

Humanitarian Action Under Attack: Reflections on the Iraq War

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On October 27, 2003, suicide bombers slammed an ambulance packed with explosives into the compound of the International Committee of the Red Cross (ICRC) in Baghdad, killing eighteen civilian bystanders and wounding dozens more.¹ Coming just two months after the bombing of the U.N. headquarters in Baghdad that claimed the lives of twenty-three people, including Special Representative of the Secretary-General Sergio Vieira de Mello, the attack on the ICRC sent shockwaves through the aid community.² There was no mistaking the intentions of the bombers; the attack was a deliberate and targeted assault on civilians and aid workers, a blatant war crime.³

Most startling was the choice of the ICRC as the target of attack. Not only is the ICRC the preeminent humanitarian organization with a specific mandate based in international humanitarian law (IHL), but it, unlike most aid agencies, also has a long history of providing assistance in Iraq. The ICRC provided aid and cared for prisoners of war during the Iran-Iraq war and remained in Iraq throughout both the tumult of the 1990s and the U.S. war with Iraq in 2003.⁴ After the bombing, aid organizations had to wonder if the ICRC, with its strong record of principled humanitarian action, was not immune to attack, what organization was?

For many aid organizations, the attack on the ICRC jeopardized the possibility of keeping international staff in Iraq, particularly in the central part of the country where hostilities between the U.S. occupation force and insurgents were the most intense. Many organizations withdrew entirely from

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1. *Baghdad Terror Blast Kills Dozens*, BBC, Oct. 27, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/3216539.stm.

2. *See id.*

3. Grave breaches of international humanitarian law (IHL) (codified in the Geneva Conventions and their Additional Protocols), such as the willful killing of non-combatants, are war crimes. *See* FRANCOISE BOUCHET-SAULNIER, *THE PRACTICAL GUIDE TO HUMANITARIAN LAW*, 414–29 (Laura Brav ed., 2002); IV Geneva Convention, Aug. 12, 1949, Oct. 21, 1950, 6 U.S.T. 3516, 75 U.N.T.S. 287.

4. International Committee of the Red Cross, *The ICRC in Iraq*, at <http://www.icrc.org/web/eng/siteeng0.nsf/iwpList74/F8EB853A6796F202C1256B6600601EDD> (last visited Feb. 11, 2004).

the country while others, like *Médecins Sans Frontières*/Doctors without Borders (MSF), scaled back their programs and temporarily withdrew international staff.⁵

The nature of the attacks on the United Nations and the ICRC raised a series of fundamental questions for aid organizations. In contexts like Iraq and Afghanistan, where the United States and other Western powers assertively project their military power in support of ambitious political goals, is there still a space to provide humanitarian aid directly to the population? Are aid organizations irrevocably intertwined with the U.S. and Western agenda in the minds of violent opponents and, even more alarmingly, of the local population? Are the fundamental principles that have typically characterized and guided humanitarian action, in particular impartiality, neutrality, and independence, still valid in such crises? Do aid organizations have choices left other than to seek armed protection and to work in full cooperation with Western military and political forces or to simply retreat?

While security risks immediately captured the attention of aid organizations, they are only one symptom of a much larger problem faced by humanitarian action in Iraq. A striking characteristic of the Iraq war and its aftermath is that at junctures when Iraqis have most needed humanitarian assistance, it has been both very difficult and dangerous for humanitarian organizations to provide it. At the height of the U.S. bombing and ground offensive, for example, Iraqi medical services were essentially left to fend for themselves in treating thousands of war-wounded patients in Baghdad and other besieged cities.⁶ Immediately after the fall of Saddam Hussein's regime, emergency relief efforts were paralyzed as basic services collapsed due to looting, political upheaval, and, in hospitals, administrative chaos.⁷ And now, months later, aid workers have become targets of attack, regardless of whether they work closely with the Coalition Provisional Authority.⁸

The fundamental aim of humanitarian action, to ensure that non-combatants are spared from undue violence and receive necessary and adequate assistance, is never easy to achieve during war. But why was the ability of humanitarian organizations to reach out independently and help victims, when and where they needed it the most, so limited and so compromised in Iraq?

The most immediate explanations highlight the most critical responsibilities. Saddam Hussein's government severely restricted humanitarian aid

5. *Red Cross to Cut Iraq Staff*, BBC, Oct. 29, 2003, available at http://news.bbc.co.uk/1/hi/world/middle_east/3224723.stm.

6. See, e.g., Colin Nickerson, *Efforts Hindered by Battles, Loss of Aid Groups*, BOSTON GLOBE, Mar. 24, 2003, at A23; Laurie Goering, *Port City Trapped Between Regimes; With No One in Charge, Residents Fear the Unknown*, CHI. TRIB., Apr. 2, 2003, at C5.

7. *Looting, Disorder Hit Hospitals*, CNN, Apr. 10, 2003, available at <http://www.cnn.com/2003/WORLD/meast/04/10/sprj.irq.aid.situation/>.

8. See, e.g., Ian Fisher & Elizabeth Becker, *Aid Workers Leaving Iraq, Fearing They Are Targets*, N.Y. TIMES, Oct. 12, 2003, at 18; Sonni Effron & Shweta Govindarajan, *Aid Agencies Pulling Out of Iraq as Violence Rises*, L.A. TIMES, Nov. 15, 2003, at A5; Vivienne Walt, *Red Cross Staff to Evacuate Other Foreign Aid Workers May Leave Over Iraq Attacks*, BOSTON GLOBE, Oct. 30, 2003, at A8.

operations in violation of IHL, and violent opponents of the U.S. occupation are now deliberately attacking aid workers and civilians. Responsibility for the obstacles to humanitarian action, however, does not fall entirely on the former government or the insurgents. The manner in which the U.S.-led coalition made the minimization of harm and the provision of relief for Iraqis an integral part of its political and military agenda contributed significantly to the hostility towards humanitarian action and those who deliver it. Aid organizations themselves contributed to the perception that their assistance is an extension of the “hearts and minds” efforts of the United States by not clearly distancing themselves from the United States as a belligerent.

Humanitarian organizations do not have or claim to have a monopoly on assistance. On the contrary, the provision of essential services to the Iraqi people is the responsibility of the political authority in charge, currently the United States as the Occupying Power. To carry out its reconstruction responsibilities, the United States may partner with civilian relief agencies and private contractors. In contrast, humanitarian organizations become relevant and are directed to take action when civilians suffer unduly as a result of political failure, conflict, and crisis.

In Iraq, however, the U.S. government failed to preserve space for the politically independent and principled role of humanitarian organizations. Instead, the United States sought to bring humanitarian aid efforts under its control and claimed that all assistance supports its cause. For example, Secretary of State Colin Powell implied that the presence of nongovernmental organizations (NGOs) in Iraq is of strategic value for the United States when he declared, following the attack on the ICRC, that if NGOs left Iraq, it would be a victory for the terrorists.⁹ The U.S. efforts to associate assistance with its political objectives have jeopardized the ability of humanitarian organizations to distinguish themselves from all parties and to provide aid based solely on need during times of crisis.

This Article aims to describe how the U.S.-led coalition contributed to humanitarian action becoming thoroughly and intensely politicized before (Part II), during (Part III), and after the war between the United States and the Saddam Hussein government (Part IV). In addition, implications of the cooptation of humanitarian action during the Iraq crisis for other international crises are examined in light of the ongoing drive to increase the “coherence” between political objectives and humanitarian action (Part V). Before discussing the issues surrounding humanitarian action in Iraq, a brief conceptual discussion of the ambition, principles, and limits of humanitarian action is presented (Part I).

9. John Shovelan, *Powell Asks Red Cross to Stay in Iraq*, WORLD TODAY, Oct. 28, 2003, available at <http://www.abc.net.au/worldtoday/content/2003/s976830.htm>.

I. HUMANITARIAN ACTION: A BRIEF OVERVIEW OF THE FUNDAMENTAL PRINCIPLES AND THEIR LIMITS

The concept that “even wars have rules” emerged from the battlefields of the late nineteenth century.¹⁰ It was not until after the Second World War, however, that international political consensus cemented around the concept that non-combatants should be spared from the excesses of war by placing limits on the means and methods of warfare and by ensuring the delivery of life-saving assistance during wartime. The Geneva Conventions of 1949 place primary legal obligations on warring parties, but also legitimize the role of “impartial” humanitarian organizations, such as the ICRC, in promoting the protection of, and providing relief assistance to, non-combatants.¹¹

Humanitarian actors regularly face the dilemma that the immediate objectives of warring parties clash with their stated commitment to IHL. This contradiction arises most acutely when, as is so often the case today, wars are fought *over*, rather than around, civilians. While IHL seeks to remove non-combatants from the equation, warring parties are increasingly placing them at its center. The fundamental principles of humanitarian action, based on the Geneva Conventions, recognize this tension and seek to overcome it.

The most important principles of humanitarian action are humanity, which posits the conviction that all people have equal dignity by virtue of their membership in humanity, impartiality, which directs that assistance is provided based solely on need, without discrimination among recipients, neutrality, which stipulates that humanitarian organizations must refrain from taking part in hostilities or taking actions that advantage one side of the conflict over another, and independence, which is necessary to ensure that humanitarian action only serves the interests of war victims, and not political, religious, or other agendas.¹²

10. The ICRC was founded by Henry Dunant in 1863 after he witnessed the battle of Solferino in 1859. International Committee of the Red Cross, *Handbook of the Int'l Red Cross and Red Crescent Movement*, (International Committee of the Red Cross, 13th ed. 1994). The Hague Conventions of 1899 and 1907 were the first international treaties establishing the laws and customs of war. See BOUCHET-SAULNIER, *supra* note 3, at 319–20.

11. Article Three of the Fourth Geneva Convention establishes a “right of initiative” which entitles any impartial humanitarian organization (the ICRC is mentioned explicitly) to offer its services during a conflict. BOUCHET-SAULNIER, *supra* note 3, at 360.

12. Along with universality, unity, and voluntary service, these are the seven fundamental principles of the Red Cross and Red Crescent Movement. International Federation of Red Cross and Red Crescent Societies, *Principles and Values*, at <http://www.ifrc.org/WHAT/values/index.asp> (last visited Feb. 12, 2004). Of the seven principles, humanity, neutrality, and impartiality are considered the most widely accepted guiding principles for humanitarian action; they have been retained as the basis for codes of conduct such as the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, which has been agreed to by ICRC, the International Federation of Red Cross and Crescent Societies, and NGOs such as CARE, Oxfam, and the World Council of Churches. G.A. Res. 182, U.N. GAOR, 46th Sess., Supp. No. 49, at 49, U.N. Doc. A/RES/46/182 (1991); International Federation of Red Cross and Red Crescent Societies, *Code of Conduct*, at <http://www.ifrc.org/publicat/conduct> (last visited Feb. 11, 2004).

These fundamental principles serve two essential purposes. They embody humanitarian action's single-minded purpose of alleviating suffering, unconditionally and without any ulterior motive. They also serve as operational tools that help in obtaining both the consent of belligerents and the trust of communities for the presence and activities of humanitarian organizations, particularly in highly volatile contexts. While humanitarian action itself is not a political project, assisting the neediest and most vulnerable in conflict is a politically charged act. The key humanitarian principles embody the (ever fragile) political agreement among belligerents about the conditions for humanitarian activity in the midst of crisis.

Humanitarian action is a pragmatic, action-oriented endeavor, not a philosophical one, and its principles should not be understood as sacrosanct strait-jackets. Wars are complex and evolving, and they repeatedly pose ethical and practical challenges to humanitarian organizations. As a result, differing views abound on the particular weight and proper interpretation of the principles.

In recent years, for example, the meaning of the principle of neutrality has been hotly debated. Some critics have argued that neutrality implies passivity or indifference to suffering, while others contend that neutrality entails a misguided evenhandedness and a failure to recognize differences, mainly judged on a moral basis, among warring parties.¹³ Most practitioners of humanitarian action, however, understand neutrality to signify neither taking sides politically nor actively participating in a conflict.¹⁴

Accordingly, for MSF, it is in keeping with the principle of neutrality to allocate aid to victims only on one side of a conflict if justified on the basis of needs, or to refuse to deploy aid operations on one side of a conflict if conditions there prevent aid from reaching and helping victims. Using IHL as a reference, MSF also believes that neutrality supports denouncing abuses committed by any belligerent with the aim of improving the protection and assistance afforded to victims. Neutrality does not mean that the impact of humanitarian action will be neutral in the way that a neutral compound, when inserted into an ongoing chemical reaction, does not affect it. Humanitarian organizations actively seek to alleviate suffering, and their actions and statements necessarily have an impact on the political dynamics of a conflict.

Furthermore, no matter how the fundamental principles of humanitarian action are interpreted, applying them to a situation does not ensure infallible results. Securing access to the victims of conflict is often problematic and tenuous. Vast parts of many war zones around the world are off-limits either

13. For a summary of the critique of neutrality see FIONA TERRY, CONDEMNED TO REPEAT? THE PARADOX OF HUMANITARIAN ACTION 20–23 (2001). Fiona Fox, a British relief specialist, rejects the “traditional concept of neutrality as on the one hand morally repugnant and on the other hand unachievable in the complex political emergencies of the post–Cold War period.” DAVID RIEFF, A BED FOR THE NIGHT: HUMANITARIANISM IN CRISIS 314 (2002).

14. TERRY, *supra* note 13, at 20–23, 70, 221.

because fighting is too intense or because the warring parties do not tolerate or facilitate the presence of humanitarian organizations. When a particular warring party perceives that the delivery of aid or the condemnation of abuse undermines its cause, this may trigger hostility and rejection, even when organizations strive to remain impartial, independent, and neutral. In a wide variety of contexts, aid workers have been threatened, kidnapped, assaulted, injured, and killed.¹⁵ However, the experience of MSF, similar to that of many organizations, has been that establishing transparent relationships with local authorities and communities based on an unambiguous humanitarian identity and supporting that relationship with effective delivery of assistance—the so-called “acceptance” approach—is the most reliable means of minimizing safety risks.¹⁶ Although security concerns remain among the most prominent operational constraints, the fact that aid workers have been deployed to active war zones in increasing numbers during the past decade underscores the feasibility of principled humanitarian action.

Clearly, there are limits to the application of the fundamental principles guiding humanitarian action; but, there is a considerable difference between recognizing these limits and jettisoning the principles altogether. Whenever principles are abandoned in the name of heightened effectiveness or on the basis of a moral choice, what is lost must be considered along with what is won. This Article argues that the costs of fundamentally compromising the guiding principles of humanitarian action through politicization, as occurred in Iraq, are significant.

II. BEFORE THE WAR: THE INTEGRATION OF POLITICS AND HUMANITARIAN ACTION

The intense politicization of humanitarian action in Iraq started well before the U.S.-led coalition launched its military attack in March 2003. In the tense months prior to the war, both proponents and opponents of military action utilized the war's likely impact on the civilian population as an element of support for their respective points of view. The fate of the Iraqi people in the impending confrontation emerged as a key issue in the battle for public opinion about the war's legitimacy.¹⁷ As a result of this focus on the potential human impact of the war, humanitarian emergency preparedness efforts were greatly affected by the political agenda, and the credibility

15. See Sheik, Gutierrez et al., *Deaths Among Humanitarian Workers*, 321 BRITISH MED. J. 166–68 (2000); Dennis King, *Paying the Ultimate Price: Analysis of the Deaths of Humanitarian Aid Workers*, at <http://www.reliefweb.int/symposium/PayingUltimatePrice97-01.html> (Jan. 15, 2002).

16. For a discussion of various approaches to security, in particular the “acceptance” model, see Koenraad van Brabant, *Cool Ground for Aid Providers: Towards Better Security Management in Aid Agencies*, 22 *Disasters* 109–25 (1998).

17. President George W. Bush, Remarks by the President in Address to the Nation (Mar. 17, 2003), available at <http://www.whitehouse.gov/news/releases/2003/03/20030317-7.html>; President George W. Bush, Radio Address to the Nation (Mar. 15, 2003), available at <http://www.whitehouse.gov/news/releases/2003/03/20030315.html>.

and identity of humanitarian actors were weakened and compromised before the conflict began.

A. The U.S. Government Makes Assistance Part of Its War Plan

For months before the initial attack, President George W. Bush declared that concerns about the welfare of the Iraqi population were central to the decision to overthrow Saddam Hussein and integral to the way that war would be waged.¹⁸ Humanitarian concerns writ large—upholding human rights and promoting freedom and democracy—were evoked to justify the war, adding urgency to the security threats emanating from the purported Iraqi build-up of weapons of mass destruction and support for terrorism.¹⁹ President Bush painted a picture of the war that included precision bombs that would minimize the number of civilian casualties, and American soldiers who would liberate and bring “food and medicine” to a population living in grim conditions under Saddam Hussein’s rule.²⁰

Anticipating and preparing for calamity are critical components of humanitarian work, and the looming conflict in Iraq warranted an emergency preparedness effort by aid organizations. Politics intervened with these efforts, however, and differences in opinion about the war stymied preparations for the potential humanitarian crisis in Iraq. European governments, reluctant to accept the inevitability of the U.S. attack, were loath to appear to be sanctioning the war by providing funding to organizations in order to address its likely consequences.²¹ In the United States, a reverse logic with

18. Well before the United States announced plans to make aid a central component of its strategy for the upcoming war, assistance was part of the international community’s policy for dealing with Iraq. To mitigate the heavy toll borne by the Iraqi population under international sanctions, compounded by the military straitjacket enforced by American and British warplanes in the no-fly zones, an “oil-for-food” program, administered by the United Nations, was put in place in 1995 by the U.N. Security Council. U.N. SCOR, 50th Sess., 3519th mtg. at 101, U.N. Doc. S/RES/986 (1995). The ensuing infusion of assistance, particularly food rations and medical supplies, made the sanctions more palatable by allowing the Iraqi population to live on somewhat better terms than they had since the Gulf War. Prior to the Gulf War, Iraq was described as a high middle-income country. The 1991 war and its aftermath, however, resulted in a serious setback in health, nutrition, and sanitary conditions as well as an increase in the number of internally displaced persons and refugees. Since 1991, the combined effect of the Iraqi government’s policies and the twelve years of international sanctions have resulted in a dramatic decline in social and health indicators. After the start of the oil-for-food program in 1996, social services improved somewhat, but they were operating at only a fraction of pre-1991 capacity in early 2003. Ctr. for Economic and Social Rights, *The Human Cost of War in Iraq*, 13–14 (2003).

19. President George W. Bush, Radio Address to the Nation, *supra* note 17.

20. *Id.*

21. The United Nations only received \$34 million, primarily from the United States and Britain, before the war started and had to draw on its emergency reserves to make preparations. Iraq’s largest humanitarian aid donor over the past decade, the European Commission’s humanitarian aid office (ECHO), made a 6 million Euro emergency allocation on March 20, the day after the initial U.S. attack (ECHO also redirected its planned budget of 15 million Euro for Iraq to emergency relief). Int’l Crisis Group, Middle East Report No. 12, *War in Iraq: Managing Humanitarian Relief* 9 (Mar. 27, 2003). Even Britain was reluctant to allocate money for emergency preparedness, and British NGOs complained of not receiving funding. See Tony Baldry, Chair, Discussion of Memorandum submitted by CARE International: Examination of Witnesses, British Parliament, at <http://www.publications.parliament.uk/pa/cm200203/>

similar consequences, was at play. Viewing humanitarian assistance as an integral part of its war plan, the U.S. government included funding provisions for aid within the war budget; but the budget was not presented for Congressional approval until March 25, six days after the United States launched its initial attack.²² Before that time, over \$100 million from other programs and crises were “scrubbed” to provide for Iraq preparations, but no fresh funding was actually made available until after the war had started.²³

The inclusion of humanitarian aid funding within the U.S. war budget is only one indication of the leadership role played by the U.S. military in what many viewed as secretive preparations for assistance.²⁴ The creation of the Office of Reconstruction and Humanitarian Assistance (ORHA) within the Pentagon on January 20 was a further sign of the military’s dominance in the government’s plans for aid delivery.²⁵ Led by retired General Jay Garner, ORHA brought military personnel alongside staff from civilian agencies such as the State Department, the United States Agency for International Development (USAID), and the Office of U.S. Foreign Disaster Assistance (OFDA). The government justified the creation of ORHA and the Pentagon’s leadership over its aid efforts by emphasizing both logistical and operational effectiveness.²⁶ The government argued that direct coordination between assistance efforts and the military command in charge of the overall campaign was critical for success.²⁷

The U.S. government outlined its planned aid effort for Iraq in the case of war and conquest on February 24, less than one month before the war began.²⁸ Consistent with President Bush’s general declarations, the premise of the U.S. approach was that military operations would be designed to minimize civilian casualties and to limit damage to infrastructure, thereby limiting the need for assistance.²⁹ The military was not expected to take a lead role in the delivery of aid, but would support the work of civilian agencies.³⁰ The government planned to field teams of expert government civilian personnel called Disaster Assistance Response Teams (DARTs) to work along-

cmselect/cmintdev/uc444-i/uc44402.htm (Feb. 12, 2003).

22. Press Release, Office of the Press Secretary, Supporting our Troops and Increasing Safety at Home, at <http://www.whitehouse.gov/news/releases/2003/03/20030325.html> (Mar. 25, 2003).

23. The supplemental budget request included \$543 million for relief assistance and \$1.7 billion for reconstruction activities. Int’l Crisis Group, *supra* note 21, at 9.

24. *Id.* at 11–12.

25. U.S. Department of Defense, *Backgrounder on Reconstruction and Assistance in Post-War Iraq*, at http://www.pentagon.mil/transcripts/2003/t03122003_t0311bgd.html (Mar. 11, 2003).

26. See Press Briefing, National Security Advisor Condoleezza Rice, Dr. Condoleezza Rice Discusses Iraq Reconstruction, at <http://www.whitehouse.gov/news/releases/2003/04/print/20030404-12.html> (Apr. 4, 2003).

27. Press Briefing, Office of the Press Secretary, Briefing on Humanitarian Reconstruction Issues, at <http://www.whitehouse.gov/news/releases/2003/02/20030224-11.html> (Feb. 24, 2003).

28. *Id.*

29. *Id.*

30. *Id.*

side the military in newly secured areas.³¹ DARTs would assess the situation and quickly disburse grants to NGOs and other agencies to implement programs.³² U.N. agencies, particularly those with a long history in Iraq under the Oil for Food Program such as the World Food Programme (WFP) and UNICEF, were expected to quickly resume their activities under a U.S.-led occupation.³³

In essence, the U.S. government announced that its “hearts and minds” effort would be carried out by a variety of civilian agencies including NGOs and private contractors as well as U.N. and governmental agencies. Work would be delegated to each agency according to its comparative advantage. All of the civilian agencies would work closely with the advancing army and deploy quickly in its shadow.³⁴ By announcing and detailing this partnership between the U.S. military and NGOs, the U.S. government portrayed NGOs as implementers of the assistance program it promised in the wake of its expected military victory.

B. Aid Organizations Play into the Politics of the Impending War

The U.S. government considered NGOs, particularly those based in the United States, as natural partners in the effort to provide relief during and after the war. Addressing NGOs during “Operation Enduring Freedom” in Afghanistan, Secretary of State Colin Powell clearly laid out the administration’s view:

As I speak, just as surely as our diplomats and military, American NGOs are out there serving and sacrificing on the front lines of freedom . . . I am serious about making sure we have the best relationship with the NGOs who are such a force multiplier for us, such an important part of our combat team. [We are] all committed to the same, singular purpose to help every man and woman in the world who is in need, who is hungry, who is without hope, to help every one of them fill a belly, get a roof over their heads, educate their children, have hope.³⁵

In Iraq, as in Afghanistan, the message was clear: the U.S. government and NGOs share the same values and should combine their efforts. Many U.S.-based NGOs, in keeping with their “Wilsonian” tradition of finding a basic compatibility between humanitarian aims and U.S. foreign policy, agreed in

31. *Id.*

32. *Id.*

33. *Id.*

34. The U.S. military set up a Humanitarian Operations Center in Kuwait, the launch pad for the U.S. invasion, to coordinate with the United Nations and NGOs. Nicolas Pelham, *Relief Workers Urge Closure of Coalition Aid Centre Humanitarian Operations*, FIN. TIMES, Apr. 10, 2003, at 4.

35. Secretary of State Colin Powell, *Remarks to the National Foreign Policy Conference for Leaders of Non-governmental Organizations*, at <http://www.state.gov/secretary/rm/2001/5762.htm> (Oct. 26, 2001).

principle.³⁶ InterAction, the largest alliance of U.S.-based humanitarian and development organizations, has often emphasized the role of overseas assistance in promoting U.S. foreign policy goals, including national security.³⁷

The status of the United States as a potential unilateral belligerent did create some trepidation among NGOs and generated calls for the United Nations to coordinate relief efforts.³⁸ Yet most American NGOs did not believe that their relationship with the U.S. government in Iraq should be fundamentally different than in other crises. In fact, American NGOs demonstrated a particular sense of responsibility to engage the U.S. government. NGOs not only wanted to remind the U.S. government of its obligations under IHL, but also wanted to jointly prepare a response to the war's likely humanitarian consequences.³⁹ As George Rupp, President of the International Rescue Committee, stated, "humanitarian planning cannot be effective if organizations that are experienced in delivering relief and rehabilitation services are excluded from the process."⁴⁰ Under the stewardship of InterAction, extensive consultations with U.S. aid and military officials were carried out on a weekly basis for more than six months before the conflict.⁴¹ The rationale of NGOs for participating in these planning efforts was their need to explain their operating principles to the U.S. military and their desire to provide expertise in mitigating the effects of war.

Provided that roles and responsibilities were clearly defined, many U.S.-based NGOs were interested in accessing U.S. government funding to work in Iraq, particularly in the immediate aftermath of the expected military victory.⁴² This interest reflects the U.S. government's status as both the largest international funder of relief efforts and the dominant funder of U.S.-based NGOs.⁴³ As the war in Iraq drew closer, the chief concern among NGOs was that the U.S. government was not sufficiently facilitating their

36. Abby Stoddard, *Humanitarian NGOs: Challenges and Trends*, in 14 Humanitarian Policy Group Report 25, 27 (Joanna Macrae & Adele Harmer, eds., 2003).

37. INTERACTION, FOREIGN ASSISTANCE IN FOCUS: EMERGING TRENDS, available at http://www.interaction.org/campaign/emerging_trends.html (last visited Feb. 11, 2004).

38. Letter from Mary E. McClymont, InterAction President and CEO, to President George W. Bush, at <http://www.interaction.org/library/detail.php?id=1187> (Dec. 20, 2002).

39. Statement, InterAction, US Unprepared For Humanitarian Response in Iraq, at <http://www.interaction.org/newswire/detail.php?id=1287> (Feb. 13, 2003).

40. International Rescue Committee, *Lack of Preparedness for Humanitarian Crisis in Iraq Will Risk Innocent Lives*, at <http://www.interaction.org/newswire/detail.php?id=1108> (Nov. 21, 2003). At the time, MSF was an InterAction member, but disagreed with these consultations and did not participate. Based on Iraq and other issues, MSF has decided not to renew its InterAction membership in 2004.

41. InterAction, *supra* note 39.

42. Joseph Zimet, *Les ONG Américaines et Leur Administration dans le Contexte de la Crise Irakienne: Les Liaisons Infructueuses*, 8 *Humanitaire* 61, 65–66 (2003).

43. Stoddard, *supra* note 36, at 25–26. The drive of NGOs to participate in the government's planning process was also fueled partly by concerns that the Bush Administration could more readily use private contractors for relief and reconstruction work in the war's aftermath. NGOs argued that they were more cost-effective and had a "comparative advantage" in terms of implementing programs requiring "soft skills" such as community involvement and support. Mark Matthews, *US Defends Private Sector's Iraq Contracts*, BALTIMORE SUN, Aug. 10, 2003, at 1A.

preparedness efforts.⁴⁴ While USAID Administrator Andrew Natsios asserted that never before had the “humanitarian community” had so much time to prepare for an emergency, NGOs retorted that U.S. government funding was late and insufficient.⁴⁵ Before framework agreements between USAID and a number of major NGOs were hastily put together days before the war began, the only U.S. government funding made available to NGOs was a grant of less than one million dollars to a coalition of five American NGOs called the Joint NGO Emergency Preparedness Initiative.⁴⁶

Even if funds had been made available to American NGOs prior to the war, the sanctions against Iraq left in place by the U.S. government would have prevented U.S.-based organizations, even those funded by the U.S. government, from sending resources to Iraq, including Kurdish-controlled areas.⁴⁷ The sanctions, holdovers of the U.S. government’s longstanding policy of linking humanitarian assistance to political objectives, thus prevented U.S.-based agencies from deploying to Iraq in anticipation of the conflict.

As many U.S.-based NGOs were discussing possible cooperation with a potential belligerent, other NGOs, mainly in Europe, implicitly and explicitly opposed the war.⁴⁸ A consortium of French NGOs, for example, questioned the necessity of going to war given the possibilities for the peaceful disarmament of Iraq.⁴⁹ In an equally political statement, Oxfam called upon humanitarian arguments when it announced that “military action is unjustifiable” because “war in Iraq will have devastating humanitarian consequences for the civilian population.”⁵⁰ At the United Nations, uneasiness and trepidation at being cast in the role of a “clean-up service” following a preordained U.S. attack led to the leaking of a January contingency plan predicting a catastrophically high number of 500,000 “direct and indirect

44. James Fallows, *Blind into Baghdad*, ATLANTIC MONTHLY, Jan.-Feb. 2004, at 53.

45. *The NewsHour with Jim Lehrer: After the War* (PBS television broadcast, Feb. 26, 2003), available at http://www.pbs.org/newshour/bb/middle_east/jan-june03/postwar_02-26-03.html.

46. International Medical Corps, International Rescue Committee, Mercy Corps, Save the Children/US, and World Vision created the Joint NGO Emergency Preparedness Initiative and received \$883,000 towards its activities from USAID. A complete overview of USAID funding as of October 1, 2003 is available at <http://www.usaid.gov/iraq/updates> (last visited Feb. 11, 2004).

47. Press Release, International Rescue Committee, American Aid Groups Are Being Shut Out of Iraq by US Sanctions, at <http://www.theirc.org/index.cfm/wwwID/1678> (Mar. 20, 2003). It was only on March 25, six days after the war had started, that the rules were relaxed: organizations funded by the U.S. government automatically received licenses from the Office of Foreign Assets Control (OFAC) to operate in “liberated” Iraq. This change did not affect privately funded organizations that still required OFAC approval, a long, cumbersome and uncertain process. Int’l Crisis Group, *supra* note 21, t 15.

48. Among the U.S.-based NGOs, the faith-based Church World Service and the American Friends Service Committee also notably opposed the war. Zimet, *supra* note 42, at 65.

49. Press Release, *Action contre la Faim, Enfants du Monde–Droits de l’Homme, Handicap International, Médecins du Monde, Première Urgence & Solidarités, Irak: Face aux Menaces qui Pèsent sur les Populations Civiles, les ONG Signataires ont Décidé de Coordonner leurs Actions Selon des Principes Communs*, at <http://www.reliefweb.int/w/rwb.nsf/3a81e21068ec1871c1256633003c1c6f/ae2ed5e6647e889ec1256cdf00410892?OpenDocument> (Mar. 3, 2003).

50. OXFAM INTERNATIONAL, OXFAM BRIEFING PAPER: *PROTECTING IRAQ’S CIVILIANS*, available at http://www.oxfam.org.uk/what_we_do/issues/conflict_disasters/bp40_iraq.htm (Mar. 2003).

casualties” based on a “medium impact” scenario during three months of fighting.⁵¹

The positions of both U.S.- and European-based NGOs were remarkable because while they generally reflected public opinion in the United States and Europe respectively, they also contradicted the accepted principles of humanitarian action. The neutral and impartial nature of humanitarian action is undermined when an organization agrees to cooperate with a belligerent or opposes a war because it will generate victims. These actions serve to compromise the credibility of humanitarian organizations in the eyes of belligerents and civilians, particularly in a highly volatile context like Iraq. For that reason, MSF adhered to its longstanding position that humanitarian action is predicated on the reality of armed conflict and aims to secure a space for humanity within war, and did not speak out on the “rightness” or “wrongness” of this or any other war.⁵²

III. DURING THE WAR: HUMANITARIAN ACTION IS CONSTRAINED

For all the intensity of the pre-war debates around humanitarian issues, little assistance was actually available to support the efforts of the Iraqi medical services in addressing the critical humanitarian issue during the conflict: providing care to thousands of war-wounded patients in major cities such as Baghdad, Basra, and Nasariya.⁵³ Playing a large role in this deficit were the withdrawal of most organizations, including U.N. agencies, just before the war, constraints posed by U.S. and U.N. sanctions, and above all, the restrictions placed on the activities of aid organizations by Saddam Hussein’s government. On the other side of the frontline, intense publicity of relief operations carried out by coalition forces and NGOs in the few accessible areas of Southern Iraq served to highlight the “humanitarian” intentions of the coalition.⁵⁴

As the conflict neared, the United Nations, ICRC, and a few other aid organizations present in Iraq, such as the Cooperative for Assistance and Relief Everywhere, Inc. (CARE), prepared for the impending emergency by, among many other activities, donating generators and extra medical supplies to health centers.⁵⁵ The Iraqi government increased its food rations so that

51. UNITED NATIONS, OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, INTEGRATED HUMANITARIAN CONTINGENCY PLAN FOR IRAQ AND NEIGHBOURING COUNTRIES (unpublished working draft), available at <http://www.casi.org.uk/info/undocs/ocha030107.pdf> (Jan. 7, 2003).

52. MSF and a few other NGOs, such as Oxfam, also ruled out taking funding from any belligerent. Nick Cater, *Oxfam To Shun Iraq Funds from Belligerent States*, REUTERS ALERTNET, at <http://www.alertnet.org/thefacts/reliefresources/602345.htm> (Mar. 4, 2003).

53. Press Release, Physicians for Human Rights, Coalition Forces Must Protect Medical Facilities and Ensure Safe Passage of Personnel and Supplies to Save Lives in Iraq, at http://www.phrusa.org/research/iraq/bulletin_040903.html (Apr. 9, 2003).

54. See *infra* notes 66–69 and accompanying text.

55. See, e.g., Press Briefing, International Committee of the Red Cross Director of Operations, at <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/5KUJSW?OpenDocument> (Mar. 20, 2003).

families could accumulate some reserves.⁵⁶ Very few outside aid organizations attempted to enter Iraq to augment these efforts and to assist the population during the conflict. Those that did, such as MSF, faced considerable barriers. Cumbersome U.N. Sanctions Committee procedures delayed the arrival of supplies and, more importantly, the Iraqi government was wary of authorizing humanitarian organizations to operate independently.⁵⁷ Stating that “Iraq does not need any humanitarian assistance. We are a rich country,” an Iraqi government spokesperson even publicly discouraged offers of aid.⁵⁸ In MSF’s case, it was only days before the war that a Memorandum of Understanding with the Iraqi Red Crescent was concluded. When negotiations at the U.N. Security Council collapsed on March 17, Secretary General Kofi Annan pulled all U.N. international staff out of Iraq.⁵⁹ However, a few aid groups (ICRC, MSF, Première Urgence, Islamic Relief) decided to maintain international staff in Baghdad to enhance the activities of national Iraqi personnel.⁶⁰ Their motivation to stay was strengthened by the fact that Western aid personnel had not managed to remain on the ground and provide assistance to victims during recent Western military operations in Kosovo and Afghanistan.

Contrary to doomsday scenarios, the three-week-long war did not generate a humanitarian catastrophe. There were no significant population displacements or refugee flows, no famine or major epidemics, and no use of weapons of mass destruction.⁶¹ Aside from the disruption of Basra’s water

56. Nadim Ladki, *Iraq Increases Food Rations as Citizens Stock Up for Possible War With US*, IRISH EXAMINER, available at <http://archives.tcm.ie/irishexaminer/2002/12/27/story609117539.asp> (Dec. 27, 2002).

57. As is typical for authoritarian regimes keen on controlling their population, the Iraqi government was highly suspicious of the concept of independent humanitarian assistance delivered directly to the population. For example, since 1993, MSF had attempted numerous times to gain access to Iraq, but was never granted permission to assess needs independently and to distribute and monitor its assistance. The Iraqi regime required all aid to be provided through state structures, as the U.N. agencies implementing the oil-for-food programs (WFP, UNICEF) agreed to do (except in the three northern, Kurdish-controlled directorates). Nicolas de Torrente, *Humanitarian Concerns About a Possible War on Iraq*, at http://www.doctorswithoutborders.org/publications/other/opinion_detorrente_iraq.shtml (last visited Feb. 11, 2004); United Nations Office of the Iraq Programme, *Oil-for-Food: About the Programme*, at <http://www.un.org/Depts/oip/background/inbrief.html> (last visited Feb. 11, 2004).

58. Mohammed Mehdi Saleh, quoted in Charlotte Denny and Rebecca Allison, *War in the Gulf: Humanitarian Crisis: Troop Setbacks Hold Up Aid*, GUARDIAN, Mar. 27, 2003, at 4.

59. Press Briefing, United Nations, Press Encounter with the Secretary-General at the Security Council Stakeout, at <http://www0.un.org/apps/sg/offthecuff.asp?nid=398> (Mar. 17, 2003).

60. See Scott Taylor, *Red Cross Gets Ready for War; Stockpiling for Casualties*, TORONTO SUN, Mar. 7, 2003, at 41; Nicholas Pelham, *Security Concerns Hinder Humanitarian Effort*, FIN. TIMES, Apr. 8, 2003, at 6; Justin Huggler, *The Iraq Conflict: French Medical Supplies Cross Border with Jordan on Long Journey to Baghdad*, INDEPENDENT, Mar. 27, 2003, at 6.

61. Press Release, *Médecins Sans Frontières*, MSF Medical Diagnosis on Iraq, at <http://www.reliefweb.int/w/rwb.nsf/0/253f67c5f8e09bc249256d12000e3046?OpenDocument> (Apr. 23, 2003). Had weapons of mass destruction been used, no humanitarian organization would have been prepared to deal with their impact. See GEOFF PRESCOTT ET AL., PROGRAMME FOR EVIDENCE-BASED HUMANITARIAN AID, HOPE FOR THE BEST, PREPARE FOR THE WORST: HOW HUMANITARIAN ORGANIZATIONS CAN ORGANIZE TO RESPOND TO WEAPONS OF MASS DESTRUCTION (2003), available at <http://www.merlin.org.uk/uploads/files/charity/Hope%20for%20the%20best,%20prepare%20for%20the%20worst%20->

supply, the most critical humanitarian issue during the war was the provision of emergency medical and surgical care to thousands of war-wounded patients.⁶² That the worst was averted should not, however, obscure the fact that Iraqi medical personnel taking care of a large number of patients could only marginally be supported by humanitarian organizations.

While most of the country's population was confined to major Iraqi cities encircled by advancing U.S. forces, the few humanitarian organizations in the country did manage to distribute supplies, but were otherwise highly restricted in their movements and capacity to assist. International staff was present only in Baghdad, and the intensity of the fighting made it impossible to reach cities such as Nasariya or Karbala. In addition, the Iraqi regime's strictures and sensitivities were only slightly diminished by the war. A presence on the other side of the conflict, for instance in Kurdistan or southern Iraq, could have put any Baghdad-based staff in serious danger.⁶³ The Iraqi secret police's arrest of two Islamic Relief staff and two MSF volunteers, François Calas and Ibrahim Younis, on allegations that they were Western spies evidenced the Iraqi government's paranoia.⁶⁴

With supplies gradually running short, the Iraqi medical system was ill-equipped to provide appropriate medico-surgical care for the thousands of civilians wounded in the bombing and ground-level fighting.⁶⁵ In most conflicts and crises, national medical personnel bear the brunt of the effort to provide care to civilians. Iraq was no different. From MSF's limited vantage point at Al-Kindi Hospital, the Iraqi staff acquitted themselves remarkably of their task. But international humanitarian personnel typically provide additional expertise, resources, and capacity to identify and respond to humanitarian needs as they emerge, thereby bringing an important added contribution. In the Iraq war, this was largely made impossible both by the in-

%20January%202003.pdf (last visited Feb. 11, 2004).

62. Journalist Niko Price and colleagues surveyed ledgers at 64 of Iraq's 120 hospitals, including almost all the large ones, after the war. Their tally of 3240 civilian deaths caused by conflict between March 20 and April 20 is the best available figure supported by evidence, but it is not comprehensive and certainly understates the extent of civilian deaths. The war-wounded typically outnumber the dead several times over. Niko Price, *Iraq: Counting the Dead*, ASSOC. PRESS NEWSWIREs, June 11, 2003. The Project on Defense Alternatives' analysis of available evidence indicates that between 11,000 and 15,000 Iraqis (combatants and non-combatants) were killed in the course of major combat actions (March–April 20, 2003), approximately thirty percent of whom (3200–4300) were non-combatants. CARL CONETTA, PROJECT ON DEFENSE ALTERNATIVES, THE WAGES OF WAR: IRAQI COMBATANT AND NONCOMBATANT FATALITIES IN THE 2003 CONFLICT, available at <http://www.comw.org/pda/0310rm8.html> (Oct. 20, 2003).

63. Personal communication with Pierre Salignon, Program Director for Iraq, *Médecins Sans Frontières*, Paris (May 2003).

64. As a result, MSF's support to Baghdad's Al-Kindi Hospital was suspended until their release following the collapse of the regime nine days later. Press Release, *Médecins Sans Frontières*, Doctors Without Borders Calls on Iraqi Authorities to Do All They Can to Bring About Immediate Release of Two Aid Workers Missing in Baghdad, at <http://www.doctorswithoutborders.org/pr/2003/04-07-2003.shtml> (Apr. 7, 2003); Press Release, *Médecins Sans Frontières*, Doctors without Borders Confirms Release of Two Missing Aid Workers in Baghdad, at <http://www.doctorswithoutborders.org/pr/2003/04-11-2003.shtml> (Apr. 11, 2003).

65. For the number of deaths and wounded, see *supra* note 62.

tensity of the fighting and the restrictions on aid organizations imposed by the Iraqi government—which had long viewed outside assistance as a component of the international community’s strategy to weaken and demean it.

At the same time, advancing coalition forces were focused on military operations. Few relief efforts were carried out behind the troops as they progressed, but those that did occur were highly publicized. Humanitarian rhetoric was part of the coalition’s psychological operations in which the embedded media played a critical role. The treatment of Iraqi civilians by U.S. military field hospitals was widely reported, as was the distribution of bottled water by British troops in southern Iraq.⁶⁶ The first convoys of water and food sponsored by the Kuwaiti government traveling just across the border to Umm Qasr received an inordinate amount of attention.⁶⁷ Even the demining of Umm Qasr port was presented as a humanitarian operation designed to allow the offloading of food aid, although the port was also important for military logistics.⁶⁸ Coalition partners such as Japan and South Korea, keen to show their participation in the war effort without contributing troops, highlighted their “humanitarian assistance” in the form of aid donations, field hospitals, and emergency civil-military teams.⁶⁹

With all of the publicity surrounding the coalition’s activities, it is important to remember that the provision of relief such as medical care, water, and food to civilians in areas an advancing military brings under its control is not humanitarian action but part of a belligerent’s obligations under the Geneva Conventions.⁷⁰ The key issue is whether the relief is actually provided and whether it is effective and equitable. In the immediate aftermath of the war, particularly in Baghdad, this question would become acute.

IV. AFTER SADDAM HUSSEIN’S FALL: HUMANITARIAN ORGANIZATIONS STRUGGLE TO ADDRESS FAILINGS OF THE OCCUPATION

Paradoxically, the toppling of Saddam Hussein’s government did not lead to a decrease of humanitarian needs in Iraq. On the contrary, the failure of

66. U.S. field hospitals garnered much media attention as places where Iraqi civilians could receive treatment. A CNN journalist/doctor even carried out an operation in one of them. See *Sanjay Gupta: Docs Grasp War Through Wounded*, CNN, Apr. 4, 2003, at <http://www.cnn.com/2003/WORLD/meast/04/04/otsc.iq.gupta>. This stood in sharp contrast to the portrayal of Iraqi hospitals solely as havens for the Fedayin and their military operations. The care provided to POW Jessica Lynch by Iraqi doctors was, for instance, blocked out in mainstream news reports about her rescue. John Kampfner, *The Truth About Jessica*, GUARDIAN, May 15, 2003, at 2.

67. A LexisNexis search returned 106 articles from major newspapers on the convoy over the space of three days: March 27, 28, and 29, 2003. See, e.g., Peter Baker & Rajiv Chandrasekaran, *Iraqi Militia, Elite Forces Roll South Into Fierce Attack by U.S. Warplanes*, WASH. POST, Mar. 27, 2003, at A1; Charlotte Denny & Rebecca Allison, *Humanitarian Crisis: Troop Setbacks Hold Up Aid*, GUARDIAN, Mar. 27, 2003, at 4.

68. *UK Aid Ship Docks at Iraqi Port*, BBC, Mar. 28, 2003, at <http://news.bbc.co.uk/1/hi/uk/2894279.stm>.

69. Doug Struck, *Asia-Pacific Allies Forced to Defend Role in Iraq War*, WASH. POST, June 4, 2003, at A14.

70. IV Geneva Convention, Oct. 21, 1950, art. 55, 6 U.S.T. 3516, 75 U.N.T.S. 287; see also BOUCHET-SAULNIER, *supra* note 3, at 260.

U.S. forces to prevent widespread looting in Baghdad contributed to the collapse of public health services, resulting in heightened difficulties for Iraqis in accessing medical care. In recent months, as the United States has faced violent opposition that has affected reconstruction efforts in the central part of the country, humanitarian organizations have struggled to provide immediate assistance, particularly as they have increasingly come under direct attack.⁷¹

A. Essential Services Collapse After the War

In the immediate aftermath of the conflict, the United States failed to live up to the expectations it generated and to its obligations as an Occupying Power under the Geneva Conventions.⁷² This failure was not only the unfortunate result of an unexpectedly rapid military success; a lack of leadership and confused actions by the United States as the new political authority also contributed to the situation. General Garner, the head of ORHA, did not arrive in Baghdad for two weeks after the end of the war and the medical DART tasked to immediately follow the troops did not arrive in Baghdad for three weeks after the war.⁷³ This situation left important initial decisions to the discretion of the U.S. military.

The provision of basic medical care in Iraq, like other services, crumbled after the war. The collapse of security following the U.S. military victory led to widespread looting, particularly in Baghdad.⁷⁴ Hospitals and other health facilities were not protected by U.S. troops, despite the pleas of ICRC and other humanitarian organizations.⁷⁵ Many health facilities were completely stripped of their medication, beds, furniture, and other amenities.⁷⁶ As a result, many war-wounded patients were forced to discontinue their treatment. In Baghdad's al-Kindi Hospital, 120 war-wounded patients were taken home by relatives as anarchy engulfed the premises.⁷⁷

In the chaos after the war, access to essential health care was badly compromised.⁷⁸ As public transportation ground to a halt, medical staff were no

71. Dexter Filkins, *Militants are Holding Back Recovery in Central Iraq*, N.Y. TIMES, Nov. 16, 2003, at 17.

72. See IV Geneva Convention, Oct. 21, 1950, art. 47–78, 6 U.S.T. 3516, 75 U.N.T.S. 287.

73. Personal communication with Kevin Phelan, Baghdad Press Officer, *Médecins Sans Frontières*, New York (May 2003).

74. *Baghdad Protests Over Looting*, BBC, Apr. 12, 2003, at http://news.bbc.co.uk/2/hi/middle_east/2941733.stm.

75. International Committee of the Red Cross, *Iraq Bulletin: Latest Reports From ICRC Staff in the Field*, at http://www.icrc.org/web/eng/siteeng0.nsf/iwpList550/09F2276EC82AAE89C1256D120051_F1DC (Apr. 24, 2003).

76. *Looting, Disorder Hit Hospitals*, CNN, *supra* note 7.

77. Dr. Morten Rostrup, *Médecins Sans Frontières* International Council President, Address at the National Press Club, available at http://www.doctorswithoutborders.org/publications/other/iraq_pressconference_5-2-2003.shtml (May 2, 2003).

78. Press Release, *Médecins Sans Frontières*, US Fails to Fulfill Obligation to Support Health Care System in Iraq, Posing Threat to Health of Iraqi People, at <http://www.doctorswithoutborders.org/pr/2003/05-02-2003.shtml> (May 2, 2003); *The Battle for Medical Real Estate*, ECONOMIST, May 10, 2003,

longer able to reach their posts. The removal of Saddam Hussein's government created a vacuum of power, spreading uncertainty and tension about leadership arrangements throughout the public health care system. Many hospitals were paralyzed by internal political struggles that mirrored those of wider Iraqi society.⁷⁹ In smaller cities, self-organization was easier, and in Shia areas, religious community leadership stepped in to fill the void and services managed to restart.⁸⁰ Yet there was still no adequately functioning hospital in Baghdad one month after the demise of Saddam Hussein's regime.⁸¹

Rather than focusing on the provision of urgently required medical care, the United States concentrated its efforts on reestablishing the functioning of institutions such as the Ministry of Health. But its initial efforts to recreate these institutions were stymied by varying statements and policy decisions regarding the continued eligibility of Baath party members for public service positions.⁸² This focus on reconstruction also came at the expense of ensuring immediate life-saving assistance in hospitals. Emergency medical assistance was quite obviously not a priority for the military. For example, when Al-Wasiti Hospital, one of the only hospitals to remain open immediately after the war, converted its lobby into an emergency room to deal with the huge influx of patients, U.S. soldiers provided little or no assistance although they occupied nearly half of the hospital.⁸³ The involvement of NGOs in the provision of services was also stalled. In the first chaotic weeks, when hardly any health services were available, interim and changing Iraqi hospital administrators indicated to MSF teams that any help beyond providing medical supplies would not be accepted.⁸⁴ They reported that U.S. military officials had told them to wait until policies for cooperation with NGOs were in place.⁸⁵

B. *The United States Orients Aid Organizations To Support Its Agenda*

From the beginning, the intentions of the U.S. government were clear: its policy was to incorporate aid agencies into its overall strategy. The U.S.-led coalition, however, did not deliberately block or overtly direct assistance efforts during and in the immediate aftermath of the conflict, contrary to some fears, voiced for instance in a statement by French organizations.⁸⁶

LEXIS, Nexis Library.

79. *The Battle for Medical Real Estate*, ECONOMIST, May 10, 2003, LEXIS, Nexis Library.

80. *Id.*

81. *Id.*

82. *US Administration Sacks New Health Ministry Head*, REUTERS, May 13, 2003, at <http://12.31.13.115/HealthNews/reuters/NewsStory0513200331.htm>; Peter Slevin & Rajiv Chandrasekaran, *Iraq's Baath Party is Abolished*, WASH. POST, May 12, 2003, at A10.

83. Personal communication with Kevin Phelan, *supra* note 73.

84. Pierre Salignon, *Guerre en Irak: les Représentations Humanitaires en Question*, 8 HUMANITAIRE 43 (2003).

85. François Calas, *Médecins Sans Frontières* Head of Mission in Iraq, *quoted in* Pierre Salignon, *supra* note 84, at 58.

86. Handicap International, *Face aux Menaces qui Pèsent sur les Populations Civiles, les ONG Signataires*

Rather, the United States was respectful of MSF's presence in Baghdad during the war and did not interfere with the wartime convoys of medical supplies from Jordan.⁸⁷ MSF staff also entered Iraq without any U.S.- or U.N.-issued identification in the immediate aftermath of the war.⁸⁸

In the wake of the Iraqi regime's collapse, U.S. forces were not in a position to establish basic security, let alone provide much assistance or manage the activities of NGOs. This disconnect between U.S. pronouncements of massive help before the war and the lack of preparations and leadership to restore basic services after the fall of Saddam Hussein's government is particularly striking. A likely explanation for the disjuncture is that the United States assumed that liberation from Saddam Hussein's rule would be so popular among Iraqis that provision of essential services could take a back seat in its planned efforts to win over the population. In addition, the massive looting was not foreseen and the United States wrongly assumed that the removal of top regime officials would leave the public service machinery of the state intact.⁸⁹ It appears that emergency relief assistance was not planned because it was not anticipated to be necessary.

The United States was, however, intent on orienting assistance to support its effort to win over "hearts and minds." For instance, U.S. sanctions barring humanitarian assistance were kept in place for a month after the Iraqi government was toppled.⁹⁰ With these sanctions in place, only programs funded by the U.S. government were legally authorized, and only in "liberated" areas prior to and during the war.⁹¹ This, in effect, kept any independent humanitarian assistance originating from the United States out of Iraq, and only organizations with an international operational base like MSF were able to avoid these interdictions. Through the "Humanitarian Operations Center" in Kuwait, U.S. officials also strongly encouraged the United Nations and NGOs to enter Iraq only when a "permissive security environment" had been established.⁹² This delayed the efforts of those organizations that sought U.S. military clearance or did not challenge its guidance.⁹³ Ironically, the few weeks following the collapse of Saddam Hussein's regime

ont Décidé de Coordonner leur Action Selon des Principes Communs, RELIEFWEB, at <http://www.reliefweb.int/w/rwb.nsf/3a81e21068ec1871c1256633003c1c6f/ae2ed5e6647e889ec1256cdf00410892?OpenDocument> (Mar. 3, 2003). Signatories to the statement are the French organizations *Action contre la Faim, Enfants du Monde—Droits de l'Homme, Handicap International, Médecins du Monde, Première Urgence, and Solidarités*.

87. Huggler, *supra* note 60.

88. Personal communication with Pierre Salignon, *supra* note 63.

89. David Rieff, *Blueprint for a Mess*, N.Y. TIMES MAG., Nov. 2, 2003, at 28.

90. Jeannine Aversa, *U.S. Lifts Some Sanctions Against Iraq*, ASSOC. PRESS NEWSWIRE, May 7, 2003.

91. See Int'l Crisis Group, *supra* note 21, at 15.

92. See Kuwait Humanitarian Operations Center Updates, RELIEFWEB, at <http://www.reliefweb.int/w/rwb.nsf/vSRC?OpenView&StartKey=Kuwait+Humanitarian+Operations+Centre&ExpandView> (last visited Feb. 11, 2004).

93. Shannon Meehan, *Where is the United Nations?*, REFUGEES INTERNATIONAL, at <http://www.refugeesinternational.org/cgi-bin/ri/bulletin?bc=00557> (Apr. 26, 2003); Ruth Gidley, *Agencies Say Iraq Needs Security, Water, Salaries*, REUTERS ALERTNET, at <http://www.alertnet.org/thefacts/reliefresources/iqhumroundup.xml> (Apr. 29, 2003).

were among the safest for aid organizations to travel around the country in order to assess and respond to needs.⁹⁴

C. Aid Organizations Equivocate in the Face of U.S. Efforts at Assimilation

Faced with the U.S. government's intention of bringing aid organizations under its umbrella, U.S. NGOs found themselves in a quandary: they recognized the peril of close relations with the U.S. military for the perception of their activities by the local population, yet the U.S. government was a major source of their funding. In response, they essentially argued that they could have it both ways: they invoked loyalty to the humanitarian principles of neutrality and impartiality guiding their efforts while opting to work with the U.S. government.⁹⁵ They focused on drawing a line in the sand: they accepted large amounts of U.S. government funding but refused direct military control over their activities, agreeing instead to work with U.S. civilian authorities such as OFDA and USAID.⁹⁶ Supporting this stance, InterAction publicly backed the State Department and USAID in their power struggle with the Pentagon over control of aid efforts and called for more coordination by the United Nations.⁹⁷

While OFDA and DARTs have significantly more expertise than military officials in carrying out relief operations, ultimately U.S. NGOs were attempting to square the circle. Their "solution" chose to ignore the basic fact that all U.S. agencies are part of the same government waging war and exercising military occupation. USAID Administrator Natsios exposed the futility of attempting to draw subtle distinctions in May 2003 when he told NGOs attending the InterAction annual forum that by receiving U.S. government money for their activities, they were in effect "an arm of the U.S. government."⁹⁸ He challenged them to either make the U.S. government origin of their funding explicit to beneficiaries, like private contractors do,

94. MSF teams assessed needs throughout the country in the first week after the fall of the Saddam Hussein regime, traveling to Basra, Karballah, Al Hillah, Al Najaf, Al Nasariya, Al Qut, and Mosul in addition to Baghdad. See Doctors Without Borders, *Latest Report on Medical Needs in Iraq's Cities: Care for Wounded and Support for Medical Staff Are Priority*, at http://www.doctorswithoutborders.org/news/2003/iraq_4-18-2003.shtml (Apr. 18, 2003).

95. See International Rescue Committee, *At Congressional Hearing, IRC Outlines Security and Coordination Needs for Iraq and Afghanistan*, at <http://www.theirc.org/index.cfm/wwwID/1737> (May 13, 2003). For a list of USAID grants, see http://www.usaid.gov/iraq/updates/nov03/iraq_fs07_111003.pdf (last visited Feb. 11, 2004).

96. See Jane Perlez, *Relief Groups Seek to Keep Pentagon at Arm's Length*, N.Y. TIMES, Apr. 17, 2003, at B1.

97. See InterAction, *Statement on Military Control of Iraq Relief; Reconstruction*, at <http://www.interaction.org/library/detail.php?id=1441> (Apr. 3, 2003). Mercy Corps and Save the Children Fund also balked at injunctions that all communications concerning USAID's "community action program" were to be vetted by the government but decided to accept the funding, while others such as International Rescue Committee, World Vision, and CARE decided not to pursue this contract at all. See Jack Epstein, *Charities at Odds with Pentagon, Many Turn Down Work in Iraq Because of U.S. Restrictions*, S.F. CHRONICLE, June 14, 2003, at A11.

98. InterAction, *Natsios: NGO Must Show Results; Promote Ties to U.S. Or We Will 'Find New Partners,'* at <http://www.interaction.org/forum2003/panels.html> (last visited Feb. 11, 2004).

or else he threatened to personally tear up their contracts and find new partners.⁹⁹

Had the U.S.-led coalition's rosy predictions of a quick and seamless transition from war to relief, rehabilitation, and reconstruction under an uncontested political authority been realized, the failure of the U.S. NGOs to counter the U.S. government's strategy of assimilation could have gone unnoticed. Indeed, it would not be problematic for those organizations choosing to work in such a context to be associated with the Occupying Power leading the reconstruction effort, particularly if they decided to take its funding.

But the situation in Iraq is far different from what was predicted. Conflicts between U.S. forces and insurgents have intensified and reconstruction efforts have struggled, particularly in the central parts of the country. In this environment, an explicit distinction between the United States, an active belligerent, and humanitarian organizations is essential.

D. As Security Deteriorates, Reconstruction Is Stalled and Aid Workers Are Attacked

The complete overhaul of the ORHA team on May 6, with Ambassador L. Paul Bremer replacing Jay Garner as the highest U.S. official in Iraq, was an indication that initial efforts at relief, rehabilitation, and reconstruction were struggling.¹⁰⁰ In the months since the reorganization, the provision of basic services, such as electricity, water, and health care, has been on the mend.¹⁰¹ This improvement stems from the injection of massive financial resources, the return of the U.N. agencies and others who have restored the pre-war food ration distribution system, the arrival of NGOs and private contractors, and the relief efforts of the U.S. military.

Although the efforts in Iraq have progressed, the U.S. government has faced criticism about the pace of reconstruction. In response, U.S. officials have argued that thirty years of neglect under Saddam Hussein's regime is to blame for the poor state of the country and that insufficient credit has been given to important reconstruction achievements, such as the repair and re-opening of schools.¹⁰² It is clear that the situation of the civilian population in Iraq had deteriorated markedly in recent history, particularly after the 1991 war, as a result of both Iraqi government policies and international

99. *Id.*

100. U.S. Department of State, Office of International Information Programs, *Ambassador Paul Bremer Named as Presidential Envoy to Iraq*, at <http://usinfo.state.gov/regional/nea/iraq/text2003/0506bremer.htm> (May 6, 2003).

101. See Simon Jenkins, *Failure Is Not an Option, Says US Chief in Iraq*, *TIMES* (LONDON), Nov. 10, 2003, at 12; see also Moni Basu & Dan Chapman, *Iraq Still in Chaos, Is Low on Patience*, *ATLANTA J.-CONSTITUTION*, May 25, 2003, at A2.

102. See Deputy Secretary of Defense Paul Wolfowitz, *Testimony on Iraq Reconstruction*, available at <http://www.defenselink.mil/speeches/2003/sp20030522-depsecdef0223.html> (May 22, 2003); see also Donald H. Rumsfeld, Editorial, *Beyond 'Nation-Building'*, *WASH. POST*, Sept. 25, 2003, at A33.

sanctions.¹⁰³ This did not, however, relieve the United States, as the Occupying Power, from its responsibility to reestablish services that were disrupted during and in the immediate aftermath of the war; many Iraqis pointed the finger at the coalition forces for shortcomings and delays.¹⁰⁴

The deterioration of the security situation, particularly in the central part of the country, is critical in this regard. Not only is reestablishing security a key obligation of the Occupying Power, it is also the linchpin for the revival of economic activity and the restitution of public services. The increase in attacks and counterattacks between U.S. forces and opponents of the U.S. occupation has had striking implications for humanitarian organizations, revealing an apparent and deeply troubling paradox. On the one hand, by directly harming an increasing number of Iraqi civilians and delaying the restoration of public services, the fighting and general insecurity suggest an increased need for immediate, life-saving services.¹⁰⁵ On the other hand, the violence, insecurity, and particularly the direct attacks against civilians and aid workers have made it increasingly difficult for international aid organizations to provide help and to complement the efforts of Iraqis.¹⁰⁶

E. Aid Organizations Reflect on Their Vulnerability to Attack

The attacks on the United Nations, NGOs, and the ICRC not only sent a clear signal that the United States had not secured Iraq, but also conveyed the message that all organizations providing assistance were now considered targets, and that international staff were not welcome in Iraq. The initial response of aid organizations to the attacks and to the persistent security threat has been to minimize direct exposure by scaling back programs and

103. For example, the MSF program in Baghdad has focused on providing medical services in Sadr City, a Shia area that had long been neglected by Saddam Hussein's regime and where, as a consequence, health services were markedly poorer than in other more favored areas. See *Médecins Sans Frontières, MSF Opens Medical Health Centers in 'Critical' Area of Baghdad*, at <http://www.msf.org/content/page.cfm?articleid=2FAD111B-6186-4578-823DF0E89AC93643> (June 16, 2003).

104. See Henry de Quetteville, *Iraqi Anger Boils Over in Summer of Discontent*, TELEGRAPH, Aug. 11, 2003, available at <http://www.telegraph.co.uk/news/main.jhtml?xml=%2Fnews%2F2003%2F08%2F11%2Fwirq111.xml>.

105. Statistics from the Baghdad morgue evidence the conflict between the Iraqi need for assistance and the increasing insecurity. Since the war began, there has been a twenty-five fold increase in the number of gun-related killings, from an average of twenty deaths per month before the war to 389 in June 2003 and 518 in August 2003. Jeffrey Fleishman, *Baghdad's Packed Morgue Marks a City's Descent into Lawlessness*, L.A. TIMES, Sept. 16, 2003, at A1. In addition, while 3500 suspicious deaths were autopsied during the whole of 2002, some 1868 suspicious fatalities were recorded during the three months of May, June, and July 2003. Thanassis Cambanis, *Baghdad Morgue Logs Tell of Violence*, BOSTON GLOBE, Sept. 3, 2003, at A9. See also Jeffrey Gettleman, *Chaos and War Leave Iraq's Hospitals in Ruins*, N.Y. TIMES, Feb. 14, 2004, at A1.

106. There was also a second attack on the United Nations on September 22, 2003 that killed one Iraqi guard, the firing at an ICRC convoy near al-Hillah on July 22, 2003 that killed one staff member and wounded another, and many other incidents and threats. U.N. News Center, *Annan Stresses Need for Security Following Latest Attack on U.N. Premises in Iraq*, at <http://www.un.org/apps/news/storyAr.asp?NewsID=8316&Cr=iraq&Cr1=>; ICRC (Sept. 22, 2003); International Committee of the Red Cross, *Iraq: One ICRC Staff Member Killed and One Wounded*, at <http://www.icrc.org/Web/Eng/siteeng0.nsf/iw-pList74/7B9B906FF90688DCC1256D6B004C883B> (July 22, 2003).

staff presence. This reaction is being complemented by reflection on what led the organizations into this predicament and how it can be escaped.

The attack on the U.N. compound in Baghdad and other serious security incidents seem part of a strategy by extremists to sharpen divisions and intimidate anyone not espousing their cause—the reverse application of President Bush’s famous warning: “Either you are with us or with the terrorists.”¹⁰⁷ It is also clear, however, that the politicization of aid before and during the war, and the resulting absence of clear distinctions between the U.S. government and aid organizations, including those distinctively focused on independent humanitarian action, has created the perception that all assistance is part of the U.S. agenda. As Oxfam spokesman Brendan Cox stated, “The boundaries between the occupying force and the U.N. and the humanitarian community in Iraq is the most blurred it’s ever been, anywhere we’ve worked.”¹⁰⁸ This perceived unity has increased the vulnerability of all organizations, irrespective of their position or actions. In effect, the bombings and threats indicate that all humanitarian aid groups are being viewed, according to Natsios’s pronouncement, as an “arm of the U.S. government.”¹⁰⁹

Given a charged history, drawing clear distinctions between humanitarian organizations and politics is not easy. The U.N. relief agencies, in particular, have to contend with a long legacy of being intertwined with the political agenda of the Security Council. The independent panel investigating the August 19 attack on U.N. headquarters, while underscoring serious lapses in security procedures, also emphasized that the “history of the U.N. engagement in Iraq in the eyes of the Iraqi population” was an important additional risk factor. The panel noted:

the U.N. system is viewed by many to be at the origins of the imposition of the longest and most stringent sanctions regime ever, the deployment of the most invasive weapons inspection programmes and the conduct of the oil-for-food programme, where for over a decade the U.N. system controlled much of the oil production of Iraq. This cumulative experience is now coming up as a liability as the Organization is redefining its role in the country.¹¹⁰

In the same vein, internal discussions among the staff of the United Nations High Commissioner for Refugees (UNHCR) raised critical questions: “How do humanitarian agencies, including UNHCR and its partners, avoid being

107. President George W. Bush, Address to a Joint Session of Congress and the American People (Sept. 20, 2001), available at <http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html>.

108. Ruth Gidley, *NGOs Say Blurred Lines Make Iraq Dangerous*, REUTERS ALERTNET, at <http://www.alertnet.org/thefacts/reliefresources/securityanalysis.htm> (Aug. 25, 2003).

109. See InterAction, *supra* note 98.

110. United Nations, *Report of the Independent Panel on the Safety and Security of U.N. Personnel in Iraq*, RELIEFWEB, at <http://www.reliefweb.int/w/rwb.nsf/0/A63412043388FFC785256DC700652680?OpenDocument> (Oct. 20, 2003).

too closely identified with resisted political and military interventions, as in Iraq,” and “[h]ow do we balance the need for a secure political and military environment—essential for our operations—without being seen as humanitarian cover for strenuously contested political action?”¹¹¹

Minimizing the safety risks of humanitarian workers in Iraq is difficult. Beyond improving security procedures and adapting operational approaches such as working with and through national staff to lessen visibility, there are few available solutions. As in any conflict, gaining and maintaining the trust and support of the civilian population is critical since humanitarian aid and the presence of international humanitarian workers cannot be imposed.¹¹² Even beyond the specific links between political agenda and assistance that the U.N. Security Council and the U.S. coalition have promoted, it may be that the predominately Western nature of most aid organizations, as evidenced by their history, their headquarters’ locations, their funding bases, and most of their international staff, is a uniting feature that makes them vulnerable to attack in contexts where there is radical opposition to Western military and political objectives.¹¹³

It is clear, however, that without a much more vigorous defense of the specificity and relevance of independent humanitarian action in both statements and actions, the perception that humanitarian aid is part of the U.S. coalition’s political and military strategy will continue to gain the upper hand.¹¹⁴ Given the determination of the most violent opponents to the U.S. presence in Iraq, this will likely make aid organizations increasingly vulnerable to threats and attacks.

F. U.S. Violations of IHL Strengthen the Need for Humanitarian Independence

The fact that the United States is an active belligerent makes the need for humanitarian organizations to establish their independence all the more pressing. When armed force is used and when violations of IHL are committed, association with a warring party can have damaging security implications for humanitarian organizations. However, security risks are not the only potential negative result of humanitarian organizations failing to distinguish themselves from a belligerent. Humanitarian action is concerned with the well-being of the civilian population, which entails far more than the provision of material assistance. Humanitarian organizations typically contribute to the protection of non-combatants from undue violence through advocacy, calling attention to and raising concerns about witnessed abuses. Close ties

111. Dennis McNamara, *Aid Business Cannot Go On as Usual*, REUTERS, at <http://www.alertnet.org/thefacts/reliefresources/106509440163.htm> (Oct. 2, 2003).

112. On Mercy Corps’ continued reliance on an “acceptance” strategy for security in al Kut, see Dan Murphy, *How an Iraq Aid Group Stays Safe*, CHRISTIAN SCI. MONITOR, Dec. 18, 2003, at 6.

113. Marie-Hélène Jouve, *MSF Carrément à l’ouest?*, MESSAGES (*Médecins Sans Frontières*), no. 126, Oct. 2003, at 12; see also Stoddard, *supra* note 36, at 22.

114. *Médecins Sans Frontières, Iraq: Independent Humanitarian Aid Under Attack*, at http://www.doctorswithoutborders.org/publications/other/iraq_11-10-2003.shtml (Nov. 10, 2003).

with any belligerent can impede humanitarian organizations from scrutinizing and, where appropriate, criticizing the belligerent's actions, thereby adversely affecting its ability to serve the interests of the civilian population.¹¹⁵

Despite the widely reported assurances of the United States that it took maximum precautions to spare civilians, violations of IHL leading to the death or injury of non-combatants occurred during the war, and continue to occur in post-war Iraq.¹¹⁶ If anything, concerns about U.S. violations of IHL have become more pressing since the removal of Saddam Hussein, as coalition forces are required to ensure public safety, a task far different than waging open war. With attacks on U.S. soldiers mounting, and force protection a key concern as a result of the growing number of U.S. casualties, the U.S. military is taking no chances. U.S. troops are authorized to use overwhelming force on any entity considered hostile, even if it does not represent an immediate threat and is near civilians.¹¹⁷ Ordinary civilians are being killed and injured at checkpoints, during raids, in response to ambushes, and in riot control actions.¹¹⁸ The number of civilian casualties are unknown because they are not being counted or recorded by U.S. military or political authorities.¹¹⁹ Media reports provide the only source of information regarding civilian casualties, but tend to focus on the most visible occurrences and

115. For an account of how considerations about U.S. government funding reportedly affected advocacy efforts of the Save the Children Fund in Iraq, see Kevin Maguire, *How British Charity Was Silenced on Iraq*, *GUARDIAN*, Nov. 28, 2003, at 1; see also the organization's reply: Mike Aaronson, *We Will Never Be Silenced*, *GUARDIAN*, Dec. 2, 2003, at 26.

116. The United States did seek to minimize civilian deaths in its closely scrutinized aerial bombing campaign. See HUMAN RIGHTS WATCH, *Off Target: The Conduct of War and Civilian Casualties in Iraq*, at <http://hrw.org/reports/2003/usa1203> (Dec. 2003); Carl Conetta, *supra* note 62. However, despite these efforts, ICRC delegates saw "dozens of dead and 450 wounded" aerial bombing victims in al-Hillah; this observation prompted the ICRC to remind all warring parties of their obligation under IHL to protect citizens. Pepe Escobar, *Cluster Bombs Liberate Iraqi Children*, *ASIA TIMES*, Apr. 4, 2003, available at http://www.atimes.com/atimes/Middle_East/ED04Ak07.html; see also *Protect Civilians, Red Cross Says*, *BBC*, Apr. 2, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/2909925.stm. Specifically, IHL proscribes the use of excessive force and demands that maximum care is taken to distinguish civilians from military targets. BOUCHET-SAULNIER, *supra* note 3, at 82–84, 292–94. In addition to aerial bombing, cluster munitions, indiscriminate weapons that do not distinguish between soldiers and civilians, were also widely used by coalition forces; they were utilized in populated areas, causing "at least hundreds of casualties." HUMAN RIGHTS WATCH, *Off Target: The Conduct of War and Civilian Casualties in Iraq, Summary and Recommendations*, at http://hrw.org/reports/2003/usa1203/3.htm#_Toc57442226 (Dec. 2003).

117. Gen. Ricardo Sanchez, commander of coalition forces in Iraq, quoted in Alex Berenson, *American Soldiers Kill Six Iraqi Civilians After a Bomb Explosion near a U.S. Convoy*, *N.Y. TIMES*, Oct. 29, 2003, at A9.

118. Bill Redeker, *Iraqi Civilians Bear Brunt of the Battle Between Insurgents, US Troops*, *ABC News*, available at http://abcnews.go.com/sections/Nightline/WorldNewsTonight/iraq_civilian_deaths_031117-1.html (Nov. 17, 2003); HUMAN RIGHTS WATCH, *Hearts and Minds: Post-War Civilian Deaths in Baghdad Caused by U.S. Forces: III. Statistical Analysis of Civilian Deaths*, at http://www.hrw.org/reports/2003/iraq1003/3.htm#_Toc54183728 (Oct. 2003).

119. HUMAN RIGHTS WATCH, *Hearts and Minds: Post-war Civilian Deaths in Baghdad Caused by U.S. Forces: VI. Human Rights and International Humanitarian Law*, at http://www.hrw.org/reports/2003/iraq1003/6.htm#_Toc54183750 (Oct. 2003).

do not present a comprehensive picture.¹²⁰ Only a few investigations of suspected IHL violations have taken place, and the results have generally not been disclosed.¹²¹ Human Rights Watch, in a recent report, highlighted this lack of accountability of U.S. soldiers and officers, observing that U.S. forces presently operate with “virtual impunity” in Iraq.¹²²

Of course, the coalition forces are not alone in committing violations of IHL. Reported Iraqi violations during the war include feigning surrender, converting protected infrastructure such as hospitals into military staging areas, and hiding active combatants among civilians. Since the war, opponents of the U.S. occupation have deliberately targeted civilians in deadly attacks, such as the bombings of the ICRC, U.N. headquarters, and the Imam Ali mosque in Najaf on August 29, and numerous other incidents.¹²³ Such attacks are war crimes.¹²⁴ Yet this fact does not release the United States from its obligations to respect IHL fully in its military operations.¹²⁵

The ongoing post-war fighting in Iraq strengthens the necessity for the United States to fulfill its obligations under IHL in a straightforward and systematic manner instead of viewing the conduct of warfare and provision of assistance primarily through the prism of a “hearts and minds” agenda. It also increases the need for humanitarian organizations to dissociate themselves clearly from the United States as they would from any belligerent, despite its benevolent pronouncements.

V. IRAQ AS AN EXTREME INSTANCE OF “COHERENCE” BETWEEN POLITICAL OBJECTIVES AND HUMANITARIAN RESPONSE

In many ways, Iraq is an extreme example of broader trends in the international response to crises. For years, the United Nations and powerful donor governments have promoted the virtues of an “integrated approach” or “coherence.” They have sought to ensure that all international aid and interventions in a particular crisis are directed towards a common objective: to make, maintain, or build peace and security based on justice, democracy, and

120. Two examples are the shooting of protestors by the U.S. military in Falluja on April 28, 2003, and the shooting of eight Iraqi policemen in the same town in September 2003. HUMAN RIGHTS WATCH, *U.S. Should Investigate al-Falluja*, at <http://www.hrw.org/press/2003/06/iraq061703.htm> (June 17, 2003); Alex Berenson, *U.S. Troops Kill 8 Iraqi Policemen by Mistake*, INT'L HERALD TRIBUNE, Sept. 13, 2003.

121. An exception was the inquiry into the incident in which a U.S. tank fired a mortar round into the Palestine Hotel on April 8, killing two journalists. A Pentagon report concluded that U.S. troops acted correctly in self-defense in response to a perceived threat emanating from a building they did not know was the international media's center in Baghdad. Guy Taylor, *Army Probe Clears Soldiers in Deaths*, WASH. TIMES, Aug. 13, 2003.

122. HUMAN RIGHTS WATCH, *Hearts and Minds*, *supra* note 119.

123. See *Baghdad Terror Blast Kills Dozens*, BBC, *supra* note 1; *F.B.I. to Join Mosque Bombing Probe*, CNN, at <http://www.cnn.com/2003/WORLD/meast/08/31/sprj.irq.main/> (Sept. 1, 2003).

124. See, e.g., HUMAN RIGHTS WATCH, *Iraq: Targeting of Civilians by Insurgents Should Stop*, at <http://hrw.org/press/2003/11/iraq112203.htm> (Nov. 22, 2003).

125. See, e.g., HUMAN RIGHTS WATCH, *Feigning Civilian Status Violates the Laws of War*, at <http://www.hrw.org/press/2003/03/iraq033103.htm> (Mar. 31, 2003).

sustainable development.¹²⁶ As such, military interventions to bring stability, political efforts to introduce democracy, human rights attempts to prevent impunity, and humanitarian endeavors to save lives are to be managed in harmony.

Proponents of a “coherence” approach argue that it is critical to enhance the effectiveness of international interventions.¹²⁷ Closer integration between aid and political responses considered necessary to address the root causes of conflicts, and to ensure that the provision of humanitarian aid does not fuel political tensions.¹²⁸ Placing assistance within the pursuit of a higher goal, such as peace-building, is also intended to relieve “donor fatigue” derived from continually remedying the recurrent humanitarian consequences of protracted conflicts.¹²⁹

A number of NGOs have embraced the idea of enhancing the relevance of their relief work by placing it within a broader framework of resolving conflict and promoting human rights. The availability of donor funding for “coherence”-based activities has also played a key role in bringing about this change.¹³⁰

Since the terrorist attacks of September 11, 2001, the “coherence” agenda has been re-energized and refocused, as the pursuit of peace and security has assumed a new meaning for major Western powers, especially the United States. The “global war on terror” seeks to bring aid organizations into the fold by projecting the view that the Western world faces an existential threat and by arguing that fence-sitting is impossible and ultimately immoral.

The “coherence” agenda challenges the essence of humanitarian action as a neutral and impartial endeavor. At its core, it implies that aid may be selectively allocated to certain groups of victims, or withheld from others, depending on their political usefulness, instead of being allocated according to, and proportionate to, needs alone.¹³¹ The primary concern for humanitarian organizations is that, when political objectives and humanitarian concerns

126. 1997 *U.N. Programme for Reform*, 34; Joanna Macrae & Nicholas Leader, *Shifting Sands: The Search for “Coherence” Between Political and Humanitarian Responses to Complex Emergencies*, 8 HUMANITARIAN POL’Y GRP. REPORT 1, 37 (Aug. 2000); Henry Dunant Centre for Humanitarian Dialogue, *Politics and Humanitarianism: Coherence in Crisis?*, 2003 HD REP. 2, 3–4 [hereinafter Henry Dunant Centre].

127. Henry Dunant Centre, *supra* note 126, at 3–4 (quoting JOHN ERIKSSON ET AL., *THE INTERNATIONAL RESPONSE TO CONFLICT AND GENOCIDE: LESSONS FROM THE RWANDA EXPERIENCE* 46 (1996)); Macrae & Leader, *supra* note 126, at 18 (on coherence mandate for the European Union); *Id.* at 22–23 (on the United Kingdom’s Official Development Assistance (ODA) and White Papers).

128. Macrae & Leader, *supra* note 126, at 16–17.

129. *Id.* at 3, 15 (on decline of ODA support); Henry Dunant Centre, *supra* note 126.

130. CARE’s Paul O’Brien lists aid effectiveness and “our business interests” as the two reasons that NGOs should adopt the “political agenda of new humanitarianism.” Paul O’Brien, *Old Woods, New Paths, and Diverging Choices for NGOs*, in *NATION-BUILDING UNRAVELED? AID, PEACE, AND JUSTICE IN AFGHANISTAN* 187, 203 (Antonio Donini et al. eds., 2004).

131. When the United Nations and donors such as the United Kingdom blocked humanitarian aid to Sierra Leone in 1997 and 1998, it was “coherent” with their policy of isolating the AFRC/RUF that had toppled President Tejan Kabbah. It was also, according to the Henry Dunant Centre, one of the “most shameful episodes regarding international humanitarian action in recent times.” *Supra* note 126.

conflict, the hierarchy of priorities inherent in the “coherence” agenda generally results in humanitarian interests being sacrificed in the name of a greater good. Moreover, by presenting aid organizations and governments as partners, the “coherence” approach weakens the ability of humanitarian organizations to hold governments accountable for fulfilling their political and legal responsibilities. Finally, by making aid organizations associates of Western political-military efforts, the “coherence” agenda may designate them as targets of violent opposition thereby hampering their access and ability to deliver assistance, as the current situation in both Afghanistan and Iraq illustrates.¹³²

A crucial indicator of how much assistance for Iraq served political purposes is its impact on governments’ responses to other crises worldwide. To fund aid efforts in Iraq, attention and resources were diverted away from other, more pressing humanitarian needs.¹³³ Once the war started, the U.N.’s emergency appeal for Iraq, the largest in its history at \$2.2 billion, was easily funded by donor governments in stark contrast to the U.N.’s appeals for crises with much more significant humanitarian impact, such as those for Burundi, Sudan, or the Democratic Republic of Congo.¹³⁴ Funding for the U.N.’s Iraq emergency appeal came out to seventy-four dollars per person compared to seventeen dollars per person for the U.N.’s Congo appeal, even though civilian needs were more acute and the U.N.’s programs more limited in the Congo than in Iraq.¹³⁵ The consolidated U.N. appeal for Iraq was forty-three percent of the total 2003 worldwide appeal, and Iraq garnered fifty-six percent of the actual funding received by U.N. agencies in 2003.¹³⁶ The United Kingdom’s Department for International Development 2003 budget for Iraq assistance was nearly double its 2001 worldwide

132. In Afghanistan, targeted attacks against aid organizations have escalated in the south of the country as fighting between the United States and the Afghan Government on the one hand and insurgents on the other continues to rage. The execution-style killing of ICRC delegate Ricardo Mungia in March 2003 has been followed by murders of Afghan aid workers, and in November 2003, of UNHCR staff member Bettina Goillard in Ghazni. As a result, access and assistance have been severely curtailed. U.N. OCHA Integrated Regional Information Network, *Afghanistan: Yet Again NGOs Cite Serious Security Concerns*, RELIEFWEB, at <http://www.reliefweb.int/w/rwb.nsf/0/b999c27b2bdfb06085256cfb0058b2e8?OpenDocument> (Apr. 1, 2003); Crispin Thorold, *Afghanistan’s Fearful Aid Community*, BBC, Nov. 17, 2003, available at http://news.bbc.co.uk/2/hi/south_asia/3278279.stm.

133. Jerome Amir Singh, *Health and Human Rights: Is Donor Aid Allocation to Iraq Fair?*, 362 LANCET 1672 (2003).

134. U.N. Office for the Coordination of Humanitarian Affairs, *Flash Appeal for the Humanitarian Requirements of the Iraq Crisis—Six Month Response*, RELIEFWEB, at <http://www.reliefweb.int/w/rwb.nsf/0/9f3592668f82768dc1256cf7003ea06c?OpenDocument> (Mar. 28, 2003). Of the \$2.2 billion, \$1.1 billion were made available from the “oil-for-food” program, and donors pledged \$870 million within three months. On July 23, 2003, the U.N. requested the remaining \$259 million, or twelve percent, for 2003. See *U.N. Agencies Appeal for \$259 Million in Emergency Assistance for Iraq*, U.N. OCHA, U.N. Doc. IHA/784 (June 23, 2003), available at <http://www.un.org/News/Press/docs/2003/iha784.doc.htm>.

135. AMELIA BOOKSTEIN, OXFAM, *BEYOND THE HEADLINES: AN AGENDA FOR ACTION TO PROTECT CIVILIANS IN NEGLECTED CONFLICTS* 28 (Anna Coryndon ed., 2003), available at http://www.oxfam.org/eng/pdfs/pp030916_headlines.pdf (last visited Feb. 12, 2004).

136. 2003 U.N. *Consolidated Inter-Agency Humanitarian Assistance Appeals*, U.N. OCHA, at http://www.reliefweb.int/fts/reports/pdf/ocha_21_2003.pdf (last visited Feb. 12, 2004).

spending on humanitarian assistance.¹³⁷ This political slanting of assistance by governments is neither a new phenomenon, nor specific to the Iraq crisis.¹³⁸ However, in Iraq, it has reached new and unprecedented heights.¹³⁹

Striving to protect and assist all victims according to need alone disturbs the designs of the powerful to abuse, exploit, or neglect. This necessarily places humanitarian actors in a tense relationship with political powers, including those who declare having benevolent intentions. It may be easier to eschew this tension and take a conciliatory approach by participating in what many view, overall, as a positive agenda promoted by Western states. Although this stance may well yield valuable services, effectively covering some of the needs of some populations, it is fundamentally the work of a service provider, not of a humanitarian actor. Instead of following donor governments' leads, humanitarian organizations should resist and contest them in the name of the equal worth of human life.

CONCLUSION

As we seek to review the ongoing Iraq conflict from a humanitarian perspective, it is essential to remember that humanitarian action is not a political project. It has a limited, modest, yet vitally important ambition to ensure that the most vulnerable are not sacrificed in times of conflict and crisis. The tested principles of neutrality, impartiality, and independence are designed to safeguard the ever-fragile access and security of humanitarian organizations in carrying out this endeavor in volatile, fragmented, and contested environments.

The well-being of the Iraqi population, which can be furthered through the establishment of a secure environment and the provision of basic services such as health, water, and sanitation, is first and foremost a matter of governance that is the legal and political responsibility of the power in charge. As the current governing authority, it is incumbent upon the United States to fulfill its obligations under the Geneva Conventions as an Occupying Power, and to deploy adequate means to meet this responsibility.

In conflict and crisis, belligerents have the obligation to allow for unmediated, direct humanitarian assistance to victims, allocated based on need alone.¹⁴⁰ In Iraq, the Saddam Hussein regime violated this obligation in many ways, as have the violent opponents of the U.S. occupation, most devastatingly by launching deliberate and targeted attacks on aid organizations and

137. BOOKSTEIN, *supra* note 135, at 27.

138. IAN SMILLIE & LARRY MINEAR, *THE QUALITY OF MONEY: DONOR BEHAVIOUR IN HUMANITARIAN FINANCING 1* (2003).

139. This point was made forcefully by the International Federation of Red Cross and Red Crescent Societies in their 2003 World Disasters Report. INTERNATIONAL FEDERATION OF RED CROSS AND RED CRESCENT SOCIETIES, *WORLD DISASTERS REPORT: FOCUS ON ETHICS IN AID* (2003) (see in particular the *Introduction: Putting Principles into Practice—Key to Legitimacy*), available at <http://www.ifrc.org/publicat/wdr2003/intro.asp> (last visited Feb. 12, 2004).

140. IV Geneva Convention, Oct. 21, 1950, art. 55, 6 U.S.T. 3516, 75 U.N.T.S. 287.

civilians. The United States and its allies, however, have also compromised humanitarian action.

When governments drape their military and political actions in the cloak of humanitarian concerns, they undermine humanitarian action's essential purpose: the unconditional provision of assistance to those in need. When all aid efforts are presented and perceived as being at the service of political and military objectives, it is more difficult and dangerous for independent humanitarian organizations to carry out their work.

While many aid organizations recognized the danger of being too closely associated with contested military and political action, they also refused to make the choice of either fully and openly working with the U.S. government or of decisively pushing back. This indecision fuelled the perception that all aid activities were simply extensions of the U.S. agenda.¹⁴¹

The reason all this matters is that, at particular junctures, humanitarian action could have made more of a difference in Iraq. Humanitarian organizations could have provided more support for Iraqi health professionals and others to assist the population affected by the ongoing conflict. The politicization of humanitarian aid has put the ability of humanitarian organizations to reach out to all victims, whoever and wherever they are, in jeopardy. As fighting continues in Iraq, and as conflicts continue to rage around the world, victims will need more, not less, principled humanitarian action that responds on the basis of needs alone.

141. Larry Minear, *Foreign Policy in Focus, A Moment of Truth for the Humanitarian Enterprise*, at http://www.fpif.org/commentary/2003/0307humanitarian_body.html (July 9, 2003).