

# HPG

Humanitarian  
Policy Group

## Strengthening access and proximity to serve the needs of people in conflict

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### Background and acknowledgments

This paper was written by Eva Svoboda of the Humanitarian Policy Group (HPG) at the Overseas Development Institute (ODI). It is one of three commissioned by the British Red Cross on behalf of the International Red Cross and Red Crescent Movement (hereafter the 'Movement') World Humanitarian Summit Task Force. The papers draw on Movement policies, practices and perspectives to provide reflections on key thematic issues of relevance to the Summit. While informed by the work of the Movement, the papers have been written by HPG and thus do not constitute an official position of the Movement.\*

\* The development of the paper was informed by consultations with a Reference Group. The Group was chaired by Jane Backhurst, British Red Cross (BRC), and comprised Jennifer Scott (BRC), Markus Geisser (ICRC), Dr Khaled Diab (Qatari Red Crescent), Andreas Kiaby (Danish Red Cross), Line Begby (Norwegian Red Cross) and Jani Leino (Finnish Red Cross). Additional inputs and comments were received from Sorcha O'Callaghan (BRC), Khaled Erksoussi (IFRC), Emmanuel Tommy (Sierra Leone Red Cross), Aude Galli (IFRC), Rebecca Dodd (IFRC) and Christina Bennett (HPG).

The paper starts by outlining the legal framework governing armed conflict, followed by a discussion on access and proximity and how these may be hampered by issues such as the politicisation of aid, inadequate resources and skills to negotiate with non-state armed groups and counter-terrorism legislation. Throughout the paper the role of the Red Cross and Red Crescent Movement as a whole or its individual components will be examined, drawing out diverse methods of work, research and initiatives which may provide examples of how the sector can address some of the major challenges facing humanitarians operating in conflict. It concludes with a set of recommendations.

### Executive summary

The World Humanitarian Summit (WHS) presents a unique opportunity to reassert the relevance of International Humanitarian Law (IHL) and to call on those responsible to respect it. Given its history, experience and specific mandate the International Red Cross and Red

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Crescent Movement (the Movement) is particularly well placed to call for better respect for IHL, and thus better protection of civilians.<sup>1</sup>

Systematic violations of IHL by parties to conflict should not be seen as inevitable or insurmountable, though it is important to acknowledge that respect for IHL is a process – and one fraught with challenges. Significant progress has been made in the development of norms and policies aimed at protecting civilians, but more needs to be done to protect civilians from the effects of war. Existing compliance mechanisms are insufficiently used or only applicable in international armed conflict. The Swiss/ICRC initiative on strengthening compliance with IHL is a step in the right direction.

The Movement has long advocated for and used an approach based on the seven Fundamental Principles. This tool has in many instances proved crucial in gaining access to people in need. The application of the principles is rarely straightforward – operating in conflicts is inherently difficult – but the principles can significantly assist in navigating through some of the challenges. Within the wide range of humanitarian actors, the Movement has a distinct comparative advantage, with a unique system that draws on capacities and resources along the local-national-international spectrum. Its vast network of volunteers and long experience in armed conflict provide a wealth of knowledge that could usefully be shared with organisations outside of the Movement.

### Key messages

- The majority of crises in which humanitarian actors intervene involve conflict and other forms of violence, yet even in the WHS the theme of conflict does not play a role that adequately reflects this reality. Discussions of the future of humanitarian action must address the theme of conflict more systematically, with a view to better serving the needs of affected people.
- Recurrent and widespread violations of IHL are at the root of suffering in armed conflict. Better compliance is needed, alongside a commitment to

respect international obligations, and ensure respect by others. Mechanisms to enhance compliance with the law are not sufficiently used and are applicable in international armed conflicts only, whereas the majority of today's conflicts are non-international.

- Humanitarian principles are not merely lofty ideals but are a practical tool that can help humanitarian agencies in gaining access to people in need. However, humanitarian principles alone are not sufficient; the quality, relevance, timeliness, consistency and effectiveness of assistance and protection and trust in the organisation providing these resources are just as important.
- People in need must be put above political considerations. The politicisation of aid, the lack of compliance with IHL norms and counter-terrorism measures have pushed the humanitarian imperative – understood in terms of the principles of humanity and impartiality – aside without justification. The idea that certain civilians in armed conflict are more deserving of aid than others, and that aid to certain civilians is 'de-prioritised' based on their alleged affiliation to certain groups, undermines the principles of humanity and impartiality. To remedy this will require trust between humanitarian organisations and governments, built on transparency and consistency in implementing principled humanitarian action.
- Access and proximity to people in need are essential as they enable aid agencies to understand the context and specific needs and to plan an adequate and relevant humanitarian response. To gain access humanitarian agencies need to be able to engage with armed groups and those who influence them.
- Operating in conflict environments is by its nature different from operating in natural disasters. Civilians in both are entitled to and deserve not only humanitarian assistance but also protection. With its various components operating in a wide range of environments, the Movement has long accepted that its approach will depend on and will have to be adapted to the specificities of each situation. This includes conducting context-specific assessments to enable operational decisions based on local knowledge of gender and diversity to identify factors that may expose male and female personnel and beneficiaries to different risks.
- Within the wide range of humanitarian actors, the Movement has a distinct comparative advantage that combines the local, national and international.

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<sup>1</sup> This paper uses the commonly agreed Inter-Agency Standing Committee (IASC) definition of protection, namely: All activities aimed at obtaining full respect for the rights of all individuals in accordance with international law, including international humanitarian, human rights and refugee law, regardless of their age, gender or social, ethnic, national, religious or other background.

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Its vast network of volunteers and long experience in armed conflict provide a wealth of knowledge that could usefully be shared with organisations outside of the Movement. The protection of staff and volunteers, including health personnel, is a major concern to the Movement, and to the humanitarian community more broadly. Campaigns such as Health Care in Danger aim at improving the efficiency and delivery of effective and impartial health care in armed conflict and other emergencies.

The following section looks at the legal framework governing armed conflict, arguing that compliance with IHL requires strengthening the law itself. This is followed by a section exploring the importance of humanitarian access and proximity to affected people, and how the application of humanitarian principles can facilitate dialogue with parties to conflict. The paper concludes with a set of recommendations for the World Humanitarian Summit.

### **International Humanitarian Law: relevant, not redundant**

At the very heart of IHL is the effort to protect civilians or those no longer taking part in hostilities. IHL seeks to balance military necessity with concerns for humanity. It insists, first of all, on maintaining a distinction between civilians and combatants. Secondly, the incidental harm caused to civilians or civilian property must not be excessive in relation to the concrete and direct military advantage anticipated by an attack on a legitimate military objective.

The notion that wars cannot be waged with any means possible and regardless of the consequences to either the opponent or those caught up in fighting is not new. Successive generations have tried to impose limits upon wars, and ancient societies had legal codes intended to protect civilians and ensure the humane treatment of prisoners (Jochnick and Norman, 1994).

A wide range of complementary norms, laws, policies and mechanisms aimed at better protecting civilians in armed conflict have emerged since the 1990s. The experience of Rwanda and Srebrenica in particular marked a turning-point in the awareness of the need to protect civilians. An initial though non-binding step was the introduction in 1999 of the UN Security Council Open Debate on the Protection of Civilians. International treaties followed, for example in relation

## **BOX 1: THE LAW GOVERNING ARMED CONFLICT**

International Humanitarian Law (IHL) comprises the universally ratified 1949 Geneva Conventions and their Three Additional Protocols, as well as customary International Humanitarian Law. Primary responsibility rests with states, which 'undertake to respect and to ensure respect' for IHL (art. 1 common to all four Geneva Conventions). While non-state armed groups (NSAG) cannot be party to international treaties, IHL provisions applicable in non-international armed conflict are nevertheless binding on them. Customary law is crucial as states that are not party to a treaty and NSAG may still be bound by IHL rules.

States and NSAG bear the responsibility for ensuring that the basic needs of civilians under their control are met. In international armed conflict, when the civilian population is not adequately provided with essential supplies, relief actions which are 'humanitarian and impartial in character and conducted without adverse distinction shall be undertaken, subject to the agreement of Parties concerned in such relief actions' (art. 70 API), and in situations of non-international armed conflicts, 'subject to the consent of the High Contracting Party concerned' (art. 18 AP II).

to the protection of children in armed conflict and anti-personnel landmines, and in 1998 the Rome Statute paved the way for the creation of the International Criminal Court (ICC). The establishment of and jurisprudence emanating from special tribunals such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have also been crucial steps. More recently, the Arms Trade Treaty (ATT) marks an important step in regulating the international trade in weapons. Yet a brief glance at today's conflicts shows that, despite significant advances in norms and policies, civilians continue to suffer from the consequences of war, in large part due to a lack of compliance with existing laws.

### *Compliance with the law: weaknesses*

Under the UN Charter the collective political responsibility to protect civilians in armed conflict rests with the Security Council if it determines that a situation constitutes a threat to peace, or breach of peace, and that it should act to maintain or restore international

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peace and security. However, the political motivations of Council members have often taken precedence over humanitarian concerns. Although there have been attempts to reform the Security Council none has come to fruition, fundamentally because any reform would require the five Permanent Members to agree to cede some of their power. Alongside the 22-member Accountability, Coherence and Transparency (ACT) group at the UN, France has been at the forefront in pushing for a moratorium on the veto power of the P5 in situations of mass atrocity. Such a move would put the plight of civilians above political considerations and potentially ease the current paralysis within the Security Council, albeit ‘only’ in very extreme situations.

Although Article 1 common to all four Geneva Conventions calls on states both to respect and to ensure respect for IHL, reminding belligerents of their duties has always been a struggle. In addition, sovereignty concerns have made it increasingly difficult to hold states to account (ICRC, 2014). In complex environments, with the proliferation and fragmentation of armed groups, it can be extremely difficult to identify clear chains of command. While there is research on the behaviour of combatants<sup>2</sup> and why they violate norms, there is less understanding of what drives different levels, patterns and types of violations. This makes it difficult to respond adequately.

#### *Strengthening compliance*

IHL lacks adequate mechanisms to identify and stop violations. Some of the existing mechanisms are applicable only in international armed conflicts. However, most conflicts today are non-international. For example, the International Fact-Finding Commission, established in 1991 pursuant to Article 90 of the First Additional Protocol to the Geneva Conventions, has to date not been utilised. There is a need to ensure its utilisation or find an equivalent or similar mechanism applicable in non-international armed conflict.

The 31st International Conference of the Red Cross and Red Crescent Movement invited the ICRC and the Swiss government to identify ways to enhance and ensure the effectiveness of mechanisms of compliance with IHL. Some of the shortcomings could be mitigated through greater support to the High Contracting

Parties, for example through a regular Meeting of States.<sup>3</sup> Their willingness to place the strengthening of IHL above political considerations will decide the success of this initiative.

#### *Knowing the law*

The main challenge facing the existing legal regime is not a need for new laws regulating armed conflict, but a need for greater respect for existing norms. Making these laws known – disseminating them and engaging weapon bearers in dialogue to ensure that they fully respect their obligations – is a central element of the work of the Movement. Crucially, this is a task that does not gain in importance only once conflict has broken out. IHL needs to be taught constantly, tirelessly and without pause, in peacetime and during conflict. And it needs to be taught widely, including within the Movement itself. Legislators, militaries, humanitarian actors and the general public all need to be aware of the law. Indeed, greater knowledge and understanding of the law by as large and diverse an audience as possible may contribute to improving accountability. This refers not only to people in countries experiencing conflict; greater knowledge of IHL on the part of the general population in countries whose militaries operate abroad may allow them to better hold their governments to account for respect of IHL, and perhaps improve empathy for those living in situations where IHL applies.<sup>4</sup>

Work to spread knowledge of the content, rationale and spirit of IHL must be adapted to the audience and the local context if it is to be accessible and have traction. Simply calling for respect for IHL will not suffice: *how* one communicates is just as important as *what* one communicates. For example, the Somali Red Crescent together with the ICRC and a local radio station developed a series of radio spots aimed at spreading awareness of the Somali customary code of war, known as *Biri-ma-Geydo*, and the basics of IHL (ICRC and SRCS, 2008). Prior to the war in Afghanistan in 2001 some aid workers negotiated access into areas under the control of the Taliban using the Islamic concept of *aman*, or safe passage (IRIN, 2014), and the ICRC has been working for years with

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2 See for example ICRC’s study *The Roots of Behaviour in War: Understanding and Preventing IHL Violations* and Hugo Slim’s *Killing Civilians: Methods, Madness and Morality in Wars*.

3 For further details see <https://www.icrc.org/eng/what-we-do/other-activities/development-ihl/strengthening-legal-protection-compliance.htm>.

4 Naz Modirzadeh, Director of Harvard Law School Program on International Law and Armed Conflict (PILAC). Speech at PHAP, Geneva, 18 March 2015.

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Islamic organisations and leaders to utilise points of convergence between IHL and Islam.<sup>5</sup>

Some armed groups subscribing to extremist ideologies consider provisions under IHL as secondary or even irrelevant. Yet this makes efforts to seek a dialogue with them on the need to protect civilians more important, not less. These armed groups are part of a humanitarian problem that needs to be addressed: they create victims and may themselves become victims. In addition, they are crucial in allowing humanitarian organisations to work. A dialogue with them is therefore essential for three reasons: to ensure the safety of humanitarian staff, to negotiate access to people in need and lastly to ascertain these groups' willingness and ability to respect the law.

Sadly, there will always be violations of IHL and not every violation can be prevented. However, demanding anything less than full respect would send a signal that violating the law is acceptable. The components of the Movement collectively and individually need to continue not only to raise awareness of the law but also demand that it is respected, no matter the setbacks. Other humanitarian and human rights actors also have a role to play in making the law known and identifying violations, respecting the different mandates such actors have and the different roles they play in what are inevitably politically sensitive contexts. Consistency and coherence in communication, and most importantly in action ('walk the talk'), is crucial in promoting humanitarian principles, and in using these principles effectively to gain access to populations in need.

### Humanitarian access and proximity to people in need

Humanitarian organisations play a crucial role in providing assistance, but they can only do so if they are able to ensure the security of their staff and gain access to affected people. There is no universally agreed definition for humanitarian access in practice or in law, though it is generally understood to mean the following:

*Access by humanitarian actors to people in need of assistance and protection AND access by*

*those in need to the goods and services essential for their survival and health in a manner consistent with core humanitarian principles (FDFA, 2014).*

Looking at the history of humanitarian action, it is evident that access to people in need has rarely been straightforward, and claims that there was ever a 'golden age' for humanitarian agencies are unfounded (Collinson and Elhawary, 2012). More often than not, access to people in need has to be renegotiated on a constant basis. How this can be done practically is illustrated in the *Practitioners' Manual* on humanitarian access published by the Swiss government (FDFA, CDI, OCHA, 2014).

Both states and non-state armed actors can regulate the access they give to aid agencies operating in territory they control. Humanitarian actors must be aware that obtaining access is by no means an automatic right. Lack or loss of access may be attributed to the reluctance of belligerents to allow unimpeded entry to humanitarian agencies. The motives for such reluctance can vary: preventing international organisations from 'spying' or witnessing violence which may amount to violations of IHL or crimes against humanity, fears that the agency may be providing assistance to the enemy, and thereby giving the other side undue advantage, effective control of aid resources and concerns about respect of security provisions. Another motivation for keeping agencies out may simply be to maintain a greater degree of control over the population as a tactic of war.

Access may also be hampered by insecurity. The protection accorded to civilians by IHL is equally enjoyed by humanitarian workers, and there are specific provisions related to humanitarian personnel taking part in relief operations.<sup>6</sup> The importance of safeguarding humanitarian workers is also regularly discussed in the Security Council and the General Assembly.<sup>7</sup> However, statistics show that aid worker victims have been steadily increasing. While there

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5 For example in Pakistan, as part of a conference on humanitarian action in the light of Sharia and international humanitarian law: <https://www.icrc.org/en/document/pakistan-conference-humanitarian-action-light-sharia-and-international-humanitarian-law>.

6 For example provisions pertaining to relief consignments, such as art. 23 GCIV, art. 69 ff of Additional Protocol I and 18 of Additional Protocol II and not least art. 3 common to the Four Geneva Conventions, but also art. 70 and 71 of API relevant to the protection of relief personnel.

7 See for example General Assembly Resolution A/RES/68/102 adopted in December 2013.

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were 143 in 2003, this number had risen to 474 in 2013.<sup>8</sup>

Official or *de facto* control over certain neighbourhoods or areas may create physical barriers to access to humanitarian aid, which in some cases may be lessened or increased by one's gender or affiliation. In Lebanon, ambulances being stopped on the road and asked about the patient's identity reportedly related to perceptions of the threat they posed. Adult male patients were less likely to be allowed to pass through roadblocks as they were seen as more likely taking part in the conflict and/or acting as messengers. Purposefully employing only female community health workers has been used as a strategy in Lebanon for outreach programmes, as women are more easily able to penetrate an environment of fear and suspicion since they are less likely to be perceived as being associated with one armed group or side of a conflict. In Colombia, some female community outreach workers reported feeling that they were better able to build trust with communities, and therefore better able to gain acceptance and access to the population. The inclusion of a gender perspective in times of armed conflict therefore enhances operational effects and strengthens the protection of individuals.<sup>9</sup>

Often, access to people in need and the licence to operate have to be constantly negotiated with all relevant actors. However, there is also always the inherent risk that negotiations for humanitarian access will be used for political objectives. Belligerents may make demands on where, how or when assistance can be provided. States and non-state actors arbitrarily controlling aid or using it for political purposes is a constant and long-standing problem for humanitarian agencies (Donini, 2012). While aid agencies should not engage in the politics surrounding conflict they must nevertheless be aware of the political environment they operate in. They must prioritise conflict analysis to understand both the political context and how humanitarian action might influence the political dynamics of a specific situation in order to minimise the risk of being manipulated. While perhaps unachievable, the de-politicisation of humanitarian action must be pursued continuously.

Although IHL does not explicitly state this as such, there is some acceptance that consent must not be

withheld arbitrarily.<sup>10</sup> Having said that there is a lack of clarity on when consent can be *legitimately* withheld. It is 'thus extremely difficult to determine – legally and factually – whether consent to relief operations has been withheld arbitrarily in a particular situation' (Gillard, 2013). Ideally, establishing such facts would fall to the International Fact-Finding Commission mentioned earlier, though is perhaps more feasible in international armed conflict and would in any case depend on the consent of the state, which might be the source of the problem in the first place.

#### *Principled humanitarian action*

The components of the Red Cross and Red Crescent Movement adhere to seven Fundamental Principles, whose fiftieth anniversary is celebrated in 2015. To the more commonly known humanitarian principles of impartiality, humanity, neutrality and independence, the Movement added unity, universality and voluntary service. Its mode of action, building on a strong local base of volunteers and providing international support where needed, in line with the seven Fundamental Principles, enables the Movement to make a unique contribution to emergency response.

Not all actors in the humanitarian sector could or should carry out humanitarian response according to the same principles as the Movement, or by the same methods. While many base their work on humanitarian principles, for example subscribing to the Code of Conduct,<sup>11</sup> others may not; it is precisely this diversity that is the strength of the sector. By recognising and building on complementary roles and mandates, humanitarians can best meet needs in places of conflict. To that end, this section describes the contribution of the Movement and how it may partner with other actors in the sector.

#### *The relationship between the Fundamental Principles and IHL*

Common Article 3 of the Geneva Conventions, applicable in international and non-international

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<sup>10</sup> ICRC Customary Law Study, Rule 55.

<sup>11</sup> *Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organisations (NGOs) in Disaster Relief*. The Code of Conduct was developed in 1994 and has been signed by 546 organisations. For a full list of signatories see: [http://www.ifrc.org/Global/Documents/Secretariat/201501/Code%20of%20Conduct%20UPDATED\\_JANUARY%202015.pdf](http://www.ifrc.org/Global/Documents/Secretariat/201501/Code%20of%20Conduct%20UPDATED_JANUARY%202015.pdf). In addition, UN General Assembly 46/182 (1991) states that humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality. Independence was added in 2003 through UN GA Resolution 58/114.

<sup>8</sup> Aid Worker Security Database: <https://aidworkersecurity.org/>.

<sup>9</sup> 'Understanding Violence against Health Care: A Gender Perspective', <https://www.icrc.org/en/document/understanding-violence-against-health-care-gender-perspective>.

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armed conflict, states that ‘an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict’. In addition, Article 63 of the Fourth Geneva Convention and Article 81 (2) of Additional Protocol I contain obligations on parties to a conflict to enable the work of National Societies operating in accordance with Red Cross principles. IHL does not define the principles of neutrality and independence, though neutrality can be inferred from the statement that ‘authorities may refuse humanitarian action if it interferes with a military strategy or aids the other side of the conflict’ (Collinson and Elhawary, 2012). The Fundamental Principles thus reflect obligations under IHL, but they do not constitute IHL.

The idea that the Movement should be guided by a set of principles developed as early as 1875, though it was not until 1921 that impartiality, economic independence,

## BOX 2: THE FUNDAMENTAL PRINCIPLES

- *Humanity*: to ‘prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being’.
- *Impartiality*: to ensure ‘no discrimination as to nationality, race, religious beliefs, class or political opinions. Impartial assistance endeavours only to relieve suffering, giving priority to the most urgent cases of distress’.
- *Neutrality*: not to ‘take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature’ in order to continue to enjoy the confidence of all.
- *Independence*: to ‘always maintain their autonomy so that they may be able at all times to act in accordance with Red Cross principles’.
- *Voluntary service*: not prompted in any manner by desire for gain.
- *Unity*: There can be only one Red Cross or one Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.
- *Universality*: The International Red Cross and Red Crescent Movement, in which all Societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.

universality and equality were incorporated into the revised statutes of the ICRC (IFRC, n.d.). In 1955, on behalf of the ICRC, Jean Pictet began analysing the values and origins of the various principles, eventually grouping them into fundamental and organic principles, the latter pertaining to the Movement’s structure and work (ibid.). The seven Fundamental Principles as they are known today were adopted in 1965 at the 20th International Conference. They are specific to the Movement, although organisations outside the Movement that subscribe to a principled approach would generally adhere to the principles of impartiality, humanity, neutrality and independence.

### *Humanitarian principles: beyond the theory*

Many organisations use humanitarian principles either explicitly or integrated as part of their overall approach. There has however been limited attention to the operational relevance of humanitarian principles and how humanitarian agencies can use them in their work (O’Callaghan and Leach, 2013). Even the Movement itself has little evidence on where the use of its Fundamental Principles has enabled better access to people in need, and much of the debate on principles within the Movement has been inward-looking. There are examples from Somalia, Lebanon and Afghanistan that clearly demonstrate how a principled approach can enhance humanitarian action. The Lebanese Red Cross ambulance service is able to reach patients across sectarian lines not only due to the quality of the service it provides, but also because its approach draws heavily on the Fundamental Principles (O’Callaghan and Leach, 2012), and is perceived to be neutral and impartial. Similarly, the Somali Red Crescent’s ability to operate is due to its predictability and longevity, and its consistent engagement with and support to communities across the country, in line with the Fundamental Principles (O’Callaghan and Backhurst, 2013). The ICRC’s focus on reasserting and demonstrating its neutrality in Afghanistan following a serious security incident in 2003 enabled it to expand its activities throughout the country. Likewise, research from outside the Movement points to the relevance of a principled approach to other organisations. Egeland et al., for example, stress the effectiveness of acceptance<sup>12</sup> when negotiating access (Egeland et al., 2011).

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<sup>12</sup> This model is based on actively building good relations with local communities, parties to the conflict and relevant stakeholders. Using the humanitarian principles the model seeks to obtain the acceptance and consent of all stakeholders for the presence and work of humanitarian organisations.

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Knowledge and interpretation of the principles vary among humanitarian organisations, and not all organisations promote the principles systematically among their staff or with outsiders. Macdonald and Valenza argue that ‘humanitarian organisations could significantly improve the consistent implementation of the principles by elaborating clear and simple internal guidance, ensuring relevant training and integrating them into monitoring and compliance frameworks’ (Macdonald and Valenza, 2012). The ICRC Safer Access Framework serves that purpose, though it is directed at National Societies rather than aid agencies more generally.<sup>13</sup> Even within the Movement the principles are understood and applied in different ways, reflecting the operational dilemmas all humanitarian agencies face in crisis contexts. In an effort to discuss these dilemmas and identify good practice in the application of the Fundamental Principles, the Movement organised a workshop during the 2013 Council of Delegates which launched a Movement-wide learning process that will eventually culminate in the fiftieth anniversary celebrations in 2015.

The significance and value of the four basic humanitarian principles are widely recognised, though not necessarily accepted by all actors as being universal. Humanity and impartiality are generally considered to be at the heart of humanitarian action, while for some actors outside the Movement independence and neutrality might be qualities they disagree with (Wilton Park/ICRC/HPG, 2013). The question is perhaps not so much one of interpretation, however, than of ownership. Actors traditionally inside the ‘formal humanitarian architecture’ (generally considered to comprise the UN agencies, the Movement and mostly Western international NGOs) are perceived as having a ‘monopoly’ on humanitarian principles (ibid.). There is a sense that humanitarian principles are used as a moral yardstick by some humanitarian actors, while not necessarily systematically following them in their own work. The formal humanitarian system regularly champions the merits of humanitarian principles, yet its own track record shows that it does not always adhere to them itself. For example, in Afghanistan the UN was seen as aligned with the efforts of the US-led coalition, while many NGOs – often multi-mandate organisations – were implementing partners of governments and thus

perceived as supporting their state-building efforts or being part of a ‘hearts and minds’ strategy (Donini, 2009). This is illustrative of an approach whereby some organisations pick and choose when they apply some humanitarian principles, while claiming to be abiding by all of them, undermining the utility of the principles and reinforcing perceptions of double standards.

While humanitarian principles are a highly useful tool they are no guarantee of access, and humanitarian organisations regularly face circumstances where they may simply not work. This does not, however, imply that the principles need changing; what does need to change is the dialogue around them and the consistency with which they are used. With its first-hand experience of using the principles the Movement can usefully contribute to that debate and to the popularisation of the principles, in particular with newer organisations. It also needs to acknowledge that the application of humanitarian principles is never straightforward, and is beset by contradictions and dilemmas (Terry, 2011).

National Societies are the actors in the Movement that most often need to balance the application of principles with their auxiliary role to their public authorities, which is not always well understood by outsiders or indeed at times by their own state. This auxiliary role defines the relationship between states and National Societies and how they can jointly prevent and alleviate human suffering while respecting appropriate roles and mandates. Initially the auxiliary role related to the relief of wounded and sick soldiers on the battlefield, but has with time expanded to cover all humanitarian activities during war and peacetime. It puts National Societies in a privileged position, but it also means that they can be placed in uncomfortable proximity to government authorities. This can pose a problem when the state is also a belligerent, or in the context of a non-international armed conflict. National Societies need to be able to explain where the limits of such proximity lie, using the authority provided by the Fundamental Principles, and carve out a space where they can not only operate impartially and neutrally, but also be perceived as doing so. The support that the ICRC and the Federation can provide in this regard may be crucial.

Neutrality is perhaps the most difficult principle to uphold for a local organisation or individual who comes from and lives in the context in which they operate. This is one of the arguments in favour of

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<sup>13</sup> For more details see: <https://www.icrc.org/eng/resources/documents/report/safer-access-all-national-societies-2013-11-07.htm>.

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deploying international staff, and historically was exactly the reason for the creation of the ICRC, which is considered to be less associated with local controversies and tensions and better placed to undertake certain activities (notably protection and in particular detention), and which may also help protect national staff from undue pressure exerted by belligerents.

Whether operating in conflicts, other situations of violence, disasters or development, National Societies regularly deal with difficult operational and ethical dilemmas. Such dilemmas are not dissimilar to those that face multi-mandate or advocacy organisations. The latter at times take political stands, though this does not mean that they reject humanitarian principles as a whole. Being transparent about what an organisation does and how it operates is important. National Societies and indeed the Movement in general should be more confident about sharing their experiences with the wider humanitarian sector, demonstrating that humanitarian principles are not a theoretical construct, while acknowledging that they do not in themselves guarantee access or security (although they certainly contribute to it). It takes more than invoking humanitarian principles to garner community acceptance; while the principles can be helpful, the effectiveness and appropriateness of a humanitarian response in line with the principles is likely to contribute the most to acceptance, and therefore access.

#### *Proximity to people in need: why it matters*

Proximity to people in need is essential in understanding the situation on the ground and assessing people's material needs, issues related to protection and existing capacities and coping mechanisms, allowing aid agencies to plan an adequate and relevant humanitarian response. The Movement's unique system draws on capacities and resources along the local-national-international spectrum (Zyck, 2015). National Societies ensure local proximity, while the ICRC and the Federation provide international support. All three components work side by side in many conflicts. Although National Societies will often have better access to local communities given their strong volunteer base, they are by no means immune to limitations on access and might not necessarily be able to access all parts of a territory. This may be a particular challenge where the National Society is perceived as closely

aligned to the government by a group that opposes that government.

The humanitarian response in Somalia highlights the interplay and complementarity of the different components of the Movement. ICRC has one of its largest global operations in Somalia, providing large-scale emergency assistance to people directly affected by armed conflict, running an extensive first aid, medical and basic healthcare programme and supporting projects to help restore or improve livelihoods. More recently, it has increased its protection activities including detention and promoting respect for IHL, particularly the protection of civilians, medical staff and infrastructure. ICRC works directly with and in support of the Somali Red Crescent Society (Ururka Bisha Cas), the oldest and largest national humanitarian organisation in Somalia and one of the only institutions to operate across the country's territory. SRCS's work is primarily health-related, including running 44 maternal and child healthcare centres in south and central Somalia, as well as rehabilitation centres and a 90-bed hospital in Mogadishu. The IFRC supports the National Society's work in Somaliland. Support from other National Societies, including from Norway, Germany, Sweden, Finland, Qatar and Iran, illustrate the universality of the Movement.

While National Societies are uniquely placed within their communities, their access to people in need is by no means uncontested or easy. Recently, particular attention has focused on the security of health personnel and the knock-on effects when medical facilities and personnel are targeted. Access to reliable healthcare is most needed in insecure environments, yet it is precisely in these environments that access is most difficult (Irwin, 2014). It was with this in mind that the Movement launched the Health Care in Danger initiative, which aims to improve security and the delivery of impartial and efficient healthcare in armed conflict and other emergencies. The initiative has shown that the gender of health personnel is an overlooked factor contributing to the risks of violence staff face while fulfilling their duties. Respondents in Lebanon anecdotally reported that local nurses, the majority of whom are female, are subject to higher risks of violence. In Iraq, male gynaecologists have been specifically threatened or killed by extremists who considered them to be violating women's privacy. The specificity of a given context

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gives rise to particular risks to access; even adjacent neighbourhoods may face different challenges, requiring different approaches to improving access.<sup>14</sup> The contextual knowledge of National Societies can be used to counter these risks when taking operational decisions. It is hoped that the lessons learned and tools developed by the Health Care in Danger initiative will help to improve safe access to healthcare in situations of conflict and emergency.

#### *Alternatives to access? The specific role and value of local partners*

National Societies and the ICRC are not necessarily the only actors with access to people in need, though at times they might be the most experienced – for example in contexts where other civil society organisations are weak or non-existent. Other local or regional groups may have access in areas that international organisations struggle to reach (Svoboda and Pantuliano, 2015). Recent years have seen a trend towards the use of remote management by international humanitarian organisations in areas where a physical presence, usually by international staff, is no longer possible for security reasons.<sup>15</sup> While this might have been considered as a last resort in the past it has now become one operational approach among many (Donini and Maxwell, 2013). It does, though, raise the question whether organisations that rely heavily on local partners are fit for purpose to work on the frontline of humanitarian aid. The argument is not that local is necessarily better, though there are activities or contexts where local organisations are better placed than international ones. Each actor will have a role to play – the question is how best to use existing capabilities to complement, not replace, one with the other.

In terms of partnership-building the Movement has perhaps been somewhat of an exception given the bond between its international and national components (ICRC, Federation, National Societies). That said, the Movement has traditionally not been very open to partnerships with entities other than its own, partly due to the importance it accords to adhering to humanitarian principles. The default position has generally been not to partner with

others, giving the impression that the Movement is a closed circle that is overly protective of its identity. Yet current conflicts also increasingly demonstrate partnerships with organisations outside the Movement, especially when the National Society has the greatest access across the affected areas.

With increased reliance on local staff/partners, there are concerns that national staff and organisations are being asked to operate in highly insecure areas, but without the requisite management, capacity or financial support (Zyck, 2015). The protection of staff and volunteers is of concern to all humanitarian agencies, though no other organisation probably relies so extensively on volunteers as the Movement. Proper risk management by international organisations, training in risk management, establishing security rules and providing moral, logistical and financial support to staff/local partners and their families following an incident are crucial elements in such a partnership.

#### *Negotiating with non-state armed groups (NSAG)*

Humanitarian engagement has to be pursued with all relevant actors in a conflict, including states and non-state armed groups, in order to gain access and provide assistance to those in need. Historical examples show that negotiating with NSAG is not a new phenomenon, though it has attracted more attention recently (Jackson and Davey, 2014), not least because of the growing political and security concerns of states regarding humanitarians' contacts with groups they consider terrorists. Indeed, the impact of counter-terrorism measures on principled humanitarian action is one of the foremost challenges for humanitarian actors today.

While engagement as such may not be new, among humanitarian actors it has traditionally been the ICRC that has engaged strategically with NSAG on a range of issues including protection and assistance. Other organisations tend to have less experience in dealing with NSAG, though many do engage with them to a certain degree. Crucially, many organisations do not invest in developing the skills and knowledge needed for such engagement, including on provisions of IHL and domestic laws and local customs (Jackson and Giustozzi, 2012). Negotiating with belligerents is key not only in obtaining access to affected communities, but also in discussing the parties' obligations under international law, especially their obligations to protect civilians. Some organisations are wary of engaging with non-state armed groups for fear of violating

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14 'Understanding Violence against Health Care: A Gender Perspective', <https://www.icrc.org/en/document/understanding-violence-against-health-care-gender-perspective>.

15 Remote management usually implies working through proxy organisations or only deploying local staff.

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counter-terrorism legislation and exposing themselves to potential criminal prosecution. It has been suggested that better coordination and joint advocacy by humanitarian agencies would help in addressing some of the broader issues related to negotiations with NSAG, including counter-terrorism legislation (Jackson, 2014a).

#### *Counter-terrorism legislation: a narrative of 'good' versus 'bad'*

Since the events of 9/11, states and intergovernmental bodies have introduced an increasing range of measures to prevent groups and individuals from engaging in terrorist activities. Some aim to deprive individuals of material and financial support. Security Council Resolution 1373, adopted on 28 September 2001, calls on states to refrain from providing any form of support to terrorist groups and individuals by passing relevant domestic legislation. However, many of the groups and individuals targeted by sanctions are crucial in providing access to humanitarian organisations. Dialogue with them is also needed to raise awareness of IHL. Humanitarian agencies need to be able to engage with non-state armed groups, whether directly or indirectly, without fearing legal punishment.

Recent research has shown that counter-terrorism legislation not only affects humanitarian agencies, but also the financial sector, which is understandably wary of financial transactions that might be violating counter-terrorism legislation (Metcalf-Hough et al., 2015). Clearer guidance is needed on legislation that can be ambiguous and difficult to navigate for humanitarian agencies and financial institutions alike. Besides the legal and operational consequences stemming from counter-terrorism legislation, humanitarian agencies also fear reputational risks.

There is a clear need to shift the debate on conflict back to the needs of affected populations and the importance of providing relief and protection to all those affected in an impartial way. 'There are no "good" or "bad" civilians in Syria – we must help all who need aid' stated the Director of Operations at the ICRC, Pierre Kraehenbuehl, in 2013. Conditionality of aid, which assumes that some civilians can be left without assistance in the name of security, and that medical aid should be given only to one's own side and not the

other, goes against the very core of humanitarian action. It is difficult to reconcile the provision of impartial humanitarian aid with counter-terrorism legislation when parties to a conflict are considered terrorists.

#### **Concluding remarks**

The consequences of armed conflict need to be addressed systematically within the process leading up to and during the World Humanitarian Summit. Issues such as strengthening compliance with IHL and how states and non-state armed groups can be held accountable for violations need to be discussed at the WHS. IHL remains relevant, but far too often it is subjected to the political objectives of states and non-state armed groups, with significant negative consequences for humanitarian action. This includes, though is not limited to, counter-terrorism measures that may undermine humanitarian assistance.

The International Red Cross and Red Crescent Movement is uniquely placed to share its own experience in addressing the consequences of conflict, both in terms of good practice and the dilemmas it faces. The application of humanitarian principles, though never straightforward, has proved a useful tool in gaining access to people in need. The Movement should engage more proactively with the wider humanitarian sector on the effective application of the principles.

Access and proximity enable humanitarian organisations to understand the context, evaluate needs and respond accordingly. Contextual analysis of gender and diversity is crucial as it allows organisations to identify factors that may expose male and female personnel, volunteers and beneficiaries to different risks. Such analysis needs to be done systematically rather than on an exceptional basis.

The debates and consultations leading up to the World Humanitarian Summit and the summit itself present a unique opportunity to highlight the plight of civilians in armed conflict, reassert the relevance of IHL and call on those responsible to respect it.

#### **Recommendations for the World Humanitarian Summit**

Responding to the needs of people affected by conflict has always been difficult and in many ways humanitarian organisations today are grappling with

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16 See <http://www.theguardian.com/commentisfree/2013/mar/03/red-cross-aid-inside-syria>.

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the same dilemmas as yesterday. However, certain challenges have been exacerbated and new ones have arisen. The humanitarian landscape is diverse and each actor bears particular responsibilities to ensure that the collective humanitarian response effectively prioritises the needs and dignity of affected people. The following recommendations aim to improve the situation of persons affected by conflict:

#### *States*

- **Implementing effective compliance mechanisms:** Compliance mechanisms currently available should be strengthened. Work emanating from the Swiss/ICRC initiative will be particularly helpful in this regard. State parties should explore means of utilising a Fact-Finding Commission for non-international armed conflicts.
- **Limiting the scope and impact of counter-terrorism measures:** Operating in conflict requires dialogue with a wide range of actors. Counter-terrorism legislation potentially hampers humanitarian action by making it more difficult for humanitarian actors to operate in accordance with the principles of neutrality and impartiality. States should ensure that counter-terrorism measures do not negatively affect humanitarian efforts.

#### *States and non-state armed groups*

- **Respecting relevant legal frameworks:** It is important to recognise that securing full respect for the law is a gradual process. Nevertheless, demands that states and non-state armed groups respect their obligations under IHL should be constantly pursued and developed. The cost of inaction is far too high.
- **Ensuring the security of aid workers:** Violent attacks against aid workers have a detrimental effect on the provision of humanitarian assistance and protection, and constitute a war crime attracting individual criminal responsibility. Belligerents must ensure the security of humanitarian staff.

#### *States and humanitarian organisations*

- **Guaranteeing rapid and unimpeded access:** There is a lack of clarity on what constitutes the arbitrary withholding of consent for relief operations. Understanding when consent is being withheld arbitrarily would contribute to shielding humanitarian assistance from excessive military and political interference and promote greater and safer access to those most in need. In order to seek

solutions, humanitarian organisations and states should discuss why and when consent is most often withheld from humanitarian actors.

- **Conduct context-specific studies on the barriers** different groups of men, women, girls and boys face in accessing humanitarian aid, and what risks male and female humanitarian staff and volunteers may face in undertaking their work.

#### *RC/RC Movement*

- **Promoting humanitarian principles:** Humanitarian principles provide a moral compass as well as a tool that can facilitate access. The Movement has extensive experience in the operational application of the principles, and yet it rarely shares such experience with those outside the Movement. The Movement should engage more proactively with the wider humanitarian sector in relation to the effective application of the principles, based on its extensive and long experience, while acknowledging the complementarity of its principled approach compared to that of other actors and modes of action.
- **Supporting local actors:** The Movement has long-standing experience in combining international with local humanitarian action. Local actors, including National Societies, are increasingly operating in high-risk areas where international aid agencies have no or little access. International aid agencies should provide support to local staff/partners operating on the ground (training, insurance, financial and psycho-social support).

#### *RC/RC Movement and other humanitarian organisations*

- **Make operational decisions based on contextual knowledge of gender and diversity to identify factors that may expose male and female personnel, volunteers and beneficiaries to different risks, in order to enhance access and proximity to populations.**
- **For organisations with the appropriate mandate, IHL dissemination activities should include specific reference to the obligation to extend access to humanitarian aid with no adverse distinction, including based on gender or other diversity factors, with consideration of the expected operational effects of contextual analysis in the application of IHL, including gender and other diversity issues.<sup>17</sup>**

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<sup>17</sup> 'Understanding Violence against Health Care: A Gender Perspective', <https://www.icrc.org/en/document/understanding-violence-against-health-care-gender-perspective>.

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