CONTESTING THE HUMANITARIAN REGIME IN POLITICAL EMERGENCIES:
International NGO policies and practices in Sri Lanka & Afghanistan, 1990-2010

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ABSTRACT

The legal humanitarian regime, set out in the Geneva Conventions and Additional Protocols, strives to alleviate human suffering through the provision of emergency goods and services, such as food supplies, water, temporary shelter, and medical treatment. This thesis examines how international non-government organizations (INGOs) contribute to the contestation of this regime in political emergencies, the effects of this contestation, and the factors driving INGO contestation.

The thesis develops an analytical framework for understanding the nature and functioning of the legal humanitarian regime, and argues that INGO contestation occurs through the two processes of regime interpretation and regime implementation. It then goes on to identify the substantive content and effects of contestation, and the factors driving INGO contestation of the regime, through a detailed study of the policies and practices of CARE, Médecins Sans Frontiers, Oxfam, and World Vision, in Afghanistan and Sri Lanka, from 1990-2010.

The thesis argues that contestation has constitutive effects, as it re-defines the meaning of the formal humanitarian regime, and the underlying rules and norms that specify the regime's function, scope, and operating principles. Contestation also has causal effects, as it can make INGOs participants in the conflict, eroding thereby the basis on which they negotiate access and their ability to respond to humanitarian needs, and the security of their staff. It has also facilitated the subordination of humanitarian assistance by donor states and combatants to their political and security objectives.

INGO identity - expressed in terms of the constituent rules and norms that define INGO membership, their mandate and goals, and the manner in which they distinguish themselves from other actors - is argued to be a necessary factor for explaining INGO contestation. The focus on identity highlights the agency of INGOs in shaping the humanitarian regime and demonstrates that INGOs are not simply at the mercy of more powerful actors or external constraints.

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ABBREVIATIONS

ACBAR: Afghan Coordinating Body for Agencies
ACT: Acting with Churches Together
ALNAP: Active Learning Network for Accountability and Performance in Humanitarian Action
BPHS: Basic Packet of Health Services
CERF: Central Emergency Response Fund
CPA: Center for Policy Alternatives
CFA: Cease-fire agreement
CHA: Consortium of Humanitarian Agencies
CHAP: Common Humanitarian Action Plan
DFID: Department for International Development
ECHO: European Community Humanitarian Office
EU: European Union
GoA: Government of Afghanistan
GoSL: Government of Sri Lanka
IASC: Inter agency Standing Committee
ICRC: International Committee of the Red Cross
ICVA: International Council of Voluntary Agencies
IDP: Internally Displaced People
IHL: International Humanitarian Law
IHRL: International Human Rights Law
INGO: International Non-Governmental Organizations
IO: International Organization
ISAF: International Security Assistance Force
LTTE: Liberation Tigers of Tamil Eelam
MF: Menik Farms
MoU: Memorandum of Understanding
MSF: Médecins Sans Frontières
NDF: National Development Framework
NSP: National Solidarity Program
OCHA: United Nations Office for the Coordination of Humanitarian Affairs
PCP: Principled Common Programming
PRT: Provincial Reconstruction team
PTF: Presidential Task Force
R2P: Responsibility to Protect
RBA: Rights based approach
SCOPP: Secretariat for Coordinating the Peace Process
SFA: Strategic Framework for Afghanistan
SLFP: Sri Lanka Freedom Party
SLMM: Sri Lanka Monitoring Mission
UN: United Nations
UNAMA: United Nations assistance mission for Afghanistan

UNCT: United Nations Country Team
UNDP: United Nations Development Program
UNP: United National Party
UNSG: United Nations Secretary General
WV: World Vision

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1

INTRODUCTION

The 1949 Geneva Conventions and 1977 Additional Protocols create a legal regime for the provision of humanitarian assistance in armed conflict.[1] Humanitarian assistance typically refers to life-saving emergency relief items such as food, water, shelter, and heath and sanitation services, that can help alleviate the immediate suffering of civilians caused by armed conflict. In its purest form, the regime represents an 'ethic of care', based on moral obligation rather than political interests, concerned with saving lives based on a shared common humanity, and not the causes of conflict or the conditions required to create peace or justice.[2]

The workings of the legal humanitarian regime merit attention in light of reports highlighting the increasing difficulties in accessing civilians to provide emergency relief services, the subordination of humanitarian aid to the military and political objectives of warring parties and donor states, the conflict exacerbating effects of relief assistance, and increasing attacks on aid workers by parties to

[1] Regimes can be broadly defined as governing arrangements, consisting of implicit or explicit principles, rules, norms, and decision making procedures, constructed by states or other groupings of actors, to coordinate expectations and organize aspects of international behavior in various issue areas. The concept of a regime is further explored in Section I of this chapter, and then again in Chapter 2.

[2] For history and overview of the humanitarian regime see: Fritz Kalshoven and Liesbeth Zegveld, *Constraints on the Waging of War: An Introduction to International Humanitarian Law* (Geneva: ICRC, 2001); Peter Walker and Daniel G. Maxwell, *Shaping the Humanitarian World* (New York: Taylor & Francis, 2008); Craig Calhoun, "The Imperative to Reduce Suffering: Charity, Progress, and Emergencies in the Field of Humanitarian Action" in Michael Barnett and Thomas G Weiss eds. *Humanitarianism in Question: Politics, Power, Ethics* (Ithaca and London: Cornell University Press, 2008).

the conflict.[3] These factors, it is argued, have contributed to the shrinking of 'humanitarian space' in political emergencies - i.e. the operational space in which humanitarian agencies deliver aid and recipients have access to aid - and resulted in the humanitarian needs of civilians being unmet despite the availability of resources and institutional capacities.[4] Former United Nations (UN) Under-Secretary General for Humanitarian Affairs, John Holmes, has noted that 'increasingly today, acquiescence for humanitarian access is lacking. We are too often attacked for what we have or who we are. When the delivery of humanitarian assistance is restricted, lives are lost and misery prolonged unnecessarily.'[5]

At a broader level, a study of the functioning of the humanitarian regime draws attention to how moral obligations in international society are constructed and transformed, the interaction between ethics and political and organizational interests, and the implications of this interaction for broader understandings of international order. In the words of Michael Barnett, one of the leading International Relations scholars of humanitarian action: 'Expressive of an international community that is made up of ethics and politics, of solidarity and diversity, of emancipation and domination, humanitarianism's history tells us much about the changing global order in which we live.'[6]

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[3] for good general discussions of these issues and challenges see:
Michael Barnett and Thomas Weiss eds. *Humanitarianism in Question: Power, Politics, & Ethics* (Ithaca:Cornell University Press, 2008); Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries* (Bloomfield,CT: Kumarian Press, 2002); David Rieff, *A Bed for the Night: Humanitarianism in Crisis* (London: Vintage Press, 2002); Thomas Weiss and Peter Hoffman, *Sword and Salve: Confronting New Wars and Humanitarian Crises* (Lanham, Md.: Rowman & Littlefield, 2006); Stephen Cornish, "No Room for Humanitarianism in 3d Policies: Have Forcible Humanitarian Interventions and Integrated Approaches Lost Their Way?", *Journal of Military and Strategic Studies,* 10(1):2008; Abby Stoddard and Adele Harmer, "Little Room to Maneuver: The Challenges to Humanitarian Action in the New Global Security Environment", *Journal of Human Development and Capabilities*", 7(1):2006.

[4] See for example: Lara Olson, "Fighting for Humanitarian Space", *Journal of Military and Strategic Studies,* 9(1): 2004; Joanna Macrae, "The Death of Humanitarianism? An Anatomy of the Attack", *Refugee Studies Quarterly,* 17(1): 1998; Antonio Donini and Larry Minear, *Humanitarian Agenda 2015: Principles, Power, and Perceptions: Preliminary Report* (Boston: Feinstein International Center, Tufts University, 2006); Michael Bryans, Bruce D. Jones, and Janice Gross Stein, *Mean Times: Humanitarian Action in Complex Political Emergencies - Stark Choices, Cruel Dilemmas* (Toronto: Program on Conflict Management and Negotiation, University of Toronto, 1999).

[5] John Holmes, 18 August 2009, cited in " OCHA on message: What is Humanitarian Access?", Report produced by the United Nations Office for the Coordination of Humanitarian Affairs, April 2009. (accessed on 09.01.10) http://ochanet.unocha.org/p/Documents/OOM_HumAccess_English.pdf

[6] Michael Barnett, *Empire of Humanity: A History of Humanitarianism* (Ithaca: Cornell University Press, 2011) ; p.18.

I. Research Question

This thesis examines how international humanitarian non-governmental organizations (INGOs) shape the functioning of the legal humanitarian regime in political emergencies, how they think about, and implement, this 'ethic of care.'[7] It develops an analytical framework for understanding the interaction between the legal regime and INGOs, and examines the effects of this interaction in concrete cases. The analysis in this thesis is driven by three sets of questions. *First*, what are the processes through which INGOs contest the legal regime and what factors drive this contestation?; *Second*, what is the substantive content of contestation?; And *third*, what are the effects of INGO contestation for the functioning of the legal regime in political emergencies? INGO contestation of the regime is studied through an examination of the policies and practices of four key agencies: CARE, Médecins Sans Frontiers (MSF), Oxfam, and World Vision (WV), in Afghanistan and Sri Lanka, from 1990 - 2010. The nature of the legal regime, the importance of INGOs, and the concept of contestation are discussed below.

International Humanitarian Law and the Humanitarian Regime

Regimes can be broadly defined 'as governing arrangements constructed by states to coordinate their expectations and organize aspects of international behavior in various issue areas.'[8] Regimes might be institutionalized through law, or through a more informal grouping of actors, rules and norms in a particular issue area.[9] The Geneva Conventions and Additional Protocols can thus be seen as the formal legal regime for humanitarian assistance, constructed by states, to govern the behavior of international actors as they seek to provide humanitarian assistance in political emergencies.

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[7] INGOs formed and based in western states dominate the global humanitarian system and are accordingly the focus of this study.

[8] Friedrich Kratochwil and John Gerrad Ruggie, "International Organization: A State of the Art on an Art of the State", *International Organization,* 40(4): 1986; p. 759

[9] The different understandings of regimes in International Relations is examined in detail in Chapter 2.

Regimes however are not only regulatory devices governing actor behavior in a particular issue area, but also constituted by the shared beliefs and practices of actors in that issue area. As Friedrich Kratochwil and John Ruggie argue, regimes can be conceptualized as 'principled and shared understandings of desirable and acceptable forms of social behavior.'[10] This gives the ontology of regimes a necessarily intersubjective quality, constituted by a shared 'web of meaning'[11] and the practices of actors that define and reproduce these shared meanings. These two understandings of regimes correspond to the rationalist and constructivist views respectively, and are evaluated in chapter 2.

The humanitarian regime thus encompasses more than what is contained in international humanitarian law, both in terms of formal and informal rules, as well as the shared understandings and practices of actors. Moreover, humanitarian assistance, as a form of charitable action, has a long history that predates international humanitarian law.[12] It has however, in the 20th century, become a distinct and increasingly institutionalized form of action. As Astri Suhrke notes, ' the distinguishing characteristic of the humanitarian response during the 20th century was that it evolved from an ad hoc crisis response into an institutionalized regime with global coverage, numerous actors, state and private sources of finance, rules and principles of action, and structures for identifying needs and charting strategies of response.'[13]

The current regime for humanitarian assistance thus includes and is defined by of a host of actors, their understanding and practices. It thus includes the various UN agencies providing humanitarian assistance; donors, both bilateral and multilateral organizations such as the United Kingdom Department for International Development (DFID) and the European Community Humanitarian Office (ECHO); local and international NGOs and the Red Cross movement; and the military units of states and combatants. It encompasses a number of formal codes of conduct such

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[10] Kratochwil and Ruggie, 1986; p. 764

[11] Mark Neufield, "Interpretation and the 'science' of international relations", *Review of International Studies,* 19(1):1993

[12] for a history of humanitarian action as a form of charitable action see: Walker and Maxwell, 2009.

[13] Astri Suhrke, "From Relief to Social Services: An International Humanitarian Regime Takes Form" in Monica Kathuna Juma and Astri Suhrke, *Eroding Local Capacity: International Humanitarian Action in Africa (*Upsalla: Nordiska Afrikainstitutet, 2002).

as the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief,the Sphere Guidelines and Minimum Standards in Disaster response, the UN Office for the Coordination of Humanitarian Affairs (OCHA) operational guidelines for the provision of humanitarian assistance, amongst others, and is shaped by a multiple bodies of law, especially human rights law and refugee law. The beliefs and understandings of these actors, along with their various organizational rules and practices, thus together constitute the humanitarian regime beyond a legal document.

While acknowledging this wider scope of the humanitarian regime, and its fundamentally intersubjective ontology, this thesis focusses on the interaction between the legal regime and INGOs. First, even though the humanitarian regime is constituted by more than just the legal provisions in international humanitarian law (IHL), these legal provisions can be seen as an anchor and reference point for the various organizational rules and practices that guide humanitarian action. The Geneva Conventions have been ratified, in whole or with some reservations, by 195 countries. This suggests that at least formally these states recognize the centrality of the Conventions as the official reference point for the conduct of war and the treatment of non-combatants. The Geneva Conventions have also been used by states and non-state actors to highlight unlawful behavior during armed conflict as well as legitimize international involvement in humanitarian emergencies. Similarly, while a number of international organization, ranging from UN agencies to the foreign aid arms of states (DFID/USAID and others) are involved in the governance and provision of humanitarian assistance, and each of these have their own operational guidelines and codes of conduct, they all still formally express a commitment to the core norms of

the Geneva Conventions for the impartial provision of assistance to non-combatants in manner that preserves their dignity as human beings. [14]

Thus, even while the understandings and practices of donors, UN agencies, NGOs, and other actors mentioned above, often diverge from the provisions in the Geneva Conventions, and the meaning and operationalization of IHL are disputed among these actors, these actors nonetheless acknowledge the centrality of the Geneva Conventions as they express commitment to its core norms and identify norm violating behavior in reference to the Conventions.Michael Barnett and Thomas Weiss have noted that 'Any account of humanitarianism must face the challenge of defining its boundaries so that it is possible to write a coherent narrative while recognizing that as a social construct its meaning is both the product of contestations and historical contingency'. [15]

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[14] The DFID policy for humanitarian assistance states, for example:
' The UK government is not, and cannot be, neutral in world affairs. In line with our commitments in international law, we recognize our responsibility not to compromise the neutrality and independence of our humanitarian partners. We therefore respect their working practices and their interpretations of core humanitarian principles.'
DFID, *Saving Lives, Relieving Suffering, Protecting Dignity (* London: DFID,2006); p. 13

The *Annual Report for the Implementation of the European Consensus on Humanitarian Aid* published by ECHO similarly notes the following as the principles and good practices underpinning the EU humanitarian aid: 1) the fundamental humanitarian principles of humanity, neutrality, impartiality, and independence; 2) the international humanitarian, human rights, and refugee law; 3) Good Humanitarian Donorship principles on donor best practice.'
ECHO, *Annual Report for the Implementation of the European consensus on Humanitarian Aid* (Geneva: ECHO, 2012)

The International Code of Conduct for the International Red Cross and NGOs in disaster relief also states that 'In the event of armed conflict, the present Code of Conduct will be interpreted and applied in conformity with international humanitarian law.'
SCHR, *Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief* (Geneva: Steering Committee for Humanitarian Response, 1992)

Canada's CIMIC policy for civil-military coordination in political emergencies similarly lays claim to the core principles of IHL. Yet, it also explicitly recognizes the instrumental function of a commitment to these core norms. The policy states that CIMIC, when conducted in an impartial, neutral and independent manner in the eyes of national authorities and the local population, is a force multiplier.

For more examples of such CIMIC doctrines which express formal commitment to the norms of the Geneva Conventions, yet also link the adoption of a principled approach to their institutional imperatives, see: Victoria Wheeler and Adele Harmer eds. *Resetting the rules of engagement: Trends and Issues in Military-Humanitarian Relations* (London: Humanitarian Policy Group, 2006); p.8

[15] Michael Barnett and Thomas Weiss , " Humanitarianism: A Brief History of the Present" in Barnett and Weiss, 2008; p.11

Here, the choice of the boundary is the Geneva Conventions and its Additional Protocols, and is based on the observation that participants themselves anchor their practices, and violations by other actors, in terms of this legal regime.

Second, the International Committee of the Red Cross (ICRC) has often been called the 'beacon' and 'guardian' of humanitarianism, and has maintained a privileged place in the development of the term 'humanitarian' and IHL.[16] The ICRC model for humanitarian assistance reflects most clearly the provisions of the Geneva Conventions; it helps develop the law and disseminate the principles and rules of the law. Its policies and practices, and its legitimacy among donors and combatants, thereby further affirm the centrality of IHL for the provision of humanitarian assistance. UN agencies and INGOs often use the language of the ICRC, what Katherine Davies calls the ICRC meta-narrative, to frame and legitimate their own policies and practices, even while they might diverge from the ICRC model.[17]Hugo Slim argues, for example, that 'most humanitarian language that emerges from the mouths of NGOs and the UN forces is in fact little more than the rebounding and frequently distorted echo of the language and principles of the Red Cross and Red Crescent Movement.[18] However, precisely because INGOs and UN humanitarian agencies make use of the ICRC 'meta-narrative' embodying the provisions of IHL, suggests that the ICRC model and IHL operate as guidelines, legitimating devices for policy changes and innovation, as well as references for identifying norm violating behavior.

Third, the focus of this thesis is on the role of a specific set of actors - INGOs - in shaping the functioning of the regime. It is not possible in a single research design of this scope to account for all these different beliefs and practices, and at the same time also provide an in-depth examination of the role of a single set of actors - the processes through which they shape the functioning of the regime and the effects of this interaction in concrete cases. Even while insights about the mutual constitution of actors and structures implies that something like the humanitarian regime can only

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[16] Katherine Davies, *Continuity, Change and Contest: Meanings of 'humanitarian' from the ' Religion of Humanity to the Kosovo War* (London: Humanitarian Policy Group, 2012).

[17] Ibid.

[18] Hugo Slim, "Relief Agencies and Moral Standing in War: Principles of Humanity, Neutrality, Impartiality and Solidarity', *Development in Practice*, 7(4):1997; p. 347

be understood in relational terms, in terms of shared understandings, in order to study the role of a specific actor within this relational social reality it is necessary to hold some aspects of social reality as constant. For these reasons, in this thesis, the legal regime is taken as the conceptual and empirical anchor for examining how INGOs contribute to the functioning of the humanitarian regime. That being said, this thesis does highlight and unpack how the broader understandings and practices of the regime by various actors influences INGO contestation of legal regime.

International Humanitarian NGOs: Chief Operational Agencies

INGOs are the chief operational agencies of the humanitarian regime key: they are responsible for programming the bulk of humanitarian resources and often have country programs with larger budgets than their southern government counterparts. Often the first agencies to establish operations in political emergencies, establishing direct and long-term programs within communities, INGOs have been called 'the driving force behind humanitarian action'[19] and the 'most important promoters of humanitarianism.'[20] Yet, their role in shaping the functioning of the regime is relatively unexplored in existing International Relations scholarship, as is detailed in section II of this chapter. Broadly, accounts tend to focus on the external factors that shape INGO operations, '...exposing the power that lurks behind the noble enterprise' rather than examining 'how humanitarians themselves re-think the ethics of care.'[21]

While the beliefs and practices INGOs are constituted and shaped by the broader institutional and normative structures in which they are embedded and their relationships with other actors, this

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[19] Abby Stoddard, "Humanitarian NGOs: Challenges and Trends" in Joanna Macrae and Adele Harmer eds. *Humanitarian Action and the 'global war on terror': a review of trends and issues* (London: Humanitarian Policy Group, 2003).

[20] Katarina West, *Agents of Altruism*: *the expansion of humanitarian NGOs in Rwanda and Afghanistan*, (Burlington, VT: Ashgate Publishing, 2001); p.5

see also: Ian Smillie and Larry Minear, *The Charity of Nations: Humanitarian Action in a Calculating World* (Bloomfield, CT: Kumarian Press Inc.,2004); Marc Lindenberg and Coralie Bryant, *Going Global: Transforming Relief and Developmental NGOs* (Bloomfield, CT:Kumarian Press Inc., 2001); Joanna Macrae et al., *Uncertain Power:The Changing Role of Official Donors in Humanitarian Action*, (London: HPG, 2002).

[21] Michael Barnett, *Empire of Humanity: A History of Humanitarianism* (Ithaca: Cornell University Press, 2011); p. 10

need not imply that INGO identities and interests can also be defined or reduced exclusively to the effects of these structures and relationships. Rather, as will be elaborated upon in the following chapter, INGOs have agency as actors and it is possible to study the nature and extent of this agency, while not denying the role of broader constitutive structures and relationships. INGOs in this thesis are thus conceptualized as purposive actors who actively participate in their own self-constitution, that have the capacity to reflect upon and critically examine their experiences and goals, and circumvent and negotiate demands from the external environment. The influence of these broader structures and relationships are discussed in chapter 2, as well as highlighted where relevant in the historical (3) and empirical chapters (5 & 6).

Regime Contestation

This thesis posits that the legal humanitarian regime is a 'contested' regime. Relevant actors - donors, combatants, UN agencies, humanitarian NGOs, and local civil society actors, among others - have different understandings and expectations of the function, scope, and operating principles of the regime, of 'what makes the regime hang together' or the 'rules of the game.' This contestation is not about a confusion in concepts, or a ' straightforward failure to specify the relationship between "term" and "meaning."'[22] It is not just a semantic argument or operational dispute, but a substantive political and moral argument around the terms of the Conventions. Part of this contestation is of a moral and ethical nature, about what constitutes human dignity, the duties of relevant actors, and the scope of international responsibility for 'saving strangers'. The contestation is also of a political nature as any injection of goods and services in a state involves political decisions and has political ramifications.Moreover, actors are committed to their interpretation of the regime and try to persuade other actors of the correctness of their

[22] David Collier, "Essentially Contested Concepts: Debates and Applications", *Journal of Political Ideologies,* 11(3):2006; p. 212

interpretation.[23]Contestation in this sense is an intentional and strategic act, informed by actors' beliefs and interests, and not conceptual or operational disarray following from confusion about what the legal regime is meant to signify. Contestation is thus seen as a constitutive feature of the humanitarian regime. However, as noted above, despite the divergent beliefs and practices of actors of the humanitarian regime, actors nonetheless formally recognize the authority of the Geneva Conventions and express commitment to its core norms.

Thinking of the humanitarian regime in terms of contestation thus helps draw out how the meaning and functioning of the humanitarian regime is fundamentally a political and moral 'contest' between actors, informed by a combination of beliefs and interests, and with operational consequences. Moreover, the emphasis on contestation draws attention to the fact that there is no fixed or stable understanding of the regime across actors, even while the regime remains anchored in international humanitarian law. The idea of contestation, by highlighting the contest between actors, their identities and interests, also opens up critical space to consider the role of actors in the making and practice of the regime, thereby taking seriously the constructivist argument about the mutually constitutive, though not mutually reducible, relationship between actors and structures. The core sections of this thesis thus elaborate and analyze this process of contestation - its substantive content, and its implications, with a specific focus on INGOs as actors who contest the regime.

II. Key arguments

The core arguments presented in this thesis are threefold. First, INGO policies and practices contribute to the contestation of the legal humanitarian regime in political emergencies through the processes of 'interpretation' and 'implementation'. INGO interpretations alter the meaning of the provisions set out in the Geneva Conventions and Additional Protocols, thereby re-

[23] For example, for military actors, humanitarian assistance is seen as part of a broader hearts and minds campaign. However, this does not stem from confusion about the terms and provisions of the Geneva conventions but the political argument that humanitarian aid should serve a larger purpose than just providing emergency care.Similarly, debates about the extent to which humanitarian assistance should extend to long term development objectives involves moral and political questions about the meaning of human dignity, the scope of international responsibility for improving the welfare of foreigners, and the responsibility of a state to its citizens, among others.

conceptualizing the function, scope, and operating principles of the legal humanitarian regime. These interpretations can be categorized into three ideal types, referred to here as 'solidarist', 'developmental', and 'integrated' ideal types, which define what the legal regime comes to mean for INGOs beyond a formal legal document. The meaning of the regime shifts once again at the level of INGO policy implementation in particular contexts, as INGOs translate global level policies to particular local contexts and negotiate local actors' interests, beliefs, and perceptions of what is possible and appropriate.

Second, INGO contestation has both constitutive and causal effects. INGO interpretations of the legal regime define what the regime comes to mean beyond a formal document and thus has constitutive effects for the meaning of the regime. The substantive content of INGO contestation through interpretation can be observed in the three ideal types, how they re-conceptualize the function, scope, and operating principles of the legal regime, and how they combine in concrete ways to shape INGO mandates and policy goals. INGO contestation also has causal effects for how the regime functions in political emergencies as it shapes INGO policy responses and structures the field of interaction with local actors in political emergencies. In the cases of Sri Lanka and Afghanistan, INGO contestation of the regime has contributed to difficulties in accessing the civilian populations and meeting their humanitarian needs; it has also contributed to the increasing threats to INGO security in both political emergencies. More significantly, INGO contestation of the legal regime has also made them participants in the conflicts, raising doubts among local actors about their neutrality and impartiality. At times, it has also helped facilitate and legitimate the manipulation of aid by combatants and donor states.

Third, while INGO contestation is driven by a variety of material and ideational factors, contestation cannot be explained without taking into account the role of INGO identity. INGO identity is thus seen to have a greater role than realist and institutional accounts suggest, and does not simply account for residual variance that material factors, such as donor funding arrangements or restrictions imposed by combatants, cannot explain. INGO identity is observed through the constitutive rules and norms which define the membership of a particular INGO; the social

purpose or goals of an INGO, which are institutionalized in its mandate; and the features and manner through which an INGO distinguishes itself from other actors.

The thesis does not claim that INGO contestation of the legal humanitarian regime is the only factor, or the most important factor, in explaining the functioning of the humanitarian regime. As is well documented in existing literature, the interests, capacities, and legitimacy of local authorities and combatants, the political economy of the conflict, and the political and military goals of western donor states, all play a role in creating the current challenges that confront the humanitarian regime. The aim of this thesis is thus not to compare the importance of INGO contestation against these other factors, but to explore how the ideas and actions of INGOs themselves contribute to the current functioning of the legal regime. This factor remains unexplored in the existing literature even while INGOs are considered to be the key driving force behind humanitarian action and the chief operational agencies of the humanitarian regime.

In addition, this thesis does not seek to provide an institutional biography of the INGOs under study or an in-depth description of their field-based operations. Rather, the aim is to analyze their policies and programs in order to illustrate how INGOs themselves contribute to the contestation of the humanitarian regime, as opposed to being passive organisations at the mercy of external pressures and interests.

III. Arguments and gaps in existing literature

A popular argument in the literature is that the working of the regime can be explained in terms of the power and interests of donor states, to which INGO operations are considered subordinate. According to these studies, western donors seek to direct humanitarian assistance in line with their

strategic interests, contributing to the politicization of aid.[24] While the politicization of humanitarian aid is as old as international humanitarian action, since the end of the Cold War the humanitarian sector has been transformed into a full-fledged industry that is heavily reliant on state-funds; states are thus increasingly involved in specifying the function they expect humanitarian assistance to serve in conflict environments. Barnett thus argues that the '1990s were unprecedented to the extent that states attempted to impose their agenda on agencies.'[25] Moreover, as Tony Vaux observes, 'instead of working in neutral territory between the two global superpowers, as in the Cold War, humanitarianism now finds itself rubbing shoulders with a single superpower and its allies, and it is this relationship that is a primary cause of concern for aid workers today…The pattern of humanitarian aid is more closely related to donors' interests than to the needs of the affected communities'.[26] The literature also notes that states' involvement in

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[24] see for example: John Burton, "Recent trends in the International Relief system", *Disasters,* 17(3):1993; Nicholas Torrente, "Humanitarianism Sacrificed: Integration's False Promise", *Ethics and International Affairs* 18(2): 2004; Joanna Macrae and Adele Harmer eds. *Humanitarian Action and the Global War on Terror* (London: Humanitarian Policy Group, 2003); Nicholas Torrente, "Humanitarian action under Attack: Reflections on the Iraq War",*Harvard Journal of Human Rights,* 17(1):2004; Adele Harmer and Joanna Macrae eds. *Beyond the continuum: The changing role of aid policy in protracted crises* (London: Humanitarian Policy Group, 2004); Weiss and Hoffman, 2006; Barnett, 2011; Cornish, 2008.

see also Larry Minear and Thomas Weiss, *Humanitarian Politics* (New York: Foreign Policy Association, 1995).While Minear and Weiss highlight the politicization of aid, they argue for a new partnership between humanitarian and political action.

see also Mark Duffield, *Development, Security and Unending War: Governing the World of Peoples* (Cambridge: Polity Press,2007). Duffield argues that humanitarian aid has become the key form of conflict management for northern states in their relationship with the south. While he acknowledges the growing importance of INGOs, he argues that this has not been at the expense of northern, metropolitan states; rather, it has strengthened metropolitan states in new ways as they are now able to govern at a distance through INGOs.

For discussions on the impact of integrated missions and the focus on system wide coherence among donors and the UN see: Joanna Macrae and Nicholas Leader, " Apples, Pears, and Porridge: The Origins and Impact of the search for 'Coherence' between Humanitarian and Political responses to Chronic Political Emergencies", *Disasters,* 25(4): 2001; Ann M. Fitx-Gerald, "Addressing the Security-Development Nexus: Implications of Joined-up Government", *Policy Matters,* 5(5): 2004.

For NGO accounts on the politicization of aid, see for example: Oxfam, *Whose Aid is it anyway: Politicizing aid in conflict and crises*, 10 February 2011. (accessed on 07.06.12) http://www.oxfam.org/sites/www.oxfam.org/files/bp145-whose-aid-anyway-100211-en_0.pdf ; CARE International, *Politicization of humanitarian Aid: Towards an Advocacy Strategy*, December 2004 (accessed 08.04.11) http://insights.careinternational.org.uk/publications/politicisation-of-humanitarian-aid-towards-an-advocacy-strategy

[25] Michael Barnett, " Humanitarianism Transformed", *Perspectives on Politics,* 3(4):2005; p. 731

[26] Tony Vaux, "Humanitarian Trends and Dilemmas", *Development in Practice,* 16(3): 2006;p.1

directing humanitarian assistance has become more pronounced, as it enables them to be engaged in the conflict without direct involvement or commitment of resources and manpower. Mark Duffield thus suggests that humanitarian assistance is increasingly seen as a substitute for political action, especially in conflicts of little strategic significance to western states.[27] The politicization of humanitarian assistance has become even more explicit in the context of the 'global war on terror' as part of a broader stabilization and nation-building strategy in fragile or failed states.[28] Humanitarian agencies are portrayed as 'force multipliers' and an 'important part of [the]combat team for western states. [29]

The working of the regime is also considered to be a reflection of the nature of so-called new wars, and the manipulation of humanitarian assistance by combatants as a weapon of war.[30] Paul Collier argues, for example, that new wars are driven by economic opportunism in which combatants have a vested interest in the continuation rather than resolution of conflict. The injection of goods and services by external humanitarian agencies is thus captured by combatants, enabling them to strengthen their position and benefit from the continuation of the conflict.[31] The manipulation of humanitarian assistance by combatants is also reflective of the fact that contemporary armed groups appear less reliant on support from local populations; as a result, they are not motivated to ensure the provision of humanitarian assistance to populations to secure their acceptance and legitimacy among local populations. Thus, civilians have increasingly become targets in conflict, and the 'humanitarian deal' between combatants and external aid agencies is ignored in a number

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[27] Duffield, 2007.

[28] see for example, Duffield, 2007; Macrae & Harmer, 2003.

[29] Colin Powell, *Remarks to the National Foreign Policy Conference for Leaders of Nongovernmental Organizations,* Washington, DC. 26 October 2001 (accessed on 08.08.12). http://2001-2009.state.gov/secretary/former/powell/remarks/2001/5762.htm

[30] for introduction to subject of 'new wars' see, Mary Kaldor, *New and Old Wars: Organized Violence in a Global* Era (Stanford: Stanford University Press, 1999).

[31] Paul Collier and Anke Hoeffler, " Greed and Grievance in civil war", *Oxford Econ. Papers*, 56 (4): 2004; see also David Keen, *The Economic Functions of Violence in Civil Wars (*London: International Institute of Strategic Studies, 1998).

of cases.[32] Such accounts focus on the incentives and opportunities for parties to the conflict to manipulate the provision of relief to serve their own interests, and not explicitly on the role or agency of INGOs.

While the above accounts on the politicization and subordination of aid provide valuable insights into the working of the regime, they suffer from three important shortcomings that limit the scope of their analysis. First, they assume that there exists a stable degree of consensus on the function, scope and operating principles of the humanitarian regime. It is against this stable understanding that the politicization or subordination of the regime can be identified and evaluated. In other words, to say that a regime is politicized requires first identifying what exactly the regime 'is' and it is only by assuming this meaning to be relatively stable and widely accepted that one can identify what amounts to a violation of the regime. However, as suggested above, if the regime is contested by various actors in terms of its function, scope, and operating principles, and this contestation is in fact a constitutive feature of the regime, then the regime does not have a stable and fixed meaning, complicating thereby the identification and evaluation of the politicization or manipulation of the regime. Second, existing accounts neglect or dismiss the agency of INGOs in circumventing and negotiating the interests of more powerful actors, assuming too readily that INGOs are merely pawns in the workings of the international humanitarian regime. Third, the literature does not interrogate the exact processes through which the politicization or subordination of aid might take place, and thereby also fails to identify the avenues and possibilities for INGOs to resist or circumvent donor or combatant demands.

Some accounts do focus on INGOs themselves, but the starting point of these accounts is the INGO institutional environment and the effects this environment has on INGO behavior. For example, employing a political economy perspective, Alexander Cooley and James Ron observe that many aspects of INGO behavior 'can be explained by a materialist analysis and an examination of the

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[32] Nicholas Leader, *The Politics of Principles: The Principles of Humanitarian Action in Practice* (London: Humanitarian Policy Group, 2000). Leader argues that the humanitarian deal between agencies and combatants is that former promise not to get involved in the conflict, by observing principles of impartiality, neutrality, and independence. Based on this promise, agencies are granted access by combatants to the non-combatant population in need of humanitarian assistance.

incentives and constraints produced by the transnational sector's institutional environment'.[33] They thus argue that organizational security, competition, and the 'marketization' of INGO activities 'generates incentives that produce dysfunctional outcomes.'[34] Michael Barnett and Ben Ramalingam frame the effects of the institutional environment on INGOs in terms of game theory, noting that while agencies 'might claim to want cooperation, [they] are rewarded for defecting and seeking more individualistic gains.'[35] Such accounts, though INGO focussed, do not specifically ascribe agency to INGOs, failing to interrogate the manner in which INGOs might negotiate and circumvent pressures emanating from the institutional environment. The starting point of these accounts remains the broader institutional environment, and INGOs are studied in terms of how they are affected by this environment. Moreover, in so far as they suggest that some of the challenges confronting the humanitarian regime stem from a 'collective action' problem, they assume too readily that there is a degree of stable consensus on the goals of the humanitarian regime among actors; it is therefore assumed that the challenges facing the humanitarian regime are primarily coordination issues rather than disagreements or disputes about the very goals and aims of the humanitarian regime.

Scholars such as Alex de Waal and David Keen provide a critical perspective on INGO operations, focusing primarily on how INGOs' 'hard' organizational interests – which are privileged over the interests of beneficiaries - influence their implementation of the humanitarian regime. De Waal argues, for example, that external humanitarian agencies prevent the formation of a political contract between local authorities and populations by undermining local capacity and accountability.[36] Keen also notes that the nature of conflict is inadequately understood by INGOs, resulting thereby in faulty policy decisions that even exacerbate conflict. He argues that INGOs operate on the assumption that armed conflict is essentially irrational and imposed on societies, representing a 'contest' between combatants that can be 'declared over'. Such a view fails to grasp,

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[33] Alexander Cooley and James Ron, "The NGO Scramble: Organizational Insecurity and the Political Economy of Transnational Action", *International Security,* 27(1):2002; p. 6

[34] Cooley and Ron, 2002; p. 6

[35] Ben Ramalingam and Michael Barnett, *The Humanitarian's Dilemma: collective action or inaction in international relief* (London: Humanitarian Policy Group, 2010); p.3

[36] Alex de Waal, *Famine Crimes: Politics & the disaster relief industry in Africa (*London: James Currey, 1997).

according to Keen, that conflict in complex emergencies represents a 'system' (rather than a contest), consisting of multiple levels and actors, and emerging from political and economic processes within a society.[37] INGOs also fail to understand the functions of violence in conflict, framing the problem in a manner that precludes effective analysis.[38] These accounts make an important contribution to understanding how INGOs can exacerbate conflict through poorly designed policies and implementation. However, this interaction between INGOs and the conflict space is analyzed in a generalized way, as the focus is primarily on explaining the overall dynamics of the conflict space as a system comprising international and local actors. Thus, while these accounts acknowledge and assign importance to the role of INGOs in shaping the conflict space, they do not focus on the specific manner and mechanisms through which INGOs exercise agency and how they partake in the making of the regime. In short, these scholars tend to provide an outsider perspective, rather than an inside-outside view of the working of INGOs.

An important exception among these accounts of INGOs is Stephen Hopgood's 'inside-outside' study of Amnesty International's decision-making.[39] Hopgood examines the internal structure and culture of this prominent human rights NGO, and its 'inner life' as it negotiates its sources of moral and political authority. This thesis differs from Hopgood's account as INGO identity-driven contestation is linked to the broader functioning of the humanitarian regime, and the effects that it produces in particular conflicts.Yet, it also borrows from Hopgood's work in its critical reading of the use of rights-language by INGOs to justify a wide range of programs and legitimate their own moral authority. Another notable exception is Liesbet Heyse's *Choosing the Lesser Evil: Understanding Decision-Making in Humanitarian Aid NGOs*, which examines the decision-making processes of MSF and Acting with Churches Together(ACT). Her study employs sociological theories about organizational decision-making to understand how NGOs initiate, terminate, and extend their project activities, thereby opening up the 'black box' of INGO deliberation.[40] This thesis differs from Heyse's study as the focus here is not on uncovering

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[37] David Keen, "A Rational kind of Madness", *Oxford Development Studies,* 25(1): 1997

[38] David Keen, *Complex Emergencies (*Cambridge: Polity, 2008).

[39] Stephen Hopgood, *Keepers of the Flame* (Ithaca: Cornell University Press, 2006).

[40] Liesbet Heyse, *Choosing the Lesser Evil: Understanding Decision Making in Humanitarian Aid NGOs* (Burlington, VT: Ashgate Publishing 2007).

organizational decision-making ideal types, but rather on the processes by which INGO interact and implement the humanitarian regime and the factors driving this process. Moreover, while Heyse ultimately concludes that humanitarian organizations' decision-making is based on a 'logic of consequences', this thesis argues that INGO interpretation and implementation is rooted in INGO identity and guided by a 'logic of appropriateness'.[41]

Much of the remaining literature on INGOs and the humanitarian regime is produced by INGO practitioners themselves. This work tends to be of three main kinds: project or program evaluation studies and learning reports;[42] policy and advocacy documents;[43] and narrative accounts by aid practitioners themselves.[44] These accounts makes evaluative and normative judgments about how these agencies function and how their performance could be improved, rather than uncovering the mechanisms through which INGOs shape understandings and functioning of the regime. They thus tend to be either policy-oriented, technical evaluations, or prescriptive studies on the role of INGOs and their relationship with states, local combatants or other international organizations such as the UN.

IV. Methodology

The argument about the processes and effects of INGO contestation involves both a constitutive and a causal explanation. Where the ontology of a regime is seen as a collection of inter-subjective beliefs, and INGO interpretations of the regime are part of these inter-subjectively held beliefs, INGO interpretations, at least partly, constitute the regime itself - i.e.,what the regime comes to be, beyond a legal document. The explanation is also causal in that these constitutive properties of the regime affect how the regime functions, by structuring the range of possible INGO policy responses

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[41] These two logics will be described more fully in Chapter 2, section IV, on the factors shaping INGO contestation.

[42] see for example, ALNAP (Active Learning Networks for Accountability and Performance in Humanitarian Action) program and project reports < http://www.alnap.org>

[43] These are detailed in Chapter 4, INGO Mandates and Policies.

[44] see for example, Fiona Terry, *Condemned to Repeat? The Paradox of Humanitarian Action* (Ithaca: Cornell University Press,2002); James Orbinsky, *An Imperfect Offering: Humanitarian Action in the Twenty-First Century* (New York: Walker Publishing Company, 2008); Tony Vaux, *The Selfish Altruist: relief work in famine and war* (London: Earthscan Ltd, 2004).

that then produce particular outcomes and effects. As Colin Wight notes, 'if things have set powers in virtue of how they are constituted, then it makes perfect sense to talk of their causal power, and the idea of constitutive effects can be understood in causal terms.'[45]

The thesis does not claim that INGO contestation 'causes' particular outcomes for the regime in the sense that contestation and outcomes are linked together in a constant and deterministic conjunction of events.[46] Rather, departing from this Humean conception of causation, the term causal is used to imply 'all things that bring about, produce, direct, or contribute to states of affairs or changes in the world.'[47] Causality is therefore understood in terms of whatever antecedent conditions, events, or actions are of significance in helping to produce an event, result or consequence, the antecedent conditions or factors that make particular actions or outcomes possible.[48] The claim in this thesis is thus that INGO contestation is a key antecedent condition in shaping the meaning and outcomes of the legal humanitarian regime. The thesis does not claim, however, that it is the only condition or that it necessarily produces the same outcomes across all situations.

This thesis is not based on a positivist epistemology as it does not seek to uncover law like generalizations about INGO contestation of the legal regime and the effects it produces. Moreover, the intersubjective ontology of regimes is fundamentally contradictory to a positivist epistemology. However, as the above discussion of causality suggests, it is possible to speak of causes without making a commitment to positivism if 'cause' is thought of in terms of the antecedent conditions that make particular outcomes possible. In fact, as Milja Kurki notes, it is ' the wide acceptance of Humean assumptions on causation [that] has led to the empiricist form of causal analysis being treated as the only acceptable form of causal enquiry…this in turn has resulted in the

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[45] Colin Wight, *Agents, Structures, and International Relations: Politics as Ontology (*New York: Cambridge University Press 2006);p. 117

[46] This is the Humean concept of causation where to say 'A caused B' is equivalent to saying that whenever A-type events happen, B-type ones follow.

[47] Milja Kurki, "Causes of a divided discipline:rethinking the concept of cause in International Relations Theory", *Review of International Studies,* 32 (2): 2006; p. 202

[48] Friedrich V. Kratochwil, "How do Norms matter?" in M. Byers ed. *The Role of Law in International Politics: Essays in International Law and International Relations* (Oxford: Oxford University Press, 2000).

dichotomization of scientific "causal" and "reflectivist" (non-causal) approaches in International Relations."[49] However, even within reflectivist approaches one can speak of causal relations between actors, events, and factors, where causality is defined in the more common-sense way noted above. Thus, rather than follow a nomological-deductive model, which establishes causality in terms of law-like generalization, this thesis instead adopts a narrative-explanatory model in explaining causal relations between INGO contestation and the humanitarian regime. [50]

The narrative-explanatory model used here is one of structural-historical analysis. The first part of the thesis, chapters 3 and 4, focus on INGO interpretation of the legal regime. As these INGO interpretations are argued to have constitutive effects for the meaning of the regime, this part of the thesis can be considered 'structural' as it identifies the structure of the regime through its constitutive features. Structural explanations, as Alexander Wendt argues, reveal the conditions of existence or ' rules of the game' of social action for particular actors. They do not explain events directly, but only how certain events are possible.Structural constitutive features can thus have causal effects, 'functioning as independently existing and temporally prior mechanisms motivating and generating behavior.[51] Actual events and outcomes can be explained through what Wendt calls the historical method, of linking together events, processes, outcomes in time. The second part of this thesis thus employs the method of historical narrative to examine the links between possible causes and observed outcomes, and 'trace the causally significant sequence of choices and interactions which lead to particular events.'[52] The method of historical narrative is thus used to link INGO contestation to the production of particular outcomes and effects in Afghanistan and Sri Lanka, over a period of 20 years, from 1990-2010. It examines how INGO interpretations, as constituting the regime, shape INGO practice, and how these together contribute to the production of certain types of effects or consequences.

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[49] Kurki, 2006; p.200

[50] Kratochwil and Ruggie, 1986.

[51] Alexander Wendt, "On Constitution and Causation in International Relations", *Review of International Studies,*24(5): 1999; p. 107

[52] Alexander Wendt, " The Agent-Structure Problem in International Relations Theory", *International Organization,* 41(3): 1987; p.365

While recognizing the reflexivity between INGO interpretation and implementation, of the structural and historical modes of analysis, for the sake of research design, these explanatory modes are bracketed off in turn. Thus, chapters 3 and 4 examine INGO interpretations of the regime; these constitute what the legal regime comes to mean beyond a treaty document and can be seen as the structural 'rules of the game' for INGO practices; chapters 5 and 6 then examine how INGO policies, made possible by particular interpretations of the regime, play out at the level of practice and the effects they produce.

A historical narrative method also creates space to consider the evolutionary nature of INGO contestation of the regime i.e. how particular effects or outcomes of the humanitarian regime were enabled or constrained by particular decisions INGOs made in a previous time. A historical narrative method also does not eliminate the possibility of considering alternative explanations; rather, it acknowledges the interaction of multiple causes in an 'open system'.[53] The manner in which INGO contestation interacts with other factors in shaping the outcomes of the regime is thus also studied through the use of this historical narrative method.

As will be detailed in chapter 2, INGO contestation can potentially be shaped by a range of external and internal factors, which are both material and ideational. The role of these factors is examined through the method of process tracing. Process tracing allows for a comparison and investigation of these factors as well as an analysis of how they work together. These factors can be thought of as 'causal mechanisms', rather than law-like generalizations linking together actors and events. Causal mechanisms, as Rudra Sil and Peter Katzenstein argue, are 'all entities - whether individual actions of choices, social relations or networks, environmental or institutional characteristics, specific events or contextual factors, individual cognitive dispositions or collectively shared ideas and world views - that generate immediate effects through processes that may or may not recur across contexts and that may be, but often are not, directly observable.'[54]In order to examine the particular weight of identity as a causal mechanism shaping INGO contestation, the

[53] Andrew Bennet and Alexander L. George, *Case Studies and Theory Development in the Social Sciences* (Cambridge, Mass.: The MIT Press, 2005); Wight, 2006.

[54] Rudra Sil and Peter J. Katzenstein, "Analytic Eclecticism in the Study of World Politics: Reconfiguring Problems and Mechanisms across Research Traditions", *Perspectives on Politics,* 8(2): 2010; p.421

discussion here compares identity based arguments with other material and ideational explanations, focussing especially on the timing and circumstances of INGO policy decisions, INGO stated reasons for particular policies, and the relationship between INGOs and other actors in the conflict space. However, the limitation of process tracing, as Jeffrey T. Checkel argues, is that ' linearity [is] captured at the expense of recursivity.'[55] Thus, while the thesis examines the various external and internal factors that might shape INGO contestation, it does not specifically examine this recursivity - i.e. how INGO contestation in turn also shapes these broader factors.

V. Case Study Selection

Selection of INGOs

While international humanitarian NGOs comprise a diverse community, the INGO landscape might be said to resemble what Katrina West calls a pyramid, with 'a few big international NGOs at the top, thousands of local small NGOs at the bottom, and a number of medium-sized NGOs in the middle.'[56] This study focuses on these 'giants' or 'mammoths' at the top of the pyramid: CARE, Médecins Sans Frontiers, Oxfam and World Vision. These INGOs are not examined in depth as 'intrinsic case studies', but rather as 'instrumental case studies' to heuristically investigate a broader question about how INGOs, as particular kinds of actors, contribute to the contestation of the humanitarian regime. [57]

CARE, MSF, Oxfam, and World Vision, control the bulk of humanitarian resources and have the largest operational presence in political emergencies.[58] Power in the INGO sector is concentrated in the hands of these 'mega NGOs', and ' despite differences in specific mandates and missions… [these INGOs] operate as a group or closed cartel with interrelated histories and limited scope for

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[55] Jeffrey T. Checkhel, " Tracing Causal Mechanisms", *International Studies Review,* 8(2): 2006; p. 363

[56] West, 2001; p. 217

[57] Bruce L. Berg, *Qualitative Research Methods for the Social Sciences* (Boston: Pearson Education Inc., 2004); p. 256

[58] Stoddard, 2003 ; see also, Lindenberg and Bryant, 2001

new entrants.'[59] The four INGOs studied here were founded, and have head offices, in Western Europe and North America, have multiple national affiliates, and operate as confederations. They are often coordinator or lead agencies in the field, and smaller agencies work under their directive. They also serve as organizational ideal types for other smaller INGOs through their leadership in various inter-NGO forums. The similarity between their policies and operational frameworks and those of other INGOs is borne out through the numerous INGO forums, learning and evaluation groups, and frequent staff inter-change. These INGOs might thus be called leaders in the INGO 'community of practice.'[60]

Of these four INGOs, CARE, Oxfam, and World Vision are multi-mandate NGOs with a three pronged focus on humanitarian assistance, development assistance, and advocacy. MSF, on the other hand, is a 'single service' INGO in that it focuses only on the provision of medical assistance. It also has a specific approach to advocacy in that it will only report on human rights violations that it has found direct evidence of, and will refrain from assigning blame, preferring instead to only document the specific instance of a rights violation.[61] This divide between MSF and the other four INGOs is also reflective of the structure of the larger INGO community; while the majority of INGOs tend to be multi-mandate, there are also a smaller proportion of niche NGOs that are concerned with the delivery of a particular service, such as health or food.[62] The policies of these INGOs, as well as similarities and differences, are analyzed in greater depth in Chapter 4.

These four INGOs are used as case studies to 'provide an insight into a larger population' as they serve as leaders in the INGO community of practice. They also represent 'a typical set of values' held by many members of the broader humanitarian NGO community, in terms of their mandates and goals, organizational structures, performance evaluation tools, and breadth of operational

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[59] Sarah Collinson and Samir Elhawary, *Humanitarian Space: A Review of trends and issues* (London: Humanitarian Policy Group, 2012); p.19

[60] for the application of the term ' community of practice' to INGOs see, Denis Kennedy, " Advancing the Normative Frame: A community approach to humanitarian practices of neutrality", *Journal of Global Change and Governance,* 3(1):2009.

[61] MSF's policy towards advocacy changed drastically following the Rwandan crisis in 1994. This is detailed in Chapters 3 & 4.

[62] Merlin (Health) and Action Contra La Faim (Emergency food assistance) are examples of such single-service NGOs.

presence. The selection of these INGOs accordingly conforms to a 'typical-case' approach to case selection - i.e., one that 'exemplifies what is considered a typical set of values, given some general understanding of the phenomena.'[63] Where they differ from the other INGOs at the middle and the bottom of the pyramid is in terms of their size and the funds at their disposal; these organizations tend to be much larger in size, with greater resources at their disposal. However, this is not a drawback for the thesis, as one would expect that these 'giants' are therefore less susceptible to shifting organizational goals because of the availability of donor funds or competition with other organizations. In other words, their size, reputation, and relative financial security should make them less vulnerable to external pressures when compared with smaller INGOs, making it thereby possible to disaggregate their agency from the influence of external factors. Moreover, precisely because of their size, funds, and operational presence, one would expect their contestation to have the more significant effects on the functioning of the humanitarian regime.

There are a few limitations to the approach adopted here. There are often differences between INGO policy-making at a head-quarter level, and how this policy is interpreted by staff in the field office; equally, it is often not clear whether the policy that is being implemented is formulated at the headquarter or at the field level or the balance between the two. These are important questions, and where possible, they have been addressed in the empirical chapters. However, to do so systematically has been difficult for two reasons. First, to make the research design manageable, it was necessary to bracket off certain processes as important but beyond the scope of a single project. Second, much of the INGO interaction between headquarter and field offices is not well documented or archived, and thus the interaction between policy making at these two levels is difficult to capture. Some of this interaction however has been captured through the interviews conducted for this study.Nonetheless, where this information was available, it has been included in the empirical chapters. Another dimension that has been bracketed off is the differences and dynamics between the national offices of INGO, as, for example, MSF France and MSF Holland, or Oxfam GB and Oxfam Australia.

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[63] see John Gerring, " Case Selection for Case Study Analysis: Qualitative and Quantitative Techniques" in Janet M. Box-Steffensmeir, Henry E. Brady and David Collier, *The Oxford Handbook of Political Methodology* (Oxford: Oxford University Press, 2008); p. 648.

Selection of Political Emergencies

In order to examine how INGOs contribute to the contestation of the humanitarian regime and the effects of this contestation, INGOs policies and practices are examined in two political emergencies: Sri Lanka and Afghanistan from 1990-2010. A small 'n' study, focussing on two political emergencies, permits the kind of in-depth investigation required to examine the processes by which INGOs contest the humanitarian regime and the factors shaping contestation. The two cases of Afghanistan and Sri Lanka have been chosen on the basis of the dependent variable; in both cases, the contested nature of the humanitarian regime has already been documented in existing academic literature, practitioner accounts, and media reports. Such selection on the dependent variable permits an in-depth investigation into the processes and factors contributing to contestation. It also further serves the heuristic purpose of identifying additional potential causal pathways and variables.[64] Examining these cases over a period of time, rather than at a fixed point in time, also helps highlight the evolutionary nature of INGO contestation.[65]

These cases might be considered 'hard cases' in that in both Afghanistan and Sri Lanka international and national actors respectively dominate the aid system and are thereby capable of asserting strong control over INGO operations and the provision of aid. In both cases, one would then expect comparatively little agency for INGOs, given the internationalization of the conflict in Afghanistan and the existence of a strong central state in Sri Lanka. Therefore, if INGO agency can be shown in these two cases, it can be expected that these conclusions are at least partly generalizable to other cases as well.

Finally, an added benefit of studying the cases of Afghanistan and Sri Lanka is that they permit an examination of contending explanations in the literature about the chief factors contributing to the contestation of the humanitarian regime. The literature on contemporary humanitarian action, as outlined in Section II of this chapter, has two main strains: first, arguments emphasizing the politicization of aid, the impact of donor objectives, the blurring of lines between military and

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[64] On the heuristic function served by choosing cases on the basis of a dependent variable see :Bennett and George, 2005; p. 23

[65] for a discussion of the benefits of employing a small-n ideal type, see Bennet and George, 2005.

civilian arms of the aid response, and the subordination of humanitarian assistance to political objectives under integrated missions and 'whole of government' structures; and second, arguments emphasizing the manipulation of aid by warring parties, the influence of the 'strong state', the contribution of humanitarian assistance to the local political economy, and the legitimating function of aid for parties to the conflict. The existing literature thus constructs two rough case types - one of internal factors playing a central role in determining the functioning of the regime, and the other of external factors. Considering these as two sub-types, this project examines a case of each: Afghanistan represents the external sub-type and Sri Lanka, the internal sub-type. The choice of these two political emergencies thus allows for a comparison of the role of INGO contestation with both these sets of alternative explanations.

VI. Data Sources

This project draws on INGO policy documents, press releases, evaluation and learning reports, and aid memoirs by INGO workers. These have been taken from the archives and websites of the INGOs under study. INGO polices and positions have also been drawn from the websites of inter-agency consortiums such as the Inter-Agency Standing Committee (IASC),[66] the International Council of Voluntary Agencies (ICVA),[67] and Active Learning Network for Accountability and Performance in Humanitarian Action(ALNAP).[68] Another important source of information has been the country specific humanitarian portals administered by the United Nations Office for Coordination of Humanitarian Affairs (OCHA), which provides situation reports, an overview of

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[66] The Inter-Agency Standing Committee (IASC) is an inter-agency forum for coordination, policy development and decision-making involving key UN and non-UN humanitarian partners. <http://www.humanitarianinfo.org/iasc/>

[67] The International Council of Voluntary Agencies (ICVA), founded in 1962, is a global network of 70 non-governmental organisations (NGOs). It provides a joint advocacy platform for INGOs, and also provides its members with up-to-date information and analyses on policy developments in humanitarian response. <http://www.icva.ch/>

[68] The Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP) is an inter-agency learning network that supports the humanitarian sector to improve humanitarian performance through learning, peer-to-peer sharing and research. <http://www.alnap.org/>

the 'who/what/where' in particular contexts, survey information, and meeting briefing notes. [69] Another key source of information has been ReliefWeb, also managed by OCHA, which provides updates on the humanitarian situation in complex emergencies and natural disasters, funding appeals, policy papers, and press releases from various sources, including Governments, UN agencies, local civil society organization, and NGOs. The project also relies on policy papers, program reports and press releases from UN agencies, donor agencies, national governments, and international and local think tanks.

Case data was also gathered through in-depth, semi-structured interviews and informal discussions with INGOs and local NGO representatives, local and central government officials, representatives from UN agencies, representatives from local and international think tanks and civil society organizations, military officials, and journalists. These interviews had three chief purposes: to help construct a descriptive account of INGO operations on the ground; to identify the key factors - external and internal - shaping INGO policies and programs and their relative impact; and to understand how INGO operations were perceived by local actors and other actors relevant at the operational level. Data gathered from a single interview was examined against other interviews to check the validity; only information that could be verified through multiple interviews is considered here.

INGO representatives were selected on the basis of their role within a specific INGO and how relevant that role was to the questions guiding this thesis. Thus, for example, INGO representatives were chosen from the Humanitarian Affairs Division and Advocacy Division, and not from the more specific sectoral departments such as Gender, Agriculture, or Trade. In addition, I attended internal INGO meetings and inter-INGO meetings, which allowed for a small degree of participant observation.

Field work was conducted in Sri Lanka and New York in 2010, and Brussels in 2009. In addition, I visited INGO libraries in London and Oxford for archival research. I have been unable to visit

[69] The UN office for the Coordination of Humanitarian Affairs (OCHA) is an inter-agency body, serving UN agencies and NGOs in the humanitarian domain. Aside from serving a coordination role, one of its main product is the Consolidated Appeal Process (CAP), an advocacy and planning tool to deliver humanitarian assistance together in a given emergency. <http://www.unocha.org/>

Afghanistan due to security reasons. Accordingly, data for the Afghanistan case has been collected through phone interviews with representatives from INGOs, local NGOs, and with other civil society actors. In addition, I met some INGO staff previously posted Afghanistan, based now in London, New Delhi, Colombo and New York.

There are some limitations I encountered with data collection. First, INGOs do not keep a systematic record of all their projects and many records have been lost as offices have closed or re-located. Second, INGOs are fiercely protective of and guarded about sharing internal policy documents and program information. It has thus not been possible to examine individual INGOs in depth across a period of time in both Sri Lanka and Afghanistan; rather, a narrative had to be weaved together from the various bits of information made available from INGOs. Finally, given the sensitive political context in both Sri Lanka and Afghanistan, most interviewees insisted on strict personal and organizational anonymity. Thus, particular points or quotes in the thesis have not been attributed to specific INGOs or INGO personnel, unless permitted; however, a full list of interviewees, including name and organization, has been provided in the bibliography.

VII. Outline of Chapters

In order to examine INGO contestation of the humanitarian regime, chapter 2 first identifies key provisions of the legal regime as contained in the Geneva Conventions and Additional Protocols, highlighting the various possible points of contention and ambiguity. International Relations theorists provide different explanations for how a regime functions, focusing on the interests of the most powerful actors, competition between implementing organizations, or changes in the normative structures of international society. Noting shortcomings in these accounts, Chapter 2 then develops an alternative framework for understanding how regimes function, focusing specifically on the contestation of a regime as it moves from a legal document to implementation across operational contexts. It argues that regime contestation occurs through the processes of interpretation and implementation, which then provides two empirical access points for analysis of INGO contestation in the remainder of the chapter. The last part of the chapter highlights the

various factors that might shape INGO contestation, and indicates the means through which the role of INGO identity can be observed.

Chapters 3 and 4 focus on how INGOs have interpreted the legal regime historically and in current policy documents, highlighting the substantive contestation of the regime at the level of interpretation. Chapter 3 identifies and categorizes INGO interpretations of the regime in terms of three ideal types - solidarist, developmental, and integrated humanitarian assistance - and Chapter 4 examines how these ideal types shape and define INGO current policy frameworks. INGO policies combine and prioritize these ideal types differently, and this is reflective of their conception of their identity.

Chapters 5 and 6 focus on the process of INGO implementation in Afghanistan and Sri Lanka from 1990-2010, how this contributes to the contestation of the humanitarian regime, and the effects of this contestation. It argues that INGO contestation of the regime at the level of practice has followed from policy level contestation around a a solidarist, developmental, and integrated ideal type. In both Sri Lanka and Afghanistan, INGO contestation of the regime served to make these organisations participants in the conflict, complicated the terms on which they negotiated access with combatants, and created the impression that they were acting on behalf of western donors.

The four empirical chapters also interrogate the factors shaping INGO contestation of the humanitarian regime, with a specific focus on the role and effects of INGO identity. They illustrate that INGO contestation at the level of interpretation and implementation is shaped by INGOs' conception of their role and social purpose, as articulated in their mandates. It is argued that INGOs are normatively purposive actors and that implementing a mandate is an act of self-constitution.

The concluding chapter draws out and examines the broader implications of INGO contestation for understandings of the humanitarian regime.It examines the implications of INGO identity being a key factor shaping contestation, the implications of contestation for the constituent norms and principles of the legal regime, and what INGO contestation implies for facilitating negotiation with

combatants in political emergencies. It concludes with the suggestion that there is a value to a narrow humanitarian mandate, limited to the delivery of only basic goods and services.

2

FRAMEWORK FOR REGIME CONTESTATION

The 1949 Geneva Conventions and 1977 Additional Protocols establish a formal legal regime for the provision of humanitarian assistance in international and non-international armed conflict. Humanitarian assistance refers specifically to goods and services essential for the survival of a population, such as food, health, shelter, and water and sanitation services. Under the Geneva Conventions, humanitarian assistance must be impartial, based on the sole criterion of individual human need; it is intended only as a form of palliative care to address immediate suffering, and must remain distinct from the political dimensions of the conflict.[1]

This chapter is divided into three parts. Part I examines the key provisions of the legal regime for humanitarian assistance, noting potential points of contestation. Part II examines how regimes are defined and understood by schools of International Relations theory. Noting shortcomings in these accounts, Part III then provides an alternative framework for what regimes are and how they function. The framework for regime contestation developed here suggests that a regime is contested through two distinct, but interrelated processes, of actor interpretation and actor implementation. These two processes contribute to the constitution of the regime, and have causal effects on how the regime functions and the outcomes it produces. In this view, a regime is considered both flexible (with actor interpretations) and structuring (of actor behavior). The theoretical framework developed in this chapter serves a heuristic function as it suggests the levels of analyses at which INGO contestation can be identified and examined and provides conceptual categories to navigate the empirical evidence.[2] The chapter then examines the factors that drive INGO contestation of the regime. It outlines the various material and ideational factors that might drive INGO contestation, and then identifies the manner in which the impacts of INGO identity - a

[1] The treaties of 1949 have been ratified, in whole or with reservations by 195 countries. Additional Protocol I and II have been ratified by 170 and 165 countries respectively.

[2] Adam Humphreys, “ The heuristic application of explanatory theories in International Relations”, *European Journal of International Relations,* 17(257): 2011; p. 263

factor relatively unexplored in the existing literature - on the contestation of the humanitarian regime might be observed and evaluated.

I. The Legal Regime for Humanitarian Assistance

Function and Scope of the Humanitarian Regime

The core *function* of the humanitarian regime is to address immediate human suffering caused by armed conflict through the provision of emergency, live-saving relief assistance. External actors may provide such relief assistance 'if the civilian population is suffering excessive deprivation owing to a lack of supplies essential to its survival'.[3] Under the legal regime, the *scope* of humanitarian assistance or the range of goods essential for survival includes food, water and sanitation services, medicine and health services, and shelter.[4] However, the Conventions also make reference to the imperative of preserving 'human dignity.' This has opened the way for varying interpretations of the goods and services that can be considered to fall under the scope of humanitarian assistance. Some interpretations of the legal regime thus suggest, for example, that access to means of sustainable livelihoods is also necessary for human dignity and developmental programs that seek to achieve this goal thereby also fall under the ambit of humanitarian assistance.[5]

The function and scope of the regime also reflect the need to balance human suffering with military necessity and concerns about state sovereignty. They 'attempt to draw a clear line between politics and the purposes and conduct of war, on the one hand, and assistance to victims, on the other, [where] the latter is to proceed independently of the former.'[6] Following from this, Article 3 of the

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[3] Additional Protocols to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977;Paragraph 2

[4] Article 59 of the 1949 Geneva Convention IV mentions food and medical supplies. This was extended to clothing, bedding, means of shelter and other supplies essential to the survival of the civilian population with the adoption of the 1997 Additional Protocol I.

[5] see for example, ECHO, *Towards a Human Rights Approach to European Commission Humanitarian Aid* (Brussels: ECHO, 1999).

[6] Neil MacFarlane, "Humanitarian Action and Conflict", *International Journal,* 54 (4): 1999; p. 538

Geneva Conventions states that 'nothing in this protocol should be invoked for the purpose of affecting the sovereignty of the state or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the state, or to defend the national unity and territorial integrity of the state.'[7]

However, the question of what constitutes interference in the domestic jurisdiction of a state, and therefore lies beyond the scope of humanitarian assistance, is a point of contention in some interpretations of the regime. For example, some INGO interpretations of the regime suggest that being 'humanitarian' means also means being concerned with the long term causes of suffering and the capacities of communities to cope with future crises. Accordingly, humanitarian actors should also be engaged in development and governance programs, and this can be construed as legitimate interference in the domestic affairs of the state as it is motivated by a concern with human suffering.[8] On the other hand, some accounts are clear that, 'assistance which is intended to support the local economy runs contrary to the strictures of international humanitarian law'[9] as it can alter the dynamics of the conflict and thereby amount to political interference in the conflict and impinge upon the sovereignty of the state.

Following from the primacy accorded to sovereignty and non-interference, the Conventions also state that national authorities or the occupying power maintain a 'right to control' the flow of assistance. It is within the rights of the occupying power or national governments to put in place verification and supervision procedures for goods and services; they also have the right to suspend relief activities for urgent reasons of security. Article 23, Additional Protocol I states, for example, that while parties to the conflict are obliged to allow the passage of relief items necessary to the survival of the population, this obligation is subject to the condition that relief will not be diverted from its destination or that the military effort or the economy of the adversary will gain a definite

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[7] Article 3,Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

[8] see INGO interpretations in Chapters 3 and 4.

[9] Kate Mackintosh, *The Principles of Humanitarian Action in International Law* (London: Humanitarian Policy Group, 2000); p.9

advantage.[10] Article 23 Geneva Convention similarly states that while a party must allow free passage of goods and services, it might withhold assistance if concerned that the consignment might be diverted from its destination; that aid agencies do not have effective or sufficient control over the provision of relief; or, if a definite military advantage may accrue to the military efforts of combatants through the provision of relief, or through the provision of goods and services that would be required for the production of such relief items. [11]

It is important to note that under the Conventions, the primary responsibility for the provision of humanitarian assistance does not lie with international humanitarian agencies but with the occupying power, in cases of occupied territory, and with national authorities, in non-occupied territories.[12] External aid is thereby intended to be complementary, and 'is only provided when the responsible authorities can no longer meet the basic necessities of the civilian population whose survival is in jeopardy.' [13]

Operating Principles

Under the legal regime, the provision of humanitarian assistance is to be guided by the principles of humanity, impartiality, neutrality, and independence.[14] The latter three principles, as Daniel Thurer argues, 'are primarily operational and instrumental in character, and serve the overarching

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[10] Article 23 of Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

[11] Article 23 of Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949

[12] Article 55 of the 1949 Geneva Convention IV.

[13] Sylvian Beauchamp, " Defining the Humanitarian Space through Public International Law", Working paper from the *On the Edges of Conflict* project, 2008 (accessed on 07.02.11)http://www.redcross.ca/cmslib/general/obeoc_beauchamp.pdf; p.10

[14] There exists a vast literature that unpacks the foundation and meaning of these principles. See for example, Deen Chatterjee ed. *The Ethics of Assistance: Morality and the Distant Needy* (Cambridge University Press, 2004)*;* Marc Weller, " The Relativity of Humanitarian Neutrality and Impartiality", *Journal of Humanitarian Assistance,* 1997; D. Plattner, " ICRC neutrality and neutrality in humanitarian assistance", *International Review of the Red Cross,* 311(1): 1996; Hugo Slim, " Relief Agencies and Moral Standing in War; Principles of neutrality, impartiality, and solidarity", *Development in Practice*, 7(1):1997. This chapter does not interrogate in detail this literature as the central aim is to identify the key points of contention around these principles pertaining specifically to the provision of humanitarian assistance in political emergencies, rather than the principles themselves.

goal of humanity.'[15] The Conventions state that relief actions must be 'of an exclusively humanitarian and impartial nature and conducted without any adverse distinction.'[16]The official ICRC commentary on the Geneva Conventions defines a humanitarian act as that which is 'concerned with the condition of man considered solely as a human being, regardless of his value as a military, political, professional or other unit' and 'not affected by any political or military considerations.'[17] The International Court of Justice's (ICJ) ruling in the case of Nicaragua vs. the United States (1986), for example, defines humanitarian assistance in terms of 'preventing suffering' and 'protecting life' in a manner that does not constitute interference in the internal affairs of state.[18] The ICJ also ruled that ' if the provision of humanitarian assistance is to escape condemnation as an intervention in the internal affairs of the state [because humanitarian assistance is by definition not unlawful intervention in another state], not only must it be limited to the purposes hallowed in the practice of the Red Cross, namely to "prevent suffering" and "to protect life and health and ensure respect for the human being", it must above all, be given without discrimination to all in need.'[19]Nonetheless, the provision that aid must be humanitarian in character is also ambiguous due to different definitions and expectations of what constitutes a particular action or activity as 'humanitarian'. Some interpretations suggest that for assistance to be truly humanitarian it must also be concerned with, for example, the injustices and crimes inflicted upon civilians by armed groups or local authorities. However, such a view of what constitutes, and what is required by, humanitarian action is seen by others as amounting to interference in the conflict.[20]

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[15] Daniel Thurer, "Dunant's Pyramid: thoughts on the humanitarian space", *International Review of the Red Cross,* 89 (865): 2007; p.55

[16] Article 18, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

[17] Jean Picket, *The Fundamental Principles of the Red Cross,* (Geneva: ICRC, 1979) ; p. 96; see also Heike Spieker, "The right to give and receive assistance" in H.-J. Heintze and A. Zwitter eds. *International Law and Humanitarian Assistance: A Crosscut through Legal Issues pertaining to Humanitarianism (*Berlin: Springer Books, 2011);Mackintosh,2000.

[18] *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Merits),* International Court of Justice Report 1986, quoted in Mackintosh, 2000.

[19] Case Concerning Military and Paramilitary Activities in and against Nicaragua (Merits), International Court of Justice Reports 1986, quoted in Mackintosh, 2000; p. 7

[20] compare, for example, Thomas Weiss, " Devolving Responsibilities: A Framework for Analyzing NGOs and Services", *Third World Quarterly,* 18(3): 1997 and Fiona Fox, " New Humanitarianism: Does it provide a Moral Banner for the 21st Century", *Disasters,* 25(4): 2001.

The second key principle governing the provision of humanitarian aid is *impartiality*. Impartiality implies that that aid should be provided in a non-discriminatory manner, based on need alone, and proportionate to the needs of the population. Jean Picket, in his seminal commentary on the Geneva Conventions defined impartiality as consisting of three components: absence of objective discrimination on the basis of membership to a particular group (for example, on the basis of race, color, religion, faith, or sex); proportionality to needs; and, the absence of any subjective distinction relating to individual guilt or innocence when determining the provision of aid.[21] With these three conditions in place, aid can be claimed to motivated by purely 'humanitarian' concerns and not social, political, or economic considerations, and thereby impartial.

The principle of impartiality rests on what constitutes a humanitarian need and thereby is open to contestation along the lines mentioned above. Moreover, the principle of impartiality can be contradictory to perceptions of humanitarian agency neutrality (discussed below). For example, responding to large scale humanitarian needs in a certain segment of the population can make it appear that agencies are applying discriminatory policies and thereby violating the principle of neutrality.[22]However, as Kate Mackintosh argues, 'while the principle of impartiality suggests that programs should be designed to respond to the greatest need, they do not lose the right to be called humanitarian if for operational reasons they serve the population of just one area.'[23] The principle of impartiality rests on what constitutes a humanitarian need and thereby is open to contestation along the lines mentioned above.

Neutrality is the second key operating principle for the humanitarian regime. While not explicitly mentioned in the Conventions, the neutrality principle can be derived from the third component of impartiality i.e. the absence of any subjective distinctions relating to individual guilt or innocence in the delivery of aid. This suggests that agencies must remain neutral about the causes of conflict and suffering while providing aid, and aid should not be influenced by the aid agency's ideological

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[21] Picket 1979; see also Mackintosh, 2000.

[22] see for example, Terry, 2002.

[23] Mackintosh, 2000;p.7

beliefs.Daniel Thurer thus argues that the 'principle of neutrality imposes two obligations on neutral parties: (i) maintaining a distance from the hostilities that would help or hinder one party or the other, and (ii) taking no part in political, racial, religious, or ideological controversy.[24]Ruth Stoffels similarly notes that neutrality contains two elements: ideological neutrality and non-participation in hostilities, direct or indirect, arguing that it is a violation of ideological neutrality for external assistance actors 'to make public their opinion as to the reasons for a conflict, to the support the cause of one of the parties, or to exploit humanitarian issues to win support for one of the parties.'[25] Neutrality however, as Thurer notes, ' is not a value in itself, but a means of obtaining access to the victims'[26], and thereby does not mean that agencies cannot have an opinion of the justness of the conflict but that this opinion must not determine the manner in which they conceptualize projects and make programming decisions, nor should it appear as such to combatants and other local actors.

The principle of neutrality can also be derived from the provision pertaining to conditions under which national authorities have a right to withhold assistance. Article 23 of the Geneva Conventions, as mentioned above, states that assistance may be withheld if it is accruing a definite military advantage to a party to the conflict. This then implies that aid agencies have to ensure that relief items do not benefit a party to the conflict and assistance remains distinct from the political dimensions of the conflict. [27]

The meaning and applicability of neutrality is however deeply contested amongst the humanitarian agencies. Some interpretations which seek to incorporate a concern with human rights into the ambit of humanitarian assistance suggest, for example, that concern with human suffering sometimes requires an agency to take a side in the conflict, and even influence the conflict when gross injustices are being committed by a party to the conflict. Others argue that this concern with the rights of populations prevents them from being neutral to the causes of suffering and

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[24] Thurer,2007; p. 58

[25] Ruth Abril Stoffels, " Legal Regulation of humanitarian assistance in armed conflict: Achievements and Gaps", *International Review of the Red Cross,* 86(855):2004; p. 542

[26] Thurer, 2007; p.58

[27] Article 23, Geneva Conventions I.

jeopardizes the provision of life-saving assistance.[28] This debate, in a large part, hinges on the question of whether human rights concerns fall under the ambit of humanitarian assistance, as well as the scope or range of rights that might be considered as covered by humanitarian assistance. As Mackintosh argues, ' if human rights conditionality is seen as a cynical foreign policy tool...clearly it contravenes the [law]. But, if it genuinely seeks to improve the conditions of individuals (without adverse distinction), the answer is not so clear. '[29]

Some commentaries suggest that a resolution to this point of contestation can be derived from international law. There are clear linkages between International Humanitarian Law and International Human Rights Law, though the former applies specifically to war time and the latter to peace time. As former President of the ICRC, Jakob Kellenberger argued, 'while one of the specific aims of international humanitarian law is to ensure the protection of persons effected by armed conflict, and in particular, of those who find themselves at the hands of the adversary, the purpose of human rights law is to govern the relations between states and individuals.'[30] Following from this distinction, the perusal of civil and political rights might lie outside the ambit of humanitarian action. Moreover, while the provisions of international humanitarian law allow governments to abdicate from certain rights in the case of a public emergency, certain non-derogable rights do however, continue to apply even in armed conflict and could thus arguably be said to fall under the ambit of humanitarian assistance; these include the right to life, prohibition of torture or cruel or inhumane treatment, and the prohibition of slavery or servitude.[31]

Ruti G.Teitel goes one step further, highlighting how humanitarian law and human rights law are now running together in significant ways. Teitel argues that there has been a move 'away from the

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[28] These positions are detailed in Chapters 3 and 4 on INGO policies.

[29] Mackintosh,2000; p. 11

[30] "International Humanitarian Law and Other Legal Regimes: Interplay in Situations of Violence", Address by Jakob Kellenberger, 27th Annual Round Table on Current Problems of International Humanitarian Law, 4 September 2003 (accessed on 06. 07. 12) http://www.icrc.org/eng/assets/files/other/irrc_851_kellenberger.pdf>

[31] Rights can be non-derogable or derogable. The former includes: the right not to be displaced, freedom of residence, freedom of movement, right of return, right not be detained/ interned. Non-derogable rights include prohibitions against attacks on civilians; prohibitions against torture and cruel and inhuman treatment; right to food; prohibitions against disappearances.

single-minded conceptualization of interstate relations premised on state interests and toward instead the legalist discourse of humanity rights pertaining to persons and peoples…'; this has lead to the emergence of what she calls 'humanity's law', dissolving also the divisions between humanitarian law and human rights law.[32]

The third operating principle intended to guide the provision of humanitarian relief under the legal regime is that of independence. Independence implies that humanitarian organizations must retain their autonomy from states, combatants and other local or international authorities. Independence is again an operational principle on the basis of which agencies negotiate access, assuring combatants that their programs are based on the criteria of need alone and that INGOs have no political objectives in providing aid.[33]

Humanitarian Space

The Geneva Conventions and Additional Protocols thus seek to create an impartial and neutral space within the larger conflict space in which the immediate needs of the population can be met without impinging on the dynamics of the conflict or the interests of combatants. As Johanna Grombech Wagner argues, the Conventions 'provide a solid ground for a humanitarian space that is impartial in character…in which humanitarian organizations can discharge their responsibilities both effectively and safely.'[34]The creation of this space is based on a concern for humanity, and impartiality, neutrality, and independence are the operational principles which facilitate the

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[32] Ruti G. Teitel, *Humanity's Law (*New York: Oxford University Press, 2011).

Marko Milanovic also argues that human rights law can be used to fill in gaps or unregulated areas in international humanitarian law, and this could be done by framing IHL in terms of International Human Rights Law(IHRL). He also argues that the complementarities between IHL and IHRL are confirmed by pronouncements by states and international political bodies such as international courts and tribunals.

Marko Milanovic, " Norms, Conflicts, International Humanitarian Law, and Human Rights Law", in Orna Ben-Naftali ed, *International Humanitarian Law and International Human Rights Law* (Oxford/New York: Oxford University Press, 2011).

[33] Thurer, 2007.

[34] Johanna Grombech Wagner, " An IHL/ICRC perspective on 'humanitarian space', *Humanitarian Exchange Network,* 32 (1): 2005; p.2

creation of this space. A humanitarian space is thus intended to facilitate the provision of aid to address the suffering of civilians without interfering in the political dimensions of the conflict. [35]

The creation of such an operational space, governed by the principles of impartiality, neutrality and independence, is also the condition on which external agencies might be granted access to a population. As Mackintosh argues, the Conventions are phrased 'in terms of obligations on the parties to allow relief on to or through their territory, the conditions which they are entitled to impose on that relief delivery, as well as the grounds on which they can withhold their consent.'[36]The principles of humanitarian action therefore ' appear as conditions for access for relief operations under international humanitarian law.'[37] However, as noted earlier, this space is not under the exclusive purview of humanitarian agencies; the primary responsibility for the provision of humanitarian assistance lies with national authorities or intervening states, and humanitarian agencies play only a complementary role.

The definition of humanitarian space however is debated, reflecting the points of ambiguity and contestation in the Geneva Conventions. Beauchamp notes that the debate occurs within a spectrum which includes two extremities: 'at one end, the view that humanitarian aid should be solely guided by humanitarian considerations and delivered by humanitarian organizations; and at the other end, the postulate that in order to achieve peace and conflict prevention, humanitarian aid must be integrated into an holistic political and military approach linked to peacebuilding and development.'[38]Accordingly, some INGO interpretations of the regime maintain that creating and maintaining a humanitarian space requires limiting the scope of activities to emergency relief assistance alone, and that it is is bound by strict adherence to the principles of humanity,

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[35] The UN Office of the Coordination of Humanitarian Affair's (OCHA) Glossary of Humanitarian terms similarly notes that 'adherence to the key operating principles of neutrality and impartiality in humanitarian operations represents the critical means by which the prime objective, of ensuring that suffering must be met where ever it is found, can be achieved.'

OCHA, *Glossary of Humanitarian Terms in Relation to the Protection Of Civilians In Armed Conflict* (New York: United Nations, 2003) p.14

[36] Mackintosh, 2000;p.7

[37] Mackintosh, 2000; p. 7

[38] Beauchamp, 2000; p. 8

impartiality, and neutrality. Other INGOs argue that the humanity imperative requires humanitarian agencies to engage in wider ranging activities, including development assistance, peacebuilding, and human rights advocacy, even if this means sometimes violating or reinterpreting the above principles.[39]

A contributing factor to this ambiguity is the fact that the humanitarian regime is weakly legalized in terms of obligation, precision, and delegation, and is thereby open to multiple interpretations that might alter the meaning or significance of the regime.[40] The fact that the regime also rests on normative evaluations about, for example, what constitutes human dignity, further contributes to the contestation of the regime. Multiple interpretations do not however negate the autonomous power and effects of the formal legalized regime. As Duncan Snidal and Kenneth W. Abbot argue, whether weakly or strongly legalized, a regime 'operates by changing material incentives and by modifying understandings, standards of behavior, and identities.'[41]

The weakly legalized regime for the provision of humanitarian assistance in armed conflict is thus ambiguous and open to contestation in terms of its function, scope, and operating principles. The regime seeks to address suffering caused by conflict through the provision of relief items that meet the survival needs of people. However, the extent of 'survival needs' is debated; some argue that this means that humanitarian assistance should be limited to palliative care through the provision of food, shelter, and medicines, while others maintain that a comprehensive sets of human needs must be addressed, including livelihood and justice issues, to preserve human dignity.[42] Contestation of the legal regime is thus about both the function and scope of the humanitarian regime: whether it should address only immediate suffering or whether 'being humanitarian' requires a concern with the conflict itself and whether, following from this debate about function, the scope of the regime should extent to development, rights, and justice concerns. The meaning

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[39] This debate among INGOs is detailed in Chapters 3 & 4.

[40] For a discussion of the nature of legalization pertaining to international regimes, see Kenneth W. Abbott, Robert O.Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal, " The Concept of Legalization", *International Organizations,* 54 (3): 2000.

[41] Abbot et al., 2000; p. 422-5

[42] This debate is detailed in Chapters 3 & 4.

and applicability of humanitarian principles is contested along similar lines. Contestation of the principles of impartiality and neutrality is embedded in debates about what constitutes a humanitarian need, what kind of assistance constitutes interference in the political dimensions of the conflict, and the conditions under which such interference might be considered legitimate and even necessary. These debates are critical for the terms on which humanitarian agencies negotiate and are granted access, their ability to operate effectively and safely, their relationship with various actors in the conflict space, and eventually the nature and effects of humanitarian assistance.

II. Theories of International Regimes

Understanding how regimes are constituted and function can provide conceptual and empirical access points to interrogate INGO contestation of the humanitarian regime. International Relations theorists take different approaches to explaining the nature and functioning of regimes.[43] This section will highlight the key arguments and shortcomings in rationalist and social constructivist theories of international regimes, and highlight how these open up the possibilities for constructing an alternative regime framework.

Rationalist accounts of International Regimes

Rationalists - comprising theorists from both the neo-realist and neo-liberal schools of thought - base their theories on a reductionist ontology and structural determinism. Actors, assumed to be egoistic and rational, and with a fixed set of interests and preferences, are ontologically prior to the system in which they operate. The structure of the international system is determined by the distribution of capabilities amongst actors; however, the international structure also develops a logic of its own, and pushes and pulls actors towards certain kinds of behavior.[44] The key

[43] for overview of various approaches to regimes, and a comparison of them, see: Volker Rittberger ed. *Regime theory and International Relations* (Oxford: Oxford University Press, 1993);Oran R. Young, "International Regimes: Toward a New Theory of Institutions", *World Politics,* 39(1): 1986; Andreas Hasenclever, Peter Mayer, Volker Ritterberger, *Theories of International Regimes,* (New York: Cambridge University Press,1997).

[44] for a good discussion of the similarities between neo-realist and neo-liberal accounts, see John Ruggie, "What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge", *International Organization,* 52(4): 1999.

explanatory variable for rationalists is the distribution of power in terms of actor capabilities in the international system, and 'any empirical political behavior, or outcome can be attributed to the interplay between self-interested stakeholders who cooperate, compete, obey, command, and assist, and harm each other from time to time.' [45]

These assumptions about the international system inform the rationalist view of regimes. For structural realists, regimes are largely irrelevant or epiphenomenal as their existence and functioning in the international system is entirely determined by the interests of the powerful states and the distribution of power in the international system. Susan Strange argues, for example, that '[a]ll those international agreements defined by the label 'regime' are only too easily upset when either the balance of bargaining power or the perception of the national interest (or both together) change among those states who negotiate them.'[46]

Modified structural realists and neo-liberal institutionalists acknowledge the significance of international regimes, considering them worthy objects of study. In this view, regimes are, to quote Stephen Krasner, 'implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given issue area in international relations.'[47] Robert Keohane and Joseph Nye similarly define regimes as 'sets of governing arrangements' that include 'networks of rules, norms, and procedures that regularize behavior and control its effects.'[48] In issue-areas that are not ruled by a zero-sum logic, and in which actors are unable to secure Pareto-optimal outcomes on their own accord, regimes become relevant by facilitating collective action and coordination, thereby increasing predictability and security in the international system in the long-run. However, institutionalist accounts of regimes note that the functioning of a regime can give way to the pursuit of individual interests by actors, preventing thereby collective action between actors to address common issues. Regimes are thus 'strictly

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[45] Sreeram Chaulia, *International Organizations and Civilian Protection: Power, Ideas and Humanitarian Aid in Conflict Zones* (London, IB Tauris, 2011); p. 4

[46] Susan Strange quoted in Stephen D. Krasner, " Structural causes and regime consequences: Regimes as intervening variables", *International Organization,* 36(2):1982; p. 185

[47] Krasner, 1982; p.185.

[48] Robert Keohane and Joseph Nye, *Power and Interdependence (*New York: Longman, 2000); p. 19

interest based phenomena, the creation, maintenance, and demise of which can and must be accounted for from the perspective of strategically rational but otherwise mutually indifferent actors.'[49]

The rationalist view of regimes has four key features, which I will later argue limit our understanding of regimes and how they produce certain behavioral outcomes. First, regimes are, at best, seen as intervening variables standing between causal factors of power and interest on the one hand, and related outcomes and behavior on the other. Second, rationalist accounts are fundamentally state-focused, which often results in sidelining the agency and role of international organizations and other non-state actors in how a regime functions. Third, just as the interests of actors are seen as fixed and exogenous to interaction, regimes themselves are seen as stable and static, at the point where actors' expectations converge. Fourth, regimes are seen as pushing and pulling actors towards certain behavioral outcomes, or regularizing behavior in the direction of compliance or violation; the functioning of a regime is thus explained in behavioral terms.

The structural realist and modified structural realist accounts correspond to the power and interest based explanations of the functioning of the humanitarian regime. Thus, in the first case, as with the arguments about the politicization and subordination of aid, one would expect the functioning of the humanitarian regime to reflect the difference in the power or capabilities of donor states, warring parties and humanitarian agencies. [50] Accounts that stress problems of collective action and coordination correspond to the institutionalist view of regimes, which acknowledges the central role of international organizations (IOs) but nonetheless bracket off their identities, interests, and the processes by which these might shift. Keeping with this institutionalist account of regimes, one would expect the functioning of the humanitarian regime to be a reflection of the extent to which NGOs have been successful in adjusting to state preferences, and are able to overcome the temptation to pursue individual organizational interests at the cost of sector-wide

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[49] Hasenclever et al., 1997; p. 26.

[50] see for example Espen Barth Eide, Anja Kaspersen, Randolph Kent and Karen von Hippel, *Report on Integrated Missions: Practical Perspectives and Recommendations* (Geneva: UN-ECHA, 2005); Mohammed Haneef Atmar, "The Politicization of Humanitarian Aid and Its Consequences for Afghans", *Disasters,* 25(4): 2001. Cornish, 2008; Leader, 2000.

cooperation that is required to improve the effectiveness of the humanitarian regime.[51] The functioning of the humanitarian regime in political emergencies is thus a reflection of the power differentials between actors and/or the extent to which actors are able to align interests and agree on collective action in the delivery of humanitarian aid.

Social constructivist understanding of International Regimes

Social constructivists' analysis of regimes is based on different assumptions about actors and the international system. Unlike rationalists, social constructivists argue that actors and structures are mutually constituted, and that the identities and interests of actors are endogenous to social interaction. International structure is both constituted and transformed by actors' inter-subjectively held beliefs and knowledge; structure, however, is also responsible for constituting the identities and interests of actors, and constraining or enabling actor behavior.[52]

Following on from these assumptions about actors and structures in international society, Friedrich Kratochwil and John Ruggie argue that Krasner's acknowledgement that regimes are based on 'convergent expectations' gives regimes 'an inescapable inter-subjective quality.'[53] It follows, they argue, 'that we know regimes by their principles and shared understandings of desirable and acceptable forms of behavior... [and] the ontology of regimes [thereby] rests upon a strong element of inter-subjectivity.'[54] Regimes, in this view, are thus 'more than mere incentive manipulators affecting the utility calculation of rational actors,'[55] but rather, comprise 'the principled and shared understandings of desirable and acceptable forms of social behavior'[56] within a particular issue area. The principles and rules underpinning a regime are not only, or

[51] see for example: Thomas Weiss and Peter Hoffman. "The Fog of Humanitarianism: Collective Action problems and Learning-Challenged Organizations", *Journal of Intervention and Statebuilding,* 1(1): 2007; Ramalingam and Barnett, 2010

[52] see: Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999).

[53] Kratochwil and Ruggie, 1986; p. 764

[54] Ibid.

[55] Hasenclever et al., 1997; p. 163

[56] Kratochwil and Ruggie, 1986;p. 764

necessarily, empirical facts but, rather, 'attitudinal phenomena' that 'exist primarily as participants' understandings, expectations, or convictions about legitimate, appropriate, or moral behavior.'[57]

Constructivist scholarship often provides 'property' accounts of a regime, unpacking the properties or constituent features of a particular regime.[58] Others focus on the functioning of the regime, or how a regime, as an ideational structure, shapes actors' interests and behaviors.[59] The relationship between regimes and particular outcomes is explained with reference to norm entrepreneurs and the processes of socialization, emulation, and moral entrapment, amongst others.[60]

These conventional constructivist accounts share four common features, which I argue later, result in an inadequate understanding of regimes.[61]First, despite the emphasis on the mutual constitution of actors and structures, there is a tendency to privilege structure over agency in empirical studies of regimes as 'what channels and directs behavior in this view are components of social structure -

[57] Donald J. Puchala and Raymond F. Hopkins, "International Regimes: lessons from inductive analysis," in Stephen Krasner, *International Regimes* (Ithaca N.Y.: Cornell University Press, 1983); pg. 62.

[58] Robert Cummins, *The Nature of Psychological Explanation (*Cambridge, MA: MIT Press, 1983).
for examples of property accounts see: Thomas Banchoff, " German Identity and European Integration", *European Journal of International Relations* 5(3):1999; Ted Hopf, *Social Construction in International Politics: Identities and Foreign policies,* (Ithaca, NY: Cornell University Press, 2002).

[59] see for example: Thomas Risse-Kappen, Steve Ropp, and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change, (*Cambridge: Cambridge University Press, 1999); Finnemore and Sikkink, 1998.

[60] See for example:Jeffery Checkel, ed., *International Institutions and Socialization in Europe* (New York:Cambridge University Press, 2007); Neta Crawford, *Argument and Change in World Politics* (Cambridge: Cambridge University Press, 2003).

[61] The term conventional constructivism is used to here to distinguish these accounts from those of critical constructivists, or critical theorists such as post-modernists. Conventional and critical constructivists share some fundamental ideas - about the mutual constitution of actors and structures and the focus on intersubjective meanings and social facts. However, conventional constructivists tend to accept a minimal foundationalism, and seek to explore causal relations between actors, processes, and events in time. Critical constructivists however reject such foundationalism and conceptualize and study social reality exclusively relational terms, often in terms of the implicit power relations through which social entities are constituted. As such,critical constructivists are less concerned with the intentions of individuals than the intention expressed in social action.These differences, as well as how thesis thesis situates itself within this spectrum of constructivism are further explored in section III of this chapter.

For more on the differences between conventional and critical constructivism see: Ted Hopf, " The Promise of Constructivism in International Relations Theory", *International Security,* 23 (1):1998.

norms of behavior, social institutions, and the values, role and rules they embody.'[62] Alexander Wendt for example argues for the mutual constitution of states and the international system, yet in his work states 'are not seen as making choices about how they define their identity.'[63]

Second, a number of social constructivist accounts do not take seriously enough the implications of the suggestion that actors and structures are mutually constituted, i.e. that regimes are re-made through actors' understanding and practices. They thus tend to take the normative beliefs and values that constitute regimes to be relatively stable and fixed in meaning. Martha Finnemore and Kathyrn Sikkink, for example, examine the origins of normative structures and the impact of these structures on behavior.[64] However, these normative structures, once institutionalized, are assumed to be stable and fixed around a point of constant consensus. These theories, as Kees Van Kersbergen and Bertjab Verbeek note, 'tend to focus on the adoption and impact of international norms, but often assume that a norm, once adopted, retains its original meaning…[this] neglects the issue of norm vagueness and elusiveness and of battles over existing norms.'[65] In these accounts, once the norm is institutionalized, 'the analytical job is done.'[66]

Third, the assumption of norm stability and the privileging of structure over agency also informs the tendency to examine the relationship between regimes and their outcomes in 'behavioral' terms i.e. the regime, once established, causally influences behavior, either directly or as an intervening

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[62] Finnemore and Sikkink, 1998; p. 913

[63] Alexander Betts, " Self Constitution in World Politics: Putting Agency back into constructivism", Paper presented at International Relations Colloquium, University of Oxford, 1 December 2012.

[64] Finnemore and Sikkink, 1998.

[65] Kees Van Kersbergen and Bertjan Verbeek. "The Politics of International Norms: Subsidiarity and the Imperfect Competence Regime of the European Union", *European Journal of International Relations,*13(2): 2007; p. 22

[66] Alexander Betts and Phil Orchard, " The Normative Institutionalization and Implementation Gap: A Theoretical Framework", Paper presented at workshop session, International Studies Association Annual Conference, Montreal, 15 March 2011; p. 1

variable.[67] The relationship between regimes and behavior can be conceived in terms of X -->Y, where a regime X exists at the structural level as the independent variable, shaping behavior - the dependent variable - in terms of compliance with, or violation of, normative structures. Two key examples of a such a behavioral view of the relationship between normative structures and behavior are Martha Finnemore's *National Interests in International Society*, and Martha Finnemore and Kathyrn Sikkinks' *International Norm dynamics and Political Change*. Both seek to unpack the origins of normative structures and the impact of these normative structures on state behavior. [68]Similarly, studies focussing on the socialization of norms across international society, highlight how the norm, as an independent variable, causes a change in actor behavior, the dependent variable, where this relationship is seen as uni-directional.[69] Such behavioral perspectives, as Antje Wiener argues, 'circumvent inter-subjectivity as a practice, which produces changes in all participating actors (and institutions), by assuming that the new "others" will be persuaded to share the dominant validity'[70] and interpretations of the normative structure in question.

Finally, following from the above features, social constructivist accounts tend to neglect the fourth stage of the norm cycle i.e.the process of regime implementation, or often conflate the arguably distinct processes of regime interpretation and implementation by assuming that 'once the machinery is in place, actors remain programmed by it.'[71] However, since normative commitments

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[67] As noted earlier, critical constructivists differ from conventional constructivists in their epistemological and methodological choices. Critical constructivists tend to argue that a social ontology necessitates a post-positivist epistemology and interpretivist methodology to grasp and uncover the structures of inter-subjective meaning that constitute the social world. They thus reject the behavioral model adopted by conventional constructivists, focussing instead on the reflexive structures of inter-subjective meaning.

Examples of such critical theorists in International Relations include Richard Ashley, David Campbell, RBJ Walker and Cynthis Weber. This can be contrasted with the more conventional constructivist approach adopted by scholars like Alexander Wendt , Ronald L. Jepperson, and Peter J. Katzenstein.

[68] Finnemore and Sikkink, 1998; Martha Finnemore, *National Interests and International Society* (Ithaca and London: Cornell University Press, 1996).

[69] Jeffery Lewis, " The Janus Face of Brussels: Socialization and Everyday Decision Making in the European Union", *International Organization,* 59(2): 2004; Thomas Risse and Kathryn Sikkink, "The Socialization of International Human Rights Norms into Domestic Practice" in Risse-Kappen, Ropp, and Sikkink, 1999.

[70] Antje Wiener, " The Dual Quality of Norms and Governance beyond the State: Sociological and Normative approaches to Interaction", *Review of International Social and Political Philosophy,* 10(1): 2007; p. 51

[71] Kratochwil and Ruggie, 1986; p. 770

need to be implemented in the domestic practices of states and societies, implementation as a domestic process should be seen as distinct from the normative and legal institutionalization (as an international level process). The process of regime implementation and norm adoption ushers in, as Kees Van Kersbergen and Bertjan Verbeek note, a 'new phase over the battle of the norm itself' as norm practice 'reveals to actors what affected parties actually intend the norm to mean.'[72] The neglect of implementation as a distinct process, as J. Tully notes, is thus informed by the 'false assumption that implementation is…simply a technical question of applying rules rigidly.'[73]

Despite the differences between rationalist and conventional constructivist views of regimes, their accounts tend to share some key features: once established, the meaning of a regime is assumed to be stable and fixed; the role of structures is privileged over actor agency; implementation is conflated with institutionalization, or neglected altogether, rather than examined as a distinct process; and empirical research tends to be based on a behavioral view of the relationship between structures and actors. These four features pose limitations to our understanding of regimes and the role of specific actors in the functioning of the regime. The next section builds on these points, and provides an alternative framework for studying regimes.

III. Alternative Framework for Regime Contestation

A key implication of the argument that actors and structures are mutually constituted is that the meaning of structures can transform through actors' interpretation and practice. Neither norms nor normative structures are free-floating entities that directly translate into, or 'cause' action or particular behavioral outcomes. Rather, norms are anchored through actors and institutions, and actors make norms meaningful through their recognition and interpretation of normative

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[72] Van Kersbergen and Verbeek, 2007; p. 22

[73] J. Tully, "The unfreedom of the moderns in comparison to their ideals of constitutionalism and democracy", *Modern Law Review,* 65(2): 2002; p. 227

An exception is Amitav Acharya's work who examines the work of local agents, at the domestic level, in building congruence between international norms and local beliefs and practices. His work on norm localization however still assumes that the meaning of the norm at the international level remains fixed and stable and that once a fit is created at the local level, this too remains stable.
Amitav Acharya, "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism", *International Organization,* 58(2): 2004

structures. A regime is thus constituted not only by a collection of norms, principles and rules, but also by actors' interpretations of these norms, principles and rules. As actors might hold different interpretations of the regime, or as actors' interpretations might shift over time and place, the meaning of a regime is flexible rather than stable or fixed. The relationship between regimes and behavior is thus perhaps better conceptualized in reflexive rather than behavioral terms.[74] In other words, regimes are made and re-made through actor understandings and practices of the regime and are therefore not stable entities, with a fixed meaning, that only structure actor behavior. A reflexive view of regimes, that unsettles the assumption of a regime having a fixed and stable meaning, provides avenues to consider how particular actors might contest the regime, and how this contestation affects both the meaning and practice of the regime. The remainder of this section provides an alternative conceptualization to that of the rationalists and conventional constructivists of how regimes function, focusing specifically on the processes that contribute to actors' contestation of the regime.

While the below framework highlights the reflexive relationship between actors and structure and the construction of intersubjective meaning through interaction, it does not situate itself with critical constructivist or postmodernist scholarship. The view adopted here, as is explicated in the following section, departs from the conventional constructivist assumptions about norm stability and the behavioral relationship between normative structures and actor behavior. Rather, as it highlights the role of actors and their practices themselves in the making of the norm, the relationship between normative structures and actors is seen in reflexive terms. However, in doing so, the thesis does not go as far as the critical constructivist position as it argues that even while actors and structures are mutually constituted, it is nonetheless possible to isolate and study aspects of social reality, and the causal mechanisms through which actors, events and processes can be connected in time. This also creates space to study the role of actors as giving normative

[74] A reflexive approach focusses on norms as both the dependent and independent variable, and thereby also collapses the distinction between the two, highlight instead the element of mutual constitution and intersubjectivity.

structures meanings, rather than only seeing them and their social behavior in terms of the effects of structure, discourses and relations of power.[75]

This conceptualization of the nature of social reality, of actors and structures and their interaction, lies in between the conventional and critical constructivist positions. It represents an ontological argument that even while actors and structure are mutually constituted, the former cannot be reduced to the effects of the latter. This ontological position thus also facilitates the use of an epistemology which recognizes the reflexive relationship between structures and actors while still permitting a focus on the role of a single actor possessing agency within the relationships of power in which it is embedded.

The framework builds on Antje Wiener's work on norm contestation in international politics.[76] Wiener argues that norms achieve validity via the legal framework that establishes them, their social facticity or whether they appear appropriate to a group, and their cultural validation as they are transferred across contexts. The primary focus of the framework is on the structural conditions under which norm contestation is enhanced and the potentially conflictive situation that can emerge as norms are dealt outside their sociocultural context of origin. The framework for regime contestation follows from Wiener's conceptualization of a reflexive relationship between the formal

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[75] The manner in which identity is conceptualized and investigated also does not go all the way down the critical constructivist path. This is because INGOs are seen as actors with agency, possessing a capacity to act that is more than just the effects of power in social relations. As Ted Hopf argues, ' conventional constructivists wish to discover identities and their associated reproductive social practices, and then offer an account of how those identities imply certain actions.' Critical constructivists, on the other hand, ' also wish to surface identities, not to articulate their affects, but to elaborate on how people come to believe in a single version of a naturalized truth.' For conventional constructivists it is thus also possible to accomodate a cognitive view of identity; the critical constructivist view of identity is rooted primarily in assumptions about power.

Hopf, 1998; p. 656

For a review of this issue see Friedrich Kratochwil, "Is the ship of culture at Sea or Returning" in Yosef Lapid and Friedrich Kratochwil ed. *The Return of Culture and Identity in IR Theory* (Boulder, CO: Lynne Rienner, 1996)

[76] see: Antje Wiener, " Contested Compliance: Interventions on the Normative Structure of World Politics", *European Journal of International Relations,* 10(2):2004;"Contested Meaning of Norms: A Research Framework", *Comparative World Politics,* 5(1): 2007; "Enacting Norms-in-use: qualitative research on norms and international relations", *Review of International Studies,* 35 (1):2009; *The Invisible Constitution of World Politics: Contested Norms and International Encounters* (New York: Cambridge University Press, 2008).

validity, social facticity and contextual validation of a norm. However, the focus on 'regimes' rather than 'norms' in this thesis allows one to specifically consider the role of actors in giving these norms meaning, both at the level of social facticity and contextual validation. Thus, the below framework builds on, but differs from Wieners work as the focus is on uncovering the processes and effects brought about by a particular set of actors as they contest the regime rather than the structural conditions that contribute to norm contestedness.

Regimes: Formal Validity, Social Recognition and Contextual Validation

A formal legal regime is established through a treaty, convention, or law. Actors, motivated by logics of consequences or appropriateness, sign onto such legal agreements, thereby accepting the formal validity of a regime. However, as Wiener notes, formal agreements in themselves 'provide an inconclusive reference for subsequent action[77]...as the documented language about norms indicates no more than the formal validity of a norm...their social recognitions stands to be constructed by social interaction.'[78] Thus, actors first have to interpret and make sense of the regime for themselves as particular kind of actors, a process that can result in a shift in the meaning of the regime. Actor interpretations can be categorized into sets of 'ideal types', and these interpretations both constitute the regime and inform goal formulation and policy making. This process between what is contained in the formal legal regime and the actors' interpretation of the regime provides the first empirical access-point to examine regime contestation.

The second process is regime implementation, which, as noted earlier, is a distinct process from regime interpretation. The meaning or significance of a regime can shift through the process of implementation as 'practice not only fulfills the rule, but also gives (...) a continual interpretation and re-interpretation of what the rule really means.'[79] Regime implementation thus provides a second empirical access point to examine how actors' practices contribute to contestation. A regime, or particular components of it, can acquire a new 'meaning in-use' through 'interaction in

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[77] Wiener, 2008; p. 41

[78] Wiener, 2008; 63

[79] Charles Taylor, " To Follow a Rule...' in Craig Calhoun, Edward Lipunna and Moishe Postpone eds., *Bourdieu: Critical Perspectives (*Cambridge: Polity Press, 1993); p. 57

context'[80], as the regime encounters new social contexts and actors. This process involves a dynamic match-making process between the various actors' interpretations of the function, scope, and operating principles of the regime in a particular social context, focusing attention on the identities, interests, and perceptions of other actors in a specific operational context - domestic and international - as they interact with the regime. Robert Payne thus notes, 'regardless of the alleged appeal of specific claims, outcomes of highly contested normative struggles cannot be adequately interpreted without also examining social process' of interaction at the operational level.[81] A focus on the process of implementation requires examining how INGOs translate headquarter level policies, structured by interpretations of the legal regime, to suit a particular context; how these are received by actors in the operational context in light of their interests, beliefs, and perceptions; and how the dynamic match-making process shapes what the regime comes to mean at the level of practice.

Regime interpretation and regime implementation are the processes through which a regime functions. They thus provide the key empirical access points to examine how particular actors contribute to the contestation of the regime. Accordingly, this thesis examines INGO contestation of the humanitarian regime through particular INGOs' current policy frameworks and practices in two operational contexts, Afghanistan and Sri Lanka, from 1990-2010.The effects of INGO contestation of the functioning of the regime is then drawn out from the two case studies.

IV. Factors shaping INGO interpretation and implementation of the regime

Humanitarian INGOs are non-profit organizations that 'are private in form but public in purpose.'[82] The purpose they are committed to is, broadly speaking, to improve human welfare through the provision of necessary goods and services, based on a belief in a common and shared humanity rather than any political, strategic or other objective. Unlike IOs who are formed through

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[80] Wiener, 2008; p. 51

[81] Rodger A. Payne, " Persuasion, Frames, and Norm Construction", *European Journal of International Affairs,* 7(1): 2001; p.39

[82] Thomas Weiss, " Devolving Responsibilities: A Framework for Analyzing NGOs and Services", *Third World Quarterly,* 18(3): 1997

state action, INGOs, as private organizations, are self-mandated and seek to protect their autonomy from states.

INGOs identities and interests are constituted through the structures of collective meaning in which they embedded; equally, through their understandings and actions they reproduce these structures and give them effect. Thus, in contrast to the rationalist view of atomized actors whose identities and interests are exogenous to interaction, here INGOs are seen as actors with a social identity, i.e. 'a set of meanings that an actor attributes to itself while taking the perspective of others, '[83] making them ontologically dependent on their relationship with others.

Yet, this does not imply that INGO identity can be reduced to the effects of structure, or that their identities and interests are directly analogous or identical to the structures of collective meaning in which they are embedded. As Colin Wight argues, 'the interdependent nature of actors and structures does not mean that there are no differences between them. Agents are not the same thing as social structures... [and] agential power in a social context is dependent on structural positioning, but it is not reducible to it.'[84] Alexander Wendt similarly argues that while actors and structures are mutually constituted, this relationship is best characterized as one of supervenience in which the properties at one level are constituted by those at another, but cannot be reduced to them.[85]

Thus, even while INGO possibilities for being and action are necessarily constituted by the environment, this does not imply that there is no space for INGO agency and capacity to do otherwise.Rather, INGOs gives these structures specificity through their participation in them; they can actively participate in the creation and negotiation of these intersubjective structures through their interactions and practices. To disregard INGO agency is also contradictory to attempts to hold them accountable or responsible for the outcomes they help produce. Holding INGOs responsible

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[83] Alexander Wendt, "Collective Identity Formation and the International State", *American Political Science Review* 88(384): 1994; p. 395

[84] Wight, 2006; 296

[85] Alexander Wendt, " Identity and Structural Change in International Politics" in Yosef Lapid and Friedrich Kratochwil eds., *The Return of Culture and Identity and IR Theory* (Boulder/London: Lynne Rienner Publishers, 1996).

assumes that they have agentic capabilities and the capacity for self governance.[86] This stands in contrast to the some critical constructivist or post-structuralist views where INGO intentionality might be seen as merely an effect of discourse and broader configurations of power and differentiation at the systemic level.

Moreover, as Alexander Betts argues (based on the writings of philosopher Christine Korsgaard), the identity of an actor is not only constituted through interaction but also by its own actions as it is in choosing their actions, that actors create their identity.[87] Thus,as an INGO chooses the kinds of effects it wants to bring about in the world, it is also defines its identity as a particular kind of INGO. INGOs can in this sense be thought of as normatively purposive actors that have intentionality and can make strategic decisions about who they are, what they do, and how they act, with the capacity to reflexively chose how they are constituted. They posses a unique self view, which allows them to 'take themselves seriously as creators of meaning , as reflexive beings capable of self-assessment.' [88] They reflect on their experiences and what happens around them, and use their knowledge and capabilities to interpret and respond to the external environment. In comparison to International Organizations (IO) established through state action, the fact that INGOs are private, self-mandated organizations allows them a special capacity to be engaged in such self-constitution through their own actions.

Yet, INGOs are also dependent on material and symbolic resources controlled by other actors. INGOs rely on states, donor agencies, and public donations for material resources needed to survive and operate. INGO ability to attract such resources is dependent on their accountability, performance, and representativeness.[89] It is also dependent on the extent to which they can legitimate their values and practices with those of its multiple audiences - recipients, combatants, donors, and western publics. These multiple stakeholders and audiences can have different

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[86] Brayden G. King, Teppo Felin, and David A. Whetten, " Finding the Organization in Organizational Theory: A Meta-Theory of the Organization as a Social Actor", *Organization Science,* 21(1):2010

[87] Christine Korsgaard in Betts, 2012; p.9

[88] King et al., 2010.

[89] see for example, M. Edwards and D Hulme eds., *Too Close for Comfort? NGOs, States, and Donors,* (Macmillan: London, 1997); A. Fowler, *Striking a Balance: A Guide to Enhancing the Effectiveness of Non-Governmental Organizations in International Development* (Earthscan: London, 1997).

beliefs,values and interests, and can differently value the sources of INGO legitimacy. INGOs thus have to balance these various, at at times competing, understandings and demands as they try and sustain organizational legitimacy. As Sarah Lister argues, 'organizational legitimacy is the reward for activity which conforms to dominant discourses and illegitimacy is the sanction.'[90]

The need for ongoing legitimation is especially important for INGOs as, IOs, INGO moral authority is essential to their capacity to act. INGO authority can be said to be derived from their claim to be altruistic actors serving the needs of global humanity. This claim lends them moral authority, meaning that other actors have made a positive normative evaluation of these INGOs and their activities.[91] Moral authority, as R.B Hall argues, imbues organizations with power 'when it reflects activities that are socially accepted as morally righteous.'[92] INGOs' moral authority thus rests in a large part on the extent to which their goals, values, methods and programs are considered legitimate by governments and the broader public, both in the countries in which these INGO originate and in the countries in which they operate.

For sociological institutionalist theorists, INGOs do not only need to legitimate their policies and practices to the broader environment, but the institutional environment in fact constitutes what the INGO is and its possibilities for action.[93] Lister, for example, highlights both the importance of acceptance by the environment of an organization as well as the role played by an organization's institutional environment in determining organizational behavior and structure.[94] Paul Di Maggio and Walter Powell similarly highlight the institutional isomorphism that occurs among organizations embedded in an institutional environment, as the environment defines standards of

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[90] Sarah Lister, " NGO legitimacy: Technical Issue or Social Construct", *Critique of Anthropology,* 23 (175): 2003; p. 188

[91] M.C Suchman, "Managing Legitimacy: Strategic and Institutional Approaches", *Academy of Management,* 20(3): 1995; p.579

[92] R. B Hall , "Moral Authority as a Power Resource," *International Organization,* 51(4): 1997; p.94

[93] see for example: Paul J DiMaggio and Walter W Powell eds., *The New Institutionalism in Organizational Analysis* (Chicago: The University of Chicago Press, 1991).

[94] Lister, 2003.

legitimacy and appropriateness.[95] Organisations thus demonstrate homogeneous behavior 'organized around rituals of conformity to wider institutions'.[96]

It is important to note however that not all institutionalist accounts necessarily deny the possibility of actor agency, but argue that agency needs to be *situated* within a broader context. Anthony Giddens for example argues that agency involves 'reflexive monitoring, rationalization, and motivation as embedded sets of processes' located in ' a discursive moment.'[97] The behavior and actions of actors can thus be seen as intentional activities, even while their agency is necessarily located within, and dependent on, a social process or framework. [98] INGOs can thus be intentional and purposive actors, whose beliefs and capacities for action are nonetheless situated within a broader set of institutional processes that shape the terms of legitimate action, directing ' who can do what where, and what this doing can be.' [99]

INGOs are thus best seen as complex organizations whose capacity to be and act is shaped by broader normative and institutional structures, relationships with other actors, and their own material capacity and moral authority. Figure 1 below by Paul Nelson highlights six dimensions of an INGO's organizational life which well encapsulate the resources and relationships that shape INGO beliefs, behavior, and capacity.[100] Interaction between these various factors and their relative salience at particular points in time will shape INGO policies and practices. These factors can be disaggregated into 'external' and 'internal' influences as well as 'material' and 'ideational' influences.

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[95] Paul J. DiMaggio and Walter W Powell, " The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields", in Paul J DiMaggio and Walter W Powell eds., *The New Institutionalism in Organizational Analysis* (Chicago: The University of Chicago Press, 1991).

[96] John Meyer and Brian Rowan, "Institutionalized Organisations: Formal Structure as Myth and Ceremony" in DiMaggio and Powell, 1991; p. 68.

[97] Anthony Giddens, *The Constitution of Society* (Polity Press: Cambridge, 1984); p. 3

[98] Hakan Seckinelgin, " The Multiple World of NGOs and HIV/AIDs: Rethinking NGOs and their agency", *Journal of International Development,* 18 (1): 2006.

[99] Ibid.; p. 724

[100] Paul Nelson, " The Varied and Conditional Integration of NGOs in the aid system: NGOs and the World System", *Journal of International Development,* 18(1):2006; p. 704

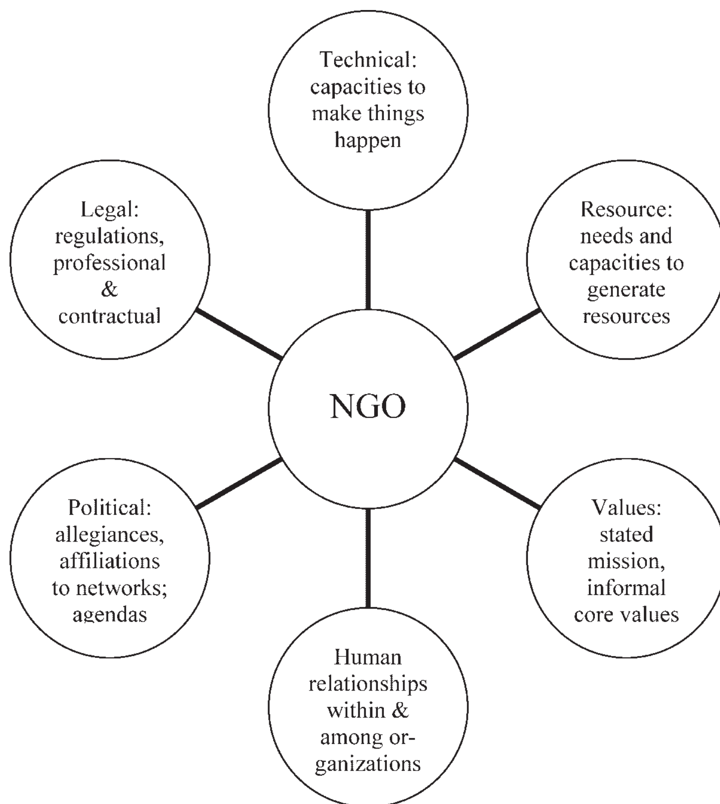

Figure 1: Six Dimensions of INGO organizational life

Material factors influencing INGO contestation

INGO contestation might be shaped by the material incentives and constraints in the environment. INGOs rely on funds and contracts from states and multilateral agencies to implement humanitarian programs in political emergencies. This makes INGOs susceptible to donor pressure to direct INGO programs in line with donor interests. Since the 1990s, the funding available for humanitarian activities has nearly tripled, though these resources have mostly been ear-marked for particular emergencies or causes and from a handful of powerful donors. This bilateralization of aid has been accompanied by an increasing donor role in the coordination of humanitarian action and in managing and monitoring the performance of INGOs.[101] The linking of the development and stability of so-called fragile states with international peace and security from the 1990s has also led donors to see humanitarian assistance as a form of conflict management.[102] Western donors have thus sought to achieve greater coherence between their political, military, and development and

[101] Joanna Macrae, *Uncertain Power: The Changing Role of Official Donors in Humanitarian Action* (London: Humanitarian Policy Group, 2002).

[102] Mark Duffield, “Governing the Borderlands: Decoding the Power of Aid”, *Disasters* 25(4): 2002.

humanitarian responses through a ‘joined up’ or ‘whole of government’ approach.Canada, for example, has adopted a 3D model to integrate its Defense, Development, and Diplomacy efforts, calling for cooperation between the departments of National Defense, Foreign Affairs and International Trade, and the Canadian International Development Agency (CIDA). Critics argue that joined- up approaches have ‘largely subsumed diplomacy and development interests and favored defense or military responses for managing conflict and for meeting the strategic goals defined by the donor governments involved.’[103]INGOs thus risk becoming “force multipliers” for donors, and must continuously negotiate the tensions between autonomy and resource dependence.

The UN has similarly been engaged in a process of institutional reform since the mid-1990s to better integrate its political, development,and humanitarian arms. It has thus devised an Integrated Mission structure to have a coherent system-wide UN response mechanism to political emergencies. Under an Integrated Mission structure humanitarian assistance is integrated with a broader political-military framework, and is expected to work in tandem with political strategies to address conflict. [104] While INGOs have resisted full integration into an Integrated Mission structure, choosing to operate outside the UN structure can mean a loss of funds and program contracts. The UN has also introduced the cluster approach for humanitarian aid provision, identifying nine sectors and specific agencies that are to take the lead in the sector. The lead role is primarily assumed by a UN agency, with INGOs following its directive, thereby undermining the ability of INGOs to act independently of the UN. The UN office for the Coordination of Humanitarian Affairs (OCHA) also manages pooled funding mechanisms such as the Central

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[103] *Reality of Aid* report cited in Cornish, 2008; p. 23

[104] An integrated mission is defined as ‘…an instrument with which the UN seeks to help countries in the transition from war to lasting peace, or address a similarly complex situation that requires a system-wide UN response, through subsuming various actors and approaches within an overall political-strategic crisis management framework’.
Eide et al., 2005; p. 3

UN Integrated Mission structures have also been criticized by INGOs who have argued that it is necessary to maintain an OCHA office distinct from the broader mission and a separation of the roles and responsibilities of the UN Resident Coordinator and Humanitarian Coordinator, especially in situations of ongoing conflict.

Emergency Response Fund (CERF) for humanitarian programs and INGOs that make use of these pooled funds are also expected to comply with the terms of the UN charter. [105]

INGOs also rely on national governments and other local parties to the conflict for access and security. Their programs are susceptible to subordination or manipulation by warring parties in line with their political or military interests. The proliferation of small arms, the use of natural resources and personal assets to sustain armed groups, and weak and fragmented command and control structures, has made it difficult to identify belligerents, the territory they control and their end-goals, and to negotiate access with them. Moreover, as contemporary armed groups appear less reliant on support from local populations, civilians have increasingly become targets and the humanitarian 'deal' ignored in a number of cases. Belligerent groups have captured humanitarian assistance to build the war economy, and the protection and resources to civilian populations has provided them a humanitarian sanctuary [106]

These accounts thus highlight the material rewards and sanctions in INGOs' external environment that might shape INGO behavior. Donors, the UN, and combatants might be seen as the 'principals' and INGOs the 'agents' for carrying out demands in line with principals' interests. INGOs, as agents, do have some room to circumvent principals' demands on the basis of their own technical expertise and moral authority, though the dominant factor shaping INGO behavior remains the power and interests of the principal.[107]This view of INGO behavior is reflective of much of the literature on the politicization of humanitarian aid outlined in Chapter 1.

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[105] Bruce D. Jones, " The Changing Role of the UN political and development actors in situations of protracted conflict" in Harmer and Macrae eds., 2004; Kari M. Osland, *The UN & Integrated Missions* (Oslo: Norwegian Institute of International Affairs, 2005); Espen Barth Eide, Anja Kaspersen, Randolph Kent and Karen von Hippel, *Report on Integrated Missions: Practical Perspectives and Recommendations* (Geneva: UN-ECHA, 2005).

[106] Leader, 2002.

[107] for Principal - Agent literature in International Relations, see for example: Darren G. Hawkins, David A. Lake,Daniel L. Nielson, and Michael J. Tierney, *Delegation and Agency in International Organizations* (Cambridge: Cambridge University Press, 2006); Kathleen, M. Eisenhardt, "Agency Theory: An Assessment and Review", *Academy of Management Review,* 14(1): 1989; for application of Principal - Agent theories see Alnoor Ebrahim, " Making sense of accountability: Conceptual perspectives for northern and southern nonprofits", *Nonprofit Management and Leadership,* 14 (2): 2003; Sarah Henderson, " Selling Civil Society: Western Aid and Nongovernmental Organization sector in Russia", *Comparative Political Studies,* 35(2) : 2003; Cooley and Ron, 2003.

INGO contestation might also be driven by their perusal of their 'hard' organizational interests such as funds, contracts, access, and visibility. As INGOs seek funds from donor agencies, they might be willing to bend organizational principles; similarly, in order to obtain access to a particular conflict, INGOs might alter organizational practices in line with combatant demands. The growth in the humanitarian sector since the 1990s with the formation of multiple new INGOs and the involvement of private security and development contractors has also increased the competition among agencies. INGOs have arguably begun to operate like firms competing for market share. [108]Such competition can have a number of consequences including a competition for market share by expanding into new areas of programming, a greater focus on high profile activities such as advocacy at the expense of less glamorous reconstruction programs, and a greater emphasis on public relations to preserve and emphasize the INGO brand.[109] Moreover, competition can result in organizational goal displacement as the pursuit of particular contracts of other short term goals are prioritized over the core mandate of the INGO.

Stephen Hopgood argues that the challenges of globalization coupled with agency competition has led to the professionalization and bureaucratization of the humanitarian sector. As a consequence, INGOs must 'globalize their operations, raise increasing amounts of money, defend their brands, comply with various accountability and evaluation mechanisms, introduce more professional management, [and] commercialize their marketing and media operations.'[110]

These external and internal factors necessarily interact, as external incentives and constraints define the environment in which INGO organizational interests are defined and pursued. For example, an INGO's hard organizational interests cannot be de-linked from the relationship between INGOs and donors. INGO competition for donor funds can create a situation whereby INGOs that are most agreeable to comply with donor demands are also the most organizationally

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[108] see for example, de Waal, 1991; Cooley & Ron, 2002; Ramalingam and Barnett, 2010; Hopgood, 2008

[109] Barnett and Weiss, 2008

[110] Stephen Hopgood, " Professionalization and Bureaucratization of Humanitarian Action", Paper prepared for the Social Sciences Research Council Initiative, The Transformation of Humanitarian Action, 23 March 2005; p.3

successful. These external and internal material incentives and constraints can operate as a form of coercive pressure on INGOs. Such coercion can also work on an institutional level as funding agencies or donors impose rules, standards, and reporting requirements. In such materialist accounts, INGOs are assumed to negotiate these environments on the basis of a 'logic of consequences', i.e. choosing between alternatives by evaluating their likely consequences, and conscious that other actors are doing likewise. Their decisions, actions, and behavior, are shaped by stable, consistent, exogenous preferences, and explained by providing an interpretation of the outcomes expected from them. [111]

	external	internal
material	donors, UN, and combatants	organizational interests
ideational	normative & institutional environment	identity and organizational culture

Table 2: Factors shaping INGO interpretation and implementation

Ideational Factors

INGO behavior can also be examined in ideational terms or through a culturalist explanation. In this view, social interaction results in the construction of inter-subjective meanings and collective knowledge; the identities and interests of INGOs are constituted by participating in these ideational structures. These normative environments thus define what it means to be an INGO and its possibilities for action. Ideas can also 'define a set of costs and benefits, and interests, in turn, are conceived within a historically specific ideational and normative context.'[112] Ideas can thus operate as reasons for particular policies, serving not only a constitutive function but also a regulative one as certain costs become associated with diverging from a particular policy defined as legitimate by broader normative structures.

[111] Peter Kotzian, " Arguing and Bargaining in International Negotiations: On the application of the Frame-Selection Ideal Type and its implications", *International Political Science Review,* 28(1): 2007; p. 81

[112] Nina Tannenwald, " Ideas and Explanation: Advancing the Theoretical Agenda", *Journal of Cold War Studies,* 7 (2): 2005; p. 18

INGOs can be said to operate in a number of overlapping normative and political environments. These environments operate as structures of collective meaning which define what matter to an INGO and its capacity to act. The ending of the Cold War was accompanied by significant shifts in these normative and political structures. The UN Secretary General's 1992 *Agenda for Peace* and 1994 *Agenda for Development* focussed on the causes and consequences of conflict within states. Conflict was seen to follow from factors internal to the state, such as poverty and a disregard for human rights, with consequences however for international peace and security. In this way, the internal conflicts within states was seen as a cause of concern for the international community, legitimating thereby also international involvement in the internal governance of the state along with peacekeeping and peacebuilding activities. The *Agendas for Peace* and *Development* also introduced the concept of human security, whereby the referent object for security was no longer the state but the individual. The security commitments of the international community thus including ensuring "freedom from want" and "freedom from fear" through measures to enhance food, health, environmental and political security. State sovereignty was thus no longer considered sacrosanct but conditional on the state's ability to provide for these elements, failing which the international community might intervene through a range of development, governance, and rule of law programs. By the 1990s, a more robust norm for military humanitarian intervention had also taken hold and the UN Security Council, under Chapter VIII of the UN Charter, facilitated military interventions with avowedly 'humanitarian' objectives in northern Iraq in 1991 and Somalia in 1992-3. In 2005, the Responsibility to Protect doctrine further legitimized the international involvement in conflict, arguing that the international community had a responsibility to protect citizens from crimes against humanity and genocide.[113] Humanitarian intervention was thus framed an ethical imperative for the international community.

The protection of human rights has also become a central organizing principle for international society since the mid-1990s. The sovereign responsibility of a state is increasingly defined in terms of its ability to safeguard the human rights of its citizens and concurrently, the promotion of human rights is a core principle for the United Nations and its various agencies, along with other

[113] ICISS, *The Responsibility to Protect* (Ottawa: International Commission on Intervention and State Sovereignty, 2001).

donor agencies, international organizations, and specifically human rights organizations. Former UN Secretary General, Kofi Annan, thus argued in the *Report to the Security Council on the Protection of Civilians in Armed Conflict* that the Security Council ' now recognizes that massive and systematic breaches of human rights law and international humanitarian constitute threats to international peace and security, and therefore demand its attention and action.'[114] The focus on human rights has been incorporated into international laws for the protection of refugees and internally displaced peoples. It has also become the legitimating principle for military intervention in the internal affairs of a state, as was the case in places such as Somalia, Bosnia, Kosovo, and East Timor. As James Darcy argues, in governmental foreign and aid policies and for the UN, ' rights increasingly feature as a guiding and often a central principle for their aid programmes.'[115]

INGO identification of problems and solutions, their beliefs and their capacity to act, must be situated within the context of these broader normative structures constituting international society. These normative structures can thus be argued to define the range of permissible and appropriate action for INGOs, and are constitutive of of INGO identity. These normative structures however also have a regulative function by defining the parameters by which INGOs and their actions are considered legitimate.Drastic digression from these values can challenge INGO legitimacy among western states and publics and threaten organizational security. As INGOs are 'rewarded for conforming to rules and legitimation principles, and punished if they do not, they will tend to model themselves after those organizational forms that have legitimacy.'[116]

However, it is important to note not how only how these structures defined INGO scope for action, but also how INGOs were able to use and appropriate the growing use of the terminology of 'humanitarian action' to suit their own programming objectives and operations, and justify their growing involvement in political emergencies. As Mark Duffield observes, the meaning of contemporary humanitarianism is affected by the discourses of development and liberal security,

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[114] UN, *Secretary General's Report to the Security Council on the Protection of Civilians in War* (New York: United Nations, 1999).

[115] James Darcy, *Human Rights and Humanitarian Action: A Review of the issues* (London: Humanitarian Policy Group, 2004) ; p.5

[116] Michael Barnett, "Humanitarianism as a scholarly vocation" in Barnett and Weiss, 2008; p.255

which empower humanitarian organizations, legitimate them, give them a social purpose, and shape their identity.[117]

As humanitarian assistance has become a full fledged sector, an increasingly rationalized and professionalized INGO 'community of practice' has emerged, built around common codes of conduct, accountability and learning mechanisms, areas of specialization and expert knowledge, and frequent staff interchanges among the INGO sector. Umbrella groups and consortia such as the Steering Committee for Humanitarian Response, International Council for Voluntary Agencies (ICVA), and InterAction have acted as forums for dialogue and information sharing, and as vehicles for joint advocacy. Such interaction has also established standards of appropriateness for the INGO 'community of practice'. These are reflected in joint INGO statements of principles such as the Red Cross Code of Conduct, the Sphere project,and the People in Aid Code of Best Practice.[118]The beliefs and values underlying these various accountability and performance initiatives, as institutionalized through inter-agency policy, define who can be a legitimate member of the community of practice, and adherence to these values becomes essential to be recognized as an INGO. The INGO community of practice can thus be said to be characterized by institutional isomorphism, with INGOs beginning to resemble each in form and objective.

An ideational account of INGO behavior might also be based in more internal characteristics, such as identity and organizational culture. Identity, in the words of Alexander Wendt, refers to the 'relatively stable, role-specifying, understandings and expectations of the self that are grounded in theories which actors collectively hold about themselves and one another.'[119] It stems from those features that are the most central and distinctive to the INGO, which define its unique special space. The most central and enduring features of INGO identity can be argued to be their not-for-profit status,their legal standing as charities, their altruistic commitment to improving human welfare, and their distinction from states. As these 'identity claims become institutionalized as mission statements, policies, and routines, they operate as the organization's social context,

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[117] Mark Duffield, *Global Governance and the New Wars* (London & New York: Zed Books,2001) ; p.125

[118] Stoddard, 2003; p. 32

[119] Alexander Wendt, " Anarchy is what states make of it: The social construction of power politics", *International Organization,* 46 (2): 1992; p. 397

providing members and informed outsiders a common set of phenomenological points of reference that guide consequential deliberation and organizational decision making.'[120] INGO identities thus determine the terms of legitimate and appropriate action for INGOs and ' makes self governance possible by serving as the corner stake against which all other beliefs and actions are brought into practical alignment.'[121]Identity can thus serve as the backdrop for strategic deliberation and the identification of legitimate problems and responses. By telling INGOs who they are, identities 'strongly imply a particular set of interests or preferences' [122]and interests are thus identified in the process of 'enacting, sustaining, or developing a particular identity.'[123]

INGOs can also have multiple identities, as an actors with a particular function or mandate, an actor from a particular country or religious beliefs, or an actor embedded in a particular relationship with a donor state, among others. These identities might be salient at different times, though there must remain some core elements by which the INGO can be recognized by other actors and interaction sustained. Moreover, these multiple identities, as King et. al. argue, 'may even enhance organizational agency as conflicting demands can provide an opportunity to make choices and invest decisions with more careful deliberation and self-reflection.'[124]

In this ideational view, INGOs make decisions on the basis of a logic of appropriateness. INGO action 'involves evoking an identity or role and matching the obligations of that identity or role to a specific situation.'[125] Behavior is thus a reflection of what is considered appropriate for an INGO with a particular identity, rather than a rational calculation between expected consequences. INGOs are thus 'imagined to follow rules that associate particular identities to particular

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[120] King et. al, 2010 ; p. 295

[121] Ibib.

[122] Hopf, 1998.

[123] Ronald L. Jepperson, Alexander Wendt, and Peter J Katzenstein, " Norms, Identity and Culture in National Security" in Peter J Katzenstein ed., *The Culture of National Security: Norms, and Identity in World Politics* (New York: Columbia University Press, 1996).

[124] King et al., 2010; p. 296

[125] James G. March and Johan P. Olsen, " The Institutional Dynamics of International Political Orders", *International Organizations,* 52(4):1998; p.951

situations...[whereby] the pursuit of purpose is associated with identities more than interests, and with the selection of rules more than with individual rational expectations.'[126]

INGO behavior, like the behavior of all social actors, is shaped by an interaction of these external and internal, material and ideational, logics of appropriateness and consequences.. For example, INGO identity cannot be seen in isolation from the broader normative and institutional structures in which INGOs are embedded, just as an internal explanation focusing on an INGO's hard organizational interests cannot be de-linked from the relationship between INGOs and donors. Similarly, a logic of appropriateness and logic of consequences can work together in shaping INGO behavior. For example, certain policies or programming decisions might have been selected because they were considered appropriate for an INGO with a particular identity, though once adopted, there could be material costs to changing the policy, thereby making INGO continuance with a policy correspond with a logic of consequences. Similarly, a decision based on expected costs and benefits could over time become internalized and be considered as appropriate to INGO identity.

The existing literature on INGOs in complex emergencies, as noted in Chapter 1, already provides rich accounts of the working of these factors. They emphasize how dependence on donors for funds results in INGOs providing aid in line with donor interests rather than identified needs[127]; how organizational competition for resources and contracts prevents collective action and cooperation[128]; how INGOS are constituted by broader discourses about humanitarianism and their institutional environment;[129]and the impact of broader normative structures on INGO behavior. [130]

The above literature on INGOs does not, however, systematically examine the role of INGO identity in shaping behavior. In focussing specifically on the role of INGO identity, this account suggests

[126] March and Olsen, 1998; p. 949

[127] see for example: Fox, 2001.

[128] see for example: Cooley and Ron, 2002.

[129] see for example: Barnett and Weiss, 2008.

[130] see for example: Duffield, 2007.

that INGOS are not only social actors constituted through interaction, but also 'normatively purposive actors with the capacity to reflexively choose how they are constituted or to consciously (re)produce structure.'[131] Thus, while the broader normative environment can provide general guidance for behavior, further specificity is given by INGOs themselves as they interpret, negotiate, and enact these normative structures. A focus on identity can therefore help interrogate INGO agency beyond the effects of structure. Moreover, examining the role of INGO identity in shaping the contestation of the regime is important if one considers, as mentioned earlier in this chapter, that INGOs derive their power from their moral authority. The basis of this moral authority is, at least partly, the beliefs and values that these INGOs stand for, which are then derived from, and constitutive of, INGO identity. It thus seems important to investigate how these beliefs and norms, which are the source of moral authority, can also contribute to the contestation of the humanitarian regime. Accordingly, this thesis is particularly interested in determining the impact of INGO identity on INGO contestation, how it works both autonomously or in conjunction with other material and ideational factors.

INGO identity:role, social purpose, and practices of differentiation

The variable of identity must be operationalized if its impact is to be observed and analyzed. Identity, as Rawi Abdelal, Yoshiko M.Herrera, Alastair Iain Johnstone, and Rose McDermot argue can be disaggregated into three non-mutually exclusive components. [132] First, identity consists of a set of constitutive norms, and informal and formal rules which define who the actor is, and which are the basis for INGO group membership. These rules and norms, taken together, define the role of an actor, here an INGO. Identity can be observed in shaping behavior if INGO reasons for acting in a given situation are found in a decision to perform a particular role rather than 'in a decision to choose between optimizing paths to some preferred outcome.'[133] The role identity of an INGO is defined by its legal status as a charity, its founding beliefs that gave birth to the INGO in the first

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[131] Betts, 2012; p.1

[132] Rawi Abdelal, A.I Johnstone, Yoshiko Herrera, and Rose McDermott, " Identity as a Variable", *Perspectives on Politics,* 4(4):2006.
Their discussion however is a general conceptualization of identity as a variable, and is not specific to a particular set of actors.

[133] Abdelal et al., 2006; p. 699

place, its organizational principles and values such as those of humanity and independence, and the collective beliefs of its members that allow it to call itself a 'we'.

Second, identity is constituted by the social purpose held by members of an INGO.[134] This is the purposive content of INGO identity, which then forms the mandate of the INGO and its more specific interests, aims, and goals. INGO mandates can thus be seen as an institutionalized expression of INGO identity; the mandate is both constituted by identity and reinforces that identity. In choosing and acting on a mandate, INGOs are thereby also engaged in a process of self-constitution; when INGOs deliberately decide what sort of effects they seek to bring about, and this is expressed in their mandates, they also constitute themselves as actors with a particular kind of identity.[135] INGO mandates range from the provision of emergency relief assistance alone, focussed on the delivery of a single service, to peacebuilding and democracy promotion. The overarching purpose however remains to improve human welfare through a range of goods and services.

Third, INGO identity is also composed of comparisons to other actors, whereby INGO identity is defined by what it is not, in comparison with some other identities or actors. INGO identity may therefore 'be contingent, dependent on [its] interaction with others and place within an institutional context.'[136]Humanitarian NGOs thus typically distinguish, and thus define, themselves in opposition to the political order of states and more recently, in opposition to private development and security contractors and military actors.The increase in the number of international and regional actors operational in political emergencies, and the overlap between many of their programs with those of INGOs, have resulted in what Barnett calls a 'crisis of identity' for INGOs.[137] Their public statements and policy documents, as is illustrated in Chapter 4, reflect concerted attempts to distinguish themselves from other political and military actors.

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[134] Abdelal et al., 2006; p. 699

[135] see discussion in Betts, 2012
see also: Christine Korsgaard, *The Sources of Normativity* (Cambridge: Cambridge University Press, 1999); *Self-Constitution: Agency, Identity and Integrity* (Oxford: Oxford University Press, 2009).

[136] Abdelal et al., 2006; p. 699

[137] Barnett, 2011.

Both facets of identity - role identity and social purpose - shape INGO behavior, but in different ways. As Abedal, Herrera, Johnstone and McDermot argue, a role identity ' imposes obligations to engage in practices that reconstitute the group, while social purposes create obligations to engage in practices that make the group's achievement of a set of goals more likely.'[138] INGO identity thus directs INGOs towards behavior that re-constitutes their identity and which makes the realization of their mandates possible. The relational component of INGO identity creates the imperative to continually define and distinguish themselves from other actors, especially when there is an overlap in their programs.

With these constituent elements and markers of identity in mind, it is possible to establish the conditions under which identity might play a prominent role in shaping INGO contestation, vis-a-vs the other above mentioned external and internal factors. Identity is at work if:

- changes in INGO policy or behavior occur in the absence of material rewards, or despite material sanctions, from the external environment;
- changes in INGO policy or behavior occur in the absence of shifts in the broader normative and institutional environment, or run counter to the dominant norms and beliefs in the normative or institutional environment;
- the choice between different or competing policy options and actions is made on the basis of the role and purpose of INGOs in a particular context, rather than the set of material incentives or constraints associated with particular policy options or context and conflict analysis;
- policy decisions and behavior are motivated by attempts to differentiate INGOs from other actors, rather than on conflict analysis and a calculation of the possible costs and benefits associated with a particular policy option.

The role of identity in shaping INGO contestation can thus be analyzed by noting the timing of policy decisions or changes, by assessing whether there are other possible factors that could explain the same outcome, and by examining how and why certain policies were adopted and the underlying motivations for those choices. Following on the framework for regime contestation developed here, the next four chapters examine how INGOs interpret and implement the legal

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[138] Abdelal et al., 2006; p. 698

humanitarian regime, the effects of this contestation, and the role of INGO identity in shaping contestation.

3

INGO INTERPRETATIONS OF THE LEGAL REGIME:
Biafra to the Present

The previous chapter noted that a legal regime acquires meanings through actor interpretations of the regime, and that this process of interpretation can give rise to new meanings of the regime. Interpretation thus provides the first empirical access point to examine INGO contestation of the humanitarian regime. This chapter examines how the INGOs under study - CARE, MSF, Oxfam and World Vision, have historically interpreted the formal legal regime, and how this process contributes to the substantive contestation of the function, scope, and operating principles of the legal humanitarian regime at the level of policy. Examining INGO interpretations over a period of time - from the Biafran crisis of 1967 to the present day - also helps identify the factors shaping INGO interpretation and examine the specific role of INGO identity. The chapter also highlights the role of the broader normative and institutional environment in which INGOs have interpreted the provisions of the legal regime, as well as the policies and practices of other relevant actors such as western donors and the UN. The chapter does not aim however to provide a comprehensive history of humanitarian action, encompassing the multitude of actors and practices,but highlight the key conceptual and policy developments regarding the function, scope, and operational principles for the provision of humanitarian assistance as contained in the legal regime and the role of INGOs in advancing these ways of thinking and doing.

Based on a history of INGO humanitarian assistance, this chapter argues that INGO interpretations of the humanitarian regime can be categorized into three ideal types - solidarist, developmental, and integrated humanitarian assistance - which contest the function, scope, and operating

principles of the humanitarian regime.[1] The three 'ideal types' for humanitarian assistance are abstract categories that capture, accentuate, and categorize certain key aspects of INGO interpretations of the legal regime. They represent the broad ideational structure of meaning that constitute the humanitarian regime beyond a formal legal document. These ideal types also structure the range of INGO policy responses and programs (Chapter 4) and the implementation of the regime and the outcomes it produces (Chapters 5 and 6).

While INGO interpretations of the legal regime are necessarily shaped by a broader constellation of norms and interests in international society, the chapter emphasizes the agency of INGOs in advancing a solidarist, developmental and integrated form of humanitarian assistance. It argues that while humanitarian assistance has been linked to the promotion of human rights, development, and peace building in western donors circles and by the UN in the post Cold war era, and adhering to this expanded function of humanitarian assistance might now confront INGOs as a form of legitimate action, INGO have themselves been norm entrepreneurs in widening the function and scope of humanitarian assistance as laid out in the legal regime. This can be seen by taking a historical view of INGO policies and practices, especially during the Cold war era. Moreover, in the post Cold war era, INGOs are found to appropriate and make use of these political and normative shifts to legitimate their own policies and goals as the scope of their intervention in political emergencies deepens and widens. Thus, not only were INGOs norm entrepreneurs in introducing many of the ideas that have contributed to an expansion of the function and scope of the humanitarian regime, but they have also also used the adoption of these ideas by the UN and donors to further legitimate their own presence and involvement in political emergencies.[2]

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[1] Ideal types, as defined by Max Weber, are the 'one sided accentuation of one or a number of viewpoints… (which may be more present in one place, less in another, and occasionally be completely absent)…into an internally consistent mental image.'
Max Weber,*The Methodology of the Social Sciences (*New York: Free Press, 1949); p. 90

It should be noted however that just as actors' interpretation of experience involve selectivity, the aggregation of actors interpretations or viewpoints into a single ideal type also necessarily involves selectivity at the theoretical level. Therefore, the three ideal types of solidarist, developmental, and integrated humanitarian assistance do not correspond exactly to INGO global and context-specific policies, but describe the key features of INGO interpretations of the regime; the accentuation of certain features of their policies and programs allows for the abstract construction of three broad categories of humanitarian action employed by INGOs.

[2] see David Chandler, " The Road to Military Humanitarianism", *Human Rights Quarterly,* Davies, 23 (3): 2001; Davies,2012; Terry, 2002.

I. Solidarist Ideal Type

Interpretations of the function, scope and operating principles of the regime in terms of human rights frameworks can be categorized as a 'solidarist ideal type'. Such interpretations privilege expressing solidarity with victims of conflict through the protection of their human rights over respecting state sovereignty and the principles of non-interference and neutrality. Under a solidarist ideal type, the function, scope, and operating principles of the legal regime are interpreted not only in terms of meeting emergency needs but also in terms of how the provision of humanitarian assistance can protect and enhance the rights of individuals. Humanitarian agencies thus operate on the basis of a 'rights based approach' to humanitarian assistance, rather than the 'needs based approach' in the legal regime.Humanitarian needs are interpreted in terms of rights and justice expanding thereby the function and scope of humanitarian assistance as envisioned by the legal regime.

The emergence of the solidarist ideal type can be traced to the 1967 conflict in Biafra, Nigeria.[3] As neither the UN nor western donors had humanitarian programs for Biafra, the provision of aid was led by INGOs. INGOs thus has considerable autonomy in defining the nature of humanitarian operations in Biafra.[4] Food supplies into Biafra were initially led by the ICRC and INGOs such as Oxfam and Caritas. By the spring of 1968, the Nigerian government withdrew approval for airlifts into Biafra. The ICRC discontinued flights into Biafra, arguing that it was not mandated to provide assistance without government consent; this position was in line with the emphasis in the legal regime that aid should not impinge on the sovereignty of a country. ICRC's stance led to much internal debate within the ICRC, and resulted in a split in the ICRC and the formation of MSF

[3] for history of conflict see, Herbert Ekwe-Ekew, *Biafra War* (Lewiston: NY/Lampeter, 1990); Suzanna Cronje, *The World and Nigeria* (Sidgwick and Jackson: London, 1972); Paul Harrison & Robin Palmer, *News Out of Africa: Biafra to Band Aid* (London: Hilary Shipman, 1986).

[4] for issues around the provision of aid during the conflict, see: Nathaniel H.Goetz, *Humanitarian Issues in the Biafran Conflict* (Geneva: UNHCR, 2001); Marc Antoine Perouse de Montclos, "Humanitarian Aid and the Biafra War: Lessons not Learned", *Africa Development,* 34 (1): 2009; Lasse Heerten, "The Biafran War in Britain: An Odd Alliance of late 1960s Humanitarian Activists", *Journal of the Oxford University History Society*, 7(1): 2009.

under Bernard Kouchner. The formation of MSF was based on the belief that solidarity with victims of conflict was more important that respecting state sovereignty. [5]

Key officials at Oxfam, similar to the founders of MSF, argued that the needs of the Biafran people should be prioritized over a concern for state sovereignty. It thus continued supplying food and other items to Biafra, despite the ban placed by the Nigerian government. Oxfam also ended up taking an openly partisan approach to the conflict; as Oxfam claimed that " the price for a united Nigeria is likely to be millions of lives", it also ended up supporting the Biafran populations' demand for self-determination. It thus stood in solidarity with the Biafran population against the Nigerian argument. [6]

However, Oxfam did not see this as a political stance , justifying its partisan approach as necessary for meeting the humanitarian needs of the Biafran people. By framing its response in terms of humanitarian needs, Oxfam was thus able to argue that its partisan position did not amount to political interference in the conflict.[7] Oxfam also called for international intervention in aid of the Biafran people, framing this appeal not as form of political action but as a form of morally necessary action to respond to the needs of the Biafran people. Oxfam argued, for example, 'Human beings are much more important than artificially created boundaries or rules and regulations made by men...In the name of humanity, these statesmen, whoever they are, must act now.'[8] Thus, as Lasse Heertens points out, 'two highly incongruent understandings of Biafra are evident...for the representative of the Nigerian Federal government, Biafra is a political concept, a secessionist state' while for INGOs Biafra is a 'site of starvation and famine...rid of the political agency of a secessionist movement.'[9]

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[5] for history of MSF and birth of solidarist ideal type, see for example: Michal Givoni, " Humanitarian Governance and Ethical Cultivation: Médecins sans Frontieres and the Advent of the Expert-Witness", *Millennium-Journal of International Studies,* 40(43):2011; Rony Brauman," Dangerous Liaisons. Bearing Witness and Political Propaganda: Biafra and Cambodia - the founding Myths of Médecins sans Frontiers", (Paris: MSF, 2006).

[6] Public statement by Oxfam as quoted in Black, 1992; p.127

[7] Babu M. Rahman "Constructing Humanitarianism: An Investigation into Oxfam's Changing Humanitarian Culture, 1942-1994." Unpublished Ph.D Thesis, University of Wales, 1999; Chandler, 2001.

[8] Iain Somerville, "Text of a Speech at " Save Biafra" rally, Trafalgar Square 7th July, 1968, quoted in Heertens, 2009; p. 9

[9] Heerten, 2009; p. 8-9

Both Oxfam and MSF thus argued that solidarity with the Biafran population was more important than the sovereignty of the Nigerian state; obtaining consent from the Nigerian state was thus seen as unnecessary and even illegitimate. While the legal humanitarian regime attempts to balance a concern for human suffering with military necessity and state sovereignty, a solidarist humanitarian assistance ideal type tips the scale to prioritize human suffering. Equally, while the legal regime attempts to keep the realms of the political and humanitarian distinct, under a solidarist ideal type the distinction between these two realms is more blurry as expressing solidarity with the victims of conflict can also involve taking a position on the conflict.

Under the legal regime, neutrality is an operational principle that helps to assure warring parties that humanitarian agencies will not interfere in the conflict. MSF's founders argued, however, that neutrality is an ethical, rather than operational, principle that makes it untenable to remain silent in the face of gross violations of human rights. Neutrality thus requires 'bearing witness' (témoignage) and 'speaking out' for the rights of victims. MSF's interpretation thus challenged the provision in the legal regime that non-interference in the conflict is a condition for external agencies to be granted access to populations. For MSF, as former president Rony Brauman highlights, the Biafran conflict marked 'the rebirth of modern humanitarianism...its new foundations were based on the notion of the humanitarian aid sector as witness for the prosecution, denunciation as a moral obligation and the mobilization of public opinion.'[10] The practice of témoignage was seen as non-political, and thereby humanitarian, as it stood in solidarity with the victims of conflict.However, as Robert De Chaine argues, the definition of what constitutes politics was intentionally under-specified by MSF so as to facilitate the use of the 'political' as a strategic move to provide 'a counterpoint to the purity signified by the rhetoric of neutrality.'[11] In this way, MSF can define neutrality 'against the tainted, corrupted tendencies of

[10] Brauman, 2006; p. 11

[11] Robert Dechaine, " Humanitarian Space and the Social Imagainary: Médecins Sans Frontiers/ Doctors without Borders and the rhetoric of international community", *Journal of Communication Enquiry,* 26 (1): 2002;p. 359

political action, while eliding the differences of having to pin down exact denotative meanings' [12] of its understanding of neutrality in particular contexts.

The humanitarian assistance operations by Oxfam and MSF, informed by a solidarist ideal type, altered the operational environment and marked a shift in the interpretation of the legal regime. Tim Allen and David Satyn note, for example, that 'by early August 1968, the activities of Oxfam and other NGOs that chose to follows its example, had forced the ICRC into re-starting its airlift without Nigerian government permission.'[13]Oxfam and MSF also sought to gain public support for a solidarist humanitarian ideal type by publishing appeals in the press and trying to raise funds for the Biafran population.[14] Oxfam bought advertising space in the British newspaper, *The Guardian*, to print sensationalized pictures of 'naked starving children.'[15] *The Guardian*'s Editorial Board itself had been reluctant to print such pictures to accompany its coverage of the Biafran conflict. De Chaine similarly notes that MSF's 'ethic of sans frontierisme...influenced public attitudes, which in turn influenced the terms of humanitarian engagement...[which] had a consequential role to play in the new global topography.'[16]INGOs such as MSF and Oxfam can thus be considered norm-entrepreneurs in introducing a solidarist form of humanitarian assistance, one that privileged people over states.It was only much later, as the remainder of this chapter will highlight, that the UN advocated for a conditional form of state sovereignty based on respect for international human rights standards.

The famine in Cambodia following the defeat of the Khmer Rouge in 1979 provided INGOs such as Oxfam, MSF, and World Vision another opportunity to interpret the function of the humanitarian regime as expressing solidarity with the victims of conflict and Cold War politics. Oxfam, MSF, and World Vision suspended relief provision along the Thai-Cambodian border, despite clear and pressing humanitarian needs, and instead shifted operations to Cambodia. This was based on the

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[12] DeChaine, 2002; p. 359

[13] Tim Allen and David Satyn, "A Right to Interfere? Bernard Kouchner and the New Humanitarianism", *Journal of International Development,* 12(6): 2000; pp. 829-30

[14] Heerten, 2009; p.7

[15] Heerten, 2009

[16] DeChaine, 2002; p. 364

Cambodian regime's request to help address the supposed famine in Cambodia, though this was on the condition that assistance along the Thai border be stopped. It quickly became clear that Cambodia was not experiencing a famine, and that reports of a famine had been fabricated by the Cambodian government. [17]Robert Mister, Oxfam's Disasters Officer reported, for example, that he 'saw no evidence of famine, starvation or serious hunger. In fact, I found it hard to believe that there ever had been famine or starvation on a massive scale in the parts of the country I visited.'[18]

INGOs however continued to provide aid to Cambodia at the cost of assistance along the Thai border. The function of humanitarian assistance was interpreted not in terms of meeting humanitarian needs, but opposing Cold War politics and expressing solidarity with the Cambodian people.[19] William Shawcross argues, for example, that Oxfam believed that an even greater contribution than humanitarian aid 'lay simply in being in Cambodia, [as] considerate ambassadors from the world against which the Khmer Rouge had raised barricades, a testament to some form of humanitarian victory over foul revolution and impoverished diplomacy.'[20] INGO responses to the famine however were framed as morally necessary. Peter Walker argues for example, 'Oxfam's claims of imminent starvation were basing a moral appeal on a situation which did not in fact exist'[21]; similarly, a World Vision campaign noted, 'If we don't act by Tuesday - come Friday, they won't be starving - they'll be dead.'[22]

MSF even launched a 'March for the Survival of Cambodia', arguing that 'the barriers preventing us from coming to the aid of human beings at risk must be dismantled...so that the Cambodian people can survive.'[23]Looking back, former MSF President Brauman noted that, for MSF

> the opportunity to denounce those responsible for the famine in Cambodia would show continuity with MSF's founders on that point [of bearing witness]. If the

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[17] see: William Shawcross, *The Quality of Mercy: Cambodia, Holocaust, and Modern Conscience* (New York: Simon and Schuster,1985); Brauman, 2006; Barnett, 2011

[18] Robert Mister, "Report on a visit to Kampuchea, [3-13th] December 1979" cited in Black, 1992; p. 231

[19] Shawcross, 1985.

[20] Ibid; p. 379

[21] Interview with Peter Walker in Rahman, 1996; p. 67

[22] Terry, 2002; p.146

[23] Brauman, 2006; p. 11

> anti-genocide effort [in Biafra] helped bring MSF into being, [the] march [March for Cambodia] organized to bring medical supplies and food to Cambodians helped to renew it. Both were based on a combination of beliefs, errors, and propagandistic manipulations...[and were] to a large extent overdetermined by the desire of its new leaders to reclaim the conception and make bearing witness an essential element of humanitarian action. [24]

INGOs such as Oxfam equally hoped that leading the campaign to urge assistance into Cambodia would help cement their role as a leader in the field of this solidarist form of humanitarian assistance. Michael Barnett points out, for example, that Oxfam's decision to provide aid in Cambodia and comply with the regime's demand to withhold assistance to camps in the Thai border was motivated, at least in part, by 'more earthly temptations...[Oxfam] imagined that it would become a leader of a consortium of NGOs in this high profile event'.[25]

Materialist explanations for INGO interpretations highlight the role of both external and internal factors - i.e. how pressure from donors or the pursuit of funds and contracts can shape INGO behavior. In the case of Biafra, for example, INGO interpretations did not reflect coercive pressure from donors or the Nigerian government, both of which maintained that the sovereignty of the Nigerian state must be respected. Babu Rahman argues that Oxfam, for example, was increasingly alienated from both the British and Nigerian governments as a result of its public advocacy: '[Oxfam's public] statements were criticised by some in the British media as impeding British efforts to negotiate access with the Nigerian authorities.'[26] Neither can INGOs be seen as following the UN, which stayed out of Biafra and chose to respect the sovereignty of the Nigerian state.[27] At the time, non-interference in the domestic affairs of a state was still considered an ordering principle of international relations and thus neither was it a case of INGOs being programmed by the broader normative and institutional structures in which they were embedded. Rather, in Biafra, INGOs can be seen as norm entrepreneurs in introducing a solidarist form of humanitarian assistance which privileged solidarity with victims over state sovereignty and security even if this amounted to interference in the conflict. Such interference in the internal affairs of the state was legitimating by framing it as a moral, not political, form of action in response to the humanitarian

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[24] Brauman, 2006; p. 8

[25] Barnett, 2011; p. 151

[26] Rahman, 1999; p. 50

[27] Goetz, 2001.

needs of the Biafran population. David Chandler thus argues that two principles emerged during the Biafran struggle - 'freedom of criticism' and the 'subsidiarity of sovereignty' and that those INGOs that chose 'to engage in advocacy and solidarity [eroded] the principle of needs-based humanitarianism by subordinating needs to the strategic end of human rights and the struggle against oppressive third world governments.'[28]

Similarly, in the case of Cambodia, western donors did not coerce, let alone support, INGO supply of assistance in Cambodia; the UN General Assembly did not recognise the new Vietnamese backed government in Cambodia and the United States continued to support the exiled Khmer Rouge.[29] One suggestion is that INGOs were following the lead of the ICRC and UNICEF, both of whom had begun cross-border operations into Cambodia. In addition, INGO behaviour might be explained by their desire to increase their relevance and visibility in conflict. Oxfam, for example, as mentioned above, was driven by 'more earthly temptations', to establish itself as 'a leader in the field.'[30] The suggestion is thus that Oxfam chose to provide assistance in Cambodia because it calculated, based on a logic of consequences, that this would allow it to enhance its visibility and relevance in a 'high-profile' emergency.

Yet, INGOs decision to provide aid in Cambodia must also be seen in the context of these INGOs as young organisations, striving to establish and secure a role for themselves in global politics, as actors that stood in solidarity with the victims of the high politics of the Cold War. The previous chapter argued that INGOs are purposive actors who, in deciding what kind of effects they want to bring about in the world, are also engaged in a process of self-constitution. This process can be expected to be especially salient in the case of new organisations who are still struggling to define their social space in global politics.[31] MSF, for example, organised the 'March for Cambodia', ignoring reports that suggested that the famine had been intentionally fabricated or exaggerated by Cambodian authorities, because the famine, as suggested by former MSF President Rony

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[28] Chandler, 2001; p. 385

[29] Daniel Chong, " UNTAC in Cambodia: A New Model for Humanitarian Aid in Failed States?" , *Development and Change,* 33 (5): 2002.

[30] Barnett, 2011; Shawcross, 1985

[31] King et al.,2010

Brauman's statement on the previous page, was seen as an opportunity to reinforce its identity as a solidarist organisation concerned with the suffering of the Cambodia people, and to distinguish itself from political actors and political interests.

Oxfam similarly sought to establish itself as a leader in the field and sought organisational visibility. However, recognition and visibility are not only ends in themselves; actors have to decide the kind of actions they want recognition for and in doing so they can also be seen as trying to establish and secure a particular organisational identity for themselves.As noted in the previous chapter, identity is both a social and relational category. This means that actors do not acquire an identity only by laying claim to it, but also through the recognition of other actors. Thus, in order to establish a role for themselves in global politics as actors committed to alleviating the suffering of people and standing in solidarity with the victims of politics, INGOs needed to be visible as acting as such.Oxfam, in distinguishing itself from state politics and the broader politics of the Cold War, thus sought to establish a 'role' for itself as an 'ambassador' for 'third world people', and its 'social purpose' as expressing solidarity with the victims of Cold War politics.

The ending of the Cold War, and the growing internationalization and institutionalisation of human rights created a more permissive environment for INGOs to implement this form solidarist form of humanitarian assistance. The broad consensus on human rights at the 1993 Vienna conference on Human Rights, and subsequent institutional and policy developments in international customary law, the UN charter and policies, and the foreign policies of states, allowed INGOs to express this solidarity with the victims of conflict through the language of human rights.
They thus argued that expressing solidarity with the victims of conflict meant protecting the human rights of people, and that this was more important that respect the artificial constructs of state sovereignty.[32] INGOs thus began to adopt a rights based approach to humanitarian assistance, rather than the needs based approach envisioned in the Geneva Conventions. This was

[32] Allen and Styan ,2000; Brauman, 2006.

for overlap and linkages between IHL and International Human Rights Law, see:

Hugo Slim, "Not Philanthropy but Rights: Rights-Based Humanitarianism and the Proper Politicization of Humanitarian Philosophy in War", *The International Journal of Human Rights,* 6(2): 2002; D. Warner ed., *Human Rights and Humanitarian Law: The Quest for Universality* (The Hague: Martunis Nijhoff Publishers, 1997).

reflected in a change in their formal policy goals and guidelines, as is detailed in the following chapter. This rights based approach reflected a ' shift from a focus on the meeting of needs to the defence and fulfilment of rights', a conceptual and perceptual shift under which the 'victims' of 'beneficiaries' becomes rights-holders and humanitarian agencies become their advocates.[33]

During the 1990s, the UN Security Council(UNSC) became more involved in protecting and promoting human rights and became increasingly willing to legitimize the use of military force to protect the rights of people. The 1992 UNSC Resolution authorizing US-led action in Somalia on humanitarian grounds was a water-shed moment in this regard. In 1997, the UNSG also called upon all UN agencies to integrate human rights into their work.[34] Thus, as Hugo Slim argues, ' the UN Security Council has become rights based. Its many resolutions of the 1990s condemn the actions of others and justify its own actions explicitly in terms of human rights law and international humanitarian law.'[35]

INGO policy making in the post-Cold War era was defined and constrained by these broader shifts in international society. The mixing of humanitarian and human rights concerns thus came to be defined as a legitimate form of action, and defined the parameters within which INGOs provided assistance. Moreover, it also constructed new standards of legitimacy among western publics, on whom INGOs are dependent on for financial support. Human rights were thus incorporated both into the mandates of UN agencies and some of the codes of humanitarian best practice such as the Sphere Project and the Humanitarian Charter. As a concern with rights issues became a legitimate form of action for humanitarian NGOs, it was institutionalized in their mandates and organizational principles (discussed further in Chapter 4).

Yet, as noted above, INGOs were the first aid actors to suggest that solidarity with the victims of conflict should be prioritized over state sovereignty. In doing so, they argued for prioritizing people over states, and that they had a moral duty to assist victims of conflict. INGOs were able to use the

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[33] Darcy, 2004; p. 4

[34] O'Callaghan and Pantuliano, 2007.

[35] Slim, 2002; p. 16.

prominence of the human rights discourse from the mid-1990s to frame and legitimate their solidarist form of humanitarian assistance that already focussed on protecting the rights of people over providing humanitarian assistance in line with needs identified with the government. In other words, in identifying solidarity with victims of conflict as one of the functions of humanitarian assistance, INGOs were already contested a fundamental tenet of the formal legal regime that humanitarian assistance is intended to be complementary to efforts by national authorities to provide assistance and based on the consent of the state. In choosing to bypass the state and focus instead on the rights and needs of the people, INGOs had already paved the way for a conditional understanding of sovereignty and the merging of the human rights and humanitarian agenda. Thus, as Chandler argues, the humanitarian NGOs were 'the first international organizations that sought to use the terminology of human rights in an attempt to justify political policy choices in the language of ethics.'[36]

The solidarist ideal type humanitarian assistance can be coherent, compatible and mutually reinforcing with the provisions in the legal regime to provide assistance and protect victims of conflict, insofar as the chief concern is the welfare and dignity of the human being. However, it can also be contradictory as it might require agencies to take a side in a conflict, which then runs against the provision in the legal regime that humanitarian assistance should not amount to interference in the conflict. Solidarist humanitarian assistance can thus be a double-edged sword which can help provide protection to civilians by focusing on the violation of human rights, but at the same time amounts to interference in the conflict, violating thereby the terms of external agency access. [37]

This tension and the resulting operational consequences were evident in a number of contemporary political emergencies.During the Kosovo crisis, INGOs condemned the actions by the Serbian authorities against the Kosovar Albanians and called for western intervention in the conflict. Barnett quotes a journalist who notes that 'Oxfam appeared so enthralled with the idea of

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[36] Chandler, 2001; p. 683

[37] for a good overview of criticism of rights-based approaches see Darcy, 2004.

a NATO intervention...that the British army [seemed] a bit like Oxfam's military wing.'[38] Barnett thus points out that 'relief organizations that had integrated a rights discourse into their operations turned out to be humanitarian warriors.'[39] However, the position taken by Oxfam, and other INGOs, had clear operational consequences. As agencies aligned themselves with NATO, albeit under the banner of solidarism with the victims of Serbian oppression, they became legitimate targets for Serbian forces; agencies were also denied access to civilians in Serbia where there were also clear and pressing humanitarian needs.[40]

During the conflict in Darfur, starting in 2003, INGOs similarly argued that their operations had to express solidarity with the victims of state-led oppression; accordingly, they were not only concerned with meeting the immediate life-saving needs of the population, but also in acting as advocates for their rights and just treatment by the Sudanese state.[41] The scope of needs that were seen to be covered under the ambit of humanitarian assistance were defined in terms of the rights of the Southern Sudanese people; neutrality was once again not seen as an operational principle to gain access, but a moral principle which required agencies to speak out against crimes committed by state-backed militia groups.[42] INGO advocacy however placed INGOs in opposition to the Sudanese government, leading to the expulsion of a number of INGOs, including Oxfam, CARE and MSF from Sudan in 2009. Subsequent reports on the humanitarian situation in Darfur noted

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[38] Barnett, 2011; p. 189

[39] Barnett, 2011; p. 189

[40] for more on the humanitarian response see: Toby Porter, " The Partiality of Humanitarian Assistance: Kosovo in comparative perspective", *Journal of Humanitarian Assistance,* June 2000. (accessed on 12.07.2010) www.jha.ac/articles/a057.htm; B. Roggo, "After the Kosovo Conflict, a genuine humanitarian space:A Utopian Concept or an Essential Requirement, *International Review of the Red Cross,* 837(1):2000; Astri Suhrke, M. Barutciski, P. Sandison and P. Garlock, *The Kosovo Refugee Crisis: An Evaluation of UNHCR's Emergency Preparedness and the Response,* (UNHCR, July 2000).

[41] see: Hugo Slim, "Dithering over Darfur", *International Affairs,* 80(5): 2004; IASC, *Inter-Agency Evaluation of the humanitarian response to the Darfur Crisis,* 3 March 2005. (accessed on 07.09.11) http://reliefweb.int/report/sudan/sudan-inter-agency-evaluation-humanitarian-response-darfur-crisis

[42] see: Sorcha O'Callaghan and Sara Pantuliano,*Protective Action: Incorporating civilian protection into humanitarian response* (London: Humanitarian Policy Group,2007).

that the expulsion of INGOs had jeopardized access to water, health, medical services and food rations.[43]

Failing to highlight the rights violations would have challenged INGO legitimacy among western publics, especially as Darfur triggered what has been described as the greatest level of global activism since the end of the apartheid in 1991. [44] UN OCHA had also assumed, for the first time, a leadership role in human rights protection, and the United Nations Mission in Sudan (UNMIS) was the first integrated mission to have a rights protection role under its humanitarian pillar. [45]While INGO decision making cannot be understand outside the context of these factors, this does not mean that INGOs had no agency in the matter. In Sudan, the lack of leadership among mandated UN agencies transferred the responsibility for shaping and driving the humanitarian response onto a core group of INGOs and the ICRC.[46] INGOs even criticized the UNSC for not doing enough for the protection of civilians in Sudan, and began to press for a strengthened mandate and increased manpower for the African Union peacekeeping mission, AMIS. At the same time, INGO preferred not to share information with UNMIS due to concerns that this information would be used for political purposes.[47]

INGO condemnation of the Bashir government might also be explained in terms of organizational interests. Following extensive media coverage of the situation in Darfur, celebrity activism even, INGOs were keen to secure available funds for human rights oriented programming in Darfur and maintain organizational visibility. Raising the profile of rights violations by the Sudanese government can thus be seen as falling under INGO organizational interests. Yet, as mentioned in the previous chapter, INGOs have multiple organizational interests and it is important to note how

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[43] Sara Pantuliano, Susanne Jaspars and Deepayan Basu Ray, *Where to Now? Agency expulsions in Sudan: Consequences and Next Steps* (London:ALNAP, 2009); Michael Kleinman, *Tough choices for agencies expelled from Darfur,* 2009. Humanitarian Policy Network Blog. (accessed on 08.01.12) http://www.odihpn.org/the-humanitarian-space/blog/tough-choices-for-agencies-expelled-from-darfur

[44] Sorcha O'Callaghan, *Humanitarian advocacy in Darfur: the challenge to neutrality* (London: Humanitarian Policy Group, 2007).

[45] O'Callaghan and Pantuliano,2007.

[46] Sorcha O'Callaghan and Sarah Pantuliano *The 'protection' crisis: A review of field-based strategies for Humanitarian Protection in Darfur* (London: Humanitarian Policy Group, 2006); p.23

[47] O'Callaghan and Pantuliano,2006.

they chose between competing interests. Maintaining access to the civilian population is also an organizational interest in order to implement their humanitarian mandates. Alternatively, INGO identity, their perception of their role and purpose, can help understand how they chose between these two interests. INGOs believed that their role and purpose, and what distinguished them from other actors, was their commitment to standing in solidarity with the victims of conflicts and acting as advocates for their rights.[48] The choice between advocacy and access was thus based in a manner that was consistent with INGO identity, their conception of their role and social purpose. Acting in a manner that could be recognized as consistent with their identity as altruistic actors concerned with the welfare of people was also necessary to maintain their reputation and legitimacy among western publics.[49]

Under a solidarist ideal type, 'needs' are identified and defined in terms of 'rights', thereby creating a wider set of needs that must be addressed under the humanitarian imperative. Equally, rights are framed as 'needs', thereby justifying a concern with rights as necessary for satisfying the humanitarian imperative. Once a particular set of concerns or issues is framed as a 'need', the response might be considered as a technical response to an objectively existing need; moreover, the framing of a particular issue or concern as a 'need' has allowed for it to be justified in moral language, as essential to safeguarding and preserving human dignity. Chandler thus argues that 'the desire to politicize involvement in aid provision without sacrificing their neutral and "non-political" status led NGOs to seek to justify their strategic choices through the language of morality and ethics rather than politics.'[50]

This has critical implications for humanitarian principles. Under the legal regime, impartiality, for example, means being blind to all concerns but needs. However, if the scope of needs is defined in terms of rights, impartiality can be re-interpreted to mean being blind to all concerns but rights; this allows even issues of justice and gender to fall under the ambit of needs-based, impartial humanitarian assistance, and yet be framed as distinct from political action. Moreover, as the

[48] Ibid.

[49] Jeremy Smith, "Lessons from Campaigning on Darfur", *Humanitarian Exchange Magazine,* 43: 2009.

[50] Chandler, 2001; p. 683

Sudan example illustrates, a key element of the solidarist ideal type is a shift in the interpretation of the principle of neutrality - from an operational principle required to gain access to a moral principle that requires speaking out in the defense of the rights of civilians in conflict.

Sorcha O'Callaghan and Sara Pantuliano also argue that interpreting humanitarian assistance as a right, 'moves the humanitarian endeavor beyond the voluntary provision of assistance to the provision of assistance on the basis of a legitimate claim for it on the part of its beneficiaries. This involves a conceptual shift whereby victims or beneficiaries become rights holders, and humanitarian agencies become their advocates.'[51]The focus thus shifts to the duties that humanitarian agencies perceive themselves to have, rather than the humanitarian needs they are mandated to meet at the operational level. The scope of needs can thus be said to be defined in terms of the role identity and social purpose of humanitarian agencies rather than the population in question. [52]Agencies such as CARE, World Vision, and Oxfam thus increasingly construe their role as advocates on behalf of victims of crises, and even as agents for change, as will be detailed in the following chapter. Thus, while the legal regime sees the provision of humanitarian assistance as complementary to national efforts, as filling a gap, a solidarist humanitarian ideal type places humanitarian agencies in a more central role as advocates to an international audience for their rights. [53]

The solidarist humanitarian assistance ideal type is most clearly enunciated in contemporary debates on the need for the 'protection of civilians.'[54] The conflict in Darfur was pivotal in putting protection programming center stage, with 41 agencies engaged in protection activities.[55] While some agencies see the focus on protection as an opportunity to include human rights concerns into existing programming, others have established stand-alone protection activities, such as child

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[51] O'Callaghan and Pantuliano, 2007; p 8

[52] for criticism of a rights-based approach see Nicholas Stockton, "In Defense of Humanitarianism", *Disasters* 22(4) : 1998; Fox, 2001; For proponents see: Hugo Slim, "Dissolving the Difference between humanitarianism and the development: The mixing of a rights based solution", *Development in Practice* 10 (3): 2000; Weiss and Hoffman, 2006.

[53] O'Callaghan and Pantuliano, 2007; p.13

[54] see for example: UN,1999.

[55] O'Callaghan and Pantuliano, 2007.

protection, sexual and gender-based violence prevention, and the rule of law.However, there remains much conceptual confusion about what humanitarian protection means; how it should be translated into practice; and whether it is compatible with humanitarian principles. Humanitarian agencies are thus also unclear on their role as protection actors in political emergencies. [56]

The legal regime does specify a protection component to humanitarian assistance and delegates responsibility for this to the ICRC. The ICRC focusses on encouraging national actors to abide by their legal obligations and thereby extend protection to civilians. Protection is thus afforded through the auspices of national actors and institutions, rather than direct support to affected populations, and is offered to civilians on the basis of their association with the conflict, rather than their needs as a specific social group. [57]

However, INGOs that interpret the regime in terms of a solidarist ideal type have re-interpreted this understanding of protection to extend beyond legal provisions to social programs. The protection oriented policies of CARE, MSF, Oxfam and World Vision are detailed in the next chapter 4. CARE, Oxfam and World Vision offer protection to civilians not on the basis of their connection to the conflict but as human beings with human rights, and implement a wide range of societal transformative programs. As Giossi Caverzasio notes, protection activities now not only includes responsive action aimed at preventing or halting a specific pattern of abuse, but also includes remedial action and environment building programs.' [58] Remedial action occurs after the specific acts of abuse, and aims to restore peoples' dignity and ensure adequate living conditions. Environment building programs seek to create an environment conducive to respect for human rights in accordance with relevant bodies of law, and is inherently a more structural response. Protection programs are also based on an appeal to international rather than national actors. An Oxfam Program Review itself states for example that, 'Oxfam's record in working on advocacy with

[56] Ibid. See also, Simon Addison, *Protecting People in Conflict and Crisis: Responding to the challenges of a changing world, (*Oxford: RSC, 2009)

[57] ICRC, "ICRC Protection Policy: Institutional Policy", *International Review of the Red Cross,* 90 (871): 2003; David P. Forsythe, " Humanitarian Protection: The International Committee of the Red Cross and the United Nations High Commissioner for Refugees", *International Review of the Red Cross,* 83 (843):2001

[58] Giossi Caverzasio, *Strengthening Protection in War: A Search For Professional Standards* (Geneva: ICRC, 2001); p. 21

national civil society is poor. Despite Oxfam's commitment to working with others, this is neither a priority nor a success when it comes to national partners.'[59]

Abby Stoddard and Adele Harrmer also note that there is also a general community-wide trend towards increased advocacy efforts, supported by new internal structures such as the creation of new policy departments, and headquarters and field based advocacy positions.[60] Rule of law and access to justice programs are common features in humanitarian response, and human rights and humanitarian agencies increasingly share information and coordinate responses. Advocacy for humanitarian intervention has also followed from, and been justified in terms of, a concern with human rights or a rights-based approach. Thus, for example, during the Iraqi Kurdish crisis in 1991, an Oxfam member argued, 'it wasn't for us to go out advocating military intervention as an end in itself, but we were concerned about protection and people with their humanitarian plight.'[61]Rahman similarly notes that in Somalia, Oxfam's call for intervention 'had been constituted by Oxfam's humanitarian culture as the most legitimate response to the organization's experience and desperate humanitarian suffering in the field.'[62]

The INGO focus on protection and the use of rights concern to advocate for military intervention can be said to mimic the policies and actions of the UN. However, as noted above, INGOs were one of the first actors to use the language of human rights and advocate for the primacy of solidarity with the victims of conflict over sovereignty.The UN's policy re-orientation following the Cold War era, while constructing new standards of legitimacy for international assistance actors, also complemented the solidarist model advanced by INGOs. Moreover, INGOs have, at times, been even more assertive in pushing for a solidarist form of action than the UN, which remains bound by it sovereign state members. In addition, even while human rights discourses have become central to donor discourses about an 'ethical foreign policy', it cannot be argued that INGOs have been

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[59] Sorcha O'Callaghan and Kelly Gilbride, *From the Grass-Roots to the Security Council: Oxfam's Humanitarian Advocacy in Darfur, the Democratic Republic of Congo, and Uganda*(London: Humanitarian Policy Group, 2008); p.47

[60] Stoddard and Harmer, 2006; p. 69

[61] Oxfam member quoted in Rahman, 1999; p. 109

[62] Rahman, 1999; p. 135

coerced into accepting the merging of the humanitarian and human rights agenda having acting as one of the first advocates for such an approach.

The story of MSF is a further good example of how INGOs have agency and cannot be said to be programmed by the broader normative and institutional environment. MSF was a key norm entrepreneur in advancing a solidarist form of humanitarian assistance. Yet, it now stands apart from the broader club of aid agencies by arguing against rights-based approaches to humanitarian assistance. MSF argues that humanitarian agencies can do little to protect civilians, and in trying to do so, they transfer the burden of responsibility away from those actors with greater potential to effect the outcomes.[63] MSF's policies and the rationale for them is examined in detail in the following chapter.

Table 2 below shows how the solidarist humanitarian ideal type re-interprets the function, scope, and operating principles of the legal regime. The manner in which this ideal type informs current INGO policies, including the differences amongst the INGOs under study, are detailed in the following chapter.

	Legal Regime	**Solidarist Ideal Type**
Function	Address immediate suffering based on needs	Address suffering, with needs defined in terms of human rights
Scope	Life saving relief items; legal provisions - protection	Life saving relief items; but also advocacy, protection, social justice, and environment building activities
Operating Principles	Impartiality, Neutrality, Independence	Neutrality re-interpreted from operational principle to moral principle; Impartiality conditional on rights concerns

Table 3: Solidarist Humanitarian Assistance Ideal Type

[63] see for example: Terry, 2002; Torrente, 2004

II. Developmental Ideal Type

Interpretations of the humanitarian regime that focus not only on addressing emergency needs but also addressing 'vulnerabilities and capacities'[64] can be categorized as a developmental ideal type. The scope of needs that fall under the ambit of humanitarian assistance thus includes the root causes of conflict and longer-term institutional measures to address these underlying causes. The interpretation of the legal regime through a developmental ideal type implies that humanitarian assistance should be provided in a manner which, from the outset, provides a foundation for lasting development; this idea is often referred to as a relief-development continuum.[65] Implicit in the idea of a relief-development continuum, as Joanna Macrae argues, is the belief that relief should be seen not as just as palliative care but also as 'a springboard for recovery and the development of more resilient and more profitable livelihoods...embodying the progressive ethos of development.'[66] The scope of assistance under a developmental ideal type thus includes community based development, capacity building, social empowerment, and reconstruction programs.

The idea of a relief-development continuum was first put forth by INGOs during the famine crises in Africa in the 1970s and 1980s. As famines were assumed to be caused by natural disasters, international relief efforts sought to alleviate immediate suffering alongside building local capacities to ensure resilience against future disasters. While this ideal type was arguably well suited to natural disasters, it was soon applied to political emergencies as well, as in the Ethiopian case discussed below. The application of the developmental ideal type in political emergencies however assumed that just as development assistance in natural disasters could build resilience against future calamities, development assistance could also help address the vulnerabilities

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[64] see: M. Anderson and P. Woodrow, *Rising the Ashes*: *Development Strategies in Times of Disaster* (Boulder: Westview Press, 1989). Anderson and Woodrow define vulnerability as the structural factors making a community susceptible to disasters as well as their ability to respond to such disasters. Capacity refers to a community's ability to prevent and cope with crisis and disasters. Development is thus defined as the process by which vulnerabilities are reduced and capacities are increased.

[65] see for example, M. Adams and M. Bradbury, *Conflict and Development: Organizational adaptation in conflict situations* (Oxford: Oxfam,1995); Mark Duffield, "Complex Emergencies and the Crisis of Developmentalism", *IDS Bulletin,* 25(4):1994; Joanna Macrae and Mark Bradbury, *Aid in the Twilight zones: A critical analysis of Humanitarian-Development Aid Linkages in situations of Chronic Instability* (London: Overseas Development Institute, 1998).

[66] Harmer and Macrae, 2004; p.2

leading to conflict and build capacities for resilience against future conflict. The developmental ideal type thus assumed that the origins of conflict could be located in under-development and that political crises were essentially transitory phenomenon, as short interruptions to an otherwise progressive and linear, state-led development process. [67]

The famine in Ethiopia during the mid 1980s was framed by INGOs as 'a crisis of developmentalism,'[68]i.e. the famine, its severity, and the inadequacy of the national response was a result of poor development policies and weak development-oriented institutional structures.[69] INGOs argued that the crisis thus corresponded to a natural-disaster relief model, and began helping the Ethiopian government tackle the famine through the reorganization of agricultural and rural life and the implementation of village resettlement programs. These longer-term institutional responses were privileged over the provision of emergency relief assistance.[70] A former INGO employee in Ethiopia, cited by Barnett, argued that 'the idea was revolution through development...this extraordinarily optimistic ideology...became so strong that aid agencies did not turn away from their developmentalist beliefs, even when poor people were suffering from the effects of famine.'[71]However, these INGOs overlooked the political causes of the famine, specifically how the government's resettlement polices were helping perpetuate the crisis.[72] Oxfam, for example, claimed that 'there was no political dimension to the famine.'[73]The government's accelerated collectivization policy however led to the death of more than 100,000 people in transit camps and re-settlement areas. [74]

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[67] Duffield,1994; Harmer and Macrae, 2004.

[68] Duffield, 1994.

[69] The principal cause of the famine was the counter-insurgency campaign of the Ethiopian army and air force in Tigray and north Wollo during 1980-85. see: de Waal, 1991.

[70] Gayle Smith, " Ethiopia and the politics of famine relief", *MERIP Middle East Report,* 145:1987; Vaux, 2001; Black, 1992.

[71] Barnett, 2011.; p. 157

[72] see: Jason W. Clay, "Western assistance and the Ethiopian famine: Implications for humanitarian assistance" in R.E Downs, Donna O. Kerner, and Stephen P. Reyna, *The Political Economy of Famine* (Pennsylvania: Gordon and Breach Science Publishers, 1991); Brauman, 2006; de Waal, 1991.

[73] Rieff quoted in Kennedy, 2004; p. 22

[74] see: Brauman, 2006: p.12; Clay, 1991; de Waal,1991.

MSF, by contrast, voiced concerns about the government's role in causing and perpetuating the famine; this open condemnation of the government eventually led to its expulsion from Ethiopia. Other INGOs refused to support MSF's stance; as Oliver Weber notes, 'the other organizations present in Ethiopia refused en bloc to bear witness...there was no question of breaking with the Ethiopians.'[75]Western governments and the UN similarly disassociated themselves from MSF's claim. David Kennedy thus notes that 'humanitarian NGOs, States, both East and West, celebrities, specialists, and academics alike condemned MSF...[arguing that] the French organization had abandoned neutrality, meddled in politics, and stepped outside the bounds of what was considered appropriate NGO behavior.'[76] MSF's position, however, was arguably in line with the legal regime for humanitarian assistance as the government had adequate capacity to address the supposed famine; moreover, the government deliberately sought to create famine-like conditions and by providing assistance, INGOs would be complicit in perpetuating a political conflict.[77]

The Ethiopia example provides an interesting counterpoint to the Biafra case, highlighting the implications of using one particular ideal type over another for humanitarian programming. In Biafra, a solidarist interpretation of the legal regime justified overriding state sovereignty. In Ethiopia, the developmental interpretation of the legal regime obscured the political causes of the famine and legitimated working with state authorities; a developmental interpretation meant that assisting the Ethiopian government was not seen as a violation of neutrality but as a technical response to a developmental problem.

The Ethiopia case seems to support the materialist explanations for INGO behavior. As the famine captured the attention of western publics through, for example, the *Live Aid* campaign and donors made funds readily available for agencies to address the famine, to withdraw from Ethiopia because of the government's complicity in the famine would have been simply 'bad for

[75] Oliver Weber, quoted in David Kennedy, *The Dark Side of Virtue: Reassessing International Humanitarianism* (Princeton: Princeton University Press, 2004); p. 20

[76] Kennedy, 2008; p. 22

[77] de Waal, 1991; p. 124

business'.[78]The Ethiopian crisis also elevated the organizational relevance of INGOs, 'Sitting literally at the right hand of ambassadors at formal briefings, their views were diligently reported in confidential cables to western capitals.'[79] Organizational interests - in terms of access to donor funds, continued organizational presence in Ethiopia, and having the ability to shape donor policy - seem to be key factors shaping INGO policy in Ethiopia.

By the late 1980s however, INGO themselves were dissatisfied with the limited impact of relief aid. David Chandler argues that INGOs became concerned with 'ending the problems of the third world' and sought to focus on long-term development work rather than only short term emergency aid.[80] By the end of the 1970s, Oxfam, for example, was spending more than 50 per cent of its budget on development programs and only 10 per cent on relief.[81] K. Henry similarly note that while CARE started out as a relief-only organization, by the 1980s its policies strongly reflected the developmental ideal type as it linked the function of humanitarian assistance in political emergencies to the alleviation of poverty.[82] Moreover, INGOs opposed the manner in which western states were using development assistance to bolster corrupt elites in the context of super-power rivalry during the Cold war. They thus advocated for an alternative, grassroots model of development, focussed on ideas of 'capacity building', 'empowerment' and 'civil society.[83]

The ending of the Cold War also created a normative and institutional environment that encouraged the linking of relief and development. In the early 1990s, western donor overseas development assistance (ODA) budgets declined; at the same time, the end of super power patronage and colonial rule in third world states contributed to internal strife and conflict in these states and a greater portion of donor funds were consequently assigned for humanitarian

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[78]Live Aid was a dual-venue concert held on 13 July 1985 in London and Philadelphia to raise funds for relief for the Ethiopian famine. It was one of the largest-scale satellite link-ups and television broadcasts of all time: an estimated global audience of 1.9 billion, across 150 nations, watched the live broadcast.

[79] Sue Lautze, Angela Raven-Roberts and Teshome Erkineh, *Humanitarian Governance in the new millennium: An Ethiopian case study* (London: Humanitarian Policy Group, 2009); p.15

[80] Chandler, 2001.

[81] Helen Searls, "The NGO Revolution", Unpublished discussion paper, 1995 cited in Chandler, 2001; p. 686

[82] Kevin M. Henry, " CARE International: Evolving to Meet the Challenges of the 21st Century", *Nonprofit and Voluntary Sector*, 28(1);1999

[83] Stockton,1998.

assistance. As Mark Bradbury argues, the growing costs of intervention and the overall decline in ODA had by the early 1990s created pressure for a reinvention for the rationale for aid. The idea of linking relief and development provided that rationale: aid could be used to prevent conflict by reducing economic instability. [84]

The decline in ODA also meant that traditional development agencies needed a new purpose and thus also sought to inject development practices into relief work. The United Nations Development Program (UNDP), for example, was concerned with the increased expenditure on humanitarian relief and the creation of the UN Department for Humanitarian Affairs (DPA) as this could threaten its role as the leading UN agency.[85] Mark Duffield argues that this encouraged the UN's endorsement of the relief-development continuum, so as to create space for development actors even in conflict situations. [86]Within UNDP, for example, a *Continuum Project* was initiated in 1993 in response to UNDP's Governing Council request for a preparation of guidelines on the organisation's role in humanitarian affairs. As John Burton argues, 'those concerned with "development" [were] taking a much closer interest in "relief" activities and questioning whether, in view of such large expenditures, there [was] room for using relief expenditures more "developmentally" by strengthening local institutions, developing the "human resources", improving local infrastructure and local productive capacity.'[87]

The bending of the principle of non-interference by the *Agenda for Peace* also created room for international involvement in the internal governance of the state. Moreover, as the root causes of conflict could be located in under-development, development oriented assistance was of special significance. The idea of linking relief and development was also supported by the UN *Agenda for*

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[84] Mark Bradbury, "Normalizing the crisis in Africa", *Disasters,* 22(4):1998; for more on history and origins, see: Claes Lindahl, *Developmental Relief? An Issues Paper and an Annotated Bibliography on Linking Relief and Development* (Stockhholm: SIDA, 1996).

[85] The UN resolution establishing DHA also specifically referred to a relief-development continuum as a key guiding principle for both natural and man-made disasters.For more on these institutional dynamics, see: Michael Askwith, "The Roles Of DHA And UNDP in Linking Relief and Development", *IDS Bulletin,* 25(4): 1994.

[86] Duffield, 2007.

[87] John Burton, " The Upsurge in the 'Relief-Development Continuum': What does it Mean?", *Humanitarian Exchange Magazine,* 2(1): 1994; p. 1

Development (1994) which sought to place greater emphasis on human development, and role of communities, civil society, and political institutions in fostering economic growth and welfare. The launch of UNDP's annual *Human Development Report* in 1990 institutionalised this thinking. [88]

The rationale behind linking humanitarian assistance to development aid, or the relief-development continuum, was that good development practices could reduce communities' vulnerability to disasters, natural or man-made, and enable populations to develop assets they could draw on in future conflicts. Moreover, as the origins of conflict could be located in under-development, and as conflict was primarily a transitory interruption in a linear state-led development process, the solutions to conflict could also be found in development assistance. At the same time, there was growing criticism in the development sector about how simple service provision could encourage dependency; humanitarian agencies adopting the relief-development continuum model thus based their programs on trying to build local solutions to local problems and build partnerships with local actors. The developmental ideal type for humanitarian assistance thus based itself on common developmental practice, with a focus on community participatory approaches, empowerment strategies, capacity building, and vulnerability analysis.[89]

The developmental interpretation of the legal regime grew increasingly popular among INGOs during the 1990s. In Somalia for example, INGO programs during the early 1990s focused only on the provision of relief; by 1995, however, INGOs began to re-orient their aid programs in line with a developmental ideal type in order to address current and future vulnerabilities and capacities. INGO programs began to include capacity building, local participation, democratization and

[88] S. Jackson, and P. Walker, "Depolarizing the 'broadened' and 'back-to-basics' relief models", *Disasters* 23 (2): 1999.

[89] for good overview see: Harmer & Macrae, 2004; Dylan Hendrickson, " Humanitarian Action in protracted crises: the new relief 'agenda' and its limits", *Relief and Rehabilitation Network,* 25 (1): 1998; Bradbury, 1998.

sustainable development components.[90] Similarly, in Rwanda, linking relief and development was the explicit programming direction adopted by INGOs immediately after the 1994 genocide. [91]

The impetus for a relief-development continuum was in response to declining ODA and the need to make aid more efficient, the protracted nature of a number of post cold war conflicts, and the push by UN development agencies to secure their operational relevance in the face of declining donor budgets. Western donors however were looking to scale back their involvement in third world states and were keen to apportion out the management of third world states to the UN and INGOs.[92] Yet, they preferred channeling their funds for humanitarian programs rather than long-term development initiatives.

However, as noted earlier, INGOs were already by the 1970s and 80s trying to find longer terms solutions to conflict and spending an increasing amount of their budgets on developmental programs. Even while UNDP and other UN agencies were by the 1990s looking for opportunities to integrate relief and development work, the UN only formally assumed responsibility for addressing under-development in southern states following the end of the Cold war. As Duffield argues, the UN 'accepted the need to work in unresolved conflict situations...following the path of independent NGOs.'[93] Thus, one might argue that INGOs were not simply mimicking the UN or responding to donor pressure in their adoption of a developmental form of humanitarian assistance. Instead, they sought to use the operational space that opened up following western disengagement from southern states with the ending of the Cold War, and widen the scope of their reach and range of operational concerns. This coincided with the goals of UN development agencies to ensure that they had a continued role in political emergencies.

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[90] Rakiya Omaar and Alex de Waal, "Humanitarianism Unbound? Current Dilemmas facing Multi-mandate relief operations in political emergencies", *African Rights,* 5(1):1994; J. Gundel, "Humanitarianism and spoils politics in Somalia" in Monika Katrina Juma & Astri Suhrke eds., *Eroding local capacity: international humanitarian action in Africa* (Uppsala: Nordiska Afrikainstitutet, 2002).

[91] Macrae & Bradbury, 1998.

[92] Duffield,2002.

[93] Duffield, 1994; p.8. see also: Joanna Macrae, *Aiding peace and war: UNHCR, returnee reintegration, and the relief-development debate*, (London: Humanitarian Policy Group,1999); Claes Lindahl, *Developmental Relief? An Issues Paper and an Annotated Bibliography on Linking Relief and Development* (Stockhholm: SIDA, 1996).

An alternative argument for INGO adoption of a development ideal type builds on the fact that the developmental ideal type widens the scope of activities that INGOs can be concerned with under the ambit of humanitarian assistance. INGO interpretation of the legal regime can then be seen as an attempt to increase organizational relevance at both the operational level and at the global aid policy-making level, as was the case in Ethiopia.

However, the fact that INGOs chose to increase their relevance through a focus long-term development aid can be linked to their perceptions of their role and purpose. As the next chapter will examine in detail, INGOs argued that as actors concerned with alleviating human suffering against oppressive states and institutional structures they were compelled to address not only immediate suffering but also the longer term term vulnerabilities and capacities of individuals and communities in conflict. Thus,one might argue that while material factors such as visibility, relevance and influence shaped INGO adoption of a developmental form of relief, it is INGO identity that gave these material factors causal effect by defining what mattered to an INGO and how its preferences were constructed.

A developmental relief ideal type is consistent with the provisions of the legal regime in so far as it is concerned with alleviating human suffering caused by conflict. As Hugo Slim argues, 'Both ethics —the humanitarian ethic of restraint and protection and the development ethic of empowerment and social justice—value the same common goods and embrace the same ideal of full human dignity.'[94]However, in other respects, the developmental ideal type contests the function, scope, and operating principles of the legal regime. [95] Under a developmental interpretation of the legal regime, the function of humanitarian assistance is to address not only cases of immediate suffering, but also the root causes of conflict and the capacities of a community to recover from conflict. The scope of humanitarian assistance thus extends from life-saving relief items to longer term programs aimed at rebuilding livelihood opportunities, strengthening local institutions and governance mechanisms, and building local capacities. The shift in focus to longer term, community-level goals, can result in the subordination of immediate life saving assistance to

[94] Slim,2000; p. 494

[95] Duffield, 1994.

broader goals of institution building or livelihood strengthening, or make relief aid conditional on developmental criteria being met.[96]

The focus on local capacity building and livelihood programs under a developmental ideal type can also contest the provision in the legal regime that aid should not amount to interference in the conflict, contribute to the local economy, or strengthen the military capacity of parties to a conflict.[97] These effects are reflective of the difficulty of providing development assistance in conflict; developmental programming requires working with local authorities, but this means that agencies are no longer neutral in their provision of aid.[98] In Northern Sudan, for example, a number of INGOs, along with UN agencies, chose to support the government's development programs including one for rehabilitation; however, as a history of the Sudanese conflict shows, population displacement was an objective of the warring parties.[99] Thus, relief programs that were designed with a developmental framework not only aided a particular party to the conflict, but also arguably contributed to the maintenance of the institutional structures and social processes critical to the continuation of the conflict. The developmental ideal type thus raises the question of how agencies are to shift from a 'state-avoiding' strategy, which is the essence of neutral humanitarian relief, to one that is 'state-supporting' as is required for developmental relief. [100]

The problem of working with a particular set of local or national authorities on development programs is especially problematic in protracted crises where it is difficult to ascertain when the conflict has ended. This was apparent in Rwanda, Sierra Leone, and Cambodia, where shifts to developmental programming in line with the national authorities proved premature as the conflict resumed once again. Yet, having worked with national authorities in these above-mentioned crises, agencies found it harder to appear as neutral actors and resume relief programming in conflict stricken areas. [101]

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[96] Macrae and Bradbury, 1998.

[97] see for example: Mackintosh, 2000.

[98] Bradbury, 1998

[99] Ibid.

[100] see for example, Hendrickson, 1998; Fox, 2001;Macrae, 1998.

[101] Burton, 1993./ Keen add/

	Legal Regime	Developmental Ideal Type
Function	Address immediate suffering; symptoms of conflict	Address immediate suffering through addressing vulnerabilities & capacities; root causes of suffering/conflict
Scope	Life saving relief items; legal provisions - protection	Capacity building, social empowerment and mobilization; community and state level institutional and governance and developmental projects
Operating Principles	Impartiality, Neutrality, Independence State-Avoiding	Not neutral to causes of suffering Impartiality re-negotiated - aid not only according to immediate need, but potential to address underlying causes of need State supporting rather than independent

Table 4: Developmental Humanitarian Assistance Ideal Type

MSF, in contrast to other INGOs studied in this thesis, does not have a developmental interpretation of the legal regime. As will be shown in the next chapter, MSF has consistently defined its identity in opposition to states, and therefore assigns tremendous importance to the principle of independence from states and other local authorities. Developmental relief would require it to cooperate with national or local authorities, and thereby pose a challenge to a defining principle of its identity. MSF has therefore sought to limit the extent of its humanitarian role, describing its responsibility in terms of only palliative medical services and not sustainable public health interventions. Since MSF is neither reliant on government funds, nor does it coordinate its action with UN agencies of parties to the conflict, its interpretation and behavior cannot be explained in terms of material-external factors alone. The next chapter also highlights how MSF makes no apparent gains in terms of hard organizational interests by rejecting the developmental type.

III.Integrated Ideal Type

INGO interpretations that posit that humanitarian assistance should not only address the symptoms of conflict through relief aid but also contribute to transformation of the conflict itself by merging the provision of humanitarian aid with peace and conflict resolution programs can be

categorized as the integrated ideal type for humanitarian assistance. The integrated ideal types promotes, as Fiona Fox argues, 'a more politically conscious aid which can assess the present and future impact of aid interventions on the politics of conflict and ensure that aid is linked to military and diplomatic tools in a coherent conflict-resolution strategy.'[102]An integrated ideal type for humanitarian assistance builds on, and combines the focus on human rights and justice concerns in the solidarist ideal type with the developmental ideal type's focus on addressing vulnerabilities and capacities through longer term programming. Of the three ideal types however, it is most explicit in conceptualizing the function of humanitarian assistance in terms of conflict resolution, peace building, and societal transformation, putting the 'strengthening of processes and institutions before saving lives.' [103]

Interpretations along an integrated ideal type were most clearly articulated following criticism of INGOs for their role in perpetuating and exacerbating the 1994 Rwandan crisis. In response to this criticism, INGOs sought not only to minimize the negative effects of aid, but also calibrate humanitarian assistance in a manner that would directly address the political dimensions of the conflict and help build peace. The Rwandan crisis also raised questions among INGOs about the value and applicability of remaining neutral in cases where civilians were made the target of violence. INGOs noted that in cases like Rwanda their moral obligation was to defend the victims and it was therefore undesirable to remain silent and uninvolved in the politics of the crisis.[104] Oxfam argued, for example, that it was not possible to remain neutral between Hutu genocidaires and their Tutsi victims, and that their silence in face of such atrocities would certainly amount to more killings.[105]

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[102] Fox, 2001; p.284

[103] Fox, 2001.

[104] Andy Storey, " Non-neutral humanitarianism: NGOs and the Rwanda Crisis", *Development in Practice,* 7 (4): 1997; John Borton, Emery Brusset, Alistair Hallam, et al. *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience. Study 3: Humanitarian Aid and Effects* (Copenhagen: Steering Committee of the Joint Evaluation of Emergency Assistance to Rwanda, 1996)*;* Antonio Donini and Nora Niland. *Rwanda: Lessons Learned, A Report on the Coordination of Humanitarian Activities (*New York: United Nations Department of Humanitarian Affairs, 1994*);* Peter Uvin, *Development, Aid and Conflict: Reflections from the Case of Rwanda* (Helsinki: United Nations University World Institute for Development Economics Research, 1996); Macrae, 1998; Terry, 2002;Fox 2001.

[105] Fox, 2001.

Under an integrated ideal type, the division between the political dimensions of the conflict and humanitarian assistance is completely dissolved as humanitarian assistance is transformed to be a form of political intervention aimed at building peace. Following Rwanda, INGOs thus began to consider how they could integrate peace building, conflict resolution, and conflict prevention components into their relief programs, expanding thereby the function and scope of humanitarian assistance. CARE for example, sought to 'bridge the divides between relief, development, and peace building' to ensure that 'relief helps build local capacity that is then crucial for peace-building.'[106] Similarly, World Vision sought 'to prevent conflict and maintain peace by supporting civil society through dialogue, mediation, advocacy, and building awareness and tolerance among the groups in conflict.'[107]

The INGO focus on the peacebuilding and conflict resolution functions of humanitarian assistance needs to be situated in the context of the broader securitization of aid in the post cold war era, and especially post 9/11. As noted earlier, identifying the root cause of conflict as under-development created a new strategic function for aid as a form of conflict transformation. The focus on human security and human needs also turned the UN's attention to the internal governance of states as the causes of conflict were located in poverty, environmental decline, and population growth.Aid was thus expected to transform entire societies through a wide range of rule of law, domestic governance, justice, and institution building programs. [108] Thus, as Mark Duffield argues, the new post-cold war security framework was 'not based upon the accumulation of arms and external political alliances between states, but on changing the conduct of populations within them...stability is achieved by activities designed to reduce poverty, satisfy basic needs, strengthen economic sustainability, create representative civil institutions, protect the vulnerable and promote human rights.'[109]

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[106] CARE, *What We Do*: *Emergency Work,* April 2012. (accessed on 07.01.13) <http://www.Care-international.org/Care-s-Work/>

[107] World Vision.*Peacebuilding*, September 2010. (accessed on : 07.01.3) http://www.worldvision.org/content.nsf/about/press-development-peace

[108] Roland Paris, "International peacebuilding and the 'mission civilisatrice'", *Review of International Studies,* 28(4):2002.

[109] Duffield, 2001; p. 310

The link between security and development received further support following the attacks in New York on 11 September 2001. Preventing and rescuing so called 'failing states' was seen as necessary for western peace and security.Former British Foreign Secretary Jack Straw argued, for example, that ' turning a blind eye to the breakdown of order in any part of the world, however, distant, invites direct threats to our national security and well being...preventing states from failing and resuscitating those that fail is one of the strategic imperatives of our time.'[110] Western donors thus sought to stabilize these failed states and, where interests permitted, as in Afghanistan and Iraq, to direct the process of state building in line with liberal democratic values.

Stabilization of vulnerable states was expected to take place not only through military means but wider 'hearts and minds' campaigns including development, reconstruction, rule of law, and governance programs. The UK Ministry for Defense, for example, defines stabilization as a process that seeks to ' prevent or reduce violence; protect the population and key infrastructure; promote political process and governance structures...and prepare for sustainable social development.'[111] Following on from the 'joined up' or 'whole of government approach', humanitarian assistance was expected to serve these broader political objectives.These broader political and normative trends meant that not only was there a normative climate that supported a broader role for aid in conflict management and societal transformation but also a political climate in which donors encouraged the use of aid as a tool for the stabilization and transformation of fragile states. [112]

MSF, however, rejects the integrated ideal type, arguing that the very idea of integrating political and humanitarian action violates humanitarian principles, and compromises the provision of relief. In the words of former President of MSF, Nicholas Torrente, 'Politically motivated humanitarian assistance creates a triage between deserving and undeserving beneficiaries whereby aid, in violation of humanitarian principles, is allocated according to peoples' expected

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[110] J. Straw, "Failed and Failing States", speech at the European Research Institute, Birmingham. 6 August 2002. quoted in Macrae and Harmer,2003; p. 9

[111] MoD quoted in Collinson and Elhawary, 2010; p. 279

[112] There is an extensive literature on how the changed security climate post 9/11 shaped the nature of humanitarian assistance. For a good review see: Macrae and Harmer, 2003; Collinson and Elhawary,2010.

contribution to the larger goals of peace and nation building.[113] It does not participate in the cluster system or coordinate its programs within the UN Integrated Mission structure.

The integrated ideal type thus contests the function and scope of humanitarian assistance as stated in the legal regime by including a concern with conflict transformation and peace building. It explicitly contests the provision in the legal regime that humanitarian assistance should not amount to interference in the conflict, collapsing the division between humanitarian and political action. The integrated ideal type also contests the meaning and applicability of key operating principles enunciated in the legal regime. Assistance is not provided according to the sole criterion of need, but the extent to which it can help realize the broader goals of peace-building and societal transformation. As peace-building, governance, or institution building programs require assessing the conflict in a manner that determines where justice lies, and partnering with local actors accordingly, INGOs cannot claim to be neutral in the provision of aid. An integrated ideal type, as Kenneth Anderson argues, depends not merely upon the rational agreement that basic human needs must be met, but also on highly disputed and highly contestable visions of the good society, the good politics, the good economy, and the good culture.'[114]

The loss of neutrality, argues Anderson, also explains the increasing attacks on INGOs in political emergencies. He thus argues that as INGOs begin to engage in reconstruction and state building activities, in Iraq, Uganda, Sri Lanka, Liberia and elsewhere, they can no longer claim to be neutral,and thereby lose their claim to humanitarian inviolability i.e. to provide humanitarian assistance with the 'assurance that their personnel, their property, and their activities will not be made the object of attack.'[115]

Others however argue that the integrated ideal type is compatible with the legal regime as it provides a multi-faceted and comprehensive approach to addressing human welfare in political

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[113] Torrente,2004.; see also Austen Davis, *Same Aims, Different Means? Why Promoting "Coherence" in Military and Humanitarian Goals Is a Disservice to Civilians in Need* (Amsterdam: MSF-Holland,2002).

[114] Kenneth Anderson, "Humanitarian Inviolability in Crisis: The Meaning of Impartiality and Neutrality for U.N. and NGO Agencies following the 2003-2004 Afghanistan Crisis and Iraq Conflicts", *Harvard Human Rights Journal* 17 (1): 2004; p. 57

[115] Anderson, 2004; p. 41

emergencies, and alerts INGOs to the broader political implications of humanitarian assistance. While this might require a re-interpretation of the principles of impartiality and neutrality, some INGO advocates of an integrationist ideal type argue that this is necessary given the nature of new wars and the moral obligation of INGOs to move beyond providing mere 'band-aids' to addressing the long term causes and consequences of human suffering. Joel Charny, Vice President for Humanitarian Policy and Practice at Inter-Action and a former employee of CARE and Oxfam, argues for example,

> There is no inherent contradiction between an integrated approach and independent humanitarian action…An effective integrated strategy preserves and expands the space for humanitarian agencies to respond to the needs of vulnerable people. A core premise for an integrated approach is that through it conflicts may be resolved and political reconciliation achieved. In a principled sense, integration is not about creating political winners…Integration is about unified international action in support of reconciliation and social inclusion.[116]

This position finds support among international donor agencies. For example, the OECD-DAC guidelines highlight that 'development and humanitarian aid can also help consolidate the fragile peace process by supporting societal reconciliation, political development, and physical reconstruction.'[117] It is also complementary to the UN 'integrated mission' structure and the emphasis some western governments lay on 'joined-up government', under which humanitarian assistance is seen as part of a broader political strategy for addressing conflict.

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[116] Joel Charny, " Upholding Humanitarian Principles in an effective integrated response", *Ethics & International Relations,* 18 (2): 2004; Paul O'Brien, " Politicized Humaniarianism: A Response to Nicolas De Torrente", *Harvard Human Rights Journal,* 17 (1):2004.

[117] OECD-DAC, *DAC Guidelines on Conflict, Peace, and Development Co-operation* (Paris:OECD, 1997); p.9

	Legal Regime	Integrated Ideal Type
Function	Address immediate suffering	Address immediate suffering through addressing conflict and broader social process contributing to conflict
Scope	Life saving relief items; legal provisions - protection	Institutional development; governance assistance; peace building; human rights and advocacy; quick impact projects
Operating Principles	Impartiality, Neutrality, Independence State-Avoiding	Not neutral to causes of suffering Impartiality re-negotiated - aid not only according to immediate need, but potential to address underlying causes of need within larger context of conflict resolution;Independence possibly compromised; related to donor strategic interests

Table 5: Integrated Humanitarian Assistance Ideal Type

Materialist explanations might suggest that INGO adoption of an integrated ideal type can be explained in terms of donor pressure and the broader external institutional environment. As western states increasingly linked under-development in third world states to the security of northern states, a more comprehensive approach was sought to political emergencies, one that would bring together political, development, and military strategies towards a common goal of stabilization or nation building. The UN similarly sought to integrate and build coherence between its political and development arms through an Integrated Mission structure. Humanitarian assistance was thus subsumed to the broader objectives of stabilization and nation building, and intended to complement the political goals of donor states and the UN missions. It could be argued, therefore, that donors or the UN pushed INGOs to incorporate peacebuilding and conflict transformation components in their programs by making funding conditional upon an integrated approach in line with their strategic interests, resulting thereby also in the politicization of humanitarian assistance. This tendency has become especially more pronounced since the attacks on the World Trade Center in September 2001, reflecting most clearly in Colin Powell's reference to INGOs as 'force multipliers' for the USA in Iraq and Afghanistan. [118]

[118] see Cornish, 2008; Macrae & Harmer, 2003.

However, analyses of conflict in terms of a lack of development, the belief that developmental relief could help address conflict, and that state sovereignty is conditional, can already be found in the development ideal type, which predates donor and UN emphasis on integrated missions. INGOs, starting with the solidarist ideal type, were one of the first advocates for a broader function for humanitarian assistance addressing not just cases of immediate suffering but issues of rights and justice. Similarly, under a development ideal type, INGOs sought to engage with with the causes of conflict and the potential to provide long term development solutions. Thus, the argument that INGO contestation of the humanitarian regime in terms of an integrated ideal type was the result of external pressure does not hold up to the evidence as INGOs were already seeking means and mechanisms through which humanitarian aid could play more than just a palliative role in political emergencies. As David Chandler argues, 'the sphere of NGO goal-oriented rights-based humanitarianism set up crucial practical precursors for more direct and invasive government-led, human rights-based interventionism of the late 1990s.' [119] In fact, as Devon Curtis argues, the growing convergence between humanitarianism and conflict reduction programs in donor policies would in fact not have been possible without the active support of a number of aid agencies.[120] In support of this, Stuart Gordon notes that the role attributed to humanitarian assistance in a 'stabilization discourse' actually found earlier articulation in debates among the INGO community concerning the relationship between relief, human rights, development, and institution building. Thus, there is a strong overlap between INGO activities and those that fall under a stabilization mission, such as the focus on short to medium-term recovery, peace-building, development and human rights work.'[121]

Donor emphasis on integrating humanitarian assistance within a wider political framework did not coerce NGOs into focusing on peacebuilding. Rather, it provided them greater operational space to implement programs along the lines of an integrated ideal type. INGOs were able to appropriate and explicitly use the language of rights, transformation, and peacebuilding to access donor funds for such integrated humanitarian assistance.Nonetheless, the overlap between the INGO

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[119] Chandler, 2001; p.689

[120] see: Devon Curtis, *Politics and Humanitarian Aid: Debates, Dilemmas, and Dissension* (London: Humanitarian Policy Group, 2001).

[121] Ibid; p.4.

integrationist relief ideal type and the stabilization agenda of western governments complicates the perception of INGOs among local authorities and populations as INGOs are perceived to be acting on behalf of donor governments. Moreover, the operational overlap creates greater opportunity for states to use INGOs to extend their own strategic interests. Finally, the overlap between a stabilization approach and the integrated ideal type for humanitarian assistance also helped legitimize the securitization of aid and western states' responses to political emergencies. This legitimization rests on the moral authority of INGOs and their claim to be motivated by alleviating human suffering rather than any other political or organizational interests.

INGO interpretation of the regime in terms of an integrated ideal type has also been argued to be shaped by external factors, specifically an increase in donor funding for development and reconstruction programs that address insecurity in political emergencies. As Alexander Cooley and James Ron argue, 'securing new funding is an ever-expanding part of the INGO's function, pushing other concerns – such as ethics, project efficacy, or self-criticism – to the margins'.[122] However, as argued above, while these organizational interests could be furthered by implementing programs along an integrationist ideal type, the availability of funding did not cause INGOs to interpret the humanitarian regime in this particular way. In other words, while INGO organizational interests might have shaped particular policies or made INGOs more susceptible to donor pressure, this pressure did not determine the overall goals and programming objectives of INGOs; the preference for a form of humanitarian programming that addressed the conflict itself can already be found in the solidarist and developmental ideal types, and prior to the donor emphasis on an integrated approach to humanitarian assistance.

An alternative argument is that INGO interpretation of the humanitarian regime in terms of an integrated ideal type was shaped by INGOs' perceived role and social purpose. Oxfam, CARE, and World Vision emphasize that their role and purpose is to alleviate the suffering of individuals; this necessitates that humanitarian programs address the causes of suffering, and help transform societies in a manner that will ensure their long term security and welfare. As the next chapter will demonstrate, INGOs defend the need for an integrated approach in terms of their moral obligation

[122] Cooley and Ron, 2002; p. 16

and social purpose, both of which are constitutive of INGO identity. MSF's refusal to adopt an integrated approach is similarly rooted in its conception of its humanitarian responsibility as a particular kind of actor.

IV.Conclusion

This chapter has highlighted how INGOs have contested the function, scope, and operating principles of the legal regime for humanitarian assistance through the process of interpretation. INGO interpretations can be categorized into three ideal types which define the broad contours of what the humanitarian regime comes to mean for INGOs beyond a formal legal document. Taken together, these ideal types represent the range of permissible humanitarian action that can be said to constitute the humanitarian regime. These ideal types also have causal effects as they structure INGO policy and practice, as will be seen in Chapters 4, and 5 and 6, respectively.

Under a solidarist ideal type, the function and scope of humanitarian assistance shifts from being need-based to rights-based, and neutrality is defined in terms of solidarity with the victims of conflict. A developmental ideal type conceives of the function and scope of humanitarian assistance not only in terms of addressing life saving needs but also the vulnerabilities and capacities of communities. The preferred approach to the provision of aid is thus in terms of a relief-development continuum, whereby relief is expected to contribute to longer-term development solutions to insecurity. The integrated ideal type builds on these ideas of rights-based aid and a relief-development continuum to suggest that humanitarian aid should be directly linked to broader attempts at conflict resolution and peacebuilding. These three ideals types are reflective of INGO interpretations of the formal legal regime and the define the range of possible and legitimate action for INGOs.

Moreover, as indicated in this chapter, there are strong complementarities between the three ideal types. The concern for human rights, underpinning a solidarist developmental ideal type, also coheres with, and provides further justification for, a developmental ideal type's concern with addressing the root causes of conflict and equipping communities with assets and skills that can

help them negotiate future conflicts. A solidarist concern with human rights also provides justification for the direct involvement in the political dimensions of the conflict envisaged by the integrated ideal type. The link between conflict and under-development is similarly the rationale for the developmental and integrated models, and the two frameworks can thus be mutually reinforcing.

However, the three ideal types can also have competing imperatives. An integrated ideal type might require INGOs to support local authorities and their attempts to consolidate their rule, even while these authorities are known to have acted in violation of human rights standards. Similarly, a developmental ideal type requires partnering with local authorities to help establish local ownership and sustainability to development interventions; this however can help consolidate the very structures that lead to conflict in the first place and thus run contrary to the objectives of peacebuilding and societal transformation. The manner in which these competing imperatives are prioritized is often resolved at the level of implementation, as will be highlighted in the empirical chapters on Sri Lanka and Afghanistan

Yet, taken together, these three ideal types re-constitute the meaning of the legal regime, defining what it has come to mean beyond a formal document and delineating the range of legitimate humanitarian action for INGOs in political emergencies. A particular ideal type might however be more dominant in a particular context. Systematically specifying the conditions in which a particular ideal type would require a much larger 'n' study and thus remains beyond the scope of this thesis. The in-depth study of the cases of Afghanistan and Sri Lanka do however provide tentative suggestions for what these conditions might be, and these could be fruitful avenues for future research.

Materialist analyses focusing on the external environment suggest that INGO interpretation is shaped by the power and interests of donors or other more powerful actors. However, as argued above, INGO re-interpretation of the legal regime often occurred in the absence of donor pressure, as in the case of Biafra, and even at times ran contrary to donor interests as, for example, in Cambodia. Moreover, the evidence does not suggest that INGOs were being forced to adopt

programs due to coercive pressure from donors or the UN that they would have otherwise not adopted; rather, as the discussion of the integrated ideal type suggests, INGOs were at the forefront of defining the function of humanitarian assistance in terms of justice and longer-term solutions to conflict. INGOs had sought to widen the function and scope of humanitarian assistance before similar attempts by donor states; donor thinking about building the complementarities between political action and humanitarian aid in the early to mid-90s in fact created a more permissive environment for INGOs to provide aid along a solidarist , developmental or integrated ideal type.

INGO interpretations were found to be driven by hard organizational interests, as was suggested in the cases of Ethiopia and Darfur, where the availability of funds and the extensive media coverage meant that remaining silent was simply 'bad for business'. Similarly, the overlap between donor stabilization approach and the INGO integrated ideal type meant that the continued use of the integrated ideal type brought tangible benefits to INGOs in terms of being able to acquire a greater portion of donor funding and expanding their operational presence.

Yet, as argued in this chapter, INGOs identification and perusal of their hard organizational interests cannot be separated from their identity as INGO identity defined what was important to them as organizational actors. Thus, in the case of Darfur, for example, INGO policies were influenced by media coverage, INGOs nonetheless sought to be recognized as the kind of actors that defend the rights of people against oppressive state policies. Equally, why a particular course of action is considered to be more of an organizational interest than another, as, for example, with the provision of aid to address the famine in Cambodia rather than cater to refugee needs along the Thai - Cambodian border can be understood with reference to INGOs perception of their social purpose and the manner in which they seek to distinguish themselves from other actors. A concern for funding or relevance is thus not base-free, but rooted in identity, as organizations do not only wish to survive, but survive as particular kinds of organizations, imbued with a particular identity. Identity thus defines what is considered legitimate, and legitimacy constitutes possibilities for action.

INGO identity was found to play an important role in explaining INGO contestation of the regime. In a number of instances, such as in Biafra and Cambodia, INGO identity is necessary to understand why particular policy decisions were made. In these cases, INGO interpretations were driven by INGO perception of their role and purpose in a particular context, as well as by their attempts to distinguish themselves from state actors. INGO interpretations occurred in the absence of donor pressure; nor were there any immediate material gains to be made by these programming decisions. This suggests that identity had autonomous effects in shaping INGO contestation, and was not merely a residual variable.The trajectory of how these three ideal types developed highlights how INGOS were at the forefront of interpreting the humanitarian regime in a manner that expanded the function and scope of humanitarian assistance. INGO identity is a necessary part of this explanation as these interpretations of the regime were considered consistent and necessarily following from INGO role and purpose.

INGO identity, as noted in previous chapters, must be situated in the broader normative and institutional structures in which they embedded. Yet, as noted earlier, INGOs were often the leaders in contesting the function, scope and operating principles of the humanitarian regime. Thus they cannot be said to programmed by these structural conditions. Moreover, while INGOs might be argued to be imitating the policies and practices of the UN, displaying institutional isomorphism, it is important to note INGO contestation of the formal legal regime often pre-dated that of the UN. Finally, the case of MSF illustrates that INGOs have agency in how they interpret and are shaped by these normative and institutional structures; as the next chapter will illustrate in detail, MSF rejects the idea that humanitarian assistance can be a tool for addressing root causes of conflict or providing longer term solutions to conflict despite the growing emphasis on an integrated form of humanitarian assistance since the late 1990s.

4

INGO Interpretations of the Legal Regime: MANDATES and POLICY

Regimes are inseparable from, and even constituted by, actors' understanding of the regime; a regime thus 'does not speak for itself...[but] must be understood from the particular perspectives of the organizations which make claim to it'.[1] The previous chapter identified the historical development of INGO interpretations of the regime and categorized these interpretations into three ideal types. These ideal types define what the regime has come to mean beyond a formal legal document for INGOs; these ideal types constitute the regime, as the broad structures of meaning defining the function, scope, and operating principles of the regime. Ideal types, however, as noted in the previous chapter, are abstract categories based on the accentuation of certain features of an empirical reality. This chapter thus examines how these ideal types are reflected in concrete ways in current INGO policy frameworks; how they combine to frame the mandates and policy frameworks of CARE, MSF, Oxfam, and World Vision; and how these policy frameworks contest the provisions of the legal regime. Chapters 3 and 4 taken together thus illustrate how INGOs contribute to the contestation of the humanitarian regime through the process of interpretation.

This chapter also helps examine in more detail the effects of identity in defining INGO policies and goals. Identity, as argued in Chapter 2, can be observed through the constitutive norms and rules that define INGO membership; INGO understandings of their social purpose; and the relational comparisons that INGOs make with other actors or other collective identities. Importantly for this chapter, INGO mandates and policies can be seen as articulating and institutionalizing the purposive content of INGO identity, or their social purpose.

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[1] Rahman, 1999; p. 1

I. CARE

CARE was established in 1945 as the 'Cooperative for American Remittances to Europe' to provide relief assistance to Western Europe in support of the Marshal Plan.[2] CARE is considered a 'Wilsonian organization' because it was founded in support of American foreign policy and saw a basic compatibility between its humanitarian aims and US foreign policy objectives.[3] With the ending of the Marshall Plan, CARE re-defined its mission from spreading American values to alleviating suffering caused by political emergencies and natural disasters. CARE's humanitarian policy framework combines elements from all three ideal types, with the function of humanitarian assistance conceived not only in terms of addressing immediate suffering but also bringing about 'lasting change' in political emergencies. CARE's mandate thus states 'our mission is to create lasting change in poor communities...the first phase of our response is to meet people's basic needs...but [this] is only the beginning. CARE works with communities for the long term, to help rebuild lives and livelihoods, and to help communities reduce their vulnerability to similar events in the future.'[4] Following from this, the scope of CARE's humanitarian programming extends to poverty alleviation, peace-building and social justice through programs for emergency response, primary health care, water supply and sanitation, agricultural development, small enterprise development, reproductive health, girls' education, civil society strengthening, conflict resolution, and other related programs. [5]

While CARE started out as a relief-only organization, by the 1980s its policies strongly reflected the developmental ideal type as it linked the function of humanitarian assistance in political emergencies to the alleviation of poverty.[6] Extending the function of humanitarian assistance to poverty alleviation is based on the assumption underlying the developmental ideal type, that the causes of conflict can be found in under-development. Responding to humanitarian emergencies is

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[2] Henry, 1999.

[3] Stoddard, 2003; p.8

[4] CARE, *CARE's Work: Emergency* (accessed on: 08.10.12). <http://www.care-international.org/Emergency/>

[5] see websites for CARE International: http://www.care-international.org/ and CARE USA http://www.care.org/

[6] Henry, 1999.

thus seen as an essential part of CARE's work to fight poverty and injustice.'[7] CARE's main policy document on humanitarian assistance thus reads,

> 'after an emergency has passed.. our goal is to transition as quickly as possible from emergency response to rehabilitation, and then to sustained development...we help people help themselves through small business assistance and agricultural rehabilitation, thereby reducing community vulnerability to future emergencies. [8]

As CARE began to operate on the basis of a developmental ideal type, it was careful to emphasize that such developmental assistance was a technical, not political, program. Barnett thus argues that CARE's 'rhetorical position was sustained and justified by its self-presentation as a development agency that managed complex operations and efficiently delivered services, all technical and not political matters...and, a discourse that treated development as a technique because it taught skills and thus avoided politics, power, and governance.'[9]

Reflective of the solidarist ideal type, CARE has adopted a rights-based approach (RBA) to humanitarian assistance to ensure that people 'achieve the minimal conditions for living with dignity.'[10] RBA asserts that people have rights and there is therefore a corresponding duty to ensure that those rights are secured. The adoption of a rights-based approach provides the rationale for a wide range of programs focused not only on civil and political rights, but also social, cultural, and economic rights. The focus of CARE's RBA is

> ....[a]t a basic level, [on] on the rights related to livelihood security - such as nutrition, education, and economic opportunity. But we also consider other conditions influencing livelihood security and, more broadly, life with dignity - such as personal security and participation in public affairs.[11]

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[7] CARE International, *Emergency Work. (*accessed on 08.10.12). http://www.Care-international.org/EMERGENCY/emergency.html

[8] CARE International, *CARE's Humanitarian Action* , (accessed on 08.10.12). http://www.care.org/careswork/whatwedo/relief/docs/Humanitarian_Action_20110214.pdf; p. 2; see also: CARE International , *CARE International: Strategic Plan, 2007-2012,* (accessed on 08.10.12). http://www.care-international.org/Strategic-Plan/

[9] Michael Barnett, " Evolution without Progress? Humanitarianism in a World of Hurt", *International Organizations,* 63 (4): 2008; p. 641

[10] Andrew Jones, "Incorporation of a Rights-Based Approach into CARE's Program Cycle: A Discussion Paper for CARE's Program Staff ", 2001; p. 1 (accessed on 07.02.11). http://pqdl.care.org/CuttingEdge/Incorporating%20RBA%20in%20CARE's%20Program%20Cycle.pdf

[11] Peter Bell, "Presentation on Rights-Based Approaches," Interaction, Washington, DC, 7 November 2001 , quoted in Barnett, 2009; p. 64

Under the Geneva Conventions, the minimal conditions for living with dignity are defined in terms of basic humanitarian needs - food, water, shelter etc. However, the framing of humanitarian needs in terms of rights, with the adoption of a rights-based framework, expands the range of activities and programs that can fall under the ambit of humanitarian assistance. Thus, with the adoption of a RBA, CARE argues that these 'minimal conditions' include the full range of civil, political, social and economic rights. Following from this, it has developed a 'Benefits-Harms' framework, which borrows methodologies developed in the human rights field to help humanitarian NGOs measure the impact of their programs on people's human rights. [12]

As with the solidarist ideal type, CARE's rights-based approach to humanitarian programming has made advocacy a core component of CARE's activities. For CARE, 'Advocacy brings a deeper dimension to humanitarian aid efforts, addressing not only the immediate needs of the poor, but also the root causes of poverty and obstacles to its elimination.'[13] In an important departure from the legal regime, this advocacy is directed towards an international audience, blurring the lines between international and domestic governance and giving international actors the primary responsibility for safeguarding the rights of civilians in political emergencies. CARE for example notes that much of its advocacy work focuses on the UN Security Council; it compiles a Watch-list on specific countries, prepares detailed policy papers, and issues briefing notes, media statements and letters primarily aimed at the UN system and governments. Through such advocacy, CARE 'seeks to influence policy makers to increase impact.'[14] This impact however is defined in terms of a much broader set of goals than that of only meeting emergency needs.

The solidarist and developmental ideal types are thus seen as complementary and mutually reinforcing. Rights concerns provide the rationale for shifting from service-delivery to longer term programs that address the wider causes and consequences of conflict. A 2002 paper on rights-based programming notes, for example, that CARE is moving towards applying rights based

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[12] Paul O'Brien, "Benefits-harms analysis: a rights- based tool developed by CARE International" , *Humanitarian Exchange Magazine,* 20 (1): 2002 (accessed on 08.01.12). http://www.odihpn.org/humanitarian-exchange-magazine/issue-20/benefits%E2%80%93harms-analysis-a-rights-based-tool-developed-by-care-international

[13] CARE International, *Advocacy*(accessed on 07.02.11). http://care-international.org/Advocacy/

[14] Ibid.

approaches to household livelihood security, 'moving away from an approach in which we mainly work though direct-action projects towards a program approach in which we try to combine various types of interventions at multiple levels.'[15] CARE thus increasingly aims to 'go beyond fulfilling immediate needs to look into the issue of why needs persist, addressing more structural issues and power relations involved that perpetuate marginalization and poverty.'[16]

CARE's policies also reflect the integrated ideal type for humanitarian assistance. It has a specific program for 'strategic peace-building' to 'build links between the micro-project level and macro-conflict context' based on a 'clear vision of peace', a 'clearly articulated theory of change' and 'solid conflict analysis.'[17] CARE also sees itself as having a role in state-building, by ' helping to extend beyond a narrow focus on building central state institutions to encompass support for fostering state-society relations that contribute toward building a sustainable peace.' [18]

Such programs however contest the provision in the legal regime that aid should not amount to interference in the conflict, and that assistance must be provided on the basis of need alone, and not broader political criteria. Moreover, models for peace-building and state-building cannot be politically neutral as they require evaluating the claims made by combatants, determining where justice lies, and selecting a particular group of actors to extend implicit or explicit political support.

CARE's policy documents note that its operations are guided by the principles of impartiality, independence (from political, commercial, or religious objectives), and local capacity strengthening.[19] Notably absent is the principle of neutrality. CARE argues that remaining neutral is not possible in the context of 'new wars' where the targeting of civilians and the manipulation of

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[15] Frank Noij, *Design, Monitoring and Evaluation in Rights Based Programming*, CARE, May 2002; p.1 (accessed on 07.02.12). http://pqdl.care.org/CuttingEdge/DME%20in%20Rights-Based%20Programming.pdf

[16] Noij,2002; p.5

[17] CARE International, *Aid reform: Addressing Conflict and Situations of Fragility*, 2010; p. 8-9 (accessed on 07.02.12), http://insights.careinternational.org.uk/conflict-and-peacebuilding/21-aid-reform-addressing-conflict-and-situations-of-fragility/download

[18] CARE International, *Aid Reform,* 2010; p.4

[19] CARE International, *Humanitarian Mandate*(accessed on 07.02.12). http://www.Care-international.org/Humanitarian-mandate/Care-internationals-humanitarian-mandate.html

humanitarian aid is a deliberate strategy of the warring parties.[20] The principle of neutrality can be said to be replaced by one for 'local capacity strengthening', highlighting the interpretation of the function of humanitarian assistance in terms of the developmental ideal type.

Yet, the compatibility between CARE's goals and stated adherence to humanitarian principles is questionable; for example, the principle of impartiality is not compatible with peace-building programs as peace-building can direct humanitarian assistance away from those with the greatest humanitarian need to interventions which, for example, are calculated to have the greatest impact on building local capacities for peace. Thus, while under the legal regime, humanitarian principles are the basis on which external agencies can assure parties to the conflict that they will not interfere in the conflict, for CARE, humanitarian principles guide, at least in part, the manner in which CARE will become involved in conflict.

The most extensive discussion of humanitarian principles is provided in CARE'S guidelines for interacting with military actors, where humanitarian principles are framed as being a key means through which CARE can distinguish itself from western military forces.[21] 'Distinction', for example, is stated as the key principle in CARE's 'civil-military' guidelines, and is stated prior to the principles of humanity and impartiality. Interestingly, when discussing interaction with the military, CARE specifically mentions the principle of neutrality.[22]This suggests that neutrality is not defined here in the context of the conflict, but in terms of CARE's relationship with the objectives and programs of the military. This re-interpretation of the principle of neutrality is brought out in a statement by former CARE president, Peter Bell, who argues that while neutrality used to imply 'a commitment to being apolitical, that is to avoid any contact with or input into public affairs or matters of governance',[23] now, 'neutrality allows CARE to stand in favor of politics even as it avoids partisanship'.[24]

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[20] Interview with Kathleen Hunt, CARE, 9 September 2010, New York.

[21] CARE International, *Policy Framework for CARE International's Relations with Military Forces*, 2009 (accessed on 07.02.12). http://expert.care.at/downloads/careexpert/CARE_CIV-MIL_Policy.pdf

[22] CARE, *Military Forces,* 2009

[23] Peter Bell and other senior CARE staff cited in Barnett, 2009; p. 644

[24] Barnett, 2009; p.644

On the other hand, in documents that refer specifically to CARE's humanitarian programming, CARE introduces an additional set of principles to those contained in the legal regime. These principles, rather than the humanitarian principles laid out in the legal regime, guide CARE's programming. These programming principles, which include promoting empowerment, addressing discrimination, and promoting the non-violent resolution of conflict, combine components from the solidarist, developmental, and integrated ideal types.[25]

As CARE has modeled its policies along the developmental and integrated ideal type, this has contributed to a distinct overlap between its programs and those of western states. This has pushed CARE towards further clarifying its relationship with political action. First, in documents that explicitly focus on the politicization of aid as a result of western donor policies, CARE defines humanitarian action in much narrower terms, and even criticizes the idea that humanitarian assistance can be used to achieve particular outcomes. It notes that 'humanitarian aid is seen as having the power to influence outcomes…[but] this differs from its original conception as an act of humanity given without prejudice where there is suffering.'[26] It thus presents a more limited function for humanitarian assistance, referring to the provisions in the Geneva Conventions, when discussing the function and scope of humanitarian assistance in the context of how aid might be politicized. However, as outlined above, in documents describing its humanitarian programming it presents a much wider function and scope for humanitarian assistance, concerned with poverty alleviation, social justice, and peace-building. The difference in these two interpretations of humanitarian assistance suggests that the manner in which CARE interprets the legal regime is at least partly shaped by attempts to distinguish itself from states, as a means to indicate that it has an identity and purpose that is distinct from that of states.

Second, when CARE makes explicit reference to the 'wider humanitarian tool-kit' based on the integrated ideal type, CARE distinguishes this from political action by arguing that it is responding

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[25] CARE. *CARE's Humanitarian Action*; p.2

[26] CARE International, *Politicization of Humanitarian Aid: Towards an Advocacy Strategy*, 2009; p. 8 (accessed on 07.02.12). <http://www.careinternational.org.uk/research-centre/conflict-and-peacebuilding/38-politicisation-of-humanitarian-aid-towards-an-advocacy-strategy>

to 'needs' necessary for 'human dignity'. CARE argues, for example, that 'the primary objective of humanitarian response is to meet immediate needs...[but], recognizing that people have the fundamental right to life with dignity CARE also strives to address the underlying causes of people's vulnerability.'[27] Its programs thus follow from its moral obligation and responsibility rather than any organizational or political goals. CARE thus emphasizes the opposition between need and political criteria, arguing that ' ...if allocations are not based on need, then political criteria are being used.'[28] CARE's policy documents thus seem to suggest that what differentiates humanitarian and political action is the motivation of actors, rather than the exact nature and content of assistance provided; thus, even programs aimed at peace-building can legitimately fall under the ambit of humanitarian assistance if motivated by a moral duty rather than political interest. This moral obligation or responsibility follows from, and is constitutive of, its role and identity as a particular kind of actor.

A third understanding embraces the political nature of CARE's response to humanitarian crises, as CARE argues that the political nature of its response is not a problem in itself. The critical issue is 'partisanship' or a compromise on the principle of independence. As former CARE president, Peter Bell, argues, 'whereas humanitarianism was once viewed as the opposite of politics, now politics and humanitarianism share the same space and are opposed to partisanship.'[29] CARE's report on the politicization of aid also notes that it is not necessarily the ideals of an expanded humanitarianism that have put INGOs in an uncomfortable position, but the previous 'cosiness' of NGOs with their own government.[30] The problem of where to draw the line between political and humanitarian action is thus not a result of the change in the function of humanitarian assistance but the fact that western states now share the same goals, though for their own strategic and military ends. This makes asserting and demonstrating independence from donor interests even more important. It could be argued that from CARE's perspective, if CARE could retain autonomy over designing and implementing its societal transformation and peace-building programs independently of donor interests, the kind of political action it undertakes is acceptable and even

[27] CARE, *Humanitarian Mandate*

[28] CARE, *Politicization of Humanitarian Aid,* 2009; p. 8

[29] Bell, quoted in Barnett, 2009; p. 644

[30] CARE, *Politicization of Humanitarian Aid,* 2009.

necessary. The nature of CARE's programs is not what makes them fall under the category of political action, but the extent to which those programs are shaped by the interests of other actors.

As the above discussion shows, CARE'S current humanitarian policy frameworks combine components from the solidarist, developmental, and integrated humanitarian assistance ideal types. Humanitarian assistance is not only intended as a form of palliative care, but necessary for lifting people from poverty and injustice. A political emergency is thus not only a site of starvation and suffering, but an opportunity to transform society. The scope of needs that CARE's programs cover are not limited to immediate life saving assistance but, following a rights-based approach, include the full range of civil, political, social, cultural and economic rights. The scope of needs that might be addressed through CARE's humanitarian programming can also include, following the integrated ideal type, an emphasis on grass root level peace-building and local capacity strengthening. The function of humanitarian principles, in CARE's interpretation, shifts from being the basis on which it negotiates access with warring parties to principles that permit CARE to implement its mandate and distinguish itself from other political and/or military actors. This question of distinction from other political/military actors is reflected in other places as well: for example, CARE's frames the function of humanitarian assistance in terms of addressing immediate suffering rather than along the lines of the integrated ideal type when discussing the politicization of aid.

CARE's programs, however, blur the distinction between political and humanitarian action that is central to the Geneva Conventions. Moreover, insofar as the Geneva Conventions attempt to strike a balance between state sovereignty, military necessity and human suffering, CARE's policy framework clearly tips the scale towards prioritizing human suffering. However, as suffering is conceived in terms of not only immediate needs but longer term societal transformational measures, the priority according to human suffering can directly undermine state sovereignty. It is also worth noting that CARE's policy papers on coordination tend to highlight the guidelines and principles for interaction with international actors, rather than with local authorities.[31] This

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[31] see: CARE, *Military Forces,* 2009; *Politicization of Humanitarian Aid,* 2009

contests the provision in the legal regime that the primary responsibility for the provision of humanitarian assistance lies with national authorities.

One might explain CARE's interpretations in terms of external factors, as a consequence of its dependence on donors and the public for resources, or the broader material and normative structures at the time. Historically, CARE has been a Wilsonian organization that has, and continues to be, heavily reliant on funds from states and their donor agencies, especially the United States. This suggests that its capacity to circumvent donor demands or operate outside a broader UN or donor-led political mission can be curtailed. Moreover, as it often receives funds from donor states who also have military units posted in particular contexts, such as USAID in Afghanistan, it often works alongside these military actors in the provision of humanitarian assistance.

The previous chapter already noted however, that a number of these policy developments in INGOs pre-dated donor pressure, and that INGOs were in fact key norm-entrepreneurs. In the case of CARE specifically, its shift towards a rights-based approach cost it both financially and symbolically suggesting that it was not a result of donor pressure, the broader normative environment, or organizational concerns to secure funding. [32]Former CARE President, Peter Bell, noted, for example, 'We would do info commercials for RBA [rights based approach] on TV and it was a complete loser. We were told by consultants to go back to the starving baby and emergencies. We decided to swallow the lost dollars.'[33] Moreover, while these external relationships place constraints on CARE's independence from states, it also creates opportunities for CARE to leverage western donor funds when there is an overlap in program goals.Thus, even while CARE's current relationship with donors might influence where it operates, specific program requirements, or the manner in which funds are allocated, the overarching programming goals that follow from CARE's interpretation of the function, scope, and operating principles of the humanitarian regime cannot be said to be determined entirely by donors or these funding arrangements. As CARE navigates these constraints and opportunities, it can be seen as a strategic and intentional actor.

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[32] Barnett,2009; p. 641

[33] Bell quoted in Barnett, 2009; p. 642

CARE's identification of its organizational goals can be said to follow from CARE's conception of its role and social purpose. The role of identity can be seen in terms of how CARE frames its humanitarian programming in terms of its role and social purpose. Its mission statement reads, for example,

> CARE's *reason for being* is to affirm the dignity and worth of individuals and families in some of the poorest communities in the world. We seek to *relieve human suffering, to provide economic opportunity, to build sustained capacity for self-hel*p, and t*o affirm the ties of human beings* everywhere..we are committed to pursuing our mission with excellence because the people we serve, beneficiaries and donors, deserve nothing else.[34] [emphasis added]

CARE's humanitarian policy frameworks, reflective of components from the developmental, solidarist, and integrated ideal types , need to be seen in the context of what it perceives as its role in a political emergency. Its interpretation of the humanitarian regime follows from what it perceives to be its moral obligation or responsibility, which is then constitutive of its identity. This moral obligation specifies the purposive content of CARE's identity through its mandate, goals, and policy frameworks. CARE's interpretation of humanitarian principles similarly reflects an attempt to distinguish itself from political and military actors, thereby defining its goals and preferences in relational terms. Similarly, the distinction between political and humanitarian action is not framed in terms of interference or non-interference in the conflict, or the conditions and context of the conflict, but the motivations and beliefs - or constituent norms and rules, driving CARE's programming vis-a-vis donors or other actors.

II. Médecins Sans Frontières

Médecins Sans Frontières (MSF) was founded in opposition to the ICRC's policies in Biafra.Led by Bernard Kouchner, the founders of MSF argued that the political construct of state sovereignty should not prevent humanitarian actors from accessing populations in need. It can be credited with introducing the solidarist ideal type, arguing that the function of humanitarian assistance was not only to provide relief aid but also to 'bear witness' and 'speak out' against human rights abuses. A concern with 'human suffering' legitimated interference in the conflict on the side of the victims,

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[34] CARE USA mission statement, cited in Henry, 1999; p.111

and required a re-interpretation of the principle of neutrality to mean siding with the victims of rights abuses. [35]

The founding principles of MSF thus contested the provision in the legal regime that the function of humanitarian assistance was to only provide palliative care; rather, MSF argued that humanitarian agencies have a duty to defend civilians against rights abuses. Accordingly, the scope of humanitarian assistance includes not only emergency relief items but also advocacy to the international community about human rights violations and other forms of injustice inflicted upon civilians, even if this amounted to interference in the conflict. As Robert De Chaine notes, 'witnessing' human rights abuses helped MSF members 'connect moral action to social justice', situating the moral imperative to respond to humanitarian needs within a broader framework of responsibility based on questions of justice and rights.'[36] MSF thus saw its role as an agent of change that could help 'stir up indignation and stimulate action.'[37] As an agent of change, its practice of 'bearing witness' also legitimated calling for military intervention as, for example, in response to Iraqi attacks on the Kurd population following the Gulf War.[38]

MSF's experience in Rwanda however led to much internal debate, deliberation and discord, and contributed to a shift in MSF's interpretation of the legal regime. During the Rwandan genocide, MSF volunteers operating in Rwanda found that the only way to continue providing assistance to civilians and minimize threats to their own security was to work with the ICRC or to align itself with the ICRC's neutrality-based approach. [39]Thus, 'progressively, MSF, that started out believing it could engage in whistle-blowing while providing medical relief inside countries...moved toward the ICRC position of cautious, neutral humanitarianism.'[40]

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[35] for a history of MSF, see : Allen and Satyn, 2000; Terry, 2002; Orbinsky, 2008

[36] Dechaine ,2002; p. 358

[37] Former MSF President Rony Brauman quoted in Dechaine 2002; p. 358

[38] Barnett, 2009.

[39] Terry, 2002; Orbinsky,2008

[40] David Forsythe, *International Humanitarianism in the Contemporary World: Forms and Issues* (Lincoln, NE: University of Nebraska-Lincoln, 2004); p. 21.

This shift in MSF's interpretation of the function, scope, and operating principles of the humanitarian regime is evident in MSF policy documents and reports. MSF reports from the 1970s and 1980s state that 'MSF personnel back from a mission will report on any human rights violations and unacceptable facts that they may have witnessed.'[41] However, its 1994-95 *Annual Report* rejects this idea, arguing that humanitarian assistance cannot provide long term political solutions to the crises in which it operates. Its 1995-6 *Annual Report* thus notes that humanitarian action,

> ...is not in a position to provide solutions to the problem it tackles...when humanitarianism becomes a way of assuaging a "citizenship without borders", confusing and supplanting the initial aim - relief, we are forced to reflect...Opting for the defense of humanitarian causes means we move away from people in danger; it risks not just the instrumentalization of the victim, but his dehumanization, and ultimately the relegation of relief to a secondary consideration.[42]

MSF can thus be seen as defining the function of humanitarian assistance in terms closer to the legal regime, as a form of palliative care to address immediate suffering. Judith Soussan thus argues that, following Rwanda, the MSF identity of 'doctor-witness' gave way to the figure of the 'aid-worker', concerned with the quality of medical care and not 'bearing witness'; the provision of medical assistance became a technical activity rather than one motivated by political solidarity. Thus, 'in [MSF's] assertion that aid is more important than appeals towards politicians, that proximity to the vulnerable takes priority over adherence to some abstract collective cause, we can detect the beginning of a shift in the center of gravity at MSF.'[43]

Following from this, the humanitarian principles of impartiality and neutrality are now seen as operational principles that allow MSF staff to access populations and demand immunity from violence. This is in sharp contrast to its previous understanding of neutrality as a moral principle which necessitated 'bearing witness'. In MSF's current policy documents, humanitarian principles are seen as a way to convince belligerents that MSF will remain distinct from the conflict space. For example, MSF argues that as 'As impartial actors, humanitarians have relinquished the right to express opinions about the legitimacy of war aims pursued by the belligerents. There is no reason

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[41] President's Annual Report, 1978, quoted in Judith Soussan, *MSF and Protection: Pending or Closed?*, (Paris: MSF, July 2008); p. 14

[42] MSF Annual Report, 1995-96, quoted in Soussan, 2008; p. 26

[43] Soussan, 2008; p. 26

why an intervention conducted in the name of protecting civilians should constitute an exception to this rule.'[44]

The principle of independence is also central to how MSF operates. Of the INGOs being examined MSF seems to be most concerned about the manner in which it exercises the principle of independence. Independence for MSF is defined not only in terms of being free of the interests of political actors, but also about maintaining its operational autonomy defined in terms of having unhindered access to independently assess needs and speak directly with aid recipients. Rony Brauman, former President of MSF, for example, defines humanitarian space in terms of such organizational independence; he thus argues that humanitarian space is ' a space of freedom in which we are free to evaluate needs, free to monitor the distribution and use of relief goods, and free to have a dialogue with the people'.[45] This contests the provision in the legal regime that local authorities have the primary responsibility to lead the assistance effort, and have a right to monitor and control the distribution of assistance. Moreover, independence is not only a means to negotiate access with combatants, as envisaged in the legal regime, but a means to define the terms on which MSF is willing to provide assistance. MSF thus routinely links meeting humanitarian needs with organisational independence to implement according to its principles.

MSF is now also critical of rights based approaches more broadly. Brauman argues that as 'human rights are not a consistent and coherent entity....human rights claims often conflict with one another.[46] Specifically, with regard to the right to health, MSF argues that this right rests on a distinct logic from that of humanitarian assistance as it focuses on 'how badly off the population is in terms relative to the best long-term health outcomes for a society.'[47]

The shift away from a solidarist ideal type also has implications for how MSF engages in advocacy. In its advocacy, it does not engage with what is happening to people per se, but only in the context

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[44] Fabrice Weissman, "Humanitarian Action and Military Intervention", *Disasters,* 28 (2): 2004 ; p. 207; see also Weissman, 2010

[45] see: Rony Brauman, *Humanitarian Aid* (Paris: MSF, 1995) ; p. 1

[46] Rony Brauman, *Health and Human Rights* (Paris: MSF 2001); p. 3

[47] Brauman, 2001; p. 3-4

of medical needs arising from armed conflict;its advocacy only highlights where needs are not being met, without assigning blame on particular combatants. In this manner, MSF maintains its distance from the political dimensions of the conflict. Michal Givoni argues, for example, that MSF advocacy has a distinct grammar that 'puts the victims and the witnesses in the fore, leaving vacant the position of the persecutor in a manner that encourages compassion while downplaying responsibility.'[48] In contrast to its earlier support for military intervention, MSF now argues that the logic of humanitarian assistance 'is fundamentally different from the reasoning employed by supporters or opponents of the recourse to force.'[49] Moreover, as Fabrice Weissman notes, 'It is impossible to answer these questions without resorting to a political vision of the present and the future that substantially overrides the issue of protecting civilians.'[50]

The emphasis on humanitarian assistance as a form of palliative care also means that MSF is critical of the developmental ideal type and the emphasis on the longer-term objectives of aid interventions. Sustainability in health interventions, MSF argues for example, is an illusion given the current availability of resources and the interests and limitations of donor states; MSF thus notes that the provision of relief assistance with a view of long-term sustainability could result in the neglect of immediate, emergency needs.[51] MSF also rejects a developmental ideal type to humanitarian relief as programs for capacity building and livelihood strengthening require working through local authorities, and thereby directly or indirectly contribute to the political objectives of local authorities. A developmental ideal type can thereby compromise perceptions of MSF's neutrality and result in a loss of access to populations in need. [52]

Equally, MSF challenges the assumptions of an integrated ideal type for humanitarian assistance arguing that '... the duty to assist a person must not be revoked in the name of a promise of future

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[48] Michal Givoni, " Humanitarian Governance and Ethical Cultivation: Medecins Sans Frontieres and the Advent of the Expert-Witness", *Millenium:Journal of International Studies,* 40(43):2011; p. 56

[49] Weissman, 2004; p.207

[50] Weissman, 2004; p. 209

[51] Brauman,2001.

[52] Brauman, 2001; p. 3

justice'.[53] MSF thus 'backs away from the peace assumption' underpinning the integrated humanitarian assistance ideal type, noting that the 'the imposition of peace, like the creation of all political order of an international, national, or local scale, inevitably generates its quota of victims who are doomed to death or deprived of essentials of water, food, medical care, and shelter.'[54] Accordingly, MSF does not define its responsibility in terms of working 'on conflict' through peace-building. Rather, it argues that as humanitarian actors get directly involved in the political dimensions of the conflict, this permits states to obfuscate their responsibility. Former MSF President James Orbinsky has thus argued that 'Humanitarianism is not a tool to end war or to create peace. It is a citizens' response to political failure. It is an immediate, short-term act that cannot erase the long-term necessity of political responsibility.[55]' MSF's conscious attempt to stay clear of issues of justice and human rights has also meant that MSF does not support humanitarian intervention and the R2P doctrine.[56] Its current position is in sharp contrast to its earlier commitment to political solidarity.

However, there remains ambivalence within MSF about the extent and manner in which it should engage with issues of justice. For example, Fabrice Weissman seeks to situate MSF's actions within a wider framework of humanitarian responsibility, arguing MSF needs to 'avoid the drift towards charity and transform pity into a demand for justice.'[57] This ambivalence towards rights concerns and issues of justice is also reflected in the heated debates among MSF members about the meaning of 'protection', and the role of MSF in focusing on protection as an organizational objective. For example, Marc Du Bois, President of MSF UK, endorses the role of protection, arguing that humanitarians 'shoulder a responsibility to engage in protection by raising public awareness or lobbying for action, by dialoguing directly with perpetrators, and by designing programs in a protection-sensitive manner.'[58] This understanding of protection seems to permit a

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[53] Brauman,1995; p. 7

[54] Weissman, 2004; p. 207

[55] James Orbinski, *Nobel Lecture by James Orbinski, Médecins Sans Frontiers*,1999(accessed 07.02.12). http://nobelprize.org/nobel_prizes/peace/laureates/1999/msf- lecture.html.

[56] Weissman, 2010.

[57] Weissman, 2004; p. 211-12

[58] Mark DuBois, "Protection: The New Humanitarian Fig Leaf", *Dialogues* 4 (1): 2007

focus on advocacy and bearing witness as part of the function of humanitarian assistance. Du Bois noted in an interview that this ambiguity about the meaning and role of protection runs through all the MSF offices and is an issue that has led to heated debates and disagreement among MSF staff.[59]

This ambivalence about the extent to which MSF should engage with issues of justice was in fact apparent even at the time of the Rwandan crisis in 1994. While MSF adopted the ICRC's approach in Rwanda, in the refugee camps along the Rwandan border, it argued that impartiality and neutrality should be considered in terms of the rights of those in need and that relief aid should thereby be based on human rights considerations; when it withdrew from the camps, it argued that the international community needed to take action, even if thus meant military intervention. [60]The genocide in Rwanda thus also contributed to internal contestation among MSF members about the conditions under which it is necessary for MSF to abandon impartiality and neutrality.

James Orbinsky, former President of MSF, argues for example, 'We are impartial to the causes and conditions...that create suffering. But, we will not remain impartial to those causes and conditions that are clearly morally unacceptable from either a political perspective or an international law perspective.'[61] However, the threshold for what is morally unacceptable is undefined, reflecting MSF's organisational ambivalence about its responsibility as a humanitarian actor. MSF however is the only organisation under study that discusses the option of 'abstention' or ' withdrawal' as an ethical choice. Abstention or withdrawal can then be seen as MSF's response to injustice and rights violations: while it does not see itself as responsible for addressing these rights violations, neither can it be complicit in their continuation.[62]

The argument that external factors have shaped MSF's interpretation of the legal regime does not hold up to evidence. MSF maintains a strict policy of independence from western donors and is able to exercise this effectively as it obtains 80-90 percent of its funding from private sources.

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[59] Interview with Marc DuBois, 8 May 2010, London.

[60] Terry, 2002; Orbinski, 2008

[61] James Orbinsky quoted in Denise Delvaux, " The Politics of Humanitarian Organizations: Neutrality and Solidarity - The Case of ICRC and MSF during the 1994 Rwandan Genocide", Unpublished M.A Dissertation, Rhodes University, January 2005; p. 46

[62] Marc Le Pape, " How MSF adapts and justifies its choices", in Magone, Neuman, and Weissman eds., 2011

Barnett in fact argues that MSF's independent resource base is 'the product of an emerging and shifting identity that warned against relying on states.'[63] MSF's interpretation of the regime also cannot be said to be caused by the external normative and institutional environment. MSF's founding beliefs and values ran counter to the primacy accorded to state sovereignty at the time of the Biafran crisis and, as noted earlier, it can be considered a 'norm entrepreneur' with regard to the emergence of a solidarist ideal type for humanitarian assistance. Moreover, MSF now attempts to maintain a strict distance from a rights based approaches to humanitarian assistance, even as this has become the dominant understanding within the UN and other international and non-governmental organizations. MSF's interpretation of the legal regime thus reinforces how actors are not simply programmed by broader normative structures, but that actors make sense of these structure in light of their identity and beliefs.

A survey and history of MSF policies highlights how MSF has progressively attempted to narrow the scope of its responsibility as a humanitarian actor; MSF staff and organizational documents note, for example, that certain programs 'are not our role.'[64]This seems to run counter to suggestions about organizational interests in terms of increased access, relevance, and operational space driving INGO contestation of the regime. Alternatively, one might argue that for MSF, limiting its role was in fact an organizational interest. However, this only reinforces the point that agencies do not have a fixed set of organizational interests. Rather, even organizational interests are defined differently depending on the identity of the organization, or what might be considered an appropriate organizational interest given a particular organizational identity.

As with the other NGOs under study, MSF's policy documents suggest that its interpretation of the legal regime is reflective of its identity, its conception of its role and social purpose, and its attempt to define and distinguish itself from other political or military actors. MSF documents explain the shift from a solidarist ideal type to one focused on the delivery of medical services alone in terms of 'discarding some badges of our identity', from the 'doctor-witness' and 'defender of populations in

[63] Barnett, 2009; p. 651

[64] This was a a point made by a number of MSF staff spoken to for this study at the Annual MSF meeting, October 2009, Brussels.

danger' to the more technical 'aid-worker.'[65] For example, Soussan argues that MSF defined humanitarian responsibility and accountability in terms of what was consistent with its identity, rather than the nature of the conflict itself. She thus argues,

> In the 1970s and 1980s, attention and responsibilities had been outwardly directed; there was an explicit relationship between the humanitarian actor and the human rights violations that occurred in theaters of war. By 1985, it had become necessary to look also inward, to answer for our own actions. The external and internal approaches co-existed throughout the 1990s. Gradually, the latter approach, the need to examine our own action and defend ourselves against manipulation, provided the hinge between MSF and its working environment. *Rather than roles or responsibilities in the face of violence, it was a matter of the responsibilities applying to our own action.*[emphasis added][66]

Thus, MSF's interpretation, though different from others, still highlights how identity is a necessary factor in explaining INGO interpretations of the humanitarian regime. It also highlights how actors give broader normative structures specificity i.e. actor identities and behavior are not only determined by structure, but actors have agency in how they understand and negotiate structures. Moreover, similar to the other INGOs, MSF's interpretation of the legal regime also reflects attempts to distinguish itself from government, military and the UN i.e. to define its identity in relation to, or in opposition to political and military actors. Standing in opposition to the policies and practices of states or the UN is arguably the common thread running through MSF's shifting interpretations of the legal regime. Barnett argues, for example, 'that the more political humanitarianism became, the more MSF wanted to defend a 'pure' humanitarianism'.[67] Barnett thus ascribes a central role to MSF's identity based on what he calls an 'anti-politics position'; he notes, for example, that former MSF President James Orbinski was appointed precisely for his firm belief that humanitarianism and politics must be kept apart.

Similarly, a history of MSF's interpretation and usage of the protection concept suggests, for example, that as the concept of protection became more widespread, adopted by the UN and other INGOs, and even at times military actors, MSF began to distance itself from the mainstream protection debate. [68] De Chaine thus argues that 'MSF's efforts to define its role as a humanitarian NGO turn on a key distinction it attempts to make between the nature of humanitarian and

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[65] Soussan, 2008.

[66] Soussan, 2008; p. 37

[67] Barnett, 2009; p. 651

[68] Soussan, 2008; Barnett, 2009.

political action. ...MSF members' use of the term 'politics' serves not so much as a symbolic bridge between governments and NGOs but rather as an ideological marker against which the constituents of true humanitarian action are to be measured.'[69]

MSF is thus an important counterpoint to the other three INGOs as it has shifted from being a strong supporter of the solidarist ideal type to now arguing for a narrow function and scope for the humanitarian regime; it has also rejected the developmental and integrated ideal types as legitimate models for the provision of aid. MSF's contestation of the legal humanitarian regime, at the level of interpretation, is thus not as stark as that by CARE, Oxfam, and World Vision. It maintains a clear and consistent distance from the developmental and integrated ideal types, and no longer defines neutrality in terms of bearing witness.

Its policy documents however express ambivalence about the extent to which humanitarian assistance should be linked to issues of justice and the conditions under which the principles of impartiality and neutrality cease to apply. It thus still reverts to components from the solidarist ideal type, with, for example, protection or advocacy related programs. Moreover, MSF understands humanitarian principles, especially independence, as not only a means of negotiating access with combatants but as defining the terms of its own engagement and programming principles. The shifts in MSF's interpretations and its current policy policies nonetheless reflect its conception of its role and purpose, especially vis-a-vis states and other 'political' actors. The ambivalence about the extent to which MSF's responsibility extends to issues of justice is thus also reflective of internal contestation about the constitutive norms and purposive content that define its identity. [70]

[69] DeChaine, 2002; p.259

[70] Interestingly, MSF is frequently criticized by other INGOs for subverting the functioning of the humanitarian regime by its refusal to to coordinate its humanitarian policies with larger political goals, especially in the context of UN integrated missions, and its decision to abstain from a number of inter-INGO forums and frameworks. In other words, these INGOs argue that MSF polices and programs contest the dominant interpretations of the regime, preventing thereby more collaborative and collective action.

III. Oxfam

Oxfam was founded in 1942 in opposition to the allied blockade of Occupied Europe during World War II.[71] The identity of the organisation at the time 'was constructed by its members essentially as a means of stimulating public concern for suffering overseas, and then to act as a response mechanism for that public concern.'[72]The provision of humanitarian aid was based on the imperative to respond to humanitarian suffering, rather than the consequences of aid, and limited to essential relief items that would address immediate suffering.

However, by the 1960s, Babu Rahman notes that for Oxfam, 'legitimate humanitarianism concerned with the relief of suffering not only involved a duty towards the welfare of others, but also a duty towards ensuring that relief be extended to longer-term suffering as well.' [73]Based on the belief that conflict was linked to under-development, Oxfam thus began to devise programs based on a developmental ideal type, seeking to address the underlying causes of conflict and the capacity of communities to weather such crises in the future. The use of a developmental ideal type was informed and justified in terms of 'the same constitutive rule which had formed the basis of Oxfam's relief practices, namely the duty to relieve suffering.'[74] A concern for human suffering thus necessitated a long-term developmental view of relief assistance.

By the 1970s, Oxfam also began to argue that addressing issues of "rights" and "justice" was the most appropriate way for it to achieve its developmental goals and provide long-term solutions to suffering. Its policies thus sought to build complementarities between the solidarist and developmental ideal types: a concern with rights was seen as essential to bring about long-term development solutions, and meeting development needs was seen as necessary for social justice. A 1974 document,*Oxfam: An Interpretation* states, for example, that ameliorating suffering from

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[71] Much of the early history of Oxfam is taken from Black, 1992.

[72] Rahman, 1999; p. 32

[73] Rahman, 1999; p. 35; see also Black, 1992; p. 69

[74] Rahman, 1999; p. 36

poverty will require Oxfam to address wider socio-economic conditions and social justice,[75] as 'fundamentally, you cannot separate humanitarian action from concepts of social justice.'[76]

The emphasis on rights concerns within a developmental framework also legitimated Oxfam's focus on rights as a stand alone program, basing its policies more explicitly on the solidarist ideal type. Rahman thus argues that the 'most significant development in Oxfam's humanitarian culture during the 1980s was the inclusion of a concern for civil-political rights. This was a consequence of the legitimisation of its socio-economic rights and justice oriented approach to development.'[77]Oxfam's rights-based approach now includes the 'full range of rights' which, for Oxfam, include the right to a decent livelihood, essential services, a voice in decision-making, and an identity free from discrimination.[78]

In contrast to CARE however, 'protection', following from a solidarist ideal type, is a key focus of Oxfam's programming priorities.[79] However, Oxfam policy documents are inconsistent in their discussion of the kind of rights to which their protection programs extend. At times, the focus is on non-derogable rights that are threatened in the context of conflict and, at other times, a much broader range of civil, political, social, and economic rights that apply even in peace time. Interestingly, an Oxfam document, *An Agenda to Protect Civilians*, which also deals with the politicization of aid, defines the scope of Oxfam's protection activities in terms of a right to life, and freedom from violence, coercion, and deprivation.[80]Thus, similar to CARE, when discussing the politicization of aid by donor governments, Oxfam focuses on a much narrower range of rights than when discussing its own programs. This is, arguably, to distinguish itself from states and donor

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[75] Rahman, 1999; p. 70

[76] Brian Walker, former Oxfam President, quoted in Rahman, 1999; p.81.

[77] Rahman, 1999; p.141

[78] Oxfam International, *Oxfam's Role in Humanitarian Action*, July 2013 (accessed on 01.08.13). http://www.oxfam.org/sites/www.oxfam.org/files/hpn-role-humanitarian-action-010613-en.pdf "

[79] see for example, Oxfam International, *Oxfam International compendium on Social Protection*, 26 November 2009 (accessed 07.02.12). http://www.oxfam.org/sites/www.oxfam.org/files/humanitarian-policy-social-protection-en-0911.pdf

[80] Oxfam International, *Beyond the Headlines: An agenda for action to protect civilians in neglected conflicts*, 03 March 2003 (accessed 07.02.12). http://policy-practice.oxfam.org.uk/publications/beyond-the-headlines-an-agenda-for-action-to-protect-civilians-in-neglected-con-111966;p.6

governments. Oxfam has a separate document on *Social Protection*, which focuses on its own activities. Here, protection is defined in much broader terms as,

> a basic right for all people that is realized through public or publicly mandated actions that enable people to deal with risk and vulnerability, that provide support in cases of extreme and chronic poverty and enhance the social status and rights of marginalized groups. Social protection is critical to achieve social inclusion, to strengthen legitimacy of governance, to reduce the possibility of conflict and achieve sustainable economic growth with equity.[81]

Oxfam links components from the solidarist and developmental ideal types into what it calls an 'integrated approach'. Oxfam's integrated approach however departs from the integrated ideal type outlined in the previous chapter, as peace-building and conflict transformation are not the explicit aims of Oxfam's approach, or stand-alone programs. Rather, Oxfam's response is concerned with peace-building and conflict transformation only insofar as it helps it achieve its developmental and social justice objectives. Oxfam articulates the objectives of its integrated approach in its chief policy document on the provision of humanitarian assistance as follows:

> Oxfam integrates humanitarian, development and campaign work to maximize its impact – to overcome both poverty and suffering. It believes the right to life, while taking precedence in an emergency, must be linked to other rights - such as social, economic, civil and political rights - if people are to take control of their lives and raise themselves out of poverty. For this reason Oxfam's humanitarian work often incorporates programmes to rebuild livelihoods or to empower people to speak out, organize and have a voice in changing their situation.[82]

Oxfam's policy framework for humanitarian assistance can still amount to interference in the conflict, even though it does not directly engage with peace-building activities. Reflecting the solidarist ideal type, Oxfam directly addresses the political dimensions of the conflict through its advocacy efforts, through an information-flow system from local communities to the international community on human rights abuses. Some of the main policy recommendations it makes to governments are around making protection a key priority through instruments such as the 'Responsibility to Protect' (R2P), adopting a policy of zero-tolerance for war crimes, and calling for joined up effective action at every level, from local communities to the UNSC, so that international

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[81] Oxfam, *Social Protection*, 2009.
Oxfam's 'Protection Review' notes this problem with consistency in defining protection activities, arguing that the sometimes conflicting interpretations of protection hamper effective programming. Oxfam is considered a leader in the field with regard to refining and implementing the concept of protection.

Rachel Hastie, Richard Nunn, Nick Martlew and Rosa Garwood, *Oxfam GB Global Protection Review*, (Oxford: Oxfam, July 2007)

[82] Oxfam, *Role in Humanitarian Action*, 2008; p. 4

action works in conjunction with what works on the ground.[83] These recommendations blur the lines between the political and humanitarian spaces in a conflict, and can make Oxfam a participant in the conflict as it chooses a side in conflict. Moreover, as O'Callaghan and Gilbride note, advocacy is increasingly viewed as a parallel program aimed more at effecting change at the Security Council or at capturing headlines, rather than at changing conditions at the operational level.[84]

Oxfam is guided by the principles of impartiality and independence.[85] It does not claim to be a neutral agency, arguing that a rights-based approach requires it to take a stand on the causes of humanitarian need.[86] It thus argues that as an organization that promotes local empowerment and social justice, it often finds itself siding with particular local organizations, even if it does not accept their political methods for achieving justice.[87] Oxfam's interpretation of neutrality thus permits it to take a side in the conflict, arguing that this is not on the basis of some political or organizational objectives, but on the basis of the needs and suffering of people.[88]

Oxfam's policies, based on the solidarist and development ideal types thus contest the function, scope and operating principles of the legal regime. Unlike CARE, the integrated ideal type does not feature prominently in Oxfam's policies; it does not have a specific peace-building or conflict resolution programming focus, though these are welcomed as possible positive outcomes of a concern with social justice and development. However, as argued previously, even programs based on solidarist and development ideal types can amount to interference in the conflict and impinge on the right of national authorities to maintain control over relief programs. Yet, Oxfam maintains its claim to being a non-political actor by framing this assistance in terms of 'basic needs'. At the same time, Oxfam's interpretation of neutrality legitimates taking a side in the conflict; by arguing

[83] O'Callaghan and Gilbride, 2008

[84] O'Callaghan and Gilbride, 2008; p. 35

[85] Oxfam,*Role in Humanitarian action*, 2008.

[86] Ibid.

[87] Rebecca Buell, *Oxfam's work in conflict situations : workshop report*, (Birmingham: Oxfam, 1996)

[88] Oxfam, *Role in Humanitarian Action,* 2008.

that it is not neutral to the causes of suffering, Oxfam can, for example, engage in advocacy by condemning the actions of one party to the conflict.

Similar to CARE, Oxfam has attempted to distinguish its brand of humanitarian assistance from political action by emphasizing the concept of 'need'. As argued in the previous chapter, justifying Oxfam's programs in terms of 'need' ' would confirm that it was addressing the suffering of aid recipients, and not expressing solidarity with the wider political agendas of partner groups.'[89] The concept of need also allows Oxfam to frame partnership with local organization as something neutral and necessary. For example, the Oxfam *Field Director's Handbook* for development programs notes that 'to support the 'humanitarian' activities of a local group which is also engaged in conflict with the state does not imply Oxfam's support for their ideology or political agenda.'[90]

Oxfam also emphasizes motivation and partisanship as key factors that distinguishe it from other political actors, even if there is an overlap in the scope of their activities.[91] It thus notes that 'though developmental relief can promote stability and security, and this is in the common interests of donors, recipient governments, and communities alike, Oxfam should ensure that its primary motive in engaging in such activities is not the political objectives of its donors'.[92] This suggests, similar to CARE, that what distinguishes political and humanitarian action is not the scope of activities, but the motive for which they are carried out; the intention of an actor providing assistance is more important than the nature of programs for determining what constitutes legitimate humanitarian assistance. For Oxfam, its motivation to address human suffering follows from its moral responsibility as a particular kind of actor with a particular role.

Similar to CARE, Oxfam's documents on the politicization of aid or the UN peace-building mission present a much narrower definition of humanitarian assistance than the documents in which Oxfam refers to its own goals and programs. This suggests that Oxfam's interpretation of the

[89] Rahman, 1999; p.77

[90] Oxfam, *The Field Directors' Handbook: An Oxfam Manual for Development Workers* (Oxford: Oxford University Press, 1985); p. 164

[91] see for example: Oxfam,*Whose Aid is it anyway,* 2011.

[92] Ibid; p.8

function, scope, and operating principles of the humanitarian regime is closely related to how Oxfam seeks to distinguish itself from states, the UN, or other actors. For example, an Oxfam 'Policy note on the UN PeaceBuilding Commission' states that 'humanitarian action focuses on preserving life and meeting immediate needs of the population for food nutrition, shelter, and basic health services.'[93]

Similarly, in a report on the politicization of aid, Oxfam makes a clear distinction between humanitarian and political aid. It defines humanitarian assistance as assistance 'designed to save lives, alleviate suffering and maintain and protect human dignity during and in the aftermath of emergencies, including the provision of shelter, food, water, sanitation, and emergency health services to those affected by armed conflict and natural disasters.'[94]Development assistance, on the other hand, covers 'financial and material resources provided to promote the broader economic development and welfare of developing countries.....[it] may have essentially political goals...but it should not primarily pursue the political objectives of its donors.'[95]Equally, in the same report on the politicization of aid it also notes the tensions in linking humanitarian assistance with development efforts and conflict resolution; the report notes that 'Using aid for military or subjective objectives has been increasingly justified by development approaches that seek to integrate humanitarian action and poverty reduction with efforts to stop violence conflict and political instability...Such approaches appear to promise a virtuous cycle between four objectives: security, state-building, satisfying humanitarian needs, and combating poverty. Yet, in practice these goals are not always compatible within the same project.'[96]

Both these examples illustrate how Oxfam, similar to CARE, presents a much narrower definition of the function and scope of the humanitarian regime in discussions that include other political actors, even while it notes how the merging of development and security goals can undermine the objectives of the humanitarian regime. However, when referring to its programs, the function of

[93] Oxfam,*Oxfam International Policy Compendium Note on the UN Peacebuilding Commission*, 2006 (accessed on 07.02.12). http://www.oxfam.org/sites/www.oxfam.org/files/oi_hum_policy_peacebuilding_0.pdf

[94] Oxfam, *Whose Aid is it Anyway*, 2011; p. 7

[95] Ibid; p. 7

[96] Oxfam, *Whose Aid is it Anyway*, 2011;; p. 18

humanitarian assistance is defined much more broadly, precisely in terms of combatting poverty and social justice.

Once again, external factors in terms of donor pressure cannot alone explain the shifts in Oxfam's policies as a number of these shifts occurred prior to changes in donor policies. Unlike CARE, Oxfam obtains the bulk of its resources from private donations and its own fund-raising campaigns.[97] Oxfam America is one of the few humanitarian organizations that does not accept US government funds.[98] It is thus not bound by the same kind of contractual relationship with donors as CARE. Moreover, its origins as a Dunanist organization founded in opposition to state politics can be argued to make autonomy from states a central feature of Oxfam's identity. Thus, even while specific projects or contracts with donor agencies might impose conditions on Oxfam's operations, it cannot be said that manner in which Oxfam conceives of the function, scope, and operating principles of the humanitarian regime was a result of the relationship it had with funding agencies. Equally, while Oxfam is shaped by the larger normative and political climate, it cannot be thought of as simply a 'cultural dupe' as these policy changes, as this chapter has noted, have been the result of much internal deliberation and debate, and occurred prior to the the broader shifts in the post-cold war political and normative architecture. [99]

Rather, as argued previously, the nature of Oxfam's policies and the manner in which it contests the function, scope, and operating principles of the humanitarian regime cannot be understood without reference to Oxfam's identity, its conception of its role and purpose. Oxfam's interpretation of the regime, based on the solidarist and developmental ideal types, follows from its beliefs and values, the constituent norms that define Oxfam membership, and its conception of its moral obligation and responsibility, defining thereby the purposive content of its identity, articulated through its mandate and policies. Oxfam thus notes that its 'commitment to responding

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97 Stoddard,2003.

98 see for example, Oxfam America, *Financial Information - 2011* (accessed on 07.01. 2013). http://www.oxfamamerica.org/whoweare/financial-information/pages

99 see for example: Rahman, 1994; Black, 1992; O'Callaghan and Gilbride, 2008.

to humanitarian suffering - the most extreme form of poverty - goes to the *core of its values as an organization* that is, taking a rights based approach to poverty alleviation.'[100][emphasis added]

This argument is supported by Rahman's study; he argues, for example, that *Oxfam: An Interpretation*, a key policy document, bases 'the legitimacy of activities which expressed solidarity with local development movements in the South facing State opposition, on the rule that it is an intrinsic element of Oxfam's identity that it undertake development activities in the field.'[101]He thus argues that *Oxfam: An Interpretation* represented 'the development of Oxfam's identity as an agency legitimately concerned with the achievement of social and economic justice and rights.' [102] Oxfam's interpretation of the humanitarian regime also reflects an attempt to distinguish itself from governments, defining humanitarian action in terms of the different motivations between itself and states rather than the nature of its activities. In instances where Oxfam defines humanitarian assistance in narrow terms - pertaining to only life-saving relief interest, this is primarily to contrast its activities from those of donors.

IV.World Vision

World Vision was founded in 1950 with the goal of combining social action with evangelism.[103]As evangelicals, the founders of World Vision believed they had a responsibility to spread the work of Christ and that providing humanitarian assistance was both an opportunity to do so and a religious duty.[104]At the time of its founding, World Vision did not seek out government funds as it feared this would interfere with its religious programming.[105] However, during the Cold War, World Vision tried to downplay its emphasis on evangelism and focused instead on the delivery of relief

[100] Oxfam, *The Pocket Humanitarian Handbook,* 2001 (accessed on 07.02.12). http://nirapad.org/admin/soft_archive/1308562615_The%20Pocket%20Humanitarian%20Handbook.pdf

[101] Rahman, 1999; p.70

[102] Rahman, 1999; p. 70

[103] Barnett notes that this was World Vision's pioneering message; Barnett, 2009.

[104] Barnett, 2009; p.645

[105] Barnett, 2009, p. 646

aid in order not to appear aligned with Western interests and values.[106] The ending of the Cold War gave World Vision a chance to re-claim its religious roots and renew its commitment to social justice.[107] World Vision now defines its core values and goals in terms of being a 'Christian humanitarian organization dedicated to working with children, families and their communities worldwide to reach their full potential by tackling the causes of poverty and injustice.'[108] WV's motivation is its 'faith in Jesus Christ' which requires that it serves 'alongside the poor and oppressed as a demonstration of God's unconditional love for all people.'[109]

In comparison with CARE and Oxfam, WV has little documentation on its approach specifically for humanitarian assistance. The clearest articulation of how WV views humanitarian assistance was found in a special issue of a journal published by World Vision titled *Humanitarianism revisited: issues for the 21st century*. Here, Richard Rumsey, WV's Humanitarian and Emergency Affairs director, highlights that WV's humanitarian programming seeks to 'address short-term needs as well as reduce long-term risks and vulnerabilities', to engage in advocacy 'for the rights to protection and assistance of poor people caught up in disaster' and to reduce the potential for conflict through reconciliation and peace-building.[110]World Vision's understanding of the function, scope, and operating principles of humanitarian assistance thus combines elements from the solidarist, developmental, and integrated ideal types.

The previous chapter noted how the developmental ideal type for humanitarian assistance was borrowed from agency responses to natural disasters. Similarly, WV's model does not distinguish between a natural disaster and a political emergency: the response to both kinds of situations is conceptualized in the same way, as moving from early recovery to long-term development

[106] Loramy Conradu Gerstbauer, " The Whole Story of NGO mandate change: The Peacebuilding Work of World Vision, Catholic Relief Services, and Mennonite Central Committee, *Nonprofit and Voluntary sector quarterly*, 39(884):2010; see also Barnett, 2009.

[107] Barnett,2009; p.647

[108] World Vision International.,*Who we are* (accessed on 07.02.12). http://www.worldvision.org/content.nsf/about/who-we-are?open

[109] World Vision (USA) Annual Review 2006 quoted in in Gerstbauerp, 2010; p. 858

[110] Richard Rumsey, " Humanitarian action: World Vision's definition", *Global Future: A World Vision Journal of Human Development,* 2:2006; p. 8

assistance and rehabilitation.[111] However, as the previous chapter highlighted, using a natural disaster model in political emergencies can obscure the political causes of conflict and contribute to the contestation of the regime by, for example, strengthening a particular set of combatants or local authorities.

In contrast to CARE and Oxfam, World Vision, from the time of its formation, has located humanitarian assistance within a wider framework of reconciliation and peace-building. Its policies are based on components from the solidarist, developmental, and integrated ideal types, but the manner in which these ideal types have been combined and understood reflect WV's roots as a Christian organization. Thus, for example, its programs focus on addressing longer term vulnerabilities and capacities, but these are framed in terms of 'transformational development' which incorporates 'the material and spiritual aspects of development, focusing on the relationship between relief, reconstruction, and tackling the causes of violence, injustice and hardship.'[112] Similarly, reflecting the integrated ideal type, World Vision links humanitarian assistance to peace-building, but, as a faith-based organization, WV's peace-building programs also have a focus on 'truth and mercy,'[113] 'transforming persons, and enhancing community capacities that generate hope.'[114] Peace-building and conflict resolution are also seen as necessary components of development assistance rather than stand-alone programs as 'peacebuilding capacity already exists within current development methodology...with the capacity to build social capital, networks of trust, co-operation, and organization.'[115]

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[111] see for example Rumsey, 2006 and World Vision International, *What we do* (accessed on 07.02.12). http://www.wvi.org/wvi/wviweb.nsf/maindocs/018080C3FFC683ED88257387007D112C?opendocument

[112] Michelle Garred ed. *A shared future: Local capacities for Peace in Community development*, (New York: World Vision, 2006); p. 6
see also:World Vision, *Transformational Development Indicators: Field Guide Framework and Policy*, 2007(accessed on 01.08.13). http://www.transformational-development.org/ministry/transdev2.nsf/1F07C7BFF9528FEF88256F460065BA43/$file/Volume%204%20-%20Transformed%20Relationships%20-%20Revised.pdf

[113] World Vision, *Transformational Development*, 2002.

[114] World Vision, *Conflict sensitivity in emergencies: Learning from the Asia Tsunami Experience*, 2007 (accessed on 07.02.12). https://www.worldvision.org/resources.nsf/main/2007_tsunami_report/$file/sensitive_context.pdf ; p. 14; see also: World Vision, *Grassroots efforts, to prevent and resolve violence*, 2005 (accessed on 01. 03. 11). http://www.wvi.org/publication/grassroots-efforts-prevent-and-resolve-violence

[115] Garred, 2006; p. 17

In contrast to CARE and Oxfam, WV programs are not explicitly guided by a right-based approach; rights concerns are linked to the 'workings of the divine' rather than a legal charter for human rights. However, following from a solidarist ideal type, World Vision's humanitarian programming includes an advocacy component. Through advocacy, WV seeks to 'influence governments and international decision makers to help secure peaceful resolution to conflicts…[providing information] that governments and public would otherwise be unaware of…'[116] WV thus sees itself not only as a provider of palliative assistance that fills a gap in the local response to the emergency, but as an advocate for civilians on the international stage. However, as pointed out in the previous chapter, such advocacy can amount to interference in the conflict, blurring the lines between domestic and international governance, and challenging the basis on which agencies are granted access to recipients of aid.

The sections on CARE and Oxfam noted that the most extensive discussion of humanitarian principles was contained in documents pertaining to interaction with the military. This is even more apparent in the case of World Vision. Aside from the edited volume mentioned above, the only other sustained discussion of World Vision's approach to humanitarian assistance can be found in two reports *Principled Pragmatism* and *HISS CAM*, both of which are primarily focused on WV's interaction with the military.[117] The *HISS CAM* tool, for example, which was first developed to help 'bridge the gaps between principles and pragmatism' while interacting with the military, is the only document in which WV was found to have defined its understanding of a 'humanitarian imperative.' Here, the humanitarian imperative is defined not only in terms of alleviating immediate suffering but also longer-term causes and consequences; the HISS CAM documents thus states that the humanitarian imperative is about 'promoting the well being and dignity of civilians in a way that also supports a sustainable, self-directed and long-term future.'[118]The HISS-CAM document also frames the humanitarian imperative not only in terms of

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[116] World Vision GB, *Peace and Conflict Advocacy* (accessed on 01. 03.11). http://www.worldvision.org.uk/what-we-do/advocacy/peace-and-conflict/

[117] Edwina Thompson, *Principled Pragmatism: NGO engagement with armed actors* (London: World Vision International, 2008); *HISS-CAM: A Decision Making Tool* (London: World Vision International, 2008).

[118] Thompson, 2008; p.3

the principles of the formal legal regime but also the UN Universal Declaration on Human Rights and the UN Convention on Rights of the Child. Importantly, while the *HISS CAM* tool was first devised by WV to guide its interaction with the military, it is now also the basis of its humanitarian programming more generally.

The key principles guiding World Vision's humanitarian programming are impartiality, independence, 'do no harm', and sustainability. The inclusion of sustainability, reflective of the developmental ideal type, is intended 'to ensure that agencies assist communities to overcome poverty and injustice over the long term.'[119] The principle of 'Do No Harm' can be considered a minimalist principle in that it only highlights what agencies should avoid doing. World Vision however argues that the flip side of the 'Do No Harm' principle is the 'Local Capacities for Peace' program. This reinforces the idea that if aid can be engineered to 'do no harm', it can also be designed and delivered in a manner that positively influences the conflict.[120] Similar to CARE and Oxfam, neutrality is notably absent as an operating principle for WV. However, WV acknowledges the need to 'appear' neutral in the provision of aid, noting the operational utility of the principle at the field level. [121]

As with the other INGOs, a key function of humanitarian principles and the *HISS CAM* tool is to help World Vision distinguish itself from political and military actors, to direct the relationship between INGOs and military actors, rather than be the basis on which it negotiates access with combatants.[122]It is also worth noting that while *Principled Pragmatism* seeks to examine WV's relationship with armed actors, the key armed actors that the document focuses on are (international) military actors, and not local parties to a conflict. [123] Similar to Oxfam and CARE, WV distinguishes its programs from the military in terms its motivation and moral obligation. .

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[119] Thompson, 2008; p. 3

[120] Garred, 2006.

[121] World Vision, *Grassroots efforts, to prevent and resolve violence*, 2005.

[122] The HISS CAM tool categorizes INGOs into 'types' according to how they relate to the military, distinguishing between 'principled pragmatists', 'ambivalents', and 'refuseniks'; World Vision sees itself as a principled pragmatist , bridging the gaps between principles and pragmatism
Thompson, 2008.

[123] Thompson, 2008.

Thus, 'while the type of activity [conducted by military and NGOs] considered to be humanitarian assistance may be similar...the motivation for aid agencies is the primacy of the humanitarian imperative, to serve a person's right to assistance, according to need alone.[124] Finally, the Geneva Conventions are mentioned in *Principled Pragmatism* in reference to the obligation of host governments to provide for the security of aid workers; in the section on the humanitarian imperative in the same document, WV refers to International Human Rights Law and the ICRC - NGO Code of Conduct, not International Humanitarian Law. This suggests that World Vision uses IHL and humanitarian principles to safeguard its operational presence in a political emergency, but defines the scope of humanitarian assistance in terms of human rights.

Barnett argues that World Vision's shift from being an overtly evangelical agency to one concerned with relief and development was not dictated by financial resources but a combination of broader environmental shifts and internal debates.[125] In fact, Barnett argues that WV made conscious attempts to sever its association with the American government; for example, it provided aid in Cambodia following the Vietnamese invasion in 1979, placing it in opposition to American foreign policy goals. At present, as a Christian organization, World Vision has been able to build a resource base reliant on public donations and is thus not dependent on funds from western states; as Abby Stoddard notes, 'the bulk of charitable donations going to international causes is religiously oriented, allowing World Vision to sustain much lower levels of public funding than secular organizations.'[126] Stoddard notes that 80% of WV's funding is private, and of this, a further 80% comes from individual donors. WV's interpretation of the humanitarian regime thus cannot be explained by reference to donor pressure alone or through material inducements or sanctions. Donor funds might facilitate WV to implement the regime in a particular manner, but they cannot be said to have caused these programs to be defined as part of the agency's mandate in the first place.

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[124] Thompson, 2008; p. 23

[125] Barnett, 2009; p. 646-7.

[126] Stoddard,2003.

World Vision's identity as a faith based organization is a necessary factor in explaining how World Vision contests the regime at the level of interpretation, how it employs, combines, and prioritizes components from the solidarist, development, and integrated ideal types. The integrated ideal plays the most dominant role in WV humanitarian programming as it sees its role and purpose in terms of bringing about comprehensive societal transformation, based on material and spiritual aspects of development, and peace and reconciliation. The integrated and developmental ideal types are thus linked through the concept of 'transformational development' and WV argues that relief or development would be wasted if issues of "reconciliation, forgiveness, and trauma healing were not addressed." [127]

Barnett also argues that WV's emphasis on development during the Cold War was aimed at downplaying its religious character, [128] highlighting how the adoption of an ideal type was also about re-constructing or re-defining WV's identity. Post the Cold War, WV was concerned that its programs needed to reclaim their spiritual and religious character, and this explains the adoption of a 'transformational development' ideal type that incorporated both the material and spiritual aspects of development. Barnett thus notes that WV staff periodically take their "temperature" to see if they are "Christian enough." [129]

While external factors such as the broader normative environment or changing aid policy in donor capitals might have had a role to shaping WV policy, these factors did 'not pull the organization onto a path that was not fitting with the long standing organizational mission and values.' [130] The two key values for WV are its Christian foundation and the resulting duty to work to alleviate the suffering of the poor; these foundational principles, Gerstbau argues, influenced the decision to adopt a peace-building mandate. World Vision staff have similarly argued that 'peace-building was a spiritual calling for World Vision, a Christian agency' [131] and that 'reconciliation in Christ is not

[127] Gerstbauer, 2010; p. 852

[128] Barnett, 2009.

[129] Barnett, 2009; see also Gerstbauer,2010.

[130] Gerstbauer, 2010; p.858.

[131] Gerstbauer,2010; p. 859.

just the end of the process, but forms the foundation and context of our work.'[132] Thus, World Vision's interpretation of the legal regime and the adoption of a particular kind of ideal type for humanitarian assistance needs to be understood with reference to its identity as a Christian organization. Its interpretation is a function of what it considers appropriate for itself, as a particular kind of actor with specific values, rather than only an examination of the costs and benefits of opting for a certain kind of humanitarian programming or policy.

Identity also shapes WV's interpretation in a second way, as WV tries to define or distinguish its identity from that military actors. This is supported by the observation made above that the most extensive and systematic discussion of WV's approach to humanitarian assistance can be found in documents outlining guidelines for interacting with military actors. In contrast, there is little discussion of humanitarian principles when discussing WV's own programs, which focus instead on WV's goals and values as an organization. Moreover, the value and efficacy of humanitarian principles is defined in context of the relationship with the military rather than the conflict itself.WV thus also seeks to define its identity in relational terms to the military and to political actors, and this attempt at distinction also shapes how it interprets the function, scope, and operating principles of the humanitarian regime.

IV.Conclusion

The previous chapter identified three ideal types for the provision of humanitarian assistance. It was argued that these ideal types re-constitute the meaning of the humanitarian regime, providing the broad structure of meaning for INGO policy and practice. This chapter has examined how these ideal types - essentially abstract categories of INGO interpretations of the legal regime - translate to concrete goals and policies for CARE, MSF, Oxfam, and World Vision. Taken together, these two chapters highlight the substantive content of INGO contestation of the legal regime through the process of interpretation.

[132] Gerstbauer,2010; p. 853.

CARE, World Vision and Oxfam's current policies contest the legal humanitarian regime, as the function and scope of aid are seen in terms of not only providing palliative care but also addressing the causes and consequences of conflict through poverty alleviation, social justice and peace-building programs. The policies of all three thus fundamentally contest the provision in the legal regime about humanitarian assistance remaining distinct from the political dimensions of the conflict. Equally, their policies contest the operating principles of the legal regime; rather than being seen as a means to negotiate access, humanitarian principles are used by INGOs to distinguish themselves from 'political actors.'

However, these ideal types were found to be combined and prioritized in different ways by these four INGOs. Oxfam does not explicitly base its policies on an integrated ideal type. Oxfam's hesitation to frame its policies in terms of an integrated ideal type might be related to its founding as a Dunanist organization and the current focus in western states on the stabilization of fragile states through an integrated approach. Thus, even while it adopts many programs based on an integrated ideal type, it arguably does not frame them as such in order to maintain its distinctiveness vis-a-vis states. World Vision, on the other hand, places the greatest emphasis on an integrated model, though this is in terms of 'transformational development' , 'truth and mercy' and 'peace and reconciliation.' For World Vision, as a Christian organization, the focus on peacebuilding is a necessary component of its programs for the material and spiritual transformation of societies. CARE, as a Wilsonian organization, that receives a bulk of its funds from donor agencies, is arguably more comfortable with the overlap between the use of peacebuilding concepts in its own policies and those of western donor agencies. These differences in how Oxfam, CARE, and World Vision conceive of peacebuilding following from constituent features of their identity, their founding beliefs, and the manner in which they distinguish themselves from other political actors.

MSF's mandate and policy frameworks set it apart from these INGOs, as it rejects the developmental and integrated ideal types. However, it is ambivalent about the extent to which its policies should be based on a solidarist ideal type as it holds both that humanitarian assistance must remain distinct from the political dimensions of the conflict and that humanitarian assistance

should be located within a wider framework of justice. This ambiguity is also reflected in debates within MSF on the meaning of 'protection' and the extent to which MSF is responsible for providing such protection. It is equally reflected in MSF debates about the conditions under which the principles of impartiality and neutrality are no longer applicable. This ambiguity, as will be seen in the following empirical chapters, is reflected in MSF's implementation of the legal regime.

MSF is however similar to CARE, Oxfam, and World Vision in that humanitarian principles are seen not only as a means to negotiate access with combatants but also in terms of defining the terms or conditions under which MSF is willing to provide humanitarian aid, and as a means to distinguish itself from other 'political actors.' Thus, for example, MSF argues that the principle of independence implies that it has a right to access populations, to directly determine the extent of humanitarian needs, and maintain control over its own operations. This contests the provision in the legal regime that the primary responsibility for humanitarian assistance lies with local authorities who have a right to control and supervise the flow of aid.

The differences in INGO policies suggest that INGO preferences and behavior are not entirely determined by the external normative and institutional environment. Rather, actors interpret the environment in light of their identity and are thus 'normatively purposive' actors who engage in self-constitution as they define their social purpose and choose their actions. Moreover, INGOs, as the previous chapter noted, were often norm-entrepreneurs in introducing new interpretations to the humanitarian regime. This is especially apparent in the case of MSF; MSF's mandate and policies reflect how actors interpret and negotiate the external normative environment in light of their identity and beliefs. The discussion in this chapter also noted that shifts in INGO interpretations took place in the absence of, or prior to, donor pressure or material rewards and sanctions from the external environment, and thus cannot be explained by external material factors alone.

INGO identity was found to be a necessary part of the explanation for how INGOs contest the regime at the level of interpretation. Despite the differences in INGO policies, the common factor was that their policy frameworks were defined in terms of what these INGOs considered to be their

moral responsibility and role in a particular context, both of which follow from the constituent rules and norms of INGO identity. INGO polices thus reflect the role identity and social purpose that INGOs assume rather than a cost-benefit analysis of the expected outcomes of particular policy decisions. The role and social purpose of an INGO is articulated and institutionalized through its mandates and polices, and provide the range of legitimate action for the INGO.

The importance of identity was also seen in INGO attempts to distinguish themselves from 'political actors', especially western states and their military forces. The function, scope, and operating principles of the regime were thus found to be interpreted in terms of how these interpretations or policies could distinguish INGOs from other actors, rather than a consideration of the nature of conflict. For example, despite the shifts in MSF's goals and policies, a common thread running through all its policies is maintaining a clear distinctiveness from the polices and practices of states. Another feature that stood out in the policy frameworks of the NGOs under study was the reference to INGO motivation as the key factor in distinguishing INGOs from states; while states are motivated by political gain, INGOs are motivated by a concern for human suffering and meeting humanitarian needs. Thus, by contrasting their position with those of states, INGO interpretations seem to suggest that a program can be constituted as humanitarian not on the basis of the activities it entails but the intentions of the actors providing that assistance. The difference in INGO identity vis-a-vis that of states is thus what defines the scope of humanitarian assistance.

There is also a fair amount of similarity between CARE, Oxfam, and World Vision's interpretations of the humanitarian regime. This similarity supports the argument that organizations are constituted by the broader institutional environment in which they are embedded. Regular interaction among agency members, frequent staff interchanges, joint codes of conduct, and collective learning and evaluation exercises create an INGO 'community of practice' which then defines the range of permissible and legitimate behavior ; INGOs within this community of practice thus display similar organizational forms and behavior around these collective social rules and standards of appropriateness. [133] Moreover, INGOs are embedded in the same normative and

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[133] see for example: Michael Barnett, "Faith in the Machine: Humanitarianism in an age of Bureaucratization", in Michael Barnett and Janice Gross Stein eds. *Sacred Aid: Faith and Humanitarianism (*New York: Oxford University Press, 2012); Hugo Slim, *Global Welfare: A Realistic expectation for the international humanitarian system* (London: ALNAP, 2007).

institutional structures and thus are similarly constituted in terms of their identities and interests; they might also at time mimic the behavior of the UN or other IOs they consider legitimate.

This thesis does not dispute this argument. Rather, acknowledging the mutual constitution of actors and structures, the focus has been on investigating the effects of identity in shaping INGO interpretation of the humanitarian regime. Even while the identities and interests and behavior of these INGOs must necessarily be situated within the context of the broader environment in which they are constituted and operational, INGOs are normatively purposive actors capable of interpreting, negotiating, and shaping these normative structures; the case of MSF is a good example. Moreover, one might argue that the similarity in CARE, Oxfam, and World Vision's conceptions of their role and social purpose is what drives them to form a 'community of practice' based on a particular set of rules and standards of appropriateness.

The points of similarly between CARE, Oxfam, and World Vision's mandates and policies has facilitated the creation of joint codes of conducts, program evaluation standards, accountability frameworks and learning mechanisms. [134] These codes of conduct and evaluation standards are based on assumptions and policies following from the solidarist, developmental, and integrated ideal types, and thus also facilitate the institutionalization of these ideal types as constituting the meaning of the humanitarian regime. Moreover, as these codes of conduct and accountability mechanisms are focused on INGOs themselves, they shift attention from the nature of the conflict and the humanitarian needs in a particular context to INGOs as the 'duty bearers'. The function, scope, and operating principles of the regime are thus interpreted through the perceived roles and responsibilities of INGOs, and institutionalized as such through these accountability frameworks and codes of conduct.

[134] Some of these include the Sphere Humanitarian Charter and Minimum standards in Disaster response, The ICRC and NGO Code of Conduct and the Active Learning Network for Accountability and Performance in Humanitarian Action(ALNAP).

5

IMPLEMENTATION:
INGO policies and practices in Sri Lanka, 1990-2010

After almost three decades of armed conflict, the Government of Sri Lanka (GoSL) declared victory over the Liberation Tigers of Tamil Eelam (LTTE) on 19 May 2009. During the final stages of the war, UN agencies and INGOs were criticized for contributing to the 'failure of humanitarianism' in Sri Lanka.[1] However, there is little consensus on what constitutes this failure. While some argue that agencies have violated humanitarian principles and are complicit in the GoSL's violation of international humanitarian law, others argue that agencies have violated Sri Lankan sovereignty to secure their organizational interests.[2] The different understandings of what constitutes 'failure of humanitarianism' in Sri Lanka suggests a lack of consensus about what defines an appropriate humanitarian response, or the appropriate function, scope and operating principles of the humanitarian regime. This contestation, as Simon Harris argues, 'has impacted the space in which humanitarians have been able to operate and their access to conflict and disaster-affected communities.'[3]

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[1] see for example: Samir Elhawary , *The Failure of Humanitarianism in Sri Lanka*, Overseas Development Institute Blog: Grabbing Aid Debates, 10 May 2011 (accessed on 01.07.13). http://www.odi.org.uk/opinion/5751-silent-witnesses-failure-humanitarianism-sri-lanka; ICG, *War Crimes in Sri Lanka,* (Brussels:International Crisis Group, 2010) ; CPA, *Policy Brief on Humanitarian Issues* (Colombo: Center for Policy Alternatives, 2007).

[2] see for example, ICG, *Sri Lanka: A Bitter Peace* (Colombo/Brussels: International Crisis Group, 2009); UN, *Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka*(New York: United Nations, 2011) ; CPA, *A Profile of Human Rights and Humanitarian Issues in the Vanni and Vavuniya* (Colombo: Center for Policy Alternatives, 2009).

[3] Simon Harris, *Humanitarianism in Sri Lanka: Lessons Learned?* (Boston: Feinstein International Center - Tufts University, 2010) ; p. 1

This chapter seeks to understand how INGOs have contributed to the contestation of the humanitarian regime in Sri Lanka through the implementation of their policies, the effects of this contestation, and the factors shaping INGO contestation at the level of practice. It examines INGO implementation from 1990 to 2010; 1990 is chosen as a starting point as this is when INGOs began to operate in the conflict-affected parts of the country.

Since the mid-1990s, INGO programs in Sri Lanka have combined elements from the solidarist, developmental, and integrated ideal types of humanitarian assistance, transforming humanitarian assistance from a form of palliative care, which addresses the symptoms of conflict, to a means of conflict and societal transformation. Contestation at the level of implementation therefore followed on from contestation at the level of interpretation. However, as the discussion in this chapter will suggest, the dominant tendency among INGOs has been to seek opportunities and means to implement as wide a range of programs as possible, reflecting an integrated interpretation of the legal regime. The solidarist interpretation of the regime was also found to play a prominent role in humanitarian assistance in this crisis, but primarily as a means of criticizing the GoSL, especially when it placed restriction on INGO access and operations. Thus, while at the level of interpretation, the solidarist interpretation seems to conform closely to the precepts of the legal regime, at the level of practice a solidarist approach can amount to, or at least be perceived as, the most direct and confrontational interference in the conflict.

As this chapter reveals, policies can acquire new meaning and significance at the level of implementation as the regime encounters new actors, interests, and beliefs, leading to outcomes and effects that are distinct from what is envisaged in the legal regime. In terms of effects, INGO contestation of the legal regime in the case of Sri Lanka had the effect of legitimizing the LTTE and enabling its military and statebuilding efforts. Contestation has also led to the perception that INGOs are LTTE sympathizers. Further, INGO polices have contributed to humanitarian organizations being perceived by local actors as participants in the conflict, placing them in opposition to the GoSL. These two effects, when combined, have led the current GoSL to place restrictions on INGO access and programs, contributing to shortcomings in the provision of humanitarian assistance to populations in the conflict-affected north-east.

Finally, this chapter demonstrates that INGO contestation of the humanitarian regime in Sri Lanka was shaped by INGO identity and mandates. INGO conception of their role and social purpose , as actors with a particular identity, shaped the nature of their contestation of the humanitarian regime; programs that contested the legal regime followed from a logic of appropriateness rather than the rational cost-benefit analysis of particular policy choices based on expected outcomes. INGO contestation thus also followed from INGO attempts to implement their mandates; mandates, as argued in Chapter 2, can be seen as an articulation and institutionalization of the role and the social purposes that INGOs envisage for themselves. Seen in this way, implementing a mandate is not only an organizational interest, but an act of self-constitution, a practice that reconstitutes INGO identity.

INGO contestation of the legal humanitarian regime necessarily took place within the context of the broader international aid architecture in Sri Lanka, encompassing multilateral and bilateral donors and UN agencies; it must also be placed in the context of the broader dominance of the liberal peace framework in the post cold war era. Yet, as this chapter will demonstrate, while these factors were important, INGOs were not merely programmed by them and exercised agency in negotiating and shaping the force of these external factors.

I. Ethnic conflict or Crisis of the State?

The conflict between the Sri Lankan state and LTTE began in 1983, following communal riots targeting the Tamil population.[4] It has often been framed as an ethnic conflict, between the Sinhalese majority and Tamil minority.[5] While ethnic tensions have deepened over the past three decades, such framing captures only part of the problem. The conflict is instead better understood,

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[4] The Democratic Socialist Republic of Sri Lanka is an ethnically, linguistically, and religiously diverse country. The majority of the Sri Lankan population are Sinhalese (74%), speak Sinhala, and for the most part are Buddhists. The two main minority groups are the hindi speaking Tamils (18%) and Muslims (7%). The north and north eastern provinces are Tamil dominated, while the South and central hill country are Sinhalese dominated.

[5] S. Jayaweera, *The ethnic conflict and Sinhalese consciousness. A History of ethnic conflict in Sri Lanka: Recollection, reinterpretation, and reconciliation* (Colombo: Marga Institute, 2001); M. O'Sullivan, " Sri Lanka: Civil strife, civil society, and the state,1983-1995", in F. Stewart and V. Fitzgerald eds., *War and Underdevelopment : Volume 1* (Oxford:Oxford University Press, 2001).

as Jonathan Goodhand and Bart Klem argue, as a 'crisis of the state' where 'violent conflict is rooted in the pathologies of the state, and notably its failure to institutionalize democratic politics'...[where this] crisis of governance has also impeded the search for a solution.'[6] As a majoritarian democracy, the Sri Lankan state lacks adequate minority safeguards which has had the effect of placing the Tamil minority in permanent opposition to the Sinhala majority. Sinhala nationalism, reflected in almost every aspect of the Sri Lankan state including the constitution, the flag, land rights, the official language, development policies, has become an enduring aspect of the political landscape in Sri Lanka. [7]

The LTTE began as a Tamil liberation movement against this state-led discrimination, and eventually emerged as the most disciplined of the various Tamil groups, espousing a separatist agenda from the mid 1980s.[8] Sunil Bastian argues that the LTTE's 'military action against any alternative form of Tamil political leadership, the authoritarian character of its organizations, the

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[6] Jonathan Goodhand and Bart Klem, *Aid, Conflict, and Peacebuilding in Sri Lanka: 2000-2005* (Colombo: The Asia Foundation, 2005); p. 29

Following independence, Sri Lanka enacted the Citizenship Act which created two categories of citizens - citizens by descent and citizens by registration, with Tamils falling in the latter category. This had the political effect of disenfranchising the bulk of the Indian Tamil population, diminishing their influence in parliament and undermining the notion of balanced representation. In 1956, the 'Sinhala Only' act was passed, making Sinhala the official language, and signaling the emergence of Sinhala-Buddhist nationalism as the dominant ruling ideology.

see also Sunil Bastian ed. *Devolution and Development in Sri Lanka* (Colombo: Konark Publishers, 1994); Sunil Bastian, *The Failure of State Formation, Identity Conflict, and Civil Society Responses - the case of Sri Lanka* (Bradford: Center for Conflict Resolution Studies - University of Bradford, 1999); Nira Wickramasinghe, *Sri Lanka in the Modern Age: A History of Contested Identities* (London: C. Hurst Co, 2006)

[7] Bastian locates the source of the conflict in a failure of state formation, arguing that this has three key dimensions: absence of a political power sharing structure between ethnic groups; failure in a number of areas of public policy pertaining to development, land ownership, language teaching, and state employment,amongst others;and the fact that the formal identity of the state is dominated by the Sinhala Buddhist community.
Bastian, 1999.

see also: Jonathan Goodhand, *Aid, Conflict and Peacebuilding in Sri Lanka* (London:Center for Defense Studies - Kings College, 2001).

[8] The LTTE emerged as the self appointed, sole representative of the Tamil people, led by Velupillai Prabhakaran, and increasingly relied on violent tactics - including pioneering the concept of suicide bombing.

extreme nationalism in its ideology, and its readiness to resort to terrorist acts in achieving its political objectives precluded the hope of an early settlement'.[9]

The question of conflict framing i.e. whether the conflict is seen primarily as an ethnic conflict or a crisis of the state, is critical for how international actors tailor their response. To illustrate the point, if the conflict is framed primarily as an ethnic conflict, this might justify programs that emphasize community awareness, ethnic reconciliation, and community level peace-building programs. If however the conflict is seen as rooted in the pathologies of the state, then such community-level measures might amount to little without top-down institutional reform. Moreover, attempts to strengthen governance through existing institutional structures can further perpetuate some of the causes of conflict. However, most international actors, as Sunil Bastian points out, have framed the conflict in ethnic terms and failed to interrogate the nature of the state; their approach has thus focused on strengthening existing institutional structures and promoting democracy and human-rights within these structures, failing to note that the nature of these institutional structures might themselves exacerbate the conflict. [10]

II. War for Peace, 1990-2000

By the mid 1990s, the LTTE established control over most of northern Sri Lanka. President Chandrika Kumaratunga launched a 'war for peace' in 1995 to militarily defeat the LTTE and offer a political solution to the Tamil people. The promise of a political solution however was quickly overshadowed by an intensification in the military campaign by both sides. Large scale warfare continued for many years; the final blow for Government forces came in 2001 when the LTTE took over Katanayake airport near Colombo, the country's only international airport, and destroyed half the air fleet. This incident is considered to mark the failure of the 'war for peace' approach.[11]

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[9] Bastian, 1999; p.24

[10] Bastian, 1999; Goodhand, 2001; p. 30

[11] Goodhand, 2001

Despite the ongoing conflict, the GoSL maintained a skeleton administration in areas controlled by the LTTE. It also led the humanitarian response in LTTE areas, and was the primary provider of food and other essential relief items. The GoSL sought to reinforce the territorial integrity of Sri Lanka and fulfill its obligations towards the war-affected populations.[12] At the same time, it wanted to ensure that humanitarian assistance did not help the LTTE's war-efforts, and thus placed an embargo on goods that could be used for reconstruction or livelihood promotion. The blockade, as Jonathan Goodhand and Bart Klem point out, made longer-term aid programming aimed at supporting sustainable livelihoods difficult.[13]

International involvement

The GoSL wanted to limit international involvement in the conflict. Western donors also had limited geo-political interests in Sri Lanka. International donors thus tended to work 'around the conflict' and provided assistance for development projects in the southern parts of the country, putting development programs in the north east on hold till the fighting ended.[14] The main donors in Sri Lanka at this point were the World Bank, the Asian Development Bank, and the Japanese external assistance program, which together accounted for approximately 92 per cent of Sri Lanka's total debt stock. Assistance was primarily focussed on supporting the state, and the promotion of liberalization and structural adjustment programs.[15] The main bilateral donors were Germany, France, Sweden, UK, Norway, Holland, Italy and the United States.[16] By the end of the 1990s, donors had recognized the need to conflict proof their programs, to do no harm at the least, and improve the chances of peace where possible. DFID, for example, made a commitment to 'explore whether there are further ways in which the UK might help efforts to promote inter-communal reconciliation in Sri Lanka'.[5]

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[12] Koenraad van Brabant, *The Coordination of Humanitarian Action: the Case of Sri Lanka* (London: Overseas Development Network, 1997) ; p.8

[13] Goodhand and Klem, 2005.

[14] for good discussion of strategy adopted by various international actors, see Goodhand, 2001; Goodhand and Klem, 2005.

[15] Goodhand, 2001.

[16] Goodhand, 2001.

The UN Country Team (UNCT) in Sri Lanka was led by UNDP. It focussed on developmental issues in the South, and worked primarily through the government. It did not operate in the conflict areas. While it had 'identified principles for programming in conflict-affected areas, including impartiality, do no harm, capacity building, and creating an enabling environment for reconciliation and peacebuilding, ' these programs were opposed by the GoSL and did not get much further than the planning stages.[17] UNHCR was the lead humanitarian agency working in the north east, and once the Sri Lankan Army took over previously LTTE held Jaffna in 1995, UNDP also increased its involvement in Jaffna. However, the GoSL continued to resist efforts by UN agencies to branch into issues of reconciliation and peacebuilding. As Jonathan Goodhand argues, 'A government that was prosecuting a "war for peace" and treated the conflict as an internal issue, always resisted efforts by international agencies to promote peace through their aid programs.'[18]

INGO policies and practices

During the 1990s, eight major INGOs were operational in the north east, including CARE, Oxfam, and MSF.[19] During the first half of the 1990s, INGOs focused primarily on the provision of relief items in 'cleared' areas i.e. areas formerly under LTTE control that had been reclaimed by the government. However, by the mid-1990s, Oxfam and CARE began to operate in LTTE areas as well and, following headquarter level shift towards a developmental and integrated interpretation of the legal regime, they began to focus on how to work 'on conflict' in Sri Lanka through livelihood strengthening and peace-building programs.[20]

Changes in Oxfam's policies are an instructive example of the shift to working 'on conflict.' Oxfam conducted a field-based study in 1996, *Listening to the Displaced*, which identified a list of 'needs' most frequently demanded by the people in the north east. This list of 'needs' included peace,

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[17] Van Brabant, 1997.

[18] Goodhand and Klem, 2005; p. 78

[19] These 8 were: Oxfam, Save the Children Fund (SCF), Redd Barna, Forut, CARE,MSF, UNHCR and the ICRC.
see: Marit Haug, *Combining Service Delivery and advocacy within humanitarian agencies: experiences from the conflict in Sri Lanka*(London: Center for Civil Society - London School of Economics, 2001)

[20] Goodhand, 2001.

access to services, education, and self-reliance and provided the justification for Oxfam's focus on poverty alleviation and peace-building.[21] Following from this, in 1996, Oxfam formulated a five year strategy for Sri Lanka to help focus its programs to work 'on conflict' through longer term investment in emergency preparedness, community strengthening, sustainable livelihoods, and conflict transformation.[22]

Oxfam staff were aware that programming focused explicitly on conflict could meet resistance from the GoSL or the southern Sinhala population; its peace-building program was thus re-named as a 'Relationship Building Program'. The program had three main objectives: to improve the conflict reduction and peace-building skills of people and organizations; to help develop greater trust and understanding between and within communities; and, to influence policy changes that would contribute to building peace and reducing conflict.[23] In support of this shift, Oxfam Program Director and Country Representative at the time, Simon Harris argued,

> As an NGO working with people affected by conflict, and accepting that such conflict prevents sustainable development, Oxfam in Sri Lanka believes it has a *responsibility* to help bring about the conditions for a just, equitable, and sustainable peace. It aims to contribute to this by supporting the activities and initiatives of people and organizations aimed at preventing, mitigating, and positively transforming violent conflict.'[24][emphasis added]

Oxfam also began to put more emphasis on advocacy, following from the headquarter-level shift towards a rights-based approach. In 1995, Oxfam employed two staff on a part-time basis whose key responsibility was to ensure that information about the situation in the north east was sent to the offices of key actors in the international community. Oxfam staff argued that 'one of our tasks is to make available objective information...a lot of the information [to the international community] comes from us.'[25] Similar to other INGOs, most of Oxfam's advocacy was focused on lobbying

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[21] K. Demusz, *Listening to the Displaced: Action Research in the Conflict Zones of Sri Lanka (* Colombo/ Oxford: Oxfam, 2000).

[22] Simon Harris and Nick Lewer, *Operationalizing Peacebuilding and Conflict Reduction: Case Study: Oxfam in Sri Lanka* (Bradford: University of Bradford, 2002).

[23] Harris and Lewer, 2002; p. 12-15

[24] Simon Harris, "Oxfam: Conflict Reduction and Peacebuilding Programme: Rationale Statement " quoted in Harris and Lewer, 2002; p. 12.

[25] Haug, 2001 ; p. 15

international, rather than national actors. [26]Marit Haug notes, for example, that Oxfam developed a strategy for passing on information about humanitarian and human rights issues to more powerful players, such as the UN, EU, and donors, urging them to make their aid programs conditional on human rights performance of the GoSL.[27]

The shift in Oxfam's policies was justified in terms of 'needs' as identified through the *Listening to the Displaced* study. The question arises however whether these 'needs' are not just a general list that most people in similar situations would ask for; the identification of these broad set of needs does not automatically imply that it is the responsibility of an INGO like Oxfam to cater to these needs.Simon Harris's analysis of INGOs operating in Sri Lanka at this time suggests that this shift towards a developmental and integrated ideal type was not unique to Oxfam, but also applied to other INGOs such as CARE. For example, the 'Do No Harm/ Local Capacities for Peace' initiative developed by Mary Anderson ran some its earliest projects in Sri Lanka in collaboration with CARE in 1997.[28]

However, there were differences in terms of how INGOs operationalized particular policies, highlighting again that implementation is a process distinct from interpretation. Thus, for example, at the policy level, CARE and Oxfam define neutrality in terms of partnering with a local organization. Both organizations thus partnered with the Tamil Rehabilitation Organization (TRO), the LTTE's humanitarian arm. However, while CARE also worked with the GoSL on rehabilitation programs in areas 'cleared' by the GoSL in Jaffna, Oxfam refused to do so, arguing that this would amount to a violation of neutrality.[29]Oxfam's position thus placed it in opposition to the GoSL. [30]

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[26] Haug, 2001; p.10

[27] Haug, 2001.

[28] Vance Culbert, *Business as Usual: Conflict Sensitive Aid in Sri Lanka,* Unpublished Masters Dissertation, Department of Geography, Simon Fraser University, 2004 (accessed on 03. 04. 11) http://summit.sfu.ca/item/2718

[29] Haug, 2001.

[30] Haug, 2001.

In contrast to CARE and Oxfam, MSF interpreted and operationalized neutrality in terms of self-implementation. This followed from the headquarter-level emphasis on independence as a key principle defining MSF programs. During the 1990s, MSF's mandate was based on a solidarist form of humanitarian assistance. As a medical organization, it thus combined delivery of health services with advocacy. In implementing its mandate in Sri Lanka, MSF Sri Lanka stated that: 'We say what we are doing and what we are seeing.'[31] When MSF witnessed violations of humanitarian law , as for example in September 1995 and July 1997, it publicized these through press releases addressed to the international community. However, as Haug argues, MSFs emphasis on transparency and keeping combatants informed allowed it to present itself as a neutral agency.[32]

Contestation and its effects

The effects of INGO contestation and the meaning or significance a particular policy acquired at the field level can only be understood with reference to the interests, beliefs, and perceptions of local actors, and the process of interaction between INGOs and local actors. The GoSL contested the expanding scope of humanitarian action in terms of livelihood and peace-building programs. For the GoSL, it had already assumed primary responsibility for the provision of relief items; the expected function of the humanitarian regime was thus to assist or complement the GoSL in meeting its responsibility to provide basic relief items, and ensure the appearance of a social contract between the GoSL and the Tamils living in the north east. It thus placed an embargo on goods permitted into LTTE areas, thereby limiting the extent to which agencies could implement longer term programs. Moreover, as Jonathan Goodhand and Nick Lewer note, programs rarely 'got any further than the hyperbole of project proposals…what we got more often than not [was] the 'anarchy of good intentions [with] programs based on a need to do good rather than hard-headed analysis of the situation and the factors causing underlying vulnerability.'[33] However, the potential of these programs to contest the humanitarian regime was noted by INGO members themselves. An Oxfam member argued, for example, that '…the rationale for humanitarian

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[31] MSF mandate cited in Haug, 2001; p. 20

[32] Haug, 2001; p.21

[33] Jonathan Goodhand and Nick Lewer, " Sri Lanka: NGOs and peacebuilding in complex political emergencies", *Third World Quarterly,* 20(1):1999; pp. 80-81

intervention is strictly limited and should remain so…we distribute according to need and if we don't, the whole thing becomes hijacked…having criteria overlaid is very dangerous…the Geneva Conventions are not concerned with peace.'[34]

Policies based on the solidarist ideal type were most visible during this period. However, when INGOs engaged in advocacy, 'ethical positions [were] applied selectively…INGOs may make a public statement about the lack of humanitarian assistance for war widows, but are reluctant to 'go public' on human rights abuses by the Tamil militant groups.'[35]Thus, the rights based approach adopted by agencies came to be seen as support for the LTTE, or reflective of INGOs as LTTE sympathizers. A local NGO humanitarian worker also indicated how INGO advocacy had resulted in them becoming participants in the conflict, arguing that their advocacy had contributed to the internationalization of the peace process in the years to come; he thus argued,

> Because of the NGO community, information started to go out…as NGOs were working in the Vanni, they had access to a lot of information from areas in which the government had no access…The government did not sign the ceasefire because it thought it was necessary… it was imposed on the government by the international world. But who gave the information to the international world? Officials in the government feel that INGOs were primarily responsible.'[36]

Moreover, for the GoSL, INGO advocacy to the international community amounted to violating the basis on which INGOs had been granted access - i.e to fill a gap in the GoSL's capacity to provide humanitarian assistance; advocacy, while justified in terms of a rights based approach, thus came to be seen as a challenge to the authority of the government, an attempt to carve-out an autonomous place for INGOs in the conflict space. Former Sri Lankan Foreign Minister, Lakshman Kadirgamar argued, for example, with reference to an INGO discussion paper on the human rights situation in Sri Lanka that, ' the discussion paper…on human rights contains many statements which are not acceptable, which are not polite, which is not the way a foreign organization of this

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[34] INGO respondents quoted in Harris and Lewer, 2002; p. 21

[35] Goodhand and Lewer, 1999; p.82

[36] Interview with Sri Lankan employee of INGO, Vavuniya, June 2010.

kind should deal with matters in our country'[37]; similarly, an article in the Sri Lanka newspaper, *Daily News* argued that ' No visitor should be so boorish as to tell his host what he should do.'[38]

During this period, INGO policies thus shifted from a focus on relief provision to development and peace-building programs; development programs however were not conceived as stand-alone programs, but linked to a transformation of the conflict. However, GoSL restrictions limited the scope and effects of these activities. The most direct contestation of the regime thus took the form of human rights advocacy, which had the effect of placing INGOs in opposition to the GoSL.

Factors shaping contestation

The shift in INGO programming from relief to development and peacebuilding cannot be said to be a result of external material incentives or constraints posed by donors. As noted earlier, donors tended to work 'around the conflict', treating conflict as an externality that was to be avoided. Some of the bilateral donors did make attempts to conflict proof their programs and recognized the potential for aid to assist with reconciliation. Yet, as argued earlier, donors remained reluctant to actively engage in these issues and for the most part maintained a hands-off approach on aid provision in the north east. They also primarily provided funding for short term projects rather than those with a longer term orientation. Jonathan Goodhand in fact even argues that donors could have learnt from humanitarian agencies and their attempts to conflict proof their programs.[39]

There might however been some overlap in thinking in donors circles and INGO operations. However, such an overlap does not suggest that INGOs were coerced into shifting their focus to development and peacebuilding programs. Simon Harris and Nick Lewer note that donors such as DFID were exploring the potential ways in which relief assistance could contribute to building local

[37] Lakshman Kadirgamar quoted in Jonthan Goodhand, David Hulme and Nick Lewer, *NGOs and Peacebuilding: Sri Lanka Study*(Bradford: Institute for Development Policy and Management,University of Bradford, 1999); p. 72

[38] *The Daily News,* 16.11.95, quoted in Goodhand, Hulme and Lewer, 1999; p. 73

[39] Goodhand, 2001; p. 16

capacities for peace and development.[40] While Oxfam worked in partnership with DFID, there is however no evidence to suggest that it was pressured by DFID to adopt this programming direction. Rather, its relationship with DFID 'helped establish a donor relationship that was to be supportive of Oxfam's developments in the field.'[41]

Neither were INGOs simply following the lead of the UN in Sri Lanka. As mentioned earlier, the UN team in Sri Lanka was headed by UNDP, which worked closely with the government and programmed mainly in the South. This close relationship between UNDP and the GoSL also meant that the UN refrained from international advocacy on the GoSL's human rights record. Moreover, as noted earlier, it did not concern its self with peacebuilding activities given the GoSL's opposition to international interference in the conflict. The UN also did not coordinate INGO operations, and INGOs were responsible for negotiating access themselves with the GoSL and the LTTE. UNHCR was present in the north east at the time, but its activities focussed primarily on the repatriation of Tamil refugees, mostly from southern India, IDPs, and the communities that had absorbed repatriated refugees. [42]

The shift in INGO programming in Sri Lanka can instead be seen as following from the changes in their headquarter level policies.Thus, for example, Harris and Lewer argue that 'Oxfam's corporate acknowledgment of the importance of peacebuilding and conflict reduction as an essential component of good development practice helped to convince those within the Sri Lanka team who had been skeptical or apprehensive of the program developing in such a direction'.[43] Oxfam field staff in Sri Lanka did indicate that the shift in programming ran the risk of serving the political and military strategies of the warring parties, but the Emergency Department at Oxfam head office (Great Britain) insisted that it was necessary to scale up its programs and adopt a more assertive strategy with the GoSL, even if this meant interference in the conflict.[44] Simon Harris also argues, in reference to the *Listening to the Displaced* report that the 'voices of the displaced that are unable

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[40] see: Goodhand ,2001.

[41] Harris and Lewer, 2002; p.7

[42] Goodhand, 2001.

[43] Harris and Lewer, 2002; p.7

[44] Harris and Lewer ,2002; p.7

to strike a chord with the strategic objectives of these agencies run the risk of falling on deaf ears.'[45] These headquarter policies, as argued in previous chapter, reflected INGO conception of their role and social purpose. In Sri Lanka as well, as INGOs chose the kind of effects they wanted to bring about through their programs, they were also defining their role and purpose in the Sri Lankan conflict.

III.Peace Negotiations & the internationalization of the peace process, 2001-2004

Following the election of the United National Party (UNP) in 2001, a cease-fire agreement was signed with the LTTE and peace talks initiated under the auspice of the Norwegian-led Sri Lankan Monitoring Mission (SLMM).[46] The GoSL's strategy was based on first creating a 'peace dividend' through development and reconstruction in the north east, following which it would turn to the core political issues at the heart of the conflict.[47] Critics note that the GoSL's approach effectively placed the 'development cart before the conflict resolution horse'[48] and, as a result, there was not only 'no seismic shift in the tectonic plates underpinning the conflict' but, 'the peace that followed the signing of the cease-fire agreement (CFA) had the effect of freezing the structural impediments to conflict resolution.'[49]

Humanitarian assistance was considered a necessary part of the phased approach to conflict resolution. A Sub-Committee on Immediate Humanitarian and Rehabilitation Needs in the North East (SIHRN) was established to address three chief concerns: rehabilitating IDPs, rehabilitating war affected women and children, and providing livelihoods for war affected people in the North East. Both the GoSL and the LTTE arguably accorded importance to humanitarian assistance for instrumental reasons: both saw humanitarian assistance as necessary to maintain the semblance of

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[45] Simon Harris, " Listening to the Displaced: analysis, accountability and advocacy in action", *Forced Migration Review,* 8 (1):2000; p. 21

[46] see: ICG, *Sri Lanka: The Failure of the Peace Process* (Colombo/Brussels: International Crisis Group, 2006).

[47] Saman Kelegama, "Sri Lankan Economy of War and Peace"*, Economic and Political Weekly,* 37 (4): 2002

[48] Dhananjayan Sriskandarajah, "The Returns of Peace in Sri Lanka: the Development Cart before the Conflict Resolution Horse?", *Journal of Peacebuilding and Development,* 1(2): 2003*;* p. 32

[49] Goodhand and Klem, 2005; p.7

social contract between the themselves and the civilian population and ensure domestic and international legitimacy.

Dissatisfied with the talks, the LTTE withdrew from the CFA in 2003 and put forth a proposal for an interim LTTE-led government, following which negotiations could be re-opened. The LTTE proposal angered the southern Sinhala nationalists, creating a political crisis for the UNP government.Low-scale warfare once again resumed with the breakdown of peace talks as the CFA was unable to address the underlying causes of the conflict. [50]

Internationalization of the Peace Process

Noteworthy about the signing of the CFA and the years following it was the internationalization of the conflict as 'the entire architecture of the peace process [was] built around international engagement.'[51]The Tokyo conference in 2003 is considered emblematic of the internationalization of the peace process as international donors pledged $4.5 billion towards reconstruction and development assistance, tied however to progress in the peace talks and respect for human rights. Compared with the previous period, the international response to the conflict became more robust and varied through security guarantees, ceasefire monitoring, the facilitation of peace negotiations, and humanitarian and development assistance. The World Bank and Asian Development Bank began to invest in the reconstruction of the north east and bilateral donors deployed conflict advisors and began to use peace and conflict impact assessment methodologies. [52]

The GoSL relied on international assistance to provide both a security net in case the peace process faltered and to provide the necessary financial assistance for implementing the peace dividend approach. There was also strong convergence between international donors and the GoSL, both of whom who were 'operating within an ideological framework of a liberal peace' [53] , whereby humanitarian and development assistance were seen as essential instruments for addressing the

[50]Goodhand and Klem, 2005.

[51] Ibid; p. 10

[52] Ibid.

[53] Goodhand and Klem, 2005; p. 79

conflict. Adam Burke and Anthea Mulaka however argue that ' the donor response following the ceasefire was in many ways remarkable...given the absence of a political settlement...they treated a no-war, no-peace environment as though it were a post-conflict setting.'[54] Donors have also been criticized for their close relationship to the UNP government at the exclusion of the LTTE.[55] An aid official quoted in Goodhand and Klem's study commented, for example, that western donors 'tend to fool themselves - they were hearing a language they liked to hear" and therefore supported the GoSl and its liberal peace framework.[56] Goodhand and Klem further note that, " The GoSL left Tokyo with their pockets full, donors left Tokyo locked into a declaration they were ill prepared to implement, and the LTTE were simply left out.'[57]

At the same time, western donors and the GoSL had different interpretations of what a peace-dividend approach would mean in practice. While 'the donor community was of the view that not enough was being achieved with regard to rehabilitation and reconciliation issues at the grassroots...through bottom up peace-building strategies'[58], the GoSL hoped that top-down, large scale development and infrastructure projects would help create 'social buy-in' among the Tamil people, de-legitimize the LTTE, and help 'Re-gain SriLanka'.[59]

It should be noted that the internationalization of the peace process was met with fierce resistance from the southern Sinhala nationalists who saw it as an erosion of Sri Lankan sovereignty. The Sinhala nationalist opposition to the internationalization of the peace process, and even the CFA, is a critical part of the story to how the conflict developed over the next years, resonating with the

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[54] Adam Burke and Anthea Mulaka,*Donors and Peacebuilding in Sri Lanka: 2000-2005* (Colombo: Asia Foundation, 2005); p. 17

[55] Ibid.

[56] Goodhand and Klem 2005; p. 79

[57] Ibid.

[58] Sultan Barakat, Mark Evans, and Arne Strand, *Back to Basics: Reconstruction and Development in Sri Lanka*(York: Post War Reconstruction and Development Unit - University of York, 2002); p. 22

[59] see: Government of Sri Lanka *The Framework for Relief, Rehabilitation, and Reconciliation: A Progress Report* (Colombo: Government of Sri Lanka,2000); Barakat et. al, 2002.

argument made by a number of commentators that it is in fact this Sinhala majority that holds the key to the resolution of the conflict. [60]

INGO policies and practices

The pause in open armed-conflict, the GoSL's development-based peace-dividend strategy, the linkage of development assistance with progress in the peace talks by international donors, and the availability of donor funding for peacebuilding programs, created a more enabling environment for INGOs to provide humanitarian assistance based on the developmental and integrated interpretation of the legal regime.The Consortium of Humanitarian Agencies (CHA) Practitioner Kit, for example, urged INGOs to provide humanitarian assistance in a manner that promoted development and supported the peace process. The Practitioner Kit states,

> ...the provision of humanitarian assistance should go hand in hand with efforts to advocate for and protect the physical safety and human rights of civilians...Relief programs should be designed to lay the foundation for development...It is important those who provide aid and those concerned with political negotiations coordinate closely to make certain that aid interventions support the negotiating process .[61]

The emphasis on development and peace-building was justified in terms of the need to 'save lives'. For example, INGO staffers interviewed for this study argued, 'the question is also how you save lives...just providing basic relief in itself doesn't save lives'[62]; humanitarian agencies therefore 'need to encourage justice, in our own voluntary, non-confrontational style.' [63]

During this period CARE developed two programs - *Transition to Reconciliation* and *Community Action for Development* to place 'special emphasis on social issues that limit the development of

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[60] This point was made by a number of Sri Lankan civil society actors interviewed for this study, such as CPA and Sarvodya, June 2010.

[61] CHA, *Practitioners Kit for Return, Resettlement, Rehabilitation, and Development* (Colombo: Consortium of Humanitarian Agencies, 2003); p. 7
The Consortium of Humanitarian Agencies (CHA) is an association of agencies working in Sri Lanka. Oxfam, CARE and World Vision have all previously been part of CHA, and continue to advocate on a common platform as CHA.

[62] Interview with Suresh Bartlett, World Vision: Head of Mission, Colombo, 20 June 2010.

[63] Interview INGO staff, Trincomalee, July 2010.

community and social structures that have broken down during the war.'[64]The aim of *Transition to Reconciliation* was to 'enhance CARE's peace-building capacities in order to ensure that its efforts are sustainable by ensuring a long-term programmatic and financial foundation for reconciliation.'[65] The *Community Action for Development* program sought to 'rebuild and empower civil society to engage in local development initiatives.'[66] CARE justified these programs in terms of the 'needs' of the population, arguing that the 'marginalization or exclusion of certain groups has been a major factor in much of the social unrest…building social cohesion is [thereby] an underlying goal of all our projects and is fundamental to our entire country program.'[67] With these programs, which resonated with CARE'S headquarter-level interpretation of the humanitarian regime, CARE sought to extend the function and scope of humanitarian assistance from working 'in conflict' to working 'on conflict.' Its *Long Range Strategic Plan* (2007-11) thus identified 'the need to challenge and transform power in all its manifestations in order to ensure peace and social justice through meaningful engagement in its strategic partnerships.'[68]

Similarly, World Vision's programs for Sri Lanka during the CFA were in line with its headquarter level interpretation of the humanitarian regime in terms of transformational development and reconciliation. Its primary focus was thus on 'area development programs' aimed at 'building local capacities for peace.'[69] Oxfam's programs in the north-east also focused on community participation and empowerment, capacity building, and gender and justice issues. An Oxfam evaluation report highlights how the Oxfam program fell short in addressing issues of rights and justice at a structural level, thereby indirectly indicating the Oxfam's programming ambitions. The report notes:

> The study suggested that the CAA [Community Aid Abroad] program in Sri Lanka has been highly relevant to some of the particular problems faced by

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[64] CARE - WFP, *Household Livelihood and Security Assessment in the Wanni District* (Colombo: CARE, 2000).

[65] Interaction, *A Guide to Humanitarian and Development Efforts of Interaction Member Agencies in Sri Lanka* (Colombo: Sri Lanka, 2007) ; p.25

[66] Interaction Member Activity Report, 2007; p. 24

[67] "Sri Lanka draft program strategy in conflict affected areas of Sri Lanka" CARE, version 1.0, Internal Document, cited in Culbert, 2004; p.66

[68] Interaction Member Activity Report, 2007.

[69]Interaction Member Activity Report, 2007; p. 24

> people - human rights violations, gender discriminations, and the lack of civil society structures. The interventions tended, however to be limited to responding to the local expression of these problems, and were u*nable to address the fundamental problems of war, human rights violations, caste, gender and ethnic discrimination, economic disadvantage, and the failure of governance.*[emphasis added][70]

Oxfam also adapted a number of tools from its headquarter level *Responding to Conflict* modules and conducted capacity building workshops on conflict mapping, 'Do No Harm' and conflict analysis for all program staff, local implementing partners, and partner INGOs.[71]

The aim of all three INGOs - CARE, Oxfam, and World Vision - was thus to build peace, following from an integrated interpretation of the legal regime, and this was operationalized through community-level development, awareness, and training programs. CARE, Oxfam, and World Vision however justified these programming decisions as necessary responses to humanitarian needs, and thereby distinct from political action. [72]

Based on a solidarist ideal type, INGOs also engaged in advocacy on human rights abuses to the international community. INGO staff interviewed for this study noted that advocacy was primarily directed to an international audience, looking to international rather than domestic institutions for redressal of human rights grievances. This was once again consistent with contestation at the level of interpretation, contesting the emphasis in the legal regime on state sovereignty and the designation of primary responsibility to national authorities. However, as with the previous period, INGOs criticism was mostly directed at the GoSL, and strove to change the behavior of the GoSL.[73]

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[70] Linda Kelly, Patrick Kilbi, and Nalini Kasynathan, " Impact Measurement for NGOs: experiences from India and Sri Lanka", *Development in Practice,* 14(5): 2004; p.699-670

[71] Isabella Jean and Maureen Lempke, *Footprints in the Sand? Implementation and Use of Do No Harm in Sri Lanka*, The Collaborative for Development Action, Inc. (accessed on15.11.11) http://www.cdainc.com/cdawww/pdf/casestudy/dnh_srilanka_reflectivecase_Pdf.pdf

[72] Interviews with INGO staff, Colombo, Trincomalee and Vavuniya, June 2010

[73] Interview with Mirak Rahman, CPA, Colombo,14 June 2010; Interview with Bradman Weerakoon, Bradman, Colombo, 16 July 2010.

MSF however withdrew from Sri Lanka following the signing of the CFA, arguing that there were no emergency medical needs that could not be addressed by local authorities.[74]The decision to bring an end to assistance was based on, as outlined in an MSF policy document, 'our experience, our perception of the situation and our concern that our short-term solution should not wrongly substitute a more permanent solutions.'[75]MSF's decision to withdraw from Sri Lanka following the cessation in armed conflict was thus in line with the provisions in the legal regime in so far as it focused on the provision of emergency relief only, withdrawing once it felt that acute needs had been met and the period of extreme crisis had passed, and assigning primary responsibility for the provision of aid with local authorities.

Contestation and its effects

While these policies and programs for Sri Lanka followed from headquarter level interpretation of the legal regime in terms of solidarist, developmental and integrated ideal types, in practice, these policies acquired a specific significance or meaning-in-use as the regime encountered new actors, interests, and beliefs at the operational level. What the regime effectively came to mean in practice thus further contested the legal regime for humanitarian assistance, with effects distinct from what was intended in the legal regime.

While the GoSL's peace-dividend strategy created a more permissive environment for development projects, the manner in which INGOs conceptualized the link between development and the conflict differed from that of the GoSL. Development assistance was critical to the GoSL's peace dividend approach, though the form of development envisaged was top-down and state-led, focusing on large scale reconstruction and infrastructure projects. It was hoped these would help normalize the east, extend the writ of the GoSL, and create the conditions for future political

[74] MSF, *MSF hands over its activities and launches new NGO ' SHADE' in Sri Lanka*, MSF Press release, 1 March 2004 (accessed on 04. 08.12).< http://www.msf.org/article/msf-hands-over-its-activities-and-launches-new-ngo-shade-sri-lanka>

[75] MSF, *Deciding When to Leave*, MSF International Activity Report, 2007 (accessed on 04.08.12) .http://www.doctorswithoutborders.org/publications/ar/report.cfm?id=3042; p.1

negotiations.[76] INGOs, on the other hand, sought to implement development programs that would address issues of reconciliation and peace-building through community level development programs, capacity building, livelihood support, and community empowerment. INGO developmental programs thus had a clear ethnic reconciliation and peace-building focus, reflective of the integrated interpretation of the regime.

INGO and GoSL strategies were arguably contradictory. The GoSL's use of economic levers aimed to 'normalize' the north-east and increase civilian support for the government in LTTE areas. The INGO approach focused on community level mobilization and transformation, to build bottom-up capacities for people. Such programs can result in a greater questioning of the governments approach and a more aggressive push for a transformative peace that constitutionally addresses Tamil grievances. Moreover, INGO community empowerment programs were based on a conception of civil society as a counterbalance, and even in opposition to, state power.[77] Thus, the interpretation of development assistance as, on the one hand, necessary for facilitating 'social-buy in' to the Sri Lankan state and, on the other hand, as necessary for facilitating ethnic reconciliation through a strengthened civil society are not necessarily complementary in practice, and can exert competing push and pull pressures.[78] This was not lost on the GoSL; for example, current Sri Lankan representative to the UN, P. Kohona questioned community empowerment programs, asking whether they aimed 'to empower the community to become a thorn in the side of the government or... to empower the community to look after itself?'[79]

Similarly, the GoSL had committed to respecting human rights at the Tokyo conference, though it defined the rights of the Tamils in the north east in terms of basic needs and state-led development

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[76] Western donors provided the critical financial backing for such reconstruction projects; however, as mentioned in the previous section, the GoSL and western donors had different understandings of how the meaning and operationalization of the peace divined approach. See for example, Goodhand and Klem, 2005; Barakat et. al, 2002.

[77] Vance Culbert, " Civil Society Development versus the peace dividend: international aid in the Wanni", *Disasters*, 29(1):2005.

[78] The term was used by a number interviewees to refer to the GoSL's strategy of trying to assert Sinhalese domination and bring the Tamil population into a Sinhala-led state; this was framed in opposition to an inclusive political solution that aimed at compromise and reconciliation between the Sinhalese and Tamil.

[79] Interview with P. Kohona, Sri Lanka representative to the United Nations, New York, 9 September 2010.

assistance. INGOs, on the other hand, conceived of a broader set of rights, including the freedom from fear and civil and political rights. INGOs argued, for example, '...human rights could and should be used to promote reconciliation in Sri Lanka. This should be done through the institutionalization of key political rights and the promotion of pluralism. Only through achieving freedom from fear and effective political participation could peace be made more sustainable.'[80] This approach dovetailed with the LTTE's focus on political rights to create a separate state, for whom the most important right was that to self-determination. [81]

INGO policies, once implemented, had the effect of strengthening the LTTE. The LTTE placed taxes on goods entering the north east and thereby increased its revenue stream through INGO goods and services. The LTTE also relied on INGOs to provide social services to the population, allowing it (the LTTE) to focus its resources and energy on building up its military capacity. As pointed out by an INGO member, 'we were careful to design our programs so that they wouldn't help the LTTE...but, whatever activity we did, strengthened civil structures in the Vanni, and thus indirectly the LTTE.'[82]Kristian Stokke thus notes that during this period, 'there was a genuine process of state-formation underway in the east'[83], and INGO developmental assistance enabled this process through their community development, civil society strengthening, and rehabilitation projects. The provision of such goods and services also served as a means through which the LTTE could enhance its legitimacy among the Tamil population. Shawn Flanigan thus notes that the LTTE was interested in 'building legitimacy as a governing authority' and was keen to 'harness the resources of the non-profit community and portray these services as coming from the Tamil Tiger "state." [84]

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[80] CPA, *Humanitarian Concerns on the Road to Peace: Workshop report*,.Berghof Foundation for Conflict Studies and Centre for Policy Alternatives, Dambulla, 8-9 February 2003 (accessed on 04. 05. 12). < http://www.cpalanka.org/wp-content/uploads/2007/8/Final_Report.pdf> ; p. 1

[81]Goodhand and Klem argue that for the LTTE the crux of a rights based approach was the right to self-determination; Goodhand and Klem, 2005 ;p. 82.

[82] Interview with INGO staff, Vavuniya, June 2010.

[83] Kristian Stokke," Building the Tamil Eelam State: emerging state institutions and forms of governance in LTTE controlled areas in Sri Lanka", *Third World Quarterly*, 27(6):2006; p. 1024

[84] Shawn Teresa Flanigan, " Non-Profit Service Provision by Insurgent Organizations: The cases of Hizballah and the Tamil Tigers", *Studies in Conflict & Terrorism,* 31(6): 2008; p. 503
see also : J. Perera, "The lesser seen political side of the LTTE", 28 June 2004. (accessed on 04.02.2011). http://www.peace-srilanka.org/media_statements/current_situation/june-28-04.html

The LTTE also required INGOs to work through local NGOS, which it then coordinated.[85] These local NGOs, as Neavis Morais and Morshed Ahmed argue, essentially served as part of the social-welfare system of the local rebel administration and were essential pillars through which the LTTE could increase its legitimacy amongst the local population and engage in a process of 'state building' in the Vanni.[86] Oliver Walton similarly notes that a close analysis of the work of these local NGOs suggests that a kind of 'co-optive peace-building' was being played out, whereby peace-building projects were adapted to accommodate the political needs of key parties in the conflict.'[87] However, working with local NGOs fit the INGO emphasis on local partnership and capacity building, and INGOs often placed greater importance on the participatory process than the quantitative outcomes, a tendency which Bastian refers to as the 'tyranny of participation in development work in Sri Lanka.'[88]

The LTTE also sought to use INGOs as a conduit to voice their aspirations for an independent Tamil Eelam to the international community, highlighting the state's discriminatory policies and rights violations.[89] Harris thus argues that 'the humanitarian imperative driving international agencies at a community or beneficiary level in LTTE- controlled areas has conveniently dovetailed with the LTTE's military need for a source of revenue and stable recruitment, as well as their political need of maintaining international credibility, exposure, and a channel for communication.'[90] INGO solidarist interpretation of the humanitarian regime thus complemented the LTTE's objectives, especially as INGO advocacy focused primarily on rights violations by the GoSL.

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[85] Neavis Morais and Mokbul Morshed Ahmad, " Sustaining Livelihoods in Complex Emergencies: experiences of Sri Lanka", *Development in Practice*, 20(1):2010.

[86] Morais and Ahmad, 2010.

[87] Oliver Walton, " Conflict, Peacebuilding, and NGO legitimacy: National NGOs in Sri Lanka", *Conflict, Security, and Development*, 8(1):2008; p.158.

[88] Bastian quoted in Culbert, 2004; p. 22

[89] Harris, 2010.

[90] Harris, 2010; p. 30.

INGO programs thus reinforced the perception amongst the GoSL and the Southern Sinhalese population that INGOs were not neutral actors, and were even LTTE sympathizers. This was because their programs were seen as benefitting the LTTE; GoSL officials argue that even if this was not the intent of INGOS, INGOs did little to resist LTTE control over their programs. Moreover, INGOs were relatively silent on human rights abuses committed by the LTTE, while condemning the GoSL record to the international community. GoSL officials thus argue that INGOs were almost running a parallel administration to the GoSL, overstepping their role in Sri Lanka, and violating the basis on which they had been granted access.[91] P. Kohona, former Sri Lankan representative to the UN argues for example, 'our image was characterized improperly by many NGOs. When something went wrong, even when it was a breach in law, these INGOs tended not to go to the police or local authorities, but straight to their embassies. This is intolerable… [they] are running a parallel administration to the government which cannot be allowed.'[92]

INGO advocacy was criticized by local civil society actors as well. However, the argument was not about why INGOs were criticizing the government but why INGOs were silent about human rights abuses committed by the LTTE which, when combined with developmental relief, was 'contributing to prolonging the conflict…[giving] people "a comfort factor" to carry on…If [NGOs] are champions of human rights, then they should have been championing the feelings of people.'[93]

Such criticism of INGOs is not without justification. As Joanna Macrae and Mark Bradbury highlight, development assistance assumes the existence of a legitimate polity.[94] In engaging in development and governance projects in LTTE areas, INGOs recognized, at least implicitly, the LTTE as such a legitimate polity. Similarly, conflict-sensitive programming, aimed at strengthening local capacities for peace, are based on an implicit or explicit view about the nature of conflict and how it can be resolved. Thus, as Goodhand points out, ' peace and stability, like development, are

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[91] Interviews with Mirak Rahman, Bradman Weerakoon, and Jeevan Thiagarajah, director of CHA, Colombo, 6 June 2010; Harsha Navaratne, Chairman, Sewalanka Foundation, Colombo, 15 July 2010.

[92] Interview with Kohona, 2010.

[93] Interviews with Mirak Rahman, Bradman Weerakoon, Jeevan Thiagarajah and Harsha Navaratne, , Sewalanka Foundation, Colombo June 2010.

[94] Macrae & Bradbury,1998.

not value neutral terms. Rather, they are hegemonic projects at the heart of which lie questions of politics and power and whose definition of peace and stability prevails.'[95]

It is not that INGOs were unaware of the contentious nature of their projects and how they might challenge at least perceptions of neutrality; for example, a humanitarian worker quoted in a study by Oliver Walton highlighted how 'peace ' was a dirty word, and they had re-labeled a program called 'community peace-building' to a 'problem solving forum'.[96] INGOs thus attempted to get around this problem of neutrality by presenting these programs as 'a matter of technocratic development administration, which is clearly linked to but nevertheless somewhat de-linked from the conflict itself'.[97]

Moreover, INGO programs were based on a particular framing of the conflict. An ethnic conflict might require community-level reconciliation, awareness, and peace-building programs. If, however, the conflict is seen as a crisis of the state, the ability of such community level transformative programs to facilitate conflict resolution is questionable. As R. Gunaratna argues, '...addressing the traditional Tamil grievances...cannot end the Sri Lankan conflict...the paramount grievance of the affected Tamils is the inability of the Sri Lankan state to provide security to Sri Lanka and to meet the challenge of their aspiration to statehood. [98]

Moreover, civil society strengthening initiatives conceptualize the state as a focal point of domination and power, and place civil society as independent from, and in opposition to, the state. S.Sinha describes this construction as one in which "...the state and community are seen as strictly separate domains, one the center of a network of domination, the other the domain from which other ways of seeing, doing, and being may emerge."[99] However, as the above discussion highlights,

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[95] Jonathan Goodhand, " Stabilizing a victor's peace? Humanitarian action and reconstruction in eastern Sri Lanka", *Disasters,* 34 (3): 2010;p. 344.

[96] Walton, 2008; p.158.

[97] Stokke,2006; p.1031.

[98] R. Gunaratna, *International dimension of the Sri Lankan conflict: Threat and response* (Colombo: Marga Institute, 2001); p.1

[99] S. Sinha, "Development counter-narratives. Taking social movements seriously" in K. Sivaramasrishnan and A. Agrawal eds. *Regional modernities: The cultural politics of development in India* (Stanford: Stanford University Press,2003); p. 288.

civil society in the north was not free of LTTE control and, arguably, by focusing on community-level, civil society initiatives in the northeast, INGOs were supporting, if not encouraging such 'other ways of seeing, doing, and being'[100], and inadvertently legitimizing the LTTE who had control over such programs.

Finally, INGO programming also furthered local perceptions that there was a coherence between western donors and INGOs, both motivated by their own interests. Rajiva Wijesinha, former Secretary General of the GoSL *Secretariat for Coordinating the Peace Process*, argues, for example 'INGOs that engage in advocacy are mostly 'Johnny come lately'; they belong to an era in which the west suddenly realized that if we start telling people what to do, we might cause resentment. But, if we pretend it is not us, and fund other agencies, then it will be okay.' [101] The argument that INGOs are working on behalf of western donors in Sri Lanka, representing a form of neo-colonialism, is a common one in the Sinhalese media and public commentary. [102] The overlap between donor emphasis on grass root level programs and INGO mandates was thus interpreted 'as providing donors with a means of bypassing conflict actors and enabling politically unfettered access to war-affected populations.'[103]

In sum, the regime contestation framework suggested that implementation needs to be seen as a distinct process in the functioning of the regime; the legal regime can acquire a new meaning at the level of implementation as it encounters new actors, interests, and contexts. INGO programs, though justified in terms of the needs of the Tamil population in the north east, helped a process of LTTE led state formation in the north east, strengthened the LTTE's civilian structures, helped the LTTE voice its aspirations to an international community, and furthered its international and domestic (among the Tamils in the north east) legitimacy. INGO programs also created the impression that they were LTTE sympathizers, damaging their credibility and legitimacy among the Southern Sinhalese nationalists. The convergence between donors and INGOs also created the

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[100] Sinha 2003; p.288.

[101] Interview with Rajiva Wijesinha, Former Secretary-General of the Sri Lankan Government Secretariat for Coordinating the Peace Process, Colombo, 13 June 2010.

[102] see for example, section on Public perceptions, Social Attitudes and Media in CPA, *Monitoring factors affecting the Sri Lankan peace process: Cluster Report* (Colombo: CPA,2006).

[103] Walton, 2010; p.134.

impression that INGOs were working in Sri Lanka on behalf of donors, as a means for donors to shape the conflict without directly supporting the parties to the conflict. INGO programs thus amounted to interference in the conflict, contesting thereby a key provision in the legal regime for humanitarian assistance. As Harris argues,

> as international humanitarian action shifted its focus through the 1980s and 1990s from working 'in conflict' to working 'on conflict', it began to try and help identify and address structural issues related to justice, human rights, governance, and the absence of a peace process which were seen to support and perpetuate the conflict rather than just deal with the physical consequences. This shift placed humanitarianism firmly within the domestic political arena, eroded its original aura of neutrality and impartiality and rendered it "a convenient foil, scapegoat, whipping boy and pawn' for every party to the conflict and individual politician depending upon their own interests and needs at any particular time.[104]

Factors shaping INGO contestation

The internationalization of the peace process with the signing of the CFA brought a significant change to the INGO operational environment as donors began to engage with the conflict directly and provided funds for transformative aid programs. With this 'peace rush' in Sri Lanka, INGOs were encouraged to focus on peacebuilding and reconciliation programs that would support the peace process. [105]

Yet, it cannot be said that these broader political changes forced INGOs to focus on an integrated form of humanitarian assistance. First, the discussion of INGO programs and polices during the 'War for Peace' period in the previous section suggests that INGOs were already devising programs based on a developmental and integrated ideal type prior to the internationalization of the peace process and donor involvement in the CFA. In fact, as some local commentators note, the nature of INGO programming did not substantially change and 'the focus of donors on the peace process induced local and international aid agencies to repackage ongoing programs as peace-building. [106] This also means that the availability of donor funds did not cause a change in INGO programming. It did however create a more enabling environment for INGOs to implement programs based on

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[104]Harris, 2010; p.20.

[105] Goodhand and Klem, 2005.

[106] Culbert,2004.

developmental and integrated ideal type. The availability of funds can thus be said to have created a 'pull' factor for such programming, rather than being a cause of such programming.

Second, the nature of INGO programming was not entirely determined by the control the LTTE exerted over INGO operations. INGOs were often aware that their programs were bringing clear advantages to the LTTE, but did little to challenge the LTTE. Vance Calbert notes, for example, that measures to decrease the economic incentives for the LTTE did not receive much attention among INGOs; for example, in 2003, when a new thirty percent tax was imposed on cement imports into the Vanni, INGOs did little to resist this, arguing that this was the price they had to pay for working with the LTTE. INGOs also did not raise these issues with donors, arguing that they were concerned they would lose access to the civilian population if they criticized the LTTE.[107] This claim is debatable: the LTTE relied on INGOs for basic relief assistance and to build legitimacy amongst civilians in LTTE areas. INGO presence in LTTE areas also provided the LTTE with a degree of international legitimacy. Both sources of legitimacy were key to the LTTE's survival. The LTTE relied on recruitment from the local Tamil population and needed to ensure that it was seen as meeting their basic needs. The LTTE also relied on funding from the diaspora Tamil networks in western capitals. If the LTTE had been strongly condemned by INGOs, this could have made it more difficult for the diaspora networks to raise funds, lobby their governments, and transfer resources to the LTTE. [108]

INGO contestation was necessarily shaped by the broader trends in post cold war international society, as noted in the previous chapter. Thus, INGO contestation of the legal regime in Sri Lanka must be situated in the context of the growing involvement of international actors in the internal governance of states and the assumptions and postulates of a liberal peace framework in which aid is expected to play a role in conflict resolution and peacebuilding. However, as noted earlier, the normative environment does not automatically program actor behavior but must be understood, interpreted and negotiated by actors. Thus even while INGOs are necessarily shaped by this broader environment it is still possible to explore their agency within this environment. Moreover,

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[107] Interviews with local staff of INGOs Colombo & Trincomalee, June 2010.

[108] Interviews with local staff of INGOs Colombo & Trincomalee, June 2010; Interviews with CPA staff, Colombo, June 2010.

INGOs are confronted with multiple normative environments. Following the attacks in New York September 11, 2001, the LTTE was labelled a terrorist organization by 32 countries, including the United States,Canada, and member nations of the European Union. Despite these perceptions of the LTTE, INGOs continued to facilitate LTTE attempts at state formation in the east.

A good example of INGO agency is also brought out by the difference between CARE, Oxfam and World Vision on the one hand, and MSF on the other hand. During the previous period, MSF's Sri Lanka policy included components from the solidarist ideal type as it 'spoke-out' on cases of human rights violations. Human rights violations did not cease after the CFA, and the internationalization of the conflict in fact created a more enabling environment for INGOs to raise the issue of rights violations with the international community. MSF practices however went against this current as it argued that, with the signing of a cease-agreement, its responsibilities as a humanitarian actor had ended.MSF's decision to withdraw from Sri Lanka after the signing of the CFA was based on its conception of its responsibility and role, reflective of its identity. MSF thus argued that its withdrawal was an 'acknowledgment that our actions and presence are limited and replaceable...ending activities reflects the will and *identity* of MSF to carry out its specific mandate as an emergency medical-humanitarian actor that exists to help the most vulnerable people at times of extreme crisis.[109][emphasis added] The case of MSF thus highlights the agency of INGOs, as normatively purposive actors, that interpret and respond to the broader normative and institutional environment in light of what it considers appropriate for itself as a particular kind of actor.

Similarly, the role of identity in shaping the practices of CARE, Oxfam, and World Vision can be derived from the timing of INGO policies vis-a-vis material rewards or sanctions from the external environment. Thus, for example, INGOs had already identified peace-building as a function of humanitarian assistance prior to the signing of the CFA and the availability of donor funds. Moreover, even when donors or the LTTE attempted to direct the manner in which humanitarian assistance was provided, this did not run counter to INGO goals and mandates; for example, while working with local NGOs fit donor criteria for local partnerships, this was not just a strategic tactic

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[109] MSF, *Deciding When to Leave*, 2007;p.1

for donors but also central to the mandates of INGOs. INGOs were thus not compelled to implement programs they otherwise would not have, had it not been for external pressures. INGO contestation of the regime can instead be seen as following from what they considered appropriate action for themselves, as actors constituted by a particular set of norms, and with a specific role and social purpose.

INGO contestation was thus also driven by a desire to implement their mandates; mandates, as argued in Chapter 2, represent the social purpose of an INGO and can be seen as the institutionalization of the beliefs and norms that constitute INGO identity.The suggestion that INGO mandate was a key factor driving INGO contestation at the level of implementation is also supported by instances in which there were differences in HQ and field level policy. For example, World Vision's 'Do No Harm' report notes that

> ... the Why, Where, What, When, With Whom, by Whom, and How elements of the analysis of the Assistance program itself received far less attention in our conversations than the Mandate, Donor, and Headquarter elements. ...[for example], in Trinco, we had a project that in running the framework we found we might be contributing to sustaining the conflict. We went to the Where portion of the framework to try and change the location of the project. However, HQ wanted the project to go to Trinco. The project ultimately failed.'[110]

The argument that INGOs were mostly concerned about implementing their mandates is also supported by the observation that INGO programs did not reflect adequate contextual analysis or a study of best practices based on empirical analysis.[111] Rather, programming decisions were made before the program was actually developed at the operational level.[112] Local commentators note, for example, that 'INGOs don't quite understand the context, values, culture and so cannot do things like conflict sensitivity...most of those involved in peace-building and conflict resolution do not have much knowledge about what these activities actually mean...they are just applying their global standard ideal types.'[113]Another local NGO worker argued that INGOs are mostly concerned with the implementation and completion of projects, and pay little attention to assessing needs,

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[110]Jean and Lempke, 2007. p.15

[111] Barnett makes a similar point about peacebuilding organizations. see: Michael Barnett, Hunjoon Kim, Madalene O'Donnell, and Laura Sitea, "Peacebuilding: What is in a Name", *Global Governance*, 13(1): 2007; p. 53.

[112] Jean and Lempke, 2007 ; p.22.

[113] Interview with Harsha Navaratne, Sewalanka Foundation, Colombo June 2010.

beneficiaries, and consequences of programs. [114]This lack of contextual understanding has in fact been pointed out by INGOs themselves. An Oxfam representative argued, for example,that 'staff training was not enough to ensure long term impact of reducing inter and intra communal tensions.'[115] During the cease-fire period, INGO contestation of the humanitarian regime thus followed from INGO attempts to implement their mandates,despite the effects of such programming for enabling the LTTE's state-building efforts.[116]

IV.War for Victory, 2006-2009

Capitalizing on southern disillusionment with the peace process and slow progress in reviving the economy, the Sri Lanka Freedom Party (SLFP) ousted UNP in the 2004 parliamentary elections; Presidential elections followed in 2005, with SLFP candidate, Mahinda Rajapaksa defeating Ranil Wickramsinghe. After a few failed attempts to re-open peace negotiations with the LTTE, the Rajapaksa government shifted strategy and decided to launch a military campaign against the LTTE. The strategy, which came to be known as 'war for victory', found popular support among the Southern electorate and Sinhalese nationalists in the GoSL. In July 2006, the GoSL launched a sustained air and ground campaign against the LTTE, eventually leading to the defeat of the LTTE in May 2009. The GoSL justified its military campaign as a 'humanitarian war of intervention',

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[114] Interview with INGO staff Trincomalee, June 2010.

[115] Interview with INGO staff, Trincomalee, June 2010.

[116] In December 2004, the tsunami caused widespread damage and displacement in Sri Lanka. In the face of ongoing violations of the CFA, international donors were on the verge of scaling down resources allocated to Sri Lanka. Following the tsunami, however, donors poured in an unprecedented amount of funds for the assistance effort and approximately 300 new INGOs established operations in Sri Lanka. The arrival of international aid agencies was often often referred to as a "second tsunami" by the Sri Lankan press, and a "humanitarian circus" by international commentators. Local perceptions of the massive influx of INGOs noted the seeming wastage of funds, badly planned and managed projects, competitions amongst INGOs, and the erosion of local emergency response capacities by INGO poaching of staff from local organizations. The provision of international assistance following the tsunami is not included in this thesis as the focus is on INGO contestation in political emergencies rather than natural disasters. Moreover, many of the issues and problems that emerged during this period were a reflection of the sudden influx of funds and aid agencies and were not directly related to the contestation of the formal legal regime. However, it is important to note that the general public perceptions of international assistance actors that were constructed during this period endure to date, and have made it easier for political elites to target INGOs and mobilize public support behind this.

see: Jock Stirrat, "Competitive humanitarianism: Relief and the tsunami in Sri Lanka", *Anthropology Today,* 22(5): 2006.

capitalizing on the rhetoric employed by western donors in Afghanistan and Iraq. The rhetoric was similar to that of George Bush following 9/11; the Sri Lankan defense minister stated, for example, 'I have only two groups - the people who fight terrorism and the terrorists.' [117]

Government-led humanitarian response

Soon after the capture of the last LTTE camp in 2007, the GoSL launched an *Eastern Re-awakening* program to stabilize the Eastern provinces through creating a peace-dividend. The program called for industrial development and infrastructure projects, and projects to provide economic opportunities, build housing, and resettle and rehabilitate those displaced by fighting in areas formerly held by the LTTE. The GoSL also encouraged initiatives that would bring tourism and private business to the East. [118] Provincial elections were held soon after to signal to international and domestic audiences that the conflict had officially ended and that Sri Lanka was now in a post-conflict stage. [119]Critics have argued that the GoSL 'is seeking to enforce a 'victor's peace', an exercise in stabilization and power-building rather than peace-building. [120] The GoSL has not addressed the political causes of the conflict, even denying the 'minority problem' and is leading a campaign of state-sponsored Sinhalization in the East.In this environment, 'development of the east remains affected by the conflicts and threatens to exacerbate them.' [121]

Civilians emerging from the conflict zone in the North were sent to an IDP camp outside Vavuniya - Menik Farms (MF). [122] Menik Farms is a 'closed' camp guarded by the military and surrounded by

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[117] quoted in UN, *Panel of Experts on Accountability in Sri Lanka*, 2011; p. 17

[118] ICG, *Development Assistance and Conflict in Sri Lanka: Lessons from the Eastern Province,* (Colombo/ Brussels: International Crisis Group, 2009.

[119] see: Goodhand, 2010; Harris, 2010.

[120] Goodhand, 2010; p. 351. Similar arguments were made by local INGOs and CPA interviewees in Colombo.

[121] ICG*, Development Assistance,* 2009; p.1.

[122]It is estimated that its peak, Menik Farms housed between 250,000 and 290,000 IDPS making it one of the largest IDP camps in the world. By December 2009, around 149,000 IDPs had been released; and by September 2010, the GoSL claimed it had released 242,741 IDPs in total, with still another 25,795 waiting to be released.
UN, *Panel of Experts on Accountability in Sri Lanka*, 2011.

barbed wire, leading to charges that it is, in effect, a detention center.[123] The GoSL argued that MF had to remain a closed camp until the necessary screening of civilians was completed. As Harris points out, 'faced with a time critical period in which to act decisively, the mass internment of IDPs was probably the most effective and efficient strategy open to the Sri Lankan government in responding to a very real security threat which, if left unchecked, could have resulted in the prolonging of an already protracted violent conflict.'[124]The conditions in Menik Farms were believed to be initially below international Sphere standards with inadequate provisions for food, shelter, sanitation, and medical support; reportedly, these conditions improved gradually and in 2012, the government announced the impending closing of Menik Farms.[125]

International donors

The GoSL has been accused by the international community and sections of Sri Lankan civil society of violating the laws of war with the intentional shelling of civilians, hospitals, and humanitarian operations.[126] Western donors criticized the GoSL's military campaign and called for a cessation of hostilities and access for humanitarian agencies to IDP camps. In April 2009, the US opposed a $1.9 billion emergency IMF loan to Sri Lanka and in May 2009, the European Union tried to have a resolution passed at the Human Rights Council calling for an international investigation into the GoSL's military campaign.[127] The UN World Food Program (WFP) , whose principal funder was the US, provided food to camps in April and May 2009. However, given reports on the conditions inside IDPs camps and the restrictions placed on the movement of IDPs by the GoSL, the US terminated its support for the WFP program.[128]

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[123] This criticism was made by a number of INGO staff interviewed. Human Rights Watch, International Criss Group, western donors governments have also argued this.

[124] Harris, 2010; p. 9.

[125] ICG, *A Bitter Peace*, 2009.

[126] see for example: ICG, *War Crimes in Sri Lanka*, 2010.

[127] see: EC, *Report on the findings of the investigation with respect to the effective implementation of certain human rights conventions in Sri Lanka* (Brussels: Commission of the European Communities, 2009).

[128] WFP, *Fighting the Hunger,* (accessed on 05. 02. 10). http://www.wfp.org/countries/sri-lanka/news/hunger-in-the-news?page=8

Despite international criticism of the GoSL's conduct during the war and the conditions in the IDP camps, western donors provided financial assistance to the GoSL for reconstruction in the East. By 2009, the government had obtained $500 million in loans and grants from the ADB, World Bank, and USAID for the reconstruction of the East. The assumption was that economic development would help build a sustainable peace. However, no formal conditionality were attached to development and reconstruction assistance.[129] Donors thus adopted a relatively hands-off approach to development assistance in the East, ignoring suggestions that the GoSL's vision for the East privileged the Sinhala community and could thus end up further aggravating the roots of conflict.[130]

Sri Lanka has however strengthened ties with some of the so-called 'non-traditional donors' - China, India, and Pakistan.[131] Support from these non-traditional donors altered the leverage and negotiating capacity of the GoSL, as was evidenced by its rebuking of the European Union (EU) resolution at the UN Human Rights council and the passing of a resolution that instead applauded the GoSL's military campaign against the LTTE.[132] Western donors have thus been reluctant to place conditions on their aid packages for fear that they will lose their political and economic influence in Sri Lanka to China. [133]

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[129] Goodhand, 2010.

[130] Bhavani Fonseka and Mirak Raheem, *Land in the Eastern Province: Politics, Policy and Conflict* (Colombo: CPA, 2010).

[131] China, for example, increased its assistance from a few million dollars in 2005 to over a billion dollars in 2009, making it the largest donor to Sri Lanka.China and Pakistan are believed to have provided the GoSL weaponry and technical assistance during the final stages of the war. India also provided over $100 million in assistance.
"Dragon's share of Lankan development projects given to China", *The Sunday Times,* 6 December 2009; "Indian offers more aid to Lanka for IDPS", *Asian Tribune,* 18 October 2009.

[132] see: Human Rights Watch, *UN Human Rights Council Victims*, 27 May 2009 (accessed on: 03.04.2012). http://www.hrw.org/en/news/2009/05/27/sri-lanka-un-rights-council-fails-victims

[133] ICG , *A Bitter Peace*, 2009

UN response

The UN response has been arguably the most schizophrenic. On one hand, the UN, as has been noted by a number of international and national commentators, was relatively restrained in challenging the GoSL. The country team has historically shared a close relationship with the GoSL and complied with the GoSL's demands; this has been justified in terms of maintaining access to the civilian population.The UN has thus come under fire from local and international commentators for its silence on the GoSL's violation of human rights both during the war and in the IDP camps set up after the defeat of the LTTE.[134]A UN internal report itself notes that the UN system was dominated by a 'culture of trade-offs' as UN staff chose not to speak out against the government in an effort to try and improve their humanitarian access.[135] *Groundviews*, a local Sri Lankan news brief that focusses on conflict related issues in the North East thus noted, "Since the time of the war, the conduct of the UN in Sri Lanka has been under criticism for failing to live up to its protection mandate and ensure upholding of humanitarian principles, of which it is the custodian. For many of the affected people, the UN became an irrelevant actor at best and complicit one at worst during a crucial time when they were vulnerable.'[136]UN agencies also shifted their programs in the East from relief to early recovery. However, commentators note that the UN response in the East was also marked by the same culture of trade-offs. The UN worked in line with GoSL identified priority areas, and was 'weak in ensuring that recovery, accountability, and reconciliation are prioritized.'[137]

UNHCR, for example, worked with the government in the resettlement process, and issued a statement stating that the process was ' voluntary and in line with international standards.'[138] Critics however charge that UNHCR ignored the human rights violations by the GoSL during the process in order to have continued access. Additionally, some have argued that UNHCR's

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[134] Elhawary, 2011.

[135] ICG, *A Bitter Peace,* 2009.

[136] Groundviews, *Many shades of accountability : The UN and Sri Lanka,* 05.11.12 (accessed on 04.01.13). http://groundviews.org/2012/11/05/many-shades-of-accountability-the-un-and-sri-lanka/

[137] Ibid; p. 2.

[138] Norwegian Refugee Council, *Civilians in the way of Conflict: Displaced people in Sri Lanka* (Geneva: NRC/IDMC,2007) ; p. 21

statement that the resettlement process was in line with international standards was utilized by the government to silence local critics of the return process.[139]

At the same time, OCHA has sought to lead the humanitarian response, appropriating responsibility for the coordination of humanitarian agencies. This was reflected in the 2010 Common Humanitarian Action Plan (CHAP), which OCHA is believed to have designed without GoSL consultation; it sent a final draft to the GoSL for approval rather than consulting with the relevant line ministries and Presidential Task Force at planning stages.[140] The GoSL however opposed the coordination role assumed by OCHA. It argued that as the war was over, OCHA was no longer required to coordinate humanitarian operations; rather, all humanitarian assistance should be coordinated through the Presidential Task Force (PTF). The GoSL also objected to the formulation of the CHAP, arguing that OCHA was no longer required to make an independent appeal for funds under CHAP to donors; all funding appeals must be approved and coordinated by the GoSL. Some GoSL representatives even accused OCHA of using CHAP to ensure greater operational autonomy for itself.[141] This argument is supported by some local commentators, one of whom argued that ' the UN has to realize that the war is over, and it is not a UN world here... this is not a failed state, where the UN has to come and fill a vacuum.'[142]

There was also a disconnect between the UN country team and the office of UN Secretary General and the Department of Political Affairs. While the UN country team was accused of complying with the GoSL's demands, the UN Secretary General adopted a more aggressive position with the appointment of a panel to investigate charges of war crimes against the GoSL.[143] This however had operational consequences as, following the appointment of the panel, the GoSL further clamped

[139] see: ICG, *A Bitter Peace, 2009;* NRC, 2007.

[140] This point was raised in most of the INGO and local NGO interviews conducted.

[141] Interview with Rajiva Wijesinha and P. Charles, Government Agent, Vavuniya, Sri Lanka, 29 July 2010. Government Agent is the name given to Sri Lankan government representatives who oversee the administration of cities/areas; see also CPA, 2009.

[142] Interview with World Bank official, former INGO employee, Colombo, June 2010.

[143] The panel found "credible allegations" which, if proven, indicated that war crimes and crimes against humanity were committed by the Sri Lankan military and the rebel. The panel concluded that "the conduct of the war represented a grave assault on the entire regime of international law designed to protect individual dignity during both war and peace" (UN,2011).

down on UN and INGO access to civilians.[144] Simon Harris thus argues that 'the construction of the West's intent and pursuance of pro-peace objectives at a diplomatic level ultimately tarnished its engagement at a humanitarian level.'[145]

INGO have also criticized the UN for negotiating on its own behalf with the GoSL and not raising their concerns adequately. They argue that the UN has failed to take the lead in the humanitarian response as individual agencies have been wiling to provide assistance without sticking to the common standards of the humanitarian community and without regard to the position adopted by other humanitarian actors in the field. The cluster system has also not been able to provide an effective coordination mechanism due to inter-agency competition and GoSL restrictions on access.[146]

INGO policies and practices

CARE, World Vision, and Oxfam were instructed by the GoSL to end their humanitarian programs in the north-east as the conflict was over, and re-focus their operations in line with the GoSL's plan to stabilize the East through its *Eastern Re-awakening* program.'[147] They thus shifted their eastern operations to early recovery, reconstruction, and development assistance, focussing on housing, roads, livelihoods, and community level peacebuilding projects.[148]

In the north, in Menik farms, INGOs - including MSF, which re-entered Sri Lanka as the peace process began to unravel - confronted the GoSL with a set of terms and conditions on which they would be willing to provide humanitarian assistance. These conditions included 'unfettered access' to the IDP population; freedom to conduct independent needs assessment; freedom to speak

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[144] Paradoxically perhaps the appointment of the panel actually strengthened the GoSL's position amongst the Sinhala nationalists, as it was cited as yet another example of international interference. Following the announcement of the panel, a protest - led by a Sri Lankan member of parliament - was staged outside the UN headquarters on 6 July 2010; see, "Sri Lanka protest outside UN office continues", *BBC News,* 07.07.10 (accessed on 06.01.13). http://www.bbc.co.uk/news/10534923

[145] Harris, 2010; p. 2

[146] Interviews with INGO personnel, Colombo, June 2010.

[147] Goodhand 2010; p. 354

[148] ICG, *Development Assistance,* 2009; Fonseka and Raheem, 2010.

directly with beneficiaries; and freedom of movement for civilians in Menik Farms.INGOs also argued that relief assistance or 'hardware' must be accompanied by 'software' programs focused on protection, capacity building, community awareness and mental health programs.[149] INGOs argued that such software programs were necessary 'to have a community re-established'.[150]

The GoSL denied these requests arguing that, as the conflict was over, humanitarian assistance must be directed by, and channeled through, government ministries. The Sri Lankan ambassador thus argued, 'Sri Lanka, as a sovereign country will decide on the degree of access that it grants anyone from outside. Access will be broad and wide as it has always been. Unfettered...? I doubt it.'[151]

The GoSL also opposed software activities arguing that, in practice, these activities can help ferment political opposition to the GoSL. As Goodhand notes,

> The government is very clear about what kinds of activities do and do not fit with its stabilization agenda: humanitarian aid should be limited to the emergency phase and quickly transitioned to 'early recovery'; reconstruction should focus narrowly on economic development and the delivery of 'hardware', particularly infrastructure; and 'softer', participatory development/ social mobilization activities are seen as potentially subversive, because of fears that they will create organisations and spaces that may lead to political opposition.[152]

The GoSL has thus put in place tight control and supervision procedures, and INGOs operating in Sri Lanka are expected to sign a Memorandum of Understanding (MoU) with the GoSL, under which they commit to keeping advocacy distinct from relief, recovery, and development operations, and to coordinate with government bodies and maintain strict confidentiality.[153] The MoU signed between the GoSL and MSF, for example, states that MSF will "strictly maintain the confidentiality

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[149] Interviews with INGO staff, Colombo , June 2010; see also CPA and ICG reports for discussion of GoSL restrictions on relief assistance.

[150] Interviews with INGO staff, Colombo, Trincomalee and and Vavuniya, June 2010.

[151] "Ambassador Dayan Jayatilleka responds to UN Human Rights High Commissioner Navi Pillay's call for International Inquiry:Sri Lanka does not believe in any attempt to equate the two sides involved in the armed conflict". Geneva, 5 June 2009(accessed on 03.04.12). http://www.lankanewspapers.com/news/2009/6/44521_space.html
need another reference here.

[152] Goodhand,2010; p. 363.

[153] Presidential Task Force for Resettlement, Development, and Security, quoted in ICG, *War Crimes,* 2010; p. 7

of the information on service provision" and make "no comments […] without the consent of the Ministry of Health Secretary".[154]

CARE, Oxfam, MSF and World Vision however, have continued to engage in collective advocacy to the international community about the GoSL's conduct during the war and the treatment of civilians in Menik Farms. MSF, for example, when faced with difficulties in accessing population in the north east, issued a press release denouncing the lack of medical help [for] tens of thousands of people living at the heart of the military offensive and organized a series of bilateral meetings with western ambassadors and the peace process co-presidents hoping that they would have the ear of the government. Fabrice Weissman thus notes that MSF played a part in disclosing the brutality of the GoSL's campaign and its internment policies.[155]

MSF's practices during this period also highlight how interpretation is a distinct process from implementation: while at the level of interpretation MSF no longer seeks to 'bear witness' , in Sri Lanka it took a clear stand against the GoSL. However, as MSF's own documents later revealed, MSF did not have adequate evidence that civilian needs in the Vanni were not being met due to GoSL restrictions on access; moreover, as MSF later admitted, the GoSL was remarkably efficient in providing health services.[156]

Restrictions on INGO programs

The GoSL had sought assistance from INGOs for the delivery of relief items, though INGOs were not consulted in the planning of the response. The Center for Policy Alternatives (CPA) noted that

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[154] quoted in Fabrice Weissman, "Sri Lanka: Amid All-out war", in Magone et. al, 2011; p.21.

INGOs, along with the UN and western donors, also pressured the GoSL to hasten the re-settlement process of civilians in Menik Farms. Responding to this pressure, the GoSL initiated the re-settlement process in September 2009.However, agencies were then concerned about whether adequate provisions had been made at the re-settlement sites; they were thus trapped by their own rhetoric of calling for the prompt and rapid resettlement of displaced civilians.INGOs were initially not allowed access to resettlement sites. The GoSL argued that this was to prevent 'anarchy and waste', but it is also likely that GoSL feared public criticism regarding the conditions of a hasty return.

[155] Weissman, 2011; p. 20

[156] Weissman, 2011.

'consultation with agencies is mostly to identify which agency the contract should be given to... [and] the restrictions on agency access have resulted in shortages in food, milk, power, shelter material and medication.'[157] Initially INGOs were denied direct access to civilians; once access was granted, each individual program had to be cleared by the Presidential Task Force (PTF).[158] Overall, there was a high degree of suspicion and fear among INGOs, and a clear 'trust-deficit' between INGOs and the GoSL.[159] The climate of mutual suspicion and distrust made it difficult for INGOs to conduct back-door humanitarian advocacy to the GoSL about the delivery of basic services to the IDP camps.

Restrictions on INGO access and operations by the GoSL highlight the evolutionary nature of the functioning of the regime. As argued in the previous section, the GoSL was deeply suspicious of INGOs, arguing that they were LTTE sympathizers; INGOs had violated the principle of neutrality and non-interference in the conflict by contributing to the LTTE's attempt at state-formation. As a researcher at the Colombo-based Center for Policy Alternatives (CPA) argued, 'Once you don't have a clear sense of neutrality, or your own principles, then it's easy for the state to make the accusation that you don't have the same standard for the government and the LTTE to start off with, and yet you, as humanitarian agencies, argue about the principle as neutrality.'[160]

INGO activities such as capacity building and training were, and had been in the past, underspecified and produced no tangible results, resulting at best, in a waste in resources and at

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[157] CPA, 2009; p. 17

[158] Acquiring PTF clearance is a time consuming and cumbersome process. Once granted access, agencies are required to go through lengthy security procedures at the various military checkpoints; in some instances, agencies need to get separate security clearances for each of their vehicles and staff members every time they send convoys into Menik Farms and the resettlement sites. This has resulted in severe delays and shortages in the provision of even basic humanitarian assistance, such as food and medical supplies, even when it is the interest of GoSL and within the mandates of INGOs.

[159] Suspicion of INGOs has led the GoSL to put in place new visa restrictions, limiting international staff posting to a maximum of three years. INGOs claim that they are closely watched by the GoSL, with the military conducting unannounced spot checks at INGO offices; emails are reportedly monitored, and some INGO members argue that the GoSL has placed local informants in INGO offices.

[160] Interview with Mirak Rahman, CPA, 2010

worst, to a diversion of resources to LTTE supporters.[161] As a result, the GoSL was especially suspicious of INGO programs and came to see these policies as challenging the sovereignty of the state and interfering in the conflict.INGO policies and programs during the CFA period thus tarnished their legitimacy and reputations, as INGOs were perceived to be non-neutral actors supportive of a particular outcome to the conflict. Based on this previous interaction with INGOs, the GoSL identified and defined its 'interests' in terms of regulating INGO behavior. It was thus in the GoSL's interests to place restrictions on INGO access and programming; however, these interests were identified and defined in the context of interaction with INGOs and INGO previous contestation of the regime. Thus, for example, GoSL believed that INGO operations since the mid-1990s had contributed to the internationalization of the conflict, and thereby also prolonged it; it thus defined its interests in terms of preventing INGOs from accessing recipients directly and advocating on their behalf.[162]

Contestation and its effects

Following the defeat of the LTTE, CARE, Oxfam, and World Vision contested the function of humanitarian assistance by framing the humanitarian imperative in terms of the provision of software assistance. In doing so, the function of humanitarian assistance was not only to provide palliative care through emergency relief items but also to protect the rights of civilians, to encourage community reconciliation and mobilization, and to partake in training and capacity building exercises to help rebuild community structures and livelihood opportunities. For example, an INGO member argued, 'Under the humanitarian imperative, if we can't [implement] software programs, if we have huge access issues, and returns are organized in such a way that doesn't make a difference to what kind of work we can do in the north anyway, shouldn't we just pull out?'[163]

[161] An example often provided in interviews of how international agencies misinterpret the potential of already existing structures and the capacities of people is that the GoSL once pressed international agencies on the exact training and capacities they were hoping to build, and the answer received from an INGO staffer was that people were being taught how to boil water.

[162] This point was made by a number of interviewees from the GoSL, Sri Lankan think tanks, World Bank and NGOs. See also, Jayadeva Uyangoda and Sunil Bastian, *State Responsiveness to Public Security Needs: The Politics of security decision making* (London: Conflict, Security and Development Group- Kings College, 2008).

[163] Interview with INGO regional officer, Vavuniya, June 2010.

Another INGO staffer similarly noted, ‘Basic relief aid without software assistance is not adequate; software is an important element of humanitarian assistance’.[164]

INGO conceptualization of the terms and conditions of access also contest the function of humanitarian principles under the legal regime. As noted earlier, under the legal regime humanitarian principles are a means by which external agencies can convince combatants that the provision of assistance will not directly attempt to influence the conflict; humanitarian principles are thus the basis on which humanitarian agencies negotiate access with combatants. In the context of Sri Lanka however, INGOs attempted to negotiate with the government that they would withdraw assistance if they were not permitted to provide assistance in accordance with humanitarian principles. This however inverses the function of humanitarian principles as envisaged by the legal regime. Rather than humanitarian principles being the means through which external agencies can negotiate access, principles are the conditions under which INGOs are willing to provide assistance. These principles are thus better conceptualized as ‘organizational principles’ rather than ‘humanitarian principles’ Thus, while under the legal regime, humanitarian principles are the conditions under which INGOs may be permitted to provide assistance, imposed on INGOs by combatants, in Sri Lanka, they are conditions imposed on the GoSL based on INGO organizational principles.

Moreover, the focus on these organizational principles over-shadowed some of the ground realities. The GoSL had legitimate security concerns about civilians escaping the Vanni and its attempt to construct welfare camps can be seen as an attempt to balance military necessity with the responsibility to provide assistance to civilians. Under the legal regime, however, adhering to the humanitarian imperative and providing basic relief assistance is not contradictory to the GoSL attempts to ensure its military and political security; the regime in fact explicitly seeks to balance human suffering with military necessity, a point that INGOs contest when they pit the humanitarian imperative and access against acting in line with humanitarian principles. Moreover, the argument that continuing to provide assistance implied complicity in the GoSL’s violation of international humanitarian law is also debatable. As Weissman argues, the idea that MSF’s silence

[164] Interview with INGO staff, Colombo, June 2010.

equalled complicity in the GoSL violations of IHL is dogmatic as is GoSLs actions had already been well covered by the media and human rights organizations.[165]

Moreover, the GoSL did permit some freedom of movement; for example, select IDPs, after a process of screening, were allowed to attend school or leave the camp for livelihood activities.[166]MSF documents also note that relief agencies were permitted access on a case by case basis, provided that the government thought they had a good reason for doing so. While the army remained in control of relief operations, MSF also noted that the army was much more efficient in coordinating the relief effort than the UN or INGOs. [167]

The GoSL also maintained that as the conflict was over and the GoSL was a democratically elected government, humanitarian assistance must be in line with government programs and objectives.It argued that in a post-conflict setting, a distinct humanitarian space is no longer required and external agencies can help by filling gaps identified by the GoSL. Once again, the GoSL has argued that as a sovereign nation, with a democratically elected government with capable and functioning national institutions, it, under the legal regime, has the primary responsibility and duty to care for IDPs. It is therefore within its rights to decide the priorities and sequencing of the humanitarian response. The Sri Lankan ambassador to the UN argued, for example, 'For us, feeding our people is more important than teaching them some principle that does not produce rice for the people…Everything else will happen in time, and for the time being the focus should be on actual tangible benefits for the population.'[168]

INGOs however challenged this interpretation, arguing that the military defeat of the LTTE had not addressed the underlying causes of the conflict. INGOs however were inconsistent in their reading of the situation and programming given their cooperation with the GoSL in implementing the *Eastern Re-awakening* program. If the conflict was not over, as INGO argued, then working under the GoSL in the eastern provinces amounts to taking a side in the conflict. INGO programming in

[165] Weissman ,2011.

[166] CPA, 2009

[167] Weissman, 2011.

[168] Interview with P. Kohona ,2010.

the East alongside the GoSL even helped legitimize a 'victor's peace' and facilitate the Sinhalization of the east.

INGOs also blurred the boundaries of international and domestic governance as they began lobbying to the international community to pressure the GoSL to allow access and software programming. While this advocacy was justified in terms of addressing the needs of civilians in Menik Farms, in practice it came to be seen as encouraging western donors to intervene in the political dimensions of the conflict.[169] The clearest example of what such advocacy came to mean in practice relates to the appointment of a United Nations Secretary General (UNSG) special panel in 2010 to investigate charges of war crimes against the GoSL. The push for this panel is believed to have come from INGOs. Staff from international NGOs interviewed for this thesis themselves noted this connection, as did commentators from local NGOs and think tanks.[170] Rajiva Wijesinha, a strong supporter of the Mahinda Rajapaksa government and the Secretary General for the GoSL's *Secretariat for Coordinating the Peace Process* also argued,

> By 2008 the Coffee Club[171] had geared itself to trying to stop the progress of the Sri Lankan forces. For this purpose they prepared a statement which they delivered to the UN Secretary General, one of the first shots in the saga of misinformation provided to him...however such a petition, alleging appalling deeds by the Government, must have had its effect, and perhaps contributed to the first mention of War Crimes by the Secretary General in a statement in September.[172]

INGO contestation thus had operational consequences; following the appointment of UNSG's panel, further restrictions were placed on INGO access to Menik Farms. A policy that was justified in terms of the needs of the people thus ended up undermining INGO ability to meet those needs. It also made INGOs easy scapegoats for local actors' criticism of international involvement in the conflict and the assault to Sri Lankan sovereignty.[173]

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[169] Interview with Saman Kelegama, Institute of Policy Studies (IPS), Colombo, 15 June 2010

[170] Interview with local and international NGO staff, Colombo & Vavuniya, June 2010.

[171] INGOs are often referred to as the Coffee Club amongst locals in Colombo, highlighting how the general public sees INGOs as not doing much in way of effective programming, involved instead in self-referential conversations and debates amongst themselves.

[172] Rajiva Wijesingha, *The Coffee Club and confusion as to Humanitarian Assistance*, Personal blog. 31 March 2010 (accessed on 01. 09. 11). http://rajivawijesinha.wordpress.com/2010/03/31/the-coffee-club-and-confusion-as-to-humanitarian-assistance/

[173] Interview with former INGO employee, June 2010.

MSF similarly notes that its advocacy had operational consequences, placing it in opposition to the GoSL and further heightening the mistrust and suspicion between the GoSL and MSF. An article published on the MSF website which condemned the shortcomings in the GoSL's provision of health services was published a few days after MSF signed the MoU with the GoSL; the GoSL Ministry of Health '... saw [the article] as betrayal, resulting in a total breakdown in our channels of communication with authorities.'[174] GoSL suspicion also resulted in GoSL directing civilians at Menik Farms away from MSF hospitals, resulting in the under-utilization of these facilities and services. An MSF study thus notes,

> The underutilization of our hospital leaves a bitter taste, given the overload on peripheral hospitals throughout the period...This failure can be blamed on our *inability to develop a trusting relationship* with the Ministry of Health...the health authorities and the PTF *suspected us of always trying to denigrate them and document human rights violations*, and *we suspected them of trying to hide a major health crisis*...Our determination to develop medical activities in the camps in spite of the fact that the Ministry believed needs were covered (which was more or less the case, despite the many shortcomings at the beginning) also *f*ueled government suspicions about our intentions (to produce our own numbers, document war atrocities, etc.)[175][emphasis added]

Moreover, by directing advocacy to the international community, INGOs were shifting responsibility away from national authorities and institutions. INGO advocacy thus also provided the GoSL an opportunity to divert attention from a national reconciliation process to the problems of international interference in Sri Lanka's domestic affairs. Local NGOs also noted that as 'rights have to come from the state', INGO advocacy 'can create more complications for the people' if, for example, INGOs promote community reconciliation projects even while 'at the structural level there is no equality for the communities and attacks by the State on people continue.'[176]

In sum, during this period, INGO policies were informed primarily by the solidarist ideal type, with a focus on advocacy, protection, and other software concerns. At the level of practice, however, INGO policies came to be seen as an attempt to assert independence and autonomy from the GoSl, even while the GoSL had defeated the LTTE and held the primary responsibility for addressing

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[174] Fabrice Weissman, *Vanni, year zero: MSF and the military-humanitarian pacification of the Vanni. Visit report - draft version 1.4*, MSF Internal Document. 23 December 2009; p.14

[175] Weissman 2009; p.13

[176] Interview with local INGO staff, Vavuniya, June 2010.

humanitarian needs. INGO focus on lobbying the international community blurred the lines between domestic and international governance, and created conditions under which the GoSL could shirk some its responsibility. This contests the provision in the legal regime about non-interference in the conflict by external agencies. Moreover, this had operational consequences, as it fostered an environment of mistrust and suspicion and resulted in restrictions on INGO access to camps in the north. Importantly, the interaction between INGOs and the GoSL during this phase of the conflict highlights how the solidarist interpretation at the level of practice can amount to, and be perceived as, the most direct interference in the conflict, even while at the level of interpretation it seems to complement the legal regime's emphasis on human dignity.

At the same time however, INGOs provided support to GoSL development and infrastructure programs in the east; they accepted the post-conflict framing, and did not consider working with the government to be a violation of humanitarian principles. INGO policies in the north and east were thus contradictory; while in the North they insisted on working independently from the Government, arguing that the government was not a neutral actor, in the East they expressed little resistance to the GoSL's directives and, in doing so, they also helped facilitate and legitimize the consolidation of a victor's peace in the East.

Following the defeat of the LTTE, INGO policies were thus guided by a developmental interpretation in the east and a solidarist interpretation in the north. This supports the earlier observation, that a solidarist interpretation is most prominent when INGOs face restrictions to their operations; advocacy on rights violations thus becomes a means for them to criticize local authorities, using human rights concerns as leverage for greater operational space and reduced restrictions to their operations. On the other hand, as was the case in the East, when permitted by local authorities and operational conditions, INGOs seek to expand the range and scope of their activities, even if this amounts to support for local authorities whose policies they oppose.

Factors shaping INGO contestation

Western donors were pushing the GoSL to grant access to agencies and permit independent needs assessment. However, as the examples in the previous section highlight, INGOs such as MSF and Oxfam were lobbying western capitals to take a tougher stance against the GoSL, to push the GoSL to permit direct access by INGO to recipients, and to permit software programming alongside the delivery of relief assistance. There was thus, at best, an overlap between western donors and INGOs conception of the function and scope of the regime, though it was not the case that INGOs were coerced into adopting such a position through the promise or threat of donors' inducements and sanctions. In fact, some interviewees suggested that western donors were often reluctant to provide funds for software programming due to the difficulty in demonstrating tangible outcomes; an Oxfam staffer argued for example, that it is much harder getting funding for programs with an advocacy or software component as compared with those that focus on the delivery of goods and tangible services. [177]This suggests that INGO definition of the scope of the humanitarian regime in terms of advocacy, protection, and community re-building programs, or the interpretation of humanitarian principles in terms of the conditions on which INGOs would provide assistance, was not determined by donor pressure or inducements.

Similarly, INGOs were not simply following the lead of the UN. As the earlier section on the UN's response highlighted, UN agencies were in fact charged with being too close to the government, easily sacrificing principles for access. INGO staff from CARE, Oxfam, World Vision, and MSF, all note that the UN was not doing enough to challenge the GoSL's policies and was consequently complicit in the GoSL's violation of humanitarian law.[178]An INGO staff member interviewed for this study argued, for example, '...the UN has been very cautious... there was never any negotiation

[177] Interview with INGO staff, New York, September 2010.

[178] Interview with INGO and UN OCHA staff, Colombo & Vavuniya, June 2010.
see also NRC, *Civilians in Conflict,* 2007. The report notes that there has been a gradual loss of will among critical international agencies, especially UNHCR, to publicly raise concerns about the government violations during the process of return. UNHCR's statement that return was taking place in line with international protection standards was utilized by the government to silence critics, especially local critics of the return process.

- the UN was present to satisfy the needs, wherever possible, of the government.'[179] INGOs also repeatedly lamented the fact that OCHA was not assuming its coordination role, and were in fact looking to the UN for leadership.

Some commentators have noted that INGO practices often reflected the same tendency - to demand that the government abide by certain principles and, given the GoSL's refusal to ease restrictions, to eventually comply with the GoSL's demands. As UN agencies and INGOs negotiated in this manner with the GoSL, an environment was created in which individual agencies attempted to secure access for themselves, and even competed with other agencies through greater compliance with GoSL conditions.[180] This competitive environment was jointly created in the interaction between the GoSL and the UN and INGOs; INGOs were not simply programmed by this environment, but helped in its construction as they negotiated on an individual basis with the GoSL.

Finally, the argument that INGO contestation of the regime was in response to the nature of the operating environment following the defeat of the LTTE is also inadequate as the broad contours of INGO policy have remained the same from the mid-1990s onwards. Since the mid-1990s, as Oxfam, CARE and World Vision all shifted program priorities from relief assistance to developmental relief and peace-building, the focus has in fact been on 'software programming' even if it was not explicitly termed as such. Thus, the external environment might have at times been more enabling or constraining for INGO programming, but INGO goals have remained broadly the same. This suggests that the change in the external environment did not alone determine INGO policy decisions and practices in Sri Lanka.

The argument that INGO programs were not a response to the changing nature of the operating environment is also strengthened by the observation that INGO programs often suffered from a lack of contextual analysis and understanding, and a failure to understand and analyze the local context, values, and power dynamics. For example, while INGOs strongly criticized the GoSL

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[179] Interview with INGO staff, Colombo, June 2010.

[180] Interview with INGO and UN OCHA staff, Colombo & Vavuniya, June 2010.

internment of IDPs in Menik Farms, a number of local commentators noted that the GoSL had legitimate security concerns which INGOs failed to acknowledge or accommodate. INGOs thus refused to engage with the critical question of the status of the civilian population in Menik farms - i.e. 'are the IDPs freedom fighters or terrorists?',[181] and thereby failed to appreciate the GoSL's security concerns in constructing closed IDP camps. A local commentator noted that he raised this question in an inter-NGO meeting; the question was dismissed and he was accused of being 'anti-human rights'.[182] Instead of attempting to understand the local context, INGOs have thus been accused of applying standard global roving models in Sri Lanka, undermining thereby their reputation and ability to operate in the country.A former INGO member argued for example that INGOs 'often believe that people want their rights defended and advocated for...but they are just projecting their own experience... with the resettlement policy, for example, ...there were actually a proportion of people who wanted to stay in the camps.'[183]

INGO contestation of the regime can alternatively be said to be shaped by INGO conception of their role and social purpose, as actors with a particular identity. The provision of only 'hardware' ran contrary to the constituent rules and norms defining the identities of CARE, Oxfam, and World Vision, as actors responsible for bringing about social change. A number of INGO interviewees argued, for example, that software programming was necessary because of their 'responsibility as a humanitarian community'. An INGO staffer, for example, when asked to explain the insistence on software, argued that '...if we are a humanitarian community, then we need to be maximizing our utility as a humanitarian community, and I think our role is more than just providing things...that's part of our work, but we have a lot more to offer...it's worth fighting for access to provide people with the empowerment they need.'[184] Similarly, other interviewees justified the focus on software assistance in terms of the 'added value' of INGOs; for example, an INGO staffer argued, 'our added value is building these capacities and processes...we are not a procurement agency.'[185] INGO policies and practices in Sri Lanka during this period were thus shaped by INGO conception of

[181] Interview with INGO staff, Colombo, June 2010.

[182] Interview with local IO staff, Colombo, June 2010.

[183] Interviews with former INGO staff Colombo, June 2010.

[184] Interviews with INGO staff Vavuniya, July 2010.

[185] Interviews with INGO staff Vavuniya, July 2010.

their role in the given situation, what they considered appropriate action for themselves as actors with a particular identity, rather than a calculation of expected outcomes or likely consequences.

Similarly, the change in MSF's policies during this period, from openly criticizing the government to then assisting the government with medium-term health programs, also reflects internal contestation among MSF members about the constitutive rules and norms that define its identity i.e. whether its role is to simply respond to humanitarian needs, regardless of the consequences or the actions of combatants, or whether its role is to express solidarity with the victims of conflict and 'bear witness' to rights violations.[186]

The tussle between the GoSL and INGOs during this period can also be seen as an attempt by INGOs to secure more operational space to implement their mandates. Mandates, as noted in Chapter 2, articulate and institutionalize the social purpose of an INGO; implementing a mandate is thus an act of self-constitution. The focus on mandates can also help explain the difference in INGO programming in the northern and eastern provinces following the defeat of the LTTE. In the East, INGOs did not argue that working under the GoSL constituted a violation of neutrality or that independent needs assessment was a precondition for impartiality. Rather, Oxfam, CARE, and World Vision were all quick to switch to early recovery and development programming in line with the GoSL's *Eastern Re-Awakening* program.[187]

INGOs justified this by framing Sri Lanka as a post-conflict state following the defeat of the LTTE. However, this post-conflict framing was at the same time challenged by INGOs in Menik Farms as they resisted operating under the PTF and demanded unfettered access to the IDP populations; if Sri Lanka was in a post-conflict state, as INGOs accepted in the East, this meant that INGOs were obliged to work under the GoSL even in the north and this could not be argued to be a violation of neutrality. The inconsistency in this framing and resultant policy was arguably because INGOs were happy to accept the framing of the east as post-conflict as this permitted them greater operational space to implement their mandates; in the north however, this operational space was

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[186] Weissman, 2011.

[187] Interview with former INGO employee, Colombo, June 2010.

curtailed by the GoSL in the north in light of its security concerns and its perceptions of INGOs based on past experience. This also supports the point made in previous paragraphs, that INGOs are likely to act in line with a solidarist interpretation of the regime when restrictions are placed on their operations, but when permitted, they implement a wide range of programs linking together a developmental and integrated interpretation of the regime.

One might argue that INGO practices in the Eastern province reflected organizational interests, as INGOs were keen to secure newly available donor funds and contracts for development and reconstruction projects in the East. This argument is not entirely misplaced, and was verified by interviewees for this study. However, as argued in the previous section, the availability of funding created greater operational space to implement programs already in line with INGO identity and mandates. Moreover, reports note that by 2010 donor funding for humanitarian aid provision, especially non-tangible software goods was drying up. [188]

The suggestion that INGO implementation of the humanitarian regime in Sri Lanka was shaped by INGO mandates is frequently made by the GoSL and local commentators. They have argued, for example, that INGOs misappropriate the humanitarian principle of independence to mean an independent INGO agenda; moreover, they have become so preoccupied with implementing their mandates that they have not adequately examined the context and requirements of the Sri Lanka people.[189] Rajiv Wijesinha,argued for example that INGOs had raised funds on 'behalf of Sri Lanka' which 'they will use on their own terms, [threatening] that unless they get their way, they will pull the plug. [190] Wijesinha' statement echoes those by other local commentators who argue that INGO preoccupation with implementing their mandates has prevented them from acknowledging the change in context since the defeat of the LTTE; for example, the head of a prominent local NGO

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[188] InterAction, *Sri Lanka: Transitioning from a humanitarian crisis to a human rights crisis,* 31 January 2013 (accessed on 02.13). http://reliefweb.int/report/sri-lanka/sri-lanka-transitioning-humanitarian-crisis-human-rights-crisis

[189] This was the general sense from interviews with local actors; eg. Interview with Vinya Ariyaratne, Executive Director, Sarvodaya, Colombo, 20 June 2010; Interview with Harsh Navaratne, Chairman, Sewalanka Foundation, Colombo, 14 June 2010

[190] Rajiva Wijesinha, *Cross Purposes – The History of Manik Farm*, Personal Blog,8 May 2010 (accessed on 01.09.11) http://rajivawijesinha.wordpress.com/2010/05/08/cross-purposes-the-history-of-manik-farm/

argued that INGOs 'should not keeping insisting on their own survival…when agencies no longer have a role to play, they must admit it and stop doing those programs.'[191]

This perception also made INGOs an easy and convenient scapegoat for GoSL criticism of western involvement in the Sri Lankan conflict. While the GoSL might have intentionally exaggerated this argument or instrumentally used it to justify limiting INGO access, the point remains that INGO policy and practices themselves facilitated the GoSL's targeting of INGOs and their being made scapegoats for the GoSL's condemnation of international involvement in the conflict.

V. Conclusion

This chapter has examined how INGOs have implemented the regime for humanitarian assistance in Sri Lanka; how this has contributed to the contestation of the regime and the effects of this contestation; and the factors driving INGO contestation at the level of implementation. INGO practices in Sri Lanka were shaped by the solidarist, development, and integrated ideal types. INGO advocacy however, following from the solidarist ideal type, was mostly directed at the GoSL rather than the LTTE; the solidarist ideal type was also found to be most prominent when the GoSL attempted to regulate, or placed restrictions on, INGO operations. However, where permitted, INGOs sought opportunities to implement programs based on the developmental and integrated ideal types, with development and peacebuilding seen as mutually reinforcing programs.

Since the mid-90s, CARE, Oxfam, and World Vision attempted to extend the function and scope of the humanitarian regime towards livelihood strengthening and peace-building. The signing of the CFA in 2001 created a more permissive and enabling environment for INGOs to implement these programs. These programs, however, had the effect of legitimizing the LTTE and contributed to a process of state-formation in the north east. At the same time, INGO selective advocacy placed INGOs in opposition to the GoSL, and heightened GoSL perceptions that INGOs were LTTE sympathizers.

Once the LTTE was defeated, the perception that INGOs had supported the LTTE contributed to a trust-deficit between INGOs and the GoSL and a climate of mutual suspicion. This was at least part

[191] Interview with Vinya Ariyaratne,Executive Director Sarvodaya, Colombo, June 2010.

of the reason for restrictions on agency access to the IDP camps and resettlement sites following the defeat of the LTTE. INGO insistence on software programs was also perceived as a form of conditionality, with INGOs identifying needs according to their mandates rather than needs on the ground. INGOs were also believed to have passed on information to the international community about human rights violations committed by the GoSL; this made them participants in the conflict and cemented the perception that they were LTTE sympathizers. INGO advocacy also had operational consequences : agencies were denied access to the civilian population as the GoSL feared that INGOs would supply information to the international community condemning the GoSL for war crimes.

The identity and mandate of INGOs are argued to be a necessary factor shaping INGO contestation of the regime at the level of practice in Sri Lanka. INGO programs followed from their perception of their role, as particular kinds of actors, constituted by a specific set of norms and social purpose. INGO contestation of the regime was thus shaped by a logic of appropriateness, rather than an evaluation or the likely outcomes or consequences of policy. This explains the continuity in INGO programs, or programming ambitions, across the various stages of the conflict. The role of identity was observed in the manner INGOs explained and justified policy decisions and the timing of policies relative to material incentives or sanctions from the external environment. While changes in the external environment or the availability of donor funding were important enabling factors, they did not cause INGOs to contest the humanitarian regime; rather, INGO contestation of the regime was mandate-driven, where, as argued earlier, implementing a mandate is not just an organizational interest but also an act of self-constitution.

6

IMPLEMENTATION:
INGO Policies and Practices in Afghanistan, 1990-2010

The American-led invasion of Afghanistan in 2001 was intended to facilitate a process of regime change, eliminating the Taliban and replacing it with a democratically elected government. However, since the mid-2000s, the Taliban gained an increasing foothold over southern and western Afghanistan, assuming a state-like role through the provision of security, law and order, and justice services. The authority of the Afghan government also extended little beyond Kabul, and its control over the country had virtually reverted to the status-quo of the period before 1992.[1]

As the conflict has increased in intensity, so have humanitarian needs; numerous reports note that access to basic services is no better now, if not worse, than in 2001.[2] As of 2009, OCHA estimated that 4.1 million people were food insecure and in need of relief support and approximately a million in need of emergency agricultural assistance; only 27 percent had access to safe drinking water - the lowest anywhere in the world, and 63 percent had no access to proper sanitation facilities.[3] At the same time, aid agencies note it has become difficult to meet humanitarian needs due to increasing attacks on aid workers, the highest in any political emergency, and limited access

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[1] see: Andy Featherstone, *Afghanistan: A Case Study. Strengthening Principled Humanitarian Response Capacities*(London: Humanitarian Policy Group, 2012); Alex Whiting, "Crisis Profile: Afghanistan still the 'sick man' of Asia", *Reuters Alertnet*, 20 June 2005.

[2] see for example: " Afghanistan's Humanitarian Needs Growing:EC", *AFP,* 5 December 2007 (accessed on 09. 07. 10). http://www.google.com/hostednews/afp/article/ALeqM5gtbWVpmQvQK7OvwtFEXf6Qs7gtmQ; "Afghanistan: Top Five Humanitarian Needs", *IRIN* , 10 November 2009 (accessed on 09.07.10). http://www.irinnews.org/report/86955/afghanistan-top-five-humanitarian-needs; " Afghanistan: More Fighting, Greater Humanitarian Needs", *IRIN* , 13 July 2010 (accessed on 09.07.10). http://www.irinnews.org/report/89806/afghanistan-more-fighting-greater-humanitarian-needs.

[3] Ashley Jackson, *The Cost of War: Afghan Experiences of Conflict, 1978-2009* (London:Oxfam International, 2009).

to parts of the country because of rising insecurity and restrictions placed by the Taliban.[4] As of 2009, access and operational space for humanitarian agencies were almost non-existent in the south, south-east, and parts of western Afghanistan. The lack of access has also made it difficult to make an accurate assessment of the nature and extent of humanitarian needs;agencies only have second-hand or anecdotal evidence of the extent of humanitarian needs.[5]

The function, scope, and operating principles of the humanitarian regime however remain contested among the Government of Afghanistan (GoA), western states and their military forces, and the Taliban as each of these sets of actors seeks to direct the provision of humanitarian assistance in line with its political and security interests.[6] Much of INGO advocacy over the past decade has thus been about the politicization and manipulation of humanitarian assistance by donors and the Taliban and how this has contributed to the shrinking of humanitarian space in Afghanistan.[7]

This chapter demonstrates and analyzes how INGOs themselves have contributed to the contestation of the humanitarian regime in Afghanistan and the effects of this contestation. Contestation, as argued earlier, occurs through the processes of regime interpretation and regime implementation. At the level of implementation, INGO policies can acquire new meanings as INGOs interact and negotiate with other actors in the conflict space, who have their own beliefs, perceptions and interests, leading to outcomes and effects that are distinct from what was

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[4] Between 2006 and 2008 there were more than 90 recorded incidents of attacks on NGO workers. see:Abby Stoddard, Adele Harmer, and Victoria DiDomenico, *Providing aid in insecure environments: 2009 update: Trends in violence against aid workers and the operational response* (London: Humanitarian Policy Group, 2009); "Afghanistan: Increasing attacks on aid workers could provoke humanitarian crisis - NGOs", *IRIN*, 22 July 2008 (accessed on 09.01.10). http://www.irinnews.org/report/79366/afghanistan-increasing-attacks-on-aid-workers-could-provoke-humanitarian-crisis-ngos

[5] Antonio Donini, *Afghanistan: Humanitarianism Unraveled?* (Boston: Feinstein International Center - Tufts University, May 2010); *Afghanistan: Humanitarianism under Threat?* (Boston: Feinstein International Center - Tufts University, 2009).

[6] see for example: Alexander Costy, "The Dilemma of Humanitarianism in the Post-Taliban Transition" in Antonio Donini, Norah Niland and Karin Wermester eds. *Nation-Building Unraveled? : Aid, Peace and Justice in Afghanistan*(Bloomfield, CT: Kumarian Press, 2004); Antonio Donini, " Principles, Politics, and Pragmatism in the international response to the Afghanistan Crisis" in Donini et al., 2004.

[7] see for example, Cornish, 2008; ACBAR, *NGO concerns and recommendations on civil-military relations* (Afghanistan: ACBAR, 2002); "Afghanistan: A Tight squeeze on humanitarian space", *IRIN* , 3 February 2010 (accessed on 03.04.12). http://www.irinnews.org/report/87973/afghanistan-a-tight-squeeze-on-humanitarian-space.

envisaged in the legal regime. In Afghanistan, INGOs' contestation of the humanitarian regime at the level of implementation has made them participants in the conflict, confused the terms of negotiating access, and reduced claims for their humanitarian inviolability.[8] INGO programs have drawn from the solidarist, developmental and integrated interpretations of the legal regime. For the most part, developmental programs have been linked to the broader objectives of peace-building under the Taliban in the 1990s, and then nation-building in support of the GoA post 2001. The solidarist interpretation was used as a means to shame the Taliban and bring about a change in its policies and behavior. The solidarist interpretation of the regime was absent from INGO policies and practices post-2001, arguably because of the overlap between the goals of the GoA, western donors, and INGOs.

While the nature and extent of the international presence in Afghanistan is an important background condition for INGO contestation of the humanitarian regime, this chapter argues that INGO contestation of the regime cannot be understood without a consideration of INGO identity and mandates. INGO contestation is found to be guided by a logic of appropriateness, based on INGO conception of their role and social purpose. Equally, INGO contestation was shaped by attempts to implement their mandates. Mandates articulate and institutionalize the role identity and social purpose of an INGO; implementing a mandate is thus an act of self-constitution by INGOs as normatively purposive actors.

I. Humanitarian assistance during the Cold War

In the late 1980s, as Afghanistan became the site for a proxy war between the Soviet Union and the United States, INGOs provided humanitarian assistance to the refugee population along the Afghanistan-Pakistan border but not to civilians in Afghanistan. A few INGOs conducted clandestine cross-border operations into Afghanistan, but only to areas held by the American-backed Mujhideen forces. INGOs have thus been said to have violated the principles of impartiality and neutrality, having clearly chosen a side in the conflict by acting as foot-soldiers for the United

[8] Humanitarian inviolability refers to the ability of relief organisations to provide humanitarian aid with the assurance that their personnel or property will not be attacked, which is based on the stipulation that their relief operations seek to address only essential human needs.

States in a broader East-West conflict.[9] CARE, for example, was reliant on funds from the US government and worked closely with USAID in providing food aid to Mujahideen held areas in Afghanistan to help bolster the opposition to the Soviet-backed regime in Afghanistan.[10]

However, INGOs were also themselves supportive of the Mujahideen resistance against the Soviet Union. Jonathan Goodhand notes that INGO '*unconditional sympathy* for the [supposed] freedom fighters eroded the humanitarian principles of impartiality and neutrality and affected the ability of NGOs to make critical judgements.'[11] [emphasis added]. In other words, INGO beliefs about the conflict shaped how they implemented the humanitarian regime; even while they might have been susceptible to pressure from western donors in the form of monetary inducements and sanctions, they were not opposed to the cause they were supporting. Helga Baitenmann thus argues that while the politicization of INGOs during this period was 'largely due to the high-profile, East-West nature of the conflict...by tracing the direct connections between NGOs and the political interests of their funders...most NGOs...were *conscious agents* of political interests.'[12][emphasis added].INGO operations however ended up strengthening the Mujahideen factions and accentuated national-regional tensions. INGO actions also contributed to the perception among the local population that INGOs were aligned with, if not representing, the interests of western donors states.[13]

MSF is an interesting case in point, as one of the few large INGOs engaged in cross-border operations. As MSF was not reliant on western donors for funding, MSF programming decisions cannot be argued to be the result of donor inducements or sanctions. MSF believed, however, that 'in the context of the Cold War, making politicians face up to their responsibility meant calling upon liberal democracies to redouble their efforts in the fight against communism.'[14]Accordingly,

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[9] Helga Baitenmann, " NGOs and the Afghan War: The Politicization of Humanitarian Aid", *Third World Quarterly,* 12(1), 1990.

[10] Baitenmann, 1990.

[11] Michael Bhatia and Jonathan Goodhand, *Profits and Poverty: Aid, Livelihoods, and Conflict in Afghanistan* (London: Humanitarian Policy Group, 2003);p.18

[12] Baitenmann, 1990; p.82

[13] Jonathan Goodhand, *NGOs and Peacebuilding in Complex Emergencies: A Study of Afghanistan* (Manchester: DFID-University of Manchester, 2000); Bhatia and Goodhand, 2003.

[14] Fabrice Weissman, " Silence Heals...From Cold War to the War on Terror: a Brief History" in Magone et al., 2011; p.2

in the Afghan conflict, MSF found itself to be on the same side as the USA, and in fact, used the overlap between MSF's beliefs and US foreign policy to further its own programming objectives. Fabrice Weissman, research director of the MSF foundation, notes, for example, that

> media coverage of MSF's Afghanistan activities became part of the moral rearmament effort launched in the mid 1970s by neo-conservative intellectuals and US administration. Taking advantage of the new political infatuation with human rights in an America seeking moral purification, [MSF] used the human rights movement in the ideological war against communism...[and] received several rounds of funding from the National Endowment for Democracy (NED), a foundation designed to export American soft power through civil organizations.[15]

These examples suggest that even during the Cold War INGOs were not mere puppets for western states nor simply responding to the availability of funds. Rather, they chose to support the Mujahideen cause, based on their own beliefs. Even if INGOs were using the overlap between their goals and those of western states to acquire greater resources, and thereby basing their decisions on a logic of consequences, the preference for a particular set of consequences - in this case, supporting the Mujahideen - was based on INGO values and beliefs. INGO beliefs were shaped by the broader normative and political climate of the time, the opposition to communism and authoritarianism in western liberal states in the context of the Cold War. However, as noted in chapter 3, INGOs provide famine assistance in communist Cambodia even while key donors like the US still recognized the Khmer Rouge; this reinforces the suggested that INGO polices and practices are not entirely determined by the external normative and political climate.

Following Soviet withdrawal in 1979, fighting between the various Mujahideen factions made it difficult to distinguish between war and peace in Afghanistan. Paula Newberg notes that these years 'witnessed the erosion of civil security, social cohesion, economic stability and political opportunity across Afghanistan', with the government in Kabul functioning in name only.[16]Rampant poverty, displacement, infrastructure damage, and land-mine penetration left large parts of the population without sanitation, potable water, basic medical care, and food. A

[15] Weissman, 2011; p.2

[16] Paula Newberg, *Politics at the Heart: The Architecture of Humanitarian Assistance to Afghanistan* (Washington, DC: Carnegie Endowment for International Peace, 1999); p.6

culture of impunity and ongoing violence and violation of human rights by Mujahideen commanders created a climate of insecurity and uncertainty for the civilian population. [17]

With the end of the Cold War, Afghanistan also became a 'forgotten emergency' as funding from western donors diminished. However, the removal of the communist government in Afghanistan allowed UN agencies and INGOs to increase their assistance to civilians and shift offices from Pakistan to Afghanistan. Newberg argues that the relative quietude in Afghanistan led agencies to view Afghanistan as a post-conflict arena. Thus, aside from catering to basic humanitarian needs, they also began to focus on refugee return and the first stages of rehabilitation.[18]Goodhand similarly notes that during this period, INGOs began to base their policies on the developmental ideal type and began to examine options for engaging in rehabilitation and development programs.[19] As the focus was now on the delivery of services and goods rather than expressing solidarity with a particular party to the conflict, the change in INGO policies, as Jonathan Goodhand and Haneef Atmar argue, marked a shift from 'solidarity during the 1980s to service delivery in the 1990s.'[20]However, most of these programs remained at a nascent stage and there was much 'institutional confusion' as agencies negotiated with the various Mujahiideen commanders for access and tried to obtain limited international funding. [21]

II. Aid and Politics under the Taliban, 1994-2001

By late 1995, the Taliban had gained control over most of Afghanistan. The Taliban's ascent led to a period of relative calm and stability compared with the Mujahideen years and the Afghan population welcomed the Taliban for the security and stability it promised. Western donor states however wanted to isolate the Taliban regime due to its alleged links with al Qaeda. Afghanistan

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[17] Newberg, 1999.

[18] Newberg 1999

[19]Jonathan Goodhand and Haneef Atmar, *Aid, Conflict, and Peacebuilding in Afghanistan: What lessons can be learned?*(Brussels: International Alert, 2000).

[20] Goodhand and Atmar, 2000; p. 49.

[21] Jonathan Goodhand and Peter Chamberlain, " Dancing with the prince: NGOs' survival strategies in the Afghan Conflict", *Development in Practice,* 6(3): 1996.

was framed a 'rogue state' and donors refrained from providing funds for development programs that might help the Taliban consolidate its rule in Afghanistan.[22]

International involvement

The relationship between the Taliban and the international community grew increasingly antagonistic through the late 1990s and came to a breaking point with US led airstrikes in Afghanistan in late 1998.Following this, the US and UK governments asked the UN not to send British and American employees to Afghanistan. The UK also ruled that any NGO sending expatriate staff to Afghanistan would automatically be disqualified from UK government funding.[23]

At the same time, following on from UN headquarter-led attempts at institutional reform, Afghanistan became the first test-case for a UN Integrated Mission, aimed at achieving coherence between the UN's political, development and humanitarian responses to political emergencies and fragile states. [24] This was articulated in the Strategic Framework for Afghanistan (SFA), formulated to 'facilitate the transition from a state of internal conflict to a just and sustainable peace through mutually reinforcing political and assistance initiatives.'[25]The SFA was to be implemented through a program of Principled Common Programming (PCP) which specified the terms on which agencies were to negotiate with the Taliban and provide assistance. [26]

The PCP reflected the provisions in the legal regime that humanitarian assistance should be provided according to the principles of impartiality, neutrality and independence, in a manner that does not provide any political or military support to the warring parties. The PCP also laid out guidelines for rehabilitation and development programs but, as the UN did not recognize the

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[22] Mark Duffield, Patricia Gossman, and Nicholas Leader, *Review of the Strategic Framework for Afghanistan* (Kabul: Afghanistan Research and Evaluation Unit , 2001).

[23] Mohammed Haneef Atmar, "The Politicization of Humanitarian Aid and Its Consequences for Afghans", *Disasters,* 25(4): 2001.

[24] see: L. Brahimi,*Report of the Panel of Experts on United Nations Peace Keeping Operations, (*New York: United Nations, 2000).

[25] Duffield et al., 2001; p. 10.

[26] Duffield et al., 2001.

Taliban as a legitimate government, the PCP was clear that these programs should not help, enable or assist the Taliban.[27] The PCP thus included a contradiction with its expressed commitment to impartiality and neutrality while at the same time focussing on development projects that circumvented the authority of the Taliban. Assistance was also linked to the Taliban's respect for human rights, making aid thereby conditional on the Taliban's respect for the norms enshrined in the UN charter. Under the SFA, aid thus had a dual role: first, to save lives through humanitarian assistance, and second, to help build a just and sustainable peace in Afghanistan and regulate or transform the behavior of the Taliban. Mark Duffield, Patricia Gossman and Nicholas Leader thus argue that the SFA, by linking aid and peace, had the effect of 'securitizing' aid as a social engineering tool, to build peace from below while moderating the behavior of the Taliban.[28]

The SFA was based on the assumption that Afghanistan was a 'failed state', characterized by a collapse of political authority and social fragmentation.[29]Yet, this framing is debatable: Mark Duffield and Patrica Gossman argue, for example, that the Taliban is better characterized as an 'emerging political complex' which, while lacking attributes associated with the traditional nation-state such as social inclusiveness and comprehensive welfare provision, continued to maintain effective executive, security, and military capabilities and thus cannot be characterized as a 'failed state.'[30]

INGO policies and practices

During this period, there was a degree of consensus among INGOs around the objectives of the SFA. Their own policies and programs in Afghanistan were based on the developmental and

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[27] Duffield et al., 2001.

[28] Securitization, as Duffield, Gossman and Leader note, is distinct from the 'politicization' of aid which is primarily about the direct attempts by donors to use their spending power and contractual authority to direct aid in line either interests.
Duffield et. al 2001; p. 10

[29] The concepts and definitions used to define situations are crucial as they also define the range of conceivable policy responses. A 'failed state' characterization, as Duffield, Gossman and Leader note, de-legitimizes local actors as reliable interlocutors, and justifies the attempt to use aid as a tool for conflict resolution, social reconstruction and behavioral change.
Duffield et al., 2001; p. 11.

[30] Duffield et al., 2001; p. 17-21.

integrated ideal type and thus shared a set of common assumptions and goals with the SFA about the function and scope of aid. The common theme tying together their programs, as Goodhand notes, was that creating 'an environment where basic rights were respected and promoted' would in the long-term help 'create sustainable peace' and that aid could 'be programmed in such a way that it supports pro-peace constituencies.'[31] Developmental programs were thus linked to the broader objective of peace-building, reflecting the integrated interpretation of the legal regime. INGOs thus tried to include a peacebuilding component to their work, though, in practice, this was limited to peace and conflict assessment exercises and local capacity development projects.[32]INGOs also argued that the relief-development distinction did not make much sense in Afghanistan, and tried to integrate relief provision with longer-term developmental programs. Antonio Donini notes that INGOs argued it was necessary 'to do development', or 'at least to maximize the logic of peace wherever possible through assistance.'[33] The shift toward longer-term programming was more prominent in rural areas and could, as Donini notes, just as well have been labeled 'development' in a non-crisis country.[34] The major areas of NGO work included provision of health services, mine action, education, food security, rehabilitation, income generation programs, environment and community development work.[35]

CARE opened its Kabul office in 1994, focusing on the provision of food and non-food items to vulnerable groups. Following from the developmental ideal type, it also tried to link emergency relief aid with longer-term developmental goals. A CARE press release from the time notes, for example that, 'CARE continues to build upon its ongoing development projects in an effort to meet growing emergency needs.'[36]In rural areas, it tried to move towards longer-term programming, and its rehabilitation program included a focus on the construction of infrastructure, livelihood

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[31] Goodhand and Atmar, 2000; p.44

[32] Goodhand and Atmar, 2000.

[33] Antonio Donini, *Learning the Lessons? A Retrospective Analysis of Humanitarian Principles and Practice in Afghanistan* (New York: OCHA, 2003); p.41.

[34] Donini,2003; p.53.

[35] see: Jonathan Goodhand, "Aiding Violence or Building Peace? The role of international aid in Afghanistan", *Third World Quarterly,* 23(5):2002. Goodhand and Atmar, 2000; Goodhand, 2000.

[36] CARE, *CARE programs in Afghanistan continue to expand NGO steps up emergency efforts as conditions worsen*", 27 March 2001 (accessed on 04. 05. 07). http://www.care.org/newsroom/articles/2001/03/afgng0033001.asp; p.1

support, and education; it also placed increasing emphasis on partnership and capacity building programs.[37] In doing so, CARE sought to be an 'effective agent in the promotion of human rights, conflict transformation and livelihood security in Afghanistan.'[38] An evaluation of CARE's *SoFAR* project noted, for example, that one of the program's impacts was the reinvigoration of community based structures which had important social benefits in terms of civil society development, conflict resolution and peace-building.[39]

INGOs also wanted to ensure that their programs did not help legitimize the Taliban, or help it consolidate its rule in Afghanistan. Similar to the UN, they defined Afghanistan as a 'failed state' and did not recognize the Taliban as a legitimate authority. Newberg thus argues that the main issue for most agencies was that there were thus no legitimate government interlocutors who could set the stage for relief and sustain rehabilitation.[40]They thus focused their developmental programs at the community level with a focus on capacity building and community empowerment; these were based on the assumption that peace in Afghanistan could be built from the bottom-up, circumventing the authority of the Taliban. Duffield, Gossman, and Leader thus argue that the community level focus was intended to create an opposing power structure in the country which would be fundamentally interested in ending the war and demanding accountability from the Taliban.[41]

CARE and Oxfam programs also reflected the solidarist ideal type as they sought to make the provision of humanitarian assistance conditional on the Taliban's respect for human rights, especially with regard to its treatment of women. As Antonio Donini notes, once the Taliban was firmly in power, agencies formally subscribed to the notion that 'the protection and advancement of human rights and gender equity' were strategic objectives.[42] The objective of such conditionality

[37] Goodhand,2000.

[38] CARE. *Afghanistan: A Letter from Care's President: Peter Bell speaks about his experiences in Afghanistan*, August 2001 (accessed on 04.05.07). http://www.afghanistannewscenter.com/news/2001/august/aug9b2001.html

[39] see Goodhand, 2000; p. 60.

[40] Newberg,1999

[41] Duffield et al., 2001.

[42] Donini, 2003; p.47.

was to transform the nature of the Taliban, and socialize it into accepting the norms of the international community. A CARE representative noted, for example, that the assumption underlying such programs is that 'by treating people responsibly they will act responsibly.'[43]In 1993, as Oxfam gradually strengthened its norms about women equality, it adopted a formal gender and development policy which committed the organization to promote the full participation and empowerment and confront the social and ideological barriers to women's participation. [44] The solidarist interpretation was thus applied to change the policies and behaviour of the Taliban, especially as the Taliban imposed restrictions on INGO programs.

An example of such programming based on the solidarist interpretation of the regime was Oxfam's decision to suspend it's Logar water-supply project in 1997 - which supplied water to approximately 400,000 people - in response to the Taliban's restrictions on allowing female aid workers to work in Afghanistan. Oxfam even tried to persuade the European Union (EU), the UK, and other donor governments to suspend all aid to force the Taliban to retract its position. [45] Oxfam, however, overlooked the fact that the Taliban's enforcement of such gender policies was often inconsistent and left to local representatives. As a result of Oxfam's decision, people reverted to collecting water from a contaminated riverbed; a policy that was intended to promote the rights of women thus had the consequence of depriving people dependent on the Logar project for safe drinking water. [46]According to Marcus Thompson, Oxfam Senior Management,

> Politically, we misjudged it, thinking we could bargain, that surely Taliban must so want a water supply in Kabul that they would allow us to employ women etc...[we thought that] there is such a general international agreement on human-women's rights issues that the solidarity would hold, and the Taliban would have to back down. Actually, the Taliban could not have cared less; they had a war to fight and solidarity collapsed. [47]

Agency positions in dealing with the Taliban on human rights violations varied between tip-toeing around the Taliban, seeking low-key concessions wherever possible, and taking a confrontational stand. However, as K.VanBrabnt and T. Killick point out, a confrontational stand had little impact,

[43]Interview with INGO staff based in Kabul (telephone), February 2009.

[44] Vaux, 2001.

[45] Atmar, 2001; p. 321.

[46] Vaux,2001.

[47] Marcus Thompson quoted in Vaux, 2001; p. 126.

and even strengthened the position of the hardliners within the Taliban; rights victories, when obtainable, had to be achieved in a context that did not challenge the authority of the Taliban.[48] Peter Marsden also notes that agencies did not make the most of openings offered by the Taliban; for example, there were often differences in opinion among Taliban commanders, some of whom were agreeable to female participation in programs depending on the nature of the program - for example, the Taliban agreed to women employment in the health sector.[49]

MSF, in contrast to its policies during the Cold War, and following shifts in head quarter level thinking, now argued that aid should not be linked to broader political or developmental goals. Attempting to build coherence between political and humanitarian objectives, as suggested under the SFA, would undermine the impartiality and neutrality of humanitarian assistance.Penny Harrison of MSF argued, for example,

> ...by co-opting NGOs under the SFA, have we forgotten that international law establishes the basis under which states and belligerents are expected to allow NGOs to assist people during an internal conflict, independently and impartially... If humanitarian assistance is to be effective, there needs to be a clear distinction between UN, donor governments, NGOs and the ICRC.[50]

Despite these points of contention,the Taliban looked to INGOs for the provision of basic social services and their operations were thus mostly accepted by the Taliban.[51] Paul O'Brien, former advocacy coordinator in Afghanistan for CARE,argues, for example, that 'it was hardly a merry dance, but it lasted nonetheless, and as a result millions of Afghans fed themselves, educated their girls and boys, and found treatment for the sick.'[52]While NGO personnel were sometimes harassed or threatened by the Taliban, on the whole the Taliban 'considered it taboo to harm NGO workers.'[53]

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[48] K. Van Brabant & T. Killick, *The Limits & Scope for the Use of Development Assistance Incentives & Disincentives for Influencing Conflict Situations: Case Study: Afghanistan*(London: Overseas Development Institute ,1999).

[49] Peter Marsden, *The Taliban: War, Religion and the New Order in Afghanistan* (London: Zed Books, 1998).

[50] Penny Harrison,*The Strategic Framework Approach and Principled Common Programming: A Challenge to Humanitarian Assistance*(London: Humanitarian Policy Group, 2001) ; p.1.

[51] Interview with Antonio Donini, 2009.

[52] O'Brien, 1994 ;p. 189

[53] Interview with Antonio Donini, 2009

Contestation and its effects

INGO policies and practices contributed to the contestation of the function, scope and operating principles of the humanitarian regime along similar lines as headquarter policy. The shifts in INGO policy during this period reflect the changes in headquarter level thinking about the function and scope of humanitarian assistance, as discussed in Chapters 3 & 4. Aid was thus conceived of as a means of building peace at the community level and altering the behavior of the Taliban. Yet, while INGO policies and programs followed from headquarter-level interpretation of the legal regime, in practice these policies acquired a specific significance or meaning as the regime encountered new actors, interests, and beliefs at the operational level in Afghanistan. It should be noted however that program implementation was often constrained by a lack of resources; they often did not go beyond the planning stage or were implemented in an ad-hoc manner.

Based on an integrated ideal type, humanitarian assistance with a view towards community level peace-building violated the provision in the legal regime about non-interference in the conflict as such programs can end up 'straddling a fine line between promoting local constituencies for peace and fomenting political opposition.'[54] This is especially the case in what Goodhand calls 'network wars' which dissolve conventional distinctions between people, army and government, and the networks supporting peace cannot be separated from those supporting war; this is the case in Afghanistan, where historically conflict has been largely an attempt at nation-building by various interest groups.[55]Thus,INGO attempts at peace-building carried the potential of further empowering pro-war constituencies. However, it is important not to over-state the operational impact of INGO programs based on an integrated ideal type for humanitarian assistance as most agencies struggled to translate these ideas into action.[56] Nonetheless, despite INGO rhetorical commitment to humanitarian principles, INGOs claim to neutrality is contentious if the

[54] Duffield et al., 2001; p 33.

[55] Goodhand, 2002.

[56] Goodhand, 2000.

overarching goal of programming was to support peace-building from below to create local governance structures in parallel to or in opposition to Taliban authority.

INGOs also attempted to include developmental components to their programs in Afghanistan. A development lens however assumes that the conflict is over, and that there exist national authorities with whom development assistance can be coordinated.However, INGOs did not want to work with or under the Taliban as it did not consider it to be a legitimate authority, and thus the small scale developmental programs carried out by INGOs were not coordinated with the Taliban. Duffield,Gossman and Leader, thus argue that attempts at implementing a developmental ideal type of humanitarian assistance were misplaced as the Taliban's authority has limited acceptance and legitimacy among local and international actors, and the necessary state implementing structures for development programming [did] not exist.[57]

However, programs based on the developmental ideal also had unintended, often negative consequences. As agencies focused on rural areas, Kabul became an economic backwater, while development, either through the illicit economy or aid projects, took place on the periphery. Regional centers thus gradually become more integrated into the economies of neighborhood countries. Goodhand notes that aid was not the primary force powering this dynamic, but it reinforced the trend towards regionalization in Afghanistan, further splintering Afghan society along ethnic and regional lines.[58]

The focus on gender issues and human rights also contested the regime as the function of humanitarian assistance was conceived in terms of bringing about Taliban compliance with international human rights standards.[59] Katrina West argues that the real target of such INGO advocacy might have been western public opinion rather than the civilian population in Afghanistan. [60]Yet, the confrontational stand taken by agencies meant that in a number of cases

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[57] Duffield et al., 2001.

[58] Goodhand, 2002.

[59] Arne Strand, Karin Ask, and Kristian Berg Harpviken, *Humanitarian Challenges in Afghanistan: Administrative Structures and Gender Assistance*(Bergen: Chr. Michelsen Institute, 2001).

[60] West, 2001.

humanitarian assistance was subordinated to human rights concerns, as illustrated by the example of Oxfam's Logar project. The confrontational stand taken by agencies also placed INGOs in opposition to the Taliban, hardened the position of the Taliban, and prevented agencies from seizing opportunities of negotiating with the more moderate elements of the Taliban.[61] Arne Strand argues, for example, based on numerous interviews with Taliban officials in 2001, that the Taliban sought much more cooperation with international agencies and was even willing to invest in education for girls.[62]Equally, the confrontational stand taken by agencies on the treatment of women might have prevented agencies from seizing other opportunities to negotiate with the Taliban. Joylon Leslie,UN resident coordinator for humanitarian assistance in Afghanistan at the time argues, for example, that the Taliban placed very few restrictions on humanitarian agency programs - the only ones that the Taliban strongly resisted were those involving female education and employment.[63]

The nature of INGO programming thus prevented agencies from formulating a consistent basis for negotiating 'a meaningful pact' with the Taliban that could form the basis for access. The multiple goals and concerns guiding INGO programming - basic relief, treatment of women, community level peace-building and reconciliation - confused the terms on which access and assistance was to be negotiated, and as, Neuman argues, 'almost paralyzed the humanitarian and political environments.'[64] Paradoxically however, INGOs helped the Taliban acquire at least some measure of domestic legitimacy, as they provided basic welfare services to the population.[65]

Factors shaping INGO contestation

An explanation focussing on external material factors might suggest that INGO contestation was shaped by pressure from donor states to deliver assistance in line with their foreign policy

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[61] Nick Stockton, "Afghanistan, War, Aid and International Order" in Donini et al., 2004.

[62] Arne Strand, *Aid Coordination in Afghanistan*, (Bergen: Chr. Michelsen Institute, 2002).

[63] Chris Johnson and Joylon Leslie, *Coordination Structures in Afghanistan* (London: Humanitarian Policy Group, 2002).

[64] Newberg, 1999; p.29.

[65] see Goodhand,2002; Goodhand and Atmar, 2000; Duffield et al., 2001.

objectives. However, as highlighted in the previous section, donors sought to restrict funding to basic relief items only; they were reluctant to provide funds for development programs as these might help legitimize the Taliban. As Afghanistan was not of strategic importance for the international donor community, donors tended to maintain a relatively hands-off policy on INGO programs and operational modalities were not closely monitored. Donors did attempt, especially towards the end of the 1990s, to make humanitarian assistance conditional on the Taliban's adherence to international human rights standards. However, as noted in the previous section, the focus on gender was in line with INGO headquarter level policy. Thus, even if the donor focus on human rights was directed by their own political concerns, and funding made conditional on this, the focus on gender issues and human rights more broadly did not challenge or compromise INGOs own programming priorities. Moreover, in some instances, as was the case with Oxfam's Logar project, INGOs even pushed donors to take stronger action against the Taliban.[66]

INGOs were also operating under the general framework of the SFA. However, it was not that they were coerced into accepting the SFA. Rather, as noted earlier, they initially welcomed the SFA and were in fact frustrated by the lack of donor funding for the SFA.[67] The components of the SFA complemented the shifts in INGO headquarter level thinking,outlined in the previous chapter,whereby aid was expected to directly work 'on conflict.' Thus, as Duffield and Gossman argue, 'inter-agency policy on principles had little impact on agency decisions...what dominated decisions about principles is internal agency mandates.'[68]Neuman similarly argues that coordination under the SFA only took place when it fit with agency internal policies and mandates.[69] Moreover, the UN led integrated approach and the emphasis on policy coherence was more rhetorical than actually enforced in practise. While agencies like MSF questioned the logic of a coherent integrated approach, that permitted conditionality - arguing that above all it was a violation of international law – in practise, agencies had a considerable amount of operational space to negotiate with the Taliban.

[66] Duffield et al. ,2001; Johnson and Leslie, 2002.

[67] Duffield et al., 2001.

[68] Duffield et al., 2001; p.30.

[69] Newberg,1999.

Katrina West similarly notes that by the early 1990s, the dominant position of the UN over INGOs (as compared with the Cold War days in Afghanistan) had collapsed. INGOs no longer provided supplementary services to the UN; in fact, they had a much more important role than the UN and with the exception of Kabul, INGOs were the chief actors providing services in rural areas in Afghanistan.Thus, while the UN might have had a formal supervisory role, INGOs had the muscle strength;they were visible everywhere and posed the most concrete threat to the Taliban.[70] Neuman similarly argues that the UN and INGOs would only coordinate when there were few costs to coordination and it broadly fit with agency internal policies and mandates.[71]

INGOs themselves support this argument: while most INGO staff interviewed for this study noted that they were initially concerned about their operations being subordinated to the UN's political mission, most argued, that in practice, the SFA did not significantly influence operations. 'It was a case of rearranging the deck chairs on the Titanic' that was not particularly relevant to NGO operations aside from facilitating information sharing. '[72]

Thus, INGO contestation of the regime cannot be said to caused by the SFA. In fact, one might even argue that INGOs in fact welcomed the SFA as it allowed them greater operational space to implement head-quarter level policy, based on the solidarist, developmental, and integrated ideal types in Afghanistan. Thus, while the external environment might have offered some material rewards or sanctions for providing humanitarian assistance in a manner identified by donors or the UN,these factors alone did not determine the nature of INGO policies and programs. Focussing on human rights also resulted in a loss of access at times and threatened INGO operational space. Moreover, INGOs seemed aware that their development programs were accomplishing little; for example, an INGO staffer argued, 'It's like planting trees in a nursery, which are then washed away by the flood. It makes little sense to focus on programs which have such a limited and transitory impact...better to focus on the core business of humanitarian aid until the macro environment changes.'[73]

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[70] West, 2001.

[71] Newberg, 1999.

[72] Goodhand, 2000; p. 30.

[73] INGO staffer quoted in Goodhand and Atmar, 2002; p. 43.

This argument is not meant to negate suggestions about the influence of the operational environment. INGOs were operating alongside UN agencies and funded by western donors; debates and policies among these actors necessarily shaped INGO practices. INGOs were also influenced by the broader global and local aid architecture, the dominant thinking of time about the role and function of aid. Yet, even within this broader architecture, the suggestion here is that INGOs were not merely programmed by it, but active participants in its construction and maintenance - both at the international and local level.

Moreover, as the case of MSF during this period highlights, INGOs are not automatically programmed by the broader environment, but must make sense of it in light of their own beliefs and interests. MSF thus rejected the assumptions underlying the SFA as its policies and practices shifted away from the solidarist interpretation employed during the Cold War. This reflects the shifts in its thinking at the global level about the function of humanitarian assistance, its relationship to politics, and MSF's conception of its role as a humanitarian actor.

Pressures from the external environment or the influence of broader normative structures thus do not alone explain INGO contestation of the regime. Alternatively, one might argue that INGO contestation of the legal regime was shaped by their conception of their role and purpose; their policies were thus based on a logic of appropriateness, about what they considered their appropriate role in the conflict. This role had been institutionalized in their mandates. INGOs thus sought opportunities to implement programs in line with a developmental and integrated interpretation of the regime even while they did not recognize the Taliban as a legitimate authority. Equally, the use of a solidarist interpretation was intended to change Taliban behavior in a manner that would permit INGOs to implement gender and rights-based programs in line with their mandates. INGO conception of their role and purpose complemented the SFA's conceptualization of the function of aid, and thus fit well with INGO policies and practices. However, rather than the SFA compromise INGO operational space, INGOs arguably welcomed it as it allowed them to implement their mandates. INGOs were themselves looking for opportunities to recalibrate their practices in line with headquarter thinking and policies.

III. Aid and Politics following Regime change, 2001-10

Following the American-led invasion of Afghanistan in 2001, the Taliban was ousted from power and an interim government was established under the leadership of Hamid Karzai. Political negotiations in 2001 at Bonn however excluded the Taliban and thus represented a 'victor's peace' among the various factions of the Northern Alliance, some of whom were effectively militia groups and warlords.[74] Astri Surke, Kristian Berg Harpviken and Arne Strand thus described this negotiation process as one of 'conflictual peacebuilding' as 'elements of conflict...were either ignored or deliberately set-aside."[75]The Afghan population was also skeptical about the legitimacy of the new Karzai government, and reluctant to support the Karzai government more actively against the Taliban.[76]

Western donors and coalition military forces

Donor policies in Afghanistan are based on their political and strategic objectives in the context of the 'war against terror'. International aid is intended to support the Coalition's counter-insurgency and stabilization efforts, as well as contribute to nation building in support of the western-backed Karzai government.[77] Colin Powell, former United States Secretary of State, for example, argued that INGOs were essential foot soldiers in the American war against terror and key to the Coalition's nation building efforts in Afghanistan.[78] Most donor funding is channelled through the UN, the Afghan Government, and government agencies such as USAID and DFID, that then contract out projects to international NGOs.

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[74] Alexander J. Thier, "The Politics of Peace-Building. Year One: From Bonn to Kabul" in Donini et al., 2004.

[75] Astri Suhrke, Kristian Berg Harpviken, *Conflictual Peacebuilding: Afghanistan Two Years after Bonn*, (Bergen: Chr. Michelsen Institute, 2004); p.3

[76] see for example, Antonio Donini, " Local Perceptions of Assistance to Afghanistan", *International Peacekeeping,* 14(1): 2007.

[77] Donini et al., 2004.

[78] Colin Powell, *Remarks to the National Foreign Policy Conference for Leaders of Nongovernmental Organizations,* Washington, DC. 26 October 2001 (accessed on 08.08.12) http://2001-2009.state.gov/secretary/former/powell/remarks/2001/5762.htm

Since 2001, the international community has pledged $90 billion for reconstruction, though only 57 per cent of this has been actually disbursed. Yet, international development assistance accounts for three-fourth of Afghanistan's GDP.[79] However, development assistance ' has largely failed to entrench effective and accountable government and the sustainable provision of basic services or achieve the broader policy objectives of internal and regional stability.'[80] Afghans argue that the bulk of international assistance has not been properly used, largely because of an over emphasis on the security sector at the cost of building state institutions. Aid has thus been donor driven rather than need driven. [81]

The Coalition is represented by two international military forces: the US led Operation Enduring Freedom (OEF) and NATO led International Security Force (ISAF). OEF has primarily focused on the search for al Qaeda and counter insurgency efforts, while ISAF, established with the 2001 Bonn Peace agreement, has focused on enabling a secure environment for reconstruction. As security objectives have guided aid disbursement, foreign militaries have played a major role in distributing humanitarian reconstruction and development assistance through PRTs. In 2010, 26 PRTs led by eleven countries were operational in Afghanistan. Their activities extend beyond the security sector and immediate reconstruction needs to include emergency assistance, infrastructure, and a wide range of development projects. PRTs are intended to help Coalition forces 'win hearts and minds' and help consolidate the rule of the Afghan government.[82] The Coalition has also employed private contractors to carry out reconstruction and development programs in Afghanistan. Afghanistan's biggest donor, USAID, now allocates close to half of its funds to five large US contractors, Kellogg Brown and Root, the Louis Berger Group, Chemonics International, Bearing Point, and Dyncorp International.[83]

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[79] ICG, *Aid and Conflict in Afghanistan* (Brussels/Kabul: International Crisis Group, 2011).

[80] ICG, 2011; p.27.

[81] ACBAR, *Afghanistan: Enhancing Aid Effectiveness* (Kabul: Acbar, 2007).

[82] For good overview see:Donini et. al, 2004; Johnson, 2003.

[83] Matt Waldman, *Falling Short: Aid Effectiveness in Afghanistan*. (Kabul: ACBAR, 2008); p. 18

In the immediate aftermath of the invasion, in response to the ongoing drought, a massive influx of refugees, and the Coalition's need to demonstrate solidarity with the civilian population, international funds were directed primarily towards meeting humanitarian needs. Shortly thereafter, Afghanistan was termed a 'post-conflict' state, and international aid was channeled through the Government of Afghanistan (GoA), the UN, INGOs, PRTs and private contractors, for development and reconstruction projects. The framing of Afghanistan as a 'post-conflict state' allowed the United States and its allies to legitimate the invasion as a 'good war', and guide the process of nation building through reconstruction and development assistance.[84]

However, the conflict was far from over and parts of Afghanistan faced an acute humanitarian crisis following the invasion. Antonio Donini thus argues that the 'biggest sin' post 2001 was the manner in which the international community defined the situation in Afghanistan. As a result of the post-conflict framing, 'the existing capacity for addressing humanitarian need that has been built up since the late 1980s and had successfully weathered the Taliban years, was dismantled under the fallacious assumption that it was no longer needed.'[85] Moreover, international funding was directed away from addressing humanitarian needs towards reconstruction and development projects, to help stabilize the state and build legitimacy for the GoA, to help it consolidate its rule and encourage 'social buy-in into a fragile political process.'[86]Accordingly, a new consensus emerged amongst donors that,

> First, all international assistance efforts should coalesce into a unified effort to support the provisions of the December 2001 Bonn agreement; second, that the authority and capacity of Afghanistan's newly formed interim administration should be fully supported; and third, that a rapid transition should be made from short-term emergency relief to longer term investments in poverty alleviation and national reconstruction...[87]

United Nations Assistance Mission to Afghanistan

The United Nations Assistance Mission in Afghanistan (UNAMA) was established to direct the

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[84] Donini, 2004.

[85] Donini,2009.

[86] Costy, in Donini et al. 2004; p. 51

[87] Costy, 2004; p. 145.

peace process and consolidate the new Karzai regime while integrating the political, development and humanitarian arms of the international assistance effort. 'Together with the Government of Afghanistan, the [UN] Mission supports the rebuilding of the country and the strengthening of the foundations of peace and a constitutional democracy.'[88]Under UNAMA, humanitarian and development assistance are thus intended to support the political process of nation building, a strategy that Nick Stockton terms 'aid induced pacification.'[89] Consequently, minimal funding is available for humanitarian work outside the larger context of nation building.[90]

The basic concepts and motivations underlying UNAMA's goals are not qualitatively different from the SFA. The difference this time is that western donors are backing the Karzai regime, and see humanitarian and development assistance as part of a broader regime consolidation and nation building strategy. UNAMA is also supposed to play a central coordinating role to facilitate the delivery of humanitarian assistance. However, the mission's political arm dominates its assistance arm and UNAMA had been resistant to the establishment of a separate OCHA office outside the main mission structure.[91]

Government of Afghanistan

In 2001, with most of Afghanistan's formal economy dependent entirely on external resources Afghan sovereignty was 'more a concept of the Bonn agreement than a reality.'[92] Of the $960 million disbursed between 2001 and 2003, only 9 per cent was provided directly to the GoA.[93] The GoA thus sought to establish ownership of the development and reconstruction process. It formulated a National Development Framework (NDF) to streamline international assistance with its priorities. Humanitarian assistance however has been sidelined by the NDF. As Costy argues,

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[88] UN Security Council, *Resolution 1401 S-RES-1401(2002)*, 28 March 2002, (accessed on 04. 05. 11). http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Afgh%20SRES1401.pdf

[89] Nicholas Stockton, *Strategic Coordination in Afghanistan* (Kabul: AREU, 2002).

[90] Costy, 2004.

[91] Stockton, 2002.

[92] Costy, 2004; p. 150.

[93] Peter Marsden, " Afghanistan: the reconstruction process", *International Affairs,* 79(1):2003.

'[the NDF's] reading of the humanitarian situation is interlaced with an emphasis on livelihood recovery, poverty alleviation, and capacity building, reflecting the desire for regime consolidation and 'social buy-in into a fragile political process'.[94]

The GoA has accused the UN system and INGOs of attempting to establish a parallel government through their development and community based programs.The GoA often finds itself 'begging for funds from international agencies' and with over 600 UN personnel in Afghanistan, along with many more from ICRC and INGOs, GoA representatives often find themselves sidelined at inter-agency meetings.[95]

INGO policies and practices

Following the US led invasion in 2001, Afghanistan became a crowded assistance 'market-place.' The availability of funds and projects in 2001 attracted a plethora of INGOs to Afghanistan; by November 2002, the number of INGOs registered with the Afghan Ministry of Planning had risen from 46 in 1999 to 350.[96] Cooley and Ron have noted a 'NGO scramble' in Afghanistan as NGOs compete for funds, contracts, and tenders in a 'competitive market place'.[97]Inter-agency competition is compounded by the short-term nature of most contracts and the consequent need to demonstrate organizational efficiency to donors.Competition between aid agencies has not been lost on the Afghan population, who notice that that 'the international aid scene [is] taking advantage of the post-war gold mine of aid contracts...many of which are worth millions of dollars and provide aid workers with high-paying jobs.'[98] Of the INGOs under study, World Vision is the only post-2001 entrant, the rest having been operational in Afghanistan since the late 1970s.

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[94] Costy,2004;p. 151.

[95] Marsden 2003

[96] Cooley and Ron, 2002.

[97] Ibid.

[98] Susanne Koelbl, "Afghaniscam", *Der Spiegel,* 30 March 2005 (accessed on 03. 04. 12). http://www.globalpolicy.org/component/content/article/176/32058.html ; p. 1

As noted in the introduction, some of major operational NGOs such as Oxfam GB, MSF, and World Vision US are able to limit their funding from donors to about 20 percent of total revenue, which gives them a high degree of flexibility. MSF retains a 70% private-to-public ratio, with a strict policy of allowing no more than 50% of their total funds to come from governments. It refuses money from governments that are belligerents in a conflict or whose neutrality is compromised. American NGOs, such as CARE USA, however receive 83 per cent of their funding from USAID or the US government. [99]

In response to widespread humanitarian needs, CARE, MSF, Oxfam, and World Vision began to provide emergency relief items to the Afghan population. By 2002, INGOs, similar to western states and the UN, framed Afghanistan as a 'post-conflict state'. Making use of the new rush of available donor funds, INGO programs began to focus on development, reconstruction, and institution building in support of the GoA. CARE, Oxfam and World Vision all implemented GoA programs such as the National Solidarity Program (NSP) and the Basic Package of Health Services (BPHS) in government-held areas.[100] As a government-led development program, the NSP was in line with GoA's political and development objectives. However, as Andy Featherstone argues, 'its roots in communities has resonance with NGO's own bottom up approach...As a result, a growing number of multi-mandate NGOs have begun partnering with the government to deliver NSP programs in their areas of operation.'[101]INGOs did not, during this period, open negotiations with the Taliban or provide assistance in areas controlled by the Taliban, often as a result of donor pressure or conditionality. [102]

CARE, Oxfam and World Vision programs covered a wide range of sectors, including health, education, food security, school reconstruction and educational programming, livelihoods and

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[99] Stoddard, 2003.

[100] The National Solidarity Program was modeled on the World Bank's program for community driven development; the GoA was keen to ensure that villagers knew that cash grants were coming from the government, even while NGOs were organizing the local consultation process. For more, see Suhrke et al., 2004.

[101] Featherstone,2012.

[102] Ashley Jackson and Antonio Giustozzi, *Talking to the other side: Humanitarian Engagement with the Taliban in Afghanistan* (London: Humanitarian Policy Group, 2012).

economic development, agriculture, capacity building, governance, peace-building, and security sector reform. In many parts of the country, INGOs were the only legal providers of employment opportunities, food, medication, and social assistance.[103]The Afghan Coordinating Body for Agencies (ACBAR)[104] notes that the overarching purpose of INGO programs is to 'alleviate poverty and ensure sustainable community development [and to] build the capacities of district and provincial staff of other ministries to plan, coordinate, and implement services.'[105] It also holds that INGOs are '...one of the main builders of Afghan management capacity, which is then regularly recruited into the Afghan government.'[106]

INGOs also supported the process of regime change and nation-building, as directed by the international community. CARE, for example, notes in a 2001 report that 'Regime change would deliver the Afghans finally, from oppression and violence, while a Marshall plan would give them a chance to rebuild their lives.'[107] CARE also notes that its advocacy contributed to the American government's decision to allocate more than $1.1 billion for the reconstruction and security of Afghanistan.[108]CARE also supports the GoA and, as an implementing partner of the GoA's NSP, it notes that 'one of the most significant developments in our programming since 2003 are efforts to strengthen the capacity of the government to meet the needs of Afghans.'[109]It also works directly with government ministries 'to help them provide services more efficiently and effectively.'[110]

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[103] Roisin Shannon, "Playing with Principles in an Era of Securitized Aid: Negotiating Humanitarian Space in Post-9/11 Afghanistan", *Progress in Development Studies* 9(1): 2009.

[104] CARE,Oxfam and World Vision are all members of ACBAR.

[105] ACBAR, *Statement to the Afghanistan Development Forum 2005*, 3 April 2005 (accessed on 09.06.10).<http://www.acbar.org/display.php?page_id=12; p.2-3

[106] ACBAR, *Afghanistan Development Forum*, 2005; pp.2-3

[107] CARE, *Priority Issues in the Aftermath of the Taliban Retreat: CARE Policy Analysis*, (Kabul: CARE, 2001).

[108] CARE, *Afghanistan : at the crossroads*, 23 June 2003 (accessed on 03. 04. 10). http://reliefweb.int/node/128736

[109] Ibid.

[110] Ibid.

OXFAM also saw regime change as an opportunity to transform Afghanistan. An Oxfam policy document, 'Winning the Peace' states that

> NGOs are ready for their role in this new circumstance. It is a critical moment to build the skills of the government and create opportunities for Afghan groups and organizations to influence emerging state institutions within Afghanistan...the end of Taliban tyranny, the establishment of an interim government, together with the expressed commitment and engagement of the international community is a precious opportunity.[111]

Reflective of headquarter-level policy, Oxfam follows an integrated approach in Afghanistan linking humanitarian assistance, long-term development, peace-building, gender and human rights promotion... [to] address the multi-layered problems facing the people of Afghanistan.'[112] Oxfam's core programs include income generation through micro-credit activities, basic health care services, education, infrastructure development and other economic revival activities. Oxfam has also put in place a community peace-building program, a 'participatory bottom-up approach, based on the premise that people are the best resources for building and sustaining peace.'[113]The program focuses on strengthening and supporting civil society institutions; developing methods to resolve disputes through mediation and negotiation; and promoting peace education. The program is seen as 'an essential and complementary part of a wider strategy to secure a lasting national peace, including concerted measures to promote better governance, rural development, and the professionalization of policy and security services.'[114]

Following from this integrated approach, Oxfam has also become directly involved in issues of local governance, some of which are not related to the conflict. For example, an Oxfam policy document traces continuing violence and insecurity in Afghanistan to issues of land, water, and family disagreements. Family disagreements are arguably far removed from the core political issues of the conflict; Oxfam's focus on the family as a unit that needs to be transformed can be seen as an example of the extent of its involvement in local governance.[115]

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[111] Oxfam, *Afghanistan: Winning the Peace? The Tokyo Conference: a challenge to donors*, 31 January 2002 (accessed on 03. 04 10). *http://reliefweb.int/node/96705* ; p. 1

[112] Oxfam, *Afghanistan: Relief and Reconstruction*, 30 September 2002(accessed on 08. 09. 11). http://reliefweb.int/report/afghanistan/afghanistan-relief-and-reconstruction; p. 2

[113] Matt Waldman, *Community peacebuilding in Afghanistan: The Case for a National Strategy* (Oxford: Oxfam, 2008); p. 16

[114] Waldman, 2008; p. 5

[115] Waldman, 2008; p. 10

Similarly, for World Vision, the defeat of the Taliban, 'liberated [it] to follow [its] beliefs…to support the democratic process…it made [World Vision's] job easier.'[116] World Vision, operational only since the US-led invasion in 2001, focuses on programs for transformational development, local governance, and community empowerment.[117] Following from the developmental ideal type, WV notes that 'it is imperative that emergency programs be balanced with long-term, sustainable development…for example, the distribution of food must be paired with programming that will result in food security for the communities, including agricultural production, irrigation, improved roads and other infrastructure.'[118]WV also supports the GoA's National Development Strategy (NDS) and helps the government implement the BPHS. Other WV programs, most of which are funded and supported by USAID, include agricultural productivity and rural employment projects: a 'Building Food Security through Food for Peace' initiative; a 'Healing and Livelihood Initiative in Ghor', referred to in its abbreviated form as HEALING;[119] and a teacher training program under the Ministry of Education 'to replace the Taliban's restrictive system.'[120]

In contrast, MSF has made it clear that its presence in Afghanistan does not imply support for the process of regime change or state-building under the GoA. It does not work with the GoA, UNAMA or western military forces, and is opposed to the idea of trying to build coherence between the political, developmental, and humanitarian dimensions of international assistance.[121] Nicholas de Torrente, former director MSF-France,argues for example, that 'the implication of the coherence agenda is that meeting lifesaving needs is too limited in scope, and that the principles of impartiality, neutrality, and independence, that have typically characterized humanitarian action

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[116] Interview with Micheal Jurcic, World Vision Afghanistan, 2009.

[117] World Vision, *Afghanistan: World Vision Afghanistan Program Update,* 14 November 2003 (accessed 03.04.10). http://reliefweb.int/report/afghanistan/afghanistan-world-vision-afghanistan-program-update; p. 1

[118] World Vision, *Program update*, 2003; p. 1

[119] World Vision,*World Vision Afghanistan: USAID food for peace multi-year activity program*, 2008 (accessed on 07.03.12). http://www.wvfoodresourcesworkshop.com/Images/mmDocument/Afghanistan%20MYAP%20brochure%20-%20FINAL.pdf

[120] Interaction, *A Guide to Humanitarian and Development Efforts of InterAction Member Agencies in Afghanistan* (Washington: InterAction,2004) ; p. 78

[121] Michiel Hoffman, "Dangerous Aid in Afghanistan", *Foreign Policy Afpak Channel*, 12.01.11, (accessed on 09. 01. 12) http://afpak.foreignpolicy.com/posts/2011/01/12/dangerous_aid_in_afghanistan; p.1

should be set aside in order to harness aid to the 'higher' goals of peace, security, and development.'[122] However, taking such a political stand on the conflict is against MSF's 'role as a humanitarian agency', which is 'not to judge the reasons or objectives [of conflict] but rather the means used to carry it out.'[123] MSF has thus also distanced itself from INGO calls for the expansion of military forces for improved security.[124] MSF has however handed over a number of health facilities to the Afghan Ministry of Health, noting that the existence of a central government along with large pockets of instability that are beyond the purview of the government creates operational confusion for agencies.[125]

In 2004, MSF withdrew from Afghanistan after six staff members were killed. MSF argued that it could not operate while its staff were at risk, especially as the GoA allegedly knew the identity of the perpetrators but took no action.[126] In 2008, MSF decided to re-open operations in Afghanistan, arguing that as the post-conflict myth was quickly unraveling, there were medical needs that MSF could help address. It also argued that the Taliban seemed willing to open dialogue with neutral agencies, and this dialogue with the Taliban could provide the basis for access and providing for humanitarian needs.[127] In order to operationalize neutrality and appeal to both sides of the conflict, MSF decided to support two public hospitals - one in Kabul, where the GoA was in control, and one in Helmand, which was the strong hold of the insurgency. MSF is now perhaps the only organization that argues that humanitarian space in Afghanistan is increasing. Michel Hoffman, Head of MSF's mission in Afghanistan thus notes that 'MSF has been able to carve out operational space through regular, direct and transparent negotiations with all warring parties and through financial independence from western and Afghan sources.'[128]

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[122] Torrente, 2004; p. 3

[123] Xavier Crombé (with Michiel Hofman), "Afghanistan. Regaining Leverage" in Magone, Neuman and Weissmand eds. 2011; p. 1

[124] MSF, *MSF suspends activities in Zhare Dasht camp, Afghanistan*, 4 December 2003. (accessed on 07. 08. 12). http://www.doctorswithoutborders.org/press/release.cfm?id=495

[125] Crombé,2011.

[126] Interview with Michiel Hoffman, MSF, Head of Mission Afghanistan, 10 October 2009.

[127] Crombé,2011.

[128] Hoffman, 2011; p.1

The post-conflict framing of the situation in Afghanistan, which legitimated shifting from relief to reconstruction, was not accurate. Large parts of Afghanistan were still controlled by the Taliban , who provided basic security and social services. This has become increasingly apparent since the mid-2000s as the Taliban has gained an increasing foothold over Afghanistan and the focus of the international strategy shifted from nation building to counter-insurgency. Moreover, access and operational space are almost non-existent in the south, south-east, and parts of the west of the country.[129]

Yet, CARE, Oxfam, and World Vision still continue to advocate for, and conduct, programs based on the developmental and integrated ideal types. At the International Conference on Afghanistan , in Paris in 2008, INGOs urged donors to disperse more funds to the Afghan government, 'whose accountability and capacity must be strengthened.'[130]Oxfam, for example, 'was pleased to hear that the new US strategy for Afghanistan will support ministries, governors, and local leaders that deliver for the Afghan people and combat corruption.'[131] Thus, despite clear indicators that Afghanistan was not in a 'post-conflict' state, INGOs continued to call upon donors to ensure that their aid programs had the primary objective of supporting the GoA and nation building in Afghanistan.[132]

Similar to the Taliban period, developmental programs were linked to the broader goals of nation-building and institutional strengthening, reflective of the integrated interpretation of the humanitarian regime. Thus, for example, one way in which the focus on development programming is justified is by linking ongoing conflict with poverty; this argument then justifies providing development assistance in the midst of conflict. An Oxfam policy document argues, for example, that

> Oxfam's own experiences suggest that poverty focused aid - used preventively - supporting essential services, education, and livelihoods, delivered in ways that decrease the inequalities between groups, reduce resource competition, and provide

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[129] Donini,2009.

[130] Oxfam, *Afghanistan: Paris Conference must result in more and smarter aid to Afghanistan*, 11 June 2008. (accessed on 04. 01.12). http://reliefweb.int/node/269648; p.1

[131] Oxfam, *Afghanistan: Paris Conference,*2008.

[132] Oxfam, *Afghanistan: Development and Humanitarian Priorities,* (Oxford: Oxfam, 2008).

> alternative livelihoods for potential combatants - may promote peace and security in a way that short-term aid intended to buy political cooperation cannot.'[133]

Establishing this link between conflict and poverty allows agencies to focus on development programs even in the midst of the Afghanistan conflict, even while such programs might contribute to the war economy or legitimize a particular party to the conflict. Moreover, linking growing insecurity with poverty can result in the neglect of the broader political and social structures in Afghanistan that contribute to conflict, and an over-emphasis on individual and community capacity building as necessary for resolving conflict. As Adam Pain and Paula Kantor note, 'the symptoms of poverty - often translated by agencies into a lack of access to the market, lack of assets etc - have come to be seen as the causes of poverty, thus denying the underlying structural inequalities that might have created them. This reinforces the idea that poverty alleviation is the chief issue that needs addressing, and that improved security will result from such programming.'[134]

Contestation and its effects

The policies and practices of CARE, Oxfam, and World Vision – drawn from the developmental and integrated interpretations - contest the regime along similar lines as headquarter level policy. With development and peacebuilding seen as mutually reinforcing objectives, the function of humanitarian assistance shifted from providing palliative care through the provision of life-saving assistance to contributing to a process of nation-building in support of the GoA, and backed by the international community.Humanitarian aid was no longer provided according to the sole criteria of need, but how such aid can contribute to broader political objectives.

The framework for regime contestation noted how a regime can come to acquire a new meaning in practice, at the level of implementation, with outcomes and effects that further contribute to the contestation of the humanitarian regime. INGO programs, which involve deep engagement in development, reconstruction, governance, and peace-building, provide support for the GoA and

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[133] Oxfam, *Development and Humanitarian Priorities*, 2008; p.8

[134] Adam Pain and Paula Kantor, *Local Institutions, Livelihoods, and vulnerability: Lessons from Afghanistan* (London: Humanitarian Policy Group, 2012); p. 19

contribute to legitimizing its authority in Afghanistan. An INGO member thus noted that as INGOs engaged in development programs they also ' gave a credit of confidence for the Afghan government.' [135] Soon after the 2001 invasion, INGOs, as the previous section highlighted, were quick to align themselves with the process of regime change and the new Karzai government. While INGOs may argue that in 2001, it seemed like the Taliban had been defeated and Afghanistan was in a post-conflict state, thereby legitimating INGOs working with the GoA, this argument holds less traction by the mid-2000s as the Taliban assumed state-like functions in parts of Afghanistan and armed conflict and insecurity increased. Yet, INGOs continued to engage in development programming and thereby took a clear stand in the conflict. INGO support for the GoA thus has helped to legitimize the GoA, while at the same time contesting the principles of impartiality and neutrality as aid was provided in line with GoA efforts at nation building and regime consolidation.

This is especially the case in contested areas, where the Taliban rather than the GoA provides a majority of state-like functions. CARE, for example, implements programs in line with the NDF in contested areas, as in Helmand, where, it has put in place a multi-component agricultural livelihoods program to provide targeted training to improve agricultural practices and rehabilitate community and agriculture-related infrastructure. [136] It is important to note that the legitimacy of the GoA is strongly contested among the Afghan population, who recognize that the conflict is far from over. As Strand and Suhrke argue, 'villagers in many areas had few reasons to support the GoA, a government they considered non-representative…[villagers] also argue that there is no way of being certain that the Taliban does not come back to power' and therefore 'do not want to support the Karzai government more actively against the militants.'[137]

Paradoxically however, government officials note that INGOs resist coordination with the GoA, with numerous projects underway without the GoA's knowledge or consent. The Minister of Agriculture in Herat argued, for example, ' …there are a lot of NGOs working in agriculture yet very little coordination happens. There needs to be coordination with us. We just want to be in the

[135] Interview with INGO staff based in Kabul (telephone), February 2009

[136] Interview with INGO staff based in Kabul (telephone), February 2009.

[137] Suhrke et al., 2004.

picture.'[138] It is also worth noting that the focus of most INGO documentation on coordination is on developing guidelines for their interaction with UN or military actors, not the GoA. INGO positions on working with the government are thus contradictory as a post-conflict reading of the situation in Afghanistan, which has provided the justification for engaging in development and reconstruction, then also requires coordinating and working with local authorities.

INGOs defend their resistance to coordination with the GoA by staking claim to humanitarian principles i.e. to work under a local authority would violate humanitarian principles.[139] However, this too is contradictory as INGOs already contest the principles of impartiality and neutrality by supporting one party to the conflict. The emphasis on humanitarian principles while engaging in development programming might thus be seen as an attempt by INGOs to maintain organizational autonomy from the GoA, even while implementing programs in line with the GoA's development framework. It can also be seen as an opportunistic misuse of principles, as INGOs make use of humanitarian principles even while their programs extend beyond the provision of relief aid.

INGO resistance to coordination with the government also contests the provision in the legal regime about the primary responsibility for the provision of assistance falling to local authorities, as well as the provision that local authorities have a 'right to control' and supervise the flow of goods and services. Nicholas Leader and Haneef Atmar thus argue that that INGO resistance to working with the government 'smacks of wanting to have your cake and eat it too, for an agency to expand into development activities through accessing development funding that is only available because the government is internationally legitimate, but yet arguing that it cannot get close to the government for fear of losing its humanitarian neutrality.'[140]

INGO programs also helped legitimize the process of regime change. As noted in the previous section, INGOs frequently called upon international donors to invest more resources in the rebuilding of Afghanistan and securing sustainable political and social reform. On the other hand,

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[138] Minister for Agriculture in Herat quoted in Emelie Jelinek, *A Study of NGO relations with the Government and Communities in Afghanistan* (Kabul: ACBAR, November 2006); p. 11

[139] Jelinek,2006; Donini,2010;Shannon,2009.

[140] Leader and Atmar,2004; p. 183

INGOs did not engage with the Taliban referring to them as 'insurgents' and urging them to cease violence and engage in political dialogue.[141] CARE, for example, called upon donors 'to build the capacity of the Afghan government to assume strategic leadership for the country's reconstruction.'[142]OXFAM has also called for 'unified NATO command for all international forces in Afghanistan...[and] a new cross sector body...comprising the Afghan government, ISAF, the UN and an Afghan Independent Human Rights Commission to monitor and investigate civilian casualties. '[143]INGOs have thus taken a clear side in the conflict, and in doing so have also helped legitimize the invasion as the 'good war'.

INGO legitimization of regime change is also facilitated by the overlap between the goals and values of western donors and those of the INGO community in terms of building a stable democratic state that respects international human rights standards. The moral authority of INGOs thus helps legitimize these goals as necessary for improving the welfare of the Afghan people and not only the security of western states; the overlap between the goals of western states and INGOs thus helps provide support to the assumptions of a liberal peace framework.

INGO use of humanitarian principles to assert independence and organizational autonomy can also be observed through INGO interaction with the military, and especially the PRTs. INGOs argue that the provision of assistance by PRTs violates humanitarian principles.[144] However, INGOs own programs are in violation of humanitarian principles as they engage in development projects under the NDF, implement projects only in government-held areas, and refrain from dialogue with the Taliban. The INGO criticism of PRTs on the basis of humanitarian principles can thus be seen as an attempt by INGOs to distinguish themselves from the military and safeguard their autonomy. Thus, rather than principles being a means for INGOs to negotiate access with combatants, assuring combatants that they will not get involved in the political dimensions of the

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[141] Donini notes that Afghanistan is the only complex emergence where there has been no dialogue with one of the warring parties. Donini, 2009; p.8

[142] CARE, *Rebuilding Afghanistan: A Little Less Talk, a Lot More Action* (Washington: CARE, 2002); p.1

[143] Oxfam, *Development and Humanitarian Priorities*,2008; p. 18

[144] see for example: ACBAR, 2002; CARE, *Military 'Hearts and Minds' Operations Placing Ordinary Afghans and Aid Workers at Risk*, 27 November 2011 (accessed on 05. 06. 12). http://www.reliefweb.int/rw/rwb.nsf/db900sid/JBRN- 7LSKGA?OpenDocument

conflict, in Afghanistan they have become the means by which INGOs distinguish themselves from one set of combatants, even where there is a distinct overlap between their goals and programs.

Another important effect of INGO contestation of the humanitarian regime is the increasing threats to INGO security.[145] This has forced NGOs to reduce the number of projects and areas in which they work.[146]While INGOs attribute this to the 'blurring of lines' between military and civilian actors, their own programs and practices have also contributed to this. As mentioned above, they have taken a clear side in the conflict, abandoned the principles of impartiality and neutrality, and become directly involved in the process of nation building in Afghanistan. As participants in the conflict, they can thus also be argued to be legitimate targets in the conflict. As Kenneth Anderson argues once agencies become involved in post conflict reconstruction and state building, they must be willing to give up their claim to humanitarian inviolability. Humanitarian inviolability refers to the ability of relief organisations to provide humanitarian aid with the assurance that their personnel or property will not be attacked, which is based on the stipulation that their relief operations seek to address only essential human needs. [147]

Moreover, attacking aid workers has become a means for the Taliban to discredit the government, as attacks illustrate that the government is not in control of security and the maintenance of order; targeting aid agencies is thus a kind of de-stabilization measure.[148] A senior Afghan government official thus argued, 'aid agencies are being targeted because they deliver services for the government. NGOs increase the legitimacy of the government. The insurgents are not attacking NGOs, they are attacking the government.'[149]

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[145] As noted earlier, between 2006 and 2008 there were more than 90 recorded incidents of attacks on NGO workers. Stoddard, Harmer, and DiDomenico, 2009.

[146] CARE, *'Hearts and Minds' Operations*, 2008; Donini, 2009;Sippi Azarbaijani-Moghaddam, Mirwais Wardak, Idrees Zaman, and Annabel Taylor, *Afghan Hearts, Afghan Minds: Exploring Afghan Perceptions of Civil-Military Relations* (Kabul: ENNA & BAAG, 2008).

[147] Anderson, 2004

[148] Interview with INGO staff based in Kabul (telephone), February 2009.

[149] Senior Afghan Government official quoted in Azarbaijani-Moghaddam et al., 2008; p. 53.

The focus on INGO developmental programs has also increased the insecurity of local villagers involved in these programs. Agencies, for example, have placed an emphasis on 'alternative livelihood' programs to replace the reliance on poppy cultivation in the agricultural sector. However, because of the close links between the Taliban and narco-trafficking groups, the focus on alternative livelihoods has also increased the insecurity of local villagers participating in such programs. INGOs acknowledge that the alternatives on offer can reduce the immediate well being of beneficiaries, but that this will be offset by the indirect benefits of living in a peaceful and stable state.[150]

In contrast to CARE, Oxfam and World Vision, MSF has argued that 'it cannot substitute [itself] to political action without running the risk of losing [its] mandate.'[151]Moreover, unlike its position during the Cold War, MSF interprets humanitarian principles as operational rather than moral principles. For example, MSF operationalized neutrality by refusing to sign the joint INGO letter that urged expansion of the International Security Assistance Force (ISAF) beyond Kabul and by refusing to operate under the umbrella of UNAMA.[152] In contrast to the other agencies under study, MSF explicitly acknowledges that even strict adherence to humanitarian principles is not enough for obtaining access; rather, access will depend on a process of dialogue and negotiation with combatants, especially the Taliban, to demonstrate to combatants how the provision of humanitarian assistance will also bring them benefits. [153]

The case of MSF thus once again highlights that INGOs are not automatically programmed by their broader environment, that they have agency in interpreting and negotiating the environment as normatively purposive actors. Interestingly, MSF is frequently criticized among the INGO community in Afghanistan for its refusal to be partake in coordination mechanisms and information sharing initiatives. In contrast, MSF is noted to be one of the more trusted organizations among civilians and the Taliban, precisely because of the distance it maintains from

[150] Ian Christoplos, *Agricultural Rehabilitation in Afghanistan: Linking relief, development, and support to rural livelihoods* (London:Humanitarian Policy Group, 2004).

[151] Xavier Crombe and Denis Lemasson*, Is independent humanitarian action over in Afghanistan*? (Paris:MSF, 2009); p. 4

[152] Hoffman, 2009.

[153] Crombe, 2011; le Pape, 2011.

the political dimensions of the conflict.[154] The success of its approach is reflected in the fact that it is one of the few agencies that has been able to negotiate with the Taliban and access areas under its control.

Factors shaping INGO contestation

Following from the discussion in Chapter 2, INGO contestation of the legal regime for humanitarian assistance can be explained with reference to material or ideational factors, either external or internal to an INGO.

The first suggestion is that INGO contestation of the humanitarian regime is best understood in terms of the politicization of aid in line with donor objectives, the 'blurring of the lines' between civilian and military actors, and attempts to incorporate humanitarian assistance into the GoA's state-building efforts. These actors have shaped the nature of INGO programming in Afghanistan through the promise of material rewards and sanctions through for example, the earmarking of funds for certain kinds of activities, laying down a set of conditions that INGOs must comply with in order to be granted particular contracts, or establishing domestic legal frameworks to regulate INGO activity. Interestingly, this argument is often made most forcefully by INGOs themselves. INGOs have argued that humanitarian space in Afghanistan is shrinking, attributing this to the politicization of aid in light of western states' political and military objectives and the 'blurring of the lines' between military and humanitarian actors.[155]

However, this argument is inadequate in explaining CARE, Oxfam and World Vision's contestation of the regime as their programming did not qualitatively change from the Taliban-era. Chris Johnson argues, for example, that while 'the new political context has seen a re-definition of the architecture of international engagement...the extent to which this has reflected radical changes in either humanitarian need or the programmatic responses to that need remains much less clear.'[156]

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[154] Interview with Nick Stockton, 6 February 2009; Interview with Donini.

[155] see for example: Lara Olson, Fighting for Humanitarian Space in Afghanistan", *Journal of Military and Strategic Studies,* 9(1):2006.

[156] Chris Johnson, " Afghanistan and the 'war on terror'", in Macrae and Harmer 2003; p. 49

Thus, one might argue that the change in the operational environment post 2001 created a more enabling environment for INGOs to implement programs, based on a developmental and integrated ideal type, that had in fact already been conceived of when Afghanistan was under the Taliban regime.

This does not mean that INGOs were not influenced by donor funding allocations, contractual agreements with donor agencies, or the conditions attached to receiving funds; nor does it mean that INGOs were able to act entirely independently of the GoA, especially as donor funds were increasingly channeled through the GoA and projects then contracted out to INGOs.[157] Rather, the argument is that the overall *goals* and *objectives* of INGOs were not contradictory to what was expected of them by the GoA or donors - i.e. to help consolidate the new democratic government through development and reconstruction programs. Pressure from donors or the GoA thus did not result in the formulation of INGO policies or programming priorities; it might however have directed these programs towards certain areas or groups but this is not the same things as directing the goals of INGO programming.

It is also important to note that INGOs have resisted coordination with the GoA.[158] This runs contrary to the argument that INGOs were coerced into following the GoA's directive to implement programs in line with its state-building goals. The GoA places some restrictions on INGO operations - such as the INGO law - but INGO resistance to coordinate with the GoA suggests that they are able to exercise agency in circumventing the demands of the GoA.INGOs were also expected to work under the institutional direction of UNAMA. Interviews with NGO personnel, however, reveal a mixed picture about the influence of the integrated approach on NGO operations. UNAMA did not oversee the day-to-day NGO operations and most attempts at integration were rhetorical and limited to information sharing to prevent project overlap.Accordingly, NGOs had more operational freedom than the integrated approach intended.[159]

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[157] BAAG, *Aid and Civil-Military Relations in Afghanistan*, 20 November 2008 (accessed on 05.06.12). http://www.reliefweb.int/rw/rwb.nsf/db900SID/JBRN- 7LSJYT?OpenDocument

[158] Suhkre et al.2004.

[159] Interview with Robin Greenwood (phone),Head of Asia and Middle East Division, Christian Aid, 24 February 2009; Interview with Marit Glad Glad (phone) Advocacy Coordinator for CARE in Afghanistan, 18 February 2009.

Moreover, by 2007-8, it was also increasingly clear that Afghanistan could not be characterized as a 'post-conflict' state. With growing 'war fatigue' and rising insecurity, donors wanted to scale back their commitments and were willing to allocate greater funds for humanitarian assistance. However, CARE, Oxfam, and World Vision all expressed reluctance to switch back to a humanitarian mode,[160] and instead continued to advocate for greater funds for development assistance, and greater support to the Afghan government.[161] During the latter stages of the conflict, INGOs were in fact outspoken about the separation between humanitarian and development assistance in donor budgets, arguing that these needed to be merged together to provide longer term solutions.[162]

The second suggestion is that the contestation of the regime by CARE, Oxfam and World Vision can be explained by organizational competition amongst INGOs, and other actors providing aid, such as donor-backed PRTs and private contractors. The presence of numerous assistance actors and the consequent competition for donor funds thus created a competitive market place in which INGOs were rewarded for complying with donor demands and penalized for acting otherwise. This resulted in INGO organizational goal displacement as INGOs prioritized securing funds and contracts over meeting humanitarian needs and abiding by humanitarian principles. Inter agency competition is compounded by the short-term nature of contracts, and the consequent need to demonstrate organizational efficiency to donors. For example, an INGO staff member highlights, 'Frenzy for donor funds in early 2002 saw hundreds of new NGOs setting up shop with little to offer beyond a signboard and a proposal. Some were entrepreneurial NGOs who understood donor needs to spend more money quickly.'[163]

However, as noted earlier, Oxfam, MSF and World Vision are mostly privately funded, receiving no more than a quarter of funding from donor agencies. Inter-organizational competition for donor funds thus cannot alone explain the programming goals and objectives of these INGOs. Of the four

[160] Donini, 2003.

[161] ICG, 2011.

[162] Featherstone, 2012.

[163] O'Brien 2004;p. 191.

under study, CARE is the only one that is heavily reliant on USAID or the US government. It is therefore most susceptible to donor pressure and the effects of this competitive marketplace. However, even in the case of CARE, it is not that the competitive market place resulted in the identification of programming priorities. It might have shaped the strategies through which CARE sought to accomplish its programming goals, but this is not the same thing as the identification of those goals in the first place. As noted in the previous section, these programming goals were in fact the same as when the Taliban was in power, and were in line with CARE's headquarter level policies.

The competitive market place might have shaped INGO strategies, creating both constraints and enabling conditions, for achieving goals that were already identified prior to the existence of these market conditions. Stockton thus notes that while post 2001 there were changes in the patterns and volumes of aid, 'the things that agencies do, the way they go about defining their objectives, establishing frameworks of accountability....has not changed at all.'[164] Thus, while not disputing the effects of a competitive market place on INGO behavior, the market place did not create or define INGO programming objectives. As a result of the competitive market place, there was greater jostling between actors to secure funds for their already formulated program objectives.

One might argue that this argument does not hold in the case of a number of pop-up INGOs that came up specifically in response to the US-led invasion. The INGOs under study here are responsible for programming the bulk of humanitarian resources among the INGO sector, in many cases more than some donor ministries. Their organizational survival is thus not dependent on securing each and every contract that comes their way; they have the capacity to evaluate which donor funded programs fit best with their organizational goals. An INGO worker interviewed for this study notes, for example, '...as a well known INGO, we find it easier to resist donor pressure...our reputation among donors gave us space to advocate among donors to keep funding open for humanitarian programs.'[165]Donini's argument that 'multi-mandate NGOs with large

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[164] Stockton, 2004 ; p. 24

[165]Interview with INGO staff based in Kabul (telephone), February 2009.

donor-funded programs are torn between principle and institutional survival'[166] thus does not seem to hold in the case of these INGO giants; while funding for specific projects might have been at stake, it can hardly be argued that 'organizational survival' was the imperative driving INGO action.

Finally, the argument about organizational interests suggests that INGOs follow a logic of consequences based on the pursuit of a set of organizational interests. However, this assumes that INGOs have a fixed set of interests, that remain stable across contexts, and which particular policies either help further or challenge. However, neither of these need be the case. O'Brien highlights, for example, how it might be in an INGO's interest to comply strictly with the humanitarian principles of impartiality and neutrality, conceiving of the function of aid only in terms of the provision of life-saving relief assistance. He thus argues,

> ' Sticking with traditional humanitarianism does not necessarily make bad business sense... The World Bank, for example, wants to create a competitive environment for the provision of social services and doesn't see the Afghan government taking nationwide responsibility for education, health, food security and shelter provision any time soon. If NGOs can mount competitive bids to provide these services, they could get these contracts. It may well be that NGOs who hear nothing, see nothing, say nothing, but do plenty will thrive.'[167]

INGO policies and practices cannot be understood without reference to the broader political, institutional, and normative structures in which they were embedded, both globally and in the context of Afghanistan. Following the attacks on September 2001, eliminating terrorism and rescuing failed states was seen as necessary for international peace and security. Shock and outrage among western publics over these attacks created a normative environment that supported these political objectives. Embedded in a post-Cold war liberal structure, which articulated standards of legitimate statehood and good governance, most INGOs thus accepted externally led regime change as representing an opportunity for progress. Agencies also felt pressure to respond to the high level of media coverage of Afghanistan and for their actions to be perceived as legitimate by western publics on whom relied on for financial support.[168]

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[166] Donini, 2009; p.4

[167] O'Brien,2004 ; p. 199

[168] O'Brien, 2004; Costy,2004; Cooley and Ron, 2002.

The rush to secure funds and support the Karzai regime can also be seen as INGOs responding to isomorphic pressures that come from belonging to a community of practice. Thus, once some NGOs set up operations in Afghanistan, others soon followed as this was constructed as legitimate action within the broader INGO community of practice. The status and reputation of a single NGO was tied up with conforming to the activities of the community at large, thereby encouraging mimetic behavior.

However, as has been argued elsewhere, INGO policies and practices cannot be reduced merely to the effects of these broader environmental factors. INGOs have been part of the construction of this environment as they defined the function of humanitarian assistance in terms of 'working on conflict.' Moreover, as the discussion in previous sections highlighted, INGOs have in multiple instances lead debates and advocacy on the contribution that aid can make to bringing stability and development to Afghanistan. The INGOs under study - Oxfam, CARE, World Vision and MSF are also the clear leaders in the INGO sector and it therefore seems unlikely that their actions would be determined entirely by legitimacy concerns within the broader INGO community of practice. Moreover, aside from World Vision, the other three INGOs were all present prior to regime change in 2001.

The case of MSF most explicitly illustrates how INGOs are not programmed by these broader structures. Despite the overwhelming consensus among western donors, the UN in Afghanistan, the GoA, and other international NGOs and advocacy groups, MSF chose not to support the process of regime change or the new government of Afghanistan. It maintained a clear distance from UNAMA and did not participate in coordination meetings and, unlike other INGOs, it opened dialogue with the Taliban, providing aid to both sides of the conflict. The case of MSF thus also suggests that there exists multiple normative environments and referents for legitimate acton in international society, and INGOs can and do chose between the environments through which they define and legitimate their actions.

INGO identity, its conception of its role and social purpose, and how it understands itself as different from other actors, can help understand how INGOs exercise agency within these broader

normative and institutional structures. Chapter 3 demonstrated that CARE, Oxfam, and World Vision see their role and social purpose as agents of change, helping build stable and just societies, based on strong community level structures, respect for human rights, access to markets, and a representative government. They do not see themselves as only responsible for the provision of palliative care. This follows from their conception of the role and social purpose, as actors defined by a specific set of norms and beliefs. This role and function is institutionalized in INGO mandates, which then provide directives for action. INGO conception of their role and social purpose explains the continuity in INGO polices from the time of the Taliban to post-regime change, despite changes in the external material environment. It also helps explain INGO support for regime change.

INGO conceptions of their role and social purpose also meant that there was an overlap between INGO goals and those of donors and the GoA. For example, CARE in 2004 justified taking funds from the US, a belligerent in the conflict, on the basis that the intervention shared the same objectives of relieving the suffering of the population and tackling the root causes of poverty. [169]Thus, the fact that INGOs implement programs in line with donor or GoA interests is not a reflection of the politicization of aid, but the overlap in their goals, which follows from INGO conception of their social purpose, their sense of moral responsibility, and the kind of action they consider appropriate for themselves as particular kinds of actors. Thus, as Hugo Slim notes, both INGOs and western donors ' claim to know what is best for people and to improve their lives accordingly…it is not just a case of politicization, or the cynical instrumentalization of humanitarian action [but] rather it is a case of genuine moral overlap.'[170] In the case of MSF, its focus on relief assistance and its decision not to get involved in issues of justice and statebuilding followed from its conception of its role and function.

INGO 'role' and 'social purpose' are a necessary part of the explanation of how INGOs contest the legal humanitarian regime at the level of implementation in Afghanistan. This role and social purpose is institutionalized in INGO mandates, leading thereby to a situation in which INGO attempts to implement their mandates contributes to a contestation of the humanitarian regime.

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[169] Collinson and Elhawary, 2012.

[170] Hugo Slim, "With or Against? Humanitarian Agencies and Coalition Counter Insurgency", *Refugee Studies Quarterly* 23(4):2004; p. 12.

Implementing in line with a mandate is an organizational interest as for example it demonstrates INGO accountability, which is necessary for continued financial support from the public and donors. However, implementing a mandate is also, as noted earlier, an act of self-constitution, a practice that helps re-constitute INGO identity.

The argument that INGO contestation of the regime was driven by INGO mandates as opposed to changes in the operational conditions is also supported by reports which highlights that INGO programs suffer from poor conflict analysis and a reluctance to engage in comprehensive risk analysis. Such analyses would reveal, as Ian Christoplos argues, 'the deep structural nature of the challenges facing [civilians], and thereby demonstrate the limited extent to which modest project interventions can modify the context of their vulnerability.'[171] The argument about the importance of mandate is also supported by reports which suggest that INGO activities reflect their own programming priorities rather than the needs on the ground.[172] An Oxfam policy document notes, for example, that 'existing measures to promote peace in Afghanistan are not succeeding. This is not only due to the revival of the Taliban, but also because little has been done to try and ensure that communities, and tribes - the fundamental units of Afghan society - get on better with each other.'[173] However, almost all analyses of Afghanistan locate the sources of conflict in political conflict between various actors and a contest about the future nature of the Afghan state. Oxfam nonetheless continues to focus its programs at the community level and building individual capacities, reflective of its own goals and program design.

INGO contestation of humanitarian principles is another instance where the effects of identity in driving contestation can be observed. The fact that INGOs refer to the humanitarian principles of impartiality, neutrality, and independence when discussing their relationship with the military and the GOA but not when discussing their own programs, suggests that humanitarian principles are a means through which INGOs seek to distinguish their identity from military actors and the GoA.

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[171] Christoplos, 2004; p. 49

[172] see for example: Walter Mayar, " Exotic Birds in Cage:Criticism grows of Afghanistan's Bloated NGO Industry",*Der Spiegel,* 22 September 2010 (accessed on 08.01. 12). http://www.spiegel.de/international/world/exotic-birds-in-a-cage-criticism-grows-of-afghanistan-s-bloated-ngo-industry-a-718656-2.html

[173] Oxfam, *Development and Humanitarian Priorities*, 2008; p. 28

This is in contrast to the legal regime, where principles are a means through which agencies negotiate access with combatants. INGOs define their identity in opposition to state actors and the military; this is part of the ontology of an INGO as a non-governmental actor. Thus, even while there might be an operational overlap, for INGOs to be seen as working with the military or government is a fundamental challenge to their identity. They thus resist coordination and coordination with these actors, even while they might be engaged in the same projects, derived from the same funding lines.

The manner in which INGOs use humanitarian principles also suggests that their contestation of the regime in Afghanistan is driven by a concern to maintain organizational autonomy. This explains, for example, the inconsistent use of humanitarian principles even while they are engaged in developmental and peace-building activities. Donini suggests, for example, that there is also 'a degree of opportunism here. NGOs are happy to fudge the issue. They define themselves as humanitarian and development actors when it suits them.'[174] This observation provides support for the argument that INGO contestation is driven by organizational interests, informed by a logic of consequences.

However, 'independence' from states is a constitutive feature of INGO identity. INGOs argue that independence is necessary for meeting humanitarian needs. Yet, this connection between independence and needs is neither automatic nor necessary. Thus, even while INGOs claim that the emphasis on independence is informed by a logic of consequences, independence is also a defining feature of INGOs conception of themselves. INGOs cherish their autonomy, as David Rieff argues,because it allows them to make decisions according to their specific mission or mandate.[175]

MSF did not contest the humanitarian regime in the post-2001 period insofar as the function of humanitarian assistance was to provide palliative care through the provision of life-saving health services. In cases where MSF established more permanent health services, it operationalized neutrality by establishing these services in both GoA and Taliban areas; neutrality was thus seen as

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[174] Donini and Minear, 2006; p.6

[175] David Rieff, " Afterword", in Magone et. al, 2011.

an operational principle rather than a moral principle, and the basis on which MSF negotiated access with combatants. MSF is not dependent on donors for funds, nor does it work under the UNAMA umbrella. Its programming decisions do not reflect external pressures from the environment but its conception of its role and responsibility as a particular kind of humanitarian actor. MSF's practices in Afghanistan are also shaped by a desire to remain distinct from the political actions of states, defining its identity and social purpose in terms what it is not, i.e. in opposition to the political interests of states. Its practices in Afghanistan are thus reflective of what it considers appropriate for itself as a particular kind of actor.

MSF's policies are also based on a logic of consequences, as for example,the manner it understands humanitarian principles.Impartiality,neutrality,and independence are seen as necessary conditions for negotiating access with the Taliban and maintaining access to civilian populations. However, as MSF own documents note, there is often a trade-off required between maintaining access and 'speaking out' on the behalf of victims, even where both of these options represent organizational interests. The decision to opt for one organizational interest over another, access over 'speaking out', is based on what MSF considers its responsibility as a humanitarian actor. Thus, even while MSF's policies and practices in Afghanistan post-2001 did not contest the legal regime in line with a solidarist, developmental, or integrated ideal type, this cannot be explained without reference to the constitutive norms and rules that define MSF's identity and social purpose.

Notably absent from INGO programming post 2001 is the solidarist ideal type. This is arguably because of the overlap between the goals of INGOs, and those of the GoA and coalition forces, in terms of the development and governance of Afghanistan. Moreover, raising concerns about rights violations by the GoA would have resulted in a loss of INGO operational space.The tendency among INGOs, as mentioned earlier, seems to be implement as wide a range of programs as possible, in line with their mandates, prioritizing thereby the developmental and integrated ideal type over rights concerns.

IV.Conclusion

This chapter highlights how CARE, Oxfam, and World Vision have contributed to the contestation of the legal regime for humanitarian assistance in Afghanistan as they have implemented programs based on solidarist, developmental, and integrated interpretations of the legal regime. These programs contested the legal regime along the same lines as headquarter-level policy. However, at the level of implementation, INGO programs can acquire a new meaning or significance contributing to effects and outcomes that further contest the regime. The solidarist ideal type was the most prominent during the Taliban era, as INGOs were opposed to the nature of the Taliban's rule and the restrictions placed on their operations by the Taliban. The solidarist ideal type was notably absent post-2001, as INGOs shared the same goals as the GoA and the Coalition partners in terms of state building in Afghanistan.

During the Taliban era, INGO policies for Afghanistan contested the function and scope of the regime as they sought to use aid to change the behavior of the Taliban. Based on a solidarist interpretation of the legal regime, INGOs thus attempted to make humanitarian assistance conditional on the Taliban's improved treatment of women. Programs based on a developmental and integrated interpretation of the regime often did not get past the planning stage and were implemented in an ad-hoc manner. While this is partly attributable to the lack of donor funds, it also reflects INGO apprehension about how they should engage with what they considered to be an illegitimate regime. These programs thus tended to be mostly focused on rural areas, away from the Taliban's seat of power. The Taliban nonetheless permitted INGO programs as they allowed the Taliban to consolidate and extend its rule over Afghanistan and build local legitimacy through INGO goods and services.

Following the US-led invasion of Afghanistan in 2001, CARE, Oxfam, and World Vision explicitly adopted a developmental and integrated interpretation of the regime, justified in terms of a 'post-conflict' framing of the situation in Afghanistan. Regime change in Afghanistan thus permitted INGOs to implement programs that had been designed during the Taliban period, but which they had been unable to implement because they did not consider the Taliban to be a legitimate

authority and the lack of donor funds. The policies and practices of CARE, Oxfam, and World Vision thus contested the function and scope of the legal regime as humanitarian assistance was seen not as a form of palliative care, but a means to re-build and transform the Afghan state under the GoA. Assuming the Taliban had been defeated, INGOs aligned themselves with UNAMA and the GoA, and many began to undertake development projects for the GoA as 'implementing partners'. This also made INGO participants in the conflict, placing them on the side of the Government of Afghanistan and the Coalition forces, and in opposition to the Taliban. As a result, INGOs were denied access to parts of Afghanistan under Taliban control. INGO programs also made them legitimate targets in the eyes of the Taliban and contributed to increasing attacks INGO staff. Moreover, even where INGO programs have been subordinated to the political and strategic objectives of the GoA and the Coalition forces, this has been facilitated by the overlap between the goals of INGOs, western donors, and the GoA. INGOs can thereby be said to have participated in their own politicization in Afghanistan. INGO policies have arguably also helped legitimize both regime change and the GoA.

CARE, Oxfam, and World Vision also contest the function of humanitarian principles in Afghanistan. Rather than humanitarian principles being the basis on which INGOs negotiate access with combatants, they are the primary means through which INGOs distinguish their operations from those of the military. Humanitarian principles have also been used as a means to assert INGO independence and autonomy from the GoA. This reflects the opportunistic misuse of principles as INGOs use humanitarian principles to safeguard an independent humanitarian space even when their programs extend far beyond the provision of humanitarian assistance. This argument is supported by the fact that at the level of policy, advocacy, and rhetoric, INGOs call for increased support for the GoA, but at the level of practice, they are reluctant to coordinate with the GoA, arguing that this will compromise the impartiality and independence of programs.

This chapter has also shown that MSF, post 2001, did not contest the function, scope, and operating principles of the regime. The function of humanitarian assistance was seen in terms of palliative medical assistance.Importantly, MSF is, as mentioned earlier, one of the few organizations that argues that humanitarian space is increasing in Afghanistan. MSF argues that

this is because it has not taken a side in the conflict, and has consciously maintained a distance from UNAMA, GoA and western donors and their military operations. This argument is supported by external commentators. For example, Donini argues that the ICRC and MSF approaches have demonstrated that in active war situations such as in Afghanistan, building trust around rigorous neutrality and independence with all sets of belligerents is the only viable approach.[176]

Finally, this chapter also highlights that INGO contestation of the humanitarian regime cannot be understood without reference INGO role identity and social purpose, articulated in their mandates. INGO contestation cannot be explained by reference to external factors alone - such as the role of western donors and the GoA, or INGO attempts to secure their respective organizational interests in a competitive market place. The highly politicized aid environment in Afghanistan, the focus in western capitals on defeating the Taliban and stabilizing the country, the GoA's need to legitimate its authority, the competitive aid marketplace, and western media coverage all created constraints and opportunities for INGOs and shaped the strategies available to them. However, it cannot be said that these factors determined INGO goals; INGOs programming goals for development, governance, and rights issues were formulated prior to the invasion of 2001, followed from INGO mandates, and were consistent INGO conception of their role and purpose in Afghanistan and their headquarter level policies.

INGO policies and practices must be situated in a broader liberal context, where conflict is linked to underdevelopment and aid is seen as one answer, and where aid actors are expected to work in conjunction with political actors towards a coherent response to political emergencies. Situating INGOs within this broader context, as actors constituted and shaped by it, does not however mean that INGO identity and agency can be reduced to this context. Rather, INGOs have agency in how they negotiate, reproduce or circumvent this environment. They are, as noted earlier, normatively purposive actors, and in choosing the kind of effects they wanted to bring about in Afghanistan, they were shaped by , as well as defining, their role and purpose in the conflict.

[176] Interview with Donini, 2009

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CONCLUSION

International NGOs are the chief operational agencies of the international humanitarian regime. They are at times the only source of emergency relief to victims of conflict, able to access areas that are beyond the bounds of the UN or other external agencies. They are responsible for programming the bulk of international humanitarian resources, with budgets often larger than local government ministries. Yet, the injection of resources can alter the balance of power among combatants, the capacities of local actors, and the social and political dynamics of the conflict space. INGO influence also extends beyond the direct provision of goods and services to influencing broader normative structures in international society, as norm entrepreneurs who influence the policies of states and international organizations. INGOs are also central to the creation and functioning of a global civil society, and their programs and advocacy are typically assumed to advance the aspirations of a solidarist international society based on progressive liberal norms.

The literature on the international humanitarian regime does not however systematically analyze the agency of INGOs in shaping the meaning and functioning of the legal humanitarian regime. The literature tends to focus on how more powerful actors - donors, combatants, or the military, are able to use material rewards and sanctions to direct the provision of aid in line with their political and strategic interests.[1]Other accounts note that INGO behavior is shaped by organizational interests, in terms of securing funding in a competitive aid-market place. The growing bureaucratization and professionalization of INGOs means that they operate like firms in a market, competing to gain and sustain market shares. [2]

[1] see for example, Antonio Donini ed.*Golden Fleece: Manipulation and Independence in Humanitarian Action* (Kumarian Press, 2012); Duffield, 2007; Leader,2000.

[2] see for example, Stephen Hopgood, “Saying "No" to Wal-Mart? Money and Morality in Professional Humanitarianism” in Barnett and Weiss, 2008; Barnett, 2012).

The focus of these accounts thus tends to be on the opportunities and constraints emanating from the external environment and how this shapes INGO behavior; thus, while they recognize the importance of INGOs, the starting point of analysis remains the external environment. This thesis has attempted to fill this gap by focusing on the agency of INGOs in shaping the nature and functioning of the legal regime for humanitarian assistance in political emergencies. It has thus examined the often neglected side of the relationship between actors and structures, focusing on how INGOs shape the meaning and outcomes of the humanitarian regime through their understanding and practice of the regime. It has sought to illustrate how INGOs *themselves* contribute to the contestation of the legal humanitarian regime, as opposed to being passive organisations at the mercy of external pressures and interests.

INGOs in thesis are conceptualized as social actors whose identities and interests are constituted through their participation in the broader normative and institutional structures in which they are embedded, through their interaction with other actors and their participation in structures of collective meaning. Yet, neither their identity, interests, nor behavior can be reduced simply to the effects of these structures. The agency of actors must necessarily be situated in a social context and is dependent on its structural positioning, but this does not mean that actors are the same as structures, reducible to the effects of structures. Rather, it is possible to study the agency of actors within a particular social context, even while they are shaped by that social context. INGOs are reflexive actors, with the capacity to reflect on,negotiate, and circumvent their environment. Moreover, INGOs are normatively purposive actors, whose identities are constituted not only by the environment, but by their own actions. In choosing the kinds of effects they wish to bring about, INGOs also define their identity; they thus engage in a process of self-constitution through their actions. Finally, to deny INGO agency is also contradictory to attempts to hold them responsible for the outcomes and effects they bring about as they are engaged in the provision of assistance.

As regimes are typically not dependent on the understandings or practices of a single actor, and as different actors might differ in their understandings and practices, regimes can be said to be

contested. Moreover, as noted in the introduction, this contestation, in the case of the humanitarian regime, is not just a question of confusion over the concepts and provisions in the legal regime, but is of a fundamentally political and moral nature, driven by the beliefs and interests of relevant actors, with actors actively engaged in trying to persuade others of the correctness of their interpretation.The use of a contestation lens helps highlight that the meaning of the legal regime is not stable or fixed, and that the contests over the correct application of the regime are of a fundamentally political and moral nature that cannot necessarily be resolved by reference to empirical evidence alone.

This thesis thus interrogated how INGOs contribute to this contestation of the legal regime for humanitarian assistance and the effects of this contestation. The processes of INGO interpretation and implementation of the legal regime provided two empirical access points to study this contestation. Chapters 3 and 4 thus examined the manner in which CARE, MSF,Oxfam, and World Vision have interpreted the regime, referencing their histories and current policy frameworks. Chapters 5 and 6 examined INGO implementation of the legal regime in Sri Lanka and Afghanistan, from 1990-2010.The thesis also identified the factors shaping INGO contestation, focusing specifically on the role and effects of INGO identity.

I. Key contributions of thesis

The thesis has two key sets of contributions, one theoretical and one pertaining to the role of INGOs for the functioning of the humanitarian regime. The *theoretical* contribution pertains to the conceptualization of regimes and the framework for regime contestation. This contributes to existing literature by highlighting first, how regimes are not static and stable entities but flexible with actors understanding and practices of the regime. Second, it draws out the centrality of actors in shaping what a regime is and how it functions, highlighting thereby the often neglected side of the relationship between actors and structures. Third, it demonstrates that institutionalization and implementation are two distinct processes that cannot be conflated; the meaning of a regime can alter once again at the level of implementation as the regime encounters new actors, interests, beliefs and perceptions. Finally, it also suggests that the relationship between regimes and and

actors cannot solely be understood in behavioral terms, where the regime produces either compliance or violation; rather, actors also shape the meaning of the regime and thus do not simply comply with or violate the regime, but re-make the regime.

The framework for regime contestation reflects some of the insights provided by critical constructivists who focus on the meaning of norms as constituted by and constitutive of specific use, focussing specifically on the intersubjective nature of norms. Yet, it departs from these approaches by bringing in the role of actors as giving norms particular meanings. While critical constructivists do not deny the importance of actors and conceptualize them as existing in a reflexive and mutually constitutive relationship with structures, the tendency is to frame actor identities and capacity exclusively as the effects of structure, sidelining thereby their individual agency. While this framework is based on Antje Wiener's discussion of norm contestation, it differs from Wieners work as the focus is on uncovering the processes and effects brought about by a particular set of actors as they contest the regime rather than the structural conditions that contribute to norm contestedness.

The second contribution pertains to the *role of INGOs* in shaping the meaning and functioning of legal regime for humanitarian assistance. The thesis demonstrates that INGOs have agency in shaping what the regime means and the outcomes it produces. It conceptualizes INGOs as normatively purposive actors, capable of shaping, negotiating, and circumventing their environment. INGO identities and interests must be situated within this broader environment, but this does mean that their identities and interests are mere effects of this environment. INGOs are also not merely pawns whose actions are determined by the interests of more powerful actors. Neither can the manner in which INGOs understand and implement the regime be explained solely in terms of their 'hard' organizational interests, such as the need for funds and visibility. Instead, this thesis argued that INGO identity is a necessary factor in explaining how INGOs understand and implement the legal regime. The arguments in this thesis also add specificity to understanding the interaction between INGOs and the legal regime by identifying the processes of INGO interpretation and INGO implementation. Examining the nature and content of these processes

allows for a more concrete understanding of the role of INGOs as providers of humanitarian assistance than is currently provided in much of the literature.

II. Two opportunities for contestation

Legal regimes, such as the humanitarian regime, are not static or fixed structures that exist independently of their relationship with actors; neither do they automatically direct actor behavior towards compliance or violation. Rather, regimes are dependent on actors' understandings and practices of the regime, i.e. their interpretation and implementation of the regime. Actors first have to interpret the provisions of the legal regime, and this process of interpretation can result in a change in the meaning of the legal regime. INGO interpretations of the legal regime thus provide the first empirical access point to examine INGO contestation of the legal regime. The meaning of the regime however can change once again at the level of practice, as INGOs negotiate the beliefs, perceptions and interests of actors in a particular operational context. Implementation is thus a distinct process from policy formulation and institutionalization, and provides the second access point to examine INGO contestation of the regime, and the effects of this contestation. INGO contestation has both constitutive and causal effects for the regime as it alters the meaning of the legal regime, and as it shapes the manner in which the regime functions and the outcomes it produces.

Interpretation

Chapters 3 and 4 examined the manner in which CARE, MSF, Oxfam, and World Vision have interpreted the legal regime from the Biafran crisis to the present day, and how these interpretations translate to concrete policy goals and objectives. INGO interpretations of the function, scope, and operating principles of the legal regime for humanitarian assistance can be categorized into three ideal types - solidarist, developmental and integrated humanitarian assistance. These ideal types can be both complementary and contradictory, and the manner in which they are combined or reconciled can be different at the level of policy and practice. Yet, these ideal types constitute what the humanitarian regime has come mean as it is interpreted by

INGOs, and thus delineate the broad contours of legitimate humanitarian action for INGOs. These ideal types shape in varying degrees and combinations the current policy frameworks of the INGOs under study. As INGO policies are based on these ideal types, their policies also help institutionalize these ideal types as defining the meaning of the legal regime. Moreover, as these interpretations are institutionalized in joint INGO guidelines and accountability frameworks, they shape actor expectations, set benchmarks and standards for evaluation, defining thereby the terms of legitimate humanitarian action.

A great deal of continuity and similarity was found in the interpretations held by CARE, Oxfam, and World Vision, both historically and in current policy frameworks. All three have adopted a rights-based approach to humanitarian assistance, linking the function and scope of humanitarian assistance to poverty alleviation and the creation of just and peaceful societies based on respect for human rights and democratic institutions. Moreover, for all three, humanitarian principles are seen as a means to distinguish themselves from political actors rather than the basis on which they negotiate access with combatants. Departing from the legal regime, humanitarian principles are not imposed on INGOs by combatants,as the terms on which combatants might grant INGOs access, but conceived as moral and operational principles that define the terms on which INGOs are willing to provide assistance.

Yet, there also are some differences in the manner CARE, Oxfam, and World Vision combine and prioritize these ideal types. Thus, for example, CARE has an explicit focus on peace-building, reflective of the integrated ideal type, whereas for Oxfam, peace-building is not a stand-alone program but follows from its focus on social justice and poverty alleviation. For World Vision, peacebuilding is a necessary component of its programs for the material and spiritual transformation of societies. These differences in how Oxfam, CARE, and World Vision conceive of peacebuilding are argued to follow from constituent features of their identity, their founding beliefs, and the manner in which they distinguish themselves from other political actors.

MSF stands apart from these INGOs. It was a norm-entrepreneur in introducing the solidarist interpretation of humanitarian assistance. In its formative years, MSF defined the function and

scope of humanitarian assistance in terms of 'bearing witness' against rights violations and promoting justice. Neutrality was conceived of as a moral principle that necessitated taking the side of victims of armed conflict, and in some cases MSF called upon western states to take military action to address the conflict. However, from the mid-1990s onwards, especially post the Rwanda crisis in 1994, there was a gradual shift in MSF's policies as it defined its humanitarian responsibility not as a 'doctor-witness', but as an 'aid-worker'. It thus dropped the focus on rights concerns, and defined neutrality as an operational principle required to negotiate access with combatants. MSFs policies are now closer to the provisions in the legal regime as the function and scope of humanitarian aid is limited to the delivery of emergency medical services as a form of a palliative care alone; it does not seek to be part of a long term political solution to conflict, arguing that this extends beyond its responsibility as a humanitarian actor and allows politicians to obfuscate their political responsibilities.

However, MSF remains ambivalent about the conditions under which it might still be appropriate to base its policies on a solidarist ideal type, about the extent and manner in which humanitarian assistance should be situated within a broader framework of justice, and the conditions under which it is acceptable for MSF to bring rights violations to the attention of the international community. Moreover, while recent MSF policy documents emphasize the importance of negotiation with combatants based on adherence to humanitarian principles, MSF also employs humanitarian principles to define the terms and conditions on which it is willing to provide assistance. MSF's emphasis on 'bearing witness' also provided the basis for the rights-based approaches adopted by other agencies, institutionalized in joint INGO frameworks such as the Sphere Standards, contributing thereby to the re-definition of understandings of the legal regime around a solidarist ideal type.

Implementation

In both Afghanistan and Sri Lanka, the policies and practices of CARE, Oxfam, and World Vision followed from their headquarter-level policy around the solidarist, developmental and integrated ideal types. Humanitarian assistance was seen as a form of conflict and societal transformation,

with programs for protection, development, and peacebuilding, justified as necessary for meeting humanitarian needs. The solidarist interpretation of the regime was found to dominate when INGOs were opposed to the nature of the ruling regime and when they faced restrictions on implementing programs in line with their mandates. Moreover, while at the level of policy a solidarist ideal type seems most complementary to the provisions in the legal regime, the application of a solidarist ideal type at the level of practice can be perceived as the most direct interference in conflict. While at the level of policy, a rights based approach to humanitarian assistance was the justification for development and peacebuilding programs, at the level of practice it was also found that the solidarist and developmental programs often had with competing imperatives, as advocacy on rights violations had effects on INGO access and operational space to conduct developmental programs.Despite the stated commitment to a rights-based approach, INGO often prioritized access and operational space to implement development and peace-building programs; the tendency among INGOs was to implement as wide a range of programs as permitted by local authorities. Programs following from the developmental and integrated ideal type were seen as mutually reinforcing, with development programs linked to the broader goals of peace-building, and peace-building seen as necessary for combating poverty.

The meaning of a regime however can shift at the level of practice as INGOs negotiate with local actors, their interests, beliefs and perceptions, leading to effects and outcomes distinct from those envisaged by the legal regime. Thus, at the level of implementation, in both Afghanistan and Sri Lanka, INGO policies and practices helped legitimize particular combatants in the conflict, and made INGOs participants in the conflict. INGO policies and practices also blurred the lines between domestic and international governance, challenging the sovereignty of the state or the authority of local authorities. Moreover, as a result of these practices, INGOs were not perceived as independent or neutral actors, and even seen as agents for western donors. INGO policies and practices, by reconceptualizing the function and scope of the humanitarian regime in terms of transformative care thus violated two essential provisions in the legal regime pertaining to respect for state sovereignty and non-interference in the conflict. For the most part, the effect of such contestation was greater difficulties in accessing and providing assistance, an increasingly hostile relationship between INGOs and combatants, and threats to INGO security. Paradoxically, these

policies and practices did not contribute in a significant manner to development and peace-building, and in some instances, even had deleterious consequences. INGO advocacy to the international community similarly resulted in restrictions in access to civilian populations.

In both Afghanistan and Sri Lanka, the restrictions on access and threats to INGO security followed from the interests of combatants; however, combatant interests were not given *a priori*, but formed and identified in the process of interaction with INGOs. The manner in which INGOs contested the regime was thus not a distinct process from the formation of combatants' interests in regulating and limiting INGO provision of assistance. Examining interaction over time in both cases also revealed how the functioning of the regime was evolutionary in that INGO reputations and legitimacy among local actors at a particular time influenced their ability to provide assistance and negotiate with combatants at a later point in time.

Thee aid response to the Afghanistan and Sri Lankan conflicts were led by international and national actors respectively. In both cases however, INGOs were found to have agency in shaping the nature of the regime and how it functioned. This was despite the presence of a strong western military and civilian presence in Afghanistan and a democratically elected national government backed by strong state institutions in Sri Lanka - factors that make Afghanistan and Sri Lanka 'hard cases' for INGOs to exercise agency. Moreover, the cases suggest that INGOs actually had greater agency in the case of Afghanistan: the overlap between their goals and those of donors, and the availability of donor funds, gave INGOs greater operational space to implement programs based on a developmental and integrated ideal type. This finding challenges some of the literature on Afghanistan that frames INGO operations in terms of the political and strategic interests of western donors and their military units. [3]

MSF's policies and practices in Afghanistan and Sri Lanka similarly followed from its headquarter-level policy interpretation of the legal regime. Thus, for the most part, MSF focused on the provision of emergency medical services as a form of palliative care, and sought to remain distinct from the conflict space through operational adherence to the principles of impartiality, neutrality,

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[3] see for example:Cornish, 2008; Waldman, 2008.

and independence.However, at particular times in Sri Lanka, MSF emphasized concerns about human rights violations and engaged in advocacy to the international community. This arguably reflected MSF's uneasy relationship with issues of justice, where at times there was a desire to 'do more' even while this challenged the provisions in the legal regime and MSF policy level commitment to these provisions. Moreover, similar to the other INGOs under study, MSF was often found to frame humanitarian principles as the terms and conditions on which it would provide assistance; humanitarian principles were thus seen as organizational principles referring to MSF's programs. In Sri Lanka, the GoSL thus perceived MSF as providing humanitarian assistance in line with its own objectives rather than in accordance with humanitarian needs or the context; MSF advocacy was also perceived as an attempt to shame the government or local authorities, and establish its lead in directing the humanitarian response.

MSF policies, especially in Sri Lanka, thus also highlight how interpretation and implementation are distinct processes. While at the level of interpretation, MSF's policies reflect the provisions in the legal regime, at the level of implementation, MSF practices were found to contest the legal regime, albeit to a lesser degree than CARE, Oxfam, and World Vision. In Afghanistan however, MSF limited the function and scope of humanitarian assistance to emergency medical care and refused to support the Coalition partners or the Government of Afghanistan. It was noted that MSF's adherence to the principles of impartiality, independence, and neutrality as operational rather than moral principles has made it one of the few agencies that has been able to negotiate access with the Taliban.

III. Explaining INGO contestation

As mentioned above, much of the literature on the functioning of the humanitarian regime discusses INGO operations in terms of material opportunities and constraints from the external environment. INGO behavior is thus explained in terms of the material rewards and sanctions from donors and combatants, as they attempt to direct the provision of INGO aid in line with their political and strategic interests. Political economy explanations tend to focus on INGO organizational interests as they operate in a competitive market place and compete with other

INGOs for funding, contracts, and access. The suggestion is that such 'hard' organizational interests is what drives INGO behavior.

Examining INGO histories, current policy frameworks, and their operations in Afghanistan and Sri Lanka has highlighted the shortcomings in such materialist explanations. First, INGO interpretations and the resulting policy shifts occurred in the absence of donor or combatant pressure or inducements. This was found to be the case both in the historical development of INGO policy as well as in Afghanistan and Sri Lanka. Donor and combatant inducements and sanctions created a more enabling or constraining environment, but cannot be said to have 'caused' INGOs to interpret or implement the regime in a particular manner. Thus, while individual programs might be constrained by donor funding, reporting requirements, or conditionality,the overarching INGO goals and how they conceive of the function and scope of aid, cannot be said to be determined by donor or combatant pressure. Moreover, the thesis notes instances in which INGOs have used their moral authority and technical expertise to lobby donors to change their policies, highlighting how INGOs are capable of circumventing donor demands and altering their policy preferences. The empirical chapters also noted that while INGO implementation of the regime was often directed by the power and interests of combatants, combatants identified and defined these interests in the process of interaction with INGOs. Finally, it was also suggested that INGO policies and practices had the effect of legitimizing the policies of both donors and combatants.

Explanations that focus on hard organizational interests and the effects of a competitive aid market place frame INGO behavior as a series of actions and decisions directed towards maintaining organizational survival. However, as giants in the international humanitarian system, none of the INGOs under study face threats to their survival.Moreover, as neither Oxfam, World Vision, nor MSF are reliant on western donors for funding, one can expect that they have considerable room to circumvent the demands created by competition for donor funds in the INGO sector. Finally, even though individual programs might be affected by inter-agency competition, it cannot be said that this competition results in the formation of INGO overall policy goals and programming priorities, especially for these INGOs that are leaders in the INGO community of practice. For these well

established and well heeled INGOs market pressures might influence the strategies that they employ, but this not the same thing as their over-arching organizational goals and priorities.

INGOs also do not have a fixed portfolio of interests. INGOs were often seen as having to choose between competing 'hard' organizational interests. The manner in which trade-offs were calculated and evaluated cannot be explained in terms of material incentives or sanctions alone. Moreover, the case studies of Afghanistan and Sri Lanka demonstrate that the availability of donor funding, as in Sri Lanka post the CFA, or the effects of a competitive market place, as in Afghanistan post regime change, did not cause INGOs to re-conceive their policies and programs, as the broad contours of INGO programming remained the same across the entire period under study. The availability of funding or constraints caused by competition over funding thus created a more enabling or constraining environment for INGOs, but did not itself lead to the identification or formation of particular policy goals. Thus, even if INGOs acted similar to firms competing for market shares, this competition was to secure funding for already formulated policy goals.

Ideational explanations on the other hand suggest that INGO behavior can be explained with reference to the normative and institutional structures in which they are embedded. These normative structures of meaning define the range of appropriate behavior, guiding policy formulation and implementation. INGO identity is also constituted through their participation in these structures of collective meaning, whereby the environment thus defines what is it means to be an INGO. The INGO interpretation of the function of humanitarian assistance in terms of human rights, for example, cannot be seen in isolation from the broader triumph of liberal and democratic values in the post cold-war era. Similarly, INGO focus on the transformative potential of humanitarian assistance cannot be seen in isolation from the broader securitization of aid as a tool for progressive development and conflict transformation.INGO focus on the internal governance of states through capacity building and rule of law programs must equally be situated in the context of the broader negotiation of the meaning of sovereignty in the post cold war context.

This thesis does not dispute the importance of this broader environment. In fact, it explicitly recognizes that INGOs, as social actors, are constituted through their participation in these

structures. Yet, as argued earlier, this does not mean that INGO action can be reduced to the effects of the environment. INGOs are reflexive and normatively purposive actors, who have the capacity to reflect on and negotiate the environment, as well as choose the kind of actors they want to be through their actions. Normative structures also acquire meaning and specificity only through actors' understanding and enactment of these structures. Thus, it is possible to explore the agency of actors beyonds the effects of the environment, while still situating their actions within this broader environment. As shown in this thesis, INGOs were in fact norm entrepreneurs in introducing a rights-based approach to humanitarian assistance. INGOs were also among the first actors to link relief with development assistance, arguing that aid could help address the root causes of conflict and build community resilience to future conflict. They were thus not passive recipients to the effects of these structures, but played an active part in constructing and perpetuating them.

MSF's interpretation and implementation of the regime provides a good example of how INGOs are both norm entrepreneurs and are not automatically shaped by the broader normative environment in which they are embedded. MSF's policies have challenged the dominant normative understandings, both at the time of its inception, when it challenged the provision in the legal regime about the primacy of state sovereignty, and in the current day where it distances itself from the rights based approach followed by most INGOs and UN agencies. At the same time, MSF was a norm-entrepreneur in introducing a rights-based approach to the provision of humanitarian assistance, which has now been institutionalized in the mandates of a number of other INGOs.

Alternatively, the argument in this thesis has been that understanding INGO contestation of the legal regime for humanitarian assistance requires an examination of the role of INGO identity. INGO identity can be observed in the i) constituent rules and norms that define who an INGO is and its role; ii) INGO mandate, reflective of the social purpose of an INGO; and, iii) the manner in which INGOs distinguish themselves from other actors, reflective of how they define their identity in terms of what they are not. The importance of INGO identity, as a factor shaping contestation, was known by examining the timing of policy changes vis a vis changes in the external material and

ideational environment; the rationale and justification of particular policy decisions; and, the manner in which INGOs sought to distinguish their operations from those of other political actors.

INGO interpretations of the regime reflected their conception of their role and responsibility as particular kinds of actors. INGO interpretation was thus seen to be shaped by a logic of appropriateness, involving a matching of INGO identity with a particular situation, in terms of the action they consider the most appropriate for them as particular kinds of actors. INGOs thus interpret the provisions of the legal regime in terms of what they consider their appropriate role and purpose in conflict. INGO identity is also reflected in their attempts to distinguish themselves from other political actors,making this distinctiveness an essential part of their identity.

Identity similarly shapes contestation at the level of implementation, though this often manifests itself in attempts by INGOs to implement programs in line with their mandates. INGOs are self mandated organizations. Their mandates thus reflect their conception of their social purpose. Mandates can thus be seen as both reflecting and institutionalizing INGO identity, the constituent beliefs, norms, and rules that define the INGO. Implementing a mandates is thus not simply an organizational interest, but an act of self-constitution, necessary for maintaining and cultivating a particular identity. Thus, even if it is in an INGO's organizational interest to implement polices in line with its mandate, this is at least partly an organizational interest because it helps an INGO maintain its identity.

Implementing programs in line with agency mandates is also essential for INGOs to maintain legitimacy and demonstrate accountability to donors and western publics. There is thus a 'hard' organizational interest in implementing a mandate. However, it is important to note that the legitimacy and accountability of INGOs is tied up with them being particular kinds of organizations, standing for particular values, and directed by certain motives. Thus, even the perusal of such organizational interests can be seen as based in INGO identity.

Identity explains the manner in which CARE, MSF, Oxfam and World Vision interpret and implement the regime, as well as the differences between them.Thus, for example, MSF has shifted

from being a norm-entrepreneur with regard to the solidarist regime to staying away from human rights concerns; this has been reflective of a shift in its identity from 'doctor-witness' to 'aid-worker'. CARE, Oxfam, and World Vision, on the other hand, see themselves as agents of change, whose purpose is to address poverty, injustice, and a wide range of other issues that might bring suffering to people, even if these issues are not directly related to the conflict. These role identities and social purposes shape the manner in which these INGOs contest the regime, and help explain why their contestation of the regime is qualitatively different from that of MSF.

Just as the similarities between the interpretations held by CARE, Oxfam, and World Vision can be explained in terms of how their perceive their role and function, the differences can also be seen as related to their identity. World Vision's emphasis on the material and spiritual transformation of communities, with this providing the rationale for peace building, follows from its identity as a Christian organization. Oxfam is arguably more reluctant to explicitly focus on peacebuilding compared to CARE because of the focus on peacebuilding in western capitals as means to contain or stabilize political emergencies. Historically, Oxfam was founded in opposition to western state policies whereas CARE was originally conceived of as a tool for the American Marshall Plan to Europe. These founding beliefs might help explain how Oxfam and CARE position themselves vis-a-vis western donor states. Independence from western states was a founding principle for Oxfam, a constituent feature of its identity. It thus also attempts to obtain the bulk of its resources through private contributions. CARE, on the other hand, receives more than half of its resource from donors, especially the United States.

IV. Implications of INGO contestation

The remainder of this chapter examines the implications of INGO contestation for the meaning and functioning of the humanitarian regime. It first examines the implications that follow from INGO identity being a necessary factor driving contestation. It then discusses the implications that follow from the re-interpretation of the constituent norms of the legal regime for humanitarian assistance. These implications are of importance as they fundamentally alter the nature of the humanitarian endeavor. The chapter concludes with a discussion of what INGO contestation

means for negotiating access and sustaining humanitarian operations in political emergencies, and a tentative suggestion for how such negotiation can be facilitated.

Identity

The key implication of the argument that INGO identity shapes the manner in which they contest the regime is that INGOs identify humanitarian needs and appropriate programming in a political emergency in terms of their own identity, or their perception of their role and social purpose. The use of a rights based approach by CARE and Oxfam reflects their conception of their moral responsibility and obligation as organizations constituted by a particular set of norms and values; similarly, World Vision's emphasis on 'transformational development' reflects its conception of its role and responsibility as a Christian organization. Even while MSF now conceives of the function and scope of humanitarian assistance in terms closest to the provisions in the legal regime, this reflects its shifting understanding of its own responsibility, from being a 'doctor-witness' to being an 'aid-worker.'

The interpretation of the humanitarian regime in terms of what is considered appropriate for an INGO with a specific identity then also implies that humanitarian action is defined not in terms of the goods and services provided or the manner in which they are provided, but the institutional identity of an actor. In other words, what defines a particular program as humanitarian action is the identity of the actor providing it. INGOs thus argue that their programs are 'humanitarian' and not 'political', despite the overlap between INGO programs and those of donor agencies, based on an appeal to INGO identity. INGOs argue that they are driven by moral obligation rather than self-interest, where their moral obligation is mutually constitutive with INGO identity.

Following from this, humanitarian space is not conceived in terms of a space within, but distinct from the conflict space, maintained by non-interference in the conflict through the adherence to humanitarian principles and the provision of only certain kinds of goods and services. Rather, humanitarian space is conceived in terms of 'agency space', or the space in which INGOs can implement programs in line with their identities, as reflected in their mandates. This suggests that

INGO concerns about shrinking humanitarian space in political emergencies do not only reflect the inability of agencies to meet humanitarian needs but INGO concerns about being able to implement their mandates. Thus, for example, when INGOs in Afghanistan argue that humanitarian space is shrinking because of the blurring of lines between civilian and military actors, they are not referring to an impartial and neutral space that does not interfere with the conflict space, as envisioned under the legal regime, but *their* operational space to implement programs following from their mandates. David Reiff argues, for example, that the focus of the principle of independence is not about convincing combatants that they will not interfere in the conflict, but about retaining the freedom to negotiate their own presence, pursue their own programs, and make their own compromises according to their specific mission or mandate.[4] Thus, INGO anxiety about a shrinking humanitarian space is also rooted in,what Barnett refers to as an INGO crisis of identity as their programs become indistinguishable from those of political actors.[5]This then also explains why most of the advocacy about the shrinking of humanitarian space is by INGOs themselves as they attempt to safeguard their distinct identity and operational space.

As the institutional identity of an actor is what defines humanitarian action, attacks or threats to this identity thus also threaten the humanitarian regime as a whole and recipient access to humanitarian aid. INGOs thus link their identity to the survival of the regime at large, and thus frame their ability to implement their mandates and distinguish themselves from state or political actors as tantamount to the survival of the regime.[6] They can thus be said to securitize their identity, by linking threats to their identity to the survival of the humanitarian regime and civilian access to aid.[7] Such securitizing of INGO distinctiveness also then elevates the importance of INGOs as being integral to the survival of the civilian population and the humanitarian system at

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[4] Reiff, 2011.

[5] Barnett, 2011.

[6] see for example: Charles Rogers, "The Changing Shape of Security for NGO Field Workers', *'Together' Magazine* 57: 1998 (accessed 11.06.07). http://domino-201.worldvision.org/worldvision/pr.nsf/ stable/ NGOsecurity (accessed11 June 2007);Jan Egeland, "Rescue Workers at Risk", *Washington Times*, 10 September 2006 (accessed on 06.03.10). http://www.washingtontimes.com/commentary/ 20060909-101232-4959r.htm; CARE, *NGO Insecurity in Afghanistan* (Kabul: CARE & ANSO,2005).

[7] Jocelyn Vaughn, "The Unlikely Securitizer: Humanitarian Organizations and the Securitization of Indistinctiveness", *Security Dialogue,* 40(263):2009.

large, supporting thereby their claims for a right to unrestricted access, and making them gatekeepers of the humanitarian regime.

Rights and Justice

A shift from needs based assistance to a rights based approach means not only that aid recipients become rights holders, but that humanitarian agencies become their advocates and duty-bearers.[8] However, following from the observations in the previous section, these rights are defined in terms of what INGOs perceive to be their responsibility or duty as particular kinds of actors. The focus of the rights based approach in political emergencies is thus on INGOs as the duty-bearers; programs are thus designed in accordance with the duties of INGOs. This supports observations by scholars such as Hugo Slim that 'we really have a view of only the expectations of the providers in this system. Still, after many years of emphasizing their importance, we only have the slightest inkling of the expectations of the recipients of humanitarian aid and protection.'[9] David Chandler makes a similar argument, noting the shift in focus under a rights based approach from citizens to international institutions. He argues that as 'rights do not manifest themselves at the level of the citizen, but rather at the level of international institutions...the new rights of global citizens are now exercised not by the rights-holders but by international institutions, which have new duties corresponding to the new rights created.'[10]

Moreover, the rights that victims are assumed to have follow from their membership to global humanity, not a particular state. However, there is no place, as David Chandler argues, 'within any institutional framework of legal and political equality from which to hold policy actors to formal account.'[11] Thus, even while 'the rights of the citizens are dependent on the advocacy of an external agency,'[12] these agencies can themselves not be held accountable for securing rights for civilians in

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[8] O'Callaghan and Pantuliano, 2007.

[9] Slim, 2007; p. 17

[10] David Chandler, " New Rights for Old? Cosmopolitan Citizenship and the Critique of State Sovereignty", *Political Studies,* 51 (2): 2003; p. 337.

[11] Ibid., p.340

[12] Chandler, 2003.

conflict. The attainment of rights requires the existence of a social contract between rights holders and duty bearers and the capacity on the part of duty bearers to provide for these rights. Neither of these conditions hold when INGOs are the duty holders.

Further, a rights based approach shifts humanitarian assistance from being a form of charity to a form of justice. However, it is not clear whether humanitarian assistance is in fact compatible with systems of justice, if, as Miriam Ticktin argues, 'humanitarianism is about the exception rather than the rule, about generosity rather than entitlement.'[13] In a liberal institutionalist view of justice, judgements of justice and injustice only apply to institutional structures and therefore not to humanitarian assistance which is based on direct interaction between aid agencies and recipients. Kok-Chor Tan argues for example that duties of humanitarian assistance do not 'directly addresses the global structural context within which countries interact, whereas duties of justice apply directly to the background structure.'[14] Moreover, because the function of humanitarian action under the legal regime is to alleviate acute suffering, humanitarian duties to an individual cease once that individual's suffering has been alleviated. In contrast, justice, especially on more egalitarian accounts, is relational: it requires ongoing redistributive schemes (embedded usually in institutional structures). Thus, while duties of humanitarian aid have a 'cutoff' point above which no more aid is required, duties of justice often do not.[15]

Alternatively, one might argue, as Jennifer Rubenstein does, that the humanitarian aid sector does in fact constitute an institutional structure based on a set of formal laws, informal rules, codes of conduct and technical standards. While individual INGO programs might be temporary and short lived, the institution of international humanitarian aid is an ongoing scheme that seriously affects the life-prospects of millions of people.[16] This might suggest that INGOs, as actors shaping and implementing the humanitarian regime, have duties of justice. However, this means that they have

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[13] Miriam Ticktin, "Where ethics and politics meet: The violence of humanitarianism in France", *American Ethnologist,* 33(1): 2006; p.45.

[14] Kok-Chor Tan, *Justice without Borders: Cosmopolitanism, Nationalism, and Patriotism* (Cambridge University Press, 2004); p. 14.

[15] John Rawls, *The Laws of Peoples* (Cambridge, MA: Harvard University Press, 1999); Tan, 2004.

[16] Jennifer Rubenstein, "Humanitarian NGOs Duties of Justice", *Journal of Social Philosophy,* 40 (4): 2009.

duties to make the functioning of the humanitarian regime more just. This is not the same as saying that INGOs have direct duties of justice to the recipients of aid on the basis of their human rights. The institutional arrangement binding governments and citizens and the arrangement binding INGOs to aid recipients are qualitatively different from one another, and thus so are the duties of justice. Thus, INGOs do not have duties of justice to recipients in terms of providing them with the rights that would otherwise be granted by the state, but more limited duties of justice to ensure that the manner in which the humanitarian regime functions is based on just and fair procedures and codes of conduct. As Rubenstein argues, 'insofar as NGOs help to create and sustain the institution of international humanitarian aid - and insofar as they benefit from this institution - they have jointly held duties to help ensure that this institution is just...but these duties do differ in kind from the narrower ethical duties directly to aid recipients that are usually emphasized in discussions of humanitarian aid, such as the duty "to do no harm" [17] Fulfilling duties to make the system more just might include reducing incentives toward bias, including greater participation from aid recipients in programming decisions, and strengthening accountability to recipients of aid. In simple terms, INGO duties of justice are to ensure that aid is allocated in a fair and transparent manner, without bias, towards addressing humanitarian needs; it is not a duty of justice to recipients in terms of a broader political and social contract that exists between citizens and states.

Individual to Community Focus

Following from the developmental interpretation of the legal regime, the focus of the humanitarian regime shifts from the individual to the community and the state. The function and scope of the humanitarian regime is not conceived in terms of addressing needs of individuals but the vulnerabilities and capacities of communities. Humanitarian assistance is thus no longer about alleviating individual suffering but also about building well-functioning, ordered, and stable societies by transforming local systems and institutions from their very core. Thus, as Julian Reid argues, '...far from the more limited ambitions of classical humanitarianism to save existing life

[17] Rubenstein, 2009; p.526.

from its contingent experiences of disasters,'[18] humanitarian assistance based on the developmental ideal type is seen as a means of '... shaping the entire predispositions of societies, as a means of preventing [the] emergence [of conflict] at source'.[19] As the focus shifts from alleviating individual suffering to transforming communities and re-building states, humanitarian assistance is thus no longer only about saving individual lives at immediate risk from the 'international sacrificial order,'[20] but building a new order based on liberal democratic values .

The object of humanitarian assistance is thus not the individual but the community, and its evolutionary capacities. This is at least partly contradictory to the cosmopolitan ethic underpinning an individualistic rights-based approach. All individuals may not be considered of equal worth, as suggested by a cosmopolitan view of rights, if considered in terms of their evolutionary capacities. Moreover, as the focus shifts to the community level, addressing individual needs is no longer an end in itself, but a means to achieving a particular end; accordingly, meeting individual needs can be sacrificed if this helps meet select ends. Humanitarian assistance, conceived as such, can thus also end up amounting to a form of moral triage as it 'differentiates between deserving and undeserving beneficiaries, under which aid is allocated based on people's expected contribution to the presumably higher goals of peace and development'[21]

Moralizing a liberal peace

As the focus of humanitarian assistance shifts to transforming communities and re-building states, based on the assumption that aid can improve community resilience to future conflict and create conditions of peace, it also overlaps with the assumptions underlying a liberal peace. Duffield thus argues, for example, that the extent to which humanitarianism has invested development tools and initiatives with ameliorative, harmonizing, and transformational powers, the political ambitions of

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[18] Julian Reid, " The Biopoliticization of Humanitarianism: From Saving Bare Life to Securing the Biohuman in Post-Interventionary Societies", *Journal of Intervention and Statebuilding,* 4(4): 2010.

[19] Reid, 2010; p. 398.

[20] Jean-Herve Bradol, " The Sacrificial International Order" in Fabrice Weissman, *In the shadow of 'just wars': Violence, politics, and humanitarian action* (Ithaca: Cornell University Press, 2004).

[21] Torrente, 2004; p. 4

this contemporary form of humanitarianism are consistent with the aims of a liberal peace, 'to transform the dysfunctional and war affected societies that it encounters on its borders into cooperative, representative, and especially stable identities.'[22]Humanitarian assistance is thus no longer a distinct sphere of action from political action, but directly involved in the governance of political emergencies, as bridging or blurring the lines between domestic and international governance, and as part and parcel of the broader tool kit of a liberal peace, based on democracy, access to markets and human rights.[23]

However, humanitarian assistance continues to be framed as morally necessary action, and distinct from political action. The overlap between humanitarian programs and those of the liberal peace thus also helps legitimize the assumptions and goals of the liberal tool kit by framing these as morally necessary. Hugo Slim argues that the idea is that 'by giving the principle of humanity an imperative gloss and making it unreservedly a moral absolute, the phrase will represent humanitarianism as a non-negotiable, almost generic and biological force, so always over-riding the position of the warring parties…'[24]The connotation of designating certain activities as 'humanitarian' thus also helps legitimize them as morally necessary.INGO humanitarian programs can thus help 'create consent' for a liberal peace by framing development, reconstruction, and peace-building activities as 'humanitarian' and thereby morally necessary. Thus, as Ticktin argues, 'moral demands have increasingly filled the space of political action…moralism has created another type of politics.'[25]

Moreover, the overlap between INGO humanitarian programs and donor political and development programs in political emergencies also facilitates states in their use of the humanitarian label to justify their own interventions in moral terms. Humanitarian programs

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[22] Duffield, 2001; p.11

[23] for a critique of liberal peace, and role of IOs and NGOs, see for example: David Chandler, " The uncritical critique of 'liberal peace'", *Review of International Studies,* 36(1): 2010; Oliver Richmond, " The Dilemmas of Subcontracting the Liberal Peace", in Oliver Richmond, and Henry F. Caney in *Sub-contracting Peace: The Challenges of NGO peacebuilding(* Burlington VT: Ashgate Press, 2005).

[24] Hugo Slim, "Relief Agencies and Moral Standing in War: Principles of Humanity, Neutrality, Impartiality and Solidarity", *Development in Practice,* 7 (4): 1997; p. 346

[25] Ticktin, 2006; p. 34

focused on transforming communities and states, for example, also define a set of parameters and benchmarks for a government's responsibility to citizens and the conditions required to be considered a legitimate state. This can then legitimize intervention in these states based on appeal to humanitarian needs. Similarly the framing of rights concerns in moral terms allows states to ride on the 'humanitarian label' to justify their own politically motivated interventions. Thus, as Bronwyn Leebaw argues, there is a 'common tendency to invoke the moral judgement of human rights to legitimate interventions, while relying on the pragmatic impartiality of humanitarianism to avoid conflict and facilitate effective action.'[26]

Facilitating negotiation

The shift in these constitutive features of the humanitarian regime and the function and scope of humanitarian assistance means that aid can no longer be considered rationally incontestable. Humanitarian assistance when limited to a form of palliative care, and disengaged from issues of rights, development, and justice is morally justified or morally in-contestable in so far as it addresses the undeniable needs of the non-combatant population, and because the satisfaction of those needs will not compromise the military necessity of belligerents. However, as Kenneth Anderson argues, once agencies start engaging in development and reconstruction 'they must make choices that are not beyond all rational question,'[27] choices that are inherently political and thereby give rise to contestation.

The rational incontestability of aid is what guarantees INGOs humanitarian inviolability to conduct their humanitarian operations without threats to their security. However, agencies jeopardize that inviolability when they extend the scope of their activities to reconstruction and development assistance. Collinson and Elhawary's study on humanitarian space reiterates the problem of increasing security threats, noting that while such threats to INGO security are commonly attributed to 'shrinking' humanitarian space, they have resulted 'from humanitarian actors'

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[26] Bronwyn Leebaw, "The Politics of Impartial Activism: Humanitarianism and Human Rights", *Perspectives on Politics,* 5(2): 2007; p .224. The 2011 intervention in Libya is a good recent example of this tendency.

[27] Anderson, 2004; p. 55

attempts to involve themselves directly in large scale-assistance or protection efforts in the midst of conflicts.'[28]

The rational incontestability of humanitarian aid is also what facilitates negotiating access and sustaining humanitarian programs. This is because it makes humanitarian aid, to use Kenneth Anderson's terms, 'morally justifiable intercourse in the normally inviolable territory of a belligerent'[29] as its seeks to address undeniable human needs in a manner that will not compromise the military necessity of belligerents.INGOs do not have an automatic right to access or an automatic claim to an independent and autonomous humanitarian space in which they can implement their mandates. Rather, negotiations and access largely depends on the extent to which external aid agencies can convince combatants they will not challenge their authority or interests in any way, and if possible even speak to their interests. As Marie-Pierre Allie, President MSF France, argues, humanitarian space is 'a space for negotiations, power games, and interest-seeking behavior between aid actors and authorities...it is the product of repeated transactions with local and international political and military forces. Its scope largely depends on the organization's ambitions, the diplomatic and political support it can rely on and the interest taken in its action by those in power.' [30]

This thesis thus contends that this process of negotiation can be *facilitated* by agencies maintaining a limited mandate, focused only the delivery of essential goods and services. This would restrict the scope of humanitarian assistance to the delivery of basic rationally incontestable relief items and limit the role of INGOs in political emergencies and the extent to which their operations can challenge the interests of combatants. It could help assure combatants that INGOs will remain on the fringes of conflict, and prevent aid from being perceived as interference in the conflict. This suggestion is supported by the empirical findings of the *Feinstein International Center*'s 2008 report on the state of the humanitarian enterprise: 'When [humanitarian action] occupied the margins of conflict...humanitarian action was an activity of generally minor

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[28] Collinson and Elhawary, 2012; p.9

[29] Anderson,2004; p. 57

[30] Marie Pierre Allie, "Acting at in any price?" in Magone et al., 2011; p.3

consequence to belligerents. Aid agencies were accepted or tolerated as beneficial, or at least non-threatening. Now, humanitarian action is very often at the center of conflicts and of international concern.'[31] As the nature and scope of their programs become more expansive and intrusive in the domestic affairs of the state, aid agencies 'exercise a separate and exclusive non-state or petty sovereignty...operating to a large extent separately from and sometimes in opposition to the state and other national organizations and power-holders.'[32] This then complicates the basis for negotiation with combatants, especially where such programs run counter to or threaten the interests of a particular set of combatants.

The process of negotiation is equally facilitated by adherence to humanitarian principles of impartiality, neutrality, and independence, conceived as operational principles rather than moral principles. The function of these principles is thus to assure combatants that agencies will not interfere in the conflict; it thus requires agencies to refrain from commenting on the causes of the conflict, even while their sympathies might lie with a particular party to the conflict or a particular set of victims. Gaining the confidence of warring parties is critical for continued access and meeting humanitarian needs. Donini argues that a return to these principles, embodying a more classical form of humanitarianism, could help address the current challenges facing the regime in terms of access, the politicization of aid, and threats to humanitarian security. [33] However, as has been noted in this chapter, this relationship is not so automatic i.e. it is not that adherence to these principles will necessarily address the current challenges facing the regime, but it can provide the facilitating conditions for negotiating access and providing aid.

Limiting the provision of humanitarian assistance to the delivery of essential goods and services raises the question of whether INGOs are not simply replaceable by a private firm. Stephen Hopgood has argued for example that if we are concerned with maximizing the utility of aid to those in need, and the basic service delivery of goods, then there is no reason that an organization such as Walmart, or any other private firm, cannot take over the provision of humanitarian

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[31] Antonio Donini , *Humanitarian Agenda 2015: The State of the Humanitarian Enterprise* (Boston: Feinstein International Center - Tufts University, 2008); p. 4.

[32] Collinson and Elhawary, 2012; p. 19.

[33] Donini, 2009.

assistance.[34] Fiona Terry raises a similar objection, arguing that if humanitarian action is reduced to a logistical exercise it is better to contract a supermarket chain to deliver assistance, accompanied perhaps by a private security firm.[35]

However, limiting the function and scope of humanitarian assistance does not strip it of its moral content, but accepts the limitations and constraints of humanitarian action. Even if humanitarian agencies operate on a limited mandate and humanitarian assistance becomes about the simple provision of tangible goods and services, this does not mean that humanitarian assistance is no longer an ethical response based on moral reasoning. Negotiation with combatants also centers around aid not directly or indirectly influencing the conflict, and speaking to combatants interests. A for-profit firm like Walmart will necessarily be motivated by its profit margins, and cannot assure combatants that it will not become involved in the conflict; it has incentives to influence the political economy of the conflict in a manner that furthers its own organizational interests. Thus, even if Walmart is more efficient in setting up systems for the delivery of humanitarian assistance,this is not adequate to gain access and sustain humanitarian operations. What makes INGOs more legitimate is their claim that they are altruistic actors, who exist to improve the lives of others. This gives them moral authority and is the basis on which their entry into the other-wise sovereign conflict space might be permitted. Thus, even if the provision of humanitarian assistance is reduced to a logistical exercise of the delivery of goods and services, this does not mean that legitimacy and motivations of the assistance actor are not important.

Yet, as the argument in this thesis has suggested, the widening of the humanitarian agenda from a limited mandate to programs following from the solidarist, developmental, and integrated ideal type has followed from INGO conception of their role and social purpose, their moral obligation as actors with a particular identity. Paradoxically then, INGO identity as altruistic actors allows them to negotiate access, but at same time it has contributed to the contestation of the legal humanitarian regime, eroding the existence of a distinct neutral humanitarian space, making INGOs participants in the conflict, and even facilitating the subordination of aid by donor states

[34] Hopgood, 2008.

[35] Terry,2002.

and combatants. However, while the identity of INGOs as altruistic actors is critical to their legitimacy and their ability to negotiate access, this does not imply that the function and scope of humanitarian assistance should also be defined in terms of INGO identity.

One might argue that an approach based on a limited mandate is fundamentally incomplete, and does not allow INGOs to respond in a comprehensive manner to the causes and consequences of suffering. It sacrifices questions of justice to the neutral provision of mere band-aids. However, there is a value to both approaches. While justice might be the highest value, it is not the only value. The approach suggested here, as Kenneth Anderson argues, 'recognizes the moral necessity of neutral humanitarianism, yet acknowledges that humanitarianism does not exhaust the field of morality.'[36]There is also a value to the suspension of moral judgement about the causes of conflict - as embodied in the principles of impartiality and neutrality - as this suspension of judgement creates the conditions to be able to alleviate the most immediate suffering of civilians in political emergencies. A limited humanitarian response might be insufficient, but that does not mean that it is unnecessary.

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[36] Anderson,2004; p. 71.

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Key Websites

ACBAR : https://www.acbar.org/ Agency Coordinating Body for Afghan Relief; ACBAR was created in August 1988 to improve coordination among key actors in Afghanistan. Its activities focus on information provision to its members and the aid community in general, coordination of activities at the national and regional levels, and advocacy on issues affecting the work of its members in Afghanistan.

BAAG: http://www.baag.org.uk/ ; British and Irish Agencies Afghanistan Group is a networking and advocacy agency based out of the UK that coordinates the activities of its 30 member organizations in Afghanistan.

CARE: www.care.org/ www.careinternational.co.uk

CHA: <http://www.econsortium.info/cha/Organisation.html Consortium of Humanitarian Agencies - Sri Lanka, is an association of INGO working in Sri Lanka; it has both a coordinating and information sharing role, through its Secretariat, and also a direct implementation role.

ALNAP: Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP): < http://www.alnap.org>

IRIN: Integrated Regional Information Networks - http://www.irinnews.org/ IRIN is a news agency formed by OCHA to report on humanitarian crises and the response to them

MSF: www.msf.org/ www.msf.org.uk/www.msf-crash.org

Office for the Coordination of Humanitarian Affairs (OCHA) Country Portals: Sri Lanka <http:// www.humanitarianinfo.org/srilanka_hpsl/. Provides situation reports, a break down of current agency operations, meeting summaries etc, funding appeals etc.

Office for the Coordination of Humanitarian Affairs (OCHA) Country Portals: Afghanistan http://afg.humanitarianresponse.info/

Oxfam: www.oxfam.org/ www.oxfam.co.uk

Sphere: www.sphereproject.org . The Sphere Project was launched in 1997 to develop a set of minimum standards in core areas of humanitarian assistance. The aim of the project is to improve the quality of assistance provided to people affected by disasters, and to enhance the accountability of the humanitarian system in disaster response.

Relief Web:http://reliefweb.int; ReliefWeb is an on-line gateway to information on humanitarian emergencies and disasters. It provides regular updates from government, UN agencies, INGOs and national NGOs, think tanks, academics, and advocacy groups.

World Vision: www.wvi.org/www.worldvision.org.uk