

GUIDING PRINCIPLES ON THE RIGHT TO HUMANITARIAN ASSISTANCE

FOREWORD

Since its inception in the 19th Century, international humanitarian law has constantly evolved new concepts and modalities. There is no need here to summarise these historical developments since they are well known. The underlying cause of these changes, however, has been the modification of a number of important elements in situations in which international humanitarian law has to operate. These elements are extremely varied including, among the broadest and most basic, the manner in which military operations are conducted, the political behaviour of States, the changing structure of international community and the evolving international legal concepts and new technology of all kinds.

To encompass these changes – or to adapt to them – international humanitarian law has been obliged to modify its earlier notions which may no longer be adequate – or to create new concepts – to make possible its effective operation. All such changes and innovations must however fully respect the cardinal principles of international humanitarian law which remain constant, regardless of the changing context and which are essential to its very existence.

One of these principles is the maintenance of absolute neutrality when humanitarian action involves aid to victims of armed conflict. This means neutrality and impartiality as between the parties to the conflict and the avoidance of any political bias. Applying this principle is by no means as easy or as simple as might appear and international humanitarian law may indeed find itself in the midst of political cross-currents.

The international community is today deeply perturbed by widespread armed conflicts of an ethnic or similar nature and is calling for humanitarian intervention to relieve the excruciating sufferings of innocent civilian victims. The legal status of the conflicting parties is often confused according to whether States or different military factions are involved in an internal armed conflict. Military forces may prevent the delivery of humanitarian aid, thus giving rise to the need for humanitarian assistance combined with armed protection to enable such aid to be delivered. The United Nations as part of its peace-keeping mandate has, in a number of recent cases, sent troops under its command to ensure the effective provision of humanitarian aid: this recent practice has given rise to the assertion of a “right to humanitarian assistance”. It may be added that it is in regard to the provision of humanitarian assistance that the most flagrant violations of the humanitarian conventions have recently occurred.

The above considerations bring into relief the variety of factors which can exist in situations calling for international humanitarian relief under circumstances which developed international law has not yet had occasion to address or to formulate legal concepts to meet these new contingencies. It is one of the aims of the International Institute of Humanitarian Law to promote the development of international humanitarian law to meet these and other new situations. In addressing this need, the Council of the Institute has prepared a document entitled “Guiding Principles on the Right to Humanitarian Assistance” which takes into account the Conclusions and Recommendations of the 17th Round Table on Current Problems of Humanitarian Law: “The Evolution of the Right to Assistance”, organised by the International Institute of Humanitarian Law at Sanremo, Italy, from 2 to 4 September 1992.

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The Council of the International Institute of Humanitarian Law:

Recognising that human sufferings, as a result of armed conflicts, in all their aspects profoundly trouble the conscience of mankind and that world public opinion demands that effective measures be undertaken to reduce them to the greatest possible extent,

Noting the valuable action to provide humanitarian assistance undertaken by many national and international actors, in particular by ICRC, UNHCR, UNICEF, other organisations of the UN system, as well as other intergovernmental and non-governmental organisations,

Bearing in mind the purposes of the United Nations, in particular those concerning the maintenance of international peace and security, international co-operation in solving international problems of an economic, social, cultural and humanitarian character, and in promoting respect for human rights,

Considering that it is essential to reinforce humanitarian action in order to alleviate human suffering, thereby contributing to the development of international solidarity and the strengthening of friendly relations between peoples,

Stressing that humanitarian assistance, both as regards those granting and those receiving it, should always be provided in conformity with the principles inherent in all humanitarian activities; the principles of humanity, neutrality and impartiality, so that political considerations should not prevail over these principles,

Reaffirming the fundamental concern of mankind and of the international community in the case of emergencies, to ensure the protection and well-being of human beings, and also the respect for human rights and humanitarian law,

Recognising that it is indispensable to undertake new measures to render rapid and efficient assistance to human beings in cases of natural and technological disasters, violence and armed conflicts, including the development of the right to humanitarian assistance,

Recognising that the respect of State sovereignty and of the principles of international solidarity and co-operation are the essential components of the right to humanitarian assistance,

Desiring to promote the right to humanitarian assistance,

Recommends the following Guiding Principles on the Right to Humanitarian Assistance:

Principle 1

Every human being has the right to humanitarian assistance in order to ensure respect for the human rights to life, health, protection against cruel and degrading treatment and other human rights which are essential to survival, well-being and protection in public emergencies.

Principle 2

The right to humanitarian assistance implies the right to request and to receive such assistance, as well as to participate in its practical implementation.

Persons affected by an emergency may address themselves to competent national or international organisations and other potential donors to request humanitarian assistance. They shall not be persecuted or punished for making such a request.

Principle 3

The right to humanitarian assistance may be invoked:

(a) when essential humanitarian needs of human beings in an emergency are not being met, so that the abandonment of victims without assistance would constitute a threat to human life or a grave offence to human dignity;

(b) when all local possibilities and domestic procedures have been exhausted within a reasonable time, and vital needs are not satisfied or are not fully satisfied, so that there is no other possibility to ensure the prompt provision of supplies and services essential for the persons affected.

Principle 4

The primary responsibility to protect and assist the victims of emergencies is that of the authorities of the territory in which the emergency causing urgent humanitarian needs occurs.

Principle 5

National authorities, national and international organisations, whose statutory mandates provide for the possibility of rendering humanitarian assistance, such as the ICRC, UNHCR, other organisations of the UN system, and professional humanitarian organisations, have the right to offer such assistance when the conditions laid down in the present Principles are fulfilled. This offer should not be regarded as an unfriendly act or an interference in a State's internal affairs. The authorities of the States concerned, in the exercise of their sovereign rights, should extend their co-operation concerning the offer of humanitarian assistance to their populations.

Principle 6

For the implementation of the right to humanitarian assistance it is essential to ensure the access of victims to potential donors, and access of qualified national and international organisations, states or other donors to the victims, when their offer of humanitarian assistance is accepted.

In the case of a refusal of the offer, or of access to the victims when humanitarian assistance action is agreed upon, the states and organisations concerned may undertake all necessary steps to ensure such access, in conformity with the international humanitarian law and human rights instruments in force and the present Principles.

Principle 7

The competent United Nations organs and regional organisations may undertake necessary measures, including coercion, in accordance with their respective mandates, in case of severe, prolonged and mass suffering of populations, which could be alleviated by humanitarian assistance. These measures may be resorted to when an offer has been refused without justification, or when the provision of humanitarian assistance encounters serious difficulties.

In the event of measures of coercion being resorted to by competent UN organs, for reasons other than those of a humanitarian nature, the right to humanitarian assistance should be respected, in particular by exempting from such measures materials for the essential humanitarian needs of the populations.

Principle 8

In the case of measures of coercion undertaken by the competent UN organs and/or regional organisations, when humanitarian assistance is provided for, these organs should ensure that such assistance is not diverted for political, military, and/or other similar purposes, and that the principles of humanity, neutrality and impartiality will be fully respected and implemented.

Principle 9

Humanitarian assistance may consist of any material indispensable to the survival of victims, such as foodstuffs, water, medication, medical supplies and equipment, minimum shelter, clothing; of services, such as medical services, tracing services, religious and spiritual assistance, as well as civil defence, in conformity with the tasks defined in international humanitarian law.

Principle 10

All authorities concerned will grant the facilities necessary for humanitarian assistance to be provided.

All authorities concerned will allow the transit of goods and personnel bringing humanitarian assistance, and will have the right to prescribe technical arrangements for these operations.

Humanitarian assistance can, if appropriate, be made available by way of “humanitarian corridors” which should be respected and protected by competent authorities of the parties involved and if necessary by the United Nations authority.

Principle 11

The status and protection of personnel engaged in humanitarian assistance operations shall be regulated on the basis of the applicable law. This is the case, in particular, as regards the personnel of the United Nations or of organisations of the UN system when engaged in humanitarian assistance activities, the personnel of ICRC, the personnel of professional organisations with humanitarian objectives, and the personnel of other national and international organisations engaged in humanitarian assistance activities. The status, rights and obligations of all these categories of personnel should be regulated by the respective national and international rules.

Principle 12

In order to verify whether the relief operation or assistance rendered is in conformity with the relevant rules and declared objectives, the authorities concerned may exercise the necessary control, on condition that such control does not unduly delay the providing of humanitarian assistance.

Principle 13

In order to improve efficiency and to avoid duplication and waste, the efforts of the various actors in any humanitarian assistance operations should be co-ordinated by those who bear the main responsibility for such operations.

Principle 14

All the actors in any humanitarian assistance operation are invited to respect and implement the present Principles. They may conclude such special agreements as may be necessary in any given situation.

The present Principles should not be interpreted as impairing or modifying any rights and obligations under international law in force.