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The Notion of “Humanitarian Activities”

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Overview

The purpose of this policy brief is to:

- Define and describe the term “humanitarian activities.”
- Confirm the compatibility of humanitarian activities with UN sanctions regimes.
- Identify potential tensions in practice.

As described in Policy Brief 1 on impartial humanitarian actors, International Humanitarian Law (IHL) gives a right of humanitarian initiative to impartial humanitarian organizations to undertake humanitarian activities in situations of armed conflict. In practice, UN sanctions regimes imposed in situations of armed conflict can both uphold and undermine humanitarian activities. On the one hand, most UN sanctions regimes require actors to support the delivery of humanitarian activities (as described in Policy Brief 4). On the other hand, the implementation of UN sanctions regimes may also interfere with humanitarian activities when those receiving humanitarian assistance, as defined under IHL, are: 1) designated or are at risk of being designated individuals for whom it is prohibited to provide resources or support; or 2) live under the control of a designated entity. This brief aims to define the term “humanitarian activities” and to briefly present the potential for tensions between IHL and the UN sanctions regimes.

Humanitarian activities: key concepts and definitions

Humanitarian activities are all those that seek to preserve the life, security, dignity, and mental and physical well-being of victims of the conflict, or which seek to restore them.¹

- **Beneficiaries:** All persons affected by an armed conflict and in need of assistance or protection can benefit from humanitarian activities. This includes civilians, but also former combatants who were involved in the fighting but are now *hors de combat* due to wounds, sickness, detention, or any other cause.
- **Purpose of Activities:** Humanitarian activities cannot encompass activities that would provide material support to advance the interests of any party to the conflict whether militarily, operationally, financially, or politically. For example, it would never be within the proper scope of humanitarian activities under IHL to use access to a given area to transmit intelligence of military value, to participate in political propaganda, or to transport weapons, financial resources, or forms of material support to any party to a conflict. Thus, even if humanitarian assistance such as medical care is delivered to wounded and sick individuals who are designated on a UN sanctions list, humanitarian activities remain in line with the underlying purposes of the covered sanctions regimes and their objectives to constrain access of designated individuals to military, operational, financial, political, or other forms of support. This is also true for food distribution or health activities that could benefit the families of listed individuals, provided these families are in need and affected by the armed conflict. Indeed, as informed by the principle of impartiality, humanitarian activities do not account for the past or present affiliations of persons affected by the armed conflict, and solely focus on needs.²
- **Scope of Activities:** What may be needed in terms of humanitarian activities in one armed conflict will not necessarily be needed in another context. Moreover, needs that might not be humanitarian in the first few days of the conflict (such as water infrastructure, healthcare facilities, human or animal vaccination, or legal training), may become so if the conflict extends for months, years, or even decades. The notion of humanitarian activities thus needs to be contextualized by the circumstances of each conflict, including the passing of time and the evolution of needs.

- **Types of Activities:** Humanitarian activities encompass two categories: relief and protection. Both work towards the same objective: safeguarding the life and dignity of victims of armed conflict.
 - **Relief activities:** Humanitarian assistance, humanitarian aid, and humanitarian relief are considered synonymous. Put simply, they all refer to basic goods and services needed to survive and live with dignity. They encompass all humanitarian activities related to food, water, medicine, and means of shelter. Some goods, such as construction material or diesel oil, are sometimes subject to controversy. In practice, the type of assistance activities differs depending on who the beneficiaries are and the nature of their needs. Assistance activities for persons wounded on the battlefield, for example, are not the same as those undertaken for civilians deprived of their liberty or under siege. As stated above, a core principle of IHL is that such activities should never be considered as a reinforcement of the enemy's military or operational capabilities, including for example, the provision of medical aid to wounded fighters, or food and health assistance to their families who qualify as beneficiaries under IHL.
 - **Protection activities:** The term protection is used by various actors for different purposes. For impartial humanitarian organizations, like the International Committee of the Red Cross, this term encompasses all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and spirit of IHL. Accordingly, protection activities refer to all activities that seek to ensure that the parties to the conflict, the State and other *de facto* authorities and other relevant actors fulfil their obligations to uphold the rights of civilians and other persons *hors de combat* to life and human dignity. In that sense, protection activities include all activities that seek to prevent the occurrence of violations of IHL or put an end to them, including engagement with authorities or dissemination of IHL to armed groups, even when designated on a UN sanctions list.

Overlap between beneficiaries of humanitarian activities and designated individuals

Under IHL, humanitarian activities may be directed towards individuals designated on UN sanctions lists, provided they belong to the civilian population or are former fighters *hors de combat*. In other words, IHL provides medical and humanitarian relief to persons *hors de combat* regardless of whether they are designated under a UN sanctions regime. Of course, individuals on UN sanctions lists who are not beneficiaries (i.e. civilians or persons *hors de combat* in need of assistance) will not qualify to receive humanitarian assistance activities. For example, active fighters (who are not wounded, sick, or detained) would be ineligible for a range of services, such as medical assistance and food (but their families would be eligible if they are civilians or wounded, sic, or detained persons in need of assistance).

Listed individuals, even when not *hors de combat*, or members of listed armed groups, may, however, receive training on IHL or related subjects such as war-surgery seminars. Indeed, these activities are delivered to them with the purpose of training and encouraging them to better protect civilians, detainees, and the wounded and sick. In other words, designated individuals are not the ultimate beneficiaries of the IHL and related training activities; it is rather the civilians and persons *hors de combat* who will be protected in the future who are the intended beneficiaries.

Compliance of sanctions regimes with IHL to protect humanitarian activities

Conflict-related UN sanctions do not prohibit per se any humanitarian activities of assistance and protection such as, for example, the delivery of emergency services aimed at meeting the basic needs of the civilian population (food, water, medicine, shelter); the implementation of an economic security project; the work on infrastructure essential to the survival of the local population; the collection, transport, and care for the wounded and sick (including listed individuals

that are wounded and sick); the material assistance to detainees (including listed individuals); first aid training, war-surgery seminars, IHL training (including to listed individuals and/or listed entities); and any engagement with the parties to the conflict (including with listed individuals and/or listed entities).

By contrast, UN sanctions do prohibit three types of acts that do not qualify as humanitarian activity under IHL but that can be very tricky for humanitarian actors to avoid:

1. payment of certain taxes and fees to individuals and entities subject to UN sanctions, those acting on their behalf, or at their direction;
2. payment for services, such as vehicle rentals, property rents, lodging, or food and drink service, to listed individuals, those acting on their behalf, or entities owned by such individuals; and
3. payment of per diems and reimbursement of travel expenses to listed individuals or members of groups designated for UN sanctions for their participation in workshops, trainings, conferences, or seminars.

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 particular settings. One important step is to distinguish between “avoidable” risks, which can be addressed by mitigating measures, and “unavoidable” risks, which are necessary for reaching vulnerable populations at a given moment. For example, large-scale aid diversion could be addressed by determining common red lines among humanitarian actors in a particular conflict setting, whereas small-scale payments at informal roadblocks in rural areas may be difficult to address in the short term. Humanitarian actors should also be careful about the payment of per diem or other attendance fees for listed individuals, which can easily be diverted.

In view of the potential for tensions between sanctions and humanitarian activities described above, sanctions designers should ensure that sanctions measures imposed in armed conflict contexts are designed and interpreted by implementing States in a manner consistent with IHL. Such implementation should ensure that sanctions measures do not restrict, impede, delay, or otherwise impair the delivery of humanitarian activities or penalize those delivering them in accordance with IHL. In other words, UN sanctions regimes should make clear that sanctions measures do not prevent or prohibit impartial humanitarian actors to undertake exclusively humanitarian activities when these actions aim to better protect civilians and other persons *hors de combat*, and that humanitarian activities do not constitute prohibited support to designated individuals or entities.

References

¹ 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)

² *Ibid.*



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