquilla and David Ronfeldt term a “NGO swarm.”⁸⁹ However, this may feed competition among agencies as shown by Alexander Cooley and James Ron, who spell out the dangers of an “NGO scramble,” that in the haste to acquire resources the operational performance of the system suffers.⁹⁰ Competition leads to unilateral behavior and non-profits to act like their for-profit counterparts. Although principles valuing humanity may have inspired or inform an organization, they are often nonetheless influenced by economic goals—not necessarily profit-maximizing behavior per se but maintaining budgets or a special role. This type of analysis has been applied in reference to the issue of human rights and the industry or set of organizations that have formed around it. Whereas Ignatieff speaks of a “revolution of moral concern,” at the heart of the spread of human rights concerns, in examining the case of Amnesty International Stephen Hopgood has found a “commodification of moral concern under globalization.”⁹¹ Hopgood further notes that

⁸⁹ John Arquilla and David Ronfeldt, *Swarming and the Future of Conflict* (Washington, D.C.: RAND, 2000).

⁹⁰ Alexander Cooley and James Ron, “The NGO Scramble,” *International Security* 29, no. 1 (Summer 2002): 5-39, especially 17 and 36.

⁹¹ Ignatieff, *The Warrior’s Honor*; Stephen Hopgood, *Keepers of the Flame: Understanding Amnesty International* (Ithaca, NY: Cornell University Press, 2006);

this underlies a change in language used by non-profit organizations, whose lexicon now include “clients,” “employees,” “brands,” “efficiency,” and “accountability.” That humanitarians are not motivated by profits does not mean that they are immune to market forces. This occurs especially when humanitarian action is reduced to a “deliverable.” David Rieff attributes this behavior of humanitarian agencies to a preoccupation with “market share.”⁹²

Humanitarian action presents opportunities for profit-seeking organizations at three stages: in the production of relief goods, in the transportation and distribution of supplies and staff, and in the protection of aid, aid workers, and intended aid recipients. This first stage, production, has traditionally been the purview of large agribusiness interests seeking to unload grain surpluses, and the second, logistics, to major multinationals with infrastructure that enables them to make the most of economies of scale. However, these two aspects are not directly pertinent to this study, it is only the last that is relevant to understanding the role of business in security for humanitarian agencies.

Many of the goods and services—such as procurements, transportation, and communication—required by the humanitarian sector are purchased like any other commodity and an industry has formed to cater to humanitarian organizations. Andrea Binder and Jan Martin Witte note that this strange arrangement creates a “quasi-market” as agencies are the intermediaries in an indirect producer-consumer relationship between

Stephen Hopgood, “Saying ‘No’ to Wal-Mart? Money and Morality in Professional Humanitarianism,” in *Humanitarianism in Question*, 98-123.

⁹² Rieff, *Bed for the Night*, 228.

donors and victims.⁹³ Moreover, it is not like a typical market system as engaging business interests in the humanitarian sector is viewed as a trade-off, with critics seeing the independence of agencies endangered and proponents contending that it promotes efficiency and also may provide a source of funds. Barnett and Weiss summarize,

Competition can encourage agencies to become more effective at existing tasks; to specialize in different areas, such as sanitation, shelter, and medicine; to compete for market share by expanding into new areas such as democracy promotion and peacebuilding; to stress public relations and attempt to develop and protect their brand; to move into high-profile areas such as advocacy and de-emphasize less captivating areas such as building latrines that nevertheless might save more lives. Also pressure may arise to alter principles, priorities, and policies so that they are more consistent with the demands of funders.⁹⁴

Binder and Witte further note that for-profit companies are motivated to do business with agencies for many reasons.⁹⁵ First, it builds their brand name by identifying their business with alleviating suffering. Second, it inspires their staff. Third, it improves business intelligence because companies can learn how to operate in disasters and gain a better grasp of cultural sensitivities. Fourth, it fulfills the desire of management and ownership

⁹³ Andrea Binder and Jan Martin Witte, *Business engagement in humanitarian relief: Key trends and policy implications*, HPG Background Paper (Humanitarian Policy Group/ODI, June 2007), 3, 6.

⁹⁴ Michael Barnett and Thomas G. Weiss, *Humanitarianism Contested: Where angels fear to tread* (New York: Routledge, 2011), 21.

⁹⁵ *Ibid*, 13 and 19.

to do good deeds (i.e., “corporate social responsibility”). From the other side, agencies may be reluctant to engage business because it raises questions of “appropriateness” as per March and Olsen’s analysis—that is, working with commercial actors brings those with economic interests into humanitarian action and agencies may feel that such a practice undermines the noble intentions and special ethically-driven position of humanitarian work.

Humanitarian Agency-Security Contractor Interactions

As a final comment on the “new humanitarianisms” literature, this section would be remiss if it did not point to the small body of policy studies and statements that specifically consider humanitarian agency-private security interactions. This area of literature derives from both commodity and ideational approaches to understanding agency behavior. The logic of economic analyses is obvious; humanitarian action as a market product attracts profit-oriented security providers. At the level of ideas the turn to security contractors may be explained by the distinctive views of autonomous organizations. Among agencies there is a spectrum of opinion from basic dismissal to cautious optimism. Expressing opposition to the idea, Fiona Terry states, “If humanitarian action has been reduced to a logistical exercise, better to contract a supermarket chain to deliver aid with the protection of DSL [Defense Systems Limited] and at least avoid the humanitarian pretense.”⁹⁶ For her there is an essential ideological component inherent in defining humanitarian action that is lost in using for-profit contractors.

⁹⁶ Ibid., 234-235.

From the other side, a study by a Canadian humanitarian organization points to the need for forces and that market-based providers should be an option.⁹⁷ Additionally, other scholars suggest that private security companies have the capacity to undertake humanitarian action, for instance Christopher Spearin looks at their emerging roles in the humanitarian field.⁹⁸ There are also studies and statements by those outside the humanitarian sector but who work with them and are enthusiastic advocates for security contractors. For example, Doug Brooks, a scholar who is also president of a trade group of private military companies, International Stability Operations Association (ISOA), has produced documents that are helpful in shining a light on the makings of interactions.⁹⁹

⁹⁷ Michael Bryans, Bruce D. Jones, and Janice Gross Stein, “‘Mean Times’:

Humanitarian Action in Complex Political Emergencies—Stark Choices, Cruel Dilemmas,” *Coming to Terms* 1, no. 3 (January 1999).

⁹⁸ Christopher Spearin, “Private, Armed and Humanitarian? States, NGOs, International Private Security Companies and Shifting Humanitarianism,” *Security Dialogue* 39, no. 4 (August 2008): 363-382; Christopher Spearin, “Humanitarians and Mercenaries: Partners in Security Governance?” in *New Threats and New Actors in International Security*, ed. Elke Krahnemann, (New York: Palgrave, 2005), 45-68; Christopher Spearin, “Private Security Companies and Humanitarians: A Corporate Solution to Securing Humanitarian Spaces?” *International Peacekeeping* 8, no. 1 (Spring 2001): 20-43.

⁹⁹ Some examples are: Doug Brooks, “Messiahs or Mercenaries? The Future of International Private Military Services,” *International Peacekeeping* 7, no. 4 (Winter 2000), 129-144; Doug Brooks and Jim Shevlin, “Reconsidering Battlefield Contractors,” *Georgetown Journal of International Affairs* 6, no. 2 (Summer 2005), 103-112.

Tracing the Norms of Humanitarian Agencies and the Roots of Revolutions in Humanitarian Affairs

The above literatures evidence particular instances and general views of humanitarian agency-security contractor interactions, however, they do not systematically explain how new beliefs in the humanitarian sector have shaped the behaviors of agencies that result in the hiring of security contractors. That is to say, existing scholarship and documentation respectively provides useful building blocks for understanding the rise of security contractors and the principles of humanitarian agencies, but what is lacking and what this dissertation offers is a more complete and compelling explanation that centers on cultural and organizational changes in the humanitarian sector that have produced new norms. Why a concentration on the norms of humanitarian agencies? They have the power to define roles and shape the behavior of agencies. Although there is a common set of norms associated with humanitarian action, how they are prioritized or interpreted is crucial. In short, an examination of major agencies' norms and their cumulative impact are a window into the nature of humanitarian action and are indicative of character of the humanitarian sector. This section presents the model for tracing the intellectual and organizational lineage of changes in humanitarian action, including the ingredients for the idea and practice of hiring guns to guard humanitarian space.

Norms and Humanitarian Agencies

At the heart of this study are six sets of influences found in the humanitarian sector that have been or are being translated into new norms:¹⁰⁰

1. **Maximization:** What activities should constitute humanitarian action? The maximization idea argues for political engagement of agencies that tackles the root causes of armed conflict: Humanitarian assistance should concentrate on the long-term consequences of their work and abide by the principle of “do no harm” in order to address political and economic conditions that foment disasters—i.e., humanitarian work should focus not only on delivery of aid but on “upstream” and “downstream” aspects such as making peace and promoting economic reconstruction. A “coherence” approach that incorporates humanitarian action into a broader international response contrasts with the “minimal” approach of concentration on the provision of short-term emergency assistance.
2. **Collaboration:** Whom should humanitarian agencies work with? The ulterior motives of actors outside the humanitarian sector can be problematic for agencies that seek their assistance in executing humanitarian action. Calls for “integration” make humanitarians the partners of actors with political agendas.

¹⁰⁰ I have intentionally avoided the term “politicization” for two reasons. First, virtually anything and everything has implications for power and outcomes, and therefore can be construed as political. Second, “politicization” has been used to describe such a wide variety of influences on the international humanitarian system that the expression has come to lack clarity.

3. **Militarization:** Can the armed forces of states lead or participate in humanitarian action? This notion pushes for militaries to serve as a tool to achieve humanitarian outcomes; soldiers hand out assistance and shield victims.
4. **Securitization:** Can agencies use force to protect their operations and personnel? Relief requires attaining access and where consent is not provided or threats are acute agencies must consider more robust tactics to ensure security. Coercive capacities may be essential to create secure humanitarian space.
5. **Marketization:** How should humanitarian action be funded? The humanitarian sector is effectively a marketplace for humanitarian action that leads to agencies competing for donors. Accordingly, this logic argues that as part of a strategy to cut costs and woo donors, agencies should incorporate business models into organizing humanitarian action.
6. **Commercialization:** Can the private sector play a role in humanitarian action? In order to increase efficiency and lower costs, for-profit actors service or undertake humanitarian operations.

Table 1.1 outlines these trends. The subjectivity of agencies in understanding problems and solutions in humanitarian crises has led to diversity among agencies in their embrace of norms: Different configurations of norms have generated a variety of innovations in humanitarian action. For instance, the confluence of maximalization, collaboration, and militarization has produced support for humanitarian action that works with military forces and other political actors to alter conditions that precipitate crisis—i.e.,

TABLE 1.1 NEW NORMATIVE TRENDS IN THE INTERNATIONAL HUMANITARIAN SYSTEM			
CONTRASTING TRADITION	NORMATIVE INFLUENCE	RESULTING IDEAS THAT INFORM PRACTICES	AGENCY PRACTICES (BEHAVIOR)
Minimal	<i>MAXIMALIZATION</i>	“Do No Harm”	⇨ Consequentialism ⇨ Coherence
Neutrality	<i>COLLABORATION</i>	Integration	⇨ Engage actors with political agendas
Independence	<i>MILITARIZATION</i>	Military-led humanitarianism	⇨ Share operational space with military forces
Renunciation of force	<i>SECURITIZATION</i>	Secure humanitarian space	⇨ Security tactics
Charity	<i>MARKETIZATION</i>	Humanitarian marketplace	⇨ Efficient use of resources ⇨ Pursuit of market share
		<i>COMMERCIALIZATION</i>	Humanitarian industry

humanitarian intervention. By contrast, this study investigates what configuration underlies a turn to security contractors to secure humanitarian space. (Note: this analysis does not assess the potential for private military and security contractors to independently carry out an entire humanitarian intervention because that idea, let alone practice, has not yet materialized.)

Trends and Transformation

This study investigates normative trends in the humanitarian sector that have led agencies to hire security contractors and ultimately considers whether such changes amount to a transformation of humanitarianism. The methodology for this analysis is to examine the views of important figures in the humanitarian sector and scrutinize the beliefs behind policy documents of humanitarian agencies over time. Additionally, the actions of agencies are analyzed in order to discover shifts in recurring practices that are linked to normative trends. Narratives of humanitarian crises facilitate discerning normative continuity and change in the perspectives, culture, and behavior of humanitarians. Table 1.2 summarizes key terminology used throughout the study.

Trends are a useful tool for understanding change in the humanitarian sector. While changes within individual agencies are certainly important, a broader look is essential to comprehend the common pressures agencies experience and also to illustrate how changes in one may affect others. Moreover, by considering trends one-time short-term episodes of norm change are recognized as a temporary deviation and not a wholesale change in the sector.

The issue of trends producing transformation is examined through a look at the relationships belligerents, victims, and local populations have with humanitarian

TABLE 1.2

TERMINOLOGY OF STUDY

Ideas and Action:

- ***Humanitarian norms***: Expected behavior in addressing human suffering in wars and natural disasters that is derived from ideas, beliefs, principles, and values. Put together these normative frameworks spell out a “culture.” They are embedded within agencies and expressed throughout the entirety of the international humanitarian system. Normative configurations are the main unit of analysis.
- ***Humanitarian norm entrepreneur***: Individuals who advocate for the acceptance of a particular norm.
- ***Humanitarian action***: Behavior intended to improve the welfare of those afflicted by humanitarian crises. These actions are routinely carried about humanitarian agencies, although other types of organizations occasionally perform key tasks.
- ***Humanitarian space***: A physically secure environment in which aid workers provide assistance to victims.

Actors:

- ***Humanitarian agencies***: The primary actors considered by this study, these are organizations with explicit mandates for addressing humanitarian crises.
- ***Humanitarian sector***: This catchall term covers the entirety of organizations comprising the international humanitarian system; i.e., all agencies.
- ***Humanitarian industry***: Agencies are usually the main actors in providing relief in crises but it should be remembered that the sector itself is an industry for

<p>donors, and furthermore that the needs of sector attract for-profit actors. This term encapsulates both humanitarian agencies and for-profit service providers.</p> <ul style="list-style-type: none">○ <i>Private military and security contractors</i>: An inclusive expression of modern market-based armed actors. Military contractors provide offensive combat capabilities; security contractors offer defensive measures such as armed escorts, guards for facilities, and close body protection.
<p>Measurement:</p> <ul style="list-style-type: none">○ <i>Trends</i>: Indicators of change, they represent norms that become commonplace in the sector.○ <i>Touchstones</i>: Moments and cases that shape the course of normative trends.○ <i>Transformation/Revolution</i>: A degree of qualitative change that signifies a profound reformulation of the principles, practices, and perceptions of the sector.
<p>Trends:</p> <ul style="list-style-type: none">○ <i>Maximalization</i>: Widen the range of humanitarian action to include root causes.○ <i>Collaboration</i>: Work with actors outside of humanitarian sector.○ <i>Militarization</i>: Military involvement in humanitarian action.○ <i>Securitization</i>: Force to protect humanitarian operations and personnel.○ <i>Marketization</i>: Market rationality in humanitarian agencies.○ <i>Commercialization</i>: Market-based actors in humanitarian action.

agencies. The perceptions local populations make a difference because they can contribute to security problems of agencies. But they also matter because of the beliefs of agencies that aid work should serve these populations and respect their preferences. These relationships are teased out through a review of armed conflicts. Moreover, views of humanitarian action tend to blur all agencies together. Loss of respect can be contagious, and when one agency's reputation is tarnished others are often lumped with this offending party—if one agency taints the security environment, then access for all agencies becomes limited.

Norms of agencies may change—indeed, the option of purchasing protection will evidence this—but when such practices are questioned and the social foundations of humanitarianism are in doubt, a metamorphosis of humanitarianism has occurred. To digest this degree of change, and understand how it is grounded upon the ideas of agencies as well as the ideas outside the sector about agencies, this study argues that a “revolution” is at hand.

The term “revolution” has perhaps been typecast inaccurately by events such as “the French Revolution,” with the dramatic seizing of the Bastille as a readily recognizable turning point. “Revolution” in the context of this study is analogous to “the Industrial Revolution,” where technological advances in fields such as chemistry and metallurgy had existed for quite some time but it was the social organization that ignited an intense, wide ranging, and long-term remaking of the world at ideological, material, and socio-political levels. Thomas Kuhn's analysis of the sociology of science and change is similarly instructive. He notes that it is the social support for, or widespread

popularity of, a scientific idea is critical to the dissemination of breakthroughs.¹⁰¹ Only when norms are embraced and espoused by experts does the content of those ideas become meaningfully established as an innovation. A final parallel can be found in the “Revolution in Military Affairs” (RMA) posited by scholars of military science to characterize technological and organizational alterations that impact the mechanics of war. For example, John Boyd evaluates military innovations and suggests there have been at least three major changes and epochs in warfare since its earliest form.¹⁰² In a similar vein, a “revolution in humanitarian affairs” (RHA) represents a change in ideas that fundamentally switches the behavior of agencies and overall humanitarian outcomes. The advantage of this framing is that it acknowledges contingency—some agencies are advocates of a complete revolution, others may resist, and a third group may vacillate over time. In the study of ideational and organizational shifts that underlie humanitarian-private security interactions there are both revolutionaries and counter-revolutionaries, and this model avoids overly deterministic or teleological approaches to understanding changes in humanitarian action by tracing the ebb and flow of norms. In the conclusion of this study the RHA model is applied to the issue of the use of security contractors by humanitarian agencies. Accordingly, the focus of this study is not on all changes in humanitarianism, but rather on a select subset of changes relating to agencies’ security arrangements that are a tripwire for transformation.

¹⁰¹ Thomas S. Kuhn, *The Structure of Scientific Revolutions*, 3rd ed., (Chicago: University of Chicago Press, 1996).

¹⁰² For an overview of John Boyd’s analysis see William S. Lind et. al. “The Changing Face of War: Into the Fourth Generation,” *Marine Corps Gazette*, October 1989: 22-26.

Many analysts, practitioners, and journalists have picked up on an epidemic of malaise in the humanitarian sector—a sense of frustration, helplessness, and sorrow at the spate of victims who receive insufficient assistance and the costs paid by aid workers in trying to bring to relief. To cope with threats some humanitarian agencies are hiring, or contemplating hiring, security contractors. The puzzle, therefore, is how did the humanitarian sector come to embrace this security tactic? The normative steps toward this development help explain the phenomenon. Previous scholarship described the origins of humanitarian agency-security contractor interactions, but it has not situated the role of agency norms in bringing them about nor does it put into historical perspective how these changes in practices dramatically re-make humanitarianism. Only by taking humanitarian norms seriously and recognizing them as insightful bellwethers can we understand the roots, mechanics, and implications of revolutionary changes in humanitarianism.

Chapter 2:
Normative Touchstones and Trajectories of
the International Humanitarian System
From the Nineteenth Century to the Twenty-First

- Normative Baselines: The Foundations of Humanitarian Traditions and Agencies
- Benchmarks of the 1990s: Humanitarian Crises and Normative Innovations
- Trends and Tensions in the International Humanitarian System, 1864-2001

Before humanitarian action deploys in the field, there is the impulse to respond to suffering, an idea as to how to actualize a response, and the coalescing of practices. What are these norms and how did they originate? This chapter charts the development of the international humanitarian system in order to provide a normative background to the security approaches of agencies and call attention to the underlying issue of means and ends. It begins by reviewing the primordial norms of humanitarian agencies starting from the “eureka” moment of the late nineteenth century. These norms serve as a baseline to be compared with other frameworks that have unfolded since then. The chapter then examines other key normative benchmarks that stimulate or represent the thinking of agencies during the hurly-burly of the 1990s. The chapter concludes with a synopsis of the aggregate picture of normative trends and the tensions seen in debates over humanitarian norms.

Normative Baselines: The Foundations of Humanitarian Traditions and Agencies

Although there is a lengthy history of humanitarianism (expressions of philosophy, legal precepts, the delivery of relief assistance, and physical protection of vulnerable populations) across a wide range of cultures, the point of departure for understanding the normative baselines of the international humanitarian system are the traditions that crystallized and shaped the emergence of humanitarian agencies in the period of the 1860s to the 1970s.¹ This section discusses the ideas that initiated the creation and recognition of humanitarian actors qua humanitarian actors, i.e., those who have a specialized place in world order to act to save lives during armed conflicts. In particular the formation of two especially noteworthy humanitarian normative frameworks is examined, those of the International Committee for the Red Cross (ICRC) and that of the Médecins Sans Frontières (MSF) are identified.

The belief that there should be some limits placed on war and the notion that those who are victimized by large-scale organized violence between states should receive aid spread and materialized in international norms over roughly the last two centuries. Humanitarian norms emerged as part of Enlightenment thinking and modern cosmopolitan appeals to universal humanism. Michael Ignatieff has identified this rise in

¹ For more on the wide range of cultures that contain humanitarian beliefs see Ephraim Isaac, “Humanitarianism Across Regions and Cultures,” in *Humanitarianism Across Borders: Sustaining Civilians in Times of War*, eds. Thomas G. Weiss and Larry Minear (Boulder, CO: Lynne Rienner, 1993), 13-22.

concern over the plight of others as “an impalpable moral ideal: that the problems of other people, no matter how far away, are of concern to us all.”² By the late 18th century the emphasis on the welfare of humanity led to devising greater restraints on war and to defining many of the principles that are now part of international humanitarian law and action. For example, Swiss philosopher Emerich de Vattel (1714-1767) had an early conception of civilian protection, arguing that they cannot legitimately be attacked unless they are politically or economically significant military assets.³

As part of creating expectations of behavior regarding victims of war, other early building blocks of the international humanitarian system defined the role and functions of a new type of organization, the humanitarian agency. These included other principles and practices of war that became fixtures in the 18th century, such as protections for “ambulance men” and “field hospitals,” and prisoner exchanges.⁴ In the 19th century, war fueled the formal establishment of humanitarian organizations and furthered the process of embedding the norms of humanitarian action in international politics.

² Michael Ignatieff, *The Warrior's Honor: Ethnic War and the Modern Conscience* (New York: Henry Holt, 1997), 5.

³ Emmerich de Vattel, *The Law of Nations; or, Principles of the Law of Nature Applied to the Conduct and Affairs of Nations and Sovereigns (Droit des gens; ou, Principes de la loi naturelle appliqués à la conduite et aux affaires des nations et des souverains)* (1758), trans. Charles G. Fenwick (New York: Oceana, 1964).

⁴ Geoffrey Best, *Humanity in Warfare* (New York: Columbia University Press, 1980), 62.

Solferino, the Geneva Conventions, and the Red Cross

The growing scale of war coupled with increasing support for a permanent international organization to establish ground rules for providing medical assistance to soldiers on the battlefield that would be respected by belligerents culminated following the Battle of Solferino (June 24, 1859) and led to the creation of what would become the ICRC. With the larger, industrialized militaries fielded by the great power states of the late 19th century, the human toll of war surged. The Battle of Solferino, part of the Second War of Italian Independence between different European monarchies, pitted French (under Emperor Napoleon III) and Piedmontese forces (under King Victor Emmanuel II) against Austrian soldiers (under Emperor Franz Joseph), exemplified this trend.⁵ This armed conflict produced large-scale casualties—of the over 200,000 combatants, 6,000 were killed and more than 40,000 wounded. After witnessing this engagement firsthand, Jean-Henri Dunant, a Swiss businessman who served as a medical observer, was inspired to set up an aid society to specifically address those harmed by war. Dunant vividly recounted his experience in *A Memory of Solferino*, which asked, “Would it not be possible, in time of peace and quiet, to form relief societies for the purpose of having care given to the wounded in wartime by zealous, devoted, and

⁵ Eric Hobsbawm, *The Age of Capital 1848-1875* (London: Abacus, 1995), 100: “...[I]t is worth noting that from the mid-1860s giant battles involving over 300,000 men ceased be unusual (Sadowa [1866], Gravelotte, Sedan [1870]). There had been only one such battle in the entire course of the Napoleonic Wars (Leipzig [1813]). Even the Battle of Solferino in the Italian War of 1859 was larger than all but one Napoleonic battle.”

thoroughly qualified volunteers?”⁶ He further concluded that “there is need for volunteer orderlies and volunteer nurses, zealous, trained and experienced, whose position would be recognized by the commanders or armies in the field, and their mission facilitated and supported.”

In early 1863, Dunant, Gustave Moirand, General Guillaume-Henri Dufour, Dr. Louis Apia, and Dr. Théodore Maunoir (all Swiss citizens and members of the Geneva Social Welfare Agency, a local charitable organization) established a subcommittee, the International Committee for the Relief of the Wounded.⁷ While this organization was birthed in Switzerland, it was part of a global movement as evidenced by other key figures at the time; Dr. Ferdinando Palasciano, an Italian physician; Henri Arrault, a French pharmacist; and Anatoli Demidov, a Russian philanthropist.⁸ Dunant and these individuals sought to institutionalize global practices of neutral humanitarian action, and accordingly can be considered as representing a type of “transnational moral entrepreneurship.”⁹ The International Committee for the Relief of the Wounded

⁶ Henry Dunant, *A Memory of Solferino* (Geneva: International Committee of the Red Cross, 1986), 27 and 29.

⁷ David P. Forsythe, *The Humanitarians: The International Committee of the Red Cross* (Cambridge: Cambridge University Press, 2005), 17.

⁸ Caroline Moorehead, *Dunant's Dream: War, Switzerland, and the History of the Red Cross* (New York: Carroll & Graf, 1998), 26.

⁹ Martha Finnemore and Kathryn Sikkink, “International Norm Dynamics and Political Change,” *International Organization* 52, no. 4 (Autumn 1998): 896-897; Ethan A.

examined the challenges associated with providing medical assistance in war zones and solicited participation from European states to craft an international agreement between states and construct private, nationally based aid societies in each state. Further negotiations in late 1863 produced resolutions to start “committees” or national societies. Within a year national relief societies had been formed across Europe, including in major power states such as France, Spain, Prussia, and other north central European principalities that would soon form Germany. On the battlefield, to contrast the work of relief societies with the combat operations of military forces, the International Committee for the Relief of the Wounded flew a flag that was colored the inverse of the flag of Switzerland—a red cross on a white field. The 1863 conference also approved this emblem as the common symbol of the international consortium of national societies, although the phrase “red cross” did not enter into the official name of the organization until the late 1870s when it was rechristened the International Committee for the Red Cross.

In addition to outlining a system of national humanitarian organizations Dunant’s reflections underscored that belligerents should cooperate with the arrangement as it served their own interests: “On certain special occasions, as, for example, when princes of the military art belonging to different nationalities meet [...], would it not be desirable that they should take advantage of this sort of congress to formulate some international principle, sanctioned by a Convention inviolate in character, which, once agreed upon

Nadelmann, “Global Prohibition Regimes: The Evolution of Norms in International Society,” *International Organization* 44, no. 4 (Autumn 1990): 479-526.

and ratified, might constitute the basis for societies for the relief of the wounded [...]?”¹⁰
In fact, around the same time as the formation of national aid societies, the guidelines enabling humanitarian assistance were also enshrined in a new body of treaties between states—international humanitarian law. Many national political leaders (kings, queens, and princes) and representatives were supportive of neutralizing medical services in war.¹¹ Actually medical attention and an improvement in sanitary conditions strengthened armies; the threat of disease and the prospect of mistreatment of their own soldiers’ motivated states to promote an international humanitarian system.

On August 22, 1864, sixteen states and other representatives who gathered in Geneva for the International Conference for the Neutralization of Army Medical Services in the Field signed *The Convention for the Amelioration of the Condition of the Wounded in Armies in the Field*.¹² Subsequent to the signing of the convention, it was quickly ratified by France, Switzerland, Belgium, the Netherlands, Italy, Spain, Sweden, Norway, Denmark, and the Grand Duchy of Baden. Although the US was not among this early group to sign the convention or form an aid society, during the recently concluded US Civil War the belligerents of the Union (the North) and the Confederacy (the South) had agreed in principle to abide by a set of rules in war known as the Lieber Code, and the US would sign the Geneva convention and an American branch of the Red Cross was organized in 1881. The 1864 Geneva Convention had four principles that defined

¹⁰ Dunant, *A Memory of Solferino*,

¹¹ John F. Hutchinson, *Champions of Charity: War and the Rise of the Red Cross* (Boulder, CO: Westview Press, 1997), 55.

¹² Best, *Humanity in Warfare*, 150.

neutrality the fundamental basis of humanitarian work: First, the wounded do not constitute a military threat. Second, those who aid the wounded are considered as “neutralized.” Third, neutrality ceases should military forces come to control aid operations. Fourth, civilians who aid the wounded become “neutrals.” This initial agreement became the normative template for a new type of organization—neutral, national affiliates working in concert to promote international humanitarian law, monitor practices of belligerents, and carry out relief operations.

Within years of its establishment the International Committee for the Relief of the Wounded was conducting large-scale operations. During the Franco-Prussian War (1870-1871) the committees exchanged information on, and provided medical assistance to, captured and wounded soldiers. The growing mechanization and size of military forces led to ever greater destructive power and its results tested both medical and logistical capacities as the fighting of over two million combatants produced significant numbers of dead, wounded, and captured. In total, fourteen societies contributed to the operation, including those from the belligerent states—the German Red Cross aided 400,000 prisoners of war (POWs), the French affiliate tended to 340,000 casualties. The performance of this family of agencies in addressing casualties and maintaining neutrality earned the respect of states and led to greater acceptance of the international humanitarian system.¹³

In the Balkans during the late 1870s, Christian communities fought civil wars against the Ottoman Empire and Turkish populations, and the fledgling network of national societies responded with aid. Three innovations in humanitarian stand out from

¹³ Best, *Humanity in Warfare*, 155; Moorehead, *Dunant's Dream*, 60, 82-83.

this war:¹⁴ First, the range of those that received medical and other assistance was broadened from the soldiers of state militaries to all victims regardless of whether they are official combatants in declared international wars. Second, having become synonymous with their emblem of a red cross, the International Committee for the Relief of the Wounded formally altered their name during this armed conflict and became the International Committee for the Red Cross. Third, to appeal to the Muslim populace to form their own branches in the emerging international humanitarian system, in addition to the symbol of the red cross (with its Christian connotation), a more culturally sensitive and politically palatable alternative, the red crescent, was recognized. This episode shows normative and organization development and demonstrates the effectiveness of the neutrality model of humanitarian action posited by the ICRC.

The 1949 Geneva Conventions¹⁵ and the Additional Protocols of 1977¹⁶ more fully fleshed out of the norms of the Red Cross. Both Chapter III (Articles 19-44) of

¹⁴ Moorehead, *Dunant's Dream*, 125-126; Forsythe, *The Humanitarians*, 27-29.

¹⁵ The 1949 Geneva Conventions is a set of four agreements: *Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* and *Convention II for the Amelioration of the Conditions of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea* calls for adequate care for debilitated soldiers on and at sea, and for protection for medical facilities. *Convention III Relative to the Treatment of Prisoners of War* covers conditions for captured soldiers. *Convention IV Relative to the Protection of Civilian Persons in Time of War* requires humane treatment of civilians under the power of belligerents.

¹⁶ *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the*

Geneva I and Chapter III (Article 22-45) of *Geneva II* pertain to soldiers and define the unique and protected status of humanitarian action in regards to medical units (e.g., hospital ships). Article 23 of the former states that:

“Parties may establish in their own territory, and if the need arises, in occupied areas, hospital zones and localities so organized as to protect the wounded and sick from the effects of war, as well as the personnel entrusted with the organization and administration of these zones and localities and with the care of the persons therein assembled.

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the hospital zones and localities they have created.”

Geneva IV, which relates to civilians, uses essentially the same, if not identical language in Article 14 in calling for “hospital and safety zones” for children under fifteen, mothers with children under seven, and the elderly. It further goes on to state in Article 15: “Any Party to the conflict may, either direct or through a neutral State or some humanitarian organization, propose to the adverse Party to establish, in the regions where fighting is taking place, neutralized zones intended to shelter” wounded combatants and non-combatants, and “civilian persons who take no part in hostilities.” This provision, however, also stipulates, “When the Parties concerned have agreed upon the geographical position, administration, food supply and supervision of the proposed

Protection of Victims of International Armed Conflicts (Protocol I); and, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*.

neutral zone, a written agreement shall be concluded and sign by the representatives of the Parties to the conflict.”

The neutrality compromise for access to and places to treat victims of war enabled states to be gatekeepers of humanitarian action. The strikingly tragic results of uncooperative states that intentionally hindered humanitarian action predicated on neutral space was apparent in the Holocaust, Nazi Germany’s plan to exterminate populations it deemed as dangerous and resulted in the annihilation of at least six million Jews and millions of other minorities. In the years leading up to and during World War II (1939-1945), as the Third Reich executed its “final solution,” the ICRC was granted access on the condition that the organization remained neutral and impartial, including not publicly denouncing atrocities committed by the regime.¹⁷ Having had access to both POWs’ facilities and in some instances concentration camps, where illegally detained people were held until sent to the gas chambers, the organization has received criticism for not modifying its stance of absolute neutrality and impartiality.¹⁸ The ICRC has defended its

¹⁷ Dorothea Hilhorst, “Being Good at Doing Good? Quality and Accountability of NGOs,” *Disasters* 26, no. 3 (December 2002): 195.

¹⁸ David P. Forsythe, *The Humanitarians: The International Committee of the Red Cross* (Cambridge: Cambridge University Press, 2005), 44-50; Jean-Claude Favez, *The Red Cross and the Holocaust* (Cambridge: Cambridge University Press, 1999); Mary B. Anderson, “You Saved My Life Today, but for What Tomorrow? Some Moral Dilemmas of Humanitarian Aid, in *Hard Choices: Moral Dilemmas in Humanitarian Intervention*, ed. Jonathan Moore (Lanham, MD: Rowman & Littlefield, 1998), 137-156.

position by arguing that such compromises were essential to achieve any amount of access.

The principle of neutrality and the vital role of states as gatekeepers were also grounded following World War II in the “San Francisco moment”, i.e., the establishment of the United Nations (UN). This preeminent international organization was devised chiefly to address issues of international peace and security, but it also contained within it several bodies involved in humanitarian action. These humanitarian agencies were designed to adhere to the norm of neutrality, including the UN High Commission for Refugees (UNHCR) and the World Food Programme (WFP).

Much of the normative development of the Red Cross and its insistence on neutrality can be traced to the “Solferino moment”—when belligerents as well as aid workers agreed on and respected the roles and rules of humanitarian action. Despite some pressure to shift from a position of pure neutrality, the principles of the agency did not substantially change from its initial formulation. Jean Pictet, the so-called “father” of the ICRC’s principles, has explained the process of how the core norms of the Red Cross tradition have emerged to become the practices of the organization: “a rule, based on judgment and experience, which is adopted by a community to guide its actions.”¹⁹ In brief, the norms encapsulated by the “Solferino moment” became the standard in

¹⁹ Jean Pictet, “The Fundamental Principles of the Red Cross,” *International Review of the Red Cross*, no. 210 (1979): 130-140, quote at 135. The full list of values includes humanity, impartiality, neutrality, independence, universality, voluntary service, and unity.

humanitarian culture²⁰. However, the ICRC's efforts to remain neutral in situations where space is truncated has been controversial, even within organization, as is seen in the establishment of the Médecins Sans Frontières.

Biafra, Médecins Sans Frontières and New Humanitarian Norms

While the ICRC lauded the benefits of neutrality, some aid workers found granting states an exclusively monopoly on authorizing humanitarian action too restrictive and at times counterproductive to alleviating suffering, and therefore they sought new terms under which operations would be carried out. The establishment of MSF reveals the rise of humanitarian norms that challenge the conventional wisdom of neutrality. Ethnically motivated attacks by the Nigeria government on Ibos incited an internal armed conflict. During the Nigerian Civil War (1967-1970) the central government imposed a blockade on Biafra, a secessionist state in its southeast. A group of French doctors offered to assist in Biafran hospitals through the French Red Cross, but their experience differed substantially from their expectations, and in the years that followed they rethought operating practices.

²⁰ As stated in chapter 1, “humanitarian culture” refers to the beliefs about the ends and means of humanitarian action, and determines the behavior of humanitarian agencies. That Solferino became a signature, defining moment for humanitarian culture may explain why many view the ICRC as akin to a “prophet” in this culture. See Hugo Slim, “Sharing a Universal Ethic: The Principle of Humanity in War,” *International Journal of Human Rights* 4, no. 2 (Winter 1998): 28-48.

Prior to deploying to Biafra the French doctors had signed statements agreeing to hew to neutrality during the humanitarian operation, but the behavior of belligerents altered this sentiment for many of these aid workers.²¹ The Nigerian military committed violence against civilians (primarily Ibos) and limited their access to food, medicine, and other essentials, in the end two million would starve as a result of the blockade.²² In defiance of Lagos the ICRC delivered aid but was then attacked by the government's armed forces, and subsequently the organization resumed its neutral posture. However, the failure of neutrality to ensure access to some victims to the benefit of others led a faction of French doctors to argue that the rights of victims must take center stage in humanitarian action.²³ Led by Bernard Kouchner, in 1970 this cadre organized *Groupe d'Intervention Médicale et Chirurgicale en Urgence* ("Emergency Medical and Surgical Intervention Group"). In December 1971, they would merge with another group of French doctors who concentrated on relief in natural disasters, *Secours Médical Français* ("French Medical Relief"), to form *Médecins Sans Frontières* ("Doctors Without Borders," or usually simply referred to by the acronym MSF).²⁴

²¹ Dan Bortolotti, *Hope in Hell: Inside the World of Doctors Without Borders* (Toronto: Firefly Books, 2004).

²² Michael Barnett and Thomas G. Weiss, *Humanitarianism Contested: Where angels fear to tread* (New York: Routledge, 2011), 56.

²³ Forsythe, *The Humanitarians*, 66-68.

²⁴ For more on the founding of MSF, see Anne Mallerys, *Médecins Sans Frontières: La Biographie* (Paris: Fayort, 2004).

The philosophy of the French doctors movement that formed MSF provides a sharp contrast with, and a profound challenge to, the ICRC's norm of neutrality. Whereas the ICRC avoided discussions of whether grievances and injustice in war should impact access to humanitarian assistance, MSF prided itself on its solidarity with victims, i.e., taking the sides of all who need aid regardless of the permission of state authorities. MSF view their approach as fundamentally apolitical, as two members have written, their organization is a "step away from the classical ICRC approach and sought to put the interest of victims ahead of sovereignty considerations [presumably the "sans frontières" of MSF] . . . more with a spirit to provide prompt and unhindered aid than with a view toward espousing political causes."²⁵ Moreover, while the ICRC did not speak out and effectively worked in a shroud of political silence, MSF is predicated on *témoignage* or bearing witness and providing testimony as to the plight of victims of war.

The understanding of the crisis in Biafra by the French doctors movement and the subsequent formation of MSF is perhaps the most dramatic indication of a change in humanitarian norms up through the end of the Cold War. However, other cultural shifts within humanitarian organizations that signaled a divergence from the traditional norms of cooperation with states as interlocutors as pioneered by the ICRC were also at hand during the 1970s and 1980s. For example, in responding to the needs of Cambodians who had fled to Thailand to escape the Khmer Rouge regime and violence in Southeast Asia—the so-called, "Boat People"—UNHCR contested the terms of access dictated by the host

²⁵ Joelle Tanguy and Fiona Terry, "Humanitarian Responsibility and Committed Action," *Ethics & International Affairs* 13 (December 1999): 31.

government.²⁶ In a departure from established practices of the UN system UNHCR in effect stood against a state, although other humanitarian agencies accepted the political conditions and sponsored relief operations.

Another illustration of innovation was in Afghanistan where the civil war featured a struggle between a Communist party government backed by the Soviet Union and an Islamic insurgency that was supported by the United States. Finding political support as well as ethnic ties (Pashtun ethnic groups populate both sides of the Afghanistan-Pakistan border), a large number of Afghan refugees ended up in western Pakistan. The camps that were established in concordance with Pakistan's wishes served dual purposes: they provided humanitarian assistance, and they also became hubs for maintaining political ties and organizing military resistance in Afghanistan. Many refugees wanted to keep the war going and supported the militarization of the camps.²⁷ The simultaneous political-military and humanitarian work in the camps violated the tenets of strict neutrality. Although humanitarian access was easily attained, the space had been compromised by political and military agendas of Pakistan. Furthermore within Afghanistan MSF defied the humanitarian norm of working through the government in negotiating access and worked within rebel areas.

²⁶ Daniel Ungar, "Ain't Enough Blanket: International Humanitarian Assistance and Cambodian Political Resistance," in *Refugee Manipulation: War, Politics, and the Abuse of Human Suffering*, ed. Stephen John Stedman and Fred Tanner (Washington, D.C.: Brookings, 2003), 54.

²⁷ Frederic Grare, "The Geopolitics of Afghan Refugees in Pakistan," in *Refugee Manipulation*, ed. Stedman and Tanner, 58-59.

In the Ethiopian famine (1985-1986), humanitarian agencies also encountered a situation where the central government was not the primary on the ground interlocutor, particularly in the provinces of Eritrea and Tigray. Given that access was difficult agencies that had negotiated with the government used airlifts to deliver assistance to these areas, though guerilla groups were suspicious of how aid might temper resentment for the regime.²⁸ MSF worked behind rebel lines and again, similar to Afghanistan, assistance was manipulated to serve the political interests of those opposing the government. In essence, by working with insurgencies Western humanitarian agencies crossed the line between neutrality and taking a particular side in the conflict.²⁹ In addition to deviating from the model of negotiating access exclusively with states, the connection of military assets (in this case mostly aircraft) to humanitarian action underscores the willingness of some humanitarian agencies to resort to working not just with state militaries but fundamentally conjoining operations.

Humanitarian action in Sudan at the end of the 1980s also encapsulates normative changes afoot. “Operation Lifeline Sudan” (OLS) is perhaps the high-water mark of what might be thought of as the “Biafra period”—the time from the founding of MSF in 1971 up through the end of the Cold War in 1989, when the terms and the interlocutors of humanitarian action are increasingly questioned and new operational formulas are

²⁸ Fred Cuny, “Dilemmas of Military Involvement in Humanitarian Relief,” in *Soldiers, Peacekeepers and Disasters*, ed. Leon Gordenker and Thomas G. Weiss (London: MacMillan, 1991), 65-66.

²⁹ Hugo Slim, *A Call to Alms: Humanitarian Action and the Art of War* (Geneva: Centre for Humanitarian Dialogue, 2004), 5.

pursued. OLS conceived a unique arrangement for negotiating access that was based on a tripartite agreement between the United Nations, the Sudanese government in Khartoum and the Sudan People's Liberation Army (SPLA) (the guerilla movement from southern areas of Sudan).³⁰ To be acceptable to the government of Sudan the pact was intended to focus on creating safe areas for relief operations ("corridors of tranquility") and tried to shy away from addressing the legitimacy of the SPLA. Although in previous crises, such as in Afghanistan and Ethiopia, humanitarian agencies had developed relations with rebel movements, Sudan was the first attempt to institutionalize this arrangement.³¹ Lastly, in this period the trend toward instituting a marketplace for humanitarian agencies appears on the horizon as how agencies received funding was also changing. In Ethiopia and Sudan, direct contracting of non-governmental organizations by donor government became routine.³² From the earliest operations of the international humanitarian system agencies had at times received contributions from states, even to carry out specific tasks. However, by the end of the 1980s this arrangement was no longer exceptional.

³⁰ Max P. Glaser, *Humanitarian engagement with non-state armed actors: The parameters of negotiated access*, HPN Network Paper 51 (June 2005), 3; Larry Minear, *Humanitarianism under Siege: A Critical Review of Operation Lifeline Sudan* (Trenton: Red Sea Press, 1991).

³¹ Jonathan Goodhand, *Aiding Peace? The Role of NGOs in Armed Conflict* (Boulder, CO: Lynne Rienner, 2006), 88.

³² Joanna Macrae, "Defining the boundaries," in *The Humanitarian Decade: Challenges for Humanitarian Assistance in the last decade and into the future*, Volume II, ed. Office of the Coordination for Humanitarian Affairs (New York: OCHA, 2004), 112.

The Diversity of Humanitarian Norms in the Founding Period

This section has laid out the early history of the international humanitarian system and identified key baselines that showcase normative developments. A review of the period from 1864 to 1989, the years between the signing of the original Geneva Convention and the founding of the organization that would become the ICRC and the end of the Cold War, illuminates contrasting sets norms within humanitarian culture. Humanitarian action was initially understood and constructed to stand outside of politics or at least not interfere with the politics of states; combatants abide rules of war and humanitarians confine their efforts to the parameters established by belligerents.³³ Indeed, the notion of “humanitarian space” was created as an attempt to depoliticize relief efforts.³⁴ However, the Solferino model was challenged by the realities of Biafra, and as a result humanitarian culture developed new operational principles: As military power became decoupled from the political authority of states (that is, when states faced significant internal security threats), some agencies sought new interlocutors and moved away from a neutrality that emphasized a role for states in determining the scope of humanitarian action. Table 2.1 sketches the two landmark episodes of development in humanitarian norms that have come to be embodied respectively in the ICRC and MSF.

³³ Joanna Macrae, “New Times, Old Chestnuts,” *Terms of Engagement: Conditions and Conditionality in Humanitarian Action*, HPG Report no. 6 (July 2000), 9.

³⁴ Michael Barnett, “Humanitarianism Transformed,” *Perspectives on Politics* 3, no. 4 (December 2005): 723.

TABLE 2.1:
EARLY HUMANITARIAN CRISES AND
MODELS OF HUMANITARIAN ACTION

CRISIS	PROBLEM	SOLUTION
<i>Solferino</i>	States granting access to victims	Neutrality, impartiality, and consent
<i>Biafra</i>	NSAs/insurgents granting access to victims	Negotiate consent with insurgents

Several typologies of humanitarian actor have been posited to characterize these normative changes. Abby Stoddard distinguishes between three types of actors engaged in assistance activities and which she has dubbed Wilsonians, religious-based, and Dunantists.³⁵ The first group, Wilsonians, is named for Woodrow Wilson, who believed that humanitarian aid was tool for states to promote their allies.³⁶ The second variety, religious groups, render assistance only to those of the same faith. In terms of how humanitarian aid is allocated—that is, on a selective basis and determined by the gain of those giving it—this normative framing of humanitarianism is quite similar to that of the Wilsonians. The third kind, Dunantists, subscribes to the neutrality model first promoted

³⁵ Abby Stoddard, *Humanitarian Alert: NGO Information and Its Impact on US Foreign Policy* (Bloomfield, CT: Kumarian Press, 2006), 7-9.

³⁶ However it should be recognized that the tradition of states rendering humanitarian assistance for political purposes predates Wilson. For example in the Napoleonic era aid was considered part of building political alliances following conquest. See Cuny, “Dilemmas of Military Involvement,” 52.

by Henri Dunant and the ICRC. Thomas G. Weiss expresses variation not into rigid categories but along a spectrum with a range of humanitarians, some embracing the impartial (“classicists”) model and those who see assistance as a method of expressing solidarity with victims and for taking up a broader agenda beyond emergency relief (“maximalists”).³⁷ In short, the fault line in humanitarian culture revolves around understanding aid as working within the parameters established by states and thus conforming to their interests, or a view of aid as not requiring the consent of state authorities and as a vehicle to reshape not only humanitarian conditions but also consciously alter political outcomes. Overall, by the end of the Cold War the international humanitarian system exhibits not only normative development, but also organizational development. The emergence of new agencies, such as MSF, indicates not only variation in humanitarian culture (different norms) but also splinters in humanitarian action (different behaviors). These changes would take on greater significance in responding to disasters in the 1990s.

Benchmarks of the 1990s: Humanitarian Crises and Normative Innovations

Post-Cold War humanitarian crises contained new elements to armed conflicts (what some term as the “new wars”³⁸) that challenged humanitarian agencies and shaped their

³⁷ Thomas G. Weiss, “Principles, Politics, and Humanitarian Action,” *Ethics & International Affairs* 13 (December 1999): 1-22, see table on 4.

³⁸ For examples see Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Stanford: Stanford University Press, 1999); Edward Newman, “The ‘New Wars’

norms. Four types of changes in disasters became commonplace: First, although this period saw a marked decline in state-to-state armed conflict, internal wars featuring non-state actors (NSAs) grew substantially. Guerillas, militias, and other informal militarized groups became prominent, if not the main, belligerents in war. Second, the victims of armed conflict were less frequently soldiers and instead were mostly comprised of civilians. Often the aims of “new wars” were not so much territory as control, removal, or extermination of populations. Third, aid workers were increasingly targeted for violence. As humanitarian agencies were seen as playing a role in assisting those deemed as enemies by belligerents, aid personnel were attacked. Fourth, the manipulation of humanitarian aid for profit or to further the war effort of belligerents swelled. The scarcity of economic resources in war zones occasionally led to warlords dictating the flow of humanitarian assistance for their own personal gain. This section reviews key humanitarian crises basically in chronological order and spotlights innovations in humanitarian norms.³⁹

Northern Iraq, 1991

The first momentous humanitarian disaster of the post-Cold War period transpired in the wake of the war to liberate Kuwait from Iraqi aggression in early 1991. For many

Debate: A Historical Perspective Is Needed,” *Security Dialogue* 35, no. 2 (June 2004): 173-189.

³⁹ Although the humanitarian crisis in Bosnia unfolded prior to that in Rwanda, the sequence of discussion here examines Rwanda first as it fits better with the aftermath of the experience in Somalia, and an analysis of Bosnia informs the situation in Kosovo.

years the leader of Iraq, Saddam Hussein, had coveted the oil deposits across the border in Kuwait. On August 2, 1990 Iraq invaded Kuwait and in a matter of days captured the entirety of the small country. Iraqi aggression was condemned worldwide, not only was the attack a violation of sovereignty but it substantially increased the price of oil worldwide. The end of the Cold War and Iraq's blatant snub of international law produced a remarkable degree of consensus within the UN Security Council and after a series of resolutions ordering Iraq to withdrawal were ignored, the use of force was authorized.⁴⁰ Starting with an air war on January 17, 1991, and finishing with a brief "100-hour" ground campaign, Iraqi forces were routed and they retreated back into Iraq. Although the international coalition of twenty-eight states that defeated Iraq had no authorization to unseat the Hussein regime, the defeat of the Iraqi military and encouragement from the United States led to widespread instability within Iraq. By mid-February the government of Iraq faced uprisings in the south (where Shiite populations were resentful towards the Sunni-led state apparatus) and the north (where Kurds had long sought to separate from Iraq to form their own state). To quell these internal threats Hussein unleashed a campaign of repression against essentially defenseless civilians, burning villages and destroying livelihoods. In April 1991 the UN Security Council

⁴⁰ UN Security Council Resolution 660 (August 2, 1990) condemned the invasion (this was the first consensus statement on aggression from the Security Council since the start of the Korean War in 1950); UN Security Council Resolution 661 (August 6, 1990) imposed economic sanctions; UN Security Council Resolution 665 (August 25, 1990) instituted a naval embargo; UN Security Council Resolution 678 (November 29, 1990) called for states to use "all necessary means" to force Iraq out of Kuwait.

declared a “safe haven” in northern Iraq that stipulated Hussein could not use military in the area and allowed for humanitarian assistance to be delivered without inhibitions.⁴¹

The creation of the “safe haven” was a departure from traditional role of humanitarian assistance. First, its political undertones should not be dismissed: it served the purpose of reinforcing US military and political efforts to oust Saddam Hussein, and it also was intended to ease the pressure of refugee flows into Turkey (a vital ally of the US in the region). Second, it directly challenged the authority of a sovereign state. Security Council Resolution 688 was a major landmark in the development of humanitarian access; it overtly linked human rights conditions to threats to international peace and security thereby establishing a right of the UN to provide humanitarian assistance.⁴² Although at the time some states from the global South (i.e., those neither aligned with the West or the Eastern bloc) were concerned that this would become a precedent for overriding sovereignty, such worries were mostly set aside given the level of international support for defeating Hussein and protecting Kurdish populations. Overall, this episode was groundbreaking in putting humanitarian issues on the international agenda; humanitarian access was achieved through the use of force and was recognized as legitimate by the most authoritative global institution, the United Nations.

⁴¹ UN Security Council Resolution 688 (April 5, 1991) deemed north of the 36th parallel as off limits to Iraqi forces.

⁴² Jarat Chopra and Thomas G. Weiss, “Sovereignty is No Longer Sacrosanct: Codifying Humanitarian Intervention,” *Ethics & International Affairs* 6, no 1. (March 1992): 95-117; and, David J. Sheffer, “Toward a Modern Doctrine of Humanitarian Intervention,” *University of Toledo Law Review* 23, No. 2. (Winter 1992): 253-293.

Throughout the period of 1990-1991 the ICRC maintained a presence in Iraq. The organization operated in accordance with neutrality and concentrated on addressing civilian suffering. What's more the Red Cross fashioned an independent line on the conflict, admonishing both sides for deviations from international humanitarian law. However, the establishment of the "safe haven" stirred debate between the ICRC and national sections. The American, French and British Red Cross Societies willingly collaborated with their respective states in working in this area, and the leadership role of the ICRC was set aside.⁴³

The implications of this crisis rippled beyond northern Iraq as within the humanitarian sector debates emerged about integrating humanitarian action into military operations and about better coordination of humanitarian efforts. Many viewed the humanitarian response as led by the US as haphazard and politically charged, with some displaced populations given greater attention and resources than others—for instance the failure to respond effectively to Iraqi refugees fleeing into Jordan in early 1991.⁴⁴ Others took issue with the fact that the P5 did not interfere with the focus of protecting civilians because at the time it did not conflict with their interests.⁴⁵

These debates culminated in General Assembly Resolution 46/182 (December 19, 1991), which established several coordinating bodies that would bring greater

⁴³ Forsythe, *The Humanitarians*, 107-108.

⁴⁴ Antonio Donini, "The Forest and the Trees," in *The Humanitarian Decade*, ed. OCHA, 130.

⁴⁵ Hugo Slim, "Protecting Civilians: Putting the individual at the humanitarian center," in *The Humanitarian Decade*, ed. OCHA, 155.

transparency to funding and functions of relief operations as well as greater consistency in responses; the Office of the Coordination of Humanitarian Affairs (OCHA), the Emergency Relief Coordinator (ERC), the Inter-Agency Standing Committee (IASC), the Central Emergency Revolving Fund (CERF), and the Consolidated Appeals Process (CAP). Moreover, General Assembly Resolution 46/182 reiterates the commitment of UN agencies to neutrality and impartiality. While it has often been invoked to define the role of humanitarian agencies in aiding victims, it should be noted that the resolution does not include the terms “civilian” or “protection.” In short, GA 46/182 should also be viewed as a reaction to irregularities witnessed in the northern Iraq operation, but in the end constituted a step forward in developing mechanisms for improving coordination throughout the entire international humanitarian system. However, the uproar surrounding the political content and use of force in creating humanitarian space in early 1991 led to an explicit restating of the fundamentally neutral posture of humanitarian agencies.

Somalia, 1991-1993

In January 1991, the weak regime of Mohammed Siad Barre was overthrown, leading to mass chaos in Somalia and exacerbating famine conditions that had been mounting since at least the early 1980s.⁴⁶ After Barre had been defeated, the government

⁴⁶ For details see Alex de Waal, *Famine Crimes: Politics & the Disaster Relief Industry in Africa* (Oxford: James Currey, 1997), 161-163; Ken Menkhaus, “Stabilisation and humanitarian access in a collapsed state: The Somali case,” *Disasters* 34, S3 (October 2010): S323.

ceased to function whatsoever as no less than fifteen clans vied for control of the country and a severe humanitarian crisis progressed. By the end of 1991 the strife worsened and a full-blown civil war took hold. From November 1991 to March 1992, 30,000 to 50,000 civilians were killed in fighting while another 200,000 died of starvation and approximately 1.5 million (nearly 30% of the population) was displaced.⁴⁷ After months of continued fighting and famine on April 24 the United Nations took action by authorizing a small observer force.⁴⁸ However, these troops were ineffective in stopping the war or addressing the humanitarian crisis, which had been plagued by the theft of aid. On August 28 the UN took steps to deploy a more robust response, ordering peacekeepers to protect the delivery of humanitarian assistance.⁴⁹ This operation (UNOSOM) had the consent of Somali clans as the authorization to use force was directed against bandits. But, with the humanitarian mission morphing into more than the provision of aid, the dynamics of the operations soon began to change,

In late 1992 the size and ambition of international forces in Somalia grew considerably. With civilian casualties continuing to mount, US President Bush considered UNOSOM a failure and pushed for a humanitarian intervention, which was authorized by the UN on December 3.⁵⁰ Entitled “Operation Restore Hope,” the Unified Task Force

⁴⁷ Thomas G. Weiss, *Military-Civilian Interactions: Humanitarian Crises and the Responsibility to Protect*, Second Edit. (Lanham, MD: Rowman & Littlefield, 2005), 60-61.

⁴⁸ UN Security Council Resolution 751 (April 24, 1992).

⁴⁹ UN Security Council Resolution 775 (August 28, 1992).

⁵⁰ UN Security Council Resolution 794 (December 3, 1992).

(UNITAF) consisted of 27,000 US troops, and backed by an additional 10,000 from other states, to establish security. While UNITAF was able to bring more aid into distressed areas, its duration was short, lasting only from December 1992 to March 1993. However, the UN wanted to do more than offer humanitarian aid to victims, it sought to force parties to end the violence. In March 1993 the Security Council, under Chapter VII, authorized the use of force to disarm Somali warlords and ensure humanitarian access.⁵¹ This operation (UNOSOM II) entailed 20,000 soldiers for security plus another 8,000 involved in logistics, and included a rapid reaction force of 1,300 US troops offshore.

Over the summer of 1993 UNOSOM II came to focus on Mohammed Aideed, a Somali warlord, as a major obstacle. In June, UN commanders called for armed support against Aideed, and the Security Council responded with authorization to arrest and try him.⁵² After several months of searching for Aideed and some small skirmishes against his militia, in October US Army Rangers concocted a plan to capture him: they would make quick strike into Mogadishu to remove Aideed. But the mission went awry, after arriving on the scene two Black Hawk helicopters were shot down by Aideed's forces. The stranded US Rangers called for reinforcements and extraction, the result—referred to as “the Battle of Mogadishu” in Somalia and immortalized in the US as “Black Hawk Down”⁵³—was a significant military engagement that produced considerable casualties: Eighteen US soldiers were killed and another thirteen wounded (the largest combat toll

⁵¹ UN Security Council Resolution 814 (March 26, 1993).

⁵² UN Security Council Resolution 837 (June 6, 1993).

⁵³ Mark Bowden, *Black Hawk Down: A Story of Modern War* (Berkeley, CA: Atlantic Monthly Press, 1999)

for the US since Vietnam); from Aideed militia, 900 were killed and 1,000 wounded; and at the same time, Somali civilians were caught in the crossfire, killing 200 and injuring 400. Although UNOSOM II remained in Somalia for almost another year and a half providing aid and a modest amount of security in some areas, by the time the mission ended in March 1995 it was seen as setback for the UN.

Several aspects of operations in Somalia from 1991 to 1993 were important in the evolution of the norms of the international humanitarian system. First, the issue of attaining consent from sovereign states was reconceived. Although local parties agreed to both humanitarian assistance and peace operations, at least initially, it is important to recognize that there was no central government to agree to this. Indeed, the UN avoided debates regarding sovereignty by ruling that no effective government existed in Somalia to grant consent.⁵⁴ For humanitarian agencies this furthered the precedent of operating in ungoverned areas and without the explicit blessing of the state that possessed formal jurisdiction over the territory.

Second, this crisis also evidences humanitarian assistance as a significant part of wartime economies. This occurred in two ways, not only was aid stolen and traded for profit, but also the insecurity created by theft led to jobs for local security providers.⁵⁵ In

⁵⁴ Brian D. Lepard, *Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions* (University Park, PA: The Pennsylvania State University Press, 2002), 182.

⁵⁵ Michael Bryans, Bruce D. Jones, and Janice Stein, “Mean Times: Humanitarian Action in Complex Political Emergencies—Stark Choices, Cruel Dilemmas,” Report of the NGOs in Complex Emergencies Project, *Coming to Terms* 1, no. 3 (January 1999): 11.

Somalia, humanitarian agencies had to contract with “technicals” to guard aid warehouses, convoys, and personnel—it was the first time the ICRC would have armed protection.⁵⁶ Indeed, all of the few agencies that were operating in Somalia were compelled to purchase armed protection.⁵⁷

Third, there was a lack of distinction between the humanitarian effort and peace and security component of the UN operation. While the latter was partially intended to protect the former, UN peacekeepers were engaged in other tasks (such as disarming militias) that often antagonized local actors. In fact, at the time, Mohamed Sahnoun, who had been appointed a Special Representative for Somalia, had negotiated the entry of a modest number of UN troops to assist with aid deliveries, but Secretary-General Boutros Boutros-Ghali organized a significantly larger force with a wider mandate, which triggered resentment in Somalia.⁵⁸ The outcome of the UN operation, most notably represented in the violence surrounding the attempted arrest of Aideed, soured many to the practicalities of humanitarian action without consent—and has become known as “Somalia syndrome.” In the US particularly the spectacle of the bodies of US soldiers

⁵⁶ David P. Forsythe and Barbara Ann J. Rieffer-Flanagan, *The International Committee of the Red Cross: A Neutral Humanitarian Actor* (London & New York: Routledge, 2007), 70-71; Forsythe, *The Humanitarians*, 118-119.

⁵⁷ Menkhaus, “Stabilisation and humanitarian access in a collapsed state,” S323.

⁵⁸ Mohamed Sahnoun, “Mixed Intervention in Somalia and the Great Lakes: Culture, Neutrality, and the Military,” in *Hard Choices: Moral Dilemmas in Humanitarian Intervention*, ed. Jonathan Moore (Boulder, CO: Rowman & Littlefield Publishers, 1999), 87-98.

being dragged through the streets of Mogadishu led many to become skeptical of undertaking such operations again.⁵⁹ But the US was not alone in this sentiment, as the failure in Somalia persuaded the Security Council as a whole to refrain from engaging in humanitarian intervention.⁶⁰

In addition to the UN, MSF was also on the ground in Somalia at this time. Initially the organization was part of the chorus calling for armed protection to stop criminals and warlords from comprising relief operations. However, when force failed to halt attacks and caused friction with Somalis, MSF withdrew.⁶¹

In the end the merging of force and relief effectively compromised the neutrality of humanitarian agencies. The experience of Somalia was a shock to humanitarian sensibilities; the premise of state-based consent was sidestepped, aid was manipulated, agency activity was blurred with peacekeeping operations, and consequently future prospects for assistance in war zones was dimmed.

⁵⁹ On March 31, 1994, President Clinton signed Presidential Decision Directive 25, which stipulated that the US would only send forces where national interests were at stake.

⁶⁰ Kofi A. Annan, "Peacekeeping, Military Intervention, and National Sovereignty in Internal Armed Conflict, in Moore, *Hard Choices*, 60.

⁶¹ Michael Barnett, "Evolution Without Progress: Humanitarianism in a World of Hurt," *International Organizations* 63, no. 4 (Fall 2009): 651.

Rwanda, 1994

Perhaps the most shocking disaster of the 1990s, the genocide in Rwanda pushed humanitarian thought to reconsider the role of assistance and the use of force. The country had endured several episodes of ethnic conflict between the Hutu majority and the Tutsi minority since becoming independent from Belgium in the 1960s, including the period from 1959 to 1963 when tens of thousands of Tutsis were massacred and hundreds of thousands fled for neighboring Burundi, Uganda, and Zaire. However, in 1994 the violence was intense and widespread, killing approximately 800,000 and displacing around 4 million in the span of about 100 days.⁶² While the run-up to the genocide and its application posed difficult challenges to UN peacekeeping, its aftermath taxed the entire network of humanitarian agencies that arrived in response and caused many of them to reexamine their principles and practices.

In October 1990, a group of Tutsi organized the Rwandan Patriotic Front (RPF) and invaded Rwanda with the intent overthrowing the Hutu-dominated regime. Sporadic fighting in October 1990, January-February 1991, March 1992, and December 1992 to February 1993 led to negotiations that produced the August 1993 Arusha Peace Accords, a power-sharing agreement between Hutus and Tutsis. The UN Security Council supported the initiative and in October, with the consent of parties (as per Chapter VI of the UN Charter), established UNAMIR to observe and facilitate compliance.⁶³ Yet by early 1994 the situation had again become stressed for two reasons. First, the Rwandan

⁶² For greater details see Alison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (New York: Human Rights Watch, 2004).

⁶³ UN Security Council Resolution 872 (October 5, 1993).

government was recruiting Hutus and forming militias to supplement their military forces. Second, Tutsi refugees who previously left the country began to return from southern Uganda and join the RPF. Hutus viewed these returned Tutsis as potential rivals for land.

While both sides seem to be preparing for another potential round of warfare, the UN mission was hamstrung by a dearth of equipment and manpower to stop the movement of people, arms, and supplies. In mid-January 1994 the UN field commander, Romeo Dallaire, drawing on local intelligence of a large-scale plan by Hutus to attack Tutsi requested greater authority and military resources to raid and disarm Hutu militias. UN headquarters turned down Dallaire's appeal and only a modest number of peacekeeper (just over 2,500) were on the ground when violence flared. On April 6, the Hutu presidents of Rwanda and Burundi were killed when the plane they were traveling in was shot down. This assassination sparked Hutu militants to carry out their genocidal plot against Tutsis as well as moderate Hutus, who were considered by extremists as too willing to compromise with Tutsis. UNAMIR troops were also attacked by Hutu militias, which result in ten Belgian peacekeepers being killed. Instead of responding with greater force, the casualty-adverse Security Council opted to reduce its presence.⁶⁴ Michael Barnett has argued that the UN withdrew peacekeepers because its lack of effectiveness in stopping the violence was undermining the image of the organization.⁶⁵ Within days of

⁶⁴ UN Security Council Resolution 912 (April 21, 1994).

⁶⁵ Michael Barnett, "The United Nations Security Council, Indifference and Genocide in Rwanda," *Cultural Anthropology* 12, no. 4 (November 1997): 551-578; Michael Barnett,

the deaths of UN peacekeepers, Western governments had evacuated virtually all of their nationals. The remaining peacekeeping forces (only 450 soldiers) regrouped and were able to keep some civilians safe—30,000; a relatively small number considering that 20,000 were killed in the week following the death of President Habyarimana, and 200,000 murdered in two weeks. The violence against international personnel also spurred MSF to take a lower profile and operate as part of a neutral ICRC operation.⁶⁶

Beyond the horrors of the genocide, the humanitarian response encountered an additional challenge in its aftermath when zones of protection established by outside intervention and refugee camps became areas for Hutu militants to regroup and sustain the war effort. By mid-June the RPF had removed the Hutu government from the capital, Kigali, and was in control of the eastern part of the country leading many Hutus to flee westward. The French government proposed Operation Turquoise to create a “safe zone” in the southwestern part of Rwanda and subsequently received authorization from the UN Security Council under Chapter VII, allowing for force to establish humanitarian space.⁶⁷ Additionally, several humanitarian agencies had set up refugee camps across the border, in the eastern part of then-Zaire (now the Democratic Republic of the Congo)—UNHCR and the WFP delivered food; MSF provided medical services—also to distribute relief to those fleeing the Tutsi-led RPF. But this aid was often manipulated and a large amount of humanitarian aid was diverted to feed militia members. Despite the intention to facilitate

Eyewitness to a Genocide: The United Nations and Rwanda (Ithaca, NY: Cornell University Press, 2002).

⁶⁶ Forsythe, *The Humanitarians*, 123.

⁶⁷ UN Security Council Resolution 929 (June 22, 1994).

relief to those in need, these operations were extensively criticized for essentially giving aid those to Hutu militants who had perpetrated the genocide.⁶⁸ Indeed, in the rush to provide assistance, it was difficult to differentiate between those who were only preyed upon by Hutu-Tutsi violence and those who were complicit in participating or fomenting the violence. One estimate states that of the 1.5 million who fled Rwanda in 1994, 10-15% participated in atrocities.⁶⁹ The emotion of the moment in the late summer of 1994—the grisly images of the genocide and displaced populations, compounded by fears of disease and famine, charged global sentiment—hastened the arrival of humanitarian aid without parsing the politics of victims and victimizers.

The humanitarian challenges and reaction to the Rwandan genocide was a milestone in contemporary humanitarian thinking—the experience of victims not saved while instigators and belligerents were safeguarded inspired a range of normative shifts among humanitarian agencies. First, many humanitarian agencies that had disavowed military solutions to part of the humanitarian equation became vocal supporters of force in 1994. As Alex de Waal states in reference to Rwanda, “Humanitarians called for an intervention to stop both the massacres and the war.”⁷⁰ For example, MSF, the

⁶⁸ David Rieff, *A Bed for the Night: Humanitarianism in Crisis* (New York: Simon & Schuster, 2002), 184; Terry, *Condemned to Repeat?*, 175-180.

⁶⁹ Howard Adelman, “The Use and Abuse of Refugees in Zaire,” in *Refugee Manipulation*, ed. Stedman and Tanner, 99.

⁷⁰ Alex de Waal, “No Such Thing as Humanitarian Intervention: Why We Need to Rethink How to Realize the ‘Responsibility to Protect,’ in Wartime,” *Harvard International Review* (March 21, 2007).

International Rescue Committee, and Oxfam all advocated using force to stop the genocide in Rwanda.⁷¹ Years after the genocide Kofi Annan who in 1994 was the head of UN peacekeeping (later to become Secretary-General) also remarked on the need for greater amounts of force in such situations, “There was a United Nation force in the country at the time, but it was neither mandated nor equipped for the kind of forceful action which would have been needed to prevent or halt the genocide.”⁷²

Following the genocide, as Hutu militias were remobilizing in refugee camps, the UN considered the use of force to separate these militants from civilian victims.⁷³ The Department of Peacekeeping considered sending a large force under Chapter VII (no consent required) or even a modest force under Chapter VI (requiring consent from the government of Zaire), but there was insufficient political will to achieve either of these options. Another proposed solution was to hire private security to police the camps, but this was dismissed as counter to the principles of the United Nations and that it would prove more expensive than a UN operation.⁷⁴ Furthermore, the government of Zaire did

⁷¹ Rieff, *Bed for the Night*, 170.

⁷² Kofi Annan, “Statement on Receiving the Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda,” United Nations, New York, December 16, 1999. Annan was reacting to the findings of the *Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda*, S/1999/1257, December 15, 1999.

⁷³ Bruce Jones, *Peacemaking in Rwanda: the Dynamics of Failure* (Boulder, CO: Lynne Rienner, 2001), 141-142.

⁷⁴ Singer, *Corporate Warriors*, 185-186.

not want outside forces on its territory. In the end a compromise was reached; UNHCR hired 50 military advisers and seconded some troops from a few governments to train police and military officers from Zaire. A force of 1,500 soldiers (the “Camp Security Liaison Group”) deployed in eastern Zaire to protect refugees and humanitarian personnel, and maintain order in camps. However, this security force enabled Hutu extremists to reorganize.⁷⁵

A second normative shift can be seen in agencies reflecting on the net impact of their efforts. They came to realize that aid was having a dangerous side effect of feeding, sheltering, and building political support actors that had participated in the genocide and that were reconstituting as a military force. As the head of UNHCR, Sadako Ogata, would lament later, “My staff had to continue feeding criminal as the price for feeding hundreds of thousands of innocent women and children.”⁷⁶ The refugee camps near Goma (in the Kivu region of then Zaire) in particular became a haven for Hutu militias to continue their war from across the border. Within MSF intense debates raged regarding the manipulation of aid and its role in strengthening belligerents.⁷⁷ In July 1994 MSF had begun to distribute aid and provide medical services as displaced Rwandan crossed into Goma. When a cholera epidemic spread among refugees, MSF accelerated its work,

⁷⁵ Terry, *Condemned to Repeat?*, 176-181; Deborah Avant, *The Market for Force: The Consequences of Privatizing Security* (Cambridge: Cambridge University Press, 2005), 193-197.

⁷⁶ Quoted by Barbara Crossette, “Why Washington and the World Largely Failed to Act to Head Off Bloods Bath,” *New York Times*, March 25, 1998.

⁷⁷ Terry, *Condemned to Repeat?*, 3.

establishing clinics and hospitals. By the end of the month, with the power of militias within in the refugee camps growing, sections within MSF disagreed as to whether the security problems of the camps could be addressed and if the agency's work was having an overall positive effect on the situation. The French section withdrew from Goma to protest the militarization of aid and protect staff from violence, but the Dutch section remained while continuing to advocate for better conditions. The November 1994 special report of MSF, *Breaking the Cycle* illustrates the "moral dilemmas" raised by Rwanda, and the centrality of contending with militarized camps and aid manipulation as pushing normative change.⁷⁸ Violence continued and by August 1995 all branches of MSF suspended operations in the Goma camps.

A third aspect of this humanitarian action that had normative consequences is the aggregate outcome of some agencies leaving and others replacing them. The widespread manipulation of aid and militarization of refugees led several agencies to withdraw.⁷⁹ However, although the International Rescue Committee (IRC) and MSF withdrew to counter this, the effect was minimal given that other humanitarian agencies took their place.⁸⁰ Moreover, the negligible political impact of withdrawal also evidence coordination problems across the humanitarian sector. Agencies often did not share information or work in conjunction in analyzing security conditions let alone in decisions to stay or withdraw. The problems resulting from agencies operating independently from

⁷⁸ MSF, *Breaking the Cycle: Calls for Action in Rwandese Refugee Camps in Tanzania and Zaire* (November 10, 1994).

⁷⁹ Terry, *Condemned to Repeat?*, 196-197.

⁸⁰ Rieff, *Bed for the Night*, 187.

each other, and with poor communication, heightened demands by humanitarians for greater coordination within sector. Barnett describes Rwanda as a “turning point” because the confusion in permitting aid to fuel war led to the development of more rules in distributing assistance and the strengthening of accountability mechanisms.⁸¹

On the whole, calls for the use of force to stop the armed conflict, the skewing of humanitarian action, and coordination problems on display in the humanitarian response to the Rwandan genocide had a profound effect on humanitarian thought. The limits of inadequate amounts of force in particular would linger in the minds of many humanitarians and stimulate thinking on force as a tool to deliver aid. A second change emerged around the role of agencies in controlling aid abuse, with some agencies embracing the ethos of “do no harm” and in some instances viewing withdrawal as their best solution. Lastly, Rwanda gave greater impetus to better cooperation among humanitarian agencies.

Bosnia, 1992-1995

From 1990 to 1992, the Socialist Federal Republic of Yugoslavia politically disintegrated and the armed struggle of nationalist movements in its aftermath produced a large humanitarian disaster that questioned the neutrality and impartiality of humanitarian agencies. During 1991 the war between the Serbian-led Yugoslav Federation and Croatia killed between 10,000 and 15,000 as well as displaced over 350,000. Late that year a ceasefire agreement was reached between the belligerents, however Bosnia and Herzegovina (henceforth referred to as “Bosnia”), a province bordering both Serbia and

⁸¹ Michael Barnett, “Humanitarianism Transformed,” 725.

Croatia and containing sizable Muslim populations, remained a war zone. UN forces had initially been dispatched to separate opposing military forces though they did not address what was transpiring in Bosnia.⁸² In addition to deploying peacekeepers, the UN also sought the assistance of the North Atlantic Treaty Organization (NATO) to enforce no-fly zones so as to prevent Serbian aircraft from attacking inside Bosnia. Nevertheless, violence continued; mostly Serbian militias conducting a campaign of ethnic cleansing against Bosnian Muslims that killed 200,000 and left another 2.7 million in need of assistance.⁸³ However, to address the lack of access to victims, in June 1992 the Security Council expanded the mandate of UNPROFOR to cover the provision of humanitarian relief in Bosnia, including seizing control of Sarajevo's airport to facilitate aid deliveries. UNPROFOR's mandate was expanded again in July and in August to protect humanitarian space and civilians throughout Bosnia.⁸⁴

Although UNPROFOR was successful in allowing UNHCR to bring in some humanitarian assistance in late 1992 and early 1993, the UN mission, combining both security operations and humanitarian efforts, was ultimately unsuccessful from 1993 to 1995 in both areas as ethnic cleansing continued fundamentally unabated by UN forces and, at the same time, UNHCR staff were attacked. Near the end of 1993 Croatia and Serbia agreed to a ceasefire, and in early 1994 Croats and Bosnians also signed a truce,

⁸² On February 21, 1992, the UN Security Council passed Resolution 743 that authorized the creation of the UN Protection Force (UNPROFOR).

⁸³ Weiss, *Military-Civilian Interactions*, 72.

⁸⁴ UN Security Council Resolutions 758 (June 8, 1992), 764 (July 13, 1992) and 770 (August 13, 1992).

but Bosnian Serbs resisted peace proposals and the war continued to inflict civilian and UN casualties. By late 1994, a major skirmish around Bihac, which had been designated a “safe area” by the UN, signaled another brewing intensification of the conflict. In response to the shelling of Bihac, NATO forces launched strikes against various Bosnian Serb positions in November 1994, and again on Pale in May 1995 after further negotiations failed and fighting persisted. Following this latter air assault Bosnian Serbs took hundreds of UN troops hostage to use as human shields against NATO bombs and continued their aggression against Bosnian Muslims. Additionally, in July violence against Bosnian civilians reached a crescendo as roughly 30,000 men and boys were slaughtered by Serb militants at Srebrenica thereby rendering the very notion of UN “safe areas” meaningless. In response, NATO again bombed Bosnian Serb positions in August and September 1995. Ultimately, the cycle of ethnic cleansing, UN protests, Serb refusals, and NATO bombings only seem to further propel the armed conflict as Serbian forces continued to carry out atrocities and exhibit contempt for UN authority and the laws of war.

The Bosnian war ended in December 1995 with the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina (better known as the Dayton Accords). Although the role of the UN in pushing for a peaceful resolution and authorizing NATO to use force to compel it from Serbian authorities contributed to the signing of the agreement, the main reasons was that Serbia and its allies within Bosnia, as well as Croatia, were able to realize their respective goals of eliminating and displacing Bosnian Muslims and other opposing groups, and securing territory for their own ethnic populations. The Vance-Owen plan of January 1993 envisioned ten semiautonomous

ethnic enclaves, however Serbs would come to control seventy percent, Croats another twenty percent of the territory, and Bosnians were only in UN declared “safe areas.” Moreover, the “security zones” or “safe areas” in Bosnia specified by the UN⁸⁵— Bihac, Gorazde, Sarajevo, Srebrenica, Tuzla, and Zepa—were also frequently attacked and in some cases overrun. In effect, the war and ethnic cleansing was unhindered by UN peace and humanitarian operations. The UN Security Council issued statements and threats to cajole compliance by belligerents with the terms of the 1993 peace agreement and to demand respect for rights under international humanitarian law, but the “confetti of paper resolutions”⁸⁶ was no deterrence in stopping the violence and preventing interference with aid deliveries. The peace that emerged in 1995 was not so much derived from the strength of the UN, even when backed by NATO forces, but rather it was the product of Serbia attaining its goals and its willingness to cut a political deal that would preserve the gains it was able to make through ethnic cleansing.

With respect to questioning traditional humanitarian norms, the experience in Bosnia was significant: not only was humanitarianism under siege by belligerents who did not respect humanitarian principles and space, but even those within the humanitarian sector became critical of the modalities of humanitarian action. At the center of controversy was the question of neutrality. The ICRC adhered to the premise despite mass human rights violations against civilians—which some have criticized as being

⁸⁵ UN Security Council Resolutions 819 (April 16, 1993), 824 (May 6, 1993), and 836 (June 4, 1993).

⁸⁶ *The Economist*, “In Bosnia’s Fog,” April 23, 1994: 16.

reminiscent of the ICRC's behavior during the Holocaust.⁸⁷ At the same time, some Red Cross societies were engaged in corrupt practices; such as the Bosnian Serbian section selling relief aid.⁸⁸

The UN's position was not straightforward neutrality, but something else; was the organization in Bosnia to end the war, facilitate aid deliveries, or both? From the outset the humanitarian work of UNHCR and the peacekeeping operation by UNPROFOR were fundamentally connected in terms of the latter's mandate. First, it should be noted that UNPROFOR was conceived initially to "deter attacks" and was not explicitly mandated to "protect" or "defend" areas or populations, which led to insufficient military resources on the ground and feeble rules of engagement when attacks did occur. Moreover, there was a considerable lack of political will displayed when Dutch peacekeepers chose to withdraw when the risk of incurring casualties appeared rather than confront Serbian militants poised to attack Srebrenica. The inability to protect civilians at Srebrenica greatly eroded the UN's reputation.⁸⁹

Second, the link between UNHCR and UNPROFOR was dangerous in that it spurred attacks on aid workers, who were viewed by Serbian militants as part of an

⁸⁷ Rieff, *Bed for the Night*, 148.

⁸⁸ Forsythe, *The Humanitarians*, 111.

⁸⁹ Netherland Institute for War Documentation, *Srebrenica, a "Safe" Area:*

Reconstruction, Background, Consequences, and Analyses of the Fall of a Safe Area

(Amsterdam: Boom Publishers, 2002); David Rohde, *Endgame: The Betrayal and Fall of Srebrenica* (Boulder, CO: Westview Press, 1998).

unwanted international presence.⁹⁰ In fact, aid workers were working with, or at least perceived as working with, military forces participating in the war.⁹¹ The ICRC, too, experienced intentional violence when in May 1992 the head of the mission to Bosnia was killed, which led to the organization withdrawing until the end of the year.

Aside from the obvious impediments and threats complicating humanitarian action in Bosnia, the resulting dynamics generated a reconsideration of how humanitarianism operated. Among many aid workers the idea of humanitarian action predicated solely on the distribution of relief in the face of ongoing violence was absurd. Providing food to those who faced the threat of execution—the expression “well-fed dead” was popularized in reference to this humanitarian crisis⁹²—was seen as morally shortsighted. As Michael Ignatieff has argued, Srebrenica destroyed the feasibility of what he terms “Kouchnerian humanitarianism,” (a supposedly apolitical version of humanitarianism) and that in situations of mass human rights violations neutral, pacifist assistance is no longer adequate but rather force is required to stop aggression.⁹³ Indeed,

⁹⁰ Martin, et. al., *The Uprooted: Improving Humanitarian Responses to Forced Migration* (Lanham, MD: Rowman & Littlefield, 2005), 198.

⁹¹ Larry Minear, et. al, “Humanitarian Action in the Former Yugoslavia: The U.N.’s Role, 1991-1993,” Watson Institute Occasional Paper Series #18 (1994), 83-103.

⁹² David Keen, *Complex Emergencies* (Cambridge: Polity Press, 2008), 118.

⁹³ Michael Ignatieff, *Empire Lite* (2003), 58.

when armed escorts were used to deliver aid they were effective.⁹⁴ In addition to elements of force, other humanitarians questioned the degree to which the work of agencies could stay outside of the realm of politics. David Rieff claims that, “What the Bosnian catastrophe seemed to have demonstrated was that the possibility of a kind of humanitarian action could remain apart from politics and reasons of state was a pipe dream.”⁹⁵ In sum, the scars of Bosnia are not only on the victims of the war that raged from 1992 to 1995, many humanitarians came away from Bosnia with the notion that a reliance on independence and neutrality as well as a lack of coercive capacity to stop war and mass human rights violations jeopardized civilians, aid workers, and the credibility of the humanitarian enterprise.

Kosovo, 1999

The war and independence movements that shattered Yugoslavia in the early and mid 1990s were not entirely resolved despite a variety of international peace agreements and the formation of several new states. By the end of the decade Serbia remained committed to controlling territory in the Balkans that had historical significance and sizable Serbian populations. Much of Serbia’s concern revolved around the province of

⁹⁴ Mark Cutts, “The Humanitarian operation in Bosnia and Herzegovina, 1992-1995: Dilemmas in negotiating humanitarian access” *New Issues in Refugee Research—Working Paper No. 8* (Geneva: UNHCR, 1999), 14-16.

⁹⁵ Rieff, *Bed for the Night*, 153.

Kosovo, which had once been heavily populated by Serbs.⁹⁶ By the late 1990s the ethnic Albanian majority was agitating for greater autonomy, if not their own state. Similar to the situation in Bosnia only a few years prior, Serbia reacted by supporting local Serb militias to carry out ethnic cleansing. Militant Albanian Kosovars (the Kosovo Liberation Army (KLA)) responded with violence. In 1998 approximately 9,000 to 12,000 ethnic Albanians were killed, as were 3,000 Serb soldiers and civilians. While some efforts at negotiating peace were attempted, in the fall of 1998 the United Nations Security Council decided it could no longer wait in addressing the violence and destabilizing refugee flows. In September the Security Council called for all parties to cease armed hostilities and allow for humanitarian access.⁹⁷

However, the conflict persisted and grew worse in early 1999. The peace conference in Rambouillet, France, failed when Serbs refused to yield on key aspects. The Security Council was deadlocked on how to respond to Serbia's defiance: Although the US, Britain, and France sought to push the council to authorize force to compel Serbian compliance, Russia and China—sensitive to issues of sovereignty, minority rights, and the stakes of using force—threatened to veto any such coercive resolution. Consequently, the Western powers, again similar to the crisis in Bosnia only a few years earlier, turned to NATO for political cover and military capabilities. The result, starting

⁹⁶ Serbian nationalism often referenced the battle of Kosovo Polje in 1389, a defeat that led to the dominance of the Ottoman Empire over Serbia. In 1989 Serbian leader Slobodan Milosevic visited the battlefield and famously promised that Serbia would never relinquish the territory.

⁹⁷ UN Security Council Resolution 1199 (September 23, 1998).

on March 24, 1999, was a 78-day bombing campaign that devastated Serbia (particularly its infrastructure) and severely weakened its proxies in Kosovo. Furthermore, while NATO was attacking Serbian forces, Albanian Kosovars ethnically cleansed Serbs from Kosovo, with at least one thousand killed and tens of thousands of fleeing to Serbia. On June 3 a peace deal was reached: Serbia would withdraw its armed forces from Kosovo, refugees and the displaced would be allowed to return, the KLA would be disbanded, and temporary authority under UN mandate would administer the territory until the final status of Kosovo could be negotiated. The Security Council (with China abstaining) quickly affirmed the arrangement and established the United Nations Interim Administration Mission in Kosovo (UNMIK).⁹⁸

Kosovo showcased a different configuration of humanitarian norms, far removed from the traditional fare in two ways. The most prominent form of this new thinking can be seen in the strange, if not oxymoronic, phrase “humanitarian bombing;” the implication that a use of force ultimately may improve the welfare of those caught in war by ending aggression and atrocities.⁹⁹ In Kosovo some humanitarian agencies such as Oxfam, which had previously focused primarily on treating victims, now found themselves advocating for force. There was a commitment of humanitarian actors to force in this instance despite the lack of lawful authorization for its use—indeed, the Independent International Commission on Kosovo branded NATO’s intervention as

⁹⁸ UN Security Council Resolution 1244 (June 10, 1999).

⁹⁹ Adam Roberts, “NATO’s ‘Humanitarian War’ in Kosovo,” *Survival* 41, no. 3 (Autumn 1999): 102-123.

“illegal, but legitimate.”¹⁰⁰ Similarly, Kofi Annan, who lambasted the absence of Security Council authorization, approved the premise of using force to stop Serb atrocities in Kosovo.¹⁰¹ In short, the Kosovo mindset, likely informed by the experiences of the Rwandan genocide and Bosnian massacres, led agencies to consider tackling causes as well as consequences of violence.

A second humanitarian norm questioned and reconceived in Kosovo was that of neutrality and impartiality. At the same time, this mission connected to the normative framework of favoring victims over parties committing human rights violations. Indeed, Kouchner explicitly said so, “The logic of humanitarian action led directly from the actions of the French doctors in Biafra to the U.N. administration in Kosovo.”¹⁰² While any sort of humanitarian action is fraught with political undertones, in this case, operations clearly served the interests of the West by benefiting Albanian Kosovars to a much greater extent than Serbians in both the provision of assistance and in recognizing Kosovo as not falling under Serbian sovereignty. In this way, although an agency like MSF maintained its autonomy in Kosovo, the vast majority of humanitarian action occurred at the behest of the West.¹⁰³ Traditional humanitarian thought viewed changes

¹⁰⁰ Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000), 4.

¹⁰¹ Kofi A. Annan, “Secretary-General’s Speech to the 54th Session of the General Assembly,” September 20, 1999.

¹⁰² Quoted in David Rieff, “Kosovo’s Humanitarian Circus,” *World Policy Journal* 17, no. 3 (Fall 2000): 30.

¹⁰³ Rieff, *Bed for the Night*, 197 and 251.

TABLE 2.2:
POST-COLD WAR HUMANITARIAN CRISES
AND MODELS OF HUMANITARIAN ACTION

CRISIS	PROBLEM	SOLUTION
<i>Northern Iraq, 1991</i>	Central government refusal to grant access	UN authorize force to establish safe haven
<i>Somalia, 1991-1993</i>	No central government to grant access Aid manipulation and theft	Strike deals with local belligerents Hire local security forces
<i>Rwanda, 1994</i>	Genocide Belligerents limit access	UN authorize force to establish safe zones Establish refugee camps across border (outside conflict zone)
<i>Bosnia, 1992-1995</i>	Belligerents target civilians, limit access to victims, and attack aid workers	UN link humanitarian and peacekeeping operations, authorize force in response to atrocities
<i>Kosovo, 1999</i>	Belligerents target civilians	Call for use of force

in authority and governance as of a higher order—i.e. formal politics—than those concerned with the mechanics of delivering assistance and thus agencies attempted to stand apart from such processes. However, in Kosovo, agencies readily looked for and developed interlocutors aside from Serbia and in this way contributed to the emergence of a new political authority within Kosovo. Overall, the crisis in Kosovo represents a thoughtful bookend to the 1990s, it is the culmination of humanitarian thinking and re-thinking about military tools and political goals in humanitarian action.

Table 2.2 summarizes the challenges humanitarian agencies confronted in the 1990s and the methods they turned to in addressing them.

Trends and Tensions in the International Humanitarian System, 1864-2001

The international humanitarian system that was conceived in the late 19th century aimed to work independently, albeit with the support of states and the respect of their armed forces, to gain access in providing emergency life-sustaining assistance to wounded and captured soldiers and eventually also to bring relief to civilians caught up in war.

However, since then the intentions and practices of humanitarian action have changed considerably due to encountering non-permissive environments that question the limits of the pre-existing understanding of humanitarianism, which in turn has created “new humanitarianisms” in the 1990s. The conclusion of this chapter traces six trends—militarization, collaboration, militarization, securitization, marketization, and commercialization—that underlie internal debates of the humanitarian sector in order to understand the emergence of new ideas.

Root Causes and the Expansion of Humanitarian Goals and Partnerships

Humanitarianism, like many other aspects of international relations, is inherently political; its place in global affairs has largely been defined by power. Traditionally it was viewed as exclusively addressing the consequences of large-scale inter-state violence but the politics that undergird this approach have shifted. Increasingly, particularly in the 1990s, there has been a push both outside and inside the humanitarian sector to maximize the impact of humanitarian action by taking up not only the grisly consequences of armed conflict but also their root causes as well considering internal in addition to international wars. For example, Oxfam, CARE, and Catholic Relief Services (CRS) started by providing relief during World War II but later came to also engage in development work.¹⁰⁴ As discussed below, there also remained some who opposed maximization approaches and were steadfast in arguing for the minimalist version of humanitarianism. Two variants of the maximization approach have appeared; one centered on addressing human rights issues and another based on considering long-term development issues and avoiding dependency.

When humanitarian action began to impact the course of armed conflicts—i.e., when aid perpetuated belligerents' war efforts—views of humanitarianism changed. This can be seen most clearly in the holistic approach towards war that became prevalent among many states, international organizations, and non-governmental organizations in

¹⁰⁴ Barnett and Weiss, *Humanitarianism Contested*, 49.

the 1990s: the humanitarian relief (as well as economic and social development) agendas merged with the peace and security agenda.¹⁰⁵ As Duffield states,

A new security framework has emerged in which stability is now regarded as unfeasible without development, while development is non-sustainable without stability. For a number of NGOs, this fusion has led to an uncomfortable realization. It has become increasingly difficult to separate their traditional non-governmental development and humanitarian activities from the wider aims and implications of this new security framework. At the same time, those who support such agencies or help them achieve their aims are also implicated through this strategic realignment.¹⁰⁶

Instead of targeting humanitarian action solely to mitigate the effects of war, humanitarianism was to be refocused more broadly to take up issues of world order.¹⁰⁷

After the Cold War the United Nations has been among the most prominent agent in advancing the maximization of humanitarianism. To begin with humanitarian issues have become part and parcel of the security discussions at the UN as indicated by the

¹⁰⁵ Goodhand, 78.

¹⁰⁶ Mark Duffield, *Global Governance and the New Wars: The Merging of Development and Security* (Zed Books, 2001), 259.

¹⁰⁷ Joanna Macrae, "The Death of Humanitarianism? An Anatomy of the Attack." *Disasters—Special Issue: The Emperor's New Clothes: Charting the Erosion of Humanitarian Principles* 22, no. 4 (December 1998): 310-315.

upswing in concern with the protection of civilians in the Security Council.¹⁰⁸ Adam Roberts points out that attitudes towards refugees began to change, not just in organs specifically charged with their care, such as the UNHCR but also within the Security Council. He enumerates a range of broader issues and actions conceived to address the plight of the displaced—preventive action, the term “internally displaced persons,” safety zones, camps at edges of countries at war as contributing to instability, military intervention in refugee producing situations, temporary protection for refugees rather than permanent asylum, assisted and forced repatriation, and monitoring after resettlement.¹⁰⁹ In short, since the 1990s “integration” and “coherence” have become watchwords at the UN as it has struggled to unite humanitarian action with its other activities.¹¹⁰

At the start of the 1990s, after years of concern that the UN’s humanitarian responses were too diffuse and working at cross-purposes, the organization began to take action to coordinate relief activities and connect them to wider UN operations. In December 1991 the General Assembly passed Resolution 46/182 to strengthen its

¹⁰⁸ For example, see UN Security Council Resolutions 1265 (September 17, 1999) and 1296 (April 19, 2000).

¹⁰⁹ Adam Roberts, “The Role of Humanitarian Issues in International Politics in the 1990s,” *International Review of the Red Cross*, No. 833 (March 1999): 29-30.

¹¹⁰ See Secretary-General Kofi Annan’s *Renewing the United Nations: An Agenda for Change* (1997), which calls for “coherence” across all UN mandates.

humanitarian infrastructure.¹¹¹ Considered as a sort of Magna Carta of contemporary humanitarian work, this resolution created the position of “humanitarian coordinators” to centralize authority over humanitarian programs in UN operations.¹¹² This process was taken even farther in another re-tooling in 1998 when the UN established the Office of the Coordination of Humanitarian Assistance (OCHA), which created committees that traverse both humanitarian and political issues. This is further underscored by new language to characterize humanitarian crises: “complex political emergency,” a “humanitarian crisis in a country, region or society where there is a total or considerable breakdown of authority resulting from internal or external conflict and which requires an international responses that goes beyond the mandate or capacity of any single agency and/or the ongoing UN country programme.”¹¹³

What’s more is that the Secretary-General also became outspoken advocates for a brand of humanitarianism in which all agencies operated in conjunction to avoid aid flows undermining the coherence of the wider effort to bring peace. In the middle of the 1990s Boutros Boutros-Ghali stated, “The United Nations... has moved to integrate, to

¹¹¹ General Assembly Resolution 46/182, *Strengthening of the coordination of humanitarian emergency assistance of the United Nations* (December 19, 1991).

¹¹² Kenzo Oshima, “The responsibility to protect and humanitarian engagement,” in *The Humanitarian Decade*, ed. OCHA, 3.

¹¹³ Inter-Agency Standing Committee, “Working Paper on the Definition of Complex Emergency,” December 1994, in Department of Humanitarian Affairs, United Nations, *Humanitarian Report 1997* (New York: United Nations, 1997), 9.

the extent possible, its human rights and humanitarian efforts with peace efforts.”¹¹⁴ At the end of the decade, Kofi Annan expressed concern that some aid agencies were achieving access through negotiations with a belligerent party at the expense of preventing unfettered access for all agencies and UN efforts,

Given the highly complex context in which such negotiations have been conducted, involving a diversity of warring parties and international actors, the need for common standards, complementary negotiation strategies and skilled negotiators is evident... Common ground rules would help to make access negotiations more predictable and effective, and reduce the risk of mistakes or of agencies being played off against each other by warring parties.¹¹⁵

The maximization trend of the 1990s has shaped two contrasting normative styles: the “back to basics” ethic of treating all immediate needs and the consequentialist-oriented “do no harm” approach. The first, “back to basics,” concentrates on maintaining the independence of humanitarianism and stresses the value of offering assistance based primarily on need. Minimalists critiqued the intention to morph humanitarian action into serving a political interest aside from the traditional one of only aiding neutralized combatants and civilian victims that has been characterized as a “bed for the night.” Moreover, during this period minimalists argued that bending humanitarianism cast the efforts of aid workers as stabilizing situations at the behest of military and political actors

¹¹⁴ United Nations, *Report of the Secretary-General on the Work of the Organization*, A/51/1 (1996), para. 1132.

¹¹⁵ *Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict*, S/2001/331/para 15, March 30, 2001.

that would otherwise have to expend considerable resources to manage disasters.¹¹⁶ For instance, Duffield worries that, “humanitarian action is now only legitimate as long as it is felt to do no harm and generally support the conflict resolution and transformational aims of liberal peace.”¹¹⁷ In other words, he contends that NGOs have become part of the “the North’s security regime,” thereby rendering such organizations soothing products of political power, not checks on them. Thus, in this interpretation, humanitarianism in its maximalist formulation becomes essentially part of an imperialist artifice.

MSF is among the most outspoken opponents of maximalist minimalist humanitarian action. Their overarching concern is with immediate aid to victims, not an estimation of the potential for such aid to change military and political situation. To that end MSF also opposes the “integration agenda,” that calls for partnering with actors that seek to harness humanitarian work to accomplish political goals.¹¹⁸ Moreover, MSF professes that offering relief without political calculations communicates a message of solidarity with all victims that in the long run will change political views and nurture peaceful as well as humanitarian outcomes.

Maximalists contended that during the 1990s humanitarianism came to accept the elimination of root causes of conflicts as a fundamental part of the humanitarian

¹¹⁶ Adam Roberts notes that in the 1990s humanitarianism became a means for states to take action without having to make significant commitments, see “The Role of Humanitarian Issues in International Politics in the 1990s,” 24.

¹¹⁷ Duffield, *Global Governance and the New Wars*, ?.

¹¹⁸ de Torrente, “Humanitarianism Sacrificed: Integration’s False Promise,” *Ethics & International Affairs* 18, no. 2 (Fall 2004), 3-4.

agenda.¹¹⁹ To maximalists, a humanitarianism predicated simply of aid delivery is piecemeal, and that it cannot reach its potential of relieving the greatest amount of suffering without widening its formulation of action. Therefore, maximalist humanitarians championed factoring in the consequences of aid work as a guiding principle. In particular many humanitarians reacted to providing aid as impacting the political legitimacy of belligerents.¹²⁰ First, negotiating with belligerents for access implies they are the rightful authorities in an area. Second, the permitting of aid agencies within a belligerent's operational area can be used as a propaganda tool for belligerents. The experience of aid assisting militants in Bosnia and Rwanda particularly led to humanitarians rethinking the classic humanitarian stance of neutrality and spurred the rise of consequentialism.¹²¹ This approach (maximization) also lent itself to subscribing to the integration agenda (collaboration), couching humanitarianism as fitting within a larger

¹¹⁹ Michael Barnett, "Humanitarianism Transformed," 724.

¹²⁰ Terry, *Condemned to Repeat?*, 44.

¹²¹ Kenneth Anderson, "Humanitarian Inviolability in Crisis," *Harvard Human Rights Journal* 17 (Spring 2004): 41-74; Nicholas Stockton, "The Changing Nature of Humanitarian Crises," in *The Humanitarian Decade*, ed. OCHA, 30; David Rieff, "Humanitarianism in Crisis," *Foreign Affairs* 81, no. 6 (November-December 2002): 111; Mary Anderson, *Do No Harm: How Aid Can Support Peace—Or War* (Boulder, CO: Lynne Rienner, 1999); and, Nicholas Leader, "Proliferating Principles; Or How to Sup with the Devil Without Getting Eaten," *Disasters* 22, no. 4 (December 1998): 288-308.

international response to structural problems of war, underdevelopment, and human rights abuses.¹²²

Overall, the controversy over maximal approaches grew intensely in the 1990s, with both pro and con factions elaborating their arguments. Ignatieff has been among the more enthusiastic supporters of this agenda, noting, “Our current debate about humanitarian intervention continues to construe intervening as an act of conscience, when in fact, since the 1990s began, intervening has also become an urgent state interest: to rebuild failed states so that they cease to be national security threats.”¹²³ Others have been more sanguine but resigned to the prospect as demonstrated by the bleak logic expressed so succinctly by Sadako Ogata, the UN High Commissioner for Refugees during the 1990s, “There are no humanitarian solutions to humanitarian problems.”¹²⁴ More critically, Rieff fears that in the 1990s agencies were “abandoning the notion of humanitarianism-against-politics for the politics of humanitarianism.”¹²⁵ Nevertheless, the change was palpable, as Barnett concludes, “these Maginot line principles defending humanitarianism from politics crumbled during the 1990s.”¹²⁶ Thus, while some humanitarian agencies such as MSF remained stalwart opponents, there is little doubt that

¹²² Charny, “Upholding Humanitarian Principles in an Effective Integrated Response,” *Ethics & International Affairs* 18, no. 2 (Fall 2004), 13.

¹²³ Michael Ignatieff, “Intervention and State Failure,” *Dissent* (Winter 2002), 115.

¹²⁴ Sadako Ogata, *The Turbulent Decade: Confronting the Refugee Crises of the 1990s* (New York: W.W. Norton, 2005), 25.

¹²⁵ Rieff, *Bed for the Night*, 26.

¹²⁶ Barnett, “Humanitarianism Transformed,” 724

maximization influences spread both inside and outside of the humanitarian sector and prompted agencies to develop new collaborative arrangements with actors outside the sector. In a nutshell, during the 1990s in the eyes of many humanitarians, the very definition of humanitarianism changed from exclusively the provision of relief to encompassing broader, more political ambitious activities, which could be achieved by working with others.

Rescue and Coercive Humanitarian Methods

The shift in what humanitarianism means in the 1990s was not solely about the role of aid in advancing human rights and promoting economic development (i.e., “do no harm” approaches), it was also about the use of force to meet humanitarian goals and, when combined with maximization, to achieve political outcomes. Consequently during the 1990 agencies worked more and more closely with military actors (militarization) to protect humanitarian operations (securitization). While traditionally the humanitarian sector always had a relationship with military forces, this was defined by a mostly respectful distance from one another, allowing aid workers space to conduct operations while militaries focused on fighting wars. Therefore, in addition to the initial normative approach of humanitarians to relations with the military—separate operating spaces—two other norms representing both trends of militarization and securitization emerged and became pronounced in the 1990s: secure humanitarian space (temporary area of protection to facilitate relief operations) and humanitarian intervention (alter political conditions that foment crises).

Armed forces have a long history of providing humanitarian relief in war zones. As part of controlling territory and populations within it, military forces have frequently been charged by governments with the distribution of humanitarian aid following war for both moral reasons and to build political support.¹²⁷ Conventionally humanitarian agencies have tried to limit working with military forces but the political concerns of states (and their militaries) coupled with the challenges of access and logistics have brought aid workers and soldiers together in relief operations. This is not unique to the 1990s per se. For example, during the early years of the Cold War Soviet forces blockaded parts of Berlin being administered by the Americans, British, and French. These Western powers organized the “Berlin Airlift,” using military hardware to transport large amount of aid. However such episodes were exceptional in the Cold War period with aid agencies usually operating separately from military forces in war zones. Following the Cold War, the success first achieved in Northern Iraq in 1991 with using force to establish an area in which to safely deliver aid became a springboard for making the practice recurrent as seen in responses to subsequent humanitarian disasters.

With the security threats associated with the Cold War receding and new types of dangers rising in what had been considered the periphery, the idea of greater involvement of the military in humanitarian operations became much more popular globally in the 1990s. This was especially true outside of the humanitarian sector. To begin with this sentiment took hold in the Security Council. Ted van Baarda observes the refinement of views following the Cold War as compared to those in the 1970s and 1980s, “the Security Council gave humanitarian aspects of armed conflict limited priority... but the early

¹²⁷ Cuny, “Dilemmas of Military Involvement in Humanitarian Relief,” 52.

nineteen-nineties can be seen as a watershed.”¹²⁸ This thinking is also evident in a 2000 United Nations report: “The Security Council has since established, in its resolution 1296 (2000), that the targeting of civilians in armed conflict and the denial of humanitarian access to civilian populations afflicted by war may themselves constitute threats to international peace and security and thus be triggers for Security Council action.”¹²⁹

Aside from the United Nations, states also shared this view and mobilized their military resources accordingly. Military organizations continued to have the greatest logistical capabilities; oftentimes they uniquely possessed these key assets. By the end of the Cold War the special capacities of the large military powers included heavy airlift, cross-country vehicles, mobile field hospitals, and communications networks.¹³⁰

However, militarization of humanitarianism in the early 1990s was not simply a matter of states increasingly using their armed forces for relief as a part of military operations. It was more complex than that as the key innovation at this time was to designate third party military forces to engage in humanitarian activities—not armies occupying enemy territories but a force that was not a party to the conflict.¹³¹

¹²⁸ Th. A. van Baarda, “The Involvement of the Security Council in Maintaining International Law,” *Netherlands Quarterly of Human Rights* 12, no. 1 (1994): 140.

¹²⁹ United Nations, *Report of the Panel on United Nations Peace Operations*, A/55/305 - S/2000/809 (August 21, 2000), para. 50.

¹³⁰ John Mackinlay, “The Role of Military Forces in Humanitarian Crises,” in *Soldiers, Peacekeepers, and Disasters*, ed. Gordenker and Weiss, 15.

¹³¹ Weiss, *Military-Civilian Interactions*, 15.

The push for militarization and securitization can be seen in the expansion of the roles played by UN peacekeeping in many disasters in the 1990s, although peacekeepers themselves initially resisted being tasked with humanitarian work. Adam Roberts suggests that while some good reasons existed for combining peacekeeping and humanitarian action, they were fundamentally different pursuits and the former was not designed to carry out the latter.

In several conflicts in the 1990s, peace-keeping forces have been mandated to offer protection to humanitarian workers and activities. UN peace-keeping operations and humanitarian operations might seem to be natural partners. Both take place in war-torn countries; both are committed to the principles of impartiality and neutrality; and both tend to be based on a deep-seated opposition to the use of force wherever possible. Many peace-keeping operations in the 1990s have had as central tasks assistance to, and protection of, humanitarian action. Yet combining peace-keeping and humanitarian action has proved extremely difficult. Peace-keeping operations are not well suited to the protection of humanitarian action. In at least three crises of the 1990s, the Security Council temporarily abandoned attempts at combining peace-keeping and humanitarian action, and authorized more forceful military intervention. It did so in Somalia with the launching of the Unified Task Force (UNITAF) in December 1992, in Rwanda with the launching of Operation Turquoise in June 1994, and in Bosnia with Operation Deliberate Force in August-September 1995. It is no accident that the same pattern was repeated in three very different situations. Protecting humanitarian action, and those it is designed to assist, generally requires a

different mandate and force configuration from those used in peace-keeping operations. In short, it involves something more akin to war.¹³²

As a result of the higher levels of force required in situations where belligerents would not give their consent, the reaction of many at the UN was to prevent future failures by narrowing the conditions under which the UN would deploy. As Michael Barnett and Martha Finnemore point out,

The decision to restrict peacekeeping to moments of stability to the neglect of humanitarian catastrophes was not accidental—it was intended. Although UN staff remained concerned about how to protect civilians during humanitarian nightmares, one of the lessons learned from recent operations in places like Somalia and Bosnia was that UN peacekeeping could not accomplish the task... The functional adaptation of the rules of peacekeeping thus shaped how UN staff judged the sorts of goals it should pursue, leaving humanitarian protection an orphaned goal, inappropriate under most circumstances.¹³³

In short, during the first half of the 1990s the UN sought to maintain momentum on the peace agenda by emphasizing consent-based peace operations despite the humanitarian consequences for areas where consent was not granted or possible.

However, over the course of the 1990s these views changed, and by the end of the decade, rather than limiting the combination of peacekeeping and humanitarian action, blending increased. The logic for operationally marrying peacekeepers and aid workers argued that although local political, economic, and cultural conditions had severely

¹³² Roberts, “The Role of Humanitarian Issues in International Politics in the 1990s,” 34.

¹³³ Barnett and Finnemore, *Rules for the World*, 2004, 135.

impacted the results of UN operations these impediments could be overcome: With sufficient political will, troops, and funds UN operations could succeed in securing humanitarian access and guarantee peace simultaneously. This began with the creation of politically designated humanitarian space with minimal security components, i.e., areas for relief that were guarded by military forces. In deploying operations in the 1990s the UN developed a variety of terminology to describe these efforts: Prior to incorporating armed elements to protecting humanitarian work, the UN relied exclusively on cooperation born out of negotiations among political actors, and this consent-based humanitarian space was labeled “corridors of tranquility.” But with the inclusion of force, new discourse was concocted that continued to stress the humanitarian overtone despite that this was coercion-based humanitarian space, and thus added to the UN lexicon were “safe areas,” “humanitarian corridors,” “safe havens,” “neutral zones,” “secure humanitarian areas,” “protected areas,” “security corridors,” “security zones,” and “open relief centers.”¹³⁴

Yet the concept of safety zones was seen by some as too weak and too limited. In many cases of the 1990s belligerents did not respect the demarcation of safe areas and international military forces deployed to secure humanitarian space did not always effectively protect civilians as illustrated by violence in Bosnian “safe areas.” Even where protection was afforded, many wondered about its long-term significance if outside humanitarian space or after the operation ended those within it would then be

¹³⁴ Roberts, “The Role of Humanitarian Issues in International Politics in the 1990s,” 31-32; Thomas G. Weiss and Cindy Collins, *Humanitarian Challenges and Intervention: World Politics and the Dilemmas of Help* (Boulder, CO: Westview, 1996), 23.

victimized. To address the root cause of the protection problem a coercive approach to humanitarian access fused well with the human rights approach to humanitarian goals complementing peacemaking. In other words, militarization and maximization of humanitarian action jelled in moving beyond the creation of safe areas to using force to stop violence and install a government that respects human rights. An example of this rethinking can be seen in a 1998 report that emphasized that an early use of force might have averted the Rwandan genocide.¹³⁵ Shortly thereafter, the international response to the crisis in Kosovo in the late 1990s, where NATO used force to stop Serbian elements from a campaign against Albanian Kosovars, was a critical juncture in this respect, demonstrating the progress of the militarization and securitization. As noted earlier, at the time of this operation NATO's actions were in a gray area of international norms; without a clear-cut sense of how to measure its precedent setting qualities, recall that its results were dubbed "illegal" but also deemed as "legitimate." Ultimately, the Kosovo crisis motivated a global discussion about how to legitimize international authority and what principles should guide human protection and intervention operations.

Humanitarian intervention, or using force to protect vulnerable populations and alter the root causes of armed conflict, was among the most controversial topics at the end of the 1990s. Whereas the decade began with international sentiment more concerned with humanitarian issues than perhaps ever before this feeling was tempered by fears

¹³⁵ Scott R. Feil, *Preventing Genocide: How the Early Use of Force Might Have Succeeded in Rwanda* (New York: Carnegie Commission on Preventing Deadly Conflict, 1998).

among financial and troop donor countries of unending commitments and attacks on aid workers and peacekeepers. But relentless media attention on humanitarian crises, particularly where UN forces had been dispatched and were withdrawn, inspired many to find a more robust or forceful solution to such situations. Nevertheless, opposition to any type of intervention—humanitarian or otherwise—was ordinary in international politics and no less so within the halls of the United Nations.

However, in the wake of the debacles and debates of the 1990s, in 2001 the International Commission on Intervention and State Sovereignty (ICISS) was established to reconcile the idea of rescuing victims with that of maintaining the authority of sovereign states. Forging a political consensus on the legitimate parameters of human protection practices was a tall order and the ICISS conducted worldwide consultations with states, non-governmental organizations, military strategists, and legal experts. The major intellectual breakthrough stemmed from a reconstituted notion of sovereignty that identified the responsibility of states to uphold international humanitarian law and stop mass human rights abuses within their own borders.¹³⁶ Moreover, when states foundered in this duty or had collapsed and were unable to perform it, the international community was then charged with taking it up. While formally dodging the terminology of “humanitarian intervention” and replacing it with a more victim-centric vocabulary, “the responsibility to protect” (R2P), this initiative, as Kofi Annan discerned, demonstrated a

¹³⁶ This framework is based on the work Francis Deng, “Sovereignty as Responsibility.”

See the ICISS, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), especially Chapter 2.

new level of political support for the “use of force for human protection purposes.”¹³⁷ To realize this idea the ICISS proposed six criteria for when and how action could be taken:¹³⁸ just cause threshold, right intention, last resort, proportional means, reasonable prospects for success, and the UN Security Council as the source of authorization.

To return to the views of humanitarians, among and within agencies R2P was contentious (and continues to be a source of debate as will be discussed in later chapters). After the tragic frustrations of Rwanda advocates for R2P celebrated the possibilities posed by the operation in Kosovo. The ICISS was representative of this new thinking. Typifying the distillation of experiences with the failures of humanitarian efforts in the 1990s, Mohamed Sahnoun, who has been Special Representative of the Secretary-General to Somalia during the 1993 crisis, was co-chair of the ICISS. Sahnoun had felt that the UN did not deploy sufficient force in UNOSOM to cope with the disorder that raged when there was no government from which to elicit consent and that doing so had greatly hampered the ability to deliver humanitarian relief. Michael Ignatieff was also a ICISS commissioner and has gone as far as to suggest that the need to build a

¹³⁷ Kofi A. Annan, *The Question of Intervention* (New York: UN, 1999). This idea became commonplace among humanitarians who sought armed responses to atrocities, for instance “military intervention for human protection purposes” was the mantra of Cornelio Sommaruga, former head of the ICRC and commissioner of ICISS, who demanded the adoption of this phrase into the ICISS report. For an in depth treatment of the development of R2P see Thomas G. Weiss, *Humanitarian Intervention: Ideas in Action* (Cambridge: Polity, 2007), 81, 88-118.

¹³⁸ ICISS, *Responsibility to Protect*, Chapter 4.

“humanitarian empire.”¹³⁹ Similarly enthusiastic about militarized humanitarianism, legal scholar Mario Bettati, architect of the, *droit d’ingérence* (“the right to interfere”), has christened the use of force to gain unfettered access a “new humanitarian international order.”¹⁴⁰

Although up to this point in time the ICISS can be considered a normative apogee to this emerging school of thought, since the late 1990s many humanitarian agencies had been increasingly involved in working directly with militaries and pushing for the use of force to achieve humanitarian goals. Rieff describes how agencies in many ways took the lead in initiating contacts and cooperation with militaries: “NGOs were more gung-ho than the soldiers were. Not only had many of the groups been pressing, usually behind the scenes, for more humanitarian military interventions, but their think tanks were also producing numerous texts on how to improve civilian-military cooperation in crisis zones.”¹⁴¹ The militarization of humanitarianism in the 1990s is often portrayed as driven primarily from those outside the humanitarian sector, and it’s true that sizable pressure was exerted by states, but those in humanitarian agencies also fueled this development.¹⁴²

¹³⁹ Michael Ignatieff, “Nation-building Lite,” *The New York Times*, July 28, 2002.

¹⁴⁰ Quoted in Rieff, *Bed for the Night*, 244.

¹⁴¹ Rieff, *Bed for the Night*, 207.

¹⁴² For more on views see Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Cambridge: Polity, 2009); Weiss, *Humanitarian Intervention*; Martha Finnemore, *The Purpose of Intervention: Changing Beliefs about the Use of Force* (Ithaca, NY: Cornell University Press, 2003).

However, some humanitarians were ardent opponents of R2P and regarded the use of force to improve humanitarian conditions as dangerous to, if not altogether antithetical, to humanitarian principles. Encapsulating this fear Rieff bitterly remarked that, “The revolution of moral concern, it appeared, would be armed to the teeth.”¹⁴³ Three major criticisms were levied against R2P. First, it was seen as violation of state sovereignty and a route to legitimizing imperialist intervention. States, particularly those that had experienced imperialism, worried that under the guise of humanitarian overtures major powers would be free to invade. As Ramesh Thakur, a ICISS commissioner, notes, regarding Third World states that oppose humanitarian intervention: “Are neither amused nor mindful at being lectured on universal human values by those failed to practice the same during European colonialism and now urge them to cooperate in promoting ‘global’ human rights norms.”¹⁴⁴ Second, as with the critique of the maximization of humanitarianism, those who opposed humanitarian intervention or R2P—as these critics used the terms interchangeably—feared that humanitarianism and human rights had

¹⁴³ Rieff, *Bed for the Night*, 264.

¹⁴⁴ Ramesh Thakur, “Global Norms and International Humanitarian Law: An Asian Perspective,” *International Review of the Red Cross* 83, No. 841 (March 2001): 31. For additional commentary that pursues this line of analysis see Mohammed Ayoub, “Humanitarian Intervention and International Society,” *Global Governance* 7, no. 3 (July-September 2001): 225-230; Noam Chomsky, “Humanitarian Imperialism: The Doctrine of Imperial Right,” *Monthly Review* 60, no. 4 (September 2008); and Noam Chomsky, *The New Military Humanism: Lessons from Kosovo* (Monroe, ME: Common Courage Press, 1999), 11.

become inextricably blurred thereby fundamentally moving away from the traditional values of independence, impartiality, and neutrality.¹⁴⁵ Third, opponents charged that carrying out R2P would inflict casualties; i.e., that attempts to save lives would also invariably cost some lives. To humanitarian opponents of R2P, the use of force, regardless of its aims, is inherently detrimental to outcomes because it results in more suffering.

The 1990s saw a profound change in the militarization of humanitarian action. What began with growing militarization and an increase in securitization, the step of using soldiers to protect aid deliveries and secure humanitarian space in non-permissive environments in the early and mid 1990s, ended the decade with a surge in militarization plus maximization, the wholesale integration of humanitarian action into military interventions to revamp political conditions that produced humanitarian crises. Actors outside the humanitarian sector who sought greater coherence of international responses and who viewed humanitarian action instrumentally propelled much of this. However, it should be recognized that this was not entirely foisted on humanitarian agencies as those within them also advocated for this change.

Turf Wars in the Humanitarian Sector

Over the course of the 1990s the humanitarian sector underwent a significant degree of marketization in that agencies increasingly followed logics that are normally associated with for-profit organizations. The efficiency of humanitarian action has been a perennial concern but after the Cold War fears of misdirected aid, as well as the greater

¹⁴⁵ Rieff, *Bed for the Night*, 211

significance attributed to relief as a means of addressing crises, heightened focus on the issue. Donors, both public (states) and private (individuals and foundations), in particular were adamant that funds were to be used for the purposes they specified and that agencies be held accountable. Within agencies the potential to generate or receive greater sums for operations was not only appealing, it also became a matter of survival. Agencies had to either accept the conditions under which donors were offering money or risk a loss of funding that could imperil an agency's existence. The result of this situation pitted agencies against one another in a "turf war" over funding as well as prominence.

To begin with, humanitarian agencies grew tremendously in size and number in the 1990s. During the Cold War many donors looked to development aid as a solution to the ills of poor and war-torn countries, but this course did not bear much fruit, and donors turned to humanitarian action as a means for realizing goals more quickly and noticeably. Bruce Biber states, "many donors felt disillusioned by development assistance which, despite decades of investment, seemed to produce few tangible results. In comparison, humanitarian action became highly attractive, producing an immediate, visible and (at least on the surface) positive impact."¹⁴⁶ Although there are some discrepancies in data on funding humanitarian action, in general it indicates that the end of the Cold War ushered in a substantial increase. Michael Barnett notes that from 1989 to 1993 humanitarian aid only represented 5.8% of overseas development aid (ODA), but by 2000 it had nearly doubled as a proportion up to 10.5%.¹⁴⁷ In 1990, humanitarian assistance was around \$2

¹⁴⁶ Bruce Biber, "The Code of Conduct: Humanitarian Principles in Practice," in *Focus/Debate on Humanitarian Action*, ICRC, September 20, 2004.

¹⁴⁷ Barnett, "Humanitarianism Transformed," 723 and 726.

billion but nearly tripled to almost \$6 billion by the end of the decade. Nicholas Stockton takes note of some fluctuation in financing—1991, \$4.5 billion; 1997, \$3.8 billion; 2000, \$5.8 billion—but sees an overall trend upward.¹⁴⁸ This oscillation may be accounted for by a lull in the number and severity of crises after Rwanda and Bosnia. It may also reflect a decrease in the appeal of humanitarian action in the wake of frustrations associated with failures in the mid 1990s, and later increases attest to the growth in needs and sense of success related to the outcome of the Kosovo operation.

Aside from the amount of money in the sector, the number of actors also surged. Prior to the end of the Cold War the ICRC and the UN basically had a virtual monopoly on humanitarian action, with other NGOs playing minimal roles, but this changed considerably in the 1990s.¹⁴⁹ Exemplifying this reordering are contrasts between the Cold War and post-Cold War periods. Alexander Cooley and James Ron state that thirty-seven relief agencies operated along the border of Thailand in 1980, but 200 agencies were operating in Goma in 1995 in response to the Rwandan genocide and that 240 were in Bosnia in 1996.¹⁵⁰ Cutts offers a slightly higher estimate for Bosnia, placing the number of NGOs at over 250.¹⁵¹ Astri Suhrke, et. al., project that at least 180 NGOs were

¹⁴⁸ Stockton, “The Changing Nature of humanitarian crises,” 23.

¹⁴⁹ Macrae, “Defining the boundaries,” in *The Humanitarian Decade*, ed. OCHA, 117.

¹⁵⁰ Alexander Cooley and James Ron, “The NGO Scramble: Organizational Insecurity and the Political Economy of Transnational Action,” *International Security* 27, no. 1 (Summer 2002), 10.

¹⁵¹ Cutts, “The Humanitarian operation in Bosnia and Herzegovina, 1992-1995,” 7.

working in Kosovo.¹⁵² Thus, many more NGOs had an on the ground presence in the 1990s than ever before.

The growth of the humanitarian sector, not just in overall size with regard to money but in the quantity of agencies, also suggests something important in terms of the “humanitarian marketplace,” i.e., relations between donors and agencies, and among agencies. In the 1990s, as the sector grew and its significance became more apparent, so, too, did marketization. This was driven by three main factors: NGO failures, neoliberal agendas, and calls for accountability.¹⁵³ First, critics presented non-governmental organizations as naively operated, poorly managed or negatively impacting outcomes. The values that inspired organizations to take action were seen as buffering them from real-world pressures. Second, neoliberalism made a similar argument regarding states, painting them as bloated bureaucracies that focused more on their own interests than those of their constituents. Third, many pundits proffered market-based approaches were a better means to ensure actors, including humanitarian agencies, were accountable in allocating resources. Moreover, the deeper entrenchment of a marketplace required agencies to offer the exact package of services specified or they would be unable to finance their activities.¹⁵⁴ Furthermore, to compete in a more marketized context agencies

¹⁵² Astri Suhrke, Michael Barutciski, Rick Garlock and Peta Sandison, *The Kosovo Refugee Crisis: An independent evaluation of UNHCR’s emergency preparedness and response* (Geneva: UNHCR, February 2000), 65.

¹⁵³ Cooley and Ron, “The NGO Scramble,” 11.

¹⁵⁴ Donors seek “one-stop shopping,” that is they look to fund agencies that provide the full range of services rather than parceling out money to different, albeit specialized,

considered working with for-profit actors that could provide goods and services at a lower cost. Thus, marketization pressures began to stimulate commercialization.

While some critics such as Rieff denounced agencies for bowing to the economic influence of donors as “hijacking,” many agencies feared a lack of funds would make them ineffective.¹⁵⁵ The results were to make agencies competitive, with each highlighting their value over other agencies—i.e., turf wars.¹⁵⁶ The effect of this also supplemented the maximization agenda by directing funds toward those agencies that were willing to integrate their work into political and military responses to humanitarian crises.

In short, in a marketized humanitarian sector the power of the purse became more powerful relative to traditional motives in dictating which agencies would take which actions. As a result during the 1990s economic incentives impelled agencies to give up their independence in conceiving programming and in deploying operations, and concentrate on renewing, extending, or winning new contracts from donors.¹⁵⁷ Although humanitarian agencies are primarily focused on the welfare of war victims, in the 1990s the notion of “market share” became an important concern as a business-oriented culture

agencies. See Maria Lange and Mick Quinn, *Conflict, Humanitarian Assistance and Peacebuilding: Meeting the Challenges*, International Alert, December 2003, 14-15.

¹⁵⁵ Rieff, *Bed for the Night*, 280, 298.

¹⁵⁶ Slim, *A Call to Alms*, 8; Cooley and Ron, 13.

¹⁵⁷ Cooley and Ron, 16.

began to permeate relief groups, particularly those based in the US.¹⁵⁸ Within humanitarian agencies the debate was between those who saw a need for financial resources to remain solvent and expand in the wake of growing worldwide humanitarian needs, and those who feared that a competitive market rendered agencies morally bankrupt. After the Cold War, the economic and political climate imposed by donors manifested within humanitarian institutions. Although agencies may not have agreed with the marketization of humanitarian sector, their behavior (including tailoring programming and turf wars over funding) indicates many seem to accept this trend.

New Norms, Normative Dissonance, and Security Arrangements in the 1990s

This chapter evidences a historical arc in the norms of humanitarian agencies by examining the rise of new ideas in the 1990s. As agencies acted on these new ideas, those they have contact with reacted, and in the case of belligerents in the 1990s their reaction was often to increasingly target aid workers for violence.

Before detailing the arrival of the security problem it is important to recognize that the normative changes discussed here are by no means monolithic as humanitarian agencies each often have idiosyncratic permutations of norms, i.e., their own set of beliefs. Moreover, as is clearly demonstrated by the rise of new norms, ideas are never forever static or linear; they not only change, they may change back. Rieff's vacillating views are illustrative. For example, at one time he argued that the instances of Bosnia and

¹⁵⁸ Rieff, *Bed for the Night*, 228. Andrea Binder and Jan Martin Witte, *Business engagement in humanitarian relief: Key trends and policy implications*, HPG Background Paper (June 2007), 5.

Rwanda suggest that the support of military forces is required to provide aid.¹⁵⁹ However, a few years later he maintained that only politics is capable of addressing the root causes of crises and encourages agencies to work independently and accept a more constrained version of humanitarian action.¹⁶⁰ On the one hand, he seems to sympathize with inclinations toward maximization, collaboration, militarization and securitization; but on the other hand, he worries about imperialist methods in pursuing humanitarian objectives. His shifting stances are representative of debates and a growing collective action problem in the humanitarian sector in the 1990s. Some agencies pushed for doing more to tackle root causes, some turned to military tools, etc. But most importantly, the diversity of norms meant that humanitarian agencies did not march in lockstep, they did not effectively coordinate among themselves. Lastly, ideas about humanitarian action are constantly evolving. For example, failures in Bosnia and Rwanda inspired reconsiderations of norms.¹⁶¹ Thus, not only is there a diversity of views among actors, on occasion actors will refine their principles and practices.

As will be examined in greater detail in Chapter 5, the incoherence of humanitarian action and the security tactics of agencies in the 1990s contributed to a security problem. Belligerents saw placing political conditions on relief or agencies

¹⁵⁹ Rieff, "Moral Imperatives and Political Realities," *Ethics & International Affairs* 13 (1999), 42.

¹⁶⁰ Rieff, *Bed for the Night*.

¹⁶¹ For examples see, *Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda*; Kofi A. Annan, *Report on the Fall of Srebrenica*, A54/549, November 15, 1999.

working directly with/through military forces as a hostile act. Moreover, belligerents likely did not distinguish between humanitarian agencies. That is, when one agency subscribed to and acted on these philosophies, typically all agencies faced the wrath of belligerents. Therefore, the diversity of norms among humanitarian agencies not only resulted in their competition and even working at cross-purposes, in the eyes of belligerents it painted all aid workers as enemies. Indeed, the totality of violence against humanitarian workers increased substantially during the 1990s.¹⁶² Overall, following the Cold War new challenges led to profound soul-searching by humanitarian and this produced new norms and differences in practices that affected operating environments. Agencies were propelled in different normative directions in this period, but they all similarly faced growing threats to their personnel.

The analysis in this chapter sets up later analyses. Chapter 4 picks up with the evolution of norms within humanitarian agencies starting where this one leaves off, in 2001 when the capstone norm of the “responsibility to protect” was formally launched by the International Commission on Intervention and State Sovereignty, and Al Qaeda perpetrated the terrorist attacks of September 11, 2001. Chapter 5 concentrates on how the norms of agencies and sector-wide trends may yield dangers to personnel and shape tactic.

¹⁶² See Mani Sheik, Maria Isabel Gutierrez, Paul Bolton, Paul Spiegel, Michel Thieren, Gilbert Burnham, “Deaths among humanitarian workers,” *British Medical Journal* 321 (July 15, 2000), 166-168; Dennis King, “Paying the Ultimate Price: Analysis of the deaths of humanitarian aid workers (1997-2001),” *Humanitarian Exchange Magazine* 21 (July 2002).

Chapter 3:
The Origins Security Contractors and Usage Norms:
Theory, History, and Law

- The Marketization of Force:
From Mercenaries to Military and Security Contractors
- Norms and the Legal Status of Market-Based Force
- Dilemmas of Hiring Security Contractors
- International Norms, Corporate Agendas, and Key Issues:
A Background on Security Contractors for Humanitarian Perspectives

The endless need for security has made the purchase of protection an enduring economic and political transaction since the dawn of history, however the current incarnation of the security industry and its face, the security contractor, has come to the fore of recent discussions of wars and protection strategies among governments, international organizations, non-governmental organizations, and businesses alike. In an era of sovereign states the notion of “market-based violence” strikes many as a throwback to chaotic, less civilized times, or perhaps as the dark, dystopian future of a post-apocalyptic wasteland. But, armed non-state actors using force purely for economic gain and in the service of their patron or employer have become commonplace in many current conflicts. As part of this study’s look at the use of hired guns to guard humanitarian space, this chapter pursue three lines of inquiry: First it explores the origins and evolution of market-

based uses of force that spawned the phenomenon of contemporary armed contractors by examining the need for, and capabilities of, for-profit militarized actors—i.e., what motivates the creation of private military and security contractors and what are they capable of? Secondly, it expounds norms of their utilization, including relevant legal frameworks—i.e., what governs usage? Finally, the chapter concludes with an overview of key issues in order to present how recent debates frame the deliberations of humanitarians on employing security contractors—i.e., what is considered in turning to hired guns?

The defining qualities of *market-based violence* are its actors and agendas. Although there are many forms of major violence production (large-scale organized force) since the establishment of states in the 17th century, this magnitude of coercion has been primarily carried out by public authorities and their agents (i.e., soldiers). Distinct from government organized military forces, militias, warlords, and in recent years, terrorists, wield *privatized force* to further their own goals. However, another form of privatized violence is rooted not in political agendas, but is based on economic ones—hence the expression “market-based violence.” The term *mercenary* has frequently been invoked in characterizing any armed non-state actors providing force for purposes of economic gain. This broad-brush portrayal of militarized economic-oriented behavior has often been applied to an expansive assortment of actors, from extortionist thugs to private guards licensed by legitimate authorities. In contrast to the stereotypical mercenary that operates informally and with no legal sanction, there is a more recently developed variant that is organized as a formal economic enterprise, *private corporate force* and its embodiment into individuals, *armed contractors*.

There are two types of armed contractors: *private military contractors* that work to facilitate or increase the military power of political actors, supplying logistics, intelligence, training and advice, or specialized combat forces to achieve a military outcome. There are also *private security contractors* that concentrate exclusively on the provision of safety—i.e., creating secure operational space for another actor in a non-permissive environment. The difference between these two forms of contracted coercion is not always clear as both may become engaged in the use of force, however the latter does so from a defensive posture while the former may take more aggressive stances. As will be discussed below, aside from the differentiation between military and security contractors, both are frequently conflated with mercenaries, particularly by those who oppose the use of force or are wary of war profiteering, but empirically they are distinct. The next section synthesizes the developments that propelled the emergence of military and security contractors.

The Marketization of Force:

From Mercenaries to Military and Security Contractors

The history of market-based actors using force is lengthy and reveals a complex ebb and flow to the process, but not every detail is relevant to the backdrop of what types of force are available for purchase by the humanitarian sector, although the circumstances of how and why this came to pass are essential. Consequently, this section only briefly discusses early antecedents and is not a catalog of every instance of market-based force, and thus instead concentrates on teasing out the key political and economic configurations that speak to the rise of the modern military and security contracting industry. Similar to the

methodology employed in the broader course of this study, this perspective on the emergence of security contractors as a potential resource for humanitarian agencies looks to understand critical normative building blocks.

A Brief History of the Rise and Fall of the Use of Mercenaries

Mercenaries are an ancient phenomenon; their presence in warfare has been extensively chronicled since antiquity. Their pursuit of economic agendas (i.e., profit), rather than the political consequences of their use of force, such as the control of territory, has is their defining quality—the term “mercenary” comes from the Latin *mercenarius* (from *merces*, or pay wages). While most forms of military organization were oriented toward, if not intrinsically connected to, political authorities, mercenaries were not.¹ However, often lost in this disparaging narrative of mercenaries are the advantages of their use. First, mercenaries provided crucial military capabilities. The classic mercenary was usually highly skilled and seasoned. Second, the use of mercenaries frequently was the product of economic logic. In addition to having undergone extensive training, mercenaries often came equipped for war, and these two elements taken together represent a significant time and capital investment that those who employed them were able to benefit from in short order. From a purely economic point of view, hiring mercenaries was a means of acquiring military power without the costly and

¹ Being politically unencumbered, these armed actors were autonomous in selling their skills, and this position has inspired the language associated with independent contractors under modern capitalism: these “lances” were “free” to work for whomever, hence the term “freelancer.”

time-consuming practice of building and maintaining standing forces. In other words, mercenaries were ready-made forces that could be swiftly deployed and then, after military objectives were achieved, dismissed so as to no longer drain financial resources. A third reason for the spread of the use of mercenaries is one of available military labor. For instance under feudalism monarchs could call on local knights to fight for them but this military labor was only required to serve for short periods of time and usually not abroad thereby limiting the potential to undertake offensive operations. There are numerous illustrations of mercenaries from the distant past up through the modern period when states came to dominate the organization of military force.²

² To cite two instances from ancient empires: Ramses II of Egypt organized Numidian mercenaries to fight the Hittite Empire around 1275 BC, and Cyrus the Younger's hiring of "the Ten Thousand" (Greek mercenaries) in a struggle against his brother, Artaxerxes, for control of the Persian Empire circa 400 BC (See respectively Richard Ernest Dupuy and Trevor N. Dupuy, *The Harper Encyclopedia of Military History from 3500 B.C. to the Present*, 4th ed. (New York: Harper Resources, 1993), and, Xenophon, *Anabasis (March Up Country)*, trans. Carleton L. Brownson, rev. John Dillery (Cambridge, MA: Harvard University Press, 1998); G.T. Griffiths, *Mercenaries of the Hellenistic World* (Chicago: Ares Publishers, 1984).) The practice continued into the Middle Ages as illustrated by William the Conqueror's use of mercenaries during the Norman Conquest in the 11th century. (See John Schligh, *Monarchs and Mercenaries: A Reappraisal of the Importance of Knight Service in Norman and Early Angevin England* (New York: New York University Press, 1968).)

The emergence and consolidation of the state as the supreme source of political governance in the 17th century began to alter the prominent role of mercenaries in war. In the lexicon of political science the uniquely privileged status of states as preeminent political authorities is known as “sovereignty.” By contrast, John Ruggie has termed the diffusion of political authority among a variety of types of actors as a condition of “heteronomy.”³ Janice Thomson points out that the shift from a world order riddled with heteronomy to one based on sovereignty necessitates the disarmament of armed non-state actors.⁴ This principle has been articulated in early studies of the state as exemplified by Max Weber in his classic depiction of the state as possessing a legitimate monopoly on the means of coercion as an indispensable component of sovereignty.⁵ Moreover, the economic aspects of warfare whereby the supplying of security is also a method of generating revenues for the state should not be overlooked—i.e., taxes to pay for defense. Charles Tilly, reflecting on the role of force in subduing local political rivals (maintaining internal order) and guarding against foreign powers (furnishing external defense), brands

³ John Gerard Ruggie, *Constructing the World Polity* (New York: Routledge, 1998), 146, 179.

⁴ Janice E. Thomson, *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe* (Princeton, N.J.: Princeton University Press, 1996), 4, 19.

⁵ “[A] state is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory.” See Max Weber, “The Profession and Vocation of Politics,” in *Max Weber: Political Writings* (original 1919) (Cambridge: Cambridge University Press, 1994), 310.

the political economy of the state's military apparatus a form of "protection racket."⁶ The maturation of this arrangement established uniquely dominant political, economic, and military roles for the state and simultaneously circumscribed, if not entirely ended, the need for and practice of mercenarism.

Overall, the ascendance of the state as a political authority necessarily implied that mercenaries as tools of violence would be governed by states or be eradicated. Thomson's study on the relations of military force to states and markets in decision-making, allocation, and ownership beginning in the 14th century is useful in detailing types of armed actors and showing how some have declined or disappeared.⁷ For instance, she points to a difference between "pirates," who operate without official sanction from political authorities, and "privateers," who operate much the same but are authorized by states and thus are essentially their proxies. However, it is two other varieties of market-based militarized actors she highlights that are germane to the parentage of contemporary security contractors; military and mercantile companies.

- *Military companies*: These were economic organizations of mercenary fighters that sold their services to political leaders and on occasion engaged in extortion against those they were poised to attack. Among the most renowned of this type of actor was Sir John Hawkwood, a veteran of the Hundred Years War, who went on to serve as a mercenary for over thirty years in Italy (1360-1394). Hawkwood led

⁶ Charles Tilly, "War Making and State Making as Organized Crime," in *Bringing the State Back In*, ed. Charles Tilly, Theda Skocpol, and Peter Evans (Cambridge: Cambridge University Press, 1985), 169.

⁷ Thomson, *Mercenaries, Pirates, and Sovereigns*, 8, 22-32.

the White Company, which featured advanced archery technology and skills for its time, and was hired by Pisa to fight against Florence, though later Hawkwood would fight for Florence. (Switching sides to earn a higher fee was not atypical for military companies.) The hiring of military companies (i.e., mercenaries) was widespread in Europe during the 14th and 15th centuries, particularly among Italian city-states where they were referred to as *condottieri*.⁸

- *Mercantile companies*: These economic organizations were designed to initiate trade and production in areas not directly controlled by European states and also assist the imperial powers with the process of colonization. More wide ranging in function than military companies, they were primarily engaged in commercial activity but often in doing so their operation entailed a security component. This type of actor is epitomized by the British East India Company, which involved trading in commodities as well as a military force to protect its administration.

Sarah Percy claims that as early as the 1100s opposition to mercenaries arose but a “compromise was struck” whereby they continued to operate though only at the behest of states.⁹ The practice of mercenarism continued but by the 17th century it became contingent on the authority of states, which had begun to assert their monopoly on force.

Nevertheless, during the Thirty Years War (1618-1648) mercenaries continued to be a factor on the battlefield as evidenced by the presence of actors such as Albrecht

⁸ Charles Tilly, *Coercion, Capital, and European States, AD 990-1992* (Cambridge, MA: Blackwell, 1992), 80-81.

⁹ Sarah Percy, *Mercenaries: The History of a Norm in International Relations* (Cambridge: Cambridge University Press, 2007), 90-91.

Wallenstein (Duke of Friedland) and Johann Tserclaes (aka Count Tilly), who both led forces on behalf of the Holy Roman Empire for a price. The outcome of this conflict, the Peace of Westphalia (1648), is usually recognized as the signature moment in the embedding of the state as the preeminent model of political governance because in its aftermath the principle of *cuius regio, eius religio* (“whose realm, his religion”) had become widely recognized thereby enabling political leaders to determine the religion of subjects within their territorial area of rule.¹⁰ However, in terms of governance of the use of force, sovereignty remained incomplete or was supplemented by mercenary activity as mercenarism persisted for quite some time following this treaty. For instance in the late 18th century Britain hired the Hessians, a group of German mercenaries, to subdue independence-minded militias in American colonies during the War for American Independence.¹¹

Though mercenaries were commonly used into the 18th century, the practice declined appreciably throughout the 19th century.¹² This began in earnest with the Napoleonic Wars (1803-1815) when the model of national armies—armed forces composed entirely of citizens—demonstrated that heightened morale based on political

¹⁰ This principle had actually first been promoted a over a century earlier as part of the Peace of Augsburg (1555) to soothe tensions between German Catholics and Lutherans but only after the Thirty Years War was doctrine universally observed.

¹¹ William R. Forstchen, "The Hessians in America," in *Mercs: True Stories of Mercenaries in Action*, ed. Bill Fawcett (New York, NY: Avon Books, 1999), 44-56.

¹² Eugene B. Smith, “The New Condottieri and U.S. Policy: The Privatization of Conflict and Its Implications,” *Parameters* 32, no. 4 (Winter 2002): 106-108.

motivations translates into superior military capabilities.¹³ Furthermore, as Percy points out, the worry over the suitability of fighting purely for money may also explain why the use of mercenaries came to end at this time.¹⁴ Over the course of the 19th century the citizen army model became deeply ingrained as represented by the forces that fought the Franco-Prussian War (1870-1871).¹⁵ The economic benefits of national militaries were also displayed during this period on two levels: First, citizens were willing to fight for less pay than mercenaries, which saved state treasuries costly expenditures. Second, national armies were usually more disciplined in refraining from engaging in plunder to sustain themselves or as part of the spoils of war, which was political advantageous to state authorities.¹⁶ Commenting on the move to armed forces based entirely on national populations rather than fighters for-hire that gained steam in the 18th century, Tilly states that “costs and political risks of large-scale mercenary forces led those state’s rulers to

¹³ Deborah Avant, “From Mercenary to Citizen Armies: Explaining Change in the Practice of War,” *International Organization* 54, no. 1 (Winter 2000): 59.

¹⁴ Percy, *Mercenaries*, 121-166.

¹⁵ Anthony Mockler, *The New Mercenaries: The History of the Mercenary from the Congo to Seychelles* (London; Sidgwick & Jackson, 1985), 15.

¹⁶ Though a variety of rulers had promoted regulations to prevent looting by military forces, it was a common practice during medieval wars. See David Keen, “Incentives and Disincentives for Violence,” in *Greed and Grievance: Economic Agendas in Civil Wars*, ed. Mats Berdal and David Malone (Boulder, CO: Rienner, 2000), 28.

However, plunder decreased markedly after the institutionalization of formal military forces.

enlist more and their own citizens, and to substitute them for foreign mercenaries where possible.”¹⁷

Throughout the remainder of the 19th century and into the 20th, the use of mercenaries dwindled greatly as most states made the transition to citizen armies. In spite of that, there were a few cases of mercenary activity. For example, in the 1820s, German and Bavarian mercenaries fought in the War of Greek Independence against the Ottoman Empire, and Simon Bolivar hired British mercenaries to fight against Spain to achieve independence for Latin American states. But in 1854 was the last major instance of a state raising a foreign army when Britain hired 16,500 German, Italian and Swiss mercenaries to battle against Russia in the Crimean War, although these forces never entered combat as the war ended before they arrived. By the late 19th century, the hiring of military companies or mercenary armies had basically come to an end, though some contingents existed within national armies (e.g., Nepalese Gurkhas in the British Army and the French Foreign Legion). However, while large-scale mercenary forces were no longer organized or hired, individuals continued to engage in mercenarism. These were usually former military officers who were hired to lead or direct the national forces of a state. Illustrations of individual mercenaries from the mid-to-late 19th century are Charles Gordon, a British officer, and Frederick Townsend Ward, an American sailor, both of who fought for Imperial China during the Taiping Rebellion (1850-1864). Although the individual mercenary had become increasingly scarce in 20th century wars, even in the post-World War II period there are several memorable occurrences of mercenaries, such

¹⁷ Tilly, *Coercion, Capital and European States*, 82-83.

“Mad Mike” Hoare (an Irish national) and Bob Denard (a former French soldier), both of who sold their services in a variety of African conflicts in the 1960s and 1970s.

The reappraisal of norms on the use of mercenaries unfolded over the late 18th and early 19th century and a revision of practices followed soon thereafter. The first states to take steps to eliminate mercenaries were those that were directly battling mercenaries or that worried that their citizens would become mercenaries and fight against powerful states that would then seek compensation or counterattack the state from which the mercenaries originated. For example, the United States enacted the Neutrality Act of 1794 out of concern that France’s use of American mercenaries against Britain would provoke a war between the US and Britain. Initially only a handful states banned mercenaries, but eventually prohibitions became widespread: In 1800, only Britain, the US, and the Netherlands had legislation outlawing mercenary activity. But through the influences of these great powers, by 1938 forty-nine states instituted regulations governing their respective populations’ participation in foreign military service.¹⁸ (Greater detail on these prohibitions is discussed in the following section on the legalities of armed contractors.)

What is the significance of the rise and fall in the use of mercenaries to contemporary debates on security contractors? Fundamentally, this history demonstrates that changes in politics and economics determine the usage and legitimacy of market-based force, but also that the embrace or rejection of it has never been absolute. Furthermore, it also spotlights that the production of violence by economically-oriented

¹⁸ Janice E. Thomson, “State Practices, International Norms, and the Decline of Mercenarism,” *International Studies Quarterly* 34, no. 1 (March 1990), 34-35, 43.

organizations has usually been at the behest of states and has at times been recognized as legitimate by the state system (i.e., permitted under international law), but a change in material interests reshaped norms, which, as will be seen below, has, in turn, framed contemporary sensibilities of perceiving economically-motivated armed non-state actors as inherently dangerous, destabilizing, and criminal.

The Development of Military and Security Contractors

Starting in the 1990s a new form of for-profit armed actor appeared, private military and security companies (PMSCs). In many ways PMSCs resemble the military companies of the medieval and early modern periods more than the individual and bands of mercenaries that persisted into the 20th century because these new entities are organized as formal corporations—they have or seek legal standing as legitimate businesses.¹⁹ Similar to the above analysis on why and how mercenaries emerged, the development of the PMSC phenomenon is the outcome of a particular configuration of military, economic, and political interests.²⁰ The motives for the establishment of PMSCs

¹⁹ For a general overview of distinctions between mercenaries and PMSCs, see P. W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca, NY: Cornell University Press, 2003), 45–47; and Robert Mandel, *Armies without States: The Privatization of Security* (Boulder, CO: Lynne Rienner, 2002), 9–10.

²⁰ Ulric Shannon, “Human Security and the Rise of Private Armies,” *New Political Science* 22, no. 1 (March 2000): 103–115; David Shearer, “Outsourcing War,” *Foreign Policy* 112 (Fall 1998), 68–80; David Shearer, *Private Armies and Military Intervention*, Adelphi Paper 316 (Oxford: Oxford University Press, 1998); David Isenberg, *Soldiers of*

are seen in both producers of violence (military and security companies and contractors) and consumers of their services.

To begin with purchasers, states and businesses sought to hire PMSCs for three reasons:

- Military reasons: the need for skilled labor and special capabilities. Like early mercenaries many PMSCs offer specialized skills and knowledge in combat, tactics, and security. Furthermore, they are usually organized for rapid deployment and do not face the political impediments that frequently slow national militaries from quickly.²¹ Moreover, by the 1990s access to quality military and security capacities was limited in supply while demand soared. Top military professionals and weaponry had become monopolized by states, and even rudimentary military labor was usually restricted to working for their home state. However, others sought access to military capabilities—for instance, weaker states desired more sophisticated military assets than they themselves produced, or non-state actors, such as businesses, required protection in hostile environments. For example, a state may seek strategic or tactical advice from experienced military personnel or a business may seek guards for their workforce or facilities. In other words, PMSCs furnish

Fortune Ltd.: A Profile of Today's Private Sector Corporate Mercenary Firms

(Washington, D.C.: Center for Defense Information Monograph, November 1997).

²¹ United Kingdom, House of Commons, *Private Military Companies: Options for Regulation*, Green Paper (July 23, 2002); Smith, “New Condottieri,” 108-111.

military labor when politically imposed constraints on access to military labor exist (see below on political reasons for PMSCs).

- Economic reasons: the belief in the efficiency of the market. Beginning in the late 1970s and early 1980s in the United Kingdom under Margaret Thatcher and in the United States under Ronald Reagan, the economic school of Neoliberalism became popular. This approach called for reducing the role of governments and instituting privatization schemes. By the 1990s Neoliberalism reasoned that the private enterprise could bring economic efficiency to military and security affairs.²² Thus, governments and businesses looked to the establishment of a private military and security sector to fulfill the need for war-fighting and protection capabilities at a less expensive price.
- Political reasons: intervention fatigue and limited accountability. Wars and the construction of order are draining; frequently they are costly by economic measures and calamitous in human terms. The combination is often politically untenable, particularly for democratic governments that must periodically answer to voters. Although by the end of the Cold War the major powers were not engaged in any debilitating armed conflicts, the memories of previous

²² Bernedette Muthien and Ian Taylor, “The return of the dogs of war? The privatization of security in Africa,” in *The Emergence of Private Authority in Global Governance*, ed. Rodney Bruce Hall and Thomas J. Biersteker (Cambridge: Cambridge University Press, 2002), 197.

ones were not forgotten and then, as depicted in Chapter 2, interventions as part of peace operations during the early 1990s returned a casualty-adverse predisposition to the forefront of political calculations. For example, US views became colored by the “Somalia syndrome” when American soldiers were killed and dragged through the streets of Mogadishu while in support of a UN peace operation in 1993. This was then reinforced a short time later when the *USS Harlan County* was turned away from Port-au-Prince as it ferried troops to provide help restore order in Haiti in 1994. European powers developed similar perspectives in Rwanda in 1994 when Belgian peacekeepers were massacred and in Bosnia in 1995 when Dutch peacekeepers were killed. The “body bag” factor—the political repercussions for governments of soldiers killed in missions they authorized—created political momentum to decrease the exposure of national military forces to the dangers of peacekeeping or other uses of force that were not critical to national security interests.

A second political motive for the use of PMSCs is that given that contractors are not government employees their operations and personnel may not be subject to legal restrictions or oversight. That is to say, armed contractors may not be legally accountable for their activities and this, in turn, serves the purposes of governments that seek to use force without the limits imposed by international or domestic law. Military activities that violate sovereignty, for instance, may operate below the political radar or produce less tension if undertaken by contractors whose actions can be officially denied by governments.

As to producers of violence, the corporations and contractors that make up the private military and security sector, their agendas in the development of their industry are primarily economic, though also on occasion political.

- Economic agendas: profit. Force is a valuable commodity; there is no substitute for it. Military and security companies formed to generate economic gains (profit) by leasing their singular capabilities. The labor for these companies—contractors—entered the marketplace for force to earn money. As the profession often comes with inherent risks, the economic rewards are considerable. For example, at present, whereas an unmarried sergeant in the United States military earns roughly \$85/day (\$51,000/year) or a four-star general earns nearly \$500/day (about \$180,000/year), a typical military contractor can make \$600/day or a top echelon former special forces soldier-turned-contractor can make almost \$1,500/day.²³ Furthermore, for those who have military training but lack other marketable skills, military and security contracting may be the optimal, if not only viable, source of income. This was a position many former soldiers found themselves in during the early 1990s,

²³ Data on contractor pay is mostly anecdotal. Robert Young Pelton, *Licensed to Kill: Hired Guns in the War on Terror* (New York: Crown, 2006), 76, 94, 120-121, and 300. For Iraq, see David Isenberg, *Shadow Force: Private Security Contractors in Iraq* (Westport, CT: Praeger, 2009), 57-58. For Afghanistan, see Ulrike Joras and Adrian Schuster, ed., *Private Security Companies and Local Populations: An Exploratory Study of Afghanistan and Angola* (Bern: Swisspeace, November 2007), 22.

when following the Cold War, many militaries downsized their forces.²⁴

These skilled workers moved from the public to the private sector through the establishment of PMSCs.

- Political agenda: providing force and order in scarce conditions. Although PMSCs are usually branded as purely economically driven, this is an oversimplification that is useful primarily for spinning a pejorative narrative of military and security contractors as extortionist “soldiers of fortune.” However, it overlooks that many military and security contractors are also motivated by ideology—they sometimes sympathize or identify with the political idea of the party that hires them. Contractors that work for governments or organizations they support typify this type of agenda; they fight not just for pay, they also fight for politics.

In short, the needs and preferences of states and the agendas of capital and military labor prompted the emergence of the private military and security sector. However, within this broadly cast schema, there is quite a bit of variation in the type of companies and contractors in terms of their functions and pedigrees.

There are three general types of PMSCs—corporate entities facilitating or producing violence:

- Logistics: Military and security forces require considerable infrastructure and mission support activities to carry out their operations and this type of PMSC furnishes these crucial underpinnings—as Napoleon noted in his early

²⁴ UK Green Paper, paras. 7-8.

campaigns, “an army travels on its stomach.” The work of logistics-supplying PMSCs includes serving meals, doing laundry, providing transportation, building bases, and engineering. A good example of this sort of PMSC is KBR, Inc. (formerly known as Kellogg Brown & Root). Originally an engineering firm focused on pipefitting and the petroleum industry, over the course of the 20th century, it expanded into building roads and constructing ships and bases for the United States military. At present KBR is one of the top contractors for the US Army and Department of Defense.

- Training and Advice: The complexities of modern warfare and contemporary dangers have spurred interest in receiving guidance from professionals on the best means to conduct military and security operations. Training and advice PMSCs prepare militaries, businesses, IGOs and NGOs as well offer command and control services. Less skilled and experienced military forces in particular may require instruction if not real-time mentoring in strategy and tactics. An illustration of this type of PMSC is Military Professional Resources, Inc. (MPRI). This company built its reputation as a result of its involvement in providing tactical advice to Croatian forces during its drawn out secessionist struggle against Serbian elements backed by the Yugoslav Army from 1994 to 1996.²⁵ MPRI reviewed real-time satellite images and instructed on force deployments that were instrumental consolidating gains

²⁵ Shearer, *Private Armies and Military Intervention*, 58; Thomas K. Adams, “The New Mercenaries and the Privatization of Conflict, *Parameters* 29, no. 2 (Summer 1999): 110.

and hastened Croatia's victory. Although businesses, IGOs and NGOs are not engaged in combat and do not need these sorts of military services, there are security situations that may need a form of assistance that is related to the use of force furnished by military contractors, such as in responding to acts of kidnapping. A good example of a private security firm that offers more defensive-oriented training and advice services—threat assessments and evacuation strategies—is Defense Systems Limited (DSL) (a part of ArmorGroup since 1996), which has provide risk management training and advice for a number of governments and multinational corporations.²⁶

- Use of Force: These armies-for-hire are by far the most controversial type of PMSCs. However, some are focused more on military (i.e., combat, and specifically offensive) operations than security tasks (primarily defensive in nature), though this is a blurry line. The most well known example of a use of force PMSC is Executive Outcomes (EO). This company immediately drew attention to its ability to defeat dangerous guerilla groups and bring security to war-torn areas.²⁷ In Angola from 1993 to 1995, EO deployed only five

²⁶ Singer, *Corporate Warriors*, 84.

²⁷ Khareen Pech, "Executive Outcomes—a Corporate Conquest," in *Peace, Profit, or Plunder? The Privatisation of Security in War-Torn African Societies*, ed. Jakkie Cilliers and Peggy Mason, (Pretoria, South Africa: Institute for Security Studies, 1999); and Jeremy Harding, "The Mercenary Business: 'Executive Outcomes,'" *Review of African Political Economy* 24, no. 71 (March 1997): 87–97.

hundred men and yet basically routed the União Nacional para a Independência Total de Angola (UNITA).²⁸ Even more striking was in Sierra Leone in 1995 when two hundred military contractors from EO pushed ten thousand rebels of the brutal Revolutionary United Front (RUF) out of the capital and back into more remote regions of the country.²⁹ In terms of security as opposed to military services, a number of firms offer armed escorts, protection of facilities, and other security programming. For example, the World Wildlife Fund considered hiring Saracen to guard a game preserve in the Democratic Republic of the Congo where poaching had become rampant.³⁰

Although logistics and training and advice contractors raise important issues of privatization, it is the use of this third category of PMSC by humanitarian agencies, and only the security contractor variant, that are the primary focus of this study.

²⁸ Kevin A. O'Brien, "Private Military Companies and African Security 1990-1998," in *Mercenaries: An African Security Dilemma*, ed. Abdel-Fatau Musah and J. 'Kayode Fayemi (London: Pluto Press, 2000), 51-52; Singer, *Corporate Warriors*, 108; and, Herbert M. Howe, *Ambiguous Order: Military Forces in African States* (Boulder, CO: Lynne Rienner, 2001), 199.

²⁹ Deborah D. Avant, *The Market for Force: The Consequences of Privatizing Security* (Cambridge: Cambridge University Press, 2005), 86-92; Singer, *Corporate Warriors*, 112-113; Ian Smillie and Larry Minear, *The Charity of Nations: Humanitarian Action in a Calculating World* (Bloomfield, CT: Kumarian Press, 2004), 27-28.

³⁰ Avant, *Market for Force*, 204-218.

Aside from the variation in the functions and tasks of PMSCs, there is also significant variation in the labor they employ with regard to their respective backgrounds, i.e., training and nationality. Overall, the importance of these differences between contractors can be seen in the cost charged for their services as well as may impact their propensity to resort to force.

Three categories are contractors are generally seen.

- “First World”: These are usually considered the best armed contractors as they tend to be experienced veterans from top militaries—primarily American and British. Many of these were officers or were in special forces that have given them valuable specialized skills (e.g., counterinsurgency). Given that they have experience and oftentimes come with advanced high-tech equipment, “First World” contractors are frequently the most expensive.
- Locals: These contractors are prized for their ability to blend into their operating environments and for their contracts among local populations. The main reservation expressed regarding local contractors is that their loyalty may remain with locals and thus that they may be unreliable security providers for foreign forces, businesses, and personnel. However, their proximity to areas of operation and knowledge of local conditions and powerbrokers may make them protection effective and their lesser training than “First World” contractors may make them a more cost effective alternative.

- “Third Country Nationals” (TCNs): This category is a hodge-podge of contractors that are neither “First World” nor local. They tend to come from countries that have decreased the size of their militaries as a result of changes in domestic and international politics. Three sub-varieties are seen: First, personnel who had been employed in Warsaw Pact militaries, such as contractors from Ukraine or Belarus. Second, military labor from Third World countries that have international experience either through peacekeeping or other exchanges, such as contractors from Fiji or Nepal. Third, forces that had been part of corrupt or oppressive regimes and these former soldiers have left their home countries to avoid prosecution or earn money, such as apartheid-era South African contractors. TCNs are widespread because they often have more military training than locals and are less costly than “First World” contractors. Moreover, their absence of ties to local populations may make them more loyal to the contracting agent than locals.

The private military and security sector has grown substantially since it surfaced in more high profile activities during the 1990s. Two telling indicators of maturation of this industry are the size of its revenues and its presence in conflicts relative to military forces. On the first count, it has been estimated that the private military and security sector was around \$100 billion near the start of the 21st century.³¹ Another projection

³¹ Michael O’Hanlon and Peter W. Singer, “The Humanitarian Transformation: Expanding Global Intervention Capacity,” *Survival* 46, no. 1 (Spring 2004): 91.

gauges that, by 2010, it will double to reach \$200 billion.³² As to the second measure, the magnitude of the PMSC footprint has grown. During the First Gulf War I (1991), when the US and a coalition of forces liberated Kuwait from Iraqi occupation, there was one military contractor for every fifty active duty personnel on the ground. In military operations involving the US in Bosnia (1995), Kosovo (1999), and Iraq (since 2003), the ratio shrank considerably, with one contractor for every ten soldiers. At present there are between 19.5 and 25.5 million personnel world wide working in the private military and security industry, which represents a doubling or tripling over the last ten to twenty years.³³ In sum, among the great changes in international politics over the past twenty years has been the development of PMSCs, which continue to play ever more meaningful roles by providing military capabilities and security services to governments and their militaries, businesses, IGOs, and NGOs.

This section has depicted the general evolution of market-based violence, but as this study is concerned with its role in humanitarian action, it should be noted how security contractors have come to market their services specifically to humanitarian agencies. Private security companies want to become significant players in humanitarian crises.³⁴ First, security contractors possess many of the requisite capacities. Dominick

³² Avant, *Market for Force*, 8.

³³ Nicolas Florquin, "A Booming Business: Private Security and Small Arms," in *Small Arms Survey 2011: States of Security* (Cambridge: Cambridge University Press, 2011), 101.

³⁴ Peter W. Singer, "Humanitarian principles, private military agents: some implications of the privatised military industry for the humanitarian community," in *Resetting the*

Donald observes, “Some humanitarian and development assistance work can easily be undertaken by PSCs. Humanitarian aid delivery, engineering and construction projects, the administration of refugee or IDP camps, building links between communities—these are all tasks that lie well within PSC contractors’ skill sets.”³⁵ In fact, private security companies often portray their contribution of protection as analogous to the services provided by non-governmental organizations. This mentality is exhibited by James Fennell, who previously had been Head of Emergency Operations of CARE International but has since become Vice President for Humanitarian Support Operations for ArmorGroup:

[H]umanitarian action is often perceived by warring parties as a real threat to military strategies that are dependent on the disabling of civilian support for a combatant group. International intervention to protect vulnerable populations may benefit from technical input to policy and the management expertise of commercial security organisations. The increasing role of commercial security

Rules of Engagement: Trends and Issues in Military-Humanitarian Affairs, ed. Victoria Wheeler and Adele Harmer, HPG Report 21 (March 2006), 72; Christopher Spearin, “Private, Armed and Humanitarian? States, NGOs, International Private Security Companies and Shifting Humanitarianism,” *Security Dialogue* 39, no. 4 (August 2008): 364.

³⁵ Dominick Donald, *After the Bubble: British Private Security Companies After Iraq*, Whitehall Paper 66 (London: Royal United Services Institute, 2006), 69.

companies may be viewed in a similar vein to the increased policy and technical input of NGOs.³⁶

Second, security companies are making a conscious effort to carve their own humanitarian action niche. Tony Vaux, et. al. state that “[A] number of private security companies have discovered the aid market. There are many cases of ex-military personnel who, having had some exposure to humanitarian action, have set up their own private company to ‘fill the gap.’”³⁷ Furthermore, Malcolm Hugh Patterson points out that PSCs make a special effort to appeal to agencies:

Some firms have humanitarian divisions which tailor packages to aid organizations and their objectives... The humanitarian field is also sufficiently lucrative to sustain the risk-advisory segment of the industry as well as security providers. In other words, there have been advances in crafting a security ‘product’ more adapt to UN and NGO clients.³⁸

And, Daniel Hellinger describes how security companies envision their place as an actor in the international humanitarian system: “[PSCs] would like to define security itself as a humanitarian service, as essential as water, food, education, health and shelter

³⁶ Quoted in Tony Vaux, et. al., *Humanitarian action and private security companies: opening the debate* (London: International Alert, 2002), 13.

³⁷ *Ibid.*, 8.

³⁸ Malcolm Hugh Patterson, *Privatizing Peace: A corporate adjunct to United Nations peacekeeping and humanitarian operations* (New York: Palgrave MacMillan, 2009), 73.

to human well-being.”³⁹ He points out, moreover, that such work bolsters their legitimacy.

To that end, several of the large private military and security companies have created subsidiaries for that distinct purpose. For example, in 2006 Blackwater (which changed its name to “Xe Services LLC” in February 2009 in an attempt to disassociate the company from notorious incidences of inflicting civilian casualties) established Greystone, Ltd. to sell humanitarian agencies and peacekeeping organizations “stability to locations experiencing turmoil whether caused by armed conflict, epidemics, or natural or man-made disasters.”⁴⁰ Thus, one form of market-based violence that has congealed in recent years is security contractors geared toward protection in humanitarian space. With the intentions and capabilities of PMSCs in regards to humanitarian action elucidated, the issue becomes not if they would tackle such missions, but whether should they be deployed.

Norms and the Legal Status of Market-Based Force

Whereas the previous section sketched a typology of PMSCs and discussed why they developed, this one dissects the norms regarding the use of these entities by examining

³⁹ Daniel Hellinger, “Humanitarian action, NGOs, and the privatization of the military,” *Refugee Survey Quarterly* 23, no. 4 (December 2004): 193.

⁴⁰ Jeremy Scahill, *Blackwater: The Rise of the World’s Most Powerful Private Army* (New York: Nation Books, 2007), 433-437.

the statements and agreements of international conferences and organizations.⁴¹ In the course of this examination, this section also sheds light on the legal standing of armed contractors. The presence of PMSCs in places such as Sierra Leone, Bougainville, Borneo, and other conflicts where international humanitarian law has not been respected has sparked a fevered debate on their usage.⁴² An analysis of international norms relevant to armed contractors, such as those found in international law and the resolutions of international organizations, provides insight into the normative background of humanitarian agencies.

For the most part armed contractors inhabit a netherworld of legality—there are essentially no international agreements that directly address the legal status of private military and security contractors and therefore much of the jurisprudence applied to them is by way of extrapolation and interpretation. The three main debates regarding private military and security contractors are: First, are they in effect soldiers—i.e., legal combatants representing a state—and thus entitled to the protections afforded to formal armed forces? Second, if armed contractors are lawful combatants, what activities are they permitted to engage in (conduct)? Third, what mechanisms are in place to ensure they are accountable for illegal activities? This review of norms and laws reveal the evolution of international thinking on the use of armed contractors and thus shape and to

⁴¹ Aside from international agreements there are also a plethora of domestic laws on mercenaries that are not covered in this discussion because here the concern is with the international regulations that influence international humanitarian organizations.

⁴² Michael T. Klare, *Resource Wars: The New Landscape of Global Conflict* (New York: Henry Holt, 2002), especially 190–212.

some extent reflect humanitarian views though this will be probed in greater detail in Chapter 5. Below is an analysis of the major normative frameworks and legal instruments that address armed contractors:

*Hague Conventions (1907)*⁴³

The first widely recognized international treaty with direct implications for for-pay militarized forces was centered on the principle of neutrality. At the end of the 19th century European powers had gathered at the Hague to negotiate early restraints on warfare, which became codified in the *Hague Conventions of 1899*. However, this set of agreements was seen as incomplete, and in 1904 President Theodore Roosevelt called for a second conference to push forward with negotiating further regulations. By 1907 another group of treaties had been finalized, among them was *Hague Convention V Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land*.⁴⁴

Although *Hague V* does not use the term mercenaries, let alone military and security contractors, it effectively prohibits the recruitment of mercenaries in states that are neutral. Article 4 declares that neutral powers cannot permit populations to assist belligerents. However, Article 6 denotes limitations on state responsibilities by proclaiming that neutral powers do have to stop “persons crossing the frontier separately to offer their services to one of the belligerents.” This legal mechanism reflects the popular view of the time it was written, that stopping war was achievable by preventing

⁴³ <http://www1.umn.edu/humanrts/instree/hagueconventions.html>

⁴⁴ <http://www1.umn.edu/humanrts/instree/1907d.htm>

conflicts between states. The worry was not mercenaries per se, but how the presence of a base for mercenary forces within a state might draw the state into war. Consequently, *Hague V* is more about preventing neutral states from becoming entangled in the wars of others than halting mercenaries.

Geneva Conventions (1949)⁴⁵

These four agreements signed on August 12, 1949, do not readily discuss either the conduct or place of private military and security contractors under international humanitarian law. Indeed, PMSCs would seem to fall in the gaps—*Geneva I and II* refer to the formal combatants of states, meaning soldiers and sailors. *Geneva IV* addresses civilians, but private military and security contractors would not fall into this category because they are armed and involved in hostilities.

In regards to the question of whether they are to receive legal guarantees of protection the closest statement is in *Geneva Convention III*, which refers to the treatment of the captured and detained in conflict, including the conditions under which they are officially “prisoners of war” (POWs). This agreement enumerates a range of rights, such as providing shelter, food, clothing, and medical attention as well as restrictions on the party that has captured them, for example, prohibitions on torture. While this treaty was specifically designed to address the plight of captive soldiers, armed contractors is another matter.

Article 4 of *Geneva III* stipulates the categories of individuals that are covered. Paragraph 1 identifies soldiers and paragraph 2 comments on “militias and members of

⁴⁵ Full text available at: <http://www.icrc.org/ihl.nsf/FULL/375>

other volunteer corps.” This later provision states that they must be “commanded by a person responsible for his subordinates,” wear markings indicating they are a combatant, “carry arms openly,” and adhere to international humanitarian law. These conditions may be problematic for armed contractors. First and foremost, the term “volunteer” denotes that a fighter’s presence on the battlefield is driven by ideology or politics, not the economic factor that underpins contracting work. Second, although they may have a “commander,” their direct supervision is not part of a state’s military force. Third, armed contractors usually do not wear uniforms or other identifying clothing. In fact, they are often hired to operate covertly or are valued because they blend into local surroundings rather than create the impression of a soldier. Fourth, as part of working covertly or blending in, they may not display their weapons but rather bring them out when they resort to a use of force. Lastly, that armed contractors adhere to the “laws and customs of war” may also be a challenge as the very nature of fighting for pay may deviate from international humanitarian legal norms. Although if armed contractors are respectful of the main principles and practices of IHL this provision would not jeopardize legal protections from *Geneva III*. This provision may prove significant in motivating the conduct of armed contractors; they may be more inclined to operate with regard to IHL if they believe that they will receive its protections. Nevertheless, there is no clarity as to whether the conditions of paragraph 2 constitute protections or disqualify private military and security contractors.

However, paragraph 4 goes further by offering the most specific reference to contractors:

Persons who accompany the armed force without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of service responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.

The modifier “supply” suggests that those contractors involved in logistics would readily receive protection under this treaty. However those that use force, and perhaps those that provide training and advice, particularly if they carry weapons, would not—i.e., being armed likely disqualifies them from the category of “supply contractors.”

As to the question of the conduct of armed contractors, as stated above there are no specific provisions in the *Geneva Conventions*. Nonetheless, the basic catchall language regarding trials for violators of international humanitarian law—intentional killing and inhuman treatment—no doubt applies: *Geneva I*, Articles 49-50; *Geneva II*, Articles 50-52; *Geneva III*, Articles 129-130; and *Geneva IV*, Articles 146-147 call for states to take legal measures against such “grave breaches.” Overall, the *Geneva Conventions* do not criminalize armed contractors, but it does not explicitly grant them the privileges of lawful combatants.

United Nations Resolutions of the 1960s and 1970s

As colonialism was unraveling and recently independent states were joining the United Nations, the political balance began to shift within the organization. These new members were growing in influence at the UN, both in terms of the persuasiveness of

their ideas as well as amassing the votes to implement these ideas. Decolonized states and their allies viewed mercenaries as a vehicle for colonial powers to contain nationalist insurgencies and newly sovereign states. In the 1960s and 1970s, mercenary activity in the Nigerian Civil War, and in what would later become the Democratic Republic of the Congo (DRC), were seen as prototypical examples of mercenaries undercutting Third World government and enabling secession.⁴⁶ In response the UN passed several condemnatory resolutions in both the General Assembly and the Security Council. On July 10, 1967 the Security Council specifically chastised the use of mercenaries in the DRC.⁴⁷ The following year the General Assembly expressed this sentiment beyond the instance of the DRC in the *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*.⁴⁸ Paragraph 8 states:

Declares that the practice of using mercenaries against movements for national liberation and independence is punishable as a criminal act and that the mercenaries themselves are outlaws, and calls upon the Governments of all

⁴⁶ Musah and Fayemi, “Africa in Search of Security: Mercenaries and Conflicts—An Overview,” *Mercenaries*, 13. Mockler, *The New Mercenaries*, 93-110; Angela McIntyre and Taya Weiss, “Weak governments in search of strength. Africa's experience of mercenaries and private military companies,” in *From Mercenaries to Market: The Rise and regulation of private military companies*, ed. Simon Chesterman and Chia Lehnardt (Oxford: Oxford University Press, 2007), 67-81.

⁴⁷ UN Security Council Resolution 239 (July 10, 1967), specifically opposing “the objective of overthrowing the Governments of States Members of the United Nations.”

⁴⁸ UN General Assembly Resolution 2465 (December 20, 1968), 4-7.

countries to enact legislation declaring the recruitment, financing and training of mercenaries in their territory to be a punishable offence and prohibiting their nationals from serving as mercenaries...

While this resolution is the first instance of the UN proclaiming that mercenaries are illegal, the language and context suggest that this is only the case in situations where mercenaries impede independence. By 1968 colonialism was waning, if not altogether politically bankrupt as a form of rule, and essentially no state wanted to be seen upholding it. Consequently the resolution was formally adopted by fifty-three states, though forty-three abstained. In regards to impacting the legal status of armed contractors, this resolution had little to no political impact, but it does foreshadow the stronger and specific international agreements on mercenaries that would arise in the 1970s and 1980s.

In 1970, the General Assembly slightly elaborated on the principle of outlawing mercenary activity in passing *the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States in According with the Charter of the United Nations*, which stated:⁴⁹ “Every state has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.” Similar to previously cited resolution in its interpretation of the illegality of mercenaries, this resolution was not limited to anti-colonial independence movements. Instead its major focus was to preserve the sovereignty of states, not require states to quash any and all forms of mercenary

⁴⁹ UN General Assembly Resolution 2625 (October 24, 1970), 121-124. Quote appears on 123.

activity within their borders. But in 1973 the General Assembly revisited the notion that mercenaries fighting to preserve colonialism are criminals in *the Declaration on Basic Principles of the Legal Status of the Combatants Struggling Against Colonial and Alien Domination and Racist Regimes*.⁵⁰ It proclaimed that, “The use of mercenaries by colonial and racist regimes against the national liberation movements struggling for their freedom and independence from the yoke of Colonialism and alien domination is considered to be a criminal act and the mercenaries should accordingly be punished as criminals.” Although this resolution refers to a very unique situation—a racist regime uses mercenaries against national liberation movement—it does offer a more specific formulation of mercenaries as criminals.

This view informed the General Assembly’s 1974 attempt to regulate mercenaries. *The Draft Definition of Aggression* declares in Article 3(g) that the use of mercenaries constitutes an act of aggression:⁵¹ “The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State...” Fundamentally, this means that the use of mercenaries by one state against another is violation of a key principle of the UN Charter, namely sovereignty as embedded in Article 2(4).

Although General Assembly resolutions are not enforced as those of the Security Council, they are strong indicators of international perspectives. The popular sentiment of this period targeted the challenges of national liberation and colonialism, and therefore,

⁵⁰ UN General Assembly Resolution 3103 (December 12, 1973), 142-143. See para. 5, 143

⁵¹ UN General Assembly Resolution 3314 (December 14, 1974), 142-144.

legislation to eradicate mercenaries was tied to this. Gradually the push to end mercenarism would be expanded to insist states, regardless of their connection to colonialism, not use mercenaries.

Additional Protocols to Geneva Conventions (1977)⁵²

The 1949 *Geneva Conventions* addressed many issues regarding conduct in war that were spotlighted during World War II, however, the subsequent upsurge in guerilla war and insurgencies led to reformulations and additions to international humanitarian law. On June 8, 1977 two agreement were adopted, *Protocols Additional to the Geneva Conventions of 12 August 1949*. The primary difference between these two new treaties is that *Protocol I* reaffirms the norms that traditionally speak to international conflicts, but *Protocol II* is innovative in that it comments on non-international conflicts (i.e., civil wars).

The provisions of *Protocol I* go further in defining the notion of who is protected by laws of war thereby helping to illuminate the status of armed contractors. Several articles could be construed as implying criteria that legalizes the activities of armed contractors. For example, Article 44 revises the specific conditions under which combatants must distinguish themselves from civilian populations and thus identify themselves as belligerents to enemies (such as by openly carrying weapons). However, this provision is not intended to address covert armed contractors but rather to prescribe

⁵² Protocol I: <http://www.icrc.org/ihl.nsf/full/470?opendocument>. Protocol II: <http://www.icrc.org/ihl.nsf/FULL/475?OpenDocument>

the circumstances in which guerilla warfare is legal. Newly independent states were especially keen to deny POW status to mercenaries.

The key and more explicit provision of *Protocol I* that is often invoked in regards to private military and security contractors is Article 47:

1. A mercenary shall not have the right to be a combatant or prisoner of war.
2. A mercenary is any person who:
 - (a) is specially recruited locally or abroad in order to fight in an armed conflict;
 - (b) does, in fact, take a direct part in the hostilities;
 - (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
 - (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
 - (e) is not a member of the armed forces of a Party to the conflict; and
 - (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

This provision signals that it is fundamentally illegal to fight for pay and results in forfeiting the protections granted under international humanitarian law. In other words, the norm of treating captured mercenaries as criminals, not defeated soldiers, was embedded in international humanitarian law.

Private military and security contractors and their supporters have critiqued this provision on several grounds. First, very few armed contractors would meet all these criteria. For example, supply and training oriented contractors would not fall under sub-paragraph (b) because they do not “take a direct part” in war. Similarly, citizens working for their own government would not be a “mercenary” as articulated by sub-paragraph (d). Second, the issue of “private gain” and “compensation” that is greater than that of other soldiers mentioned in provision (c) is difficult to substantiate because such actors do not share or publish documentation of their motives or pay. As Geoffrey Best wryly notes, “any mercenary who cannot exclude himself from this definition deserves to be shot—and his lawyer with him.”⁵³

Protocol II, designed to codify the principles of international humanitarian law in the context of internal wars, is much more brief and circumspect. It makes no references to mercenaries or contractors whatsoever. This absence likely reflects that issues of market-based combatants in civil wars were not widely recognized or understood at the time this treaty was negotiated. It may also betray that mercenaries were only seen as a problem when used against states, but not by used by them. The only provision of *Protocol II* that has possible relevance is Article 13 on civilian protections. Paragraph 3 notes, “Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.” Again, this provision can be judged as not pertaining to those contractors who participate in combat. Moreover, despite expressly rejecting that mercenaries be granted the extensive protections that are accorded to

⁵³ Quoted in Shearer, *Private Armies and Military Intervention*, 18

soldiers and civilians even mercenaries—whether one includes armed contractors or not in this category—are entitled to at least minimal protections as noted in Article 75.

The *Additional Protocols* are a significant change in regulating mercenary activity. Previous agreements were designed to encourage states to stop using and supporting mercenaries, but the *Additional Protocols* go further by deeming mercenaries criminals. However, the narrow definition of a mercenary has limited its applicability.

Convention for the Elimination of Mercenarism in Africa (1977)⁵⁴

In the post World War II period several African states had encountered the use of mercenaries on their territory, frequently in support of colonial regimes or to undermine independent nationalist governments. As noted above this was most vividly exemplified in Nigeria and the Congo in the 1960s. Later that decade and continuing into the 1970s, the Organization of African Unity (OAU) made it a priority to criminalize and end mercenarism. In 1971 the OAU had authored the *Declaration on the Activities of Mercenaries in Africa*, which linked mercenaries to foreign domination and pushed for greater regulation.⁵⁵

Subsequent to this declaration, the OAU began work on a new convention to criminalize mercenaries. While a text was negotiated and finalized, the UN General Assembly passed Resolution 3103 and the *Additional Protocols to the Geneva Convention* was adopted. This work was also propelled by ongoing mercenary activity,

⁵⁴ <http://www.icrc.org/ihl.nsf/FULL/485?OpenDocument>

⁵⁵ Reprinted in Musah and Faymei, ed., *Mercenaries*, 283-285.

especially the so-called “Luanda Trials” following the capture of mercenaries fighting against the revolutionary government in Angola.⁵⁶

On July 3, 1977, less than a month after the *Additional Protocols to the Geneva Conventions* had been passed, the *Convention for the Elimination of Mercenarism in Africa* was signed, though it did not come into effect until April 22, 1985. While this convention only has jurisdiction in Africa, it represents another telling set of norms regarding the use of force by for-profit actors.

This treaty essentially reiterates the definition of a mercenary put forth in Article 47 of *Additional Protocol I to the 1949 Geneva Conventions* but then goes further in articulating that support for mercenary activity that challenges “self determination stability or the internal integrity of another State” is also criminal. Article 1, paragraph 2 states:

The crime of mercenarism is committed by the individual, group or association, representative of a State or the State itself who with the aim of opposing by armed violence a process of self-determination stability or the territorial integrity of another State, practises any of the following acts:

- a) Shelters, organises, finances, assists, equips, trains, promotes, supports or in any manner employs bands of mercenaries;
- b) Enlists, enrolls or tries to enroll; in the said bands;

⁵⁶ Wilfred Burghett and Derek Roebuck, *The Whores of War: Mercenaries Today* (New York: Penguin, 1978); Mockler, 213-214.

c) Allows the activities mentioned in paragraph (a) to be carried out in any territory under its jurisdiction or in any place under its control or affords facilities for transit, transport or other operations of the above mentioned forces.

Article 3 enumerates the bottom line legal standard, “Mercenaries shall not enjoy the status of combatants and shall not be entitled to the prisoners of war status.”

Article 6 offers greater detail on the responsibility of states in ensuring compliance with prohibitions against mercenarism:

a) Prevent its nationals or foreigners on its territory from engaging in any of the acts mentioned in Article 1 of this Convention;

b) Prevent entry into or passage through its territory of any mercenary or any equipment destined for mercenary use;

c) Prohibit on its territory any activities by persons or organisations who use mercenaries against any African State member of the Organization of African Unity or the people of Africa in their struggle for liberation;

d) Communicate to the other Member States of the Organization of African Unity either directly or through the Secretariat of the OAU any information related to the activities of mercenaries as soon as it comes to its knowledge;

e) Forbid on its territory the recruitment, training, financing and equipment of mercenaries and any other form of activities likely to promote mercenarism;

f) Take all the necessary legislative and other measures to ensure the immediate entry into force of this Convention.

Furthermore, Article 9 requires states to extradite offenders.

The primary contribution of this convention is to expand culpability for mercenary activity. Under the *Additional Protocol I* the individual mercenary was seen as criminal, but the framework of the OAU's convention also considers states that enable or allow mercenaries to operate from their territory as liable. The convention's main purpose is to criminalize mercenaries who fight against a member state of the OAU, however, in doing so it overlooks the issue of mercenaries who fight against a rebel movement.

United Nations Convention against the Recruitment, Use, Financing, and Training of Mercenaries (1989)⁵⁷

This agreement basically widens the jurisdiction of the *Convention of the Elimination of Mercenarism in Africa* by taking the premise of the latter and applying it throughout the United Nations system. Negotiations and drafting of a new convention began in 1980, but it took nine years to produce a consensus. The result was the *International Convention Against the Recruitment, Use, Financing, and Training of Mercenaries*, which was adopted by the General Assembly in late 1989.⁵⁸ This convention follows in the normative footsteps of previous ones, though in some ways it elaborates in four ways. First, in terms of defining a mercenary although this treaty contains the same language as found in Article 47 of *Additional Protocol I*, in Article 1 it broadens the area of concern from “armed conflicts” to also include “any other situation.”

⁵⁷ <http://www.icrc.org/ihl.nsf/FULL/530?OpenDocument>

⁵⁸ UN General Assembly Resolution 44/34 (December 4, 1989).

Second, Article 1 (2) (b) moderates the high standard set by Article 47 of the *Additional Protocol I* in defining a mercenary as receiving “material compensation substantially in excess of that promised or paid to combatants of similar rank or function.” Alternatively, its definition points simply to the “desire for private gain.”

Third, Article 2 of the convention also follows the precedent of the OAU’s convention in that enlarges the scope of activities that are deemed illegal to encompass “[a]ny person who recruits, uses, finances or trains mercenaries.” Article 4 similarly denotes that offenders are not simply those who commit the act of mercenarism but also those who are complicit in the activity.

Fourth, the convention reinforces the role of states and meshes the principles of stemming mercenarism with international humanitarian law. In Article 5 states are recognized as regulating authorities and called upon to halt and prevent mercenary activity based within their respective territories as well as extradite or take legal action against mercenaries. Whereas previous agreements encouraged states to take such measures, particularly to avert intervention into another state, under this convention states are now required to take action. Furthermore, under Article 17 states may be held liable for sponsoring mercenary activity or allowing it on its territory.

In regards to treatment of captured mercenaries, Article 10 provides that the role of states in controlling mercenarism also consists of allowing the International Committee of the Red Cross “to communicate with and visit the alleged offender.” In addition, Article 16 states that the convention applies to “the law of armed conflict and international humanitarian law, including the provisions relating to the status of

combatant or of prisoner of war,” and therefore is merely a refinement of existing norms not a replacement.

United Nations Work and Resolutions on Mercenaries After the Cold War

As the Cold War wound down and tensions between the great powers diminished, the United Nations became assumed a larger role in the maintenance of international peace and security. In addition to its previous efforts of passing resolutions condemning the practice as a threat to the independence of states and establishing the *International Convention Against the Recruitment, Use, Financing, and Training of Mercenaries*, the organization took two other measures. First, it cast the problem as not simply confined to wars of national liberation but constituted a threat to international peace and security.⁵⁹ Second, the UN developed tools to routinely monitor and promulgate information on mercenaries. In 1987, the Commission on Human Rights, responding to a flurry of mercenary activity as well as a host of Security Council Resolutions⁶⁰ and a General Assembly Resolution⁶¹ appointed a Special Rapporteur to examine relevant issues.⁶² This individual is charged with gathering and analyzing information from governments, IGOs and NGOs. Enrique Ballestros, who served as UN special rapporteur on mercenaries from

⁵⁹ UN General Assembly Resolutions 42/96 (December 7, 1987), 47/84 (December 16, 1992) and 48/92 (December 20, 1993).

⁶⁰ UN Security Council Resolution 239 (July 10, 1967), 405 (April 14, 1977), 419 (November 24, 1977) 496 (December 15, 1981), and 507 (May 28, 1982).

⁶¹ UN General Assembly Resolution 41/102 (December 4, 1986).

⁶² Commission on Human Rights, Resolution 1987/16 (March 9, 1987).

1987 to 2004, has stressed that while the use of mercenaries may present economic advantages, they are adversely effect human rights: “Mercenaries base their comparative advantage and greater efficiency on the fact that they do not regard themselves as being bound to respect human rights or the rule of IHL. Greater disdain for human dignity and greater cruelty are considered efficient instruments for winning the fight.”⁶³

In addition to documenting and underscoring the illicit nature of mercenaries, the Special Rapporteur has also been given authority to investigate new forms of mercenarism although as early as 1997 Ballestros proclaimed that PMSCs “cannot be strictly considered as coming within the legal scope of mercenary status.”⁶⁴ Therefore, in 2004, the Commission on Human Rights specified under Resolution 2004/5 that the mandate of this Special Rapporteur was to include a consideration of “the impact of the activities of private companies in “offering military assistance, consultancy and security services on the international market on the exercise of the right of people to self-determination.”⁶⁵ This has mostly fed into a perspective similar to the one disapproving of mercenaries, and thus, since the late 1990s the UN has embraced a norm against the

⁶³ Enrique Ballestros, *Report on the Question of the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Rights of People to Self-Determination* (report to Commission on Human Rights, Geneva, Switz., January 13, 1999).

⁶⁴ *Report on the Question of the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Rights of Peoples to Self-Determination*, (February 20, 1997).

⁶⁵ <http://www.unhcr.org/refworld/topic,4565c2254a,4565c25f593,43f313760,0.html>.

use of private military and security contractors.⁶⁶ This is seen in the hesitancy, if not serious opposition, to the idea of the UN hiring PMSCs expressed by Kofi Annan and other senior figures in the organization.

The Special Rapporteur routinely had its mandate renewed since its inception, but in 2005 the Commission announced that it would be succeeded by a new entity comprised of five experts (one from each regional group), The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination.⁶⁷ This group is tasked with the same responsibilities as the Special Rapporteur. In particular it is also intended develop norms and law regarding mercenaries (“possible new standards, general guidelines, or basic principles encouraging the further protection of human rights, in particular the right of people to self-determination, while facing current and emergent threats posed by mercenaries or mercenary-related activities.”) and private military and security companies (“prepare draft international basic principles that encourage respect for human rights on the part of those companies in their activities.”).⁶⁸ With the growing presence of PMSCs in contemporary conflicts, in 2008 the newly created Human Rights Council authorized the Working Group to put greater effort into detailing private military and security industry and building consensus for international legislation through a series of regional consultations and country visits.⁶⁹ As José Luis Gómez del Prado (former chair and

⁶⁶ Percy, *Mercenaries*, 224.

⁶⁷ UN Commission on Human Rights, Resolution 2005/2 (April 7, 2005).

⁶⁸ *Ibid.*, paragraph 12, provisions (a) and (e), respectively.

⁶⁹ UN Commission on Human Rights, Resolution 7/21 (March 28, 2008).

present member) has noted, “This industry, which deals with heavy weaponry in conflict zones, is less regulated than the toy industry.”⁷⁰ Accordingly, in 2010 the Working Group put forward new regulations for PMSCs that would enable monitoring of human rights and provide compensation for victims in the event that violations occur—see the proposed convention below.

Montreux Document (2008)⁷¹

The increase in PMSC usage in the first decade of the twenty-first century and several high-profile incidents of human rights violations motivated continued scrutiny. Although critics continued to complain that PMSCs were unaccountable, the private military and security sector thrived. However, both those who opposed and favored PMSCs recognized the limits of this political-legal stalemate—opponents wanted some sort of regulation, proponents sought recognition for what they saw as a vital contribution to the maintenance of order—and looked to move the debate forward. Starting in January 2006, the Swiss government and the International Committee of the Red Cross organized meetings to generate new norms and agreements on the sector. In addition to

⁷⁰ UN Office of High Commissioner for Human Rights, “Guns for hire,” April 29, 2010, <http://www.ohchr.org/EN/NewsEvents/Pages/Gunsforhire.aspx>. Also see José Gómez del Prado, *Why Private Military and Security Companies Should Be Regulated* (September 3, 2010), <http://www.reports-and-materials.org/Gomez-del-Prado-article-on-regulation-of-private-and-military-firms-3-Sep-2010.pdf>

⁷¹ http://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf.

governments and experts, this initiative also solicited the views of private military and security companies as well as NGOs and IGOs. On September 17, 2008 the *Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflicts* was announced and signed by seventeen states: including “contracting states,” which hire armed contractors (such as the United States); “home states, where armed contractors are based (such as South Africa, Germany, and the United Kingdom); and, “territorial states,” where PMSCs operate (such as Afghanistan and Iraq). Since then the total number of signatories has climbed to thirty-six.

The agreement distills the *Geneva Conventions*, the *ICRC Study on Customary International Humanitarian Law*, the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, the *UN Code of Conduct for Law Enforcement Officials*, and a variety of national regulatory frameworks.⁷² Although *Montreux* is certainly a step forward in parsing the status of armed contractors, this agreement is not legally binding and it does not establish any new legal mechanisms, rather it is a compendium of previously established international rules and is designed merely to clarify the rights and responsibilities associated with PMSC use. Additionally critics have

⁷² James Cockayne, “Regulating Private Military and Security Companies: The Content, Negotiation, Weaknesses and Promise of the Montreux Document,” *Journal of Conflict & Security Law* 13, no. 3 (Winter 2008): 402.

pointed out that explicit language on the responsibility of states to apply “due diligence” in enforcing the code of conduct is lacking.⁷³

Nevertheless, the principles articulated in the *Montreux document* essentially identify a way for PMSCs to uphold international standards and pinpoints specific areas of responsibility for states that interact with PMSCs. The document concentrates on state usage of PMSCs and in terms of IHL underlines the centrality of Common Article 1 of the *Geneva Convention*.⁷⁴ Moreover, the document reiterates that those who violate human rights or international humanitarian law or authorize actions that do so will be held accountable. That is to say, both perpetrators and their immediate superiors will face criminal penalties as will the state that has hired them. Furthermore, *Montreux* also explicitly expresses the status of PMSC personnel under international humanitarian law.⁷⁵ It notes that armed contractors do not readily fit into the conventional categories of “combatant” or “civilian,” but that such a determination should be “case-by-case” depending on the type of service they are providing: Most are fundamentally “civilians,” but two exceptions apply. First, if an armed contractor is incorporated into military forces, he is to be treated as a soldier. Second, if an armed contractor directly participates in hostilities, they are to be considered a combatant. In both instance this would mean that an armed contractor does not qualify for the protection granted to civilians under IHL

⁷³ José L. Gómez del Prado, “Private Military and Security Companies and the UN Working Group on the Use of Mercenaries” *Journal of Conflict and Security Law* 13, no. 3 (Winter 2008): 429-450.

⁷⁴ *Montreux Document*, Statements 3, 9, 14, and 18.

⁷⁵ *Ibid*, 38-39.

(i.e., that they may not be attacked). Nevertheless, as long as PMSCs are accompanying the armed forces of a state they may receive prisoner-of-war status. To realize these principles the document enumerates “good practices,” which include a licensing system to strengthen home states’ capacities for control and oversight of PMSCs and a tracking system of PMSC records to encourage contracting states to only hire those contractors that respect human rights and IHL.

What is perhaps most surprising about this document is the diversity of parties that joined forces in forging it as well as those who have come to support it.⁷⁶ States most affected by PMSCs obviously had an interest in better defining respective legal roles and obligations. And, PMSCs quickly championed the agreement.⁷⁷ However, it is the endorsement by non-governmental actors such as Amnesty International, despite some reservations, that is remarkable.⁷⁸ More importantly the presence of the ICRC is most notable because traditionally it has been a fierce critic of any sort of privatized violence, but in this case the organization was instrumental in developing the framework of the *Montreux document*. Although there is a statement within it that contends this initiative is not intended to legitimize PMSCs or otherwise take a position on the issue—it argues that

⁷⁶ Cockayne, “Regulating Private Military and Security Companies,” 425-426.

⁷⁷ International Peace Operations Association, Press Release, “IPOA Welcomes Agreement on Private Security Companies,” (September 17, 2008).

⁷⁸ Amnesty International, “Amnesty International Public Statement on the Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to the Operations of Private Military and Security Companies during Armed Conflict,” (AI Index IOR 30/010/2008), October 14, 2008.

it is simply emphasizing that PMSCs, like all other actors in wars, are subject to international humanitarian law—this agreement does seem to imply an imprimatur of legality.⁷⁹ In other words, *Montreux* is ostensibly not to encourage the use of PMSCs, but to cement the rights and responsibilities of armed contractors and states.

Draft of a possible Convention on Private Military and Security Companies (PMSCs) for consideration and action by the Human Rights Council (2010)⁸⁰

In its July 2, 2010 report to the Human Rights Council and the General Assembly, the United Nations Working Group on Mercenaries spelled out its main concerns regarding PMSCs—the dearth of formalized accountability, the unique deadly nature of the commodity/services it entails, and the limits of the applicability of existing legal mechanism geared to mercenaries (i.e., Article 47 of *Additional Protocol I of the Geneva Conventions*, and Article 1 of the *International Convention Against the Recruitment, Use, Financing and Training of Mercenaries*)—and proposed a new treaty to specifically

⁷⁹ *Montreux Document*, 41.

⁸⁰ United Nations, Human Rights Council, A/HRC/15/25, *Draft of a possible Convention on Private Military and Security Companies (PMSCs) for consideration and action by the Human Rights Council*, July 2, 2010. (The Human Rights Council succeeded the Commission on Human Rights in 2006, and the Working Group now falls under the purview of this new Council, which ultimately reports to the UN General Assembly). See Annex of document for draft of proposed convention.

<http://www2.ohchr.org/english/issues/mercenaries/docs/A.HRC.15.25.pdf>.

address private military and security contractors. This convention is based on eight principles

- State responsibility *vis-à-vis* private military and security companies: States must ensure that PMSCs within their jurisdiction adhere to international humanitarian law and establish procedures for licensing exporting and importing military and security personnel and services, including control over firearms.
- Rule of law: PSMCs and personnel must be held accountable for violations of national and international law. The bodies of laws that must be respected include those of the home state (where PMSCs are based), the contracting state (the state that hires PMSCs), the state of operations (where PMSCs work), and third-party states (where contractors are from, if different than where PMSC is based).
- State sovereignty: States cannot allow PMSCs to undermine sovereignty of another state.
- Respect and protection of international human rights and humanitarian law: States must enforce compliance with international human rights protections and IHL by guaranteeing accountability for violations, specifically by making superiors (either government officials or company managers) liable for criminal activity.
- Prohibition on the use of force: States cannot permit PMSCs to directly participate in military actions that overthrow governments, alter borders, violate sovereignty, promote foreign occupation, or target civilian

populations. Furthermore, states cannot allow PMSCs to provide training that enables these same military activities.

- Prohibition of delegation and/or outsourcing of inherently State functions: Only states can engage in combat, policing, and intelligence work; PMSCs are not permitted.
- Prohibition of outsourcing the use of certain arms: State must prevent munitions that have been deemed as illegal under Article 35 of the *Additional Protocols to the Geneva Convention* as well as weapons of mass destruction from being used by PMSCs.
- Prohibition on illegal acquisition, possession and trafficking in firearms, their parts and components and ammunition: States must prevent illegal arms transfers and PMSCs from using their weapons in areas outside client's premises.

This list embodies the state of norms of PMSCs. It does not attempt to criminalize armed contractors but instead regulate them. Aside from requiring adherence to rules for the use of force (such as a prohibition on the use of firearms except in self-defense and injunction on torture and other forms of inhumane treatment); this proposed convention goes much further in offering guidelines for the operations of PMSCs. It includes vetting personnel and training them in human rights and international humanitarian law; proper identification that distinguishes them from civilians; methods for reporting incidents, field audits and complaint procedures; and, means for prosecution when laws are broken (i.e., removing immunities for contractors).

*International Code of Conduct for Private Security Providers (2010)*⁸¹

Whereas the Montreux Protocol and other recent initiatives to regulate the private security companies called on states to uphold their responsibilities under international humanitarian law, there remained a lack of clear and formal commitment by PSCs themselves to comply. To address this shortcoming the Swiss Department of Foreign Affairs along with the Geneva Centre for the Democratic Control of Armed Forces and the Geneva Academy of International Humanitarian Law and Human Rights, and in conjunction with members of the private security industry developed the *International Code of Conduct for Private Security Providers*. Upon its release on November 9, 2010, fifty-eight PSCs immediately signed it (including mainstays such as Aegis Defence Service Ltd., DynCorp, G4S, Triple Canopy, and Xe Services (formerly Blackwater, now called Academi since December 2011)), and as of August 2011 the number of signatories reached one hundred sixty-six.

This agreement requires signatories to respect human rights and to adhere to humanitarian legal obligations in their operations—not only with regards to their own personnel but also their clients and the populations in the areas in which they work. Provisions involve rules for the use of force; recruiting, vetting and training personnel; and, procedures for reporting violations (field auditing and a method for filing complaints). Moreover, should companies commit human rights abuses, under the Code those that hire the offending company could fire them on the grounds of breach of

⁸¹ [http://www.icoc-
psp.org/uploads/INTERNATIONAL_CODE_OF_CONDUCT_Final_without_Company
_Names.pdf](http://www.icoc-
psp.org/uploads/INTERNATIONAL_CODE_OF_CONDUCT_Final_without_Company
_Names.pdf).

contract. However, the code is somewhat limited in terms of its applicability and enforcement as it only governs companies that formally sign on, not the smaller local security providers that have also come to play more pronounced roles in armed conflicts.

Contemporary Practice on Market-Based Force in Historical Perspective

The norms and laws that inform behavior in employing market-based violence have changed and continue to do so. The use of mercenaries dates to the ancient world and was rather extensive up until the nineteenth century. During European state formation in the sixteenth through eighteenth centuries mercenaries were seen by state-based political authorities as a cost-efficient military tool that could further the political interests of the state. However, by the nineteenth century views of using mercenaries changed considerably as citizen armies were seen as more reliable (their political motivations more certain than the fickleness of economic agendas) and less expensive (the bevy of European wars had increased the demand and price for military labor thus making national conscription far more cost-effective). Furthermore, ending the use of mercenaries was regarded as more conducive to stable international relations because states did not want to be held accountable for the external activities of citizens (i.e., states sought to avoid becoming entangled in conflicts because their nationals engaged in mercenary activity against other states).

After World War II the connection of mercenaries to colonialism, imperialism, and oppressive regimes also dissolved political support for mercenarism. Consequently, decolonized states and national liberation movements pushed for international legislation to ban mercenaries. This was a largely successful effort as a number of treaties lessened

the practice greatly with only a few rare occurrences of mercenarism. Overall, norms of employing mercenaries evolved from general acceptance and widespread usage well into the nineteenth century but changed to discouraging and then prohibiting the practice altogether in roughly a forty year period from the late 1940s to the late 1980s. Thomson summarizes the shift in ideas that precipitated the decline of mercenaries by remarking that “practices of the twentieth century reflect a powerful norm against eighteenth-century-style mercenaries; they appear to us as anomalies precisely because they are only marginally legitimate.”⁸² Percy, however, has argued that while the norm against mercenaries has become strong, the law has remained intentionally weak; requiring motive as a key criterion in assessing whether behavior constituted mercenarism ensures that the law is unenforceable.⁸³ She concludes, “Our moral dislike of mercenaries may no longer be grounded in the realities of mercenary behavior, and the potential benefits of private force may be obscured by the great strength of the anti-mercenary norm.”⁸⁴ However, in recent years the motive standard for classifying actors as mercenaries has essentially been sidestepped as the benefits of private military and security contractors appear to have dissipated or at least ignored principles that prohibit their use. At present, practice seems to have tilted toward considering PMSCs as combatants that can legally be attacked and, if they accompany soldiers, may be granted POW status. However, this has not been set under international humanitarian law.

⁸² Thomson, “State Practices, International Norms, and the Decline of Mercenarism,” 31.

⁸³ Sarah V. Percy, “Mercenaries: Strong norm, weak law,” *International Organization* 61, no. 2 (Spring 2007): 376; Percy, *Mercenaries*, 178-179.

⁸⁴ Percy, *Mercenaries*, 247.

The very specific case of security contractors guarding humanitarian space is also not clear. Under *Additional Protocol I* two provisions allow for lightly armed individuals to protect the wounded and sick.⁸⁵ But this agreement predates humanitarian agency-security contractor interactions and the situation has not been formal addressed by states or international humanitarian law.

To better see the shift in norms on market-based violence from those opposing mercenaries to those that enable the hiring PMSCs, table 3.1 provides a thumbnail view of the relevant major international laws and agreements on the books. What is clear is that although the beliefs and bans regarding mercenaries provide some direction for interpreting ideas about private military and security companies, PMSCs represent a different form of market-based violence where the norms and laws are still unfolding. While some contest the use of PMSCs, others view them as a necessary tool and since the 1990s a struggle between norm entrepreneurs has ensued. As this section has shown, over the past twenty years within the United Nations system there has been fierce opposition to armed contractors as typified by reports of the Special Rapporteur on Mercenaries⁸⁶ and statements of the Secretary-General Kofi Annan.⁸⁷

⁸⁵ Additional Protocol I, Articles 13 (2) and 28 (3).

⁸⁶ *Report of the Special Rapporteur on Mercenaries*, E/CN.4/1998/31 (January 27, 1998); and *Report of the Special Rapporteur on Mercenaries*, E/CN.4/2001/19 (January 11, 2001), 18.

⁸⁷ United Nations, “Transcript of Press Conference by Secretary-General Kofi Annan at United Nations Headquarters on 12 June 1997,” Press Release SG/SM/6255 (1997).

TABLE 3.1: NORMS OF MAIN INTERNATIONAL LAWS AND AGREEMENTS RELEVANT TO THE USE OF PRIVATE MILITARY AND SECURITY CONTRACTORS				
TREATY	DEIVED/ IN FORCE	SIGNATORIES AND PARTIES	NORMS FOR PRIVATE MILITARY AND SECURITY SECTOR	
Hague V, Articles 4 & 6	October 18, 1907/ January 26, 1910	17 states signed; 32 states parties	Neutral states must prohibit recruitment of mercenaries on their territory, but not prevent from crossing borders to become mercenaries	
Geneva Convention III, Article 4	August 12, 1949/	194 states parties	Mercenaries not entitled to POW protections	
Additional Protocol to Geneva Conventions I, Article 47	June 8, 1977/ December 7, 1978	4 states signed; 171 states parties	Mercenaries not outlawed but not obligation to grant them formal combatant or POW status	
OAU Convention for the Elimination of Mercenarism	July 3, 1977/ April 22, 1985	8 states signed; 30 states parties	States prohibited against using mercenaries against OAU member states	
UN Convention against the Recruitment, Use, Financing, and Training of Mercenaries	December 4, 1989/ October 20, 2001	17 states signed; 32 states parties	State prohibited from using mercenaries	
Montreux Document	September 17, 2008	36 states support	PMSCs are not civilians, but if accompany soldiers may receive POW status; States where PMSCs are based, states that hire, and states where they operate are responsible for regulating PMSCs	
International Code of Conduct for Private Security Providers	November 9, 2010	166 PMSCs signed	PMSCs treated as legitimate parties to international agreements; commits PMSCs to respect human rights and international humanitarian law in regards to own personnel and to populations where operate	

By contrast, there is also a distinct contingent of advocates (or “norm entrepreneurs”) for the privatization; among the most visible is Doug Brooks, the head of a trade association of fifty-six PMSCs. The mission statement of this organization includes in its list of purposes, “To engage in a constructive dialogue and advocacy with policy-makers about the growing and positive contribution of these firms to the enhancement of international peace, development and human security...” Founded in 2001, this entity was initially called “International Peace Operations Association,” but in October 2010 was rechristened “International Stability Operations Association” to reflect the desire of the industry to undertake not only peacekeeping missions but also humanitarian work.⁸⁸ As Brooks notes, “The new name and logo are designed to better reflect the broad industry that provides vital services and support to the international community in conflict, post-conflict and disaster relief operations.”⁸⁹ Brooks contends that in the face of states being unwilling or unable to furnish military resources and security services, properly regulated PMSCs are the best alternative.⁹⁰ The ISOA is the oldest and perhaps the most widely known norm entrepreneur for legitimizing corporations wielding force but there are others, most notably the British Association of

⁸⁸ See <http://www.stability-operations.org/>

⁸⁹ Doug Brooks, “International Stability Operations Association: IPOA’s New Name,” *Journal of International Peace Operations* 6, no. 3 (November-December 2010): 4.

⁹⁰ For instance see, Doug Brooks, “Messiahs or Mercenaries? The Future of International Private Military Services,” *International Peacekeeping* 7, no. 4 (Winter 2000), 129-144.

Private Security Companies (BAPSC) and the Private Security Company Association of Iraq (PSCAI).⁹¹

In assessing the relative weight of these two camps, the scales have tipped toward the latter in recent years so much so that Anna Leander has commented that commodifying security has become “more widely accepted than at any other time during the past century.”⁹² In fact, the first ever General Assembly resolution (“Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Rights of Peoples to Self-Determination,”) that specifically mentions “private companies offering international military consultancy and security services,” which was adopted in March 2005, requests that states not permit such entities from employing mercenaries, which, in effect, distinguishes between PMSCs and mercenaries.⁹³ Finally, it should be noted that in addition to the normative change, there has been a discernable shift in practices on hiring PMSCs, even at the United Nations. Although armed contractors have

⁹¹ The BAPSC was established in February 2006 and has 23 companies as members; <http://www.bapsc.org.uk/>. The PSCAI was founded in August 2004 and represents 40 companies; see <http://www.psc.ai.org/>.

⁹² Anna Leander, “The Commodification of Violence: Private Military Companies and African States,” in *The Making of the Africa-Nation: Pan-Africanism and the African Renaissance*, ed. Mammo Muchie (London: Adonis-Abbey, 2003), 264-280.

⁹³ United Nations General Assembly. Resolution 59/178 (March 3, 2005).

not been employed to carry out entire peace operations, in the last decade they have been hired to provide logistical support and perform tasks such as de-mining.⁹⁴

While the 2010 proposal for a convention regulating PMSCs would be a major step forward in clarifying their legality and elucidating their roles, two sorts of critics oppose this initiative. On the one hand are those who continue to object to any sort of privatization of force and see this agreement as legitimating a form of mercenaries. On the other hand are those who see the treaty as too limiting because it proscribes that PMSCs can not be used for “inherently state functions” (police, interrogation, direct hostilities). Overall, the proposal for a new convention unambiguously on PMSCs demonstrates just how far the norm of usage has come—while there are still stalwart opponents of any sort of marketization of force, the goalposts of the debate have moved such that international deliberations are no longer centered on whether such actors are legal or legitimate, but rather how to best influence their conduct. For instance, Pratap Chatterjee, a scholar, member of the board of Amnesty International and frequent critic of PMSCs, has recently testified before the UN Working Group on the Use of Mercenaries to offer recommendations to regulate, not proscribe, PMSCs.⁹⁵

International regulation of private military and security contractor is a moving target, but by reflecting on the experience of regulating mercenarism two facets of change

⁹⁴ Oldrich Bures, “Private Military Companies: A Second Best Peacekeeping Option?” *International Peacekeeping* 12, no. 4 (March 2005): 539.

⁹⁵ Statement of Pratap Chatterjee before UN Office of the High Commissioner for Human Rights, Expert Meeting, Working Group on the Use of Mercenaries, July 7, 2011, http://www.americanprogressaction.org/issues/2011/07/pdf/pratap_contractors.pdf.

regarding PMSCs can be seen. First, the speed of change is tied to the rate and consequences of usage. As wars of national independence raged in Africa in the 1960s, an increase in concern over mercenaries as an impediment to liberation and sovereignty spurred the signing of new international treaties. A greater reliance on armed contractors in recent years and cases of human rights violations will likely have a similar effect.

Second, the anticipated substance of change can be discerned in considering the nature of the provisions that have been introduced to regulate the use of force. The Just War tradition is premised on the principle that while force is not a preferable means for resolving conflict, it is valid under certain conditions. The growing use of PMSCs by states and businesses likely saps the political will to ban armed contractors outright despite the protests of some human rights groups. A more moderate approach that seeks to bring Just War principles to the regulation of PMSCs appears to be materializing. An examination of norms found in the 2008 *Montreux Document*, the 2010 proposed treaty, and the 2010 *International Code of Conduct* reveal several core Just War concepts that foreseeably will emerge as law: force as a last resort, respect for protection of civilians, accountability for human rights violations (including command responsibility), and the requirement to wear identifiers denoting their armed status. Unless there is a dramatic shift in views, PMSCs are unlikely to go the way of the mercenary—decreasing in military significance and becoming politically untenable. Instead armed contractors will continue to thrive in a legal limbo that serves the interests of the politically powerful (i.e., the states and business that rely on them). However, the pressure for greater and more specific international regulation is building.

Dilemmas of Hiring Security Contractors

This chapter has overviewed the theory, history, and law of for-profit militarized units, namely mercenaries and the more recently devised actor, private military and security contractors. The purpose of this survey has been to present the motives that explain the turn to armed contractors, to tease out the historical backdrop that produced PMSCs, and to identify where they fit in under international law so as to frame their potential use by humanitarian agencies. This chapter concludes with an analysis that narrows the focus specifically to security contractors so as to illuminate the key issues that challenge humanitarian agencies in considering this option for protection: Law, ethics, and economics. Table 3.2 synthesizes the dilemmas of using security contractors: what those who support the usage of security contractors claim and what those who oppose usage maintain.

TABLE 3.2:
DILEMMAS OF EMPLOYING SECURITY CONTRACTORS:
PRO (SUPPORT USAGE) VS. CON (OPPOSE USAGE)

	ISSUES	QUESTION	CURRENT DEBATE
LAW	<i>Legal Status</i>	Are security contractors lawful combatants?	Pro: Yes, no specific ban; Montreux and International Code legalize Con: No, international

			conventions oppose for pay military activity, no treaty specifically legalizes PMSCs
	<i>Governing Conduct</i>	Are there restraints on the behavior of security contractors?	Pro: Yes, Montreux and International Code of Conduct contain rules Con: No, international law has not deterred PMSCs from bad behavior
ETHICS	<i>Responsibility</i>	Are the legal mechanisms to govern security contractors adequate to ensure reliability and accountability?	Pro: Yes, PMSCs take responsibilities seriously if only to protect reputation Con: No, few prosecutions for criminal activity and corporations' responsibility is profits

			not people
	<i>Transparency</i>	Is there sufficient information available to foster clarity and candor in evaluating security contractors?	Pro: Yes, many PMSCs are publicly traded companies and disclose public information on activities Con: No, corporations maintain secrecy
	<i>Sacrifice</i>	Does the use of security contractors insulate citizens and states from sacrifice and obscure the debate on the use of force?	Pro: No, PMSCs enable greater flexibility in pursuing military and security operations Con: Yes, PMSCs undercut “body bag” factor
ECONOMICS	<i>Efficiency</i>	Is hiring security contractors more cost effective than using conventional armed forces?	Pro: Yes, private sector is more efficient and therefore less expensive

			Con: No, reputations of PMSCs prolongs conflicts thus making them more costly
	<i>Political Economy</i>	Do the relations of producers and consumers of force engender a form of extortion?	Pro: No, PMSCs create options not threats Con: Yes, PMSCs are profiteers of suffering

The following review fleshes out dilemmas and spotlights the state of current debates.

Law

A chief restraint on the use of security contractors is their questionable legality. Much of the assessment with respect to the legality of either private military or security contractors hinges on whether they are regarded as mercenaries—although international humanitarian law does not offer regulations specific to PMSCs these treaties posit norms that unequivocally prohibit for-profit armed actors. However, there are two difficulties with a framing that enables prosecuting PMSCs as mercenaries. First, the legal mechanisms to attend to mercenaries do not readily lead to trials or other juridical proceedings. As former Special Rapporteur on Mercenaries Enrique Ballesteros notes, “Mercenaries are frequently active in places where there is a market for their activities. The problem remains that there is no appropriate legal definition or legislation under

which they can be prosecuted.”⁹⁶ Second, the most comprehensive definition of mercenaries is found in the *UN Convention Against Mercenarism*, but as discussed earlier, PMSCs do not meet all six criteria, thus negating this instrument as a means of branding armed contractors as unlawful. Ballesteros, an ardent critic of PMSCs, points to “the thin line dividing the activities of private security companies and the use of mercenaries.”⁹⁷ In essence, despite what some consider extensive similarities, private military and security contractors are fundamentally a different animal.

An additional hurdle to applying treaties such as *Additional Protocol I*, the *OAU Convention Against Mercenarism* and the *UN Convention Against Mercenarism* to criminalize PMSCs is that they have been written to protect states. If PMSCs are employed by states and do not threaten self-determination or the territorial integrity of a state that is party to these treaties, then the PMSC would not fall under the jurisdiction of these agreements.⁹⁸ For instance if a government hires armed contractors to fight against insurgents, terrorists or bandits, than they are not covered by international conventions intending to limit irregular militarized actors from threatening sovereign states.

⁹⁶ *Report of the Second Meeting of Experts on Traditional and New Forms of Mercenary Activities as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination*, Economic and Social Council, 59th Sess., Agenda Item 5, U.N. Doc. E/CN.4/2003/4 (June 24, 2002), 4, para. 11.

⁹⁷ *Ibid*, 8, para. 28.

⁹⁸ Leonard Gaultier, et. al., *The Mercenary Issue at the UN Commission on Human Rights: The Need for a New Approach* (London: International Alert, 2001), 30.

Despite the efforts of critics of usage, the upshot of relevant international jurisprudence is that PMSCs are legal entities. However, although their status as actors is lawful their conduct is still subject to international law. That is to say, PMSCs may not be inherently illegal, but the actions they and those who hire them undertake may indeed cross that threshold. Specifically, international law is virtually silent on what “rules of engagement” inform PMSCs use of force and what happens when armed contractors violate human rights or the laws of war. Additionally, international law does not speak to labor and jurisdictional issues relating to the employment of Third Country Nationals (those who are not from the country where they have been hired to operate or from the country where the PMSC is based).

Lastly, a distinction between military and security contractors is in order because the latter are not employed to directly engage in hostilities, but rather furnish protection. This difference may be important to those who are concerned that those they hire have engaged in an illegal use of force by participating in combat. Therefore, while neither private military or security contractors are explicitly banned, the constrained scope of activities performed by security contractors makes them far less likely to violate international law.

Ethics

Beyond issues of legality are those of legitimacy—not just if security contractors are permissible under international law but also whether they should be hired at all. Three aspects are salient. The first is related to legal matters and considers whether existing laws make contractors responsible. Traditionally one concern about mercenaries was that

they were unreliable—would they carry out their duties under fire or if offered more money by another party? A similar worry surrounds PMSCs, though the primary fear is based less on anxiety that contracts won't be honored and more on issues of accountability. Although there are laws that have the potential to adjudicate PMSCs and their personnel when violations of human rights and international humanitarian law occur, there has been instances when operating in a hodge-podge of political jurisdictions have prevented justice from being served. For instance, armed contractors hired to support peace operations in Bosnia have been implicated in sex trafficking.⁹⁹ Rather than potentially facing legal penalties, the contractors were fired from their positions and removed from the country—by evacuating contractors out of the jurisdiction where crimes were committed they eluded justice.

A second ethical concern is transparency. It is difficult to appraise the value militarily and morally as well as economically (see below) of armed contractors without substantial documentation of the sector, companies, and their personnel. The private military and security industry in many ways thrives on its opaque and discrete nature; many who employ armed contractors appreciate that, if not specifically hire them because, they operate below-the-radar and do not disclose information about their clients or activities. The lack of knowledge is problematic inasmuch as it allows corrupt actors to operate with impunity and undermines the ability of those who would hire armed

⁹⁹ Human Rights Watch, “Hope Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution,” *Human Rights Watch Report* 14, no. 9 (November 2002), 62.

contractors to accurately assess their military and security capabilities, let alone their political and economic viability.

The third ethical bone of contention regards the nature of sacrifice and the politics that surround it. As mentioned above in the list of motives for using armed contractors, their injuries and deaths do not receive the same level of attention as those of soldiers—the so-called “body bag” effect. Thus, hiring PMSCs enables using force without the public directly experiencing the human costs. Indeed, there is often a sentiment among society that the wounds and fatalities suffered by armed contractors are simply a part of the business they have chosen. Without the sensitivity to the price of violence being stimulated, society may be more willing to support, or at least tolerate, the use of force. Historically, the state made a bargain of sorts with their societies—the state provide protection for its population and granted them rights, society funded the state through taxes and furnished it with labor to serve in its military (in some cases this has been presented as a national duty, in others there has been a formal draft instituted). This created an institutionalized check on the state; when societies did not support the state’s use of force, it did not give resources and the weakened state would need to change its policies. Thus, the monopoly on violence granted to the state is designed to limit the use of force to the formal military of the state and, in doing so, restrain the use of force. However, by employing for-profit armed actors the state has deviated from this deal; the state may not require the support of its domestic society in order to pursue its own agenda and may not feel obligated to uphold promises of human rights. In short, the lack of widespread and shared sacrifice in the use of force as the result of contracting it out may inhibit opposition and also erode society’s engagement in governance.

Economics

PMSCs are traditionally touted as a market-based solution thereby implying that from an economic point of view they are the best means for using force. However, questions of efficiency and political economy remain. To begin with, the cost effectiveness argument has not been substantiated. While it is true that hiring armed contractors is less costly than maintaining standing forces—the expense of training, equipping, feeding, and sheltering are considerable—this presumes that the PMSCs will permanently solve problems of force. The dearth of data on the durability of military and security outcomes that compare expenditures on national or international armed forces with those of PMSCs leaves this an open question, and far from the certitude that is often expressed in regards questions of cost effectiveness.

A related second matter is that of political economy, i.e., power relations of production. In a world with armed contractors violence is a commodity. In traditional formulations of market mechanics, producers have an interest in creating demand for their products. In this case PMSCs are producers of force that sell their services to states, businesses, IGOs, and NGOs. Armed contractors, therefore, benefit from a persistent sense of insecurity. To that end, PMSCs that provoke greater threats, rather than affording greater protection or offensive capability, are good for increasing their business and bottom-line. Therefore, market economics of force may nurture a system verging on extortion and predation (what some might term “blood money”); PMSCs provide immediate security for a price but to maintain the revenue stream they perpetuate a sense of danger that leads to the next contract.

International Norms, Corporate Agendas, and Key Issues:

A Background on Security Contractors for Humanitarian Perspectives

As the need for protection persists or heightens for humanitarian agencies, particularly in the wake of a lack of consent and states unwilling or unable to provide it, other means of security will have to be found. This chapter has shown that although riddled with dilemmas, from the point of view of protective capacities, employing security contractors is an option for humanitarian agencies that refuse to allow insecurity to dictate their operations and the possibility of delivering aid to those who need it. In short, security contractors have developed the force capabilities required to provide protection, are inclined to undertake these missions, and are legally permitted to do so under appropriate conditions.

In the next chapter contemporary configurations of relief work and PMSCs are probed to showcase the challenges of insecure environments and the juxtaposition of agencies and armed contractors since 9/11. In Chapter 5 the issue of humanitarian agency-security contractor interactions is more closely analyzed from the perspective of humanitarian organizations' views of security to determine their viability, not just from the vantage of coercive capabilities and legal status, but political and operational sensitivities.

Chapter 4:

Contemporary Cases of Humanitarian Space and Hired Guns

- Afghanistan
- Iraq
- Other Current Humanitarian Crises
- Contemporary Trends in Humanitarian Action

Periodization is invariably difficult in international politics because there are rarely clearly seen and universally recognized markers in history, particularly at the time they are unfolding. However, September 2001 has been hailed as a landmark in international politics and also is a milestone in the development of the international humanitarian system for a number of reasons: Since then agencies grapple with patently different political, military, economic, and humanitarian landscapes in many theaters of operation even by the standards of the “new wars” and “new humanitarianisms” of the 1990s.

Politically, the September 11 terrorist attacks on the United States raised to the surface deep-seated tensions between the West and the Islamic world, and resulted in the United States (US) launching the so-called “Global War on Terrorism” (GWOT). The politics of this conflict further accentuated the divide between the West and other societies thereby underlining the tensions associated with Western aid agencies working in places that interpret the presence of foreigners as veiled imperialism. Militarily, with considerable numbers of civilian casualties, the character of the battlefield is quite similar

to that seen in the 1990s. However, after 9/11 the armed forces more greatly participate in humanitarian action and humanitarians are more intimately involved in military operations than in the decade following the Cold War. Economically, the new topography is both in the field of operations and within the sector. On the one hand, there are the usual concerns that aid flows sustain the war economies of belligerents but more so there is intensification in attracting market-based armed actors (including private military and security contractors). On the other hand, there are aid economies that necessitate agencies maintain a presence in crises and a more cost effective presence at that. In regards to humanitarian terrain, the conflicts of the contemporary period render an ever-growing number of people in need as well as a correlate demand for humanitarian services.

Moreover, as discussed near the end of Chapter 2, the release of the International Commission on Intervention and State Sovereignty's report, the *Responsibility to Protect*, demonstrated a more consciously maximalized, collaborative, and militarized brand of humanitarianism to address unconventional wars that do not respect humanitarian space, although it did not anticipate the dynamics of the Global War on Terrorism.

With respect to the focus of this study, the post-9/11 period showcases humanitarian agencies and armed contractors operating in the same environment, and in some instances directly interacting. In order to apprehend how the configuration of these actors bespeaks to changes in the international humanitarian system this chapter analyzes prominent contemporary cases of humanitarian space and hired guns. It is not a comprehensive investigation of all aspects of conflicts but rather a survey that concentrates on humanitarian action in Afghanistan, Iraq, and other significant

representative instances. The chapter concludes with a distillation of the key trends of the past ten years.

Afghanistan

Long before the terrorist attacks of September 11, 2001 and the subsequent war, Afghanistan suffered from poor humanitarian conditions. This situation is derived from persistent outbreaks of armed conflict as well as low levels of economic and social development. Furthermore, the history of Afghanistan is riddled with attempts of foreign powers to conquer the country and thus its populace is sensitive to any sort of outside interference, including the presence of humanitarian agencies.

Background: The 19th Century “Great Game” to the Civil War of the 1980s

In the 19th century Britain and Russia competed to establish influence in southwest Asia as part of an imperial “Great Game” resulting in the First Anglo-Afghan War (1839-1842), the Second Anglo-Afghan War (1878-1880), and the Third Anglo-Afghan War (1919). Although by the early twentieth century imperialist forces left and the state of Afghanistan was consolidated under a monarchy, the country again became a pawn, but this time in the Cold War confrontation between the United States and the Soviet Union. In July 1973 a former Prime Minister ousted the monarchy, but he was assassinated in April 1978. This led to a new faction of communist-oriented military officers taking over, which brought the People’s Democratic Party of Afghanistan (PDPA) to power. However, the PDPA was immediately threatened by other elements

within Afghanistan that did not want a communist government. As a result, in late December 1979, the PDPA invited the USSR to send troops to secure the rule of the PDPA. The Soviets would end up occupying Afghanistan from 1979 to 1988 and fighting an Islamic-based insurgency (the *mujahadeen*). The war between the USSR and mujahadeen forces produced sizable displacement and within a relatively short period of time at least five million of Afghans were either internally displaced or in refugee camps in Pakistan and Iran.¹ The camps in Pakistan became bases for the mujahadeen, giving them an opportunity to receive medical attention, recruit new militants, and attract assistance from the Pakistani government as well as the US, who was looking to counter Soviet domination.² The nine-year war bled the USSR dry, and on February 15, 1989, the last Soviet troops left Afghanistan. The total casualties for the armed conflict from 1979-1989 were about 26,000 Soviet troops killed and about 1.3 million Afghans killed. Additionally, there were still millions of Afghans displaced.

While there was some rejoicing at the defeat of the Soviet Union, Afghanistan would remain war-torn for much of the 1990s. The power vacuum left by the retreat of the USSR created political space for local, often ethnically-based, warlords and their

¹ Human Rights Watch, "Backgrounder on Afghanistan: History of the War," October 2001.

² Frederic Grare, "The Geopolitics of Afghan Refugees in Pakistan," in *Refugee Manipulation: War, Politics, and the Abuse of Suffering*, eds. Stephen John Stedman and Fred Tanner, 57-94 (Washington, D.C.: Brookings, 2003), 57-94; Fiona Terry, *Condemned to Repeat? The Paradox of Humanitarian Action* (Ithaca, NY: Cornell University Press, 2002), 55-82, especially 71.

militias, many who had a hand in pushing out the Soviets. The result was a patchwork of authorities and armed groups struggling for political control and for tax revenues. As a Frustration at the chaos and violence of the warlords, as well as distaste at the growth of the drug trade in the country, led many to turn to religious authorities to forge a new governing regime. In 1994 the Taliban (a “talib” is a wandering cleric) emerged as a movement of students and religious figures seeking to bring order to Afghanistan by cracking down on warlords and drug traffickers and instituting an Islamic government. The Taliban grew in popularity, size, and power very quickly and by 1996 they had captured Kabul, the capital.

During the civil war of the mid to late 1990s humanitarian agencies worked to aid and resettle the displaced from the previous conflict and also assist new victims. From the point of view of the aid community there were two problems in Afghanistan: First, too much aid was ending up in the hands of belligerents and fueling the conflict.³ Second, Afghans were becoming resentful of what were seen as Western influences spread by aid agencies. To address these concerns, in 1998 the UN implemented the “Strategic Framework for Afghanistan,” (SFA) which brought together all aid programs so as to coordinate a “do no harm” approach and also promote the idea of local solutions.⁴ While

³ Ibid.

⁴ Mark Duffield, Patricia Gossman, and Nicholas Leader, *Review of the Strategic Framework for Afghanistan* (Afghanistan Research and Evaluation Unit, 2000), http://www.aims.org.af/services/advisory/info_mngmt_strategy/strategic_framework.pdf; Antonio Donini, “Principles, Politics, and Pragmatism in the International Response to the Afghan Crisis,” in *Nation-building Unraveled? Aid, Peace and Justice in*

this made international efforts more coherent, it also aggregated them, which became problematic once the US fired cruise missiles into eastern Afghanistan in an attempt to kill Osama Bin Laden following the August 7, 1998 terrorist attacks on US embassies in Africa. Nevertheless, with attention focused on other disasters—recall that in the late 1990s high profile crises such as Kosovo dominated the humanitarian spotlight—Afghanistan was mostly neglected. Indeed, in 2001 the UN announced that Afghans “were becoming a forgotten and abandoned people as humanitarian crises in other parts of the world diverted international attention and humanitarian assistance.”⁵ In fact, donors only provided 40-50% of funds requested by aid agencies.⁶ The combined influences of a drought that began in 1999, the hunger that followed, and the ongoing civil war, nearly 4 million were starving and just over 4 million were displaced.⁷ Consequently, by the year 2001, Afghanistan remained a humanitarian disaster: the UN Development Programme had rated it among the worst places in the world to live. The

Afghanistan, eds. Antonio Donini, Norah Niland, and Karin Wermester (Bloomfield, CT: Kumarian Press, 2004), 126-130.

⁵ United Nations, *Human Rights Questions: Human Rights Situations and Reports of Special Rapporteurs and Representatives, Situation of Human Rights in Afghanistan*, UN document A/56/409/Add.1, November 5, 2001.

⁶ Nicholas Stockton, “Afghanistan, War, Aid, and International Order,” in *Nation-Building Unraveled?*, eds. Donini, Niland, and Wermester, 22-23.

⁷ Agence France Presse, “World Food Programme Steps Up Supplies to Afghan Refugees,” June 28, 2001; UNHCR, “Afghanistan,” *UNHCR Mid-Year Progress Report 2001* no. 143 (September 1, 2001).

infant mortality rate was 165 out 1,000, the under-five mortality rate was 257 out of 1,000, 70% were undernourished, and life expectancy was a paltry 42.5 years.⁸

Contemporary Situation: from defeat of the Taliban to their Resurgence

Given that Al Qaeda had been hosted by the Taliban and used Afghanistan as a base of operations, in October 2001, shortly after the 9/11 attacks, the US invaded the country. In a matter of a couple of months the Taliban was ousted from Kandahar, the center of their organization and the last urban area to fall. But this phase was relatively brief compared to the armed conflict that continues to this day. For the duration of this episode, October to December 2001, the US suffered few casualties, with only 12 soldiers killed. However, the Afghans bore a significantly higher price; at minimum 1,000 to 1,300 were killed with another 3,200 dying as a result of disease and hunger triggered by the war.⁹ Displacement also grew by another 1.2 million. Furthermore, on top of the 5 million who already required international assistance to survive, another 2.5 million

⁸ UNDP, *Human Development Report 2001* (New York: Oxford University Press, 2001), 238.

⁹ Carl Conetta, "Operation Enduring Freedom: Why a Higher Rate of Civilian Bombing Casualties," *Project for Defense Alternatives Briefing Report 13*, January 24, 2002; Carl Conetta, "Strange Victory: A critical appraisal of Operation Enduring Freedom and the Afghanistan War," *Project for Defense Alternatives Research Monograph 6*, January 30, 2002.

would also need aid.¹⁰ By early 2002 the UN tabulated that it would have to address the humanitarian needs of about 9 million in all.¹¹

Since the initial phase of ousting the Taliban in late 2001 Afghanistan has drifted back into a cycle of Islamic insurgency against a foreign-backed government and humanitarian conditions have stagnated. In December 2001, the UN organized the Bonn conference to promote international support for the recently installed Afghan government. To promote security, the UN Security Council created the International Security Assistance Force (ISAF) to protect for the new Afghan government and UN staff in Kabul.¹² To continue and expand on this, the ISAF mandate has been renewed repeatedly and broadened to include other governance and rehabilitation tasks, including the protection of humanitarian workers, as well as cover the entire country.¹³ A second UN response to the conflict appeared in March 2002 when a civilian component to

¹⁰ Human Rights Watch, “Backgrounder: No Safe Refuge: The Impact of the September 11 Attacks on Refugees, Asylum Seekers, and Migrants in the Afghanistan Region and World Wide,” October 18, 2001.

¹¹ Donini, “Principles, Politics, and Pragmatism in the International Response to the Afghan Crisis,” 128.

¹² Initially UN Security Council Resolution 1386 (December 20, 2001), but has been renewed in UN Security Council Resolutions 1413 (May 23, 2002), 1444 (November 27, 2002), 1510 (October 13, 2003), 1563 (September 17, 2004), 1623 (September 13, 2005), 1707 (September 12, 2006), 1776 (September 19, 2007), 1833 (September 22, 2008), 1890 (October 8, 2009), and 1917 (March 22, 2010).

¹³ ISAF website, “History,” <http://www.isaf.nato.int/history.html>.

advance the consolidation of peace was deployed, the UN Assistance Mission in Afghanistan (UNAMA). This operation assists with drug eradication, human right promotion, and coordinating international aid (including humanitarian assistance).¹⁴ However, UNAMA and aid agencies often must operate in areas where the war continues and, thus, part of the ISAF deploys as “provincial reconstruction teams” (PRTs), hybrid units of armed actors and civilian personnel engaged in reconstruction and provide protection for aid agencies.¹⁵

Security overall has been greatly lacking. The number of international forces on the ground was initially quite limited due to a belief that a smaller footprint could accomplish the goal of defeating the Taliban militarily and at the same time prove less politically provocative. But the war has grown in intensity since 2006 as the Taliban began to reconstitute their forces. Furthermore, there are also a substantial number of private military and security contractors on the ground. A 2011 Congressional Research Service report details how the levels of armed contractors working for the US has grown in the last few years.¹⁶ As a frame of reference the report compares this rise to the

¹⁴ Initially under UN Security Council Resolution 1401 (March 28, 2002), and most recently UN Security Council Resolution 1974 (March 22, 2011).

¹⁵ Robert J. Bebbler, “The Role of Provincial Reconstruction Teams (PRTs) in Counterinsurgency Operations: Khost Province, Afghanistan,” *Small Wars Journal* (November 2008).

¹⁶ Moshe Schwartz, *The Department of Defense’s Use of Private Security Contractors in Afghanistan and Iraq: Background, Analysis, and Options for Congress*, Congressional Research Service (May 13, 2011), 3 and 9.

numbers of US troops deployed during the same period. In September 2007, there were about 35,000 troops and almost 4,000 security contractors; in September 2008, 70,000 troops and just over 4,000 security contractors; September 2009, over 100,000 troops and nearly 12,000 security contractors; September 2010, troop levels briefly declined to around 80,000 and security contractors rose to 18,000. In 2011, US troop levels (including those fielded as part of NATO's mission) near 140,000 and security contractors working for the US are close to 19,000 (the highest number since tracking began). There are also several hundred security contractors hired to guard United Nations facilities.¹⁷ However, the Congress Research Service report also states that if all licensed security contractors are included, they number over 30,000 in 52 companies. Furthermore, if unlicensed ones are factored in, the report approximates there are a total of 70,000 security contractors in Afghanistan.

Militarized forces that are not subordinate to the political authority of the Afghan state have been a major problem in promoting stability. A 2007 survey of local perspectives explains:

Overall, PSCs are not seen in a positive light in Afghanistan. While PSCs may provide security for their clients, they are considered not to enhance the security of the general population. Much rather those interviewed suggested that the PSC presence leads to a sense of distrust or even insecurity. Several reasons were

¹⁷ Colum Lynch, "U.N. embraces private military contractors," *Foreign Policy*, January 17, 2010,

http://turtlebay.foreignpolicy.com/posts/2010/01/17/un_embraces_private_military_contractors.

named for this, including the legitimization and empowerment of local power-holders and militias when PSCs hire them or otherwise collaborate with them; the heavy armament of PSCs; the impolite and ‘bad’ behaviour towards the local population; the reported links of PSCs to criminal activities; and the concern that PSCs divert scarce resources from Afghanistan’s reconstruction, given the (high) costs of their services.¹⁸

This worry pertains to militias, but also to PMSCs, particularly following the crash of a vehicle with armed contractors from DynCorp that killed four Afghans in July 2010. Due to popular perceptions President Karzai has vowed to ban all PMSCs from operating in Afghanistan, though he has continued to push back the deadline for when the ban will go into effect.

With respect to humanitarian action in Afghanistan, the war has greatly constrained and curtailed efforts. Upon initiation of the war humanitarian space immediately shrank as aid agencies were, in effect, expelled as the Taliban proclaimed that they could not guarantee the safety of humanitarian workers. Attacks on aid agencies underlined this message, such as the November 2003 bombing at UN offices in Kandahar and an attack on a UNAMA facility in Kabul that killed a member of UNHCR’s staff. Shortly thereafter the UN, the ICRC, and several other NGOs withdrew.¹⁹ Several

¹⁸ Ulrike Joras and Adrian Schuster, eds., *Private Security Companies and Local Populations: An Exploratory Study of Afghanistan and Angola* (Bern: Swisspeace, November 2007), 6.

¹⁹ David Rieff, *A Bed for the Night: Humanitarianism in Crisis* (New York: Simon & Schuster, 2002), 250.

agencies would periodically return but would again find operations too problematic because of agencies being associated with the US. For instance, MSF re-entered Afghanistan but exited again in June 2004 after five aid workers were killed. Although MSF does not work with American soldiers, statements by the US military suggested that all agencies were partners of the US in stabilizing Afghanistan. MSF contends that the impression this created greatly undermined their ability to work in Afghanistan: “the Americans are pretending that NGO’s are with them fighting the war against terror, and they are not. That put them in danger. We want to be relevant medically and irrelevant militarily and politically.”²⁰

In the middle of the decade the war seemed to start to winding down and some agencies once again resumed operations in Afghanistan. But in the last few years the Taliban have regrouped and attacks on aid workers have restarted. Consequently, in August 2007, the government demanded that all aid convoys leaving from Kabul have armed escorts.²¹ However, this had a limited effect and did not solve the problem as demonstrated by the August 13, 2008 ambush by the Taliban that killed 4 workers from the International Rescue Committee, which lead to the IRC suspending its operations there. In fact shortly thereafter, the Agency Coordinating Body for Afghan Relief (ACBAR) issued a statement that all of its members (over 100 agencies) were considering withdrawing in the face of such sustained violence against aid workers. Yet a 2009 assessment maintained that security problems remained: “Aid agency staff are

²⁰ Cited in John S. Burnett, “In the Line of Fire,” *New York Times*, August 4, 2004.

²¹ IRIN, “Afghanistan NGOs question new government directive on armed escorts,” August 2, 2007.

being increasingly targeted by the Taliban and other insurgents for their perceived instrumentalization by, and support of, alien political agendas.”²²

In August 2010, ten medical personnel from the International Assistance Mission (Christian aid group operating in Afghanistan since 1966) were killed in Badakhshan province, which up until then was the largest massacre of aid workers in Afghanistan. Later that same month in the same area, three Oxfam workers killed and two others were injured by roadside bomb. In short, data from the last three-plus years show a sharp escalation in attacks: in 2008, thirty attacks; in 2009, twenty-six attacks; in 2010, fifty-nine attacks; and through April 2011, six attacks thus far.²³ But, in April 2011, the largest attack on aid workers ever in Afghanistan occurred in Mazar-i-Sharif and led to the deaths of twelve UNAMA.²⁴ And, on October 31, 2011, three UNHCR guards were killed in Kandahar province. In general, some research contends that intentional violence against aid workers has plateaued, although danger persists—In the first quarter of 2011 attacks against NGOs by the armed opposition have remained at a constant rate, if criminal acts are included, the number of incidents has increased by thirty-eight percent.²⁵

²² Antonio Donini, *Afghanistan: Humanitarianism under Threat*, Feinstein International Center Briefing Paper—Humanitarian Agenda 2015 (March 2009), 2.

²³ Humanitarian Outcomes, *Aid Worker Security Report 2011* (August 2011), 5; Aid Worker Security Database (accessed August 23, 2011).

²⁴ BBC, “UN staff killed during protest in northern Afghanistan,” April 1, 2011.

²⁵ Afghanistan NGO Safety Office, *ANSO Quarterly Data Report, January 1-March 31, 2011* (2011), 3 and 8, <http://www.humansecuritygateway.com/documents/ANSO-Q1-Report-2011.pdf>

Nevertheless, even this somewhat more optimistic analysis finds that NGOs continue to be impacted by “ambient violence.”

In response to the acute security situation, most humanitarian agencies have responded by withdrawing and only returning when consent has been restored. MSF, which had withdrawn most recently in 2004, returned in 2009 after negotiating with the Taliban and the ICRC liaise with the Taliban regarding the movement of aid convoys.²⁶ In November 2009 the UN basically cut its presence in half, though since then more staff has returned. However, some agencies have adopted a “go local” approach, but this has simply changed who is attacked and not lessened attacks.²⁷ Lastly, a few agencies have opted to organize force to secure humanitarian space. The UNAMA Civil-Military Working Group in conjunction with the Agency Coordinating Body for Afghan Relief (ACBAR), UNAMA, ISAF, forces serving in Operation Enduring Freedom, and government of Afghanistan have crafted non-binding guidelines to govern such activity—they call for independent, impartial and neutral operations, state that armed protection is only permissible in exceptional circumstances and when agencies make the decision, and endorse the principles found in the UN’s “Use of Military or Armed Escorts

²⁶ April Rabkin, “Foreign Policy: Cooperating with the Taliban,” *NPR.org*, August 18, 2010; IRIN, “Analysis: Humanitarian Space Easing in Afghanistan?” July 8, 2010.

²⁷ Antonio Donini, et. al., *Mapping the Security Environment: Understanding Perceptions of Local Communities, Peace Support Operations and Assistance Agencies* (Feinstein International Famine Center, June 2005), 60.

for Humanitarian Convoys.”²⁸ In select instances some agencies have hired security contractors to protect operations, most notably UNHCR.²⁹ In the end fewer humanitarian agencies operating and then only in the context of limited humanitarian space has meant there has been little improvement in conditions. A March 2010 report by the UN notes that one-third of the population live in absolute poverty, another one-third live just above the poverty line; the country has the second highest maternal mortality rates and the third worst child mortality rates; twenty-three percent lack access to safe drinking water; and, only twenty-four percent over age fifteen are literate.³⁰

Trends in Humanitarian Action in Afghanistan since October 2001

Enormous obstacles to accessing victims remain in Afghanistan, not simply because of armed belligerents but also as a result of the beliefs and behaviors of humanitarian agencies. As Antonio Donini stated in 2009, “There is no humanitarian consensus in Afghanistan and very little humanitarian space. Both have been trampled by political expediency and by the disregard by all parties to the conflict for the plight of civilians.”³¹ And, following up in 2010 with the observation that, “[H]umanitarians have

²⁸ UNAMA Civil-Military Working Group, *Guidelines for the Interaction and Coordination of Humanitarian Actors and Military Actors* (May 2008).

²⁹ Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca, NY: Cornell University Press, 2003), 82.

³⁰ United Nations, Office of the High Commissioner for Human Rights, *Human Rights Dimensions of Poverty in Afghanistan* (March 2010).

³¹ Donini, *Afghanistan: Humanitarianism under Threat*, 2.

lost a lot of ground because of political agendas that disregard the humanitarian imperative; humanitarians are under increasing threats given perceived political alignments.”³² Underlying these hurdles is the character of humanitarian action evidenced in Afghanistan and that registers the key trends in the sector.

The maximalization and collaboration agenda was first raised in Afghanistan with the implementation of the Strategic Framework for Afghanistan in 1998. Using terms such as “coherence” and “integration,” the major effect was to bring humanitarian efforts under the umbrella of the larger international initiative to rebuild Afghanistan.³³ While humanitarian agencies shared some of the same goals, such as promoting stability, their independence was subverted by the endeavor. Since the US intervention in 2001 the maximalization, collaboration and militarization of humanitarian work has progressed considerably to the point where humanitarian agencies are inextricably linked to military forces. The intent behind this was signaled early on by then US Secretary of State Colin Powell who referred to non-governmental organization as “force multipliers” and part the US’s “combat team.”³⁴

³² Antonio Donini, *Afghanistan: Humanitarianism Unraveled?* (Feinstein International Briefing Paper, May 2010), 2.

³³ Antonio Donini, “An Elusive Quest: Integration in the Response to the Afghan Crisis,” *Ethics & International Affairs* 18, no. 2 (Fall 2004): 21.

³⁴ Colin L. Powell, “Remarks to the National Foreign Policy Conference for Leaders of Non-governmental Organizations,” (U.S. Department of State, Washington, D.C., October 26, 2001).

But this project began in earnest with the deployment of the PRTs, which essentially blur the line between aid workers and actors working on behalf of the US government.³⁵ Agencies are wary of PRTs, as one observer has commented, “Humanitarians hardly share a positive view of PRTs in Afghanistan... Perhaps what alarms humanitarian the most is the banding together of military units, including those tasked with routing out terrorist elements, and civilian officials from USAID.”³⁶ A 2004 report by the Save the Children goes even further in condemning the security provided by PRTs, “When PRTs engage in activities other than in the security sectors, and especially when NGHAs [non-governmental humanitarian agencies] interact or work closely with the PRTs, the very presence of a PRT can instill or reinforce a perception aid workers are ‘agents’ of the military.”³⁷ MSF has also reached a similar conclusion and points out that this arrangement results in attacks on humanitarian personnel:

The once clear distinction between armies, reconstruction and development activities and humanitarian aid has become confused to the point where health care has become part of the battlefield: international coalition forces have co-opted assistance for ‘hearts and minds’ initiatives, occupied hospitals, and arrested patients in their beds while armed opposition groups have targeted health

³⁵ Abby Stoddard, *Humanitarian Alert: NGO Information and Its Impact on US Foreign Policy* (Bloomfield, CT: Kumarian Press, 2006), 21.

³⁶ Eric James, “Two Steps Back: Relearning the Humanitarian-Military Lessons Learned in Afghanistan and Iraq,” *Journal of Humanitarian Assistance* (October 2003).

³⁷ Gerard McHugh and Lola Gostelow, *Provincial Reconstruction Teams and Humanitarian-Military Relations in Afghanistan* (London: Save the Children, 2004), 34.

care workers and health structures because of the presence of international forces providing relief.³⁸

As such, some agencies refuse to work with armed forces. For instance, Caritas rebuffed operating in conjunction with the reconstruction efforts of a German army unit for fear of undermining neutrality.

Although many agencies have resisted the conflation of force and relief, Afghanistan has become a nexus of using violence for humanitarian ends. This is true on two levels:³⁹ First, since the US response to Afghanistan, the rhetoric of “humanitarian war” among the leaders of Western governments to justify taking lives in order to save lives has become commonplace. Second, in Afghanistan humanitarians have also come to celebrate a form of maximalized-collaborative-militarized-securitized humanitarians that has agencies exchange their autonomy for access—i.e., the security afforded by working with international forces makes their efforts more effective.

Humanitarian action in Afghanistan also displays that agency actions are influenced by economic calculations (marketization) and the intrusion of for-profit actors (commercialization). While this sentiment is grounded on cutting costs and yielding greater efficiency it has often appeared as either a crude pursuit of profits or more mundanely as giving donors a greater say in programming. On the first account, some Afghans have put forward the critique that resource allocations of aid agencies profit

³⁸ Doctors Without Borders, “Politics of Aid Leaves many Afghans Cut-off from Humanitarian Assistance,” December 21, 2009.

³⁹ Rieff, *Bed for the Night*, 258 and 264.

NGOs more than serve the interests of victims. For example, Bashar Dost, a planning minister in the Karzai government stated,

I have yet to see an NGO that has spent 80 per cent of its money for the benefit of the Afghans and 20 percent for their own benefit. International NGOs get big amounts of money from their own nations just by showing them sensitive pictures and videos of Afghan people, and there are even some individuals who give all their salaries to NGOs to spend it on charity here, but [NGOs] spend all the money on themselves.⁴⁰

While Dost's comment is mostly a supposition some data suggests that his general argument may hold some truth. In fact, a 2008 Oxfam study noted that around 40% of aid to Afghanistan went to Western consultants and contractors.⁴¹

Moreover, the marketization influence can be seen in security strategies. With the upsurge in attacks on aid workers, donors have pushed for arrangements that integrate humanitarian agencies into security efforts. A 2005 study by the Feinstein International Famine Center proclaims,

[T]he security perceptions and agendas of outside actors are generally more controlling of activities than the perceptions, needs, and agendas of local communities. The data suggests that to a significant degree, security has become a donor-driven concept... The most glaring instance of securitization of aid comes from Afghanistan, where innovative but contested examples of the merging of

⁴⁰ Quote from interview taken from Abdul Baseer Saeed, "Minister Scorns NGOs' Work," (Institute for War and Peace Reporting, London, November 11, 2004).

⁴¹ Oxfam, *Afghanistan: Development and Humanitarian Priorities* (January 2008), 4.

military and assistance processes are taking place through the Coalition and ISAF PRTs.⁴²

In other words, funding (or marketization) is also propelling working with military forces (the more maximalized and militarized form of humanitarian action). Furthermore, pressures to reduce expenses and thus appeal to cost conscious donors can also help explain employing security contractors, as UNHCR has (commercialization).

Lastly, the mix of international actors on the ground as well as trends in the international humanitarian system has shaped Afghans' perceptions of humanitarian agencies. Two journalists observing this state of affairs comment on the plight of agencies:

They cannot reach parts of the country because of security threats. They are being blamed by many Afghans for the slow pace of reconstruction. They are accused of squandering funds on expensive cars and homes, and high salaries. They are being confused with soldiers and private security contractors who carry weapons but wear civilian clothes. And they are being held accountable for the actions, or lack thereof, of numerous fly-by-night aid organizations seeking to cash in on Afghanistan's rebuilding.⁴³

These views underlie the central problem; agencies in Afghanistan have sought protection to achieve access, but, in doing so, that has altered their security arrangements

⁴² Donini, et. al., *Mapping the Security Environment*, 55.

⁴³ Carlotta Gall and Amy Waldman, "Under Siege in Afghanistan, Aid Groups Say Their Effort Is Being Criticized Unfairly," *New York Times*, December 19, 2004.

and this compounds threats and contributes to a negative judgment of aid work.⁴⁴ The use of security contractors by agencies in Afghanistan has not been widespread, but the belief that they have is rampant among local populations.

Iraq

Although having experienced colonialism and occupation by a variety of imperial powers (Ottoman and British), by the late 20th century Iraq was a moderately wealthy and stable country. This was primarily as a result of oil exports, but also due to possessing both ample agricultural resources and considerable industrial development. In terms of the population, despite having been under some form of monarchy or military dictatorship since its inception, it fared reasonably well in regards to socio-economic measures. However, as discussed in Chapter 2, Iraq's invasion of Kuwait in August 1990 and the campaign to liberate Kuwait that began in late January 1991, aka Gulf War I, had massive repercussions for Iraqis: US attacks on the Iraqi military coupled with secessionist movements in the north (Kurds) and the south (Shiites) triggered a large humanitarian crisis. Even after the war formally ended in 1991 and repression tapered off within Iraq, humanitarian challenges have lingered for going on twenty years.

Background: Sanctions and Oil-for-Food

In 1990, before Gulf War I, Iraq ranked ninety-first on the UN's Human Development Index, placing it roughly in the middle tier of all countries.⁴⁵ However, in 2000, a decade

⁴⁴ Donini, et. al., *Mapping the Security Environment*, 19.

after the institution of the sanctions regime, Iraq had fallen to one hundred twenty-sixth on the Human Development Index.⁴⁶ Sanctions had curtailed Iraq's economy and in particular prevented the importation of food. In response to this situation the UN had organized the Oil-for-Food (OFF) Program to allow Iraq to pay for the importation of foodstuffs. The Saddam Hussein regime provided security for the delivery of humanitarian aid in the early 1990s and the environment was unthreatening to aid agencies.⁴⁷ By the end of the 1990s, nearly sixty percent of the population had come to rely on food aid through OFF.⁴⁸ Additionally, following Gulf War I and the uprising within the country, the Hussein regime reacted with a campaign of severe repression that displaced somewhere between 600,000 to 800,000 Kurds in the North, and 100,000 to 300,000 Shiites in the South.

While the US did not oust Hussein from power during Gulf War I, it remained concerned that Iraq would develop weapons of mass destruction (WMD). The sanctions

⁴⁵ UNDP, *Human Development Report 1990* (New York: Oxford University Press, 1990), 124.

⁴⁶ UNDP, *Human Development Report 2000* (New York: Oxford University Press, 2000), 155.

⁴⁷ Greg Hansen, "Taking Sides of Saving Lives: Existential Choices for the Humanitarian Enterprise in Iraq," *Humanitarian Agenda 2015: Iraq Case Study* (Feinstein International Center Briefing Paper, June 2007), 6.

⁴⁸ United Nations, *Humanitarian Appeal for Iraq, Revised Inter-agency Appeal 1 April-31 December 2003*, June 2003; David Cortright and George A. Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Boulder, CO: Lynne Rienner, 2000), 46.

regime put in place after the 1990-1991 armed conflict was intended to persuade or force Hussein to disarm and destroy his chemical weapons (which clearly Iraq had as the central government used them during its war with Iran from 1980 to 1988 as well as against Kurds in that same period) and to prevent acquisition of nuclear weapons. In addition to sanctions, the United Nations had also imposed inspections to monitor compliance. In 1998 Hussein announced that he would not allow inspectors to continue their work and in response the US and the UK bombed Iraqi military units to push Iraq to allow the resumption of inspections.

Contemporary Situation: From Gulf War II to Post-Saddam Insurgency

After 9/11 worry regarding WMD skyrocketed and the Bush administration focused intensely on the potential that Iraq could acquire them. In November 2002 the US argued that Iraq was in breach of previous Security Council resolutions obligating it to disarm and prove it through permitting inspections, and the Security Council agreed with this assessment.⁴⁹ In December, Iraq divulged its weapons programs but its documentation made no mention of chemical, biological or nuclear ones. This disclosure did not placate the Bush administration and on March 17, 2003, an ultimatum was issued to Saddam: step down from power in forty-eight hours or be attacked. On March 19, a war was launched by a “coalition of the willing,” albeit without the approval of the UN Security Council. Within a rather brief period of time, the Hussein regime was defeated, and on May 1, Bush declared, “mission accomplished.” From March 17 to May 1, 140 US soldiers were killed. The toll for Iraqis was much greater with around 13,000 killed

⁴⁹ UN Security Council Resolution 1441 (November 8, 2002).

and 260,000 displaced.⁵⁰ However, it should be noted that in this immediate phase of the war, a major humanitarian disaster was averted as no mass displacement (less than 1% of the population) had occurred and no famines or epidemics had broken out. Nonetheless, the humanitarian situation was tenuous.

Although the war between the US and Hussein regime ended quickly, the conflict morphed into a civil war involving Kurds, Sunnis, Shiites, foreign forces, and the newly created central government. Violence against US forces grew progressively more intense for several years as armed opposition from Sunnis, Shiites, and a newly fashioned terrorist group, Al Qaeda in Mesopotamia, grew. In 2006 the US embarked on a new strategy that encouraged Sunnis to participate in the post-Saddam Shiite-led government. The US worked with local Sunni political figures and militias—the so-called Awakening Movements—to dislodge Al Qaeda elements. The US also took steps to limit provocations by curtailing US military patrols and handing security responsibilities over to Iraqi forces. Hence, the US has started to withdraw its soldiers from Iraq. In December 2007 the US had 165,700 troops on the ground, but by March 2011 this was down to 45,600.

Both the number of US soldiers and private security contractors in Iraq are decreasing on the whole. Right after the invasion armed contractors protected oil pipelines and refineries, guarded political officials, and secured military bases, and currently continue to provide bodyguards and shield facilities, but the numbers have

⁵⁰ Carl Conetta, “The Wages of War: Iraqi Combatant and Noncombatant Fatalities in the 2003 Iraq Conflict,” *Project on Defense Alternatives Research Monograph 8*, October 20, 2003.

dwindled from their peak.⁵¹ This is mostly due to fewer working for the US Department of Defense as American troops exit Iraq, however, the amount of those working for the US Department of State for activities, such as guarding the embassy, are climbing. At present there are around 3,000 PSCs but the number will eventually reach around 5,500—the contracts have been awarded to Triple Canopy and Global Strategies Group. According to a 2011 Congressional Research Service report at the end of December 2010 the overall total private security footprint (not just those hired by the US) numbered over 30,000 personnel working for about 100 companies.⁵² In sum, the US was and still is wholly dependent on contractors to maintain a semblance of security and protect US interests as its soldiers depart.⁵³

PMSCs have never been well received in Iraq. Resentment is based on the violence rendered, profits earned, and lack of accountability—the US-installed Coalition Provisional Authority’s Order 17 (signed June 27, 2004 by its chief executive, L. Paul Bremer) granted immunity to contractors for any crimes committed, though since 2007 the Iraqi state ostensibly has a licensing mechanism to address this problem. The negative response to the presence of PMSCs was viscerally demonstrated by the killings and

⁵¹ For a full list of private military and security contractors in Iraq, see Steve Fainaru, *Big Boy Rules: America’s Mercenaries Fighting in Iraq* (New York: Da Capo Press, 2008).

⁵² Schwartz, *The Department of Defense’s Use of Private Security Contractors in Afghanistan and Iraq*, 3.

⁵³ David Isenberg, *Shadow Force: Private Security Contractors in Iraq* (Westport, CT: Praeger, 2009), 29-42.

public dismemberment of four Blackwater contractors in Fallujah in March 2004.⁵⁴ If its possible, since then Iraqi views of security contractors have worsened due to incidences leading to civilian casualties, such as the December 2006 shooting of a bodyguard of Vice President Adel Abdul-Mahdi by a drunker Blackwater employee and the September 2007 firefight instigated by Blackwater contractors that killed seventeen.

The civil war that has ensued since the defeat of Saddam's army has created tremendous humanitarian problems; substantial numbers killed and displaced, and at the same time limited humanitarian space for addressing these victims. Amnesty International reminded the US that according to *Geneva IV* occupying powers have obligations to maintain order and safety as well as provide food and medical supplies to populations under their control.⁵⁵ The US-led coalition furnished some assistance but also relied on funds leftover from the OFF and also pushed the Security Council to lift the sanctions so that new exports could also contribute. But the infusion of these resources could not prevent humanitarian conditions from worsening as from May to July 2003, the Iraqi state began to crumble—not simply that the Hussein regime had been unseated, but governmental institutions of Iraq itself markedly weakened—and social services were significantly eroded or collapsed.

Throughout the summer of 2003 looting and insecurity predominated and the US-led invading forces and the UN each took steps to support the delivery of humanitarian

⁵⁴ Robert Young Pelton, *Licensed to Kill: Hired Guns in the War on Terror* (New York: Crown, 2006), 118-142.

⁵⁵ Amnesty International, "Iraq: Looting, Lawlessness and Humanitarian Consequences," 2003.

assistance, including rebuilding governance in an effort to sustain social services. On July 13, the Coalition Provisional Authority was established to administer the country and prepare for a transition to a new government. The CPA's oversight of basic law and order was viewed as an essential first step in moving beyond war, occupation, and ongoing humanitarian crisis. In August the UN Assistance Mission for Iraq (UNAMI) was established to phase out OFF by November and coordinate relief work.⁵⁶ Despite these initiatives many agencies experienced attacks that motivated changes in their security tactics. For instance, the International Organization for Migration suspended operations in Mosul, UNICEF withdrew expatriate staff, and an ICRC staff member was killed near Hilla.⁵⁷

But these incidences were but a foreshadowing of the defining two moments of humanitarian action in Iraq. First, on August 19, United Nations Headquarters in Baghdad was bombed, killing twenty-two, including the special representative of the secretary-general, Sergio de Mello. This act of violence had not only immediate material impacts, such as the withdrawal of two-thirds of UN staff from Iraq, but also was laden with deep symbolic significance as de Mello was considered by many to be among the most dynamic people in the humanitarian sector as well as in the UN. An influential UN report on the bombing declared that such attacks "are signals the emergence of a new and

⁵⁶ UN Security Council Resolution 1500 (August 14, 2003).

⁵⁷ United Nations, Office for the Coordination of Humanitarian Affairs, Integrated Regional Information Network, "Chronology of Key Humanitarian Developments in Iraq in 2003," January 6, 2004.

more difficult era for the UN system.”⁵⁸ Second, on October 28, an ambulance was used as a truck bomb and detonated inside the compound of the International Committee of the Red Cross, killing eighteen. Given earlier violence, the Red Cross had already scaled back much of its expatriate staff and thus those killed were local personnel, but the attack was nonetheless damaging and intimidating. These two strikes were in many ways the international humanitarian system’s equivalent of 9/11—an overwhelming shock that altered conceptions of war and victimization; the notion that the values of humanitarianism protected aid workers was shattered by these attacks. Andrew Bearpark, Director general of the British Association of Private Security Companies, points out that in Iraq aid workers had become targets:

The ultimate illustration is Iraq, where aid agencies, even though purely helping the Iraqi people and without any other agenda whatsoever, became a specific target. During 2003/2004 you saw the tragic bombing of the UN, and a few weeks later you had the attack on the ICRC office and the kidnappings and murders of individual aid workers, with the tragic death of Margaret Hassan from CARE as one example. There was a total change in atmosphere—from being neutral do-gooders, the aid workers had suddenly become perceived as part of the war environment, and that’s where the need for security arose.⁵⁹

⁵⁸ United Nations, *Report of the Independent Panel on the Safety and Security of UN Personnel in Iraq* (October 20, 2003), 23.

⁵⁹ “Interview with Andrew Bearpark,” *International Review of the Red Cross* 88, Number 863 (September 2006), 450 .

To counter this problem the Security Council initially promoted legal remedies—immediately following the August 2003 onslaught, the Security Council deemed the attack a violation of international humanitarian law.⁶⁰ But after seeing no appreciable change in the behavior of belligerents in June 2004 the Security Council authorized more forceful measures that insisted UN agencies to rely on the US-assembled multinational force for security.⁶¹ Though some agencies returned to Iraq the threat level did not appreciably diminish, and once again organizations, such as Oxfam and MSF, withdrew. Other agencies have reacted to security threats by engaging in remote programming. However, moving operations out of the country and trying to manage aid deliveries from abroad has been detrimental. “One of the unanticipated effects of remote programming has been the inadvertent institutionalization, over time, of the geographic and psychological gaps between those in remote management roles and their counterparts on the ground inside Iraq.”⁶² The impacts of agency departures and scaled back have been massive as Iraqi victims had fewer places to turn for assistance. For instance, UNICEF

⁶⁰ UN Security Council Resolution 1502 (August 26, 2003). This has since been reiterated in UN Security Council Resolution 1770 (August 10, 2007).

⁶¹ UN Security Council Resolution 1546 (June 8, 2004).

⁶² Greg Hansen, *Iraq: More challenges ahead for a fractured humanitarian enterprise*, Feinstein International Center Briefing Paper—Humanitarian Agenda 2015 (December 2008), 11.

reported that from the March 2003 invasion to 2005 child malnutrition almost doubled from four percent to nearly eight percent.⁶³

The overall human toll of the war has been difficult to tabulate as some data look at those killed as a result of violence, other incorporate those who die from diseases and other causes that are related the distressed conditions caused by the war. For just about the first three years of war, from March 2003 to June 2006, approximately 53,000 have been killed directly, another 605,000 indirectly.⁶⁴ A more recent estimate that includes the more intense periods of violence from mid-2006 to end of 2007 and up until the present, places fatalities at between 102,000 and 112,000.⁶⁵ Furthermore, there has been copious displacement: “UNHCR estimates more than 4.5 million Iraqis have left their homes, many in dire need of humanitarian care. Of these more than 2.5 million Iraqis are displaced internally, while 2 million more Iraqis have fled to neighboring states, particularly Syria and Jordan.”⁶⁶ The scale of this displacement has led Antonio Guterres, the UN high commissioner for refugees, to designate the situation as “one of the largest forced population movements in the region since 1948.”⁶⁷ The environment for aid workers has also remained dangerous. A March 2008 survey documents the tally of

⁶³ United Nations, Office of the Iraq Programme Oil-for-Food, “Fact Sheet,” (November 4, 2003).

⁶⁴ Hansen, “Taking Sides of Saving Lives,” 11.

⁶⁵ Iraq Body Count, <http://www.iraqbodycount.org/>.

⁶⁶ UNHCR, *The Iraq Situation*, March 2008.

⁶⁷ Antonio Guterres, “Foreword,” *Foreign Migration Review*, Special issue—Iraq’s displacement crisis: the search for solutions (June 2007): 4.

insecurity: “94 aid workers have been killed, 248 injured, 24 arrested or detained and 89 kidnapped or abducted since 2003.”⁶⁸ In short, humanitarian space remains under siege in Iraq.

Trends in Humanitarian Action in Iraq since March 2003

Humanitarian action in Iraq exhibits broader sector-wide trends. Some humanitarians believe that a Dunantist ethic of neutral response has endured in the face of this extremely politicized context, but the pressure to deviate from this norm have become intense.⁶⁹ Similar to the statement made by Colin Powell at the start of US intervention in Afghanistan in October 2001, Andrew Natsios, the administrator of USAID and a former senior NGO official, torpedoed any claims humanitarian agencies might make to independence and neutrality by proclaiming that NGOs in Iraq under US contracts are “an arm of the US government.”⁷⁰ The January 2003 establishment of a center in Kuwait to coordinate the operations of the US and several humanitarian

⁶⁸ Humanitarian Policy Group, *Humanitarian action in Iraq: putting the pieces together*, HPG Brief 30 (March 2008), 2.

⁶⁹ Greg Hansen contends that a neutral strain humanitarianism continues in Iraq regardless of attempts to coopt or otherwise manipulate it, see Hansen, “Taking Sides of Saving Lives: Existential Choices for the Humanitarian Enterprise in Iraq,” *Humanitarian Agenda 2015: Iraq Case Study* (Feinstein International Center Briefing Paper, June 2007), 4.

⁷⁰ Andrew Natsios, “NGOs Must Show Results; Promote Ties to U.S. or ‘We Will Find New Partners,’” Address to InterAction, June 9, 2003.

agencies; World Vision, Save the Children-US, the International Rescue Committee, Mercy Corps, and the International Medical Corps has further reinforced this notion.⁷¹ Even agencies that have actively sought to distance themselves from US policy objectives in Iraq have by their mere presence fallen into contributing to a maximalized and collaborative version of humanitarianism: Providing humanitarian assistance in an occupied state necessarily supports the occupying power. This is apparent in deliberations of the ICRC as to if this situation inherently erodes the neutral stance of the organization and thus should prompt a withdrawal. David Forsythe explains that, “for both the United States and its opponents, the ICRC presence had strategic implications.” By the same token, “No matter how much the UN or the ICRC might try to signal that they were separate from the US-led coalition forces, for example, by not fortifying their in-country headquarters, their work for the Iraqi people dovetailed with US objectives.”⁷² Maximalization and collaboration have also sparked militarization. Whether its is being based in the so-called Green Zone, a piece of Baghdad fortified by US troops, or requesting helping protecting personnel in the field, many humanitarian agencies have come to work with US forces.

Marketization further compounds these trends. Aid agencies must maintain a presence in Iraq in order to receive funding from donors, who are increasingly looking to the private sector as conduits for assistance. Rony Brauman, the former head of MSF, and Pierre Salignon, head of programmes for MSF, articulate this concern when they states

⁷¹ Hansen, “Taking Sides of Saving Lives,” 42.

⁷² David P. Forsythe, *The Humanitarians: The International Committee of the Red Cross* (Cambridge: Cambridge University Press, 2005), 99.

that, “Many NGOs fear that they will lose out to private companies, which are already claiming larger amounts of the ‘NGO market’, and hence prefer to play the role requested of them to preserve their ‘market share.’”⁷³ Thus marketization concerns in the Iraq crisis may compel agencies to engage in practices that facilitate their effectiveness in delivering aid, which may include working more closely with the US.

The upshot of these arrangements is painting a fundamentally new portrait of humanitarian agencies. Greg Hansen, who has conducted studies on perspectives of humanitarian action in Iraq, notes, “There has been a serious blurring of the lines in Iraq between military, political, not-for-profit and commercial actors, on one hand, and humanitarian actors on the other hand, to the extent that many Iraqis (and some humanitarian professionals) cannot distinguish between the various sets of actors.” And furthermore,

The research indicated an acute readiness among Iraqis to distinguish between aid providers that have taken sides and those that have not: however, readiness does not necessarily equate to ability. Insecurity for Iraqis in the central and southern governorates often engenders acute suspicion of the motives and affiliations of others in a context where the ‘wrong’ affiliations can be toxic and life-threatening.⁷⁴

⁷³ Rony Brauman and Pierre Salignon, “Iraq: In Search of a ‘Humanitarian Crisis,’” in *In the Shadow of “Just Wars”: Violence, Politics, and Humanitarian Action*, ed. Fabrice Weissman (Ithaca, NY.: Cornell University Press, 2004), 271.

⁷⁴ Greg Hansen, “Perceptions of Humanitarianism in Iraq,” *Focus on Operationality, Briefing Paper 6* (NGO Coordination Committee in Iraq, January 2008), 1 and 3.

Others echo this view noting that: “PMCs affiliated with the MNF-I are mistaken for humanitarian workers and there is a common perception that international organizations, including the UN and NGOs, are linked to the multinational forces.”⁷⁵ In Iraq, humanitarian agencies have few links, and in most cases none, to security contractors, but the belief that they do is ubiquitous.

Other Current Humanitarian Crises

In addition to Afghanistan and Iraq, other contemporary cases also reflect the state of humanitarian action, two in particular stand out: Darfur (Sudan) and Somalia. They share some key characteristics with Afghanistan and Iraq—they involve Muslim populations, Western powers debate whether to intervene directly, and market-based forces play a role in these conflicts. But, they differ in at least one notable way, they are in Africa, not the Middle East or Southwest Asia. Nevertheless, crises in Darfur and Somalia are representative of contemporary tensions in humanitarian action because they showcase impediments to establishing secure humanitarian space and the turn to private security. Furthermore, Darfur is worth examining because it has been characterized as genocide and also illustrates when world cares more about other crises, which saps political will for intervention. Somalia is also significant as it is an omen, in addition to the legacy of a failed intervention there in the mid-1990s (i.e., the so-called Black Hawk Down episode when US soldiers were killed in attempting to capture a Somali warlord that had menaced

⁷⁵ Dina Abou Samra, “Military-induced Displacement,” *Foreign Migration Review*, Special issue—Iraq’s displacement crisis: the search for solutions (June 2007), 38.

relief work) and recent fears of new hub of Islamic insurgency with ties to terrorism, the disaster has been ongoing for twenty years. (Other cases that could similarly be discussed—Côte d’Ivoire, Myanmar, North Korea, and Libya—because each demonstrates the overarching dynamics of non-permissive environments that are primarily rooted in tensions with Western agencies, but the purpose of this study is not to detail every crisis, rather it is to illuminate instances that are barometers of sector-wide trends.)

Sudan: Genocide and Neglect

Most of the international attention on Sudan since its independence in 1956 has concerned the tensions between the North and the South. After many years of strife between the Arab, Muslim North (that is presently under the National Congress Party) that has control of the government and the Christian and animists rebel groups in the South lead primarily by the Sudan People’s Liberation Movement, war erupted in earnest in 1983. This was a very large armed conflict, and recent tabulations estimate that since its outbreak this war has killed around 2.5 million and displaced 4.6 million out of a total population of just over 41 million.⁷⁶ The conflict has some cultural and religious elements to it—this massive country was assembled by British colonialism and forced diverse peoples and societies to live together in the same state. There is also an economic aspect as both sides seek control over the oil deposit in the South (centered on the town of Abyei).

⁷⁶ Andrew S. Natsios, “Beyond Darfur: Sudan’s Slide Toward Civil War,” *Foreign Affairs* 87 (May /June 2008): 79.

While this war has raged, famine has arisen and at times been used strategically by the government to starve the opposition. In the late 1980s the famine was particularly severe; from 1986 to 1988 approximately 400,000 to 500,000 died as a result of it. In response, starting in April 1989 the international humanitarian system fielded “Operation Lifeline Sudan” (OLS) to provide food and other urgently needed relief supplies.⁷⁷ This operation was unique in two ways: First, it brought together both actors within the UN system as well as 35 non-governmental organizations. It was ahead of its time in integrating NGOs and the UN into a common framework of action. Second, and perhaps most innovative, it negotiated access with non-state actors, namely guerilla groups in the South. Although this type of arrangement has become much more frequent since the end of the Cold War, this was one of the first instances where humanitarian agencies worked exclusively with the central government of the state where the crisis was occurring.

After over 20 years of conflict and extensive diplomacy by the UN, the North-South civil war in Sudan ended in January 2005. The provisions for the peace treaty (the Naivasha Accords) stipulated that the North withdraw its forces from the South and that the National Congress Party and Sudan People’s Liberation Movement form a unity government for six years when a referendum would be held in January 2011 to determine the whether the South would secede. Maintaining peace between North and South has been an important contextual component in framing international responses to Darfur: there has been a premium placed on ensuring that the costly North-South conflict does not resume so much so that addressing Darfur has been essentially marginalized.

⁷⁷ For a more complete account of OLS, see Larry Minear, *Humanitarianism under Siege: A Critical Review of Operation Lifeline Sudan* (Trenton: Red Sea Press, 1991).

Although Darfur is of considerable size, its population is rather small—the area is roughly that same size as Texas, but whereas Texas has 24.7 million people in it, Darfur has only about 6 million. The Darfuris are Muslim, but not Arab. The other populations in the region that the Darfuris are in conflict with are also Muslim, but are Arab.⁷⁸ Darfur itself was an independent Muslim sultanate until 1916 when it was made into a British colony. In 1956 Darfur was incorporated into a newly independent Sudan. Like the rest of Sudan, Darfur experienced serious famines in the 1980s, during the early part of that decade about 100,000 Darfuris died of hunger. In the later part of the decade, a drought sparked armed clashes between Darfuri pastoralists (agriculturalists) and Arab nomads (who raised livestock) over the use of land for farming versus grazing.

Around 2000 Darfuri rebel groups crystallized, at least twenty-seven in all. The two most prominent ones are the Justice and Equality Movement and the Sudanese Liberation Movement/Army. In February 2002 rebels burned a government garrison. In April 2003 the SLA attacked a government airfield at El Fasher (the capital of North Darfur), destroying helicopters and jets as well as killing 75 soldiers. This strike created a new sense of urgency within the Sudanese government responded by sponsoring the “janjaweed,” Arab militias. The government of Sudan allowed the janjaweed to pursue taking land in exchange for their help in putting down the rebellion. During the winter of 2003-2004 the violence peaked and resulted in 600,000 being displaced. In April 2004 the government and several major rebel groups signed the Ndjamenan Humanitarian Ceasefire Agreement. In addition to stopping the immediate violence, this accord also

⁷⁸ Scott Straus, “Darfur and the Genocide Debate,” *Foreign Affairs* 84, no. 1 (January/February 2005): 123 and 126.

called for the African Union to deploy monitors and forces to protect monitors (the African Union Mission in Sudan, AMIS). To hasten and strengthen this operation, DynCorp has been contracted to train these peacekeeping forces and help build infrastructure as well as transport African Union troops.

As the crisis continued to burn, international outrage grew although little of substance was done in response. In May 2004, Bertrand Ramcharan, the acting UN high commissioner for human rights, stated that these actions “may constitute war crimes and/or crimes against humanity.”⁷⁹ In July the US Congress voted 422 to 0 for a resolution that declared the situation in Darfur “genocide,” and Secretary of State Colin Powell echoed this sentiment in testimony in September.⁸⁰ However, at the same time, Powell said that, “no new action is dictated by this determination.”⁸¹ Moreover, UN emergency relief coordinator Jan Egeland labeled it “one of the world’s worst humanitarian crises.”⁸² The UN Security Council called for the government of Sudan to disarm the janjaweed in Resolution 1556 and the Special Representative of the Secretary-General negotiated for safe zones with the consent of the government. Nevertheless the

⁷⁹ UN Information Service, “Violations in Darfur, Sudan may constitute war crimes, crimes against humanity, UN human rights office report says,” May 7, 2004.

⁸⁰ UN OCHA, “Sudan: US Congress Unanimously Defines Darfur Violence as ‘Genocide,’” July 23, 2004.

⁸¹ Quoted in Julie Flint and Alex de Waal, *Darfur: A Short History of a Long War* (London: Zed Books, 2005), 9.

⁸² Barbara Borst, “UN Security Council Urges Progress in Cease-Fire Talks on Western Sudan,” *Associated Press*, April 2, 2004.

humanitarian crisis continued to mount and by the end of 2004 around 1.8 million Darfuris had been displaced and of those 200,000 had fled into neighboring Chad.⁸³ On January 25, 2005, the UN-sponsored International Commission of Inquiry into Darfur released its report, but it did not term the crisis “genocide” but instead referred to “crimes under international law.”⁸⁴ This, too, had little effect as humanitarian conditions remained poor; in February, 2.3 million Darfuris required international assistance.

In March 2005, the UN Security Council authorized a new operation, the UN Mission in Sudan (UNMIS) as part of Resolution 1590. But the main focus of this operation was to keep the peace in south Sudan, not address Darfur. A few days later in Resolution 1591 the Security Council imposed travel bans and froze the assets of key individuals implicated in human rights violations, however, no embargo was placed on Sudan’s most valuable export, oil. A couple of days later, in order to promote the prosecution of war criminals, Security Council Resolution 1593 referred the situation in Darfur to the International Criminal Court (ICC). But the conflict still continued through 2005. At the end of August 2006 Security Council Resolution 1706 authorized UNMIS to take over from AMIS subject to the consent of Sudan’s government. This was not approved by Khartoum, and Resolution 1706 is the first time a UN peacekeeping force had been authorized but then failed to deploy. In July 2007, the Security Council tried again, and Resolution 1769 authorized a joint or hybrid operation between the UN and

⁸³ Straus, “Darfur and the Genocide Debate,” 127.

⁸⁴ International Commission of Inquiry on Darfur, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General* (January 25, 2005), http://www.un.org/News/dh/sudan/com_inq_darfur.pdf.

the African Union in Darfur (UNAMID) to supplant the under-resourced and ineffective AMIS. Initially this called for 26,000 peacekeeping troops and a budget of \$1.5 billion a year, but by December this plan was scaled back to only about 9,000.

At the same time peacekeeping operations were deployed to end the violence, the International Criminal Court attempted to pursue war crimes cases against the leadership of Sudan and the janjaweed. In March 2009, the ICC issued a warrant for President al-Bashir on seven counts: five of crimes against humanity and two for war crimes, but by a vote of 2-1 the judges rejected charge of genocide citing inadequate evidence. The warrants were controversial. Human rights groups, such as the Enough Project, and advocates, such as Archbishop Tutu of South Africa, strongly favored them. However, surprisingly, several notable humanitarian actors opposed them because of concerns that the ICC warrants would anger the government of Sudan, which would then expel non-governmental organizations and prevent relief from being delivered. Indeed, only five after the warrants were issued thirteen NGOs were pressured and subsequently withdrew.⁸⁵ This resulted in 1.1 million without food, 1 million without water, and 1.5 million without health care. Furthermore others also critiqued the warrants. In southern Sudan there were worries that the warrants would produce a backlash that would trigger a resumption of the war. Others argued that the warrants were also racist because such

⁸⁵ Eric Reeves, "Darfur and international justice," *Dissent* 56, no. 3 (Summer 2009): 13-18; Victor Peskin, "Caution and Confrontation in the International Criminal Court's Pursuit of Accountability in Uganda and Sudan," *Human Rights Quarterly* 31, no. 3 (August 2009): 655-691.

prosecutions were only against Africans. At present the ICC continues to pursue al-Bashir, and issued a second arrest warrant for al-Bashir in July 2010.

The present state of affairs in Darfur remains precarious. Although UNAMID currently has almost 17,800 troops on the ground and is complemented by nearly 3,770 police, sporadic violence continues and much of the damage has already been done. In addition to the 300,000 killed, humanitarian conditions are terrible. Of the 3 million that have been displaced, 2.5 million live in government controlled camps. Only 70% of the population of Darfur has access to clean water and life expectancy is below 59 years old.

Humanitarian space has been and remains tenuous: To begin with, the government of Sudan fears the prospect of imperialist intrusion and therefore allows humanitarian agencies only minimal access, if any whatsoever. As an aid worker spells out, “For governments like Khartoum, it is not just an issue of perception, it is a conviction of what humanitarian work has come to be about. In Darfur, the government sees humanitarian action and human rights as Western constructs being imposed upon them.”⁸⁶ As a consequence, the crisis in Darfur has been reminiscent of the “new wars” disasters of the 1990s, in that agencies have been able to provide relief but not security thereby revisiting the spectacle of the “well-fed dead.” As Egeland observes in regards to Darfur, “We humanitarian workers were, as in Bosnia in the 1990s, asked to feed and

⁸⁶ Quoted in Jan Egeland, Adele Harmer, and Abby Stoddard, *To Stay and Deliver: Good practice for humanitarians in complex security environments* (New York: UN Office for the Coordination of Humanitarian Affairs, 2011), 16.

shelter millions while armed men around the 140 camps planned their next massacres with impunity. It is as if Srebrenica and Rwanda are ancient history.”⁸⁷

In addition to the ramifications for victims, the personnel of humanitarian agencies have also felt the impacts of limited humanitarian space. Government imposed restrictions on humanitarian agencies in Darfur since 2008 has curtailed their presence and a flurry of kidnappings of aid workers in the region over the course of 2009 and 2010 has led to a much smaller number of staff exposed to dangers: in 2008 there were 26 attacks on aid workers throughout Sudan, in 2009 there were 27 attacks, but in 2010 this figure declined to 11.⁸⁸ Fewer attacks is certainly a positive development, but it is less due to a lessening of threats and more attributable to a smaller humanitarian deployment. Although there are fewer agencies on the ground as compared to several years ago, some remain. Of those, most operate without armed protection.⁸⁹ However, a few have hired contractors: DynCorp has been contracted by humanitarian organizations.⁹⁰ But, such arrangements are relatively scarce because there has not been much money to be made:

⁸⁷ Jan Egeland, *A Billion Lives: An Eyewitness Report from the Frontlines of Humanity* (New York: Simon & Schuster, 2008), 216.

⁸⁸ Humanitarian Outcomes, *Aid Worker Security Report 2011*, (August 2011), 4-5.

⁸⁹ Ivor Morgan, “NGO responses to insecurity in Darfur,” *Humanitarian Exchange*, no. 47 (June 2010): 25-28.

⁹⁰ Anna Leander and Rens van Munster, “Private Security Contractors in the Debate about Darfur: Reflecting and Reinforcing Neo-Liberal Governmentality,” *International Relations* 21, no. 2 (June 2007), 202. For more on armed contractors looking to be hired for humanitarian work in Darfur see Doug Brooks, “Focusing on Sudan,” *Journal of*

[R]elatively few international PSPs work in Sudan, and the majority of those that do are operational in the south rather than in Darfur. Many interviewees attributed the low level of international PSP presence in the north to entry restrictions imposed by the Khartoum government. It may also be that humanitarian actors in Sudan do not offer as lucrative an opportunity for PSPs as they might expect in a country with a large international military and diplomatic presence.⁹¹

As compared to Afghanistan and Iraq there are very few armed contractors operating in Darfur. The smaller humanitarian footprint partially accounts for this. Nevertheless, even in a situation where there are fewer agencies at work, the potential for resentment is strong, and profits for private security are limited, humanitarian agencies have hired PSCs. Therefore, the case of Darfur demonstrates that the norm of private security contractor usage endures beyond the headline-making crises of hired guns guarding humanitarian space in Afghanistan and Iraq.

Somalia: Terrorists and Pirates

Given that the humanitarian crisis in Somalia during the 1990s was seminal in the evolution of the international humanitarian system, this case was analyzed in Chapter 2,

International Peace Operations 2, no. 1 (July/August 2006), 4; Willis Witter, "Private Firms Eye Darfur," *The Washington Times*, October 2, 2006; Max Boot, "Send Private Security Companies into Sudan," *Journal of International Peace Operations* 2, no.1 (2006), 4 and 9.

⁹¹ Abby Stoddard, Adele Harmer, and Victoria DiDomenico, *The use of private security providers and services in humanitarian operations*, HPG report 27 (October 2008), 13.

however, since then the country remained in disarray and a disaster has persisted. This section provides an overview of what has transpired in Somalia in the post-9/11 period and how it is also representative of trends in the humanitarian sector.

Since the tailing off of international involvement in Somalia in 1995 (the end of the UNOSOM mission), the country has essentially become divided into three regions: the self-declared Republic of Somaliland, an autonomous area in the northeast (Puntland), and the south-central section. While Somaliland was rather stable and developed a governance mechanism resembling an independent state, warlords ruled much of the rest of Somalia. In 1995, the Somalia Aid Coordinating Body (SACB), a group of donors to aid agencies, insisted that security was a prerequisite to deploying operations.⁹² For humanitarian agencies this meant access was negotiated not through a central state but by striking deals with often fickle local interlocutors. Consequently, many agencies departed, though the ICRC, CARE, UNICEF, and the World Food Programme (WFP) remained.⁹³

⁹² Somalia Aid Coordinating Body, *Code of Conduct for International Rehabilitation and Development Assistance to Somalia* (February 17, 1995), see United Nations, *Report of the Secretary-General, Strengthening of the Coordination of Humanitarian and Disaster Relief Assistance of the United Nations, Including Special Economic Assistance to Individual Countries or Regions: Assistance for humanitarian relief and the economic and social rehabilitation of Somalia*, A/50/447 (September 19, 1995).

⁹³ Ken Menkhaus, “Stabilisation and humanitarian access in a collapsed state: The Somali case,” *Disasters* 34, S3 (October 2010): S329.

A large and growing Muslim movement emerged around 2002, the Islamic Courts Union, and by June 2006 had gained control of most of Somalia. Many Somalis supported the Islamic Courts Union as it was seen as bringing order as compared to the endless clan wars. However, its growth and its victory against the government of Somalia in November 2006 raised concerns for the US and its Global War on Terrorism. In December, Ethiopian troops (with the encouragement of the US) pushed the Islamic Courts Union out of Mogadishu—in the process, it destroyed about one-third of the city and caused 700,000 to flee.⁹⁴ During 2007, while Ethiopia conducted a brutal campaign against clans supporting the Islamic Courts Union, the African Union attempted to organize a peacekeeping force, but few countries were willing to provide soldiers for the operation. To support this peacekeeping initiative, the US State Department hired DynCorp to equip and provide logistics. Aid agencies operating in the context of Ethiopia's invasion or African Union peacekeeping were frequently presumed to be endorsing these outside interventions, i.e., during this period humanitarian action was conflated with other motives.⁹⁵

At the start of 2008 the country representation for the UN High Commission for Refugees declared Somalia as the “most pressing humanitarian emergency in the world

⁹⁴ Ken Menkhaus, “Somalia: What Went Wrong?” *The RUSI Journal* 154, no. 4 (August 2009): 7.

⁹⁵ Karin Von Hippel, “Blurring of mandates in Somalia,” in *Humanitarian Diplomacy: Practitioners and Their Craft*, eds. Larry Minear and Hazel Smith (New York: United Nations University Press, 2007), 298-322.

today—even worse than Darfur.”⁹⁶ At least one million had been uprooted, the rate of malnutrition was 15%, and access was so poor that UNHCR could not operate. The fight against Ethiopia had inspired the rise of a radical Islamic insurgency, al-Shabab, which appears to be connected to Al Qaeda and is suspicious of Western aid agencies.

Furthermore, the Transitional Federal Government that has been around since 2004 also imposed restrictions on aid agencies; basically attempting to prevent assistance from going to areas that supported the insurgency.⁹⁷ Thus, during 2008 conditions did not improve and aid workers struggled to reach 3.5 million in need; furthermore, aside from the war, limited rainfall had rendered a poor harvest.⁹⁸

After suffering substantial military losses and having propped up a moderate pro-Western government, by mid-January 2009, Ethiopia withdrew from Somalia. To maintain order and bolster the Transitional Federal Government, a small force (around 4,000 troops) authorized by the African Union deployed, but they have had limited impact in stopping the Islamic Courts Union from governing, including instituting Sharia law in parts of the country. (At present, the US funds a private security company, Bancroft Global Development, to train these African Union troops and to conduct bomb disposal.) Later in 2009, due to concern that aid was ending up in the hands of Islamic militants, the US government prevented humanitarian agencies from receiving food to

⁹⁶ Emma Batha, “Somalia is worst humanitarian crisis, UN official,” *Reuters*, January 30, 2008.

⁹⁷ Menkhaus, “Stabilisation and humanitarian access in a collapsed state,” S333-S334.

⁹⁸ Ken Menkhaus, “Somalia: a country in peril, a policy nightmare,” *Enough Strategy Paper*, September 3, 2008.

deliver to Somalia.⁹⁹ Nevertheless, WFP and ICRC continued to operate in south-central Somalia, an area controlled by al-Shabab, but where much of those in need were. Yet, when security problems grew worse, the WFP temporarily withdrew in December 2009.

Since 2007 this war has killed at minimum 20,000 and displaced 1.7 million (out of population that had decreased down to about 9 million). But, in 2011 the humanitarian crisis has grown far more desperate for two reasons. First, humanitarian access and space has been greatly curtailed. Within Somalia, back in February, the al-Shabab movement ordered the WFP out of the country and other agencies, such as CARE, suspended their operations. From September 2008 to October 2010 eighteen humanitarian agencies were ousted from south-central Somalia.¹⁰⁰ Additionally, along the coasts of Somalia, piracy has become rampant thereby imperiling aid deliveries. This is especially problematic as roughly eighty to ninety percent of food arrives by sea.¹⁰¹ Second, starting in the summer of 2011, Somalia, like the rest of the Horn of Africa, has experienced a severe hunger: in July, famine was declared in two southern regions, in August, three more regions, and in September a sixth region. Consequently, by the fall of 2011 overall 4 million are suffering from a food crisis—almost 40% of the population requires international assistance to survive and one-fifth of all children are malnourished. Given the scope of

⁹⁹ Jeffrey Gettleman, “U.S. delays Somalia aid, fearing it is feeding terrorists,” *New York Times*, October 1, 2009.

¹⁰⁰ IRIN News, “Analysis: US NGOs still in the dark over terrorism law in Somalia,” October 5, 2011, <http://www.irinnews.org/report.aspx?reportid=93887>.

¹⁰¹ Kennedy K. Mbekeani and Mthuli Ncube, “Economic Impact of Maritime Piracy,” *Africa Economic Brief* 2, no. 10 (July 14, 2011): 5.

the famine, agencies have been eager to resume operations in Somalia, but this has usually meant bargaining with armed elements. For example, the ICRC has only recently (October 2011) negotiated access from al-Shabab.

In the post 9/11 period Somalia again exemplifies major trends in the international humanitarian system. Maximalization and collaboration is apparent in the mixing of humanitarian action with other political agendas, most notably the attempt to use relief to foster state-building. As Ken Menkhaus remarks,

This ‘instrumentalist’ approach to humanitarian aid by political actors pursuing stabilisation goals in Somalia has been at its most unvarnished form in the period since 2006, and is responsible for the deep tensions within the donor, aid and diplomatic community in Nairobi. The Somali case demonstrates that, when external stabilisation efforts in a failed state are pursued through a state-building initiative, humanitarian access can quickly become the target of political battles.¹⁰²

Humanitarian agencies being perceived, rightly or wrongly, as supporting one side or another has put aid personnel in danger. This was evident in 2008 when one-third of all humanitarian casualties were in Somalia.¹⁰³ However since then the numbers have declined strikingly—51 in 2008, 19 in 2009, and 8 in 2010— but like in Darfur, fewer personnel being deployed in Somalia may explain this as many agencies suspended

¹⁰² Menkhaus, “Stabilisation and humanitarian access in a collapsed state,” S333-S338.

¹⁰³ Abby Stoddard, Adele Harmer, and Victoria DiDomenico, *Providing Aid in Insecure Environments: Trends in violence against aid workers and the operational response—2009 Update*, HPG Briefing Paper 34 (April 2009), 4.

operations or reduced their on-the-ground presence.¹⁰⁴ In response to the hazards of crime, piracy, and militias, there has been a turn to a use of force. In analyzing Somalia, Menkhaus comments that there is a growing “securitisation of complex emergencies” that spurs calls for more military resources to be brought to bear for humanitarian purposes, though as, he warns, without adequate scrutiny of the ramifications.¹⁰⁵ With respect to the issue of private security, in Somalia, there are not many international PSCs operating in conjunction with humanitarian agencies, instead less formalized local outfits are pervasive. As a study by Stoddard, Harmer, and DiDomenico explicates:

Somalia, which has the highest percentage of humanitarian organisations using armed protection to run their operations, has evolved a kind of informal local PSP sector, and paid security services are typically based on arrangements with local groups. These include the direct hire of armed guards, who then serve and appear as staff members.¹⁰⁶

Beyond humanitarian agencies displaying securitization and commercialization, the government of Somalia also demonstrated militarization and securitization as in August of 2011 Prime Minister Abdiweli Mohamed Ali established a special force of three hundred troops specifically to protect aid convoys.

¹⁰⁴ Humanitarian Outcomes, *Aid Worker Security Report 2011* (August 2011), 5

¹⁰⁵ Kenneth Menkhaus, *Somalia: State Collapse and the Threat of Terrorism*, Adelphi Paper 364 (Oxford: Oxford University Press, 2004), 7.

¹⁰⁶ Stoddard, Harmer, and DiDomenico, *The use of private security providers and services in humanitarian operations*, 13.

Contemporary Trends in the Humanitarian Sector

Beyond the evidence found in Afghanistan, Iraq, Sudan and Somalia, a look at the overall course of the international humanitarian system over the past decade denotes a significant advance in major trends. Although these changes started after the Cold War and began to manifest in the 1990s, subsequent to 9/11, these trends have greatly accelerated. This section stands back from the bellwether cases discussed above in order to synopsise developments in the humanitarian sector over the last ten years.

In an attempt to maximalize the potential of their efforts, humanitarian agencies have become part of larger political endeavor to build order. The content of that order is to nurture states that suit the interests of the West by establishing political systems designed to foster stability and participation in the international economy. Although humanitarian agencies have traditionally avowed an ideology that concentrates only on addressing human suffering, they have come to embrace other political projects that help realize their goals. Exemplifying this trend in this period is the Commission on Human Security. Its 2003 report articulated a vision of “human security” that brings together diverse programming throughout the UN system to “protect the vital core of all human lives in ways that enhance human freedoms and human fulfillment.”¹⁰⁷ In May 2004 this

¹⁰⁷ Commission on Human Security, *Human Security Now* (New York: Commission on Human Security, 2003). For more on this concept see S. Neil MacFarlane and Yuen Foong Khong, *Human Security and the UN: A Critical History* (Bloomington, Indiana University Press, 2006.)

notion was embodied in the creation of the Human Security Unit in the Office for the Coordination of Humanitarian Affairs.

The consequence of this new thinking is that operational independence has been set aside as humanitarian agencies are folded into “coherent” approaches and “integrated” operations, and therefore humanitarian action serves the interests of those they work with rather than vice versa—what Antonio Donini dubs as having humanitarians “play second fiddle” and Christopher Spearin terms the “instrumentalization of humanitarianism.”¹⁰⁸ In fact, the UN proclaims that “integration” necessarily involves “subsuming various actors and approaches within an overall political-strategic crisis management framework.”¹⁰⁹ Nicolas de Torrenté of MSF interprets this as, “when political objectives and humanitarian concerns conflict, the hierarchy of priorities in the coherence agenda often results in humanitarian interests being sacrificed or sidelined in the name of a ‘greater good.’”¹¹⁰ Moreover, regardless of the beliefs of aid workers, this situation has the effect

¹⁰⁸ Antonio Donini, “The Evolving Nature of Coordination,” in *The Humanitarian Decade: Challenges for Humanitarian Assistance In the Last Decade*, ed. OCHA vol. II (New York: OCHA, 2004), 136; Christopher Spearin, “Private, Armed and Humanitarian? States, NGOs, International Private Security Companies and Shifting Humanitarianism,” *Security Dialogue* 39, no. 4 (August 2008): 374.

¹⁰⁹ Espen Barth Eide, et. al., “Report on Integrated Missions: Practical Perspectives and Recommendations,” (independent study for the Expanded UN ECHA Core Group, New York, May 2005), 14.

¹¹⁰ Nicolas de Torrenté, “Humanitarianism Sacrificed: Integration’s False Promise,” *Ethics & International Affairs* 18, no. 2 (Fall 2004): 7.

of making humanitarian agencies exponents of liberal principles. Hugo Slim voices that in the cases of Afghanistan and Iraq, humanitarian agencies have come not only to work with the Western coalition, but also share their values: “UN agencies, NGOs and other humanitarian commentators may be in an interesting form of denial about the morality they have in common with Coalition authorities.”¹¹¹

Some view this vision of a maximalized humanitarianism as a positive development. This is illustrated by Michael Ignatieff, who argues that calls for guaranteeing humanitarian space fit comfortably with the pursuit of democracy, human rights, and law, and, therefore that the construction of a “humanitarian empire” is warranted. Indeed in what would seem to be a reply to Sadako Ogata’s worry that “There are no humanitarian solutions to humanitarian problems,” Ignatieff professes, “Humanitarians know that there are some humanitarian problems for which there are only imperial solutions.”¹¹² Others recognize this trend, but lament it. David Rieff, for instance, invokes the critique of imperialism and opines that fusing humanitarianism and

¹¹¹ Hugo Slim, “With or Against? Humanitarian Agencies and Coalition Counter-Insurgency,” *Refugee Survey Quarterly* 23, no. 4 (December 2004): 35.

¹¹² Sadako Ogata, *The Turbulent Decade: Confronting the Refugee Crises of the 1990s* (New York: W.W. Norton, 2005), 25; Michael Ignatieff, *Empire Lite: Nation-Building in Bosnia, Kosovo, and Afghanistan* (Toronto: Penguin, 2003), 19.

human rights leads to “humanitarian recolonization.”¹¹³ Most troubling of all, teaming up with military forces in the past decade has heightened threats against aid workers.¹¹⁴

Two prominent expressions of the maximalization, militarization, and collaboration of humanitarian action can also be seen after 9/11, one within the sector, the other from outside of it. First, Chapter 2 discussed the promotion of the “responsibility to protect” following the unveiling of the report of the International Commission on Intervention and State Sovereignty, and since then political support for the use of force for human protection purposes has grown—both in a more limited sense, to secure humanitarian space (protecting access), as well as its more wide-ranging variant, humanitarian intervention (altering political conditions that foment humanitarian crisis). This is evidenced by explicit approval for this principle in numerous international forums and statements: The 2004 UN’s High-level Panel of Threats, Challenges, and Change; the outcome document of the 2005 World Summit; a recommendation of the 2005 Commission on Global Governance; a 2006 Security Council resolution; the appointment of “Special Adviser on the Responsibility to Protect” at the Assistant Secretary General level; a 2009 report on the issue by the Secretary-General that was taken up for debate by the General Assembly; and, General Assembly resolutions in 2009, 2010, and 2011.¹¹⁵

¹¹³ Rieff, *Bed for the Night*, 191.

¹¹⁴ de Torrenté, “Humanitarianism Sacrificed,” 6; Joel R. Charny, “Upholding Humanitarian Principles in Effective Integrated Responses,” *Ethics & International Affairs* 18, no. 2 (Fall 2004): 13.

¹¹⁵ United Nations, Report of the High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* (New York: United Nations, 2004), para.

Widespread acknowledgment of this norm is epitomized in an April 2011 comment by Stéphane Crouzat, spokesman for the French mission to the United Nations: “There is a new trend in the Security Council in which the responsibility to protect principle is gaining a new hold.” Recalling Rwanda, Bosnia, and Darfur, he continued, “There is a desire to intervene before war crimes or ethnic cleansing can take place.”¹¹⁶

A second indicator of militarization can be seen in the preparations governments have increasingly made to work with humanitarian agencies as well as directly undertake humanitarian operations. This chapter has previously referred to statements of US policymakers that reveal how they hope to utilize humanitarian efforts to achieve political and military objectives. In addition to the rhetoric, the US military has been devising guidelines for working with humanitarian agencies in what they term “operations other

203; United Nations, *2005 World Summit Outcome*, A/60/1 (October 24, 2005), paras. 138-139; Commission on Global Governance, *Our Global Neighbourhood* (Oxford: Oxford University Press, 2005), 90; UN Security Council Resolution 1674 (April 28, 2006); Ban Ki-moon, *Implementing the Responsibility to Protect* (January 30, 2009); UN General Assembly Resolutions 63/308 (September 14, 2009), 64/684 (July 14, 2010), and 65/877 (June 27, 2011).

¹¹⁶ Quoted in Dan Bilefsky, “Recent U.N. Action Show Policy Shift, Analysts Say,” *New York Times*, April 5, 2011.

than war” (OOTW).¹¹⁷ Furthermore, the US military asserts that even without the presence of humanitarian agencies it is capable of performing humanitarian operations.¹¹⁸

Turning to the trend of securitization, this stems from the increasing risks to humanitarian workers in the past ten years. An editorial in the *Economist* articulates, “It was not until the American-led wars in Afghanistan and Iraq that the UN and other aid agencies began to be deliberately hunted down.”¹¹⁹ This is overstating the case, as there have been previous occasions where humanitarian personnel have been targeted, but it is safe to say that in recent years the threat has grown. Nor are these dangers restricted to the cases of Afghanistan, Iraq, Sudan and Somalia as demonstrated by the August 2006 massacre of seventeen personnel from Action Against Hunger, the killing of six staff members of World Vision in Islamabad, Pakistan in March 2010, and the murder of five aid workers in the Democratic Republic of the Congo in early October 2011.

Traditionally, agencies shied away from non-permissive environments, but the practice of

¹¹⁷ Rieff, *Bed for the Night*, 206.

¹¹⁸ In January 2003, U.S. Department of Defense opened the Office for Reconstruction and Humanitarian Assistance (see Stuart Gordon, “Military-Humanitarian Relationships and the Invasion of Iraq (2003): Reforging Certainties?” *Journal of Humanitarian Assistance*, July 6, 2004) and more recently, the higher profile of the Defense Security Cooperation Agency (see Sharon Weinberger, “Pentagon Agency Emphasizing Humanitarian Work,” *Defense Daily*, April 26, 2005, 2).

¹¹⁹ *The Economist*, “Aid Agencies: More Dangerous to Work Than Ever,” November 20, 2004, 49.

maintaining a presence by using force to protect humanitarian space that was an anomaly in the 1990s has become common in the post-9/11 period.

In regards to marketization, the past ten years have seen humanitarian agencies increasingly behaving as market-motivated actors (appealing to donors), which can be seen in an obsession with market share. As noted earlier, the humanitarian marketplace is unlike conventional markets with direct producer-consumer relationships, but instead is organized such that donors (not aid recipients) dictate the flow of humanitarian resources, which by 2010 had reached \$16.7 billion.¹²⁰ This has produced a relatively narrow range of agencies receiving the lion's share of resources—what Alexander Cooley and James Ron term an “aid oligopoly.”¹²¹ Accordingly, in order to preserve or grow market share agencies will implement policies that donors prefer in order to attract funding. In other words, competition for resources is driving the behavior of agencies. David Rieff observes, “For all the talk of coordination and accountability, the need to maintain market share continues to trump sound humanitarian practice.”¹²²

In this way, marketization contributes to maximalization and collaboration because in recent years donors are pushing for the integration of humanitarian action. For

¹²⁰ Development Initiatives, *Global Humanitarian Assistance Report 2011* (Somerset, United Kingdom: 2011), 6.

¹²¹ Alexander Cooley and James Ron, “The NGO Scramble: Organizational Insecurity and the Political Economy of Transnational Action” *International Security* 29, no. 1 (Summer 2002), 13.

¹²² David Rieff, “Tsunamis, accountability, and the humanitarian crisis,” *Humanitarian Exchange*, no. 29 (March 2005): 50.

example the 2003 International Meeting on Good Humanitarian Donorship called for recognizing not only the key values of humanitarian action but also human rights and development work.¹²³ “In the case of Afghanistan and Iraq major donors also encouraged agencies to integrate their operations, but this is due to the fact that the donors were also involved in these conflicts—what Hugo Slim has called “belligerent funding.”¹²⁴ The upshot of marketization is that agencies lose their autonomy because practically they become implementers of donor policy.¹²⁵

There has also been an increase in commercialization: Humanitarian agencies appeal to donors by demonstrating how efficiently they utilize funds, and this has led agencies to subcontract the private sector to provide resources that facilitate relief

¹²³ International Meeting on Good Humanitarian Donorship, “Principles and Good Practice of Humanitarian Donorship,” Stockholm, June 17, 2003.

¹²⁴ Hugo Slim, *A Call to Alms: Humanitarian Action and the Art of War* (Geneva: Centre for Humanitarian Dialogue, 2004), 5.

¹²⁵ Brauman and Salignon, “Iraq: In Search of a ‘Humanitarian Crisis,’” 271; Maria Lange and Mick Quinn, *Conflict, Humanitarian Assistance, and Peacebuilding: Meeting the Challenges* (London: International Alert, 2003), 15; Mark Duffield, “The Political Economy of Internal War: Asset Transfer, Complex Emergencies, and International Aid,” in *War and Hunger: Rethinking International Responses to Complex Emergencies*, eds. Joanna Macrae and Anthony Zwi (London: Zed Books, 1994), 59. For the specifics on the case of UNHCR, see Evaluation and Policy Analysis Unit of United Nations High Commissioner for Refugees, *The state of UNHCR’s organization culture* (Geneva: EPAU/UNHCR, May 2005), 103.

operations. Since the 1990s business has made inroads into the market for services to the humanitarian sector in areas such as procurement, transportation and communication.¹²⁶ Even the cautious and conservative ICRC has taken steps in this direction. In 2006, the Red Cross signed a disaster-response partnership with Wal-Mart, as Billy Wagner, chief of emergency management for the Florida Keys, remarked, “It’s all going to private enterprise before it’s over. They’ve got the expertise. They’ve got the resources.”¹²⁷ However, humanitarian agencies have been critical of businesses directly undertaking humanitarian action because the focus should be on victims not profits, and organizationally speaking the private sector represents stiff competition to non-profits. Be that as it may, humanitarians have come to work with business because they view certain services as supporting humanitarian work rather than outright displacing agencies.

The culmination of all the major trends (maximalization, collaboration, militarization, securitization, marketization, and commercialization) is that humanitarian agencies employ security contractors to help protect humanitarian space. As humanitarians embark upon operations that associate openly with clearly political ventures in areas where humanitarian space is not respected, many have come to advocate for a use of force either to enable secure access or to alter governance so as to ensure that safe access will not be an issue. At the same time, donors are providing funds to agencies

¹²⁶ Andrea Binder and Jan Martin Witte, *Business engagement in humanitarian relief: Key trends and policy implications*, HPG Background Paper (Humanitarian Policy Group/ODI, June 2007), 19.

¹²⁷ Quoted in Naomi Klein, “Disaster Capitalism: The new economy of catastrophe,” *Harper’s Magazine*, October 2007, 51.

that pursue operations with political and security components. Thus, in the heat of responding to humanitarian crises and in the context of sector-wide trends, agencies have turned to hired guns for protection. While the practice is not prevalent, since 2001 the option is no longer dismissed. As the next chapter will detail, although hiring security contractors is not preferred, over the past decade it has become increasingly more palatable within the humanitarian sector.

Chapter 5:

The Security Problems and Solutions of Humanitarian Agencies:

Risks, Tactics, and Practices

- Humanitarian Agencies in the Crosshairs
- Agency Tactics to Protect Humanitarian Space
- Agency Practices to Protect Humanitarian Space
- Changes in Agency Views and the Norm of Employing Security Contractors

Humanitarian action in war zones is often fraught with peril—from criminals attempting to steal aid and menace personnel to militarized forces with political agendas opposing the delivery of assistance—and protection is essential to maintain operations. Two commentators on humanitarian issues state unequivocally, “The safety and security of humanitarian relief personnel is an indispensable condition for the delivery of humanitarian relief to civilian populations.”¹ Moreover, as a recent study spotlights, aid organizations are legally responsible for the security of their personnel, and thus there are legal, and possibly financial, incentives to provide aid workers with protection.² As

¹ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law: Vol. I* (Cambridge: Cambridge University Press, 2005), 105.

² Edward Kemp and Maarten Merkelbach, *Can you get sued? Legal liability of international humanitarian aid organisations towards their staff*, Policy Paper (Geneva: Security Management Initiative, Geneva Centre for Security Policy, November 2011).

discussed in Chapter 2, since the end of the Cold War, the risks of aid work have grown as agencies have increased their presence in areas lacking either cooperative or capable public authorities, and over the same period belligerents have become less respectful of international humanitarian law. Furthermore, Chapter 4 pointed to an ever greater erosion of humanitarian space and increasing hazards to aid work that have manifested following the September 11, 2001 terrorist attacks on the United States, especially in places where the so-called “Global War on Terrorism” has come to the fore.

This chapter begins with a description of the dangers humanitarian agencies confront in operating in contemporary conflicts. After spelling out the nature and degree of security problems, the chapter then turns to examine the solutions that agencies consider. These solutions consist of tactics that are intended to keep aid flowing while protecting personnel and creating a positive image for the agency and the endeavor. Lastly, the chapter analyzes a particular normative change in the international humanitarian system: how existing norms and conditions that inform security arrangements—which is essentially a subset of the grand debate on means and end—have led to the emergence of humanitarian agencies hiring security contractors as a new and widely accepted, albeit grudgingly, norm within the humanitarian sector?

Humanitarian Agencies in the Crosshairs

Working in war zones is inherently dangerous, but beginning in the 1990s the tally of humanitarian personnel killed or wounded seems to have grown substantially. This can be attributed to an increase in the number of a certain type of humanitarian crises that

have appeared in the past 20 years; i.e., not merely more disasters, rather more disasters with greater insecurity.³ The violence humanitarian agencies increasingly encounter, moreover, is deliberate and targeted—it is not primarily the result of the general quality of chaotic conflicts, but rather the intentions of belligerents. One study of the impact of firearms on aid workers comments, “humanitarian and development workers are the explicit targets of criminal violence and, to a lesser extent, of intellectual violence from state and non-state actors.”⁴ This section looks at the nature of the threats humanitarian agencies grapple with, why they exist and exacerbate as well as how they are viewed by humanitarians.

Why are Humanitarian Agencies Under Siege?

Humanitarian agencies operate in insecure environments—there are security threats to areas of operation, relief convoys, and agency personnel. Aid and aid workers present a tempting fount of resources in the context of the scarcity endemic to conflicts; the material can be sold or bartered, the personnel can be kidnapped and ransomed. Traditionally, humanitarian space was well defined and protected from such occurrences

³ Susan F. Martin, et. al., *The Uprooted: Improving Humanitarian Responses to Forced migration* (Lanham, MD: Rowman & Littlefield, 2005), 189.

⁴ Cate Buchanan and Robert Muggah, *No Relief: Surveying the Effects of Gun Violence on Humanitarian and Development Personnel* (Geneva: Centre for Humanitarian Dialogue, July 2005), 9.

because states, the main belligerents in conventional wars, guaranteed its sanctity and afforded access to distressed populations.⁵

However, this is less and less the case in contemporary conflicts. Since the end of the Cold War the geography of humanitarian crises has changed profoundly. There are no longer clear frontlines and prescribed battlefields with designated areas for civilians to seek refuge and hospitals to operate without interference. In fact, since 1990 many humanitarian crises take place in areas where states no longer protect humanitarian space. In some cases the state has “failed” or is “failing”—i.e., a collapse or weakening of its capacities—and this undermines its ability to provide security. The dearth of order may embolden bandits and other criminals to prey on aid agencies. In other circumstances the state is engaged in violence, that is to say, it may be able, but it is not willing. In either instance, whether the state is a belligerent in an internal conflict or there is fragmented authority, the protection of humanitarian space suffers.⁶

An additional driver of attacks may be the belief among local armed actors that humanitarian agencies operate as part of a larger political project. So-called “dual

⁵ Michael, Bryans, Bruce D. Jones and Janice Gross Stein, “Mean Times: Humanitarian Action in Complex Political Emergencies—Stark Choices, Cruel Dilemmas,” Report of the NGOs in Complex Emergencies Project, *Coming to Terms* 1, no. 3, (Toronto: Center for International Studies, University of Toronto, January 1999): 9-10.

⁶ Adam Roberts, “The Role of Humanitarian Issues in International Politics in the 1990s,” *International Review of the Red Cross* 81, No. 833 (March 1999): 39; and, Fiona Terry, *Condemned to Repeat? The Paradox of Humanitarian Action* (Ithaca, NY: Cornell University Press, 2002), 14.

international responses” that appear to coordinate or conjoin humanitarian action with more explicitly political activities and military organizations, such as peacekeeping operations or “hearts and minds” programming of armed forces, are seen as fundamentally provocative and account for at least part of the uptick in violence against aid workers.⁷ This stance is especially pronounced among those whose power may be jeopardized by the delivery of humanitarian aid.⁸ For instance, in the 1990s the linking of political and humanitarian work led to acute security problems: in Somalia the pursuit of a warlord by UN peacekeepers spurred an assault on humanitarian agencies, and in Bosnia the efforts of the UN Protection Force led to a violent reprisal against staff of the UN High Commissioner for Refugees.⁹ More recently, since 9/11 and the launch of the Global War on Terrorism, the political context of some humanitarian crises now feature the idea that humanitarian agencies are proxies for Western interests. The aid organization Oxfam has found that, “military involvement can compromise the effective delivery of aid and lead to unintended consequences, potentially threatening the security

⁷ Abby Stoddard, Adele Harmer and Victoria DiDomenico, *Providing Aid in Insecure Environments: Trends in violence against aid workers and the operational response*, HPG Briefing Paper 34 (April 2009), 5; Max P. Glaser, *Humanitarian engagement with non-state armed actors: The parameters of negotiated access*, HPN Network Paper 51 (June 2005), 2.

⁸ Bryans, Jones, and Stein, “Mean Times,” 10.

⁹ Martin, et. al, *The Uprooted*, 198.

of civilian aid workers.”¹⁰ And, Abby Stoddard, Adele Harmer and Victoria DiDomenico find that: “aid organisations are being attacked not just because they are perceived to be cooperating with Western political actors, but because they are perceived as wholly a part of the Western agenda.”¹¹ Furthermore, Laura Hammond explains that for some belligerents the symbolism of attacking aid workers is a performance to enhance their reputation.¹² Thus, when aid organizations are seen as part of politico-military efforts of the West, belligerents demonstrate their opposition by targeting humanitarian agencies.¹³

On the whole, in the post-Cold War world the once safely insulated position of humanitarian agencies has been dramatically altered by changes in war and politics. As a recent study by the UN’s Office for the Coordination of Humanitarian Assistance (OCHA) contends,

Humanitarian action is under attack, but neither governments, parties to armed conflicts, nor other influential actors are doing enough to come to its relief. On the contrary, those who control territory, funding, or simply the closest guns are too

¹⁰ Oxfam, “Iraq: Humanitarian-Military Relations,” Briefing Paper 41 (Oxford: Oxfam, 2003), 1.

¹¹ Stoddard, Harmer, DiDomenico, *Providing aid in insecure environments*, 6.

¹² Laura Hammond, “The Power of Holding Humanitarianism Hostage and the Myth of Protective Principles,” in *Humanitarianism in Question: Politics, Power, Ethics*, ed. Michael Barnett and Thomas G. Weiss (Ithaca, NY: Cornell University Press, 2008), 177-180.

¹³ Nicolas de Torrente, “Humanitarianism Sacrificed: Integration’s False Promise,” *Ethics & International Affairs* 18, no. 2 (Fall 2004): 6.

often allowed to harass, politicise, militarise and undermine humanitarian action with impunity.¹⁴

In short, humanitarian space has come to be seen as offering criminals potential resources to pillage while political authorities are too feeble to stop them or giving belligerents an easy symbolic target.

Threat Perception

Over the past twenty years have the risks markedly increased or is that attacks have become more high profile and, therefore, resonated more greatly? Conventional wisdom has put forth that violence against aid workers on the whole has swelled.¹⁵ A 2000 report by the office of the Secretary-General states that from January 1, 1992 to September 18, 2000 198 civilian staff of the UN were killed. And though the data does not identify how many of these were specifically engaged in humanitarian work at the time of death, the report points to “an unprecedented number of cases of rape and sexual

¹⁴ Jan Egeland, Adele Harmer, and Abby Stoddard, *To Stay and Deliver: Good practice for humanitarians in complex security environments* (New York: UN Office for the Coordination of Humanitarian Affairs, 2011), viii.

¹⁵ Martin, et. al, *The Uprooted*, 190-191; Roberts, “The Role of Humanitarian Issues in International Politics in the 1990s,” 27; Maria Isabel Gutierrez, Paul Bolton, Paul Spiegel, Michel Thieren, Gilbert Burnham, “Deaths among humanitarian workers,” *British Medical Journal*, Vol. 321 (July 15, 2000), 166-168; Dennis King, “Paying the Ultimate Price: Analysis of the deaths of humanitarian aid workers (1997-2001),” *Humanitarian Exchange Magazine*, Issue 21 (July 2002).

assault, armed robbery, attacks on humanitarian convoys, car-jackings, harassment and arrest and detention.”¹⁶

An ongoing research project by Stoddard, Harmer and DiDomenico, the most comprehensive examination of violence specifically against humanitarian workers, notes that the general rate of attacks has risen greatly in roughly the past ten years.¹⁷ In 2006, they showed that between 1997 and 2005, 941 aid personnel were seriously injured or kidnapped, including 434 killed. In their 2009 follow-up report they note that the period from 2006 to 2008 registers an eighty-nine percent increase over the previous three years and a one hundred seventy-seven percent increase from the average since they began collecting their data in 1997: from 2003 to 2005 there were on average 147 aid worker victims per year, from 2006 to 2008, there were 235 per year. Beyond net totals, the rate of attacks has increased. That is, even when factoring in the growth of humanitarian workers in the field—136,204 in 1997 and 241,654 in 2005¹⁸—the upsurge in violence evidences an increase in risk, not just an increase of the number at risk. However, the 2006-2008 data is somewhat skewed due to a dramatic upturn in just three states; Afghanistan, Sudan (Darfur), and Somalia. According to the most recent data from the

¹⁶ United Nations Secretary-General, *Safety and Security of United Nations Personnel: Report of the Secretary-General*, A/55/494, 18 November 2000, para. 8.

¹⁷ Abby Stoddard, Adele Harmer and Katherine Haver, *Providing Aid in Insecure Environments: Trends in policy and operations*, HPG Report 23 (September 2006), 1; Stoddard, Harmer and DiDomenico, *Providing Aid in Insecure Environments* (September 2009).

¹⁸ Stoddard, Harmer, Haver, *Providing Aid in Insecure Environments*, 16.

Aid Worker Security Database, since 2008, the numbers have started to decline some, with 290 victims in 2009 and 242 in 2010, however this is likely attributable to a decrease in personnel deployed and not necessarily a diminished risk.¹⁹

In the end the exact number or rate of attacks is not as important as beliefs about them. From the point of view of humanitarians, they have come to recognize that it is their very identity as humanitarians that have placed them in the crosshairs of belligerents. Pierre-Michel Fontaine, a former senior official at UNHCR, declares, “The simple truth is that humanitarian workers are no longer, if they ever were, shielded from violence and attacks of various forms by the mere fact of being in the humanitarian field. Quite the contrary... they are now sometimes deliberately targeted because they are humanitarians.”²⁰ This belief is also echoed in the findings of a 2008 UN report on the safety of UN staff following the December 2007 attack on its personnel in Algeria.²¹

Furthermore, the threat perception stimulates a reconceptualization of security management strategies and influences the allocation of resources. A good illustration of this is the thinking of Jan Egeland, who served as head of OCHA from June 2003 to December 2006. It should be noted that his first day in the position was August 19, 2003,

¹⁹ Humanitarian Outcomes, *Aid Worker Security Report 2011* (August 2011), 2.

²⁰ Pierre-Michel Fontaine, “New Threats Against Humanitarian Workers,” *Refugee Survey Quarterly* 23, no. 4 (December 2004): 168.

²¹ The Independent Panel on Safety and Security of UN Personnel and Premises Worldwide, *Towards A Culture of Security and Accountability: Report of the Independent Panel on Safety and Security of UN Personnel and Premises Worldwide*, June 9, 2008, <http://www.un.org/News/dh/infocus/terrorism/PanelOnSafetyReport.pdf>.

the same day as the bombing of UN headquarters in Baghdad that killed twenty-two staff including Sergio de Mello, a former UN Undersecretary-General for Humanitarian Affairs and Emergency Relief Coordinator. Egeland, reflecting on his time at OCHA and the targeting of UN staff, has written, “The age of innocence has gone. I had expected to spend all my energies in the UN on the security and survival of disaster and conflict victims, not on the security and survival of our own staff.”²² While it would be difficult to argue that agencies have become intrinsically more casualty-adverse, it does appear that perceptions of the threat have ballooned. With this new mindset, what can agencies do about security problems?

Agency Tactics for Protecting Humanitarian Space

The protection of humanitarian space involves providing security both aid workers and aid beneficiaries. With respect to security tactics, there should not be a distinction between these groups because their safety is interrelated; giving priority to staff creates distance between agencies and the societies they tend to, giving priority to victims minimizes the human resources that realize assistance.²³ Humanitarian agencies have somewhat limited options in addressing security problems. They cannot altogether solve these problems by defeating military forces or criminal elements that threaten them, nor

²² Jan Egeland, *A Billion Lives: An Eyewitness Report from the Frontlines of Humanity* (New York: Simon & Schuster, 2008), 8.

²³ Tony Vaux, et. al., *Humanitarian Action and Private Security Companies: Opening the Debate* (London: International Alert, 2002), 4.

**TABLE 5.1
TRADE-OFFS OF HUMANITARIAN AGENCY SECURITY TACTICS**

TACTICS	ADVANTAGES	DISADVANTAGES
LEGAL	<ul style="list-style-type: none"> • Non-coercive • Demonstrate respect for belligerents 	<ul style="list-style-type: none"> • Limited enforcement
ACCEPTANCE	<ul style="list-style-type: none"> • Non-coercive • Demonstrate respect for belligerents 	<ul style="list-style-type: none"> • Access is contingent on interlocutors
LOWER PROFILE	<ul style="list-style-type: none"> • Non-coercive • Easy and quick to implement 	<ul style="list-style-type: none"> • Disconnects agencies and victims • Lessens information gathering • Hinder transparency of agency • Removes protection from emblem
LOCALIZATION	<ul style="list-style-type: none"> • Non-coercive • Demonstrate respect for belligerents • Contributes to local economy • Builds local humanitarian capacities 	<ul style="list-style-type: none"> • Does not eliminate danger • Shifts security burden to locals
WITHDRAWAL	<ul style="list-style-type: none"> • Non-coercive • Maintains principle of consent • Ensures protection of agency personnel 	<ul style="list-style-type: none"> • No access ends aid to victims • Loss of funds and market share • Disconnects agencies and victims
FORCE FROM STATES AND IGOs	<ul style="list-style-type: none"> • Secure humanitarian space 	<ul style="list-style-type: none"> • Blurs aid, force, and politics • Agencies become dependent
CONTRACT FORCE	<ul style="list-style-type: none"> • Secure humanitarian space • Avoids political bottlenecks, which speeds deployment • Independence avoids backlash of links to political projects 	<ul style="list-style-type: none"> • Blurs aid and force • Agencies become dependent • Perception of profiteering • Uncertain status under IHL • Detrimental to agency reputation • Greater incidence of violence • Contribute to legitimacy of private security

are they likely able to fundamentally alter conditions that foment attacks such as the political activities of other actors that may be (falsely or accurately) associated with humanitarian agencies. Instead, agencies select from a more modest set of tactics that allow risks to be minimized. As will be seen, some tactics are ubiquitous and can be pursued concurrently; some are more rarely used and incompatible with others.

Legal

The first approach is to remind belligerents and other actors of their responsibilities under international humanitarian law, which includes refraining from attacks on humanitarian agencies. *Geneva Convention I*, which concerns land warfare, states in Articles 19 to 37 the protections accorded to medical personnel.²⁴ Article 21 stipulates that protection “shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy.” Article 26 unambiguously affords protections to “The staff of National Red Cross Societies and that of other Voluntary Aid Societies...” *Geneva Convention II*, which covers naval warfare, offers identical protections for hospital ships and such in Articles 22 to 40.²⁵ *Geneva Convention IV*, on civilians in war, declares in Article 20 that, “Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases shall be respected and protected.”²⁶

²⁴ <http://www.icrc.org/ihl.nsf/FULL/365?OpenDocument>.

²⁵ <http://www.icrc.org/ihl.nsf/FULL/370?OpenDocument>.

²⁶ <http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument>.

Additional Protocol I reaffirms these commitments. Article 15 (1) is explicit, “Civilian medical personnel shall be respected and protected,” and 15 (4) places the onus for that protection on belligerents, “Civilian medical personnel shall have access to any place their services are essential, subject to such supervisory and safety measures as the relevant Party to conflict may deem necessary.” Article 17 is even more specific; it states that,

“The civilian population and aid societies such as national Red Cross (Red Crescent, Red Lion and Sun) Societies, shall be permitted, even on their own initiative, to collect and care for the wounded, sick and shipwrecked, even in invaded and occupied areas. No one shall be harmed, prosecuted, convicted or punished for such humanitarian acts.”²⁷

Protection for “relief consignments” and aid “personnel” is further detailed in Articles 70 (4) and 71 (2). *Additional Protocol II* continues in the vein of *Additional Protocol I* though applied to non-international armed conflicts. Article 9 (1) calls for aid workers to be “respected and protected. Article 11 (1) affirms this in regard to “medical units and transports,” though it has the caveat that protection is terminated if they are “used to commit hostile acts, outside their humanitarian function.”

Since the end of the Cold War two other international agreements further elaborate and strengthen legal prohibitions on attacks on aid workers: First, the 1994 *UN Convention on the Safety of United Nations and Associated Personnel*.²⁸ Following a

²⁷ Articles 21-31 list the types of medical transportation that are also protected.

<http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument>.

²⁸ <http://www.un.org/law/cod/safety.htm>.

spate of new UN operations in the 1990s and a torrent of violence against its staff, some of which were involved in humanitarian assistance, the organization began work on a new international agreement to criminalize attacks against its civilian personnel. Article 1(b)(iii) specifies that those covered by this treaty include “Persons deployed by a humanitarian non-governmental agency under an agreement with the Secretary-General of the United Nations or with a specialized agency...” (UN peacekeepers are essentially excluded from this treaty as the laws of war primarily determine their legal standing.) This convention entered into force January 15, 1999, and, presently 88 states have signed it. Since then the General Assembly has oftentimes again urged adherence to this treaty.²⁹ However, the 1999 convention is plagued by a key shortcoming, it is predicated on the compliance of states. In many contemporary conflicts, armed non-state actors, not states, are responsible for violence and thus this accord would have limited application and power.

A second international agreement that outlaws attacks of aid workers is the 1998 *Rome Statute of the International Criminal Court*.³⁰ This treaty is primarily known for establishing the International Criminal Court (ICC), but it also contains protections for both United Nations and Red Cross personnel. Article 8(2)(b)(iii), which covers international armed conflicts proclaims that “Intentionally directing attacks against buildings, material, units and vehicles involved in a humanitarian assistance or peacekeeping ” is a war crime. With respect to other armed conflicts, Article 8(2)(e)(ii)

²⁹ UN General Assembly Resolutions 59/211 (December 20, 2004), and 64/77 (December 7, 2009).

³⁰ <http://untreaty.un.org/cod/icc/statute/romefra.htm>.

makes a similar pronouncements for members of the Red Cross: “Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law,” is a violation of international law. Lastly, the provisions of Article 8(2)(e)(iii) repeat those of Article 8(2)(b)(iii) with the distinction that such injunctions apply to non-international armed conflicts. *The Rome Statute* has been hailed as a breakthrough in international jurisprudence and the establishment of a permanent tribunal to adjudicate war crimes is remarkable. Furthermore, this agreement has rather widespread appeal; at present there are 139 signatories and 116 parties to *the Rome Statute*. Likewise, in 2003 the Security Council recognized its utility in this regard by pronouncing that attacks on aid workers are war crimes.³¹ But the absence of certain states joining or heeding the International Criminal Court restricts its jurisdiction—the ICC can only take action when states become party to the treaty and are willing to cooperate.

Looking to legal measures as a means of protecting aid workers has some merit. Legal measures are useful normative infrastructure for shaping behavior among actors that seek official standing with normalized relations. However, in many war zones of the past twenty years the laws of war and other legal instruments to prevent attacks on aid workers have basically been ignored. Limited respect for international humanitarian law and international law coupled with constrained jurisdictions has rendered law inconsistent in effectively protecting the personnel of humanitarian agencies.

³¹ UN Security Council Resolution 1502 (August 26, 2003).

Acceptance

At the inception of the international humanitarian system in the late nineteenth century, space was crafted for the Red Cross to operate because states had a strong interest in it. Aiding wounded soldiers in an era of inter-state war was popular, hence getting consent from belligerents was relatively easy provided agencies conformed to principles of neutrality and impartiality. This arrangement enabled access to victims of war and protected aid workers.

But since the end of the Cold War, some humanitarian agencies have deviated from the principles of neutrality and impartiality or found that such principles alone provided inadequate protection for their personnel. As seen in Chapter 4, this has been especially true in theaters of the Global War on Terrorism. Accordingly, many agencies seek to strengthen security for their staff by promoting “acceptance” of humanitarianism among local populations.³² This technique can develop in several ways. Some agencies undertake a public relations campaign to promulgate information about their activities, which requires an institutional capacity equipped with language skills that can field outreach teams and conduct perception surveys.³³ Other agencies negotiate very specific rules and policies with local political authorities. Some examples of this approach are: “The Agreement on Ground Rules” in Sudan; “The Memorandum of Understanding” in

³² Glaser, *Humanitarian engagement*, 16.

³³ Egeland, Harmer, and Stoddard, *To Stay and Deliver*, 19-20.

Afghanistan; and, the “Principles of Engagement” in the Democratic Republic of the Congo.³⁴

Ideally humanitarian agencies receive consent based on appreciation for the role they play in bringing relief to distressed populations. But, sometimes this counting on this tactic requires patience and perseverance given that the very idea of humanitarianism or the reputation of a humanitarian agency is insufficient or, worse yet, an obstacle to acceptance. To build confidence among local populations and political authorities can take time and resources, and may require an ongoing effort. Moreover, it presumes that gaining acceptance is essentially a matter of publicizing and that once the intentions of agencies are presented they will be popular—as a 2004 OCHA report states, “Acceptance is based on the premise that local communities and power structures will allow and even support humanitarian activities if these activities are well understood.”³⁵ However, because humanitarian work provides relief and cultivates stability it may be intrinsically threatening to those who benefit from the perpetuation of chaos and scarcity, and in such situations the acceptance model may be flawed and fail. In the end, deriving protection for humanitarian work and workers solely on consent can be precarious as it signals that operations can, in effect, be controlled by locals regardless of the right of to access under

³⁴ Nicholas Leader and Joanna Macrae, “New Times, Old Chestnuts,” *Terms of Engagement: Conditions and Conditionality in Humanitarian Action*, HPG Report 6 (July 2000), 10.

³⁵ Office for the Coordination of Humanitarian Assistance, *Maintaining a UN humanitarian presence in periods of high insecurity: learning from others*, Final Report (May 6, 2004), 3.

international humanitarian law. In short, consent is a valuable tactic, but it comes with some risks of its own.

Lower Profile

If the presence of agencies is seen as incendiary, but aid workers feel it is necessary to carry on with their efforts, one tactic that has minimal economic cost and is physically easy to implement is to lower the profile of the organization. Most humanitarian agencies call attention to their work so that victims are aware of the resources available to them and local populations gain a greater understanding of what aid workers are there to accomplish. A lower profile requires halting public advocacy; removing identifiers from uniforms, transportation, and facilities; using local rented vehicles; and, possibly restricting the movements of personnel, particularly international staff.³⁶

A lower profile, however, has some important drawbacks for humanitarians.³⁷ First, it disconnects aid workers and victims. With limited or no contact with their surroundings agencies have difficulty adapting their programming to the needs of victims as well as fostering acceptance among locals. Less knowledge is gathered by agencies and they become less transparent. Second, given that it places restrictions on travel and communication, a lower profile can also impede an exchange of information between agencies. Lastly, and perhaps more problematic, is the removal of markings that uniquely identify humanitarian workers. Not only is this troubling from the point of view of

³⁶ Egeland, Harmer, and Stoddard, *To Stay and Deliver*, 27-28.

³⁷ Stoddard, Harmer, and Haver, *Providing Aid in Insecure Environments*, 23, 43, and 49.

international humanitarian law, which calls for distinguishing emblems, but donning identifiers may provide protection. Bearing this in mind, going low profile is typically an interim tactic.

Localization

Suspicion or fears of outsiders may contribute to a crippling security problem for agencies and, consequently, humanitarian agencies may consider using only nationals or even exclusively locals to carry out operations. International personnel tend to stand out; their mode of dress and their accent, despite fluency in the local language, often indicates they are from abroad. Nationals blend in and locals may also possess invaluable knowledge and contacts that improve the delivery of relief. On average internationals constitute only a small minority (seven percent) of humanitarian agency personnel while nationals account for the overwhelming bulk (ninety-three percent).³⁸

The challenges of utilizing this tactic are two-fold. First, finding qualified and appropriate personnel may be difficult. It is essential that aid workers not have a stake in relief that may have the effect of contributing to the conflict. By the same token, aid workers must also often speak a language that allows communication with the headquarters of the humanitarian agency—for example, English or French—and locally based individuals with these skills may be hard to find in some areas. The availability of talented human resources may be scarce in conflicts as people may flee these areas or choose to pursue opportunities other than humanitarian aid work.

³⁸ Ibid., 39.

The second challenge of localization is to ensure that switching to nationals actually reduces security problems and not merely shifts the burden. Locals who work for international aid agencies may be branded as “collaborators.”³⁹ Furthermore, locals may in some ways be more vulnerable as they may not have anywhere to go should they be targeted. Violence against international staff usually commands attention but attacks on local personnel rarely draw notice although the problem has worsened appreciably in recent years as more agencies have opted for “remote programming” that features a great use of nationals. By 2005 national personnel constituted 79% of all attacks on aid workers.⁴⁰ However, data on the past few years show resurgence in the rate of attacks on international staff.⁴¹ In sum, localization may not lend itself to the provocation that some see in the on-the-ground presence of international humanitarian agencies, but it does not solve the essential problem of danger.

Withdrawal

In the most extreme cases of violence against aid workers, agencies can eliminate their exposure to dangers by suspending operation or departing altogether from the war zone. The decision to do so is a difficult one and not always directly related to attacks on personnel, but other factors such as impediments to access and the amount of aid stolen

³⁹ Antonio Donini, et. al., *Mapping the Security Environment: Understanding the Perceptions of Local Communities, Peace Support Operations and Assistance Agencies* (Feinstein International Famine Center, June 2005), 60.

⁴⁰ Stoddard, Harmer, and Haver, *Providing aid in insecure environments*, 11.

⁴¹ Stoddard, Harmer, and DiDomenico, *Providing aid in insecure environments*, 3.

or extorted.⁴² This tactic has been pursued in only a handful, albeit remarkable, instances by a variety of agencies—Médecines San Frontières (MSF) exited Goma, Democratic Republic of the Congo in 1995, the ICRC from Liberia in 1996, and the UN from Afghanistan in 1998.

There are four concerns related to withdrawal or suspension. First is that victims are deprived of relief. Nevertheless, there are times when humanitarian agencies need to recognize that their presence only incites opponents and consider “avoidance” or “retreat.”⁴³ Second, agencies may merely threaten to leave in an attempt to gain leverage, though issuing such ultimatums may be seen as a form of extortion or regarded as an empty threat. In the end, for this tactic to be effective as a means to restart aid deliveries, agencies must express to interlocutors the conditions under which they will return.⁴⁴ Third, agencies may also be reluctant to withdraw because without an on the ground presence, donors may direct their resources elsewhere.⁴⁵ Fourth, if an agency leaves but another agency takes its place then the tactic has no impact.

There is an additional version of withdrawal that is more limited in scope in which personnel are pulled out of particularly risky areas and relocated to secure

⁴² Bryans, Jones, and Stein, “Mean Times,” 38-9.

⁴³ Hugo Slim, *A Call to Alms: Humanitarian Action and the Art of War* (Geneva: Centre for Humanitarian Dialogue, February 2004), 14.

⁴⁴ Larry Minear, “The Craft of Humanitarian Diplomacy,” in *Humanitarian Diplomacy: Practitioners and Their Craft*, ed. Larry Minear and Hazel Smith (Tokyo: United Nations University Press, 2007), 17-18.

⁴⁵ Rieff, *Bed for the Night*, 298.

compounds. But, whereas “bunkerization” reduces vulnerability, it also has the effect of shrinking access and isolates humanitarians from those they seek to help:

[H]igh walls and reduced movement effectively distance the agency from the local population, sending the wrong signals for a humanitarian entity and creating a ‘bunker mentality’ among staff. As both programming and security personnel acknowledge, there is a difference between access and effective access, and aid workers serve no practical purpose if they remain barricaded in compounds, unable or unwilling to get out to the field.⁴⁶

As a result limited withdrawal is usually only a short-term stopgap measure until consent is re-established or full withdrawal is instituted.

Force from States and IGOs

The final tactic for agencies to contemplate is the use of force. This is a last resort, but when threats are intense and the human costs of withdrawal are seen as too severe, working with militarized forces is the only option. At the outset, recall from Chapter 3, that a modicum of force for the protection of humanitarian space is permitted under international humanitarian law. This is enumerated in two provisions of Additional Protocol I: Article 13 (2) declares that “light individual weapons” for self-defense and “sentries” “shall not be considered as acts harmful to the enemy,” and do not result in forfeiting protected status. Article 28 (3) applies this principle to humanitarian personnel on medical aircraft.

⁴⁶ Egeland, Harmer, and Stoddard, *To Stay and Deliver*, 9.

There are two variety of attaining security from the military forces of political authorities. First, agencies can work with the armed forces of a state. Depending on the state this usually has the advantage of providing sufficient security capabilities. However such an arrangement is problematic because it undermines the independence and neutrality of an agency. The armed forces of states as security providers for agencies also makes operations wholly dependent on the political proclivities of states, which may use their influence to determine who receives aid thereby also violating the principle of impartiality, which, in turn, generates insecurity.⁴⁷ A second possibility is to integrate humanitarian action into United Nations peacekeeping operations. The benefits of organizing security with UN forces is that although they may not be able to field as robust a military presence as a state can, the UN's reputation may also facilitate security. But this is also thorny because peacekeepers have a political agenda that differs from that of humanitarian agencies and thus also compromise neutrality. Furthermore, the speed at which humanitarian crises unfold and security needs arise make working with states or the UN difficult. While agencies are usually quick and are first-responders to disasters, states and the UN tend to have lengthy and cumbersome deliberations before agreeing to dispatch troops. Therefore, for agencies to rely on states or the UN for force may be “waiting for Godot”—filled with promise but ultimately is fruitless dallying.

Contract Force

Another option for humanitarian agencies seeking to use force is the hiring of security contractors. This approach has four virtues: First, private security firms are

⁴⁷ Ibid., 34.

capable of plugging the “security gap” in humanitarian space because they have the military tools necessary to physically protect humanitarian space, e.g., armored vehicles and skilled personnel.⁴⁸ Second, private security forces deploy rapidly. Dispatching PSC requires no lengthy political debates over matching compassion to resource availability. Third, security contractors hired to protect humanitarian space do not intermingle agencies with the UN or states. Avant observes that, “For different reasons, both NGOs and corporations have specific commitments to ‘apoliticism’; the fulfillment of their respective mandates requires that they *not* make enemies or take sides.”⁴⁹ When state militaries and the United Nations provide security for humanitarian agencies they do so only in the context of undertaking other operations and these other pursuits can obscure or confuse belligerents and local populations about the work of humanitarian agencies. Lastly, contracting for security limits the liability of agencies.⁵⁰ Organizing protection is complicated and may open a Pandora’s box of legal obligations that agencies can steer clear of by deriving security from another actor.

In the eyes of humanitarians, the potential downsides of hiring security contractors begin with the negative association of agencies with coercion—it blurs aid and force—but are an additional five-fold: First, the very idea that there is profit in humanitarian crises is considered ethically repugnant within the sector. Indeed, many

⁴⁸ Vaux, et. al., *Humanitarian Action and Private Security Companies*, 3.

⁴⁹ Deborah Avant, “NGOs, Corporations and Security Transformation in Africa,” *International Relations* 21, no. 2 (June 2007): 146.

⁵⁰ Stoddard, Harmer, and DiDomenico, *The use of private security providers and services in humanitarian operations*, 22.

humanitarians believe that their values give them exclusive claim to engaging humanitarian action. Van Brabant describes this attitude:

Aid agencies, NGOs in particular, like to rhetorically monopolise the high ground. The mere suggestion that commercial companies may have expertise and a quality of services that is equal to, if not better than, that of charitable organisations, can lead to outcries of indignation. There is an implicit, and sometimes explicit, argument that all profit motivated organisations are by definition ‘unprincipled’ whereas all not-for-profit organisations are on the contrary by definition ‘principled.’⁵¹

In other words, humanitarians oppose other actors from intruding into their select moral niche, especially those that may be, in effect, profiteering from suffering. Furthermore, this unease factors into the worry that by hiring PSCs, humanitarians are in essence endorsing the principle that protection is a luxury only the wealth can afford. They ask: “Is it contributing to the ‘privatisation’ of security, whereby those who are able to pay can buy security while others have to live in fear?”⁵²

Second, the degree to which security contractors are accountable for misdeeds is questionable. Although international humanitarian law is clear that all actors in war zones must adhere to conduct that respects human rights, however the extent to which legal mechanisms will enforce these protocols is uncertain. Cordula Droege, legal adviser to the ICRC, states:

⁵¹ Vaux, et. al., *Humanitarian Action and Private Security Companies*, 10.

⁵² Humanitarian Practice Network, *Operational security management in violent environments*, Good Practice Review Number 8 (December 2010), 74.

In case of breaches of IHL, the legal responsibility of PMC/PSC staff and of the States that hire them is quite clear. Admittedly, practical difficulties have arisen in bringing legal proceedings when violations have taken place. Where the law falls short is in the field of national or international control over the services PMCs/PSCs may provide and of the administrative processes, if any, which they must respect in order to be allowed to operate. There is no international regulatory framework specifically focusing on this industry and its activities.⁵³

With little or no responsibility ensured, humanitarians may not be amenable to working with security contractors.

Third, the reputation of PMSCs as human rights, earned or not, is also a major deterrent to humanitarians. In some cases armed contractors have worked with unsavory elements; they have “been linked with dictatorships, rebel groups, drug cartels and, pre-9/11, two al-Qaeda-linked groups.”⁵⁴ Given these damning connections, agencies worry that their standing will suffer by association.

Fourth, humanitarians are apprehensive that the training in the use of force may make security contractors predisposed to resort to force in challenging security situations.

⁵³ Interview with Cordula Droege, “Getting private military and security companies to respect the law,” ICRC website, April 17, 2008, <http://www.icrc.org/eng/resources/documents/interview/privatisation-war-interview-150408.htm>.

⁵⁴ Singer, “Humanitarian Principles, Private Military Agents,” 75; for more on this reputation among humanitarians see HPN, *Operational security management in violent environments*, 287.

This is can be seen in the example of Iraq where security incidence involving contractors is eight times greater than that for aid workers.⁵⁵ Humanitarian culture is grounded in responding to the worst consequences of violence and therefore many aid workers prefer solutions that avoid force.

Fifth, while there is the fear that PMSCs ruin the image of agencies, there is also distress that agencies may inadvertently improve the reputation of PMSCs. Singer submits that,

Humanitarian actors must be prepared to deal with the industry from an informed and prepared position, and, most importantly, must factor in the consequences of their actions. That is, humanitarian organisations must meet the challenge of building ties with [PSCs] without granting them legitimacy. Akin to the problem of dealing with warlords on the ground, humanitarian actors can, usually unwittingly, provide an air of legitimacy to the groups they encounter.⁵⁶

Thus, humanitarians, who are frequently already suspicious of security contractors, are loath to engage in behavior that they deem as rehabilitating the negative perception of PMSCs.

⁵⁵ Stoddard, Harmer, and Haver, *Providing aid in insecure environments*, 23.

⁵⁶ P.W. Singer, "Humanitarian Principles, Private Military Agents: Some Implications of the Privatised Military Industry for the Humanitarian Community," in *Resetting the Rules of Engagement: Trends and Issues in Military–Humanitarian Community*, ed. Victoria Wheeler and Adele Harmer, HPG Report 21 (London: Humanitarian Policy Group, 2006), 78.

Nevertheless, despite these reservations, many humanitarian agencies have employed private security firms. Some aid organizations have consulted with security companies and sought their assistance in developing security management strategies.⁵⁷ For example, security contractors have helped with contingency planning and dispensed instruction to humanitarian personnel on safety. In terms of using force, which is far more controversial than advice, some within the humanitarian sector have broached this issue. For instance, following inaction to the Rwandan genocide, a study sponsored by CARE Canada defined the problem and proposed a solution:

NGOs should consider the privatization of security for humanitarian purposes... Since the core dilemma humanitarians face is the ability of predators to prey on civilians and NGO staff at will, and since nations and the UN are increasingly hesitant to furnish the necessary means to provide security, it is worth exploring whether in the face of the privatization of assistance, the privatization of security is also appropriate.⁵⁸

Since then several agencies have “hardened” themselves by hiring security contractors.⁵⁹ For example, ArmorGroup has worked for UNICEF, IRC, CARE, and Caritas. (The

⁵⁷ Christopher Spearin, “Humanitarians and Mercenaries: Partners in Security Governance?” in *New Threats and New Actors in International Security*, ed. Elke Krahmman (New York: Palgrave, 2005): 59

⁵⁸ Bryans, Jones, and Stein, “Mean Times,” 31.

⁵⁹ Singer, “Humanitarian Principles, Private Military Agents,” 17 and 68-70; Buchanan and Muggah, *No Relief*, 9, 28-29; Leonard Gaultier, et. al., *The Mercenary Issue at the*

practices of humanitarian agencies in this regard are analyzed in greater detail in the next section.) However, while the impact of this arrangement on security has been substantial, it should be noted that these measures have usually been taken primarily to ensure security for aid workers, not so much victims.⁶⁰ That is to say, security contractors are used predominantly to protect humanitarian agency personnel not the entirety of humanitarian space despite the tradition that there should be no distinction between staff and beneficiaries.

Agency Practices on Protecting Humanitarian Space

Although some security tactics can be pursued simultaneously—for instance legal measures are consistently invoked—others are mutually exclusive. However, it can be a challenge to even initiate a discussion of protection problems and solutions as generally humanitarians are reluctant to talk about the issue.⁶¹ First of all, security management is mostly neglected because there is little interest in building a culture within humanitarian agencies that considers security issues. Adele Harmer points to the,

the need for security management to be integrated across the organisation, and not treated as an ‘add-on’ or a luxury. While this is not a new topic, only in recent years have organisations begun to realise that developing a security culture poses

UN Commission on Human Rights: The Need for a New Approach (London: International Alert, 2001), 11.

⁶⁰ Martin, et. al, *The Uprooted*, 205.

⁶¹ Roberts, “The Role of Humanitarian Issues in International Politics in the 1990s,” 38.

one of the most significant challenges. Much of the focus in security management tends to be on specific operational needs, such as security policies and plans. Yet there is also a need to take a step back and look at how to develop a culture of security within the organisation, including developing capacity.⁶²

A recent study by the Security Management Initiative (SMI) surveyed international aid organizations and found that only one-third had institutionalized systems for security management and the reporting of incidents, and about the same number actually specifically provided for security measures in their budgets.⁶³ Similar to Harmer's contention, the SMI study notes that the dearth of security management is the result of "an absence of a 'culture of security,' of understanding/knowledge, and of institutionalised willingness, decisions, and mechanisms."⁶⁴

A second obstacle to discussing security is the concern that highlighting security tactics might endanger neutrality and impartiality. Moreover, humanitarians are especially resistant to talking about the use of PSCs because it may harm the reputation of an agency. Indeed, humanitarians prefer to speak about the causes of security problems, i.e., why they need private security, not the implications of doing so.⁶⁵ Therefore, many agencies prefer not to draw attention to their choice of tactics.

⁶² Adele Harmer, "A decade on: a new Good Practice Review on operational security management," *Humanitarian Exchange*, no. 47 (June 2010): 2.

⁶³ Kemp and Merkelbach, *Can you get sued?*, 10-11.

⁶⁴ *Ibid.*, 17.

⁶⁵ Vaux, et. al., *Humanitarian Action and Private Security Companies*, 9-10.

Nevertheless, faced with spiraling casualties in the 1990s, aid agencies deliberated mechanisms to better protect their operations and staff. As one agency's security manual from this period remarks, "The rules of security have changed. And so must our practices."⁶⁶ The first initiative in this regard was the 1996 *Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Response Programmes*.⁶⁷ Supported by a considerable number of major humanitarian organizations—Caritas International, Catholic Relief Services, the International Federation of Red Cross and Red Crescent Societies, International Save the Children Alliance, Lutheran World Federation, Oxfam, The World Council of Churches, and the International Committee of the Red Cross—it enumerated different areas of responsibility for donor governments, host governments, and international organizations. The document shows a commitment to acceptance/consent tactics, including respect for local populations and the building of local capacities.

While beginning the conversation on aid agency security and codifying approaches was a step forward, the process of rethinking tactics continued. In fact, a new wider menu would emerge in 2000: the "security triangle."⁶⁸ This model puts forward

⁶⁶ Charles Rogers and Brian Sytsma, *World Vision Security Manual: Safety Awareness for Aid Workers* (Geneva: World Vision, 1999), 2.

⁶⁷ ICRC, *Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Response Programmes*, February 29, 1996.

⁶⁸ First devised in 2000, it was updated last year, see Humanitarian Practice Network, *Operational Security Management in Violent Environments: A Field Manual for Aid Agencies*, HPN Good Practice Review No. 8 (London: Overseas Development Institute,

three types of tactics—“acceptance,” “protection,” and “deterrence.” Acceptance, the preferred tactic, remains, but two other alternatives have been formulated. “Protection” calls for avoiding threats by not exposing personnel to risks. This includes measures such as better training for staff to recognize dangers, greater communication to improve awareness of changing conditions, curfews and “no-go” areas, and assessing whether fortifications are counterproductive because they provoke resentment. Both the acceptance and protection corners of the triangle underscore the devotion of agencies to consent-based work. But the third corner, “deterrence,” presents the option of using guards. The notion that humanitarian organizations could resort to relying on force to maintain a presence was truly innovative. Lastly, conspicuously absent from the “security triangle” options is the tactic of withdrawal, which though lurking as real possibility, this model indicates it was not a popular idea.

In addition to calls to respect international humanitarian law some other security practices have become common to all agencies. For instance, in the past ten years, more attention is paid to managing security: data collection and assessments of risk, selecting personnel with cultural sensitivities and holding them accountable for their behavior, choice of transportation (i.e., types of vehicles), and planning (e.g., access to facilities, convoy routes) and contingency measures.⁶⁹ However, behind the decision-making of

December 2010), chapter 3, “Security strategy,” 55-82; Randolph Martin, “NGO Field Security,” *Forced Migration Review* 4 (April 1999): 4-7.

⁶⁹ Koenraad van Brabant, *Mainstreaming the Organizational Management of Safety and Security: A Review of Aid Agency Practices and a Guide for Management*, HPG Report 9 (March 2001); Koenraad van Brabant, *Mainstreaming Safety and Security Management*

more controversial and incompatible security tactics are both normative and practical considerations. In many ways the norms regarding security practices revisit the core debate on the “logic of appropriateness” vs. “the logic of consequences.”⁷⁰

Fundamentally humanitarianism is rooted in sensitivity to welfare that transcends physical sustenance but includes the political relationship between aid worker and recipients. In terms of security arrangements each agency makes its own determination of what is appropriate and what consequences are acceptable. Some agencies will not accept working with militarized actors or having to resort to force to carry out humanitarian objectives, but others will. So, which agencies embrace which security practices and why?

International Committee of the Red Cross

Given its historic role in founding the international humanitarian system and its recognized position as custodian of international humanitarian law, the ICRC is often considered the “gold standard” of humanitarian agencies.⁷¹ The organization’s strict

in Aid Agencies, HPG Briefing 2 (March 2001).

⁷⁰ James March and Johan Olsen, “The Institutional Dynamics of International Political Orders,” *International Organization* 52, no. 4 (Autumn 1998): 948-955.

⁷¹ It is also among the largest and found in the most disasters: During 2009 the ICRC was operating in about eighty countries and had 12,473 personnel (1,542 expatriates and 10,931 national staff). See Patrick Brugger, “ICRC operational security: staff safety in armed conflict and internal violence,” *International Review of the Red Cross* 91, no. 874 (June 2009): 432.

adherence to principles of neutrality and impartiality continue to define its operations—even routinely refusing to engage in the “naming and shaming” of violators of international humanitarian law.⁷² Even by the end of the tumultuous 1990s, Cornelio Sommaruga, then President of the ICRC, argued that maintaining neutrality “signifies determination to preserve the freedom and independence necessary to serve the interests of victims alone.”⁷³ Therefore, the primary security tactic of the ICRC is to begin with reminding belligerents and other possible threatening actors that the Geneva Conventions demand refraining from attacks on aid workers. As such, the organization believes that the Red Cross symbol itself affords protection.⁷⁴ Beyond this approach, decisions on security are decentralized as the head of the delegation in the field manages security arrangements, i.e., selected tactics.⁷⁵

The ICRC’s security culture for field operations is based on seven pillars:⁷⁶ acceptance, identification (distinguishing emblems), information (knowledge of

⁷² David P. Forsythe, *The Humanitarians: The International Committee of the Red Cross* (Cambridge: Cambridge University Press, 2005), 170 and 178.

⁷³ Cornelio Sommaruga, “Humanity: Our Priority Now and Always,” *Ethics & International Affairs* 13 (December 1999): 26.

⁷⁴ International Committee of the Red Cross, “Principles and response in international humanitarian assistance (C. The use of armed escorts),” Presented at the 26th International Conference of the Red Cross and Red Crescent, September 15, 1995.

⁷⁵ Brugger, “ICRC operational security,” 433 and 442.

⁷⁶ Philippe Dind, “Security in ICRC field operations,” *International Review of the Red Cross*, no. 323 (June 1998): 335-345.

surroundings), operationally specific security regulations, personality (character of personnel), telecommunications (to maintain contact), and protective measures (both active (e.g., guards) and passive (e.g., walls)). Acceptance remains the agency's main tactic: "Persuasion, influence, and credibility are [the ICRC's] only weapons."⁷⁷ The organization strives to receive consent from governments where they operate, usually by underscoring their commitment to neutrality and independence. In fact, the Red Cross is so careful to distinguish its own operations from that of the United Nations, it has insisted that the 1994 *UN Convention on the Safety of United Nations and Associated Personnel* specifically not refer to the ICRC out of fear that it might have the effect of associating the two organizations thereby jeopardizing ICRC neutrality.⁷⁸

The ICRC has withdrawn infrequently arguing that if a sufficient amount of aid gets through that it is preferable to the alternative of what they see as abandoning victims. Regardless, if there are widespread manipulations and delivery goals are not met, the ICRC will withdraw. This can be seen in comparing the response of the Red Cross to Somalia from 1991 to 1993 and Liberia in 1994.⁷⁹ In the former, though there were considerable diversions, food did get to victims, and the ICRC remained. However, in the latter, looting was systematic so the ICRC withdrew.

⁷⁷ Brugger, "ICRC operational security," 436.

⁷⁸ Adam Roberts and Richard Guelff, ed., *Documents on the Laws of War*, 3rd ed. (Oxford: Oxford University Press, 2000), 624.

⁷⁹ Danielle Coquoz, "ICRC and Conditionality: Doctrine, Dilemma, and Dialogue," *Terms of Engagement: Conditions and Conditionality in Humanitarian Action*, HPG Report 6 (July 2000), 25.

Authorizing a potential use of force to protect operations has been unusual to say the least—although it is the final pillar of ICRC security tactics, the agency engages in the practice in exceptional circumstances. Traditionally, the ICRC’s security has been premised on a neutrality to generate acceptance and refrained from any association with force. David Forsythe and Barbara Ann Rieffer-Flanagan describe this view, “[i]t is very dangerous if not impossible to organize a large-scale relief effort in secret or against the wishes of a fighting party. The ICRC operates on the principle of neutrality, which means that in theory, and in fact 99 percent of the time, it does not allow any weapons in the vicinity of its operations.”⁸⁰ Even into the 1990s, when attacks on aid workers became more prevalent, the ICRC opposed armed escorts. A 1995 policy document on armed protection explicitly states:

[A]s a general principle, any armed protection for any component of the [Red Cross] Movement that works under armed protection, particularly an armed escort, may endanger the neutrality and ultimate safety of other components... the ability to deliver humanitarian assistance and to carry out humanitarian activities in violent situations is a product first and foremost of our ethical and professional

⁸⁰ David P. Forsythe and Barbara Ann J. Rieffer-Flanagan, *The International Committee of the Red Cross: A Neutral Humanitarian Actor* (London & New York: Routledge, 2007), 57.

standards and the way we conduct ourselves. It is not a function of armed escorts and flak-jackets.⁸¹

More recently, Patrick Brugger, who is responsible for security at the ICRC's Directorate of Operations, has articulated why the ICRC embraces this view: "[A]rmed protection may help to get one aid convoy through but eventually jeopardize the operation as a whole."⁸²

On top of that, eschewing force and espousing independence may actually contribute to the field security of the ICRC. The organization "maintains that it has increased its operational engagement in some very insecure contexts, and has done so with international staff and without armed escorts, armoured cars or military protection."⁸³ However, ICRC security norms have changed over the past twenty years as demonstrated by the 1995 ICRC report on armed protection which notes that in extraordinary circumstances, "when the safety of the Movement's staff is endangered and the protective value of the emblem is no longer respected, the question of armed protection or use of deterrent force against tempted to use violence against the components of the Movement must be considered."⁸⁴ Under such conditions, the report notes the criteria for usage: that needs must be great, armed escorts cannot exacerbate the

⁸¹ ICRC, "Report on the use of armed protection for humanitarian assistance," taken from *Working Paper, Council of delegates, 1995*, presented at the ICRC and International Federation, Council of delegates, Geneva, 1-2 December 1995.

⁸² Brugger, "ICRC operational security," 442.

⁸³ Stoddard, Harmer, DiDomenico, *Providing Aid in Insecure Environments*, 3 and 10.

⁸⁴ ICRC, "Report on the use of armed protection for humanitarian assistance."

situation, no other actor can provide aid, the focus must be on deterrence not firepower, political authorities have given consent for security arrangements, and protection is to guard against criminal elements not fight belligerents. Since the development of these criteria, the Red Cross has engaged in the practice in a few select situations where neutrality and impartiality were threatened.⁸⁵

With respect to paying for protection the ICRC has done so only in rare cases. The very first time was in Somalia in 1993 when the organization determined that there was no other way to deliver aid and avert famine without hiring local militias.⁸⁶ Since then the ICRC has by and large refrained from doing so. However, the 1995 policy states that “a reputable private company” may provide armed escorts. A 2001 report by International Alert states that the ICRC had indeed hired Defense Systems Limited to guard facilities in the Democratic Republic of the Congo, yet the organization, being wary of the taint of associating with mercenaries, on another occasion terminated a contract in Uganda with a company that was connected to Saladin, a nefarious mercenary firm based in South Africa.⁸⁷

More recently, in the past seven years, the ICRC has been refining its policy on the use of security contractors. In 2004, Claude Voillat of the ICRC’s unit on relations with the private sector stated, “Up to now, contacts between the ICRC and private military and security companies have taken place on an informal basis. The ICRC now plans a more systematic approach focusing on companies operating in conflict situations

⁸⁵ Martin, et. al, *The Uprooted*, 206.

⁸⁶ Forsythe and Rieffer-Flanagan, *The International Committee of the Red Cross*, 70-71.

⁸⁷ Vaux, et. al., *Humanitarian Action and Private Security Companies*, 14-17.

or providing training and advice to armed forces.” He goes on to acknowledge that the Red Cross has come to accept that private solutions to security problems are here to stay and that the focus of agencies should be on regulating armed actors and ensuring their compliance. “The ICRC does not plan to take a position on the legitimacy of these private companies, but it will insist that the trend toward privatising military functions should not open the door to a weakening of respect for IHL and for its implementation.”⁸⁸

Up until recently the only viable alternative to traditional security tactics (legal and consent) should these approaches fail was to withdraw. However, at present the ICRC is at the forefront of developing protocols for the legal deployment of security contractors as seen by their sponsorship of *Montreux Document*. As Christopher Spearin has remarked in reference to the ICRC’s newfound attitude toward private security, “the liberal conscience has become more tolerant of non-state actors and violence.”⁸⁹

Médecins Sans Frontières

⁸⁸ ICRC, “The ICRC to expand contracts with private military and security companies,” August 4, 2004, <http://www.icrc.org/eng/resources/documents/misc/63he58.htm>; Claude Voillat, “Private military companies: a word of caution,” *Humanitarian Exchange*, no. 28 (November 2004): 33-35.

⁸⁹ Christopher Spearin, “Private, Armed and Humanitarian? States, NGOs, International Private Security Companies and Shifting Humanitarianism,” *Security Dialogue* 39, no. 4 (August 2008): 5.

MSF's approach to security consists of eight pillars:⁹⁰ acceptance (getting buy-in from locals and belligerents), relationship with the environment (awareness of local conditions and diplomacy with in explaining the role of MSF), information and risk analysis (tracking security incidents, assessing threats, and notifications), security rules and procedures (guidelines by head of mission), protective measures and MSF identification (badges, signs, etc.), telecommunications (maintain contact), transportation (responsible use of vehicles and planning for field trips), and personality and attitude (credibility is tied to behavior of personnel). Like the ICRC, MSF prides itself on providing aid to victims even in the most dire security environments and acceptance is the main principle of MSF's risk reduction policy, but MSF is markedly different than the ICRC in that MSF sees itself as not working silently but bearing witness (*témoignage*). This more explicitly political stance on occasion translates into a decision to withdraw in situations where conditions are placed on operations—i.e., assistance sustains militants or aid workers are limited in their access. Some examples of the agency withdrawing are: MSF left Rwanda and surrounding areas in August 1995 after security problems worsened, aid was manipulated, and prospects for change seemed negligible. In Burundi in February 1996, MSF was asked to provide medical assistance to camps the government had constructed to house Hutus (so as to ethnically cleanse areas), but several sections of MSF withdrew in protest to the premise of the camps as well as a security problem (attacks continued). In North Korea in August 1998, MSF exited after only a short operation because access was greatly constrained by the government.

⁹⁰ Médecins Sans Frontières, *Security Manual*, 1st ed. (Geneva: MSF, July 2007), 16-22.

Austen Davis, Director of MSF Holland, reviews the intricate formula underlying MSF's tactical approaches, "Factors in decision making are multiple and can be divided into objective and subjective criteria," (objective criteria are: scale of (medical) needs, presence of other actors, need for independent international presence, assessment of MSF's impact, access, security, scale of human rights violations, manipulation of aid, necessity to expose abuses; subjective criteria are: human resources, money, intersectional dynamics, individuals involved, media attention) and further comments on the "very wide-ranging and complex debate within and between sections to reach any decision."⁹¹ In short, he presents a very elaborate process for determining tactics that gives great latitude to each individual affiliate. Beyond the checklists of criteria what stands out is that MSF is most sensitive to limits on access and curbs on their advocacy—staff security is a criterion, but it does not seem to be decisive. Therefore, only in cases where conditionality is rigidly imposed, MSF may withdraw.

Similar to the ICRC, MSF seeks to derive safety from their ethical stance and will not engage armed protection. MSF contends that access and security is attained by "robustly defending the right of intervention on the principle of impartiality and neutrality."⁹² Additionally, MSF does not hire security contractors; they view for-profit actors as inherently antithetical to humanitarian principles. Fiona Terry, who was once a research director for MSF, delineates this perspective: "If humanitarian action has been

⁹¹ Austen Davis, "Thought on Conditions and Conditionality," in., *Terms of Engagement: Conditions and Conditionality in Humanitarian Action*, ed. Nicholas Leader and Joanna Macrae, HPG Report 6 (July 2000), 32

⁹² Vaux, et. al., *Humanitarian Action and Private Security Companies*, 14.

reduced to a logistical exercise, better to contract a supermarket chain to deliver aid with the protection of DSL [Defense Systems Limited] and at least avoid the humanitarian pretense.”⁹³ For MSF, those motivated by the ethic to respond to victims must conduct humanitarian action singularly, not commercial interests, and therefore the organization is dismissive of hiring security.

United Nations Humanitarian Organizations

The UN is a highly complex institution with many organs and branches, which makes it difficult to generalize about the security arrangements the organization devises for its humanitarian agencies, but some tendencies are evident. The first initiative to safeguard personnel and premises was the creation of the UN Security Coordination Office (UNSECOORD) in 1988, a relatively small entity that mostly concentrated on protection for offices and but did really address field operations.⁹⁴ However, sparked by the jump in attacks on aid workers in the early 1990s, the General Assembly passed the 1994 *UN Convention on the Safety of United Nations and Associated Personnel*. But this did not significantly diminish the threat. Furthermore, as more UN humanitarian workers were being deployed in conjunction with UN peacekeepers (which have their own structure for protecting its civilian personnel), the exposure to risks was increasing. A November 2000 review of security by the Office of the Secretary-General of the United Nations pointed to the weakness of the existing arrangement under UNSECOORD:

⁹³ Terry, *Condemned to Repeat?*, 234-235.

⁹⁴ Stoddard, Harmer, and Haver, *Providing Aid in Insecure Environments*, 22.

Currently, at the Headquarters level, there are only eight Professional staff responsible for coordinating and managing the security system covering 70,000 staff and dependents at over 150 duty stations. There are only 60 cost-shared security officers in the field while there are some 80 high-risk duty stations where the presence of at least one field security officer would be warranted.⁹⁵

This report further noted that although UNSECOORD was seen by UN humanitarian agencies as playing a policymaking role, it was inadequate in providing sufficient staff and, as such, UNICEF, UNHCR, and the WFP set up their own security departments.⁹⁶

The August 2003 bombing of UN headquarters in Baghdad inspired the establishment of the Independent Panel on the Safety and Security of United Nations Personnel. The panel's report observed that threats to the organization were growing and recommended major changes to the UN's security architecture. In particular it called for more resources to assess dangers, to manage arrangements, and to strengthen capabilities. The report also stressed the need for greater responsibility and accountability in implementing security guidelines. This resulted in the General Assembly reconfiguring institutional structures—UNSECOORD, the Security and Safety Services, and the civilian security aspects of the Department of Peacekeeping were consolidated into a new single entity as of January 17, 2005, the Department of Safety and Security (DSS) under

⁹⁵ United Nations Secretary-General, *Safety and Security of United Nations Personnel: Report of the Secretary-General*, A/55/494, 18 November 2000, para 8.

⁹⁶ *Ibid.*, para. 35. UNHCR established "Humanitarian Security Officers" in May 2002, see Martin, et. al, *The Uprooted*, 215-216.

a more senior official (rank of Under-Secretary-General).⁹⁷ This new institution is charged with risk assessments, development of best practices, monitoring compliance, and “to ensure the most cost-effective provision and employment of security personnel by taking advantage of economies of scale and through centrally directed recruitment, selection, training, deployment and career development.”⁹⁸ In regards to UN humanitarian agencies, the DSS provides information on threats and coordinates field security for civilian staff engaged in the organization’s humanitarian work, which as of 2008 numbered around 37,000.⁹⁹

As to specific tactics by UN humanitarian organizations, withdrawal is highly unusual. In spite of the 2003 bombing in Iraq, the UN has been reticent to take this approach, arguing that, “The Organization cannot succumb to a bunker mentality and shrink from the work the world’s people expect it to do. A degree of risk cannot be avoided; the challenge is to mitigate it.”¹⁰⁰ And, just this year, Jan Egeland, head of

⁹⁷ General Assembly Resolution 59/211 (December 20, 2004) and A/59/365, Corr. Add. 1 (October 20, 2004).

⁹⁸ UN Department of Safety and Security, “History,” <http://dss.un.org/public/AboutUs/History/tabid/520/language/en-US/Default.aspx>.

⁹⁹ Independent Panel on Safety and Security of UN Personnel and Premises Worldwide, *Towards A Culture of Security and Accountability*, 9, notes that 37,000 civilian staff are involved in humanitarian operations out of a total 140,000 civilians staff and that 75% of all personnel are national staff.

¹⁰⁰ *Strengthening and Unified Security Management System for the United Nations*, UN document A/59/365, September 17, 2004, 11.

OCHA from 2003 to 2006, has stated that regardless of the attacks on its personnel, the UN has “an obligation to stay and deliver.”¹⁰¹ Accordingly, like their non-governmental counterparts, UN humanitarian agencies rely on international law as their first line of defense and also seek consent.

However, when these tools are lacking and humanitarian agencies have been authorized to act, they are permitted to work with armed actors. UN policy on this crystallized in the late 1990s—“guidelines for armed escorts” was first disseminated as a security directive on January 9, 1996 and since then has appeared in 2001 as and again in 2008 in *Civil-Military Guidelines & Reference for Complex Emergencies*.¹⁰² The guidelines state on page 10 that, “As a general rule, humanitarian convoys will not use armed or military escorts,” but then proceeds to enumerate the criteria that must be met for an exception to this principle to be put into practice: local authority is unwilling or unable to secure humanitarian space; need for relief is too great to ignore; and, short-and long-term safety is enhanced not compromised by armed escorts. The decision on when to use armed escorts resides with the “Designated Official,” which is usually the Humanitarian Coordinator, and this individual is to consult all participating agencies. The guidelines then provide the rules that should apply to the use armed escorts: the central importance of humanitarian goals in efforts; humanitarian agencies as the main actors and

¹⁰¹ *Associated Press*, “UN report: Over 100 Aid Workers Killed Annually,” April 13, 2011.

¹⁰² <http://www.unhcr.org/refworld/pdfid/4289f1b54.pdf>; IASC & UN OCHA, *Civil-Military Guidelines & Reference for Complex Emergencies* (New York: IASC & UN OCHA, 2008), 39-54.

are the only ones engaging in relief work; and, separate vehicles for humanitarian and armed personnel respectively. Lastly, these instructions (pp. 13-14) state that negotiating security arrangements should be a collective endeavor of all humanitarian organizations on the ground in terms of process, substance, and setting a code of conduct.

These guidelines are quite thoughtful in depicting the state of the challenge of security arrangements on two levels, the safety of agency personnel and coordination between agencies. First, it outlines the risks to personnel in “irregular” warfare and the heightened dangers that emanate from the belligerents’ beliefs that humanitarian organizations are no longer neutral and impartial. While accentuating that armed escorts are generally disadvantageous, the guidelines advise there are situations where they are distinctly beneficial:

There are many cases in which the use of force, including armed escorts, would compromise the impartiality or humanitarian organizations. There are also circumstances, however, in which the use of armed escorts for humanitarian convoys would *increase* the capacity of such organization to provide assistance in an impartial manner...¹⁰³

Secondly, the memo points out that policies on the issue have been “fragmented.”¹⁰⁴ This split over the use of armed escorts is largely between the UN and non-governmental organization, as the latter is far more reticent to opt for this course of action.

¹⁰³ United Nations, *Use of Military or Armed Escorts for Humanitarian Convoys: Discussion Paper and Non-Binding Guidelines*, (September 14, 2001), 6.

¹⁰⁴ *Ibid.*, 7.

Finally, the issue of the UN hiring private security is controversial. During the early to mid 1990s as threats to peacekeepers and civilian staff were escalating, and the organization suffered increasing casualties—not to mention a similar growth in killed and wounded non-combatants the UN was attempting to protect—the practice was taboo. Even in the midst of the horrors of the 1994 Rwandan genocide, Kofi Annan, who had then been head of UN peacekeeping (and later would become secretary-general of the organization), commented that,

Some have even suggested that private security firms... might play a role in providing the United Nations with the rapid reaction capacity it needs. When we had need of skilled soldiers to separate fighters from refugees in the Rwandan refugee camps in Goma, I even considered the possibility of engaging a private firm. But the world may not be ready to privatize peace.¹⁰⁵

However, the 1996 guidelines for using armed escorts contain no specific outright prohibition regarding the hiring of PSCs but rather stresses that the UN security coordinator is charged with making all security decisions.¹⁰⁶ OCHA's own guidelines for using PSCs state only that the company must be registered in the country in which they

¹⁰⁵ Kofi Annan, "Intervention," Ditchley Foundation Lecture XXXV, June 26, 1998, <http://www.ditchley.co.uk/page/173/lecture-xxxv.htm>.

¹⁰⁶ United Nations, *Use of Military or Armed Escorts for Humanitarian Convoys*, 7 and 11. This is also reiterated by the Independent Panel on Safety and Security of UN Personnel and Premises Worldwide, *Towards A Culture of Security and Accountability*, 45.

operate and that the government must authorize the contract.¹⁰⁷ Likewise, UNHCR includes security contractors in the “ladder of options” it devised in 2007.¹⁰⁸ Consequently, in several cases, a variety of humanitarian agencies within the UN system have hired security contractors to provide protection for staff and facilities. In addition to OCHA and UNHCR another prominent example is the WFP.¹⁰⁹ Thus, although UN security behavior has changed to allow for the hiring of private security contractors, publicly much of the rhetoric of the organization remains hostile to the concept. Malcolm Hugh Patterson characterizes this duality:

For the present the UN retains a conflictual position on private military and security services. It publicly decries them but members employ them in various forms. There is a UN treaty for the suppression of mercenaries, yet the document

¹⁰⁷ Vaux, et. al., *Humanitarian action and private security companies*, 15.

¹⁰⁸ Executive Committee of UNHCR, “Security and the Civilian and Humanitarian Character of Refugee Camps and Settlements: Operationalizing the ‘Ladder of Options,’” UN Document EC/50/SC/INF.4, June 27, 2007.

¹⁰⁹ P.W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca, NY: Cornell University Press, 2003), 82; Vaux, et. al., *Humanitarian action and private security companies*; James Cockayne, “Commercial Security in Humanitarian and Post-Conflict Settings: An Exploratory Study,” (New York: International Peace Academy, 2006); Sarah Percy, *Mercenaries: The History of a Norm in International Relations* (Cambridge: Cambridge University Press, 2007), 223; Malcolm Hugh Patterson, *Privatizing Peace: A corporate adjunct to United Nations peacekeeping and humanitarian operations* (New York: Palgrave MacMillan, 2009), 55.

is poorly drafted and lacks widespread support. UN organs face escalating threats to their operations, which at times compels them to hire armed contractors to secure employees safety. At the same time the Organization's senior staff issue polemical criticisms against various firms.¹¹⁰

Nevertheless, in sum, UN practice demonstrates that the idea of private security for humanitarian agencies while atypical has not been spurned.

Other Humanitarian Non-Governmental Organizations

The previous cases of humanitarian agencies are representative of the range of views as well as the general change throughout the sector to include hiring PSCs in the menu of permissible security tactics, but it is worth noting that other humanitarian NGOs are part of the overall debate. Although all humanitarian NGOs express a commitment to acceptance and consent as standard operating procedure, during the 1990s most also came to recognize that armed escorts are essential to delivering aid in insecure environments. Support for this idea is discernible in the practices of humanitarian NGOs as early as the operations during the Bosnian war, 1992-1994.¹¹¹ However, like the controversy within the United Nations, humanitarian NGOs are somewhat divided on hiring PSCs. Some have used them: The International Rescue Committee and Caritas have used ArmorGroup and Southern Cross, and World Vision hired LifeGuard

¹¹⁰ Patterson, *Privatizing Peace*, 59.

¹¹¹ Mark Cutts, "The Humanitarian operation in Bosnia and Herzegovina, 1992-1995: Dilemmas in negotiating humanitarian access," *New Issues in Refugee Research—Working Paper No. 8* (Geneva: UNHCR, 1999), 6-10.

Protective Services, Inc.¹¹² Other NGOs, such as Save The Children, are adamant that acceptance is the only possible tactic and that employing PSCs is irreconcilable with truly humanitarian action. Nick Downie, Head of Security for the Emergencies Team of Save the Children, personifies this sentiment:

I am concerned that our reputation and community perceptions of our work are at risk when we work with PMSCs. Equally, I am worried that inappropriate engagement with PMSCs will lead to us becoming more insecure. Many aid workers assisted by PMSCs are already, and will become more, vulnerable because of this engagement... I prefer active avoidance rather than associating with this globally resurgent-armed actor.¹¹³

Overall, in assessing the view of non-governmental humanitarian agencies aside from those mentioned above, on balance, what is surprising is not that some agencies continue to oppose the practice, but rather that some agencies have come to embrace it.

Changes in Agency Views and the Norm of Employing Security Contractors

The above indicates considerably variation in the security tactics of humanitarian agencies, but also an across the board drift in the humanitarian sector toward new approaches. So, why have humanitarian agencies views of security tactics changed, and

¹¹² Vaux, et. al., *Humanitarian action and private security companies*, 16; Singer, *Corporate Warriors*, 82.

¹¹³ Nick Downie, "Humanitarian Action in Insecure Contexts," *Co-operation With Private Security and Military Companies*, Dialogue 7 (2008): 7.

in particular, how has the norm of contracting private security materialized? Before examining the specific case of PSC usage, how agencies learn and make decision is pertinent to this analysis. New experiences frequently stimulate new interpretations of principles, but decisions to adopt new practices are motivated by the latest concern and are usually ad hoc.¹¹⁴ This is due to the fact that most humanitarian agencies lack an inclination to investing in the seeming luxury of data collection, analysis, and strategic planning, and this impairs grasping challenges at hand—i.e., the “fog of humanitarianism” afflicts them.¹¹⁵ Some agencies have become more adept than others at acquiring knowledge and overhauling their practices (“organizational learning”), but it takes considerably longer for knowledge to diffuse throughout the sector (“institutional learning”).¹¹⁶ Moreover, agencies often come away with different interpretations of

¹¹⁴ Dorothea Hilhorst, “Being Good at Doing Good? Quality and Accountability of NGOs,” *Disasters* 26, no. 3 (December 2002): 195; Koenraad Van Brabant, “Organizational and Institutional Learning in the Humanitarian Sector,” in *The Charitable Impulse: NGOs and Development in East and North-East Africa*, ed. Ondine Barrow and Michael Jennings (Bloomfield, CT: Kumarian Press, 2001), 186; Antonio Donini, “An Elusive Quest: Integration in the Response to the Afghan Crisis,” *Ethics & International Affairs* 18, no. 2 (Fall 2004): 27.

¹¹⁵ Thomas G. Weiss, and Peter J. Hoffman, “The Fog of Humanitarianism: Collective Action Problems and Learning-Challenged Organizations,” *Journal of Intervention and Statebuilding* 1, no. 1 (March 2007): 47-65.

¹¹⁶ Van Brabant, “Organizational and Institutional Learning in the Humanitarian Sector,” 183-184.

experiences and this contributes to a variation in behavior. Therefore, there are significant differences not only in the process of decision-making but also in the outcomes seen in the decisions that are made.

With respect to the politics of protection, dangerous environments, a new emphasis of security, and funding dynamics have reshaped the thinking of agencies in recent years. The lead off piece in a 2010 issue of *Humanitarian Exchange* devoted to issues of operational security ruminated on the changes at hand over the past decade:

New conflict contexts involving intervening Western powers fighting against armed insurgent forces have created new sources of threat to international humanitarian action. Increasing violence against aid workers and their operations, including more kidnappings and lethal attacks, has had serious implications for humanitarian relief work in insecure contexts. In some circumstances attacks have been increasingly politically motivated. This growing violence has generated a deeper awareness of the security challenges faced by operational agencies, giving rise to new adaptations and strategies in security management.¹¹⁷

Although citing international humanitarian law and seeking acceptance remain foundational strategies, in many cases they have come to be seen as far too limiting and unpredictable.⁴¹¹⁸ Reflecting on August 2003 bombing of the United Nations in Baghdad, an attack he experienced firsthand and barely survived, Gil Loescher somberly remarks

¹¹⁷ Adele Harmer, “A decade on: a new Good Practice Review on operational security management,” *Humanitarian Exchange*, no. 47 (June 2010): 2.

¹¹⁸ Larissa Fast and Michael O’Neill, “A closer look at acceptance,” *Humanitarian Exchange*, no 47 (June 2010): 5.

that the foundational principles of independence, impartiality, and neutrality suddenly and dramatically were “an idea lost in the rubble.”¹¹⁹ Consequently, there has been a greater reliance on operating with a lower profile, withdrawal, or the use of force.¹²⁰ Some agencies, like the WFP and CARE, will take a more forceful approach and organize armed escorts for relief convoys; others, such as the ICRC and MSF avowedly refuse on moral grounds, though the practices of the ICRC seem to indicate that in an anomalous state of affairs they operate with them.¹²¹

The least common security arrangement has been to employ security contractors because much of the humanitarian sector has viewed the practice as likely quite harmful to their overall goals. Not surprisingly “[b]oth ICRC and MSF refuse to use security contractors in Afghanistan and Iraq, on the basis that to do so would in fact decrease staff security by risking associating them with parties to an armed conflict.”¹²² However, although the culture among humanitarians for many years has been to repudiate the practice such arrangements endure. Van Brabant depicts this attitude;

Some agency staff simply deny that their organisation has ever used a private security firm, even when it patently has done so. They may argue that this is a

¹¹⁹ Gil Loescher, “An Idea Lost in the Ruble,” *New York Times*, August 20, 2004.

¹²⁰ Stoddard, Harmer, DiDomenico, *Providing Aid in Insecure Environments*, 10; Stoddard, Harmer, and Haver, *Providing Aid in Insecure Environments*, 28-29.

¹²¹ Vaux, et. al., *Humanitarian action and private security companies*, 15.

¹²² Cockayne, *Commercial Security in Humanitarian and Post-Conflict Settings*, 14.

false discussion, and that the focus should be on the failure of politicians to provide secure conditions in which aid agencies can do their work.¹²³

Nevertheless, in extreme situations, security concerns have trumped all else and have motivated agencies to hire security contractors: “Contracting of PSPs [private security providers] is driven by organisations’ perceptions of increasing insecurity and their own lack of capacity to meet the threat, but is also dependent on the available supply of contractors and alternative security provision, such as UN peacekeeping support.”¹²⁴ Moreover, the decision to do so is more often the result of the expedient calculation of vulnerable field personnel rather than principle-oriented and precedent-setting trepidation that is found within the safety of headquarters.¹²⁵

Earlier chapters have examined the role of donors in prompting agency behavior, however, with respect to the hiring of security contractors the evidence is mixed. The argument is sometimes made that funding dictates this decision: “Some agency staff state that it is donors who are putting pressure on them to use private security companies, to get the aid through irrespective of principles.”¹²⁶ However, while it is true that donors have become much more interested in security issues, there is no common standard

¹²³ Koenraad Van Brabant, “Humanitarian action and private security companies,” *Humanitarian Exchange*, no. 20 (March 2002): 25.

¹²⁴ Stoddard, Harmer, and DiDomenico, *The use of private security providers and services in humanitarian operations*, 12 and 21.

¹²⁵ *Ibid.*, 13.

¹²⁶ Van Brabant, “Humanitarian action and private security companies,” 25.

among them on the means to achieve it.¹²⁷ For instance, USAID permits hiring protection, and in fact, in Iraq, it insists that agencies do so. In comparison, the Humanitarian Aid department of the European Commission (ECHO) does not allow force of any kind, including PMSCs. Furthermore, in reviewing agency practices, it appears that both those that rely on public authorities (states and intergovernmental organizations) for resources, such as UNHCR, as well as those that are more independent (raising funds through private grants and membership), like World Vision, have used security contractors. Therefore, although donors exert influence on aid agencies, they for the most part hold no sway in the selection of security tactics; it is humanitarians themselves who have pursued the turn to security contractors.

So, how extensively have humanitarian agencies turned to security contractors for protection? Setting aside ethical bluster, legal uncertainty, panic over potential profiteering, and political reverberations, the practice has grown remarkably. In 2006, Singer pointed out that, “[Private security] [i]ndustry representatives estimate that approximately 25% of the ‘high end’ firms that provide security services, and over 50% of firms that provide military support or logistics functions, such as military air transport, have worked for humanitarian clients.”¹²⁸ And, in 2009, Stoddard, et. al., report,

While the use of commercially contracted armed protection, including guards and escorts, remains very much the exception and is confined to particular places, every major international humanitarian agency has paid for armed security in at

¹²⁷ Ibid., 24-25.

¹²⁸ Singer, “Humanitarian Principles, Private Military Agents,” 70.

least one operational context. In 2007, for example, approximately 22% of international humanitarian agencies reported using armed security services.¹²⁹ When even the “prophet” of humanitarian action, the ICRC, resorts to the practice, and is joined by other “priests” (other humanitarian agencies), the norm has been established—in this way the ends of this mode of using force has been absolved.¹³⁰ Thus, what was once an unorthodox idea, verging on heresy for some within the humanitarian sector, has since become a recurrent behavior. The discussion to ban “mercenaries,” even in humanitarian circles, has fundamentally given way to deliberations over how to regulate security contractors. This is evidenced by the strong advocacy underway for humanitarian agencies to contribute to the effort to institutionalize the 2008 *Montreux Document* and the 2010 *International Code of Conduct for Private Security Providers*. *The Code*, in particular, makes the process of hiring PSCs more acceptable for humanitarian agencies because if security contractors violate human rights or international humanitarian law, it then affords recourse to both agencies and victims. As André du Plessis denotes,

By including a clause along the lines of ‘the private security company shall comply with the standards set out in the Global Code of Conduct’, humanitarian organisations can easily incorporate compliance with high industry standards into their commercial contracts. In effect, this would make a breach of human rights

¹²⁹ Stoddard, Harmer, DiDomenico, *Providing Aid in Insecure Environments*, 8.

¹³⁰ Hugo Slim, a theologian by training, has applied this religious terminology to the humanitarian sector to explain its unique culture and position in international politics. See “Sharing a Universal Ethic: The Principle of Humanity in War,” *International Journal of Human Rights* 2, no. 4 (Winter 1998): 28-48.

standards a breach of contract, giving the humanitarian organisation the opportunity to terminate its relationship with the private security company. It also allows humanitarian organisations to demonstrate that they have taken measures to ensure that the highest standards are met.¹³¹

The inclusion of protocols for protecting human rights and ensuring accountability is refashioning humanitarian action's relationship to private security. Culturally, the overall impact is that humanitarian norms have come to accommodate security contractors protecting agencies.

This chapter has traced the decisions of humanitarian agencies to employ security contractors and the shifting views of the practice within the humanitarian sector. The reluctance to forgo aid work despite the dangers associated with it, or a disinclination toward a bunkerized humanitarianism in which personnel stay within fortified facilities, have compelled agencies to seek more robust security solutions. Over the past twenty years there has been a greater willingness among agencies to work with military forces, but this has led to other complications. These armed actors have had other agendas that undermine the ability of agencies to be or present themselves as neutral and impartial. To avoid the mire of the politics and questions of dependability that comes with relying on states, international organizations, or local armed elements, agencies have sought to acquire protection by hiring security contractors. However, there is no centralized

¹³¹ André du Plessis, "The Global Code of Conduct for Private Security Companies: why it matters to humanitarian organisations," *Humanitarian Exchange*, no. 47 (June 2010):

procedures or guidelines for humanitarian agencies to employ security contractors. Moreover, because this arrangement is also seen as incendiary it simply alters the nature of security problem rather than alleviating it. Humanitarian efforts are seen as a conglomeration, and humanitarian agency-security contractor interactions by even a single agency create the impression that aid work is the handmaiden of profiteering military forces.

By analyzing the motives of agencies and the mechanics of their respective behaviors, this chapter facilitates an appreciation of how the development of humanitarian agency-security contractor interactions is changing the character of the humanitarianism in terms of ideology, organizations, and operations. The next chapter pursues this line of inquiry to problematize the issue of change in the international humanitarian system and interpret the role of norms and the innovation of humanitarian agency-security contractor interactions in realizing change.

Chapter 6:

Conclusion:

From Coaxing Consent to Contracting Coercion?

Evaluating the Private Security Revolution in Humanitarian Affairs

- Argument
- Consequences
- Scholarly Debates
- Research Agenda
- Final Thoughts

The incorporation of private security within the range of tactics that humanitarian agencies consider in determining modes of protecting operational space constitutes a revolution in humanitarian affairs—it represents a profound shift from traditional behavior—but what are the ramifications? This chapter assembles the pieces of the puzzle of humanitarian agency-security contractor interactions that have been unearthed in earlier chapters to interpret this development, analyze its consequences, and reflect on its significance. First, it begins with a distillation of changes in the principles and practices of humanitarian agencies and an analysis of the trends that explain innovations, and more particularly, what in humanitarian culture motivates the turn to hiring security contractors. Second, this chapter considers the implications of this growing phenomenon,

i.e., how the use of private security by some humanitarian agencies impacts the entire humanitarian sector. Third, in the context of heightened security threats and agencies searching for new solutions, this chapter presents proposals to address current challenges. Fourth, this chapter mulls how the findings of this dissertation correspond with and advance arguments within academia by asking, what does this revolution in humanitarian affairs mean for scholarly debates? Fifth, it identifies lingering questions and puts forward a research agenda.

Argument

This dissertation argues that a private security revolution in humanitarian affairs is afoot. Although the inception of a revolution is not formally demarcated, trends indicate increases in frequency and intensity. In this case, the term “revolution” is used consciously to indicate a major qualitative transformation in the methods as well as the meaning of humanitarian action that are the result of a configuration of the six trends defined in Chapter 1: maximalization, collaboration, militarization, securitization, marketization, and commercialization. The tradition of the humanitarian sector is to operate separately from producers of violence so as to avoid confusing relief with military objectives or being drawn into the politics of armed conflicts. The premise of humanitarianism as improving the welfare of victims of war was initially defined narrowly to involve only the provision of emergency relief and this model was uniformly supported by states, which ensured the protection for agencies. However, since this original bargain between humanitarians and belligerents, humanitarian action has come to

include aspects that confront the root causes of humanitarian crises (maximalization), such as promoting of human rights, abetting state-building and fostering economic development.¹ To facilitate this wider agenda humanitarian agencies have engaged and worked with actors outside of the sector; sometimes governments and political entities (collaboration), other times the armed forces of states and militias (militarization). This expansion of activities and partnerships not only breaks the classical mold of humanitarian action, it also undermines the assumption of protection for agencies—when belligerents fear that aid is going to their opponents, they then view agencies as threats. Without recognition, or with outright antagonism, from belligerents, agencies encounter dangers that constrain humanitarian space.

To cope with spiraling protection problems, humanitarian agencies have sought new security solutions. As seen in Chapters 2, 4, and 5, the conventional menu of humanitarian agencies' security tactics was basically limited to legal protections, acceptance by locals and political authorities, or forsaking involvement (either not enter into the crisis or withdraw if already present). However, in the past twenty years agencies have also experimented with a “go local” scheme that draws on local populations (who would be less conspicuous and perhaps more readily accepted) and force. Localization has some benefits in terms of reducing high profile incidents of violence against aid workers, but it has not eliminated the problem and mostly transposes the peril to national staff from international personnel.

¹ Michael Barnett, “Humanitarianism Transformed,” *Perspectives on Politics* 3, no. 4 (December 2005): 723.

Accordingly, using coercive means to secure humanitarian space (securitization) has become increasingly prevalent. This tactic has two varieties: The first is to look to states or inter-governmental organizations to provide force; the second is to hire private security contractors. This latter method is prompted by the availability of this protective capability—as Chapter 3 shows, private security company actively market this service to humanitarian agencies (commercialization). This arrangement avoids the entanglements of working with intervening states or local militarized actors. Moreover, the securing of humanitarian space allows agencies to maintain a presence in crises, which enables the delivery of assistance. Furthermore, it also helps agencies attract donors and preserve their market-share in the sector (marketization).

The configuration of beliefs and behaviors that has produced the private security revolution in humanitarian affairs is sketched in Figure 6.1. To reiterate: Whether or not an agency pursues a maximal agenda, supports political activities, or operates in conjunction with military actors is not as important as the perception that they do. This, in turn, has made humanitarian action much more dangerous. Consequently, agencies reconsider tactics for defending humanitarian space. The option of private security contractors has come to be seen as a viable and independent avenue to protect staff and victims, and also has the effect of enhancing the identity of the agency to donors.

While the mix of factors that produces this outcome is elaborate, the key catalyst is humanitarian culture. The path to determining protection arrangements runs through the haunted landscapes of Srebrenica and Goma, the celebratory euphoria of Mosul and Pristina, and the cautious humility of Mogadishu, Baghdad, and Kabul. The twists and

FIGURE 6.1
**HOW NORMS EXPLAIN HUMANITARIAN AGENCY-
SECURITY CONTRACTOR INTERACTIONS**



turns of normative inspiration and re-evaluation in an agency, let alone the entirety of the humanitarian sector is convoluted and complex, but aside from the impulse to respond, since the end of the Cold War and ever more since 9/11, three ideas loom largest in shaping humanitarian thinking: a casualty-aversion fueled by the surge in aid worker casualties; a longing for security fed by the violence against them coupled with the dearth of protection afforded by belligerents, states, and inter-governmental organizations; and, an organizational imperative to have a presence in disasters. In sum, why have humanitarian agencies turned to private security? It is because humanitarians see PMSCs as a means to keep aid flowing, to keep aid workers safe, and to keep aid agencies on the ground.

The private security revolution in humanitarian affairs should be understood within the context of other revolutions in humanitarian affairs (RHA). Indeed, this latest one stands on the shoulders of the others. The first RHA arose in the late nineteenth century with the creation of humanitarian organizations. The idea of humanitarian action embedding into institutions is revolutionary in itself as previously there had never been a permanent organization dedicated exclusively to this theme. The second RHA corresponds to the range of victims that are entitled to aid. Initially the international humanitarian system was devised to assist wounded soldiers, but during the twentieth century civilians have come to be included. The third RHA is in the scope of activities undertaken by humanitarian agencies. After the Cold War there has been a greater emphasis placed on relief operations contributing to human rights and economic development. The fourth RHA is about how to achieve humanitarian goals, and in particular the movement from consent-based to work to coercive practices. Two variants

are discernible: The “responsibility to protect” (R2P) paradigm is perhaps the most conspicuous and most debated instance of this. The other, the use of private security contractors to protect humanitarian space, is less prominent in international discussions. The project of private security protecting humanitarian space does not have R2P’s ambition of political transformation to alleviate the root causes of humanitarian crises, but instead concentrates on securing access. This fourth generation RHA is incipient. The existence of the norm is evident, but it nonetheless remains contested in some quarters, even within the humanitarian sector—there are founding revolutionaries, such as UNHCR; those who have since joined the revolution, which the ICRC has seemingly done; but also counter-revolutionaries, such as MSF. Although the politics of private security use by humanitarian agencies and R2P are routinely revisited, the ferocity of crises can outweigh political concerns. This fourth RHA is realized not so much through open debate and global consensus, but by the desperate desires of those in a position to make a difference in addressing war-inflicted suffering.

Consequences

The onset of the private security revolution in humanitarian affairs has significant consequences. In terms of international politics broadly speaking the hiring of security contractors by humanitarian agencies raises important policy issues regarding control over the use of force (is it exclusively the purview of states?) as well as the role of economics in allocating violence (does wealth grant a privilege of protection?). However,

beyond these concerns there are ramifications to the humanitarian sector that warrant examination.

To begin with there is a collective action problem that stems from employing private security. A humanitarian agency does not operate in a vacuum; other humanitarian agencies operate in the same environment. One agency's selection of tactics for gaining access to victims or protecting staff affects all agencies. That is to say, although aid organizations are independent in considering their respective principles and in determining their respective practices, there is an aggregate net effect. For instance, the negotiations of one agency with an interlocutor can influence conditions for other agencies—i.e., there is an overlap between “agency space” and “humanitarian space.”² A mixture of approaches that includes an agency working with armed actors can undermine another agency that pursues non-violent tactics. In short, the lack of coherence on security tactics produces a collective action problem.³

Moreover, it also produces a dire security problem throughout the sector. Belligerents and locals do not differentiate between humanitarian agencies.⁴ For example, in Bosnia in the mid 1990s, the perceived transgressions of one agency impacted others

² Max P. Glaser, Max P., *Humanitarian engagement with non-state armed actors: The parameters of negotiated access*, HPN Network Paper 51 (June 2005): 1.

³ Michael Bryans, Bruce D. Jones and Janice Gross Stein, “Mean Times: Humanitarian Action in Complex Political Emergencies—Stark Choices, Cruel Dilemmas,” Report of the NGOs in Complex Emergencies Project, *Coming to Terms* 1, no.3 (January 1999): 14.

⁴ David Rieff, *A Bed for the Night: Humanitarianism in Crisis* (New York: Simon & Schuster, 2002), 114.

due to guilt by association; suspicion about the religious, ethnic and national affiliations of certain agencies implicated them all.⁵ Therefore, when a humanitarian agency engages in what may be perceived as a provocative practice, belligerents respond with attacks on all agencies, including others that do not engage in the practice. As the 2000 UN report on safety and security states,

In addition to the attacks and threats against United Nations personnel, non-governmental organization partners of United Nations humanitarian organizations that operate in the same environment are subjected to the same treatment in complex emergencies. It is recognized that threats against non-governmental organization staff can also directly affect the United Nations humanitarian assistance programmes, especially since conflicting parties often do not distinguish between United Nations and non-governmental organization personnel.⁶

This finding has been reiterated again more recently: “The UN agencies in the field will continue to be affected by the security actions of other humanitarian actors, and vice-versa.”⁷ The security threat to all agencies from the security tactics of one agency or a

⁵ Mark Cutts, “The Humanitarian operation in Bosnia and Herzegovina, 1992-1995: Dilemmas in negotiating humanitarian access,” *New Issues in Refugee Research—Working Paper No. 8* (Geneva: UNHCR, 1999): 7, 23-24.

⁶ United Nations, *Safety and Security of United Nations Personnel: Report of the Secretary-General*, A/55/494, November 18, 2000, para. 16.

⁷ Abby Stoddard, Adele Harmer, and Victoria DiDomenico, *The use of private security providers and services in humanitarian operations*, HPG Report 27 (October 2008), 27.

few agencies has two potential effects on the humanitarian sector: blowback and snowballing.

Blowback

The use of private security by humanitarian agencies has often resulted in two types of blowback. The most frequently discussed kind of blowback is manifest in the level of antagonism belligerents and local populations express, and, moreover, which then motivated them to attack aid workers. A second type of blowback is within the humanitarian sector and arises from the disgust some humanitarians feel toward the practice and this divides the sector. Perspectives that oppose PMSC usage both inside and outside the sector are rooted in the common contention that, essentially, private security is not a humanitarian actor, nor does it operate in accordance with recognized humanitarian practices. As Abby Stoddard, Adele Harmer, and Victoria DiDomenico concisely state in their study of private security use by humanitarian agencies: “very few PSPs [private security providers] appear to have developed an understanding of the unique operating principles that guide humanitarians in their operations in conflict contexts...”⁸

Outside the humanitarian sector, critiques of private security and particularly humanitarian agencies relying on them for protection are numerous. To that end Hugo Slim warns that any sort of humanitarian action that is seemingly colonial in orientation, invasive, arrogant or culturally insensitive breeds resentment toward humanitarians.⁹ In

⁸ Ibid., 2.

⁹ Hugo Slim, *A Call to Alms: Humanitarian Action and the Art of War* (Geneva: Centre for Humanitarian Dialogue, February 2004), 8.

regards to PMSC usage, therefore, the list of criticisms span the belief that any use of violence undermines humanitarian outcomes, the attitude that such security approaches reveal the undercurrent of Western imperialism in humanitarian action, and to the conviction that such arrangements abet profiteering from suffering. Chapter 4 enumerated specific cases of negative views of humanitarian agency use of PSCs. However, blowback from outside the sector is not necessarily inevitable. Private security may be innately provocative, but humanitarian needs may trump hostile reactions to agencies hiring PSCs. For instance, a 2005 study of security environments underscores that local recipients are far more concerned about what is provided than who is providing it.¹⁰ Nevertheless, perceptions matter in humanitarian action, particularly when for-profit armed actors are deployed in the name of humanitarianism. Empirically, humanitarian agencies use of PSCs has resulted in heightened threats against aid workers and at times produced blowback, but not in every instance.

Within the humanitarian sector, despite greater usage of private security and greater acknowledgement of the phenomenon, the practice nonetheless remains contentious among some agencies. Chapter 5 delineated the tradeoffs humanitarians see to such arrangements. To some humanitarians, armed actors are simply not appropriate for this type of work. For instance, Larry Minear expresses, “as a matter of principle and practice, humanitarian action is—and should remain—first and foremost civilian in

¹⁰ Antonio Donini, et. al., *Mapping the Security Environment: Understanding Perceptions of Local Communities, Peace Support Operations and Assistance Agencies* (Feinstein International Famine Center, June 2005), 53.

character.”¹¹ And, subsequent to that, added, “while the military and private contractors may make specific and indispensable humanitarian contributions . . . the new breed is no substitute for the old.”¹² In other words, some humanitarians profess that the hiring of private security redefines humanitarian action for the worse—the practice takes humanitarianism too far away from its fundamental principles.

Furthering this critique by humanitarians, two studies emphasize that agencies that hire PSCs are underestimating or misunderstanding the damage that the practice may inflict. One study, on gun violence against aid workers, argues that, “the complexities and potential controversies of how private security can be locally-interpreted is not being adequately considered by those agencies who often engage it.”¹³ The other study takes up the issue of long-term impacts of privatizing security and concludes, “short-term gains from the use of [private security companies] need to be balanced against possible long-term losses at every instance of outsourcing. The problem in this respect is that isolated

¹¹ Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries* (Bloomfield, CT: Kumarian Press, 2002), 105.

¹² Ian Smillie and Larry Minear, *The Charity of Nations: Humanitarian Action in a Calculating World* (Bloomfield, CT.: Kumarian, 2004), 18.

¹³ Cate Buchanan and Robert Muggah, *No Relief: Surveying the Effects of Gun Violence on Humanitarian and Development Personnel* (Geneva: Centre for Humanitarian Dialogue, July 2005), 28.

decisions are taken without a wide perspective on the cumulative effects of privatizing security.”¹⁴

The blowback within the humanitarian sector prompts destabilizing discord, with those who hire PSCs staking claim to the idea that humanitarian action must incorporate this tool to remain relevant and those who oppose the usage of PSCs proclaiming that the practice undermines the core values. That is to say, the sector is divided on how to understand security. People in Aid, an organization to support human resource management in the humanitarian and development fields, provides useful definitions of security that explain rival conceptions.¹⁵ On the one hand, there is “operational security,” “NGO security is achieved when all staff are safe, and perceive themselves as being safe, relative to an assessment of the risks to staff and the organisation in a particular location.” On the other hand, there is “organisational security,” “NGO security is achieved when organisational assets are safe and when the organisational name and reputation are maintained with a high degree of integrity.” Some agencies argue that while the tactic of PSC may succeed in protecting humanitarian space, it is a strategic failure because of the harm it does to an agency’s reputation—i.e., the standing of humanitarianism should take

¹⁴ Caroline Holmqvist, *Private Security Companies: The Case for Regulation*, SIPRI Policy Paper 9 (Solna, Sweden: Stockholm International Peace Research Institute, 2005), 58.

¹⁵ People in Aid, *Promoting Good Practice in the Management and Support of Aid Personnel: Policy Guide and Template for Safety and Security* (June 2008), 6, www.peopleinaid.org/pool/files/publications/safety-security-policy-guide-and-template.pdf.

priority over a potentially alienating tactic that can derail cooperation among particular agencies. Without agreement on the goals and purposes of humanitarian action, there can be no consensus on coherence of action.¹⁶ In other words, the lack of agreement among agencies leads to an erosion of the international humanitarian system's functional capabilities. Briefly, muddled security arrangements are causing blowback from within the sector and thus fracturing it to a degree that makes humanitarian action incoherent and possibly untenable.

The impact of these blowbacks is two-fold: First, security conditions that were previously so poor that some humanitarian agencies felt it necessary to hire PSCs to cope deteriorate even further. Second, agencies which seek to stand apart from the usage of private security struggle to define a separate identity for themselves and implicitly erode the reputations of agencies that do use private security. The other alternative agencies have in a worsening security environment is to adopt the practice so as to reap the protection PSCs supply (see below on "snowballing").

Snowballing

The rapid diffusion and acceptance of a norm throughout a system has been termed by Martha Finnemore and Kathryn Sikkink as a "norm cascade,"¹⁷ and this study has endeavored to illustrate how this has unfolded with respect to humanitarian agencies embrace of security contractors, albeit more slowly than perhaps a "cascade" implies.

¹⁶ Joanna Macrae, "Understanding Integration from Rwanda to Iraq," *Ethics & International Affairs* 18, no. 2 (Fall 2004): 55.

¹⁷ Martha Finnemore and Katherine Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (Autumn 1998): 887-917.

However, beyond the embeddedness of the norm as a growing acknowledgment of this idea, there has also been a correlate proliferation of the practice or a “snowballing” effect. It is not only the idea that a tactic is permissible that hastens its spread among humanitarian agencies, the performance of the practice and contextual elements also contribute to its adoption.

Despite the possible problem of blowback, humanitarian agencies that were hesitant or resistant to the notion of hiring PSCs may emulate agencies that do if the latter are more successful in delivering aid as well as in receiving funding as a result of continuing operations in the face of the danger. This mechanism of changing security practices recalls the analysis of DiMaggio and Powell cited in Chapter 1, that agencies might change as a result of “mimetic isomorphism.”¹⁸ A second route to the snowballing of security contractor hires by humanitarian agencies is the product of what DiMaggio and Powell would term “coercive isomorphism,” because agencies are compelled to change. In this scenario the driver of practice is the increases in security threats that may, in fact, be related to the use of private security itself. That is to say, the blowback that results from one agency’s employment of PSCs may require other agencies to either endure greater hazards and the likelihood of casualties, withdraw, or follow suit.

A third aspect that fosters snowballing is that once the tactic of hiring private security has been used, its hard, if not impossible, to go back to other tactics. As the 2010 Good Practice Review of the Humanitarian Practice Network points out in regards to the

¹⁸ Paul DiMaggio and Walter Powell, “The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields,” *American Sociological Review* 48, no. 2 (April 1983): 147-160.

use of force: “[There are] possible longer-term cost implications for the agency if it is following a predominantly protection and deterrence security approach. There is a risk that this approach will perpetuate itself partly because it will become increasingly difficult to return to an acceptance approach, which can be less expensive.”¹⁹ Although, it is difficult to differentiate among these factors, the data suggests a snowballing of PSC usage by humanitarian agencies.

Redefinition

What is at stake in blowback and snowballing is the fundamental issue of how the private security revolution in humanitarian affairs changes the character of humanitarian agencies and action—does working with for-profit armed actors alter the quality of mercy? Such a significant change raises vital questions:²⁰ PSCs may help save lives, but does this arrangement evince disempowering of victims as well as agencies? Do improving the welfare of those in war, but also yielding profit and serving the interests of Western states, constitute a humanitarian act?

Ultimately, given the potential for humanitarians hiring of security contractors to trigger blowback both within and outside the humanitarian sector, and the possibility of snowballing, PSC usage is becoming a key, perhaps *the* key, distinguishing feature of an agency. Scholars and practitioners have put forward a variety of categorization schemas for humanitarian agencies—Abby Stoddard points to the relation to politics to differentiate between Wilsonians and Dunantists; Thomas G. Weiss posits the relation to

¹⁹ HPN, *Operational security management in violent environments*, Good Practice Review Number 8 (December 2010), 287.

²⁰ Barnett, “Humanitarianism Transformed,” 734.

victims to discern between the impartial and “solidarists;” and Steve O’Malley and Dennis Dijkzeul stress the relation to states to separate independent versus subservient.²¹

The relation of agencies to private security presents a new typology to distinguish them.

Furthermore, beyond a re-definition of agencies into PSC revolutionaries or counter-revolutionaries, there is a re-definition of humanitarian action itself. By changing the content and quality of humanitarian action, this may alter its position in international politics. For instance, it has become apparent there is a moral cost to the closeness between relief agencies and the US government.²² Similarly, there is a toll for PSC usage. Humanitarian agencies have authority and capabilities because they are granted special powers to address recognized emergencies. But, when agencies are not seen as making a net contribution in humanitarian crises or viewed as engaging in provocative practices, the reputation and privileged position of the sector suffers.

²¹ Abby Stoddard, *Humanitarian Alert: NGO Information and Its Impact on US Foreign Policy* (Bloomfield, CT: Kumarian Press, 2006), 14; Thomas G. Weiss, “Principles, Politics, and Humanitarian Action,” *Ethics & International Affairs* 13 (1999), 1-22; Steve O’Malley and Dennis Dijkzeul, “A Typology of International Humanitarian Organizations,” (paper for the International Expert Conference “Security and Humanitarian Action: Who is Winning? A US–Europe Dialogue in the Wake of September 11,” Columbia University, May 24-25, 2002).

²² Rieff, *Bed for the Night*, 114-115.

Scholarly Debates

In addition to examining practical concerns relating to security tactics of the humanitarian sector, this study on the causes, and to some extent consequences, of the private security revolution in humanitarian affairs speaks to scholarly debates about norm changes, the impact of humanitarian agencies, and the meaning of humanitarian action.

Normative Dynamics

Much of the scholarly literature in International Relations Theory on humanitarianism views it as either fundamentally insignificant or essentially serving the interests of the powerful. However, given that the basis of humanitarian action is inspired by the impulse to address the suffering of others, it counters the concept that material interests, such as security and economics, are the only substantial drivers of behavior in international politics. As taken up in Chapter 1, lurking behind these interpretations is the classic debate over the extent to which ideas are power or are simply cosmetic justifications. To follow-up on this debate, this study provides a case of how norms shape the behavior of actors: legacies of past actions regarding securing humanitarian space spur a rethinking of past practices and the establishment of new ones.

The experiences of the last twenty years—replete with the “well-fed dead,” aid manipulation, and attacks on aid workers—led many humanitarian agencies to redesign programming. The traditional principles of humanitarian action, most notably neutrality and consent, have come to be questioned and in many instances set aside in favor of other approaches. What had been the custom of appropriate behavior has come to be altered through a process of reevaluation by humanitarians. As James March and Johan Olsen point out, rules of appropriateness “are likely to be abandoned when rule following

creates catastrophic outcomes, and in periods of radical change, when past arrangements and rules are defined as irrelevant or unacceptable.”²³ However, the change in practices and ensuing behavior that reach the outcome of hiring private security contractors is not a complete break with the past, but rather, it is a modification: humanitarian principles are not wholly discarded, they are merely reinterpreted. “Transformation can result from quantitative changes which, when accumulated over a period of time, bring new forms to life. But, logically, the new forms must derive from old patterns. They can partly replace old forms, but by definition they must include residues or legacies of the old.”²⁴ The principle of assisting victims is not rejected but customary methods are revised. The establishment of a new norm is guided by material factors (e.g., skewed outcomes of assistance or security threats) but the actual lever of change is pulled as a result of humanitarian culture. The case of humanitarian agencies turning to security contractors indicates that norm changes spring from new attitudes, i.e., ideas are power.

Agencies as Autonomous Actors

The private security revolution in humanitarian affairs also showcases the authority of humanitarian agencies to make key decisions about the character and techniques of humanitarian action. International Relations Theory has mostly been

²³ James March and Johan Olsen, “The Logic of Appropriateness,” in *The Oxford Handbook on Public Policy*, eds. Michael Moran, Martin Rein, and Robert E. Goodin (Oxford: Oxford University Press, 2006), 705.

²⁴ Kalevi J. Holsti, *Taming the Sovereigns: Institutional Change in International Politics* (Cambridge: Cambridge University Press, 2004), 16.

dismissive of agencies as autonomous actors, instead looking to states or donors to ascertain what agencies do and why they do it. Humanitarian agencies have always been delegated a degree of authority and granted some power with respect to addressing humanitarian crises, but the relationship between states and agencies has and is changing.²⁵ For example, the establishment of and respect for independent operational space carved out an area of autonomy for agencies. But, over the duration of the past almost 150 years agencies have had considerable success in furthering this. A case in point of this can be seen in the expansion of who receives assistance from the international humanitarian system: initially, it was soldiers wounded on the battlefield, but later on agencies broadened recipients to include civilians.²⁶ A second illustration of this is the development of the practice of operating without the consent of central governments. Both of these instances represent changes that some states may have favored, but more likely spurned on the grounds that they challenge the rights of sovereign states to make authoritative decisions regarding the power of and limits on non-state actors.

Humanitarian agency use of private security is another demonstration of their autonomy. Whereas some states see this practice as enabling agencies to protect

²⁵ Michael Barnett and Martha Finnemore analyze different relationships between states and inter-governmental/non-governmental organizations. See *Rules for the World: International Organizations in Global Politics* (Ithaca, NY: Cornell University Press, 2004), 27-28.

²⁶ Geoffrey Best, *Humanity in Warfare* (New York: Columbia University Press, 1983), 147-148.

themselves and at the same time freeing states from carrying out this task, PSC usage and the selection of PSCs as security providers reflects the power of agencies. Moreover, by hiring security contractors humanitarian agencies acquire more authority in terms of, in effect, allocating access to humanitarian space. As Peter Singer declares, “Determining who enjoys protection and who does not is a political act; when they hire PMFs [private military firms], humanitarian actors are taking upon themselves decisions that were once the prerogative of the state.”²⁷ In short, humanitarian agencies have been slowly gaining greater autonomy by using their authority to recast the endeavor, and the private security revolution in humanitarian affairs contributes to this process.

The International Sacrificial Order

A final area of scholarship that this study relates to regards the place of humanitarianism in international politics as a coping mechanism. For the most part humanitarian action is fundamentally a Band-Aid; it salves the wounds of war and thereby to some extent sanitizes war. One school of thought proposes understanding humanitarian action against the backdrop of an “international sacrificial order” that determines who lives and who dies, who receives justice and who is forsaken.²⁸ The

²⁷ Peter W. Singer, “Humanitarian principles, private military agents: some implications of the privatised military industry for the humanitarian community,” in *Resetting the Rules of Engagement: Trends and Issues in Military-Humanitarian Affairs*, eds. Victoria Wheeler and Adele Harmer, HPG Report 21 (March 2006), 77.

²⁸ Jean-Hervé Brodel, “The Sacrificial International Order and Humanitarian Action, in *In the Shadow of “Just Wars”: Violence, Politics, and Humanitarian Action*, ed. Fabrice Weissman (Ithaca, NY: Cornell University Press, 2004), 1-22.

international sacrificial order is based on the proposition that violence and death are produced by a global system that has been rationalized and which resigns some to neglected fates—that is to say, it is tolerated that the properties of contemporary world order create victims. Although many humanitarians would contend that their efforts to provide assistance contests the established international sacrificial order, others critique that humanitarian action buttresses this system by creating the pretense that there is a vehicle for tending to victims and thus subverting a need to change the world.

One aspect of the international sacrificial order that has not been examined is the burden placed on aid workers, who are usually seen as agents either resisting or sustaining the international sacrificial order. However, given the casualties inflicted on humanitarian agencies in the midst of delivering aid, their sacrifices should also be noted. Does the world accept that a certain number of humanitarians will die each year so that the international humanitarian system can continue to operate? Do we not question whether the deaths of aid workers could be avoided from a structural point of view as opposed to lamenting that such fatalities are simply the nature of aid work?

The introduction of private security into the equation of humanitarian action further refines our understanding of an international sacrificial order; are the deaths of security contractors in the service of protecting humanitarian agencies bearable because on the one hand, they are for-pay actors, and on the other hand, they are involved in humanitarian action, which is inherently dangerous? The private security revolution in humanitarian affairs protects humanitarians and therefore decreases the sacrifices they make, but it also obscures the human costs of humanitarian action because security contractor deaths usually don't register as significant within the international sacrificial

order. The hiring of PSCs lubricates the gears of a humanitarian action that underpins the international sacrificial order and does so silently.

Research Agenda

This study has endeavored to explain changes in the culture of humanitarian agencies that have contributed to a norm that frames their use of security contractors, but there remain additional aspects that would help illuminate the extent and impacts of the ongoing private security revolution in humanitarian affairs. This section briefly outlines a research agenda to pursue this line of inquiry.

With respect to humanitarian agencies, several elements should be investigated:

- *Who are the most effective providers of protection for humanitarian space?* The armed forces of states, United Nations peacekeepers, international private security companies, and local militias have each been tried in this role and with varying degrees of success as well as failure. An analysis of the rate of attacks encountered by each type of actor as well as examining the extent to which attacks are repelled would bring together the issues of political provocation and military capability to generate insight into the mechanics and prospects of protecting humanitarian space.
- *Are the security budgets of humanitarian agencies rising?* More money dedicated to this area of programming heralds that it is a rising concern. Furthermore, it may also indicate a greater reliance on paying for

protection rather than sticking to acceptance or lowering the profile of an agency. At the same time, a decrease in security expenditures might show a higher incidence of withdrawal.

- *Are donors earmarking for security projects?* In conjunction with rising budgets for security, this might suggest that donors are playing a more pronounced role in determining practices, which typifies greater marketization. It would also give sense of how aid programming is conceived by looking at whether donors are dedicating an increasing portion of their funds for security rather than logistics or aid itself, and then juxtaposing this with whether agencies are balking or buying in.
- *What accountability mechanisms do agencies have should they authorize the use of force?* Aside from codes of conduct that describe permissible activities, are agencies considering the possibility that those they have hired to protect them commit human rights violations? A survey of legal agreements as well as the procedures followed in these situations would foster the creation of best practices in this area.
- *How do agencies track private security providers?* Not only is there little data on security contractors, and in particular usage by humanitarian agencies, but there is also often a dearth of sharing information between agencies and a paucity of institutional memory within agencies, all of

which makes selecting an appropriate PSC a challenge for humanitarians. More study on how they monitor developments relating to PSCs is required.

In regards to private security companies that work with humanitarian agencies, there are also areas that need more research:

- *Are they training for humanitarian work?* PSCs offer their services for sale to humanitarian agencies, but the extent to which they are prepared to operate under humanitarian guidelines is less clear. Security contractors are capable providers of physical protection, however, in the context of humanitarian action, it is essential that their operations are sensitive to victims and local societies.
- *Have PSCs raised their costs?* With more agencies resorting to PSCs, has the average price of protection services climbed? Once PSCs receive a contract and an agency or agencies come to rely on them, this creates an opportunity for a mark up because the expense of finding and switching providers and a possible lag between the former PSC and the newly hired one might convince an agency to acquiesce to higher charges.
- *How do PSCs impact the security environment of humanitarian space?* Much of the evidence points to PSCs as contributing to a backlash against humanitarian agencies, but not in every instance; why? More study to

determine the conditions under which PSCs are successful in providing protection and not provoking a negative reaction would shed greater light on what is the ingrained nature of security contractor usage versus what are the particularities of failed operational postures.

Final Thoughts

Although the general premise of humanitarian action to relieve suffering in disasters has remained consistent, the practices and perceptions of humanitarian agencies have changed. This study has articulated this change by focusing on the evolution of conceptions humanitarians have of security problems and solutions in order to witness the arrive of the private security revolution in humanitarian affairs. Given that humanitarianism broadly speaking is grounded on a social relationship between those who provide aid and those who receive it, humanitarians have always been attuned to means-ends relationships in their work. In the humanitarian tradition the question of a use of force has birthed Just War Theory, but this philosophy was understood as informing the deliberations of political authorities in the decision to go to war (*jus ad bellum*) and military leaders in how to fight it (*jus in bello*). However, in confronting the challenges of non-permissive environments, many humanitarian agencies now find themselves in the position of, in effect, authorizing armed actors on their behalf and setting out condition for the use of force. This has raised a new area for humanitarian thought that is related to Just War Theory, but should properly be recognized as something onto its own: Just Coercive Humanitarian Action Theory.

This facet of humanitarian thought has developed considerably in the last twenty years. The endless drumbeat of humanitarian crises that feature little or no protection for civilians and aid workers, and accompanied by the eagerness of agencies to respond, have brought great attention to idea of secure humanitarian space. In humanitarian circles the cries of “never again” (in reference to the lack of substantive response to the horrors of the Holocaust during World War II) were uttered throughout the 1990s when new calamities that encapsulated humanitarian horrors entered the lexicon of aid workers: “Srebrenica” (which brings to mind atrocities in Bosnia) and “Goma” (which recalls the Rwandan genocide). Since then humanitarians have ardently awaited an opportunity to reinvent humanitarian action in a way that would avoid the pitfalls displayed by these signature tragedies. The use of force as a tool of humanitarian action has been controversial. Borrowing from the historic occasion near the end of World War II that produced the United Nations, advocates view an occasion to make force part and parcel of humanitarian responses as their figurative “San Francisco moment.” By contrast, those who disdain such a development see this as a metaphorical “Munich” (a dangerous appeasement to force that emboldens purveyors of violence). These rival perspectives underlie disputes surrounding hired guns guarding humanitarian space.²⁹ However, the politics of protection have changed in recent years: although no dramatic moment has yet thundered through the humanitarian sector, the din of severe threats resonates more loudly than reservations, and the private security revolution in humanitarian affairs resounds.

²⁹ They also pervade issues of the “responsibility to protect.”

Appendix:

Data Collection and the Value-Laden Enterprise

Inherent in attempting to scientifically study humanitarianism are some important methodological issues that must be acknowledged at the outset as they relate to the amount and kinds of information available. The lack of research on humanitarianism may be attributed to cultural factors as most data has been collected by agencies themselves. “Humanitarian culture,” the umbrella of norms under which agencies couch their actions, fuses the ethics of response and institutional interests of organizations (including placating donors). In general, this culture seeks to illustrate the benefits and successes of humanitarianism. First, responding to victims has priority over documenting or analyzing humanitarianism—at a cultural level aid workers are concentrated on mustering resources and delivering of assistance, waiting to reflect on research would seem to ignore immediate needs and impulses to respond. Also, the drama of humanitarian crises, with their moving images of victims, is the backdrop for most analytic treatments of humanitarianism. A view through the window of disasters as seen by agencies has often slanted analysis towards showcasing the most poignant and horrifying instances of war and the need for greater levels of assistance. Second, from the perspective of organizations with few resources to spare, humanitarian agencies do not have an incentive to dedicate human and financial resources to routinely collect data. The possibility that such research potentially contains disturbing and provocative findings also proves a disincentive to documentation. Aid workers may be reluctant to support

research that questions the validity of the enterprise. Additionally, agencies may also be protective of their organization within the sector and therefore are only eager to trumpet research that exalts their efforts. Moreover, as these obstacles and orientations have persisted over the past twenty years, the paucity of evidence collected on humanitarianism compounds into an absence of baselines with which to compare data on agencies, operations, or perceptions.

Differing agendas (e.g., medical, organizational, political, etc.) regarding the humanitarian field have produced a discrepancy in the data sets designed to measure it. Bringing a more critical eye to data collection are those who challenge the choices of agencies (donors who want greater accountability for the resources they provide), or those who outright oppose the premise of humanitarianism (radicals who question existing practices). The scholarly or scientific approach can be a part of this, but science's principal motivation is to understand, not reform or raze, humanitarianism. Ideally, the scientific method approaches a phenomenon in four stages; description of characteristics, explanation of interactions, prediction of outcomes, and control of elements. For example, a natural scientist, say a chemist, can describe the properties of sodium and chloride, explain how they combine chemically, and be able to predict that salt would be the result. In addition, chemists could regularize this activity because they can strictly control what goes into the test-tube and what does not. In the social sciences this is slightly different; this additional final step is impossible as social realities cannot be isolated and studied to the point of experiments that allow for a control of elements. The other stages, however, lay out how to analyze a phenomenon. But in the case of humanitarianism, it is essential to recognize that these scientific procedures are being

carried out in a distinctive and powerful cultural milieu that has determined the kinds of information available. Therefore, in characterizing social scientific looks at humanitarianism, we must recognize that these studies are social science not simply because of the phenomenon that they study is a social one but that their system for studying it is subject to social influences—the data is both social in topic and in methodology, it tells us something about the humanitarian sector as well as about those collecting data on it.

In the social sciences there is often talk of “selection bias,” i.e., the selection of variables necessarily dictates the findings, and in studies of humanitarianism, this condition may be more apparent and its practice more intended. This struggle over data—a presentation that flatters versus one emphasizing flaws—has high stakes as the conclusions can have serious consequences, such as impacting the funding of a particular agency. The result is an omnipresent tension between science and culture in assessments of humanitarianism. From the perspective of the scientist, the issue and the camps are between “fog” and “faith,” between those who recognize the complexities and challenges of knowledge production and decision-making, and those who guide their actions by a preternatural instinct of charity. By contrast, the aid worker disparages numbers-crunching as a form of denigration inappropriate to appreciating the value behind their actions, and juxtaposes banal accountants opposing compassionate angels.

In addition to concerns regarding social scientific data and approaches to humanitarianism, heed must also be paid to the limits on and contexts of data collection regarding private security. Fundamentally, the uncomfortable politics of hired guns has inhibited research, especially as it has related to the humanitarian sector—producers and

consumers of security services do not readily seek attention for their activities. Those within the private security sector who do collect data also have cultural reasons for tilting research. Secrecy has always been a value in the security field, and as private economic actors, corporations offering security services would have an economic incentive to release only that information which attracts customers. Critics of private security have also contributed data, and much research has been devoted to bringing attention to the most shocking instances of mercenaries. Accordingly, there is much more anecdotal information than systematic data on the capabilities and consequences of security contractors. As such *strum und drang* dominate documentation of the private security sector. The study of humanitarian-private security interactions, therefore, must be prepared to divorce hyperbole from reality, to extract accurate information from polemical framings.

In short, disagreements among aid workers as well as those who observe and fund aid work about the definition of humanitarianism have led to a multiplicity of inconsistent and incoherent metrics for evaluating the activities of humanitarian agencies. This epistemological disconnect produces a confusing array of data and interpretations. Additionally, data on the private security industry is also limited—there is a culture of secrecy shrouding much of this field, and dramatic, controversial moments with security contractors constitute a huge proportion of documentation. There is no way to obviate certain methodological impediments in studying humanitarianism; indeed, they are part of the story. Studying humanitarianism requires accepting the parameters of what data is possible to collect. This study does draw on previously collected data on humanitarianism and on private security but accounts for the value-laden quality of some

social scientific findings by incorporating this dimension into analysis—spotlighting the ideas of agencies and victims views of the enterprise.

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- Documents on International Humanitarian Law
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