BRIEFING PAPER FIVE

GOOD HUMANITARIAN ACTION IS APOLITICAL AND ADHERES TO INTERNATIONAL LAW AND THE HUMANITARIAN PRINCIPLES

ALNAP

Contents

Acknowledgements

The Global Forum Briefing Papers: What are they for and what do they tell us?

The aim of the Global Forum is to identify recommendations that will help the international system become more adaptable to different crisis contexts, thereby making overall humanitarian action more effective. To support these discussions, these Background Papers:

- Outline how the international system is performing against various criteria of effective humanitarian action
- Identify the key obstacles to improvement on each criterion of effective action
- Present the recommendations that have been put forward around the World Humanitarian Summit (WHS) process to address these obstacles

Each paper's title describes a **success criterion** for humanitarian action. These are different ideas of what effective humanitarian action looks like. The seven success criteria were identified through a two-stage review of the evaluative research on humanitarian performance and the recommendations put forward for the World Humanitarian Summit process (for more detail, please see the accompanying paper: 'The Global Forum Briefing Papers: What are they for and what do they tell us?').

WHAT IS THIS SUCCESS CRITERION ABOUT? WHY DOES IT MATTER?

These sections give a brief description of the success criterion and the different views on why this is important for good humanitarian action.

HOW WELL DOES HUMANITARIAN ACTION PERFORM AGAINS THIS SUCCESS CRITERION?

This section provides an overview of what is going well and what is not with respect to each success criterion. It draws on evidence to identify the degree to which the criterion is being met in current humanitarian action. The primary source of evidence for this section in each paper is the 2015 State of the Humanitarian System (SOHS) report, and it should be assumed that this is the key reference unless cited otherwise. This section also introduces the key obstacles to improvement, which are bolded in the text. These key obstacles are also derived from the 2015 SOHS, as well as from other research and evaluation on humanitarian action.

KEY OBSTACLES

This section is a summary list of the key obstacles described in each paper as inhibiting better performance against the criterion.

KEY OBSTACLES AND RECOMMENDATIONS

This section provides a list of the recommendations which seek to address the key obstacles and so to improve humanitarian action with respect to each success criterion. These recommendations have been synthesised from over 700 recommendations across 39 position papers, WHS consultation reports and the work of the WHS Thematic Teams (see 'The Global Forum Briefing Papers: What are they for and what do they tell us?' for more detail). They reflect the different recommendation areas external organisations have put forward and have been clustered according to the obstacles they seek to address. The aim of the synthesis is to accurately reflect the range of views and ideas for reform, and to connect these ideas to an evidence base on how the humanitarian system is performing. This means some synthesised recommendations may conflict with one another, or may not be mutually achievable, as there remains a lack of consensus among humanitarian actors on how best to improve humanitarian action.

ANNEXES

The annex to each paper (provided in a single-bound document to Global Forum participants) provides the full set of raw recommendations used in the synthesis, showing where these recommendations were clustered.

GOOD HUMANITARIAN ACTION

IS APOLITICAL AND ADHERES TO INTERNATIONAL LAW AND THE HUMANITARIAN PRINCIPLES

1. WHAT IS THIS SUCCESS CRITERION ABOUT?

- Delivering humanitarian assistance and protection in accordance with the principles of humanity, impartiality, neutrality and independence
- Ensuring there is a demonstrated respect by all parties, particularly by states and parties to conflict, for international law relevant to humanitarian action, especially international humanitarian law (IHL), international refugee law and international human rights law
- Protecting humanitarian action from political instrumentalisation
- Protecting the rights of crisis-affected people

2. WHY DOES IT MATTER?

The humanitarian principles are at the heart of humanitarian action, providing a normative basis that both guides and justifies humanitarian assistance.[i] This justification has both moral and legal resonance, particularly in situations of armed conflict, where scholars agree humanitarian action is legally grounded in conventional IHL, international customary law and some principles of law. Where humanitarian actors fail to uphold these principles, they lose moral authority and can lose legal justification for their activities. This can jeopardise access and provision of aid to people in need.

The failure of states and other actors to respect international law (particularly IHL, international refugee law and international human rights law) can create or exacerbate situations where humanitarian assistance is required and can also make it extremely difficult to provide assistance.

The failure of states to meet their duty of protection to populations in situations of crisis, and – in many cases – of humanitarian actors to respond effectively to these situations, greatly exacerbates the suffering and loss of dignity of crisis-affected populations.

3. HOW WELL DOES HUMANITARIAN ACTION PERFORM AGAINST THIS SUCCESS CRITERION?

The State of the Humanitarian System (SOHS) 2015 reports no progress on issues related to principled humanitarian action from the prior period of study. SOHS survey respondents were fairly positive about their own organisation's adherence to principles: between 60% and 78% rated this as 'good' or 'excellent'. Rather unexpectedly, organisations reported broadly similar levels of adherence to principles across conflicts, protracted crises and rapid-onset natural disasters.

This view from the agencies was in contrast with the views of affected people in conflict and protracted crises, as reported at the World Humanitarian Summit (WHS) Middle East and North Africa (MENA) consultation: when asked to say to what degree (out of 10) they felt aid

Difficulties in applying humanitarian principles in ways that fit with ethical priorities and conceptions of aid in other cultures.

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groups were neutral and impartial, affected people's responses were between 2.9/10 in Lebanon and 5 /10 in Jordan.[ii] The WHS Eastern and Southern Africa (ESA) community consultations reported that only 32% of those asked trusted humanitarian actors 'to some extent' or more, and suggested this was a result of these actors (international, national and local) not following humanitarian principles.[iii]

One particular challenge noted in the SOHS is that of balancing between different principles where they appear to be in conflict. In the Syria crisis (as in several others), some agencies have had to decide an appropriate balance between the principle of humanity and other principles, notably impartiality. Choosing between being based in Damascus or operating cross-border has resulted in primarily serving in government-controlled areas or on the edges of the borders to camps/settlements (and to a limited segment of the population). Organisations chose to prioritise the principle of humanity and remain 'present', even though this meant following the requests of the Syrian government and thus sacrificing heavily their impartiality.

Another potential challenge lies in **applying humanitarian principles in ways that fit with ethical priorities and conceptions of aid in other cultures**. The principle of impartiality, for example, can run contrary to culturally accepted principles around distribution and need. In Myanmar, community leaders requested requested that deliveries provide a 50/50 equal share for the Rakhine and the Rohingya, despite differences between the two groups in terms of level of need. Similar problems were reported in Somalia, where cultural norms often demand equality of distribution irrespective of need, which conflicts with humanitarian targeting and prioritisation.

Neutrality is also being challenged, as humanitarians are discouraged or prevented from engaging in dialogue with armed actors to help ensure humanitarian objectives are met. This lack of ability to engage with some actors in conflict can lead to the perception that humanitarians are taking sides and can prevent humanitarians from gaining access to populations in need. In particular, counterterrorism legislation (in both crisis-affected and donor states) was cited as placing limits on the groups with which humanitarian actors can dialogue.

In general, many SOHS interviewees felt it was a challenge for non-governmental organisations (NGOs) to stay independent from donor priorities, and also independent from the UN. Several interviewees felt **humanitarian action continues to be at best obscured, and at worst instrumentalised, by political, military or peace-building objectives**. In particular, the problem of stabilisation programmes co-opting humanitarian aid – and associating humanitarian actors with stabilisation goals – remains forefront on the minds of humanitarians: it has direct implications for their security and their decisions on whether and how to intervene in conflict settings. Similarly, a number of governments have justified the use of force or a combat-specific operation under the guise of 'humanitarian' assistance. A wider funding base, including with new donors, could help improve independence – but might undercut the other principles, as new and emerging donors may not always share the same views on the humanitarian principles.

Where humanitarian actors are perceived to be working according to a political programme, particularly – but not exclusively – in conflict and protracted crises, they may find it difficult to secure access due to **insecurity and threats to agency staff**. In 2013, 474 aid workers were killed, injured or kidnapped: of these, 417 were 'national' victims, of whom 206 worked for national NGOs or Red Cross/Crescent societies.[iv] Globally, interviewees perceive there to be a decreasing respect for the neutral and impartial status of aid workers.

The underlying reason for many of these problems is that **rights and obligations deriving from IHL, refugee law and human rights law are not fully respected**. In Syria, as mentioned above, interviewees felt there had been too much respect for sovereign rights without enough emphasis on sovereign responsibilities. More broadly, the most recent SOHS interviews and field research underline that government behaviour in some countries does not demonstrate respect for IHL and the principles. One concrete example of this is repeated challenges around access as a result of constraints imposed by the state (generally in conflict situations, but not always). Both the SOHS and the WHS stakeholder consultation for North and Southeast Asia[v] reported that government restrictions or interference by governments/donors were an important factor in preventing access. It was also noted that working with central authorities can be problematic, as the intentions around programmes can become very political.

Humanitarian action continues to be at best obscured, and at worst instrumentalised, by political, military or peace-building objectives.

Insecurity and threats to agency staff.

Rights and obligations deriving from IHL, refugee law and human rights law are not fully respected.

Currently the centrality of protection in humanitarian action is not affirmed and meaningfully applied as it should be.

In addition, the protection of civilians and persons hors de combat remains a significant and increasing challenge. Again, the primary responsibility here rests squarely with states and other parties to conflict. However, humanitarian agencies should also contribute to addressing the consequences of violations. Many feel that, **currently, the centrality of protection in humanitarian action is not affirmed and meaningfully applied as it should be**. Unfortunately, protection historically has among the poorest percentages of funding coverage. In 2013, at a time when protection crises dominated the humanitarian caseload, protection was the least-funded activity, with just 30% of requirements in appeals funded. In the WHS MENA stakeholder consultation, when asked to say to what degree (out of 10) they felt protected and safe from violence, affected responses were between 2.3/10 in Yemen and 5.8/10 in Jordan. In some cases, women felt less safe and protected than men (Egypt, Jordan); in others, with active hostilities, men felt less safe than women (Palestine, Yemen).[vi] The broad findings from SOHS 2015, including the global interviews and survey findings, conclude that advocacy and response to protection threats by humanitarians have been limited.

4. KEY OBSTACLES

1

Difficulties in applying the principles in ways that fit with ethical priorities and conceptions of aid in other cultures.

2

Humanitarians are discouraged or prevented from engaging in dialogue with armed actors to help ensure humanitarian objectives are met.

3

Humanitarian action is being obscured, or directly instrumentalised, by political, military or peace-building objectives.

4

Insecurity and threats to agency staff.

5

Rights and obligations deriving from IHL, human rights law and refugee law are not fully respected.

6

Currently the centrality of protection in humanitarian action is not affirmed and meaningfully applied as it should be.

5. KEY OBSTACLES AND SYNTHESISED RECOMMENDATIONS

The WHS Thematic Teams' Bonn recommendations reflect the most recent thinking of the WHS Secretariat and Thematic Teams on the key areas for reform to be addressed by the Summit. These recommendations are italicised below.

1

KEY OBSTACLES

Difficulties in applying the principles in ways that fit with ethical priorities and conceptions of aid in other cultures.

RECOMMENDATIONS TO BE DECIDED

2

KEY OBSTACLES

Humanitarians are discouraged or prevented from engaging in dialogue with armed actors to help ensure humanitarian objectives are met.

RECOMMENDATIONS

a. *Pursue dialogue on mitigating the impact of counterterrorism legislation on humanitarian negotiation, while not undermining the aims of such legislation.*

3

KEY OBSTACLES

Humanitarian action is being obscured, or directly instrumentalised, by political, military or peace-building objectives.

RECOMMENDATIONS

a. Pursue dialogue with states aimed at depoliticising humanitarian action.
b. Ensure these concerns are addressed in the review of UN peace operations.
c. Work with the UN Security Council (UNSC) to depoliticise humanitarian action.

4

KEY OBSTACLES

Insecurity and threats to agency staff.

RECOMMENDATIONS

a. Make funding available, especially for local actors.
b. Keep the issue on the UNSC agenda.
c. Prosecute under international law those who attack humanitarian actors.
d. Strengthen operational management systems.

5

KEY OBSTACLES

Rights and obligations deriving from IHL, human rights law and refugee law are not fully respected.

RECOMMENDATIONS

a. *States should ensure full implementation of IHL: this includes ratification of relevant treaties, national commissions on IHL, policy frameworks, integration of IHL into armed forces' doctrines and procedures and many other measures.*
b. Mechanisms for ensuring compliance and accountability for violations should be in place, be fully functioning and have competences over the alleged violations.
c. All parties should be made aware of, and understand the specific implications of, IHL and the principles for humanitarian action.
d. Ensure states and non-state parties allow access through advocacy, dialogue and education.* Monitor access at a global level.

6

KEY OBSTACLES

Currently the centrality of protection in humanitarian action is not affirmed and meaningfully applied as it should be.

RECOMMENDATIONS

a. *Humanitarian actors should increase funding for protection, and ensure protection activities are mainstreamed and take place throughout the programme cycle.*
b. Protection in the context of humanitarian action should match the needs and priorities of affected communities, and be contextualised.
c. Local communities should be more empowered in enforcing and advocating for the respect of IHL and the fulfilment of protection needs.
d. *Regional entities should currently play a more significant role in monitoring and promoting protection and assistance, in particular through the creation of regional frameworks.*
e. *Build on the upcoming UN General Assembly resolution to bolster protective accompaniment/ presence.*
f. *Humanitarian actors should address protection in non-conflict situations (such as migrants and asylum-seekers travelling by sea, urban and communal violence and during pandemics).*

5. ENDNOTES

i.   The classic modern-day presentation of the principles is found in the Fundamental Principles of the Red Cross (1979).

ii.   WHS (2015) 'Regional Consultation for Middle East and North Africa: Jordan 3-5 March 2015. Preparatory Stakeholder Analysis'. World Humanitarian Summit (WHS) .

iii.   WHS (2014) 'Regional Consultation for Eastern and Southern Africa. Preparatory Stakeholder Consultation'. World Humanitarian Summit (WHS).

iv.   Figures obtained from the Aid Worker Security database, https://aidworkersecurity.org/incidents/report/summary, accessed 24 April 2015.

v.   WHS (2014) 'Regional Consultation for North and South-East Asia. Preparatory Stakeholder Consultation'. World Humanitarian Summit (WHS).

vi.   WHS (2015) 'Regional Consultation for Middle East and North Africa: Jordan 3-5 March 2015. Preparatory Stakeholder Analysis'. World Humanitarian Summit (WHS) .

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