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Impartial Humanitarian Organizations

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Overview

The purpose of this thematic brief is to:

- Define and describe an ‘impartial humanitarian organizations/bodies’ under International Humanitarian Law.
- Discuss the rights and protections afforded to organizations falling under this definition.

Armed conflict situations are regulated by International Humanitarian Law (IHL), also known as the Law of Armed Conflict (LOAC), the primary goal of which is to limit the suffering of civilians and combatants in conflict.¹ IHL grants the right to impartial humanitarian organizations to offer their services to parties to the conflict, as well as special status and treatment, described in this brief. The application of IHL in conflict settings is highly relevant to sanctions regimes, given that ten of the current fourteen UN sanctions regimes are applied in situations of armed conflict, with the goal of preventing, mitigating, and resolving conflict.² In these situations of armed conflict, UN sanctions apply alongside IHL and can, to some extent, share a convergence of goals. As described in Policy Brief 4, UN sanctions, when appropriately designed and imposed, can help enforce IHL.

Yet in practice, UN sanctions can also negatively affect the status and access of impartial humanitarian organizations, limiting their ability to reach communities affected by conflict as otherwise regulated by IHL. These limitations can come directly from sanctions measures, or indirectly through implementation (donors’ restrictions, third States’ restrictions, or banks de-risking), and/or a broader chilling effect on humanitarian organizations. These legal and practical constraints may impede the ability of impartial humanitarian organizations to operate in accordance with the fundamental IHL principle and requirement of impartiality – described below – which is essential for the access, operations and safety of such organizations in conflict settings. As a result, humanitarian actors are often left facing a choice between strict compliance with UN sanctions that inhibits their actions but avoids diversion of aid, or continuing impartial delivery but risking a violation of sanctions. The former comes with the burden of failing to live up to the humanitarian principles guiding their work, while the latter exposes them to potential criminal accountability and reputational harm.

It is therefore essential that UN sanctions designers understand the basic criteria that constitute an impartial humanitarian organization and the ensuing protections that such organization should be afforded under IHL. Once the purposes and limits on impartial humanitarian organizations are recognized, it becomes clear why incorporating safeguards for impartial humanitarian organizations to protect or exclude them from the scope of UN sanctions regimes is necessary. Such safeguards would be consistent with the broader aims of the Security Council and ensure alignment with IHL.

The definition of impartial humanitarian organizations under IHL

There is a wide range of actors working to prevent or alleviate human suffering in armed conflict settings, notably by providing aid to civilians, medical care to the wounded and sick, and assistance to persons deprived of their liberty. However, not all the actors operating in armed conflicts may qualify as an impartial humanitarian organization or an impartial humanitarian body under IHL. Three elements are required to qualify as an impartial humanitarian organization.³

1. “**Organization**”: This requirement excludes loose associations of individuals, or private persons engaging in charitable activities.⁴ The organization must be capable of complying with professional standards for humanitarian

activities,⁵ such as humanity and impartiality, and to ensure that its activities are not discriminatory or produce any other harmful effects.

2. **“Humanitarian”**: The activities of the organization must be humanitarian in scope.⁶ However, it is not sufficient to engage in a “humanitarian activity” to qualify as a humanitarian organization. The organization itself must have an exclusively humanitarian character and pursue only humanitarian aims with no other commercial, political, military, or intelligence activities or purposes. Other actors, such as armed forces or private companies, can engage in relief activities, such as food distribution, but doing so is not enough for them to qualify as impartial humanitarian organizations under IHL and to benefit from the “right of initiative” and corresponding special status and treatment under IHL. Medical activities undertaken by civilians or other persons, however, benefit from additional protections under IHL.
3. **“Impartial”**: An impartial humanitarian organization must always operate in an impartial manner. Impartiality is the requirement not to make any “discrimination as to nationality, race, religious beliefs, class or political opinions”⁷ or any other similar criteria - including discrimination based on whether or not an actor, entity or group is sanctioned. In other words, only the needs of persons affected by the conflict may direct the proposals, priorities, and decisions of humanitarian organizations when determining which activities to undertake and where and how to implement them. As further explored in the sections below, sanctions regimes may directly or indirectly challenge the ability of humanitarian organizations to act impartially and/or to be perceived as impartial actors by parties to the conflict.

IHL does not require an impartial humanitarian organization to be “neutral” or “independent.”⁸ However, based on decades of humanitarian practice and as reflected in General Assembly resolutions, neutrality and independence, along with humanity and impartiality, constitute the fundamental principles guiding humanitarian action by the Red Cross and Red Crescent Movement.⁹

While IHL does not place the determination of impartiality in the hands of a party to the conflict, in practice, it often depends on the subjective belief of the parties. Where a humanitarian organization is perceived as partial, both acceptance by the parties and access to populations in need tends to decrease. Where the implementation of sanctions creates or increases the perception of partiality, it can frustrate the goals of impartial humanitarian organizations.

The status of “impartial humanitarian organizations” under IHL entails special treatment.

Right of initiative: Impartial humanitarian organizations have a right, but no obligation, to offer their services (i.e. to undertake relief and protection activities) to parties to a conflict,¹⁰ for the benefit of persons affected by the conflict. This category encompasses civilians as well as former combatants who were involved in the fighting but are now *hors de combat* due to wounds, sickness, detention, or any other cause. Concretely, this means two things.

First, impartial humanitarian organizations may propose relief and protection activities to both States and non-State actors for the benefit of the civilians living under their control. This is true even when the group controlling territory is designated on a sanctions list. An offer of services by an impartial humanitarian organization may not be regarded as interference in the conflict or as a hostile act. In practice, it is often impossible for humanitarian actors to avoid interactions with listed individuals or authorities – even armed groups acting as *de facto* authorities – when they control territory. Such engagement with designated entities or individuals should not be prohibited by sanctions nor interpreted as such by implementing States or donors. However, operating in the areas under their control means there are risks that humanitarian actors may be required to pay taxes, fees, or that their aid will be diverted, potentially constituting a sanctions violation. The practical reality of working and operating in the field means that there are no “zero risk” settings. Instead, sanctions and humanitarian actors must find ways to balance risks and address the inherent tensions of specific

settings. One important step is to distinguish between “avoidable” risks, which can be addressed by mitigating measures adopted by States and humanitarian organizations, and “unavoidable” risks, which are necessary for reaching vulnerable populations at a given moment.

Second, under IHL, impartial humanitarian organizations must also undertake relief and protection activities for the benefit of listed individuals – even listed armed fighters – who are *hors de combat* or otherwise victims of the armed conflict. In other words, only the needs of persons affected by the conflict can determine who is or is not entitled to receive humanitarian assistance and protection, and the designation of individuals under a UN sanctions regime is irrelevant. In practice, humanitarian actors may face situations in which they have to provide humanitarian aid to *hors de combat*-listed individuals, including medical relief, food, water, and sanitation – and these should not be considered as sanctions violations.

Consent of the parties concerned: Impartial humanitarian organizations must obtain the consent of the parties to the conflict before undertaking relief and protection activities.¹¹ However, under IHL, parties to the conflict may not reject the offer of relief or protection activities made by impartial humanitarian organizations if they are unable and/or unwilling to meet the existing basic needs of all the victims of the conflict (civilians, the wounded and sick, and detainees).¹²

Duties of third States regarding humanitarian activities: Once the relevant parties to the conflict grant their consent, IHL does not require impartial humanitarian organizations to request additional authorizations from third States or from the UN to undertake these activities in conflict areas. In international armed conflict, this means that, once the relevant conflict party grants consent, third States are expected to allow and facilitate the rapid and unimpeded passage of relief consignments, equipment, and personnel. In non-international armed conflict, there is no equivalent obligation of third States. Both the Security Council and the General Assembly have emphasized the importance for neighbouring States facilitate the access for humanitarian relief in non-international and international armed conflicts.¹³ This is important because relief supplies often originate in or transit through third States. In practice, it can create challenges in cases where humanitarian relief passing through third States is destined to areas under the control of sanctioned individuals or entities. Third States may find it difficult to both comply with their sanctions obligations while not impeding the passage of humanitarian relief according to IHL.

Interplay between sanctions and impartial humanitarian organizations

As described in *Enforcing UN Sanctions and Protecting Humanitarian Action*,¹⁴ sanctions measures can pose *de facto* and *de jure* constraints on humanitarian actors’ ability to operate in certain areas or for the benefit of certain categories of individuals. These constraints challenge the fundamental requirement under IHL according to which humanitarian actors must operate in an impartial manner, i.e. based on needs alone and without discrimination – including discrimination based on whether or not an actor, entity or group is sanctioned. Concretely, through limiting access to specific communities, sanctions measures can jeopardize the ability of humanitarian organizations to operate impartially at all times, simply because they restrict humanitarian organizations’ ability to decide which activities to undertake and where to implement them on the basis of needs alone.

In turn, these constraints also take a toll on the ability of humanitarian organizations to be perceived as neutral actors by the parties to the conflict – in other words, as actors who will not take sides. Indeed, if a humanitarian organization cannot operate in a particular area under the control of a party to the conflict because of sanctions but it can still operate in other areas under the control of another party to the conflict, it may end up being perceived as 1) acting in a discriminatory manner and 2) favoring one side of the conflict over another. And this perception of partiality and lack of neutrality will either cost it its access or jeopardize the safety of its staff. It is therefore essential that, at the very

least, UN sanctions designers understand the basic criteria that constitute an impartial humanitarian organization and the ensuing protections that arise.

On the other hand, while State parties to the conflict and neighbouring States have certain obligations under IHL, they may take necessary, appropriate, and reasonable measures to ensure the *bona fide* nature of the activities carried out by humanitarian actors. Indeed, *impartial* humanitarian actors are uniquely privileged under IHL, but they also are not exempt from all limitations imposed by sanctions.

In addition to verifying the *bona fide* nature of the humanitarian activity and of the humanitarian actors carrying it out, there are other sanctions restrictions consistent with IHL that States can implement including measures to avoid diversion of aid or payment of fees and/or per diem to listed individuals and entities. Under IHL, parties to the conflict, as well as States in which the humanitarian activity originates or transits, are allowed to make technical arrangements and to undertake appropriate measures of control to ensure that the relief consignments are exclusively humanitarian and not for the benefit of other persons than for whom they were intended.

It is therefore consistent with IHL for States to take necessary, appropriate, and reasonable measures to monitor or supervise the activities of humanitarian actors to ensure that they are legitimately delivered, provided such measures are applied in good faith, and that their nature, extent, or impact do not prevent the rapid delivery of humanitarian relief in a principled manner.

While often a complex and difficult practice, States can interpret, implement, and enforce UN sanctions in an effective manner while remaining in compliance with IHL.

References

¹ Among the main sources of IHL are treaties, such as the four Geneva Conventions of 1949 and the two Additional Protocols of 1977, and customary IHL. Customary IHL is made up of rules that are considered “general practice accepted as law” and that exist independently of treaty law. Customary IHL is of crucial importance in today’s armed conflicts because it fills gaps left by treaty law applicable to both international and non-international conflicts and so strengthens the protection afforded to victims. See, International Committee of the Red Cross, “Treaties, States Parties and Commentaries,” last accessed 18 March 2022, <https://ihl-databases.icrc.org/customary-ihl/eng/docindex/home>.

² Somalia, Democratic Republic of Congo, Central African Republic, Sudan, South Sudan, Libya, Yemen, Mali, Iraq, and Afghanistan (the 1988 regime on the Taliban). By contrast, the 1267 sanctions regime on ISIL and Al Qaeda also juxtaposes with situations of armed conflict in Syria, Iraq, and other places, but its sole purpose is to counter-terrorism, and not to prevent, mitigate, or resolve armed conflict.

³ Geneva Conventions, common article 3 and common articles 9/9/9/10. See in particular the 2016 ICRC Commentary on articles 3 and article 9 of the first Geneva Convention. International Committee of the Red Cross, *Basic Rules of the Geneva Conventions and Their Additional Protocols* (Geneva: ICRC, 1983); International Committee of the Red Cross, *Updated Commentary on the Geneva Conventions of August 12 1949* (Geneva: ICRC, 2016)

⁴ IHL however protects civilians providing aid under different rules.

⁵ See, among others, for example, International Committee of the Red Cross, *Professional Standards for Protection Work* (Geneva: ICRC, 2018), <https://www.icrc.org/en/publication/0999-professional-standards-protection-work-carried-out-humanitarian-and-human-rights>; Sphere, *The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response* (Geneva: Sphere, 2018).

⁶ Sophie Huvé, “The Notion of ‘Humanitarian Activities’,” *UN Sanctions and Humanitarian Action Policy Brief 2* (2022).

⁷ Geneva Conventions, common article 3 and common articles 9/9/9/10. See in particular the 2016 ICRC Commentary on articles 3 and article 9 of the first Geneva Convention. International Committee of the Red Cross, *Basic Rules of the Geneva Conventions and Their Additional Protocols* (Geneva: ICRC, 1983); International Committee of the Red Cross, *Updated Commentary on the Geneva Conventions of August 12 1949* (Geneva: ICRC, 2016)

⁸ Ibid. Neutrality means that the humanitarian organization has no stake in the armed conflict, does not care who wins or loses, is agnostic as to the political or military outcome of the conflict, and does not engage in controversies of a political, racial, religious, or ideological nature. Independence means that the organization is distinct from governments, and other political or military authorities and is able to decide and act autonomously from them. Neutrality and independence are often essential to maintain acceptance from and access to all parties to the conflict and communities concerned. While not required of other humanitarian organizations, acting according to these two additional principles also serves to protect humanitarian organizations from accusations of political interference, which could quickly threaten their safety and their access to vulnerable populations.

⁹ International Committee of the Red Cross’ Commentary on common article 3 and common articles 9/9/9/10; UN General Assembly resolutions 46/182 of 1991 and 58/114 of 2004; 1986 Statutes of the International Red Cross and Red Crescent Movement. International Committee of the Red Cross, *Basic Rules of the Geneva Conventions and Their Additional Protocols* (Geneva: ICRC, 1983); International Committee of the Red Cross, *Updated Commentary on the Geneva Conventions of August 12 1949* (Geneva: ICRC, 2016)

¹⁰ Otherwise known as the “right of initiative” or the “offer of services”. Geneva Conventions, common article 3 and common articles 9/9/9/10. See in particular the 2016 ICRC Commentary on articles 3 and article 9 of the first Geneva Convention. International Committee of the Red Cross, *Basic Rules of the Geneva Conventions and Their Additional Protocols* (Geneva: ICRC, 1983); International Committee of the Red Cross, *Updated Commentary on the Geneva Conventions of August 12 1949* (Geneva: ICRC, 2016)

¹¹ In international armed conflict (IAC), consent is required from the State or the party on whose territory the humanitarian activities are to be conducted, or from the State or the party exerting effective control over the territory on which humanitarian activities are to be conducted. In non-international armed conflict (NIAC), the consent of the effective government is always required, including for activities conducted in areas controlled by a non-State armed group. As matter of policy and for operational reasons, consent of the non-State armed group controlling territory will also be sought. However, there might be exceptional circumstances in which seeking and obtaining the consent of the sovereign State might not be feasible (e.g. collapse of States authorities). There might also be situations in which humanitarian needs are so great that, if they remain unaddressed, the humanitarian imperative would require humanitarian activities to be undertaken by impartial humanitarian organizations.

¹² In international armed conflict (IAC), consent is required from the party to the conflict on whose territory the humanitarian activities are to be conducted, or from the party exerting effective control over the territory on which humanitarian activities are to be conducted. In non-international armed conflict (NIAC), the consent of the effective government is always required, including for activities conducted in areas controlled by a non-State armed group. As matter of policy and for operational reasons, consent of the non-State armed group controlling territory will also be sought. However, there might be exceptional circumstances in which

seeking and obtaining the consent of the sovereign State might not be feasible (e.g. collapse of States authorities). There might also be situations in which humanitarian needs are so great that, if they remain unaddressed, the humanitarian imperative would require humanitarian activities to be undertaken by impartial humanitarian organizations.

¹³ See notably, International Committee of the Red Cross, *Customary International Humanitarian Law* (Cambridge: Cambridge University Press, 2005): Rule 55. The UN Security Council has sometimes called on neighboring States to facilitate the transfer of goods and supplies, and the Guiding Principles of Humanitarian Assistance, adopted by the UN General Assembly in 1991, emphasize that “States in proximity to emergencies are urged to participate closely with the affected countries in international efforts, with a view to facilitating, to the extent possible, the transit of humanitarian assistance”.

¹⁴ Sophie Huvé et al., *Enforcing UN Sanctions and Protecting Humanitarian Action: Towards a Coherent and Consistent Approach* (New York: United Nations University, 2022).



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