

AUTHORITARIAN PRACTICES AND HUMANITARIAN NEGOTIATIONS

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Chapter 1

THE FRICTION OF PRACTICE – REFLECTING ON THE MÉDECINS SANS FRONTIÈRES EXPERIENCE WITH 'AUTHORITARIAN REGIMES'

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THE FRICTION OF PRACTICE – REFLECTING ON THE MÉDECINS SANS FRONTIÈRES EXPERIENCE WITH 'AUTHORITARIAN REGIMES'

Sean Healy and Andrew J Cunningham*

Introduction

Humanitarian international non-governmental organisations (INGOs)¹ provide assistance to populations living in the midst of man-made crises, 'natural' disasters, or armed conflicts. The goal is to save lives, alleviate suffering, and help restore dignity for those suffering from a crisis. Humanitarian INGOs, however, do not implement their activities in isolation and operate within a complex global and domestic political environment. The subject of humanitarian negotiations with states has attracted considerable attention over the last decades, from both researchers and practitioners. It is easy to divine why this is the case: in most situations, humanitarians are entirely dependent on state consent if they are to do their jobs. This is not only at the level of legal principle (the requirement for 'state consent' to the delivery of humanitarian assistance that is contained in international humanitarian law) but also at the level of practice, as in hundreds of different, daily ways, humanitarians need the cooperation of government officials – for customs clearance, tax matters, travel permissions, visas, work permits, registration, international bank transfers, and so on.

One main focus of humanitarian researchers and practitioners has been to better understand and analyse state practices in relation to humanitarians and what motivates them – why and how, for example, they might seek to restrict agencies' presence in the country, what their political aims might be in relation to a given population sub-group on their territory, how their attitude to humanitarians intersects with their attitudes towards civil society as a whole, or even simply how the specific government actually operates. This line of enquiry will assist humanitarian practice if it allows humanitarians

to better understand a government's positions, interests, and needs and thus allows them to better prepare and conduct negotiations with governments. This is all the more needed when relations are 'difficult'.

Difficult relations is a subjective term but could certainly describe those situations where governments place barriers to access, for both humanitarian organisations and populations in need, of various levels of severity and where government-INGO negotiations are tense, slow, and often opaque. In such situations, INGOs complain of government intransigence and struggle to develop an appropriate negotiation strategy. It is also a given that each state is different and that the levels of difficulty in government relations can range from openness to mere suspicion to hostility.

To look more deeply into this topic, researchers from Médecins Sans Frontières (MSF) launched a research project to examine MSF's engagement with governments where 'humanitarian space' is restricted and where governments are suspicious or even hostile to the presence of international humanitarian actors. One aim is to develop a well-articulated and defined spectrum, from most to least hostile, upon which operational contexts can be placed. The most productive set of contexts to research are those in the middle of the spectrum, where the relationship is difficult but not untenable. Nevertheless, input from case studies of the other extremes of the spectrum is also helpful with the overall analysis.

Humanitarian engagement with states that impose restrictions varies considerably. First, there might be weaknesses in the engagement with specific state agencies. In some places, humanitarians must negotiate with specific ministries or agencies of the state that are responsible for administering, and also policing, humanitarian INGOs (such as Sudan's Humanitarian Affairs Commission). Second, there might be problems arising from states' relationships with civil societies, and restrictions on humanitarians can be seen as only a subset of restrictions being placed on civil society institutions generally. In others, there might be variations based on the place of origin (local or international), the nature of the organisation (humanitarian, development, or human rights), political complexion (perceived as pro- or anti-government), and so on. And finally, there might be problems arising from a lack of adequate contextual understanding. In some places, humanitarians are associated with specific political or religious agendas, such as foreign intervention or proselytisation, even without their full knowledge or understanding.

As well as lessons learned from specific case studies, the research project theorises the humanitarian INGO – state relationship in general. Tactical guidance on negotiations is useful but is made more robust if set against a strategic understanding of how the organisation, as an international humanitarian NGO, approaches and conceptualises sovereign states and the governments which represent them.

It should be noted that the perspective taken in this MSF research study is to examine practices rather than regimes. Glasius (2018, 517) defines authoritarian practices as:

patterns of action that sabotage accountability to people over whom a political actor exerts control, or their representatives, by means of secrecy, disinformation and disabling voice. These are distinct from illiberal practices, which refer to patterned and organised infringements of individual autonomy and dignity. Although the two kinds of practice often go together in political life, the difference lies in the type of harm effected: authoritarian practices primarily constitute a threat to democratic processes, while illiberal practices are primarily a human rights problem.

To investigate the topic, we chose a range of case studies, from Bangladesh to the Kurdistan Region of Iraq (KRI) to Italy to Chad, to complement the traditional analytical focus on ‘strong states’, which are often extreme cases. This chapter reviews the research’s mid-point findings and seeks to demonstrate how an organisation goes about defining the research question.

Before solving the riddle of how INGOs should best engage with states, however, it is important to understand both how states view and engage with INGOs and the global context of humanitarian action against, and within which all actors operate. The next section will review the concept of the state before the chapter addresses how INGOs approach them.

Negotiating with states – an inherently fraught endeavour²

There is a wide spectrum of state types, but few states are on the extremes – either deeply authoritarian or truly liberal democracies. Most states are in the middle of the spectrum. The task is to define the parameters of the spectrum of state types. Rather than an academic discussion of political concepts, this should be a practice-driven exercise as INGOs operate in the real world and interact with actual rather than ideal states. The key is to find ways to better understand the states with which organisations must work. As a starting point for this discussion, key political concepts must be described.

Defining the concept of the state is problematic. The state could more rightly be considered ‘an idea or cluster of concepts, values, and ideas about social existence’, than an objective reality (Vincent, 1987, 4). Each state develops in a unique historical, geographical, cultural, and religious context and will focus on different aspects of what it means to be a state. Although the modern state system has been greatly influenced by Western political and philosophical developments, there are regional and national differences which inform attitudes to the roles and responsibilities of states. This is important

to keep in mind when Western-oriented INGOs encounter non-Western political heritages.

Even more than for the definition of a state, sovereignty is an ambiguous concept (Biersteker and Weber, 1996). Sovereignty can be understood as two core ideas: That there is 'no final and absolute authority exist[ing] elsewhere', that is, outside the state, and that 'there is a final and absolute political authority in the political community', that is, internally (Hinsley, 1986, 26). Therefore, an ideal state is 'sovereign' in the sense that there is no higher *external* authority and that *internally*, the state is the final decision-making body. A state can be considered a political entity which is acknowledged internationally to represent a defined geographical area and/or population. It is understood that states are autonomous, that other states should not interfere in their affairs unless under special circumstances, such as UN-mandated interventions, and that all states are equal – *de jure*, if not *de facto*. States can decide whether they will abide by international legal standards, treaties, and norms of behaviour of the international community of states or participate in international political structures, such as the United Nations.³

But domestically what is a state? In Max Weber's definition, 'a state is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory' (Weber, 1946). Coercive authority is an essential element holding a state together (Laski, 1935), and not coincidentally, violence is a major element in the creation of a humanitarian crisis. Another key aspect is that public and private spheres are different constructs (Dunleavy and O'Leary, 1987) and that states claim 'hegemony or predominance within a given territory over all other associations, organizations or groups within it' (Vincent, 1987, 19). A state considers itself above society and will regard its relations with civil society from a political and instrumentalist viewpoint.

For INGOs, external conceptions of statehood are less important than an understanding that political actors use coercion domestically to meet their political objectives and that the public sphere is often dominated by the state. This chapter is concerned with this domestic understanding of sovereignty, which is the most important locus of concern for the relationship between states and humanitarian INGOs.

It is also important to be clear about the use of the terms 'state' and 'government'. A government is made up of individuals who guide a state's apparatus at any given time (Vincent, 1987). Governments are 'composed of political actors who are simultaneously members of social sectors, classes, and interest groups; they have their own ideological, ethical, and religious beliefs; their own programmatic priorities; and their specific views on how best to fuse these complex personal traits with their roles as state officials' (Pempel, 1992, 118). Therefore, a government is a collection of officials holding

formal power at a given time and place and is the only existing political entity which can be directly engaged with by INGOs.

Digging deeper into these concepts, Carl Schmitt discussed the idea of prerogative in relation to governmental decision-making: 'The sovereign is he who decides on the state of exception' (1985, 5). This idea of deciding on a 'state of exception' – and the related prerogative to make decisions based on this state of exception – is at the core of the interaction between states and INGOs and can be correlated to a context of humanitarian crisis. These are cases where different rules of conduct apply in reaction to an overriding emergency. Such humanitarian emergencies, therefore, create political and security environments in which governments will act outside the normal rules of state behaviour, as defined domestically and internationally.

An additional aspect of Schmitt's work which is particularly relevant to this type of research is the 'friend and enemy' distinction (2007, 26). To Schmitt, the friend and enemy distinction is independent of other judgments, such as 'good and evil', and does not 'draw upon all of those moral, aesthetic, economic, or other distinctions' (ibid, 26, 27) which are sometimes attributed to states. When considering the approach that a government takes in reacting to the presence of an external agent on its territory, Schmitt's 'friends and enemies' dichotomy may be the most useful as it allows for one actor to define another actor as a stranger, an outsider, an 'other'. The designations must be determined by the political actors themselves, establishing a conflictual relationship in the process. In humanitarian crises, which can be understood as states of exception where normal rules do not apply, INGOs, as external agents, can easily be considered to be 'enemies'.

The primary relationship under consideration in the research programme discussed in this chapter is one of negotiation. In such a negotiation structure, each side has its own objectives and interests which must be met and considered. For a humanitarian INGO a condition of being labelled an enemy and a threat is hopefully replaced by a condition of being seen as a legitimate actor with whom a government can negotiate, if not a 'friend'. The objective of negotiation is thus to create this positive discursive space. For INGOs engaged in negotiations, the primary objective is to create the 'space' – physically, legally, and morally – for an identified population in crisis to access humanitarian assistance safely and securely. Reference to humanitarian principles is often used in this negotiation and can be considered a fundamental part of humanitarian norms, if not increasingly contested. Governments are concerned with issues of national security, the social contract with their populations, their international standing, and their sovereignty, amongst other issues.

On the other side of the table are the humanitarians, but what do they stand for? Humanitarianism can be 'conceived of as an unchallenged good characterised by impartial charity for a common humanity and something

which transgresses the confines of state sovereignty' (Campbell, 1998, 498). One should be reminded, though, of Schmitt's warning that 'we have come to recognize that the political is the total, and as a result we know that any decision about whether something is *unpolitical* is always a *political* decision, irrespective of who decides and what reasons are advanced' [italics in the original] (1985, 2). Given the type of work they do, INGOs are intimately involved with highly political issues, and their activities will have political consequences which will be reacted to by the main political participants in the crisis.

One framework for understanding how states deny access to humanitarian organisations describes three types of denial: Bureaucratic obstruction, the intensity of the hostilities itself (insecurity), and targeted violence against humanitarian personnel and theft (Labonte and Edgerton, 2013, 39). But the important question is why states would want to deny access to INGOs. Labonte and Edgerton argue that state behaviour is not ad hoc – denial 'can constitute a valuable policy tool for national authorities and reflects prevailing perceptions of the norms associated with humanitarian access and civilian protection' (ibid, 40). In other words, a state's political goals inform a state's policy response to humanitarian action.

In conclusion, both states and humanitarian INGOs come to a humanitarian crisis with their own normative reference points, and these will almost always be in tension. States, of course, have the upper hand in decision-making as they are sovereign actors with coercive authority over international actors. Negotiations start here.

Inward and outward forces at play for humanitarian INGOs

Within the understanding of the state and sovereignty elaborated upon above, we must situate the humanitarian sector. Humanitarianism as a concept changes over time, and the humanitarian sector faces an ever-changing set of pressures – some internal and some external. To better understand these pressures, it helps to look at them as centripetal and centrifugal forces. Centripetal forces are those which keep the humanitarian sector coherent, and centrifugal forces are those which challenge central tenets of humanitarianism. States and humanitarian actors both have a role to play in challenging or reinforcing these forces.

A non-exhaustive list of forces directed at the humanitarian section by states includes shifting interpretations of international humanitarian law (IHL); changing definitions of what constitutes criminal acts and who are criminals, inclusive of counter-terrorism laws; and fluctuating views on the space within which civil society actors must operate. These all link to state conceptions of sovereignty – what states consider within their purview to decide and have the coercive power to implement and impose unless otherwise constrained by enforceable international norms.

Philosophical debates about natural law notwithstanding, at a pragmatic level, international legal structures are state-made. IHL is what states make of it. Domestic and international political and security trends explain how IHL is interpreted and engaged with more than moral and ethical considerations. This applies as well to the issue of criminalisation of aid and aid actors. States decide what a crime is and who criminals are based on national political and security requirements. Counter-terrorism laws are a prime example. The shrinking of civic space is intimately related to all of these trends, as the balance between state and civil society actors is ever-changing. It should also be noted that there is a large collection of civil society actors outside the aid sector, implying a much larger question about how states engage with their societies.

Concerning these themes, to a large extent, the literature is less important than the practice. The important point is to follow the changes in how states actually manage these issues – nationally, regionally, and globally. The theoretical literature on sovereignty as well is not up to the task of assisting humanitarian INGOs in understanding *how* particular states interpret and operationalise these fundamental political concepts. This argues for a practice-oriented approach.

On the side of the humanitarian sector, debates have increasingly called into question the viability of the ‘humanitarian project’ as it is currently understood. Although sometimes driven by internal questioning, such as the protracted debates about the role of humanitarian principles, most often larger socio-economic, political, and security debates led by states and their proxies have demanded a response. The humanitarian literature is increasingly focused on issues such as the grand bargain, localisation, resilience, the nexus, decolonising aid, diversity, equity, and inclusion (DEI) – all of which demand a reinterpretation, sometimes fundamental, of how INGOs work and act. The sanctity of humanitarian principles – humanity, independence, neutrality, and impartiality – is routinely questioned; the Western identity of the majority of the large international agencies is often seen as a liability; and the contexts within which humanitarian actors work are perceived to be increasingly more dangerous. As well, serious concerns have been expressed over aid ‘politicisation’, when states use aid and aid actors for political purposes, and over aid ‘securitisation’, when aid actors are integrated into national security risk assessments (Cunningham, 2018).

Will centripetal forces within the humanitarian sector keep it a coherent whole given these disruptive forces?

Understanding the exact and specific points of friction

Having outlined some of the core beliefs of states and humanitarians and suggested some of the ways that they view each other, it is necessary to

analyse the actual practices which inform the central question about state – INGO relations. Our research work, or at least its ‘pointy end’, focuses on ‘engagement’ and ‘negotiation’ and the actual meeting place between states and humanitarians. This section will frame the research question in reference to the findings from the survey of key concepts and debates. The issues to be explored can be summarised in the following statements:

States have their own views on how to engage with international aid actors seeking to implement projects on their territory

Key reference points which must be kept in mind are sovereignty and the nature of politics. States, represented in practice by government officials, will have political, security, social, and economic agendas in place against which international actors must negotiate. Government officials will naturally determine who are friends and who are enemies. Humanitarian organisations must analyse the context properly in order to understand how a particular state approaches international actors and frames its political and security agendas. There is a need for a proper analysis of not only what the policies, rules, and regulations are but also of the perspectives and attitudes of governments to foundational concepts such as sovereignty and politics. Although it is important to develop a generic understanding of ‘statehood’ as a reference point, each state is unique. This research project, therefore, frames the questioning of states against, for example, the friends and enemies dichotomy and the lenses of politicisation and securitisation, as well as understandings of politics and sovereignty.

Each state has its own historical and cultural understanding of aid

Beyond the dictates of current security policies and political demands, each country has its own history with aid and aid organisations. Current policies, however informed by contemporary events, are never made in isolation of what has gone before. The research therefore must explore these issues through methodologies such as public discourse analysis in order to understand the ‘narrative arc’ communicated by the state concerning aid and aid actors.

States are influenced by international trends in aid policy

States learn from each other, and so it is important to contextualise a particular government’s response within a larger environment of debates. Regional and global trends inform a government’s engagement with international actors. This includes trends in international and refugee law. The research must keep in mind the trends from the state’s perspective, outside the inward facing

debates within the aid sector. It will be important to look at the genealogy of state engagement and where each state fits on the spectrum of engagement options.

Humanitarian aid is not static as a concept, and the humanitarian norm is ever adapting

The humanitarian sector develops swiftly, and states pay attention. Much of the rhetoric coming from the aid sector is directed at and in response to states and their concerns. Aid cannot be offered in isolation, and even the most ‘beneficiary’-focused policy will have implications for how government officials engage with aid agencies. Finding ways to better help people in need will not always win the favour of a government. When analysing trends in the aid sector, developing policies and approaches must be seen from the standpoint of a state – generically and specifically. In actual practice, as aid organisations decide on their perspective on emerging trends, a worldview must be articulated and communicated to a government in order to differentiate one agency from another. But to a large extent, when governments situate humanitarian organisations into their political world, a generic approach is taken. INGOs, after all, are rarely the primary concern of a government, even if the humanitarian crisis is at the forefront of the agenda.

INGOs must find the actual locus of engagement

The most important objective is to understand how any given state – within its historical and cultural heritage, in relation to its domestic and international political worldview, and against its previous engagements with INGOs responding to crises – intersects with humanitarian norms as developed over time by states, donors, and humanitarian NGOs themselves. These state and INGO norms are almost always in tension and form an ever-progressing dialectic. Analysing this dialectic – the clashing of norms resulting in a negotiated relationship – is the locus of our research. Situating properly the locus of engagement is the first step to negotiating an acceptable outcome for humanitarian organisations seeking to offer humanitarian assistance to populations living in the midst of a humanitarian crisis. Our argument, then, is for treating each case of interaction between a state and humanitarian NGOs as culturally and politically distinct and specific and to understand that interaction within its given context of differing and potentially clashing agendas between the two sets of actors. As a base-line for the research project, we performed a historical review of the most egregious cases of tension between MSF and ‘strong states’. The next section will provide a brief history of MSF’s engagements with governments exhibiting authoritarian practices.

The MSF experience – a historical review

MSF has its own long and complicated history of engaging with various governments considered to be 'authoritarian'. In doing so, it has often had to wrestle with a critical contradiction. As an international NGO, it needs the authorisations and permissions of such governments to work on their national territories, and so needs good working relationships with them. But as a humanitarian organisation, it provides assistance to people who have often been victimised by these very governments, and indeed, its medical teams have often directly witnessed government actors, such as militaries, commit atrocities of various kinds. This contradiction has been difficult to manage, to say the least, and has often been unresolvable.

One of the earliest, and perhaps the most archetypal, moments of crisis MSF faced with an authoritarian government occurred in 1984–1986 in Ethiopia (Binet, 2005). The military-led government of the Derg, led by Mengistu Haile Mariam, was fighting against an insurgency in the country's north, led by Tigrayan and Eritrean national liberation movements. In 1983, a famine broke out in the country, and MSF, alongside many other humanitarian organisations, worked desperately to provide relief to people who were starving. Unlike other agencies, however, MSF judged that the crisis was the result of a deliberate war-fighting strategy of the Derg and that, by silently providing assistance, humanitarian organisations were bolstering and therefore complicit in this strategy. It committed to doing no such thing, and the president of MSF France publicly denounced the Derg government's famine policy. In response, the government expelled MSF France from the country, the first such occasion in the organisation's history.

In the decades since, relations with the Ethiopian state have been through moments of calm and productive work, moments of frustration, and moments of abject crisis, regardless of which government was in power. In 2008 and 2009, during the years of Meles Zenawi's prime ministership, conflict in the Ogaden region caused widespread hunger and suffering among the civilian population and significant problems for MSF and other humanitarian organisations, including the placing of teams under house arrest and the blocking of medical supply into the region. In June 2021, during the conflict between the government of Prime Minister Abiy Ahmed and Tigrayan regional forces, three MSF employees travelling in an ambulance looking for casualties from the fighting were killed in circumstances which seemed to implicate Ethiopian government soldiers, and MSF demands for accountability met with little success. In July 2021, one of MSF's operational sections was suspended in the country for alleged breaches of administrative policy on work permits for foreigners and on the importation of communications equipment, and for charges of 'spreading misinformation' on social media about the government's handling of the conflict.

During the conflict in Darfur, in neighbouring Sudan, the government led by Omar al-Bashir imposed a strict set of controls on humanitarians, which made work in the large IDP camps on government territory difficult and even outright impossible in areas controlled by armed opposition groups, such as the East Jebel Mara. A public MSF report in 2005 on the widespread incidence of rape committed during the conflict led to the arrest of two MSF officials. And in 2009, after the indictment of Bashir by the International Criminal Court for war crimes, two operational sections of MSF were expelled from the country, as were 12 other humanitarian organisations. They were not permitted to return to the country until after the overthrow of Bashir, and a new civilian-led government took his place.

In Myanmar, MSF began its work in 1992, during the years of rule of the State Law and Order Restoration Council, a military junta. There were few international humanitarian organisations working in the country at the time, and MSF's work proceeded slowly and carefully so as not to upset the government. In 1993, MSF started working in Rakhine, home of a persecuted minority, the Rohingya, who had been stripped of their citizenship by the state, first by focusing on malaria, which was a major public health threat in the region. Large-scale treatment programmes for HIV and tuberculosis were also initiated in the states of Shan and Kachin and in the country's main city, Yangon, during a time when the government had zero willingness to itself address these diseases. Carefully worded MSF reports attest to the various restrictions the government imposed on these efforts, including in one case prohibiting entry to an entire state considered too sensitive (MSF, 2008, 2012).

During an upsurge of violence against the Rohingya in 2012–2014, MSF was suspended from operating in Rakhine for nine months by the government after confirming that it had treated victims of a massacre. The subsequent year-long process of negotiating with the government for an end to the suspension sparked intense internal debate within MSF about whether it would be forced to choose to abandon either the Rohingya in Rakhine or the HIV and tuberculosis (TB) patients under its care (Binet, 2020), although fortunately neither option eventuated. When a military campaign began in 2017 to force the Rohingya out of the country, MSF and other humanitarian organisations were in effect confined to their own compounds due to government restrictions on movement and other administrative requirements.

MSF began operating in Russia and the new states of the Former Soviet Union in the early 1990s. These were years of political and economic crisis and sometimes open conflict (in Moldova, Nagorno-Karabakh, and Tajikistan, for example) that followed the break-up of the Soviet Union. The brutal civil conflict in Chechnya laid bare the pivotal role security plays in humanitarian operations. Through the two wars and inter-war period, the threat of kidnapping and extreme violence against the population as well as humanitarian workers remained very high. MSF suffered its share of kidnappings and

serious security incidents in the North Caucasus. International actors opted for a 'remote-control' working methodology, to localise as much as possible the work to decrease the risks taken by international staff, who were the most threatened with kidnappings. In this system, expatriates managed operations from a distance and only made periodic surprise 'flash-visits' to Chechnya, sometimes for only a couple of hours at a time. The security risk assessment pointed to a lesser risk to national staff and yet still mandated a very low-profile approach to operations. The context remained opaque and defined by the politics of fear. It was an open question, where the state was situated in such an environment. If Chechnya was a case where fear prevailed, it was unclear from whence threats came. In such a situation, it was impossible to know who the real negotiation partner was. Was the state a protector and partner, or a threat and a cynical manipulator? In such contexts, no actors could be trusted, and negotiations were implemented less at the organisational level than personally by the staff working locally.

In Turkmenistan, a decade of work in two of the country's regions came to an end in 2010 when MSF came to the conclusion that government health authorities were pushing misinformation about the truth of the population's health and were violating medical-ethical standards of care so egregiously that remaining present would be a form of complicity. MSF issued a public report denouncing the government and withdrew from the country (MSF, 2010). Complicity has also been a question when operating in Belarus implementing tuberculosis (TB) programming. When does working with the Ministry of Health become problematic within a harshly controlled political environment? In Uzbekistan, both during the reign of President Islam Karimov and during the partial liberalisation that has followed, MSF has worked in the western province of Karakalpakstan, first addressing the health consequences of the Aral Sea disaster and then treating tuberculosis patients, including carrying out a clinical trial for a new TB drug. Despite the difficulties that many international NGOs have in engaging with the Uzbek government, MSF had been able to demonstrate the value of its medical relevance, sufficient to be able to work there relatively successfully (del Valle and Healy, 2013).

In Sri Lanka, over the years of civil war, MSF was faced with a government which was expert in outwardly adhering to the rules and norms of war and humanitarian negotiations. Although often difficult, negotiations resulted in (albeit limited) operational access during much of the war. The end period of the war in 2008–2009, however, brought a break-down in relations, as the GoSL was focused on ending a decades-long war and did not have the inclination to allow international actors to interfere with the final prosecution of the war. One lesson from the Sri Lankan experience is that states of exception are real and will define the state – INGO relationship. The GoSL could effectively define when the dictates of the war effort took precedence over humanitarian norms and situate international actors in a severely limited

operational and advocacy space. Another lesson is how big a role discourse plays in creating friends and enemies. The press and governmental proxies were effectively utilised to box civil society actors in when needed.

Some contexts, such as North Korea and Eritrea, have continually stymied MSF and almost all other humanitarian actors. Such totalitarian states have proven impossible to work within in any effective way, as much as INGOs attempt negotiations.

Several themes emerge from this brief historical overview. One is the significant role played by MSF's public communications in determining its relationships with these various governments. On several occasions, MSF witnessed situations it considered to be violations of basic norms of humanity, such as massacres, rape, or forced famines, and felt compelled to speak out publicly – and suffered repressive measures from the governments named as a result, which prevented it from working in a particular region or the country as a whole. This dilemma between speaking out and continued operational access has been central to generations of tortured internal debate in the organisation. While sometimes falsely dichotomised, as though they are always an either-or choice, it is easy to understand why: the ethical obligations of medical personnel in conflict zones are numerous but rarely ever clear, and it is easy for these obligations (to save lives, to speak truth to power, to provide medical care above all) to pull in different directions.

Another is the difficulty of negotiating with a government on the terms for access to particular population groups that a government considers to be an 'enemy' or at least suspect in some way. This might mean areas outright controlled by armed opposition groups (such as in Darfur, Sudan) or simply the home of discriminated-against communities (such as in Rakhine, Myanmar, the Tamils in the north of Sri Lanka, or the Chechens in Chechnya). Sometimes, this was in high-profile ways, such as by simply declaring certain regions off-limits, but often it was in less obvious but not less effective ways, such as by imposing such high administrative barriers that access became de facto too hard to achieve or making a context so dangerous for humanitarian actors as to be inaccessible. Regardless of the exact ways they have gone about it, these authoritarian governments have made their preferences known. They seem to consistently regard the very existence of such zones as dire threats to their sovereignty. They have little or no interest in acceding to the demands of non-government organisations to work there, as hard as that might be to accept for the NGOs involved.

A third theme can be found not so much in the moments of crisis named here but in the years between them. These governments have not been impossible to negotiate with. Some of MSF's largest operations worldwide have been conducted in Ethiopia, for example, and its commitment to treating tuberculosis patients in the countries of the Soviet Union has been continuously functional over decades. MSF worked in Sri Lanka for decades during the war

and has remained in Russia since the early 1990s. When interests between MSF and these governments have coincided, such as when these governments have wanted MSF's medical capacities to meet a particular public health need (for example, in Belarus), then successful programmes have resulted. While the eye might be drawn to those moments when MSF publicly spoke of matters of grand humanitarian principle, the daily reality has been a much more pragmatic one. MSF has usually been quite prepared to compromise its principles when it negotiates with governments if it smooths the way towards accessing a population it wants to assist; its researchers have even published a book admitting just that (Magone, Neuman, and Weissman, 2011).

This foregoing historical review illustrates that MSF has found it difficult to negotiate with states it considers in some way 'authoritarian', and especially so during periods of conflict and crisis. This historical understanding, however, suggests more questions than answers. Where does this leave the organisation in dealing with current realities and, most importantly, preparing for the future? How can an analysis of the organisation's engagement with authoritarian regimes help future negotiations? The current research programme aims to expand the analysis and sharpen the conceptualisation of state-INGO negotiations within an environment of authoritarian and illiberal practices rather than regimes.

Not 'strong' or 'weak' states, but practises in which all states engage

For the last decade or two, MSF has avoided speaking about 'authoritarian' governments, much less 'authoritarian regimes'.⁴ Instead, its analytical categories have been more vague, speaking instead of 'strong states' or sometimes 'assertive states'. In large part, this came from a growing belief that more and more governments were imposing authoritarian-style restrictions on humanitarian work and that humanitarians could face threats of control, manipulation, suppression, and even outright violence not just from dictatorships but also from democracies. The evidence seems to mount for such a conviction, whether one looks at the policies of Africa's largest democracy, Nigeria, in its war in the north-east or at those of Italy and Greece in seeking to close their southern and eastern borders to refugees.

A concept of 'strong states' also partly carried the implication that MSF had previously considered some states 'weak', or at least permissive, when it came to matters of where, how, and when humanitarians could work on their national territories, and that this was increasingly no longer the case. This is more arguable – even highly fragile states seem more than capable of enforcing their own preferences on humanitarians when situation dictates. The world's newest and possibly weakest state, South Sudan, for example, has a well-developed regime of its own to control humanitarian organisations; it even named its key institution after its ancestor in Khartoum, the Humanitarian Affairs Commission.

Hence, driven by experience, there is growing interest for forms of analysis which focus less on the type of regime that humanitarians face, be it authoritarian, democratic, or hybrid, and more on the kinds of practices they see when they engage with states, regardless of type. Following Glasius, the research project, therefore, is less focused on regimes than practices. Moving beyond the focus on the hardest cases as presented in the historical review, the present research findings from our four case studies – the Kurdish Region of Iraq, Bangladesh, Italy, and Chad – will build on this historical analysis. The findings will place the organisation better in dealing with a range of authoritarian practices in a variety of states. We can, however, already look towards what we will be able to do with such findings. While only two cases have been completed so far (the Kurdish Region of Iraq and Bangladesh) and more work is still to be done on conducting the cases and analysing the results, a few questions already arise.⁵

Both the Kurdish Region of Iraq and Bangladesh could be classified as ‘hybrid’ regimes which mix aspects of democratic and authoritarian functioning, and both states certainly do show a range of practices which could be classified as ‘authoritarian’ or ‘illiberal’ according to Glasius’ definitions. Illiberal practices principally affect the human rights of people on the state’s territory, and here humanitarians have seen a variety of examples in these two contexts, such as harsh restrictions on the freedom of movement of refugees and internally displaced people. Authoritarian practices aim at controlling and suppressing information, and in both cases, there have been severe restrictions on the freedom of the press and to some extent also on humanitarians speaking out about what they see. There were also cases where humanitarian NGOs did not need to feel the full dose of a ‘practice’ in order to learn a lesson; for example, in one case, some NGOs had supported a (legal) civil rights march by refugees; the government viewed this as an unwarranted interference in the politics of the country and made its displeasure known through a mix of administrative (‘authoritarian’) measures against the few it considered ringleaders and through a ‘chilling’ of relations with the humanitarian NGO sector as a whole; NGOs subsequently were much more careful about supporting refugee organisations.

However, both cases also show that the boundaries between what is and what is not an ‘authoritarian’ practice are not always clear. Both the Kurdish Region of Iraq and Bangladesh have administrative systems in place which, to varying extents, coordinate and control humanitarian NGOs. Each state has a rather elaborate system – formal or informal – for ensuring that all charitable funds coming from outside the country are directed towards the types of activities that it wants to see, such as immediate emergency relief, and away from those it does not, such as assistance of a longer-term nature that might create expectations among refugees that they will be allowed to stay. Certainly, humanitarian NGOs do feel this system as a bureaucratic

imposition that hinders their work, but does that make it 'authoritarian'? Or rather, is it simply a form of state regulatory practice, of the kind that many states all over the world impose on charitable activities, often in cumbersome and heavy-handed ways? Or is it a form of practice ostensibly imposed on humanitarians but in service to an illiberal practice, given that its main object seems to be to support a policy which denies formal, legal refugee status to refugees on its territory? Or is this practice a mix of all of these things?

Further, the two cases completed so far show how different the perceptions of specific practices are for both government officials and humanitarian workers. Humanitarian workers tended to view any and all of the administrative measures applied to them (for example, travel permits or reporting requirements) as 'authoritarian', as a sign of suspicion or even hostility towards them by the state, and as a warning that some definitive rupture in relations was due. Government officials, however, tended to view such measures as simply them doing their assigned job; in their view, these practices were not about the state avoiding accountability but about the state ensuring the accountability of NGOs to them. In addition, it was evident that, while humanitarian workers concentrated overwhelmingly on today's problems, government officials worked at two levels, a 'tactical' level and a 'strategic' one, and while a 'tactical' level official might communicate suspicion to a humanitarian worker, a more 'strategic' level official might be seeking to communicate something quite different. Indeed, in both cases, the more senior the government official, the more long-term their vision was of the relationship with humanitarian NGOs, and the more they aligned that relationship with much wider, even historical, policy goals of the state – for example, for improved international recognition or for increased international community attention to a protracted crisis. Does this not mean we should ensure we open our eyes to the breadth of state practices, beyond simply 'authoritarian' and 'illiberal' ones?

Conclusion

One of the goals of this investigation of state practice in relation to humanitarian INGOs was to define a 'spectrum' on which various states could be placed as a heuristic device to assist practitioners in considering the various dynamics they confront when they seek to negotiate with state representatives. While more work needs to be done to achieve this goal, we can here venture some initial thoughts on how to do so.

On the basis of MSF's historical experiences, which we reviewed here, and on the case studies described above, it does seem that Glasius' description of authoritarian and illiberal practices is a useful grounding on which to construct a spectrum of state practice. Many states have exhibited behaviours designed to constrain or prevent humanitarian organisations from seeing,

and then speaking about, what happens in various situations of crisis – fitting the definition of an ‘authoritarian’ practice. And many also have engaged in practices which restrict or deny the human rights of people living in crisis situations, such as the right to move freely or the right to equal treatment before the law, and this would fit the definition of an ‘illiberal’ practice.

Further, it can be said that these practices are not confined to regime types which are themselves considered ‘authoritarian’ – and instead do show themselves in countries considered a kind of ‘hybrid’ or ‘mixed’ regime type and even in ‘democratic’ regimes. The hardening of punitive border regimes and the criminalisation of humanitarian NGOs in the United Kingdom and the European Union is a clear example of the latter case. And, on the contrary, we can also see that at times ‘authoritarian regimes’ have engaged in ‘non-authoritarian’ practices and been open, welcoming, and facilitative towards humanitarian INGOs when it suits their perceived needs for their nations.

Several dependencies can perhaps also be advanced about when and how a state engages in such practices. First of all, if a state perceives that a humanitarian organisation in some way threatens its interests, for example by damaging its international reputation, then the risks of some kind of authoritarian practice increase. The intensity of its reaction might depend on how it reads this ‘threat’ – a threat to its perceived security (such as a suspicion that humanitarians are aiding armed opposition groups) might be treated far more harshly than a threat to its political standing (such as the raising of a controversial issue during a politically inopportune time, such as an election campaign). Further, the approach a state might take to a humanitarian INGO could be considered a product of the approach it takes to the international community as a whole and/or of the approach it takes to the civil society in its own country.

In addition to ‘authoritarian’ and ‘illiberal’ practices, however, in our view there is a further set of state practices that need to be placed on a spectrum: those related to governmental regulation of the economy and society in general and of charities and NGOs in particular. These do have some linkage to authoritarian and illiberal practices and can have major impacts on humanitarian INGOs and on people in situations of crisis – we gave several examples where administrative obstacles were placed in the way of humanitarian INGOs with the apparent motive of restricting their presence and their activities. But there will certainly be cases where such regulatory practices are only partially explained by such motivations or not explained by them at all but are rather merely the product of the growth and extension of state regulatory capacities, which in some countries has been rapid. For example, in one country, a humanitarian NGO might find its doctors denied the ability to work not because of some deliberate political motive but simply because the medical registration system imposes such restrictions on all foreign-trained doctors. Or, in another case, a humanitarian agency’s problems with the tax authorities might only partially be explained by a more hostile environment

for INGOs and be more closely linked to those authorities' new-found interest in closing previously existing loopholes in the tax regulations for foreigners as a whole. It cannot always be assumed that humanitarian INGOs' problems with governmental authorities are motivated by 'authoritarian' aims; sometimes, this is simply how these governments work for everyone. Figuring out what is behind each problem will have to be a matter for specific analysis on each occasion.

Another much-needed line of approach, especially for practitioners, has been to focus specifically on skill formation in the technique of negotiation. The teaching of this technique is usually polyvalent, involving a variety of aspects.⁶ A key focus is on learning about interpersonal relations, about understanding that negotiations do not happen between institutions but between people – and that their relationships with each other do matter. A humanitarian negotiator who is technically correct but unsympathetic might end up failing to reach an agreement with a government official where another with a more personal touch succeeds.

Finally, we would argue that humanitarians need to understand themselves better if they are to engage better with governments. Critical self-reflection is also necessary because the uncomfortable truth might turn out to be that the government is right in a particular negotiation and that the humanitarian is not. In the Iraq and Bangladesh research, we heard many complaints from humanitarians about how bureaucratic, how corrupt, how uncaring governments were. But when we spoke to government officials we saw many of those same criticisms mirrored. Many specific examples were provided – humanitarian agencies inflate their numbers of beneficiaries so they can get more money, they say they know what they're doing, but they often don't; they claim to be all about the people, but really they are just protecting their own interests, and so on. Can we really say that criticisms such as these are all false? Doing the right thing is always harder than doing the wrong thing – harder to discern, harder to design, harder to implement. Humanitarians do not help themselves when they enter an engagement with a government filled with moral self-assurance. A much more mindful position is needed.

Notes

- 1 For simplicity the acronym INGO will be used to refer to the set of international non-governmental organisations which provide humanitarian assistance and of which MSF is a member.
- 2 Much of this section is based on arguments made in Cunningham (2018).
- 3 As examples, look at how North Korea and Turkmenistan engage with other states and the UN, and how some states are not signatories to core international conventions, such as the Refugee Convention. But also see the debates on the concepts of universal jurisdiction: <https://www.un.org/press/en/2018/gal3571.doc.htm> and customary international law: <https://www.icrc.org/en/war-and-law/treaties->

customary-law/customary-law. The applicability of international law over states and state authorities is dynamic and ever developing.

- 4 Buth P (2010), *A Line in the Sand: States' restrictions on humanitarian space*. MSF, Amsterdam [Internal]. Copy on file with the authors.
- 5 Jacob Kumar Sarker was the co-researcher for the Bangladesh case study and Mera Jasm Bakr for the Kurdistan Region of Iraq case study.
- 6 As an example, see Conflict Dynamics International's normative and practitioners handbooks on negotiated access.

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- See, for example, the view from Amnesty International: <https://www.amnesty.org/en/latest/news/2019/05/un-catastrophic-failure-as-civilians-ravaged-by-war-violations-70-years-after-geneva-conventions/>
- See, for example, from OCHA/NRC: <https://www.nrc.no/globalassets/pdf/reports/study-of-the-impact-of-donor-counterterrorism-measures-on-principled-humanitarian-action.pdf>
- See ICVA: <https://www.icvanetwork.org/uploads/2021/08/ICVA-Report.pdf>; CIVICUS: <https://civicus.org/state-of-civil-society-report-2021/> and ICNL: <https://www.icnl.org/>
- See OHCHR: <https://www.ohchr.org/EN/Issues/CivicSpace/Pages/ProtectingCivicSpace.aspx>
- See the “MSF Speaking Out Case Studies” for a thorough archival and historical review of many of the chief episodes in this history: <https://www.msf.org/speakingout>
- The literature on IHL is vast, but an obvious place to start is the ICRC view on trends related to IHL: <https://www.icrc.org/en/document/icrc-report-ihl-and-challenges-contemporary-armed-conflicts>
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* After the publication of this chapter my very good friend and long-time colleague, Sean Healy, suddenly passed away. Sean's contribution to our understanding of humanitarian action was immense. Our shared interest in state-INGO engagement had developed over the years and this is tragically one of our last collaborations. Rest in peace my friend.