



# Legal considerations regarding the protection of humanitarian workers in the field

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While many aspects of the safety of humanitarian personnel in the field tend to be focused on techniques and procedures, it is equally important to consider a number of legal issues that have a direct impact on the problem. The protection of the personnel of humanitarian organisations is a matter which falls within the scope of both international and national law.

## **I. Applying the law of armed conflict**

One important legal question that arises is whether or not the situation prevailing

within a given context amounts to an armed conflict. By the very nature of their activity, humanitarian workers often work in places where security is a serious concern. However, not all dangerous situations constitute an armed conflict. For example, a country can face situations of internal violence, generalised banditry, riots, etc. As unsafe as such situations can be, they do not trigger the application of the law of armed conflict, also known as 'International Humanitarian Law' (IHL). When IHL is not applicable, only international human rights law and domestic legislation apply (see IV, below).

An armed conflict is a situation where fighting takes place between the armed forces of two States in an 'international armed conflict'; or within the territory of a State between its regular armed forces and organised armed groups or when such groups fight one another in 'internal' or 'non-international armed conflict'. When a situation can be qualified as an armed conflict, IHL applies. The application of humanitarian law has a number of consequences as mentioned below.

## **II. Protection under international humanitarian law**

Under IHL, the cornerstone of the protection afforded to the personnel of an humanitarian organisation is founded on the principle that: within the context of hostilities a distinction must always be made between combatants and civilians. Under IHL, humanitarian workers are considered to be civilians. Accordingly, they must be respected and protected in all circumstances, and must never be made the object of attack.

For members of humanitarian organisations the general principle of protecting civilians is strengthened by other specific rules of IHL. Contained in IHL are a number of provisions for the protection of human-

itarian personnel who are involved in relief operations. Under a number of conditions, relief operations that are humanitarian and impartial in character and are conducted without any adverse distinction may be undertaken (Articles 69, 70 and 71 of Additional Protocol I and 18 of Additional Protocol II). Offers of assistance fulfilling these conditions shall not be regarded either as interference in the armed conflict or as hostile acts.

IHL also contains provisions for the protection of medical personnel and transports. This protection, which also applies to military medical units and transports, is represented visually by the Red Cross/Red Crescent emblem. However, it must be noted that in principle most humanitarian organisations which are **not** part of the Red Cross and Red Crescent Movement are not entitled to use that emblem.

Effective, preventive measures must be taken by States to limit any risk to the security of humanitarian workers. They must suppress breaches of international law and prosecute those responsible of war crimes. Any intentional attack against members of an humanitarian organisation would constitute a war crime. War crimes can also be prosecuted in another country on the basis of universal jurisdiction.

### **III. Other relevant rules of IHL**

In situations of armed conflict, humanitarian workers should be aware of and respect a number of rules so as not to jeopardise the protection they enjoy under IHL. Obviously, they must not take part in the hostilities and they should always refrain from committing any act that could be construed as hostile towards one party to the conflict.

Humanitarian workers should also keep in mind what constitutes a lawful military objective according to IHL. Objects or places which by their nature, location, purpose or use make an effective contribution to military action could become a military target. Whenever possible, members of humanitarian organisations should stay clear of such objects and places.

### **IV. Situations not amounting to an armed conflict**

As noted above, when a situation, no matter how unstable, does not amount to an armed conflict, IHL does not apply – only domestic laws and norms of international human rights are applicable.

In addition, there exists the Convention on the Safety of United Nations and Associ-

ated Personnel, adopted by the UN General Assembly on 9 December 1994. However, this instrument primarily protects personnel engaged directly by the UN (or its specialist agencies) and personnel of organisations which are in a contractual situation with the UN. Even so, for this category of people, the Convention only applies once the Security Council or the General Assembly has declared that there exists an exceptional risk to the safety of the personnel participating in the operation.

### **V. Conclusion**

Humanitarian personnel are exposed to security risks in situations not always covered by IHL. However, without minimising the security risks that occur in other circumstances, there is little doubt that armed conflicts pose the greatest danger to humanitarian workers. Accordingly, this chapter concentrates on the rules relating to the protection of such workers in situations of armed conflict.

Analysis of security problems is multifold. Awareness of possible risk factors and also of applicable laws is therefore essential to enable humanitarian workers to react in an adequate and professional manner.