

# Human Rights and Humanitarian Diplomacy in Contemporary Armed Conflict

[Roberta Abdanur | SHE Institute](#), Director and Co-founder

## Abstract

This paper focuses on a search for a common understanding of the concept and role of human rights and humanitarian diplomacy in the context of contemporary armed conflict. Humanitarian diplomacy is an emerging term, in fact since the beginning of the 21st century, due to the accelerated pace of globalization, new areas of global diplomacy have started to include issues on climate change, environment, access to water, culture, health and knowledge. However, humanitarian diplomacy focuses on maximizing support for operations and programs and building the partnerships needed to alleviate human suffering and achieve humanitarian goals.

Humanitarian diplomacy includes negotiation with various political actors, state and non-state regarding the presence of humanitarian organizations, and negotiation to ensure the human rights, protection and humanitarian aid access to civilian populations. Thus, it involves monitoring assistance programs, promoting compliance with international humanitarian law and carrying out support activities in favor of broader humanitarian goals.

## Background

The destruction caused by a decade of conflict in Syria, the Ebola virus epidemic in West Africa added to the conflict in the DRC, the natural disasters impacting Southeast Asia, internal displacements in Colombia, food insecurity in Yemen and the crisis migration in Europe are situations where millions of people are in danger and which require an immediate response. Therefore, it is important to emphasize the crucial role of local and international actors to prevent these dangers, rescue and protect vulnerable people or promote respect for fundamental rights. These events are not straightforward, however, in most cases, to carry out their work on the ground, humanitarian actors must obtain approval from state or non-state entities, whether civil or military, since then these responses have been described as humanitarian actions. In their daily practices, humanitarian professionals develop a specific type of experience and resort to innovative

methods to achieve their goals and, in fact, demonstrate a real skill in diplomacy and negotiation, which has come to be classified as a new form of diplomacy, called “humanitarian diplomacy”.

Humanitarian diplomacy research lies at the intersection of literature on global governance, humanitarian affairs, and foreign policy studies. Although, chronologically, there is a long history of international humanitarian action, however, the concept of humanitarian diplomacy is new and remains contested (Egeland, 2013). Therefore the literature on humanitarian diplomacy remains limited, demonstrating its recent appearance in global affairs.

## **The Concept**

The concept itself is a paradox, as in “Humanitarian Diplomacy: Theory and Practice” (Smith, 2007). In fact, while defenders of a certain humanitarian ideal tend to reject political games, diplomacy dominates political relations between states. When a humanitarian actor assumes the role of a diplomat, they default to political action, and sometimes their impartiality is challenged. Hence, it is important to understand the contours of humanitarian diplomacy and the increasingly important role it is playing in the field of diplomacy, especially in the context of responding to armed conflicts.

Humanitarian diplomacy is based on a foundation, namely, the imperative of humanity, which means the recognition that the other is a human being whose dignity and rights deserve to be protected (Dunant, 1862). This imperative is outlined in a set of principles of international humanitarian law (IHL) and in international instruments of international human rights law (IHRL). For this reason, the actors of humanitarian diplomacy and their practices in this sense need to be analyzed to offer a broad view of the different agents that are part of humanitarian diplomacy. Consequently, this study will address the practices of the International Committee of the Red Cross (ICRC), humanitarian organizations and the United Nations. In the same way, the term is used also by national cooperation agencies and ministries (foreign affairs, development, civil protection) that comprise humanitarian aid departments to respond to crises of national or international emergencies.

## **Historical Origin and Developments**

The needs of civilian populations affected by contemporary armed conflict are multiple and complex. They range from protection from direct harm and the effects of hostilities, violation of human rights to basic human needs such as food, water, medical care, education of children, psychosocial support. Effectively protecting people and reducing

their suffering requires action on at least three interconnected levels (Maurer, 2018). First, it is the responsibility of parties to armed conflicts to implement their international legal obligations. Second, individuals and communities are actors in their own protection who know their needs. And third, humanitarian action must be designed in collaboration with populations according to their specific needs and vulnerabilities.

The founder of the Red Cross and Red Crescent Movement and initiator of modern international humanitarian law (IHL), Henry Dunant, has successfully mobilized the good intentions of people at the local, national and international levels, calling on the public, governments, and civil society to act with humanity towards the victims of the war, after having personally witnessed the suffering of the battle of Solferino (24 June, 1859). Therefore, he put into practice the evolution of modern international humanitarian law. The International Committee of the Red Cross (ICRC) has implemented its own definition of humanitarian diplomacy, which reflects its specific mandate and presents precise objectives: providing protection and emergency relief (health and sanitation, food security, shelter), providing assistance to detainees, searching for the missing, restoring family links and ensuring the safety of ICRC staff (Régnier, 2012). In addition to contributing to efforts to negotiate and codify humanitarian norms and standards into national legislation and within international organizations such as the United Nations and the International Conference of the Red Cross and Red Crescent.

To illustrate, the definitions and perceived content vary as widely as the number of organizations using the term and the humanitarian operations that they carry out. Humanitarian diplomacy is not yet a solidly established concept generally recognized by the international community: there is a big difference between conceiving the idea, (IRRC, 2012) using the term itself, and arriving at international recognition for its definition and agreement on how it should be conducted. It follows that the landscape of warfare has evolved since World War II (Hoffman, 2018). Almost all contemporary conflicts are intra-State and, as such, oppose actors who are not States but non-state armed groups (NSAGs) who fight each other or who wage an asymmetric war against government forces (Hemptinne, 2018). Thereafter, the violence results in incisive social crises and the internal dysfunctions of the societies concerned.

## **The "Imperative of Humanity" and The Legal Framework**

As described, humanitarian diplomacy is based on one foundation, namely the imperative of humanity. This imperative is outlined in a set of principles embedded in international humanitarian law (IHL) and international human rights instruments. (Rousseau, 2020) The idea that armed conflict is subject to rules and limitations has existed for millennia (Sassoli, 2019) as it is inherent in the very concept of war. Following the initiative of Henry

Dunant and later of the ICRC in the 19th century, the first multilateral treaties were adopted in this field. Subsequently, these treaties were periodically extended and adapted to new problems arising in armed conflicts.

Today, this branch of public international law is largely codified in the four 1949 Geneva Conventions as well as the related 1977 Additional Protocols. Although all States are parties to the Conventions, several important States have not yet accepted the Protocols. However, most of the rules contained therein are considered as customary law. Since the adoption of these treaties, States have not been able to agree on a general revision of IHL to better adapt it to the modern realities of warfare (David, 2019). Yet, more recently, international criminal law (ICL) and the jurisprudence of the international criminal courts established to implement it, as well as treaties on specific issues such as weapons, children and cultural heritage, have contributed to the progressive development of IHL rules and mechanisms.

Accordingly, humanitarian diplomacy negotiators will need to clarify which legal instruments are applicable in each situation. For instance, it is necessary to analyze which mechanisms would be able to declare applicable law, as well as identify which implementation mechanisms are operational on the ground. Despite the link between humanitarian diplomacy, international humanitarian law and international human rights law, it is important to be careful not to get confused. First, humanitarian diplomacy is not the prerogative of international jurists (Veuthey, 2012). Some authors are aware of the illegality of their actions, but show their determination not to comply. Addressing these violations through legal arguments would therefore be pointless, even counterproductive. Second, the specter of humanitarian diplomacy cannot be reduced to conflict intervention. Correspondingly, the imperative of humanity, foundation of humanitarian diplomacy, also involves intervening where populations are vulnerable due to natural disasters, health or social crises (Rousseau, Pende, 2020).

Since IHL is the branch of international law that governs the conduct of international armed conflict (IAC) and non-international armed conflicts (NIAC) and aims to limit their consequences, the definitions, current and future challenges in the conduct of hostilities must be addressed. In addition, the relationship between cyberspace and the battlefield, the role of artificial intelligence in the targeting process, and the potential for using space for non-peaceful purposes are all important issues that will be considered in discussions about the applicability of IHL to new technologies of warfare and the challenges for the humanitarian diplomacy. Accordingly, before focusing on the challenges that "humanitarian diplomats" face in the context of contemporary armed conflict, it is essential that there is a session in this study to classify the conflicts.

## **The Protagonists of Humanitarian Diplomacy**

While some authors consider humanitarian diplomacy to be limited and discrete (Smith 2007), others consider it an alternative diplomacy (Ryfman 2010). Hence, humanitarian diplomacy is unique in that it is able to deal with emergencies and overcome deep divisions to reach solutions to highly complex situations. Nevertheless, the negotiation and persuasion techniques of humanitarian diplomats are relatively unknown to practitioners of traditional diplomacy (Régnier, 2012). It follows that humanitarian actors are not even aware that they have diplomatic skills that can spark interest and be passed on. Therefore, approaching humanitarian diplomacy as a homogeneous unit would not be correct (Pease, 2016). As for important actors, such as the ICRC, for example, they are extremely regular in their diplomatic practices. However, humanitarian practice and diplomacy vary from one context to another, but always keep the imperative of humanity at its core. The diversity of actors, the different fields of intervention, the context and the variety of practices certainly mean that humanitarian diplomats will face ongoing challenges

### *The Role of the International Committee of Red Cross*

In highlighting the key actors in humanitarian diplomacy, it is important to emphasize that the ICRC is a private association established under Swiss law in 1863 and a unique diplomatic actor. This special identity results from the Geneva Conventions, by which States Parties have entrusted the ICRC with a specific mandate to assist and protect victims of armed conflict. This mandate also seeks to prevent human suffering by promoting and reinforcing the principles of IHL (Berger, 1995). In addition, the States Parties to the Geneva Conventions have granted the ICRC an international legal personality. This results in a diplomatic status similar to that of representatives of a State, the United Nations or the European Union.

Due to the complex realities of contemporary armed conflicts, which will be discussed in this research, preventing violations before they occur offers the best chance to ensure that IHL is respected (Sassoli, 2019). The ICRC helps States fulfill their preventive obligations, in particular in the fields of national legislation and dissemination and training, during both peace-time and in times of armed conflict. In its own dissemination activities during times of armed conflict, however, the ICRC faces a key dilemma because its first priority is to ensure that its staff and activities are respected, while IHL's most important message is that the adversary must be respected.

The ICRC's humanitarian diplomacy is defined by four specific traits: it consists of relationships with a wide range of contacts, including non-state actors; it is limited to the humanitarian sphere and the promotion of peace is not its primary objective; it is independent of the State's humanitarian diplomacy; and, finally, it often takes the form of a

series of representations. (Haroff-Tavel, 2006)

## **Conclusion**

The protection and assistance must be ensured to prevent, to end the violations of international humanitarian law and by guaranteeing humanitarian actors the necessary space to act independently, with adequate resources in order to access people affected by the conflict and disasters. In the process of identifying relevant studies it became apparent that literature solely focusing on humanitarian diplomacy in armed conflict is still scarce. The landscape of warfare has evolved since World War II. Almost all contemporary conflicts are intra-State and, as such, oppose actors who are not States but armed groups who fight each other or who wage an asymmetric war against government forces. This violence feeds on acute social crises and the internal dysfunctions of the societies concerned.

Many humanitarian needs are perceived in the first hours of a conflict, but can change and deteriorate over time. As an example, conflicts of prolonged periods destroy essential infrastructure, such as schools and hospitals, or degrade them to the point of rendering them unusable. When conflicts go unresolved and negotiation fails, displaced people are all too often denied the opportunity to return voluntarily, in safety and with dignity to their homes. And when services and support systems break down, new barriers arise for people with disabilities. Moreover, climate change is increasing the vulnerability of conflict-affected populations to drought and natural disasters (IRRC, 2019). These obstacles, especially when they persist, fuel tensions rather than dissipate them.

In conclusion, humanitarian diplomacy is the global mechanism that supports the creation of humanitarian space in order to facilitate the presence and access on the ground, to help secure infrastructure and funding, to ensure the respect for human rights and to establish and maintain broad stakeholder relationships, such as private and public partnerships.

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