

On the Ethical and Political Dimensions of Humanitarian Action

A Brookings Doha Center Workshop

“A Critical Review of the Challenges and Opportunities of Humanitarian Access”

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Introduction

The ICRC would very much want to engage with humanitarian organizations and professionals on the issue of humanitarian access. This issue has been hotly debated recently in several contexts, as access to populations suffering from conflict becomes increasingly challenging, forcing organizations to ponder the needs of populations with the growing insecurity of these operations. Attacks against humanitarian personnel have seemingly increased over the last decade, as conditions of access are continuously deteriorating in many situations. Just in the recent week, three delegates of the ICRC have been kidnapped and fortunately released in Yemen, after several similar incidents in the region. This incident demonstrates once again how thin the security margins have become and how important is the need to maintain and strengthen solid professional approaches to humanitarian access.

Varying approaches to address common obstacles

I believe that a proper strategy to promote and enable humanitarian access is central to the timely and adequate delivery of humanitarian assistance in many environments where the ICRC and other organizations are active such as Syria, Sudan, Somalia, Mali, Pakistan, Afghanistan or Myanmar. In these contexts, the continuous engagement of the ICRC with all the parties to the conflict, including non-state armed groups, is essential with a view to ensure access and security for independent and impartial humanitarian actors. Yet, the ICRC recognizes that other organizations may approach humanitarian access from different angles.

The point of departure of our discussion is that while we may differ on how to design our respective approach to humanitarian access, we can observe that

humanitarian organizations are all facing increasingly stringent constraints to accessing vulnerable populations. Some of these constraints are bureaucratic in essence, in the forms of visa restrictions for employees, limitations on the import of humanitarian goods and equipment, new forms of taxations, permits requirements, etc.). Others are more political, such as an open or implicit discrimination against international actors; the stagnation of decision-making structures; the lack of clarity in terms of control, etc. Finally, obstacles may be very practical in terms of the safety and security of humanitarian personnel and the integrity of operations due to ongoing armed hostilities and the unwillingness or inability of militaries to engage and coordinate with humanitarian actors.

Methodologies to overcome these difficulties are varying from one organization to the next. The ICRC is committed to building pragmatic relationships with the relevant political forces at the field level in a confidential manner, remaining close to the beneficiaries and contextualizing its activities. It negotiates its access through step-by-step approaches: connecting with power brokers at the local and national levels, testing deliveries and scaling up operations while building trust with the parties to conflict.

Other actors have developed other methodologies based on their respective mission, values and experience providing a mosaic of strategies to address these challenges. In particular, risk mitigation and security management procedures tend to vary among professionals operators based on their perception of risks, their security experience and their position in the larger security environments.

- Hence, some organizations will contemplate the possibility of armed escorts, military or private, others, like the ICRC, will exclude them entirely;
- Some will concede to various forms of integration into national or international military interventions, other will attempt to stay distinct at the cost of withdrawing from entire operational areas;
- Some will seek the proximity with beneficiaries at high-cost in terms of exposure to insecurity, other will opt for remote management through local partners and private contractors or resort to cash models of delivery as a preferred mean of operation;
- Finally, some organizations will prioritize the needs of population over the respect for State sovereignty, privileging direct (unauthorized) cross-border operations over continued engagement with a reluctant state at the cost of diminished access.

This variance is explained by the diversity of perspectives and experiences humanitarian actors carry with them, especially with the growing role of humanitarian organizations from the Global South bringing new lenses on the professional culture of humanitarian action. This diversity is part of the richness of

the international humanitarian community. Evidently, such diversity is not immune from political considerations. Yet, I believe that the imperative humanitarian character of these operations and of the needs of population should inspire the humanitarian community to explore as many avenues as possible to reach the victims and provide the goods and services necessary to save lives, maintain dignity and support communities in coping with these situations.

On the importance of critical exchanges on access strategies among peers

We should however expect that this variance generate debates across this professional community on how to best achieve our common goal without being used or abused by other actors for their own political or security benefits. In particular, we should be prepared to review these new avenues in light of the some of the core principles of international humanitarian action, such as neutrality and impartiality. I see these debates as positive developments from a professional perspective. The point here is not to define the most authoritative method to access populations affected by conflict at the expense of all the others. Rather, we should be able to analyze in a critical manner how best an organization can ponder the various interests at play from the needs of beneficiaries, the security of staff, the sustainability of the local economy and coping mechanisms of victims, while being able to maintain and re-enforce the responsibility of local and national institutions. Ultimately one of the most critical questions is, in what circumstances organizations should depart from the international legal framework set in UNGA Resolution 48/182, and provide direct assistance without the consent of the national state?

These are critical questions that will continue to raise intense discussions and divisions among states and humanitarian organizations alike. To best serve the needs of populations, we need to see how we can generate productive exchanges of experience and build a critical and professional space where various approaches can cohabit and become complementary.

Legal and policy dilemmas of humanitarian access from an ICRC perspective

Humanitarian access inevitably entails a number of legal and policy dilemmas that are at the heart of humanitarian action:

- Article 3 of the Geneva Conventions is widely seen as stating the minimal standard for access and behavior of all parties to conflict and legitimizing the access of “an impartial body, such as the ICRC” without affecting “the legal status of the Parties”. Despite this, in today’s conflicts, there is a perception that negotiations with the party controlling the affected population or territory, entails implicit forms of recognition of the parties involved, which in turn may have significant political repercussions. In other words, humanitarian negotiations always take place in highly charged political environments, domestically and/or internationally. Therefore, these negotiations should be planned and implemented in ways that favor the long-

term maintenance of access to the population in need and are, “*ceteris paribus*”, universally applicable in order not to create “double standards”. For ICRC this means particularly stringent focus of negotiations with armed groups to the objective of access and security.

- Humanitarian access entails the application of several legal frameworks that define the obligations of the parties involved, from the UN Charter to the Geneva Conventions, from Human Rights treaties to, more recently, counterterrorism legislations. Each of these laws has been elaborated and adopted in response to particular and sometimes diverging national or international agendas. The convergence or divergence of norms mirrors the current state of international relations. Yet, much of our work and safety depends on the trust of belligerents on the relevance of and consensus around internationally grounded rules. While the development of various legal regimes may differ over time, to play one set of rules against another will only weaken the overall understanding and authority of international law at the field level;
- Humanitarian access also raises a number of questions regarding the type and scope of vulnerabilities of the population, the causes of their vulnerabilities and the responsibilities of the state and non-state actors as well as the international community to deal and address the causes and consequences of conflicts. In some many ways, humanitarian access is understood by many organizations and governments as a first step in a process of social, political and economic transformations to bring about stability, development and improved governance. These aspects cannot be easily detached from the humanitarian operations. The rise in number of integrated missions confirms this trend.
- Yet, negotiation of humanitarian access often takes place in absence of a clear consensus on the relevant political, social and security considerations surrounding the operation. Rather, humanitarian organizations have been negotiating access mostly in contexts where the international community has failed to address the root causes of the conflicts or remains unable to mobilize the political will to address the underlying grievances fuelling them. Most humanitarian operations take place in protracted and forgotten conflicts with limited sustained and effective security and political engagements of the international community. In this context, humanitarian organizations need to act in a highly pragmatic manner in engaging with the parties involved, knowing that long-term relationships with all of the parties concerned is what will allow the maintenance of basic security conditions to operate on the territory under their control.

Moving forward

From an ICRC perspective, humanitarian access serves three fundamental goals:

1. Humanitarian access is designed primarily to provide life-saving relief to the populations in need. The principles of humanity and impartiality enshrined in international humanitarian law are the ethical foundations of the relief action of the ICRC. These principles demands that the allocation of humanitarian assistance be predicated on the essential needs of the populations and be based on their specific vulnerability. Humanitarian relief programs require therefore proper need assessments identifying priority areas and substantiating arguments for an independent humanitarian access.
2. Beyond serving the immediate needs of the population, humanitarian access also serves to support and strengthen the coping capabilities and resilience of the affected community. In this context, ICRC humanitarian programs include the rehabilitation of essential services such as health care capabilities and water infrastructures. In many countries nowadays ICRC carries out activities aimed at reconstituting the basic economic activity and even the fabrics of economic life. This is for example the case with livestock management in the North of Mali and other areas in the Sahel. Providing improved seeds is a common feature in many African countries but also in the Philippines and Afghanistan. Resilience of populations has become a common concern among humanitarian professionals.
3. Finally, humanitarian access is a critical platform to ensure the protection of civilian populations, reaffirming the importance of promoting the respect for international humanitarian law in all its aspects. Beyond its legal nature, Common Article 3 to the four Geneva Conventions regulating humanitarian access in internal armed conflicts represents an important basis of engagements with the political actors of the conflict to discuss the behavior of belligerents. It grants the ICRC and other similar impartial and independent humanitarian actors the legal privilege of offering services to all the parties to an armed conflict in various domains of assistance and protection, including the protection of detainees, the monitoring of displaced populations, the coordination of relief action, and the design of special programs for the protection of vulnerable groups such as women and children. Stopping short of declaring a right to assist, it facilitates a discussion on the political engagement of state and non-state actors toward the welfare of affected populations. Such discussion is of critical importance in establishing sustainable relationships and agreements with the parties involved and securing the access to populations in need.

In conclusion, humanitarian access represents an important although challenging domain of negotiations and engagements with the parties to the conflict. Evidently, humanitarian access is a source of intense frustration. There is not one day my colleagues and I are not profoundly frustrated with the limited access granted to the ICRC. While we face exponential demands for humanitarian assistance, negotiated

access imply the design of linear step-by-step approaches to the delivery of aid, sometimes prompting unfilled humanitarian needs, as we see in Syria and other tragic situations. These deficits are often at the center of political debates and divergences on methods of access such as cross border vs. cross line strategies, which in turn put strong pressure on the professional dimensions of humanitarian action. Conversely, field-tested organizations know from experience that ethical or legal arguments are of limited use in the midst of battlefields. The reality is that the movement of each and every humanitarian convoy needs to be negotiated with the parties concerned in a very pragmatic manner.

In this context, it is our professional responsibility to continuously improve our approaches through ongoing exchanges of experiences and critical discussions among professionals in this field. I believe that such exchanges will remain key to the success of neutral, impartial and independent humanitarian operations. By improving our communication, we can only hope to develop more responsive and cogent strategies to access populations in need.

I very much look forward to this discussion, as a unique opportunity to share experiences with professionals in Qatar, comments on each other perspectives, and learn to develop higher level of complementarity.

Thank you!