

The Limits and Risks of Regulation Mechanisms for Humanitarian Action

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Le *Centre de réflexion sur l'action et les savoirs humanitaires* (CRASH) a été créé par Médecins sans frontières en 1999. Sa vocation : stimuler la réflexion critique sur les pratiques de l'association afin d'en améliorer l'action.

Le Crash réalise des études et analyses portant sur l'action de MSF dans son environnement immédiat. Elaborées à partir des cadres et de l'expérience de l'association, ces textes ne représentent pas la « ligne du parti » MSF, pas plus qu'ils ne cherchent à défendre une conception du « vrai humanitaire ». Leur ambition est au contraire de contribuer au débat sur les enjeux, contraintes, limites – et par conséquent dilemmes – de l'action humanitaire. Les critiques, remarques et suggestions sont plus que bienvenues, elles sont attendues.

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The Crash carries out in-depth studies and analyses of MSF's activities. This work is based on the framework and experience of the association. In no way, however, do these texts lay down the 'MSF party line', nor do they seek to defend the idea of 'true humanitarianism'. On the contrary, the objective is to contribute to debate on the challenges, constraints and limits – as well as the subsequent dilemmas - of humanitarian action. Any criticisms, remarks or suggestions are most welcome.

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The idea that a uniform set of standards, both theoretical and technical, should be applied to humanitarian action to enhance its effectiveness in responding to the needs of people in distress has been welcomed by the majority of actors in the field of humanitarian assistance. Who could deny that aid recipients have a right to quality care, or that humanitarian action must, by definition, conform to certain principles? Yet several humanitarian organisations – predominantly French NGOs – have chosen to distance themselves from such initiatives, to the chagrin of agencies that invested considerable time and resources attempting to forge consensus and cooperation among the variety of actors concerned. This brief article aims to clarify some of the central concerns held by organisations like Médecins sans Frontières (MSF) regarding the approach and the application of initiatives such as the Sphere Project, codes of conduct, and the Humanitarian Ombudsman. The main criticisms of the proposed regulatory mechanisms for humanitarian action are twofold and inter-related: they are misguided in their focus, and as such they risk reducing rather than expanding the scope for effective humanitarian action.

A Misguided Focus

The various codes of conduct and the Sphere Project have undoubtedly improved awareness among aid organisations of the guiding principles of humanitarian action and the need to strive for certain minimum standards of care to save life and assure human dignity. As a tool to provoke discussion and reflection they are useful; it is in the continual process of adapting theoretical principles to operational practices that the benefit of these tools lie. But once they are written down as rules and set in stone, they are no longer a tool of reflection but become ends in themselves to uphold. Putting the respect of principles above all else stifles the search for innovative ways with which to best access people in need. The symbolism of the stiffly laminated Code of Conduct for Sierra Leone - impervious to rain, crumpling and, most importantly, alterations - is striking. Some aid organisations carry a copy in their vehicles, as if it is this paper that will guarantee them protection, access to populations, and understanding of their purpose by belligerents. Few organisations questioned whether their programs really were impartial, neutral or independent. Most of them are not.

But more worrying than this is the erroneous impression these initiatives give of increasing the responsibility and accountability of humanitarian actors: in reality they ignore the most crucial issues confronting humanitarian organisations today. Protection is as integral a part of humanitarian action as the alleviation of physical needs, yet receives scant attention, despite the obvious clash that can occur between providing assistance and ensuring safety. From attracting combatants to the sites of food distributions in Liberia to being used to lure refugees from hiding in Eastern DRC, humanitarian assistance can compromise protection. Assuring high technical standards in relief operations is no substitute for protection: a vaccination card or full belly does not protect against *refoulement* or attack, as exemplified by the fate of Rwandan refugees in Zaire in late 1996.

Focus on technical aspects of relief operations is often undertaken at the expense of addressing the more difficult ethical issues of humanitarian action. And contrary to the popular notion that crises of the 1990s are fraught with increased dilemmas, this is not a new phenomenon. Some NGOs working in the Khmer Rouge controlled refugee camps in Thailand in the 1980s expressed

appreciation of the efficiency with which the Khmer Rouge organised their camps. The Humanitarian Charter and codes of conduct are supposed to guarantee the ethics of humanitarian action, but fail to shed light on how to reconcile competing principles. Particularly in situations of conflict, honouring one principle might entail violating another, yet no hierarchy of principles is offered beyond putting the humanitarian imperative first. Yet even honouring the humanitarian imperative is problematic if doing so jeopardises the safety of those that aid is trying to assist, or necessitates remaining silent when confronted with human rights violations or the manipulation of humanitarian aid. Respect for some standards needs to be weighed against the non-respect of others, and decisions of the relative good or harm of aid judged accordingly. A bottom line of acceptable compromise needs to be established in order to ensure that the negative effects of aid do not outweigh the good. Without a hierarchy or ordering of principles, they can be engaged to justify any form of action or decision; they do not serve as a constraint to permissible action.

Just as minimum standards of relief assistance are not always possible to attain, attaining minimum standards does not guarantee that aid is humanitarian. Sufficient food has been delivered to North Korea to cover the needs of the population, yet people continue to starve because they lack entitlement to food. Denied permission to conduct independent assessments, or monitor and evaluate the end use of aid, MSF withdrew from North Korea because to continue to channel relief through this discriminatory system was to strengthen it. There was no humanitarian space in North Korea. None of the regulatory initiatives helps to shed light on how to respond to dilemmas of this nature.

Potential Mechanisms of Control

The second major concern with Sphere, codes of conduct and the Humanitarian Ombudsman Project is that they provide mechanisms through which control can be exerted over aid organisations by the very powers from which NGOs should strive to retain independence. Many donor governments have made adherence to these standards a prerequisite for funding. Given the growing tendency of the UN and donors to incorporate humanitarian action in support of political processes – such as UN Strategic Frameworks and US Food for Peace – humanitarian agencies risk eroding their independence and impartiality through being coordinated in this way. Humanitarian action is not given on the sole criteria of need if it is used as a tool of peace.

Signatories to the codes of conduct claim to respect humanitarian principles yet provide no indication of how they measure such adherence. NGOs in Sierra Leone, for example, consider that they are independent despite the majority receiving over 70 percent of their funding from governments of the US, UK or European Union, each of which is pursuing a political agenda in the country. Only when DFID directly pressured some of 'its' NGOs to evacuate due to London's security concerns did the question of real independence arise. Receiving government funding does not necessarily obviate the possibility of independent humanitarian action, but the prevailing trends towards greater coordination, cooperation and consensus between NGOs, UN agencies, governments and military forces blurs the distinction between political and humanitarian activity. It is necessary to increase the independence of humanitarian action rather than provide the tools with which donors – and belligerent parties – can subsume it beneath a larger political agenda.

Finally, the proposal to appoint an ombudsman to listen to the concerns of 'beneficiaries' – particularly if situated within the UN or paid for by governments – runs counter to the whole notion of increasing the responsibility of humanitarian actors and governments. First, humanitarian action is not a commercial enterprise that can be judged according to market forces. The 'clients' to which this initiative refers are not consumers but are victims of some kind of abuse that has left them powerless to meet their own needs. To imagine that they will organise of their own volition to oppose the people that came to assist them is utopian. A much more likely scenario is that

powerful elements will use such a system to oppose those aid agencies that do not act in their interests, and will increase the pressure on victims. This initiative ignores the fact that one of the biggest problems facing humanitarian action is how to reach victims without strengthening their oppressors.

Second, and more importantly, the ombudsman initiative puts the onus on the victims to identify problems of humanitarian action: does the absence of complaints imply that all is well? This represents a final step in shifting the responsibility for alleviating the plight of people in distress from governments to the victims themselves. To call this accountability is the height of hypocrisy.

It is not the NGOs which deliver Gatorade to Goma; drive a truck full of blankets to Bosnia; or even accept armed escort to deliver food in Sierra Leone that pose the greatest problems to humanitarian operations today. Rather it is the indifference of powerful states to the plight of civilian populations in areas deemed outside their spheres of interest and their reluctance to take the necessary measures, in financial and political terms, to address the political roots of the problem. From Sphere, through the codes of conduct and finally to the ombudsman, the onus of responsibility for assisting vulnerable people shifts from states to humanitarian organisations and finally to the victims themselves. They do not make humanitarian action more effective or responsible, to the contrary. They reduce its potential to assist people in need in a truly impartial and independent manner.