

# Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict

## CONCLUSIONS

Commissioned by the United Nations Office for the Coordination of Humanitarian Affairs



OXFORD INSTITUTE FOR  
ETHICS, LAW AND  
ARMED CONFLICT



Human  
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GENERATIONS

## Foreword

In armed conflicts across the world, millions of civilians require emergency assistance to survive. Despite the challenges and dangers of operating in armed conflict, humanitarian organizations respond with life-saving assistance by distributing food and life-saving medical supplies, and by providing access to shelter, water and sanitation. Tragically, civilians continue to live in areas where parties to armed conflict withhold consent to humanitarian relief operations or impose onerous and time-consuming bureaucratic restrictions on assistance, such that humanitarian organizations can only reach a small fraction of those in need. Such impediments and delays of humanitarian relief operations further compound civilian suffering.

A firm understanding of the legal framework regulating humanitarian relief operations in situations of armed conflict is essential for all those with a role to play in ensuring that people in need have the best chance of accessing and receiving life-saving assistance. While the parties have clear legal obligations, the day-to-day reality is that humanitarian access is a matter for negotiation between parties to an armed conflict and those seeking to conduct humanitarian relief operations, and is not achieved simply by making demands.

The present Guidance will assist a variety of actors concerned with humanitarian relief operations, including parties to armed conflict, other states, international and non-governmental organisations seeking to provide humanitarian assistance, the United Nations Security Council and General Assembly and other relevant bodies, legal practitioners, scholars and the media. The document will enhance understanding of the rules of international law that are relevant to this area, promote further discussion, and inform policies and advocacy strategies for improving humanitarian access to conflict-affected populations.

In his 2013 report on the protection of civilians in armed conflict, the United Nations Secretary-General noted that further analysis of one dimension of this legal framework was required: the issue of arbitrary withholding of consent to humanitarian relief operations and the consequences thereof. He instructed the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) to engage with a range of actors to examine the relevant rules, and consider options for providing guidance.<sup>1</sup>

In response, OCHA commissioned the Institute for Ethics, Law and Armed Conflict and the Oxford Martin Programme on Human Rights for Future Generations at the University of Oxford to convene a meeting of experts to discuss the options for providing guidance on this topic. As the experts expressed the view that it was not possible to consider the question

1. *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, UN doc S/2013/689, 22 Nov 2013, para 80.

of arbitrary withholding of consent in isolation from the rest of the rules regulating humanitarian relief operations in situations of armed conflict, the scope of the consultations was broadened accordingly. It was also indicated that the most useful format for providing guidance was a non-binding restatement of applicable rules. On the basis of this feedback, OCHA commissioned the University of Oxford to convene a series of consultations of eminent experts in international law that led to the elaboration of the present Guidance document. In the course of the consultations, OCHA also commissioned the University of Oxford to produce two background research papers addressing some of the issues that are examined in the Guidance document. These papers<sup>2</sup> provided an initial step in the analysis of the relevant legal issues and a basis for discussion and further exploration.

The Guidance document seeks to reflect existing law, and to clarify areas of uncertainty. Where the law is unclear, it presents possible different interpretations. Each section is presented in the form of a narrative commentary outlining the legal framework regulating a specific aspect of humanitarian relief operations and ends with italicised Conclusions summarising the key elements. The Guidance document does not represent the official position of OCHA or of the United Nations, and each Conclusion does not necessarily reflect the unanimous view of the experts consulted.

OCHA, the Oxford Institute for Ethics, Law and Armed Conflict, and the Oxford Martin Programme on Human Rights for Future Generations would like to express their gratitude to the experts who participated in the consultations. Without their expertise, experience, commitment and goodwill, the elaboration of the Guidance document would not have been possible.



**Stephen O'Brien**

United Nations Emergency Relief Coordinator and  
Under-Secretary-General for Humanitarian Affairs

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2. Dapo Akande and Emanuela-Chiara Gillard, *Cross-Border Relief Operations: The Legal Framework* (2016), and Dapo Akande and Emanuela-Chiara Gillard, *Arbitrary Withholding of Consent to Humanitarian Relief Operations in Armed Conflict* (2016).



## Authors

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## Acknowledgements

This document has been prepared on the basis of consultations with experts who met in Oxford for a number of sessions held in 2013 and 2014. At these sessions, the experts provided valuable advice on the law and practice related to the topic, and reviewed drafts of the Guidance document. In between and after these sessions, electronic consultations were also held with the experts.

The list of experts who participated in the consultations is to be found below. The authors would like to express their sincere gratitude to them for their wisdom and for their dedication to the process. They have played an indispensable role in the elaboration of the Guidance document.

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## Core Group of Experts Consulted

The experts listed below took part in the consultation process in their individual capacities. Their current or former affiliations are provided only for the purposes of identification. Nothing in the document necessarily represents the views of any state or organization with which they are or have been affiliated.

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## Conclusions

These conclusions should be read together with the narrative commentary in the Guidance in order to obtain a fuller understanding of the relevant legal framework.

### A. Introduction

*A(i) For the purposes of this Guidance document, “humanitarian relief operations” include, but are not limited to, operations to provide food, water, medical supplies, clothing, bedding, means of shelter, heating fuel, and other supplies and related services essential for the survival of a civilian population, as well as objects necessary for religious worship.*

*A(ii) The rules of international humanitarian law on humanitarian relief operations apply to relief operations that are exclusively humanitarian and impartial in character, and that are conducted without adverse distinction.*

### B. Responsibility for Meeting the Needs of the Civilian Population

*B(i) States have the primary responsibility to meet the needs of civilians in their territory or under their effective control.*

*B(ii) In non-international armed conflicts, in situations where organised armed groups exercise effective control over territory, they also have a responsibility to meet the needs of civilians under their effective control if the state party to the conflict is unable to or otherwise does not discharge its obligations in this regard.*

### C. Offers of Services

*C(i) In situations where a civilian population remains inadequately provided with food, water, medical supplies, clothing, bedding, means of shelter, heating fuel, and other supplies essential for its survival, as well as objects necessary for religious worship, offers may be made to conduct relief operations that are exclusively humanitarian and impartial in character and conducted without adverse distinction.*

*C(ii) Offers to conduct humanitarian relief operations do not constitute interference in the armed conflict or unfriendly acts.*

### D. Consent to Humanitarian Relief Operations

*D(i) If civilians are inadequately provided with essential supplies and offers have been made to conduct relief operations that are exclusively humanitarian and impartial in character and*

*conducted without adverse distinction, such operations must be carried out subject to the consent of the state in whose territory the operations will be carried out. Such consent must not be arbitrarily withheld.*

*D(ii) In situations of non-international armed conflict, where a humanitarian relief operation is intended for civilians in territory under the effective control of an organised armed group, and this territory can be reached without transiting through territory under the effective control of the state party to the conflict, the consent of the state is nonetheless required, but it has a narrower range of grounds for withholding consent.*

*D(iii) If the whole or part of the civilian population of an occupied territory is inadequately supplied, the occupying power may not withhold consent to offers to conduct humanitarian relief operations that are exclusively humanitarian and impartial in character.*

*D(iv) The United Nations Security Council may adopt binding decisions requiring parties to an armed conflict and other relevant states to consent to offers to conduct humanitarian relief operations, or may impose such operations, thereby dispensing with the requirement of consent.*

## **E. Arbitrary Withholding of Consent**

*E(i) Consent to humanitarian relief operations must not be withheld arbitrarily if:*

- civilians are inadequately provided with essential supplies; and*
- the party responsible for meeting their needs does not provide the necessary assistance; and*
- offers of services have been made by actors capable of carrying out relief operations that are exclusively humanitarian and impartial in character, and conducted without any adverse distinction.*

*E(ii) Consent is withheld arbitrarily if it is withheld:*

- in circumstances that result in a violation of obligations under international law with respect to the civilian population in question, including, in particular, obligations under international humanitarian law and international human rights law; or*
- in violation of the principles of necessity and proportionality; or*
- in a manner that is unreasonable, or that may lead to injustice or lack of predictability, or that is otherwise inappropriate.*

## **F. Implementation of Humanitarian Relief Operations**

*F(i) Once consent has been granted, parties to an armed conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief supplies, equipment, and personnel into and throughout territory under their effective control.*

*F(ii) The activities of humanitarian relief personnel may be limited or their movements temporarily restricted only in case of imperative military necessity.*

*F(iii) Parties to an armed conflict may prescribe technical arrangements for the passage of humanitarian relief supplies, equipment, and personnel.*

*F(iv) Administrative procedures and formalities and technical arrangements must be applied in good faith, and that their nature, extent and impact must not prevent the rapid delivery of humanitarian relief in a principled manner. Their imposition or effect must not be arbitrary.*

## **G. Humanitarian Relief Supplies, Equipment, and Personnel: General Rules and Additional Safeguards for Two Privileged Types of Humanitarian Relief Operations**

### **Humanitarian relief supplies, equipment, and personnel – general rules**

*G(i) Relief personnel may participate in humanitarian relief actions, subject to the approval of the state in whose territory the humanitarian relief operation is intended to be conducted. Such personnel must not exceed the terms of their mission and must comply with technical arrangements prescribed by the relevant authorities.*

*G(ii) Parties to an armed conflict must respect and protect supplies, equipment, and personnel that form part of humanitarian relief operations. Intentionally directing attacks against personnel, installations, material, units, or vehicles involved in a humanitarian assistance mission, as long as they are entitled to the protection given to civilians and civilian objects under international humanitarian law, is a war crime under the ICC Statute in international and non-international armed conflicts.*

### **Medical humanitarian relief operations**

*G(iii) The wounded and sick must be respected and protected. They are entitled to receive to the fullest extent practicable and with the least possible delay the medical care and attention required by their condition. Distinction may not be drawn among them on any grounds other than medical ones.*

*G(iv) Under no circumstances may anyone be harassed, harmed, subjected to any form of legal*



*proceedings or punished for having carried out medical activities compatible with medical ethics, or for having provided care to the wounded and sick.*

**G(v)** *In situations where the wounded and sick are in need of medical care and they are not receiving it, withholding consent to offers to provide the necessary assistance in a principled manner would be arbitrary.*

**G(vi)** *Once consent has been granted, parties to an armed conflict and states in whose territory the medical relief operations are initiated or through whose territory they must transit must allow and facilitate the rapid and unimpeded passage of medical relief supplies, equipment, personnel, and vehicles forming part thereof. They may prescribe technical arrangements for their passage. The nature, extent, and impact of administrative procedures and formalities and technical arrangements must not prevent the rapid delivery of medical humanitarian relief in a principled manner, and their imposition or effect must not be arbitrary.*

### **Food assistance relief operations**

**G(vii)** *Once consent has been granted, parties to an armed conflict and states in whose territory food assistance relief operations are initiated or through whose territory they must transit must allow and facilitate rapid and unimpeded passage of supplies, equipment, personnel, and vehicles forming part thereof. They may prescribe technical arrangements for such passage. The nature, extent, and impact of administrative procedures and formalities and technical arrangements must not prevent the rapid delivery of food assistance relief in a principled manner, and their imposition or effect must not be arbitrary.*

**G(viii)** *Starvation of the civilian population as a method of warfare is prohibited, including by deliberately depriving it of foodstuffs or other objects indispensable to its survival. Withholding consent to offers to conduct food assistance relief operations with the intention of starving the civilian population would be arbitrary.*

## **H. Non-Belligerent States and Humanitarian Relief Operations**

**H(i)** *Non-belligerent states must allow the free passage of humanitarian relief consignments intended for the civilian population of occupied territories.*

**H(ii)** *In international armed conflicts, the consent of non-belligerent states in whose territory humanitarian relief operations are initiated or through whose territory they must transit is required. Such consent must not be arbitrarily withheld.*

**H(iii)** *Non-belligerent states in whose territory humanitarian relief operations are initiated or through whose territory they must transit withhold consent arbitrarily if they do so*

- *in circumstances that result in a violation of their obligations under international law*

*with respect to the civilian population in question, including, in particular, their obligations under international humanitarian law and international human rights law; or*

- in violation of the principles of necessity and proportionality; or*
- in a manner that is unreasonable, or that may lead to injustice or lack of predictability, or that is otherwise inappropriate.*

**H(iv)** *In international armed conflicts, non-belligerent states in whose territory humanitarian relief operations are initiated or through whose territory they must transit must allow and facilitate rapid and unimpeded passage of humanitarian relief supplies, equipment, and personnel for relief operations that have been consented to. These states may prescribe technical arrangements, including search of humanitarian relief consignments, under which such passage is permitted but may not divert humanitarian relief consignments nor delay their forwarding. Technical arrangements must be applied in good faith and their nature, extent, and impact must not prevent the rapid delivery of humanitarian relief in a principled manner.*

**H(v)** *In relation to non-international armed conflicts, non-belligerent states may regulate the initiation and transit of humanitarian relief operations from or through their territory under national law, including the question of whether consent is required and, if so, in which circumstances it may be withheld. The position they adopt must not violate their obligations under international law.*

**H(vi)** *In non-international armed conflicts, non-belligerent states should endeavour to allow and facilitate rapid and unimpeded passage of humanitarian relief supplies, equipment, and personnel for relief operations that have been consented to. These states may prescribe technical arrangements, including search, under which such passage is permitted, but should endeavour to ensure that such arrangements are applied in good faith and that their nature, extent, and impact do not prevent the rapid delivery of humanitarian relief in a principled manner.*

**H(vii)** *All non-belligerent states should cooperate in providing humanitarian assistance and promoting compliance by parties to an armed conflict and other relevant states with their obligations under international humanitarian law and international human rights law relating to humanitarian relief operations.*

## **I. Consequences of Unlawful Impeding of Humanitarian Relief Operations**

### **Responsibility of the party and of persons unlawfully impeding humanitarian relief operations**

**I(i)** *Humanitarian relief operations are impeded unlawfully as a matter of international law*

- *when parties to an armed conflict or other relevant states are obliged to consent to offers to conduct humanitarian relief operations but fail to do so; or*
- *when states whose consent is required before offers to conduct humanitarian relief operations can be implemented withhold it arbitrarily; or*
- *when parties to an armed conflict or other relevant states violate their obligation to allow and facilitate rapid and unimpeded passage of humanitarian relief supplies, equipment, and personnel.*

**I(ii)** *Unlawful impeding of humanitarian relief operations gives rise to responsibility under international law.*

**I(iii)** *Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies, is a war crime.*

**I(iv)** *Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance mission, as long as they are entitled to the protection given to civilians and civilian objects under international humanitarian law, is a war crime.*

**I(v)** *Intentionally directing attacks against individual civilians not taking direct part in hostilities is a war crime.*

**I(vi)** *Intentionally directing attacks against civilian objects is a war crime.*

**I(vii)** *The intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, is a crime against humanity.*

### **Consequences of unlawful impeding of humanitarian relief operations for those seeking to conduct such operations**

**I(viii)** *Humanitarian relief operations conducted by states or international organisations on the territory of another state, including its airspace, without that state's consent, violate the latter's sovereignty and territorial integrity, even in cases where humanitarian relief operations have been unlawfully impeded.*

**I(ix)** *In situations where humanitarian relief operations are imposed by a binding decision of the United Nations Security Council, such operations conducted by states or international organisations without the consent of the relevant states would be lawful.*

**I(x)** *Exceptionally, states or international organisations may conduct temporary humanitarian relief operations to bring life-saving supplies to a people in extreme need, when no alternatives exist. Such operations must not violate the prohibition of the threat or use of force or seriously impair the territorial integrity of the state on whose territory they are conducted.*



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Cover photo: Water point in Sortony, North Darfur, Sudan; Credit: OCHA / Amy Martin