

It's all relative: The origins, legal character and normative content of the humanitarian principles

Marina Sharpe^{1,2*}

¹Assistant Professor of International Law, Royal Military College Saint-Jean, Canada

²*Professeure associée*, Faculté de Droit, Université de Sherbrooke, Canada

Email: marina.sharpe@cmrsj-rmcsj.ca

Abstract

Analyses of the humanitarian principles of humanity, neutrality, impartiality and independence often focus on the principles' meanings and/or the challenges of applying them in practice. This article, by contrast, steps back to address foundational but somewhat neglected questions about whether these principles can accurately be designated "the" humanitarian principles; about how they came to

* I am grateful to Jan Eliasson, Hugo Slim and Edward Tsui for sharing stories and invaluable insights in research interviews; for the excellent research assistance of Hye Joon Lee and Poonam Sandhu; for advice and feedback from Aurelien Buffer and Francesco Messineo of the UN Secretariat and from the *Review's* anonymous peer reviewers; for incisive comments from Emanuela-Chiara Gillard of the *Review's* editorial board and special issue jury; and for research help from ICRC librarian Charlotte Mohr. This research was funded by the Canadian Defence Academy and the Social Sciences and Humanities Research Council of Canada (Insight Grant). I am grateful to the Université de Sherbrooke for its administration of my Insight Grant.

The advice, opinions and statements contained in this article are those of the author/s and do not necessarily reflect the views of the ICRC. The ICRC does not necessarily represent or endorse the accuracy or reliability of any advice, opinion, statement or other information provided in this article.

govern the whole humanitarian sector; about their legal character and normative content; and, more fundamentally, about whether the principles can even have objective character and content. It begins by defining “humanitarian principles” and determining whether and on what basis certain principles constitute “the” humanitarian principles. The article then traces the history of how the principles came to govern the International Red Cross and Red Crescent Movement and diffused from there to non-governmental organizations and the United Nations system. It then analyzes the principles’ legal character and normative content for each of the above-mentioned categories of actor plus States, demonstrating that the principles do not – and, legally, cannot – have fixed legal character and normative content. While humanitarian actors share common understandings of the principles, legally the character and content of each principle flows from its source for the actor in question.

Keywords: Code of Conduct, Fundamental Principles, humanitarian action, humanitarian principles, international law, International Red Cross and Red Crescent Movement, relief, Resolution 46/182, United Nations.

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Introduction

Analyses of the humanitarian principles of humanity, neutrality, impartiality and independence often focus on the principles’ meanings¹ and/or the challenges of applying them in practice,² whether in peacetime disasters or during armed conflict. This article steps back to address foundational but somewhat neglected questions about whether these principles can accurately be designated “the” humanitarian principles; about how they came to govern the whole humanitarian sector; about their legal character; and about their normative content and, more fundamentally, whether the principles can even have fixed meanings.

1 See, for example, David P. Forsythe, “On Contested Concepts: Humanitarianism, Human Rights, and the Notion of Neutrality”, *Journal of Human Rights*, Vol. 12, No. 1, 2013; Laura Hammond, “Neutrality and Impartiality”, in Roger Mac Ginty and Jenny H Peterson (eds), *The Routledge Companion to Humanitarian Action*, Routledge, Abingdon, 2015; Hugo Slim, *Humanitarian Ethics: A Guide to the Morality of Aid in War and Disaster*, Oxford University Press, New York, 2015, Chaps 2–3; Larissa Fast, “Unpacking the Principle of Humanity: Tensions and Implications”, *International Review of the Red Cross*, Vol. 97, No. 897–898, 2016.

2 See, for example, Fiona Terry, “The International Committee of the Red Cross in Afghanistan: Reasserting the Neutrality of Humanitarian Action”, *International Review of the Red Cross*, Vol. 93, No. 881, 2011; Stuart Gordon and Antonio Donini, “Romancing Principles and Human Rights: Are Humanitarian Principles Salvageable?”, *International Review of the Red Cross*, Vol. 97, No. 897–898, 2016; Jérémie Labbé and Pascal Daudin, “Applying the Humanitarian Principles: Reflecting on the Experience of the International Committee of the Red Cross”, *International Review of the Red Cross*, Vol. 97, No. 897–898, 2016; Ed Schenkenberg van Mierop, “Coming Clean on Neutrality and Independence: The Need to Assess the Application of Humanitarian Principles”, *International Review of the Red Cross*, Vol. 97, No. 897–898, 2016.

Inherent in this analysis is an argument about the importance of analyzing the principles from the disciplinary perspectives of history and law. The humanitarian principles are often covered ahistorically,³ as if how they came to govern international humanitarian action is unimportant because their value is evident.⁴ Legal analysis is equally scant – the limited international law scholarship that does exist relates mostly to the principles of neutrality and impartiality,⁵ likely because the latter features in the Geneva Conventions,⁶ their Additional Protocols⁷ and the International Court of Justice's (ICJ) *Nicaragua* judgment,⁸ while neutrality has an autonomous international humanitarian law (IHL) meaning. There is one piece addressing neutrality and impartiality as well as humanity.⁹

These gaps in the literature are significant. While it is widely known that the humanitarian principles are based on the first four Fundamental Principles of the

- 3 Joël Glasman, "The Invention of Impartiality: The History of a Humanitarian Principle, from a Legal, Strategic and Algorithmic Perspective", Centre de Réflexion sur l'Action et les Savoirs Humanitaires, 2020, available at: www.msf-crash.org/en/publications/invention-impartiality-history-humanitarian-principle-legal-strategic-and-algorithmic (all internet references were accessed in July 2023). See also Eleanor Davey, "Thinking Principles Through the Past", in Chatham House, *Internal Coherence in the Efforts of Humanitarian Organizations to Operate in Accordance with Humanitarian Principles in Armed Conflict*, London, 2022, available at: <https://chathamhouse.soutron.net/Portal/Public/en-GB/RecordView/Index/191963>.
- 4 An exception is Joël Glasman, *Humanitarianism and the Quantification of Human Needs: Minimal Humanity*, Routledge, Abingdon, 2019, which covers the history of impartiality. For histories of humanitarianism more generally, see Michael Barnett, *Empire of Humanity: A History of Humanitarianism*, Cornell University Press, Ithaca, NY, 2011; Bruno Cabanes, *The Great War and the Origins of Humanitarianism 1918–1924*, Cambridge University Press, New York, 2014.
- 5 Frits Kalshoven, "Impartiality and Neutrality in Humanitarian Law and Practice", *International Review of the Red Cross*, Vol. 29, No. 273, 1989; Marc Weller, "The Relativity of Humanitarian Neutrality and Impartiality", in *American Society of International Law Proceedings*, Vol. 91, 1997; Kubo Mačák, "Principles of Neutrality and Impartiality of Humanitarian Action in the Aftermath of the 2011 Libyan Conflict", in Andrej Zwitter *et al.* (eds), *Humanitarian Action: Global, Regional and Domestic Legal Responses*, Cambridge University Press, Cambridge, 2015; Kubo Mačák, "A Matter of Principle(s): The Legal Effect of Impartiality and Neutrality on States as Humanitarian Actors", *International Review of the Red Cross*, Vol. 97, No. 897–898, 2016.
- 6 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) (GC I), Arts 3(2), 9; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) (GC II), Arts 3(2), 9; Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) (GC III), Arts 3(2), 9; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) (GC IV), Arts 3(2), 10, 59, 61.
- 7 Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I), Arts 5(3), 5(4), 9(2)(c), 22(2)(b), 60(2), 70(1); Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978) (AP II), Art 18(2).
- 8 ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, *ICJ Reports* 1986, p. 14.
- 9 Kate Mackintosh, *The Principles of Humanitarian Action in International Humanitarian Law*, Humanitarian Policy Group Report No. 5, Overseas Development Institute, London, March 2000.

International Red Cross and Red Crescent Movement (the Movement),¹⁰ this is typically stated without substantiation or attribution.¹¹ Further, this common knowledge about the principles' origin seems to have precluded analysis of how the principles of one organization – albeit a critically important one in the humanitarian field – came also to apply to the sector's other major categories of actor: non-governmental organizations (NGOs) and organizations of the United Nations (UN) system.¹² And legal analysis is important to counter inaccurate claims about the principles being “binding on States and other humanitarian actors as a matter of international law”,¹³ particularly IHL, and having objective meanings. Drawing on historical research and legal analysis, which builds on the work of Mačák and Weller,¹⁴ this article demonstrates that while the humanitarian principles do have common roots in the Fundamental Principles of the Movement, their legal character and normative content are inherently relative, depending on the source of the principle in question for the humanitarian actor concerned.

The article begins by defining the notion of “humanitarian principles” and determining whether and on what basis certain principles constitute “the” humanitarian principles. The following section then draws on archival and interview research, as well as secondary sources, to articulate the history of how the principles became relevant first to the Movement and subsequently diffused to humanitarian NGOs and the UN system. The third section analyzes the principles' legal character in general and in relation to each of the above-mentioned categories of humanitarian actor, plus States, demonstrating that whether the principles are legally binding for a given humanitarian actor depends on their source for that actor. The third section also analyzes the principles' normative content, demonstrating that each principle does not – and, legally, cannot – have one fixed or objective meaning; while there are common understandings of the principles, legally each principle's normative content flows from its source for the actor in question. The final section summarizes and concludes.

The notion of “the” humanitarian principles

The term “humanitarian principles” (also known as “principles of humanitarian action”) refers to doctrine to which humanitarian actors – including the

10 The Movement consists of the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies (IFRC) and all National Red Cross and Red Crescent Societies (National Societies). The Fundamental Principles Movement are listed in the following section.

11 Examples are provided in the section below on “The History of the Core Humanitarian Principles”.

12 States are also important humanitarian actors, and several have adopted humanitarian principles. However, it is not possible to analyze the history of how humanitarian principles came to govern States as a category because whether and how individual States have adopted humanitarian principles is specific to each State.

13 K. Mačák, “A Matter of Principle(s)”, above note 5, p. 159; examples in this regard are cited in the section below on “Legal Character and Normative Content”.

14 K. Mačák, “A Matter of Principle(s)”, above note 5; M. Weller, above note 5.

components of the Movement, NGOs, relevant entities of the UN system, and States – adhere in planning and carrying out humanitarian work, whether in peacetime disasters or during armed conflict, with a view to centring its rationale, maximizing access and operational effectiveness, and limiting negative externalities.

Humanity, neutrality, impartiality and independence are often identified as *the* humanitarian principles, for example by UN bodies such as the Office for the Coordination of Humanitarian Affairs (OCHA)¹⁵ and the Office of the UN High Commissioner for Refugees (UNHCR),¹⁶ by the African Union¹⁷ and European Union (EU);¹⁸ in the *Sphere Handbook*;¹⁹ and in academic literature.²⁰ However, these four are not the only humanitarian principles – some organizations use them along with other additional principles. For example, there are seven Red Cross and Red Crescent Fundamental Principles: humanity, impartiality, neutrality, independence, voluntary service, unity and universality. The Humanitarian Accountability Partnership (HAP) Standard Principles are humanity, impartiality, neutrality, independence, participation and informed consent, duty of care, witness, redress, transparency and complementarity.²¹ The 1994 *Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief*²² (Code of Conduct) includes the principles of humanity, impartiality and independence (framed hortatorily), a neutrality-like principle and six additional principles:

1. The humanitarian imperative comes first [humanity].
2. Aid is given regardless of the race, creed or nationality of the recipients and without adverse distinction of any kind. Aid priorities are calculated on the basis of need alone [impartiality].

15 OCHA, *OCHA on Message: Humanitarian Principles*, July 2022, available at: www.unocha.org/sites/unocha/files/OOM_Humanitarian%20Principles_Eng.pdf.

16 UNHCR, *Emergency Handbook*, 4th ed., 2015, available at: <https://emergency.unhcr.org/>.

17 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 49 ILM 86, 23 October 2009 (entered into force 6 December 2012) (Kampala Convention), Art. 6(3).

18 Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission, “The European Consensus on Humanitarian Aid”, OJ C 25, 30 January 2008, para. 10, noting that “[t]he EU is firmly committed to upholding and promoting the fundamental principles of humanity, neutrality, impartiality and independence”.

19 Sphere Association, *The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response*, Geneva, 2018.

20 See, for example, Elizabeth Ferris, *The Politics of Protection: The Limits of Humanitarian Action*, Brookings Institution, Washington, DC, 2011, p. 11.

21 HAP, *The 2010 Standard in Accountability and Quality Management*, 2nd ed., Geneva, 2010, pp. 8–9, available at: <https://reliefweb.int/report/world/2010-hap-standard-accountability-and-quality-management-enar>.

22 IFRC and ICRC, *The Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief*, 1994 (Code of Conduct), available at: www.icrc.org/en/doc/assets/files/publications/icrc-002-1067.pdf. While the Code of Conduct’s full title mentions only “Disaster Relief”, it applies equally in armed conflict, as evidenced by its initial statement of purpose: “In the event of armed conflict, the present Code of Conduct will be interpreted and applied in conformity with international humanitarian law.” Perhaps the intent was for “disaster” to be understood as inclusive of armed conflict, a usage that was not uncommon at the time (consider, for example, the title of the 1989 book *Assisting the Victims of Armed Conflict and Other Disasters*, edited by Frits Kalshoven).

3. Aid will not be used to further a particular political or religious standpoint [cf. neutrality].
4. We shall endeavour not to act as instruments of government foreign policy [independence].
5. We shall respect culture and custom.
6. We shall attempt to build disaster response on local capacities.
7. Ways shall be found to involve programme beneficiaries in the management of relief aid.
8. Relief aid must strive to reduce future vulnerabilities to disaster as well as meeting basic needs.
9. We hold ourselves accountable to both those we seek to assist and those from whom we accept resources.
10. In our information, publicity and advertising activities, we shall recognise disaster victims and dignified humans, not hopeless objects.²³

The third principle is similar but not identical to neutrality. While it provides that aid cannot be instrumentalized for political or religious ends, the Code of Conduct goes on to specify that humanitarian actors have “the right ... to espouse particular political or religious opinions”.²⁴ Neutrality, by contrast, is typically understood as precluding humanitarian actors from taking sides in hostilities or engaging in “controversies of a political, racial, religious or ideological nature”.²⁵ The Code of Conduct’s departure from the typical understanding of neutrality is not surprising, as neutrality is the most controversial of the humanitarian principles²⁶ and is explicitly rejected by some NGOs. Oxfam’s principles, for example, are limited to impartiality and independence.²⁷ Doctors Without Borders (Médecins sans Frontières, MSF) considered dispensing with neutrality but ultimately retained the principle.²⁸

Prior to 2003, the UN system used fewer than four principles.²⁹ For example, the General Assembly recalled in 1990 that “in the event of natural disasters and similar emergency situations, the principles of humanity, neutrality and impartiality must be given utmost consideration by all those involved in providing humanitarian assistance”.³⁰ The UN system’s current humanitarian

23 Code of Conduct, above note 22, pp. 3–5.

24 *Ibid.*, p. 3.

25 OCHA, above note 15; see Annex 3 below.

26 See Hugo Slim, *Humanitarian Resistance: Its Ethical and Operational Importance*, Humanitarian Practice Network Paper No. 87, Overseas Development Institute, London, September 2022, available at: https://odihpn.org/wp-content/uploads/2022/09/Humanitarian-resistance_NP_web.pdf.

27 Oxfam International, *The Oxfam Humanitarian Dossier*, Version 4.A, 2012, pp. 15–16, available at: <https://www.oxfamwash.org/running-programmes/coordination/OI%20Humanitarian%20Dossier%20version4a%20march2012.pdf>.

28 Fiona Terry, “Taking Action, Not Sides: The Benefits of Humanitarian Neutrality in War”, *Humanitarian Law and Policy Blog*, 21 June 2022, available at: <https://blogs.icrc.org/law-and-policy/2022/06/21/taking-action-not-sides-humanitarian-neutrality/>.

29 The term “UN system” refers to the UN itself (i.e. the six principal organs and their subsidiary organs), plus the autonomous specialized agencies and related organizations.

30 UNGA Res. 45/100, 14 December 1990, preambular para. 14.

architecture was created in 1991 by General Assembly Resolution 46/182.³¹ The resolution's substantive portion, an annex, begins with "Guiding Principles". The second principle provides that "[h]umanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality";³² independence is not mentioned. This tripartite formulation was subsequently reaffirmed by both the General Assembly³³ and the Security Council.³⁴ It is not that the General Assembly deemed independence unimportant; rather, there was no role – in an international organization comprised of and responsive to member States – for a principle understood at the time to mean autonomy from States and international organizations.³⁵ The UN's 1998 *Guiding Principles on Internal Displacement* also do not mention independence, nor do they mention neutrality. Mirroring the relevant Additional Protocol rules on humanitarian relief operations in armed conflict,³⁶ Principle 24(1) provides that all humanitarian assistance to internally displaced persons (IDPs) "shall be carried out in accordance with the principles of humanity and impartiality and without discrimination".³⁷

In its Resolution 58/114 of 2003, the General Assembly recognized that independence "is also an important guiding principle for the provision of humanitarian assistance".³⁸ Since the adoption of this resolution, when they invoke humanitarian principles, both the General Assembly and the Security Council typically list the four.³⁹ However, the International Law Commission's (ILC) 2016 Draft Articles on the Protection of Persons in the Event of Natural Disasters (ILC Draft Articles) do not mention independence. Article 6 notes that "[r]esponse to disasters shall take place in accordance with the principles of humanity, neutrality and impartiality, and on the basis of non-discrimination, while taking into account the needs of the particularly vulnerable".⁴⁰ The summary of the debate relating to this article notes that "suggestions included

31 UNGA Res. 46/182, "Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations", 19 December 1991.

32 *Ibid.*, Annex, para. 2.

33 See, for example, UNGA Res. 51/194, 10 February 1997, preambular para. 12; UNGA Res. 58/114, 17 December 2003, preambular para. 4.

34 See, for example, UNSC Res. 1296, 19 April 2000, para. 11; UNSC Presidential Statement 7, 13 March 2000, para. 9.

35 Interview with Edward Tsui, Chappaqua, New York, 29 June 2022 (on file with author).

36 AP I, Art. 70(1); AP II, Art. 18(2).

37 Economic and Social Council (ECOSOC), *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, Submitted Pursuant to Commission Resolution 1997/39: Addendum: Guiding Principles on Internal Displacement*, UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998.

38 UNGA Res. 58/114, above note 33, preambular para. 5.

39 See, for example, UNGA Res. 60/124, 8 March 2006, preambular para. 4; UNGA Res. 69/243, 11 February 2015, preambular para. 2; UNGA Res. 72/132, 15 January 2018, preambular para. 2; UNGA Res. 74/118, 20 January 2020, preambular para. 3; UNGA Res. 76/167, 7 January 2022, preambular para. 5; UNSC Res. 2228, 29 June 2015, para. 17; UNSC Res. 2274, 15 March 2016, preambular para. 24; UNSC Res. 2417, 24 May 2018, preambular para. 19; UNSC Res. 2504, 10 January 2020, para. 6.

40 ILC, *Report of the International Law Commission on the Work of its Sixty-Eighth Session*, UN Doc. A/71/10, 2016, para. 48.

adding a reference to the principle of independence”; no explanation is provided as to why this suggestion was not retained.⁴¹

EU member States are governed by fewer than four principles. The Treaty on the Functioning of the European Union (TFEU) provides that “[h]umanitarian aid operations shall be conducted in compliance with the principles of international law and with the principles of impartiality, neutrality and non-discrimination”.⁴² This use of non-discrimination as a distinct principle is unusual (though similar to the *Guiding Principles on Internal Displacement* discussed above); in conceptualizations where the humanitarian principles are humanity, neutrality, impartiality and independence, non-discrimination is typically understood as a dimension of impartiality.⁴³

Academics also have varying conceptions of the humanitarian principles. Slim identifies thirty-three principles “routinely used in the pursuit of humanitarian action”.⁴⁴ Mackintosh (writing before 2003) omits independence.⁴⁵ Examples of the different humanitarian principles used or recognized by multilateral and joint initiatives, individual NGOs, the Movement and select States, as well as in the UN system, are provided in Annex 1.

Given these variations, the basis on which humanity, neutrality, impartiality and independence are often identified as *the* humanitarian principles is not immediately clear. Slim’s classification of the thirty-three humanitarian principles that he identifies is instructive in this regard. He articulates four categories of humanitarian principles: principles in law;⁴⁶ principles of action; principles of dignity, participation and stewardship; and principles of effectiveness.⁴⁷ Perhaps, then, what many practitioners describe as *the* humanitarian principles are more accurately described using the alternative formulation “principles of humanitarian action”. Indeed, Slim’s “principles of action” are humanity, impartiality, neutrality and independence.⁴⁸

Humanity, neutrality, impartiality and independence might also be singled out because they are particularly important. When additional principles are mentioned, humanity, neutrality, impartiality and independence are typically listed first, as in the examples above. In relation to the International Committee of the Red Cross (ICRC), Forsythe explains that of “the official seven Red Cross principles that are supposed to guide activities of the Movement ... only the first

41 ILC, *Report of the International Law Commission on the Work of its Sixty-Second Session*, UN Doc. A/65/10, 2010, para. 313.

42 Consolidated versions of the Treaty on the European Union and the Treaty on the Functioning of the European Union, OJ C 202/1, 2016 (TFEU), Art. 214(2).

43 The other dimension is proportionality: see the subsection on “The International Red Cross and Red Crescent Movement” within the section on “Legal Character and Normative Content” below.

44 H. Slim, above note 1, p. 40.

45 K. Mackintosh, above note 9.

46 This category consists of State/non-State responsibility; proportion and restraint; distinction; humane treatment; protection; assistance; precaution; military necessity; humanitarian initiative; and asylum. H. Slim, above note 1, p. 40.

47 *Ibid.*, p. 40.

48 *Ibid.*

four really count”.⁴⁹ Similarly, Barnett notes that of the seven Fundamental Principles of the Movement, humanity, neutrality, impartiality and independence are “most important”.⁵⁰

Terming humanity, neutrality, impartiality and independence “the” humanitarian principles obscures the fact that some actors use more principles, while others have employed fewer. To account for this, these four principles are here conceptualized and often termed – where it is not grammatically cumbersome to do so – the “core humanitarian principles”,⁵¹ based on their particular importance and the fact that humanitarian practitioners often speak of the “core four”.⁵²

It is also worth addressing the order in which the principles are enumerated. Listing humanity, neutrality, impartiality and independence in this order is typical in the UN system. This ordering reflects the adoption – as discussed above – of the first three principles in 1991, followed by independence in 2003. In the Movement, the order of neutrality and impartiality is reversed: humanity, impartiality, neutrality and independence. This ordering is intentional and meaningful: in his commentary on the Fundamental Principles, Pictet explains that they “do not all have the same importance. They have a hierarchical order, indicated ... by the sequence in which they are presented”.⁵³ Other actors tend to use either the UN or the Movement order without articulating any rationale for the sequence employed.

The history of the core humanitarian principles

There is little detailed scholarship on how the core humanitarian principles came to govern international humanitarian action. When the principles’ history is addressed, it is in terms of vague links to the ICRC or the Movement more generally. For example, Weiss explains that the ICRC derived the core humanitarian principles “after decades of experience about which principles were most effective in accessing war victims” and that they “subsequently became the mantra of all humanitarians”.⁵⁴ An OCHA note on the core humanitarian principles explains that they “are derived from the Red Cross Movement’s ‘fundamental’ principles”.⁵⁵ In his important history of humanitarianism, Barnett

49 David P. Forsythe, *The Humanitarians: The International Committee of the Red Cross*, Cambridge University Press, Cambridge, 2005, p. 161.

50 M. Barnett, above note 4, p. 137.

51 Cf. the EU terminology of “fundamental humanitarian principles” in “The European Consensus”, above note 18. The word “core” is preferred because “fundamental” has legal meaning in some contexts (for example, “fundamental rights” in EU law); no such meaning is intended here.

52 Interview with Hugo Slim, Senior Research Fellow, Oxford Institute for Ethics, Law and Armed Conflict, via Zoom, 26 March 2021 (on file with author).

53 Jean Pictet, *The Fundamental Principles of the Red Cross: Commentary*, IFRC, Geneva, 1979, p. 8, available at: www.icrc.org/en/doc/resources/documents/misc/fundamental-principles-commentary-010179.htm.

54 Thomas G. Weiss, “Humanitarian Action”, in Jacob Katz Cogan, Ian Hurd and Ian Johnstone (eds), *The Oxford Handbook of International Organizations*, Oxford University Press, Oxford, 2016, p. 305.

55 OCHA, above note 15.

explains that in elaborating the Movement's Fundamental Principles, ICRC officials were fully "aware that they were debating not only the principles of the ICRC but also humanitarianism writ large".⁵⁶ Such accounts do not illuminate how the core humanitarian principles came to govern humanitarian actors outside the Movement. Indeed, Glasman explains that principles

are omnipresent in humanitarian discourse, but little interest is shown in their history. They are often regarded as being timeless: they are vaguely linked to the Red Cross, often without any further clarification, and it is almost always said that they are universal. Just like Athena being born from the forehead of her father, Zeus, humanitarian principles seem to have emerged "ready made" from [ICRC founder] Henri Dunant's forehead. However, this magical vision of humanitarian principles is dangerous. It is based on realities that lack historical context and are therefore unarguable. In fact, these "universal" principles are the result of very real conflicts. They reflect interests that can be situated and dated.⁵⁷

There are distinct but connected histories of the principles in relation to NGOs, on the one hand, and the UN system, on the other. These categories of actor are addressed in turn below. The Movement is the root of the humanitarian principles for both, so it is addressed first.

The International Red Cross and Red Crescent Movement

The history of the Red Cross and Red Crescent Fundamental Principles has been addressed by scholars of the Movement.⁵⁸ These principles were the genesis of the core humanitarian principles for both NGOs and the UN system, so their history merits broader attention. In 1859, Swiss businessman Henry Dunant witnessed the bloody aftermath of the Battle of Solferino, part of the war to unify Italy. The extent of the carnage overwhelmed both sides' capacity to care for wounded soldiers. Dunant mobilized a local volunteer response and, following his return to Geneva, authored an influential book about his experience.⁵⁹ Its ideas led to the founding of the ICRC in 1863⁶⁰ and to the adoption in 1864 of the

56 M. Barnett, above note 4, p. 137.

57 J. Glasman, above note 3.

58 See, for example, André Durand, "Quelques remarques sur l'élaboration des principes de la Croix-Rouge chez Gustave Moynier", in Christophe Swinarski (ed.), *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, Brill Nijhoff, Geneva and The Hague, 1984; D. P. Forsythe, above note 49, Chap. 5; Hans Haug, *Humanity for All: The International Red Cross and Red Crescent Movement*, Haupt, Berne, 1993, pp. 443–446. Note, however, that Moorehead's important history of the Movement does not address the Fundamental Principles in any detail: Caroline Moorehead, *Dunant's Dream: War, Switzerland and the History of the Red Cross*, HarperCollins, London 1998. The ICRC Library's excellent research guide on the Fundamental Principles is available at: https://blogs.icrc.org/cross-files/the-fundamental-principles-of-the-international-red-cross-and-red-crescent-movement/#_ftn1.

59 Henry Dunant, *Un souvenir de Solferino*, 1st ed., Imprimerie Jules-Guillaume Fick, Geneva, 1862.

60 François Bugnion, "Birth of an Idea: the Founding of the International Committee of the Red Cross and of the International Red Cross and Red Crescent Movement: From Solferino to the Original Geneva Convention (1859–1864)", *International Review of the Red Cross*, Vol. 94, No. 888, 2012.

very first Geneva Convention on assistance to wounded combatants (1864 Geneva Convention).⁶¹ Antecedents to the Movement's Fundamental Principles – and thus to the core humanitarian principles – of neutrality, humanity and impartiality are evident in this treaty. Article 1 of the 1864 Geneva Convention provides that “[a]mbulances and military hospitals shall be recognized as neutral”, while Article 2 relates to the neutrality of their personnel. Article 5 provides for the neutrality of local people who “bring help to the wounded”; their assistance is sought based on appeals “made to their *humanity*”.⁶² Also neutral, under Article 6, are evacuation parties collecting wounded combatants from the field. Article 7 establishes a distinctive flag and armband to denote the neutrality of hospitals, ambulances, evacuation parties and relevant individuals and personnel. Impartiality is evident in Article 6, which provides that “[w]ounded or sick combatants, *to whatever nation they may belong*, shall be collected and cared for”.⁶³ These three principles inspired by the 1864 Geneva Convention, as well as additional principles drawn from other sources⁶⁴ such as ICRC co-founder Gustave Moynier's 1874 pamphlet “Ce que c'est que la Croix-Rouge”,⁶⁵ governed the Movement informally until 1921.

In 1921, Movement principles were written down for the first time in the ICRC's Revised Statutes. The 1921 Statutes list four principles: impartiality; political, religious and economic independence; the Movement's universality; and the equality of its members.⁶⁶ In 1946, these four principles were affirmed and supplemented by thirteen additional principles and six rules of application at a meeting of the Board of Governors of the League of Red Cross Societies (the League, as the International Federation of Red Cross and Red Crescent Societies (IFRC) was then known) held in Oxford.⁶⁷ The seventeen 1946 principles were reaffirmed in 1952 at the 18th International Conference of the Red Cross in Toronto.⁶⁸

The 1952 principles were then analyzed by ICRC official⁶⁹ Jean Pictet in his doctoral thesis on Movement doctrine. Pictet's thesis was supervised by Max Huber – who served as ICRC president from 1928 to 1944⁷⁰ – and published in French in 1955 and 1956 across several issues of this journal, as well as in English

61 Convention for the Amelioration of the Condition of the Wounded in Armies in the Field of 22 August 1864, Geneva (entered into force 22 June 1865) (1864 Geneva Convention).

62 *Ibid.* (emphasis added).

63 *Ibid.* (emphasis added).

64 According to J. Glasman, above note 3, there “were twelve [Red Cross] principles (in the 1880s), then around twenty (circa 1900), and subsequently six (1920)”.

65 Gustave Moynier, “Ce que c'est que la Croix-Rouge”, B. Soullier, Geneva, 1874.

66 H. Haug, above note 58, p. 444.

67 ICRC, *The Fundamental Principles of the Red Cross and Red Crescent*, ICRC Publication Ref. 0513, 1996, available at: www.icrc.org/en/doc/assets/files/other/icrc_002_0513.pdf.

68 *Ibid.* This conference – which brings together States party to the Geneva Conventions, components of the Movement and other humanitarian actors – is now known as the International Conference of the Red Cross and Red Crescent.

69 Pictet's job title in 1956 was director for general affairs (H. Haug, above note 58, p. 445).

70 Yves Sandoz, “Max Huber and the Red Cross”, *European Journal of International Law*, Vol. 18, No. 1, 2007, p. 176.

as a treatise.⁷¹ Pictet divided the seventeen principles into two categories: seven “fundamental principles” (humanity, equality, proportionality, impartiality, neutrality, independence and universality) and ten “organic principles” relating to the Movement’s structure and functioning (selflessness, free service, voluntary service, auxiliary, autonomy, multitudinism, equality of the National Red Cross and Red Crescent Societies (National Societies), unity, solidarity and foresight).

The “whole Red Cross Movement took keen note of Pictet’s work”.⁷² The Japanese National Society proposed that Pictet’s principles become official Movement doctrine, leading to the establishment of a joint ICRC–League commission.⁷³ The commission “worked out its own simplified draft and submitted it to the Standing Commission of the International Red Cross”, which then proposed a slightly amended draft to the Council of Delegates of the International Red Cross.⁷⁴ The Council unanimously adopted the Standing Commission’s draft with minor amendments in 1961.⁷⁵ The Red Cross and Red Crescent Fundamental Principles were formally “proclaimed” by the whole Movement in 1965 at the 20th International Conference of the Red Cross in Vienna.⁷⁶ In 1979 and 1980, Pictet published a nine-part commentary on the Fundamental Principles,⁷⁷ making him both their architect and an important authority on their meaning.⁷⁸ The Fundamental Principles were reaffirmed at the 25th International Conference in 1986, when they were incorporated into the preamble to the Statutes of the International Red Cross and Red Crescent Movement (Red Cross Statutes).⁷⁹

Glasman provides a rare *critical* account of Pictet’s formulation of the Fundamental Principles within his monograph on the history of the principle of impartiality.⁸⁰ He explains that impartiality originates only in part in Article 6 of the 1864 Geneva Convention. Quoted above,⁸¹ this provision prohibits nationality-based discrimination. Glasman argues that impartiality’s additional proportionality dimension – impartiality requires that humanitarian actors provide assistance without discrimination *and* proportionate to need – originates not in the 1864 Geneva Convention but in Pictet’s doctoral thesis. The thesis clearly articulates the proportionality element: “les hommes qui souffrent doivent être secourus; à détresse égale l’aide sera équivalente; à détresse inégale, elle sera

71 Jean Pictet, *Red Cross Principles*, ICRC, Geneva, 1956, available at: https://library.icrc.org/library/docs/DOC/DOC_00028.pdf.

72 H. Haug, above note 58, p. 445.

73 *Ibid.*

74 *Ibid.*, pp. 445–446.

75 *Ibid.*, p. 446.

76 International Conference of the Red Cross, “Resolutions Adopted by the XXth International Conference of the Red Cross”, *International Review of the Red Cross*, Vol. 5, No. 56, 1965.

77 Jean Pictet, “The Fundamental Principles of the Red Cross: Commentary [Parts 1–9]”, *International Review of the Red Cross*, Vols 19–20, Nos 210–218, 1979–80. This commentary was subsequently re-published by the IFRC as a standalone document: see J. Pictet, above note 53. It is discussed in more detail later in the article.

78 A volume prepared to mark Pictet’s 70th birthday reflects this authority: C. Swinarski (ed.), above note 58.

79 Statutes of the International Red Cross and Red Crescent Movement, 1986 (Red Cross Statutes), pp. 5–6, available at: www.icrc.org/en/doc/assets/files/other/statutes-en-a5.pdf.

80 J. Glasman, above note 3.

81 See text attached to above note 63.

conditionnée par l'importance des besoins et leur urgence".⁸² The same is evident in the Fundamental Principles adopted in 1965: impartiality "makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours only to relieve suffering, *giving priority to the most urgent cases of distress*."⁸³

According to Glasman, the ICRC waged an ultimately successful "moral and legal struggle for several years to ensure that Pictet's principles were adopted by the entire movement".⁸⁴ Glasman explains that Pictet "invented" impartiality's proportionality dimension, and the ICRC campaigned for it, not only "to address ethical issues" – proportionality provides humanitarian actors with an ethical framework through which to apportion assistance in circumstances where not all urgent needs can be addressed – "but also to champion the interests of the ICRC itself in response to external attacks" from the League.⁸⁵ In 1946, the League proposed a reorganization of the Movement that was tantamount to "an outright attack on the ICRC".⁸⁶ According to Glasman, Pictet's articulation of Red Cross principles

was the main weapon of the [ICRC's] counter-attack. He formulated the principles in a way that could justify the moral authority of the [ICRC] within both the humanitarian field and the Red Cross movement. ... It is clear from Pictet's work that he considered "impartiality" as a key tool to counter the ... League's and National Societies' ambitions. The National Societies ... acted on *national* scales, which did not allow them to be purely humanitarian: "the National Societies of the Red Cross help above all those of their own nationality, which is normal, given the national character of these institutions". The ICRC had the higher moral ground: It could allocate "aid measured solely by the extent of distress".⁸⁷

Thus, Pictet's conceptualization of impartiality as also including proportionality (in addition to non-discrimination) allowed the ICRC to maintain its supremacy within the Movement. The balance of this section demonstrates how the influence of both the Movement and Pictet ultimately extended to the whole humanitarian sector.

NGOs

The core humanitarian principles came to govern humanitarian NGOs via the 1994 Code of Conduct, which propelled the core principles from the Movement to

82 "Men who suffer shall be helped; with equal distress, the help will be equivalent; with unequal distress, it will be conditioned by the importance of the needs and their urgency." Jean Pictet, "Les principes de la Croix-Rouge (III)", *International Review of the Red Cross*, Vol. 37, No. 442, 1955, p. 636 (author's translation).

83 International Conference of the Red Cross, above note 76, p. 573 (emphasis added).

84 J. Glasman, above note 3.

85 *Ibid.*

86 *Ibid.*; see also Daniel Palmieri, "Les principes fondamentaux de la Croix-Rouge: Une histoire politique", ICRC, 6 July 2015, available at: www.icrc.org/fr/document/les-principes-fondamentaux-de-la-croix-rouge-une-histoire-politique.

87 J. Glasman, above note 4, pp. 31, 33 (internal citations omitted).

humanitarian NGOs more broadly. At its 1991 meeting in Budapest, the Movement's Council of Delegates – one of its two main governing bodies⁸⁸ – adopted a resolution on the need for a code of conduct relating to “[h]umanitarian assistance in situations of natural and technological [human-made] disasters”.⁸⁹ The resolution noted the Council's concern “for the respect for the Fundamental Principles” and its awareness of “the essential role” of the Movement “in international humanitarian activities and related codification”.⁹⁰ The operative portion of the resolution “asks” the IFRC, “in consultation with the main relief organizations, to set up a group of experts to study the possibility of elaborating a Code of Conduct relative to humanitarian aid in situations of natural and technological disasters”, and “requests” the IFRC, “after consultation with the main relief organizations, to report on the outcome of that study to the next Council of Delegates”.⁹¹

Around the same time, staff of several UK-based NGOs independently concluded that a code of conduct was needed to counter the threat that the end of the Cold War posed to humanitarian operations, and Oxfam-GB began collaborating with the IFRC to draft what would become the Code of Conduct. Hugo Slim, who in 1991 worked for Save the Children, explained that he and colleagues at other British NGOs expected that the end of the Cold War would change the impact of armed conflict on humanitarian actors. This was prescient. During the Cold War, conflicts were typically proxy wars involving major powers; their intensity confined humanitarian action to locations outside theatres of conflict, such as IDP and refugee camps. By contrast, humanitarian actors were often near the front lines of the civil wars that began or intensified following the end of the Cold War, such as in Bosnia, Liberia and Sierra Leone.⁹²

The next Council of Delegates was held in Birmingham in 1993. By this time, Peter Walker of the IFRC and Tony Vaux of Oxfam-GB had consulted the Steering Committee for Humanitarian Response⁹³ and completed a draft of the Code.⁹⁴ The Council of Delegates approved their draft and urged the IFRC and ICRC to “take steps to promote the Code's implementation within the Movement and to disseminate the Code amongst disaster response agencies, encouraging them in turn to endorse the Code through their governing bodies”.⁹⁵

88 The other is the International Conference of the Red Cross and Red Crescent, which is described above at note 68.

89 ICRC and IFRC, *Verbatim Report: Council of Delegates, Budapest, 28–30 November 1991*, Geneva, 1992, Resolution 17, p. 221, available at: https://library.icrc.org/library/docs/CI/CD_1991_RAPPORT_ENG.pdf.

90 *Ibid.*

91 *Ibid.*

92 Interview with H. Slim, above note 52.

93 Formed in 1972, the Steering Committee for Humanitarian Response comprises ActAlliance, CARE, Caritas, the ICRC, the IFRC, the Lutheran World Federation, Oxfam International, Save the Children and World Vision. See the Steering Committee's website, available at: www.schr.info.

94 Dorothea Hilhorst, “Dead Letter or Living Document? Ten Years of the Code of Conduct for Disaster Relief”, *Disasters*, Vol. 29, No. 4, 2005, p. 351.

95 Jacques Meurant (ed.), “Resolutions of the Council of Delegates (Adopted at Its Session of 29–30 October 1993, in Birmingham)”, *International Review of the Red Cross*, Vol. 33, No. 297, 1993, Resolutions 6, 8, available at: https://library.icrc.org/library/docs/CI/CD_1993_RESOLUTIONS_ENG.pdf.

In 1994, the IFRC, the ICRC and six NGOs – Caritas, Catholic Relief Services, the Lutheran World Federation, Oxfam, Save the Children and the World Council of Churches – finalized the Code of Conduct. It includes the ten principles cited above,⁹⁶ three of which are essentially humanity, impartiality and independence; there is also a principle similar but not identical to neutrality. The 26th International Conference of the Red Cross and Red Crescent in 1995 took note of and welcomed the Code and invited States and National Societies to “encourage NGOs to both abide by the principles and spirit of the Code and consider registering their support for the Code” with the IFRC.⁹⁷ As of July 2022, the Code of Conduct had been signed by nearly 900 organizations.⁹⁸

Strong evidence for the Code of Conduct’s influence over the humanitarian principles employed in the NGO sector comes from other lists of principles adopted by NGO groups (or groups including NGOs) prior to and following 1994: there is a clear shift towards the core humanitarian principles after 1994. For example, a “handbook for practitioners” published in 1993 articulates the Providence Principles: relieving life-threatening suffering, proportionality to need, non-partisanship, independence, accountability, appropriateness, contextualization and subsidiarity of sovereignty.⁹⁹ By contrast, the 1995 Mohonk Criteria are humanity, impartiality, neutrality, independence and empowerment.¹⁰⁰

The Code of Conduct was “strongly influenced by” the Fundamental Principles,¹⁰¹ which is not surprising given that one of its lead drafters was IFRC staff. After the Code of Conduct had been adopted by the six sponsoring organizations and other NGOs, these organizations would of course go on to incorporate its principles within their own operations, marking the beginning of the diffusion and then entrenchment of the core humanitarian principles outside of the Movement. There is thus a clear timeline that begins with the formal adoption by the Movement of its seven Fundamental Principles in 1965. In and after 1994, the Code of Conduct carried four of these Fundamental Principles beyond the Movement to humanitarian NGOs.

96 See text attached to above note 23.

97 International Conference of the Red Cross and Red Crescent, “Twenty-Sixth International Conference of the Red Cross and Red Crescent, Geneva, 1995: Resolutions”, *International Review of the Red Cross*, Vol. 36, No. 310, 1996, p. 73.

98 OCHA, above note 15.

99 Larry Minear and Thomas G. Weiss, *Humanitarian Action in Times of War: A Handbook for Practitioners*, Lynne Rienner, Boulder, CO, 1993, p. 19.

100 Jon M. Ebersole, “The Mohonk Criteria for Humanitarian Assistance in Complex Emergencies: Task Force on Ethical and Legal Issues in Humanitarian Assistance”, *Human Rights Quarterly*, Vol. 17, No. 1, 1995.

101 Hugo Slim, “Wonderful Work: Globalizing the Ethics of Humanitarian Action”, in R. Mac Ginty and J. H. Peterson (eds), above note 1, p. 17. See also Jérémie Labbé, “Les principes de l’action humanitaire”, in Sandra Szurek, Marina Eudes and Philippe Ryfman (eds), *Droit et pratique de l’action humanitaire*, LGDJ, Issy-les-Moulineaux, 2019, p. 241. UN General Assembly Resolution 46/182 of 1991 may also have been influential. It provides that “[h]umanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality”; this is discussed below.

The UN system

Prior to 1991, the “focal point” within the UN system for “matters related to disaster relief and disaster mitigation” was the Office of the UN Disaster Relief Co-ordinator.¹⁰² The genesis of the resolution that would change this – General Assembly Resolution 46/182 – was described to me by former UN Deputy Secretary-General Jan Eliasson in an interview. From 1992 to 1994, he served as the UN’s first Undersecretary-General for Humanitarian Affairs and Emergency Relief Coordinator, a position created by Resolution 46/182.¹⁰³ Prior to this, from 1988 to 1992, Eliasson was Sweden’s Permanent Representative to the UN in New York. During this time, he had regular informal meals with other UN ambassadors. Around 1989, they began to discuss the challenges that would likely emerge following the end of the Cold War. They predicted that conflicts would increasingly occur within – rather than between – States, and that such non-international armed conflicts (NIACs) would particularly affect civilians, but State sovereignty would complicate the UN’s humanitarian response. The solution, they concluded, was to reform the UN’s humanitarian response architecture.¹⁰⁴ The challenge in this regard was twofold: to get the idea on the General Assembly’s agenda, and to shape the resulting General Assembly resolution.¹⁰⁵

The first challenge was addressed through the European Council of the European Community. Its June 1991 Declaration on the Improvement of Emergency Assistance within the United Nations Framework recommended the “appointment of a high-level coordinator for emergency humanitarian aid” who would, among other things, chair “an inter-agency standing committee” to “coordinate assistance efforts”.¹⁰⁶ This Declaration was followed up with a letter dated 16 August 1991 to the UN Secretary-General from the Permanent Representative of the Netherlands, writing on behalf of all member States of what was then the European Community. He formally requested that “strengthening ... the coordination of [UN] humanitarian emergency assistance” be added to the

102 UNGA Res. 45/221, “Strengthening of the Office of the United Nations Disaster Relief Co-ordinator”, 21 December 1990.

103 UNGA Res. 46/182, above note 31, Annex, para. 34.

104 This recollection is reflected in published accounts such as Edward Tsui and Thant Myint-u, “The Institutional Response: Creating a Framework in Response to New Challenges”, in OCHA, *The Humanitarian Decade: Challenges for Humanitarian Assistance in the Last Decade and into the Future*, Vol. 2, New York, 2004, p. 3. However, other accounts, such as by Crisp, point to the centrality of the 1990–91 Persian Gulf crisis as the genesis for the adoption of Resolution 46/182: Jeff Crisp, “Humanitarian Action and Coordination”, in Thomas G. Weiss and Sam Daws (eds), *The Oxford Handbook on the United Nations*, 2nd ed., Oxford University Press, Oxford, 2018, p. 588.

105 Interview with Jan Eliasson, via Zoom, 25 February 2022 (on file with author).

106 UN General Assembly, “Letter Dated 1 July 1991 from the Chargé d’Affaires A.I. of the Permanent Mission of the Netherlands to the United Nations Addressed to the Secretary General”, UN Doc. A/46/288, 8 July 1991, Annex.

agenda for the General Assembly's 46th session, to be held in the autumn of 1991.¹⁰⁷ The item was added.¹⁰⁸

With the UN's humanitarian architecture on the General Assembly agenda, the second challenge was to shape the Assembly's deliberations. To tackle this, the informal group of Permanent Representatives in New York concluded, given Sweden's established interest in humanitarian affairs, that Eliasson should run for the vice-presidency of the Economic and Social Council (ECOSOC). ECOSOC makes or initiates "studies and reports with respect to international economic, social, cultural, educational, health, and related matters", and makes "recommendations with respect to any such matters to the General Assembly".¹⁰⁹ The ECOSOC vice-presidency would, accordingly, afford Eliasson the opportunity to influence ECOSOC's, and thus the General Assembly's, deliberations regarding the UN's humanitarian architecture.¹¹⁰ Eliasson was elected in 1991; the agenda of ECOSOC's Second Regular Session of 1991, held in Geneva in July, thus included "Coordination Questions" as agenda item 12, including the "Response of the United Nations to Emergencies".¹¹¹

The UN response to emergencies was addressed by ECOSOC's Third (Programme and Coordination) Committee from 8 to 11 July 1991. It produced the "outline for a [UN humanitarian] mandate ... with the elements to be decided by the General Assembly".¹¹² This outline is contained in the Chairman's Summary annexed to ECOSOC's 1991 annual report,¹¹³ which was provided to General Assembly member States to background the deliberations that led to Resolution 46/182. The Summary covers four main topics: "prevention; preparedness; coordination and cooperation; and the relationship between emergency relief and development".¹¹⁴ Eliasson describes the process of drafting Resolution 46/182 as a "two-stage rocket", with the Chairman's Summary that emerged from the ECOSOC Third Committee meetings in Geneva

107 UN General Assembly, "Letter Dated 16 August 1991 from the Permanent Representative of the Netherlands to the United Nations Addressed to the Secretary General", UN Doc. A/46/194, 19 August 1991.

108 UN General Assembly, *Provisional Verbatim Record of the 3rd Meeting*, UN Doc. A/46/PV.3, 20 September 1991; UN General Assembly, *Annotated Agenda of the Forty-Sixth Regular Session of the General Assembly*, UN Doc. A/46/100/Add.1, 30 September 1991, para. 142.

109 Charter of the United Nations, 1 UNTS xvi, 26 June 1945 (entered into force 24 October 1945) (UN Charter), Art. 62(1).

110 Interview with J. Eliasson, above note 105.

111 ECOSOC, *Resolutions and Decisions of the Economic and Social Council: Second Regular Session of 1991*, Supp. 1A, UN Doc. E/1991/91/Add.1, 1992, p. 1.

112 Interview with J. Eliasson, above note 105.

113 ECOSOC, "Response of the United Nations to Emergencies: Summary Prepared by the Chairman of the Third (Programme and Coordination) Committee", in *Report of the Economic and Social Council for the Year 1991: General Assembly Forty-Sixth Session*, Supp. 3, UN Doc. A/46/3/Rev.1, 1992, Annex IV.

114 *Ibid.* In addition to the deliberations in ECOSOC's Third Committee, Resolution 46/182 was also influenced by an October 1991 report by the UN Secretary-General reviewing the "Capacity, Experience and Coordination Arrangements in the UN System for Humanitarian Assistance" (UNGA Res. 46/182, above note 31, preambular para. 5). See *Report of the Secretary-General on the Review of the Capacity, Experience and Coordination Arrangements in the UN System for Humanitarian Assistance*, UN Doc. A/46/568, 17 October 1991.

representing the first stage.¹¹⁵ Indeed, the Third Committee topics, and a handful of others, are reflected in Resolution 46/182; the headings of the resolution's operative annex are "Guiding Principles", "Prevention", "Preparedness", "Stand-By Capacity", "Consolidated Appeals", "Coordination, Cooperation and Leadership" and "Continuum from Relief to Rehabilitation and Development".¹¹⁶

Back in New York, Eliasson asked Samir Shihabi, then Permanent Representative of Saudi Arabia and President of the General Assembly, to convene an *ad hoc* committee in the Assembly, open to all member States, to negotiate what would become Resolution 46/182.¹¹⁷ The committee met for the first time in October 1991, and thereafter for "intense negotiations".¹¹⁸ The committee spent a "long time" discussing humanitarian principles.¹¹⁹ Accounts of the origins of the humanitarian principles in Resolution 46/182 are rare, though Wynn-Pope *et al.* state simply that humanity, neutrality and impartiality were included based on the Red Cross and Red Crescent Fundamental Principles.¹²⁰ Eliasson confirms that the principles were, indeed, "picked ... up from the International Red Cross".¹²¹ Edward Tsui, a now-retired UN official who was also involved in drafting Resolution 46/182, recalls that this was because the drafters did not want to "reinvent the wheel"¹²² – rather, they looked to the ICRC for "best practices" given its status as a highly respected humanitarian organization.¹²³ This historical link between the principles in Resolution 46/182 and the ICRC is today widely known among OCHA personnel.¹²⁴ General Assembly Resolution 45/100 – the earlier 1990 resolution which also mentions humanity, neutrality and impartiality and which may itself have been based on the Fundamental Principles – may also have been influential.¹²⁵ The origins of the core humanitarian principles, for NGOs as well as for the UN system, can thus be definitively traced to the Fundamental Principles of the Movement.

The final draft of Resolution 46/182 was ultimately supplied by Sweden.¹²⁶ Despite "weeks of difficult negotiation",¹²⁷ including overnight on 18–19 December,¹²⁸ Resolution 46/182 was ultimately adopted by the General Assembly

115 Interview with J. Eliasson, above note 105.

116 The rationale for these topics is beyond the scope of this article; it is detailed in E. Tsui and T. Myint-u, above note 104.

117 Interview with J. Eliasson, above note 105.

118 *Ibid.*

119 *Ibid.*

120 Phoebe Wynn-Pope, Yvette Zegenhagen and Fauve Kurnadi, "Legislating against Humanitarian Principles: A Case Study on the Humanitarian Implications of Australian Counterterrorism Legislation", *International Review of the Red Cross*, Vol. 97, No. 897–898, 2016, p. 236.

121 Interview with J. Eliasson, above note 105.

122 Interview with E. Tsui, above note 35.

123 *Ibid.*

124 Email from Aurelien Buffer, Chief, Policy Advice and Planning Section, Operations and Advocacy Division, OCHA, to author, 25 October 2022 (on file with author).

125 UNGA Res. 45/100, above note 30.

126 UN General Assembly, *Strengthening of the Coordination of the Humanitarian Emergency Assistance of the United Nations*, UN Doc. A/46/L.55, 17 December 1991; UN General Assembly, *Strengthening of the Coordination of the Humanitarian Emergency Assistance of the United Nations*, UN Doc. A/46/L.55/Corr.1, 18 December 1991.

127 Paul Lewis, "UN to Centralize its Relief Efforts", *New York Times*, 18 December 1991, p. A19.

128 Interview with J. Eliasson, above note 105.

without a vote, a procedure reflecting strong consensus. However, while there was consensus among member States in their adoption of the principles, the next section demonstrates that there is little consensus among humanitarian actors regarding the principles' legal character.

Legal character and normative content

Similar to their history, the humanitarian principles' legal character is sometimes misconstrued. Mačák notes that impartiality and neutrality are “sometimes described as binding on States and other humanitarian actors as a matter of international law”,¹²⁹ citing several examples in this regard,¹³⁰ but further observes that “such assertions are usually accompanied by little or no analysis as to their specific legal basis”.¹³¹ This is true not only of impartiality and neutrality, but of all four core humanitarian principles. Wynn-Pope *et al.*, for example, state that the core humanitarian principles “are enshrined in modern-day international law as obligations of States and humanitarian actors”,¹³² without providing any elaboration as to the source of such obligations or how they might bind NGOs, which can benefit from but are not subjects of international law.

The issue is pronounced in relation to IHL. Gillard observes that the humanitarian principles and IHL are “frequently conflated” and that there is often “an assumption that IHL is the source of the humanitarian principles”.¹³³ For example, a “topic guide” commissioned by the UK presents the humanitarian principles as if they are derived from IHL and does not distinguish between the core humanitarian principles and similarly termed, but distinct, IHL concepts.¹³⁴

The core humanitarian principles are also sometimes said to constitute international law in the context of disasters. The summary of the ILC's debate regarding Article 6 (on “Humanitarian Principles in Disaster Response”) of its Draft Articles notes that the “view was ... expressed that the three principles [humanity, neutrality and impartiality] were well established in international law, as reflected in a number of international instruments”. However, there was also a contrary view that while the principles “were important ... for the International Red Cross Movement, it was not clear that they were principles of international

129 K. Mačák, “A Matter of Principle(s)”, above note 5, p. 159. See also Emanuela-Chiara Gillard, “Framing the Conversation: Humanitarian Principles and the Law”, in Chatham House, *The Normative Framework of Humanitarian Action in Armed Conflict: Workshop 1*, Royal Institute of International Affairs, London, 2022, available at: <https://chathamhouse.soutron.net/Portal/Public/en-GB/RecordView/Index/191239>.

130 K. Mačák, “A Matter of Principle(s)”, above note 5, p. 159. Examples cited by Mačák include Sylvain Beauchamp, *Defining the Humanitarian Space through Public International Law*, On the Edges of Conflict Working Paper, 2008; Vincent Chetail, “The Contribution of the International Court of Justice to International Humanitarian Law”, *International Review of the Red Cross*, Vol. 85, No. 850, 2003.

131 K. Mačák, “A Matter of Principle(s)”, above note 5, p. 159.

132 P. Wynn-Pope, Y. Zegenhagen and F. Kurnadi, above note 120, p. 240.

133 E.-C. Gillard, above note 129, pp. 12–13.

134 Huma Haider, *International Legal Frameworks for Humanitarian Action: Topic Guide*, GSDRC, Birmingham, 2013, p. 25.

law”.¹³⁵ Ultimately, the ILC did not resolve this question. Its commentary on Article 6 notes that the principles “are considered by the Commission to constitute humanitarian principles that underlie disaster relief and assistance”, and that “[o]n this basis, the Commission did not find it necessary to determine whether these principles are also general principles of international law”.¹³⁶

Given the frequency with which the core principles are said to come from or constitute international law, particularly IHL, it is worth considering where this idea might originate. It is likely attributable to the use of “humanitarian” and “impartial” in the Additional Protocol provisions on humanitarian relief operations. Article 70(1) of Additional Protocol I (AP I), which governs international armed conflicts (IACs), provides that if “the civilian population of any territory under the control of a Party to the conflict, other than occupied territory, is not adequately” supplied, “relief actions which are *humanitarian* and *impartial* in character and conducted *without any adverse distinction* shall be undertaken” (emphasis added). Article 18(2) of Additional Protocol II (AP II) provides essentially the same in relation to NIACs. The words “humanitarian” and “impartial” as used in Articles 70(1) and 18(2) are terminologically similar to the core principles of humanity and impartiality; “without any adverse distinction” is a dimension of the principle of impartiality but is easily confused with the humanitarian principle of neutrality. It is thus not surprising to come across references such as this: “[the] humanitarian principles of impartiality and neutrality [have] their legal basis in Art. 70 [of AP I]”.¹³⁷ This statement is, however, inaccurate; for reasons explained below, the humanitarian principles do not have any general “legal basis” in IHL independent of their source for a particular humanitarian actor.

Inaccurate claims that the principles are international law may also “to some extent be explained by the perceived moral desirability” of the principles.¹³⁸ Nevertheless, it is important to counter the flawed idea that the principles constitute international law in some general sense. Here the analysis must proceed on a category-by-category basis because the principles’ legal character depends on their source, which varies by category of humanitarian actor. First, however, the analysis demonstrates that “principles” do not, on their own, create binding obligations. It then goes on to analyze the legal character, as well as the normative content, of the core humanitarian principles for the Movement, NGOs, the UN system and States. The analysis is summarized in a table at Annex 2, which provides a snapshot of the source of the obligation to act in accordance with, or voluntary commitment to follow, humanitarian principles for select actors within each category.

135 ILC, above note 41, para. 309.

136 ILC, *Report of the International Law Commission on the Work of its Sixty-Third Session*, UN Doc. A/66/10, 2011, para. 289(1).

137 Heike Spieker, “Humanitarian Assistance, Access in Armed Conflict and Occupation”, in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law*, Oxford University Press, Oxford, 2013, para. 1.

138 K. Mačák, “A Matter of Principle(s)”, above note 5, p. 159.

Legal character of the principles

The core humanitarian principles do not, in and of themselves, create binding obligations for humanitarian actors. In English, a principle is “a fundamental truth or proposition that serves as the foundation for a system of belief or behaviour or for a chain of reasoning”.¹³⁹ Principles are distinct from rules in that they do not themselves prescribe or proscribe conduct – rather, a principle expresses a moral norm that may guide conduct and from which a rule or set of rules may be derived. In legal theory, principles refer to “moral standards that do not apply in a conclusive and all-or-nothing fashion”; they “vary in the weight they have”.¹⁴⁰ Principles are thus higher-order norms that provide the rationale for rules but are not themselves binding. The Statute of the ICJ, which lists the sources of international law, provides a germane example: among such sources are “general principles of law recognized by civilized nations”,¹⁴¹ which are not a source of international law *qua* principles, but because they are “recognized” as “law” by States. Thus, the English-language and legal meanings of “principle” are essentially the same and imply that the core humanitarian principles do not themselves create legal obligations. They may, however, create obligations for a particular humanitarian actor if that actor has translated the humanitarian principles into a binding rule or rules, as will be shown below.

The International Red Cross and Red Crescent Movement

Legal character

The component organizations of the Movement have had to act in accordance with the Movement’s Fundamental Principles since 1965, when the 20th International Conference of the Red Cross proclaimed the “fundamental principles on which Red Cross action is based”.¹⁴² While the Fundamental Principles have been binding for the ICRC, the IFRC and National Societies since 1965,¹⁴³ their character was clarified and affirmed by the Red Cross and Red Crescent Statutes adopted in 1986. These provide that “the Movement *shall be* guided by its Fundamental Principles”.¹⁴⁴ In addition to this mandatory language, Haug summarizes the other ways in which the 1986 Statutes impose the Fundamental Principles on Movement components:

A National Society may only be recognised by the ICRC if it respects the Red Cross principles. The ICRC itself – as already in earlier years – is given the role of disseminating and preserving the principles. The [IFRC] also shall

139 “Principle”, *Oxford English Dictionary*, 10 June 2022.

140 Brian Bix, *A Dictionary of Legal Theory*, Oxford University Press, Oxford, 2004, pp. 165–166.

141 Statute of the International Court of Justice, 961 UNTS 183, 24 October 1945 (ICJ Statute), Art. 38(1)(c).

142 International Conference of the Red Cross, above note 76, p. 573.

143 H. Haug, above note 58, p. 446.

144 Red Cross Statutes, above note 79, Preamble (emphasis added).

fulfill its purpose of promoting National Societies and coordinating their activities, in particular in peacetime, in the context of the principles. The participants in Red Cross and Red Crescent Conferences and the members of the Council of Delegates of the Movement are expressly obliged to respect and maintain the principles during the meetings. New [in the 1986 Statutes] and specially important is the provision that the States parties to the Geneva Conventions have at all times to respect the fact that all components of the Movement are bound by its principles.¹⁴⁵

Indeed, the Red Cross Statutes provide that States party to the Geneva Conventions “shall at all times respect the adherence by all components of the Movement to the Fundamental Principles”.¹⁴⁶

Several provisions of the Geneva Conventions and Additional Protocols require States to grant certain facilities to Movement components operating in accordance with the Fundamental Principles. Under AP I, States undertake to grant “their respective Red Cross (Red Crescent, Red Lion and Sun) organizations the facilities necessary for carrying out their humanitarian activities ... in accordance with ... the fundamental principles” and to facilitate humanitarian assistance extended “in accordance ... with the fundamental principles”.¹⁴⁷ States also agree that in occupied territory, “National Red Cross (Red Crescent, Red Lion and Sun) Societies shall be able to pursue their activities in accordance with Red Cross principles”.¹⁴⁸ The Fundamental Principle of impartiality receives particular support through provisions on the ICRC’s right of initiative,¹⁴⁹ which is its “right to offer its services to all parties to any conflict, both international and non-international, on any matters that the ICRC considers as within its purview”.¹⁵⁰ The right of initiative is contingent on the ICRC acting impartially. Article 3 common to the four Geneva Conventions (common Article 3), which applies in NIACs, provides that an “*impartial* humanitarian body, such as the [ICRC], may offer its services to the Parties to the Conflict” (emphasis added). Common Article 9/9/9/10, which applies in IACs, states that the provisions of the Geneva Conventions “constitute no obstacle to the humanitarian activities which the [ICRC] or any other *impartial* humanitarian organization may ... undertake” (emphasis added).

Thus, for the ICRC, the IFRC and National Societies, the core humanitarian principles – as well as the three further Fundamental Principles of the Movement – are binding via the Red Cross Statutes. Movement components’ statutory obligations to act in accordance with the Fundamental Principles in general, and particularly the principle of impartiality, are supported by the Geneva Conventions and their Additional Protocols.

145 H. Haug, above note 58, p. 447.

146 Red Cross Statutes, above note 79, Art. 2(4).

147 AP I, Art. 81(2)–(3).

148 GC IV, Art. 63.

149 GC I, Arts 3(2), 9; GC II, Arts 3(2), 9; GC III, Arts 3(2), 9; GC IV, Arts 3(2), 10; AP I, Art. 81(1).

150 Emily Crawford and Alison Pert, *International Humanitarian Law*, 2nd ed., Cambridge University Press, Cambridge, 2020, p. 277.

Normative content

Since the 1986 Red Cross Statutes are now the primary source of the Fundamental Principles for the Movement, they provide the authoritative statement of their meaning for the Movement. Each of the seven Fundamental Principles is briefly described in the Statutes' preamble in terms almost identical (there are a few minor grammatical changes) to those used when the Fundamental Principles were proclaimed in 1965.¹⁵¹ Pictet provides more detailed explanations in his authoritative commentary on the Fundamental Principles.¹⁵²

Humanity is the Movement's "essential principle".¹⁵³ The Statutes do not define it as such; rather, humanity is addressed entirely in terms of the Movement itself. The Statutes state:

The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.¹⁵⁴

This self-referential explanation of humanity provides the Movement's "ideal, its motivation and its objective".¹⁵⁵ A less Movement-specific understanding of humanity can be found in the ICRC's *Professional Standards for Protection Work*, which define the principle of humanity as a directive: "all people must be treated humanely in all circumstances".¹⁵⁶

The Red Cross Statutes explain that impartiality "makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress."¹⁵⁷ It is thus evident, as explained above, that for the Movement, impartiality has two dimensions: non-discrimination (on the grounds listed) and proportionality. The latter means that "help available shall be apportioned according to the relative importance of individual needs and in their order of urgency".¹⁵⁸

The principle of neutrality provides that in "order to continue to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature".¹⁵⁹

151 International Conference of the Red Cross, above note 76.

152 J. Pictet, above note 53.

153 *Ibid.*, p. 8.

154 Red Cross Statutes, above note 79, p. 5.

155 J. Pictet, above note 53, p. 14.

156 ICRC, *Professional Standards for Protection Work*, 3rd ed., Geneva, 2018, p. 24.

157 Red Cross Statutes, above note 79, p. 5.

158 J. Pictet, above note 53, p. 27.

159 Red Cross Statutes, above note 79, p. 5.

Pictet explains that while neutrality “defines the attitude of the Red Cross towards belligerents and ideologies, it never determines its behaviour towards the human beings who suffer”.¹⁶⁰ The principle of neutrality thus explains ICRC president Peter Maurer’s widely criticized but little understood meeting with Russian foreign minister Sergei Lavrov soon after Russia’s illegal invasion of Ukraine.¹⁶¹ In order to gain access to victims in the power of States – in this case in Russian-controlled or -occupied parts of Ukraine – the ICRC generally “abstains from making public pronouncements about specific acts committed in violation of law and humanity and attributed to belligerents”.¹⁶²

Independence relates to the relationship between the Movement and other actors. The Statutes provide that

[t]he Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.¹⁶³

Pictet identifies three dimensions of independence: economic, political and religious.¹⁶⁴ Further, he clarifies that while the Statutes only mention independence from governments, the principle is in fact broader, referring to all “outside forces”.¹⁶⁵ This includes (but is not limited to) “public authorities”,¹⁶⁶ “intergovernmental organizations”,¹⁶⁷ any “class, pressure group or even public opinion”,¹⁶⁸ and other humanitarian organizations.¹⁶⁹ Pictet nevertheless focuses the majority of his commentary on independence from governments. In this regard, he devotes considerable attention to the auxiliary status of National Societies, explaining how they can be independent from governments while still supporting government humanitarian functions.¹⁷⁰

While these articulations of the core humanitarian principles are specific to the Movement because they flow from its Statutes and from Pictet’s commentary on the Fundamental Principles, they are also evident – given the Red Cross and Red Crescent origins described above – in the principles’ normative content for other actors, which are addressed below.

160 J. Pictet, above note 53, p. 34.

161 Imogen Foulkes, “Why the Red Cross Has to Be Neutral in the Ukraine Conflict”, *BBC News*, 29 March 2022, available at: www.bbc.com/news/world-europe-60921567.

162 J. Pictet, above note 53, p. 39.

163 Red Cross Statutes, above note 79, p. 5.

164 J. Pictet, above note 53, p. 40.

165 *Ibid.*

166 *Ibid.*, pp. 43–45.

167 *Ibid.*, p. 40.

168 *Ibid.*, p. 41.

169 *Ibid.*

170 *Ibid.*, pp. 41–42.

NGOs

Legal character

An NGO can only be bound by the core humanitarian principles through an internal governance document, such as its charter, and/or via any voluntary sectoral document, such as the Code of Conduct, that the organization may have signed. Both create obligations as a matter of institutional governance, but not as a matter of international law. For example, members of MSF agree to “honour” the principles contained in the MSF Charter, which include to provide assistance “irrespective of race, religion, creed or political convictions” (impartiality’s non-discrimination dimension), to observe “neutrality and impartiality in the name of universal medical ethics” and to “maintain complete independence from all political, economic or religious powers”;¹⁷¹ they are also bound by the organization’s Chantilly Principles.¹⁷² These commitments are opposable by MSF vis-à-vis its members (staff), but not between third parties and MSF or between third parties and individual MSF members. NGOs that have committed to the core humanitarian principles or some other set of humanitarian principles are often referred to as “Dunantist”, a term coined by Stoddard to describe organizations that “seek to position themselves outside of state interests”.¹⁷³ As discussed above in the section on “The Notion of ‘the’ Humanitarian Principles”, not all humanitarian NGOs commit to the core humanitarian principles.

In armed conflict, an NGO may act in accordance with one or more of the core humanitarian principles not, or not only, because this is required by an internal governance document and/or by the Code of Conduct, but because doing so may have consequences in relation to the treaty obligations of conflict parties. For example, Article 70(1) of AP I provides that

[i]f the civilian population of any territory under the control of a Party to the conflict, other than occupied territory, is not adequately provided with [relief supplies], relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the Parties concerned.¹⁷⁴

AP I is directly binding on the parties to the conflict in question, but not NGOs. The effect of Article 70(1) on the NGO is indirect: if its activities are humanitarian and impartial and conducted without adverse distinction, then the party cannot arbitrarily withhold consent to the NGO’s humanitarian relief operation.¹⁷⁵ Thus

171 MSF, MSF Charter, available at: www.msf.org/msf-charter.

172 MSF, *Chantilly Principles*, 4 October 1995, available at: www.msf.org/sites/default/files/Principles%20Chantilly%20EN.pdf.

173 Abby Stoddard, *Humanitarian NGOs: Challenges and Trends*, Humanitarian Policy Group Briefing No. 12, Overseas Development Institute, London, 2003, p. 2, available at: <https://odi.org/en/publications/humanitarian-ngos-challenges-and-trends/>.

174 See also, regarding NIAC, AP II, Art. 18(2); and regarding occupation, GC IV, Art. 59.

175 Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols*, ICRC, Geneva, 1987, para. 4885, available at: <https://ihl-databases.icrc.org/en/ihl-treaties/apii->

the NGO will act in accordance with the principles of humanity and impartiality not because it is treaty-bound to do so, but because acting in these ways privileges its operations under IHL. In short, a treaty can make it in an NGO's interests to act in accordance with humanitarian principles, but no treaty *requires* it. In addition to rendering the rules on humanitarian relief operations applicable, there are important additional practical reasons for NGOs to abide by the core humanitarian principles, such as operational security and effectiveness.

Normative content

The meanings of the core humanitarian principles for an NGO bound by them pursuant to an internal governance document depends on how the principles are defined in that document or, if they are not defined, how they are commonly understood within the organization. Nevertheless, given the principles' common origins in the Fundamental Principles of the Movement, the existence of sectoral documents such as the Code of Conduct and the importance to humanitarian coordination of shared meanings, common understandings of the principles have emerged. These understandings that are common among NGOs are also shared with the UN system, and are outlined below. Additionally, there is rich literature on the meanings of the core humanitarian principles and the tensions between them and praxis,¹⁷⁶ which has influenced how the core principles are understood by NGOs.

1977/article-18/commentary/1987. See also Dapo Akande and Emanuela-Chiara Gillard, "Arbitrary Withholding of Consent to Humanitarian Relief Operations in Armed Conflict", *International Legal Studies*, Vol. 92, 2016; Dapo Akande and Emanuela-Chiara Gillard, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict*, OCHA and University of Oxford, 2016, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/Oxford%20Guidance%20pdf.pdf>.

176 See the sources cited elsewhere in this article, particularly at above notes 1 and 2, and Marion Harroff-Tavel, "Neutrality and Impartiality: The Importance of these Principles for the International Red Cross and Red Crescent Movement and the Difficulties Involved in Applying Them", *International Review of the Red Cross*, Vol. 873, No. 273, 1989; Hugo Slim, "Relief Agencies and Moral Standing in War: Principles of Humanity, Neutrality and Solidarity", *Development in Practice*, Vol. 7, No. 4, 1997; Andy Storey, "Non-Neutral Humanitarianism: NGOs and the Rwanda Crisis", *Development in Practice*, Vol. 7, No. 4, 1997; Nicholas Leader, "Proliferating Principles; or How to Sup with the Devil without Getting Eaten", *Disasters*, Vol. 22, No. 4, 1998; Larry Minear, "The Theory and Practice of Neutrality: Some Thoughts on the Tensions", *International Review of the Red Cross*, Vol. 81, No. 833, 1999; Robin Coupland, "Humanity: What Is It and How Does It Influence International Law?", *International Review of the Red Cross*, Vol. 83, No. 844, 2001; Antonio Donini, "Between a Rock and a Hard Place: Integration or Independence of Humanitarian Action", *International Review of the Red Cross*, Vol. 93, No. 881, 2011; Antonio Donini (ed.) *The Golden Fleece: Manipulation and Independence in Humanitarian Action*, Kumarian Press, Sterling, VA, 2012; Scott Paul and Elizabeth Holland, "Principled Humanitarian Organizations and the Use of Force: Is There Space to Speak Out?", *DePaul International Human Rights Law Journal*, Vol. 1, No. 1, 2015; Heather Rysaback-Smith, "History and Principles of Humanitarian Action", *Turkish Journal of Emergency Medicine*, Vol. 15, Supp. 1, 2015; Andrew Thompson, "Humanitarian Principles Put to the Test: Challenges to Humanitarian Action during Decolonization", *International Review of the Red Cross*, Vol. 97, No. 897–898, 2016; Amelia B. Kyazze, "Walking the Walk: Evidence of Principles in Action from Red Cross and Red Crescent National Societies", *International Review of the Red Cross*, Vol. 97, No. 897–898, 2016; Sophia Hoffmann, "Impartiality", in Antonio De Lauri (ed.), *Humanitarianism: Keywords*, Brill, Leiden, 2020; Jon Harald Sande Lie, "The Humanitarian–Development Nexus: Humanitarian

The UN system

Legal character

Several provisions of General Assembly Resolution 46/182 make clear that it applies to the entire UN system.¹⁷⁷ The fourth preambular paragraph notes that the Assembly is mindful of the need “to strengthen further and make more effective the collective efforts of the international community, *in particular the [UN] system*, in providing humanitarian assistance”.¹⁷⁸ The resolution’s operative paragraph adopts the text in the annex to strengthen “the coordination of emergency humanitarian assistance *of the [UN] system*”.¹⁷⁹ The resolution has been appropriately called “humanitarianism’s ‘magna carta’”.¹⁸⁰

While Resolution 46/182 applies to the whole UN system, whether a given component of that system is bound by the resolution in general and by obligation to act “in accordance with the principles of humanity, neutrality and impartiality” in particular depends on its relationship with the General Assembly. This is determined by the UN Charter and, to a lesser extent, by established practice. General Assembly resolutions are not binding for member States,¹⁸¹ nor are they binding for the specialized agencies, such as the Food and Agriculture Organization (FAO), which are distinct international organizations. The General Assembly is, however, “vested with an oversight role in relation to its fellow principal organs”, and its “ability to influence the actual functioning of its fellow organs varies depending on the particular principal organ”.¹⁸² The General Assembly “has had a large influence on the functioning of the Secretariat, including the establishment and reform of its administrative structure”.¹⁸³ This competence enabled the General Assembly to create, with Resolution 46/182, the role of Emergency Relief Coordinator within the UN Secretariat, and a secretariat, now known as OCHA, to support this high-level official.¹⁸⁴ As OCHA was created by Resolution 46/182, it is clearly governed by that resolution.

Principles, Practice, and Pragmatics”, *Journal of International Humanitarian Action*, Vol. 5, No. 18, 2020; Francesca Romeo, “Humanity”, in Antonio De Lauri (ed.), *Humanitarianism: Keywords*, Brill, Leiden, 2020; Tristan Ferraro, “International Humanitarian Law, Principled Humanitarian Action, Counterterrorism and Sanctions: Some Perspectives on Selected Issues”, *International Review of the Red Cross*, Vol. 103, No. 916–917, 2021.

177 The technical meaning of “UN system” is outlined above at note 29.

178 UNGA Res. 46/182, above note 31, preambular para. 4 (emphasis added).

179 *Ibid.*, para. 1 (emphasis added).

180 Michael O’Flaherty, “The Human Rights Field Operation in Partnership for Humanitarian Relief and Reconstruction”, in Michael O’Flaherty (ed.), *The Human Rights Field Operation: Law, Theory and Practice*, Ashgate, Hampshire, 2007, p. 160.

181 UN Charter, above note 109, Art. 10.

182 Rosalyn Higgins, Philippa Webb, Dapo Akande, Sandesh Sivakumaran and James Sloan, *Oppenheim’s International Law: United Nations*, Oxford University Press, Oxford, 2017, p. 51. See also ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, para. 105.

183 *Ibid.*, para. 53; UN Charter, above note 109, Art. 101(1).

184 UNGA Res. 46/182, above note 31, Annex, paras 34, 36.

The General Assembly can create subsidiary organs,¹⁸⁵ including funds, programmes and other forms of subsidiary organ. Funds and programmes relevant to humanitarian action established by the General Assembly include the UN Children’s Fund (UNICEF),¹⁸⁶ the UN Development Programme (UNDP),¹⁸⁷ the UN Population Fund (UNFPA)¹⁸⁸ and the World Food Programme (WFP); the latter was established jointly by the General Assembly and FAO.¹⁸⁹ Other subsidiary entities engaged in humanitarian action include UNHCR¹⁹⁰ and the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).¹⁹¹

Organs subsidiary to the General Assembly may be bound by Resolution 46/182 if there is a basis for this in the organ’s governance structure. UNHCR is bound by 46/182 pursuant to its Statute, which provides that the High Commissioner acts “under the authority of the General Assembly” and must “follow policy directives given [to] him by the General Assembly”.¹⁹² Indeed, as a matter of practice, UNHCR aims to operate in accordance with the core four principles.¹⁹³ UNRWA’s Commissioner General is advised and assisted by an Advisory Commission composed of member States,¹⁹⁴ although the Commissioner General is ultimately “responsible to the General Assembly for the operation of the programme”.¹⁹⁵ UNRWA is thus also bound by Resolution 46/182. UNICEF, UNDP and UNFPA are not directly governed by the General Assembly, but by executive boards “responsible for providing inter-governmental support to and supervision of the activities of each fund or programme *in accordance with the overall policy guidance of the General Assembly and [ECOSOC]*”.¹⁹⁶ Such policy guidance includes Resolution 46/182. The core humanitarian principles are indeed apparent in the documentation of these funds and programmes, such as UNICEF’s *Core Commitments for Children in Humanitarian Action*.¹⁹⁷ WFP is governed by an executive board composed of UN and FAO member States,¹⁹⁸ which is subject to policy guidance from the General Assembly and ECOSOC,¹⁹⁹ as well as from certain FAO bodies. WFP is thus also bound by Resolution 46/182. Indeed, the core principles appear in WFP’s ethics document, which specifies that its “humanitarian response is rooted

185 UN Charter, above note 109, Art. 22.

186 UNGA Res. 57 (I), 11 December 1946.

187 UNGA Res. 2029 (XX), 22 November 1965.

188 UNGA Res. 3019 (XXVII), 18 December 1972.

189 UNGA Res. 1714 (XVI), 19 December 1961.

190 UNGA Res. 428 (V), 14 December 1950.

191 UNGA Res. 302 (IV), 8 December 1949.

192 UNGA Res. 428 (V), above note 190, Annex, paras 1, 3.

193 UNHCR, above note 16.

194 UNGA Res. 302 (IV), above note 191, para. 8.

195 *Ibid.*, para. 9(3).

196 UNGA Res. 48/162, 14 January 1994, Annex, para. 21 (emphasis added).

197 UNICEF, *Core Commitments for Children in Humanitarian Action*, 2020, p. 10, available at: [www.unicef.org/media/87611/file/Core%20Commitments%20for%20Children%20\(English\).pdf](http://www.unicef.org/media/87611/file/Core%20Commitments%20for%20Children%20(English).pdf); further examples are provided in Annex 3 below.

198 UNGA Res. 50/8, 1 November 1995, para 1.

199 UNGA Res. 48/162, above note 196, Annex, para. 30.

in the core humanitarian principles of humanity, neutrality, impartiality and operational independence”.²⁰⁰

General Assembly Resolution 58/114 recognized in 2003 that independence “is also an important guiding principle for the provision of humanitarian assistance”.²⁰¹ This lacks the mandatory language of Resolution 46/182, and further, independence is addressed in a preambular paragraph rather than in the operative portion of Resolution 58/114. In treaties, “recitals in the preamble are not the appropriate place for stating obligations”;²⁰² the same is true of General Assembly resolutions. Thus, even components of the UN system over which the General Assembly has binding authority were not initially required to act in accordance with the principle of independence. More recently, however, General Assembly resolutions have routinely addressed independence alongside humanity, neutrality and impartiality and have not distinguished among the principles.²⁰³ This practice suggests that independence is now equally binding for the UN system – indeed, the view among OCHA personnel is that member States expect humanitarian action of the UN system to abide by all four principles.²⁰⁴

Resolutions 46/182 and 58/114 are not, however, the only sources of the core humanitarian principles for components of the UN system. Specific entities may be required to act in accordance with one or more of the core principles, as well as with other principles, pursuant to other resolutions of the General Assembly. For example, UNHCR’s Statute – a General Assembly resolution – provides that the “work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social”.²⁰⁵ Thus in addition to being bound to act in accordance with the principles in Resolutions 46/182 and 58/114, UNHCR is also required to operate apolitically and to be humanitarian and social.²⁰⁶

Normative content

Neither General Assembly Resolution 46/182 nor subsequent Assembly resolutions recalling and/or reaffirming 46/182 define humanity, neutrality or impartiality. Resolution 58/114 does, however, define independence as “the autonomy of humanitarian objectives from the political, economic, military or other objectives that any actor may hold with regard to areas where humanitarian action is being implemented”.²⁰⁷ The same definition of independence is used in subsequent

200 WFP, *Ethics in WFP*, 2020, p. 3, available at: <https://docs.wfp.org/api/documents/WFP-0000120630/download/>.

201 UNGA Res. 58/114, above note 33, preambular para. 5.

202 Richard Gardiner, *Treaty Interpretation*, Oxford University Press, Oxford, 2010, p. 186.

203 See, for example, UNGA Res. 76/124, 17 December 2021, para. 5.

204 Email from A. Buffler, above note 124.

205 UNGA Res. 428 (V), above note 190, Annex, para. 2.

206 On the meanings of these terms, see Sugino Kyoichi, “The ‘Non-Political and Humanitarian’ Clause in UNHCR’s Statute”, *Refugee Survey Quarterly*, Vol. 17, No. 1, 1998.

207 UNGA Res. 58/114, above note 33, preambular para. 5.

General Assembly resolutions.²⁰⁸ The documentation of relevant UN entities uses the same, or substantively the same, definition of independence.²⁰⁹

While not defined in Resolution 46/182, humanity, neutrality and impartiality are defined in non-binding documentation published by OCHA, UNHCR, UNICEF, UNRWA and WFP; UNDP and UNFPA do not define the humanitarian principles in publicly accessible documentation. These definitions demonstrate a system-wide UN understanding of these principles based in the Fundamental Principles of the Movement. Of the three principles, there is the most variation in how humanity is defined, which can likely be attributed to the absence of a definition of humanity in the Red Cross Statutes. Despite these minor variations, the essential elements of humanity are the same: responding to human suffering and protecting or saving human lives. Neutrality means that UN humanitarian actors will not engage in controversies of an ideological, political, racial or religious nature, nor will they take sides in hostilities. Impartiality includes proportionality and non-discrimination dimensions: the former requires that assistance be provided according to need alone, while the latter means that assistance must be provided without distinction on the grounds of class, gender, nationality, political opinion, race or religious belief. UNICEF distinguishes between sex and gender identity and specifies additional prohibited grounds of discrimination: ethnicity, language, disability and sexual orientation. WFP also additionally specifies ethnic origin but omits class. The OCHA, UNHCR, UNICEF, UNRWA and WFP definitions of humanity, neutrality and impartiality are reproduced in full at Annex 3. Additionally, the ILC elaborates its understandings of humanity, neutrality and impartiality in its commentary on Article 6 of the Draft Articles, though these definitions are limited to the disaster context.²¹⁰

These definitions of the three Resolution 46/182 principles are understood in the UN system in their broader context as part of a set of guiding principles on UN humanitarian assistance. These guiding principles also include the requirement that the “sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the [UN] Charter” and that humanitarian assistance “*should* be provided with the consent of the affected country”.²¹¹ The guiding principles also note that “[e]ach State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory”; the territorial State thus “has the *primary* role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory”.²¹²

208 See, for example, UNGA Res. 59/141, 15 December 2004, preambular para. 4; UNGA Res. 60/125, 15 December 2005, preambular para. 3; UNGA Res. 60/124, 15 December 2005, preambular para. 5.

209 See, for example, “Protection”, in UNHCR, above note 16; UNICEF, above note 197, p. 10; UNRWA, “Humanitarian Principles”, available at: www.unrwa.org/humanitarian-principles; WFP, above note 200, p. 3.

210 ILC, above note 136, paras 289(3)–(7).

211 UNGA Res. 46/182, above note 31, Annex, para. 3 (emphasis added). Eliasson described the language of “*should*” (cf. “*must*”) as a victory in the negotiation of Resolution 46/182: interview with J. Eliasson, above note 105.

212 UNGA Res. 46/182, above note 31, Annex, para. 4 (emphasis added).

States

Legal character

The core humanitarian principles are not binding on States as a matter of international law. For these principles to constitute international law, they would have to derive from one or more of the formal sources of international law listed in the Statute of the ICJ: treaties, customary international law and general principles of law.²¹³ Mačák has demonstrated that neither impartiality nor neutrality can be traced to any of these sources.²¹⁴ The same is true of humanity and independence.

While the Geneva Conventions and their Additional Protocols address humanitarian action in armed conflict and mention “humanity” in other contexts, they do not mention the humanitarian principles of humanity or independence. Rather, “humanity” features in terms of the principle of humane treatment and the Martens Clause,²¹⁵ both of which are distinct from the humanitarian principle of humanity. The Additional Protocols mention “humanitarian” in relation to the characteristics of relief actions, but not in the sense of imposing the principle of humanity on States in their humanitarian operations. Rather, as discussed above, conflict parties may not arbitrarily withhold their consent to relief operations that are “humanitarian”, as well as impartial and conducted without adverse distinction.²¹⁶

Further, there is no widespread State practice and *opinio juris* in humanitarian action, whether in armed conflict or in peacetime, that would elevate humanity and independence to the status of customary international law. States do, however, have an obligation under customary international law not to arbitrarily withhold consent to relief operations that are humanitarian, impartial and conducted without adverse distinction.²¹⁷

Finally, while there is no evidence that the independence of humanitarian action constitutes a general principle of law, it has been argued that “elementary considerations of humanity” constitutes one such general principle,²¹⁸ further to

213 ICJ Statute, above note 141, Art. 38(1).

214 K. Mačák, “A Matter of Principle(s)”, above note 5.

215 The principle of humane treatment is expressed in common Article 3 and in Article 27 GC IV, and requires that civilians are always treated humanely. On the Martens Clause, see Theodor Meron, “The Martens Clause, Principles of Humanity, and Dictates of Public Conscience”, *American Journal of International Law*, Vol. 94, No. 1, 2000; Yoram Dinstein, “The Principle of Proportionality”, in Kjetil Mujezinović Larsen, Camilla Guldahl Cooper and Gro Nystuen (eds), *Searching for a “Principle of Humanity” in International Humanitarian Law*, Cambridge University Press, Cambridge, 2013; Emily Crawford, “The Modern Relevance of the Martens Clause”, *ISIL Yearbook of International Humanitarian and Refugee Law*, Vol. 6, 2006.

216 AP I, Art. 70(1); AP II, Art. 18(2).

217 Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rule 55, available at: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1>.

218 Gerald Fitzmaurice, *The Law and Procedure of the International Court of Justice*, Cambridge University Press, Cambridge, 1986, p. 4; Nils Melzer, *Targeted Killing in International Law*, Oxford University Press, Oxford, 2008, p. 187, cited in K. Mačák, “A Matter of Principle(s)”, above note 5, p. 174.

the ICJ's judgment in the *Corfu Channel* case.²¹⁹ However, Mačák points out that in the *South West Africa* cases decided later, the ICJ rejected the notion that humanitarian considerations can generate legal obligations.²²⁰ He notes further that in *Nicaragua*, also decided subsequent to *Corfu Channel*, the ICJ limited “elementary considerations of humanity” to the narrower meaning contained in common Article 3.²²¹ Accordingly, like independence, humanity is not a general principle of law within the meaning of the Statute of the ICJ.

While the core principles are not binding on States under international law, UN member States are required to “consider” General Assembly resolutions.²²² Thus, the three principles in Resolution 46/182 and the Resolution 58/114 addition of independence are not irrelevant to States. Indeed, OCHA consistently stresses UN member States' responsibility – if not their legal obligation – to uphold the core four principles and promote their implementation within the UN system.²²³

While the core humanitarian principles are not binding on States as a matter of international law, this is not to say that certain States are not committed to upholding these or other humanitarian principles, in the sense of not impeding others' capacity to comply with them. EU member States have committed to uphold humanitarian principles (but not all four core humanitarian principles) under the TFEU, which provides that “[h]umanitarian aid operations shall be conducted in compliance with ... the principles of impartiality, neutrality and non-discrimination”.²²⁴ States may also be required to uphold humanitarian principles as a matter of policy. For example, the UK's Humanitarian Reform Policy provides that “[h]umanitarian action ... *should be* guided by the principles of humanity ... neutrality ... impartiality ... [and] independence”.²²⁵ The “core values” of the Office of US Foreign Disaster Assistance are “inspired by overarching and fundamental humanitarian principles of humanity, impartiality, and operational independence”.²²⁶ Denmark, Finland and France have also committed themselves to the core humanitarian principles via policy instruments or operational guidance documents.²²⁷ Germany commits itself to the

219 ICJ, *Corfu Channel Case (United Kingdom v. Albania)*, Judgment, *ICJ Reports* 1949, p. 4.

220 K. Mačák, “A Matter of Principle(s)”, above note 5, p. 175.

221 *Ibid.*

222 Jochen Frowein, “United Nations”, in R. Wolfrum (ed.), above note 137, para. 34.

223 Email from A. Buffer, above note 124.

224 TFEU, above note 42, Art. 214(2).

225 UK Department for International Development, *Saving Lives, Building Resilience, Reforming the System: The UK Government's Humanitarian Reform Policy*, 2017, p. 9 (emphasis added), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/659965/UK-Humanitarian-Reform-Policy1.pdf.

226 US Agency for International Development, Office of US Foreign Disaster Assistance, *Policy for Humanitarian Action*, 2015, p. 4, available at: https://2012-2017.usaid.gov/sites/default/files/documents/1866/Humanitarian%20Policy%20Framework_digital.pdf.

227 Ministry of Foreign Affairs of Denmark, *The World 2030: Denmark's Strategy for Development Cooperation and Humanitarian Action*, 2017, p. 21, available at: <https://uganda.um.dk/en/-/media/country-sites/uganda-en/front-page/the-world-2030-denmarks-strategy-for-development-cooperation-and-humanitarian-action.ashx>; Ministry of Foreign Affairs of Finland, *Finland's Humanitarian Policy*, 2012, pp. 11–12, available at: https://um.fi/documents/35732/48132/finlands_humanitarian_policy; French Minister for Europe and Foreign Affairs, *France's Humanitarian Strategy*,

core four principles, as well as to a focus on needs, to subsidiarity and to doing no harm.²²⁸

States are also bound to respect the humanitarian principles if required to do so by the UN Security Council. Security Council resolutions are binding on member States when mandatory language is used (in such cases, resolutions are termed “decisions”).²²⁹ When binding Security Council decisions mention the humanitarian principles, these typically require conflict parties to ensure humanitarian access so that humanitarian actors can deliver assistance in accordance with the principles;²³⁰ they are not decisions requiring State compliance with the humanitarian principles as such. However, such decisions are not unheard of: regarding the situation in Darfur, the Security Council demanded Sudan and others respect the principles.²³¹ More often, though, Security Council resolutions relating to the principles are non-binding. In relation to the Democratic Republic of the Congo, the Security Council called on “all parties to respect the principles of neutrality and impartiality in the delivery of humanitarian assistance”.²³²

The Security Council has also issued thematic resolutions mentioning the humanitarian principles. A 2009 resolution on the protection of civilians in armed conflict stressed “the importance for all, within the framework of humanitarian assistance, of upholding and respecting the humanitarian principles of humanity, neutrality, impartiality and independence”;²³³ “upholding” is addressed to States and “respecting” to other humanitarian actors. More recently, the Security Council emphasized “the importance of the principles of humanity, neutrality, impartiality and independence in the provision of humanitarian assistance” and reaffirmed “the need for actors engaged in such assistance in situations of armed conflict to promote and fully respect these principles”.²³⁴

Normative content

The principles’ content for States flows from applicable domestic or regional law or policy. Some States, such as the United States, do not define the principles. Others,

2018, p. 8, available at: www.diplomatie.gouv.fr/IMG/pdf/strategie_humanitaire_2018-_eng_cle4c3b27-3.pdf.

228 German Federal Foreign Office, *Federal Foreign Office Strategy for Humanitarian Assistance Abroad*, 2019, pp. 13, 15, available at: <https://tinyurl.com/7ae4wb34>.

229 UN Charter, above note 109, Arts 25, 103; ICJ, *South West Africa*, above note 182, paras 113–114.

230 See, for example, UNSC Res. 2060, 25 July 2012, para. 6; UNSC Res. 2113, 30 July 2013, para. 16; UNSC Res. 2230, 14 July 2015, para. 23; UNSC Res. 2277, 30 March 2016, para. 41; UNSC Res. 2296, 29 June 2016, para. 22.

231 UNSC Res. 2113, 30 July 2013, para. 16; see also UNSC Res. 2134, 28 January 2014, para. 26. OCHA worked with the Security Council over the years to promote more accurate language in its resolutions relating to humanitarian principles (review comment from Emanuela-Chiara Gillard, former OCHA staff, to author, 25 July 2023 (on file with author)).

232 UNSC Res. 1341, 22 February 2001, para. 12.

233 UNSC Res. 1894, 11 November 2009, para. 13.

234 UNSC Res. 2474, 11 June 2019, preambular para. 15; see also UNSC Res. 2286, 3 May 2016, preambular para. 15. For further examples of Security Council resolutions relating to the humanitarian principles, see OCHA, *Aide Memoire: For the Consideration of Issues Pertaining to the Protection of Civilians in Armed Conflict*, 2016, pp. 94–98.

such as the United Kingdom, do define the principles, in terms that are based on those of the Movement and are the same or substantially the same as those used in the UN system; select State definitions are reproduced in Annex 3.

While the content of humanitarian principles for States is determined by domestic or regional law or policy, it is worth noting that the ICJ has considered the nature of “humanitarian aid”. In *Nicaragua*, the Court defined such aid provided by States in terms of the first and second Fundamental Principles: humanity and impartiality. The Court cited the Movement’s articulation of these principles, as proclaimed by the 20th International Conference of the Red Cross in 1965, exactly and in full; it did not mention neutrality or independence.²³⁵ This is not to say that the ICJ regarded neutrality and independence as irrelevant. Rather, it is more likely that the Court focused on humanity and impartiality because these principles were the most pertinent to the issue under consideration: whether the United States’ provision of humanitarian aid solely to the Contras (and not to the Sandinistas) breached the international legal principle of non-intervention. The Court’s invocation of the Fundamental Principles is further evidence of their profound influence in relation to the core humanitarian principles.²³⁶

Conclusion

The core humanitarian principles are rooted in the Fundamental Principles of the Movement, the first four of which are humanity, impartiality, neutrality and independence. The core principles diffused from the Movement to humanitarian NGOs via the Code of Conduct, which was prepared at the suggestion of the Movement’s Council of Delegates and drafted by the IFRC and Oxfam-GB; the IFRC drafter presumably drew inspiration from his organization’s own Fundamental Principles. The core principles govern humanitarian action in the UN system pursuant to General Assembly Resolution 46/182 – whose drafters were also inspired by the Fundamental Principles – and Resolution 58/114.

This common origin in the Movement’s Fundamental Principles does not, however, imply that the core principles have the same legal character or normative content for all humanitarian actors. The principles’ legal character varies depending on their source for the actor concerned, and similarly, their normative content also derives from the source of the principles for the actor in question. While in practice the principles’ meanings are largely homogenous, reflecting their common Red Cross and Red Crescent origins, there are some variations, particularly in relation to neutrality. These common origins and largely shared meanings may have contributed, in addition to the principles’ evident value, to the common mischaracterization of them as binding as a matter of international law. The core

235 ICJ, *Nicaragua*, above note 8, para. 242.

236 For detailed analysis of the impact of *Nicaragua* on the meaning of impartiality and neutrality in humanitarian action, see F. Kalshoven, above note 5.

humanitarian principles simply do not derive from any of the sources of international law: treaties, international custom and general principles of law.

The fact that the core humanitarian principles do not come from international law should not be viewed as undermining them. While they are not derived from international law, the analysis above has demonstrated that, for most actors, the core humanitarian principles are indeed legally binding. For components of the Movement, this is by virtue of its Statutes. NGOs may be bound by internal governance document(s) and/or by any sectoral document that the organization has signed, such as the Code of Conduct. Since most UN humanitarian actors are subsidiary to the General Assembly, the principles are largely binding via its Resolutions 46/182 and 58/114. For States, the source of the commitment to uphold the principles is national and/or regional (e.g. EU) law and/or policy. Additionally, while the Geneva Conventions and their Additional Protocols do not make the principles legally binding for States, at least impartiality is a constitutive element of humanitarian action under IHL. In addition to acting impartially because this is required by the Red Cross Statutes, the Code of Conduct or General Assembly resolutions, humanitarian actors in armed conflict will act impartially because doing so privileges their assistance under IHL.

Once it becomes clear that humanitarian actors in every category are obliged or have strong reasons to comply with humanitarian principles, what may initially appear as constructive ambiguity – let us not challenge the notion that the humanitarian principles are international law, merely because we would like it to be so – becomes akin to confusion. Humanitarian actors should know why they must or should act in accordance with the principles; the incorrect idea that the principles are international law does not advance that end.

Annex 1: Humanitarian principles used or recognized by select bodies and States²³⁷

Entity	Principles
<i>Multilateral initiatives</i>	
AU Kampala Convention	Humanity, neutrality, impartiality, independence
Good Humanitarian Donorship Principles	Humanity, impartiality, neutrality, independence ²³⁸
<i>UN system</i>	
ILC (Draft Articles)	Humanity, neutrality, impartiality, non-discrimination
UNFPA	Humanity, impartiality, neutrality, independence ²³⁹
UNHCR	Humanity, neutrality, impartiality, independence – Statute: “The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social”
UNICEF	Humanity, neutrality, impartiality, independence
Secretariat (OCHA)	Humanity, neutrality, impartiality, independence
WFP	Humanity, neutrality, impartiality, operational independence
<i>Joint initiatives</i>	
Code of Conduct	See the above section on “The Notion of ‘the’ Humanitarian Principles”
Core Humanitarian Standard on Quality and Accountability	Humanity, impartiality, neutrality, independence ²⁴⁰

237 In this and the other Annexes, footnote citations are provided if the information is not already cited in the main text.

238 Good Humanitarian Donorship Initiative, *24 Principles and Good Practice of Humanitarian Donorship*, 2003, available at: www.ghdinitiative.org/assets/files/GHD%20Principles%20and%20Good%20Practice/GHD%20Principles.pdf.

239 UNFPA, *Minimum Standards for Prevention and Response to Gender-Based Violence in Emergencies*, 2015, available at: www.unfpa.org/sites/default/files/pub-pdf/GBVIE.MinimumStandards.Publication.FINAL_ENG.pdf.

240 CHS Alliance, *Core Humanitarian Standard on Quality and Accountability*, Group URD and the Sphere Project, 2014, available at: https://d1h79zlgft2zs.cloudfront.net/uploads/2020/06/Core_Humanitarian_Standard-English.pdf.

Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance

HAP

Sphere Handbook

Individual NGOs

International Rescue Committee (IRC)

MSF

Norwegian Refugee Council

Oxfam International

Save the Children

Humanity, neutrality, impartiality²⁴¹

Humanity, impartiality, neutrality, independence, participation and informed consent, duty of care, witness, redress, transparency, complementarity

Humanity, neutrality, impartiality, independence

Humanity, impartiality, neutrality, independence²⁴²

- Charter: non-discrimination, neutrality, impartiality, respect for professional codes of ethics, independence, volunteerism
- Chantilly Principles: medical action first, *témoignage*, respect for medical ethics, defence of human rights, concern for independence, impartiality, a spirit of neutrality, accountability and transparency, an organization of volunteers, operating as an association

Humanity, neutrality, independence, impartiality²⁴³

Impartiality, independence

Impartiality, independence²⁴⁴

Continued

241 IFRC, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*, adopted in 2007, Geneva, 2017, available at: https://disasterlaw.ifrc.org/sites/default/files/media/disaster_law/2020-09/1205600-IDRL-Guidelines-EN-LR.pdf.

242 IRC, *The IRC Way: Our Standards of Professional Conduct*, available at: www.rescue.org/sites/default/files/document/2802/englishirc-waycode-conducta4final.pdf.

243 Norwegian Refugee Council, *NRC Policy*, available at: www.nrc.no/globalassets/pdf/policy-documents/nrc-policy-paper_web.pdf.

244 Save the Children, "Humanitarian Response Policy and Advocacy", available at: www.savethechildren.org/us/what-we-do/global-policy-advocacy/humanitarian-crises.

Continued	
Entity	Principles
<i>International Red Cross and Red Crescent Movement</i> ICRC, IFRC and National Societies	Humanity, impartiality, neutrality, independence, voluntary service, unity, universality
<i>Select States</i> Canada	Humanity, neutrality, impartiality, independence ²⁴⁵
EU States (TFEU)	Impartiality, neutrality, non-discrimination
United Kingdom	Humanity, neutrality, impartiality, independence
United States	Humanity, impartiality, operational independence

Annex 2: The core humanitarian principles – who is bound by what?

Entity	Primary source of binding obligation	Primary source of voluntary commitment
<i>International Red Cross and Red Crescent Movement</i> ICRC, IFRC and National Societies NGOs	Red Cross Statutes	N/A

245 Government of Canada, “About Humanitarian Assistance”, 30 September 2020, available at: www.international.gc.ca/world-monde/issues_development-enjeux_developpement/response_conflict-reponse_conflicts/about_humanitarian-a_propos_humanitaire.aspx?lang=eng.

Individual NGOs	Internal governance document (e.g. charter, by-laws) if humanitarian principles are included	<ul style="list-style-type: none"> – Code of Conduct, if signed – Any other applicable codes and/or standards
<i>UN system</i>		
Secretariat (OCHA)	<ul style="list-style-type: none"> – UNGA Res. 46/182 19 December 1991 (humanity, neutrality and impartiality) – UNGA Res. 58/114, 17 December 2003 (independence) 	N/A
UNDP	<i>Ibid.</i>	N/A
UNFPA	<i>Ibid.</i>	N/A
UNHCR	<i>Ibid.</i>	N/A
UNICEF	<i>Ibid.</i>	N/A
UNRWA	<i>Ibid.</i>	N/A
WFP	<i>Ibid.</i>	N/A
<i>Select States</i>		
Denmark	– TFEU, Art. 214(2)	The World 2030: Denmark's Strategy for Development Cooperation and Humanitarian Action (2017)
Finland	<i>Ibid.</i>	Finland's Humanitarian Policy (2013)
France	<i>Ibid.</i>	France's Humanitarian Strategy 2018–2022
Germany	<i>Ibid.</i>	Federal Foreign Office Strategy for Humanitarian Assistance Abroad 2019–2023
UK	N/A	Saving Lives, Building Resilience, Reforming the System: The UK

Continued

Continued		
Entity	Primary source of binding obligation	Primary source of voluntary commitment
US	N/A	Government's Humanitarian Reform Policy (2017) Office of US Foreign Disaster Assistance Policy for Humanitarian Action (2015)

Annex 3: Definitions of the core humanitarian principles used in the UN system and State policy

Entity and source	Definitions
<p><i>UN system</i></p> <p>All UN entities below UNGA Res. 58/114 (2003)</p> <p>Secretariat (OCHA) OCHA on Message (2022)</p>	<p>Independence: “The autonomy of humanitarian objectives from the political, economic, military or other objectives that any actor may hold with regard to areas where humanitarian action is being implemented.”</p> <p>Humanity: “Human suffering must be addressed wherever it is found. The purpose of humanitarian action is to protect life and health and ensure respect for human beings.”</p> <p>Neutrality: “Humanitarian actors must not take sides in hostilities or engage in controversies of a political, racial, religious or ideological nature.”</p>

UNHCR

Emergency Handbook (2015)

Impartiality: “Humanitarian action must be carried out on the basis of need alone, giving priority to the most urgent cases of distress and making no distinction on the basis of nationality, race, gender, religious belief, class or political opinions.”

Humanity: “The principal motivation of humanitarian action is to save lives and alleviate suffering in a manner that respects and restores personal dignity. Accordingly, humanity is the principal driver for any response to a crisis, whether caused by conflict, violence or natural or man-made disaster.”

Neutrality: “The neutrality of humanitarian action is further upheld when humanitarian actors refrain from taking sides in hostilities or engaging in political, racial, religious or ideological controversies.”

Impartiality: “Humanitarian action is based solely on need, with priority given to the most urgent cases irrespective of race, nationality, gender, religious belief, political opinion or class.”

UNICEF

Core Commitments for Children in Humanitarian Action (2020)

Humanity: “Human suffering must be addressed wherever it is found. The purpose of humanitarian action is to save lives, protect health and ensure respect for human beings. UNICEF upholds the principle that all girls, boys, women and men of every age shall be treated humanely and seeks to assist and protect any and every vulnerable child, treating them with dignity and respect.”

Neutrality: “UNICEF refrains from engaging in controversies of a political, racial, religious or ideological nature, and does not take sides in hostilities.”

Impartiality: “UNICEF allocates and delivers assistance based on needs and

Continued

Continued

Entity and source

Definitions

UNRWA²⁴⁶

without discrimination based on nationality, ethnicity, race, sex, language, disability, religious belief, class, sexual orientation, gender identity, [or] political or other opinions.”

Humanity: “Human suffering must be addressed wherever it is found. The purpose of humanitarian action is to protect life and health and ensure respect for human beings.”

Neutrality: “Humanitarian actors must not take sides in hostilities or engage in controversies of a political, racial, religious or ideological nature.”

Impartiality: “Humanitarian action must be carried out on the basis of need alone, giving priority to the most urgent cases of distress and making no distinctions on the basis of nationality, race, gender, religious belief, class or political opinions.”

WFP
Ethics in WFP (2020)

Humanity: “WFP will seek to prevent and alleviate human suffering wherever it is found and respond with food assistance when appropriate. It will provide assistance in ways that respect life, health and dignity.”

Neutrality: “WFP will not take sides in a conflict and will not engage in controversies of a political, racial, religious or ideological nature. Food assistance will not be provided to active combatants.”

Impartiality: “WFP’s assistance will be guided solely by need and will not discriminate in terms of ethnic origin,

246 See UNRWA, “Humanitarian Principles”, available at: www.unrwa.org/humanitarian-principles.

Select States

Denmark

Strategy for Danish Humanitarian Action 2010–2015 (2009)

nationality, political opinion, gender, race or religion.”

Humanity: “Human suffering must be addressed wherever it is found, with particular attention [paid] to the most vulnerable in the population. The dignity of all victims must be respected and protected.”

Neutrality: “Humanitarian aid must not favour any side in an armed conflict or other dispute.”

Impartiality: “Humanitarian aid must be provided solely on the basis of need, without discrimination between or within affected populations. Impartiality also implies making choices to favour those most likely to benefit from lifesaving aid.”

Independence: “The autonomy of humanitarian objectives from political, economic, military or other objectives must be observed, thus serving to ensure that the sole purpose of humanitarian aid remains to relieve and prevent the suffering of victims of humanitarian crises.”

Finland

Finland’s Humanitarian Policy (2013)

Humanity: “To save lives and alleviate human suffering wherever it is found and respecting the dignity of those affected.”

Impartiality: “Humanitarian action is based solely on need, without discrimination between or within affected populations.”

Neutrality: “Humanitarian action must not favour any side in an armed conflict or other dispute.”

Independence: “Humanitarian action is autonomous of political, economic, military or other objectives.”

Continued

Continued

Entity and source

UK
The UK Government's
Humanitarian Reform Policy
(2017)

Definitions

Humanity: "Human suffering must be addressed wherever it is found. The purpose of humanitarian action is to protect life and health and ensure respect for human beings."

Neutrality: "Humanitarian actors must not take sides in hostilities or engage in controversies of a political, racial, religious or ideological nature."

Impartiality: "Humanitarian action must be carried out on the basis of need alone, giving priority to the most urgent cases of distress and making no distinctions on the basis of nationality, race, gender, religious belief, class or political opinions."

Independence: "Humanitarian action must be autonomous from political, economic, military or other objectives that any actor may hold in areas where humanitarian action is being implemented."