

Opinion on the World Humanitarian Summit

Plenary meeting of 12 February 2015

(Unanimously adopted)

1. At the initiative of the Secretary-General of the United Nations, the World Humanitarian Summit will take place in May 2016 in Istanbul¹. The purpose of the summit, the first event of its kind to be held on a global scale, will be to set "*the agenda for work beyond 2016 to make humanitarian action more effective, inclusive and global*"².
2. The preparatory process to the Summit is part of an approach designed to hear what all of the players concerned have to say on a number of themes³. The CNCDH, which operates in the fields of human rights, international humanitarian law and humanitarian action, has decided to contribute to reflection on the issues that will be dealt with at the Summit and more specifically on the final theme relating to "serving the needs of people in conflict". The present opinion therefore aims not only to enrich the French diplomatic position but also to contribute to future regional and theme-specific consultations that will take place in preparation for the Summit⁴.
3. The opinion produced by the CNCDH focuses on what it wants the Summit to reassert, namely the universal founding values of IHL and the principles of humanitarian action, and underlines a number of practical aspects of these 'basics'. The Summit must, of course, provide an opportunity for all players to make clear commitments with regard to the effective implementation of international humanitarian law and ensuring full compliance with humanitarian principles. Said principles guarantee the effectiveness of humanitarian aid and therefore of population protection.
4. The initial stages of the global Summit have revealed that the first thing those faced with armed conflict or any other situation of violence want is security. Given that human security means not only being protected against fear but also protected

¹ The Secretary-General of the United Nations announced that a World Humanitarian Summit would be held in 2016 at an event organised alongside the United Nations General Assembly's annual high-level debate in September 2013.

² World Humanitarian Summit document: *Brief overview of the four WHS themes*, p.1.

³ These themes are as follows: Humanitarian Effectiveness, Reducing Vulnerability and Managing Risk, Transformation through Innovation and Serving the Needs of People in Conflict.

⁴ Notably including the Middle-East and North Africa regional consultation on 3-5 March 2015, the Latin America and Caribbean regional consultation on 5-7 May 2015, the Pacific regional consultation on 30 June-2 July 2015, the South and Central Asia regional consultation in July 2015, the theme-specific consultation in September 2015 and the global consultation in October.

against need⁵, humanitarian action must be perceived as an essential factor in the protection of individuals.

5. The aim of humanitarian action is "to provide a needs-based emergency response aimed at preserving life, preventing and alleviating human suffering and maintaining human dignity wherever the need arises"⁶.
6. In view of the specific characteristics of armed conflict, the CNCDH wanted to focus its reflection on the issues raised by such situations. In this respect, it intends to look at both international and non-international armed conflict and other situations of violence (domestic discord, internal tension, etc.). In all such contexts, violence is the result of an intentional act that can present particular difficulties with regard to humanitarian action.
7. The Humanitarian Summit is therefore being held at a time when the players concerned are finding themselves faced with a situation of intensifying and increasing conflict, with very significant human⁷ and even generational⁸ consequences. If the Summit is to have meaning and not appear untimely or even inappropriate in view of the tragic situation in which many people who are either directly or indirectly affected by conflict find themselves⁹, it must endeavour to identify practical solutions for safeguarding and improving humanitarian action.

I. THE SUMMIT SHOULD REAFFIRM THE 'BASICS' FOR THE PURPOSES OF PROTECTING PEOPLE IN SITUATIONS OF ARMED CONFLICT AND OTHER SITUATIONS OF VIOLENCE

8. During periods of armed conflict, warring parties - both States and non-State armed groups - are primarily responsible for protecting the populations under their jurisdiction or control and meeting their needs. Nevertheless, they are not always in a position to fulfil their obligations or may not want to take action to provide an appropriate humanitarian response. In such cases, they must consent to "relief

⁵ As essential components of human security, security, peace, a respect for all human rights, democracy and development are inseparable concepts and are related and interdependent objectives. See notably the Saint-Boniface Declaration (Canada) adopted by the *Conférence Ministérielle sur la Prévention des Conflits et la Sécurité* (Ministerial Conference on Preventing Conflict and Security) on 14 May 2006 in the framework of the International Organisation of the French-Speaking World (OIF).

⁶ The European Consensus of Humanitarian Aid, *The humanitarian challenge*, 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, p.6.

⁷ In 2012, for example, 172 million people were affected by armed conflict, see Center for the Research on Epidemiology of Disasters, *People affected by conflict 2013, Humanitarian needs in numbers*, 2014, p.6. Furthermore, "by the end of 2013, the number of people internally displaced by armed conflict and generalized violence had increased to over 33.2 million, the highest figure recorded by the Internal Displacement Monitoring Centre. Although an estimated 1 million people were able to return home in 2013, over 8.1 million were newly displaced. The number of people fleeing their homes across borders also continued to increase dramatically. In mid-2013, the global refugee population stood at 11.1 million, 600,000 higher than six months earlier, and the figure was considered likely to increase"; see Secretary-General of the United Nations, *Strengthening of the coordination of humanitarian and disaster relief assistance of the United Nations*, General Assembly of the Economic and Social Council, 29 April 2014.

⁸ Acts of sexual violence committed in the context of armed conflict, for example, have serious repercussions on future generations.

⁹ Examples include, for example, Syria, the Central African Republic, South Sudan, the Democratic Republic of the Congo, Nigeria, the Ukraine, Iraq, Afghanistan, etc.

actions which are humanitarian and impartial in character"¹⁰ being undertaken during periods of armed conflict. Humanitarian action must be taken in accordance with the humanitarian principles of humanity, independence, neutrality and impartiality.

A. THE PIVOTAL ROLE OF INTERNATIONAL HUMANITARIAN LAW

9. The CNCDH wishes to reiterate the fact that the effective implementation of international humanitarian law (IHL) helps ensure respect for life and human dignity during periods of armed conflict. Failure on the part of warring parties to respect IHL, or indeed any other aspects of international human rights law, has an impact on the 'human toll' of an armed conflict (people killed, injured, maimed or displaced, refugees, etc.).
10. The parties to an armed conflict are bound by an absolute obligation to spare those who are not or no longer directly involved in the hostilities¹¹, by virtue of the absolute immunity by which such people are protected. In accordance with conventional and customary IHL, under no circumstances should such people be attacked or targeted by the parties to the conflict or be more exposed to situations in which they will inevitably suffer. They should not be used as a human shield or taken hostage either in the broader or stricter sense of the term. The CNCDH would like to highlight the case of those who are forced to move or trapped within areas that have become inaccessible.
11. The Summit should therefore demonstrate a degree of concern for improving the implementation of IHL by all parties to conflict and call for IHL control mechanisms to be reinforced. Preventing violations of IHL at national level, by adopting legislation that complies with IHL and the necessary means to ensure that it is observed, and fighting impunity for violations of IHL should be explicitly reaffirmed as crucial factors in improving the safeguarding and protection of people in situations of armed conflict.
12. It should also be borne in mind that human rights are intended to apply under all circumstances, including in other situations of violence that do not qualify as armed conflict in the framework of IHL and that do not, therefore, fall within its scope. In such contexts, basic humanitarian considerations should always prevail¹².

B. RESPECT FOR HUMANITARIAN PRINCIPLES SHOULD BE AT THE HEART OF THE WORLD HUMANITARIAN SUMMIT

13. The CNCDH believes that respect for the humanitarian principles of humanity, impartiality, independence and neutrality (hereafter referred to as the 'humanitarian principles'), as outlined fifty years ago by the International Red Cross and Red Crescent Movement and to which the main players in the humanitarian community have adhered ever since¹³, is a vital condition to the effectiveness of

¹⁰ Article 70 of Additional Protocol 1 and Article 18 of Additional Protocol 2 to the Geneva Conventions.

¹¹ See notably Melzer, N., *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, ICRC, 2010.

¹² International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, 27 June 1986.

¹³ These principles were ratified 50 years ago in *The Fundamental Principles of the International Red Cross and Red Crescent Movement* adopted in Vienna in 1965, at the 20th International Conference of the Red Cross. They were later recognised by a number of humanitarian organisations and in some cases modified slightly. See notably the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Government

humanitarian action in that it depoliticises it and therefore relieves it of any notion of power. This respect should be firmly placed at the heart of both the discussions of the World Humanitarian Summit and the results that it delivers.

1. Principle of humanity

14. At the forefront of the humanitarian principles lies the principle of humanity¹⁴. It lies at the root of IHL and represents the very essence of humanitarian action and what drives it intrinsically, whereas the other principles relate more to priorities pertaining to the way in which such action is perceived and implemented. The principle of humanity manifests itself in the unconditional nature of the aid provided and expresses the absolute need to prevent and alleviate human suffering. Humanitarian players are therefore "attentive to human misery"¹⁵. The decision to implement humanitarian action is based on both an individual and collective awareness of the primacy of human life and on constant vigilance. In this respect, this principle is a reflection of the humanity in humankind, through its core universal virtues of solidarity, compassion and selflessness¹⁶.

2. Principle of impartiality

15. The principle of impartiality requires humanitarian aid to be based solely on the needs of the people concerned, regardless of their belonging to a certain population, nation or party to the conflict. With this in mind, IHL provides that any aid provided must be impartial and that humanitarian aid must be provided by impartial humanitarian organisations¹⁷. The principle of impartiality is reinforced by the rejection of any form of discrimination based on ethnic origin, religion, gender, political views, etc. In accordance with this principle, particular attention must be paid to the most vulnerable groups in society (women, children, the elderly, the disabled, etc.).

3. Principle of independence

16. The principle of independence opposes any form of political, military, ideological or economic influence in humanitarian action. This principle must enable any humanitarian organisation to make independent strategic choices with regard to political, economic and military players.

Organisations (NGOs) in Disaster Relief, produced jointly by the International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross, 1993; The European Consensus of Humanitarian Aid, *The humanitarian challenge*, 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, 2007; Resolution AGNU 57/152, 3 March 2003.

¹⁴ In the new 2014 ICRC publication this principle is referred to as a 'basic principle', the others being 'derived principles', see *The Fundamental Principles of the Red Cross and Red Crescent*, May 2014.

¹⁵ *The Fundamental Principles of the Red Cross and Red Crescent*, ICRC 1996, p.2.

¹⁶ See *The Fundamental Principles of the Red Cross and Red Crescent*, ICRC 1996, p.2-4.

¹⁷ Article 3 common to the four Geneva Conventions, Article 9 of Geneva Conventions I, II and III, Articles 10 and 59 of Geneva Convention IV, Article 70 of Additional Protocol I and Article 18 of Additional Protocol II.

4. Principle of neutrality

17. The principle of neutrality requires complete independence from any of the parties to an armed conflict and from any ideology or military strategy defended by the parties involved. Implementing humanitarian action out of solidarity with a party rather than out of a genuine concern for the actual needs of the people concerned therefore constitutes a breach of the principle of neutrality.

18. These four key humanitarian principles underlie humanitarian action and are reflected in its reason, its purpose and its meaning. They permeate all aspects of humanitarian action, from its very nature and its delivery to the players involved in its implementation. Ensuring that they are observed by players involved in the aid sector, as well as parties to conflict and donors, is crucial.
19. The principles are closely linked, and even interdependent, and must therefore be observed as a whole. Their observance is measured in practical terms through the adoption of behaviours that comply with the principles and helps to gain the trust of both the parties to an armed conflict and of civil populations, which is crucial to the delivery of the necessary aid and the protection of the people concerned. As the European Union confirms, "this principled approach is essential to the acceptance and ability of the EU, and humanitarian actors in general, to operate on the ground in often complex political and security contexts"¹⁸.
20. The Summit must emphasise the universality of these principles. The general movement towards globalisation should not bring with it a downturn in local idiosyncrasies but rather recognition of the universal nature of the values on which IHL is based and of the associated principles of action.

II. THE SUMMIT SHOULD ENCOURAGE ALL OF THE STAKEHOLDERS TO ASSESS THE PRACTICAL IMPLICATIONS OF THE HUMANITARIAN PRINCIPLES

21. Access to populations and the protection of humanitarian personnel are central factors in humanitarian assistance and population protection and will be considered once the concept of need has been examined. The roles of the various players involved in humanitarian action will be dealt with at the end, notably in light of the prerequisites required in order to prevent any politicisation of humanitarian aid.

A. NEED - THE *RAISON D'ETRE* OF HUMANITARIAN ACTION

22. The concept of need features in IHL provisions regarding assistance, where it is linked to survival and safeguarding human life. Having been implicit in the Geneva Conventions of 1949, it became more significant in the Additional Protocols of 1977¹⁹.

¹⁸ The European Consensus of Humanitarian Aid, *The humanitarian challenge*, 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, p.6.

¹⁹ See notably Article 23 of Geneva Convention IV, which refers to "essential foodstuffs", Article 55 of Geneva Convention IV, which refers to "ensuring the food and medical supplies of the population", Article 70 of Additional Protocol 1, which refers to "the civilian population... not adequately provided with the supplies" and

23. The issue of providing aid to populations should not, therefore, be affected by considerations that alienate it from its main goal of saving lives by meeting vital needs. Needs, as identified by means of independent evaluations, are the fairest objective and quantifiable criteria when it comes to justifying humanitarian action in the territory of a third State. It happens that in situations of armed conflict, those awaiting such aid are often located in particularly dangerous regions that are difficult to access, having fled the fighting or become trapped in the middle of it. The more isolated and difficult to reach they are, the greater their needs are likely to be. The Summit should therefore reiterate this primary objective and offer practical solutions for improving access to such people (see below).
24. Whilst need is the *raison d'être* of humanitarian action, the implementation of the latter must be based on the rights of the people concerned. Indeed, as the CNCDH has reiterated on a number of occasions²⁰, each victim should not only benefit from humanitarian assistance but also be considered to have certain rights that must be safeguarded by all those in power or in a position of control over a territory. The place of human rights within the various stages of humanitarian action must therefore be reinforced.

B. ACCESS: A KEY FACTOR IN HUMANITARIAN ACTION AND ONE THAT IS HIGHLY DEPENDENT ON THE HUMANITARIAN PRINCIPLES BEING OBSERVED

25. Humanitarian assistance to populations concerned inherently requires said populations to be able to access humanitarian aid and services, and access the personnel responsible for providing it. Respecting both IHL and the humanitarian principles requires both humanitarian players and the State or non-State armed groups to take all necessary measures in order to facilitate the access of aid and humanitarian personnel to those who need them.
26. According to Rule 55 of the ICRC's study on the customary IHL applicable to situations of international and non-international armed conflict, "parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need"²¹, including the populations of the party considered to be the enemy.
27. The humanitarian Summit might also take it further by expressly recognising people's right to actually receive the humanitarian assistance aimed at them.
28. Access to populations includes the provision of material assistance to the populations concerned as well as access to said populations for humanitarian workers, without which no aid could be provided. It goes without saying, as highlighted in the conditions of the aforementioned Rule 55, that this humanitarian access relates only to humanitarian assistance that is "impartial in character and conducted without any adverse distinction". Likewise, the status of humanitarian personnel should only concern those players with a truly humanitarian function, that is one that complies with the fundamental humanitarian principles and pursues exclusively humanitarian objectives. Players that claim to be humanitarian without

Article 18 of Additional Protocol 2, which cites "undue hardship owing to a lack of the supplies essential for [...] survival".

²⁰ See notably CNCDH, *Avis sur l'action humanitaire française*, 31 March 2011.

²¹ Henckaerts, J.-M. and Doswald-Beck, L., *Customary International Humanitarian Law - Volume I: Rules*, Bruylant-ICRC, 2006, p.193 *et seq.*

applying the corresponding fundamental principles would only cloud the perception of the humanitarian sector, and with serious consequences. Indeed, if a party to the conflict or an element of the population concerned believes the players involved in humanitarian action to be pursuing a political purpose, humanitarian access can become very difficult or even impossible, thus putting all of the humanitarian players involved at greater risk.

C. HUMANITARIAN PERSONNEL: THE NECESSARY RECOGNITION OF A SPECIFIC PROTECTION

29. The observance of the humanitarian principles by both humanitarian players and warring parties is vital to the protection of humanitarian personnel, which is itself vital to the protection of civilians, the access of humanitarian workers to populations in need and the access of populations in need to humanitarian aid²².
30. However, as the CNCDH highlighted in its opinion on the respect and protection of humanitarian workers of 22 May 2014, "there is no international status specific to humanitarian personnel that applies in all circumstances. It is, however, possible to identify a series of protection standards specific to certain situations and certain personnel, depending on the mission they are undertaking"; "this protection can vary depending on the field (medical or other) and the employing organisation (relief society or other)".
31. Rule 31 of the ICRC's study on customary IHL does, however, state that "humanitarian relief personnel must be respected and protected", whether the conflict is international or otherwise.
32. The CNCDH would therefore like to reiterate its recommendations aimed at increasing the protection for humanitarian personnel provided for by IHL, as outlined in its opinion of 22 May 2014. It would notably ask that humanitarian personnel be granted a specific international status that exceeds the provisions of IHL applying to their specific situation. The Summit should lead to such a status being proposed.
33. Humanitarian personnel must, of course, respect the sovereignty and the rights of the State in the territory in which they operate. Likewise, nationals of other States remain subject to the laws of the latter. Nevertheless, the impact that complying with safety regulations imposed by States may have on humanitarian action poses a problem.
34. Furthermore, the radical safety measures with which humanitarian players must sometimes comply in order to protect their employees can sometimes prove a stumbling block to the effectiveness of humanitarian aid in the most dangerous of areas, where the *raison d'être* of their mission is often the most strongly manifested. The danger can often stem from the specific targeting of such players by armed groups, which is itself caused by a poor understanding of the humanitarian aid mission or a deliberate desire to isolate the population and take it

²² In this respect, Security Council Resolution 2165 entitled '*Protection of Civilians in Armed Conflict*' focuses exclusively on the protection of humanitarian personnel, a way of 'highlighting the importance of humanitarian personnel in the protection of civilians and of considering them a cornerstone of civilian protection', v. Domestici-Met, M.-J., 'Le Conseil de sécurité et la Protection des civils en Syrie, Le rôle pivot de l'action humanitaire', in MELANGES H SLIM, to be published in 2015.

hostage. Again, in this respect, it is essential that the principles be circulated and effectively observed.

35. The Summit should make this issue one of its key focal points, given that it is an integral factor in the very existence of humanitarian aid and vital to its effectiveness.

D. ESSENTIAL CONDITIONS THAT HELP PROTECT HUMANITARIAN ACTION FROM ANY FORM OF POLITICISATION

36. The briefing document to the European regional consultation recognises that "the debate on the humanitarian principles has become entangled with the debate on the UN integration, UN peace-keeping and peace enforcement missions, as well as the increasing complexity of the political environment including the politicization of humanitarian aid and re-emergence of strong emphasis on national sovereignty in humanitarian emergencies"²³.
37. The CNCDH would like to further the analysis in order to capitalise on the lessons learnt from both the implementation of humanitarian action in recent decades and its repercussions on the principles themselves.
 1. The challenge: humanitarian action, now perceived as a component of international relations
38. Following the end of the Cold War and bipolarisation, the world witnessed the development of a new type of non-international conflict that sparked a great deal of emotion among opinion and the media, as well as an upsurge in humanitarian action and a change in the way it was perceived. Likewise, this geopolitical development resulted in a change in the way crises were managed, which, in turn, had an effect on humanitarian action.
39. Conflicts, in which the civilian nature of the populations appeared to have become lost behind their ethnic, linguistic, clan and/or religious background, caused millions of people to flee, resulting in a significant increase in the number of refugees and internally displaced persons. More and more people were finding themselves in need of comprehensive and sustainable care. This being the case, material assistance became the visible face of the protection afforded to individuals, whilst the media reported on their suffering and violations of their immunity. At the same time, in the eyes of certain warring parties, humanitarian action was becoming a means of protecting the 'enemy' population, whereas opinion saw it more as an initiative designed to help 'the good'. Neither aspect did anything to reinforce the idea of neutrality.
40. Furthermore, the Security Council, revived by the actual disappearance of the veto, claimed that the threat to humanitarian aid was in fact a 'threat to peace' and starting creating a peace-keeping force for every crisis, the purpose of which would be far more powerful than at the time of the Cold War and would include missions to protect humanitarian convoys, towns and cities under siege and ultimately the civilian population as a whole. With this in mind, physical protection, which can be effective but has also been marked by failure, was beginning to stand out in the common representation of protection, thus further denting the perception of

²³ Update on preparations for the WHS 'Europe and Others' Regional Consultation, December 2014, p.25.

impartiality. Later, with ethnic conflicts raising the issue of the very existence of the State, the Security Council, and indeed the international community as a whole, began putting in place a series of more comprehensive crisis management procedures designed to restore peace and to build peace by consolidating the State. Over the course of these long and often still contentious processes, the international community stood alongside the State through various stabilisation forces, whilst the situation called for humanitarian initiatives to be extended.

41. Such developments resulted in an increasingly complex landscape of humanitarian action. On the one hand, the importance of humanitarian assistance was creating a need for coordination, which, with the Assistant Secretary-General of Humanitarian Affairs, the Office for the Coordination of Humanitarian Affairs (OCHA) and the relevant Clusters, resulted in a rise in the role of the United Nations within the field of humanitarian action. On the other hand, the scope of the material services provided in the framework of humanitarian action was resulting in an increase in the importance of donors, sometimes represented by special departments (such as the ECHO) with regard to funding humanitarian aid. However, funding reconstruction and development was, in the eyes of donors and in terms of supporting peace, the counterpart of what emergency measures consisted of at the peak of the crisis and in the early stages of recovery. Finally, out in the field, the United Nations was sometimes known to deploy 'integrated missions' involving the combined intervention of the political, humanitarian (e.g. HCR) and even military branches of the organisation to support a State that was still fragile and under reconstruction. This, of course, gave rise to the issue of the independence of humanitarian action.
42. The CNCDH does not intend for this reminder of a historical chain of events to be perceived as a condemnation. Indeed, it salutes the considerable efforts that have been made, but nevertheless underlines the fact that lessons must be learned for the future. This is particularly important in light of the new configurations that are being introduced and the new players that are entering the fray. Certain aspects of the World Humanitarian Summit process have identified a number of elements that again reflect an approach that is not very conducive to the independence of humanitarian action in relation to international political matters. There is evidence of this notion of 'also' dealing with warring parties, which indicates a false appraisal of impartiality that could cloud the way in which needs are identified. There is also evidence of the idea that humanitarian action should take into account arrangements made to promote peace and adapt to the new configurations of the parties involved, meaning that humanitarian action is perceived as being intended not to help individuals but rather to help the parties to a conflict.

2. Lessons learned

43. Humanitarian action comes into play in contexts involving different players with different purposes (States, international governmental and non-governmental organisations, etc.) and who operate in different ways (developmental players, peace-keeping and -building, etc.). In order to prevent the 'politicisation' of humanitarian aid, whether by means of instrumentalising such aid for political, economic or military purposes or adopting a black and white view of the context, potentially fuelled by media coverage, certain precautions must be taken by the various players involved in situations of armed conflict and other situations of violence.

a. Distinguishing humanitarian action from crisis management

44. The coexistence of various bodies in theatres of conflict makes it essential to distinguish between different roles and mandates in order to protect the humanitarian space that helps ensure the provision of neutral and impartial aid.
45. With this in mind, whilst it might be logical for States to offer and to provide assistance to victims in various crises with humanitarian consequences, their essentially political role means that they cannot claim to respect the humanitarian principles. When States provide emergency relief and assistance to individuals, the aid provided is likely to be seen as a way to achieve a political goal, even if it is not the case. They must therefore show restraint in the terms they use and the positions they adopt in order to avoid any confusion that would actually politicise the field of humanitarian action. Initiatives designed to encourage the protection of civilians and implemented under the umbrella of the *responsibility to protect* must also be distinguished from humanitarian action.
46. Likewise, whilst regions must be secured by State armies, often at the order and under the banner of an international organisation such as the United Nations, and although this is intended to facilitate the provision of aid, the primary purpose of this operation is quite different. It is undesirable for armies to confuse these two missions, something that rarely happens. Furthermore, whilst state civil protection services are vital when it comes to dealing with the consequences of complex natural disasters, they, too, can prove inadequate in the context of humanitarian emergencies resulting from an armed conflict.
47. Moreover, States must recognise that in order to fulfil their mandate and negotiate access to populations in particular, humanitarian NGOs have no choice but to 'talk to everyone they can', and with each party to the conflict, both State and non-State, in particular. In no way does contact with the latter represent any form of collusion with the enemy or support for terrorism, despite being perceived as an inconvenience to the public authorities. The authorities should not, therefore, jeopardise a dialogue that is being conducted for exclusively humanitarian purposes in the process of adopting and implementing national anti-terrorist measures. With this in mind, the Summit should explicitly oppose any form of 'criminalisation'²⁴ of humanitarian aid²⁵, regardless of the intended aim.

b. Avoiding the confusion of mandates

48. Whilst dialogue between all of the players involved in a crisis region is essential and whilst an integrated global approach to 'crisis' response may be preferable, it should not lead to any merging of roles. Indeed, each party should remain within their mandate, respect those of others and interact with them in an entirely transparent manner. The special expertise of humanitarian players when it comes to situations of conflict and context analysis is vital and can fuel medium- and long-term initiatives designed to prevent the conflict in question from recurring. Nevertheless, whilst it is essential that they have the option of establishing a

²⁴ That is 'making it illegal'.

²⁵ As predicted by the terms of the ruling by the Supreme Court of the United States, which confirmed the constitutionality of the Material Support Statute, a law designed to penalise aid provided for groups and individuals believed by the United States to be 'terrorists', such as training for PKK and LTTE executives in IHL, which constitutes a federal crime punishable by 15 years in prison. See *Holder v. HLP ruling*, 21 June 2010. For the procedure see <http://ccrjustice.org/holder-v-humanitarian-law-project>

dialogue with all of the players involved in neighbouring fields, such as conflict prevention and resolution, peace negotiations, development, etc., they cannot have any stake in any parallel process, whether political or military, that is being implemented in the framework of the conflict.

49. Recent decades have seen a notable increase in the deployment of 'integrated missions' by the United Nations as the international community's response to complex crises, with the aim of ensuring the cohesion and coordination of the various branches of the United Nations. Such missions bring together activities relating to the humanitarian, political and diplomatic, human rights and sometimes even military fields under the same leadership and present a number of complex challenges with regard to humanitarian action, which finds itself mixed up in various activities that do not observe the same principles or pursue the same objectives. Humanitarian NGOs working in connection with the United Nations can therefore find themselves assimilated with peace-keeping operations in the eyes of the populations, which can, in some cases, result in the safety of humanitarian players being put at risk and prove an obstacle to accessing populations in need.
50. It is essential that the World Humanitarian Summit, instigated and organised by the United Nations, look at the place of the humanitarian aspect in integrated missions and ask that existing directives be strictly and systematically applied (Policy on Integrated Assessment and Planning)²⁶. The 'humanitarian component' of such missions must be preserved in the framework of integration, protecting it from any political aspects associated with the organisation, and be made clearly visible to ensure the coherence of humanitarian action.
51. NGOs must themselves ensure that their humanitarian mandate is protected, particularly when the latter is just one aspect of a broader mandate that includes initiatives relating to development (developing local capacities in the fields of health, education, agriculture, etc.) and activities designed to support social change. If such organisations choose to develop a continuous global approach, they must remain vigilant regarding the risks of contradiction that their multi-mandate involves. In light of the large number of organisations with multi-mandates operating in the fields of emergency relief and development, such organisations should implement a thorough proactive initiative designed to raise awareness of the humanitarian principles as part of the humanitarian component of their mandates²⁷.
52. Likewise, they should conduct an on-going internal project to establish the best possible balance between the various priorities at play in a given operational situation, the most important thing being to remain loyal to the humanitarian principles at all times. This pressing need could lead NGOs to consider the potential impact of their reporting of any potential violations of IHL or human rights that they might witness. Indeed, several have already openly considered the best course of action to take in such cases.

c. Establishing partnerships that comply with the principles

²⁶ On the matter of integration policies see <http://www.undg.org/index.cfm?P=1100>

²⁷ See Slim, H. and Bradley, M., 'Principled humanitarian action and ethical tensions in multi-mandate organisations in armed conflict, observations from a rapid literature review', World Vision, March 2013.

53. The vital role played by national NGOs²⁸, and indeed by national players in general, is becoming increasingly widely recognised and accepted by all players. This development within the humanitarian sector has been largely highlighted by some of the regional consultations undertaken in preparation for the Summit. The role they play is a valuable one and must be reinforced²⁹. Indeed, the intricate knowledge of contexts and resources in terms of personnel, equipment, etc., that national players can bring to the table is essential both to identifying needs and to the effectiveness of the aid provided. However, the involvement of national NGOs can sometimes put international NGOs in a difficult position when it comes to implementing the principles of impartiality, neutrality and independence. Their involvement can also leave them open to greater insecurity. It is therefore important for humanitarian action to stem from a partnership wherever possible.

d. Ensuring that funding complies with the humanitarian principles

54. Humanitarian players must make operational decisions and guide their actions in accordance with the humanitarian principles. These decisions notably include those regarding the funding of their actions. In this respect, it is preferable for the source of funding to be selected in accordance with the principle of independence.

55. Donors also have a major responsibility with regard to observing the humanitarian principles and a number of interesting initiatives have emerged in recent years with the aim of ensuring that the actions of the donors comply with the humanitarian principles³⁰. These must, of course, be pursued if the funds available are to be used in accordance with the needs expressed.

56. Institutional donors (governments, the United Nations, the European Union, etc.) in particular have a heightened responsibility in accordance with IHL and various commitments that they can make besides (in the framework of the European Consensus, for example). The greater the perception of aid being instrumentalised and politicised through their funding, the more important it is that they observe the humanitarian principles. Indeed, donors funding humanitarian aid in a given conflict can also be governments with a political interest in the conflict in question. It is therefore crucial that humanitarian funding remain entirely disconnected from any political, religious or ethnic objective and be based on a strict assessment of need. Likewise, it is equally important that the humanitarian component of the funding instrument remain separate from the political and developmental components.

57. Furthermore, donors must also take into account the fact that humanitarian action is, by its very nature, a matter of emergency and that such action has to be quickly deployable if it is to be effective. The system by which humanitarian initiatives are funded must therefore adapt to this need for responsiveness and flexibility. In order to preserve this specific characteristic of the humanitarian sector, it would again

²⁸ International NGOs are organisations that operate in several countries whereas national NGOs are those operating only in their home countries.

²⁹ See on this matter Christian Aid, *Making the World Humanitarian Summit worth the climb*, December 2014.

³⁰ See *Good humanitarian donorship* (or GHD initiative): The principles of GHD notably refer to the factors of principled humanitarian action, respect for and promotion of international humanitarian law, the importance of needs-based assistance, accountability to affected populations, predictable humanitarian funding, coherence of donor action, primacy of civilian response and support for multilateral coordinated humanitarian action.

appear preferable for the bodies and mechanisms used to fund humanitarian and developmental initiatives to be kept entirely separate.

58. Finally, aid transparency is vital to the perception that the humanitarian principles are being observed, for the purpose of demonstrating impartiality and independence of action. The importance of donors registering their contributions in the form of humanitarian aid, for the purpose of the financial supervision measures implemented by the United Nations OCHA, should also be borne in mind³¹.

Recommendations

The CNCDH would recommend that the government play an active role in discussions leading up to the World Humanitarian Summit, both alone and together with the European Union and its Member States, if it is to have a positive influence on the conclusions drawn from the Summit in terms of improving the effectiveness of humanitarian action in accordance with the law and with the humanitarian principles.

The CNCDH would recommend that the government take the appropriate steps to ensure that the World Humanitarian Summit results in the following:

1. a firm reassertion of the relevance of the rules of conventional and customary international humanitarian law applicable during periods of conflict and a call for them to be faithfully and effectively implemented;
2. the reinforcement of mechanisms designed to prevent and suppress violations of international humanitarian law at national level;
3. the creation of a series of international mechanisms for controlling the implementation of the rules of international humanitarian law;
4. a reassertion of the universal nature of the fundamental humanitarian principles of humanity, impartiality, neutrality and independence;
5. a commitment on the part of all players involved in the aid sector, parties to conflict and donors to respect and to ensure compliance with the humanitarian principles through the development of a series of specific and transparent indicators that can be used to assess this commitment;
6. the introduction of practical measures designed to remove any impediments to the effective application of the humanitarian principles by players in the field and limit the politicisation of humanitarian aid;
7. a reassertion of the obligation on the part of all parties to allow access for humanitarian aid bodies to the populations affected without making it dependent upon conditions that contravene the humanitarian principles, and a reassertion of the criminal nature of such hindrances;

³¹ See the European Consensus of Humanitarian Aid, *The humanitarian challenge*, 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, p.23-24. Furthermore, it may be worthwhile examining ways of more comprehensively registering non-government sources of funding in the financial supervision system for the purpose of establishing an accurate picture of global humanitarian action.

8. recognition of the right of individuals to actually receive the humanitarian assistance intended for them;
9. formal recognition of the fundamental role played by both national and foreign humanitarian personnel and the adoption of measures designed to grant them a more protective international status;
10. strong support for the vital role of humanitarian NGOs working in accordance with the humanitarian principles;
11. recognition of the shared responsibility of all of the players operating in the same regions and in various capacities for the purpose of preserving the specific nature of humanitarian action;
12. recognition of a responsibility on the part of donors not to make funding dependent upon specific conditions that do not reflect the humanitarian principles for the purpose of applying said principles;
13. a commitment on the part of all stakeholders not to use humanitarian aid as a crisis management tool. Institutional players with a 'humanitarian mandate' should maintain their independence. Likewise, the risks to the observance of humanitarian principles posed by 'integrated missions' undertaken by international organisations should be seriously considered;
14. recognition of the role of national players in humanitarian action, in partnership with international players;
15. a reminder of the importance of establishing a dialogue with all the parties to a conflict, including non-State armed groups, with a view of providing humanitarian aid, and subsequently firm opposition to any form of 'criminalisation' of humanitarian aid.