Humanitarian Access
in situations of armed conflict

Field Manual
Version 1.0

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Foreign Affairs FDFA

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Background and Purpose

In light of the challenges in securing and sustaining humanitarian access and the central role access plays in contributing to the protection of civilians, Switzerland launched an initiative in 2009 to develop two practical resources on humanitarian access in situations of armed conflict: this **Field Manual** on humanitarian access and an accompanying **Handbook on the Normative Framework**. These products contribute directly to the fulfillment of the objectives of the Swiss Federal Department of Foreign Affairs (FDFA) Strategy on the Protection of Civilians in Armed Conflict (2009–2012) pertaining to humanitarian access.

This Field Manual **provides a structured approach** and practical guidance for humanitarian practitioners on humanitarian access in situations of armed conflict. Even with this structured approach, humanitarian organizations will still face difficult choices on how to approach access. For this reason, the Field Manual includes guidance on **how to work through the dilemmas of humanitarian access.**

The companion **Handbook on Humanitarian Access** presents the normative framework pertaining to humanitarian access in situations of armed conflict, and therefore serves as a useful reference source for humanitarian practitioners on the normative framework.

This initial version of the Field Manual – labeled Version 1.0 – was elaborated by Conflict Dynamics International in collaboration with the FDFA and the UN Office for the Coordination of Humanitarian Affairs (OCHA).

Development of the structured approach and guidance contained in this Manuel involved a consultation process which included bilateral meetings with humanitarian organizations, regional consultation events and consultations during several field visits, including dedicated field missions.

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Methodology for Humanitarian Access

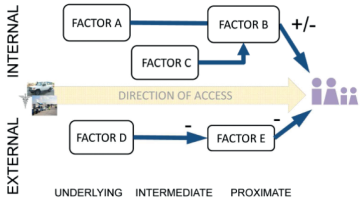
COMPONENT 1: PATHWAYS FOR HUMANITARIAN ACCESS

Step 1 *Establish direction and start/end points for access*

Step 2 *Identify types of factors affecting humanitarian access*
- *INTERNAL or EXTERNAL*
- *UNDERLYING, INTERMEDIATE, or PROXIMATE*

Step 3 *Group factors along possible causal pathways*

Step 4 *Rank factors*



COMPONENT 2: RELATIONSHIP & INFLUENCE MAPPING

>> Identify influencing actors and building a relationship map

>> Learn more about key influencing actors

>> Identifying specific provisions of the normative framework

COMPONENT 3: OPTION GENERATION

>> Develop options targeted at each influencing factor and the associated actor(s)

>> Consider and keep open alternative approaches

REVISIT OPTIONS

VIABLE OPTIONS?

NO

PURSUE ALTERNATIVES TO ACCESS

YES

COMPONENT 4: STRUCTURING APPROACH & COORDINATION

STRUCTURING APPROACH

>> Identify the humanitarian organizations at field/national/HQ level to lead on options

>> Ensure effective communication

>> Organize actions to be taken by immediate, medium-, and long term timeframes

COORDINATION

>> Seek agreement on framework and indicators

>> Establish an information sharing system on humanitarian access

>> Develop strategy for humanitarian negotiations

>> Identify, exploit linkages with cluster approach

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Summary and Quick Reference

Section 1	Introduction and objectives
Section 1.1	Humanitarian access encompasses **access by humanitarian organizations to those in need of humanitarian assistance and protection, and access by those in need to the goods and services essential for their survival.**
Section 1.2	The purpose of this Field Manual is **to contribute to improvement of the operational response to protection of civilians in situations of armed conflict … through the presentation and dissemination of a structured approach to- and guidance on securing and sustaining humanitarian access.** The primary audience for this Manual is humanitarian personnel working in- or on issues relating to humanitarian access in situations of armed conflict, whether there are engaged in policy development, planning, program management or operations.
Handbook on the Normative Framework	The companion publication to this Manual – **Humanitarian Access in Situations of Armed Conflict: Handbook on the Normative Framework** – presents the normative framework in greater detail and is intended as a reference resource for readers.

Section 2	Parameters of humanitarian access
Section 2.2	Six parameters of humanitarian access used to capture the scope and meaning of access in a given situation are: access **BY WHOM, TO WHOM, TO WHAT, FOR WHAT PURPOSE; WHO TRANSITS** (for access) and free passage **OF WHAT**
Section 2.3	These **six parameters are used as part of a structured approach** to humanitarian access; they: (i) provide a filter to ensure that the TO WHOM and FOR WHAT PURPOSE are considered in every case concerning access; (ii) provide a very practical organizing structure for the normative framework relevant to humanitarian access; (iii) help to identify the steps that form pathways for humanitarian access; and (iv) provide a common vocabulary among interlocutors when they may have differing perspectives on humanitarian access.

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Section 3	Framing the approach to humanitarian access
Section 3.1	For humanitarian practitioners the overall approach to humanitarian access in situations of armed conflict is **guided by core humanitarian principles and the normative framework.**
Section 3.2	Efforts to secure and sustain humanitarian access must be undertaken in accordance with the **core humanitarian principles of humanity, neutrality, impartiality and independence.**
Section 3.3	Two important **considerations for practitioners concerning overall posture** in approaching humanitarian access are: ACCESS AS NORMALLY "ON" OR NORMALLY "OFF"; and THE RIGHT TO HUMANITARIAN ACCESS.
Section 3.4 Reference: Handbook on the Normative Framework	The **normative framework** pertaining to humanitarian access in situations of armed conflict consists of the relevant provisions of **general International Law, International Humanitarian Law (IHL), International Human Rights Law (IHRL), and International Criminal Law.** It also includes relevant provisions of the Charter of the United Nations, decisions and resolutions of the U.N. Security Council and other international or regional bodies (e.g., the African Union),and the Guiding Principles on Internal Displacement.
Section 3.5	When the relevant provisions of the normative framework are reflected (whether explicitly or otherwise) in the domestic legislation of States or in customary or traditional practices, then these elements can provide a further reinforcing layer of the normative framework.

Section 4	Methodology for humanitarian access
Section 4.2 Figure on page i	The methodology for humanitarian access consists of four components: **Component I** – Pathways for humanitarian access *Step 1 – Use PURPOSE to establish direction and access start/end points* *Step 2 – Identify types of factors affecting humanitarian access* *Step 3 – Group factors along possible pathways* *Step 4 – Rank the factors and priority pathways* **Component II** – Relationship and influence mapping **Component III** – Option generation **Component IV** – Structuring approach and coordination
Section 4.3	**Indicators of humanitarian access** should capture both the desired end results of humanitarian access as well as changes in operating conditions such as the percentage of area accessed, the quantities of assistance delivered, etc. Indicators can also be used to monitor and report on access constraints.

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Section 5	Opportunities and options for specific access issues
	The methodology provides a template, or starting point, for humanitarian practitioners to adapt and apply to their particular contexts. Section 5 presents guidance on application of the methodology for four categories of opportunities or constraints:
Sections 5.2 to 5.5	**Humanitarian access during ongoing hostilities** **Bureaucratic constraints affecting access** **Targeting of humanitarian personnel or goods/assets** **Obstruction of humanitarian access.** The guidance for each category focuses on pathways for humanitarian access and options and alternatives.

Section 6	Dilemmas of humanitarian access
Section 6.2	Dilemmas of humanitarian access can be considered in three categories: **dilemmas of principle, institutional dilemmas and operational dilemmas.** Some dilemmas may be reflected in each of these categories. The following **actions can assist in working through dilemmas of humanitarian access**: (1) involve peers in working through dilemmas; (2) use decision-making tools; (3) identify and use technical criteria for decision making; (4) identify precedents; (5) use humanitarian principles and the normative framework to guide decisions; (6) balance potential short-term gain against longer term- or global consequences; (7) keep open alternate courses of action; (8) communicate organizations decisions and policies on how to deal with dilemmas throughout the organization; (9) be consistent in interactions with parties to the conflict or other actors to avoid misunderstandings and miscommunication; and (10) ensure effective coordination among humanitarian actors.
Sections 6.3 to 6.6	Section 6 presents guidance and options for four frequently-encountered dilemmas of humanitarian access: **Humanitarian security and humanitarian access** **Humanitarian negotiations to secure and sustain access** **Coordination of approach to humanitarian access** **Preserving humanitarian neutrality in context of an integrated U.N. peace operation**

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1. Introduction and objectives

1.1 Humanitarian access in contemporary armed conflicts

Humanitarian access is an essential enabler of humanitarian action. Without access, direct humanitarian assistance is impossible; without access, effective humanitarian protection becomes implausible.

Humanitarian access encompasses **access by humanitarian organizations to those in need of humanitarian assistance and protection, and access by those in need to the goods and services essential for their survival.** By facilitating humanitarian action, effective humanitarian access can improve the operational response by humanitarian actors and others to strengthen protection of civilians.

However, humanitarian access is often approached in an ad hoc way, with little or no structure or method. There is often a lack of clarity – among State actors, national authorities, non-State armed groups and humanitarian relief organizations – on the normative framework for humanitarian access. Furthermore, there are **differing and often competing perspectives** on the duties and obligations of parties to armed conflict and others concerning access, and even on the meaning of the term "humanitarian access" itself. Other areas where there is a lack of clarity or differing perspectives include the obligations and limitations on humanitarian organizations themselves, and the criteria for humanitarian access in different situations.

While humanitarian access is by no means a new issue in the realm of humanitarian action, contemporary armed conflicts have presented **new and/or more acute challenges**

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to securing and sustaining access for humanitarian purposes.[1] Examples of the types of challenges to humanitarian access include: ongoing hostilities, destruction of infrastructure, attempts by parties to armed conflict to intentionally block humanitarian access.[2] At a more fundamental level, in some situations ideological or other motives may result in a lack of willingness to facilitate humanitarian assistance and protection.

Most of these challenges are external to humanitarian organizations. However, they are often complicated by internal constraints – within humanitarian organizations – that affect humanitarian access. These include: the lack of sustained presence by humanitarian organizations in a particular area, humanitarian organizations' rules and procedures on operational security and security risk management.

This combination of the absence of a structured approach, lack of clarity on certain aspects of humanitarian access, and internal and external challenges have contributed to major difficulties in securing and sustaining access in many situations of armed conflict.

In light of these challenges, this **Field Manual provides a structured approach and practical guidance for humanitarian practitioners** on humanitarian access in situations of armed conflict. Even with this structured approach, humanitarian organizations will still face difficult choices on how to approach access. For this reason, the Manual includes guidance on how to work through these dilemmas of humanitarian access (Section 6).

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1 These challenges have arisen partially as a result of the changing nature and environment of armed conflicts, in turn due to a range of factors, including: (1) the preponderance of non-international armed conflict since the late 1980s which has resulted in more frequent need to engage with a variety of non-State actors; (2) the assertion of state sovereignty by certain States in ways that may resulted in limited humanitarian access and constraints on humanitarian assistance; (3) the proliferation of emergency relief actors; (4) the engagement of military forces in relief operations; (5) the active targeting of humanitarian personnel by parties to armed conflict in some contexts; and (6) the use of private military contractors for military or security operations in some contexts.

2 The types of challenges presented here are a subset of the nine categories of constraints on humanitarian access which have been identified by the United Nations Office for the Coordination of Humanitarian Affairs as part of its access monitoring and reporting framework. The nine categories of constraints are identified in Annex III.

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1.2 Objectives

The purpose of this Field Manual is:

> **To contribute to improvement of the operational response to protection of civilians in situations of armed conflict …**
>
> **… through the presentation and dissemination of a structured approach to- and guidance on securing and sustaining humanitarian access.**

The overall approach to securing and sustaining humanitarian access is **based on the core principles of humanitarian action – humanity, neutrality, impartiality and operational independence – and the normative framework.**

The primary audience for this Manual is humanitarian personnel working in- or on issues relating to humanitarian access in situations of armed conflict, whether they are engaged in policy development, planning, program management or operations. The content of this Manual is designed to assist in analyzing, planning, developing strategies for, and implementing approaches to humanitarian access at the global, country and sub-national levels. The guidance presented is intended equally for practitioners working with United Nations- or non-governmental humanitarian organizations.[3]

This Manual **does not provide a "quick fix"** to access constraints which practitioners may spontaneously encounter. It can help address spontaneous or newly-arising access challenges if the structured approach has been applied to the situation and if context-specific options have been developed.

While the guidance presented in this Manual is orientated specifically towards humanitarian access in **situations of armed conflict**, the methodology and relevant guidance can also be useful in developing approaches to access in situations other than armed conflict, such as in natural disasters. In these situations, the applicable normative framework will differ from that pertaining to situations of armed conflict.

The guidance presented in this Manual complements and should be used in conjunction with **existing policy guidance on humanitarian negotiations and on operational security and risk management,** policies which are highly relevant to humanitarian access.

[3] Where the guidance may differ depending on whether it is a U.N. or non-governmental humanitarian organization the text highlights the difference in suggested guidance.

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1.3 Organization of this manual

Section 2 presents key parameters or attributes of humanitarian access. **Section 3** summarizes the core humanitarian principles and the normative framework that guide the overall approach to humanitarian access. The companion publication to this Manual, titled *Humanitarian Access in Situations of Armed Conflict: Handbook on the Normative Framework* presents the normative framework in greater detail and is intended as a reference resource for readers.

Section 4 presents the methodology for humanitarian access, while **Section 5** provides guidance on application of the methodology in light of specific opportunities. **Section 6** presents guidance on dealing with dilemmas of humanitarian access.

Case studies and examples from experiences of humanitarian organizations are included throughout the text. The annexes contain additional information on humanitarian access for practitioners:

Annex I provides a selection of useful Internet/other resources relating to humanitarian access

Annex II presents select provisions of international law pertaining to humanitarian access

Annex III provides sample indicators for humanitarian access developed by the United Nations

Annex IV provides a sample worksheet to assist in application of the methodology for humanitarian access.

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2. Parameters of humanitarian access

2.1 Overview

There is **no universally agreed upon definition** of the term **"humanitarian access"**, neither in public international law nor in practice. There are many different perspectives on the actual meaning and scope of humanitarian access.

This Manual does not attempt to provide a working definition of humanitarian access, as has been attempted for other concepts (such as "humanitarian protection").[4] Instead, it **uses six key parameters relevant to humanitarian actors' efforts to secure and sustain access.** These parameters are used in the methodology to assist in identifying relevant provisions of the normative framework as well as the causal pathways for access and the actors involved.

2.2 Parameters based on practical aspects of humanitarian access

Humanitarian practitioners must deal with the practical, operational aspects of humanitarian access: *Who* is seeking access? Access *to whom*? Access *to what*? *Who transits*?

[4] The working definition of protection which emerged from a series of workshops at the ICRC in Geneva (1996–2000), and which has been widely used, is: "all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e., human rights law, international humanitarian law and refugee law. Human rights and humanitarian organisations must conduct these activities in an impartial manner and not on the basis of race, national or ethnic origin, language or gender." International Committee of the Red Cross (ICRC), Strengthening Protection in War: A Search for Professional Standards (Geneva: ICRC, May 2001) : p. 19.

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Because of this need to consider very practical aspects of access, and in light of the many perspectives on the meaning of humanitarian access, six parameters of humanitarian access have been identified to capture the scope and meaning of access in a given situation.

These parameters (presented below) can assist in approaching humanitarian access in a more rigorous way, when used as part of the methodology presented later in this Manual. The parameters can also assist practically in identifying the relevant provisions of the normative framework for a particular setting (see Section 3).

In addition to the term humanitarian access, the term "free passage" is used in the context of transiting, **unimpeded**, to access civilian populations and others not or no longer participating in hostilities in need of humanitarian assistance and protection.[5]

The six parameters of humanitarian access are presented in Table 1.

[5] Throughout this Field Manual the term "those not participating in hostilities" encompasses those who may previously have participated in hostilities but no longer do so (such as prisoners of war). Those not participating in hostilities include: the civilian population; medical and religious military personnel; wounded, shipwrecked and sick combatants; and prisoners of war.

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Table 1 – Six parameters of humanitarian access

	PARAMETER OF HUMANITARIAN ACCESS	DESCRIPTION / NOTES
Access …	**BY WHOM**	Identifies those organizations or persons seeking access. Depending on the direction of access, and based on the criteria and conditions in the normative framework (Section 3), can include access:[5.1] >> BY **humanitarian organizations and other actors** who can provide relief assistance to the civilian population and others not participating in hostilities >> BY **the civilian population** and others not participating in hostilities to essential objects and services. While access (e.g., for relief operations) may be sought and secured by many actors, including States and parties to the conflict, *humanitarian access* is unique to humanitarian organizations and those seeking assistance.
Access …	**TO WHOM**	The persons or groups to whom access is being sought, and can include access: >> TO t**he civilian population in need of humanitarian assistance and protection** (including children, women and other vulnerable groups) and TO **all others not participating in hostilities** >> TO **medical and other humanitarian personnel** by those not participating in hostilities.
Access …	**TO WHAT**	Relates to access: >> TO **objects and services essential for the survival of the civilian population.** For example, TO food, medical supplies, and TO services such as health care >> TO **services such as: registration** for receipt of humanitarian assistance and issuance of documentation >> TO **objects necessary for religious worship.**

[5.1] The two directions of humanitarian access highlighted throughout this Manual are reflected in the way in which the term humanitarian access is used by the Global Protection Working Group: "Humanitarian access should be understood both from the perspective of the affected population having access to protection and assistance, as well as the humanitarian actors having access to those requiring assistance and protection." See: Global Protection Cluster Working Group (PCWG), Handbook for the Protection of Internally Displaced Persons (Geneva: Global PCWG, December 2007) http://www.humanitarianreform.org [Accessed 5 November 2011]

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	PARAMETER OF HUMANITARIAN ACCESS	DESCRIPTION / NOTES
Access …	**FOR WHAT PURPOSE**	Captures the purpose for which access is granted or being sought. The overarching purpose must be based on core humanitarian principles. Purposes include: >> To **undertake needs assessment** to determine the humanitarian needs of an affected population >> To **deliver supplies to meet the humanitarian needs of the civilian population** or others no longer participating in hostilities >> To **ensure the protection of detainees, forcibly displaced persons** and others.
	WHO TRANSITS … for access	For free passage, captures who is given rapid and unimpeded passage, and can include: >> **States or impartial humanitarian organizations,** relief personnel >> **Commercial operators,** engaged by- and acting on behalf of humanitarian organizations. *It is important to make a distinction between access BY WHOM, which can relate to humanitarian organizations or those in need of assistance, and WHO TRANSITS: Even in cases where a humanitarian organization seeks and secures access, it may engage others (e.g., commercial operators) to transit.*
Passage or transit	**OF WHAT**	For passage or transit as an essential component of humanitarian access, captures WHAT transits: >> **Essential goods, medical supplies, objects for religious worship, persons, etc.**

An additional parameter to consider is UNDER WHAT CONDITIONS access is secured and maintained. The criteria and conditions for humanitarian access are specified in the normative framework and are presented in Section 3 and Annex II.

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Box 1 – Differing perspectives on humanitarian access

The term humanitarian access is used by different actors to mean different things. Even among humanitarian organizations there are differing interpretations as to the meaning of humanitarian access.[6]

Two practical implications of this lack of a common, agreed upon understanding of the term humanitarian access and what it means for practitioners include:

- In negotiations with other actors – including military forces and non-State armed groups – to secure and sustain humanitarian access, humanitarian practitioners should not assume that the interlocutors share the same understanding of the term humanitarian access. Humanitarian practitioners should be clear about what they mean by humanitarian access and should communicate their approach and understanding of duties and obligations of parties to the conflict and other actors.

- In some situations "access" may be considered to relate only to access to civilian populations and others not participating in hostilities in need of assistance and protection. It is important that humanitarian practitioners' approaches to humanitarian access include the second, equally important dimension of humanitarian access: access by those not participating in hostilities to objects and services they need for their survival.

The parameters provided in this section can be used to define and communicate more clearly the type and characteristics of access in a particular situation.

[6] Examples of perspectives on humanitarian access include: Inter-Agency Standing Committee (IASC) – "Sustained humanitarian access to the affected population is ensured when the receipt of humanitarian assistance is not conditional upon the allegiance to or support to parties involved in a conflict but is a right independent of military and political action."; United Nations General Assembly – "Actively facilitating, including through negotiation if needed, the access by the operational organizations to emergency areas for the rapid provision of emergency assistance by obtaining the consent of all parties concerned, through modalities such as the establishment of temporary relief corridors where needed, days and zones of tranquility and other forms"; World Food Programme (WFP) – "Humanitarian access involves the free and unimpeded movement of humanitarian personnel to deliver relief services, or the free and safe movement of humanitarian agencies to reach civilians who are trapped, unable to move or detained because of armed conflict, natural disasters and other difficult access situations. Humanitarian access allows impartial assessment of the needs of populations at risk and the delivery of assistance to respond to those needs. Access is therefore a precondition for humanitarian action."

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2.3 Using the parameters as part of a structured approach

These six parameters are used as part of a structured approach to humanitarian access in the following ways:

1. Actions by humanitarian personnel to secure and sustain access are inherently humanitarian activities. As a result, the core humanitarian principles of humanity, neutrality, impartiality and operational independence dictate that there must be some attachment of access TO WHOM (based on principles of humanity and impartiality), and FOR WHAT PURPOSE (based on principle of humanity). The parameters therefore provide a filter to ensure that TO WHOM and FOR WHAT PURPOSE are considered in every case concerning access.

2. These parameters provide a very practical organizing structure for the normative framework relevant to humanitarian access. By looking at the provisions of relevant international law through the lens of these parameters, humanitarian practitioners can more easily and quickly identify the provisions of the normative framework that may apply in a particular context. The parameters are used to organize specific provisions of the normative framework in Annex II.

3. One component of the methodology for humanitarian access (Section 4) involves analysis of the factors that can cause changes in access. These parameters help to identify the steps that form pathways or causal chains for humanitarian access.

4. The parameters of humanitarian access can provide a common vocabulary among interlocutors – be they humanitarian organizations, State forces, non-State armed groups or others – to discuss humanitarian access where they may have different definitions of- and approaches to the term itself.

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CASE EXAMPLE: Parameters of humanitarian access can be important tools for access

Parties to armed conflict may have concerns that by facilitating access to deliver certain types of goods and services, they could be strengthening the military capability of their adversaries. This is particularly true in the case of so-called "dual use" goods that may have potential to be used for civilian and (if even indirectly) military purposes.

The principles of humanity and impartiality dictate that humanitarian assistance must be provided on the basis of need alone, and so humanitarian organizations should know, with reasonable clarity, **TO WHOM** humanitarian assistance will be provided. Blindly advocating for access of supplies into a particular territory does not satisfy these principles if it cannot be determined who will benefit from the access and resulting supplies.

In seeking access, humanitarian organizations must therefore be clear about the intended beneficiaries and the purposes of the assistance that may follow from access.

For example, if emergency field medical kits are to be supplied it should be ensured (to the extent possible) that they are going to be used to provide medical assistance to all those in need and not be diverted to be used solely by a party to the conflict. Similarly, if building supplies are being delivered they must be essential to meeting the humanitarian needs of the civilian population or others not participating in hostilities.

If humanitarian organizations cannot reasonably provide this information, then parties to armed conflict and others can legitimately deny humanitarian access to those organizations.

During early 2010, some humanitarian organizations were advocating at times for entry of certain supplies into the Gaza Strip for commercial use and onward supply. The Government of Israel objected to the fact that in some instances it could not be determined what, or who would be the end use/user and intended recipients of the supplies and therefore legitimately argued that the supplies could not be considered as humanitarian supplies.

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3. Framing the approach to humanitarian access

3.1 Overview

For humanitarian practitioners the overall approach to humanitarian access in situations of armed conflict is **guided by core humanitarian principles and the normative framework.**

Since efforts to secure and sustain humanitarian access are inherently humanitarian activities, they must be undertaken in accordance with the **core humanitarian principles of humanity, neutrality, impartiality and independence.**

The normative framework pertaining to humanitarian access in situations of armed conflict consists of the relevant provisions of general International Law, International Humanitarian Law (IHL), International Human Rights Law (IHRL) and International Criminal Law. It also includes relevant provisions of the Charter of the United Nations, decisions and resolutions of the U.N. Security Council and other international or regional bodies (e.g., The African Union), and the Guiding Principles on Internal Displacement.

It is important to be aware that **international law provides the minimum requirements and conditions for humanitarian access** (the "floor") and that practitioners should strive to secure and sustain full and effective humanitarian access (the "ceiling") in every situation.

This section presents the humanitarian principles and the normative framework that structure the approach to humanitarian access.

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The content of this section which focuses on the normative framework reflects, in summary form, the **content of the partner publication to this Manual, the** *Handbook on the Normative Framework.* That Handbook provides a more detailed presentation and explanation of the normative framework and should be used as a reference source.

3.2 Humanitarian principles underpinning humanitarian access

3.2.1 Core humanitarian principles

Efforts to secure and sustain humanitarian access must be undertaken in accordance with the core humanitarian principles of humanity, neutrality, impartiality and independence.[7]

Humanity: Human suffering must be addressed wherever it is found, with particular attention to the most vulnerable in the population, such as children, women and the elderly. The dignity and rights of all victims must be respected and protected.

Neutrality: Humanitarian assistance must be provided without engaging in hostilities or taking sides in controversies of a political, religious or ideological nature.

Impartiality: Humanitarian assistance must be provided without discriminating as to ethnic origin, gender, nationality, political opinions, race or religion. Relief of suffering must be guided solely by needs and priority must be given to the most urgent cases of distress.

Independence: In the provision of humanitarian assistance, humanitarian objectives must remain autonomous from the political, economic, military or other objectives that any actor may hold with regard to areas where humanitarian action is being implemented.

[7] The guiding principles of humanity, neutrality and impartiality were adopted by the United Nations General Assembly in resolution 46/182 (19 December 1991). In its resolution 58/114 (5 February 2004) the U.N. General Assembly subsequently recognized Independence as another important principle of humanitarian action. Moreover, in its resolution 1894 (2009), the U.N. Security Council stressed the importance to respect the humanitarian principles of humanity, neutrality, impartiality and independence (paragraph 13).

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Table 2 summarizes some of the practical implications of these humanitarian principles as they relate to humanitarian access.

Additional principles of humanitarian action drawn from other sources – including the fundamental principles of the Red Cross and Red Crescent Movement and the Code of Conduct of the International Red Cross and Red Crescent Movement and Non-Governmental Organisations in Disaster Relief (1994) – may also be reflected in practitioners' approaches to humanitarian access.[8]

These principles, some of which may be specific to the groups or organizations that endorse them, additionally include: dignity, voluntary service, unity, universality, participation, accountability, transparency and respect for culture and custom. The concept of "Do No/Less Harm" – meaning that at a very minimum humanitarian assistance and protection should not cause harm to those whom it seeks to assist – has been adopted as a complementary guiding approach by many organizations.[9]

CASE EXAMPLE: "It's not what we do, but who we are that causes us problems with access" [10]

In some situations of armed conflict, constraints on access may include direct targeting of humanitarian personnel or facilities. Some of these attacks may be ideologically motivated. Parties to the conflict or other groups may have a predetermined view of humanitarian personnel as inherently supporting particular religious or political views. Some may view humanitarian organizations as supporting one party to the armed conflict, especially if the organization is headquartered in the territory of a party to the conflict or receives funding from one party/State.

8 The fundamental principles of the Red Cross and Red Crescent Movement are stipulated in the Statutes of the International Red Cross and Red Crescent Movement (adopted by the 25th International Conference of the Red Cross at Geneva in 1986, amended in 1995 and 2006). The Fundamental Principles were originally proclaimed in 1965. The Statutes are available on the Internet site of the International Committee of the Red Cross: http://www.icrc.org/ [Accessed 5 November 2011]. See also: International Federation of Red Cross and Red Crescent Societies, Code of Conduct for The International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief (1994).

9 For example, in expressing its Core Commitments for Children the United Nations Children's Fund (UNICEF) has committed itself to the "Do No Harm" principle. See, United Nations Children's Fund (UNICEF), Core Commitments for Children in Humanitarian Action (New York: UNICEF, May 2010). Available at: www.unicef.org [Accessed 24 July 2010].

10 This statement was made during one of the regional consultations undertaken during the development of this Manual; It echoes a perspective presented by many that no matter what humanitarians do, they will be seen as partial or potentially biased to one party of the conflict.

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In some cases, extreme ideological views may override any other considerations, irrespective of how "humanitarian" the organization is or believes itself to be.

In these cases, humanitarian organizations will have a better chance of securing humanitarian access if they can demonstrate humanity, neutrality, impartiality and independence *by determined and consistent action* and not only in statements and words.

To help in this regard, humanitarian organizations should, for example:

>> Ensure **impartial and balanced humanitarian advocacy** to avoid the common perception of being seen to favor one party to the armed conflict (e.g., objective statements regarding acts of all parties to armed conflict that may affect protection of civilians)

>> Express readiness to work in all areas affected by the armed conflict and **engage (directly or indirectly) with all parties** to the conflict

>> **Not accept donor conditionality on funding for humanitarian assistance** which would compromise in any way operational independence (e.g., donor stipulation of parties with whom humanitarians cannot engage)

>> Avoid using humanitarian supplies or vehicles that are intentionally labeled or identified as coming from a particular country

>> **Be sensitive and respectful of cultural and traditional norms,** but not at the expense of commitment to humanitarian principles or the normative framework.

Ultimately, what humanitarian actors do shapes impressions of who they are!

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Table 2 – Humanitarian principles and what they mean in practice

Humanitarian principle	… and what it means practically in guiding approach to humanitarian access
Humanity	• Humanitarian access is sought to alleviate human suffering wherever it is found • Humanitarian access serves to identify and address essential needs of the civilian population and others not participating in hostilities. Therefore efforts to secure and sustain access **must be based on assessment of humanitarian needs** • Particular attention should be paid to securing and sustaining humanitarian access to- and for children, women and other vulnerable groups.
Neutrality	• In working to secure and sustain humanitarian access, **humanitarian actors cannot take sides in controversies of a political, religious or ideological nature** • Negotiations or agreements with parties to the conflict or other actors concerning humanitarian access **cannot endorse any party/parties' political, religious or ideological views** • Humanitarian negotiations should be conducted by humanitarian actors independently of political processes (e.g., cease-fire negotiations) • When necessary, humanitarian practitioners should engage with any and all parties to the conflict and other actors who may have influence over humanitarian access and the well-being of the civilian population.
Impartiality	• Humanitarian access must be assessed, secured and sustained without discriminating against individuals or groups on the basis of ethnicity, gender, nationality, political opinions, race or religion • If humanitarian access is sought to persons in need, the terms of humanitarian access pertaining to who can be accessed cannot be dictated (outside the scope of the legitimate criteria specified in the normative framework) by parties to the conflict or others.
Independence	• In securing and sustaining humanitarian access, humanitarian organizations **must retain operational control** and direction of humanitarian activities. Parties to armed conflict and other actors may however stipulate conditions as provided for under international law (e.g., parties may have a right of control, routes of access may be directed by parties to armed conflict).

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3.2.2 Humanitarian policies: Translating principles into practice

Humanitarian policies translate humanitarian principles into practice and therefore can provide a source of guidance for practitioners on securing and sustaining access.

One of the components of the methodology presented later in this section focuses on option generation and analysis of alternatives for access. Humanitarian policies can provide a source of options for humanitarian practitioners to consider when working to secure and sustain humanitarian access.

Three important examples of humanitarian policy guidance that are very relevant to practitioners' efforts to secure and sustain access are:

Humanitarian negotiations: A manual produced by the United Nations in collaboration with members of the Inter-Agency Standing Committee (IASC) provides a structured approach and guidance on humanitarian negotiations with non-State armed groups. **Resource title:** *Humanitarian Negotiations with Armed Groups: A Manual for Practitioners (2006)*.[11]

Civil-military relations: A compilation of guidelines and reference developed by the United Nations and the Inter-Agency Standing Committee on the issue of civil-military relationships. **Resource title:** *Civil-Military Guidelines and Reference for Complex Emergencies (2008).*[12]

Security and risk management: Guidance on humanitarian security and risk management provided by the United Nations and other studies/evaluations. Resources: Information on the United Nations Department of Safety and Security (UNDSS) Security Level System (SLS); and To Stay and Deliver: *Good Practice for Humanitarians in Complex Security Environments (2011).*[13]

[11] Gerard Mc Hugh and Manuel Bessler, Humanitarian Negotiations with Armed Groups: A Manual for Practitioners (New York: United Nations, January 2006). Available at: http://ochaonline.un.org/humanitariannegotiations/index.htm [Accessed 5 November 2011].

[12] United Nations and Inter-Agency Standing Committee (IASC), Civil-Military Guidelines and Reference for Complex Emergencies (New York: United Nations Office for the Coordination of Humanitarian Affairs, 2008). Available at: http://www.humanitarianinfo.org [Accessed 18 January 2011]

[13] Jan Egeland, Adele Harmer and Abby Stoddard, To Stay and Deliver: Good Practice for Humanitarians in Complex Security Environments (New York: U.N. Office for the Coordination of Humanitarian Affairs, February 2011).

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3.3 Posture in securing and sustaining humanitarian access

Humanitarian practitioners sometimes approach their activities to secure and sustain access with a certain "posture" or set of assumptions which may come with pre-conceived notions of: the duties and obligations of parties to the conflict, the feasibility of securing and sustaining humanitarian access and humanitarian practitioners' own role with regard to humanitarian access. In some instances this posture of humanitarian practitioners can strongly influence the approach to securing and sustaining access.

Two important considerations for practitioners concerning overall posture are:

ACCESS AS NORMALLY "ON" OR NORMALLY "OFF": In some situations of armed conflict in which access is severely constrained, humanitarian actors – perhaps influenced by previous actions of parties to the conflict – may hold the view that effective humanitarian access is an unrealistic goal, that parties to the conflict intentionally deny or constrain access as much as possible (i.e., access as normally OFF).

Within the limitations of the duties and obligations of parties to armed conflict and other actors concerning access, humanitarian practitioners can choose to approach humanitarian access as **normally ON**, meaning that when the normative framework dictates, humanitarian access is something that parties to the conflict and other actors have a positive obligation to facilitate.

THE RIGHT TO HUMANITARIAN ACCESS: Except for children who are considered refugees or are seeking refugee status, there is no general, explicit human right to humanitarian assistance in international law, although such a right has been inferred from other human rights (e.g., the right to life).14 This, however, is subject to legal interpretation. The Handbook on the Normative Framework for humanitarian access and the text of the section below on the normative framework, present the relevant provisions of international human rights law and identify specific human rights pertaining to humanitarian access.

14 In the case of refugee children or children seeking refugee status the United Nations Convention on the Rights of the Child (CRC) includes the right of the child to receive humanitarian assistance and protection, not specifically to humanitarian access. Article 22 of the Convention states, "States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall … receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties."

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The practical implication for humanitarian practitioners is that there must be a realization that while the normative framework provides much in the way of openings for humanitarian access, it also identifies lawful criteria and conditions for humanitarian access, depending on the situation (as identified in Section 3.4 below).

In short, humanitarian access is not automatic in every case and it is not free of conditions (from the standpoint of the normative framework). These conditions pertaining to humanitarian access in different contexts are specified in the following section on the normative framework.

3.4 The normative framework

The normative framework is a powerful tool for ensuring a more structured approach to humanitarian access. This section begins by highlighting the **practical relevance and application of the normative framework** for humanitarian practitioners. The **main elements of the normative framework** are then summarized according to the various bodies of international law.

This summary also identifies in what types of situation of armed conflict the provisions apply:

International armed conflict, other than occupation: Exists when there is resort to armed force between two or more States.

Military occupation: Exists when a territory "*… is actually placed under the authority of the hostile army.*"[15]

Non-international armed conflict: Exists where there are protracted armed confrontations occurring between governmental armed forces and the forces of one or more non-State armed group(s), or between such groups.

The companion publication, *Humanitarian Access in Situations of Armed Conflict: Handbook on the Normative Framework,* presents the normative framework in more detail. The specific **provisions that apply in different situations of armed conflict** are identified in a series of tables in Annex II of this Manual.

[15] Hague Regulations concerning the Laws and Customs of War on Land, 18 October 1907, Art. 42.

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3.4.1 Why the normative framework matters

Why should humanitarian practitioners be concerned with the normative framework for humanitarian access? After all, practitioners must deal with very practical issues relating to humanitarian access, issues that may often seem far removed from the legal texts and evolved practice.

1. It is important for humanitarian practitioners to be familiar with the provisions and scope of the normative framework and what these provisions mean in practice because:

2. The normative framework specifies the **duties and obligations** of parties to armed conflict (States and non-State armed groups), States not participating in the conflict, humanitarian actors and others concerning humanitarian access.

3. The normative framework specifies – sometimes in general terms – the **criteria for humanitarian access** in a particular situation.

4. The normative framework identifies **conditions** under which humanitarian actors can access those not participating in hostilities who may be in need of assistance and protection, as well as the conditions under which humanitarian actors may not access those persons.

5. Humanitarian practitioners frequently need to **negotiate humanitarian access** with parties to armed conflict or other actors. The normative framework is an important tool for humanitarian negotiators to: (i) define boundaries within which to seek agreement on humanitarian access; (ii) assist in generating options for operationalizing humanitarian access; and (iii) provide incentives for parties to armed conflict and others to negotiate humanitarian access.

6. The normative framework provides a **common, objective set of rules** to which different actors can each or jointly refer to assist in securing and sustaining access.

For all of these reasons, the normative framework is key to developing a structured and practical approach to humanitarian access.

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3.4.2 General international law and humanitarian access

What it is, and when- and to whom it applies

vnternational law has three principal and interrelated sources: international treaties (written), custom (unwritten) and general principles of law (unwritten). International treaties are legally binding on States that are party to them.

The existence of a rule of international customary law requires the presence of two elements, namely State practice and a belief that such practice is required, prohibited or allowed (depending on the nature of the rule), as a matter of law. Customary law is important because States that are not party to a treaty may nonetheless be bound by some or all of its contents under customary law. The Charter of the United Nations and the Geneva Conventions (GC) are important examples of treaties whose provisions have attained customary law status.

It is useful to highlight that UN Security Council (UNSC) resolutions may also be legally binding.16 On the other hand, soft law (e.g., U.N. General Assembly (UNGA) resolutions, guiding principles, declarations) is not legally binding. However, soft law can be used as a basis in a treaty-making process or may contribute to the development of customary law.

General international law relating to humanitarian access is found in:

- the Charter of the United Nations
- declarations and resolutions of the U.N. General Assembly
- resolutions and statements of the U.N. Security Council
- decisions and precedents set by the International Court of Justice
- instruments such at the Guiding Principles on Internal Displacement.

[16] Art. 25 of the UN Charter provides that "Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

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Framing the approach to humanitarian access

The overall framing of humanitarian access under the relevant treaties and rules of general international law is based on the approach that:

1. States bear the primary responsibility for ensuring the basic needs of civilian populations placed under their control. In situations of military occupation, this responsibility falls to the Occupying Power.

2. International law prohibits States from interfering directly or indirectly in the internal or external affairs of another State where any such interference threatens the State's sovereignty or political independence.17 If humanitarian assistance is provided or offered exclusively on humanitarian grounds it cannot be deemed as interference in the internal affairs of a State.

3. U.N. Member States have a general duty to cooperate with a view to facilitating humanitarian access, where access can assist in addressing humanitarian challenges and/or fulfilling human rights, even in situations of armed conflict.

4. Obstruction or denial of humanitarian access by any and all parties to armed conflict is prohibited. In some cases this could constitute a threat to international peace and security.

General Assembly resolution 46/182 (December 1991) represents a landmark decision of the United Nations on strengthening the coordination of humanitarian assistance. In addition to setting out guiding principles for humanitarian assistance, it addresses the specific role of the United Nations with regard to humanitarian access (see Table 6).[18]

The U.N. Office for the Coordination of Humanitarian Affairs has produced a compilation of provisions of United Nations resolutions and decisions from 1991 to 2009 concerning humanitarian access (and hence they are not repeated here).[19]

[17] However, this principle can not preclude application of enforcement measures by the United Nations under Chapter VII of the U.N. Charter.

[18] United Nations General Assembly, Strengthening of the coordination of humanitarian emergency assistance of the United Nations, UNGA resolution A/RES/46/182 (19 December 1991).

[19] United Nations, Reference Guide: Normative Developments on the coordination of humanitarian assistance in the General Assembly, the Economic and Social Council, and the Security Council since the adoption of General Assembly resolution 46/182, Office for the Coordination of Humanitarian Affairs Policy Development and Studies Branch Policy and Studies Series VOL. I N°2 (New York: United Nations, 2009).

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3.4.3 International Humanitarian Law (IHL)

What it is, and when- and to whom IHL applies

International humanitarian law is a set of rules which seeks to regulate the means and methods of warfare and to protect civilians and others who are not or no longer participating in hostilities from the effects of armed conflict. It seeks to do this for purely humanitarian reasons.

Treaty-based and customary international humanitarian law apply only in situations of armed conflict (and not, for example, in situations of internal disturbance or tensions). International Humanitarian Law distinguishes between three situations of armed conflict: international armed conflict (other than military occupation), military occupation, and non-international armed conflict. International Humanitarian Law is binding on all parties to armed conflict; it contains rules that apply to States as well as rules that apply to non-State parties to armed conflict. In non-international armed conflicts Parties are bound by the same rules.

The main instruments of international law that contain provisions relevant to humanitarian access are: the Hague Conventions of 1907, the four Geneva Conventions of 1949, the two Protocols Additional to the Geneva Conventions of 1977, and rules of customary international humanitarian law.[20] An extensive compilation of rules of customary international humanitarian law was presented in a study undertaken by the International Committee of the Red Cross and published in 2005.[21]

Framing the approach to humanitarian access

The specific provisions of international humanitarian law relating to humanitarian access differ depending on the situation of armed conflict, whether: international armed conflict (IAC), military occupation (OCC) or non-international armed conflict (NIAC).

However, the overall framing of humanitarian access under international humanitarian law is based on the approach that:

1. The **primary responsibility** for meeting the basic needs of affected populations lies with the parties to the conflict who have control over them.

[20] Examples of others treaties that make up the body of international humanitarian law, but which are not discussed here, are: the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflicts, the 1972 Biological Weapons Convention, the 1980 Convention on Conventional Weapons, the 1993 Convention on Chemical Weapons and the 1997 Ottawa Convention on anti-personnel mines.

[21] Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law [Volumes I and II] International Committee of the Red Cross (Cambridge: Cambridge University Press, 2005).

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2. **In international armed conflict, situations other than military occupation:** If populations remain in need, **third States or humanitarian organizations can offer relief assistance.** Relief actions must be humanitarian, impartial and conducted without any adverse distinction. **Parties to armed conflict have an obligation to allow and facilitate humanitarian access,** which is impartial and conducted without any adverse distinction, subject to their consent and right of control. Consent cannot be arbitrarily withheld (i.e., without valid reasons).

3. **In situations of military occupation,** the **Occupying Power is obliged to ensure adequate supplies to the population or, in situations where the population is inadequately supplied, to allow and facilitate relief actions.**

4. **In non-international armed conflict,** relief operations, though binding, are **subject to the consent of *"the [State] High Contracting Party [to Additional Protocol II] concerned"***[22]; in addition, all parties must allow and facilitate the rapid and unimpeded passage of humanitarian relief for civilians in need, subject to their right of control.

5. Important **conditions on humanitarian access** (depending on the specific type of armed conflict) can include the consent of the parties to the conflict, the parties right of control, etc.

It is important to note that specific provisions of treaty-based international humanitarian law are binding only on those States that have ratified/acceded to the relevant treaties. All States have ratified the four Geneva Conventions of 1949 making these treaties universally applicable. The Protocols Additional to the Geneva Conventions of 1977 apply to those States that have ratified or acceded to the relevant Protocols. However, even if a State is not party to one of the relevant treaties, the specific provisions may nonetheless be applicable through customary international humanitarian law.

Box 2 – IHL and Private Military and Security Companies (PMSCs)

In many contexts – including Afghanistan and the Occupied Palestinian Territories – humanitarian practitioners may need to engage with Private Military and Security Companies (PMSCs) or contractors for the purposes of securing humanitarian access. There is often a lack of clarity among humanitarian practitioners regarding the duties and obligations of these actors when it comes to humanitarian access.

[22] Protocol II Additional to the Geneva Conventions of 1949 (AP II), Article 18.

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The increased resort to use of PMSCs and their changing role led to an initiative by the Government of Switzerland and the ICRC to capture legal obligations (under international law) and good practice relating to the role of PMSCs. These two aspects – legal obligations and good practice – were presented in the "Montreux Document" (2008).[23]

The Montreux Document contains several provisions relating to the role of States and PMSCs and respect for international humanitarian law. For example, the Document stipulates:

"The personnel of PMSCs: are obliged, regardless of their status, to comply with applicable international humanitarian law;"

PMSCs are therefore obliged to comply with all applicable provisions of international humanitarian law pertaining to humanitarian access.

In addition to the general framing of humanitarian access in IHL, the relevant treaties and customary rules contain reinforcing provisions that relate to specific groups (e.g., children under 15, expectant mothers) within the population as well as to specific situations (e.g., blockade). When taken together, the array of provisions presented in summary below can make the framework for humanitarian access more robust.

The specific provisions of international humanitarian law pertaining to humanitarian access are presented in table form in Annex II (Table 7).

CASE EXAMPLE: Darfur, Sudan, and Cote d'Ivoire: [In non-international armed conflicts] When those controlling access may appear to have no desire or incentive to recognize or fulfill their obligations under international law.

In many situations of non-international armed conflict, and particularly in situations requiring negotiations with non-State armed groups for humanitarian access, it may seem that these groups have little incentive to recognize or abide by the relevant provisions of international law.

[23] Swiss Federal Department of Foreign Affairs (FDFA) and International Committee of the Red Cross (ICRC), The Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict (Bern and Geneva: FDFA and ICRC, August 2009). Available at: http://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf [Accessed: 5 November 2011].

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A response frequently encountered from non-State armed groups, "*Why should we comply with those laws [treaty-based IHL, etc.], when we had no hand in shaping them and cannot sign on to them? They are laws between States and in this country we are at war with the government.*"

However, often it is the case that non-State armed groups can be engaged with a view to ensuring more respect for international norms, especially if by doing so it meets the groups' or individual members' interests.

In addition, if non-State armed groups can be engaged in a conversation on their ownership of norms, including their role in ensuring compliance within the group, there is likely to be more chance of respect for these international norms. **A number of initiatives have encouraged this ownership** by developing and using instruments which non-State armed groups can sign on to. These include the "Deed of Commitment" developed by Geneva Call for adherence to a total ban on anti-personnel mines and for cooperation in mine action, and the "Action Plans" used as part of the Monitoring and reporting Mechanisms (MRM) for grave violations against children in situations of armed conflict established under U.N. Security Council resolution 1612 (2005).

The cases of Darfur and Cote d'Ivoire provide practical examples of situations where groups realized that acting to ensure better respect for international law could meet their interests (interests often unrelated to humanitarian considerations).

In **Darfur, Sudan,** during 2006 members of one of the many factions of the Sudan Liberation Movement/Army (SLM/A) saw that it was in their interest to allow humanitarian access. This was not because of a primary desire to respect international humanitarian law, but more out of concern that by not doing so they would leave themselves open to possible future investigation by the International Criminal Court (ICC). The situation in Darfur had been referred to the ICC by the U.N. Security Council in early 2005. Because of this interest there was more willingness to discuss arrangements regarding humanitarian access.

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In **Cote d'Ivoire between 2003 and 2006** the Forces Nouvelles de Côte D'Ivoire (New Armed Forces; FAFN) armed group worked with the United Nations, including UNICEF, to demobilize children associated with the group. One of the main interests of the group in doing so was to have its name removed from the listing contained in the regular reports of the U.N. Secretary-General on Children and Armed Conflict.

In both of these cases, the groups' political, organization, or "image"-related interests led them to take steps to respect international law.

3.4.4 International Human Rights Law

What it is, and when- and to whom IHRL applies

International human rights law is a body of law made up of international treaties, covenants and declarations that regulate the obligations of States towards individuals. Many of these provisions and norms are also reflected in customary law. Human rights are rights of individuals; human rights are universal, inalienable, interdependent and indivisible.

International human rights law specifies the **obligations and duties of (primarily) States** to ensure fulfillment and realizations of these rights within all territories under a State's jurisdiction. International human rights law generally protects all people regardless of citizenship, and applies at all times, including in situations of armed conflict. International humanitarian law and human rights law both share the common goal of preserving the dignity and humanity of all. They are complementary and not mutually exclusive.

In certain limited circumstances, the State Parties to some treaties may exceptionally suspend respect for- and fulfillment of certain human rights. This is known as "derogation", and can only take place in strictly-defined circumstances where there is a grave risk to the State (e.g., in situations of public emergency). There are some rights that can never be derogated: the right to life, the right to freedom from torture or cruel, inhumane or degrading treatment, the right to freedom from slavery, the right to recognition as a person before the law, and the right to freedom of thought, conscience and religion.[24]

[24] These and other non-derogable human rights are stipulated in the International Convention on Civil and Political Rights (1966). In addition, the International Covenant on Economic, Social and Cultural Rights (1966) and the Convention on the Rights of the Child (1989), among other international human rights treaties, do not provide for the possibility of derogation at all.

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Framing the approach to humanitarian access

In general, the main elements of international human rights law (such as treaties, etc.) do not **directly and explicitly** provide a framework for humanitarian access. There are some exceptions to this which are presented in the specific provisions identified in Annex II (Table 8). Moreover, it is a matter of legal debate as to whether there exists a right to humanitarian assistance and a right to humanitarian access in international human rights law.[25]

However, in situations where humanitarian access, as a key enabler of humanitarian assistance, is a direct influencing factor in the realization of certain fundamental rights, then international human rights law can provide a framework for humanitarian access. In short, a strong causal link must exist between humanitarian access and fulfillment/realization of core human rights.

For example, in situations where the civilian population is not adequately supplied, and where humanitarian access is the main factor in facilitating delivery of relief supplies, then fulfillment and realization of the right to life may be critically dependent on securing and sustaining access.

1. Through certain key human rights, treaties of international human rights law offer a broad legal framework pertaining to humanitarian access. These key rights include: the right to life, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the right to food, the right to water and the right to health.

2. Insofar as humanitarian access directly affects availability of essential goods/supplies such as food, water and health care, it can be considered a critical element in fulfillment of the corresponding rights.

3. A State which claims that it is unable to fulfill its legal obligations for reasons beyond its control must show that it has made every effort to use all resources that are at its disposition in an effort to satisfy its minimum obligations.[26]

CASE EXAMPLE: Emphasizing international human rights law as a framework and basis for humanitarian access when States deny situation of armed conflict

[25] See the companion publication, Humanitarian Access in Situations of Armed Conflict: Handbook on the Normative Framework, Version 1.0, November 2011.

[26] In determining whether a State is truly unable to fulfill its obligations under human rights law, it is necessary to consider both the resources existing within a State and those available from the international community.

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In some contexts, humanitarian personnel are confronted with the situation where a State or other party to conflict denies the existence of armed conflict. This often arises in situations of non-international armed conflict.

If these linkages cannot be clearly demonstrated (for example, by using the causal approach described in Section 4), then it is unlikely that arguments for securing and sustaining access will be persuasive.

3.4.5 International criminal law

What it is, and when- and to whom relevant international criminal law applies

International criminal law encompasses rules which prohibit certain conduct and make perpetrators of such conduct criminally accountable for their behavior. International criminal law applies at all times.

The Rome Statute of the International Criminal Court (1998) is an important international agreement which includes provisions concerning humanitarian access. However, the body of international criminal law also includes other international treaties or agreements. The relevant treaties or rules of international criminal law, where applicable, recognize individual criminal responsibility for war crimes, crimes against humanity and genocide. Denial of humanitarian assistance and access could constitute the basis of several crimes under international criminal law.

Framing the approach to humanitarian access

The overall framing of humanitarian access under the relevant treaties and rules of international criminal law, including the Rome Statute of the International Criminal Court (1998), is based on the approach that:

1. Intentional obstruction or denial of humanitarian access may constitute a crime under international criminal law. Two relevant crimes under international criminal law are **war crimes and crimes against humanity**. Alleged perpetrators of these international crimes can be prosecuted in national- and, where appropriate, international courts.

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2. A **war crime** is a serious and criminally punishable violation of international humanitarian law. **A crime against humanity** is a violation of human rights when committed systematically or as part of a widespread attack, whether or not the situation is an armed conflict.

3. For obstruction or denial of humanitarian access to be considered a war crime, **it would have to be shown that the obstruction/denial was intentional** and that it was intended to inflict significant suffering on the civilian population.

4. For the **denial or obstruction of humanitarian access to constitute genocide,** the denial/obstruction must amount to or result in one of the acts identified in the definition of genocide (Rome Statute of the International Criminal Court, Article 6; See Annex II, Table 9) and must be directed against a national, ethnical, racial or religious group, as a group. In addition, the perpetrator must have the intent to destroy the group in whole or in part.

5. **International criminal law reinforces international humanitarian law and international human rights law** in a number of ways, including by criminalizing (and hence establishing individual criminal responsibility for) war crimes and crimes against humanity as serious violations of the respective bodies of law (IHL and IHRL).

3.4.6 Getting the most out of the normative framework

The normative framework can best assist in securing and sustaining humanitarian access when the **relevant provisions of different bodies of treaty-based and customary international law reinforce each other** for a particular context.

If provisions of one body of international law (e.g., international humanitarian law) seem not to apply to humanitarian access in the particular setting, or are disputed, other bodies of law (e.g., international human rights law) may contain provisions that equally relate to humanitarian access.

Humanitarian practitioners should therefore seek to build a **framework of multiple layers** that reinforces the need to secure and sustain humanitarian access in the particular setting.

The normative framework does not, however, provide humanitarian organizations with access at all times and in all settings. Certain criteria must be satisfied and conditions may need to be met before access is granted.

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In addition, in certain instances the normative framework stipulates that States and others can conduct relief actions. If these actions address the objectives of humanitarian access, then humanitarian organizations will likely not have a basis in law for seeking humanitarian access.

It is important for humanitarian practitioners to be familiar with and understand the normative framework for humanitarian access in each particular context. However, legal arguments may not always offer the best entry points for negotiation or advocacy for access. For example, in situations where a State strenuously denies the existence of conflict or humanitarian needs, or where non-State armed groups reject responsibility for respecting international law, humanitarian actors may choose to frame their discussions by focusing on common interests (of the State and the humanitarian organization) and humanity, cultural or religious norms, or even personal rapport and networks of influence.

3.5 National legislation and customary / traditional arrangements

When the relevant provisions of the normative framework are reflected (whether explicitly or otherwise) in the domestic legislation of States or in customary or traditional practices in a particular territory, then humanitarian practitioners can draw on these elements as a further reinforcing layer of the normative framework.

Customary or traditional arrangements may be particularly useful in situations where, for example, non-State armed groups may assert that they cannot sign international treaties (and hence assert that they are not bound by them) or do not accept the legislation of what they may view as an illegitimate government (e.g., if they are fighting the government within the territory).

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4. Methodology for humanitarian access

4.1 Overview

The methodology presented in this section provides a structured approach to humanitarian access. The overall approach to securing and sustaining humanitarian access is based on core humanitarian principles, humanitarian policies and the normative framework (Section 3). The methodology also uses the key parameters of humanitarian access presented in Section 2.

The methodology is intended to provide a template which humanitarian practitioners can adapt to their own particular context and organizational mandate and needs. The approaches to humanitarian access which can be developed using this methodology can be presented in various forms of products or outputs, including:

- **Flowcharts and relationship maps** showing causal analysis of humanitarian access and actors who may influence access
- **context specific (e.g., country-level) strategies** for humanitarian access
- **action plans** for humanitarian access at sub-national level (e.g., in particular geographical areas of the same country that may have different access constraints)
- **organization-specific strategies** and/or guidance notes on humanitarian access.

This structured approach can also provide a common template to facilitate coordination (within and between humanitarian organizations) on humanitarian access.

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Development of strategies, action plans and other products for humanitarian access will involve consideration of: (a) strategy objectives (the "WHY"), (b) activities for humanitarian access ("HOW"), (c) roles and responsibilities for implementation ("WHO"), (d) timeframe and sequencing ("WHEN"), (e) evaluation mechanisms ("HOW WELL"), and (f) coordination across different levels (national, sub-national etc.).

4.2 Methodology

The methodology for humanitarian access consists of four components:

Component I – Pathways for humanitarian access

Component II – Relationship and influence mapping

Component III – Option generation

Component IV – Structuring approach and coordination

The methodology uses the parameters for humanitarian access, humanitarian principles and policies, and the normative framework throughout these four components.

While the core humanitarian principles remain unchanged irrespective of the type of armed conflict (or even in situations other than armed conflict), the provisions of the normative framework (and particularly international humanitarian law) which apply will depend on the type of situation of armed conflict. Therefore, in preparation for using this methodology it is necessary to determine what provisions of the normative framework (Section 3) may apply to the particular context:

- Determine whether access is being sought in a **situation of international armed conflict, a situation of military occupation, or a situation of non-international armed conflict.** Remember that part of a territory can be under military occupation.

- Identify the **types of parties** to the armed conflict; some provisions may apply only to certain types of parties engaged in hostilities.

- Check to see **what treaties and other agreements have been ratified** or entered into by the States that may be involved in the armed conflict (use resources identified in Annex I).

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The tools incorporated into the methodology include causal analysis and relationship mapping techniques.

CASE EXAMPLE: A structured approach and relationship building pay off in Eastern Democratic Republic of the Congo (DRC)[27]

During early 2010, in North and South Kivu Provinces in the Democratic Republic of the Congo, two humanitarian organizations enjoyed relatively unhindered and effective access, even when many other humanitarian organizations were experiencing very limited or no access because of assessed insecurity and, in some cases, internal organizational restrictions on movements by road.

Factors that contributed to the effective access enjoyed by the two humanitarian organizations included: (1) [for one organization] the consistent and rigorous use of a structured approach to identifying how the organization engaged at different levels with influential actors in priority areas of acute humanitarian needs, (2) a long history of impartial humanitarian operations serving all communities in need, (3) operating in close proximity to the communities in need (rather than by "remote programming"), and (4) a strategic approach to maintaining strong relationships with all parties, including non-State armed groups, over the course of several years (Examples of the ways in which this was achieved included: efforts to reduce staff turnover, use of "hand over" periods where exiting and new staff had opportunities to jointly visit key interlocutors, detailed recording of interactions with key interlocutors etc.).

Conversely, other humanitarian organizations that had not invested the effort in building relationships and had not engaged with all parties to the conflict complained about their lack of humanitarian access.

[27] This case example is based on observations and findings from a field mission undertaken as part of the project to develop this Field Manual. The field mission was undertaken during March 2010.

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> The structured approach (mentioned in 1) above) used by one of the organizations to identifying how the organization engaged at different levels with influential actors involved: identification and tracking of key interlocutors influencing access and division of labor and coordination within the organization as to who should engage with key interlocutors at different levels.

The methodology also uses indicators of humanitarian access to: (1) capture the value and intensity of the factors that influence humanitarian access; and (2) gauge and track the effectiveness of access.

Component I — PATHWAYS FOR HUMANITARIAN ACCESS

The first component of the methodology is the **pathways** for access – made up of different steps along each path or process – that influence the situation of humanitarian access.

The six parameters of humanitarian access – access **BY WHOM, TO WHOM, TO WHAT, FOR WHAT PURPOSE, WHO TRANSITS,** and passage **OF WHAT** – help to trace the pathways of access in several ways:

- The parameters identify the **direction** of desired humanitarian access and the actors involved in access, that is, access **BY WHOM, TO WHOM** or **TO WHAT** (e.g., humanitarian actors, parties to the conflict, civilian population)

- The parameters identify the **PURPOSE** of the humanitarian access (e.g., ensuring the food and medical supplies of the population)

- If the particular situation of humanitarian access includes transit of goods or persons, the parameters identify **WHO TRANSITS** and transit/passage **OF WHAT** (e.g., transit of medical supplies, foodstuffs, etc.).

Identification of the pathways for humanitarian access uses a causal analysis approach. Causal analysis seeks to identify factors (e.g., ongoing hostilities) and relationships that cause or contribute to a particular effect, such as reduced or increased humanitarian access.

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CASE EXAMPLE: Use of causal analysis approach to analyze humanitarian conditions of women and children, and to assess the potential humanitarian implications of sanctions

Causal analysis approaches have been put to practical use for many other humanitarian issues, and these other uses can provide additional examples of how this method can assist in identifying the causes of changes in humanitarian access.

The United Nations Children's Fund (UNICEF) has long used causal analysis approaches **to identify the causes that influence humanitarian conditions of women and children,** including child malnutrition. In some of these analyses, UNICEF has identified causes at three levels: immediate, underlying, and basic.[28]

Causal analysis has also been incorporated in to the IASC-endorsed approach to a**ssessing the potential humanitarian implications of sanctions**. In this context, causal analysis helps to identify the possible contribution of different types of sanctions to causing negative or positive effects on humanitarian conditions.[29]

The pathways for humanitarian access are identified using the following four steps.

Step 1 – Use PURPOSE to establish direction and start / end points for access

The first step in tracing pathways for humanitarian access is to use the six parameters to clearly specify the general context of humanitarian access. Identify access BY WHOM, TO WHOM, TO WHAT and FOR WHAT PURPOSE. If the particular situation of humanitarian access includes transit of goods or persons or otherwise requires passage, additionally identify WHO TRANSITS and transit OF WHAT.

[28] For an example of the application of the causal analysis approach to understand the factors influencing the humanitarian conditions of children, see: United Nations Children's Fund (UNICEF), The Situation of Children in Iraq: An Assessment Based on the UN Convention on the Rights of the Child (Baghdad: UNICEF, [Reprinted] March 2003).

[29] Manuel Bessler et al. Sanctions Assessment Handbook (New York and Geneva: Inter-Agency Standing Committee, 2004). Available at: http://www.humanitarianinfo.org/sanctions/handbook/index.htm [Accessed 18 January 2011]

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This first step identifies **the direction of access:** does the PURPOSE of access require **access by humanitarian actors to the civilian population** in need, or **access by the civilian population to essential objects** needed for its survival? This step also identifies the end points of the pathways of access.

If a single organization or coordinating group of organizations has different purposes for humanitarian access that may result in different directions of access, then separate causal pathways can be identified for each purpose.

Considerations of the purpose of access will also influence the logistics, security and communications arrangements required. Access for the purpose of conducting an immunization campaign in a certain area may require travel over the course of a relatively short period, but may also require transport of a large number of medical personnel (to conduct the immunization campaign). Access to facilitate ongoing delivery of humanitarian assistance will likely require consideration of logistical arrangements for as long as assistance is necessary, and this may include, for example, establishment of forward staging warehouses or distribution centers.

Step 2 – Identify types of factors affecting humanitarian access

The second step in tracing the pathways is to identify types of factors that influence access in the particular context. To do this it is helpful to use two classifications of factors:

INTERNAL or EXTERNAL: Is the factor influencing humanitarian access internal to the humanitarian organization(s), or is it external to the humanitarian organization(s)?

INTERNAL factors influencing humanitarian access could include: internal security procedures/rules, internal rules on engaging with certain types of actors (e.g., non-State armed groups), organizational resources, rapid turnover in personnel which can limit opportunities for building relationships with influential actors.

Examples of EXTERNAL factors include: ongoing hostilities, banditry and criminal activity, bureaucratic delays, environmental factors, logistical constraints.

PROXIMITY: How close is the factor to the situation of humanitarian access? The causal or influencing factors can be proximate, intermediate or underlying factors.

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Proximate factors: *These factors are closest (in the process) to the end objectives of humanitarian access. In the example of externally-imposed bureaucratic delays, the proximate factor affecting access may be decisions by local authorities to limit access due to incorrect/missing permits.*

Intermediate factors: *These factors are one or more steps removed from, but lead to, the more proximate factors. In the example above, an intermediate factor may be the lack of agreement between the humanitarian organization and government authorities at the national level concerning the overall approach to movement of humanitarian organizations.*

Underlying factors: *A more basic cause in this example may be a fundamental level of mistrust within the national authorities as regards the motives of external humanitarian organizations.*

Using these different categories of factors can help to: (i) better identify and understand the linkages between the different factors (described in Step # 3 below); (ii) identify the likely level of action (local level, country-level, organizational headquarters level) required to address certain factors and (iii) identify which factors are more likely to be within the control of a humanitarian organization (mostly internal factors) and those which a humanitarian organization cannot control, but perhaps can influence (mostly external factors).

While the factors affecting humanitarian access will vary greatly from context to context, there are several factors that are common across many situations of armed conflict, such as:[30]

- Denial of the existence of humanitarian need or of entitlements to assistance by authorities
- Impediments on the entry of agencies, personnel, goods into the country of operations
- Restrictions on or interference with the passage of agencies, personnel, goods within the country
- Military operations and ongoing hostilities impeding humanitarian operations
- Violence against humanitarian personnel and facilities

[30] This sample list was compiled based on factors identified in separate studies undertaken by the United Nations Office for the Coordination of Humanitarian Affairs (on a monitoring and reporting system for humanitarian access, 2009–2010) and the Swiss Agency for Development and Cooperation (SDC) (on integrated peace operations, 2011).

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- Interference in the implementation of humanitarian activities
- Physical environment
- Presence of mines and un-exploded ordinance
- Restrictions on, or obstruction of, conflict affected populations access to services and assistance
- Attitudes and expectations of beneficiary populations
- Decaying societies and absence of accountability of armed/other groups
- Displaced and migrating populations
- Fragmentation of armed groups
- Economic incentives to violence
- The array and different mandates of humanitarian actors
- Limited operational capabilities of humanitarian organizations
- "Bureaucratization" of humanitarian operations
- Organizational security rules and procedures

Step 3 – Group factors along possible pathways

The third step in tracing the pathways for humanitarian access is to cluster the factors identified into the categories INTERNAL or EXTERNAL and arrange them in sequence along pathways between the start and end points identified above according to whether they are believed to be PROXIMATE, INTERMEDIATE or UNDERLYING causes.

The following considerations can help to identify the pathways for humanitarian access based on linkages between the different factors:

1. The pathways for humanitarian access may include INTERNAL as well as EXTERNAL factors; they do not have to consist solely of INTERNAL or solely of EXTERNAL factors.

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2. In some cases it may not be possible to identify UNDERLYING factors, and this does not detract from the identification of pathways connecting INTERMEDIATE and PROXIMATE factors.

3. There can and generally will be inter-connections across pathways and feedback between factors also. These interconnections can also be captured on a schematic worksheet. A sample worksheet is provided in Annex IV.

The following activities can assist practitioners in carrying out Step 2 (identifying types of factors) and Step 3:

- **Brainstorm openly** with colleagues, communities and others on what they believe are the most important factors influencing (positively or negatively) access

- **Gather experiences** from a range of humanitarian organizations working in the same context

- **Identify factors that are mentioned repeatedly** or shown by experience as influential factors

- [If internal factors] Check with colleagues within the same organization **but working in different contexts** as to what they may see as UNDERLYING or INTERMEDIATE factors influencing humanitarian access

- Review and analyze past/current reports to identify factors influencing access and their inter-relationships.

Once the factors and pathways have been identified, they can be represented in diagram form to provide an overview of the situation of humanitarian access. Figure 1 provides a sample diagram of pathways for humanitarian access. Based on the main direction of access, factors that make up the processes affecting access have been arranged along pathways based on whether they are INTERNAL or EXTERNAL factors, and based on their proximity to the situation of access.

Once the factors have been clustered into pathways the influence of each factor can be identified along the path using signs of positive ("+"), negative ("-"), or potential positive and negative ("+ / -") influences.

In addition to the influence of each factor it can be helpful to monitor indicators, where possible, for each of the factors. This will help not only in assessing the relative influence of the factor, but also its intensity at different times and in different geographical areas.

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For example, an indicator for the factor <*Denial of permission to travel by local officials*> may be the number of times during a given period (week/month) when permission to travel was denied. An additional indicator for this factor could be the reason(s) given by the local officials for denial of permission to travel.

A sample list of indicators associated with some of the above factors is presented in Annex III.

Step 4 – Rank the factors and priority pathways

Once the pathways for humanitarian access have been constructed, the next step is to rank the individual factors in terms of their overall effect or influence on humanitarian access. Factors can be assigned numeric ranking (1, 2, 3 etc.) to identify those of highest influence. Based on this ranking of the factors, priority pathways can be identified as those processes that most strongly influence access.

Two of the main goals of this ranking exercise are: (i) assist in deciding where to invest available organizational resources to have maximum impact on humanitarian access (targeting the pathways that most influence humanitarian access) and (ii) identify in the context of a coordinated strategy on humanitarian access the collective efforts (involving multiple organizations) that can be focused on specific high-impact pathways.

To assist in this ranking exercise, humanitarian practitioners can:

- **Brainstorm openly** with colleagues, communities and others on what they believe are the most influential factors and pathways affecting humanitarian access

- **Conduct a short, formal or informal, survey** of colleagues within and across organizations to rank the importance of the factors on a scale of 1–5.

This step precedes the identification of specific actors who may influence access, which is the second component of the methodology (see below).

The four steps provide a means of capturing the main factors at play with regard to humanitarian access and how they are connected. This is not intended as a once-off exercise but rather an ongoing process.

This causal analysis approach, in addition to identifying the factors influencing humanitarian access, can assist humanitarian organizations in identifying the areas in which further investment of personnel and other resources is required (whether for a single context or across contexts), for example in generating more options around specific factors.

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Component II

RELATIONSHIP AND INFLUENCE MAPPING

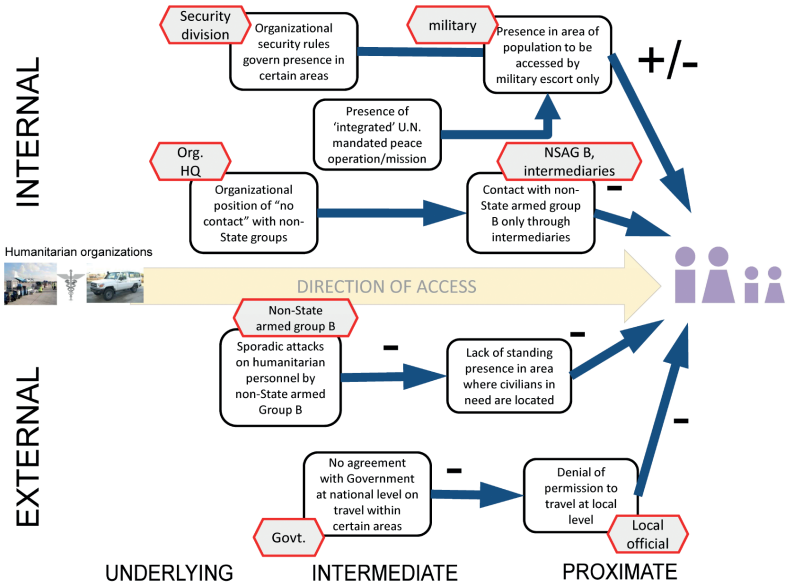
Once the pathways for humanitarian access have been identified, the next component of the methodology – Relationship and Influence Mapping – helps to **identify the actors which influence the pathways for humanitarian access** at different stages.

Identifying actors and building a relationship map

For each causal factor or link in the process, the actors that may be responsible for- or connected with that cause can be assessed. Using the pathways generated, the relevant actor(s) can be identified and included on the pathways representation, as shown in Figure 1. The strength of the influence of the actor should also be assessed.

In addition to identification of the relevant actors, the relationship and influence mapping component involves the identification of the inter-relationships between different actors, including parties to armed conflict, humanitarian organizations, national authorities etc.

Figure 1 – Pathways for humanitarian access with actors identified at each factor



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One approach to building a map of the relationships between different actors involved is to begin with the parameters of humanitarian access. This can assist in identifying the actors involved (access BY WHOM, TO WHOM). Additional actors can then also be included in the diagram.

The relationship map can use lines to indicate positive relationships and to indicate lines of weak or poor relationships to highlight the assumed relationships between the actors. A sample relationship map is shown in Figure 2.

CASE EXAMPLE: Mapping non-State armed groups in Darfur, Sudan

From 2004 to 2007 the number of non-State armed groups of various sizes and influence that asserted they were active in Darfur grew from two to more than 16. Many of these groups had little military capacity but several nonetheless presented themselves (especially to the humanitarian community) as controlling large parts of the territory of Darfur. Even very small groups with limited military capacity identified "Humanitarian Aid Coordinators" or similarly-titled individuals from within their ranks.

Part of the reason for this was that some of these groups were attempting to gain a seat at the ongoing political negotiations between the Government of the Republic of the Sudan and opposition groups as part of the Darfur Political Process.

Although it proved very time consuming, the mapping of the evolution of these groups, the relationships between them and their actual observed areas of operation proved critical to securing and maintaining humanitarian access. This was because: (i) it shortcut the learning curve and relationship-building phases for new organizations commencing operations and existing organizations working in new areas, (ii) it identified the interlocutors with whom humanitarian organizations needed to engage in certain geographical areas to negotiate access, and (iii) it provided an incentive and common template for humanitarian organizations to contribute to the mapping (as they all benefited from the collective knowledge).

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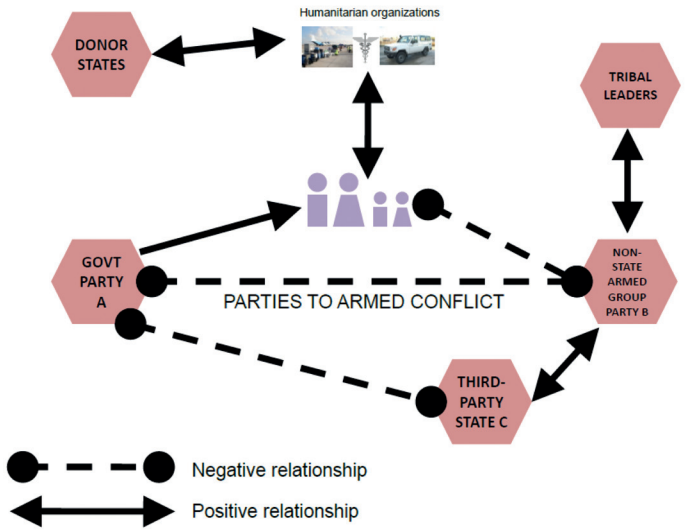
The mapping included use of geographic maps and databases of contact information for representatives of the various non-State armed groups.

This activity was coordinated by one agency; this helped to ensure that information from multiple sources was used to constantly update the analysis. This relationship and influence mapping helped to focus humanitarian organizations' interactions with the few non-State armed groups that did actually exert some influence over humanitarian access.

Figure 2 – Example of relationship map showing lines of positive and negative relationships



The relationship mapping exercise can help humanitarian practitioners to:

- identify opportunities for building relationships with influential actors
- mitigate the impact of actors that may negatively influence humanitarian access
- identify third-party influencers.

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Learning more about key influencing actors

Once the key influencing actors have been identified it is necessary to learn as much as possible about these actors. Table 3 presents some characteristics of actors (organizations/armed forces/armed groups, etc.) that may influence access and questions that may be used to gain more information.

Table 3 – Characteristics of those influencing access and questions to gain information

Characteristic of those influencing access	Questions to ask and points of guidance
MOTIVATION	**Questions to explore:** *What is the actor's driving organizational motivation (political, economic, military, ideological, religious, etc.), and what are the motivations (personal and other) of key interlocutors in the organization/group?* *How do these motivations relate to the actor's view of humanitarian action and their control of humanitarian access (e.g., is control purely on ideological grounds, thereby permitting some organizations humanitarian access but not others)? Have these views been expressed in any documents or media reports?* **Points of guidance:** >> Gather information and generate an image of the way in which an actor views different types of humanitarian organizations, using statements, media reports, interviews, etc. >> Identify cases where the actor has facilitated access and prepare to use as precedent. Identify the humanitarian actors(s) involved.
STRUCTURE	**Questions to explore:** *What is the structure of this organization/group? Is there a clear and effective command structure which can ensure that any commitments concerning humanitarian access can be fulfilled and communicated through the organization/group?* *Does the command and control structure operate across territorial regions or is it a "cell-like" structure?*

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	In the case of armed actors, is there high turnover of commanders within the forces/groups? Are existing policies and doctrine regarding relationships with humanitarian organizations effectively communicated within the armed forces/groups?
	Points of guidance: >> Even when there may be a trusted relationship with armed forces/group and a proven track record of communicating the enabling of access within the force/group, always check to ensure that the instructions have reached local-level commanders >> Depending on the structure of the armed force/group it may be necessary to negotiate humanitarian access with several military commanders (e.g., controlling different geographical areas).
INTERESTS	**Questions to explore:** *What are the particular interests of the organization/group? Does the group/actor have interest(s) in allowing or prohibiting humanitarian access? If so, what are they? Are there areas of overlapping interest with humanitarian organizations to facilitate access?* *What are the organizational, resource-related or personal needs which may be driving a particular actor's approach to humanitarian access?* **Points of guidance:** >> Learning more about the interests of a particular actor will assist in preparing for and undertaking negotiations for humanitarian access with this actor. The interests of the actor will shed light on what they may agree to in terms of facilitating access >> Humanitarian access is more likely to be secured or sustained if it addresses also the interests of those that may influence humanitarian access (in addition to the primary interests of the people in need themselves) >> Humanitarian practitioners can learn more about the interests of particular actors by: directly asking the group, gathering information from the group's statements etc., learning more about the motivations of the group (see above) >> Assess how the group's needs influence its interests in enabling or preventing humanitarian access.

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CONSTITUENCY	**Questions to explore:** *Does the actor concerned have a legitimate constituency ("legitimate" in terms of a constituency viewing the actor as a genuine and desired representative/advocate of the constituency's interests)?* *What are the views of the actor's constituency concerning humanitarian access? Do the interests of the constituency and the interests of the actor "line up" on the issue of humanitarian access? (For example, a constituency may be in desperate need of humanitarian assistance. However, an actor exerting control over a certain territory may refuse access on ideological or other grounds).* **Points of guidance:** >> Engage in a transparent manner with members of the constituency which may support a particular actor. Determine whether the actor actually represents the views and interests of the constituency >> If the interests of the supporting constituency and interests of the controlling actor are divergent, assess whether the constituency (e.g., through influential tribal leaders) can influence the actor to facilitate humanitarian access.
SOCIO-CULTURAL ASPECTS	**Questions to explore:** *Are there cultural considerations which may influence the actions of an organization/armed force/armed group with regard to humanitarian access? Are there social concerns within the actor?* **Points of guidance:** >> Identify whether there are certain socio-cultural factors within the populations in need that may inhibit access. Examples may include: suspicions in some cultures of immunization programs, cultural sensitivities to gender of those seeking to deliver humanitarian assistance, etc.

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CONTROL OF TERRITORY	**Questions to explore:** *What is the actual extent of influence or military control of the actor in a particular area? In the case of armed forces or groups does the stated extent of control (often exaggerated for military purposes) match the reality?* *Is the control of territory shifting (between armed groups or between commanders within a particular group)?* **Points of guidance:** >> In seeking to secure and sustain humanitarian access, humanitarian organizations should focus on the **people to be accessed or the people to whom access (e.g., to medical services) must be given,** rather than focusing on a specific territory. It is the humanitarian needs of people, and not territories, which must be met. This avoids a potentially contentious dialogue on who controls specific areas or of "locking in" access to a given area even if the population in need is moving (as in the case of displaced populations) If a mapping exercise identifies particular geographic areas of operation of Parties to the armed conflict it should be used for internal purposes of guiding engaging with those Parties in the respective areas and must not be- or perceived to be used – purposely or inadvertently – for the military advantage of any one Party to the conflict. These types of documents should be treated as strictly confidential within or between humanitarian organizations and should be developed for humanitarian purposes only. Humanitarian organizations should not publish or make available in any form (e.g., through satellite imagery) information which would provide a military advantage to any Party to armed conflict.
PERCEPTION OF OWN IMAGE	**Questions to explore:** *How does the actor perceive itself to be viewed by other actors? Does the organization/force/group care about its "image", especially with regard to enabling (or at least not being seen as an obstacle to) humanitarian access?* **Points of guidance:** >> The actor's view and importance of how others perceive it may be useful if the humanitarian organization needs to turn to the alternative of humanitarian advocacy to assist in securing access. This perception can identify third parties who may be in a position to exert political or other influence to assist in facilitating humanitarian access.

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Identifying specific provisions of the normative framework

Once the causal pathways of humanitarian access have been identified based on the relevant parameters (BY WHOM, TO WHOM, TO WHAT etc.), the specific provisions of the normative framework that apply to those pathways and the **types** of actor can be identified, as well as those that apply because of the type of armed conflict, using the series of tables in Annex II. More specifically,

- Use the parameters of humanitarian access – and specifically access BY WHOM AND/OR TO WHOM and access TO WHAT/OF WHAT parameters in the tables in Annex II – to **focus in on the provisions that relate most specifically to the particular access context**

- Using the tables in Annex II, **identify the main criteria and conditions** that may apply to the particular situation

- **Assess whether the criteria for humanitarian access exist.** For example, work to determine whether the population is or is not adequately supplied. If it cannot be established (including through lack of access) whether the humanitarian needs of the population are being met, engage with the relevant parties to conduct a humanitarian needs assessment

- If criteria for humanitarian access are met, work with the parties that will grant humanitarian access to satisfy legitimate (permissible under the normative framework) conditions that may be imposed.

Component III OPTION GENERATION

The third component of the methodology involves the **generation of options** to assist in securing and sustaining humanitarian access in light of the pathways, influencing factors (Component I) and relationships (Component II) identified. In addition to identification of options for access, this component also includes development of alternative approaches to delivering humanitarian assistance and protection if efforts to secure access are unsuccessful.

The guidance presented here on option generation and alternatives is generic to a range of situations of humanitarian access. Guidance on specific access issues is provided in Section 5.

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Option generation

The development of options for humanitarian access is guided by: (i) what is possible within the scope of humanitarian principles, policies and the normative framework (Section 3), (ii) clear understanding of the humanitarian needs and (iii) the capacity of the organization to implement the options.

Options can be generated in two ways. **First**, humanitarian practitioners can evaluate the situation of humanitarian access and generate options based on what might work in that particular setting. **Second**, humanitarian practitioners can work out options based on how humanitarian access was secured on previous occasions in the same context or for similar situations of access in other contexts.

For every combination of factor and influencing actor(s) identified in Components I and II above, options developed can be recorded and listed in a table (as shown in Table 4). This table can include the numbers corresponding to the ranking of each factor.

Table 4 – Using a table of factors and influencing actors to identify options at each node along the pathways for humanitarian access (Two examples provided).

Ranking	Factor	Actor involved	Option(s)
1	Sporadic attacks on humanitarian personnel	Non-State armed group B	Enter into negotiations with non-State armed group B and other parties to the conflict to secure agreement not to target humanitarian personnel and assets
2	Lack of standing presence in area where civilians in need are located	Non-State armed group B	Identify other humanitarian organizations who may have a standing presence in the area

The following **generic options** for securing and sustaining humanitarian access may assist in starting the process of identifying options to fit the specific context and situation of access:

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Relationship building

- Strategically **build up working relationships, over time,** with those actors that influence humanitarian access. Initial approaches (if direct contact not initially feasible) may require use of a trusted intermediary (person/organization)

- Build **relationships with community leaders** in areas of operation when access is possible. These relationships will pay off if the access situation changes in the future

- Build relationships by working with directly and closely with communities which humanitarians seek to assist to identify their humanitarian needs and to decide on how best to meet those needs

- Demonstrate commitment to the relationship through sustained presence, proximity to- and consultation with those the organization is seeking to assist and sensitivity to the needs of the civilian population.

Negotiations and communications

- When necessary, plan for- and enter into **negotiations with those actors identified** in Component I and II as exerting influence over humanitarian access

- If direct negotiations are not possible – for example, due to lack of sufficient relationship – consider **negotiations** for humanitarian access through a credible and trustworthy **intermediary** who will act to fulfill humanitarian objectives

- While some parties to conflict may reject normative arguments and/or legal obligations, a focus on objective technical criteria for humanitarian access can in some cases create an opening for practical dialogue. For example, in situations of international armed conflict the State which permits free passage of medical and hospital supplies to the civilians of another party has the right to prescribe the technical arrangements under which such passage is allowed. These technical arrangements can include the times, routes, number of vehicles involved etc. This **provides an opening for dialogue on the technical criteria for humanitarian access.**

Getting there: Transport and logistics

- Consider and evaluate effectiveness of all possible modes of transport and delivery for humanitarian access. Evaluate under what conditions, if necessary, military escorts may have to be used to ensure safety of humanitarian convoys

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- Make a distinction between the use of military escorts in situations where the primary threat is criminal behavior of groups other than parties to armed conflict, and situations where a party to the conflict may actually target humanitarian assets, personnel

- Consider using trusted commercial counterparts to transport supplies "point to point".

Acceptance and coping strategies

- Presence and commitment are the key ingredients of acceptance; Acceptance in turn is crucial for access

- Orient programming as much as possible to communities' self-sufficiency. This will prevent future access difficulties

- Establish lines of communication with members of the community, and lines of supply, in case access becomes difficult later

- Through demonstrated, principled action and careful explanation of the purposes of the organization and its work, assist in gaining acceptance from communities in need

- Demonstrate a commitment to remain with communities and continue to operate, rather than "cut and run".

CASE EXAMPLES: **UNHCR experiences of humanitarian access in 15 operations worldwide**

In early 2010, UNHCR published the findings of a study which reviewed challenges to "safeguarding humanitarian space" across 15 past- or ongoing operations worldwide.[31]

UNHCR uses a working definition of "humanitarian space" which includes access: *"[Humanitarian space is] a social, political and security environment* ***which allows access*** *to protection, including assistance, for populations of concern*

[31] Vicky Tennant, Bernie Doyle and Raouf Mazou, Safeguarding humanitarian space: a review of key challenges for UNHCR, Document Ref. PDES/2010/01 (Geneva: United Nations High Commissioner For Refugees-Policy Development And Evaluation Service, February 2010). The fifteen operations covered by the study were: Afghanistan, Algeria, Central African Republic, Chad, Colombia, Cote d'Ivoire, the Democratic Republic of Congo, Georgia, Iraq, Israel, Myanmar, Pakistan, Somalia, Sri Lanka, and Sudan.

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to UNHCR, facilitates the exercise of UNHCR's non-political and humanitarian protection mandate, and within which the prospect of achieving solutions to displacement is optimized."

The study pointed to common threads of guidance to safeguard this environment which allows access:

>> Adopt and follow a **clearly-defined vision** of what the organization is working to achieve, and set clearly-defined objectives for delivery

>> **Establish and maintain positive relations** with host and displaced communities. Presence – through longevity and reach – is key!

>> **Empower communities** through engagement and consultation. Strengthen existing coping mechanisms

>> **Influence perceptions,** including by clearly and assertively communicating the organization's humanitarian mission and mandate

>> Develop **strategic partnerships** – including for inter-agency action – to overcome challenges to humanitarian access

>> Explore and develop where necessary **operating models that are tailored to the particular context;** not "one size fits all" operations

>> **Develop staff skills and capacity,** especially in areas of communication and negotiation

>> **Understand the operating environment,** including through conflict analysis.

Additional consideration in option generation that relate to criteria and conditions for humanitarian access are presented in Table 5.

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Table 5 – Some key criteria and conditions for humanitarian access and what they mean in practice for humanitarian practitioners

Criteria and conditions for humanitarian access	How humanitarian organizations can work to confirm criteria or fulfill legitimate conditions
If the population is inadequately supplied, in whole or in part	>> If it is not clear whether or not population is adequately supplied, seek to assess humanitarian needs, and engage with parties to armed conflict and other parties with a view to securing access to conduct an assessment of humanitarian needs >> If parties to armed conflict or other parties assert that certain goods or services do not constitute "humanitarian" goods, use humanitarian catalogues or supplies, precedents set by that party, internationally-recognized lists of "dual use" items, etc. as validation of one dimension of the humanitarian nature of the supplies.
Subject to the parties' right of control	>> If the parties to the armed conflict or other parties express their intent to make access subject to their right of control, request specific details on how that right of control will be operationalized.
Subject to technical arrangements, including search	>> Humanitarian organizations should engage with parties to the conflict and other relevant parties to seek agreement on the technical arrangements to facilitate humanitarian access.

Alternatives: when access is not possible

If none of the options or combination of options for humanitarian access is successful, practitioners must look to alternative approaches to achieving the same objectives of delivering humanitarian assistance and protection to those in need.

In many cases, the alternatives to be considered may not be very attractive. Nevertheless, when entering into humanitarian negotiations and other activities to secure and sustain access it is important to have alternative approaches in mind. At the very least this is necessary for balancing the risk and resource commitment required to pursuing the options against the potential benefit if indeed humanitarian access is secured.

Alternative courses of action include, for example:

- Undertaking **humanitarian advocacy,** directed towards actors influencing humanitarian access (as identified in the pathways), potentially through the United Nations Security Council, third-party States, etc.

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- Encouraging **other organizations to undertake humanitarian advocacy,** particularly organizations which may not be exposed to the risk of reprisals or the imposition of sanctions on personnel in the particular context

- **Requesting military forces to deliver relief supplies** in accordance with existing policy guidance on use of military assets in emergency situations

- **Moving to so-called "remote programming"** and/or working through intermediate organizations or individuals

- **Contracting of commercial actors,** especially those with close links and communications to local communities, to deliver humanitarian assistance or to transport those in need of services to areas where the services can be provided

- **Engaging directly with communities,** perhaps in a location accessible to humanitarian organizations, to assess humanitarian needs and to discuss options for delivery of assistance

- **Providing direct support to local services** (e.g., health services delivered at local hospitals) in areas of need

- Taking a decision to cease operations in the area in which access is not possible due to unacceptable constraints.

Box 3 – Starting points for developing approach to remote programming

When humanitarian access is not possible, one alternative approach has been to move towards "remote programming" or "remote management" association with humanitarian assistance and protection. In Afghanistan (2011) and other contexts, approaches to remote programming have been developed in an effort to overcome difficulties in operating in insecure environments.

A study published in 2010 suggested guidelines and options for improving the effectiveness of remote management.[32]

[32] Abby Stoddard, Adele Harmer and Jean S. Renouf, Once Removed: Lessons and challenges in remote management of humanitarian operations for insecure areas, Report prepared by Humanitarian Outcomes for the Center on International Cooperation under a project supported by the Government of Australia (London: Humanitarian Outcomes, February 2010).

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Guidelines from that study and from other experiences include:

>> The objectives, activities and support for the program should **be based on a long-term view**

>> **Invest in building and maintaining relationships** with staff drawn from local communities, implementation partners and community authorities before moving to remote management/programming

>> **Do not simply transfer security/other risks to local partners** when considering remote programming. Use common approaches to security management in the remote, primary organization and for the local partner, factoring in the potential reduction (or possible increase) in risk associated with local partners' knowledge of and proximity to the community

>> Identify **effective and reliable security, logistics** and communications arrangements to operationalize remote program management

>> **Identify contingency plans** in event that local partner also faces challenges to humanitarian access or threats to safety and security

>> Establish a system of remote programming that makes sense in the local community and context (e.g., the remote management "Shura System" used by Tearfund Afghanistan)

>> At all stages, plan carefully for remote management.

Of these alternatives, **humanitarian advocacy** is one which deserves special mention because many humanitarian organizations turn to advocacy as a first course if access is constrained, and because many organizations engage in advocacy on an ongoing basis. Different humanitarian organizations have different approaches to advocacy, reflecting their different mandates and ways of working. [33]

[33] The Global Protection Cluster Working Group defines advocacy as, "… a set of activities aimed to promote change to bring policy, practice or law in compliance with international standards." Inter-Agency Standing Committee, Handbook for the Protection of Internally Displaced Persons (Geneva: IASC, June 2010). Available at: http://www.unhcr.org/refworld/docid/4790cbc02.html [accessed 1 May 2011].

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Some points of guidance on advocacy specifically as it relates to humanitarian access include:

1. Ensure an objective presentation of the constraints on humanitarian access, and especially regarding parties that may be constraining access. Failure to do so will only lessen chances of changing the behavior of those obstructing or limiting access.

2. Wherever possible, use assessment of humanitarian needs and access indicators to present the constraints as objectively as possible.

3. Avoid general statements that could be perceived as focusing only on one party to the conflict.

4. Understand the relevant provisions of the normative framework and obligations and roles of the parties to armed conflict and others, and consider highlighting these in advocacy statements or direct interactions if relevant parties are considered to be receptive to normative arguments.

5. Be strategic and judicious in calling on States, the United Nations Security Council and others (if the organization chooses to do so) to take action to improve access.

6. Prioritize advocacy activities according to the investment of time and personnel resources required and the likely outcome.

7. Recognize actions by any and all parties (including non-State armed groups) to facilitate humanitarian access.

8. Work with other organizations in joint humanitarian advocacy efforts around a single issue or area/region.

CASE EXAMPLE: Access constraints in Afghanistan lead humanitarian organizations to seek alternatives

In Afghanistan, during early 2011, acute constraints such as direct targeting of humanitarian personnel and ongoing hostilities were severely limiting direct access to populations in need by U.N. and non-governmental humanitarian organizations alike. The ICRC and one or two non-governmental organizations were the exception, but nevertheless they too faced significant constraints in certain areas.

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Humanitarian organizations took alternative courses of action in an attempt to get around these access constraints. Some of the approaches used included:

>> Meeting with community and tribal leaders from surrounding areas in provincial "hub" locations to reduce the number of trips to communities where organizations were not well known or had not had presence for some time

>> Using commercial drivers and transport, familiar with- and known to the local communities, to access areas otherwise inaccessible to humanitarian organizations

>> Working with established Afghan non-governmental organizations working directly in- and known to the affected communities

Component IV STRUCTURING APPROACH AND COORDINATION

Once options for seeking humanitarian access have been developed, the final component in the methodology, which focuses on implementation of the options and alternatives, is structuring the approach and ensuring effective coordination for humanitarian access.

Structuring approach

Based on Components I, II and III of the methodology, practitioners will have available a number of options. These options will require action at different levels, whether at the level of delivery of humanitarian assistance, the level of the organization's country office/team or at the regional- or headquarters level.

A structured approach to humanitarian access involves several steps:

1. Working through the table of options generated in Component III, **identify the humanitarian organizations and personnel, at field/national/HQ level that are best placed to lead** on the particular option(s)

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2. Identify **lead persons by area/zone** or thematic area who will have responsibility for carrying forward certain options

3. Ensure **effective communication within the organization** at the country level to advise colleagues regarding progress or obstacles in implementing the options for humanitarian access

4. Organize actions to be taken to implement **options according to immediate, medium-, and long term** timeframes

5 Ensure the structured approach is **captured in written form and identify lead person within the organization** at country/zone level to regularly update and revise the structured approach.

Coordination

The adoption in 2005 by the Inter-Agency Standing Committee of the "cluster approach" – whereby global cluster leads have been identified for specific areas of activity – sought to address gaps in humanitarian response and to improve the effectiveness of humanitarian action.34 At the country level, the cluster approach is intended to strengthen coordination within and between sectors under the overall leadership of the Humanitarian Coordinator.

In situations where many humanitarian organizations may be active and/or seeking humanitarian access, the prospects for more effective humanitarian access will be enhanced through coordination within and between humanitarian organizations.

To ensure more effective coordination (for access), humanitarian organizations can consider the following actions:

1. For those organizations participating in the Humanitarian Country Team] Work to ensure that coordination of approaches to humanitarian access reflect the coordination mechanisms existing under the in-country implementation of the cluster approach. For example, in some situations a dedicated HCT working group could be designated to take the lead on coordinating the approach to humanitarian access.

2. Seek agreement on a common framework and set of indicators to facilitate data collection on factors influencing humanitarian access.

[34] Inter-Agency Standing Committee (IASC), Guidance Note on using the Cluster Approach to Strengthen Humanitarian Response (Geneva: IASC, 24 November 2006). Available at: http://oneresponse.info [Accessed 18 January 2011]

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3. Establish an information sharing system on humanitarian access, potentially through a single coordinating entity such as OCHA or an NGO coordination network.

4. Consider the establishment of an Internet-based or otherwise-shareable (possible on restricted basis) access database to facilitate information sharing and tracking of humanitarian access.

5. Establish a humanitarian access "cell" to coordinate requests and regular interactions with parties to the conflict and other actors on humanitarian access.

6. Develop a common strategy for humanitarian negotiations with parties to the conflict and other actors (for negotiations on humanitarian access and on other issues).

4.3 Indicators and tools for humanitarian access

Trends in humanitarian access

The methodology is designed to be used in a dynamic manner, with ongoing review of the pathways for humanitarian access and assessment of trends in access (is it improving, or deteriorating?). Identification of trends in the situation of humanitarian access requires baseline indicators and indicators of change in access.

Since the ultimate objective is to facilitate delivery of humanitarian assistance and protection to those not participating in hostilities who are in need of assistance, the monitoring of trends should reflect this end objective by focusing on whether the humanitarian needs of these persons are being met. Changes in humanitarian conditions can take time to show themselves (e.g., changes in nutrition status). This is one reason why trends are frequently identified based on changes in the operations of humanitarian organizations, such as percentage of a certain area accessed, or the number of people accessed.

Using indicators of humanitarian access

Since access is a necessary, but not sufficient, condition for effective humanitarian assistance, indicators of humanitarian access should capture both the desired end results of humanitarian access (changes in humanitarian conditions) as well as changes in operating conditions such as the percentage of area accessed, the quantities of assistance delivered etc.

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Indicators of humanitarian conditions are well developed and are used by many humanitarian organizations. They include metrics that capture the state of health and well-being of populations – such as under-5 (years of age) mortality rates, average daily calorific intake, etc. – as well as the status of health and well-being of individuals – for example, the health and well-being of individual children in a school. Many of these indicators have been standardized within organizations (such as the "Situation Analysis" methodology used by the United Nations Children's Fund or the indicators of human development used in the United Nations Development Programme *Human Development Report*). Common assessment frameworks have also been developed to assist in the use of standardized indicators of humanitarian conditions across organizations. These indicators and the data on which they are constructed can provide a pool of inputs for developing and using indicators for humanitarian access.

Operational indicators can include extent of area accessed, percentage of the persons in need who can be accessed, percentage of the persons who require access to services and goods who can actually avail of the them, number/length of roads along which humanitarian vehicles and personnel can travel unimpeded.

Another approach to using indicators of humanitarian access is based on identification of indicators associated with different types of access constraints. The United Nations Office for the Coordination of Humanitarian Affairs has developed a series of indicators for each of nine categories of constraint (see Annex).

Other types of indicators include:

- The Sphere Project has developed a set of *Minimum Standards for Humanitarian Assistance* that provide another useful set of indicators to assist in determining the levels of access required (e.g., the number of convoys or trucks) to meet the humanitarian needs of the population as specified in the Sphere Minimum Standards.35

- Lists or catalogues of what constitute humanitarian goods and services can be used as qualitative indicators when attempting to secure access, particularly in situations when the humanitarian nature of certain goods and/or services is in dispute. One example is the Emergency *Items Catalogue* of the IFRC and ICRC.36

35 The Sphere Project, Humanitarian Charter and Minimum Standards in Disaster Response, 2004 Edition (Geneva: The Sphere Project, 2004). Available at: http://www.sphereproject.org [Accessed 12 October 2010]

36 The Emergency Items Catalogue is available on the internet site of the IFRC: http://procurement.ifrc.org/catalogue/ [Accessed 12 October 2010]

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Tools

The range of tools that may be at the disposal of humanitarian organizations to assist in monitoring and assessing humanitarian access include:

- **Information sharing systems** such as OCHA's ReliefWeb: This and other resources identified in Annex I can provide: case studies, lessons learned, maps on humanitarian access, regular updates on humanitarian conditions and needs, policy papers and organization-specific policy guidance notes for humanitarian access etc.

- The Humanitarian Access Monitoring and Reporting Framework developed by U.N.-OCHA: Provides a framework for monitoring and reporting on humanitarian access, including a set of indicators (see Annex III).

- Databases of humanitarian conditions for a part context or region, such as those available on the **Humanitarian Information Centers**: Assist in identifying priority areas for access and can also provide one measure (over time) of effectiveness of access and humanitarian assistance in general.37

- **Geographical Information Systems (GIS)** and other mapping tools: Provide visual and geographical tools for identifying access constraints in particular areas.

- **Global Positioning System (GPS)** or other vehicle tracking devices: Provide tools to track location of humanitarian convoys/assets and to identify in real time progress on overland access. Provides capability to log location of particular geographic or other (e.g., mines, UXOs) constraints on movement and humanitarian access.

- Incident logging and reporting systems.

37 See: http://www.humanitarianinfo.org/ [Accessed: 5 November 2011]

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5. Opportunities and options for specific access issues

5.1 Overview

The methodology and tools presented in Section 4 provide a template, or starting point, for humanitarian practitioners to adapt and apply to their particular contexts.

This section presents guidance on application of the methodology for four categories of opportunities or constraints: humanitarian access during ongoing hostilities, bureaucratic constraints affecting access, targeting of humanitarian personnel or goods/assets, and obstruction of humanitarian access. It should be noted that these categories are not mutually exclusive as combinations of these issues may be at play in any particular situation of armed conflict.

The guidance for each category of opportunity or constraint focuses on pathways for humanitarian access and options and alternatives (Components I and III of the methodology).[38]

[38] The reason why the guidance in each category of opportunity or constraint focuses on Components I and III is that the relationship and influence mapping, and the type of structured approach and coordination mechanism(s) will be much more dependent on the actual context.

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5.2 Humanitarian access during ongoing hostilities

I Pathways for humanitarian access

PROXIMATE FACTORS	>> Specific military operations affecting access to the civilian population in need in a particular area/region >> Imprecise or indiscriminate targeting >> Absence of- or unreliable security guarantees
INTERMEDIATE FACTORS	>> Parties to armed conflict seeking to capitalize on their facilitation of humanitarian access to garner support within their constituency or other communities >> Concerns by one/other party to the conflict that humanitarian assistance may: (i) constrain military operations; (ii) benefit the military forces of the adversary; (iii) lead to a pause in hostilities which the adversary could use to rearm/reorganize
UNDERLYING FACTORS	>> Degree of respect by the parties to the conflict for the relevant provisions of international law >> Possible ideological reasons for certain groups rejecting humanitarian assistance

III Option generation

Factor	Option(s) and possible alternatives
Poor respect by parties to the conflict for provisions of international law pertaining to humanitarian access	>> [If due to insufficient awareness and training] Work with parties to the conflict – including through training on international humanitarian law – to raise awareness of parties' obligations under relevant provisions of international law concerning humanitarian access. >> Clearly and consistently communicate the mandate and objective of the humanitarian organization.
Insufficient or sporadic contact with parties to the conflict	>> Build contacts with the influential actors identified through the Relationship and Influence Mapping component of the methodology (Component II), at an appropriately senior level on the relevant parties' and the humanitarian organization's sides. >> Engage early and often, when necessary, with all parties to the conflict.

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Concerns by parties to the conflict that humanitarian access may restrict military operations	>> Convey to the parties, in practical terms, the modus operandi of humanitarian organizations, being based on the core principles of humanity, neutrality, impartiality and operational independence. >> Reassure parties that humanitarian access will not be used for purposes of public advocacy, and follow through by deeds. >> Offer search of humanitarian convoys as a means of reassuring parties to armed conflict that the goods and services being supplied are exclusively humanitarian in nature.
specific military operations affecting access to the civilian population	>> Engage with influential actors with a view to securing commitment to ensure humanitarian access. While not ideal, this could include consideration of temporary mechanisms to facilitate access such as, humanitarian corridors, "days of tranquility" etc. (see Box 4 for definition of possible mechanisms). It should be noted however that the limited (geographically or in time) actions do not substitute for full, secure humanitarian access to the civilian population in need when the normative framework requires such free and unhindered access. >> Negotiate with parties to armed conflict to secure access to the sick and wounded (and others not participating in hostilities). In such cases, sick and wounded persons may need to be evacuated from the area of military operations. >> Secure firm guarantees from parties to armed conflict to take adequate precautions to protect hospitals, schools and other civilian facilities during military operations.
Unreliable security guarantees	>> Seek strong commitment to security guarantees which include clear indications (to armed forces/group controlling access) of implications of a breach of these guarantees. >> Self-check that orders concerning security guarantees have been communicated with the armed force/group to local force/group commanders. >> Identify in advance channels for emergency communication in the event of a security incident.

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Box 4 – Terminology used for mechanisms to secure access during ongoing hostilities

In the context of the United Nations humanitarian response to the conflict in Libya during the first half of 2011, the U.N. Office for the Coordination of Humanitarian Affairs developed a glossary of terminology associated with mechanisms to assist in securing and sustaining access to the civilian population, some of which are listed below:39

"There are no legal definitions of the following terms and, therefore, this glossary provides explanatory descriptions rather than precise definitions.
…

Ceasefire

A ceasefire refers to a suspension of active fighting undertaken by the parties to a conflict, typically as a part of a political process. It is intended to be long-term and often covers a broad geographic area encompassing the entire area of conflict. A ceasefire is usually intended to allow the parties to take a break from the fighting in order to engage in dialogue to resolve political questions, including the possibility of a permanent political settlement.

Cessation of hostilities

A cessation of hostilities is the suspension of active fighting. It is a factual description and does not necessarily mean that the parties have reached a political agreement. However, a cessation of hostilities is sometimes also used to describe a suspension in the fighting for various reasons, including as a step towards political dialogue and a longer-term ceasefire.

39 Source: United Nations Office for the Coordination of Humanitarian Affairs, Glossary of key terms relating to negotiations during hostilities, Unpublished note (New York, May 2011).

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Temporary cessation of hostilities

This expression refers to the suspension in active fighting for a specific period. Like "cessation of hostilities", it is a factual description and may be undertaken for various purposes, for example to encourage political dialogue. It is also used to describe a temporary suspension in fighting for humanitarian purposes, often in a limited geographic area, in order to enable evacuations, delivery of relief supplies, etc. A temporary cessation of hostilities for humanitarian purposes requires the agreement of all relevant parties with humanitarian actors. Is not intended to facilitate dialogue between the parties, nor is it intended to extend beyond the period and geographic area agreed to for accomplishing specific humanitarian objectives, although it may be repeated or replicated in different areas.

Humanitarian pause

This refers to a temporary suspension in fighting for exclusively humanitarian purposes, involving the agreement of all relevant parties, for a defined period and covering a specific geographic area where the humanitarian activities are to be carried out. It has essentially the same meaning as "temporary cessation of hostilities for humanitarian purposes" but the exclusively humanitarian purpose is stated more explicitly. …

Humanitarian corridor

This is a mechanism for humanitarian actors to obtain access to populations in need for exclusively humanitarian purposes during active fighting. Humanitarian corridors consist of specific designated routes involving the agreement of all relevant parties to allow the safe passage of humanitarian goods and/or people from one point to another in an area of active fighting. In addition to the geographic dimension, humanitarian corridors may be agreed to for a specific period of time.

De-confliction arrangements

This entails liaison between humanitarian actors and parties to conflict to communicate the time and locations of relief

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activities in order to ensure that military operations do not jeopardize the lives of humanitarian personnel, impede the passage of relief supplies or implementation of humanitarian activities, or endanger beneficiaries.

Days of tranquility

This mechanism has been used primarily by UNICEF, often in collaboration with WHO, in order to enable children to have access to health care during conflict, for example to undertake national immunization campaigns, or other exclusively humanitarian activities. "Days of tranquility" require the agreement of all relevant parties to grant access to and not interfere with the work of medical and other personnel during the designated days."

5.3 Bureaucratic constraints affecting humanitarian access

I Pathways for humanitarian access

PROXIMATE FACTORS	>> Individual officials obstructing movement or insisting on overly-bureaucratic procedures >> Arbitrary changes in procedures at local level >> Political decisions over-ruling laws/procedures >> Case-by-case denial of entry/exit visas for humanitarian personnel
INTERMEDIATE FACTORS	>> Lack of clear relationships between government institutions at national level and local government institutions >> Differing political allegiances at national- and local levels >> Lack of institutional capacity at regional or local level to process/issue certain documentation >> Absence of technical criteria for registration of humanitarian organizations
UNDERLYING FACTORS	>> Limited institutional capacity of the national authorities – at national and local levels >> Lack of existing institutional procedures, for example for registration of humanitarian organizations >> Lack of political commitment at national level to facilitate work of humanitarian organizations

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III Option generation

Factor	Option(s) and possible alternatives
Limited institutional capacity	>> Share experience of procedures and systems to facilitate the work of humanitarian organizations which have been used in other contexts.
Limited communication between central- and local level authorities	>> Identify key interlocutors at national- and local levels and make connections between them on actions to be taken to ensure effective humanitarian access; For example, in some circumstances this may involve securing copies of national-level procedures and documentation and providing those if required to local-level authorities.
Denial of visas for humanitarian personnel to enter the country	>> Engage with national authorities within Ministry of Foreign Affairs or equivalent to (i) clarify procedures and processing times for visa issuance; (ii) issue multiple-entry visas to humanitarian personnel; (iii) identify actions to be taken if visa issuance delayed (e.g., temporary travel permits); and (iv) to establish procedures for urgent issuance of visas in exceptional circumstances (e.g., entry visa on arrival).

5.4 Obstruction of humanitarian access

This issue focuses on types of obstruction of humanitarian access other than through bureaucratic impediments (addressed in Section 5.3 above).

I Pathways for humanitarian access

PROXIMATE FACTORS	>> Imposition of curfews in local areas; blockage of key access routes >> Physical intimidation of humanitarian personnel >> Obstruction of vehicles at roadblocks >> Delays in customs clearance.
INTERMEDIATE FACTORS	>> Refusal by military actors to facilitate humanitarian access to particular geographical regions >> Imposition of conditions intended to obstruct access such as demands by parties to armed conflict to humanitarian supplies >> Imposition of flight or vehicle movement restrictions >> Arbitrary holding of humanitarian supplies at entry ports/airports >> Lack of clarity within humanitarian organizations of how to approach situations of obstruction.

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UNDERLYING FACTORS	>> Systemic lack of awareness by parties to armed conflict about their duties and obligations concerning access >> Lack of ownership of norms, for example by non-State armed groups >> Systemic prioritization of the military imperative over all other considerations >> Desire by parties to armed conflict not to have external actors witness the effects of military operations, particularly on civilians >> Assertion of state sovereignty in a manner intended to limit involvement of foreign humanitarian organizations in delivery of assistance.

CASE EXAMPLE: In the face of obstruction of access in Myanmar, a focus on sustained dialogue, doing what is possible, and maintaining humanitarian independence.

Beginning in 2006, the State Peace and Development Council (SPDC) of the Government of Myanmar took measures, the effect of which was to curtail humanitarian access in certain parts of the country.

This action included the issuance of guidelines concerning the operations of United Nations and international non-governmental organizations. The guidelines required organizations to coordinate with the SPDC and further required approval by the Council of operations and staffing decisions.

The restrictions remained in effect as of early 2010. The ICRC and others could not move independently and hence delivery of humanitarian assistance, including to conflict-affected areas, was not possible.

The ICRC continued its activities in areas where it was possible to work, such as in technical and training support, and continued with its efforts to engage the authorities in a dialogue on humanitarian issues.[40]

[40] International Committee of the Red Cross (ICRC), ICRC Annual Report 2009 (Geneva: ICRC, May 2010).

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Ultimately, the insistence by the SPDC on strict guidelines governing access forced organizations to choose the alternative of not operating in those areas rather than agreeing to conditions that would compromise principles of humanity and operational independence.

Some organizations engaged in active humanitarian advocacy to ensure access, while others sought to continue more limited operations from bases in neighboring countries.

III Option generation

Factor	Option(s) and possible alternatives
Lack of clarity within humanitarian organizations about how to approach situations of obstruction	>> Work within the organization and with other humanitarian organizations operating in the same context to agree a set of procedures for dealing with situations of obstruction. This could include common agreement on non-interference in recruitment of national staff members or national partner organizations; decisions regarding coordinated approach to nonpayment of any forms of taxation.
Blockage of key access routes	>> If obstruction of key access routes by parties to armed conflict is based on military imperative, negotiate times for ensuring that the routes are accessible (restrictions by parties to armed conflict can only be temporary) or negotiate access by other modes (air/sea).
Obstruction of vehicles at roadblocks	>> If a systematic pattern of obstruction, enter into negotiations at senior level with relevant parties to armed conflict; Seek agreement to facilitate access and (i) secure written commitment that can then be presented at roadblocks; and (ii) secure commitment to have agreements on access communicated to local-level military commanders >> Identify, in advance of passage, points of contact within armed forces/groups with whom to communicate in the event of spontaneous obstruction at roadblock.
Desire by parties to armed conflict not to have witnesses to possible effects of military operations	>> Emphasize to the parties to armed conflict the primary humanitarian imperative of the organization and the role of the organization in working to alleviate suffering of all people. Clarify the role of the humanitarian organization and its position vis-à-vis interaction with any accountability mechanisms (such as international criminal accountability entities).

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5.5 Targeting of humanitarian personnel and goods/assets

I Pathways for humanitarian access

PROXIMATE FACTORS	>> Precautionary or reactionary withdrawal of humanitarian personnel based on security assessment or security incidents >> Lack of ability of humanitarian personnel to travel in particular areas.
INTERMEDIATE FACTORS	>> Targeting of humanitarian personnel and goods/assets if they do not agree to certain conditions, such as payment of "taxes" or fees >> Targeting of humanitarian personnel who may be perceived as promoting particular religious views >> Inadequate and/or ineffective security management policies on the part of humanitarian organizations (e.g., not objectively balancing humanitarian benefit and security risk; not based on objective criteria) >> A conservative approach to humanitarian security devoid of considerations of potential program benefit; lack of organizational presence which could build trust and demonstrate intent in a particular desired area of operation.
UNDERLYING FACTORS	>> Ideological opposition to the work or ethos of humanitarian organizations >> Perceptions of humanitarian organizations as being aligned with certain political actors >> Economic motives underlying the actions of parties to armed conflict.

III Option generation

Factor	Option(s) and possible alternatives
Lack of organizational presence which could build trust and demonstrate intent	>> When planning humanitarian activities, plan for sustained presence and build relationships accordingly in the planned areas of operation. Avoid "parachute" interventions where humaniarian activities are undertaken without good understanding of the humanitarian needs, the political dynamics and the influential actors in the area(s).

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Lack of ability of humanitarian personnel to travel in particular areas.	>> Consider use of military escorts in line with normative framework and humanitarian policies; This could include assessment of whether potential threat(s) are economically (e.g., through banditry) or politically (e.g., through intentional targeting of humanitarian workers) motivated. If motivations of groups that may target humanitarian convoys/persons are deemed to be purely economic, then the use of military escorts may not adversely affect perception of humanitarian organizations' neutrality.
Inadequate and/or ineffective humanitarian security policies	>> Employ risk management techniques that not only factor in humanitarian security concerns but that objectively balance these concerns and possible threats with potential humanitarian benefit of particular operations.
Humanitarian personnel who may be perceived as promoting particular religious views	>> Demonstrate first and foremost by actions, but also through documents/publications, that the humanitarian organization does not promote any particular religious or other values. Point to other situations or contexts where the organization has worked successfully across communities.
Perceptions of humanitarian organizations as being aligned with certain political actors	>> Demonstrate in statements and actions the humanitarian neutrality of the organizations. Identify sources of funding in a transparent manner when required. >> Humanitarian organizations cannot agree to politically-motivated or other operational restrictions to their humanitarian activities that may be imposed by donors.

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6. Dilemmas of humanitarian access

6.1 Overview

Humanitarian organizations are often faced with difficult **choices between different courses of action to secure and sustain humanitarian access**, each one of which will have its advantages and disadvantages, and none of which may immediately present itself as the best option. Often the available courses of action are far from ideal. These are dilemmas of humanitarian access.

This section suggests approaches and guidance for practitioners in considering the most appropriate course of action when faced with a particular dilemma of access.

Just as the overall approach to humanitarian access is guided by core humanitarian principles and the normative framework, so too dilemmas of humanitarian access are considered based on the core principles and the normative framework.

6.2 Dealing with dilemmas of humanitarian access

Dilemmas of humanitarian access can be considered in **three categories:** dilemmas of principle, institutional dilemmas and operational dilemmas. Some dilemmas may be reflected in each of these categories. Examples of dilemmas of each type include:

DILEMMAS OF PRINCIPLE: In the case of integrated U.N.-mandated peace operations/missions, how to maintain and demonstrate humanitarian neutrality while

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operating in an integrated mission environment | Maintaining operational independence in the face of strong political pressures.

INSTITUTIONAL DILEMMAS: How to operate within the parameters of organizational rules and procedures on safety and security of humanitarian personnel while working to secure and sustain access | Choosing how the organization will coordinate with other humanitarian actors in working to secure and sustain access.

OPERATIONAL DILEMMAS: Securing and sustaining humanitarian access in the face of demands by parties to armed conflict or other actors for payment or "in kind" benefits.

Some of the **characteristics of dilemmas** of humanitarian access, which have practical implications for how to work through these dilemmas, include:

- Dilemmas of humanitarian access are often **presented in real time and require rapid decision making**

- There are no "fix all" solutions to dilemmas of humanitarian access as the parties, conditions etc. involved often changes for each dilemma

- **The stakes are high.** The course of action in these dilemmas can significantly affect humanitarian objectives and outcomes

- Approaches to some dilemmas may afford short-term benefits but long-term disadvantages.

These categories and characteristics help to determine how to work through these dilemmas. One of the most significant challenges in dealing with dilemmas of humanitarian access is that when practitioners work through a dilemma and choose a course of action, often the action/outcome is recorded but the way in which the dilemma was resolved (the process and tools used) is often not recorded.

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CASE EXAMPLE: Dealing with dilemmas of humanitarian access during the conflict in the former Yugoslavia (1992–1995)[41]

Humanitarian organizations faced significant dilemmas when operating in the former Yugoslavia during the various conflicts between 1992 and 1995. Examples of the types of dilemma included:

- ➔ Dilemmas associated with decisions on how rigidly to adhere to humanitarian principles, and potentially by doing so limiting humanitarian assistance in the short-term, in an environment where humanitarian norms were being flouted by parties to the conflict [DILEMMA OF PRINCIPLE]

- ➔ Providing assistance (for example, by UNHCR) to groups when it was known that they were not the ones who needed it most, in the hope that this assistance would improve broader access and that some of the assistance would "trickle down" to those who were most in need of assistance [DILEMMA OF PRINCIPLE, OPERATIONAL DILEMMA]

- ➔ Accepting military and/or political conditionalities as part of an agreement reached during humanitarian negotiations. For example, there were several instances when UNHCR and other organizations were deemed to have accepted military and political conditionalities when they believed this would assist in securing humanitarian access [DILEMMA OF PRINCIPLE, OPERATIONAL DILEMMA]

In the case of the former Yugoslavia and in many other cases, such dilemmas have been made more acute by humanitarian principles and norms being subordinated by political interests and pressures and by "policy gap", whereby actions of humanitarian organizations/personnel are out of step with existing humanitarian policy.

[41] This case example reflects the analyses presented in several documents on the situation in the former Yugoslavia and in Bosnia in particular during 1992 - 1995. See, for example: Kirsten Young, "UNHCR and ICRC in the former Yugoslavia: Bosnia-Herzegovina," International Review of the Red Cross and Red Crescent, Vol. 83 No 843 (September 2001); Mark Cutts, The Humanitarian Operation in Bosnia, 1992-95: Dilemmas of Negotiating Humanitarian Access (Geneva: United Nations High Commissioner for Refugees, May 1999).

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The following actions can assist in working through dilemmas of humanitarian access:

1. **Use humanitarian principles and the normative framework** to guide decisions; Eliminate courses of action that may run counter to humanitarian principles and provisions of international law pertaining to humanitarian access [esp. for DILEMMAS OF PRINCIPLE].

2. **Adhere rigorously to a (humanitarian) principled approach when implementing decisions and strategies** concerning humanitarian access. Rather than vaguely quoting humanitarian principles, interpret what the principles mean in the particular situation and use this to formulate and communicate a principled approach.

3. **Balance potential short-term gain against longer term- or global consequences** (esp. for OPERATIONAL DILEMMAS]. For example, does agreeing to providing 10 percent of the food consignments at an armed group checkpoint, with a view to securing immediate access to those in urgent need of assistance, compromise the humanitarian character of the operation and encourage such "rent-taking" on a wider scale?

4. **Involve peers** (within or across organizations) in working through the dilemma. Brainstorm with colleagues on the merits of the various courses of action, and on possible alternative approaches [brainstorming within the organization particularly useful for INSTITUTIONAL dilemmas].

5. **Use decision-making tools** – for example, ranking of choices or using a decision path – to structure and provide a record of how the dilemma was resolved (or alternate course of action chosen). This also helps to ensure consistency within the organization on how to approach certain dilemmas and provides a good starting point for newly-recruited personnel.

6. **Identify and use technical criteria** which can provide a more objective basis for decision making [esp. for OPERATIONAL DILEMMAS].

7. **Identify precedents** – from the current context of other situations of armed conflict – to compare how this dilemma was resolved by others, or in other contexts; Precedents can be very helpful in substantiating the case for a particular course of action.

7. **Keep open alternate courses of action** to secure and sustain access. This could include, for example, operating through other humanitarian or commercial actors; suspending humanitarian activities while engaging in humanitarian advocacy.

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8. **Communicate organizational decisions and policies** on how to deal with dilemmas throughout the organization, especially to those at the operational level.

9. **Be consistent**, as much as possible, in interactions with parties to the conflict or other actors to avoid misunderstandings and miscommunication.

10. **Ensure effective coordination** among humanitarian actors; avoid situations where the actions of one organization undermine other organizations.

In some instances, it may not be possible to resolve a dilemma of humanitarian access. This may be due to a number of factors including, for example: lack of clear organizational policy that can inform the approach, differing and irreconcilable views within or between organizations on how best to proceed, a lack of individual or organizational willingness to address the dilemma "head on" for fear of exposing oneself/the organizations to political pressures or sanction, slow decision making procedures which may make it difficult to respond in a timely way to emerging dilemmas, organizational culture, etc.

In these cases, practitioners should invest in exploring alternatives to humanitarian access, some of which were identified in Section 4.2.

The following sections provide guidance and suggested approaches on four frequently encountered dilemmas of humanitarian access.

6.3 Humanitarian security and humanitarian access

A common dilemma encountered by humanitarian practitioners is how to balance humanitarian security risk with expected humanitarian benefit of a particular program activity. This is especially true when organizational rules and procedures may appear to limit opportunities to access those in need of assistance and protection.

For some humanitarian organizations, security rules and procedures can dictate a very limited window for seeking and securing access. For example, humanitarian personnel may be limited in their movements and security procedures may require military escorts that may be in short supply and have limited personnel / capacity.

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Guidance and options

- Use **risk assessment and risk management approaches** and tools to generate a more objective picture of the assessed (humanitarian) security risks and envisaged humanitarian benefits

- Learn more about how humanitarian security risk assessments are carried out. What are the criteria used by those undertaking these assessments?

- Consider **likelihood and impact as two components of risk**. Consider feasibility and impact of different courses of action for securing and sustaining humanitarian access

- Identify other cases where particular humanitarian security risks have been mitigated, for example by building stronger relations with parties to armed conflict operating in the area in which the population is to be accessed, or by negotiating security guarantees.

- Consider protective and deterrent measures (see case example below) to assist in securing access and to reduce vulnerability to specific security threats.

Box 5 – Access in complex security environments that carry high risk for humanitarians

In 2011, the U.N. Office for the Coordination of Humanitarian Affairs launched a study, *"designed for aid practitioners and their organizations seeking practical solutions to gain, maintain and increase secure access…"*[42]

The study highlighted seven categories of good practice for securing and sustaining humanitarian access in high-risk environments. Some of the key findings and issues in each of these categories are:

1. **Active acceptance-based approaches:** more active investment in acceptance strategies leads to better access through improved negotiation and communication.

[42] Jan Egeland, Adele Harmer and Abby Stoddard, To Stay and Deliver: Good Practice for Humanitarians in Complex Security Environments (New York: U.N. Office for the Coordination of Humanitarian Affairs, February 2011).

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2. **Negotiating access:** the greater an organization's capacity to communicate and negotiate effectively with all parties, the better access and security for humanitarian personnel (relevant to Section 6.4 below).

3. **Remote programming:** good practice focuses on strategic "localization" of operations, and highlighted need to avoid risk transfer (e.g., to national staff).

4. **Low-profile approaches:** such approaches can include "de-branding" (of vehicles and facilities etc.), "blending" strategies (to blend with the local environment), and "no visibility" approaches.

5. **Protective measures:** these measures focus on reducing vulnerability to threats. They can include discreet protection measures (e.g., hidden wall/structural reinforcements) and diplomatic/international enclaves with restricted entry.

6. **Deterrent measures:** humanitarian organizations may balance the use of armed security with other deterrents such as suspension of operations; Community-based policing has also been used in some contexts..

7. **Security management, coordination and preparedness**

6.4 Humanitarian negotiations to secure and sustain access

Securing and sustaining humanitarian access in situations of armed conflict generally requires engagement with some or all parties to the conflict as well as with other actors. Although engagement with the parties to the conflict can take many forms (liaison, negotiation, mediation, advocacy, etc.), humanitarian practitioners frequently need to **negotiate with parties to the conflict and other actors to secure humanitarian access.**

Guidance on humanitarian negotiations, including with non-State armed groups, is provided in the 2006 publication of the United Nations: *Humanitarian Negotiations with Armed Groups: A Manual for Practitioners.*[43] The guidance in the publication was

[43] United Nations, Humanitarian Negotiations with Armed Groups: A Manual for Practitioners (New York: United Nations, January 2006) p 73. Available at: http://ochaonline.un.org/humanitariannegotiations/index.html

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developed in collaboration with members of the Inter-Agency Standing Committee (IASC).

Negotiations to secure and sustain humanitarian access present several dilemmas for practitioners, among which two of the most acute are: (i) how to negotiate with non-State armed groups in the face of political pressures; and (ii) how to maintain the independence of humanitarian negotiations (for access) distinctly separate from political negotiations.

Guidance and options – Negotiations with non-State armed groups in the face of political pressures

The designation of some non-State armed groups as so-called "terrorist" groups by States or international organizations, and the resulting uncertainty surrounding the limits of humanitarian negotiations with these groups, has resulted in many humanitarian organizations refusing to negotiate with non-State armed groups in certain contexts.

There is no universally-agreed upon definition of "terrorist" group or individual in public international law; There is a definition of "terror tactic." Existing humanitarian policy guidance on humanitarian negotiations with non-State armed groups states that,[44]

"If negotiating with an armed group is deemed a humanitarian necessity, then the designation of that group as a "terrorist" group by some States or institutions should not automatically preclude negotiations with the group. As with negotiations with all armed groups, negotiations with those that employ terror tactics must focus solely on humanitarian issues …"

Moreover, the United Nations (including the General Assembly and the Security Council) has identified the need for humanitarian organizations to engage with all parties to the conflict for the purposes of securing access and for other humanitarian purposes.[45] However, the clear mandate (for humanitarians) to engage with all parties to the conflict under international law is not always upheld or respected in the domestic legislation of States.[46]

The effect of domestic laws that may criminalize contact- or engagement with non-State armed groups that may use terror tactics or other designated individuals has been to

[44] United Nations, Humanitarian Negotiations with Armed Groups: A Manual for Practitioners, p 73.

[45] For example, in General Assembly resolution A/46/182 (1991) (see relevant provisions in Chapter 3 of this Manual on normative framework): "[The role of the Emergency Relief Coordinator includes …] actively facilitating, including through negotiation if needed, the access by the operational organizations to emergency areas for the rapid provision of emergency assistance by obtaining the consent of all parties concerned …

[46] For a discussion of the evolving policy and legal debate on this issue, see: Program on Humanitarian Policy and Conflict Research (HPCR), Humanitarian Action under Scrutiny: Criminalizing Humanitarian Engagement, HPCR Working Paper (Cambridge, MA: Harvard University, February 2011).

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complicate the ability of humanitarian personnel to engage with these groups. In many instances, the lack of clarity in whether humanitarian personnel can actually engage has been enough to prevent engagement, based on a conservative approach.

- Humanitarian organizations that are facing political pressures – whether from the host country government, donor States, or third parties – to abstain from negotiations with groups that may be considered by some States or international organizations as groups that employ terror tactics should **communicate to the parties involved the relevant provisions of international law** and the existing humanitarian policy guidance concerning humanitarian negotiations. Based on the humanitarian imperative, humanitarian organizations can negotiate with all parties to armed conflict to secure humanitarian access.

- Humanitarian organizations should seek **to clarify the scope and provisions of domestic legislation** regarding engagement with certain groups in countries where they are legally incorporated, registered or operating. Humanitarian organizations may wish to avail of exemption procedures where they exist.

- **Humanitarian organizations should use precedents** for engagement by humanitarian organizations with certain groups – whether in the same or in different contexts – to reinforce the mandate which exists under international law to engage with all parties to armed conflict. Examples of contexts in which there has been engagement on the part of humanitarian organizations (directly or indirectly) with groups that may be designated as "terrorist" groups by some States include: Lebanon (2006), the Gaza Strip in the Occupied Palestinian Territories (various times since 2005), Somalia (various times including during 2009), and Afghanistan (2008 – 2011).

- Ultimately, humanitarian organizations will have to decide how assertive they wish to be in adhering to the core humanitarian principles – especially impartiality and operational independence – which preclude donors, third-party States or others from dictating discriminatory usage of the humanitarian organization's resources.

Guidance and options – Separating humanitarian negotiations on access from political negotiations

Another dilemma of humanitarian access relating to humanitarian negotiations is the course of action to choose in maintaining a distinct track for negotiations to secure and sustain humanitarian access, separate from political negotiations. Policy guidance on humanitarian negotiations suggests maintaining a clear separation between humanitarian- and political negotiations as the end objectives and how they are achieved are different.

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However, it is often the case when political negotiations are ongoing in a context in which there are also ongoing humanitarian operations that high-level humanitarian negotiations are subsumed under the political negotiations. The greatest risks associated with this approach are: (i) if the political track of negotiations falter or collapse, it can also compromise humanitarian negotiations; (ii) that humanitarian objectives will be tied in to political objectives in combined negotiations; and (iii) it fails to preserve the independent character of the humanitarian negotiations.

- Humanitarian organizations should strive **to maintain a separation between humanitarian and political negotiations.** To this end, humanitarian negotiations should be undertaken by different persons than those engaging in- or mediating the political negotiations.

- Humanitarian organizations should seek to establish separate and independent lines of communications with parties to armed conflict and other actors with whom they may need to negotiate for humanitarian access.

6.5 Coordination of approach to humanitarian access

One of the components of the methodology presented in this Manual is **Structuring Approach and Coordination** (Component IV). This component set out the preferred course of action to structuring the approach to- and ensuring coordination among humanitarian organizations on humanitarian access.

In practice, coordination across humanitarian agencies to secure and sustain humanitarian access, as with other humanitarian activities, often proves very challenging. Institutional interests, desire to be the lead or prominent humanitarian agency, donor pressures and reluctance to share information can all conspire to make it difficult to coordinate activities for access. On the other hand, in some contents Access Coordination Units or similar entities have been established precisely to ensure more effective coordination on humanitarian access.

CASE EXAMPLE: Establishment of an Access Coordination Unit in the Occupied Palestinian Territories (OPT)[47]

Prior to mid-2008, U.N. humanitarian agencies operating in the OPT context addressed access constraints in a very *ad hoc*

[47] Source: OCHA/UNOPS project document titled "Access Coordination Unit," 2010.

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manner. The U.N. found that the absence of a coordinated approach to humanitarian access was placing an increased drain on the personnel resources of individual humanitarian organizations and was ineffective because of the multiple separate approaches to- and lines of communication with the Israeli authorities.

As a result, the inter-agency Access Coordination Unit (ACU) was established in June 2008 to, *"rationalize, coordinate and consolidate individual efforts being undertaken by U.N. agencies, international NGO partners and diplomatic missions to address restrictions in the movement of their staff and supplies in the OPT."*

As of May 2010, the ACU was well established and had managed to streamline and make more efficient organizations' interactions with the Israeli authorities, the Palestinian Authority and others on certain aspects of humanitarian access. This was achieved by (among other factors): the ACU establishing working relationships with interlocutors in various national authorities, the ability of the ACU to reduce redundancy by coordinating interventions on specific access "incidents", the use of afterhours/emergency ACU contact persons to assist in overcoming specific access problems at any time, etc.

Guidance and options

In considering the best course of action to take in coordinating humanitarian access, practitioners can:

- Assess the potential for coordination in the particular content, including relationships between humanitarian agencies, willingness to share information, coherence on other humanitarian issues

- **Assess the risks and benefits of seeking to coordinate activities** with other humanitarian organizations on humanitarian access including: level of effort, resources and time that will need to be invested, potential impact on humanitarian needs of coordination on humanitarian access

- Consider **four possible models** for coordination with other humanitarian organizations on humanitarian access:

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1. Identification of a lead agency or group of organizations to coordinate humanitarian access activities

2. Activities by individual agencies on humanitarian access but coordinated with others through sharing of information, contacts etc.

3. No coordination at level of country organizational headquarters, but pragmatic coordination of activities (e.g., joint agency mission to negotiate humanitarian access) at field level

4. Division of labor among humanitarian organizations on humanitarian access according to competencies and mandates.

- [Depending on the in-country implementation of the cluster approach, and for humanitarian organizations participating in the Humanitarian Country Team] Use the Terms of Reference for Humanitarian Coordinators to confirm the key role of the Humanitarian Coordinator with regard to humanitarian access.[48]

6.6 Preserving humanitarian neutrality in context of an integrated U.N. peace operation

One of the most frequently recounted dilemmas of humanitarian access relates to the challenge of maintaining humanitarian neutrality in the context of an integrated, U.N.-mandated peace operation, including in a U.N. integrated mission environment (which seeks to integrate political, development-related and humanitarian dimensions of the United Nations' work).

This dilemma is most acute for U.N. humanitarian organizations, but also affects non-governmental organizations as local communities and perhaps even parties to the conflict may in some cases not (or not want to) distinguish between different types of humanitarian organizations.

Moreover, the dilemma is most acute when the United Nations – for example, by virtue of a peace enforcement component of its mandate or protection of civilians by military

[48] According to the Terms of Reference for Humanitarian Coordinators (HC), "[The HC, whenever possible in support of and in coordination with national and local authorities …] Expends all necessary efforts to obtain free, timely, safe and unimpeded access by humanitarian organizations to populations in need, where appropriate, by leading and/or promoting negotiations with relevant parties, including non-state actors." Inter-Agency Standing Committee (IASC), Terms of Reference for the Humanitarian Coordinator (Geneva: IASC, May 2009). Available at: http://oneresponse.info [Accessed 18 January 2011]

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means – is asserted or perceived to be a party to the conflict. For example, in the Democratic Republic of the Congo (DRC), some human rights organizations asserted that the United Nations Organization Mission in the DRC (MONUC) was at certain times a party to the armed conflict (e.g., during 2008 – 2009).

In other cases, the direct support to political processes and democratic governance by the United Nations (e.g., in Somalia) has fed a belief by opposition or non-State armed groups that the United Nations system as a whole is supporting one side in the conflict.

Guidance and options

In considering the best course of action to take in preserving humanitarian neutrality in the context of an integrated U.N. mandated peace operation, practitioners can:

- [For all humanitarian organizations] Avoid co-location (of facilities, buildings etc.) with United Nations or other multilateral forces. Avoid use of armed escorts for humanitarian convoys (except in extenuating circumstances and in accordance with existing policy guidance), especially when operating in a situation of armed conflict in which the armed forces are viewed as supporting or partial to one party to the conflict.

- [For all humanitarian organizations] When there is a significant risk of perceived association with military forces or a political or military agenda, organizations should consider developing a contingency strategy, to include: the use of independent logistics, coordination and safety and security capacities and clear differentiation and separation of humanitarian roles (from political, military roles) through words (statements, etc.) and actions.

- [For all humanitarian organizations] When humanitarian conditions in times of armed conflict are further affected by natural disasters and other situations it may become more difficult to avoid collaboration with military forces, at least in the short-term. In these situations humanitarian actors must balance the short-term humanitarian benefits of operating in close collaboration with one party to the conflict against the longer-term perception challenges that may arise once the initial response to the natural disaster has subsided. As a general principle, humanitarian organizations responding to natural disasters and other crises in situations of ongoing armed conflict should be willing to collaborate transparently and equally with all parties to the armed conflict (i.e., with State military forces and with non-State armed groups alike).

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- [For all humanitarian organizations] When operating in situations of armed conflict, focus exclusively on life saving and life sustaining activities, and not on longer-term development roles.

- [For all humanitarian organizations] Strengthen the organization's capacity to engage effectively in humanitarian negotiations for the purpose of securing access.

- [For non-U.N. humanitarian organizations] Depending on the context, decide what relationship the organization will have with the armed forces of the U.N. peace operation and the overall mission.

- [For U.N. humanitarian organizations] Advocate within and across organizations for separate leadership of the Humanitarian Country Team and the political and development-related functions of the United Nations system. For example, advocacy that the Humanitarian Coordinator retain an independence from the political and development-related objectives of the system and that the person holding the position not also serve as "Resident Coordinator" or within the leadership of the integrated mission focusing on political issues (e.g., the Deputy Special Representative of the U.N. Secretary-General (D-SRSG), where such a position exists).

- [For U.N. humanitarian organizations] Consider use of distinctive "branding" of humanitarian vehicles that distinguish them from other U.N. assets not employed for humanitarian purposes.[49]

- [For U.N. humanitarian organizations] Build relationships with- and when necessary negotiate with all parties to armed conflict, irrespective of whether they are participating in a U.N. sponsored or other peace process.

- [For U.N. humanitarian organizations] Retain independence of humanitarian action. Avoid handing over roles such as humanitarian negotiations to those engaged in political or security-related activities.

- [For U.N. humanitarian organizations] Avoid transport of U.N. military personnel – whether armed or not – in humanitarian vehicles.

- [For U.N. humanitarian organizations, based on the above] Develop a strategy for operating in the context of a U.N. integrated mission environment which reflects the nuance of convergence of overall U.N. objectives, but with necessary separate operational activities (i.e., focus on integration of objectives rather than actions!).

[49] For example, in Jalalabad, Afghanistan, in 2011 vehicles of U.N. humanitarian organizations used large blue "U.N." lettering on the vehicles while those of UNAMA used black "U.N." lettering. Some communities and even members of non-State armed groups referred to the "blue U.N." and the "black U.N." and made the distinction between the parts of the U.N. system. This is merely an illustrative example of the distinction that is made in many contexts where there is a U.N.-mandated peace operation of political mission.

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- [For all humanitarian organizations] Constantly convey and explain the role of the organization, expressing that it is purely humanitarian in nature.

- When presented with assertions that "you only work with the government", state that the organization is willing to engage with all parties to the conflict to meet humanitarian needs; Follow up (if no existing access) by proposing that the organization travel to areas under the control of non-State armed groups to deliver humanitarian assistance and protection.

- Finally, for all of above, demonstrate neutrality by actions and not only by words.

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Annex I – Summary listing of key resources

This list identifies select resources that can provide additional information and guidance to humanitarian practitioners on humanitarian access:

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RESOURCE TYPE	RESOURCE AND LOCATION	DESCRIPTION OF RELEVANT RESOURCES
Normative framework for humanitarian access	International Committee of the Red Cross (ICRC) **www.icrc.org**	Resources on normative framework, and on international humanitarian law in particular | Treaty databases, IHL treaties and commentaries
	U.N. Office for the Coordination of Humanitarian Affairs (OCHA) **ochaonline.un.org**	Policy guidance on humanitarian negotiations, operating in complex security environments | Information on humanitarian activities by country | Compilation of resolutions, decisions of United Nations concerning access | Guidance on other humanitarian policy issues.
	U.N. Office of the High Commissioner for Human Rights (OHCHR) **www.ohchr.org**	Treaty databases and publications on international human rights law | Publications on the normative framework as it applies to particular contexts | Publication on a wide range of human rights issues.
Relevant methodologies and tools	United Nations Children's Fund (UNICEF) **www.unicef.org**	Policy guidance and publications on advocacy, humanitarian access and activities in emergency situations | information on the Convention on the Rights of the Child | Information on humanitarian conditions in different countries | Example of causal analysis framework.
	The Sphere Project **www.sphereproject.org**	Handbook and guiding principles for humanitarian actors in disaster and conflict response
Humanitarian negotiations for humanitarian access	U.N. guidance on Humanitarian Negotiations with Armed Groups **ochaonline.un.org/humanitarian-negotiations/index.html**	Manual for and field guidelines for practitioners on humanitarian negotiations with armed groups
Relevant humanitarian policy guidance	Inter-Agency Standing Committee (IASC) **www.humanitarianinfo.org/iasc**	System-wide strategies, principles and policies for humanitarian access and related focal areas
	The cluster approach **oneresponse.info**	Cross-cutting approach to emerging crises for humanitarian actors promoting greater predictability, accountability and partnership
Information and maps on humanitarian access for specific contexts	Reliefweb **www.reliefweb.int**	Humanitarian news and analysis drawn from the websites of relevant NGOs, Governments, media outlets and others
	Humanitarian Information Centers **www.humanitarianinfo.org**	

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Annex II – Specific provisions of international law pertaining to humanitarian access

Table 6 – Some examples of specific provisions of general international law pertaining to humanitarian access

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TYPE OF ARMED CONFLICT	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT/OF WHAT
ALL	*"The Purposes of the United Nations are: to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."*	Charter of the United Nations, Article 1, Paragraph 3	-	-
-	*The Organisation and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles:* *1. The Organisation is based on the principle of the sovereign equality of all its Members. […]* *4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations. […]* *7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.*	Charter of the United Nations, Article 2.	-	-
ALL	*"Every treaty in force is binding upon the parties to it and must be performed by them in good faith."*	Vienna Convention on the Law of Treaties, Article 26	-	-

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TYPE OF ARMED CONFLICT	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT/OF WHAT
ALL	*"States whose populations are in need of humanitarian assistance are called upon to facilitate the work of these organizations in implementing humanitarian assistance, in particular the supply of food, medicines, shelter and health care, for which access to victims is essential."*	GA A/RES/46/182 Para. 6	BY HUMANITARIAN ORGANIZATIONS	TO POPULATIONS IN NEED OF ASSISTANCE
ALL	*"(d) Actively facilitating, including through negotiation if needed, the access by the operational organizations to emergency areas for the rapid provision of emergency assistance by obtaining the consent of all parties concerned, through modalities such as the establishment of temporary relief corridors where needed, days and zones of tranquility and other forms;"*	GA A/RES/46/182 Para. 35	BY THE OPERATIONAL AGENCIES	TO EMERGENCY AREAS
	[Various][51]	UNSC resolutions [various]	-	-
ALL	*"All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.*	GP-IDP Principle 25(3)	BY HUMANITARIAN PERSONNEL	TO INTERNALLY DISPLACED PERSONS

[51] Examples of provisions of U.N. Security Council resolutions concerning humanitarian access include: In Security Council resolution 1296 (2000) the Council underlined the importance of safe and unimpeded access: "Underlines the importance of safe and unimpeded access of humanitarian personnel to civilians in armed conflicts, calls upon all parties concerned, including neighbouring States, to cooperate fully with the [United Nations] in providing such access, invites States and the Secretary-General to bring to its attention information regarding the deliberate denial of such access in violation of international law, where such denial may constitute a threat to international peace and security." Other resolutions relating to humanitarian access in specific contexts include, for example: UNSC Res. 767 (1992) and 794 (1992) concerning Somalia; UNSC Res. 918 (1994) concerning Rwanda; UNSC Res. 1132 (1997) concerning Sierra Leone; UNSC Res. 1199 (1998) concerning Kosovo.

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Table 7 - Specific provisions of IHL pertaining to humanitarian access

TYPE OF ARMED CONFLICT[52]	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT // OF WHAT
IAC	**Activities of the ICRC or other impartial humanitarian organization** *"The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief."* **Main criteria and conditions:** >> Subject to the consent of the Parties to the conflict concerned	GC IV Art. 10	-	-
IAC	**Besieged areas: Local agreements for passage** Parties to the conflict shall, *"endeavour to conclude local agreements … for the passage of ministers of all religions, medical personnel and medical equipment on their way to [besieged or encircled] areas."*	GC IV Art. 17	BY RELIGIOUS MINISTERS, MEDICAL PERSONNEL	TO BESIEGED AREAS // OF MEDICAL EQUIPMENT

[52] "IAC" denotes international armed conflict; "OCC" denotes military occupation; "NIAC" denotes non-international armed conflict; "ALL" refers to all types of situation of armed conflict.

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TYPE OF ARMED CONFLICT[52]	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT // OF WHAT
IAC	**Free passage of certain consignments** *Requires States to "allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship" and to "permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases."* **Main criteria and conditions:** >> Consignments intended only for civilians >> Power which allows passage may make permission conditional on distribution being made under the local supervision of the Protecting Powers >> Technical arrangements can be prescribed	GC IV Art. 23	TO CIVILIANS TO CHILDREN UNDER FIFTEEN, EXPECTANT MOTHERS, MATERNITY CASES	OF MEDICAL / HOSP. STORES, OBJECTS FOR RELIGIOUS WORSHIP OF ESSENTIAL FOODSTUFFS, CLOTHING, TONICS
IAC	**Prohibition of starvation as a method of warfare** *1. Starvation of civilians as a method of warfare is prohibited.* *2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population … for the specific purpose of denying them for their sustenance value [to civilian population]"*	AP I Arts. 54(1), 54(2)	BY CIVILIANS	TO OBJECTS INDESPENSIBLE TO THEIR SURVIVAL

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TYPE OF ARMED CONFLICT[52]	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT // OF WHAT
IAC	**Relief actions for civilian population** *"1. … relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken …"* The relevant parties, *"... shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel… "*[53] **Main criteria and conditions:** >> Civilian population must be inadequately supplied >> Relief subject to agreement of parties concerned >> Free passage subject to right of parties to prescribe technical arrangements, including search >> Passage may be made conditional on the distribution being made under the local supervision	AP I Art. 70	BY RELIEF PERSONNEL TO CIVILIAN POPULATION	OF FOOD, MEDICAL GOODS, CLOTHING, BEDDING, MEANS OF SHELTER, OTHER ESSENTIAL SUPPLIES; OF OBJECTS NECESSARY FOR RELIGIOUS WORSHIP

[53] The parties to which these provisions apply include the parties to the conflict and The Parties to the conflict and each "High Contracting Party" (… to Additional Protocol I).

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TYPE OF ARMED CONFLICT[52]	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT // OF WHAT
IAC, OCC	**Relief actions for civilian population** *"1. Where necessary, relief personnel may form part of the assistance provided in any relief action, in particular for the transportation and distribution of relief …* *2. Such personnel shall be respected and protected.* *3. Each Party in receipt of relief consignments shall, to the fullest extent practicable, assist the relief personnel … in carrying out their relief mission."* **Main criteria and conditions:** >> Participation of relief personnel subject to approval[54] >> Activities of relief personnel can be temporarily restricted on basis of imperative military necessity	AP I Art. 71	BY RELIEF PERSONNEL	TO CIVILIAN POPULATION

[54] Approval by the Party in whose territory the relief personnel carry out their duties.

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TYPE OF ARMED CONFLICT[52]	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT // OF WHAT
OCC	**Duty to ensure food and medical supplies** *"To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.* *The Occupying Power may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account…"* **Main criteria and conditions:** >> If the resources of the occupied territory inadequate	GC IV Art. 55	BY POPULATION OF THE OCCUPIED TERRITORY	TO FOODSTUFFS, MEDICAL STORES AND OTHER ARTICLES
OCC	**Duty to ensure medical and hospital services/ facilities** *" … the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene…"* **Main criteria and conditions:** >> To the fullest extent of the means available to the Occupying Power	GC IV Art. 56	BY THE POPULATION IN THE OCCUPIED TERRITORY	TO MEDICAL AND HOSPITAL SERVICES/ FACILITIES

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TYPE OF ARMED CONFLICT[52]	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT // OF WHAT
OCC	**Occupying Power must agree to relief schemes** *"If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.* *Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing.* *All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection."* **Main criteria and conditions:** >> If the population is inadequately supplied >> Relief schemes undertaken by impartial humanitarian organizations >> Power granting free passage has right to search the consignments, regulate passage, etc.	GC IV Art. 59	BY STATES OR HUMANITARIAN ORGANIZATIONS TO THE POPULATION	TO CONSIGNMENTS OF FOODSTUFFS, MEDICAL SUPPLIES AND CLOTHING

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TYPE OF ARMED CONFLICT[52]	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT // OF WHAT
OCC	**Responsibility of the Occupying Power** *"Relief consignments shall in no way relieve the Occupying Power of any of its responsibilities under Articles 55, 56 and 59. The Occupying Power shall in no way whatsoever divert relief consignments from the purpose for which they are intended …"* **Main criteria and conditions:** >> Diversion of relief supplies permissible only in cases of urgent necessity, in the interests of the population of the occupied territory and with the consent of the Protecting Power	GC IV Art. 60	-	-
OCC	**Distribution of relief consignments** *"The distribution of the relief consignments referred to in the foregoing Articles shall be carried out with the cooperation and under the supervision of the Protecting Power. This duty may also be delegated, by agreement between the Occupying Power and the Protecting Power, to a neutral Power, to the International Committee of the Red Cross or to any other impartial humanitarian body."*	GC IV Art. 61	-	-

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TYPE OF ARMED CONFLICT[52]	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT // OF WHAT
OCC	**Basic needs in occupied territories** *"1. In addition to the duties specified in Article 55 of the Fourth Convention concerning food and medical supplies, the Occupying Power shall, to the fullest extent of the means available to it and without any adverse distinction, also ensure the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship.* *2. Relief actions for the benefit of the civilian population of occupied territories are governed by Articles 59, 60, 61, 62, 108, 109, 110 and 111 of the Fourth Convention, and by Article 71 of this Protocol, and shall be implemented without delay."*	AP I Art. 69	CIVILIAN POPULATION OF THE OCCUPIED TERRITORY	CLOTHING, BEDDING, MEANS OF SHELTER, OTHER SUPPLIES ESSENTIAL TO THE SURVIVAL OF THE CIVILIAN POPULATION OF THE OCCUPIED TERRITORY AND OBJECTS NECESSARY FOR RELIGIOUS WORSHIP

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TYPE OF ARMED CONFLICT[52]	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT // OF WHAT
NIAC	**Obligation concerning humane treatment** *"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:* *(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.* *To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:* *a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;* *b) taking of hostages;* *c) outrages upon personal dignity, in particular humiliating and degrading treatment;* *d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.*	CG, Common Article 3	-	-

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TYPE OF ARMED CONFLICT[52]	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT // OF WHAT
	(2) The wounded and sick shall be collected and cared for. *An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention…"*			
NIAC	**Protection of objects indispensable to the survival of the civilian population** *"Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works."*	AP II Art. 14	CIVILIAN POPULATION	FOODSTUFFS, AGRICULTURAL AREAS FOR THE PRODUCTION OF FOODSTUFFS, CROPS, LIVESTOCK, DRINKING WATER INSTALLATIONS AND SUPPLIES AND IRRIGATION WORKS
NIAC	**Relief actions for civilian population** *"… relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken"* **Main criteria and conditions:**[55] >> If the civilian population is suffering undue hardship >> Subject to consent of the concerned party	AP II Art. 18(2)	BY IMPARTIAL HUMANITARIAN ORGANIATIONS	TO CIVILIAN POPULATION

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TYPE OF ARMED CONFLICT[52]	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT // OF WHAT
IAC, NIAC	**Free passage of humanitarian relief** *"… parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control."* **Main criteria and conditions:** >> Parties' right of control	CIHL (ICRC), Rule 55	BY HUMANITARIAN ORGANIZATIONS	TO CIVILIANS IN NEED
IAC, NIAC	**Freedom of movement of relief personnel** *"… parties to the conflict must ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions."* **Main criteria and conditions:** >> Movements can be temporarily restricted in case of imperative military necessity	CIHL, (ICRC), Rule 56	BY AUTHORIZED RELIEF PERSONNEL	-

[55] Two limitations in scope of Application of AP II are: (a) it only applies to non-international armed conflicts in which non-State armed groups exercise effective control over a territory; and (b) it only applies to armed conflict between State forces and non-State armed groups (i.e., not between non-State armed groups).

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Table 8 – Specific provisions of IHRL pertaining to humanitarian access[56]

TYPE OF ARMED CONFLICT	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT/OF WHAT
ALL	**Right of refugee children to humanitarian access** *"1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee … shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights …".* *2. … States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child …"*	CRC Art. 22	BY A CHILD WHO IS A REFUGEE OR SEEKING REFUGEE STATUS	TO PROTECTION AND HUMANITARIAN ASSISTANCE
ALL	**Access by children to health care services** *"1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services."*	CRC Art. 24	BY CHILDREN	TO HEALTH CARE SERVICES

[56] Abbreviations in this table: "CRC" denotes U.N. Convention on the Rights of the Child; "CRPD" denotes Convention on the Rights of Persons with Disabilities; "ACRWC" denotes African Charter on the Rights and Welfare of the Child; "KC" denotes Kampala Convention.

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TYPE OF ARMED CONFLICT	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT/OF WHAT
ALL	**Right of child refugees to humanitarian assistance** *"1. States Parties … shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee … shall … receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties. […]*	ACRWC Art. 23	BY CHILD REFUGEE OR SEEKING REFUGEE STATUS	TO PROTECTION AND HUMANITARIAN ASSISTANCE
	4. The provisions of this Article apply … to internally displaced children …"		BY INTERNALLY DISPLACED CHILDREN	TO PROTECTION AND ASSISTANCE
ALL	**Protection and assistance to internally displaced persons** *"States Parties shall provide sufficient protection and assistance to internally displaced persons, and where available resources are inadequate to enable them to do so, they shall cooperate in seeking the assistance of international organizations and humanitarian agencies, civil society organizations and other relevant actors."*	KC Art. 5(6)	BY INTERNALLY DISPLACED CHILDREN	TO PROTECTION AND HUMANITARIAN ASSISTANCE

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TYPE OF ARMED CONFLICT	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT/OF WHAT
ALL	**Relief action for internally displaced persons** *"States Parties shall take necessary steps to effectively organize, relief action that is humanitarian, and impartial in character, and guarantee security. States Parties shall allow rapid and unimpeded passage of all relief consignments, equipment and personnel to internally displaced persons. States Parties shall also enable and facilitate the role of local and international organizations and humanitarian agencies, civil society organizations and other relevant actors, to provide protection and assistance to internally displaced persons …"* **Main criteria and conditions:** >> States Parties shall have the right to prescribe the technical arrangements for passage	KC Art. 5(7)	TO INTERNALLY DISPLACED PERSONS	ALL RELIEF CONSIGNMENTS, EQUIPMENT AND PERSONNEL
ALL	**Prohibition on impeding humanitarian assistance and passage** *"Members of armed groups shall be prohibited from:* *(b) [...] Hampering the provision of protection and assistance to internally displaced persons under any circumstances;* *(g) [...] Impeding humanitarian assistance and passage of all relief consignments, equipment and personnel to internally displaced persons."*	KC Art. 7(5)	TO INTERNALLY DISPLACED PERSONS	ALL RELIEF CONSIGNMENTS, EQUIPMENT AND PERSONNEL

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TYPE OF ARMED CONFLICT	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT/OF WHAT
ALL	**Right to life; Right to economic, social and cultural rights** *"10. …a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant."*	CESCR General Comment No. 3	BY THE POPULATION	FOOD, HEALTH CARE, AND BASIC SHELTER AND EDUCATION
ALL	**Right to life** *"1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."*	ICCPR Art. 6(1)	BY THE POPULATION	-
ALL	*"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."*	ICCPR Art. 7	-	-
ALL	**Prohibition of torture and other cruel, inhuman or degrading treatment or punishment** *"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."*	UNDHR Art. 5	-	-

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TYPE OF ARMED CONFLICT	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT/OF WHAT
ALL	**Right to basic needs** *"1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."*	ICESCR Art. 11	BY THE POPULATION	TO FOOD, CLOTHING AND HOUSING
ALL	**Right to health** *"1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness."*	ICESCR Art. 12	BY THE POPULATION	TO HEALTH CARE

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Table 9 – Specific provisions of the Rome Statute pertaining to humanitarian access

TYPE OF ARMED CONFLICT	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT/OF WHAT
IAC	**Starvation as a war crime** War crimes include: *"Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;"*	RS-ICC Art. 8(2)(b) (xxv)	BY CIVILIANS	TO OBJECTS INDESPENSIBLE TO THEIR SURVIVAL
IAC, NIAC	**Intentionally targeting humanitarian personnel / objects** *War crimes include: "Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations …"*	RS-ICC Art. 8(2)(b) (iii) and 8(2)(e)(iii)	-	-

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TYPE OF ARMED CONFLICT	PROVISION RELATING TO HUMANITARIAN ACCESS	SOURCE IN LAW	ACCESS, BY WHOM AND/ OR TO WHOM	TO WHAT/OF WHAT
ALL	**Genocide** *"For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:* *(a) Killing members of the group;* *(b) Causing serious bodily or mental harm to members of the group;* *(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;* *(d) Imposing measures intended to prevent births within the group;* *(e) Forcibly transferring children of the group to another group."*	RS-ICC Art. 6	-	-
ALL	**Extermination as a crime against humanity**[57] *Extermination is defines as "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".*	RS-ICC Art. 7(2)	-	-

[57] The Rome Statute of the ICC includes extermination as one of several acts that constitute crimes against humanity, «when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."

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Annex III – Sample indicators related to specific humanitarian access constraints

The following table provides an example of indicators used to monitor certain types of constraints on humanitarian access. These indicators were developed by the United Nations Office for the Coordination of Humanitarian Affairs.

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Ref	Constraints	Description	Indicator
1	Denial of the existence of humanitarian need or of entitlements to assistance by authorities	Exclusion of conflict-affected civilian populations from humanitarian assistance and/or indicate denial of the existence of need or of entitlements to assistance	Public statements Private statements Other
2	Impediments on the entry of agencies, personnel, goods into the country of operations.	Bureaucratic and administrative requirements for entry into the country of operation, such as registration, visas and work permits for personnel, and constraints on import of equipment and relief items into the country. (Please note that restrictions experienced once agencies, personnel and goods are in-country are treated as a separate constraint.)	Other
3	Restrictions on or interference with the passage of agencies, personnel, goods within the country.	Impediments to freedom of movement as experienced by humanitarian actors in-country in order to reach affected populations and transport essential relief.	Demand for search of personnel and vehicles Unload/reload goods at checkpoints Other
4	Military operations and ongoing hostilities impeding humanitarian operations.	Implications of the military activities of the parties to conflict for the movement of people and goods. Absence of arrangements to facilitate the passage of emergency relief supplies during active hostilities.	Withdrawal of personnel Humanitarian activities suspended Other
5	Violence against humanitarian personnel and facilities.	Politically- and economically-motivated violence as well as exposure to incidental violence directly affecting humanitarian personnel, equipment and facilities.	Incident Type Against personnel Against assets
6	Interference in the implementation of humanitarian activities.	Direct interference with humanitarian activities, goods and facilities during or after their implementation.	Aid diverted Sabotage of aid item or structure Disruption of humanitarian activity during implementation Post-distribution looting of relief items

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Ref	Constraints	Description	Indicator
7	Presence of Mines and UXOs.	Mines, cluster munitions and other unexploded ordinance inhibiting the movement of equipment, goods and personnel or otherwise impeding humanitarian activities.	Status of mines/ERWs per geographic area Suspected presence Reported but not demarcated Demarcated area Defined hazardous area Cleared area Other
8	Physical environment	Obstacles related to terrain, climate and lack of infrastructure, such as roads, bridges and airstrips	Population inaccessible Climate, terrain, infrastructure Other
9	Restrictions on, or obstruction of, conflict affected populations access to services and assistance	All events and practices which interfere with the ability of conflict-affected populations to access assistance and services.	Forced movement of population away from location of services/ assistance Denial of population movement to location of services/assistance Restriction on affected population freedom of movement Involuntary return to country of origin Prevention of use of services/ assistance Other

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Annex IV – Humanitarian access worksheet

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