



Interview with Nils Melzer

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Nils Melzer was appointed as the Director of International Law, Policy and Humanitarian Diplomacy of the International Committee of the Red Cross in 2022. He previously served with the ICRC from 1999 until 2011, both as a delegate in operational contexts and as a Legal Adviser in Geneva. He has also been the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2016–22), Senior Security Policy Adviser to the Swiss Ministry of Foreign Affairs (2015–16), and Vice-President of the International Institute of Humanitarian Law in Sanremo (2019–22).

An affiliate Professor of International Law at the University of Glasgow, he has also held the Swiss Chairs for Human Rights and for International Humanitarian Law at the Geneva Academy of International Humanitarian Law and Human Rights, and has been a Senior Fellow and Programme Adviser for Emerging Security Challenges at the Geneva Centre for Security Policy, as well as Research Director at the Centre for Business and Human Rights at the University of Zürich.



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The International Red Cross and Red Crescent Movement [the Movement] is guided by seven Fundamental Principles. The first four of these – humanity, neutrality, impartiality and independence – are generally referred to as the “humanitarian principles” and have been widely adopted by other humanitarian organizations. Starting with the first and most fundamental of these, how does the principle of humanity inform the work of the International Committee of the Red Cross [ICRC] in your view?

The principle of humanity is the ethical foundation – and *raison d'être* – for the ICRC and the Movement as a whole. Humanity is what connects human beings, fostering mutual understanding, friendship, cooperation and peace. Humanity is what drives the ICRC to prevent and alleviate human suffering wherever it may be found, to protect life and health, and to ensure respect for human beings.¹ It is what makes our mission exclusively humanitarian and distinguishes us from movements and organizations with a political agenda.

Humanity is what drives our work to protect and assist victims of war and violence, whether through delivering humanitarian aid to those displaced by armed conflict or ensuring humane conditions for those in detention facilities. Likewise, humanity informs our calls for compliance with international humanitarian law [IHL], as well as our promotion of peace and disarmament, as both aim to prevent and alleviate human suffering. Key to humanity is also conducting humanitarian work based exclusively on the magnitude and urgency of the human needs we observe, without adverse distinction and free from political interests.

In terms of substance, this principle reminds us of our shared humanity and calls on us to show compassion. It reminds us that, even in situations of extreme hostility, we have much more in common than we have separating us. It helps us recall that we all have the same human needs, and that our enemies love their children, mothers and fathers just as much as we do. Before all else, it helps us remember that we are members of the same human family. In short, the principle of humanity is the antithesis of dehumanization and total warfare.

Let's now talk about the principle of neutrality. What role does it play in the ICRC's work?

The principle of neutrality means that we cannot under any circumstances take sides in hostilities or engage in controversies of a political, racial, religious or ideological nature.² Our neutrality is not an expression of moral indifference with regard to the cause of conflict, but it is an indispensable professional stance without which we simply cannot fulfil our role as a humanitarian intermediary. In order for the

1 ICRC, *The Fundamental Principles of the International Red Cross and Red Crescent Movement: Ethics and Tools for Humanitarian Action*, Geneva, 2016, p. 2, available at: www.icrc.org/en/publication/0513-fundamental-principles-red-cross-and-red-crescent (all internet references were accessed in June 2024).

2 *Ibid.*, p. 2.

ICRC to operate safely in the world's most violent war zones, we must enjoy the trust of all those involved. Our neutrality is the foundation of that trust. Only by categorically refusing to side with either party to a conflict can the ICRC side with all the victims of that conflict, and only by refusing to operate in the interest of one party against another can the ICRC operate in the interest of humanity as a whole.

Should the ICRC ever abandon its neutral stance and side with one belligerent party, we would immediately be perceived as hostile by the opposing party and would no longer be able to safely access areas and victims under their control. Therefore, building and maintaining trust in the ICRC's neutrality is an absolute prerequisite for our ability to carry out our humanitarian mission and to protect and uphold the principle of humanity in armed conflict and other situations of violence.

The ICRC's neutrality is at times challenged or even openly criticized. How do you respond?

In general, our neutrality is universally accepted as a professional necessity required by the humanitarian nature of our mandate. When this purely humanitarian rationale is not properly understood, however, the neutral stance of humanitarian actors can also give rise to misunderstandings and frustration. Situations of war and violence are always deeply traumatizing, not only for those directly exposed to them, but often also for those helplessly witnessing them from far away. The resulting death, injury and destruction often trigger overwhelming emotions of anxiety, pain and anger, as well as a natural urge to take sides and, possibly, even to escalate the violence. In such circumstances of extreme emotional distress, concepts of neutrality and impartiality often feel counter-intuitive and are not readily understood. People naturally tend to feel strongly about the moral superiority and righteousness of a particular party to the conflict, and so the ICRC's humanitarian neutrality can be misunderstood as a concession to their adversary.

But it is precisely with the aim of mitigating the destructive dynamics of situations of war and violence that the Geneva Conventions and the Fundamental Principles were adopted, and the ICRC was created. When the world is increasingly polarized around a particular conflict or context, the presence of a neutral humanitarian actor like the ICRC, invoking universally agreed minimum standards of humanity, can help the belligerents to avoid an uncontrolled escalation of violence and to stop the downward spiral towards hatred, barbarity and total destruction.

How does the principle of neutrality relate to the ICRC's policy of confidentiality?

Though the ICRC is neutral between parties to any armed conflict, the organization takes strong positions regarding violations of IHL. In this respect, we are never neutral but always side with the victims – on all sides of the conflict. We routinely speak up on their behalf, albeit usually on a strictly confidential and bilateral basis.

In general, our experience shows that, in order to achieve the desired protection outcomes, it is most effective for the ICRC to express humanitarian concerns, including on alleged violations of IHL, in confidential and bilateral dialogues with the responsible authorities. As a result, confidential bilateral dialogues are our preferred method of work for discussions of this nature – and we rarely deviate from this choice. If we were to routinely publicize evidence of violations of IHL, our delegates would quickly be perceived as potential witnesses in criminal trials. As a consequence, they would likely lose access to the victims or even come under threat themselves.

Nevertheless, while our neutrality between belligerent parties is an absolute requirement from which no exceptions can be made, our policy of confidentiality is more nuanced and conditional. Under exceptional circumstances, when the protection of the victims so requires, and when all other means have failed or have no prospect of preventing or putting an end to violations, the ICRC reserves the right to resort to public denunciation.³

Importantly, neither the principle of neutrality nor the policy of confidentiality prevents the ICRC from positioning itself publicly on controversies of a purely humanitarian nature or on questions relating to the interpretation and development of IHL.

How does the principle of impartiality relate to the ICRC's work, and how is it different from its neutrality?

Neutrality means that we do not take sides in armed conflicts and other situations of violence. Impartiality, by contrast, means that we work to protect and assist affected persons and populations based solely on their humanitarian needs, and without discrimination as to nationality, race, religious beliefs, class or political opinions. In other words, within the available means, priority should be given to the most urgent cases of distress and to the most pressing needs.

Impartiality is not unique to humanitarian action. In our highly organized societies, there are other actors that we expect to act impartially. For example, we expect doctors to treat patients according to their medical needs, regardless of personal status, identity or affiliation. We expect judges and mediators to evaluate disputes and allegations fairly, irrespective of their personal views or preferences. We expect journalists to report facts and news objectively, without undue influence from their own perspectives. What these roles have in common is their service and responsibility to the interest of society as a whole.

In the humanitarian context, impartiality in many ways gives practical meaning to the principle of humanity. Humanity demands that we work to alleviate human suffering. Impartiality tells us that, as we prioritize and carry out our humanitarian work, the objective urgency of individual suffering shall not be

3 ICRC, "Action by the International Committee of the Red Cross in the Event of Violations of International Humanitarian Law or of Other Fundamental Rules Protecting Persons in Situations of Violence", *International Review of the Red Cross*, Vol. 87, No. 858, 2005, p. 393.

superseded by discriminatory factors. Impartiality reminds us that, in preventing and alleviating suffering, all that matters is the urgency and scope of humanitarian needs – not status, affiliation, religion, gender, origin or political opinions.

In practice, the ICRC's impartiality means that anyone exposed to the humanitarian consequences of war and violence can turn to us for help and assistance. It means that both those in need and those in power can trust the ICRC to carry out its mandate fairly and without adverse distinction or preference.

The world is becoming an increasingly polarized place – to the point that even the perception of truth has become polarized through rampant misinformation and disinformation. How do neutrality, impartiality and confidentiality work in this landscape?

It is true that the contemporary information environment is rife with misinformation and disinformation of many kinds. This inevitably gives rise to serious challenges, including major misperceptions and even potential security risks. False allegations and manipulated photos are sometimes difficult to distinguish from reliable information, contributing to a vicious cycle of misguided speculation, accusation, polarization and confusion with potentially dangerous effects not only on humanitarian actors, but often also on those most tragically affected by situations of conflict and violence.

As the world grows more divided, and opposing factions lose their ability and willingness to speak with one another, the ICRC plays an ever more important role as a neutral and impartial intermediary – someone all parties and other stakeholders can trust and rely on. The more the public communication environment gets inundated with distorted and divisive narratives, the more important becomes our confidential and bilateral dialogue as a protected space and a source of reliable information for the authorities in charge.

Unfortunately, while the degrading public information space underlines the importance of neutral and impartial humanitarian action, rampaging misinformation and disinformation about the ICRC and its staff can also seriously undermine our ability to safely and effectively carry out our humanitarian mission, with potentially devastating consequences for the most vulnerable: those who have lost everything, those who have been abused and victimized, those whose last hope for life, health and dignity is timely and impartial humanitarian aid.

What are the implications of the principle of independence, given the reliance of the ICRC – and indeed many other humanitarian organizations – primarily on States for their funding?

The principle of independence requires that we maintain our ability to act in accordance with the other humanitarian principles – in particular neutrality and impartiality – at all times and without undue interference. In particular,

independence is critical for the credibility of neutral and impartial humanitarian action.

At the same time, the ICRC and many other humanitarian actors rely on States for funding for our crucial work. In order to avoid undue interference, we consistently ensure that the modalities of our funding agreements guarantee the autonomy of our operational decision-making processes. We also try to expand and diversify our sources of funding to as many States as possible. This protects not only the operational independence of our organization, but also its financial sustainability in times of economic downturn.

The ICRC's humanitarian mandate is derived directly from the Geneva Conventions and the Statutes of the Movement. In my view, therefore, it is the States party to the Geneva Conventions who should bear the shared responsibility for guaranteeing the ICRC's operational independence and financial sustainability.

Let's get personal: early in your career, you served as an ICRC field delegate. What importance did the Fundamental Principles have for your work at the time?

Working as humanitarian in a war zone is not a walk in the park. On the one hand, you have to be physically and mentally resilient, calm and professional. On the other hand, you have to digest the horrors of war without becoming cynical and losing your compassion.

During my own years as a field delegate, the principles of humanity, neutrality, impartiality and independence served as a constant compass to me. They provided me with personal and professional orientation, confidence, and identity in an often chaotic environment, where we were exposed to multiple levels of stress, need, anxiety, confusion, and pressure from governments, armed actors, media and civil society, as well as victims and their families. The principle of neutrality helped me not to get emotionally caught up in the political controversies which fuelled the unspeakable tragedies unfolding around me. The principle of impartiality provided me with unfailing guidance for difficult decisions when confronted with humanitarian needs far surpassing our capacities. The principle of independence reminded me to always protect the humanitarian integrity of our decision-making process, and never to take short cuts that could have undermined our mission. Most importantly, however, it was the principle of humanity and our focus on compassion which allowed me to maintain my sanity, hope and sense of purpose in the midst of constant insanity, cruelty and despair.

Now, twenty-five years later, you are the ICRC's Director of International Law, Policy and Humanitarian Diplomacy. What role do the Fundamental Principles play in your work today?

Nothing has changed in this regard, except my levels of exposure and responsibility. As a field delegate, I felt a sense of direct responsibility for my day-to-day choices and their immediate effects. As director, that sense of responsibility has only grown and now also includes the long-term guidance of our institution. But even

today, our humanitarian mission – guided and informed by the Fundamental Principles and IHL – remains the bedrock of my motivation, the reason I get up in the morning and stay awake at night. To me, these principles are like a guiding star, offering us direction, assurance and hope in an increasingly destabilized, fragmented and disoriented world.

We would like to end with a thought experiment: if you had the chance to add an eighth Fundamental Principle, what would it be?

In my opinion, what we need is not an eighth principle, but a more courageous, honest and uncompromising practice of the first one. If only the principle of humanity were actually taught and practiced in every community, school and university, if it were enshrined in every constitution, legislation and regulation, and prioritized by every government, organization and business, the other six principles and all of IHL would be self-evident and, ideally, would not even be needed anymore. Humankind would then be in a far better place than the founding mothers and fathers of the Movement and the drafters of the Geneva Conventions could ever have imagined.