Thinking about the legitimacy of humanitarian action is another way of thinking about what is – or should be – meant by “humanitarian space”, a concept very often used in the discussions that have proliferated over the past ten years even though the term has never really been defined. This aptly reflects the differences that exist today within the humanitarian community, which now comprises a very large number of agencies (some 300 NGOs were present on the Rwandan border after the genocide). The confusion perceived among humanitarian actors can also be seen in their dialogue with political players, who are themselves deeply divided on the question of the political role of States in crisis management and the role of humanitarian organizations in the same crises.

This confusion mirrors a world which, having abandoned the old order before a new one had been clearly established, now operates in deregulation mode, governed by a form of pragmatism hardly reconcilable with a universal humanitarian approach whose focus is people and whose goal is respect for human dignity. As a result, since the end of the Cold War the humanitarian commitment of the "dominant" States has been subject to an ethic characterized by “variable geography” dictated by their national interests. This is what led them, for example, to intervene in Kosovo but to remain completely passive.
when faced with the genocide in Rwanda. Another result of this state of affairs is that the humanitarian organizations either find themselves alone in coping with situations of chaos and unbridled violence that go beyond their capacity for action and far exceed their mandates, or, at the other extreme, see themselves relegated to the sidelines of operations conducted by those same States in conflicts where the political interests of the latter happen to coincide with the concerns of the humanitarian community. This, in a few words, sums up the contradictions and tensions that have encroached on the humanitarian space as a result of the upheavals following the end of the Cold War. The very grave difficulties that the humanitarian organizations have encountered in Bosnia-Herzegovina, Rwanda, Somalia, Sierra Leone, Angola and Kosovo can undoubtedly be attributed to this type of dysfunction. Such difficulties are inevitable when humanitarian players cannot rely on an international community capable of assuming an effective role in managing the political and security aspects of crises, and therefore find themselves alone, constantly exposed to the dangers of hostilities and even deliberately targeted because of their activities.

With humanitarian work deflected from its primary mission and becoming disproportionately vast, scaled down or diluted, the question is to what extent it can, without seeing its own legitimacy seriously challenged, fill the vacuum created by the lack of a worldwide political system that is consistent and predictable. To answer this question we clearly need to go beyond a mere redefinition of humanitarian action. Between war and peace, this question casts its shadow on the broader horizon of a world in search of a new political system, one that would be better able to reconcile humanitarian requirements and political interests, State sovereignty and respect for the fundamental rights of the individual.

In this debate between political and humanitarian circles, it seems to me that it is not up to the humanitarian agencies to tell politicians what the new global system should be. What they should do, on the other hand, is tell the politicians how they see their own role, what humanitarian action is and what it cannot be unless we are to resign ourselves to watching it become some kind of "all-purpose" activity which, for lack of a clear framework, would fluctuate with the fads and ideologies of the day, with changes in State in-
terests and with the evolution of conflicts. Such an attitude would result in the politiciza-
tion of humanitarian work and would gravely compromise the principle of humanity,
which forms the very basis of this work, embodying its ideal, its motivation and its goal.

As a representative of the International Committee of the Red Cross (ICRC), and in
view of the vast experience the organization has accumulated over the years, I would
like to share with you some thoughts on the subject under discussion. The ICRC occu-
pies a unique place among humanitarian organizations. Founded well over a century
ago, it has played a key role in the development of the modern concept of humanitarian
action. Although a private institution, the ICRC has a humanitarian mandate conferred
on it by States and sanctioned in international law. Its legitimacy as a humanitarian
agency is therefore soundly established.

This legitimacy is upheld by three elements: the first is a set of principles that lend the
ICRC’s work its moral legitimacy; the second is a legal framework, made up today of
the 1949 Geneva Conventions and their Additional Protocols of 1977, legal instruments
drafted on the initiative of the ICRC and now enjoying universal acceptance; and the
third is the product of time, the legitimacy acquired through activities conducted in the
long term. Indeed, while the notion of legitimacy suggests the recognition of competen-
cies, it is also directly linked to the way in which those competencies are exercised.
Hence the importance for humanitarian action to affirm itself by a constant practice that
guarantees moral legitimacy, which is by nature more subjective.

The ICRC has never deviated from a humanitarian concept that is founded on principles
whose raison d’être is to mark out and define the humanitarian space within which it
operates. It is worth taking the time to look at these principles, which we all feel we know
quite well, so as to consider together how, even today, they can help us delimit this hu-
manitarian space. Four of them are particularly important: universality, impartiality, in-
dependence and neutrality.

Universality implies that humanitarian action embraces all conflict victims, wherever in
the world they may be; and impartiality that it is concerned with providing assistance
and protection to all the victims of a given conflict, no matter to which side they belong, and whatever their background, social status, religion, race or ethnic origin. Bearing this in mind, it is obvious that some of the responses given by humanitarian operations in recent years did not sufficiently take these two principles into account and that, for example, under pressure from the media and in line with the priorities of governments, notably those of the West, the crises that occurred in Europe received vastly preferential treatment over those unfolding at the same time in Africa, even though in Africa the number of people in situations of extreme distress was considerably higher. Genuinely humanitarian action is entirely incompatible with such "discriminatory" impartiality. So this is the first point of tension between humanitarian and political priorities, one that should concern us all and that underlines how important it is for humanitarian players to safeguard the third principle I mentioned, that of independence. This third principle enables humanitarian players to conduct activities that are not governed by considerations or interests that must remain alien to them. Without independence, humanitarian action cannot legitimately assert itself as a moral counterforce vis-à-vis the belligerents. Yet the principle of independence has now become blurred with the growing involvement in humanitarian operations of the United Nations, which remains subject to the decisions of its member States, in particular the permanent members of the Security Council. The scale of humanitarian operations in recent years highlights another factor that can undermine the principle of independence: in order to do their work, humanitarian agencies remain essentially dependent on the financial support they get from the exclusive club of major donor States which, by deciding to grant or not to grant support for a given operation in a given situation, can influence the application of the principle of independence which is vital for impartial action.

The fourth principle that can help us define the humanitarian space is neutrality. In the operational context, observance of this principle has as its corollary the immunity that humanitarian organizations expect to be granted by belligerents. This practical neutrality means that humanitarian workers must stand apart from the political issues at stake in conflict situations. The current trend, however, is to expand the sphere of humanitarian work to encompass peace-keeping, peace-building and even peace-enforcement activities. We should question this expansion of the concept of humanitarian action, which
has also given rise to obvious ambiguities. Indeed, by becoming associated with such diplomatic and military processes, humanitarian action risks losing its credibility and its acceptability to the belligerents when such ventures fail or take a warlike turn.

However, this neutrality – and this is a capital point I feel should be made here – is not absolute. It is a functional matter, not an end in itself, and can in no way be equated with a moral neutrality that would compel humanitarian organizations to remain silent and, passively, to accept the unacceptable. When violence, as the expression of a deliberate policy, reaches a certain pitch, this practical neutrality must be abandoned as an indication that humanitarian action is no longer an adequate response to the crisis. At that stage the international community has to act rapidly to find a solution in the United Nations Charter, for massacres and genocide are political crimes that can be combated only by political action and, if necessary, by force. The principle of neutrality therefore also obliges humanitarian agencies to recognize their own limits in such extreme situations. But while the abandonment of this principle marks the dividing line between political and humanitarian action, it has to be admitted that in recent years the humanitarian and political worlds have not succeeded in agreeing on a framework and conditions for effective complementary action which, when the vital interests of conflict victims so demand, would enable them to back each other up without becoming merged. Except in extreme situations of this kind, the principle of neutrality in my opinion retains its full relevance as an instrument of humanitarian action. As for those who feel it has outlived its usefulness, what do they propose as an alternative? Indeed, what alternative can there be for an organization like the ICRC, whose mandate is to act as a humanitarian intermediary capable of bringing aid to all victims, regardless of the side to which they belong? The countless examples of prisoners visited, hostages freed, and medical and other aid supplied to displaced persons on all sides of a conflict as a result of ICRC action show that this practical function of neutrality is worth preserving.

Humanitarian action also derives its legitimacy from the humanitarian treaties, which are the legal expression of the principles of humanity, universality and impartiality. I am thinking in particular of the Geneva Conventions, which afford protection for the wounded and sick, prisoners and civilians not taking part in the hostilities, of the Con-
vention on Refugees and of the many instruments of international law inspired by the Universal Declaration of Human Rights. The law is supposed to clarify responsibilities, yet a degree of confusion appears to have crept into the scope and implementation of these various treaties. This confusion relates to the priorities they assign to different humanitarian players. Indeed, humanitarian law and human rights law do not define the humanitarian space in the same way. Humanitarian law, or *jus in bello*, grew out of the tension between humanitarian principles and security imperatives. Its aim is to set limits on violence in war. Human rights law, on the other hand, grew out of the tension between abuse of power on the part of those wielding State power and the welfare of those living under their jurisdiction, and is primarily a code of behaviour for good governance in peacetime rather than for the conduct of war. In other words, the Geneva Conventions are a set of rules governing the turmoil that results when the political conditions for observance of the human rights instruments no longer exist. For example, in peacetime no one should be held in detention without due process of law. In wartime, however, international humanitarian law, which applies in such situations, does not prohibit the internment of persons without due process but requires, with no derogation possible, that such persons be treated with humanity. What I wish to underline here is that even if there is some convergence between the two legal regimes, there are also essential differences as to their objectives and the kind of situations to which they apply. Hence the confusion that reigns today when, in the same conflict situation, some organizations are working within the framework of humanitarian law while others are working for human rights. Operations in Afghanistan offer very significant examples in this regard. In that context, one of the ICRC’s aims is to ensure that women who are wounded or sick are able to receive medical treatment equivalent to that enjoyed by men. For the human rights organizations, a much broader issue is at stake: that of respect for women’s rights more generally, including recognition of their right to education, employment, and to a full place in Afghan society. These claims are certainly justified, but the ICRC does not consider them as priorities in a conflict situation. Depending on which of these two approaches is adopted, the legitimacy of humanitarian action is measured in terms of different requirements and perspectives. It is therefore important to know what we mean by legitimacy: what humanitarian action are we talking about? Is it the work done by the ICRC, UNHCR or the High Commissioner for Human Rights, or do we include the often
ad hoc and limited activities conducted of victims on one side of a conflict by NGOs whose accountability is not clearly established? This blurring of mandates was reflected in a recent article by Elizabeth Olson that appeared in the New York Times analysing the action taken by Mrs Sadako Ogata, head of UNHCR. Elizabeth Olson wrote:

“The agency's caseload has risen by more than a third. (...) Previously, [its] mission had been to help those who had fled their country. By helping the Kurds, the agency carved out new ground, working with military forces and assisting internally displaced persons. 'It was sink or swim', recalled Mrs Ogata. The new course she set was tested, again and again, in subsequent crises. (...) The question of which international group is responsible for internally displaced persons – there are now as many as 25 million worldwide from Afghanistan to Congo – has yet to be settled officially”.

I feel, therefore, that restoring the legitimacy of humanitarian action also implies a more precise distribution of the mandates and objectives assigned to such action among the various members of what is today a multitudinous community.

Before concluding I should like to mention another consideration. War has always been a magnifying mirror reflecting the underlying forces that build or tear apart human societies. That is why I believe that the major challenges facing humanitarian action and now appearing to cast doubt on its legitimacy must be analysed in a wider social and political context. In this light the setbacks of the operations in Bosnia-Herzegovina, Liberia, Sierra Leone, Kosovo and the African Great Lakes region seem to be very directly attributable to the two deep crises which, to varying degrees, are affecting contemporary society as a whole. The first of these crises is a moral one, seen in the rejection of the values of tolerance and solidarity. The second, more structural in nature, is the crisis of the State, whose only true legitimacy rests precisely on its capacity to ensure respect for those values.

It is thus impossible to construct legitimacy that does not take the evolution of the world situation into account. This evolution results from the clash of two changing realities which are still in contradiction, having failed to resolve their differences. For me, the
greatest challenge of today is to reconcile the demands of national sovereignty with the reality of a world in the process of globalization. It is here, between these two opposing realities, that the humanitarian space has to be redefined. That could mean reworking the content of the four major humanitarian Conventions, without deviating from their underlying principles. The ICRC is taking an active part in this new process, having embarked on a wide-ranging study on the customary rules of humanitarian law in cooperation with experts and teams of researchers from all over the world. The study, whose results will be published within the year, was prompted by the concern to gain a better understanding, beyond the existing texts, of how international humanitarian law is actually applied, especially in internal conflicts. It should revive the debate on the foundations of humanitarian action and how it relates to national sovereignty and human rights, and provide a basis for proposing to States terms of reference allowing such action to assume a more dynamic role within a new international order of which it has become one of the key elements. In this regard, the establishment of the International Criminal Court is another element that must be given a place as a matter of priority in the new edifice, within which independent, impartial and neutral humanitarian organizations will be the indispensable complement to an international community answerable for its own legitimacy.

This search for new legitimacy will take time, even though everyone is aware of how urgent it is. We must ensure that it succeeds, and for that to happen the many – and often contradictory – forms taken by humanitarian action today need to resolve their differences. The humanitarian community must take care not to fall victim to the illusion that with the end of the Cold War it was going to be easy to place international relations on a moral footing in the near future and to establish an order based on sharing and respect for the reconciled values of democracy and humanity. Our discussion here today shows how far we still are from that ideal, and is therefore a timely attempt to find a way out of what does seem, for the time being at least, to have become a dead end.

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