Ensure Full Access to and Protection of the Humanitarian and Medical Missions

Analytical Paper on WHS Self-Reporting on Agenda for Humanity Transformation 2B

This paper was prepared by:[1]

SAFEGUARDING HEALTH IN CONFLICT

Executive Summary:

In recognition of the brutality of today's armed conflicts and the lack of respect for the fundamental rules of international humanitarian law, the Agenda for Humanity presented at the World Humanitarian Summit called for greater commitment and action to ensure the essential needs of affected populations are met and for full respect and protection of humanitarian and medical missions. In support of this transformation in the Agenda for Humanity (2B), more than 180 commitments[2] were made at the World Humanitarian Summit to support its advancement and the continuation of existing efforts to improve access to and protection of medical missions. Forty-five stakeholders—three faith-based organizations; 11 NGOs; 21 Member States; nine UN organisations, and one other organization—provided self-reports on progress against Transformation 2B: ensure full access to and protection of the humanitarian and medical missions.[3]

The majority of stakeholders reported efforts to promote the principles of humanity, impartiality, neutrality, and independence in humanitarian action and adherence to International Humanitarian Law (IHL) in a variety of ways. Organisations and Member States worked towards embedding humanitarian principles and IHL by training and building capacity of staff and partners; reviewing codes of conduct; and implementing mechanisms on humanitarian responses and promotional materials, among others.

Advocacy efforts also took many forms. Most notable was the engagement of Member States and UN agencies in supporting Security Council Resolution 2286, which specifically addresses attacks on health services and health workers in armed conflict. Operationally, a number of stakeholders also reported positive examples of increased efforts to ensuring access to humanitarian aid in hard to reach areas, as well as efforts to protect the safety and security of humanitarian and medical missions.

Despite positive examples, many challenges remain to ensure people in need have access to—and there is protection of—humanitarian and medical missions. There remains a persistent gap between words and

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[2] Individual and joint commitments along with core commitment alignments.
[3] As of 1 June 2017.

AGENDA FOR HUMANITY 5 CORE RESPONSIBILITIES 24 TRANSFORMATIONS

practice with respect to compliance with IHL and accountability for violations. Widespread violations of IHL are still occurring on a daily basis. Humanitarian and health workers and medical facilities continue to be deliberately targeted with impunity. A lack of political commitment and action is a huge barrier hindering progress.

Most significant progress made across reporting on transformation 2B – Ensure full access to and protection of the humanitarian and medical missions

Promotion of and adherence to humanitarian principles and International Humanitarian Law

Most actors have, in some capacity, reinforced commitments to humanitarian principles and/or respect for IHL within organizations, through engagement with partners, and/or through advocacy. This has been achieved through a variety of initiatives. For example, the EU provided funding for the dissemination of information and training on IHL and humanitarian principles to professionals working in contexts where IHL is violated.

> *"In a globalized and increasingly volatile world, the relevance of humanitarian principles should not be considered as context-specific."*
>
> **- Germany**

Some Member States reported integrating IHL in a military context. For example, the EU organised training courses internally and for other Member States on civil-military relations. Austria reported that the module Support to Humanitarian Assistance is part of various scenarios used for training. France deploys operational legal advisors on humanitarian and human rights law where French and allied military capacities are engaged. At a domestic level, Turkey reported that it conducted studies on the compatibility of the means and instruments of war with international humanitarian law. Additionally, Turkey has engaged in training programs for its own staff and Turkish security forces, the Ministry of Justice, the Ministry of Foreign Affairs, the ICRC, and other parties convene regular meetings as a mean of assessing progress.

In recognition of the centrality of humanitarian principles to obtaining access to populations in need, a number of stakeholders reported on their efforts to strengthen promotion of the principles. CBM International is implementing sessions on humanitarian principles in trainings for their East Africa and Asia Pacific regions' partners; the ACT Alliance, which is comprised of more than 140 faith-based member organizations, updated their Humanitarian Response Mechanism to more strongly reflect humanitarian principles and accountability; Trócaire has set up a Humanitarian Learning Platform where staff can access information and training modules on humanitarian principles and action. Ireland and Norway are applying adherence to humanitarian principles as criteria for funding and partnerships.

Strengthening respect for International Humanitarian Law through UN Security Council Resolutions

Some Member States reported on their support of the adoption of UN Security Council Resolution 2286, which set out a roadmap to protect medical facilities and personnel, and some are providing continued support for its implementation. New Zealand, Japan, and Spain participated in the drafting of the resolution, which also received support from Canada, the United Kingdom, Norway, and the EU, among others.

Some UN actors also reported their efforts to support Resolution 2286 as well as the protection of medical missions. The UN Special Representative of the Secretary-General for Children and Armed Conflict dedicated a session to attacks on health care and protected personnel in her report to the General Assembly, and information on attacks on health was also included in her report to the Human Rights Council. Moreover, in line with the resolution, both the Office of the Special Representative and UNICEF have supported the development of actions that parties to conflict should take to end these violations.

In addition to Resolution 2286, Member states including Austria, Canada, and Spain have continued to promote respect for IHL and humanitarian principles by leading and/or cosponsoring other resolutions at the UN level, including for country-specific emergency humanitarian crises, such as in Syria, Burundi, and the DRC. For example, Spain supported the adoption of Resolution 2328 for the evacuation of civilians from Aleppo. Austria co-sponsored similar initiatives at the UN Human Rights Council, such as Resolution 33/24 on the Human Rights situation in Burundi.

Operational efforts to increase access to people in hard-to-reach areas

"Recognize the important role of faith-based actors in delivering humanitarian response, as they have the unique advantage of reach and influence not just to their direct constituents but to the broader populations where they are located."

- ACT Alliance

A few actors reported efforts to ensure access to humanitarian assistance. UNFPA has increased its effort to advocate and reach additional communities in hard-to-reach areas in Syria, Iraq, and Nigeria. The organisation provided humanitarian assistance to around 500,000 people during the reporting period. Ukraine simplified the procedures for crossing contact lines into non-government controlled territories in the eastern region of the country for a list of international organisations to enable the delivery of humanitarian assistance to those areas.

Switzerland promotes and financially supports the Centre of Competence on Humanitarian Negotiation in Geneva, which came into operation in October 2016, and whose objective is to facilitate and promote the exchange and analysis of best practices in humanitarian negotiations to enable humanitarian aid and protection to reach people in need rapidly and without hindrance. The UNHCR has almost 100 staff working exclusively or partly on protection coordination and information management in the field.

Sweden reported that the Swedish International Development Cooperation Agency's (Sida) new strategy focuses on the protection, which includes improved opportunities for safe and unhindered humanitarian access to people affected by crises.

CARE is a member of the Working Group on Protection of Humanitarian Action, which supports the creation of a Special Rapporteur for the protection of aid workers, dedicated to advancing efforts to respect and protect the humanitarian mission against attacks, threats, or other violent acts, and to fight impunity.

The main barriers/ challenges to progress

Gaining free and unfettered humanitarian access during emergencies is a difficult barrier to overcome as it depends on a number of external factors, which are often outside an organisation's control. The continued lack of compliance with and accountability for violations of IHL was the most cited challenge among actors. More specifically, the deliberate targeting of

medical facilities and personnel was reported as a particular barrier to progress. Both UNICEF and Medair cited conflict and disregard for human rights law and IHL by parties of armed conflicts as well as the targeting of medical facilities, personnel, and supplies as the main challenge in their operations. Humanitarian Aid International noted in its report that the continued violations of IHL and attacks on humanitarian and health workers seriously harm the humanitarian sector, as it discourages humanitarian workers to work in conflict zones.

While sharing good practices can be useful in identifying innovative solutions to overcoming access constraints and enhancing protection of medical and humanitarian personnel, WFP notes that confidentiality plays a large part in negotiating access—so sharing experiences, challenges, and best practices is often not possible. Further, they report that gaining principled access also depends on a number of external factors which are sometimes outside of the WFP's control and, consequently, they are not always successful in ensuring free and unfettered humanitarian access. Although UNFPA made progress in accessing hard-to-reach areas, it stated that the lack of protection and security still remain a challenge for staff and partners.

Turkey noted that lack of coordination and collaboration among missions hinders progress towards this transformation. As an organisation that works with different programmes and local partners, Cordaid reported constraints in country programmes as a challenge in its operations, which require choosing between local system strengthening or the creation of parallel systems to deliver aid to those in need.

Measuring progress

> *"One cannot plan a serious humanitarian project without considering safety and security and thus foreseeing budgets for safety and security measures."*
> **- Johanniter-Unfall-Hilfe**

Some actors reported that monitoring and evaluation mechanisms are being assessed or pending approval within organisations. Others reported that while no formal mechanisms were in place, internal monitoring and assessment was taking place through reports and/or other existing channels within organisations.

The UN Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict documents attacks on health facilities and denial of access to health services to children. UNICEF tracks these violations to assess progress and to direct additional attention to where attacks are ongoing. UNFPA observed and documented, along with other UN agencies, the number of attacks against humanitarian and health workers and health facilities.

Johanniter-Unfall-Hilfe has set up a monitoring system and conducts lessons learned sessions following security incidents. Austria utilises a quality-management-system applied to all academic trainings within the Austrian Armed Forces, in addition to regularly evaluating the processes applied in its practical trainings. Along the same lines, France, who deploys operational legal advisors to operations fields and conducts training activities for French and allied military and armed forces of host countries, conducts regular reports of these training activities that are shared with military authorities at the strategic level and allow for better sharing of best practices.

> *"A critical element is focusing more on the political pathways to change—our early warning is fairly good, but we are as yet unable to transform that to early action."*
> **- CARE International**

Gaps between the actions of stakeholders and advancing the transformation

"Continued support and funding is required to pursue efforts to strengthen the capabilities of staff and partners to properly plan and implement strategies to gain and maintain humanitarian access to those in need."

- WFP

While there were increased efforts to promote the principles of humanity, impartiality, neutrality, and independence in humanitarian action and adherence to IHL in the actions of stakeholders, there remain major gaps between words and practice to ensure the realisation of Transformation 2B.

Even efforts to ensure these principles are upheld still require greater commitment. The EU noted that mainstreaming the promotion and respect for IHL throughout all relevant EU activities requires further strengthening. Similarly, while Malteser has internally reaffirmed humanitarian principles, the organisation raised a concern that programme teams may lack the necessary awareness to provide transparent reports on adherence to and compliance with humanitarian principles in practice.

Most notable, however, was the recognition that adherence to IHL is critical, but action toward compliance remains thin. If non-state and state actors continue to disregard IHL and intentionally target humanitarian and health workers, no amount of effort by stakeholders will be enough to ensure the transformation is realised. In order to achieve this, Humanitarian Aid highlighted that a solution to the lack of accountability and compliance with IHL means challenging those who commit violations and those who hold positions of power and influence. Lithuania called attention to a need to reach broad agreement and understanding among States and non-State actors to ensure wide participation in the implementation of this commitment.

The need to hold violators accountable and to end impunity for these violations was a recurring theme among the reports. Accountability is needed both for violators of IHL and for Member States' commitments under Security Council Resolution 2286. While many Member States supported Resolution 2286, its implementation has remained practically non-existent and the reasonable recommendations of the Secretary General for implementation have not been adopted by the Council. Spain reported that the political objectives of many countries are a barrier to the resolution's effective implementation.

Moreover, actions protecting the medical mission highlighted in Member States' commitments require many further actions, including reform of laws and military doctrine, training of military organizations, and strengthening domestic investigations and accountability that were not reported by stakeholders, or that were at best vaguely addressed. Further, despite the need to ensure that counter-terrorism laws and practices do not prevent access of humanitarian assistance or lead to the killing, arrest, and/or prosecution of health providers, no actions were reported. Furthermore, the insufficient reporting of concrete and effective measuring and evaluation mechanisms to assess progress towards commitments is a gap in itself.

Other identified gaps include lack of reported action to ensure that additional procedures to facilitate rapid and unimpeded humanitarian and medical access, to protect humanitarian and medical personnel are in place and to condemn instances of States that arbitrarily withhold consent to humanitarian access.

Highlights of good practice

- Canada, along with Switzerland, co-leads an informal group in Geneva that brings States together to mobilize international leadership for UN Security Council Resolution 2286. Canada is also closely tracking international progress in implementing the resolution, which includes regular internal discussions and meetings with other Member States and with humanitarian partners and civil society.

- The Office of the Special Representative of the Secretary-General for Children and Armed Conflict has supported the development of recommendations on measures to enhance protection of the wounded and sick, of humanitarian and medical personnel engaged in medical duties, of their means of transport and equipment, and of hospitals and other medical facilities, through recommendations to parties to conflict, in line with the request made by the Security Council in Resolution 2286.

- The Ukraine amended its policies to allow for clearer, simpler, and more accelerated procedures for rapid and unimpeded delivery of humanitarian aid and assistance to the Donetsk and Luhansk regions, the non-government controlled territories in eastern Ukraine. The amendments simplify the procedures of crossing contact lines to a list of international humanitarian organisations.

- InterAction released the policy brief "Civilians Under Fire: Restore Respect for International Humanitarian Law" and engaged the Obama administration on measures to implement the Presidential Executive Order on minimizing civilian harm in US military operations as well as on security cooperation. Further, InterAction hosts visiting field staff in roundtables and staff briefings with the aim of increasing the connectivity between policy development and frontline response.

Recommendations

1. Continue efforts to ensure the promotion of the principles of humanity, impartiality, neutrality, and independence in humanitarian action and compliance to International Humanitarian Law by all stakeholders.

2. Where Member States fail to conduct thorough, impartial, and independent investigations of IHL, the Security Council should mandate an international investigation or commissions of inquiry, and make referrals to the International Criminal Court or other international tribunals as warranted to initiate accountability procedures where violations are found.

3. All stakeholders, particularly Member States, should implement Resolution 2286 based on the recommendations of the Secretary-General, including reform of laws (including laws that criminalize the provision of impartial health care) and military doctrine, training of military organizations, and strengthening domestic investigations and accountability.

4. Member States should support the creation of a Special Representative dedicated to advancing the implementation of Resolution 2286. The Special Representative would, in turn, request access to countries where humanitarian and medical missions are under attack.

5. Humanitarian and other relevant actors should collaborate with the UN to systematically collect, verify, analyse and report data and actions set out in Resolution 2286 to gain a comprehensive understanding of national and global trends to prevent attacks on humanitarian and medical missions and promote accountability.

6. All stakeholders should work to foster collaboration and coordination among different actors as well as the sharing of lessons learned and best practices to avoid competition between various actors and discrepancies in aid delivery, to maximize efforts and ensure assistance reaches those in need.

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