

Helpdesk Research Report

Ground rules for military conduct

Siân Herbert

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Question

Looking at ICRC (and/or other organisations, in one instance at least ICRC and NGOs) development of ground rules for military conduct in recent conflicts, provide a list of principles that they have asked parties to the conflict to sign up to, and the process used to get parties to sign.

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1. Overview

Under international humanitarian law (IHL), all parties involved in non-international armed conflicts – whether state actors or non-state armed groups – should comply with international standards of behaviour. In many contexts, humanitarian organisations broker ‘ground rules’ with state and non-state actors to ensure compliance with IHL standards.

This report focuses on agreements involving non-state actors, and particularly focuses on the International Committee of the Red Cross (ICRC), according to the question. However, **the literature base in this area is very limited**. While there is significant reference in academic papers to ‘ground rules’, there is little documentation of the actual agreements, unless they are very formal agreements such as the well documented example of the ground rules ‘Operation Lifeline Sudan’. The UN has provided the most details

regarding ground rules – these usually document ground rules between humanitarian organisations. This provides the evidence used as examples in this report.

While each humanitarian organisation agrees some form of ‘ground rules’ with each actor in the areas they operate in, these **agreements are very rarely made publicly available**. ICRC’s agreements are always confidential, and vary greatly according to the actor and context (expert input). Many agreements are verbal; others may have written consent, but are not generally formalised in written agreements, and the ICRC never signs official agreements with conflict parties (expert input). ICRC operates under what is called “the confidential approach” – this is based on the objective of “persuading an authority to meet its obligations without resorting to public pressure” (ICRC, 2012, p.3). Confidentiality is also a key principle underpinning the work of many humanitarian actors working in sensitive conflict environments.

This rapid literature review explains the type of agreements brokered by humanitarian organisations in conflict situations, the underlying principles for these agreements, and the method and process two organisations use to broker these agreements (the ICRC and the UN). It then outlines five case studies of ground rules: Operation Lifeline Sudan; the Somalia NGO Consortium’s Operating Principles and Red Lines; the Basic Operating Guidelines in Nepal; the Principles and Protocols of Humanitarian Operation in Liberia; and the Principles of Engagement for Emergency Humanitarian Assistance in the Democratic Republic of Congo.

2. Ground rules for military conduct – principles and process

2.1 The principles

Since the mid-1990s, IHL has expanded its coverage of non-international armed conflicts.¹ Various treaties have been drafted or revised to regulate the conduct of states and non-state armed groups party to such conflicts. IHL is binding on both state actors and non-state armed groups (GSDRC, 2013).

Common Article 3(2) of the Geneva Conventions encourages parties to a non-international armed conflict to conclude ‘special agreements’ through which all or parts of the other provisions of the Conventions (applicable to international armed conflict) are brought into force (GSDRC, 2013). At the same time, the activities of international organisations are bound by ‘core humanitarian principles’ (humanity, neutrality, and impartiality) and humanitarian negotiations should proceed according to the relevant bodies of law including: IHL, international human rights law, and international criminal law (especially the Rome Statute of the International Criminal Court) (McHugh & Bessler, 2006).

2.2 Ground rules

The term ‘ground rules’ is a broad term that can include various types of formal and less formal agreements between actors involved in conflict situations. These terms are not used consistently throughout the literature, and other terms are also used to refer to ground rules, including memorandums of understanding, operating principles, principles of engagement, codes of conduct, and/or red lines (Egeland, Harmer & Stoddard, 2011). These agreements can cover the military conduct of parties engaged in the conflict; others provide frameworks for humanitarian assistance during a conflict.

¹ This section draws on the 2013 GSDRC topic guide ‘International legal frameworks for humanitarian action’ <http://www.gsdr.org/docs/open/ILFHA.pdf>

There are two general categories of ground rules (McHugh & Bessler, 2006, p.63):

- 1) Ground rules agreed among multiple humanitarian organisations, or for humanitarian organisations and host/third-party national governments; and
- 2) Ground rules for humanitarian organisations and armed groups.

Regarding the second category, UN guidelines on humanitarian negotiations with armed groups defines ground rules as: “To seek agreement with an armed group on a basic operational framework – consisting of humanitarian principles, operating guidelines and commitments of both parties to ensure the safe and efficient provision of humanitarian assistance and protection (often referred to as ‘Ground Rules’ agreements)” (McHugh & Bessler, 2006, p.2). Egeland, et al. (2011, p.25) explain that the “practice of systematic coordination between humanitarian actors and military actors” is known as “deconfliction” and that it is “being practised in every instance of successful civil-military coordination, even where practitioners do not use the term”.

2.3 The process

Different humanitarian actors have different approaches to negotiating ground rules. The NGO Coalition to Stop the Use of Child Soldiers (2006) has produced a useful bibliography on approaching armed groups in 2006 which outlines different approaches and guidelines. This section explores the approaches of two principal actors – the ICRC and the UN.

ICRC

Under Article 3 common of the Geneva Conventions, in non-international armed conflicts, the ICRC is mandated with the “right of humanitarian initiative”.² The ICRC maintains a dialogue with all actors involved in a conflict situation. ICRC explains that it does this by using the following tools: “dissemination sessions [to increase understanding of IHL principles and obligations], first-aid courses, advanced courses for commanders; practical support to incorporate IHL into training, education, doctrine and sanctions; and policy tools such as unilateral declarations and special agreements between the parties can also be provided by the ICRC to specific armed groups”.³

The agreements ICRC makes with actors vary greatly according to the context and the actors. These agreements are not documented publically; many are verbal only, some are private but formal, others are highly informal and involve minimal communication (expert input). ICRC does not co-sign public documents with groups, and it does not publish details of its relationships with specific groups, nor on the process of negotiation (expert input). Confidentiality is a key principle of ICRC’s work (ICRC, 2012). ICRC has not published a guidance document with general principles on dialogue or ground rules, as situations and actors vary so greatly that it would not be possible or useful to provide a general guidance note (expert input).

² See - <http://www.icrc.org/eng/who-we-are/mandate/overview-icrc-mandate-mission.htm>

³ See - <http://www.icrc.org/eng/what-we-do/building-respect-ihl/dialogue-weapon-bearers/other-weapons-bearers/overview-icrc-other-weapon-bearers.htm>

UN

The UN has published guidelines on how to negotiate with armed groups, and a section of this explores how to negotiate ground rules for humanitarian action. It notes that elements of a ground rules agreement could include details of (McHugh & Bessler, 2006, pp.64-5):

- **Purpose and scope:** listing of participants/signatories; scope (what do the agreed rules cover); and duration (are the rules time limited?)
- **Guiding instruments:** Applicable elements of IHL, International Human Rights Law (IHRL); statement of recognition for these elements; of IHL, IHRL; obligations of parties to the agreement.
- **Humanitarian principles:** statement and recognition of core humanitarian principles; statement of relevant humanitarian policies.
- **Definition of operational principles:** Operating guidelines for issues to be covered by agreement, including some/all of: identification of humanitarian workers, vehicles and property; free passage of humanitarian workers; tolls, rents and taxes.
- **Implementation:** criteria for evaluating and monitoring implementation; obligations of both parties to ensure implementation; the process of implementation.
- **Dispute resolution:** stipulation of dispute resolution mechanisms.

Page 85 of the UN guidelines notes that an accompanying CD-ROM includes additional resources including: samples of written agreements between humanitarian organisations and other actors. It was not possible to request a copy of the CD-ROM in the timeframe of this report, however contact details in the report are: Office for the Coordination of Humanitarian Affairs, United Nations (+1 212 963-1234 ochany@un.org).

3. Case studies

3.1 Sudan⁴

The Operation Lifeline Sudan (OLS) was designed in April 1989 during the Second Sudanese Civil War between the Khartoum-based government in the North and the Sudan People's Liberation Army (SPLA) in the South. Displacement and starvation occurred on a large scale. OLS involved a 'negotiated access' model, whereby a trilateral agreement was reached in 1989 by the United Nations, the Sudanese government and the SPLA in order to access affected areas in the South (and to a lesser extent the North). While originally based solely on 'mutual understandings', the OLS later adopted signed written agreements with the rebel movements on 'ground rules'. These rules involved acknowledgement of the need for protection of civilians for aid delivery; the right of civilians to live in safety and dignity; and the principle that humanitarian assistance must be provided in accordance to considerations of need alone, independent of political factors. OLS set an important precedent that it is possible to negotiate access to areas of conflict; and to obtain acknowledgement from both warring sides of the need to provide civilians with humanitarian relief and to facilitate safe delivery. It contributed to the distribution of large amounts of food and other relief supplies to southern Sudan, which helped significantly in relieving famine and suffering.

⁴ This section draws heavily from the GSDRC topic guide International Legal Frameworks for Humanitarian Action, <http://www.gsdrc.org/docs/open/ILFHA.pdf>

3.2 Somalia

Egeland, et al. (2011) examine the Somalia NGO Consortium's 'Operating Principles and Red Lines' (2009), which acted as 'ground rules' for humanitarian organisations in the country. The objective of the rules was to ensure that a collective response to staff threats, kidnap, or death in Somalia (ibid). It identified three 'red lines' (ibid):

- direct payment (material or cash) for access to people in need
- payment of taxes, registration fees, or other forms of payment to armed groups
- transfer of humanitarian goods to any party to the conflict for distribution

Failure to comply with the red lines was to lead to the suspension (or closure) of a programme (ibid). It also included commitments to share information and details of access to groups.

In Somalia, ground rules were also agreed by the Interagency Standing Committee (IASC) – this committee is the primary mechanism for coordination of humanitarian assistance, and includes the key UN and non-UN actors (IASC Somalia, 2009). The ground rules were agreed by and apply to the IASC members, to cover their own activities. The ground rules set out five obligations (pp.1-2):

- "Agreements negotiated between the humanitarian community and local authorities – and any assistance arising out of such agreements – should not cause harm to civilians or undermine their security, safety, and dignity. Nor should these agreements undermine or negatively affect the activities of other humanitarian agencies.
- All humanitarian workers must commit to act and deliver assistance and services in accordance with the humanitarian principles; and equally local authorities should commit to these principles.
- The humanitarian community will strive to work in a transparent manner with openness and clarity about the purpose and objectives of activities to be undertaken, which will be shared with the relevant beneficiary communities, local authorities, and coordinated with other humanitarian agencies.
- A local authority's primary role is to assist and protect civilian populations under their control, and allowing unhindered and unencumbered access those in need.
- Local authorities assume the full responsibility for the safety and security of humanitarian workers and their equipment in areas under their control, which includes protection from any form of threat, interference, harassment, or hostility. Agencies are ultimately responsible for the safety and security of their staff, where an agency decides to remove staff from any location this will be supported by local authorities."

It also details four areas of agreement on operational issues including: property; staff; registration; taxes and duties (p.2).

3.3 Nepal

Basic Operating Guidelines (BOGs) were agreed in 2003 between 10 donors in Nepal, with the objective of ensuring staff "protection from any challenges to operational space for development", amid conflict in the country (UN, n.d., p.6). In 2007, a unified set of BOGs was agreed by more bilateral and multilateral donors (including the UN agencies) and the Association of International NGOs in Nepal (ibid). This consolidated

and replaced three sets of BOGs that the different signatories had previously used. In 2003, a BOGs Groups was set up to “provide a forum to establish common positions on operational space issues, share experiences amongst BOGs members and disseminate examples of best practice”.⁵ In 2009 a fulltime BOGs Secretariat was set up.

The BOGs have also influenced other actors. In 2005, the Communist Party of Nepal (CPN) (Maoist) Central Committee released a press statement stating “we appreciate in principle the Basic operating Guidelines of the United Nations and other development agencies & organizations operating in Nepal and have instructed cadres and local people's representatives to cooperate with it as per the specific situation of the place. We also appeal to the international community and development agencies to work in regular consultation and cooperation with our party...” (CPN (Maoist), n.d., p.1). The BOGs also stipulate that any activities funded by BOGs signatories (e.g. service deliver, or activity with NGOs) must comply with BOGs standards, and these should be documented in the respective contracts.

The BOGs sets out 14 principles (p.1):

- “We are in Nepal to contribute to improvements in the quality of life of the people of Nepal. Our assistance focuses on reducing poverty, meeting basic needs and enabling communities to become self-sufficient.
- We work through the freely expressed wishes of local communities, and we respect the dignity of people, their culture, religion and customs.
- We provide assistance to the poor and marginalized people of Nepal, regardless of where they live and who they are. Priorities for assistance are based on need alone, and not on any political, ethnic or religious agenda.
- We ensure that our assistance is transparent and we involve poor people and their communities in the planning, management and implementation of programmes. We are accountable to those whom we seek to assist and to those providing the resources.
- We seek to ensure that our assistance tackles discrimination and social exclusion, most notably based on gender, ethnicity, caste and religion.
- We recruit staff on the basis of suitability and qualification for the job, and not on the basis of political or any other considerations.
- We do not accept our staff and development partners being subjected to violence, abduction, harassment or intimidation, or being threatened in any manner.
- We do not work where staff are forced to compromise core values or principles.
- We do not accept our assistance being used for any military, political or sectarian purposes.
- We do not make contributions to political parties and do not make any forced contributions in cash or kind.
- Our equipment, supplies and facilities are not used for purposes other than those stated in our programme objectives. Our vehicles are not used to transport persons or goods that have no direct connection with the development programme. Our vehicles do not carry armed or uniformed personnel.

⁵ See - <http://www.un.org.np/thematicareas/bogs>

- We do not tolerate the theft, diversion or misuse of development or humanitarian supplies. Unhindered access of such supplies is essential.
- We urge all those concerned to allow full access by development and humanitarian personnel to all people in need of assistance, and to make available, as far as possible, all necessary facilities for their operations, and to promote the safety, security and freedom of movement of such personnel.
- We expect and encourage all parties concerned to comply strictly with their obligations under international humanitarian law and to respect human rights”.

3.4 Philippines

In 1998, the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDF) (an alliance of seventeen organisations led by the Communist Party of the Philippines (CPP) and its armed wing, the New People's Army (NPA)) signed the Comprehensive Agreement on the Respect for Human Rights and International Humanitarian Law (CARHRIHL). Key objectives of the agreement are to protect civilians and ex-combatants. The CARHRIHL is divided into six parts, with numerous principles.⁶ An article published by ICRC summarises the main areas of the agreement, these include (Muyot & Yambao, 1999):

- Distinction between civilians and combatants.
- Special protection for children.
- Guidelines for the conduct of warfare and use of weapons.
- Precautions in attacks.
- “Stay-put policy”.
- Prohibited weapons.
- Negotiation with the other side.
- Prohibition on pillage.
- Identification.
- Protecting the civilian population against starvation.
- Protection from attack on medical and religious personnel and medical facilities.
- Protecting cultural objects.
- Treatment of the individual in connection with armed conflict.
- Obligation to give quarter.
- Persons in detention or otherwise in the hands of a hostile party.
- Release and return.
- Displacement and treatment of displaced persons.

⁶ See the agreement here - <http://peacebuilderscommunity.org/documents/CARHRIHL.pdf>

Sarmiento (2005, p.73, p.75) explains that “a number of procedural agreements” including setting up the Joint Agreement on Safety and Immunity Guarantees (JASIG) helped “pave the way” for informal and formal peace negotiations, and the entry of the Royal Norwegian Government as third-party facilitator. According to Sarmiento (2005, p.73), CPP/NPA/NDF claimed that third-party facilitation by the Dutch government “raised the level of seriousness of the GRP-NDFP negotiations” (1992 to 2001).

3.5 Liberia

In 1995-1996 the humanitarian community developed two interagency mechanisms in Liberia, to increase adherence to IHL and to “reduce the extent to which their assistance was manipulated”, notes Atkinson and Leader (2000, p.2). In 1995, UN and NGO agencies agreed on ‘The Principles and Protocols of Humanitarian Operation’ (PPHO). Then in 1996, following significant looting of relief resources, NGOs formulated another agreement – ‘The Joint Policy of Operation’ (JPO) (Atkinson and Leader, 2000, p.2).

Atkinson and Leader (2000, p.20) note that this later became the standard upon which similar agreements were drawn up for Sierra Leone (‘The Code of Conduct for Humanitarian Agencies in Sierra Leone’ – 1998) and the Democratic Republic of the Congo (‘The Principles of Engagement for Humanitarian Assistance in the DRC’ – 1999).

The principles section of PPHO details five principles: impartiality, neutrality, independence, consent and targeted assistance (Atkinson and Leader, 2000, p.21). A protocols section in the PPHO highlights six issues: impartiality; negotiating with factions; armed escorts; forbidding payments for access at all levels; safety of staff and property; and solidarity.

3.6 Democratic Republic of Congo⁷

The Principles of Engagement for Emergency Humanitarian Assistance in the Democratic Republic of Congo were agreed in 1999, in response to a declining humanitarian situation in the country, and general increased security risks (UN, 1999). The document notes that “the set of principles is addressed to the international humanitarian community as well as to the political and military authorities” (UN, 1999, p.1).

The principles section of the agreement details commitments that the UN agencies have agreed to, detailing eight issue areas: impartiality; neutrality-apolitical nature of humanitarian aid; independence; human rights; participation; coordination; transparency; and accountability (UN, 1999). The protocols section addresses the parties to the conflict and details expected standards in five areas freedom of access; security; escorts; joint assessments and types of intervention; and monitoring and evaluation (UN, 1999).

4. References

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⁷ No robust evidence emerged during this rapid literature review on the process of coming to this agreement, or on whether the other actors responded to the agreement.

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Key websites

- International Committee of the Red Cross - <http://www.icrc.org/eng/>

Expert contributors

Alexis Heeb (ICRC Geneva)

Tim Holt (Alert-24)

Sean Maguire (ICRC UK and Ireland)

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