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Imperfect relief: Challenges to the impartiality and identity of humanitarian action

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Abstract

One of the four core humanitarian principles, impartiality's substantive ethical and deeply operational nature directs aid agencies to seek and deliver aid on the basis of non-discrimination and in proportion to the needs of crisis-affected people. Designed to operationalize the principle of humanity, impartiality is challenged by a plethora of external factors, such as the instrumentalization of aid, bureaucratic restriction, obstruction by States or non-State armed groups, and insecurity. Less visible and less examined are factors internal to aid agencies or the sector as a whole. Based on a desk review of the literature and the authors' experience

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† Sadly, Sean Healy passed away on 26 November 2023. See Appendix for a tribute to Sean, penned by his co-author, Marc DuBois.

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working with Médecins Sans Frontières, this article explores shortcomings in how the humanitarian sector understands and operationalizes impartiality, placing the focus on these internal factors.

Beginning with the definition of impartiality, the article focuses on inadequacies in the practice of impartiality's twin pillars: non-discrimination and proportionality in the delivery of aid. Key conclusions include the necessity of an active rather than passive approach to non-discrimination, and the need for greater commitment to proportionality. In extending this analysis, the article looks more deeply at how aid organizations approach the humanitarian principles, identifying shortcomings in the way that the sector operationalizes, engages with and evaluates those principles. Given the sector's limited inclusion of or accountability towards people in crisis, its exercise of impartiality seems particularly problematic in relation to its power to decide the who and what of aid delivery, and to define the needs which it will consider humanitarian.

The objective of this article is to reset humanitarians' conceptual and operational understanding of impartiality in order to better reflect and protect humanity in humanitarian praxis, and to help humanitarians navigate the emergent challenges and critical discussions on humanitarian action's position in respect to climate change, triple-nexus programming, or simply a future where staggering levels of urgent needs vastly outstrip humanitarian resources.

Keywords: impartiality, humanitarian principles, inclusion, humanitarian needs, accountability, power dynamics.

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Introduction

Impartiality is more than just a non-discrimination clause, and more than simply a matter of prioritizing aid according to need. In its full glory, impartiality carries an ethic and a substantive value which reflects, embeds and therein safeguards humanity, the foundation of humanitarian action. Impartiality is also a principle in trouble.

Looking outward, where is humanitarian action today? An unscientific roll call of today's most pressing crises might include areas in Syria, Sudan, Gaza, Yemen, Ethiopia (Tigray), Somalia, Afghanistan, Burkina Faso, Haiti, North Korea, Mali, eastern Ukraine and various parts of the Democratic Republic of the Congo, as well as the plight of the Rohingya in Myanmar and Bangladesh. In many of these contexts, minimal or zero humanitarian access to some of the most crisis-affected people remains an enduring reality. This amounts, in many cases, to enormous humanitarian needs in the context of degraded respect for international humanitarian law (IHL), leaving untold people with urgent needs who cannot access humanitarian assistance and protection.[1]

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1   Global figures on those reached by at least one item of aid remain unreliable. The numbers do show that in 2022, humanitarian aid targeted a reported 222.4 million out of an estimated 404.6 million people in need. Development Initiatives, *Global Humanitarian Assistance Report 2023*, Bristol, 2023, pp. 41, 44, 11.

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Bureaucratic impediments, counterterrorism laws that criminalize or impede humanitarian action, and depriving enemies through siege all demonstrate the same reality: the first casualty will always be the people. Often, a second casualty is the principle of impartiality itself. The erratic fulfilment of this definitive principle corrodes both the viability of emergency relief that is humanitarian in character and the principle itself, a principle that is positioned by IHL and the humanitarian sector to empower humanitarian efforts in conflict situations. At its core, impartiality is the principle responsible for operationalizing the principle of humanity, responding to the suffering of "all beings" because of the "common nature we share with them" as humans.[2]

External obstructions and the difficulties of access receive considerable attention.[3] This article takes a different approach, exploring a number of critical challenges to impartiality that emerge from within the aid sector. Looking beyond programmatic issues such as weak negotiating capacity or financial dependence upon the grant mechanisms of political bodies, the analysis focuses on how weakness in the interpretation and implementation of impartiality itself contributes to aid not reaching those most in need.

Though not methodologically a research project, this article is based upon document review, a set of twenty-seven interviews with key stakeholders and thinkers in the sector, and the authors' considerable familiarity with the operations of Médecins Sans Frontières (MSF). Following this introduction, the second section begins with the definition of impartiality, tracking the logic of its three component values: (1) non-discrimination, (2) proportionality and (3) individual impartiality. Key issues include the hierarchies between different categories of disempowerment and how people's urgent needs compete against, *inter a*lia, institutional specialization, bias, agency needs and the workings of the humanitarian marketplace.

The third section then explores two sets of fundamental conceptual and operational challenges to impartiality. It starts with the sector's at times problematic relationship with its own principles, which can render them insubstantial in decision-making, as well as the poor learning and development that surround the principles. It then discusses how the practice of impartiality reflects the sector's inequitable share of decision-making power,[4] leaving humanitarians with the power to decide who does and does not receive aid, and the power to define whether needs count as humanitarian or not.

2   Jean Pictet, *The Fundamental Principles of the Red Cross: Commentary*, International Federation of Red Cross and Red Crescent Societies (IFRC), 1979, p. 24.
3   Amelia Kyazze, "Walking the Walk: Evidence of the Principles in Action from Red Cross and Red Crescent National Societies", *International Review of the Red Cross*, Vol. 97, No. 897–898, 2015, p. 212; Sean Healy and Sandrine Tiller, *Where Is Everyone? Responding to Emergencies in the Most Difficult Places*, Médecins Sans Frontières (MSF), July 2014.
4   In its most basic form – that is, the response to the suffering of others – the authors recognize the historical and geographic omnipresence of humanitarianism. In this article, references to "humanitarian" refer to the formal sector, largely comprising institutions of the global North that hold a disproportionate influence over the sector, which predominantly operates in the global South.

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The objective of this article is to strengthen the sector's commitment to and implementation of impartiality by resetting humanitarians' conceptual and operational understanding of it. The overarching purpose is twofold: first, furthering humanity. As the principle of humanity evolves – for example, in shifting away from a benign, universalist paternalism to acknowledging contextual specificity and recognizing human agency in crisis-torn communities – so too must humanitarianism's operationalization of impartiality. Borrowing from Fast's discussion of the principle of humanity in an earlier issue of the *Review*, it is this shift "from the abstract to the concrete" that opens up paths "to promote systemic and principled reform".[5]

The second purpose of the article is to confront the reality that the humanitarian principles, and perhaps most importantly impartiality, must play a crucial role in the emergent critical discussions on humanitarian action's relationship to climate change, protracted crisis and triple-nexus programming – or, more ominously, to a future where exponentially greater numbers of people confront urgent, life-threatening crises while funding for humanitarian action relatively contracts. Exploring the deeper workings of impartiality is thus necessary in anticipation of the mounting challenges to impartiality's pre-eminence.

The tripartite workings of impartiality

After first introducing impartiality as a principle, the three main subsections of this section track the three components of impartiality, highlighting key conceptual and implementational challenges.

An introduction to impartiality

Much of the humanitarian sector has adopted the definition of the four core principles[6] of humanitarian action from the 20th International Conference of the Red Cross and Red Crescent Movement (1965). The principle of impartiality stipulates that the humanitarian agency

> makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.[7]

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5   Larissa Fast, "Unpacking the Principle of Humanity: Tensions and Implications", *International Review of the Red Cross*, Vol. 97, No. 897–898, 2015, p. 116.

6   While these four principles track the first four (of seven) Fundamental Principles of the International Red Cross and Red Crescent Movement (the Movement), the Movement's Code of Conduct notably also contains principles related to integrating with local capacities and involving beneficiaries in the management of aid. See International Committee of the Red Cross (ICRC) and IFRC, *The Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organisations in Disaster Relief*, Publication Ref. 1067, 31 December 1994.

7   ICRC, *The Fundamental Principles of the Red Cross and Red Crescent*, Publication Ref. 0513, Geneva, 1996, p. 4.

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Though other accepted definitions exist, the variation is minimal.[8]

By resolution of the United Nations (UN) General Assembly in 1991, impartiality is also one of three principles according to which humanitarian assistance "must be provided".[9] Uniquely among the four core humanitarian principles, impartiality has been legally enshrined by Article 3 common to the four Geneva Conventions (and in a small number of additional articles), which provides the right of an "impartial humanitarian body" to "offer its services".[10] This clause is widely interpreted as establishing a "universal requirement" that a government needs to have good cause to reject such an offer.[11] Importantly, IHL places its emphasis not upon the mandate or humanitarian mission of the agency, but upon the character of its work, which must be "exclusively humanitarian" and impartial.[12]

The sector's understanding of the core principles builds upon *The Fundamental Principles of the Red Cross: Comment*ary, the seminal work of Jean Pictet. His explanation of impartiality sets forth two sub-principles – non-discrimination and proportionality – and elucidates a third component, somewhat unhelpfully also labelled "impartiality":

1. The central ethic of impartiality, *non-discriminat*ion refers to "the refusal to apply distinctions of an adverse nature to human beings simply because they belong to a specific category," thus ensuring that assistance is delivered to "friend and foe" alike.[13]
2. Recognizing that no organization can cover all needs, *proportional*ity provides a logical and fair way of setting priorities. Impartiality is thus in part utilitarian.[14] As it would not be equitable to deliver aid randomly, or to give everybody an equal amount of aid, the logic of proportionality cascades down from non-discrimination, with aid first targeting those most urgently in need.[15] Impartiality is thus not *simp*ly utilitarian.

8   See e.g. UN Office for the Coordination of Humanitarian Affairs (OCHA), "OCHA On Message: Humanitarian Principles", June 2012.
9   UNGA Res. 46/182, 19 December 1991. A later resolution added independence to this threesome: UNGA Res. 58/114, 5 February 2004.
10 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950), Art. 3; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950), Art. 3; Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950), Art. 3; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950), Art. 3.
11 Jeremie Labbé and Pascal Daudin, "Applying the Humanitarian Principles: Reflecting on the Experience of the International Committee of the Red Cross", *International Review of the Red Cross*, Vol. 97, No. 897–898, 2015.
12 Dapo Akande and Emanuela-Chiara Gillard, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict*, University of Oxford and OCHA, 2016, p. 21.
13 ICRC, above note 7, p. 5.
14 J. Labbé and P. Daudin, above note 11.
15 J. Pictet, above note 2, p. 27.

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3. The idea of each *individual*'s impartiality is meant to ensure that humanitarians do not allow their personal biases – i.e., disfavour towards some categories or favouritism towards others – to colour the distribution of aid.[16]

Grounded in the response to crisis, the principle of impartiality is designed to centre both ethical thinking and operational practice, combining questions of why, where and who, and insisting that the humanitarian principles should constitute humanitarianism's primary relationship: that between the giver of aid and its recipient.[17] The practice of impartiality, in the formal sense of the word, thus distinguishes "humanitarian" aid from other forms of emergency relief, beneficial as they might be.[18]

Non-discrimination in the delivery of assistance and protection

This subsection examines the workings of non-discrimination, then differentiates active versus passive forms of non-discrimination, and finally offers an analysis of non-discrimination's relationship to vulnerability.

The workings of non-discrimination

The ethical heart of impartiality is the sub-principle of non-discrimination.[19] While proportionality and individual impartiality do speak to virtues – of objectivity, of understanding, of giving – non-discrimination draws on something that is more fundamental and that is central to the very notion of who and what humanity is: all human beings, being human, must be respected equally and treated equitably.

Perhaps the most singular focus of the principle of non-discrimination has been to require that wounded and sick people on all sides of a conflict are provided with care and treated humanely, whether "friend" or "foe". In his Commentary, Pictet foresaw some of the deeper ethical, philosophical and even political consequences of committing humanitarians to non-discrimination:

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16 *Ibid.*, pp. 31–32.
17 Though this is often overlooked in much thinking on the principle, impartiality is also the primary determinant of the relationship between the aid giver and the people and communities in crisis who do *not* receive aid.
18 *Ibid.*; Martin Quack, "Impartiality in Discussion", in Martin Quack (ed.), *Based on Need Alone? Impartiality in Humanitarian Action*, Caritas Germany, Diakonie Katastrophenhilfe and Ärzte ohne Grenzen, 2018, p. 11.
19 In deliberating non-discrimination in relation to policies and plans, it is helpful to distinguish between different categories of discrimination, and the ethics surrounding them: (1) discrimination may be entirely justifiable where it is designed to produce positive distinction, identifying groups or individuals for whom it is morally required or justified (e.g., targeting the elderly, immunosuppressed, etc. during the first round of COVID vaccinations); (2) intentional discrimination that produces an adverse distinction; (3) policies and programmes that are non-discriminatory in their design but produce discriminatory consequences that could not have been reasonably foreseen; and (4), a subset of the previous category, policies and programmes established with no actual discriminatory intent, but where the discriminatory impact should reasonably have been foreseen (e.g., health education messages that appeared only in written form, thereby excluding key groups in society).

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> This concept [of non-discrimination] deserves to have a prominent place, for it is inseparable from the Red Cross and from the very principle of humanity itself.[20]
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> …
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> Today, as Louis Pasteur wrote, *We do not ask a suffering man what country he comes from or what his religion is, but say simply that he is in pain, that he is one of our own and that we will give him relief.*[21]

In jurisprudence, the element of non-discrimination has been affirmed as definitional to the humanitarian character of aid work. In a case involving US government aid to Nicaraguan opposition groups, the International Court of Justice relied on the fact that the assistance "was limited to one side of the conflict" to determine that it was not "given without discrimination" and so was not humanitarian in character.[22] In their treatment of impartiality, humanitarian writers tend to take non-discrimination at face value and as rather self-explanatory, thinking of it less in terms of global- or programme-level decision-making (targeting) than of taking individual-level decisions within projects, such as at the door of a clinic or food distribution point.[23]

There is very good reason today to stress even this basic obligation of non-discrimination, as in many contemporary conflicts one party or another has insisted that its "enemies" do not deserve, and also are not entitled to, humanitarian assistance and protection.[24] Non-discrimination on the part of humanitarians thus serves impartiality and crisis-affected populations. It also contributes to the humanitarian sector playing a normative role, modelling the sort of non-discrimination that IHL, international human rights law, national laws (often) and religious scriptures (among others) demand of people, militias, politicians and governments.

20 J. Pictet, above note 2, p. 13.
21 *Ibid.*, p. 25.
22 International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment, *ICJ Reports 1986*, p. 115.
23 On the surface, the concept of global impartiality is a simple extension of impartiality to the organization's or sector's global operations. In reality, it is technically complex to measure, financially viable for less than a handful of organizations, and politically impossible. Two recent examples are the recent disproportionate responses to the situations in Ukraine and Gaza versus, respectively, the Horn of Africa and Sudan. Interviews revealed that some international NGOs have constructed monitoring tools and response capacities to use global impartiality as a useful metric, while for others it is more aspirational – for example, a useful concept in planning next year's opening and closure of programmes. As for humanitarian actors working at a national or local level, globality seems inapposite.
24 See e.g. Neve Gordon, "The Moral Norm, the Law, and the Limits of Protection for Wartime Medical Units", in Jehan Bseiso, Michiel Hofman and Jonathan Whittall (eds), *Everybody's War: The Politics of Aid in the Syria Crisis*, Oxford University Press, New York, 2021. Gordon documents the efforts of the Syrian government to discriminate in the provision of health care against wounded civilians that it considered "enemies of the State".

The challenge of active non-discrimination

Humanitarians have tended to assume – and sometimes superficially operationalize – the concept of non-discrimination, rather than investigating how discrimination affects, or even frames, the lives of the people they try to help, and even how a lack of conscious attention to the deep roots of discrimination might lead humanitarian work to cause harm. Due to impartiality's partially utilitarian nature and prioritization, at least in some cases, of doing the greatest good for the greatest number of people in need, the principle can lead humanitarians to inadvertently reinforce structural inequalities – and thus can amount to humanitarians enacting discrimination themselves. For example, perhaps the existence of poor road networks leads humanitarians to set up their programme in the largest nearby town with an airstrip and a river port – exactly as the government has previously done, and the colonial authorities before them, but to the great detriment of access for local indigenous populations. Or perhaps the staff of a humanitarian agency – educated, city-dwelling, or holding to a particular faith – might see a given local population in a discriminatory way, as "Other", or might blame them for their own problems, making the local people unwilling to attend a clinic where they feel unwelcome. These examples are based upon the authors' experience with MSF.

This challenge is not insurmountable, but it makes clear that non-discrimination requires positive effort and action rather than passive abstention. It requires a high degree of understanding of the context and of the nature and causes of the discrimination that affects the specific populations, and a willingness to confront and dismantle barriers that would otherwise lead to aid helping some of those most in need and carelessly neglecting others.

The intersection of vulnerability and discrimination

An emerging body of work now investigates how discrimination moulds who is and is not in "need", and what their "needs" are, and indeed finds that humanitarians have too often held to a superficial concept of non-discrimination that bears its own set of victims. Becky Carter summarizes the existing evidence on the intersection between "discrimination" and "vulnerability" during times of crisis.[25] The modes of interaction between the two phenomena are manifold. Not only can discrimination mean that certain people are deliberately targeted for violence and exclusion, but it also reduces people's access to resources and thereby amplifies their needs: the hardships they face increase their vulnerability to disasters, reduce their resilience to cope with disasters, and increase the likelihood of their exclusion from humanitarian responses. Carter also reviews the strength of the evidence base, finding relatively more literature and data on the vulnerability of, and humanitarian response to, women and girls, as well as

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25 Becky Carter, *Impact of Social Inequalities and Discrimination on Vulnerability to Crises*, K4D Helpdesk Report No. 994, Institute of Development Studies, Brighton, April 2021.

persons with disabilities, while there is "less [literature] focused on adolescents and older people, and very little on people with diverse sexual orientation, gender identity and/or expression, and sex characteristics, and people from religious and ethnic minorities".[26]

Parallel research further illuminates how specific groups of people face discrimination, including exclusion from humanitarian responses, such as the elderly,[27] people with diverse sexual and gender identities,[28] persons with disabilities[29] and people from religious backgrounds.[30] Barbelet, Lough and Njeri, in a groundbreaking set of research on inclusion in humanitarian responses, address the superficiality in humanitarian commitments to non-discrimination directly, identifying and analyzing various examples of how humanitarian responses include, and exclude, people they consider "vulnerable":

> Despite efforts in the past few years …, current policy frameworks and guidelines lack a holistic approach to inclusion beyond single forms of discrimination. … The core principle of impartiality – a central element of inclusion – is rarely critically evaluated and too often assumed.[31]

Threaded through this tension between the implementation of inclusive programming and impartiality is the issue of vulnerability. Finding the generically "most vulnerable" can become a proxy for finding those actually most in need in a specific context, especially where "static categories of vulnerability … frame how aid is prioritised".[32] In its 2018 *State of the Humanitarian System* report, the Active Learning Network for Accountability and Performance (ALNAP) similarly highlights the insufficient practice of aid programming that consists of "predetermined activities for predetermined 'vulnerable groups'".[33] Where agency specialization is based upon a specific identity (e.g. refugees or women),

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26 *Ibid.*, p. 2.
27 Verity McGivern and Ken Bluestone, *If Not Now, When? Keeping Promises to Older People Affected by Humanitarian Crises*, HelpAge International, London, 2020. See also Veronique Barbelet, *Older People in Displacement: Falling Through the Cracks of Emergency Responses*, Humanitarian Practice Group (HPG) Commissioned Report, Overseas Development Institute (ODI), London, July 2018, p. vi: "actual interventions still lack a sufficiently nuanced understanding of how displacement affects the status and role of older people …, and resources continue to be skewed towards younger generations".
28 Jennifer Rumbach and Kyle Knight, "Sexual and Gender Minorities in Humanitarian Emergencies", in Larry W. Roeder (ed.), *Issues of Gender and Sexual Orientation in Humanitarian Emergencies: Risks and Risk Reduction*, Humanitarian Solutions in the 21st Century, Springer, Cham, 2014, p. 3.
29 Handicap International, *Disability in Humanitarian Context: Views from Affected People and Field Organisations*, July 2015.
30 Jeremy Allouche, Harriet Hoffler and Jeremy Lind, *Humanitarianism and Religious Inequalities: Addressing a Blind Spot*, CREID Working Paper No. 04, Brighton, 2020.
31 Veronique Barbelet, Oliver Lough and Sarah Njeri, *Towards More Inclusive, Effective and Impartial Humanitarian Action*, ODI, London, 2022, p. 1.
32 Veronique Barbelet and Oliver Lough, "In Search of Inclusive Humanitarian Responses", *ODI Blog*, 6 January 2021, available at: https://odi.org/en/insights/in-search-of-inclusive-humanitarian-responses/ (all internet references were accessed in February 2024); see also HERE-Geneva, *Principled Humanitarian Programming in Yemen: A "Prisoner's Dilemma"?*, Geneva, 2021.
33 ALNAP, *The State of the Humanitarian System: 2018*, ALNAP and ODI, London, 2018, p. 142, further finding that "[a]ssessments to identify the actual vulnerabilities of different groups of people within a specific context are still uncommon".

there is hence greater risk of programming that meets important needs, yet not necessarily those most in need.[34] Or, as Darcy and Hoffman quipped over two decades ago, "[n]ot belonging to a 'vulnerable group' can itself be a major vulnerability factor".[35] Hugo Slim concludes that for impartiality to enable rather than occlude an intersectional analysis, targeting should avoid being based upon factors of primary political identity such as race or religion, thus recognizing that within those groups, the criticality of needs affects people differently.[36]

The problem is not specialization – which reinforces tailored programming, a contributor to an impartial response – but the implementation of it. Without regard for the higher responsibility to take impartial action, such group-specific expertise (and personal conviction) may yield not simply a distinction in favour of a vulnerable group, but an adverse distinction that discriminates against groups with greater needs. This occurs when the delivery of assistance to a particular group ("the project") becomes the overarching goal of the intervention, rather than it being a means, a sub-objective designed to maximize the goal of saving lives and alleviating suffering in that context.[37] Further, funding streams that capitalize on preconceived categories of vulnerability reinforce this bias by "confirming a hierarchy between different forms of discrimination, where gender and disability inclusion" are typically (although still inadequately) prioritized but other categories are not (e.g., language, older age, ethnic and religious minority rights).[38] Without a more proactive approach to finding those who are marginalized or discriminated against, "humanitarian actors may be saving some lives while actively pushing behind the lives of those harder to reach, invisible and unheard".[39]

Proportionality: Aid based solely on needs

If the analysis of non-discrimination raises important concerns and challenges, implementation of the principle of proportionality raises red flags at the core of impartiality and hence humanitarian action. First, and dealt with in the next subsection, decision-makers within humanitarian agencies struggle with conceptual and pragmatic complexity along with competing institutional factors. Competing values, variance in the perceptions of need, bias in the data or decision-maker, and institutional factors often undercut the aim of delivering aid based on greatest need. A second issue is whether sufficient commitment exists to operationalize proportionality. Finally, in practice, the necessity of interrogating

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34 The authors note that some agencies are officially mandated to respond to certain identity-based groups, such as UNICEF or the Office of the UN High Commissioner for Refugees.

35 James Darcy and Charles-Antoine Hofman, *According to Need? Needs Assessment and Decision-Making in the Humanitarian Sector*, ODI, London, 2003, p. 31.

36 Hugo Slim, "Impartiality and Intersectionality", *Humanitarian Law and Policy Blog*, 16 January 2018, available at: https://blogs.icrc.org/law-and-policy/2018/01/16/impartiality-and-intersectionality/.

37 See Monika Krause, *The Good Project: Humanitarian Relief NGOs and the Fragmentation of Reason*, University of Chicago Press, Chicago, IL, 2014.

38 V. Barbelet, O. Lough and S. Njeri, above note 31, p. 15.

39 *Ibid.*, p. 5.

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the power dynamics surrounding who gets to decide whose and which needs are the greatest has become ever more insistent; this will be addressed in this article's third main section.

Beyond insecurity and context: Conceptual and institutional challenges to proportionality

At the level of practice, various issues compete with the needs of people, such as agency staff and operational interests, institutional donor influence over the geography and content of humanitarian work, and the top-down way in which the sector "shapes interventions to conform to agencies' mandates regardless of the priorities of crisis-affected populations".[40] Furthermore, data that is sufficiently rigorous to serve as the basis for allocation decisions is difficult to obtain, and more broadly the use of data has been harshly criticized as inaccurate in its quantification of need and political in its application.[41] Even if available, the data may remain insufficiently disaggregated to spot exclusion or identify specific subgroups.[42] Finally, at the heart of the allocation of resources sits the riddle of the incommensurability of needs: how does one compare cholera deaths to sexual and gender-based violence to the destruction of homes and displacement, and do so across the globe? Major initiatives seek to produce better and more comparable data.[43]

Perfect impartiality may be both impossible and undesirable. Most would disagree with an exorbitant percentage of resources being used to reach and respond to ten very remote and very needy people. Reaching the greatest in need will almost never result in reaching the most in number because the most in need require a more resource-intensive approach. But scale can easily replace proportionality using a logic in which the number of aid recipients becomes more important than the urgency of the need or the depth of the impact. Similarly, the quality of programming also affects impact. MSF regularly debates difficult trade-offs between higher levels of quality versus reaching greater numbers of people. With care, organizations can embrace scale or impact as complementary to impartiality – for example, the International Rescue Committee defines its understanding of scale, cautioning that scale cannot be reduced to measures of quantity and emphasizing its commitment to "contribut[ing] to meaningful

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40 Jeremy Konyndyk, *Rethinking the Humanitarian Business Model*, CGD Brief, Center for Global Development, May 2018, p. 5.
41 See Joel Glasman, *Humanitarianism and the Quantification of Human Needs*, Routledge, New York, 2020.
42 Veronique Barbelet, and Caitlin Wake, *Inclusion and Exclusion in Humanitarian Action: The State of Play*, ODI, London, November 2020, p. 25.
43 For example, ACAPS has developed a global severity index, available at: www.acaps.org/en/thematics/all-topics/inform-severity-index. Interestingly, some interviewees expressed hopefulness while others were critical of a similar effort by the UN, the development of a Joint Intersectoral Analysis Framework (JIAF), which aims *inter alia* to permit the comparison of disparate needs across contexts and sectors. For commentary on the JIAF, see Victoria Metcalfe-Hough, Wendy Fenton and Farah Manji, *The Grand Bargain in 2022: An Independent Review*, HPG Commissioned Report, ODI, London, June 2023, pp. 87–90.

change in people's lives when and where that change is most needed or most significant: when people need it most", and doing so "even when people are harder to reach or face more barriers to reaching us".[44]

Beyond these difficulties in the application of impartiality, two humanitarian evolutionary trends over recent decades conceptually complicate the humanitarian approach to needs. The first of these trends is the great broadening of the "new humanitarianism" to include protection, development, peace, transformative outcomes, promotion of human rights, and now climate change.[45] Second is the shift from short-term, one-off interventions during exceptional moments of crisis to long-term interventions in complex, compounding emergencies[46] where the core function of humanitarian work – responding to urgent needs – shrinks in *relati*ve importance to addressing the underlying causes of crisis.

Perhaps the most vexing question of all is even simpler: what are needs? More specifically, what do humanitarian decision-makers mean by "needs"? Interestingly, recent research has revealed differences in how agencies interpret the humanitarian "mandate" and has shown that this divergence is fundamental to the conceptualization of need. The root lies in differing interpretations of the principle of humanity, where one view of "life-saving" is based on physiological existence and the other is more expansively set in the concept of dignity, which supports a much wider bandwidth of programming.[47] Slim's 2023 inquiry into the nature of humanitarian need proposes closer attention to the distinction between "life-saving" or "life-keeping" needs, which involve things *necess*ary to life and, according to Slim, should be the focus of the humanitarian sector, versus "life-making" needs, which involve things merely *benefic*ial to life.[48] In trying to expand how humanitarians conceptualize need, Slim proposes three categories of humanitarian need beyond those necessary for biological sustenance (food, water, health care, etc.): social need, survival capability and systems need.[49]

Finally, in a recent article for the Humanitarian Practice Network, Cara Kielwein critiques the sector's assessment and commodification of need, and its insistence upon its definitions and presumptions of needs. In discussing needs assessments, she offers the example of a person who ticks the box for inadequate access to safe shelter. The aid sector presupposes that this indicates a need for

44 International Rescue Committee, *IRC's Equitable Scale: Connecting Our Ambition, Our Mission and Our Values*, 2021 (internal document on file with author).

45 See e.g. Antonio Donini and Stuart Gordon, "Romancing Principles and Human Rights: Are Humanitarian Principles Salvageable?", *International Review of the Red Cross*, Vol. 97, No. 897–898, 2015; Ban Ki-moon, *One Humanity; Shared Responsibility: Report of the Secretary-General for the World Humanitarian Summit*, United Nations, New York, 2016; J. Labbe and P. Daudin, above note 12.

46 According to Development Initiatives, in 2022, contexts of protracted crisis accounted for 83% (339.3 million) of the total people in need of humanitarian relief. Development Initiatives, above note 1, p. 25.

47 Marzia Montemurro and Karin Wendt, "The Limits of Labels: Mali Report", in HERE-Geneva, *The Role of Mandates*, Geneva, 2018.

48 Hugo Slim, *How Should We Define and Prioritise Humanitarian Need? An Ethics-Based Perspective for IMPACT Initiatives*, NCHS Paper No. 15, Norwegian Centre for Humanitarian Studies, Bergen, November, 2023.

49 *Ibid.*, pp. 10–11.

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shelter, but from the person's perspective, they might conceive of their need as being for a job (in order to rent accommodation), or for security (in order to return to their existing home), or for a more long-term and dignified solution (after years of access to emergency shelter).[50]

Watering down or disregarding proportionality

Studies have shown that aid agencies often prioritize non-discrimination but undervalue, remain unaware of or ignore the attendant principle of proportionality.[51] With a focus on Afghanistan, South/Central Somalia, South Sudan and Syria, research by Haver and Carter found that a "key feature" explaining why some agencies gain greater access than others is "focusing on the goal of reaching those most in need, rather than simply executing programmes in reachable areas".[52] To be clear, many external factors such as insecurity and government securitization plague access in a given context and constitute a formidable barrier. Nonetheless, taking Haver and Carter's finding to its logical conclusion, inadequate commitment to the principle of proportionality contributes to these factors "succeeding" as a barrier or not being overcome. When "operationalised consistently", the principled approach offers the best hope for access.[53]

The crux of the problem is that delivering aid to people in need sounds like a good thing – and indeed, it *is* a good thing – but it is not necessarily an impartial or humanitarian thing, because the aid is not necessarily being delivered to those *m*ost in need. More than a philosophical point of contention, the risk is for the aid to be less impactful, to be seen as biased or unfair, or to provoke grievances among those not receiving assistance. In effect, the *de fa*cto objective becomes reaching "people in need", a form of mission creep that normalizes a lesser standard, and one that often favours manageability, risk aversion[54] and meeting contract targets.

50 Cara Kielwein, "Can We Make Better Use of Humanitarian Data for an Impartial and Humane Response to Crisis?", Humanitarian Practice Network, 24 November 2023, available at: https://odihpn.org/publication/can-we-make-better-use-of-humanitarian-data-for-an-impartial-and-humane-response-to-crisis/.

51 Abby Stoddard and Shoaib Jillani, *The Effects of Insecurity on Humanitarian Coverage*, Humanitarian Outcomes, Global Public Policy Institute and UKaid, November 2016; Katherine Haver and William Carter, *What It Takes: Principled Pragmatism to Enable Access and Quality Humanitarian Aid in Insecure Environments*, Humanitarian Outcomes, 2016; HERE-Geneva, above note 32. The issue is less about proportionality specifically than the more general insufficient understanding of the principles and the lack of policies and guidance related to them that is discussed in the next section.

52 K. Haver and W. Carter, above note 51, p. 67. The research further concluded that this "mindset can be found in a small range of national and international organisations". See also Ed Schenkenberg van Mierop, "Local Humanitarian Actors and the Principle of Impartiality", in M. Quack (ed.), above note 18; Standing Committee for Humanitarian Response (SCHR), *SCHR Impartiality Review: Report of Findings*, January, 2014, available at: http://tinyurl.com/btbae2xc. "Many agencies are concentrating only on the easiest-to-reach populations and ignoring the more difficult places": S. Healy and S. Tiller, above note 3, p. 4.

53 A. Donini and S. Gordon, above note 45.

54 HERE-Geneva, *Principled humanitarian Assistance of Echo Partners in Iraq*, Geneva, May 2017.

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This compromised logic finds footing in the highest of places, as when the UN Secretary-General used the World Humanitarian Summit to place "leaving no one behind" at the heart of the humanitarian imperative, along with "ending need".[55] Inspiring as they might sound, the goals of leaving no one behind and ending need encourage the logic of delivering aid to anyone with needs, flattening out the distinction between charity, welfare or relief on the one hand, and *humanitar*ian response on the other.[56] This mission confusion is also evident in the phrasing of Core Humanitarian Standard calls for the "impartial assessment of needs" and "providing impartial assistance based on … needs" without specific emphasis on proportionality.[57] This reads as an emphasis on non-discrimination and delivering food to those needing food, but not explicitly allocating assistance to those most in need.

Impartiality's duty of individual impartiality, a form of depersonalization

Impartiality's third component, the concept of individual impartiality, is a personal quality – and a requirement if the aid organization is to operationalize the substantive principles of non-discrimination and proportionality. Pictet saw this individual impartiality as each person "applying established rules, recognised as valid, without taking sides, either for reasons of interest or sympathy".[58] Though less explored than proportionality and non-discrimination, individual impartiality nonetheless raises the subject of bias at the individual level.

Is this standard a proverbial fly in impartiality's ointment? Human nature can be defined by its familial, communal and tribal affinities, and thus by an inescapably imperfect capacity for rational objectivity, which in turn constrains impartiality. A recent (and imperfect) example: in the wake of the public and sectoral outpouring of money, urgency and commitment following Russia's escalation of its invasion of Ukraine, many were quick to point out that the people in crisis may have been prioritized not for their generic humanity but for their specific "Western-ness" (for lack of a better term).[59] Contrary to its negative consequences, however, affinity can also be seen as a source of knowledge and contextual understanding, a foundation for identifying those within a given community who are the most vulnerable.[60]

According to Pictet, an International Committee of the Red Cross (ICRC) worker should ensure that a doctor attends to an adversary in crisis before attending to a friend who is suffering to a lesser degree. Such positionality "implies the

55 "Leave no one behind" and "ending need" formed two of the five "Core Responsibilities" established in the UN Secretary-General's report: B. Ki-moon, above note 45, pp. 20 ff.
56 E. Schenkenberg van Mierop, above note 52.
57 *Core Humanitarian Standard on Quality and Accountability*, CHS Alliance, Groupe URD and Sphere Project, 2014, p. 10.
58 J. Pictet, above note 2, pp. 31 ff.
59 Zainab Moallin, Karen Hargrave and Patrick Saez, *Navigating Narratives in Ukraine: Humanitarian Response Amid Solidarity and Resistance*, ODI, London, 2023.
60 See Kathryn Kraft, "Faith and Impartiality in Humanitarian Action: Lessons from Lebanese Evangelical Churches Providing Food Aid", *International Review of the Red Cross*, Vol. 97, No. 897–898, 2015.

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objective scrutiny of problems and the 'depersonalisation' of humanitarian work".[61] Interestingly, Pictet recognized the difficulty here, calling for personal self-assessment and effort to achieve an "internal freedom", resulting in this capacity to depersonalize the charitable action.[62] Yet Pictet's call remains largely obscured by the powerful assumptions of the sector, which casts local actors as so biased by their proximity as to be unable to adhere sufficiently to the humanitarian principles – meaning that they cannot be trusted to be funded directly or to take key decisions[63] – and which, in contrast, can assume a "natural" or greater scientific rationality and capacity of the dominant "global North", including its capacity to diagnose and address the problems of the "global South".[64]

Conceptual and operational challenges to impartiality

This section further explores the challenges to the implementation of impartiality, taking forward the previous section's discussion but leaving behind the tripartite framework of impartiality's components. The analysis below situates impartiality within the humanitarian principles and the broader power dynamics affecting their implementation. The first main subsection examines the significance accorded to the humanitarian principles in the sector and how humanitarian actors relate to the principles in their work. The second main subsection spotlights the issue of power and the ever more insistent question of who gets to decide and define what needs can be labelled as humanitarian and whose needs are the greatest.

The practice of the principles

Generally speaking, analysis related to the humanitarian principles tends to focus on the challenges to the principles themselves, rather than on challenges to how they are applied.[65] That gap seems critical given the degree to which the sector remains "uncertain about what to do with [the principles] in practice" combined with "limited practical support to put them into practice".[66] This subsection looks at how the principles are or are not practised, the nature of the sector's

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61 ICRC, above note 7.
62 J. Pictet, above note 2, p 33.
63 For example, one major UN review found that "some evaluations link the risk of local partner bias … with the risk of partiality in the delivery of aid". Tony Beck, Margie Buchanon-Smith, Belen Diaz and Lara Ressler, *Reflecting Humanitarian Principles in Evaluation*, UN Evaluation Group Working Paper, 2016, p. 23.
64 See e.g. Sadaf Shallwani and Shama Dossa, "Evaluation and the White Gaze in International Development", in Themrise Khan, Dickson Kanakulya and Maïka Sondarjee (eds), *White Saviorism in International Development*, Daraja Press, Wakefield, 2023, pp. 47 ff.
65 A. Kyazze, above note 3, p. 212.
66 ALNAP, *The State of the Humanitarian System: 2022 Edition*, ALNAP and ODI, London, 2022, pp. 267–268.

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engagement with them, and how this engagement seems to misunderstand the nature or meaning of the principles in action.

Engagement and disengagement with the principles

In a 2023 study, Rafael Gorgeu explores how the humanitarian sector has evolved, based on his review of over 8,000 documents (!) produced or referred to by the Inter-Agency Standing Committee (IASC)[67] over the past two decades. Indicative of insufficient visibility, only after the first seventy-five pages of his report does he explain not having previously mentioned the humanitarian principles:

> [D]espite numerous references to humanitarian principles in discussions and documents emanating from the IASC and its periphery, they are never, or hardly ever, discussed in their content. There is no trace of … discussions seeking to articulate them to produce common narratives.[68]

Comparable absences exist in other contexts. Research commissioned by the UN Evaluation Group found little evidence of systematic evaluation of UN programming that included the performance of the humanitarian principles, and no common understanding of them in terms of either the concepts or their implementation.[69] That same research concluded that impartiality was only "very infrequently" present in decisions on the targeting of aid. Findings discussed in an interview with the author of the forthcoming UN Evaluation Group guide on evaluating the humanitarian principles again reveal that agencies rarely explicitly review their results against the humanitarian principles and that there is limited explicit mention of the principles in country-level strategies, planning, or programming documents.[70] At the sectoral level, despite the high-level calls for the evaluation of the humanitarian principles, the sector drives attention towards accountability for technical and financial performance.[71] For example, the 429-page ALNAP guidance on the evaluation of humanitarian action mentions the principles only in passing, and offers no specific advice on evaluating them.[72]

67 The IASC was created by the same UN General Assembly resolution that endorsed the humanitarian principles: see above note 10. Convening the heads of nineteen humanitarian agencies and consortia, the IASC formulates policy, sets strategic priorities and mobilizes resources in response to crisis. See IASC, "The Interagency Standing Committee", available at: https://interagencystandingcommittee.org/iasc.
68 Rafael Gorgeu, *Thinking About the Evolution of the Humanitarian Sector: An Exploration within the World of Ideas*, HERE-Geneva, Geneva, January 2023, p. 75.
69 T. Beck *et al.*, above note 63, p. 17.
70 Interview with Margie Buchanon-Smith, August 2023 (virtual, on file with author).
71 "Strengthening accountability through asking humanitarian actors not just how effective or efficient they are but also how well they live up to their principles would bolster consistency and build trust. If the usual evaluations and audits … give sufficient weight to principles, it would be a practical driver of changed behaviour." World Humanitarian Summit Secretariat, *Restoring Humanity: Synthesis of the Consultation Process for the World Humanitarian Summit*, United Nations, New York, 2015, p. 92.
72 Margie Buchanan-Smith, John Cosgrave and Alexandra Warner, *Evaluation of Humanitarian Action Guide*, ALNAP and ODI, London, 2016.

Despite these tendencies, the principles are not invisible. An evaluation by HERE-Geneva of the application of the humanitarian principles in Iraq, for example, found that thirteen out of the fifteen agencies in the review regularly discussed the principles in taking decisions, setting priorities and negotiating access.[73] In that study, two concerns emerged that contribute to an analysis of impartiality. First, there was great divergence in how agencies employed the principles, and whether they were used to set the agencies' strategic direction.[74] Second, the actual operationalization of the principles led to inconsistent outcomes, such as the principles leading one organization to justify intervention and another to reject it.[75]

Four years later, the HERE-Geneva team evaluated the use of the principles in Yemen, finding the same active consideration of the principles in the day-to-day work as well as the same two concerns.[76] In this 2021 analysis, and particularly related to gaining access to hard-to-reach areas of the greatest need, the evaluation team found a pattern whereby individual agencies tended to "opt for their own agency-specific approaches in the operationalisation of the principles thinking it will bring them most [sic] short-term benefit", at the expense of a collective approach to the principled negotiation of access, likening the collective outcome to the "prisoner's dilemma".[77] While the thorny, insecure context of Yemen may have formed a demanding stage, the performance dilemma actually arose from the internal dynamics of the aid system, such as the pressure to deliver, competition for funding, and a lack of trust and communication about the principles among humanitarian actors.[78]

Ethics and engagement with the principles

Previous scholarship has argued that the tendency to judge the morality of humanitarian work on the principles guiding it rather than on its consequences and outcomes (i.e., the primacy of deontological ethics) is no longer as compatible as it once was with Western societies, given the expansion of postmodern thinking which emphasizes the diversity rather than the universality of perspectives.[79] This principle–practice gap – an insufficiently principled

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73 HERE-Geneva, above note 54.
74 *Ibid.* More recently, two separate evaluations of the approaches of humanitarian actors to the principles of humanitarian action in Afghanistan made a similar finding: Ashley Jackson, Rahmatullah Amiri and Sarah Kilani, *Principled Humanitarian Action in Afghanistan: Research Report*, May 2023 (unpublished, on file with author); Humanitarian Outcomes, *Navigating Ethical Dilemmas for Humanitarian Action in Afghanistan*, June 2023.
75 HERE-Geneva, above note 54.
76 HERE-Geneva, above note 32.
77 *Ibid*. In HERE-Geneva's interpretation of the prisoner's dilemma in the context of Yemen, the impact of one "prisoner's" decision upon others gives rise to a responsibility to communicate. Furthermore, there is a crucial difference between this and the traditional prisoner's dilemma: in the latter, the cost falls upon the prisoners, while in the humanitarian context, the cost falls instead upon the people who do not receive assistance, and so indirectly upon the principle of impartiality.
78 *Ibid.*
79 A. Donini and S. Gordon, above note 45, p. 93.

orientation at the strategic level and insufficient interpretation of the principles through praxis – arises from twinned weaknesses. First, MSF experience and research from the sector both show that humanitarians struggle with thinking systematically about ethical issues, despite their being engulfed by them.[80] Exploring the applied ethics of the humanitarian response in Afghanistan (a remit which included the humanitarian principles), recent work by Humanitarian Outcomes found that aid agencies lacked frameworks for making these difficult ethical decisions, individually or collectively:

> Most of them struggle even to define the problem in terms of competing moral values and the ethical principles at stake. Unlike with their security risk management tools, agencies have not developed models or practical guidance for ethical decision making in their programming.[81]

This finding was echoed by numerous interviewees, including in concerns that field staff received little or no guidance on how to make trade-offs; that ethical risks did not routinely appear in risk management frameworks; and that situational ethical trade-offs could not be reduced to a decision tree. It is fair to wonder if there is a disconnect here: the humanitarian principles present a deontological or duty-based ethic,[82] whereas the external (context) and internal (agency) environments of humanitarian action generate a constant pressure at the level of programming effectiveness, resulting in a focus on technical approaches, activity guidelines, and decisions based on "plug-and-play" calculations.

Second, ALNAP's 2022 systemic review found that there is a lack of systematic or strategic development of organizational and sectoral comprehension of the humanitarian principles.[83] Definitions are taught, but what do the principles look like in action? How can the sector defend against the politicization of aid?[84] Interviewees and MSF experience highlight how high turnover of staff exacerbates shortcomings in the understanding of these issues. Further, several interviewees expressed concern about the lack of evaluation as a symptom of a deeper malaise, of organizational cultures which see the principles as part of work in the "field", with little leadership engagement and poor dedicated documentation and reflection upon how they have been implemented or the long-term consequences of decisions. The point here is firstly about learning, understanding and defining through praxis an agency's specific approach to impartiality – how was impartiality approached in specific situations in the past, and how can those experiences be applied to today's decision-making? Secondly, it is about accountability; As Ed Schenkenberg writes, agencies "should be able to demonstrate the actions that they have concretely undertaken

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80   Humanitarian Outcomes, above note 74.
81   *Ibid.*
82   Zeynep Sezgin and Dennis Dijkzeul, "Introduction: New Humanitarians Getting Old?", in Zeynep Sezgin and Dennis Dijkzeul (eds), *The New Humanitarians in International Practice: Emerging Actors and Contested Principles*, Routledge, New York, 2016, p. 5.
83   ALNAP, above note 66, pp. 267–268.
84   For a summary of these issues, see *ibid.*, pp. 265 ff.

to apply the principles and be transparent on the challenges and compromises they make".[85]

The nature of the principled action

"How can we encourage an open debate on the problems of implementing the principles?"[86]

One weakness in the strategic engagement with the humanitarian principles is in part the consequence of their being misconstrued along a false binary of compliance and non-compliance. The principles function at once as absolute moral imperatives and as rules or guidance that steer on the basis of praxis and judgement.[87] They therein combine a deontological ethic with a consequentialist one, and do so in a way that may be misunderstood. Exemplifying this misconception, a commentator on ALNAP's 2022 *State of the Humanitarian System* report criticized the principles of humanity and impartiality because "they simply tell you what's good, not how to do it".[88]

As a moral imperative, impartiality should be treated as the goal to be approached, not an outcome to be ticked off a to-do list. Yet treating the principles as sacrosanct or inviolable, as binary propositions (with an agency seeing itself or being judged as (perfectly) principled for its adherence, which pushes the alternative of real-world compromise into the box of *unprincip*led), undermines their implementation, as well as the assessment of and ability to learn from them.[89] Recent research by Jackson *et al.* in Afghanistan illustrates this misconception in practice. The difficult circumstances on the ground required compromises to impartiality and independence, which led the majority of the aid workers they interviewed to feel that impartiality was "no longer attainable in practice".[90] Echoing this point, one agency country director explained that the principles "cannot be *literally appl*ied, because if we do, then we will not be able to implement the project".[91] In the more broad analysis of Buchanon-Smith *et al.*, they worryingly found that "Humanitarian Principles take place 'behind closed doors', which offers a further challenge to their evaluation, especially agencies' willingness to be evaluated against this framework".[92]

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85 Ed Schenkenberg van Mierop, "Coming Clean on Neutrality and Independence: The Need to Assess the Application of Humanitarian Principles", *International Review of the Red Cross*, Vol. 97, No. 897–898, 2015.

86 Martin Quack with Nina Zimmer, "Humanitarian Action and Impartiality: Where Do We Go from Here?", in M. Quack (ed.), above note 18, p. 90.

87 Nicholas Leader, "Proliferating Principles; or How to Sup with the Devil without Getting Eaten", *Disasters*, Vol. 22, No. 4, 1998, p. 293.

88 ALNAP, above note 66, p. 267.

89 Julia Steets and Katherine Haver, "Dealing with Challenges to Decisions Based on the Humanitarian Principles", in M. Quack (ed.), above note 18. Various interviewees emphasized this point.

90 A. Jackson, R. Amiri and S. Kilani, above note 74, p. 18.

91 *Ibid.*, p. 18 (emphasis added).

92 T. Beck *et al.*, above note 63, p. 42 (see also p. 8). The primary challenge, of course, is not to the evaluation of the principles, but to principled humanitarian aid reaching those most in need.

In combating this binarism, verbs matter. As one interviewee explained, in her organization the articulation of the principles as being "complied with" or "adhered to" suggested to staff that concession on the principles amounted to the breaking of a standard, and thus to *unprinci*pled action, therefore raising anxieties. Further pressure comes from key donors requiring that grant recipients commit to adhering to the principles, creating strong pressure in agencies to proclaim their accordance with the principles.[93] Several key informants similarly noted that staff in project locations will discuss compromises to the principles only in private, fearing retribution from headquarters or donors if "non-compliance" is discussed more openly.[94] This inhibits the sharing of experiences and undermines coordination,[95] and contrasts with the extent to which impartiality should be judged first by its efforts rather than outcomes.[96]

No organization is 100% independent, neutral or impartial, especially in the degraded contexts of crisis and given competing organizational or personal demands. Imperfection in relation to the principles – being "not 100%" impartial – is unavoidable, even if it sounds like an admission of wrongdoing rather than a recognition of the trade-offs and choices that humanitarians must make. Such trade-offs are built-in, because the principles themselves demand compromise as they complement, reinforce, chafe against or even contradict one another.[97] The principles call for pragmatism, and well-discussed and accountable compromise is critical to how agencies ensure that they are principled.[98] Such deliberation marks the distinction between, as the physician and ethicist Ross Upshur described it, "a compromise of principles and a principled compromise".[99] The lack of open discussion on the principles also inhibits their growth and their internalization not as two-dimensional definitions but as actions that shape the interpretation of these definitions over time.

A second critical and insufficiently understood or operationalized feature of the humanitarian principles is that their operational directives should be matched by strategic direction. For example, an agency might not be capable of running safe programmes in the area where people are most in need due to a lack of security management expertise and negotiating capacity. Acting impartially in a less needy but accessible area offers a common and understandable compromise, but that

93 Martin Barber, Mark Bowden, Armida van Rij and Rose Pinnington, *Applying Humanitarian Principles in Armed Conflict: Challenges and Ways Forward*, Chatham House, London, 2023, p. 4.
94 See also HERE-Geneva, above note 32, p. 10: "The overarching finding of this research is that a lack of trust and communication about how each agency/organisation operationalises the principles is hindering the effectiveness of the response"; A. Jackson, R. Amiri and S. Kilani, above note 74, p. 20: "No one will admit what they are doing"; J. Steets and K. Haver, above note 89, p. 30, finding that the perceived inviolability of the principles "makes staff and partners afraid to raise possible compromises".
95 HERE-Geneva, above note 32; A. Jackson, R. Amiri and S. Kilani, above note 74.
96 See Jason Philips, *Counterterrorism and Humanitarian Impartiality*, International Rescue Committee, New York, 2021, p. 2.
97 See J. Labbe and P. Daudin, above note 11, p. 199, for an illustrated discussion of this point.
98 See also J. Steets and K. Haver, above note 89.
99 Nathan Ford and Richard Bedell (eds), *Justice and MSF Operational Choices*, MSF, Amsterdam, 2001. See also K. Haver and W. Carter, above note 51, p. 67, noting that fulfilling the principle of humanity "is all about the art of finding acceptable compromises".

compromise should not be the end of an agency's strategic approach to principled action. An organization's approach to impartiality should be understood as triggering a concomitant strategic direction[100] – in this example, an organizational objective to increase the organization's capacity to be impartial by strengthening its security management expertise and capacity to negotiate with armed actors.

Such a strategic approach to the principles is at minimum a matter of accountability and, given the above-described gaps in the operationalization of impartiality, might very well give rise to a set of strategic objectives in the organization's development plan (e.g., greater deployment of resources devoted to context analysis, enhanced negotiation skills, improved use of disaggregated data, regular evaluation of the principles, or greater financial independence). It equally signals an enhanced role for the principles in organizational and country/project strategies. In the end, being principled has a cost in terms of attention, leadership and resources, and implies both sacrifice and self-restraint; it hence requires dedicated investment.[101] Summarizing this role of the principles well, Martin Quack asks, "how can humanitarian actors ensure that the sense and purpose of the principles remains a decisive factor when striving to implement them in the right way?"[102]

Overstating the imperative to deliver?

Though compromise and balance among the humanitarian principles is necessary, striking that balance can be challenging. Of particular relevance is an ideology of "access at all costs", wherein agencies favour the humanitarian imperative to deliver a lot of aid quickly, at the expense of the other principles.[103] Essentially, agencies accept significant restrictions being placed upon access (and hence impartiality) in order to deliver aid to only some areas or populations.[104] As one country director in Afghanistan explained:

> The problem is that we are dealing with people who are more principled than we are …. [The Taliban] won't compromise, and they know we will because they have seen us cross all of our red lines over the past thirty years.[105]

Humanity occupies the highest rung of the humanitarian principles, and the potential necessity and value of "principled pragmatism" in contrast to an

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100 See e.g. HERE-Geneva, above note 54, including the recommendation to make the humanitarian principles more central to strategic coordination processes such as the Humanitarian Response Plan.
101 ALNAP, above note 66, p. 265; see also J. Labbe and P. Daudin, above note 11. These investments include the resources to build neutrality and independence.
102 M. Quack with N. Zimmer, above note 86, p. 90.
103 See J. Labbe and P. Daudin, above note 11, p. 199, pointing out that the "so-called humanitarian imperative", not part of Pictet's commentaries, has been exploited as a justification for military intervention (under the Right to Protect).
104 In the eyes of one interviewee, this amounted to using the principles as a "cloak behind which people hide the essential motivation behind their aid, which is to spend donor money and have a job".
105 A. Jackson, R. Amiri and S. Kilani, above note 74, p. 10.

instrumentalized principlism is clear. But it is a conceptual error to conflate the humanitarian imperative with the principle of humanity, and this narrowing-down of the principle has a knock-on effect which short-changes impartiality. Prioritizing the humanitarian imperative fits into the exceptionalism of the "emergency imaginary" (as discussed below), creating a bias in favour of "stay and deliver" compromises which become less balanced over years or decades of conflict. At the same time, not staying and delivering also has consequences. A key issue is whether and how agencies decide upon and manage red lines, and the accountability for such decisions.[106] Are these understood as boundaries of action or of principle? And how are red lines reassessed over time? Many in MSF see the red lines of yesterday as the distant memories of today. Lastly, and explored in the next subsection, is the question of who holds the power to trace these red lines in the first place – or to cross them. The recent discussion on staying in or pulling out of Afghanistan after the Taliban's edict that agencies may no longer employ female employees tellingly illustrates the importance of whose voices are heard in such a discussion.[107]

Partiality in the humanitarian sector's practice of power

The conceptualization and implementation of impartiality is beset by the origins of the humanitarian sector, its inequitable power relations that place foreign agencies at the centre of power vis-à-vis people in their home environments, and the capacity of its life-saving benefits to justify, excuse or render invisible its own ethical shortcomings. The sector's assumption that it honours the humanitarian principles, and that local agencies cannot, seems a case in point. At the core of critiques of the sector's neo-colonialism, racism, sexism and other evolutionary artefacts lies an exercise of power that affects the way the principles are approached, and vice versa. Discussed in the next two subsections, this power manifests in the sector's near-monopoly over decision-making that profoundly affects the lives of people, and includes the power to define the scope or remit of the humanitarian response.

The humanitarian sector's power to decide

In theory, and if properly operationalized, impartiality directs relief to the most marginalized, powerless and oppressed, and the most impacted by a given crisis, offering an equitable solution and the best possible allocation of resources under circumstances of scarcity. In actual operations, forthcoming research on power and inequality in MSF reveals an entrenched "emergency imaginary" that distorts humanitarian decision-making, because the urgency of relief work commands a

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106 Martin Barber and Mark Bowden, *Rethinking the Role of Humanitarian Principles in Armed Conflict: A Challenge for Humanitarian Action*, Chatham House, London, 2023.
107 Humanitarian Outcomes, above note 74, p. 3.

particular exceptionalism, a speed of action rife with short-termism and a conviction in the necessity of external decision-makers.[108]

Beyond the sense of immediacy, the focus on saving lives carries the allure of moral clarity offered by the urgent preservation of human life.[109] Citing the work of the anthropologist and sociologist Didier Fassin, Davey *et* al. explain how humanitarianism is a "politics of life" which acts by "distinguishing lives that may be risked, and lives that can be sacrificed, despite its egalitarian aims".[110] Compounding this flaw in the sector's mindset, humanitarians involve people in crisis as objects to be acted upon rather than subjects in the determination of their own needs and contributors to the "discourse that determines their fate".[111] Any reckoning or cost falls not upon the organization, but instead upon the communities and individuals for whom it was decided that aid would not meet their needs, or not be sent, and for whom this means continued suffering or death.

Despite agreement at the 2016 World Humanitarian Summit for a "participation revolution", an independent review recently found "no evidence of a substantive shift in practice on the ground" of this fundamental commitment to place people affected by crisis at the heart of humanitarian decision-making in order to ensure the centrality of their needs.[112] The sector's arrogation of this power to decide seems anachronistic, and is particularly problematic given the numerous above-discussed factors that bias or undercut the rigour of agency decision-making. Further, with internal learning and formal evaluation of the principles insufficiently developed in many agencies, compromises of the principles take place largely without internal accountability at the level of the intervention, organization or sector, and with even less accountability towards or meaningful involvement of the compromise-affected people.

Perennial calls – including in the form of top-level policy directives and full-throated sectoral commitment – for accountability to affected people remain "stuck in the weeds".[113] "Bias, favouritism or corruption often prevents the neediest people from receiving help" not as a "result of strategic compromises taken to enable access", but "from agencies prioritising accountability to donors

108 Eleanor Davey, Lioba Hirsch, Myfanwy James and Molly Naisanga, *In Service of Emergency: Understanding Power and Inequality in MSF*, MSF, London, 2024 (forthcoming). This "imaginary" matters because, as noted above, a great deal of the sector's work takes place in protracted crises that endure for years if not decades, available at: https://msfuk.unbounddocs.com/wp-content/uploads/2024/02/Understanding-Power-Inequality-in-MSF-UK-FINAL-Full-Research-1.pdf.

109 E. Davey *et al.*, above note 108, p. 26.

110 *Ibid.*, p. 44.

111 Tammam Aloudat, "Can the Sick Speak? Global Health Governance and Health Subalternity", *Social Sciences*, Vol. 11, No. 417, 2022.

112 See V. Metcalfe-Hough, W. Fenton and F. Manji, above note 43, p. 73. The "participation revolution" formed a key commitment in the work stream on localization within the World Humanitarian Summit's Grand Bargain, an agreement between humanitarian donors and aid agencies to improve the effectiveness of aid by ensuring the participation in decisions of people in crisis.

113 Humanitarian Advisory Group, *Accountability to Affected People: Stuck in the Weeds*, Humanitarian Horizons Practice Paper Series, June 2021. ALNAP's 2022 *State of the Humanitarian System* report found that despite increased attention to accountability to affected people, the conclusion of its 2015 and 2018 editions still held true: such efforts "have not yet delivered greater accountability or participation". ALNAP, above note 66, p. 303.

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over investing in systems and practices to improve accountability to the people they serve".[114] The predominant location of decisions remains steadfastly in the global North. As then emergency relief coordinator Mark Lowcock assessed, "[t]he humanitarian system is set up to give people in need what international agencies and donors think is best, and what we have to offer, rather than giving people what they themselves say they most need".[115]

Without systematic scrutiny of such decisions, it is both authoritarian and inherently dehumanizing for aid agencies to decide which subsets of crisis-affected people will and will not receive aid. Ignoring this exercise of power in the heat of emergency response may form a justifiable compromise, although there is an attendant and essential need for the ethical and real-world consequences of practice to be deliberated.[116] Further, the realization that this justification on the grounds of emergency is often exercised not during an emergency but over decades of protracted crisis outweighs most justifications for the continued lack of meaningful accountability to affected populations.[117] In turn, following from the decisions comes the engagement of action. In building both actual and perceived impartiality, arguably the most critical factor lies not in the evidence for or the specific outcomes of the decision but in how people were involved or treated in the process.[118]

The reality is that people in crisis already express their dismay, and their views are increasingly known yet inconsequentially actioned. Ground Truth Solutions (GTS) recently surveyed over 15,000 crisis-affected people in nine crisis contexts. When asked "Does the aid you receive currently cover your most important needs?", 27% of respondents in Chad answered "not at all", and another 39% answered "not really".[119] ALNAP's 2022 *State of the Humanitarian System* report found that many communities criticized the fairness of their aid distribution, and only 36% of those surveyed thought that assistance went to people who needed it most[120] – and these respondents were *recipients*, who at least received some aid. GTS's analysis concluded that

> [i]t is indisputable that people should be "at the centre" of humanitarian assistance. It is equally indisputable that they are not. Despite widespread efforts to include crisis-affected communities and align with their needs, people impacted by crisis feel disempowered and think aid is missing the mark.[121]

114 K. Haver and W. Carter, above note 51, p. 67.
115 Patrick Wintour, "Humanitarian System Not Listening to People in Crises, Says UN Aid Chief" *The Guardian*, 21 April 2021.
116 See Humanitarian Outcomes, above note 74, p. 32.
117 See Marc DuBois, *The Triple Nexus – Threat or Opportunity for the Humanitarian Principles?*, discussion paper, Centre for Humanitarian Action, Berlin, May 2020, p. 19.
118 Interview with Paul Harvey, August 2023 (virtual, on file with author).
119 Elise Shea and Meg Sattler, *An Unaccountable Response Perpetuates People's Vulnerabilities*, GTS, June 2023, p. 5.
120 ALNAP, above note 66, p. 101.
121 Elise Shea and Meg Sattler, *Listening Is Not Enough: People Demand Transformational Change in Humanitarian Assistance*, GTS, November 2022, p. 2.

Finally, in the deliberation of operational choices, centring and compromising impartiality should be considered prerequisites, necessary yet not always sufficient. Beyond external factors such as manipulation or blockage of aid by armed actors or funding shortfalls, arguably the most critical factor lies not in the outcomes of the decision but in the consequences of how the aid was delivered. Do people feel respected and that their voices were heard? Do they understand why they are receiving X and not Y, or why they are not receiving what others are receiving? Is there a perception of fairness in the decision, or is there a stoking of grievance?[122] Are agencies routinely asking themselves these questions?

The humanitarian sector's power to define

Even if aid agencies (or donors) ensure the rigour of their impartial determinations, communities may not calculate impartiality or sense fairness in the same way. Put differently, an ethical standard such as impartiality may not prove generalizable across a globe of specific contexts, particularly in how the standard is interpreted or prioritized.[123]

Similar to the issue of spiritual needs (see "The Biased Exclusion of the Sacred?", below), an instructive illustration emerges from the increasing visibility being given to the tension between communal ideas of fairness and the impartial targeting of assistance on an individualized basis of need. Research in Afghanistan,[124] Nigeria[125] and the Philippines[126] has shown how aid targeting individuals within a community can undermine community solidarity, reduce social capital, provoke distrust in aid actors and their decisional processes, provoke shame on the part of the recipients or larger community, and contribute to grievances and tensions that then contribute to conflict. Institutional decision-making thus represents an exercise in the power to impose the sector's idea of fairness, arguably an individualist approach being forced into a predominantly communitarian environment. One approach of an aid organization might be to see this as a justification for compromise, and then to deliver aid according to a community-centric basis. The alternative is not to view this as a compromise at all, but for the agency to accept the community's decision as a fulfilment of a revalued impartiality, one that places a communitarian humanity at the centre of the context-specific decision, replacing an individualized quantification of need.

122 See A. Jackson, R. Amiri and S. Kilani, above note 74, pp. 16–17; interview with Ashley Jackson, Afghanistan expert, July 2023 (on file with author).
123 See Lisa Schwartz *et al.*, "Western Clinical Health Ethics: How Well Do They Travel to Humanitarian Contexts?", in Caroline Abu-Sadr (ed.), *Dilemmas, Challenges and Ethics of Humanitarian Action: Refection on Médecins Sans Frontières' Perception Project*, McGill-Queen's University Press, London, 2012.
124 A. Jackson, R. Amiri and S. Kilani, above note 74.
125 Meg Sattler, "Five Ways the Aid System Can Improve Its Accountability to Affected People", *The New Humanitarian*, 5 April 2023, available at: www.thenewhumanitarian.org/opinion/2023/04/05/ways-aid-system-can-improve-its-accountability.
126 Alex Humphrey, Vaidehi Krishnan and Roxani Krystalli, *The Currency of Connections: Why Local Support Systems Are Integral to Helping People Recover in South Sudan*, Mercy Corps, Washington, DC, January 2019.

This power to decide is in part a power to define: defining the needs of people, or defining the sort of needs that will form part of the humanitarian purview while pushing other needs outside. Commonplace as they are, these definitions have an enormous impact on who does and does not receive aid. An emblematic example of this power to define is the rejection of spiritual needs and faith-based organizations by the Western, secular sector, and the relative absence of critical discussion on the topic (see "The Biased Exclusion of the Sacred?", below). A specific and, in hindsight, distressingly obvious example is how the sector has only recently recognized that menstrual hygiene should constitute a priority in many crisis situations.[127]

The biased exclusion of the sacred?

While it is important to maintain the perception of religious neutrality in many conflict situations, the treatment of religious belief by the Western humanitarian sector seems concealed by an unquestioning mindset. By what authority has the humanitarian community decided that "basic needs" do not include spiritual needs, or that spiritual needs are not among the most urgent needs in many situations? In a previous issue of the *Review*, Kathryn Kraft articulates well the particular value of religious community and beliefs at times of crisis, such as the psychological benefits of being able to connect to a higher power, or to make sense of one's losses.[128] Or, as Slim reasons, faith acts to encourage and guide us in the grand scheme of survival.[129] Yet the assumption that the principles prevent humanitarians from responding to people's spiritual needs is an enduring one, as is the sector's treatment of many faith-based organizations as not fully humanitarian. Moreover, the judgemental critique – that the proselytizing of faith-based organizations is inherent to their work and contrary to the humanitarian principles – reflects a bias in which humanitarian donors and agencies fail to recognize their own identity. From a community's point of view, impartiality may reflect a secular proselytizing of neoliberal norms of governance, or humanitarianism's nurturing of "universal" rights and a political, economic and cultural agenda that will strike many crisis-affected communities as heavily partial.[130]

A different kind of conceptual gap affects impartiality in situations of protracted crisis, which in 2022 accounted for a full 92% of humanitarian

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127 World Health Organization, "WHO Statement on Menstrual Health and Rights", Human Rights Council Panel Discussion on Menstrual Hygiene Management, Human Rights and Gender Equality, 50th Session, 22 July 2022, available at: www.who.int/news/item/22-06-2022-who-statement-on-menstrual-health-and-rights.
128 K. Kraft, above note 60.
129 H. Slim, above note 48.
130 Cecilia Lynch and Tanya B. Schwartz, "Humanitarianism's Proselytism Problem", *International Studies Quarterly*, Vol. 60, No. 4, 2016.

funding.[131] With its focus on the most urgent cases of distress, impartiality directs resources towards immediate needs, even over decades of intervention. In these protracted crises – full-blown society-destroying political and economic conflict compounded by structural immiseration – it is critical to respond to immediate needs such as food, shelter and health care, but it is also paramount to ensure that the underlying causes are not ignored, and ignored over generations (see also the discussion of the "emergency imaginary" above). This state of affairs contributes to the "humanitarian alibi"[132] and produces societies in crisis where "the urgent displaces the important (the systemic or structural) in perpetuity".[133] In such crises, major surveys show that people, even in active conflict areas, seek long-term solutions, prioritizing for example economic betterment and pathways towards autonomy over their lives.[134] At what point in a protracted crisis should immediacy cede centre stage to the urgency of structural solutions rather than humanitarian band-aids, and who takes this decision? The context of the protracted crisis arguably stretches impartiality beyond the limits of its design.

The sector needs to engage with this complexity, perhaps by extending, where possible, beyond the usual output and offerings, especially where other sectors are scarcely present. As the ICRC has declared, "humanity implies that no service whatsoever for the benefit of a suffering human being is to be dismissed out of hand".[135] Or as Kielwein opines,

> any reporting that has conceptually reduced the wide range of people's needs potentially captured by a needs assessment to only "humanitarian" needs is unlikely to incentivise any broader response, in the absence of which people's needs will always only be partially addressed.[136]

More prosaically, the humanitarian sector also decides where impartiality applies (in the programmes) and where it does not (in the headquarters). With (unearmarked) donations coming from the public, agencies are entrusted to spend this money per their own mission statements and declarations – to save lives and alleviate suffering in crisis, guided by the humanitarian principles, and so on. Yet HQ offices need IT upgrades, updated guidelines, salary and staffing increases, and occasional makeovers. These upgrades and refinements do deliver benefits, and they respond to needs – but is that a sufficient justification for approval, in the face of funding shortages for life-saving work in projects (needs versus most urgent needs)?

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131 Development Initiatives, above note 1, p. 51.
132 Matthew Bywater, "The Humanitarian Alibi: An Overview and a Redefinition", *Journal of International Humanitarian Action*, Vol. 6, No. 22, 2021. In short, the humanitarian alibi describes the way in which humanitarian action, and the funding of it, creates the impression of dealing with a crisis, allowing political actors to avoid the more difficult responsibility to engage politically or directly to resolve the underlying conflict.
133 Marc DuBois, *The New Humanitarian Basics*, HPG Working Paper, ODI, London, May 2018, p. 6.
134 E. Shea and M. Sattler, above note 121; Mary B. Anderson, Dayna Brown and Isabella Jean, *Time to Listen: Hearing People on the Receiving End of International Aid*, CDA Collaborative Learning Projects, Cambridge, MA, 2012.
135 ICRC, above note 7, p. 2.
136 C. Kielwein, above note 50.

Framed differently, why is impartiality (proportionality) not a factor in the determination of spending at the level of an agency's entire budget, instead of being limited to its operational envelope?

The sector has its own deep biases, leaves out some groups, whittles away at impartiality in the name of self-interest, and delivers aid that is captured by elite groups. There is a hypocrisy in holding on to this power, even if agency explanations for not placing these decisions in the hands of people in crisis – that bias will occur, vulnerable groups will be left out, or corruption will divert aid from the most in need – may well prove correct. This article does not support a utopian conviction of the goodness and wisdom of people in crisis holding decisional power, but grounds a belief in this shift of power in the principle of humanity. The capacity to get it wrong and to learn from mistakes over time seems intrinsic to societal progress and fundamental to human dignity. Moreover, within some bounds, people have the right to get things wrong in their own house.

Conclusion

Taken as a whole, the humanitarian sector has evolved ways of practicing impartiality that dilute its meaning and value. Programmatic design has often fallen into a passive, superficial approach to non-discrimination, and decision-making has allowed a set of practices to take root which undercut the principle of proportionality. In turn, this erosion of impartiality erodes the humanitarian character of the relief itself, which is integral to an organization's standing under international law, and more pragmatically undermines the credibility of the sector. More fundamentally, practice has infused impartiality with a kind of paternalism (in the best case) or an abuse of power (in the worst case), in which the most critical decisions, of who receives and who does not receive aid, are clenched in its own hands rather than released to those who should be at the centre, the affected communities themselves.

With its focus on internal factors, this article has been critical of the sector's performance of impartiality, even if the authors remain cognisant of the substantial, catastrophic and arguably enlarging external constraints on humanitarian action. Moving forward requires a more intentional humanitarian commitment to and deliberate compromise of the principle. Leadership must pilot this escape from closed-door discussions and the principled/unprincipled binarism that stifles sharing, learning, and a development or evolution of the principles that is rooted in practice and in context.

It is upon this foundation of a reinvigorated impartiality that humanitarians can better grapple with the incoming and provocative challenges to it. How should the sector prioritize needs in the face of intersectoral clashes of crises (e.g., climate change, conflict, underdevelopment, incompetent and venal governance) and a humanity facing unprecedented levels of universally urgent, high needs?[137] Slim, a thought

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137 Hugo Slim, "Painful Choices: How Humanitarians Can Prioritize in a World of Rising Need", Global Public Policy Institute, 11 January 2024, available at: https://gppi.net/2024/01/11/how-humanitarians-can-prioritize.

leader in the sector, worryingly proclaims the need for far-reaching change with (headed in bold) his call-out of the principle: "Beyond Impartiality: Why We Need New Criteria".[138] Does the humanitarian sector need to recalibrate the balancing act inherent to decision-making, perhaps placing greater emphasis on more sustainable actions than repetitive responses to less stable environments?[139] Or does the humanitarian sector need to re-evaluate the centrality and adequacy of impartiality in the face of the climate crisis?[140]

For the sector, the appropriate response to these conceptual and practical challenges (and others to come) seems threefold: first, to (re)build the currency and practice of impartiality through commitment, assessment and learning, yielding principle-driven, reality-comprised humanitarian action; second, to recognize the undermining of human dignity in the status quo control of the powers to decide and define, and to begin the process of revaluing (not redefining) impartiality accordingly; and third, to embrace and protect humanity more deliberately through a dynamic and equitable operationalization of impartiality.

Appendix: Tribute to Sean Healy, MSF Head of Reflection and Analysis, by Sean's friend and co-author, Marc DuBois

It is with a heavy heart and a certain degree of existential bewilderment that I write these words. In September 2023, I sat with my friend, colleague and co-author Sean Healy to discuss this chapter, my role in a presentation on MSF's engagement with States, and the general state of everything in the entire world. It was a typical hour with Sean in a sunny Amsterdam pub garden. On Sunday 26 November, he passed away after a brief illness.

Sean Healy was MSF's Head of Reflection and Analysis, a role in which he combined his prodigious intellectual curiosity and talent with over twenty years of MSF experience. He was a rare breed, not simply in his analytical capacity or his understanding of operational dynamics, but in his ability to integrate the two, translating lofty ideals and complex issues into operational advances. Never far from the surface in our debates and so much of his work, I could always find the young rebel of his earlier years, his fiery disgust in the face of hypocrisy, his anger at injustice, and his sadness at the indescribable abuse and violence in the world.

His first departure with MSF was as Project Coordinator in Burundi in 2005. He went on to subsequently be the Project Coordinator in Pakistan in Muzaffarabad for the Kashmir earthquake and in Quetta for the Chaman project.

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138 *Ibid.*
139 Catherine-Lune Grayson and Amir Khouzam, "Responding to Climate Risks in Conflict Settings: In Search of Solutions", *Humanitarian Law and Policy Blog*, 23 November 2023, available at: https://blogs.icrc.org/law-and-policy/2023/11/23/responding-to-climate-risks-in-conflict-settings-in-search-of-solutions/.
140 Andrea Steinke, *Climate Change and Humanitarian Change: Challenging Norms, Mandates and Practices*, Centre for Humanitarian Action, Berlin, November 2023.

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He did a spell as a Human Resources Adviser back in MSF Australia, before becoming Head of Mission in Lao PDR. In 2010, he joined the Berlin office as a Humanitarian Affairs Adviser, a position he filled for four years before becoming Access Adviser supporting negotiations efforts in Syria, Somalia and Myanmar, amongst others.

In 2018, Sean became MSF's first Head of Reflection and Analysis. In that role, he coordinated a network of internal and external researchers (often working long into the night to attend meetings from his home in Melbourne), spearheading thinking from others in the humanitarian and global health community that could in turn help MSF reflect upon its own analysis.

The article that Sean and I wrote together grew from that work, from fundamental questions about how MSF decided where to go and what to do. In discussions to come, this focus on impartiality will be combined with work on the potential relevance and value of health equity to MSF decision-making, and work on the dynamics of resource allocation in the organization. Sean's aim was to explore what he saw as the thread between impartiality, health equity and resource allocation: the nature of a "need", how needs are defined and by whom, and how we make choices between competing needs. This article marks one step towards answering those questions, with more to come.

Sean held a great passion for MSF and medical humanitarian aid. He has inspired colleagues all over the world. He infected me and this article and all who knew him with his irrepressible courage to face life, and with his great wit and warmth.

Sean leaves behind his two sons, Luca and Patrick, to whom he was a devoted father, and his partner Sonya.

He will be greatly missed.