

Humanitarian Access to Areas Affected by Syria-Turkey Quake of 6 Feb 2023



Simplified answers to legal questions about the rights and duties of the parties to the conflict (including the Occupying Power) in respect of the entry, passage, and distribution of relief consignments

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Background

The deadly earthquake that struck along the border between Turkey and Syria on 6 February 2023 left millions in urgent need of assistance. As is the norm at times like this, the international community, governments, and local communities rushed to send relief supplies to the affected areas. However, since most of the Syrian areas hit are disputed territories, there were, reportedly, cases of politicizing diverting, and obstructing of humanitarian aid by different parties to the conflict. Therefore, Syrians for Truth and Justice (STJ) considered it necessary to recall the rights and obligations of parties to the conflict (including the Occupying Power) and relief organizations in respect of the entry, passage, and distribution of humanitarian aid under international law.

1. What are the Humanitarian Principles Humanitarian Actors Must Stick to in a Humanitarian Relief?

According to International humanitarian law (IHL), the principles of humanity and impartiality are the core tenets of everyday humanitarian action on the ground.

However, Humanitarian action is guided by four widely accepted principles:

- **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.
- **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 adverse distinction on the basis of nationality, race, gender, religious belief, class or political opinion.
- **Neutrality:** Humanitarian actors must not take sides in hostilities or engage in controversies of a political, racial, religious or ideological nature.
- **Independence:** Humanitarian action must be autonomous from the political, economic, military or other objectives that any actor may hold with regard to areas where humanitarian action is being implemented.

Observing such principles is crucial in addressing constraints faced by humanitarian actors in ensuring safe, timely, and effective access to those in need.

2. What are the Role and Responsibilities of the Sovereign State towards Earthquake-Affected People?

The Sovereign State (Damascus government in the Syrian case) is legally responsible for the welfare of people in territories under its influence. In case the Sovereign state is unable or unwilling to provide aid, then it shall ensure and facilitate access to relief consignments provided by the international community, governments, or local communities.

The sovereign state cannot invoke insurgency in disputed areas to justify the prevention or disruption of humanitarian access to vulnerable people affected by hostilities or natural disasters. The state must prioritize the response to the humanitarian imperative to alleviate human suffering.

3. What are the Responsibilities of Turkey as an Occupying Power towards People in Northwestern Syria?

The Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores clothing, bedding, means of shelter, and objects indispensable to the survival of the civilian population. However, international law does not set a list of the essential supplies the Occupying Power must provide to the areas it occupies in times of disaster. As matters stand, the Occupying Power must provide – in addition to the supplies described above – rescuers, heavy debris removal machinery, and all other supplies necessary for rescue operations in the areas it occupies.

The Occupying Power has no option but to provide adequate humanitarian supplies for the occupied people or to facilitate their access to the humanitarian aid provided by a third party. The Occupying Power does not have the freedom to withhold external humanitarian assistance from affected people in its areas in case it is unable to provide aid itself. The legal regime applicable during occupation prohibits the Occupying Power from preventing, delaying, or obstructing the aid passage under any pretext; including sanctions imposed or closed crossings.

4. Does Humanitarian Aid Passage or Entry Require Permission/Approval from the Controlling Power?

- The Sovereign State's approval:

Under the IHL, the consent of the affected State is required for the passage or entry of humanitarian aid. However, this does not give the state the right to manipulate the flow of humanitarian aid or to block it arbitrarily.

- The armed groups' approval:

In the absence of any express provisions and by virtue of international practice and doctrine, the consent of the controlling armed groups is required for the humanitarian aid flow in their areas. Unjustified blocking of aid by an armed group is considered arbitrary according to international law.

- The Occupying Power's approval

International Law does not require the Occupying Power's approval for the passage of aid, since occupation does not vest the occupying power with sovereignty over the occupied territory. Yet, the Occupying Power is responsible for responding to the needs of the population under its control. Failure to do so, Occupying Power must ease the flow of humanitarian aid. The Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.

- ❖ It is not enough to keep the border crossings open, Turkey also must allocate a part of the humanitarian aid it received to the disaster Syrian areas under its influence.
- ❖ It is permitted under international law to block the entry or passage of humanitarian aid if it is proven that it will be diverted to support the enemy militarily or economically. (See Question No. 1).

5. What are the Rights of The Parties to the Conflict during Humanitarian Aid Delivery?

- The right to give permission/approval (See Question No. 4).
- The right to inspect aid convoys; provided the inspection is not arbitrary or aims to delay the aid arrival.
- The right to direct the passage of humanitarian aid and secure it: this does not in any way mean to steer aid toward areas under their own control, but it means to secure relief consignments and workers and guarantee their safe arrival to destinations targeted by the donors.

6. What are the Prohibitions on Parties to the Conflict during Humanitarian Aid Delivery?

- Imposing political, financial, ideological, or other conditions on the passage of aid.
- Diverting aid: Parties to the conflict must not distribute humanitarian aid to other people other than the intended beneficiary groups. For example, parties

to the conflict cannot divert the humanitarian aid meant for people in need to fighters affiliated with them or their families. Aid diversion contravenes the Principles of humanity and impartiality (See Question No. 1).

- Imposing a tax on the aid consignments or taking a share of them in exchange for their access to beneficiaries.
- Selecting beneficiaries: parties to the conflict shall not see the list of beneficiaries or change it.
- Following discriminatory criteria in humanitarian aid delivery: Humanitarian assistance must be afforded on the basis of need alone, in accordance with the principles of humanity and impartiality, and not on the basis of religion, political views, nationality, or geographic location.

7. Can a Party to the Conflict Refuse Humanitarian Aid Provided by Another Party?

Civilians' needs must be the only criteria for determining whether to accept or refuse humanitarian aid; parties to the conflict cannot refuse aid on arbitrary grounds. Thereby, it is forbidden for the parties to the conflict to refuse the aid that comes from regime-held areas.

Let us further clarify this point with the following supposed case: if the Autonomous Administration of North and East Syria (AANES) sent aid to the Olive Branch area, without specifying the beneficiaries, the party in control of the Olive Branch area would be responsible for distributing that aid to civilians according to their level of need. Let us not forget that responding to the needs of the civilian population rests primarily with the controlling party.

- ❖ In all cases, it must be ensured that the provision of humanitarian aid fulfills the four principles of humanitarian action; humanity, neutrality, impartiality, and independence. Besides, the aid must be distributed on the sole criterion of need.
- ❖ Humanitarian actors must ensure that their action is impartial and is not subject to discrimination under any circumstances. Parties to the conflict have the right to refuse humanitarian passage if it is proven that it may not meet the requirements of humanity and impartiality, or that it may support the enemy's military or economic powers.
- ❖ The parties to the conflict cannot consider certain civilian ethnic, religious, linguistic, or other groups that oppose them as 'enemies' and thus deny them humanitarian assistance.

8. Who Shall Assess the Scale of Humanitarian Needs and Identify the Neediest People?

It is a shared responsibility between controlling powers, international organizations, and humanitarian actors. If any of the parties chose beneficiaries unilaterally, there would be doubts about its impartiality. For example, if the controlling authorities in Jindires District distributed the aid to certain people it had selected, neglecting the human rights organizations' assessments of the neediest, the authorities have thus violated principles of humanitarian action (See Question No. 1). Usually, states send humanitarian aid to affected areas based on assessments from humanitarian bodies or organizations working with them. In any case, donor states must ensure that such aid indeed reaches its intended recipients.



About Us:

Syrians for Truth and Justice (STJ) is a nonprofit, nongovernmental organization monitoring human rights violations in Syria. Founded in 2015, STJ has been based in France since 2019.

STJ is an impartial and independent Syrian human rights organization operating across Syria. Our network of field researchers monitor and report human rights violations occurring on the ground in Syria, while our international team of human rights experts, lawyers, and journalists gather evidence, examine emerging patterns of violations, and analyze how violations break domestic Syrian and international law.

We are committed to documenting violations of human rights committed by all parties in the Syrian conflict and elevating the voices of all Syrians victimized by human rights violations, regardless of their ethnicity, religion, political affiliation, class, and/or gender. Our commitment to human rights monitoring is founded on the idea that professional human rights documentation meeting international standards is the first step to uncovering the truth and achieving justice in Syria.



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