

To humanitarian
workers in Syria

2016

21 Answers

on International Humanitarian Law and
Humanitarian Principles.



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The questions in this handbook are questions that were compiled from a number of sources, including from Syrians who are new to the humanitarian field, and reflect questions that may have been addressed to humanitarian workers by a variety of Syrian stakeholders. The questions reflect the main issues considered to be vital, practical, and controversial.

The answers provided in this handbook are not complete or exhaustive with respect to international humanitarian law and humanitarian principles. The handbook should not be consulted in isolation from other materials. Where relevant, this handbook includes references to additional readings on the topics raised.

1

INTERNATIONAL HUMANITARIAN LAW

INTERNATIONAL HUMANITARIAN LAW

1

1. What is international humanitarian law? Why is it beneficial in times of war?

Conflicts do not only affect warring parties. Wars often generate great human suffering among people who are not taking any part in the conflict. International humanitarian law (IHL), also known as the law of armed conflict, is the body of international law intended, in part, to limit this suffering by striking a balance between military necessity, on one hand, and humanity, on the other.

IHL protects *civilians* ⁽¹⁾, the wounded, the sick, and detained fighters, and property by limiting the permissible means and methods of warfare. It requires all *parties to a conflict* ⁽²⁾ to distinguish between civilians and civilian objects, on one hand, and military objectives, on the other. *Military objectives* ⁽³⁾ may be attacked lawfully.

Civilians as long as they are not directly participating in hostilities and **civilian objects** ⁽⁴⁾ as long as they are not used for military purposes may not be attacked.

IHL accepts that hostilities may cause **incidental harm** ⁽⁵⁾ to civilians and civilian objects as long as the expected civilian harm is not excessive in relation to the expected military advantage. Still, parties to the conflict must always take **feasible precautions** ⁽⁶⁾ to minimise harm. All persons who do not participate in hostilities, including fighters who no longer do so, must be treated humanely and without discrimination based on race, religion, sex, or other such criteria. Torture, execution without a **fair trial** ⁽⁷⁾, and cruel and degrading treatment are prohibited at all times without exception. The sick and wounded, including fighters, must be collected and cared for. IHL also limits unnecessary suffering by restricting the use of certain weapons such as the ban on the use of chemical weapons.

IHL applies to all parties to a conflict, state and nonstate, without regard to which side is the oppressor or the oppressed. In other words, the basic IHL obligations are the same for everyone. IHL does not see the parties to a conflict as “good guys” or “bad guys”. All parties must follow the same rules.

(1) Civilians: Persons who are not members of the armed forces of a party to the conflict. Civilians lose the protection of IHL if and when they directly participate in hostilities.

(2) Party to a conflict: A state or non-state actor that is engaged in hostilities and has obligations under IHL.

(3) Military objective: Persons or objects that may be lawfully targeted.

- Persons: members of the armed forces of a party to a conflict or civilians who directly participate in hostilities.

- Objects: a thing or place that contributes to one party's military action and whose neutralisation at the relevant time offers a military advantage to the other party.

(4) Civilian object: Any object that does not qualify as a military object. This includes homes, schools, hospitals, and cultural property. Civilian objects lose their protection and become military objects if and when they are used for military purposes.

(5) Incidental harm: The damage caused to civilians or civilian objects when a legitimate military object is attacked. It is also known as "collateral damage". It does not refer to damage caused by intentional attacks on civilians or civilian objects.

(6) Feasible precautions: The reasonable steps a party to the conflict must take prior to and while launching an attack to ensure a target is legitimate and to avoid or minimise incidental harm.

(7) Fair trial: A trial by a court that implements the essential guarantees of independence and impartiality and the fundamental rights of the accused.

Humanity v Military Necessity

The objective of IHL is not to prohibit war or to end war but, rather, to limit the suffering and damage caused by war by establishing certain rules about how the war is fought. These rules have no chance of being respected if they are unrealistic or if they prevent a party to the conflict from gaining a military victory. Therefore, IHL represents a balance between humanity and military necessity. Humanity aims to reduce human suffering. Military necessity permits measures that are actually necessary to accomplish a legitimate military purpose and are not otherwise prohibited by international humanitarian law. This may not seem satisfactory since the only way to truly end war's suffering is to end war. Yet, history has shown that ending war is never easy. Therefore, IHL is like a bandage; if applied properly, it can reduce the harm until the social and political healing process takes place.

2. Where does IHL come from? Why is it relevant in Syria?

Throughout history, factors such as culture, customs, religion, values, and chivalry have regulated the law of war. The codification and expansion of these norms became what we know as modern day international humanitarian law. In fact, many Islamic principles are reflected in IHL, such as the guidance the Prophet Mohammad gave to the armies before war.

The impetus of modern day IHL dates back to 24 June 1859, when a Swiss businessman saw the deadly consequences of the bloody battle of Solferino between the French and the Italian armies. With the city full of injured soldiers from both sides, Henry Dunant, along with others, volunteered to help all the wounded. This experience prompted an initiative to develop

international legal obligations regulating the conduct of war, beginning with the diplomatic conference that adopted the first Geneva Convention in 1864.

At first, such rules were limited to protecting the sick and wounded on the battlefield, but now IHL provides a much greater scope of protection through the four Geneva Conventions of 1949, the Additional Protocols of 1977, and other treaties regulating issues such as cultural property and weapons, as well as **customary IHL** ⁽⁸⁾. Most of the treaty rules only apply to conflicts between

(8) Customary IHL:

A binding source of IHL that evolves from the practice of states rather than treaties. It is just as much “law” as treaty-based IHL. In its opinion, The International Committee of the Red Cross has found 161 rules of customary IHL. About 90% of these apply in both IAC and NIAC.

states—known as international armed conflict (IAC). ⁽⁹⁾ **Common Article 3** is the most important example of a treaty rule that applies to armed conflicts involving **armed non-state actors (ANSAs)** ⁽¹⁰⁾—known as non-international armed conflict (NIAC), such as in Syria. Although many of these treaty provisions are not applicable in Syria either because they only regulate IAC or because Syria is not a party to the treaty, customary IHL has filled in the gaps, so that most of the rules of IHL also now apply in Syria.

(9) Common Article 3: The article in all four of the 1949 Geneva Conventions that applies in NIAC. It protects civilians as well as sick and detained fighters from inhumane treatment, requires care for the sick and wounded, and provides the right of initiative for impartial humanitarian organisations to offer their services to parties to the conflict for strictly humanitarian purposes such as delivering aid to civilians.

In the Syrian context, the question that logically follows is: What is the benefit of IHL in light of the on-going mass breaches and atrocities? However, IHL is usually only noticed when it is violated. If IHL were not respected at all in Syria, the suffering would be even worse. When IHL is violated, it is because enforcement mechanisms are lacking. Yet, IHL is the language the world speaks, and it is also the basis for dialogue and advocacy about how people should be treated—even during war, for stopping violations now, for ensuring accountability for those who committed war crimes, and for restoring justice in the future.

(10) ANSA: The term is used in this FAQ to refer to organised non-state entities that have the capacity to use widespread violence to achieve their ends. Some humanitarian actors use other terms. ANSA is meant to be a neutral term. However, others may use terms such as freedom fighters, terrorists, revolutionary movements, or rebels. In legal terms, ANSAs are referred to as armed groups.

3. Isn't IHL primarily meant for the parties to the conflict? What do we as humanitarian actors have to do with it?

It is true that parties to the conflict have the primary responsibility to protect civilians and to provide for their basic needs. However, when the parties do not meet their responsibilities, impartial humanitarian actors under IHL may offer their services in order to save lives and alleviate suffering. IHL lays down rules about when and how humanitarian relief actions are to be undertaken. In all cases, the relevant rules may depend on whether the conflict is international (between two or more states) or non-international (between a state and ANSA(s) or among ANSAs).

In addition, humanitarians need to be aware of IHL for many other reasons. For example:

- *IHL allows a limited amount of collateral damage. So, a humanitarian organisation that invokes IHL to demand an end to all civilian casualties would be advocating something beyond the requirements of IHL.*

- *IHL allows for the displacement of civilians under limited circumstances but prohibits their expulsion from their own territory. So, a humanitarian organisation engaging with an ANSA on displacement practice must understand these parameters.*

Humanitarians must also be aware of the limited protection IHL grants to their own actions. When civilians including humanitarian actors take a direct part in hostilities, they lose their protection and may be targeted as they do so. For example:

- *The provision of tactical military intelligence to a party to the conflict could result in the loss of protection, making the humanitarian a possible legitimate target.*

- *If a hospital allows its premises to become a headquarter for military operations, this hospital could become a legitimate target.*

Moreover, the way humanitarian actors conduct their operations determines whether or not they are impartial and, thus, whether the parties to conflict must grant them the additional special protection as humanitarians as well facilitate their relief action for those in need. Of relevance to impartiality, many donors only fund humanitarian action based on need alone. This is to ensure that they are not to be seen as supporting one party to the conflict or the other. Therefore, the conduct of humanitarian actors within the remit of IHL directly affects the availability and sustainability of their funding and, ultimately, their ability to reach those most in need in Syria.

IHL also informs humanitarians as to what does or does not constitute a violation or a war crime against their staff, their beneficiaries, or the general population. Taking all this into account, IHL becomes particularly relevant when humanitarian actors are involved in advocacy whether domestically or internationally since it locates their message within an internationally-recognised framework.

4. Under IHL, do armed actors always have to allow humanitarian actors to operate? If not, in what ways may they constrain our actions?

When parties to a conflict cannot meet the basic needs of civilian populations, IHL requires them to facilitate impartial relief actions. This is an obligation that allows humanitarian actors to respond to dire humanitarian situations. Note that the use of starvation as means of warfare is an IHL violation. It may constitute a war crime and, if done systematically, a crime against humanity.

However, parties to the conflict also have rights, and their obligations are not absolute. This means that the rights of humanitarian actors are not absolute. First, in non-international conflicts such as those in Syria, impartial humanitarian actors have the right to offer their services to the parties

to the conflict for strictly humanitarian purposes such as delivering aid to civilians. While such offers may be rejected if valid reasons exist (see below), they cannot be considered unlawful intervention in the sovereign affairs of the state. In all cases, humanitarian actors should seek consent from the parties to the conflict in order to work in areas under their control, and they should strive towards transparency. Second, the parties to a conflict are only obligated to accommodate impartial humanitarian services. This means that access may be legitimately denied if a humanitarian organisation does not deliver its services in an impartial manner. Third, if the services are not directed towards civilians in need or are not humanitarian in nature, then the party to the conflict has the right to withhold consent. Fourth, parties to the conflict may exercise some rights over humanitarian action, such as verifying the humanitarian and impartial nature of the assistance provided

making technical arrangements for its delivery or limiting/restricting the activities of relief personnel, but only if there is an imperative military necessity that is time limited.(See question 11 for more details.)

In short, although humanitarian actors do not have a free pass, parties to a conflict may not arbitrarily deny humanitarian assistance.

2

HUMANITARIAN PRINCIPLES

5. What are humanitarian principles? And to whom are they applicable?

The Syrian humanitarian crisis is described as one of the most significant disasters of modern history according to the Secretary-General of the United Nations. With millions of Syrians in need of humanitarian assistance, the complex nature of the Syrian conflict has generated a challenging environment for humanitarian actors operating in Syria. Given the number of parties to the conflict, humanitarians need practical and predictable ways of working that are applicable at all times and in all contexts in order to allow them to operate in a safe, accountable, and responsible manner to reach those in need.

Humanitarian principles underpin humanitarian actions and provide guidance for how humanitarian actions should be carried out. They should be used as tools for orientation, like

a compass. They should guide informed decision-making in the face of complex dilemmas and difficult choices. They are inherently practical in character and intended to enable humanitarian actors to navigate the extraordinarily sensitive and complex situations encountered in armed conflict.

The four humanitarian principles are:

1. **Humanity:** Human suffering must be addressed wherever it is found. The purpose of humanitarian action is to protect life and health and to ensure respect for the human being.

2. **Neutrality:** Humanitarian actors must not take sides in hostilities or engage in controversies of a political, racial, religious, or ideological nature.

3. **Impartiality:** Humanitarian action must be carried out on the basis of humanitarian need alone, giving priority to the most urgent cases of distress and making no distinctions on the basis nationality, race, religious beliefs, class, or political opinions.

4. **Independence:** Humanitarian action must be autonomous from the political, economic, military, or other objectives that any actor may hold. Such actors may include the governments and/or actors who are in control of the areas where you are working, donors, or other states.

Remember:

The difference between neutrality and impartiality is that impartiality is related to the beneficiaries and neutrality concerns our posture in relation to parties to the conflict.

Be aware that parties to a conflict, states, donor governments, the private sector, and other actors are not expected to comply with these principles. These principles define what and who is “humanitarian” and describes how humanitarian services are to be carried out. Although “impartiality” and “humanity” are relevant to defining who may offer services under IHL, the principles in themselves are not considered “law”.

It should be remembered that humanitarian principles are interdependent. For example, if an organisation behaves in a partisan manner and is not seen to be neutral, it may lose access to some populations and, therefore, lose its ability to be impartial. If an organisation compromises its independence and impartiality – for example, by allowing other actors to direct their activities – parties to the conflict may believe that the humanitarian actors are no longer neutral. Once an organisation loses the perception that it is a principled humanitarian actor, it is extremely difficult for the organisation to regain its reputation and restore confidence in its role.

There are other principles that many consider highly relevant to humanitarian action – such as accountability and transparency – which can be found in many humanitarian standards and guidelines.

However, these four principles provide the core underpinning for all humanitarian action and are

codified by the United Nations General Assembly (in GA resolutions 182/46 and 141/59).

6. Where do these principles come from? How do these principles protect those in need?

The humanitarian principles came, first and foremost, from a practical need. Wars have been fought throughout history. Without the application of these principles, belligerents would be reluctant to allow and facilitate assistance on their territory. The foundational principles of the Red Cross/Crescent movement were developed out of that organisation's lengthy experience of humanitarian work in conflict zones. The value of humanitarian principles was unanimously agreed upon by states in UN General Assembly resolutions.

Adherence to humanitarian principles protects your integrity as a humanitarian actor and, ultimately, protects the beneficiaries of your

actions. In a complex situation, humanitarian principles are critical in order for all observers (whether they are parties to the conflict, citizens, or funders) to distinguish humanitarian action from the activities and objectives of political, military, and other actors.

In deeply political and sensitive conflict environments in which inter-group dynamics and territorial control are constantly changing, adherence to humanitarian principles allows humanitarian actors to build confidence and trust in themselves as individuals and organisations and in the roles they are performing in a specific situation. It allows all other actors, including the people they seek to assist, to understand that they are clearly dealing with humanitarians, not people acting from any other motive.

If consistent, demonstrable, and unimpeachable integrity is maintained, including through adherence to humanitarian principles, a higher level of trust is created in the minds of all actors.

This has the overwhelmingly positive effect of increasing the number of vulnerable civilians who can be reached and the extent to which access can be continued over a period of time.

When it comes to principled humanitarian action, perception is as important as reality. If a party perceives that a humanitarian actor has not been acting in a principled manner, the results could be devastating even if the actual actions were carried out in a principled manner.

It is good practice for all staff members of humanitarian organisations to assess their application of humanitarian principles in specific contexts and to reflect regularly on the way they fulfil the principles of humanity, impartiality, neutrality, and independence. By adopting a continuous practice of reflection, the importance of humanitarian principles can be fully internalised by individual staff members, and they can adjust and adapt their posture and behaviour in a timely manner as and if needed.

7. How do counter-terrorism measures affect our ability to adhere to humanitarian principles?

In recent years, the world has seen an increase in what is known as counter-terrorism measures. These measures, taking the form of international and domestic laws and regulations, were created by multi-lateral bodies, such as the UN Security Council as well as individual states. These regulations differ from state to state and between one piece of international legislation and another. The purpose of these measures is to eliminate support to groups that are defined or designated as terrorist organisations.

“Terrorist” organisations are often found in conflict areas and are often parties to a conflict according to IHL. Note that IHL does not contain any special status for “terrorist” organisations

(remember it doesn't see “good guys” or “bad guys” although it does prohibit acts that are primarily aimed at spreading terror).

A number of measures undertaken with the objective of countering terrorism have been found to be in tension with IHL, and there are numerous ways that counter-terrorism laws, policies, and other restrictions may affect the ability to meet the needs of civilian populations as well as the work of humanitarian actors. For example:

- Restrictions on the financial sector may inhibit international wire transfers to certain countries, thereby making it difficult for humanitarian agencies – particularly, small, local ones – to operate.
- Prohibitions on the provision of support to designated terrorist organisations may be interpreted to include most forms of engagement with them, thereby inhibiting dialogue for the purposes of establishing humanitarian access.

- Counter-terrorism restrictions may criminalise medical workers who treat wounded combatants if those combatants are members of a designated terrorist organisation.
- Counter-terrorism restrictions might recognise some exceptions to the types of materials that can be distributed as humanitarian aid – such as medicines – but exclude other forms of assistance that the affected population needs.

Counter-terror laws, policies, and other restrictions have led to a decrease in risk-taking by some donor governments and some humanitarian actors due to the legal uncertainty associated with working in certain areas in which the need is great but which a designated group also controls.

Many donor governments are placing more and more requirements on NGOs that receive funds from them in order to demonstrate that every effort is being made to ensure that funding is

not diverted to terrorist organisations. In recent years, donor governments have not been satisfied with the explanation that humanitarian actors already exercise due diligence in accordance with humanitarian principles to prevent aid diversion. Several international NGOs are working to change these laws, policies, and restrictions; but, in the meantime, what should humanitarian actors do in the face of such challenges? Here a few steps.

① You need to be aware of the counter-terrorism measures that are in place and have an impact on you. You need to look internationally as well as at domestic legislation applicable where your NGO may be registered and where it operates. Additionally, many donor contracts include counter-terrorism provisions. Make sure you are aware of such provisions in your contracts.

② Apply humanitarian principles throughout your operations. Create a paper trail of measures you have taken to ensure compliance with the principles and to avoid aid diversion, so that you can demonstrate your compliance to external parties such as donors or law enforcement agencies. Use a principled approach to negotiate greater leverage with donors where possible. This gives donors and states the comfort that you are as interested in not having aid diverted as they are.

③ Balance the risks vs. the humanitarian needs, and make an informed decision. As with most challenges faced in situations of armed conflict, there is no black and white when it comes to counter-terror measures. Make sure that where problems are foreseen, the management in your organisation is informed.

④ Use risk management tool kits in relation to counter-terrorism measures. The Norwegian Refugee Council has recently produced a very comprehensive tool kit to assist humanitarian NGOs on these matters.

In reality, there is a common ground between counter-terrorism measures and humanitarian principles, since both aim to ensure that aid is not diverted to parties to the conflict.

In carrying out all of the above, humanitarian actors need to be very cautious about using the “terrorist” label, as this may be perceived as a political act affecting their neutrality. It is the job of the governments and the donors that fund NGOs to label certain groups as terrorists, not the job of the NGO itself. The distinction is crucial.

3

THE UNIVERSALITY OF HUMANITARIAN PRINCIPLES

8. Should humanitarian principles be applied to all parties throughout Syria? And should we conform to them even when some parties to the conflict don't recognise them?

By definition, a principled approach demands equal application in relations with all relevant parties. This may be difficult to put into practice even with the best intentions. Some parties may simply be more demanding than others, and the temptation to compromise principles in order to gain short-term access to civilians in need is understandable. For example, this might involve allowing parties to a conflict to direct where aid is to be delivered or to give relief supplies to a party to the conflict rather than insisting on handling distributions directly. Such compromises may have significant consequences on the ability of humanitarian actors to operate effectively for

the duration of the conflict and to reach all people in need, no matter where they are. Compromises often lead to an environment in which parties to the conflict increase their efforts to control humanitarian aid. The best way to create immunity to such pressure and manipulation is to be consistent in your adherence to principles.

Of course, you will be engaging with some parties to the conflict more often than others. It even may be the case that you only regularly encounter one group. That doesn't mean that your organisation is biased or unprincipled. However, it is crucial that principled actors apply the same standards to every interaction in the field. As you are aware, power dynamics within these entities and the Syrian conflict as a whole shift quickly. You have to aim to serve the need wherever it is, no matter how volatile the situation.

Sticking to the principled approach is equally important even if a party to the conflict does not

recognise the humanitarian principles themselves. In some cases, the party may want to be associated with a humanitarian activity because they believe it is aligned with their objectives - for example, if the party wants to show the local population that it can facilitate access to clean water. This is not necessarily problematic, but caution is essential.

9. Have these principles also been applied in other countries? Please provide some examples.

Every conflict is unique, and so is the Syrian conflict. However, many conflicts involve a massive proliferation of multiple armed actors, each vying for territorial gains. It is precisely these circumstances that humanitarian principles are intended to help navigate. This accounts for the universality of humanitarian principles. Humanitarian actors have relied on humanitarian principles to manage their operations in complex

political environments long before the Syrian conflict arose – for example, in Libya, Iraq, Afghanistan, Mozambique, and Palestine, and they will do so in other conflicts in the future. It is important to remember that, while humanitarian principles provide the general framework, they have to be put into operation in the specific context of each conflict.

In some conflicts, humanitarian agreements have been made between the parties to the conflict and humanitarian organisations. In Sudan, for example, the Operation Lifeline Sudan Agreement on Ground Rules between the SPLM (a non-state party to the conflict) and humanitarian actors included the following provision:

2. All UN/NGO workers are expected to act in accordance with the humanitarian principles previously defined: provision of aid according to need, neutrality, impartiality, accountability and transparency. This includes non-involvement in political/military activity. NGOs and UN agencies

must not act or divulge information in a manner that will jeopardise the security of the area.

As you can see, the OLS/SPLM agreement refers to three of the four core principles as well as the additional principles of accountability and transparency.

In Syria, members of the humanitarian community drafted and adhere to a protocol entitled Joint Operating Principles (JOPs). The JOPs, which outline the framework of engagement between humanitarians and parties to the conflict, make direct reference to the humanitarian principles while also contextualising and operationalising them to the Syrian situation.

10. We have Islamic Sharia. So, why should we use laws and principles put in place by the West? Are they relevant to Islamic law?

As mentioned before, IHL and the guiding principles known as “humanitarian principles” were all established on a common logic and an instinct to help others and relieve suffering. Therefore, these principles are widely accepted at the global level because they embody customary and religious laws and principles that have been used to regulate and guide people’s behaviour across every cultural divide. For example, the orders the Prophet gave to Muslim fighters in the battle of Mu’tah emphasise the same principles as IHL (such as avoiding the killing of civilians and destroying the infrastructure).

Moreover, humanitarian principles also go hand-in-hand with Islamic teachings. Humanitarian action in helping others is a core principle in Islam under the concept of “Sadaqa”. “Sadaqa” and humanitarian principles both apply the principle of impartiality in that the people who are entitled to this aid are those in need regardless of their race or ethnicity. Universality and solidarity with human beings are also mentioned in Islam. For example, the saying “mercy for humans” (“rahmatan lel alameen”) does not specify a religion, an ethnicity, or a race.

There have been many studies conducted on this issue, and references may be found at the end of this document.

11. How can NGOs still adhere to the “independence” principle if their HQ and funding sources are operating from certain states with certain agendas?

Very few humanitarian organisations are able to raise funds exclusively from private sources with no strings attached. In many cases, funding is secured through state donations, and donors often have a specific interest or agenda. However, the acceptance of such funds from a state or another interested donor does not in itself mean that an organisation is no longer independent. The crucial factor is whether humanitarian actions are autonomous of the non-humanitarian objectives of the donor. “Autonomy” does not mean that the action has to be opposed to the interests of the donor or HQ state. It just means that it must not be influenced by such interests. Sometimes,

humanitarian and other interests align. For example, if a donor wants to establish a hospital in a certain area, acceptance of funds to manage that hospital will remain independent as long as an objective humanitarian needs assessment prioritises this hospital. In other cases, donor conditions may not align with such needs assessments. Principled action would require the organisation to renegotiate or reject the donation.

Earlier, it was stated that the perception of principled action is just as important as the principled action itself. For this reason, depending on the circumstances, some organisations do not accept funding from interested parties such as donor states that are also a party to the conflict. Humanitarian organisations should always be aware of how their actions are perceived by relevant actors and work to rectify false perceptions through dialogue and demonstrated principled action.

United Nations humanitarian agencies struggle to be neutral and independent, and to be seen as such. This is because the United Nations consists of states; its agencies are the creation of states; and their mandates are established to support states. UN entities often encounter government resistance if they are perceived to be engaged in activities that depart from the interests and control of governments. In addition, the United Nations is fundamentally a political institution. Therefore, it will always be difficult for UN humanitarian agencies to assert their independence from political negotiations conducted by other UN bodies. It is possible for UN agencies to be effective in complex conflict situations and to be seen as behaving in a neutral, impartial, and independent manner, but it does take extra effort on their part.

In the same way that parties to a conflict facilitate aid on the ground for many motives such as an

improved reputation, donors also have similar interests. The key point here is that humanitarian actors should look for the common humanitarian interests they have with donors. The other interests – as long they don't contradict the principled approach or create the perception of doing so – should not be a concern.

4

ENGAGEMENT WITH ARMED ACTORS

12. Some parties to the conflict have the best understanding of local conditions. Would coordinating with an armed party to the conflict for security, cost reduction, or aid distribution be compatible with a principled approach?

Coordinated action with all concerned parties to a conflict is not just compatible with a principled approach, it is vital to a principled approach. Engagement on a consensual basis is the best way forward, as this ensures that the parties know about your position and approach. However, don't confuse this principled cooperation with unprincipled support or deference. Remember that all parties to a conflict have the right to verify the humanitarian and impartial nature of the assistance as well as to prescribe some technical arrangements for the practical delivery of the assistance. Humanitarian actors should

cooperate in their exercise of this right. However, these rights do not mean that parties to a conflict may direct humanitarian activities, such as determining beneficiaries or the types of assistance to be provided.

In order to be consistent with a principled approach:

Yes, you should, where possible, consult with all parties to benefit from their understanding of local conditions. Their local knowledge may be invaluable, especially when local conditions may have changed since access was last permitted or the last information was received. This knowledge, along with other sources, may assist your own unbiased needs assessment. Consulting all parties will also provide the opportunity to assure them that you are, in fact, a principled humanitarian actor.

Yes, you should coordinate on aid delivery to ensure you are using a safe route, have the necessary permits through checkpoints, etc.

Yes, you should give parties to the conflict access to inspect your materials and to communicate with your staff, so they can be sure the materials are, indeed, of a humanitarian nature and intended for civilians in need in order to satisfy their right of control. There is a fine line between inspection and interference. So, make sure you read the points below on what is not allowed. If done in a principled manner, communicating and engaging with parties to a conflict does not mean endorsing them.

Yes, if your organisation provides medical services, these services should also be available on the basis of need for ensuring medical care for the sick and wounded of parties to the conflict, even the fighters.

No, you should not use the armed forces of a party to the conflict as escorts. Not only may this have an impact on the way others perceive your neutrality, but it puts your people and materials in danger. It may put civilian populations whom you seek to assist in danger as well. Armed forces members and their equipment are legitimate military targets; and, when you are close to them, you and your relief materials may become legitimate collateral damage.

No, you should not let parties to a conflict deliver your aid. You are responsible for ensuring it reaches the intended beneficiaries, and you must do everything possible to ensure it does not end up in the hands of armed actors.

In many cases, parties to a conflict request the payment of “taxes” in order to facilitate humanitarian assistance. In an ideal world, humanitarians would not be requested to pay taxes at all. Yet, in the real world, this

can create complex challenges to neutrality. In normal situations (meaning when there is no war), states collect taxes while non-state parties are prohibited by the state from doing so.

Every effort should be made to negotiate for an ability to operate without paying taxes or fees of any kind. This is extraordinarily difficult in situations in which there may be multiple humanitarian actors simultaneously engaging with the same party to the conflict but in an uncoordinated way. An agreement to pay some form of tax or fee by one organisation can undermine and weaken the negotiations of other actors on this issue and, indeed, on other issues being negotiated. In some countries, humanitarian agreements with parties to a conflict or codes of conduct to which the humanitarian actors themselves agree address the payment of taxes. Governments often exempt humanitarian organisations from certain taxes (for example, on imported humanitarian goods), which can help to leverage negotiations with non-state armed groups to reach similar agreements.

Check to see whether your organisation has made any such commitments, and be aware of what the existing practice (spoken and unspoken) is in a given context. Once a precedent has been established, it is extremely difficult to reverse it. In addition, be aware that the payment of taxes to non-state parties to a conflict may be at odds with counter-terrorism laws or other restrictions.

If problems occur, your skills of negotiation will become very important and permit you to navigate difficult conversations while maintaining a firm stance that is supported by the humanitarian principles. Remember that IHL encourages aid NGOs to engage with parties, and such communication is a good way of improving the way IHL and humanitarian principles are understood throughout the conflict.

13. How flexible are these principles? Can they be altered to reflect changes in the agendas of armed actors and conflict dynamics?

For humanitarian actors who have committed to principled humanitarian action, the core humanitarian principles are not altered (although different humanitarian actors may apply additional principles such as transparency, community engagement, accountability, etc.).

When engaging with parties to the conflict, a mutually acceptable position may be reached through negotiation on a pragmatic basis without contradicting the humanitarian principles. Note that, as always, your actions should be limited by what is required by the particular operating conditions of your organisation and the requirements of the situation.

As you know, territorial control can shift quickly, as can leadership structures within parties to the conflict. Although it may lead to a short-term advantage in some circumstances, circumventing the principles may seriously impair the ability of your organisation and, possibly, the broader humanitarian community to deliver effective assistance across the rest of the conflict zone or, in fact, in the same area if there is a change of those in control. Therefore, the urge to circumvent principles should be resisted with a calm re-engagement with the new leaders of the group by reaffirming your consistent principled position. If you are being subjected to repeated attempts at diversion or pressure, you may choose in some instances to suspend your operations temporarily until a new understanding is reached. This conveys to your interlocutors the seriousness of the issue you seek to address, reinforces their obligation to refrain from interfering with

impartial humanitarian activities, and underscores the importance of dialogue and mutual understanding before your operations can proceed.

Not every party to the conflict is aware of the nature of humanitarian organisations, how humanitarian principles underpin their work, or why your organisation is taking a principled approach. Parties to the conflict, therefore, need to be engaged through the principled approach to ensure in particular that they understand the restricted mandate forming the basis of your request, i.e., delivery of assistance to civilians in need, something that most parties to the conflict cannot easily refute.

14. Why would we want to be neutral when we are provided security by armed actors in the areas in which we work?

All parties to a conflict have a responsibility under IHL and towards the population to respect and protect humanitarian actors, and they must make efforts to ensure their safety, security, and freedom of movement. Therefore, your safety and security should not depend on whether or not you take the side of any particular party. If a party is not aware of its obligation to help ensure your security regardless of your political allegiance, you may engage with them on this topic to convince them of the importance of your neutrality and your value as a principled humanitarian actor.

Remember that there is a need for humanitarian action all over Syria, and different regions are

often controlled by opposing parties to the conflict. If you are not neutral or seen to be too close to or giving preference to one party or the other, how will the other belligerent parties perceive this the next time you try to enter a different area or if control shifts in the areas in which you work? It could have implications not just for your access to populations in need but for your own security as well.

Remember, too, that humanitarian organisations do not work in a vacuum. What you do may have an impact on how other actors and the humanitarian community as a whole are perceived in other areas of the country. While your support of one party in exchange for its security may initially be successful, the long-term effect of these actions and the long-term solution of the conflict should be paramount considerations.

15. If we promote IHL and apply the humanitarian principles, wouldn't that make us a target for certain groups in the conflict, given that they would perceive us as not believing in and supporting their cause?

One of the main priorities of a principled humanitarian organisation is to make each party to the conflict aware that remaining non-aligned and non-partisan does not mean they are opposed to that party or its values. Rather, it is a part of an overall strategy to assure access to civilians in need. This frames the engagement with the parties and aims towards a mutual understanding. Therefore, whether you believe in their cause shouldn't be determinative; rather, it should be the shared belief of all entities that you are acting solely on a humanitarian basis in support of the civilian population only.

Not every engagement will work every time. It may be that the process of negotiation and building understanding will take place over several encounters and must be continually maintained as the politics of the context change. Maintaining a focus on the needs of the civilian population displays a consistency that aids believability in your core aim.

Maintaining a principled approach over the entire period of the operation fulfils the promise and delivers on the trust placed at the start of that engagement. This assists greatly in fostering future constructive relations. Correspondingly, an inconsistent approach betrays that trust and should be avoided in all but the most extreme situations.

5

ACCOUNTABILITY

ACCOUNTABILITY

5

16. What are the consequences tied to violating the principles? And to whom will we be held accountable?

The ultimate consequence of violating the principles is not being able to reach those in need, and it is those people who are in dire need of humanitarian assistance and protection to whom you are accountable. Humanitarian principles are the way of working, the means to the end. The principles are viewed by the humanitarian community as an effective means to an end. Many donors require their grantees to adopt the humanitarian principles, which, if not met, could lead to the suspension of funds and the denial of humanitarian activities for those in need.

However, you should not see humanitarian principles as pure “law” in that their violation carries no direct punitive sanction in a courtroom. Remember, however, that, in order for relief action

to be covered by certain provisions of IHL, it must meet the humanity and impartiality requirements. Therefore, you cannot expect parties to a conflict to facilitate humanitarian relief if you are not following these principles.

The primary basis for humanitarian action is the desire to relieve people's suffering. Humanitarian workers should be driven by their willingness to help and not by their fear of punishment or consequences from violating the principles. Moreover, organisations that consistently disregard the principles may find that the humanitarian community does not want to be seen as being aligned with them, and it will distance itself from unprincipled actors.

17. People have been dying for years without any accountability mechanism for those violating IHL. Why should we consider supporting IHL if it hasn't been protecting them?

Remember that IHL is like a bandage rather than a cure. It is far from perfect, but it is the result of over 150 years of testing what is realistic in conflict situations. It provides the basis for dialogue with all parties to a conflict about the preservation of humanity and practical measures to ensure that people remain safe and protected even during times of war. IHL's accountability mechanisms are also far from perfect. Many people, including leaders of state and non-state parties to the conflict, are getting away with crimes. Yet, just because accountability is not immediate does not mean it will not come. Parties that ignore IHL are condemned, and breaches are documented,

stored away for a future determination of accountability through any one of a number of possible measures. For example, Bosnian Muslims strongly believed that IHL was useless; but, years after the conflict ended, there have been over 100 prosecutions on the basis that IHL was breached. Many, including top commanders on all sides of that conflict, have been imprisoned. Even if the International Criminal Court does not have jurisdiction in Syria, prosecutions for war crimes may also be pursued through the national courts of all states through the legal principle of universal jurisdiction. That means that persons who have committed war crimes, genocide, and crimes against humanity can never be safe from prosecution when they travel or reside in other countries. Note that Nazi war criminals are still being prosecuted today more than 70 years after the end of World War II. In 2016, a 95-year-old man was arrested in Germany on suspicion of crimes committed while a medical assistant at Auschwitz concentration camp.

And just because people are not being held accountable does not mean that IHL is not working to protect Syrians. Restraint has been shown by parties to the conflict. However, it is difficult to observe the successes in the Syrian situation since people mainly focus on violations.

NGOs have found that IHL may be persuasive in advocacy or negotiations, bringing to light steps and measures that should be taken to protect civilians better during times of war, highlighting atrocities in an easily translatable way, and giving the contravening party an opportunity to reflect on its actions.

6

HUMANITARIAN PRINCIPLES IN CONTEXT

18. Even though we are humanitarian workers, we are still Syrians with different affiliations, visions, and opinions. Does being neutral mean that we are not entitled to our own views?

Certainly, each and every individual is entitled to his or her opinion – especially regarding the crisis in Syria. After all, it is your country.

You will know people who have suffered directly, and you may have been inspired to take up humanitarian work because of what you have seen. However, it must be remembered that there are consequences to the expression of those opinions in the wrong circumstances – especially, as a humanitarian actor who should want access to all Syrians in need.

Ask yourself this: Aren't there Syrians in need in areas where a party to the conflict has views with which you disagree? Aren't those people entitled to humanitarian assistance? Will this party let you in after you have put a label on it?

As a dedicated humanitarian worker, you will be operating in some of the most challenging situations, operating in territory where you are surrounded by those holding different ideologies in the middle of a tense and fast-moving conflict. Every day brings a new practical problem to overcome. Even though one representative of a party may seem friendly, those around him or those who replace him may not hold the same degree of tolerance for your views. They may, as a result, seek to frustrate your efforts to deliver humanitarian assistance. Strict application of neutrality avoids this potential problem, removing one unknown variable from the equation to be factored into any engagement and, thus, leaving space to focus on solving other difficulties.

Acting in accordance with the humanitarian principles doesn't deny you the right to hold views favouring one side or another; it simply asks you not to exhibit these views in your professional capacity and to exercise restraint in communicating your views for the period of your employment. There have been examples in which a Facebook comment or a casual meeting in a café with a friend has been the basis for an accusation of partiality, leading parties to the conflict to withdraw their support. Even using labels such as freedom fighters, revolutionaries, traitors, or terrorists may create the perception of a lack of neutrality and should be avoided by principled humanitarian actors.

19. Why should we be concerned with international laws regulating armed conflict when what the Syrian uprising is really about is freedom and human rights?

Freedom and human rights are central to international law. Still, you must remember that not all states are in agreement about the full scope of applicable human rights in war, but they all accept that IHL is applicable.

IHL focuses on the protection of civilians and civilian property and seeks to impose restraint on those participating in the fighting—both the good-intentioned and the bad-intentioned—in order to protect those who are not participating in the fighting, including civilians, fighters who have been wounded, and people who have been detained.

IHL is complementary to human rights and part of a system that seeks to ensure that people are treated with humanity and can seek the fulfilment of their human rights and freedom. The strands you identify are not incompatible. However, you may find yourself on a catastrophic slippery slope if you justify violations of humanitarian or human rights law in the current conflict because you don't think certain parties live up to your conception of human rights and freedom. The problem is that almost every party to a conflict thinks that it is the "just" party, and the logical result is that every party would violate the rules in seeking a "just" outcome. This is why IHL specifically separates the means from the end. As we have said, IHL is only a bandage. It is not concerned with who is right or wrong, only to prevent everyone from bleeding to death before peace, justice, and reconciliation are achieved.

20. Can we remain a principled humanitarian actor if we also contribute to the monitoring of human rights violations (e.g., attacks on our facilities, beneficiaries, civilians in general)?

Humanitarian actors are often asked why they should not name and shame those who are responsible for violations or, at least, contribute to processes that do so. There is nothing in the humanitarian principles per se that prevents a principled actor from contributing to human rights monitoring if it is done without bias or favouritism. The extent to which these two different activities are undertaken depends on the precise mandate, capacity and expertise, and position of your organisation.

For many traditional humanitarian organisations, the role of observing, documenting, and reporting

violations against populations in need is purely operational. Such organisations need information about the situation on the ground in order to tailor the type of response needed — e.g., if there has been a chemical weapons attack. Moreover, many organisations that undertake protection work engage parties in confidential dialogue in order to improve their compliance with IHL. In order to do this, they must understand what violations are taking place.

Such organisation may also call for the end to violations in general without singling out responsible parties in all but the most severe and persistent violations. The rationale of remaining silent is very practical. Parties to a conflict are more likely to refuse humanitarian access if they think you are going to report on their conduct. Even those parties who generally try to respect IHL may be cautious since they understand their behaviour is unlikely to be perfect.

Other humanitarian organisations do choose to contribute to the public documentation of human rights and IHL violations and abuses. They are of the view that neutrality is not synonymous with silence and that, in certain circumstances, the benefit to be gained by contributing to human rights monitoring outweighs the risk of losing access. The Islamic Charter of the Work of Goodness, a document intended to provide guidance to Islamic faith-based charities, contains the principle of positive neutrality, which holds that such organisations “shall bear true witness against any observed violation of the rights of creatures; it shall not remain silent before such abuse for the sake of neutrality. In case the organisation cannot respond directly to the violation, it shall inform another specialised organisation.”

Organisations that provide both humanitarian assistance and human rights monitoring should have clear guidance as to how to balance the responsibilities.

21. What are the next steps (now that we have a better understanding of IHL, the humanitarian principles, and how they are related to the Syrian context)?

Now that you have a better understanding of IHL, the humanitarian principles, and their application to the Syrian conflict, the first step your organisation should take, if it hasn't done so already, is to clarify its level of commitment to principled humanitarian action. Principled humanitarian actors should review their own policies and actions and make sure that their staff has as much guidance as possible.

Second, you have a great responsibility to help promote and disseminate these principles across the humanitarian community, including to your own colleagues, agencies and intermediaries,

camp managers, and donors, all of whom have a vested interest in taking a principled approach. Where possible, your organisation may make principled agreements with other humanitarians as well as parties to the conflict in order to give practical effect to the principles.

Your knowledge and skills will be invaluable the next time you engage with a party to the conflict or a civilian group that is requesting assistance. The importance of IHL and HPs to local communities and groups can only increase through your work with capacity building and disseminating information.

You have taken on an incredibly rewarding and noble mission. You are working to serve people who are dependent on you. Let us make sure you are able to reach them in a safe, sustainable, and dignified manner.

Further Resources

- Humanitarian Access in Situations of Armed Conflict: Handbook on the International Normative Framework & Practitioners' Manual – Swiss Federal Department of Foreign Affairs & Conflict Dynamics International.
- “Rahmatan lil-'alamin” (A mercy to all creation): Islamic voices in the debate on humanitarian principles – International Review of the Red Cross.
- Customary International Humanitarian Law database -The International Committee of the Red Cross.
- OCHA on Message: Humanitarian Principles – UN OCHA.
- Risk Management Toolkit in Relation to Counter-terrorism Measures – Norwegian Refugee Council.



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SYRIAN LEGAL DEVELOPMENT PROGRAMME
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NGO Forum
NGOs operating in northern Syria



