Humanitarian Exchange

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About HPN

The Humanitarian Practice Network at the Overseas Development Institute is an independent forum where field workers, managers and policymakers in the humanitarian sector share information, analysis and experience. The views and opinions expressed in HPN's publications do not necessarily state or reflect those of the Humanitarian Policy Group or the Overseas Development Institute.

The tenth anniversary of the start of the Rwanda genocide is on 7 April 2004. The events that ensued represented one of the worst humanitarian catastrophes of recent times. Up to a million people were killed in the genocide and civil war; over two million Rwandans became refugees and more than a million were internally displaced. An estimated 80,000 died in camps in Zaire, Tanzania and Rwanda.

The genocide revealed terrible failings in the international community and weaknesses in the international humanitarian system. Humanitarian organisations were criticised for a lack of professionalism, efficiency and accountability. But the critical failings lay not in the humanitarian domain; instead, they were political, diplomatic and military. 'It is highly significant,' said the Joint Evaluation of Emergency Assistance to Rwanda, 'that the number who died as a result of causes that could be considered avoidable had the humanitarian response been more effective was many times lower than those who died as a result of the genocide and conflict.'

The special feature of this issue of *Humanitarian Exchange* focuses on Rwanda ten years on. It begins by revisiting the horror of spring 1994 in Rwanda, with the moving testimony of a woman who survived the genocide. The feature also looks at what went wrong in 1994, how international response has evolved since, and where further change is needed. Ramesh Thakur was a member of the International Commission on Intervention and State Sovereignty, which produced the report *The Responsibility to Protect*.

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He discusses the responsibility of states for the protection of civilian populations – their responsibility to protect their own citizens and, if they are unwilling or unable to do so, the responsibility of the broader community of states to intervene. That genocide was being planned was known by the UN Secretariat and some Permanent Members of the Security Council, and UN forces were present, albeit in insufficient numbers. Randolph Kent looks at the UN's failure to address the genocide, and asks what might happen if such a catastrophe happened again. Sadiki Byombuka looks back over the last ten years from the point of view of a Congolese NGO, and charts changes in the humanitarian capacity of local organisations. John Borton, a member of the team that carried out the unprecedented Joint Evaluation of Emergency Assistance to Rwanda, reviews the evaluation and the follow-up process, and reflects on its impact.

A wide range of other humanitarian policy and practice issues are also discussed in this issue. As always, we welcome submissions for publication and your feedback on our publications.

From death to life: a widow's story

Ten years after the genocide in Rwanda, memories of what took place are still raw. This testimony, collected by the UK-based Survivors Fund, is part of a wider Remembrance Initiative, which aims to help the healing process by recording the experiences of the survivors in their own words.

In 1994, I was married and had a baby. We were living at Muhima, near the Kabuga business building. It was on 7 April 1994 at 5.30 in the morning that we first heard that President Habyarimana was dead. Immediately my husband became terrified and said that he knew the Tutsis would not survive; he went to hide at our neighbours' house, but I stayed at home. My husband was right, and that morning the worst things happened. People were herded into a beautiful new big compound near our house to be killed. We could see the killings through the windows of our house. Men armed with machetes, sticks and pangas hit people until they dropped down dead. Then I began to pack things in a suitcase in order to flee that evening. I bathed my baby and dressed him.

Widowed

A directive was issued, telling all men to go on neighbourhood security watch. My husband went, but before leaving, he told me 'I am going but I am not sure I will be coming back.' Indeed, they did not take long: men including my husband were immediately attacked and killed. I was frightened to stay at home alone, so I went to a lady who was our neighbour. She told me someone had just been killed: it was my husband.

> my husband became terrified and said that he knew the Tutsis would not survive

Before I could gather the details, a very big group of more than 30 killers came to our house and asked, 'Where is Kabanda's wife?' 'Here I am,' I said. 'Take us first to your house and give us money,' said one of them. 'There is no money at home,' I answered. They told me to go with them. I was carrying my baby on my back. On the way, I saw a neighbour called Papa Neema and I took off my baby and asked him if he could keep him. Papa Neema was seriously injured and could not manage the baby, so I had to put the baby on my back again. We continued, and when we arrived at that beautiful compound, me still with my baby on my back, a group of male killers immediately struck me with whatever they had to hand: machetes, axes, clubs, sticks, swords and spears. I knew that I was going to die and prayed, asking God to forgive me all my sins.

Bereaved

Then I heard a voice saying, 'And this baby who is shouting and must be silenced.' They hit him just once, and he died immediately. After killing him and leaving me for dead, they closed the gate of the compound and went to bring other people to kill. I heard people crying out in agony, calling for help until one by one they breathed their last breath. I was badly injured and covered in my own blood, blood from my baby and blood from other people. I didn't know whether I was alive or dead. I took my baby off my back, made a small bed with the clothing I was carrying him in, and put him to lie near his father. I covered him and felt he was safe with his father. It was then that I realised I was not dead. I was the only person in the compound still moving; everyone else was silent because they had died.

I left the compound without knowing whether I should go home or elsewhere. People saw me and it was a miracle that no one shouted at me. I was covered with blood and my brain had come out of my skull. I was numb and had not begun to feel pain. Then I saw a lady staring at me and asked her if she could take me to her house. She was my neighbour and a wife of one of the men who had tried to kill me in the compound. She shouted to her husband to come and finish me off. The husband came and said, 'If it is this one, I know that she is going to die very soon; I will not waste my energy on her.' He left me.

Hidden

I continued walking aimlessly, and saw a boy and asked him to hide me at his house. He told me he couldn't let me in through the back compound because the killers were at his gate. He eventually agreed to let me in to his compound, saying that he was going to check the situation and would come back for me in the evening. There were many people hidden there and when they saw me, they were afraid. I too was shocked to see them and I fainted. When his father came, he found me in the compound and, thinking I was dead, they put me in a small house where they kept turkeys. The other people who were hiding there were afraid and went to find somewhere else to hide.

I heard people come to the turkey house debating whether I was dead, but I couldn't move, let alone speak. They forced tea down my throat to see whether I was dead or not, and I swallowed a little. They kept giving me tea and on the following day I regained full consciousness. Then they told me that they were planning to go, and so had to find

A young genocide survivor

the dispensary and they covered my wounds. I was admitted to the dispensary and my rescuers left me there, promising to come back to visit me.

Many people had taken refuge at the dispensary. Then the Interahamwe came to kill people there. All the people left, including those who were in-patients. I immediately felt as though I had died again: I cannot say that I was sleeping; it was as if I was dead. After some days (I don't know how long I lay in the valley of death), one of the dispensary workers came to me and recognised me. He went and informed my husband's relatives. They didn't come to my rescue, nor did the dispensary worker. I stayed at the hospital and lost count of the days. My body, which had wounds and injuries everywhere, began to rot, and there were maggots on my head, my face and other places where I had been injured. I was covered in maggots and I smelt badly. It was at that time that I learned the difference between body and spirit. The body was completely dead but my spirit was still alive inside that rotten body.

Then I began to reflect, 'I thought I was still alive but I realise I am dead. Is this how all the dead people are? Do they see their bodies?' A miracle had happened to me because I had not eaten for days; I learnt that one can live without eating. I prayed to God to lift my spirit out of my maggot-ridden body. I don't know how, but most of the maggots disappeared, except in my head and on my right hip where the wounds were excessively deep and open. Other dispensary workers came to watch me die, refusing to treat me. They could see my eyes were open, looking at them.

another place for me. I was too weak to go anywhere. Their grandmother had a house nearby behind their compound, and the next evening they broke down the fence that separated the houses and took me to her. She was poor and there was no light in her house. When the grandmother saw me, she was afraid because she said I looked like an animal. I told her I had been asked to come to her and hide because I was too weak to go anywhere. She took pieces of wood and made a fire. Then she cleaned me, put some of her clothes on me, and dressed the wound on my head where my brain was exposed with a piece of cloth. When she gave me food, I could not lift my arm to eat. She saw milk coming out of my breast and asked me if I was pregnant or had a baby. I said, 'I have left my baby with his father where they were killed.' She was very sad.

Refuge

In the morning, she washed my clothes, which were covered with blood, and tried to take me to the dispensary. There were roadblocks everywhere and Tutsis were being killed everywhere. People were crying in pain while others were singing and dancing every time a Tutsi fell and died. The old lady waited until evening and asked a soldier who was their neighbour to take me to the dispensary. He came with his car and took me in with the old lady and two of her grandsons. The old woman put clothes over my stomach and pretended I was pregnant and in labour. When we reached the roadblocks, the soldier said he was taking his pregnant wife who was about to give birth. We arrived at

my body was completely dead but my spirit was still alive

Paralysed

Maggots surrounded me where I was lying: they had made a trail from my body to the ground outside. The dispensary workers put on rubber boots and gloves and pulled me out. They did not lift me up but instead dragged me on the ground like a dead animal. They put me outside and cleaned the room. While I was outside, it rained and it was good for me because I found water to drink, although it was painful because I could not move my arms and was drinking like an animal. When they had finished cleaning the room, they pulled me back in again, but after some time the maggots came back. The workers cleaned the room again and this time shaved my hair with a brand new razor blade. They discovered that my head was full of wounds, which they disinfected, and they tried to give me porridge, saying, 'Tutsis are special. They die and come back again to life. But let us see what will happen to this person.' After I was treated I tried to sit, but my right side was completely paralysed. It was as if I had no right arm, no right leg and no right side. People, especially children, would come to see me through the glass in the door. They

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had never seen anything that looked like me locked up in a room.

I was very thirsty and whenever I heard somebody passing I shouted for someone to bring me water, but this cry was in vain as no one did. Then I heard the sound of many boots, so I shouted loudly, 'You people!' One worker came and told me to be quiet because it was soldiers looking for Tutsis to kill and they would shoot me. But I kept shouting and some soldiers came and saw me, a dead body who could not even move. 'How are you?' They asked me. 'I have been locked up in this room and some people won't let me out,' I said. They ordered the workers to open the room.

Pity

When the soldiers saw me they had pity. But the workers thought that the soldiers were going to kill me. 'When did this lady come here?' asked the soldiers. 'On April 8,' replied the worker. 'What does she eat?' they asked. I shouted that they had refused to give me water and tried to crawl to them, begging them to kill me. I tried to go out but the soldiers pushed me back into the room and angrily ordered the workers to find me some food. They said that if I died they would be in trouble.

The worker brought water in a small five-litre jerry can and I drank it as if I had stolen it, fearing that they would stop me drinking. They gave me food once a day but because my arms were not functioning I could only eat with my mouth like an animal. After nearly two weeks I was able to sit despite my injuries, and the workers said this meant that I would not die. They stopped giving me food and water. As I could not walk, I crawled slowly on the ground like a reptile and arrived at the road. I continued and came to a place where aubergines were planted. When I saw children passing, I asked them to give me some aubergines to eat. I continued crawling and when I arrived at the main road, people came to see me because I was something interesting to watch. Even the Interahamwe came to look at me, but no one could kill me because no one kills a dead person.

Then a soldier came, and when he saw me he said, 'This thing is making our town dirty. Let me kill and remove this dirt.' He took his gun and loaded it, but then immediately his colleague came running, took his arm and said, 'Can't you find people to kill? Is this someone to kill? Do you want to put this one on the list of those you killed?' He left me. After that, it rained heavily and the people left me alone in the rain. When the rain stopped they returned and took me back to the dispensary. It was difficult to carry me. When the workers saw me, they insulted me because they hadn't given me the authorisation to discharge myself from the dispensary. They tried forcing me back into my old room, but I didn't want to go in. I wanted them to kill me and end my misery, but they couldn't.

Recognised

I crawled back to the main road, hoping to meet angry Interahamwe who would kill me. Some ladies saw me and had pity on me and told me where I was. I saw many Red Cross cars passing, and hoped one might stop and take pity on me, but none took me. Some even stopped, came to look at me and almost vomited. From morning to evening I waited by the road, cars passing and leaving me there. Then late in the evening some policemen passed and one hit me with his gun. I looked at him and recognised him because he used to come to my house. When he hit me for the second time, I asked him why he was beating me if he knew my father, Bakundukize Jacques. He became afraid and they left me. I decided to cross the road where there was a house and a lady who recognised me from sitting by the road. She had pity on me and gave me a sweet potato. Then she took me into her kitchen and made a fire for me. I slept by the ashes and had a nice sleep.

Her husband came early in the morning and told me to go back to the road because he didn't want anyone to see me in the house. I escaped yet again through their back door onto a stony road, with stones entering my wounds all along the way. When I reached the road, my body was covered in blood. People saw me and recognised me from the dispensary. They wondered how I had managed to get there. A man came with his wife, cleaned my wounds and took me to a valley nearby and left me out in the sun. I was like an exhibition and people exclaimed, 'That woman who was at the dispensary is now in the valley!' People came to see me.

Spared

Later on, the militia came and the good man told them to spare me. In the evening a little girl came and told me her mother said that if I went to their house they would give me food. They lived up the hill, but I could not climb it as I could not walk and all my whole body was covered with wounds. I tried to crawl up but it was impossible. I asked people passing by to take me up, explaining that someone there had said she would give me food, but they refused. A soldier who had a Bible in his hand passed and I asked him to carry me, but he said he couldn't because other soldiers would kill him if they saw him doing it. But he did give me 200 Francs to give to the children to go and buy me a drink. He left me, and other soldiers asked me what we were talking about. I was surprised when they all came and helped him carry me. They were frightened to be seen so they left me near the house. I called the woman's children and told them to tell their mother that I had made it to the house.

The children told their mother that I was there and she sent her daughters to bring me in. The mother prepared warm water and they washed me and took all the maggots away. She gave me clothes and brought a mattress into a room in a small house behind hers that also had a kitchen. They began to take care of me. They brought me food and after eating I slept.

Rescue

It was a very hard time when the remaining Tutsis were aggressively hunted down. The woman's husband was a Hutu but she was a Tutsi and could not go out. The militia came every day to see whether Tutsis were hidden in

houses, but they did not come to the small house where I was for some time. Then one day they came. I saw them opening the door and entering my room. They looked everywhere but didn't say anything; I do not know whether they saw me or not. The lady hadn't told her husband that I was there, but she thought that now she should. Her husband took pity on me but was afraid that the militia would come and kill them. He told his wife that she had to take me to another place. She came and told me that she was going to move me but that she would continue to take care of me. She took me to a neighbouring house where the owners had fled. She continued to feed me and to do everything she used to do for me. After some time, I was better and even could get to the toilet outside on my own.

I am still suffering; the treatment I have received hasn't healed me completely

The RPF had come but we did not know. Then one day, there was an indescribable noise of guns. The following day, I waited for people to bring me food but nobody came. After a long time a child came and told me that her mother said to come. She ran off and when I went outside I could not see her. I went to the family's house but it was closed and even the curtains were drawn. Nobody was there, not even a bird. I saw many bullets. Then I prayed and asked God where I should go, and at that moment I saw an RPF soldier. He called me and told me to join a group of people down the hill where I would get treatment.

Miraculously, among the soldiers who were supposed to treat me there was one I had previously seen at Kibogora when I was doing a survey for a Rwandan private company. I recognised him and he recognised me. He gave me powders to make drinks, and they gave me food.

Treatment

After a short time, I became very sick and was taken to Kigali Central Hospital, vomiting and suffering terribly. They took me to intensive care and I nearly died again. I was in intensive care for one or two weeks in a coma. They were expecting to see me die, but I didn't. They decided to take me to another room where I stayed for months in a coma. No one can count the number of serums that were injected in me. Sometimes, the nurses covered me, believing that I was dead, and then realised that I wasn't. I remained like that for months and months: not alive but not completely dead. Many doctors came and confirmed that my head could not heal in Rwanda, as my brain had come out many times. This is what people told me when I recovered.

After a long period, I began to see people but I could not recognise them or make out people from objects. I could not speak but I could hear, even though I could not understand what I was hearing. Slowly I began to communicate with people using gestures. After some time, someone asked a doctor who I was and he said that I was Godriva. I used gestures to ask the meaning of Godriva and the doctor told me that it was my name; I was amazed to learn that I had one. He began to teach me to say my name. I had forgotten how to read and write. I could not recognise people, not even my mother and my friends. Today I do not know how to read and write, but I can read and write Godriva. I plan to learn again to read and to write, and I think that I will make it.

Today, I am still suffering because the treatment I have received hasn't healed me completely. The doctors recommended treatment abroad, but the Government Fund for Rwanda failed to send me abroad because it is expensive. I pray for proper treatment. Maybe one day someone will help me.

The Survivors Fund

The Survivors Fund (SURF) exists to rebuild a sense of self and trust in humanity among the survivors of the Rwandan genocide. Since 1997, it has helped survivors deal with and recover from their experiences, supporting a wide range of services for victims in Rwanda, and assisting survivors in the UK. SURF works in partnership with AVEGA, a widow's association supporting 25,000 women, and through Uyisenga N'Manzi, which helps 10,000 orphan heads of households.

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Genocide response: a timeline

August 1993	The Arusha Peace Agreement mandates a power-sharing government, signalling the end of the civil war in Rwanda. The UN Assistance Mission for Rwanda (UNAMIR) is deployed with 2,500 troops to oversee implementation
January 1994	UN Commander in Rwanda Major-General Romeo Dallaire informs the UN Department of Peacekeeping Operations of indications that the extermination of Tutsi is being planned
6 April 1994	Rwandan President Juvénal Habyarimana and his Burundian counterpart are killed when their plane is shot down near Rwanda's capital, Kigali. Within hours, government soldiers and Hutu militia begin killing Tutsi and moderate Hutu. In the next 100 days, an estimated 800,000 people are killed
7 April 1994	Prime Minister Agathe Uwilingiyimana is killed by government forces. Ten Belgian UN peace-keepers are killed; a week later, the remaining Belgian troops are withdrawn from UNAMIR
9 April 1994	An interim government takes office but fails to stop the massacres and leaves Kigali three days later
21 April 1994	UN Security Council Resolution 912 reduces the UN military contingent in Rwanda from 2,500 to 270: the mandate of the operation remains unchanged
29 April 1994	Approximately 250,000 Rwandans flee to Tanzania. UN Secretary-General Boutros Boutros-Ghali calls for more UN troops to be sent to Rwanda. The Security Council rejects the request
30 April 1994	UN Security Council issues a resolution condemning the killings but does not call the killings 'genocide'
17 May 1994	UN Security Council passes a new resolution (918) approving the deployment of 5,500 UNAMIR troops
31 May 1994	Boutros-Ghali reports to the Security Council that 'We have failed in our response to the agony of Rwanda, and thus have acquiesced in the continued loss of human lives'. He says 'there can be little doubt' that the killing 'constitutes genocide'
23 June 1994	French forces begin controversial 'Operation Turquoise', agreed to by the UN Security Council pending the UNAMIR deployment, to protect civilians in south-west Rwanda
4 July 1994	RPF captures Kigali. Within two weeks, it declares the war over and announces the formation of a government of national unity based on the principles of the Arusha Agreement
14 July 1994	Rwandan refugees begin flooding into Zaire. Nearly a million flee in a few days. Thousands die in a cholera epidemic in the refugee camps
24 August 1994	Operation Turquoise ends and UNAMIR forces take over from the French
November 1994	UN establishes the International Criminal Tribunal for Rwanda
April 1995	The Rwandan government opens the first genocide trials in Kigali. Between 2,000 and 8,000 are killed when the Rwandan army moves to close an IDP camp in Kibeho
March 1996	Report of the Joint Evaluation of Emergency Assistance to Rwanda published
Late 1996	Refugee camps in Zaire are attacked and closed. Most refugees return to Rwanda but several hundred thousand disappear in Zaire
December 1999	Report of the independent inquiry into the actions of the UN during the genocide in Rwanda released
December 2001	Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*

'No more Rwandas': intervention, sovereignty and the responsibility to protect

Ramesh Thakur, United Nations University

Who bears the responsibility to protect innocent victims of humanitarian atrocities like the Rwandan genocide? When may outsiders legitimately suspend another state's sovereignty and use force to intervene in its internal affairs? 'Humanitarian intervention' was a persistent challenge throughout the 1990s, in Somalia, Rwanda, Srebrenica and East Timor. Although 9/11 and the 'war on terrorism' has caught the world's attention, this challenge has not gone away, particularly in Africa. In Iraq, meanwhile, Saddam Hussein's record of brutality was a taunting reminder of the distance yet to be traversed before we reach the goal of eradicating domestic state criminality; his ousting and capture is a daunting setback to efforts to outlaw and criminalise war as an instrument of state policy in international affairs.

The International Commission on Intervention and State Sovereignty

The International Commission on Intervention and State Sovereignty (ICISS) was set up to address the tension between sovereignty on the one hand, and humanitarian intervention on the other. It was established by the Canadian government in September 2000, in response to Kofi Annan's challenge to the world to forge a new consensus on the competing principles of international humanitarian concern and national sovereignty. Its members were chosen to reflect a range of geographical, political and professional backgrounds. Its work took us to every continent and most major capitals.

The results are encapsulated in *The Responsibility to Protect*, published in December 2001. The report seeks to do three principal things: to change the conceptual language from 'humanitarian intervention' to 'responsibility to protect'; to pin this responsibility on the state, at the national level, and on the UN Security Council, at the international level; and to ensure that interventions, when they do take place, are done properly.

> ### it is easy to dub a war a 'humanitarian intervention', and so label its critics as 'anti-humanitarian'

It is easy to dub a war a 'humanitarian intervention', and so label its critics as 'anti-humanitarian'. The ICISS recommended a change in terminology to 'responsibility to protect', which is a more accurate reflection of the sense of international solidarity from which external help should spring. It is important to get away from the rights and duties of interveners and to focus instead on the needs of victims.

The commission found it useful to reconceptualise sovereignty, viewing it not as an absolute term of authority, but as itself a kind of responsibility: state authorities are responsible for protecting the safety and lives of citizens, and accountable for their acts of commission and omission in international as well as national forums. In part, this expressed what we heard from a cross-section of African interlocutors.

While the state has the primary responsibility to protect its citizens, the responsibility of the broader community of states is activated when a particular state either is unwilling or unable to fulfil its responsibility to protect, or is itself the perpetrator of crimes or atrocities. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the government in question is unwilling or unable to halt or avert it, the norm of non-intervention yields to this international responsibility to protect.

The foundations of the international responsibility to protect lie in obligations inherent in the concept of sovereignty; the responsibility of the Security Council, under Article 24 of the UN Charter, for the maintenance of international peace and security; specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law; and the developing practice of states, regional organisations and the Security Council itself.

ICISS identified three specific responsibilities: prevention, reaction and reconstruction:

- *The responsibility to prevent*. This requires addressing both the root causes and the direct causes of internal conflict and other man-made crises putting populations at risk. ICISS believes that prevention is the single most important dimension of the responsibility to protect: prevention options should always be exhausted before intervention is contemplated, and greater commitment and resources must be devoted to it. The responsibility to prevent and react should always involve less intrusive and coercive measures before more coercive and intrusive ones are applied.
- *The responsibility to react*. This requires us to respond to situations of compelling human need with appropriate measures, which may include coercive means like sanctions and international criminal prosecution, and in extreme cases military intervention.
- *The responsibility to rebuild*. This requires us to provide, particularly after a military intervention, full

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assistance with recovery, reconstruction and reconciliation. These follow-up components of external action are becoming major concerns in post-war Iraq.

Responsibility to Protect is not an interveners' charter: it does not provide a check-list against which decisions can be made with precision. Political contingencies cannot be fully anticipated in all their glorious complexity and policy choices will always be made on a case-by-case basis. With that in mind, ICISS set out to identify those conscience-shocking situations where the case for international intervention was compelling, and where armed international intervention was clearly required.

The circumstances in which intervention might be permissible were necessarily narrow, the bar for intervention was high, and the procedural and operational safeguards were tight. The threshold for intervention is crossed when large-scale loss of life or ethnic cleansing is occurring or is about to occur (this is not retroactive, and does not justify intervention now for atrocities committed in the past). Intervention must be guided by the principles of right intention, last resort, proportional means and reasonable prospects.

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The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. The goal is not to wage war on a state, but to protect victims of atrocities inside the state, to embed protection in reconstituted institutions after the intervention, and then to withdraw all foreign troops.

The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective. And there must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.

Questions of authorisation: the role of the UN

Given the enormous normative presumption against the use of deadly force to settle international quarrels, who has the right to authorise such force?

ICISS is clear on this: the UN is the indispensable font of international authority, and the irreplaceable forum for authorising international military enforcement. While its work can be supplemented by regional organisations acting within their own jurisdictions, only the UN can build, consolidate and use military force in the name of the international community. As we learn yet again in Iraq, it is easier to wage war without UN blessing than it is to win the peace.

The urgent task therefore is not to evade or circumvent the UN, but to make it work better, to hold it accountable for its responsibility to protect at the global level. Security Council authorisation should be sought prior to any military intervention. Those calling for an intervention should formally request such authorisation, or have the Council raise the matter on its own initiative, or have the Secretary-General raise it under Article 99 of the UN Charter, which permits the Secretary-General to bring to the attention of the Security Council 'any matter which in his opinion may threaten the maintenance of international peace and security'.

The Security Council should deal promptly with any request for authorisation where there are allegations of large-scale loss of life or ethnic cleansing. It should seek adequate verification of facts or conditions on the ground that might support a military intervention. The Permanent Members of the Security Council should agree not to apply their veto, in matters where their vital interests are not involved, to obstruct the passage of resolutions authorising military intervention for human protection purposes for which there is majority support. Washington had a point in its complaints about the inadequacies of the existing UN machinery and modalities for confronting and eliminating today's threats.

If the Security Council rejects a proposal or fails to deal with it in a reasonable time, the matter may be considered by the General Assembly under the 'Uniting for Peace' procedure. This machinery, established in 1950, allows the Assembly to consider issues of force in cases where the Permanent Members are divided, or where the Council 'fails to exercise its primary responsibility for the maintenance of international peace and security'. Action within their area of jurisdiction may also be taken by regional or sub-regional organisations, subject to their seeking subsequent authorisation from the Security Council. The Security Council should take into account in all its deliberations that, if it fails to discharge its responsibility to protect in conscience-shocking situations, concerned states may not rule out other means – and that the stature and credibility of the UN may thereby suffer further erosion.

Changing demands, expectations and tools

The ability and means to do something beyond a state's borders, even in some of the world's most distant spots, have increased tremendously. This has correspondingly increased the demand and expectation that something be done. An analogy with medicine is appropriate. Rapid advances in medical technology have greatly expanded the range, accuracy and number of interventions. With enhanced capacity and increased tools have come more choices, often with accompanying philosophical, ethical, political and legal dilemmas. The idea of simply standing by and letting nature take its course has become less and less acceptable.

Military intervention happens. The challenge is to manage it so that human security is enhanced and the international system strengthened: to accentuate the positive, minimise the harm. The underlying factors that led to the

creation of the ICISS have not gone away. Living in a fantasy world is a luxury we can ill-afford. In the real world, the choice is not between intervention and non-intervention. Rather, it is between ad hoc or rules-based, unilateral or multilateral, and consensual or deeply divisive intervention.

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the challenge is to manage military intervention so that human security is enhanced and the international system strengthened

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If we are going to get any sort of consensus in advance of crises requiring urgent responses, including military intervention, the principles of *Responsibility to Protect* point the way forward. To interveners, they offer the prospect of more effective results. For any international enforcement action to be efficient, it must be legitimate; for it to be legitimate, it must conform with international law; for it to conform to international law, it must be consistent with the UN Charter. To the potential targets of intervention, these principles offer the comfort of a rules-based system, instead of one based solely on might.

During the commission's worldwide outreach and consultations, nowhere did we find an outright and absolute rejection of intervention in favour of sovereignty. Instead, we found much greater focus on issues like consistency of response, agency of authorisation and clear and consistent rules – echoes of which were heard again in debates over Iraq in 2003. On balance, the desire to avoid another Rwanda (where the world stood passively by during genocide) was more powerful than the desire to avoid another Kosovo (where NATO intervened without UN authorisation).

Kofi Annan has put the authority of his office behind *Responsibility to Protect*, describing it as the 'most comprehensive and carefully thought out response to date' to the challenge of 'humanitarian intervention'. According to Annan, it takes away the last remaining excuses for the international community to do nothing when confronted with atrocities again. We believe that it will help the world to be better prepared – conceptually, normatively, organisationally and operationally – to meet the challenge, wherever and whenever it arises again, as assuredly it will.

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The ICISS report may be found at www.iciss-ciise.gc.ca.

The UN and the Rwanda genocide: could it ever happen again?

Randolph Kent, King's College London

Those factors that led the UN and most of its member states to ignore the Rwandan genocide are as relevant today as they were a decade ago. Whether the UN would mount the same kind of mission as it did in post-genocide Rwanda is, however, a different matter. Institutionally, significant changes have occurred since 1994, and the potential capacity of the UN to respond coherently and professionally to conflict and post-conflict situations has greatly improved since those early days of 'complex emergencies' and their grim aftermaths. Yet for all these improvements – impressive as they may be from the perspective of a decade – the same uncertainties, divergent interests and institutional constraints remain.

Rwanda in retrospect
The possibility of genocide was first broached by the commander of the UN Assistance Mission for Rwanda (UNAMIR), Major-General Romeo Dallaire, in a cable dated 11 January 1994 to the UN Department of Peacekeeping Operations (DPKO) in New York. The cable noted that an informant from Rwanda's mainly Hutu government had let it be known that he had been ordered

to register all Tutsis in Kigali, and presumed that this was for the purpose of extermination. The informant suggested that his personnel could probably kill up to 1,000 Tutsis 20 minutes after an order was given to proceed. For Dallaire at least, events in Rwanda were no longer the inevitable toll of civil war. Rather, the crisis was now about extermination, about genocide actively and deliberately pursued by the Rwandan government.

Dallaire reported regularly on the deteriorating security situation right up to the start of the genocide in April. Given these repeated warnings, why was the response so slow and uncertain? The answer is broadly three-fold, to do with the UN's mandate and role; its peacekeeping and intelligence capacity; and the political calculations of its member states.

Mandate and role
Despite subsequent claims to the contrary, Dallaire's cable was not ignored, nor was it treated as standard field-to-headquarters traffic. Several senior DPKO officials – Iqbal Riza, the Assistant Secretary-General for Peacekeeping; Maurice Baril, a Canadian general and

DPKO's military advisor; and Hedi Annabi, the chief of DPKO's Africa section – discussed it well into the night of 11 January. However, while in retrospect Dallaire was clear in his assertion that steps were being taken towards government-sponsored genocide, he also questioned the reliability of his informant, and proposed an arms seizure initiative that arguably went beyond the mandate of his mission, which was to support the implementation of the Arusha accords between the government and the Tutsi-led rebel movement the Rwandan Patriotic Front (RPF).

Dallaire reported regularly on the deteriorating security situation right up to the start of the genocide in April

It has been suggested that Dallaire's assertion that his informant may have been unreliable allowed officials to downplay his warning of genocide and focus instead on what was, from their perspective, the more important element of his message: his proposal to seize arms caches in Kigali. This would have constituted a pre-emptory act that would have compromised, as far as DPKO and others at headquarters were concerned, the neutrality and consent that underpinned 'classical' peacekeeping operations such as UNAMIR.

These issues were not trivial: ultimately, they touched on the essence of the UN's role in peacekeeping, and they framed the immediate and subsequent responses to the 11 January cable and ensuing communications with the Force Commander. For headquarters in New York, Dallaire's cable foretold not genocide, but the collapse of almost 12 months of arduous negotiations between the Rwandan government and the RPF. Staff at headquarters, right up to the Secretary-General, repeatedly insisted that nothing must be done to stand in the way of implementing the Arusha accords. As Michael Barnett puts it in *Eyewitness to a Genocide: The United Nations and Rwanda*, officials 'wanted to remind [Dallaire] that he was a peacekeeper and not a soldier'.

Peacekeeping and intelligence capacity

Issues of capacity also influenced the response within the UN. With the end of the Cold War, expectations had grown that the UN would play a central role in promoting peace and security in a new, multilateral world. Between 1991 and 1994, the organisation undertook as many peacekeeping operations as it had in the previous 40. In 1989, the DPKO had a staff of nine; six years later, it had 50, dealing with 73,000 peacekeepers in 17 separate operations. As well as increasing in number, UN operations had also expanded in scope and complexity, and in the variety of contexts in which they were deployed, from 'classic' peacekeeping to operations in highly unstable environments.

The UN lacked the capacity to deal adequately with the glut of operations with which it had to contend. Few knew how best to undertake the rapidly changing and diverse roles being demanded of the peacekeepers, and there was significant anxiety about the organisation's expansion away from the 'classic' model of intervention. Too little time and capacity were available to do justice to all the crises the UN faced by 1994.

The UN also lacked – and still lacks – a formal intelligence-gathering capacity, primarily because member states oppose it. Theoretically, the UN should have an effective information-gathering capacity in its extensive field networks. In practice, however, this is an unreliable resource: the expertise of field staff is variable, and the UN's institutional culture avoids systematic intelligence-gathering. Instead, the UN relies on informal mechanisms, including the exchange of sensitive information through member states.

Inevitably, this means that the UN can only expect to receive the information that interested governments are willing (and/or able) to provide. In the case of Rwanda in 1994, intelligence was conspicuously lacking. The US committed virtually no in-country resources to what was considered a tiny state in a region of little strategic value. According to one analyst, the majority of information came from non-governmental organisations and news reports. These primarily concerned events in Kigali, and so hid the scale of the violence in the country as a whole. Without reliable intelligence to support and confirm Dallaire's communications, headquarters staff were essentially working in the dark.

the UN still lacks a formal intelligence-gathering capacity

Political considerations

According to Samantha Power, one of the key analysts of the US response to the genocide, Rwanda was very low on the list of American priorities: 'When [James] Woods of the Defense Department's African affairs bureau suggested that the Pentagon add Rwanda–Burundi to its list of potential trouble spots, his bosses told him, in his words, "Look, if something happens in Rwanda–Burundi, we don't care. Take it off the list. US national interest is not involved and we can't put all these silly humanitarian issues on lists … Just make it go away"'.

There is little doubt that mean political calculation and institutional cowardice played a key role in the failure of the international community to respond to the unfolding genocide in the early days of April 1994. Deliberations over Rwanda followed hard upon a string of peacekeeping failures: Bosnia, Somalia and Haiti had all in one way or another gone sour; UNAMIR was established just two days after 18 US troops were killed in Mogadishu. Using the small UNAMIR force to intervene in yet another

episode of African ethnic violence would have pitted the Secretary-General against the majority of Security Council members. That was a risk neither Boutros Boutros-Ghali nor his Under-Secretary-General for peacekeeping, Kofi Annan, was prepared to run.

The US, shaken by its experience in Mogadishu and disillusioned with the whole peacekeeping process, insisted that UNAMIR should be shut down. This threat was echoed by the UN Secretariat, though in an attempt to persuade the belligerents to abide by the Arusha accords; the UN at least still felt that the peacekeeping presence had value. Although the UK brokered an extension of UNAMIR, the downing of the Rwandan president's aircraft on 6 April 1994 – the trigger for the genocide – prompted the Security Council to rethink UN involvement in what was still seen as a civil war, and attention shifted to the evacuation of international personnel. UNAMIR was reduced to a token force of 270, around a tenth of its original size, and the Rwandan horror was allowed to run its course.

could another genocide on Rwanda's scale happen again?

Rwanda in prospect?

Could another genocide on Rwanda's scale happen again? Secretary-General Annan recently called for the creation of a UN commission and a Special Rapporteur to forestall future acts of genocide. His proposal would, he said, ensure that when 'confronted with a new Rwanda … the world would respond effectively'. Annan's hope is a logical extension of much that has happened in the UN over the past decade, particularly when it comes to the UN's peacekeeping role.

There is little doubt that the international community is now more focused on issues of conflict prevention than it was a decade earlier. The Millennium Goals emphasise the need for a far more integrated approach for dealing with the root causes of conflict. Greater integration and more effective peacekeeping are the leitmotif of the Brahimi Report on UN peace operations, published in August 2000. Following Brahimi, field-based missions and headquarters will now plan operations together, with mission officials joining their counterparts at headquarters. There will be UN stand-by arrangements to ensure that adequate forces are sent to crisis areas when required. There will also be links between mission planners and their human rights counterparts in the UN. Information systems will be improved, and 'lesson-learning' will be strengthened, in terms of analysis, dissemination and understanding.

Recent operations in Kosovo and Sierra Leone might suggest that UN member states, and the Security Council in particular, are willing to respond with greater alacrity to threats of ethnic cleansing, genocide and social collapse. While one can only hope that this is the case, Rwanda also suggests lingering hazards. Political interest and calculation, the possibility of misperception and the constraints and limitations of institutional behaviour all remain perverse but inevitable determinants of action. In the final analysis, it is a question of will. Does the international community care enough to respond to the threatened slaughter of a small community in a remote part of the world – does it care enough that a response is its single most important priority?

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RWANDA TEN YEARS ON

Building local capacity after crisis: the experience of local NGOs in the Kivus after 1994

Sadiki Byombuka, CELPA/Bukavu-DRC

Local NGOs in the eastern part of the Democratic Republic of Congo (Zaire) became involved in humanitarian assistance in the wake of the 1994 genocide in Rwanda. Subsequent crises – wars in Congo and Burundi, massive population displacement, violent ethnic conflict and the volcanic eruption in Goma in January 2002 – only increased the need for local NGOs in South and North Kivu to develop their capabilities in humanitarian aid. Today, ten years on from the genocide, humanitarian assistance has become a key area of activity for local NGOs in eastern Congo. This article looks at some of the key points in this development.

The impact of the genocide

Cooperative community development organisations in the Kivus started as far back as the 1970s. The higher education institution the Rural Development College of Bukavu (Institut Supérieur de Développement Rural de Bukavu – ISDR) was instrumental in this early phase. The ISDR, founded in 1962 by Catholic missionaries and taken over in 1972 by the Congolese government, trained people from the Congo, Rwanda and Burundi in community and rural development, and with help from the Canadian government started up credit and savings cooperatives. This played a key role in the rapid development of NGOs in the eastern part of the country.

Prior to 1994, most of these local NGOs did not consider humanitarian assistance as one of their core areas. Their main concerns were rural extension services and community development. In the late 1980s and early 1990s, provincial networks were formed: the Conseil Régional des ONG de Développement (CRONGD), and a national body, the Conseil National des ONG de Développement (CNONGD).

The genocide – and the million-strong refugee influx that it precipitated – presented local NGOs with a number of challenges. These organisations had important experience in community development, but not in humanitarian aid: they lacked competent staff to manage humanitarian projects, and did not possess the techniques needed to implement relief work. Managers were not prepared to handle the sudden arrival of massive amounts of aid funds, and NGOs were generally not up to the complex negotiations and advocacy that the crisis demanded. Their own material and financial resources were in short supply, and they had a tendency to compete among themselves, rather than looking for ways in which they might be able to complement each other. They were also ill-equipped to deal with the equally sudden influx of large numbers of foreign aid organisations.

Subcontracting: learning by doing

In 1994 and 1995, large refugee camps were established in South and North Kivu, to host Rwandan and Burundian refugees. Some, such as Mugunga camp near Goma and Kashusha camp near Bukavu, held over 100,000 people; many more smaller camps were scattered along the Rwandan and Burundian borders. The foreign aid organisations that came to Congo – UNHCR, WFP, UNICEF, Save the Children UK, World Vision, the International Rescue Committee (IRC), Médecins Sans Frontières, Norwegian Church Aid (NCA), Caritas – could not cope themselves, and did not possess the necessary local knowledge. Many, including UNHCR, WFP, Save the Children and the IRC, subcontracted work to local NGOs in areas such as food distribution, camp management, healthcare, water supplies, shelter and firewood supply. Competition among local NGOs for these contracts was intense; some abandoned existing projects for work with prominent international organisations. For all that, contracts were awarded according to actual capabilities: available staff, equipment and experience were required.

> prior to 1994, most local NGOs in the Kivus did not consider humanitarian assistance as a core area

Via subcontracting work, local NGOs in the Kivus, such as APIDE, PLD, Solidarité Paysanne, ADI-KIVU, SOCOODEFI, the Association Elimu and GEAD-Goma, entered the humanitarian field, going on to 'learn by doing' alongside international humanitarian organisations. As one example of the way local and international organisations could work together, two national Protestant churches headquartered in Bukavu, CELPA and CEPAC, formed a kind of joint venture with NCA to deliver integrated assistance to refugees in three camps around Bukavu. The two churches were not subcontracted by NCA, but rather joined with it in a temporary organisation called Plateforme CELZa–CEPZa.

Planning and implementing humanitarian aid projects

From their initial experience of subcontracting, many local NGOs started planning and implementing their own humanitarian aid projects in their areas of intervention. Funds were mainly obtained from the international organisations which had earlier subcontracted them, but were also accessed from other international sources. Most projects were run on a short-term basis (three to six months, occasionally a year). Examples include a seeds and tools project by PLD in Kaziba-Luhwindja in 1997, a similar project by APIDE in Kalambi-Mwenga in

A local NGO food aid project in Bukavu

the same year, and CEPROF/SOCOODEFI's distribution of exercise books and chalk in schools in Fizi.

There were two factors behind this shift to more independent work:

1. A fresh humanitarian crisis in Congo, precipitated by the outbreak of conflict in October 1996.
2. The mixed experience of subcontracting with international organisations. For NGOs that benefited with contacts, equipment and know-how, the experience had been positive; for the many local NGOs that were treated as mere implementers and not as partners, and that faced a large degree of disdain from international organisations, the experience had been decidedly unhappy.

Networking, mobilising local resources and implementing large-scale projects

When Congo's second war broke out in August 1998, local NGOs in the Kivus began increasingly to mount joint projects. These were supported by international humanitarian organisations, either as funders or as partners in implementation.

Examples include:

- UNDP humanitarian projects in North Kivu and South Kivu, which use a network of local actors in school rehabilitation. UNDP has been working in partnership with NGOs and public services in charge of education and planning.
- The humanitarian programme funded by EPER-SUISSE (a church-related international development organisation based in Switzerland), involving a group of NGOs and churches in Goma coordinated by a local consultancy, the BEED.
- Christian Aid's joint humanitarian programme in South Kivu, where eight NGOs work together around Bukavu and in the territories of Walungu and Kabare.
- The joint humanitarian initiative targeting street children and former child soldiers in Bukavu, involving

a number of local NGOs and supported by Save the Children UK.

Meanwhile, large-scale humanitarian projects run by individual NGOs and churches have been undertaken, such as a CARITAS programme in South and North Kivu; CELPA's humanitarian programme, which covers three provinces (South Kivu, North Kivu and Province Orientale); and CEPAC's humanitarian project, which focuses on health and education. This kind of work has been made possible as a result of the increased capabilities of NGOs and churches in managing humanitarian aid activities.

Another important feature is the considerable efforts by NGOs to mobilise local resources to respond to humanitarian crises. After the Goma eruption in January 2002, local NGOs collected food, clothes, jerry-cans and money from local people to help the volcano's victims. A few weeks after the Goma event, the Kamongola river flooded, killing about 50 people in the city of Uvira in South Kivu. Once again local NGOs, led by the BUCONGD network, were the first to assist with food, clothes and medicines collected locally. All the large humanitarian organisations were preoccupied with Goma, where the disaster was being well reported in the international media.

> ## large-scale humanitarian projects run by individual NGOs and churches have been undertaken

Further steps and fresh challenges

Some NGOs in South and North Kivu are trying to create specialist humanitarian departments through further training in areas such as project management, human rights and humanitarian action and emergency preparedness. Many NGOs are also keen to find better ways to combine humanitarian interventions with development projects, which remain their core business.

As the Congo moves towards peace, further challenges lie ahead, both there and in the Great Lakes more broadly. Local NGOs will need to develop their capacity to manage humanitarian programmes. International humanitarian organisations should help in this regard. They must step up their emergency preparedness, and mobilise local and external resources more effectively. They need to establish better coordination and collaboration with government institutions and services, and with international humanitarian organisations, and develop stronger networks among themselves to allow synergies to emerge. They also

need to integrate humanitarian interventions with their long-term development work, not least because, in the Great Lakes, crises tend to last for a long time.

Local NGOs in the Kivus should also look at enhancing their advocacy skills and their use of the media to raise awareness on local disasters at the national, regional and international levels. Partly, this has an educative function, helping the international community to understand that it is important to stop political leaders in the region from exploiting disasters as a political asset, and from waging unjustified wars as a means of looting natural resources. Congo needs more international help, notably to strengthen the local, national and regional economy; this can be achieved through employing more local people, and buying more relief goods locally. Finally, NGOs need to help international humanitarian organisations prioritise interventions more efficiently, and more effectively: as Roger Persichino puts it, even 'the more straightforward emergencies in eastern DRC legitimately call for a prioritisation of limited resources'.

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The Joint Evaluation of Emergency Assistance to Rwanda

John Borton, John Borton Consulting

The 1994 genocide and the ensuing relief operations provoked an unprecedented international collaborative evaluation process – the Joint Evaluation of Emergency Assistance to Rwanda (JEEAR) – which has remained unsurpassed in terms of its scope and scale, and arguably its impact. This article reviews the JEEAR and follow-up process, and offers some personal observations on the evaluation's impact eight years on.
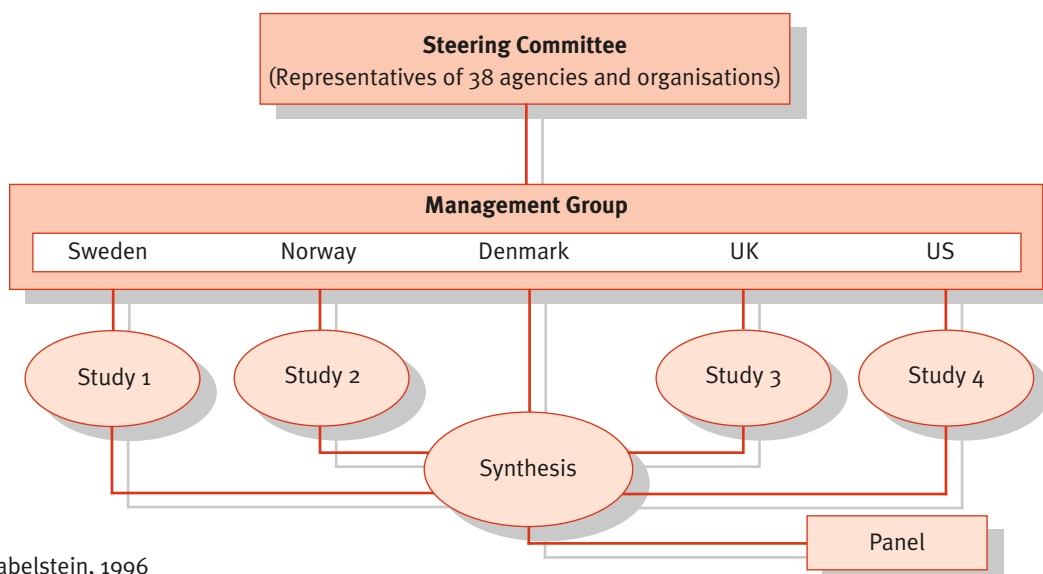
The Joint Evaluation
The JEEAR process was first proposed by the Danish government's aid agency Danida in September 1994, just two months after the end of the genocide and the influx of almost two million refugees into eastern Zaire. An approach to the OECD's Development Assistance Committee (DAC) Expert Working Group to approve the process as a DAC activity did not receive the full support of all DAC member governments, and so in November 1994 Danida's Evaluation Department organised a meeting of organisations interested in participating in a collaborative evaluation process. The meeting, in Copenhagen, was attended by a broad range of bilateral and multilateral donors, UN agencies and NGOs. It agreed the organisational structure for managing and overseeing what would clearly be a complex and unprecedented evaluation process (see Figure 1). The whole effort would be guided by a 38-strong Steering Committee representing the international aid community, while day-to-day management would be entrusted to a Management Group comprising the heads of the evaluation departments on the Swedish aid

agency body Sida, Norway's Norad, Danida, the UK's Overseas Development Administration (now DFID) and the US Agency for International Development (USAID). Danida acted as the chair. The Steering Committee held its first meeting in December, at which terms of reference were approved for five separate studies (described in Table 1). Each member of the Management Group took responsibility for managing one of the five.

Study 1, on historical perspectives, produced its report first, so that it could act as a resource for the other studies. Studies 2, 3 and 4 all circulated their draft reports to the Steering Committee in October 1995, and each team gave a presentation to the November Steering Committee meeting in Copenhagen. Work on the synthesis began in December 1995, merging the main findings, conclusions and recommendations from studies 2, 3 and 4 into one overall report containing 64 recommendations. All five reports were published in March 1996. Simultaneous launch events were held in Geneva, New York and Nairobi, with a press launch in London. Over 8,000 copies were printed and distributed.

The scale of the process was unprecedented. Overall, 52 researchers and consultants were employed on the five studies, and the cost of the whole process including translation and dissemination of the published reports was $1.7 million. The largest of the studies, Study 3 on humanitarian aid, cost $580,000 and had a team of 20 specialists and support staff with a combined input of four person-years.

Figure 1: Organisational structure of the JEEAR

Source: Dabelstein, 1996

Table 1: The JEEAR studies

Study number	Focus	Managing evaluation department
1	Historical perspectives	Sida
2	Early warning and conflict management	Norad
3	Humanitarian aid and its effects	ODA
4	Rebuilding post-genocide Rwanda	USAID
Synthesis study	Synthesis and principal recommendations	Danida

The JEFF process: an early assessment of impact

At its meeting in November 1995, the Steering Committee agreed to review the impact of the JEEAR reports one year after their publication, and a second process, the Joint Evaluation Follow-up, Monitoring and Facilitation Network (JEFF), was set up to monitor and report on the evaluation's 64 recommendations. JEFF was a small network of 11 individuals representing the Management Group, the study teams and the Steering Committee, with a part-time secretariat and a modest budget. In the 15 months following publication, JEFF members participated in a total of 73 events. JEFF's final report was issued in June 1997, 15 months after the publication of the evaluation itself.

The JEFF process assessed the status of each of the 64 recommendations according to four principal categories (A–D) and two mixed categories (A/D and C/D), described in Table 2.

Two-thirds of the recommendations were judged to have had at least some positive outcomes. The main areas of progress were:

- the strengthening of human rights machinery in Rwanda;
- the development of early-warning information systems in the Great Lakes region;
- the broadly supported efforts within the NGO community to improve performance through the development of standards and self-regulation mechanisms; and
- the commitment shown by donors, UN agencies and NGOs to improve accountability within humanitarian aid.

The main areas where no progress was found were:

- 'Fostering Policy Coherence' (directed at the UN Security Council, Secretariat and General Assembly); and
- 'Effective Prevention and Early Suppression of Genocide' (directed at the UN Security Council, the secretary-generals of the UN and Organisation of African

Table 2: JEFF's assessment of the JEER recommendations' status

Category		Proportion of recommendations
A	Not formally discussed/raised by recommendation addressees	11%
B	Formally discussed by recommendation addressees and rejected	6%
C	Formally discussed but no resolution or action	17%
D	Formally discussed and resolution reached or action taken	37%
A/D	In part formally discussed In part formally discussed and resolution reached or action taken	6%
C/D	In part formally discussed but no resolution or action taken In part formally discussed and resolution reached or action taken	22%

Unity (OAU) and the High Commissioner for Human Rights).

The four recommendations that had been formally considered and rejected (category B) involved the more radical of the options offered on UN coordination, the regulation of NGO performance and mechanisms for improving accountability.

The longer-term impact of the JEEAR

The evaluation literature identifies four main ways in which evaluations are used:

1. *Guidance for action* – the direct use of the evaluation to change programmes or policies
2. *Reinforcement of prior beliefs* – reaffirms and bolsters the confidence of those who want to press for change
3. *Mobilisation of support* – providing ammunition for a particular change
4. *Enlightenment* – a general increase in understanding that may not itself lead to action, but that leads to changes in thinking and the reordering of priorities that may eventually result in a change.

While evaluations certainly are used directly to effect change, this appears to be the least common outcome. This is broadly the case with the JEEAR. Whilst the evaluation can claim to have had a direct impact on certain programmes and policies, it has also had many other less direct impacts and uses, though these are often difficult to measure and assess objectively.

The International Response to Conflict and Genocide: Lessons from the Rwanda Experience

3

Humanitarian Aid and Effects

Joint Evaluation of Emergency Assistance to Rwanda

Three personal observations are offered below on the areas where the impact of the JEEAR seems to have been more and less evident.
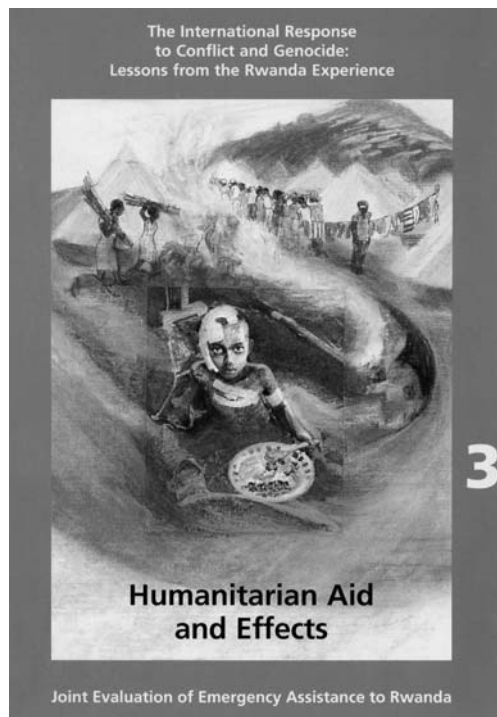
1. The JEEAR's impact is most evident in the areas of humanitarian accountability and evaluation
At least three of the significant initiatives aimed at improving accountability and performance in the humanitarian sector over the last eight years – the Sphere Project, the Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP) and the Humanitarian Accountability Project (HAP) – stemmed directly from, or were substantially influenced by, the JEEAR.

Although Sphere's beginnings just predated the JEEAR, the evaluation gave the project a fillip, partly by encouraging the initiative as a piece of welcome self-regulation, and partly by raising the prospect of external regulation of the NGO community. ALNAP, a network bringing together bilateral and multilateral donors, UN agencies, NGOs and the Red Cross, grew out of a European bilateral donor meeting in 1996 to consider the JEEAR, and was significantly influenced by the inclusiveness and perceived value of the JEEAR Steering Committee. Finally, while the JEEAR's recommendation for a 'humanitarian ombudsman' was initially rejected, British NGOs nevertheless set up the Humanitarian Ombudsman Project, out of which grew the HAP.

The JEEAR also appears to have made significant contributions to the evaluation of humanitarian action through:

1994

September (?)	Danida representative proposes a joint evaluation of the Nordic emergency response in the Great Lakes region to a regular meeting of the Evaluation Departments of the Nordic aid agencies. Meeting proposes an approach to the DAC to undertake a joint DAC evaluation.
October	Danida presents the concept of joint evaluation to the DAC Expert Group on Aid Evaluation. Whilst the majority of members are supportive some are not, and the DAC's consensus rule prevents the joint evaluation going ahead as a DAC activity.
November	Danida holds a consultative meeting for interested bilateral donors, UN agencies, international organisations and NGOs. The structure for the JEEAR process is agreed.
December	The Steering Committee holds its first meeting, and approves TORs for the five studies. The Management Group undertakes a tendering and selection process for the four study teams and the synthesis team.

1995

January	Representatives of the teams meet the Management Group in Geneva. Evaluation work begins.
April	Study teams 3 and 4 make their first visits to the region.
June-July	Study teams 3 and 4 undertake the bulk of their fieldwork.
October	Draft reports of Studies 2, 3 and 4 are completed and disseminated for comment to organisations represented on the Steering Committee.
November	The Steering Committee meets in Copenhagen, and teams present the comments received and how they propose responding to them in the final report.

1996

January	Report texts are finalised.
March	JEEAR is launched simultaneously in Geneva, Nairobi and New York, with a special press briefing in London.
May	Joint Evaluation Follow-Up Monitoring and Facilitation Network (JEFF) is formed to represent JEAAR at meetings and conferences and to monitor the follow-up discussions and responses to the JEEAR's recommendations.

1997

February	The final meeting of the Steering Committee reviews the preliminary report by JEFF.
June	JEFF issues its final report, *A Review of Follow-up and Impact Fifteen Months after Publication of the JEEAR*.

• direct and indirect contributions to thinking on the methods and approaches to the evaluation of humanitarian action; and

• providing a 'demonstration effect' that encouraged the greater use of evaluation in the sector and setting a 'gold standard' for it.

2. JEEAR's impact is much less evident in relation to the discourse on the prevention of genocide and in relation to political and military processes in the Great Lakes
The JEEAR made an important contribution to the understanding of early-warning signals and decision-making processes in the UN and Western capitals. Indeed, it can legitimately claim to have put into the public domain Major-General Romeo Dallaire's infamous cable of 11 January 1994, discussed by Randolph Kent in his article (pages 9–11). However, the JEEAR's contribution to the discourse on how to prevent genocide seems to have been less clear. The events of 1994 have been the subject of numerous publications, including by people involved in the JEEAR. In addition, the genocide was the subject of international official investigations including by the UN in 1999, and the OAU the following year.

Parliamentary enquiries were also carried out in France and Belgium. The JEEAR was therefore one among many studies, and it would seem that its contribution and ability to provide a focus for the debates on how best to prevent genocide were diluted.

During the JEEAR process and for ten months after its publication, 1.8 million Rwandans lived as refugees in neighbouring countries. The new Rwandan government struggled to establish its control over the country and its international credentials. In November 1996, many of the refugees in the camps around Goma returned to Rwanda as a result of Rwandan military action against the Hutu militia who had been controlling the camps. Whilst this broke the impasse with the refugees and enabled the Rwandan government to focus on reintegration and stabilisation inside Rwanda, it also saw the start of several years of direct and indirect Rwandan involvement in the civil war and ethnic conflict in large areas of Zaire (now the DRC). This fundamentally altered the context in which the study and the recommendations had been generated, and may have made its conclusions appear less relevant than at the time of publication.

RWANDA TEN YEARS ON

3. The recommendations on policy coherence were misinterpreted by some actors

The JEEAR argued that the lack of effective political responses to the genocide, and to the problem of Hutu militia control of the camps in Zaire, forced humanitarian agencies to work in situations that were untenable. However, the JEEAR's call for more effective political action and greater policy coherence between the aid and political spheres seems to have been interpreted by some donor organisations as a call for the integration of humanitarian assistance within an overall political framework. For instance, the British government appears to have pursued a policy of not funding humanitarian aid in Sierra Leone after the March 1997 coup there, fearing that the aid would sustain the (unwelcome) new regime.

the scale of the Joint Evaluation process was unprecedented

Conclusions

These observations are subjective and impressionistic. It is highly likely that a more thorough exploration will reveal other areas where a linkage between changes in policy and practice can be traced to the JEEAR. It may also be that the effects in relation to genocide prevention and politico-military processes in the region have been more positive than appears to be the case to this observer, at this stage.

A larger study of the legacy of the JEEAR is planned for presentation to the ALNAP Biannual Meeting in Copenhagen in June 2004. Whatever its outcome, it is clear that the JEEAR represented a unique process – a product of the shock felt by so many of those working in the aid community at what had happened, and been allowed to happen, in Rwanda. Under the able leadership of Niels Dabelstein, the Head of Evaluation at Danida, that sense of shock was used to galvanise the aid community into undertaking a collaborative process that has had a fundamentally positive impact within the humanitarian sector, and in other areas as well. Efforts at similar collaborative, system-wide evaluations following Hurricane Mitch in 1998 and the conflict and humanitarian crisis in Kosovo in 1999 failed to bear fruit. Although the benefits of such evaluative exercises are readily apparent, it seems that it takes events as shocking as those in Rwanda in 1994 to generate the effort and collaborative spirit required.

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A summary of the findings and recommendations on Study 3 on humanitarian aid is available as HPN Network Paper 16, www.odihpn.org/documents/networkpaper16.pdf.

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HUMANITARIAN exchange

Cost-recovery in the health sector: an inappropriate policy in complex emergencies

Timothy Poletti, London School of Hygiene and Tropical Medicine

The introduction of cost-sharing mechanisms as part of healthcare programmes in complex emergencies has become a source of increasing concern to many humanitarian relief agencies. Cost recovery seems contrary to the humanitarian principle of impartiality and the allocation of assistance based on need alone. Critics argue that, in already difficult healthcare environments, charging users fees compounds inequities in access to treatment and contributes to the destitution of the most vulnerable. Yet donors have increasingly made their funding contingent on having these mechanisms. Both donors and national governments see such policies as developmental; they believe that their introduction is inevitable, and that bringing them in at an early stage will contribute to building a sustainable, locally financed health system in the longer term.

The rationale for introducing cost-sharing in complex emergencies has not been well articulated, and the arguments in favour of it are largely ideological. The research base on cost-sharing in complex emergencies is extremely limited; there is insufficient evidence to develop more empirically based approaches. However, given the evidence available on cost-sharing in other resource-poor settings, and the results of NGO evaluations, there is a strong case that, regardless of whether cost-sharing mechanisms should remain a longer-term development goal, their introduction in complex emergencies is inappropriate and should be abandoned.

Cost-sharing in developmental settings

While cost-sharing is a recent innovation in complex emergencies, there is substantial experience with such schemes in the development sector. Cost-sharing became widely accepted as a necessary element of healthcare financing in the developing world in the mid-1980s. At that time, governments were unable to adequately fund public services including health, and out of pocket expenditure on health was growing rapidly as people (including the poor) were forced to seek care in the private sector.

Alternative sources of financing were clearly needed, and the World Bank began pushing for the inclusion of national cost-sharing mechanisms as a way of bridging what is known as the health sector resource gap – the shortfall between the funding provided by governments and donors and the level of funding required to provide a basic level of healthcare of acceptable quality. The World Bank's arguments in favour of cost-sharing were given added weight by the Bamako Initiative, developed by WHO and UNICEF and adopted by African ministers of health in 1987. This focused on the potential of user fees to increase the resources available for primary healthcare.

Three basic arguments have been developed to support cost-sharing:

1. *Increased revenue*. User fees are one of the few feasible ways of raising revenue to bridge the health sector resource gap in resource-poor environments. There are other ways of raising revenue: increased donor funding; increased private philanthropy; economic growth and a consequently increased tax base; taxes on health-damaging products such as tobacco and alcohol; or increasing the share of government expenditure spent on health. However, none of these is likely to be achievable in the developing world, especially in Sub-Saharan Africa, in the near future.
2. *Increased efficiency*. User fees, if well designed, should mean that resources are used more efficiently within the health system. They discourage unnecessary use, and can create incentives for providers and patients alike to shift the focus towards cost-effective high-priority care for disease prevention; they can also, via differential pricing, move the delivery of care away from expensive hospital-based treatment to more cost-efficient primary healthcare.
3. *Increased equity*. If the income they generate is used to improve service quality, user fees could have positive equity outcomes. Even with user fees, a public health system that delivers high-quality care close to where people live would offer poor people cheaper and better care than they would be able to get in the private sector.

The verdict on cost-sharing in resource-poor settings

The results of cost-sharing in resource-poor settings have been disappointing. It has failed as a revenue-raising tool: although the World Bank had hoped for 15%–20%, user fees have raised an average of 5% of total recurrent health system expenditure, and even this is an over-estimate because it does not take account of the cost of collecting the fees. User fees have, however, been able to generate a large proportion of non-salary recurrent expenditure, ranging from 10% to more than 100% in Sub-Saharan Africa. This can be significant in well-directed and well-managed

health systems, where otherwise effective systems were failing because there was insufficient money for drugs and other medical supplies.

The evidence that cost-sharing improves efficiency is weak. There is no evidence to support the argument that user fees discourage unnecessary use, or that they have significantly altered patterns of service delivery in ways that increase efficiency. There is evidence that user fees can create perverse incentives that actually *decrease* efficiency by reducing the use of preventive services; reducing access for the poorest (and often sickest); and forcing people to wait until they are very sick, and then seeking more expensive treatment in hospitals.

A temporary hospital in the Vanni, Sri Lanka

©Frances Stevenson

Evidence as to the equity impact of user fees has been mixed, in part because it is difficult to disentangle the effects of price, quality of care and affordability on service use. In many cases, the introduction of user fees has led to significant and sometimes dramatic decreases in utilisation, despite mechanisms exempting certain sections of a population from having to pay. There is also evidence of an increase in utilisation following the removal of fees. At the same time, there are examples that suggest that, if cost-sharing is linked to improvements in the quality of care, and particularly to the availability of drugs, user fees may benefit everyone (including the poor) by providing cheaper access to public care of higher quality. On balance, the introduction of cost-sharing will in many instances create a significant barrier to poor people accessing care.

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the evidence that cost-sharing improves efficiency is weak

There is also the question of willingness and ability to pay. Poor people may be willing to pay to access care, but they may be unable to do so without sacrificing their longer-term economic well-being through unsustainable borrowing or selling productive assets. This is referred to as catastrophic health expenditure.

By 1993, the World Bank's position on user fees in healthcare had become more neutral, and there is now widespread consensus that the most efficient provision of healthcare involves free service at the point of delivery.

Nevertheless, policy-makers within donor organisations and governments, both in the West and in the developing world, have bought into the World Bank's mid-1980s arguments in favour of cost-sharing, and still retain a widespread belief that it is a necessary component of healthcare financing in the developing world – largely because there are no other options, since taxation or insurance systems are too complex to operate in these environments.

Cost-sharing in complex emergencies

A similar logic (that there is no other option) drives cost-sharing in complex emergencies where donor pressure has been crucial in pushing cost-sharing onto the policy agenda in these environments. The majority of funding for health programming comes from donors, which means that donors have significant leverage over health policy. In its approach to supporting primary healthcare in the Democratic Republic of the Congo (DRC), for instance, the European Commission Humanitarian Aid Office (ECHO) has developed guidelines for partner NGOs which promote cost-sharing. As a consequence, ECHO-funded projects in the DRC include cost-sharing mechanisms.

The arguments in favour of cost-sharing in complex emergencies are the same as in other resource-poor settings: it can raise revenue; increase efficiency; and, with appropriate exemption mechanisms, increase or have minimal effect on equity. Cost-sharing is regarded by its proponents as developmental: the underlying logic is that, given the widespread introduction of cost-sharing mechanisms throughout the developing world, it is more than likely that such a scheme will be introduced in any case once peace has been restored. The introduction of user fees is seen as a necessary step towards rebuilding a sustainable health system. This does not, of course, solve the problem of when a complex emergency might reach

the point where developmental programming is appropriate, and opponents often criticise cost-sharing as an example of premature developmentalism.

Many people working in humanitarian relief have an instinctive resistance to the introduction of user fees in complex emergencies. It runs counter to the ethos and principles of humanitarianism, under which assistance should be rendered to people affected by conflict on the basis of need alone. To many, it seems absurd that people who are struggling to survive in difficult and unstable circumstances should have another financial burden placed on them. The potential for catastrophic health expenditure is self-evident in complex emergency settings, where people's asset base is typically extremely vulnerable and their health needs are grossly elevated. Critics point out that the characteristics of complex emergencies are such that transferring the policy from a development context is inappropriate: poverty is widespread, needs are high, governance is absent, per capita incomes are already insufficient to meet essential needs and the skills and capacity to support the introduction of user fees are missing.

cost-sharing mechanisms should not be introduced in complex emergencies

There is very limited published literature on the impact of user fees in complex emergencies. In-house NGO assessments suggest that their capacity to raise significant amounts of money is limited. Utilisation rates indicate that, in already disrupted and inequitable healthcare environments, user fees compound inequities in access to treatment and contribute to the destitution of the most vulnerable. Little is known about who is discouraged from seeking treatment, or what the impact might be, but community-based surveys suggest that the poor are prevented from accessing care.

There is limited information regarding the impact of cost-sharing on the health of populations, particularly its implications for the control of infectious disease, which is a major source of morbidity and mortality in complex emergencies. However, if user fees do create an access barrier for the poor, it is likely that some individuals with infectious diseases will fail to get effective treatment because they cannot afford it. They then act as a reservoir of infection, with the potential for triggering and sustaining epidemics.

Conclusions
Definitively answering the myriad of complex questions that the introduction of user fees in complex emergencies raises would require well-designed academic studies. Such operational research is the only way to develop a foundation for more empirically based policymaking in this area. In the meantime, there is no evidence to

support cost-sharing mechanisms in complex emergencies, and there are good grounds to argue that they should not be introduced. It is likely that cost-sharing in complex emergencies will:

- Raise little money.
- Have a significant negative impact on equity, which cannot be effectively mitigated via exemption mechanisms.
- Have a negative impact on efficiency.
- Result in unequal access to care.
- Potentially tip individuals and families into destitution via catastrophic health expenditure.
- Potentially hamper efforts to control epidemic infectious disease.
- Needlessly increase the complexity of programming in already challenging environments, potentially damaging the motivation of local staff and the relationship between local and expatriate staff.

This constitutes a reasonable basis for arguing that cost-sharing should not be introduced in complex emergency settings. If donors reject this argument on the basis that the evidence is insufficient, the onus should be on them to fund further operational research to establish the basic conditions for the successful introduction of user fees. It should not be acceptable to make claims for any benefits from user fees when the basic underlying conditions do not exist for their introduction; where doing so has predictable negative impacts; where prior experience in more favourable settings is negative; and where levels of need are high.

If donors fail to change their policies, some NGOs and humanitarian agencies will be forced to continue to compromise their principles and include cost-recovery in programme design; others may withdraw altogether from the provision of health services in complex emergencies. If cost-sharing remains part of the donor policy agenda, we may perhaps need to redefine the humanitarian ethic as an obligation to prevent suffering and protect life and health – but only for people who can pay.

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PRACTICE AND POLICY NOTES

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Legal aid for returnees: the NRC programme in Afghanistan

Conor Foley, Norwegian Refugee Council

Legal aid might not seem the first priority for a humanitarian assistance organisation in a situation where people's physical needs for food, shelter, security and basic healthcare have not been met. Nonetheless, its practical value in post-conflict situations is being increasingly recognised. Until the rule of law has been re-established, most attempts to tackle other social problems are likely to be little more than short-term palliatives.

Afghanistan is a prime example. The central government's writ barely extends beyond the capital Kabul. Much of the country remains lawless and, even in the areas that they control, the police and courts are unable to protect basic human rights. Corruption is rife and popular alienation from the government is, in some ways, similar to the situation which first swept the Taliban to power. It is no coincidence that this force has now re-emerged as a credible threat. For donors and the international community, restoring the rule of law in Afghanistan is seen as a vital part of the process of disarmament, political reform and social reintegration.

NRC's legal aid programme

The Norwegian Refugee Council (NRC) first began legal aid and information projects in the Balkans in the mid-1990s. Thousands of refugees and internally displaced people were helped throughout the region. Often working in the absence of a properly functioning legal system, it was an innovative programme that other agencies have since copied.

NRC established a number of legal aid centres in Pakistan in 2002, and opened three more in Afghanistan in 2003. These are currently the only centres of their kind in the country. The programme is expanding during 2004, with another four centres opening in the north and west. The centres provide free assistance, including direct legal representation by local Afghan lawyers, to people who have been forced to flee their homes or who have recently returned. They also provide information and advice about the current situation in places of origin so that people can make an informed decision about whether to return. The centres work closely with protection staff of the UN High Commissioner for Refugees (UNHCR), the UN Assistance Mission to Afghanistan (UNAMA) and the Afghan Independent Human Rights Commission (AIHRC). In their first six months, NRC's information and legal aid centres had registered over 300 cases, and had achieved a number of notable settlements.

Land rights and the justice system

Two issues in particular need to be tackled. The first concerns land rights, which remains the biggest single source of conflict in Afghanistan. The second concerns the shape of the justice system, and how formal institutions should be developed alongside traditional, informal ones.

Land rights

The vast majority of cases handled by the NRC's legal aid programme are related to land disputes. Land rights are a sensitive and deeply controversial subject in Afghanistan. A mismanaged attempt at land reform was one of the major causes of the revolt against the Communist regime in 1978. Since then, successive governments have used land policy as a way of rewarding their own supporters. Land ownership is starkly inequitable, and a significant proportion of the rural population is landless.

Complex social relationships determine rights to ownership and usage, and these can vary considerably in different areas. Few people possess official title deeds,

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HUMANITARIAN **P**RACTICE **N**ETWORK

and most use customary documents to prove ownership. Missing deeds, widespread forgery and the fact that disputed land has often been sold many times over make it difficult to determine who owns what. A quarter of a century of conflict, population growth and the rapid return of so many refugees have added to these problems. Prices have risen sharply, particularly in urban areas, and returnees often find themselves entangled in property disputes, or simply fall victim to extortion rackets run by local commanders.

Discontent over the land issue is one of the factors behind growing disenchantment with President Mohammed Karzai's Western-backed government. One of Karzai's first acts was to ban further land distribution, in recognition of the fact that the warlords would simply grab it for themselves. This freeze is thawing in many areas – further undermining the president's authority. A Special Land Court has been established to address the property concerns of returnees, but it is over-burdened, politicised and subject to intimidation and widespread corruption. A Special Commission for City Development has been instructed to arbitrate disputes over urban property and a number of presidential decrees have been issued on land rights, but these have created as many problems as they were intended to solve.

Women shopping in Kabul. Women rarely have a say in informal justice systems

©Frederik Kok, NRC Geneva

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land rights are the biggest single source of conflict in Afghanistan

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The absence of rule of law in much of the country means that, even where the courts issue fair judgments on land and housing disputes, there is no guarantee that these will be enforced. Many Afghans are understandably cynical about their prospects of obtaining justice through the official system, and around half of the land and property cases registered by the NRC's legal aid centre in Kabul concern people who have become dissatisfied with the progress of the courts.

In September 2003, a government Special Commission was established to look at the issue of land rights following the high-profile demolition of houses in the Shirpur district of Kabul to make room for private homes for a number of government ministers. The residents had been occupying their houses, which were located on government-owned land, for over 20 years. NGOs and the AIHRC publicly condemned the demolition, and it was also criticised by the UN Special Rapporteur on the Right to Adequate Housing. The municipal chief of police was forced to resign, although the Commission's report, which is believed to

have contained damning criticism of other high-ranking public officials, has not been published.

NRC provided legal advice to residents in the Shirpur case, and has a number of similar cases where people feel threatened by evictions. The organisation is sometimes able to use its 'international status' to obtain leverage with commanders or senior officials (the two are not mutually exclusive) in order to obtain justice in individual cases. Commanders have been persuaded to hand back houses to their rightful owners after interventions by NRC counsellors. In one case, NRC successfully mediated a settlement with an official who had cut off the water supply to over 1,000 returnees, some of whom had been assaulted, imprisoned and shot at when they objected.

Such initiatives may help individuals, and may even have a role to play in strengthening civil society and holding the authorities to account, but they are no substitute for an effective justice system based on respect for the rule of law and human rights. Many of NRC's clients have still not obtained justice, and managing people's expectations is becoming an increasing problem. Conversely, the organisation's successes may attract more cases than the centres can handle. Staff safety is also another potential problem, for which there are no easy answers in such a dangerous society.

The shape of the justice system

The second pressing problem concerns the relationship between formal systems of justice and informal, traditional mechanisms. As much as 90% of all cases are settled using these methods, and few cases that NRC has 'resolved' are officially registered as such because there is no official mechanism to acknowledge them or monitor their implementation. While the community itself can be relied upon to enforce rulings that it considers 'fair', such settlements do not always accord with principles of human rights and natural justice.

The two key mechanisms of traditional justice in Afghanistan are the *shura* and the *jirga*. These entities are products of the country's patriarchal tribal society, which lays strong emphasis on solving conflicts 'privately', within the family, village or clan. A *jirga* is a decision-making forum at which, theoretically, all adult males can participate. A *shura* is restricted to the elders of a particular community. Both have a long history of resolving land disputes.

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almost all legal cases are settled informally

Shuras and *jirgas* derive their legitimacy from their perceived ability to settle disputes. At their best, they are the closest thing to democratic institutions in Afghanistan today. They can reach decisions much faster than the official courts, are virtually cost-free, are less susceptible to bribery and are accessible to illiterate Afghans (the vast majority). Since they reach decisions by consensus, they tend to try to settle disputes through compromise. This makes them an effective mechanism for conflict resolution. However, they do not always offer the best method of upholding individual rights. Women rarely have any say in their deliberations, and may find their own rights being violated by the settlement reached. It is not uncommon for a family to be required to give a young girl to another family as part of a compensation package.

Sexual slavery, of course, violates Afghanistan's state law and Islamic law, on which the country's formal justice system is also based. This dual basis was confirmed at the Special Loya Jirga which approved Afghanistan's new constitution in December 2003. However, there remains a widespread misunderstanding about many principles of Islamic law, and it is frequently cited to justify practices based on Afghan tribal traditions. No in-depth analysis has been conducted into the strengths and weaknesses of Afghanistan's informal justice system; this is clearly an issue that would benefit from closer study.

NRC's legal counsellors have represented women before informal dispute resolution bodies, and have successfully mediated divorces and custody battles. Like most Afghan lawyers, NRC's counsellors believe it is best to try and exhaust domestic remedies, using informal mechanisms, before a case is brought to court. For NRC, the issue is not whether informal mechanisms are better or worse than the formal system, but how best to obtain justice for our clients in whatever forum can be used. One important lesson from the legal aid programme's admittedly limited Afghan experience will be whether such 'principled pragmatism' has a wider application, and what the rest of the world can learn from Afghanistan's system of justice.

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Does the humanitarian community need a humanitarian academia?

Peter Walker, Feinstein International Famine Center, Tufts University

For much of its short life, modern humanitarianism has been seen as a specialised arena in which various professions and services are practiced. More recently, however, the temptation, and maybe necessity, has grown to treat it as a profession in its own right. If humanitarianism is a profession, does it warrant an academic discipline?

What is a profession?
Today's model for professionalism has at its heart individuals who try to provide an expert service. To do this, they need to be equipped with three things:

- a solid set of values which are agreed upon by the profession;
- a body of skills and knowledge accepted by the profession; and
- a set of systems, organisations and administrations that allow the professional to provide his or her services reliably.

In the 1960s and 1970s, professionalism came under intense criticism for being elitist and decoupled from society. Professions have since come through this crisis – knowledge through action, and the use of reflection and

intuition, is now recognised as essential to the pursuit of a profession. An art has been added to the science. Today, we expect professionals to be human; we expect them to relate to their clients, and to listen and learn from them.

If the client relationship represents the 'downstream' extension of the professional, then academia represents the 'upstream' source.

Professions need a repository for knowledge, a body that will teach and train new professionals and constantly try to push forward the frontiers of knowledge and practice in the profession. They need a yardstick by which to judge if new people seeking to enter the profession have a sufficient grasp of the values, knowledge and skills that lie at its heart. For most professions this upstream body is academia, with its ability to teach a set curriculum, award a qualification and carry out objective research.

Why view humanitarianism as a profession?
Is this a model for humanitarianism: a body of committed individuals with an agreed value set, knowledge and skills, providing services to clients whom they respect, treat with dignity and learn from, backed up by an academy that provides high-quality and consistent education, painstaking research and objective advice?

I believe this model works well, because it allows us to identify those things we need to preserve, and to see where the gaps are.

We have a core set of values: the notions of humanity, impartiality and independence run through all humanitarianism. We have a basic knowledge and skill set, captured in guidelines and field manuals, in the Sphere project and in International Humanitarian Law.

Downstream, we are at last starting to get serious about our relationship with our clients. The recent *Global Study on Consultation of Affected Populations in Humanitarian Action*, undertaken by the French research group Groupe URD under the auspices of ALNAP, points to the future, as does the creation and growth of the Humanitarian Accountability Project.

But what about upstream? How well is academia serving humanitarianism?

What does academia add?
Academia should add four things to humanitarianism.

- First, a body of knowledgeable and skilful individuals carrying on relevant and essentially curiosity-driven research in order to enhance our understanding of the depth, breadth and complexity of the humanitarian field.
- Second, a repository for knowledge, in the form of libraries, learned journals, databases and conferences.
- Third, an ability to provide objective and critical advice, which is qualitatively different from that of private consultancies.
- Finally, an ability to teach to a commonly accepted

curriculum, allowing a student to graduate with a recognised and relevant qualification.

Academic research
Research in academia comes in two basic forms: that which is driven by curiosity, and that which is driven by the need to find answers to specific problems. Curiosity-driven research is traditionally seen as the purest and least susceptible to bias – one goes into a piece of research with no interest invested in any particular outcome. Problem-solving research is always open to the charge that researchers are looking for certain desirable end-states and certain desirable solutions, thus bringing an inherent bias to the work.

Which direction research takes is increasingly driven by how the research is funded. Curiosity-driven research has tended to be funded by the large national research councils and foundations, set up specifically to promote their own professions and disciplines. Humanitarianism is too young a discipline to have such institutional backing. Most research in humanitarianism is funded by agencies and foundations interested in particular problems. Often, the same agencies fund and implement humanitarian action. In the past few years researchers, like operational agencies, have found themselves being drawn into contract rather than grant arrangements. This makes the role of academic research more valuable, as the academic environment, with its history of rigorous research, objectivity and professional checks, guards against bias and predetermined solutions.

> most research in humanitarianism is funded by agencies and foundations interested in particular problems

Knowledge repository
Libraries, peer-reviewed journals, professional discussions in conferences, online journals and searchable databases all provide the basic academic backup to a profession. Once again, humanitarianism demonstrates its youthfulness. There is really only one dedicated peer-reviewed journal in humanitarianism – *Disasters*. There are on-line journals which accept papers on a non-reviewed basis – such as the *Journal of Humanitarian Assistance* – and there are peer networks, like HPN and its websites and publications.

Humanitarianism is still reliant upon its grey literature: the reports, sitreps and other pieces which form the bedrock of study, but which are rarely published. Sites like Reliefweb, run by the UN Office for the Coordination of Humanitarian Affairs, do an excellent job of providing access to a wide range of crisis-related reporting. Of more interest to academics is the Forced Migration Online Project at Oxford

University's Refugee Studies Centre. This searchable database actively collects grey literature on humanitarian crises, refugee issues and complex emergencies, digitises it and makes it directly available to researchers through the project's website, at www.forcedmigration.org.

Academic and research associations and their related conferences are the mainstay of building an academic community in most disciplines. Humanitarianism has not got to this stage yet. There is no association of humanitarian researchers or academics and, although there are many subject-specific conferences to which academics are invited, there is no regular academic gathering on humanitarianism.

In May 2003, the Feinstein International Famine Center brought together scholars of humanitarian issues to review the standards, content and relevance of the academic programmes on offer, as well as the issues facing researchers in the field. The conference also considered the formal establishment of an Association of Humanitarian Scholars. The workshop made some progress, and its conclusions are available on the web (see www.famine.tufts.edu/pdf/curriculum2003.pdf).

Academic advice

Academia plays a critical role in advising humanitarian practice. Often, agencies will choose to contract academics and academic bodies ahead of consultancies because of the more objective and rigorous approach they will bring to study (though often at the expense of rapid delivery). Academia needs these relationships to ensure that it stays in touch with the profession. Involvement in needs assessments, evaluations and field-based training is an essential knowledge-exchange mechanism for both the profession and academia.

> keeping true to our values and trying to develop our expertise and ability in delivering assistance is an increasing challenge

Academic education

Finally, academia has a duty to provide the formal educational tools that allow humanitarianism to consistently obtain agreed-upon standards of values, skills and knowledge.

To date, most people practicing humanitarianism have come to it from other professions, from medicine, anthropology, accountancy or the military, for example. In effect, humanitarianism is a profession built upon other professions, and this is reflected in its educational structure. Almost all formal academic degrees in humanitarianism are postgraduate Masters degrees. Many are derivatives of other degrees. Some courses are essentially variants upon disaster management, such as the Disaster

Management Diploma at Wisconsin University, others are spin-offs of development studies degrees. Some, like the MA in Post War Recovery Studies at York University in the UK, are derived from the interests of a particular group of academics. Reliefweb provides a comprehensive listing of available degrees under its Humanitarian Assistance Training Inventory (see www.reliefweb.int/training).

Finally, there are a handful of degrees specifically tailored to provide a solid foundation in the theory and practice of humanitarianism. The Masters of Art in Humanitarian Assistance offered at Tufts University in the US is one such degree.

The Famine Center degree

The Master of Arts in Humanitarian Assistance is a one-year joint degree offered by the Friedman School of Nutrition Science and Policy and the Fletcher School of Law and Diplomacy at the Feinstein International Famine Center at Tufts. The programme is geared towards mid-career professionals who have significant field experience in humanitarian action. The programme's mission is to offer an academic setting where professionals can further their knowledge and skills in the areas of nutrition, food policy and economic, political and social analysis as they relate to humanitarian action in famines, complex emergencies and other disasters.

There are eight courses. Three are mandatory courses:

- Humanitarian aid in complex emergencies. This course puts complex emergencies and acute hunger situations within a global perspective.
- Nutrition in complex emergencies: practice, policies and decision-making. This course examines the value of nutrition in humanitarian aid. It is meant to provide basic understanding and applied skills in nutritional and health issues affecting populations in complex emergencies.
- Independent seminar in humanitarianism. This seminar analyses and synthesises the students' field experiences.

In addition, one course is selected from the following:

- Daily risks and crisis events: how people and planners cope with vulnerability.
- Gender, culture and conflict.
- International intervention for conflict prevention, conflict management and post-settlement peace-building.
- International NGO management: tools and practice.
- Seminar on global issues in forced migration.

Finally, students are allowed to choose up to four courses from within the available academic community in Boston.

Since its inauguration in 1999, students completing the degree have all returned to work in the humanitarian field at a higher level and with greater opportunities than before. The consistent offering of a recognised qualification is, we hope, making a substantial contribution to increasing the level of professionalism within the humanitarian endeavour.

Humanitarianism faces tremendous tests. Keeping true to our values and trying to constantly develop our expertise and ability to deliver assistance, protection and solidarity in crisis situations is an increasing challenge. A vibrant, critical and committed academic community is essential to supporting this endeavour, but it remains unclear whether staff, agencies and donors are really willing to move humanitarianism beyond an ad hoc arrangement to an internationally recognised profession and discipline.

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More information on the Famine Center's Master of Arts in Humanitarian Assistance can be obtained by emailing faminecenter@tufts.edu, or by visiting www.famine.tufts.edu/training/maha.

Related websites

The Sphere project: www.sphereproject.org.

The Humanitarian Accountability Project (HAP) International: www.hapinternational.org.

The ICRC's website on International Humanitarian Law: www.icrc.org/web/eng/siteeng0.nsf/htmlall/ihl?Open Document.

The Global Study on Consultation of Affected Populations in Humanitarian Action: www.globalstudyparticipation.org.

Disasters journal: www.blackwellpublishing.com/journal.asp?ref=0361-3666.

The Journal of Humanitarian Assistance: www.jha.ac.

Reliefweb: www.reliefweb.int.

New rules to minimise the suffering caused by 'explosive remnants of war'

Louis Maresca, ICRC

Unexploded ordnance poses a significant threat to civilians following the end of an armed conflict. These 'explosive remnants of war' (ERW) include artillery shells, mortars, bombs, hand grenades, landmines, cluster-bombs and other sub-munitions and similar explosives. Such weapons have caused significant numbers of civilian deaths and injuries and hindered reconstruction, the return of refugees and displaced people and the delivery of humanitarian aid. They are a regular consequence of modern warfare, and prolong the hardship of war-affected countries.

The international community took an important step to address the problems caused by anti-personnel landmines by concluding a Convention prohibiting their use in 1997. However, other types of explosive remnants of war had not been addressed until late last year, when in November governments adopted a new international treaty in this area. The Protocol on Explosive Remnants of War establishes a framework that, if adhered to and implemented, can help minimise the post-conflict suffering caused by unexploded and abandoned ordnance.

The problem of ERW
The problem of explosive remnants of war has plagued many countries, sometimes for decades. UK NGO Landmine Action estimates that 84 countries and territo-ries are affected. Three examples, Poland, Laos and Kosovo, provide a glimpse into the scale of the problem.

Poland has been clearing ERW from the Second World War for over 50 years. Since 1944, more than 96 million pieces of explosive ordnance have been removed, at an estimated cost of $866m. Between 1944 and 1989, ERW killed 4,094 people, and injured another 8,774. Hundreds of thousands of these weapons are still being cleared annually.

The wars in Indochina in the 1950s, 1960s and 1970s left Laos heavily contaminated by a range of explosives. The scale of the problem is difficult to estimate, but the country's main clearance agency, UXO Laos, says that between 9m and 27m unexploded sub-munitions remain throughout the country. Some 11,000 people have been killed or injured, many of them children. Almost three decades after the fighting ended in 1975, Laos is still strug-gling with a large ERW problem.

Wars do not have to be global or last for decades to produce a serious ERW problem. Short-lived regional or internal conflicts can also produce significant amounts of unex-ploded ordnance and large numbers of civilian casualties. The conflict in Kosovo lasted only 11 weeks and did not

involve large military operations on the ground. Nonetheless, in the year following the end of the war in June 1999, nearly 500 people were killed or injured by ERW, including anti-personnel and anti-vehicle mines and cluster-bomb sub-munitions. More than 54,000 pieces of ordnance were removed or destroyed by clearance agencies.

Ordnance can fail to explode for a variety of reasons: fuses can be poorly designed; the device might be poorly built; improper storage, handling and transport might affect it; or the weapon might be incorrectly delivered (dropped from too low an altitude, for example). Environmental factors also affect detonation, as ordnance will often land on soft ground or be deflected by trees, vegetation or other obstacles. These weapons may seem harmless duds, but in fact they remain dangerous, with full explosive force.

The war in Iraq in 2003 has highlighted another source of ERW. Like other conflicts, the fighting produced a large amount of unexploded ordnance. But there are also large stockpiles of explosive weapons abandoned by Iraqi forces. This ordnance was often located in or near populated areas, and has caused significant casualties when civilians have tried to collect or tamper with it. In some instances, stocks have spontaneously exploded in the summer heat.

The new Protocol
In September 2000, the ICRC proposed that a new protocol be added to the Convention on Certain Conventional Weapons (CCW) that would outline specific requirements on the clearance of ERW, the provision of warnings to civilian populations affected by such weapons, and the sharing of information between the parties to a conflict and organisations involved in ERW clearance and risk education. The CCW, adopted in 1980, is intended to regulate the use of weapons that may cause unnecessary suffering or have indiscriminate effects, such as incendiary weapons, booby traps and similar weapons. As of January 2004, 93 states were party to the CCW.

At the Review Conference of States Parties to the CCW, which took place in December 2001, a Group of Governmental Experts was established to consider the nature of the ERW problem and ways to address it. NGOs, UN agencies and the ICRC contributed to the Group's work. A draft protocol was submitted for consideration, and the Protocol on Explosive Remnants of War was adopted at a meeting of CCW states in Geneva on 28 November 2003.

An abandoned ammunition store in Iraq, April 2003

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the Protocol on Explosive Remnants of War was adopted in November 2003

The Protocol establishes new rules in an area where international humanitarian law has been weak. Under its terms, 'explosive remnants of war' means explosive ordnance that has been abandoned by a party to an armed conflict, or that has been used during a conflict and was supposed to explode but failed to do so. It covers all situations of armed conflict irrespective of whether they are international or internal in nature. The Protocol does not apply to mines, booby traps and devices that are already addressed by the CCW.

The Protocol requires each party to an armed conflict to:

- clear explosive remnants of war in territory it controls after the end of active hostilities;
- provide material and financial assistance to facilitate the removal of unexploded or abandoned ordnance in areas it does not control resulting from its operations. This assistance can be provided directly to the party in control of the territory or through a third party, such as the UN or an NGO;
- record information on the explosive ordnance employed by its armed forces and share that information with organisations engaged in ERW clearance or conducting programmes to warn civilians of the dangers of these devices; and
- provide warnings to civilians of the ERW dangers in specific areas.

Although these obligations are only called for 'where feasible', they nevertheless provide an outline of the measures required to address an ERW problem and a framework to support the activities of organisations conducting ERW clearance and risk education programmes.

One of the Protocol's weaknesses is that its rules will have their greatest impact in future conflicts – its obligations do not address ERW already on the ground. Recognising the need to improve the situation in countries already affected, the Protocol gives a state the right to seek assistance from other states to help it remove ERW that may already be in its territory. In parallel, countries that are in a position to do so are obliged to provide assistance to help ERW-affected states to reduce the threats posed by these weapons.

The Protocol primarily focuses on remedial measures and does not include specific requirements on cluster-bomb and other sub-munitions. These weapons are a particular concern due to the large numbers which have failed to explode as intended and the large area over which explosive force is delivered. Several organisations and governments have proposed specific requirements such as self-destruct mechanisms to prevent these weapons from becoming explosive remnants of war in the first place, and to prohibit their use in populated areas. Such weapon-specific measures were not included in the Protocol. Nevertheless, they continue to be discussed by the Group of Governmental Experts, and with increased public and political support could become the subject for negotiations in the future.

Final thoughts

Like other protocols to the CCW, the Protocol on Explosive Remnants of War will enter into force once 20 states have ratified it. In order for the Protocol to fulfil its goals, it will need to be widely ratified and implemented. The Protocol has the potential to enhance the activities of organisations involved in clearing mines and ERW, or which conduct risk education programmes and help bring rapid results on the ground. These organisations are often the first responders to an ERW problem following the end of active hostilities.

Despite its limitations, the Protocol is a significant development in international humanitarian law, and the first multilateral agreement to be adopted by all the major military powers in this area. In the current international environment this is an encouraging result. Together with the Convention on the Prohibition of Anti-Personnel Mines, the international community has adopted a framework to reduce the scourge of civilian death, injury and suffering caused by unexploded and abandoned ordnance, and to eliminate one of the serious threats facing civilians in the aftermath of conflict.

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Humanitarian protection: a case study from Palestine

Erik Johnson, formerly Oxfam

The prevailing protection discourse amongst humanitarian agencies focuses on appeals to the responsibilities and obligations of belligerents and occupying powers under International Humanitarian Law (IHL). However, most aid workers know that rhetoric rarely intersects with reality on the ground. States – including nations traditionally held to be the guarantors of the principles underpinning IHL – flagrantly violate it, and agencies' attempts to link power with responsibility are frequently and deliberately thwarted. While agencies must continue the struggle to change this status quo, field-level strategies must meanwhile provide protection in spite of it.

This article examines the protection challenges Oxfam faced doing a water project in the Occupied Palestinian Territories (OPT) in 2002 and 2003. Oxfam sought to help the villagers affected to maintain their access to a critical water supply. More broadly, the agency was also concerned with protecting the villagers from violence, prevailing upon the Israeli army to honour its protection responsibilities while the project was being completed. This article examines the protection measures adopted, attempts to understand why some strategies failed and others were successful, and offers recommendations for further research and action.

The protection environment in Madama

Madama is a Palestinian village of approximately 2,000 people near the town of Nablus, in the OPT. In 1983, the Israeli settlement of Yizhar was built on a hilltop approximately 1.5km away. Villagers report that Israeli settlers have frequently fired on them, and in 2002 they vandalised a natural spring near the village, which provided crucial drinking water. The village council approached Oxfam for help in repairing the spring and protecting it from further vandalism. They also asked for Oxfam's help in protecting workers from the Israeli settlers and army. Villagers had

been fired on at the spring's location on several occasions; one person had been injured and a donkey killed.

The primary point of contact for humanitarian agencies in the OPT is the civil liaison branch of the Israeli army. Oxfam requested its assistance to ensure that the workers repairing the spring would be free from harassment by the army or the settlers at Yizhar. Civil liaison staff reviewed the request and gave verbal guarantees that agency staff and villagers would be safe. On the morning work was due to begin, Oxfam contacted the civil liaison branch to ensure that the settlers and army personnel were informed of the project. The agency was repeatedly assured that the work was authorised and safe. Three international staff members were present at the worksite, and a large ECHO flag was planted nearby (ECHO funded the project). Oxfam vehicles with insignia were also visible about 200 meters away.

The work was quickly stopped by a group of Israeli soldiers from the settlement. They took workers' IDs, claiming to have no knowledge of the permission from the civil liaison. After about two hours, the documents were returned and the work was allowed to continue. On the following days, the army patrol reappeared and watched from a distance, but did not hinder the work. After a few days, the village council representatives and Oxfam decided that the villagers could continue the work without the presence of international staff. Oxfam continued to make contact with the civil liaison and the village council prior to the start of work and throughout each day.

Two days later, a van appeared from the settlement road after the work began, and a gunman began firing on the workers. A donkey being used to haul cement was shot and killed. The workers ran from the scene, terrified but unhurt.

Oxfam reported the incident in writing to the officer responsible, to the commander of the civil liaison in the West Bank, and to the ICRC and ECHO. The civil liaison officer apologised and reassured Oxfam and the villagers that such an incident would not happen again. The following morning he met villagers and Oxfam staff in Madama. While there, he tried to extract sensitive information about village residents from the council representative, who politely refused. The officer assured those present that work could continue safely, and drove up the hill to the settlement.

Approximately two hours later an unmarked vehicle appeared from the settlement; the driver opened fire on village workers and Oxfam staff, shooting about 40 rounds. One worker fell and broke his nose while fleeing. Further reports and complaints were made to the Israeli army authorities, and Oxfam also tried to interest an Israeli journalist in the incident. Though promised, no story ever

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A Palestinian settlement on the West Bank

appeared. The commanding officer told Oxfam that the work was not permitted, since the area was under indeterminate status pending final negotiation of the (collapsed) Oslo peace accords. He insisted that a permit request had to be completed before work could continue – despite having already received such a request.

On Oxfam's advice, the village council made direct contact with an activist group, one of several 'solidarity organisations' operating in the Occupied Palestinian Territories, doing witnessing work and acting as human shields and escorts. None of these groups is permitted to work in the OPT, and their members are routinely deported or denied entry into Israel.

Members of the organisation accompanied the workers to repair the spring. With their help the villagers were able to complete the work. Water pipes were subsequently vandalised again at a location closer to the village, but these too were repaired and encased in concrete.

Analysis

This incident merits analysis not because it was unusual, but because it was common, and bears many of the hallmarks of the most difficult but nevertheless routine protection challenges facing staff working in an environment of protracted conflict, where the military authority has little or no interest in protecting beneficiaries; where there is no accountability to IHL on the ground; and where the monitoring and reporting of human rights violations has had no perceivable effects for those at risk.

Oxfam used a variety of 'protective' methods during this incident:

- establishing a working relationship with representatives of the Israeli army to solicit their permission and agreement not to harass workers;
- using visible and locally known 'labels' – an ECHO flag, Oxfam T-shirts and Oxfam vehicles with humanitarian

insignia – to identify the humanitarian nature of the work;

- maintaining daily contact with the Israeli army before, during and after the work;
- using international staff as 'escorts' to discourage violence against villagers;
- reporting abuses to the army authorities, both directly and through intermediaries with special access to belligerents;
- requesting an Israeli army presence at the settlement to control the settlers; and
- attempting to use the media to attract public attention to the issue.

Oxfam used a variety of 'protective' methods during this incident

None of these measures protected staff members or villagers.

Did Oxfam pick the wrong interlocutor? The protection strategy was developed in consultation with the villagers, and with advice from a number of other agencies, both local and international. Everyone consulted used the army's civil liaison branch to some extent. As the OPT are under Israeli military control and subject to military action at any time, the army is the de facto authority in most areas.

Oxfam staff chose not to negotiate directly with the settlers because:

- as a civilian rather than a military force, there was no chain of command, and thus there was neither the opportunity to directly address those involved in the violence, nor any accountability;
- Oxfam's policy prohibited staff from entering Israeli settlements, both for security reasons and because the agency does not recognise settlements as legitimate since they are in violation of international law; and
- Oxfam staff believed the villagers' claims that the settlers had vandalised the spring and were responsible for the shooting. Oxfam believed that the army could serve as an intermediary with the vandals.

Regular escort by international Oxfam staff would probably not have made a difference, since staff were likewise fired upon at the worksite, even while the civil liaison himself was present at the settlement.

The solidarity organisation's intervention was successful where Oxfam's failed because the solidarity organisation had:

- strength in numbers – Oxfam did not have the number of international staff necessary to establish a more visible presence;
- the willingness to work in the evening and after dark, which is likely to be a more dangerous time;
- a clear mission to protect human rights, unencumbered by other objectives, such as maintaining a long-term legal presence in the OPT; and
- the willingness to risk their lives.

Oxfam's Madama experience shows that, while it is important for agencies to maintain advocacy efforts towards compliance and protection, people at risk and staff in the field can confront threats to individuals' rights and safety with more pragmatic approaches. In many situations, the most effective protection efforts are often like the one achieved at Madama – what one might call 'underground protection'. Where advocacy efforts fell on deaf ears and conventional approaches fell short, a variety of contacts between a village, a humanitarian agency, and a more activist human rights organisation were able to protect workers and enable them to restore a crucial water supply.

Conclusion
When humanitarian agencies consider how their relief programmes may impact upon protection, they should focus on practical outcomes that strive for real safety for those at risk. There is an implicit tension between more activist protection work and humanitarian neutrality, but this tension should not blind agencies to the opportunities they have for assisting in protection. While staff safety, access and the longer-term viability of aid missions are vitally important, aid workers have witnessed countless abuses and been powerless to offer protection. Humanitarian agencies can maintain their neutrality and the impartial nature of their programmes while still contributing to protection. More information-sharing and creative action are needed to expand the current range of protection strategies and develop innovative approaches that do not jeopardise agencies' neutrality.

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PRACTICE AND POLICY NOTES

Public–private partnerships in the health sector: the case of Iraq

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Public–private partnerships (PPPs) are fast becoming the dominant method of tackling large, complicated and expensive public health problems in post-conflict and unstable settings such as Afghanistan and Iraq. They are seen as 'win-win' arrangements in which diverse actors – with often varied, sometimes conflicting, motivations – work together to contribute to health development.

In principle, there is no reason why a PPP should not be effective, provided it is established on the premise of a '*partnership*'. In the quest for a standard definition of partnership in a PPP, there are signs of convergence on common elements: the mutual recognition of comparative advantages; cooperation and coordinated planning; transparency; and cost-effectiveness.

Merlin working in Iraq, November 2003

These general conditions are necessary for the existence of a partnership, regardless of its nature. However, for a partnership to be successful in the delivery of humanitarian aid in countries under occupation (like Iraq), there are further specific conditions that need to be met: legitimacy, legality and an understanding of critical cross-cultural issues.

Merlin's work in Iraq began in December 2002, when it carried out health assessments in the north of the country and in Baghdad. By mid-February 2003, Merlin had established a coordination base in Amman, Jordan. The agency has since assessed around 200 health centres in the Baghdad region, and continues to support facilities in the capital in cooperation with the Iraqi Ministry of Health. This article summarises Merlin's experience in Iraq. It argues that both the general and the specific conditions for PPPs are as yet unmet, and raises questions as to whether Iraq is a good setting in which to experiment with PPPs on such a large scale.

Why PPPs?

The notion of public and non-profit organisations working jointly with private companies to establish, deliver and manage essential services is well-known in a number of sectors, and is being actively promoted in the reconstruction of the health sector in post-conflict settings. PPPs are seen as a panacea for resource-constrained governments that can no longer provide public services solely from their national budget. Particular advocates of this approach include the World Health Organisation (WHO) and the World Bank, which is a partner in the Global Fund to Fight AIDS, Tuberculosis and Malaria (GFATM). This fund is an independent PPP working to increase global financing to combat these diseases.

PPPs in Iraq

The prime US Agency for International Development (USAID) contracts in post-war Iraq (valued at $900 million) were awarded to US for-profit companies to repair and reconstruct water systems, roads, bridges, schools and health facilities in what the *Wall Street Journal* called the largest government reconstruction effort since the Second World War. The private sector has been asked to apply its skills and resources to services that have traditionally been provided by the Iraqi government. The bidding process has, however, been criticised for including only a handful of companies, none of which is based outside the US. Private contractors have secured lucrative contracts from the Coalition Provisional Authority (CPA), and seem unwilling to cooperate with the Iraqis and/or the local authorities towards the establishment of a partnership. Examples of this lack of cooperation as they relate to the fundamental components of a successful partnership are described below.

1. Comparative advantage

The first component of a successful PPP is the recognition of the comparative advantages of the players within the partnership. Yet with key aid donors not making funding decisions in favour of the Iraqi authorities until November 2003, and others disinterested in installing the framework of support for NGOs and international organisations such as the UN, this component has been lacking from the beginning. As a result, at the beginning of the reconstruction period there were more than 100 NGOs operating in Iraq. Now, there are fewer than 50 permanent delegations and only one major international organisation. This is due primarily to a lack of 'neutral and impartial' funding and security issues, combined with the difficulties encountered in working with the CPA and the private sector.

2. Cooperation and coordinated planning

The second key component of partnership is cooperation and coordinated planning. With some private contractors, Merlin has encountered strikingly uncooperative attitudes towards the Iraq Medical Assistance Committee (IMAC), the joint CPA/Ministry of Health responsible for authorising medical assistance programmes, and towards the NGO Coordination Committee in Iraq (NCCI). Some contractors also seem to have ill-defined remits. During the early post-war period, this caused confusion within the CPA and UN agencies, such as the WHO, over who was doing what, leading to delays in evaluating the health situation and in response planning. Lack of collaboration and transparency between private contractors and humanitarian agencies has resulted in duplication of effort and unnecessary competition over responsibility for rehabilitating health facilities. Forums such as IMAC, which is hosted by the CPA, have not helped to persuade some private contractors into greater collaboration. In such a situation, it is difficult to establish trusting partnerships or to have confidence in the conduct of other parties.

However, this pattern is not universal. Merlin also has experience of a contractor which has been cooperative, open and proactive in presenting its plans, and in coordinating with NGOs and the Ministry of Health. Due to its high visibility and collaborative approach, this company has a more positive relationship with NGOs, the local population and the Iraqi health authorities. Indeed, it also provides grants to NGOs – both international and local – working in the health sector in Iraq.

3. Transparency

This is the third key component of partnership. It is a matter of public record that most NGOs present themselves as separate and independent of the CPA and coalition as any other stance would jeopardise their neutrality. This is done to increase the likelihood of having a transparent and trusting relationship with Iraqi interlocutors. As charities, most NGOs' accounts and affairs are matters open to the public.

Given that the USAID contracts were given to companies in a closed-bid process, away from public scrutiny, it is no surprise that transparency is a word not well applied to the PPP experiment in Iraq.

4. Cost-effectiveness

The fourth key component of a successful PPP is cost-effectiveness. Systems to measure impact, utilisation and health status are not yet in place in Iraq. Presently, therefore, cost-effectiveness is hard to assess. What certainly seems in doubt, however, is whether cost-effectiveness is being used as a major criterion by PPPs in Iraq. Very little effort has been expended by anyone, other than NGOs and the WHO, to work with the Iraqi Ministry of Health to objectively ascertain impact and outcomes.

Legitimacy, legality and cultural questions

Tensions between the public (non-profit) and private sectors in Iraq have been exacerbated by divergent philosophies and by the harsh security environment since the end of the war. To go some way towards addressing these issues, this article suggests three additional conditions that PPPs should meet if they are to be effective in the delivery of humanitarian aid in countries under occupation. These are legitimacy, legality and the understanding of cross-cultural issues.

1. Legitimacy

Legitimacy hinges on the consent of the population, however represented or governed, and is therefore distinct from legality. In the absence of consent, legitimacy can be bestowed *de facto* by acquiescence. Questions of legitimacy are hard to substantiate, but the public is believed to perceive private contractors as profiteering and supporting the occupation, and therefore lacking the legitimacy to operate in Iraq.

NGOs are faced with the same legitimacy issues when implementing humanitarian work without the consent of the beneficiaries. Indeed, it is this lack of expressed consent that leads NGOs to strive for greater neutrality and impartiality, as this is assumed *de facto* to lead to consent and thus legitimacy. Being associated with the coalition forces and the civil–military administration may jeopardise neutrality and security, and ultimately the delivery of humanitarian aid itself.

These tensions would be resolved if private contractors gained legitimacy from the public and worked together with the local authorities. This would facilitate cooperation, enabling NGOs to work in partnership with the local authorities and indirectly with the private sector, without facing neutrality issues.

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are private contractors really motivated to respond to Iraqis' needs?

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2. Legality

Legality is a thorny issue, though no doubt lawyers are studying the Hague and Geneva laws closely. The Hague Regulations stipulate that public property may be administered by an occupying power, but only under the rules of usufruct (Article 55). Proceeds from such property (e.g. Iraqi oil wells) should be used for the benefit of the local population and, to some extent, to cover the cost of occupation. In other words, the Hague Regulations do not self-evidently justify large profits for foreign private contractors.

3. Cultural issues

As for understanding of cultural issues, most contractors had no previous experience of Iraq and seem to have a poor understanding of the country's health needs, looking to the WHO and others for guidance as to what they should be doing. It is questionable to what degree the complex mosaic of Iraqi religions, clans and history has been taken into account when designing services and consultation exercises. NGOs and the UN on the other hand have expertise in, and share an established frame-

work for, delivering humanitarian relief to people forcibly displaced or otherwise affected by conflict, natural disaster and oppression. With many years' experience working in a multi-agency environment, they maintain culturally sensitive methods of work, including beneficiary participation in programme design. Despite this, the coalition administration largely marginalised experienced international relief organisations in favour of the at the time non-functioning private sector.

Profits and partnership

Private contractors will seek to make a profit. Are they really motivated to provide a culturally sensitive and appropriate health system to respond to Iraqis' needs? Do these contractors intend to impose their idea of health reform, based on US healthcare models, bypassing the Ministry of Health and the general public's will? An effec-tive PPP should be based on mutual recognition of comparative advantages, transparency, cost-effectiveness and coordinated planning. In addition, in occupied countries, the parties should operate within a framework of legality, legitimacy and sensitivity to contextual and cultural differences. Like it or not, PPPs have become established as a method of providing humanitarian and now development relief in Iraq. Yet, so far, they have had a chequered record in assisting and supporting the benefi-ciaries. The key components of PPPs were not adequately in place in Iraq – is there still time to learn from these mistakes?

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Operational interaction between UN humanitarian agencies and belligerent forces: towards a code of conduct

Greg Hansen, independent consultant

The recent wars in Afghanistan and Iraq have resulted in unprecedented threats to the integrity of the humanitarian system and to the credibility of some of its leading institutions, perhaps most especially the UN. In the wake of the bombing of the UN office in Baghdad in August 2003, there has been a groundswell of interest in examining how the UN manages humanitarian crises in armed conflict.

Humanitarian space in a conflict zone depends on the consent of warring parties and the acceptance of the host population. All humanitarian agencies working in conflict need to manage the tensions inherent in dealing with belligerent forces on the one hand, and on the other safe-guarding their real and perceived independence and neutrality. This balancing act is especially difficult when the belligerent nations are major donors. For UN agencies, the management task is further complicated by the multiple roles that member states expect the UN to perform. In a single country, as in Iraq, different elements are given simultaneous responsibilities to administer sanctions, investigate and report on weapons of mass destruction, coordinate humanitarian action, meet emergency needs and endorse – or not – an invasion and occupation by Permanent Members of the UN Security Council.

the UN's civil–military coordination is conducted in a policy vacuum

Currently, the UN's civil–military coordination is conducted largely on an *ad hoc* basis, in a policy vacuum. While the UN Office for the Coordination of Humanitarian Affairs (OCHA) has produced guidance for interaction between UN personnel and the occupying power in Iraq, this does not go

Medical supplies being unloaded from a Belgian air force plane at Baghdad's airport, May 2003

far enough to deal with the threats that conflict of interest, deferral to belligerent chains of command, lack of transparency and individual conduct pose to the UN's real and perceived independence and neutrality.

For all the difficulties, it is essential that UN agencies have some form of engagement with belligerent forces or occupying powers, both for their own security and to limit the harmful consequences of warfare for the civilian population. Ideally, engagement prevents the potential blurring of roles between military and humanitarian actors, coordinates the use of UN Military and Civil Defence Assets (MCDA), ensures that military assets are not injudiciously used for humanitarian operations, and enables the smooth and timely flow of information.

While engagement with belligerent forces or occupying powers has been essential, the form of engagement in recent emergencies has been deeply flawed.

- Without precedent, in October 2001 UN humanitarian agencies co-located staff members within the military headquarters of a belligerent force in an active conflict occurring outside of UN auspices. On the orders of the UN Secretary-General, the UN presence at US Central Command (CENTCOM) Headquarters in Tampa, Florida was low profile, and no UN flag was displayed. But the presence of UN staff nevertheless implied UN endorsement of coalition military operations, and undermined the perceived independence and neutrality of UN humanitarian operations and staff by suggesting that the UN was the humanitarian instrument of a belligerent force. Co-location with the US-led coalition also suggested that UN agencies practiced different standards of independence and neutrality from belligerent to belligerent, particularly because – whether justified or not – UN agencies had suspended contact with the other set of combatants in both Afghanistan and Iraq soon after hostilities began.

- UN civil–military liaison positions were staffed with nationals of belligerent nations or occupying powers. In the case of Afghanistan, all of the UN agency liaisons to CENTCOM were nationals of countries participating in the US-led coalition. Many were one-time military personnel, and thus had former colleagues among the belligerent forces.

The argument has sometimes been advanced that a national and former military officer of a belligerent nation will be a more effective representative of the UN's humanitarian interests. This has not been demonstrated. Indeed, the erosion of real and perceived neutrality and independence has far outweighed any notional benefits. Real, legal and perceived conflicts of interest existed under the recent arrangements. Former military officers who collected pensions or continued to hold security clearance from their home governments were legally bound by the secrecy laws of those governments, at the same time as they were in the paid service of UN humanitarian agencies, and ostensibly accountable to humanitarian principles. The assertion of the UN's humanitarian interests by some liaison staff was periodically tempered or stymied by an inappropriate deference to CENTCOM's rank structure and chain of command. Loyalty oaths taken by commissioned officers, and their adherence to the military ethos of duty, suggested the possibility of dual allegiances between their home countries and the UN system, in particular when specific military operations were proving fundamentally incompatible with the humanitarian imperative.

- The UN's civil–military coordination efforts with US-led forces were opaque and, at times, highly secretive. While the substance of humanitarian diplomacy should arguably have been discreet, there was a blanket lack of transparency that obscured even the structure of coordination mechanisms. This invited all manner of speculation. Just prior to the invasion of Iraq, senior UN humanitarian officials paid furtive visits to CENTCOM's forward headquarters in Doha, Qatar, feeding the perception that the UN had taken sides in a *fait accompli* and was engaged in joint planning with US-led forces. Even within UN agencies there was noticeable – though largely unspoken – discontent about the perceived subjugation of humanitarian to political agendas for the sake of smooth relations with prominent member states and donors.

- After the onset of hostilities, the relationship between UN humanitarian agencies and belligerent forces was at times necessarily adversarial, given the range of humanitarian responsibilities entrusted to the UN. Again, there were perceived inadequacies in the strength with which the UN asserted the humanitarian

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agenda with belligerent forces, both at the policy and operational levels.

These are serious shortcomings, and they point to the need to professionalise and codify operational interactions between the UN's humanitarian agencies and belligerent forces and the occupying power. Recent crises and attacks on UN aid operations and personnel have given rise to renewed speculation about whether the UN's humanitarian and political roles have become irreconcilable and whether, therefore, new and separate humanitarian institutions are now needed. The perennial tensions between these dual roles will not be resolved by a code of conduct. But while much damage has been done to the UN, the UN has done much to damage itself. In the absence of radical reform to its humanitarian apparatus, faulty processes can and should be dealt with decisively.

> there is a need to professionalise and codify operational interactions between UN humanitarian agencies and belligerents and the occupying power

Towards a code of conduct

Codes of conduct are unpopular. They imply that not everyone naturally adheres to high professional standards or behaves honourably and with integrity all the time in every situation. But a code of conduct is as much an aid to navigation as it is a tool of accountability. The following measures represent a first attempt to translate lessons learned from recent failings into clearer guidance. These measures are meant to improve adherence to the principles of neutrality and independence in UN humanitarian action, and to better preserve the quintessentially civilian character of humanitarian action.

1. Form of engagement

Civil–military coordination functions should be conducted at arm's length from belligerent forces or occupying powers. Co-location should not occur. Effective liaison can be achieved, according to need, through liaison visits, conference calls and other indirect means, in support of assertive UN humanitarian diplomacy. The experience of other humanitarian agencies has demonstrated that such discreet approaches entail no reduction in the quality of civil–military coordination, and are less open to question.

2. Recusal

In the event of a real or perceived conflict of interest, employees of UN humanitarian agencies, at all levels and without exception, should routinely exempt themselves from civil–military coordination duties, including decisions related to the establishment of coordination structures. In particular, such conflicts of interest should be understood to exist when employees are nationals of a belligerent nation or occupying power.

3. Independence from the chain of command of belligerent forces

The real and perceived independence and neutrality of UN humanitarian agencies is harmed when UN staff defer to belligerent forces or occupying powers, or allow themselves to be intimidated by forceful personalities. Interaction with a belligerent's command structure should take place at the lowest rank necessary to get a particular job done.

However, large military bureaucracies can be difficult to deal with. Where necessary, as may be the case when a commander is acting in an unhelpful, unduly time-consuming or obstructive manner, UN liaison staff should not hesitate to assert the UN's humanitarian agenda with the most senior military decision-makers in their area of responsibility.

4. Transparency

The UN's humanitarian agencies must be seen at all times to be acting in a neutral and independent way. Transparency is essential. By contrast, military organisations and operations are characterised by secrecy, and information is frequently classified.

Coordination structures adopted by or for UN humanitarian agencies must be transparent in order to avoid the appearance that UN agencies are taking sides, or making undue compromises with belligerents or occupying powers. The mechanics of coordination structures should be publicised and open to scrutiny in order to avoid any appearance that the UN has something to hide.

5. Qualifications

Civil–military coordination is a specialised and sensitive undertaking. Field liaison staff should be graduates of at least a basic – and preferably an advanced – UN Civil–Military Coordination (UN-CMCoord) training course. This would ensure greater consistency of approach. While a military background can be immensely helpful, greater emphasis should be placed upon humanitarian – rather than military – credentials.

6. Personal conduct

The Inter-Agency Standing Committee (IASC) should provide active oversight to ensure that senior UN managers are accountable for setting the highest standards of principled and professional conduct. Perceptions of too-close relationships between UN staff members and military or civilian members of belligerent forces or occupying powers will increase distrust of the UN. Individual conduct in the practice of independence and neutrality needs to be beyond reproach. UN humanitarian personnel should not socialise with belligerents or occupying powers, either civilian or military, beyond what is judged minimally necessary for maintaining professional relations and protocol.

7. Organisational culture

In times of acute insecurity or in the wake of a direct attack, humanitarian agencies tend to become more insular, less transparent and more defensive. The bombing of the UN office in Baghdad and attacks on UN premises in

Afghanistan have only worsened this tendency. Given the likelihood that the UN will soon be asked by member states to re-engage in Iraq in a sizeable way, this is likely to result in closer affiliations with the occupying power.

It should be the responsibility of managers at all levels to create working environments where the humanitarian imperative comes first, and where threats to real and perceived independence and neutrality are dealt with quickly, decisively and transparently to ensure that staff security and the integrity of UN humanitarian programmes are not compromised.

Next steps

A logical next step would be to situate these measures within the role played by the Humanitarian Coordinator in an emergency. Apart from further development of a code of conduct, UN interaction with belligerent forces would also benefit from broader guidelines, perhaps developed through an open and consultative process modelled on that used to develop OCHA's Oslo Guidelines on the use of military and civil defence assets in disaster relief. Greater professionalism and consistency in the UN's approach to interaction with belligerents needs to be nurtured over the long term by strengthened policy development, advisory and training capacities.

Increasingly, UN agencies are being called on to serve in places where the UN's credibility is already in short supply, and where people are predisposed to distrust it, rightly or wrongly, as an instrument of Western interests.

The UN Staff Association can clamour for greater staff security in war zones, but no amount of hardening of potential UN targets will protect aid operations and personnel if the UN's credibility is compromised by the injudicious management of relationships with belligerent forces and occupying powers.

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Iraq and the crisis of humanitarian action

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The Iraq crisis has contributed to a deep malaise in the humanitarian community. Agencies are confronted with major policy quandaries, including a contested environment, a security crisis and a host of issues arising from interaction with coalition forces whose intervention is seen as illegitimate by significant segments of the population. With the lines between political and humanitarian action blurred, humanitarian principles have been eroded and the credibility of the humanitarian enterprise has been devalued. The UN and other humanitarian agencies are seen as taking sides, with tragic consequences for the security of staff and ongoing humanitarian operations. The Baghdad blast in August 2003, which killed Special Representative of the Secretary-General Sergio Vieira de Mello and 21 of his colleagues, and attacks against the ICRC and NGOs have brought home the risks and the consequences of the choices made.

Coming shortly after the Afghanistan and Kosovo crises, the issues highlighted in Iraq are profoundly troubling. This was the broad consensus of a series of meetings held during the final quarter of 2003 in Boston, Geneva, London, and Washington. The discussions were facilitated by Tufts University's Feinstein International Famine Center in collaboration with the Centre for Humanitarian Dialogue, the International Council of Voluntary Agencies, the InterAgency Standing Committee, the Overseas Development Institute, and the Brookings Institution. Participants included over 200 UN and government officials, NGO and Red Cross Movement members, and academics. The consultations were laden with political sensitivities and unusually high levels of tension between principles and institutional interest. Views diverged widely, even within individual agencies. This article recaps the recurring themes of these meetings which, taken together, map out the key issues that face the humanitarian enterprise.

Diagnosis

Most humanitarian actors are in broad agreement that the Iraq crisis has resulted in a dangerous blurring of the lines between humanitarian and political action and the consequent erosion of core humanitarian principles of neutrality, impartiality, and independence. Well-established NGOs, particularly in the US, have faced stark choices and considerable pressure from their governments as well as competition from less principled quarters in the community and from for-profit contractors. In contrast with their European counterparts, many US-based NGOs have not felt that they could afford to say no. Before the intervention, few in the humanitarian community were prepared to say openly that their agency should not be in Iraq, deferring instead to the occupying power to deliver on its responsibilities under international humanitarian law. However, many now privately question whether NGOs should have relied on the UN as a 'buffer' between themselves and the occupying power, and whether the UN's humanitarian apparatus should even be operational within Iraq.

Food aid bound for Iraq, April 2003

©Reuters/Sukree Sukplang, courtesy www.alertnet.org

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there is broad agreement that the Iraq crisis has blurred the lines between humanitarian and political action and eroded core humanitarian principles

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The murkiness of the situation was compounded by two additional factors. First, the situation on the ground was arbitrarily defined as 'humanitarian', reflecting both an absence of knowledge and a felt need to justify the presence of the UN and NGOs in the absence of a UN mandate. Pockets of need did exist, nor was it wrong to plan for a possible deterioration in the situation. However, agencies felt they needed a humanitarian 'cover' in order to be present. The UN's Consolidated Appeal for $2.3 billion was driven by political considerations, institutional interest and the sheer magnitude of the funds that were being made available. Second, humanitarian, development and advocacy agendas were conflated in order to justify agency presence. Both considerations were viewed by discussants as illuminating the extent to which humanitarian agencies have strayed into a political thicket.

This is not the first crisis in which the lines between humanitarian and political action have been blurred. Afghanistan and Kosovo provided a foretaste of unpalatable pressures on humanitarian action. From Angola to East Timor, humanitarians have often functioned in highly politicised landscapes or in lieu of political action. Yet the Iraq crisis was viewed as representing a new level of instrumentalisation, differing in degree and kind from its predecessors.

Moreover, the global war on terror now casts a sombre shadow over the prospects of principled humanitarianism, leaving little space for independent, neutral and impartial humanitarian action. Decisions on humanitarian issues by the major donors are made in the context of their foreign policy and security agendas. There is a readiness to ignore humanitarian principles and international law, in general and in specific incidents such as the detentions in Guantanamo Bay. The perception that double standards are being applied is reinforced by the wide disparity in funding patterns. High-profile crises attract funds, while forgotten – but more deadly – crises languish.

Events in Iraq, hard on the heels of Afghanistan, have confronted the humanitarian community with the unpalatable truth that Western aid agencies are seen as the 'mendicant orders of empire' – the compassionate face of a hard-nosed globalisation. So-called humanitarian assistance is funded by a small club of Western donors and implemented by agencies and individuals based primarily in donor countries and who by and large share the values of these countries. Even the UN is unable to broaden humanitarian action significantly: unlike peacekeeping operations, which are funded by assessed contributions from the entire membership, funding for humanitarian assistance is exclusively voluntary. The scores of member states not part of the 'donors' club' have no visible stake in the policies and implementation of UN humanitarian assistance.

The nature of the aid apparatus thus calls into question the actual universality of humanitarianism. At the same time, other forms of action with major humanitarian implications go unnoticed and unreported: the contributions of Islamic countries and charities, the remittances of diasporas, the involvement of countries in crisis them-

selves and the coping strategies of affected communities. These unrecorded flows are sizeable but largely ignored. The increased disaffection with humanitarianism in large swathes of the South and the Islamic world should thus come as no surprise. The fact that aid workers are seen as 'the enemy' by extremist groups in Islamic countries and beyond is only one example of the extent of this disaffection.

the global war on terror casts a sombre shadow over the prospects of principled humanitarianism

Prognosis

While the discussions suggest that there may be the beginnings of some consensus on what has gone wrong in Iraq, the bigger picture and its evolution are more difficult to assess. While it is still too early for certainty, the future of humanitarianism is likely to be shaped by how the following questions are answered in the months and years to come:

- Is the subordination or instrumentalisation of humanitarian action to the political objectives of the remaining superpower an aberration or the harbinger of things to come?
- Has the push for 'coherence' and 'integration' in crisis management resulted in a temporary or permanent eclipse of the humanitarian dimension in the UN response to crises?
- How will the tension between 'the UN as Security Council' and 'the UN as *We the peoples*' be resolved? Are reforms possible that would give higher priority in the Council's deliberations to human rights and human needs, wherever they exist?
- Is a two-tiered crisis-response regime emerging in which the US harnesses humanitarian action in the high-profile situations where it is directly involved, while elsewhere humanitarians are better able to go about their business in principled ways?
- Are the devaluation of humanitarian emblems and the threats faced by humanitarian personnel qualitatively or only quantitatively different from earlier experience? What is known about the motivations of 'extremist groups' and their grievances?
- Is it necessary to redefine humanitarianism? Is it truly universal? What is its essential core and how does it connect with other forms of international engagement: development, human rights, trade, investment and political/military action?
- Is it possible or desirable to decouple humanitarian action from Western values and approaches to security? What are the indigenous values and traditions that a more universal humanitarianism might tap into?

The current push for programme integration in high-profile crises carries crucial policy and institutional implications for the humanitarian enterprise. UN humanitarian bodies are confronted with a stark choice. One option involves full membership in the UN conflict management and conflict resolution machinery, with a potential loss of their independent and neutral humanitarian voice. The other embraces some degree of separation or insulation from that machinery so as to nurture policy and partnerships in the wider humanitarian community, with the risk of being less able to ensure that humanitarian concerns are given equal prominence in the overall response. Regardless of whether the question of the UN's institutional architecture is reopened, many feel that efforts should be redoubled to influence decision-makers in the Security Council and elsewhere on humanitarian aid issues. The establishment by the Secretary-General of a panel on the reform of the UN's political/security role provides one such opportunity. The objective from a humanitarian perspective would be to humanitarianise politics without politicising humanitarian action.

A call for action

What is the future of humanitarianism? Does it still have meaning in its classical sense? Most participants seemed to agree that the humanitarian enterprise is ailing. The consensus among those who believe that humanitarianism as a universal ideal is worth fighting for is that the time has come to sound the clarion. A recurrent theme of the meetings in the four cities was that no outside body – donor governments, the general public, the UN General Assembly – can take the lead in revitalising humanitarian action. This must be an initiative led by humanitarians themselves. Humanitarian agencies around the world can form a powerful constituency. They can influence public opinion, parliaments, the media, communities, affected populations, and, last but certainly not least, governments.

does humanitarianism still have meaning in its classical sense?

Various groups, agencies, community-based institutions, research bodies and professional organisations are in a position to join forces around the defence of core values. The resulting movement would represent a range of views, including those not part of the mainstream Judeo-Christian tradition but with their own valuable traditions of humanity. Such a transnational and transcultural mobilisation would put issues on the table and challenge the humanitarian community to test itself. Are humanitarians clear on their value set? Are they putting this value set and consequent actions unashamedly before governments and international civil society? The active involvement of groups and constituencies in the South is crucial to the success of any reform process.

One can envisage many different structures for driving such a reform process. These include a small coalition of like-minded agencies, as happened with the Ottawa landmines campaign; an internally commissioned but exter-

nally conducted holistic evaluation akin to the multidonor evaluation on Rwanda in the late 1990s; and an independent commission, like the Bruntland Commission on development or the International Commission on Intervention and State Sovereignty. Detailed proposals will no doubt emerge in the coming months.

Since the Second World War, humanitarianism has moved forward through phases of opportunistic growth followed by piecemeal and largely reactive reform. There is a sense, however, that the 'system' is now beyond further patching up. One-off studies and fix-it remedies, however well-intentioned, cannot redress the fundamental problems of humanitarianism today. Now may be the time for those who are serious about preserving humanitarianism and who are able to see a future different from yesterday to set aside their institutional differences and to start to re-build this enterprise with humility, principle, and a sense of rekindled universal mission.

This article summarises a longer paper entitled *The Future of Humanitarian Action: Implications of Iraq and Other Recent Crises*, Report of an International Mapping Exercise by the Feinstein International Famine Center at Tufts University. The paper is available, along with supporting documentation, at famine.tufts.edu and hwproject.tufts.edu. **Antonio Donini** acted as a consultant to the Feinstein Center, conducting interviews prior to the four discussions, participating in the meetings themselves and drafting the report. **Larry Minear**, the director of the Center's Humanitarianism and War Project and **Peter Walker**, who heads the Center itself, were also engaged in the discussion process and report writing.

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Forthcoming special feature in *Humanitarian Exchange*

The politics of famine and the business of food aid

It is 20 years since the famine in Ethiopia, in which between 800,000 and a million people are thought to have died. Following years of war and drought, it was the worst famine in the country's modern history and its scale and severity eventually triggered an unprecedented international response. Such events as the Band Aid and Live Aid concerts marked the moment when, for many, the world woke up to the huge challenge of famine and food insecurity in the world's poorest countries.

The July 2004 issue of *Humanitarian Exchange* will have a special feature of articles on Ethiopia as a focus for a reassessment of the complex, often controversial question of famine response. It will look back over the last 20 years from the perspective of a range of different actors to ask what has changed, and what still needs to change in humanitarian policy and practice on famine.

In Ethiopia, for instance, much has changed: the government and its policies, the foreign policies of other countries, the shape of the international aid community, early warning and food security policy and practice, demographics, and the degradation of the environment. Some things have not changed, such as agencies' inability to learn, doubts about the role and impact of food aid, chronic poverty, limited coping strategies, and the inability of humanitarian aid models to respond. As a result, much of the population is extremely (and increasingly) vulnerable and, agencies say, in 2003 nearly 14 million Ethiopians might have died had they not received emergency food aid.

If you would like to suggest or contribute an article for this feature, please contact hpn@odi.org.uk. HPN's editorial policy and submissions procedure is available on the HPN website at www.odihpn.org/documents/ HPN-submission.pdf or from hpn@odi.org.uk. The final deadline for submissions for the feature is 14 May 2004.

Japan's official humanitarian assistance

Makiko Watanabe, formerly JICA

Japan's humanitarian assistance dates back to 1953, when the government started funding UN relief work for Palestinian refugees. Since then, Japan has provided a vast amount of assistance worldwide, including financial aid, emergency supplies and personnel. This was primarily in response to natural disasters: Japan only became actively involved in conflict-related emergencies in 1992. Legally, humanitarian assistance for natural disasters remains distinct from humanitarian assistance in response to conflict. Nonetheless, Japan is starting to play a larger role in post-conflict environments, such as post-war Iraq, where Japanese troops were deployed in January 2004.

The legal framework

The Law Concerning the Dispatch of Japan Disaster Relief Teams (JDR Law) was introduced in 1987. Although the JDR Law provides a comprehensive approach to international disaster relief, the scope of assistance is restricted to natural disasters, and man-made disasters *except* those arising from conflict. JDR Teams have been sent to major disaster areas worldwide, especially in developing countries, to carry out rescue operations, provide medical care and undertake rehabilitation work. JDR Teams comprise rescue workers, medical teams and experts in disaster response and reconstruction. To ensure a swift and flexible response, Japan maintains a standby roster of rescue personnel and a registration system for medical teams; relief teams can be dispatched within 24 hours of a request for assistance, and medical teams can be ready to move within 48 hours.

The outbreak of the Gulf war in 1991 led to widespread domestic discussion about Japan's role in conflict-related disasters. The following year, the Japanese government enacted the Law Concerning Cooperation for United Nations Peacekeeping Operations (PKO Law), which allows Japan to engage more fully in UN peacekeeping and international humanitarian relief operations, including the dispatch of Self-Defence Force (SDF) units. PKO Law permits the following activities in relation to humanitarian relief:
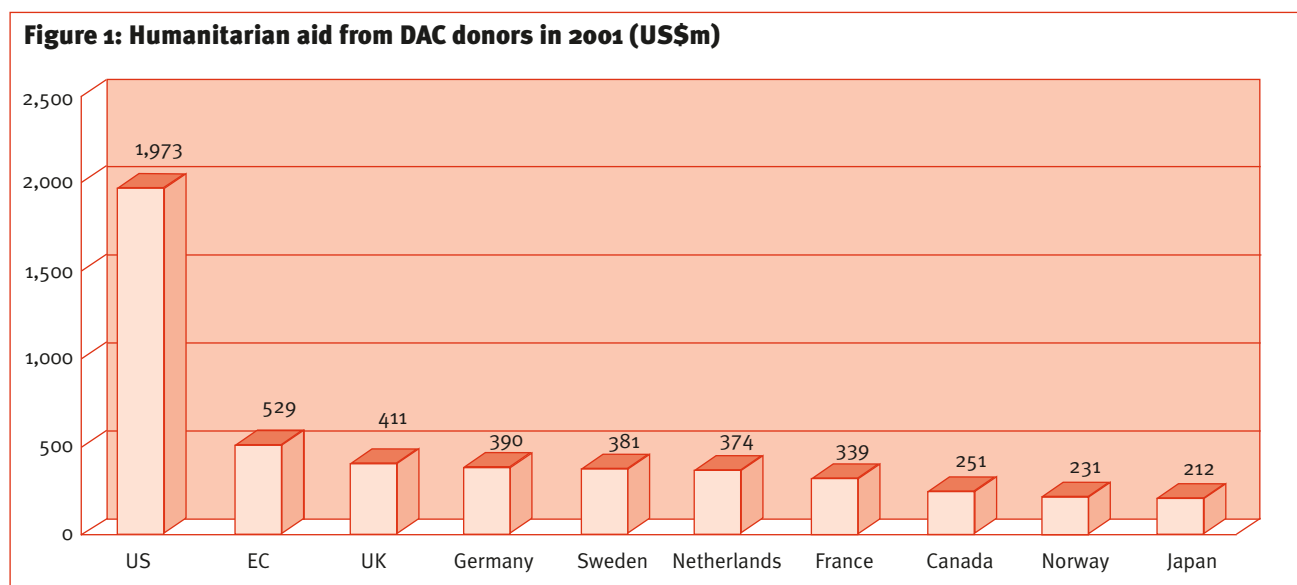
- medical care including sanitation;
- search and rescue or repatriation assistance;
- the distribution of food, clothing, medical supplies and other necessities;
- construction of facilities or equipment to accommodate affected people;
- rebuilding facilities and equipment damaged by conflict; and
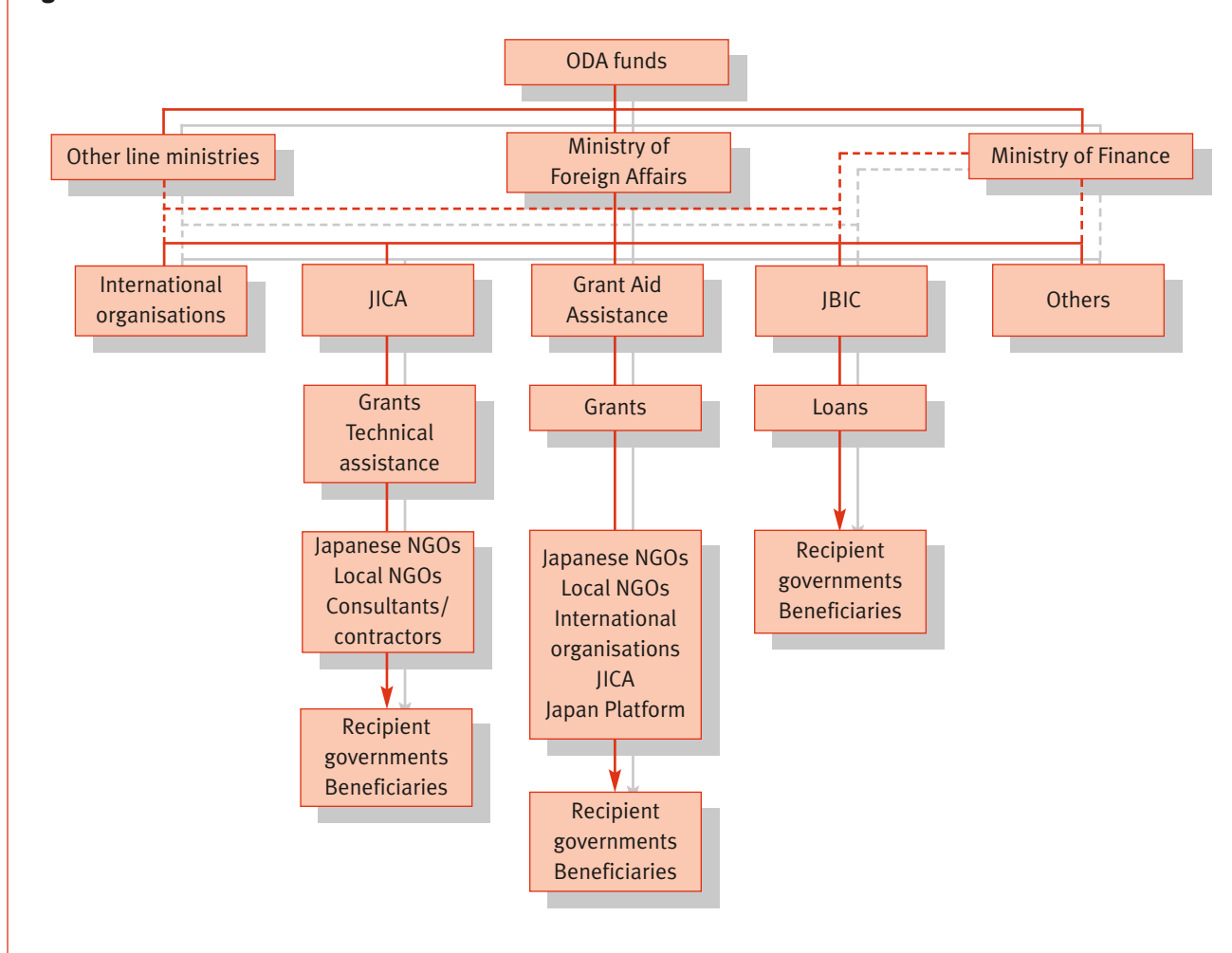- restoring natural environments where they have been damaged by conflict.

This legal provision has, however, been rarely used: SDF medics were sent to Rwanda in 1994 and the SDF provided air transport for refugee assistance in East Timor in 1999, but no civilian doctors or relief personnel similar to JDR Teams have been dispatched under this law.

The policy context

The introduction of the PKO Law reflected a growing recognition within the Japanese government that conflicts not only destroy the products of long-term development, but also greatly hinder future development. As such, the government highlights the important role of development assistance as a means of dealing with conflict.

Numerous policy statements have spoken of the need for comprehensive assistance and a seamless transition from humanitarian relief to post-conflict reconstruction. *Japan's Medium-Term Policy on Official Development Assistance*, issued in 1999, identified conflict and development as a priority issue. It emphasised that 'Japan must play an active

Figure 1: Humanitarian aid from DAC donors in 2001 (US$m)

Donor	US$m
US	1,973
EC	529
UK	411
Germany	390
Sweden	381
Netherlands	374
France	339
Canada	251
Norway	231
Japan	212

Figure 2: Flow of ODA funds for humanitarian assistance

role in conflict prevention and post-conflict reconstruction', and outlined key activities, such as promoting good governance as a means of conflict prevention, humanitarian assistance to neighbouring countries affected by refugee inflows, the resettlement and social rehabilitation of refugees and former combatants, landmine clearance and strengthening emergency medical systems.

In July 2000, Japan announced its *Action from Japan on Conflict and Development* in response to the Miyazaki Initiative on conflict prevention agreed by the G-8 countries in July 2000. The Japanese statement stressed the importance of timely assistance so as to eliminate the gap between humanitarian aid and reconstruction efforts. It also spoke of the need for close collaboration with Japanese NGOs as well as private firms and the media.

The emphasis on assistance in response to conflict has been further strengthened following the attacks on the US in September 2001. Japan's principal policy statement on ODA, *Japan's Official Development Assistance Charter*, revised in 2003, says that 'the objectives of Japan's ODA are to contribute to the peace and development of the international community, and thereby to help ensure Japan's own security and prosperity'. It notes that addressing new development challenges such as peace-building is 'an urgent need', and that 'preventing conflicts and terrorism,

and efforts to build peace … have become major issues inherent to the stability and development of the international community'. It lists peace-building as one of four priority issues (the other three are poverty reduction, sustainable economic growth, and global issues like the environment and disease).

ODA and humanitarian assistance

In line with these policies, the Japanese government has increased its budget allocations for peace-building and humanitarian assistance. This is despite a general downward trend in ODA overall. In 2001, for example, Japan's total humanitarian assistance was $212 million, or 2.1% of a total ODA budget of $9.8 billion. In 2004/05, the ODA budget had decreased by 20% compared with 2001, to $7.8bn; of this, humanitarian assistance and post-conflict reconstruction aid accounted for over $735m – more than 9.4% of total ODA. Allocations include over $459m for humanitarian assistance and reconstruction in Iraq and Afghanistan; over $28.5m for landmine removal and support for landmine victims; over $77m for refugee assistance through UNHCR; over $28.5m for other UN agencies; and over $142m to support humanitarian assistance by Japanese and local NGOs. Figure 1 shows how Japan's humanitarian assistance compares with other major Development Assistance Committee (DAC) donors.

Over 50% of Japan's total ODA. Humanitarian assistance, however, has been extended to conflict-affected countries around the world. Some of the major contributions in the last five years include:

- Assistance for East Timor: a total of $190m during 1999–2005, of which over $30m was spent on humanitarian aid (medicine, tents, blankets), support for humanitarian NGOs and the transport of supplies.
- Assistance for Afghanistan: a total of $560m during 2001–2003, of which over $120m was allocated to humanitarian assistance, including the provision of food supplies, shelter and health services.
- Assistance for Sri Lanka: a total of $1 billion has been pledged for 2003–2006. So far, $260m has been provided for health care through UNICEF.
- Assistance for Iraq: a total committed of $100m for 2003–2004 for humanitarian assistance. Aid includes the provision of medical and food supplies, rehabilitation of key infrastructure, such as schools, hospitals, ports, water and electricity systems, refugee assistance and food for work. An additional $320m has been provided to Palestine, Jordan and Egypt. Over $500m-worth of assistance has been pledged for reconstruction efforts until 2007.

ODA is primarily administered by the Ministry of Foreign Affairs (MoFA), which manages approximately 60% of the total budget. Other involved line ministries include the Ministry of Finance. In terms of humanitarian assistance or conflict-related assistance, there are three main sources of funds: MoFA, the Japan International Cooperation Agency (JICA) and the Japan Bank of International Cooperation (JBIC). JICA is in charge of grant aid and technical assistance, JBIC is in charge of administering loans, and both fall under the portfolio of MoFA, although JBIC is also under the Ministry of Finance.

Most humanitarian assistance is channelled through UN agencies; in 2001, Japan was the second-largest donor to WFP and UNHCR. Japan is now starting to increase its support for NGOs and to diversify its areas of assistance. This reflects a growing recognition of the need for comprehensive assistance from humanitarian relief to post-conflict reconstruction.

Future challenges

PKO Law stipulates that the dispatch of humanitarian relief personnel in response to conflict-related emergencies requires a request from the UN or another relevant international organisation, as well as approval from the Japanese cabinet. This takes between one and two months, and so acts as a major hindrance to the swift dispatch of relief or medical personnel. By contrast, JDR Teams are dispatched within 24 to 48 hours. Thus, humanitarian assistance to conflict areas has primarily been limited to funds channelled through international organisations or NGOs and in-kind contributions. If Japan is to realise more 'visible' and effective humanitarian assistance, either the process needs to be simplified, or the law has to be amended to enable JDR Teams to be sent to conflict areas.

The Japanese public is relatively supportive of Japan's commitment to 'civilian' humanitarian assistance. There is, however, strong opposition to the dispatch overseas of SDF units, and this has only increased with the killing of Japanese diplomats in Iraq in November 2003. The deployment of SDF troops to Iraq in January 2004 has been controversial. If the Japanese government is committed to expanding its humanitarian assistance based on collaboration between Japanese civilians and the SDF, then it needs to encourage a deeper understanding of the necessity for such assistance among the Japanese people. Humanitarian assistance is associated with risks, physically and politically. The government should engage in a thorough dialogue with academics, the media and the public on its future policy on humanitarian assistance.

Too much emphasis on the speediness and volume of assistance leads to poor-quality and possibly inappropriate implementation. While increased humanitarian assistance is welcome, it has outgrown the human resources and knowledge available in Japan. It is thus crucial that Japan strengthen its monitoring and evaluation mechanisms for humanitarian assistance. This has been done for JDR activities in response to natural disasters since 2002, and needs to be extended to conflict-related relief activities. Doing so would not only improve future assistance, but disclosure of the results would deepen the public's understanding of the humanitarian aid project and increase the government's accountability.

Makiko Watanabe is a Masters student at the J. F. Kennedy School of Government, Harvard University. Between 1997 and 2001, she worked for JICA.

References and further reading

For more on Japan's ODA programme, see the Japanese Ministry of Foreign Affairs website: www.mofa.go.jp.

- Japan International Cooperation Agency: www.jica.go.jp
- International Peace Cooperation Headquarters: www.pko.go.jp/PKO_E/pko_main_e.html
- Japan Platform (a partnership between Japanese NGOs, businesses and government): http://www.japanplatform.org.

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PRACTICE AND POLICY NOTES

Humanitarian Practice Network

The **Humanitarian Practice Network (HPN)** is an independent forum where field workers, managers and policymakers in the humanitarian sector share information, analysis and experience.

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- A series of specialist publications: *Humanitarian Exchange* magazine, Network Papers and Good Practice Reviews.
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HPN's members and audience comprise individuals and organisations engaged in humanitarian action. They are in 80 countries worldwide, working in northern and southern NGOs, the UN and other multilateral agencies, governments and donors, academic institutions and consultancies. HPN's publications are written by a similarly wide range of contributors.

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