

# Disorder within the humanitarian sector: the old versus new humanitarianism debate

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*A debate is continuing between old humanitarianism, based on neutrality and short-term, relief-based assistance, and new humanitarianism, centring on advocacy and development. This paper views this deliberation as the humanitarian equivalent of the legal discussion between international humanitarian law and international human rights law. It tries to regulate it using the *lex specialis* and the belt and suspenders approach. Whether or not to be neutral is the key issue. Analysis of this point makes it possible to reveal the limited functionality of the *lex specialis*: it does not determine which approach should and should not be employed; there is no superior methodology. In conclusion, the belt and suspenders approach helps one to comprehend that 'what is the right method for humanitarian actors?' is not the right question to ask; both positions are valid, or simply the two approaches apply. It is important, therefore, to clarify and combine old and new humanitarianism.*

**Keywords:** Dunantist, humanitarianism, international human rights law (IHRL), international humanitarian law (IHL), *lex specialis*, neutrality

## Introduction

There are two main types of humanitarianism: Dunantist; and rights-based. The former, named after the Swiss activist, Henry Dunant, is the needs-based approach that is followed by the International Committee of the Red Cross (ICRC) and, to a certain extent, by Médecins Sans Frontières (MSF). It is characterised by four fundamental principles: humanity; neutrality; impartiality; and independence. Old humanitarianism depicts itself as a relief-based 'effort to bring a measure of humanity, always insufficient, into situations that should not exist' (Rieff, 2003, p. 178); it is an endless attempt to alleviate human suffering.

By contrast, the latter emerged in the post-Cold War era following the human rights 'revolution'. A group of humanitarians stressed that relief-based assistance was not enough, and started to ask for more, that is, for protection, human rights, and development. Their request led to the birth of new humanitarianism, as beneficiaries became rights-holders, and humanitarian agencies became their advocates—an example of a new humanitarian non-governmental organisation (NGO) is Oxfam. Political independence and neutrality are sacrificed here in the name of justice.

Today, both approaches are employed in conflict areas, since humanitarianism demands neutral relief as well as development and protection of human rights. Yet,

as the two schools have competing priorities, 'structural' differences, and diverging working methodologies, their joint application can cause detrimental tensions in the humanitarian sector (Nascimento, 2015). It is important, therefore, to manage them as far as possible.

This study seeks not only to fulfil this objective, but also to discover how old and new humanitarianism relate and might relate to each other in wartime, and how they could resolve potential conflicts to guarantee the delivery of humanitarian assistance. To do so, the legal debate between international human rights law (IHRL) and international humanitarian law (IHL) is employed as a surrogate model.

The adoption of this legal debate as a reference point assumes that old and new humanitarianism are based directly on their legal cousins. Indeed, on one side, the Dunantist approach and IHL evolved over the same period: the ICRC was founded in 1863, and the 'First Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field' was signed in 1864 (Tucker, 2014, p. 1314). They emerged jointly because they were both based on the same premise: the need to humanise war. The similarities do not end there, though: IHL and the ICRC also utilise similar methodologies of action. Old humanitarianism, as IHL, is based on respect for sovereignty; it accepts war, without taking a political stand or advocating for the end of fighting (Barnett, 2011). On the other side of the debate lies the rights-based approach, whose name clearly depicts its roots. It is one of the emanations of IHRL, sharing with it almost everything: values, aims, and methods. New humanitarianism, as IHRL, does not require only respect for negative obligations, but also respect for positive obligations (Darcy, 2004, pp. 9–10). The rights-based approach does not want just to mitigate war; it aspires to create 'positive peace'. Lastly, similar to human rights, it is inherently linked to a liberal view of the world; hence, it takes a political stand (Darcy, 2004; Barnett, 2005).

Starting from the assumption that the rights-based and the Dunantist approaches are respectively closely related to IHL and IHRL, this paper asserts that they have (or might have) the same relation as these two bodies of law. There are two main ways of representing this: the *lex specialis* doctrine; and the belt and suspenders method. They are useful in identifying a balanced association between old and new humanitarianism and in clarifying their roles.

On the one hand, as expressed by the International Court of Justice (ICJ) in advisory opinions pertaining to the 'legality of the threat or use of nuclear weapons' (1996) and the 'legal consequences of the construction of a wall in the Occupied Palestinian Territory' (2004), the relation of specific conflicts with regard to IHL and IHRL can be regulated by the principle of *lex specialis* in wartime (Milanović, 2009, pp. 5–7). IHL is considered to be the *lex specialis* (law governing a specific subject matter) and IHRL is considered to be the *lex generalis* (law governing only general matters). The *lex specialis* of IHL constitutes a sort of prism through which IHRL is interpreted in wartime. A *lex specialis* that is no longer a *lex specialis derogat legi generali* ('special law repeals general laws') corresponds instead to the general rule of interpretation. In other words, it is a tool that helps one to understand the *lex*

generalis that continues to apply, as expressed in Article 31(3)(c) of the 1980 Vienna Convention on the Law of Treaties (VCLT) (Borelli, 2015, p. 22).

On the other hand, the United Nations (UN) Human Rights Committee in its 'General Comment 29' of 31 August 2001<sup>1</sup> and the ICJ in its judgements on 'Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)'<sup>2</sup> look at the two bodies of law as purely complementary, distinct, and additive in effect to best match the interest of individuals (Schabas, 2007, p. 598).

Given this dual view of the relation between IHL and IHRL, this paper contends that new humanitarianism can be applied in wartime; however, it should be interpreted according to the context and old humanitarianism. This is because the rights-based approach should be administered in a sensitive matter so as not to impose unbearable, pejorative, or contradictive changes on humanitarianism (Nascimento, 2015). That said, there are several instances where interpretation is not of any help, and the two approaches should just be seen as distinct and complementary forms of humanitarianism, which can reciprocally support each other (Labbé, 2012, p. 24; Scott, 2014).

This finding raises a final question: does the application of the general rule of interpretation and the belt and suspenders approach resolve the humanitarian debate? The answer is no. While it can help to mitigate or avoid operational conflicts between old and new humanitarianism and can clarify their roles, it will leave unresolved the conflict of principle on which the humanitarian debate is based.

## **The new versus old humanitarianism debate**

### **The Dunantist approach: why keep it?**

It is important to understand why the ICRC has retained its original principles instead of adopting the rights-based approach. Dunantism has to be seen as the realistic face of humanitarian action that is based on a likewise realistic depiction of war, which it aims to alleviate and not end. The ICRC's mission statement does not even mention the word 'peace'; the closest it gets to it is: '[t]hrough its work, the ICRC helps to prevent the worsening of conflicts and even at times to resolve them' (ICRC, 1996, p. 35). In fact, old humanitarianism corresponds to the classical and traditional concept of 'humanitarian', meaning someone or something that is directed towards reducing the number of dead by offering material, medical, and partly moral help (Slim, 1997, p. 248).

These are the aims of Dunantist humanitarians, not advocacy, development, or peace. They can seem modest and of minimal impact, but attaining them demands endless effort and does not yield totally satisfactory results. Hence, old humanitarians stress the importance of remaining focused on these pragmatic objectives of classic humanitarianism without aspiring to eradicate war and influence societies (Pictet, 1979). This is not because further assistance, such as advocacy or development, is not needed, but that new humanitarianism represents an extension of what humanitarian aid already is, as well as a change in and a challenge to the soul of humanitarianism.

The differences and discordant points between the two approaches are many and range from priority setting to the delivery of aid. However, the debate's core issue concerns the principle of neutrality (Anderson, 2004, p. 41). New humanitarianism rejects neutrality in favour of human rights advocacy. Old humanitarian academics and practitioners strongly disagree with this move, highlighting the tension between humanitarianism and advocacy. Echoing Jean Pictet, the father of the ICRC's principles, they point out that '[o]ne cannot be at the same time the champion of justice and charity. One must choose' (Leebaw, 2014, p. 1).

Humanitarianism was born from charity, from choosing between justice and charity. A side was selected because it is not possible to denounce a government for its crimes and gain its trust, which is key to acquiring access to as many areas and individuals as possible. For instance, by being impartial and neutral, the Red Cross could reach agreement with President Slobodan Milošević on access to Serbia in the 1990s; hence, it was the only humanitarian actor able to deliver aid after the 'ethnic cleansing' by the warring parties and the 'humanitarian bombing' by the North Atlantic Treaty Organization (Gordon and Donini, 2016, p. 99). An analogous story comes from Sri Lanka in 2008, where many NGOs asking for protection were expelled; only Caritas and the ICRC remained present (Keen, 2014, p. 8). In addition to being an entrance ticket to a humanitarian crisis, neutrality is also desirable as it makes it more likely that humanitarian actors can fulfil their goals and tasks, since they can operate in a more secure environment (Shetty, 2007, pp. 377–378).

One can also reflect similarly on development. Old humanitarianism was not traditionally preoccupied with development, but with relief. It did not challenge the civil, economic, and legal systems of countries, and did not establish any basis for judging them, being limited to offering food, medicine, and shelter (Labbé, 2012, p. 2). By contrast, new humanitarianism does so when it tries to address the root causes of underdevelopment and poverty. Notwithstanding the rightness or necessity of this choice, there are two significant downsides to it. First, development involves humanitarianism in the critique of Western solutions to non-Western issues (Gordon and Donini, 2016, p. 99), leading to the expulsion from Afghanistan and Sudan, for example, of NGOs from different contexts, and increasing the bureaucratic constraints on others (Groves, 2007). Second, the development component of humanitarianism and the same labelling of a crisis as humanitarian have been used by political actors to avoid broader involvement or to identify a scapegoat in case of political failure, as happened in Sierra Leone between 1991 and 1995 (Keen, 1998; Macrae, 1998). Given these disadvantages, the Dunantist approach defends a modest form of humanitarianism, reflecting acknowledgement that the humanitarian enterprise cannot rebuild a country's economic and political systems (Rieff, 2002).

To conclude, the maxim that neutrality and independence are necessary components of Dunantism does not mean that they amount to the end of old humanitarianism (Slim, 2015, Part 2.3). They are not and they were never supposed to be the humanitarian imperative. In fact, Dunantists recognise the weaknesses of neutrality and independence and wish to stress that they are operational principles, not absolute ones;

principles useful for getting aid to where it is needed, but useless if not based on judgement and experience (Murphy, 2016, pp. 44–51). However, drawing a line between concessions to new humanitarianism and the core of old humanitarianism is not an easy task. Either one is neutral, or one is not; it is difficult to find a middle way without sacrificing neutrality, without taking a political stand. Ultimately, the ICRC wants to help, not to condemn. To assist as many individuals as possible ‘it must be able to help victims everywhere, which implies moderation in its criticism’ (Minear, 1999, p. 173). Moreover, ‘[o]nly if you’re politically savvy can you be politically neutral’ (Minear, 2002, p. 78). The ICRC factors in politics without getting involved in it, therefore; it believes that neutrality sometimes means silence in the face of abuses, and that its medical ethic addresses suffering only in the present tense (Pictet, 1979).

### New humanitarianism: why adopt it?

It is important to understand why humanitarian organisations adopt the new approach. Rights-based NGOs started to spread broadly in the 1990s, when the humanitarian sector was in crisis. In the post-Cold War era, humanitarian action proved to be palliative action, incapable of providing sufficient aid (Gordon and Donini, 2016). Both the Gulf War of 1990–91 and the subsequent Kurdish refugee crisis underlined the need to improve coordination between aid workers and the local population and between humanitarian and military actors, whose divisions impeded the benefits of humanitarian action (Gordon and Donini, 2016, p. 85). The inefficiencies that were evident throughout these emergencies became untenable during the conflicts in the Balkans, Somalia, and the Great Lakes region in the 1990s, when humanitarian aid was seen as an instrument to prolong the fighting, directly, by offering help to the perpetrators, or, indirectly, by not allowing a dispute to reach the highest point of crisis that would lead to its resolution, as Luttwak (1999) controversially argues. Alternatively, humanitarian aid and the lack of accountability associated with it were considered to be among the causes of the renewal of instability. A case in point is Rwanda, where the desperate conditions in the refugee camps may have led to the resurgence of violence and to what were then called ‘avoidable deaths’ (Nan, 2010). Overall, humanitarianism was seen as a banal evil: a bureaucratic structure that does not want to be so, but does not reflect on its own actions (Arendt, 1963).

The pressure on humanitarian actors was rising, therefore, not helped by the silence surrounding human rights abuses. In fact, humanitarian workers were accused of being complicit in this regard with sovereign powers in Ethiopia, Rwanda, Sri Lanka, and many other countries. The presence of humanitarian actors raised expectations of justice that old humanitarianism was not able to match, and that it was not supposed to match according to its mandate and principles (Stockton, 1998; Walzer, 2011). Consequently, it was decided that they should have been changed, and that *Candide*’s logic of ‘[a]ll is for the best in the best of all possible worlds’ (Voltaire, quoted in Barber, 1960, p. 12), should have left space for reforms that would have made operational humanitarianism more similar to aspirational humanitarianism.

To explain the need for this shift in mandate and principles, almost all articles, reports, and books on humanitarian approaches cite the ICRC's silence about Nazi concentration camps; this paper follows this trend. The example is useful because the issue connected to a neutral position is self-evident. Not even crimes that shocked humankind could induce the ICRC to take a political stand against the perpetrators, naturally leading to negative assessments of the organisation and the humanitarian sector as a whole (Forsythe, 2006). Silence to protect political independence seemed like an excuse when thinking about the degree to which humanitarian action is political, even old humanitarianism. Indeed, humanitarian actors are deeply involved in politics. From the negotiation of humanitarian access to not commenting on human rights violations, humanitarian action is political (Weiss, 1999, p. 22). Furthermore, as political neutrality had always been a chimera for humanitarian actors, neutrality gave the impression of indifference and complicity with those responsible for such abuses. In opposition to this neutrality, new humanitarians argue in favour of impartiality as a source of legitimacy and access to people in need (Darcy, 2004, p. 12). This is because they believe that humanitarian workers should be impartial in dealing with the parties to the conflict, but not neutral in the face of contraventions of human rights.

Similarly, if humanitarian action is already political, it should operate in collaboration with military and political actors to offer efficient and long-term development-based assistance. Indeed, it is said that as relief is just palliative treatment in complex emergencies, the division between relief and development should be overcome to achieve a higher standard of help (Slim, 2015, Part 3.9). The need to do so was broadly demonstrated in the 1990s, when the humanitarian industry looked like 'a completely independent ambulance service with no connection whatsoever to a hospital' (Anyangwe, 2015). This is exemplified among the medical humanitarian organisations that have been present in Juba, the capital of South Sudan, for decades: 'the hospital doesn't function at all, and the health structure of this new country is quasi non-existent' (Anyangwe, 2015). It can seem preferable in such settings to stop considering politics as poison, and including humanitarian action in a broader political project that will take care of the country from the relief phase to the reconstruction of society. New humanitarians are aware that suppressing the division between relief and development raises unrealistic expectations of humanitarian action and creates great confusion about the roles of development and humanitarian actors (Terry, 2013, p. 245). Their point is that criticism is not something humanitarian actors can avoid by saying or doing nothing.

Lastly, when viewing the panorama of unproblematic changes introduced in the humanitarian sector by new humanitarianism, one needs to note the diverse depictions of beneficiaries. To understand the shift, it is necessary to take a step back. Old humanitarianism is based on charity; the act of giving is key, rather than how assistance is supplied (Pictet, 1979). Thus, humanitarianism can be constitutive with regard to narcissistic power relations, which often benefit the provider more than the receiver (Mauß, 2002). New humanitarianism instead highlights the importance of choosing

the right way to deliver aid. In this respect it is crucial not to consider beneficiaries as victims, but as rights-holders (Mauss, 2002). This means, in practice, that beneficiaries are not reduced to a status of dependency, what Agamben (2005) calls 'bare life', but that they become responsible for their own development. Accordingly, new humanitarians stress the need to be accountable not only to donors, but also to beneficiaries, and to pursue a context-based humanitarian plan, which includes specific standards, the hiring of local staff, and field evaluations (Paul, 1999; Barnett, 2005). Overall, the change in the depiction of beneficiaries helps people to feel fully human and the owner of their future even in a time of war, making it possible to have an empowered and resilient community that has the purpose and strength to rebuild the country, and it grants room for more accountable humanitarian responses (Darcy, 2004, p. 10).

## **The general rule of interpretation and the belt and suspenders approach**

Since the rights-based approach entered the humanitarian field, whether it should replace Dunantism or whether it represents ineffective reform of the sector remain key points on the humanitarian assistance agenda. There is large pool of academic literature that argues in favour of one or the other, and a vast range of NGOs that adopt one or the other on the ground. As a result, confusion reigns about the role and meaning of humanitarianism (Donini, 2010), opening the door to manipulation and critiques that are detrimental to action and beneficiaries (Borton, 2009, p. 4). The issue needs to be addressed, therefore. The general rule of interpretation and the belt and suspenders approach have precisely this aim. They can help to iron out misconceptions, facilitating the co-application of the rights-based and the Dunantist approach. The general rule of interpretation can, in fact, help in applying the rights-based approach in conflict settings in a sensitive manner while recognising the equal grade of the two forms of humanitarianism and the need for complementarity between them. Meanwhile, the belt and suspenders approach comes to the rescue of the general rule of interpretation when it cannot be applied, to maintain harmony in the humanitarian sector instead of divisions.

## **Lex specialis: what it is not**

Before analysing the joint application of old and new humanitarianism through the general rule of interpretation and the belt and suspenders approach, a more detailed explanation of *lex specialis* is required. The *lex specialis derogat legi generali* principle stipulates that specific law prevails over general law with regard to a conflict and in a relation between two norms, as explained in the work of early writers such as Hugo Grotius and Emer de Vattel (Milanović, 2016a, p. 35). More precisely, as argued by Joost Pauwelyn, the *lex specialis* was originally supposed to correspond to 'the

closest, detailed, precise, or strongest expression of state consent', which because of its nature, was taken as the dominant rule (Prud'homme, 2007, p. 367). Today, it does not have this meaning. The *lex specialis* of IHL is considered to be an interpretative framework for IHRL. This latter definition is used here. In fact, this paper shares the scepticism of Kammerhofer (2011) in not assuming that a model based on the specificity and generality of humanitarian approaches can clarify the new versus old humanitarianism debate. Doing so would mean oversimplifying a complex and articulated relationship between the two schools of thought.

Before discussing the contemporary theory of the *lex specialis*, one has to clarify why the meaning that Grotius attributed to it cannot be applied to the humanitarian debate. When Grotius wrote about the use of the *lex specialis*, he was referring to a rule to solve antinomies between norms that concurrently regulate the same subject matter (Simma and Pulkowski, 2006, p. 487). Old and new humanitarianism do not do so. The position adopted here distances itself from that of academics such as Darcy (2004, p. 15), who believe that the two approaches have the same objectives and purpose. Instead, this paper agrees with Gordon and Donini (2016, p. 107) that they rest on very different goals. Old humanitarianism offers short-term, relief-based assistance to alleviate suffering in wartime without taking a political stand or an adversarial position (Slim, 1997), whereas new humanitarianism is a long-term development-focused project that collaborates with military and political actors to establish 'positive peace'. Ultimately, the two have relevant differences, even though their broad overarching aim is the alleviation of human suffering (Labbé, 2012).

## **The general rule of interpretation: what it is**

Having clarified what the *lex specialis* is not, one can probe what it is: that is, an interpretive tool for the *lex generalis* that continues to apply. A step towards the emergence of this contemporary definition of the *lex specialis* manifested first in the ICJ's pronouncement in 1996 in its advisory opinions pertaining to the 'legality of the threat or use of nuclear weapons', concerning the continued application of IHRL in wartime but granting some form of prevalence to IHL (Droege, 2007, p. 324). In particular, the ICJ stated that the application of the *lex specialis* was coherent in establishing the predominance of IHL in the interpretation of right to life, as it is specifically designed for wartime (Milanović, 2009, p. 5). However, while reflecting on this decision of the court in the advisory opinion on the 'legality of the threat or use of nuclear weapons' (1996), it was stressed that this interpretation of the *lex specialis* could not have been generally extended to any other relationship between the two bodies of norms (Cassimatis, 2007; Prud'homme, 2007, pp. 370–372). On the contrary, as IHRL is more precise than IHL in certain domains, it should apply in such cases. Following this interpretation, IHRL and IHL can be the *lex specialis* or the *lex generalis* to employ in wartime, depending on the specific realm of the conflict between the two (Schabas, 2007, pp. 597–598).



With regard to the advisory opinion on the ‘legal consequences of the construction of a wall in the Occupied Palestinian Territory’ (2004), it was further clarified that the *lex specialis* is not being used to displace IHRL. It was reasoned instead that human rights law should be interpreted according to IHL in wartime. As Finnish international lawyer Martti Koskenniemi pointed out (Simma and Pulkowski, 2006, p. 490; Cassimatis, 2007), interpretation is used when considering perfectly equal rules. What is more, the interpretation of the judge is not only based on the internal logic of norms, but also on external factors (Milanović, 2009, pp. 1–4). Hence, as the ICJ was bidding to use IHL as an interpretative framework for IHRL, it did not suggest that IHL derogates or prevails over IHRL, and it did not actually utilise the *lex specialis* doctrine, but rather, it applied the principle of general interpretation or systematic integration, which is found in Article 31(3)(c) of the 1980 Vienna Convention on the Law of Treaties. This Article declares that a treaty shall be interpreted according to the context, and any rule of international law applicable in the relation between the parties shall not undermine the integrity of the international legal system. Recent cases, such as the decision of the Grand Chamber of the European Court of Human Rights in ‘Hassan v. The United Kingdom’ (2014) and ‘Serdar Mohammed v. Ministry of Defence’ (2017), reaffirm this meaning of the *lex specialis*. The language of the *lex specialis* is abandoned in this paper, therefore, in favour of Article 31(3)(c), as suggested by Borelli (2015, pp. 16–24) in her work on ‘the (mis)-use of general principles of law’.

## **The general rule of interpretation and the belt and suspenders approach: evolution of the humanitarian debate**

Now it is time to apply the general rule of interpretation to the humanitarian debate. In the advisory opinion on the ‘legal consequences of the construction of a wall in the Occupied Palestinian Territory’, the ICJ proposed three different ways of viewing the relation between IHL and IHRL:

*some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law* (Schabas, 2007, p. 595).

This depiction is also valid in the humanitarian field. There are many instances in this realm in which the needs- and rights-based approaches are not in opposition to one another, but rather confront different aspects of a humanitarian crisis or regulate the same aspect in a different fashion. Consequently, they can mutually reinforce each other. More precisely, new humanitarianism can buttress the applicable provisions of old humanitarianism, expanding its range and impact of action in wartime. Conversely, old humanitarianism can strengthen new humanitarianism via the absolute nature

of its obligations and its response to the immediate needs of beneficiaries. In practical terms, for instance, the neutrality of the ICRC is a matter of interest among old humanitarianism. It does not necessarily enter a conflict with the arguments advanced by new humanitarian NGOs; instead it allows for the broad mandate of some of them (Forsythe, 1996). Meanwhile, the adoption of the new humanitarian view on accountability and empowerment of the population is not in conflict with old humanitarianism; rather, it harmoniously expands the Dunantist approach (Footer and Rubenstein, 2013). Lastly, some situations interest both new and old humanitarians, such as the discussion about the division between relief and development, the debate about a neutral or political position, or the contrast between a politics of discretion and new humanitarian advocacy—here the general rule of interpretation applies. With respect to the latter scenario, the statement that the rights-based approach shall be interpreted in good faith in accordance with the context and object and purpose of Dunantism is used to stress the point that it should be applied in a sensitive matter, not undermining the essence of humanitarianism while trying to pursue moral or political aims.

The paper next examines the relationship between humanitarianism and politics to elucidate the practical application of the Dunantist approach as an interpretative framework of new humanitarianism. Detached from the actual political independence of old humanitarian actors, the ICRC, MSF, and other needs-based NGOs seek to avoid becoming instruments of political objectives. Their assistance is based on an independent evaluation of the requirements of beneficiaries. They strive to ensure that they have the power to assess freely these wants, to access communities without constraints, and to monitor directly the aid that they deliver (IFRC and ICRC, 1995). This independence is facilitated by accepting only a minimal portion of funds from governments and intergovernmental organisations. By contrast, new humanitarian NGOs, which receive money from specific governments and intergovernmental organisations, and act with military and political actors to implement development and peacebuilding programmes, necessarily relinquish their independence (Keen, 1998).

The abandonment of political independence can be considered to be a good choice and seem to be the right decision in a humanitarian sector that has never been truly independent. However, the use of the Dunantist approach as an interpretative tool is helpful in gaining the most from this new humanitarian position. What the general rule of interpretation suggests is that new humanitarians should try to collaborate with political actors without being politically motivated. This is because being part of a political project may mean forsaking IHL for political imperatives with negative consequences for humanitarianism. The Great Lakes tragedy of 1994–97 is a case in point. When soldiers serving with the Rwanda-backed Alliance des Forces Démocratiques pour la Libération du Congo-Zaïre attacked refugee camps in the eastern Democratic Republic of the Congo (DRC) in October 1996, more than one million people had to flee. Some NGOs thus called for an international intervention to create corridors to help them. Yet, the Governments of the United Kingdom and

the United States and new humanitarian NGOs opposed the appeal, believing that the initiative would be detrimental to the 'rapid achievement of a lasting solution to the Great Lakes Crisis' (Fox, 2001, p. 287). Consequently, many refugees were killed by the rebel forces of Laurent Kabila; still others died because of a lack of adequate relief.

The new goal-oriented humanitarianism called for the sacrifice of lives to achieve political stability (Fox, 2001, p. 288). It was a sad moment for the humanitarian sector. It is one thing to collaborate with political actors, but quite another to become a mere instrument of them. To avoid this risk, Pictet (1979) suggests treating politics as a poison that humanitarians should avoid at any cost. More correctly, though, it seems that politics is a 'pharmakon', both a poison and a remedy; it can be beneficial and detrimental to the same person at the same time (Persson, 2004, pp. 45–67). The same can be said of politics in relation to humanitarianism. It is essential that humanitarian actors collaborate with political entities on all sides of a conflict and with the international community, but this is also risky, as it entails an agreement between humanitarian and political interests. The agreement that should always be sought is one where both parties stand to lose the same, and it should be signed with any side. Humanitarian NGOs, in fact, cannot help to mediate the effects of a conflict if they are part of the dispute (Stockton, 1998, pp. 359–360). Hence, the saying that new humanitarianism should be interpreted according to old humanitarianism means that it should sign a treaty of peace and friendship with politics, not capitulate. Ultimately, it should not lose its independence and impartiality, which guarantee its legitimacy and distinguish the action, to pursue a political purpose that contradicts the only constant feature of humanitarianism: the alleviation of human suffering in wartime (Weiss, 1999, pp. 17–19; Stockton, 2002).

It is difficult, therefore, to calibrate the extent of the application of the general rule of interpretation. Not all humanitarian conflicts are as complex as the relation with politics, which is the 'Achilles heel' of humanitarianism (Nan, 2010). However, all conflicts do not have black or white solutions; the two approaches are equal and equally applicable in wartime. Just as the ICJ's advisory opinion on the wall in the Occupied Palestinian Territory notes that IHL and IHRL supporters must acknowledge that each make some valid arguments, and that a simplistic dismissal of all of the points is persuasive only in one's own echo chamber, so one can say the same about the humanitarian system (Milanović, 2016b). Indeed, the positive and negative impacts of the two approaches should remain under consideration while balancing their relation in humanitarian crises.

On the one positive side of the equation, old humanitarianism is still valuable in negotiating with governments on the humanitarian space and access to victims. It is also more modest and limited in its scope of action, thus its aims are more realistic and less problematic in guaranteeing the efficiency of the humanitarian sector and a positive external perception of humanitarian action (Pictet, 1979). Furthermore, at present, there is no other humanitarian actor that can be compared with the ICRC given its history, range of activities, and reputation. This is demonstrated by the fact that the organisation did not suffer significantly due to this phenomenon between

2003 and 2013, during a period of increasing violence worldwide against aid workers (Gordon and Donini, 2016, p. 99).

That said, one should acknowledge that new humanitarianism demands that the international community and perpetrators be accountable for their behaviour, action and inaction. In addition, it tries to deliver aid while considering its long-term impact, seeking to offer more than 'a bed for the night' (Rieff, 2003) and a meal to the hungry (Slim, 2015), and it is thanks to the new humanitarian reform that accountability of the humanitarian sector has been augmented (Anderson, 1999). This is because the linking of humanitarianism and human rights entails conditionality for the 'benefactor' as well as the beneficiary; the beneficiary should be granted some freedom in determining the quality of humanitarian assistance. In the end, the promotion of the right to development, whose content is a matter of definition by people and communities rather than states, challenges the complacency of the humanitarian sector regarding its own standards (United Nations, 2013, pp. 12–16).

On the negative side, aid has been used under a Dunantist approach as an instrument to fund and help perpetrators. In Rwanda in 1994, for instance, humanitarians found themselves helping the Hutu génocidaires; only later did they realise who their beneficiaries were and the results of the action. Another adverse outcome of old humanitarianism is that leaders may abrogate their relief responsibilities and devote their resources to fighting (Groves, 2007). Similarly, those leaders might exploit humanitarian aid in order to acquire the support of the local population without having to capture hearts and minds, as happened in the Horn of Africa between 1991 and 1996 (Prendergast, 1996, p. 35). Lastly, the needs-based approach can reduce people to a status of 'bare life', alienation and dependency, which is visible in many camps for internally displaced persons (IDPs) and refugees. Indeed, the provision of basic relief is not sufficient for people who live for years in camps, where they are 'alive to death but dead to life' (Pirandello, 2017, p. 241). In such a context, saving old humanitarianism may mean sacrificing some people in the way (Agamben, 2005, p. 136).

Meanwhile, the rights-based approach has created its own unintended negative consequences. When humanitarians decide not to deliver food and medical aid to perpetrators, they contradict and weaken IHRL, negating goods and rights that are accorded to the worst criminals under any developed judicial system (Stockton, 1998, p. 355). When they transform human rights from means to ends, they can end up delivering the right to humanitarian assistance, instead of assistance (Sen, 1999). Furthermore, the rights-based approach risks undermining one of the absolute principles of humanitarianism: universality. The new perspective questions the right of everyone to receive humanitarian relief in a time of crisis and increasingly restricts the supply of aid to those parties who are willing to follow specific political lines. Evidence is advanced here using the example of Serbia, where donors directed funds only to those areas that opposed Milošević (Fox, 2001, p. 282). Humanitarianism, therefore, loses any link with charity and becomes a god that gives to anybody according to 'merit', creating a division between deserving and undeserving victims.

Overall, both approaches have strengths that should be preserved. More importantly, though, both contain important gaps that may be closed via coordinated application of the two forms of humanitarianism. This need for complementarity has been acknowledged in the humanitarian sector over the past 15 years. Notably, an integrated approach emerged in 2005 when humanitarian assistance delivered in the wake of the Darfur (west Sudan) crisis and the Indian Ocean tsunami was deemed inadequate. The response led to the UN implementing in 2005 its 'Cluster Approach' (Humphries, 2013). Clusters are collectives of humanitarian organisations, UN and non-UN, that seek to optimise coordination among humanitarian actors and to avoid resources being wasted in specific areas, such as logistics and water, sanitation, and hygiene (Labbé, 2012, p. 8).

The emergence of initiatives such as the Sphere Project,<sup>3</sup> a global community of hundreds of NGOs, offers further proof of understanding of the need for an integrated approach. Prior to the emergence of the Sphere movement in 1997, the ICRC developed (in 1992) a 'Code of Conduct for International Red Cross and Red Crescent Movement and NGOs in Disaster Relief', a process that included both relief and human rights NGOs. Indeed, there is no choice to be made between the two: between a 'well-fed dead' and a 'starving rights-holder', the aim should be to have a 'well-fed rights-holder'. This need for harmonisation between the two forms of humanitarianism is the reason why one must remember that the general rule of interpretation should always be based on analysis of the humanitarian crisis; one should not look for hierarchies between the two approaches where they do not exist.

In fact, there are also cases where the general rule of interpretation cannot apply. In such instances, this analysis reaches the same conclusion as that of the ICJ in 'Democratic Republic of the Congo v. Uganda'. The court declared that human rights law remains applicable as humanitarian law in wartime (Schabas, 2007, p. 598), and it did not even address a possible conflict between IHRL and IHL, considering them to be complementary and distinct bodies of norms that can help each other by closing their reciprocal gaps (Prud'Homme, 2007, p. 389). Similarly, in relation to many humanitarian conflicts, the view is that the needs- and the rights-based approaches are two equal and distinct systems that complement one another.

Humanitarian actors should honestly declare their purpose and not pretend to be someone else, as, for instance, multi-mandate NGOs have done in Afghanistan, where they feign to be neutral humanitarian actors (Gordon and Donini, 2016, p. 98). After clarifying their position, they should also understand that fragmentation can be an asset of humanitarianism in complex and chaotic contexts. It guarantees, for example, the ability of some humanitarian actors to operate in areas where their specific approach affords them access and trust, while not precluding other entities from pursuing the broader objectives of new humanitarianism. Evidence of this is offered by the division of roles between Islamic charities and UN agencies and troops in Somalia. By remaining distinct from the military and political objectives of the UN, Islamic charities enjoyed access to isolated areas, while UN agencies continued to pursue a broader humanitarian and political agenda in other parts of the country (Labbé,

2012, pp. 22–23). Ultimately, the humanitarian sector must accept the opportunities, and the constraints, presented by having different humanitarian approaches, which are both necessary in confronting the chaos of contemporary crises (Labbé, 2012, p. 24).

## **The general rule of interpretation and specific cases**

After having discussed the general rule of interpretation and the belt and suspenders approach, the focus now shifts from the relation between old and new humanitarianism to a particular conflict between them, over the principle of neutrality. It will become evident that the general rule of interpretation and the belt and suspenders approach are just a palliative cure of the humanitarian debate. Even if operational manifestations of the humanitarian debate can be addressed through the general rule of interpretation, the conflict of principles on which they are based is unlikely to be resolved. Moreover, as humanitarian conflicts change from context to context, the theory developed here is not a universal remedy that *a priori* works in every case, but a treatment has to be found—or remain undiscovered—using single and specific analyses.

### **Example: neutrality**

The denunciation of human rights abuses by new humanitarian NGOs is arguably a valid move. Even MSF, which is a Dunantist NGO, has adopted this mode of speaking out. Yet, there are different ways in which rights-based NGOs could defend human rights, and, utilising the Dunantist approach as an interpretative framework, it is possible to find a means that allows for the pursuit of justice while not sacrificing humanitarian action in the process. New humanitarians should not be an adversarial and hypercritical type of human rights worker for two key reasons. First, there are already human rights organisations that can assume this role. Second, as Slim (1997, 2015) argues, if NGOs denounce human rights violations, it is not possible to preserve the immunity of the humanitarian space. Hence, adversarial advocacy on the part of humanitarian actors does not seem to be the best choice of action in the midst of a humanitarian crisis.

This is not to say, though, that the denunciation of abuses is wrong in itself, but rather, that it should be moderated. For example, there are instances in the past of individual aid workers deciding to speak out, and then opting to leave the operation or being banished by a government for doing so. Another example from the past is the practice of passing information to human rights organisations such as Amnesty International as a way of denouncing without losing humanitarian access (Lunn, 2005, p. 6). Such practices correspond to applying new humanitarianism in the light of old humanitarianism.

What can happen if new humanitarianism does not derogate or delay some of its aims to adapt itself to the reality on the ground? Many NGOs suspended humanitarian aid programmes in Afghanistan when the Taliban restricted women's rights in 1996 (Atmar, 2001; Fox, 2001). For instance, Oxfam suspended its clean water programme,

which, according to Tony Vaux, the emergencies co-ordinator for Afghanistan at the time of the aforementioned restrictions, may have led to the loss of some 1,800 lives (Fox, 2001). One could contend that the deaths were important and functional in order to prevent women from suffering in the future, but the action of the rights-based NGOs, including Oxfam, does not appear to have led to the affirmation of women's rights in Afghanistan (Stockton, 1998; Fox, 2001). Instead, people seem to have been left in need and without any assistance. That new humanitarianism should be interpreted according to old humanitarianism means, therefore, that the defence of human rights should not comprise sacrificing human beings for a benign abstraction or a legal formalisation that does not translate into practical benefits (Sen, 1999).

More recently, humanitarian workers have avoided becoming an adversarial and hypercritical type of human rights worker in places such as South Sudan, as this would hardly have had any kind of positive impact. The Government of South Sudan is principally responsible for the abuses, and so it is unlikely that rights-based advocacy will result in it meeting its human rights responsibilities. The government is also very concerned about a perceived bias on the part of humanitarian actors, spawned by the fact that at the beginning of the crisis in 2013, humanitarian aid was focused on protection of civilians (POC) sites, where primarily people associated with the opposition resided; this led to the conclusion that humanitarians favoured the Nuer. In response, the government passed legislation in February 2016 limiting the number of humanitarian actors that can operate in the country (Hamsik, 2017), and bureaucratic constraints are now in place at checkpoints.

Asking non-state actors such as the Nuer and other South Sudanese armed groups to guarantee human rights has a weak base in law, which concentrates on the responsibilities of states, and is likely to yield scant results in practice (Sassòli and Olson, 2008). Indeed, even if Kantian natural possession of rights can seem morally correct, and its recognition is requested even by non-state actors, respect for human rights is a decision for those who hold the power, according to a less politically correct but plausible Grotian viewpoint (Kant, 1996; Grotius, 2012). Furthermore, the issue is broader than a lack of respect for IHRL by armed groups. There is no developed judicial system in South Sudan (Padgen, 2003), and there is no division between judicial and governmental power. Justice is administered by elders; entire regions of the country are without any form of judicial presence, inevitably affecting the awareness of individuals of justice (International Commission of Jurists, 2013). Humanitarian actors alone cannot assume the task of protecting human rights in this context. There are development and human rights organisations that can defend rights and take care of long-term projects, but only humanitarians have the role of providing relief.

However, the general rule of interpretation does not have to be understood as a 'duty' always to keep advocacy moderate. The ICRC has relinquished its neutrality in a few settings. For instance, Jakob Kellenberger, the former president of the organisation, strongly denounced abuses of civilians and detainees by the Government of Myanmar in 2007 (ICRC, 2007). MSF has done so too, abundantly (Groves, 2007). In Syria, it supports the cause of the rebels, a non-neutral position that facilitates its

access to opposition-controlled areas (O'Reilly, 2013). In Libya in 2012, the organisation decided to suspend medical activities in detention centres in Misrata because patients were brought to MSF doctors in the middle of an interrogation for medical care to make them fit for further torture (MSF, 2012). In such cases, denunciation and/or consequent withdrawal can be the best way to minimise the worst effects of aid. Hence, it is crucial that the general rule of interpretation is based not on a deontological logic, but on external factors. In the end it is a reminder that NGOs should evaluate accurately when and how to speak out so beneficiaries do not pay for their decision.

Furthermore, as occurs in the relation between IHL and IHRL, there are instances where no deontological logic or external factor provides an answer to how to resolve the conflict between the two types of humanitarianism. In such cases, the only option left is the one assumed by the ICJ in relation to armed activities in the DRC: recognise that they are complementary and distinct, and admirably so (Prud'Homme, 2007, p. 389). In fact, neutrality might be a good choice for some NGOs, but it might not be right for all of them. Some organisations do not have the diplomatic and political contacts or the financial resources and professional competence to agree and maintain a neutral position (African Rights, 1994, p. 24). What is more, the ICRC is just one player in an always expanding humanitarian sector. For this organisation, offering efficient humanitarian assistance may correspond to contributing to humanitarian action using a neutral and independent approach (Forsythe, 1996), but for other humanitarian actors, such as UN agencies, it may mean focusing on development, denouncing human rights violations, and taking part in a political process (Dickinson, 2016). Lastly, it is difficult to know *a priori* if the denunciation of human rights violations will have a negative or positive impact. Ultimately, therefore, it is up to individual NGOs to decide whether or not to be neutral, but they have to clarify their position so as not to create misconceptions about the role of humanitarianism, and to build a partnership with other humanitarian actors (Scott, 2014), as suggested by the belt and suspenders approach.

An example of the belt and suspenders approach was evident in South Sudan in 2017, where it was applied to overcome the negative ramifications of the initial division between new and old humanitarians. At the beginning of the crisis, old humanitarian organisations, such as the ICRC and MSF, did not operate in POC sites, in order not to compromise their neutrality while working with the United Nations Mission in South Sudan (UNMISS). They concentrated instead on deep field locations, but did not have enough funds to respond to the needs of the people in all of these areas; besides, the escalation of violence prevented them from doing so. Meanwhile, donor funds and new humanitarian NGOs were mainly directed to POC sites because of greater media attention and political relevance (Briggs and Monaghan, 2017, pp. 22–33). Yet, neither the civil component of UNMISS nor the NGOs were able to cope with the increasing numbers of IDPs seeking refuge in POC sites, being ill-prepared to develop a consistent needs-based plan. Thus, this division between the old and new approaches meant that there was inefficient humanitarian assistance within and



without POC sites. This reality was acknowledged and the system was adapted to the needs of the context. Old humanitarian organisations operated inside POC sites, and donors started to direct their funds to deep field locations, where the majority of individuals at risk were situated (Briggs and Monaghan, 2017, pp. 35–43). Both groups of actors retained their approaches while clarifying their positions and cooperating. This harmonisation, as recommended by the belt and suspenders approach, can seem simple, but it is not. It is never inevitable, and constant effort is required to prevail over divisions.

## Conclusion

This paper provides a theoretical background to clarify the meaning of old humanitarianism, based on neutrality and short-term, relief-based assistance, and new humanitarianism, centring on advocacy and development, and to identify harmony between them in wartime. In summary, the application of the general rule of interpretation (to represent the humanitarian debate) serves to highlight the need for complementarity between the two schools of thought, which can both contribute to the efficiency of the humanitarian sector. Yet, the belt and suspenders approach acknowledges that old and new humanitarianism do not mesh together perfectly; an ideal compromise is simply not possible in some instances, either in relation to humanitarian assistance on the ground or the values and policy considerations behind it. In cases of conflict between the two methods, an accurate evaluation is needed to determine if it can be resolved by employing the general rule of interpretation, or if it is unsolvable and hence the belt and suspenders approach should apply (Darcy, 2004, p. 15). Where the general rule of interpretation is valid, most conflicts could be addressed via sensitive application of the rights-based approach, so as not to hamper the delivery of humanitarian aid while pursuing moral and political aims (Gordon and Donini, 2016, pp. 105–109). When there are unresolvable disputes, the humanitarian system can gain much from accepting the unavoidable application of the two distinct approaches and trying to clarify their points of complementarity (Labbé, 2012, p. 24).

Consequently, the theory developed here may seem unsatisfactory, and its ‘tool-box’ can appear to be dull and not particularly useful. A theory can only take one so far, though; it cannot resolve the dilemma, ultimately a moral one, faced by the humanitarian system. What is considered to be correct application of this theory necessarily changes according to the humanitarian crisis; thus, the formulation of a context-based humanitarian plan requires that the theoretical background is clear. The general rule of interpretation and the belt and suspenders approach can reduce the uncertainty regarding the meaning of humanitarianism, they can reveal the ‘black holes’ in humanitarianism where individuals might be sacrificed for other objectives, and they acknowledge the need for a complex humanitarian system to confront intricate humanitarian crises. But they cannot resolve the conflict of principle between humanitarianisms, as it is not designed to be resolved, but rather to be managed.

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## Endnotes

- <sup>1</sup> For more information on this, see [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=en) (last accessed on 16 October 2020).
- <sup>2</sup> For more information on this, see <https://www.icj-cij.org/en/case/116/judgments> (last accessed on 16 October 2020).
- <sup>3</sup> The *Sphere Handbook* is 'one of the most widely known and internationally recognised sets of common principles and universal minimum standards in humanitarian response'. For more information on this, see <https://spherestandards.org/about/> (last accessed on 16 October 2020).

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