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Humanitarian Exchange

Special feature
Humanitarian negotiations

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Editorial

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This edition of *Humanitarian Exchange*, co-edited with Humanitarian Policy Group (HPG) Research Fellow Ashley Jackson, features humanitarian negotiations. In many contexts, negotiations with a wide array of actors – both state and non-state – are essential to gaining access to populations in need of assistance. This issue looks at field experiences of undertaking humanitarian negotiations, the challenges and compromises involved and the resources and tools that have been developed to support more effective engagement.

In their lead article, Gerard Mc Hugh and Simar Singh emphasise the need to preserve the integrity of humanitarian negotiations. Stuart Casey-Maslen highlights the need for greater engagement with armed non-state actors (ANSAs). Pascal Bongard outlines Geneva Call's efforts to encourage ANSAs to sign 'deeds of commitment' to specific humanitarian norms. Ashley Jackson examines Taliban attitudes and policies towards aid agencies and their work, and Harry Johnstone describes the World Food Programme (WFP)'s experience of using contractors to negotiate access and monitor deliveries. Antonio Galli writes on access negotiations with Hamas in Gaza, and Jonathan Loeb explores the issues around humanitarian access to rebel areas in Darfur. Finally, Kate Mackintosh and Ingrid Macdonald present the initial findings from an Inter-Agency Standing Committee (IASC) study on the impact of counter-terrorism restrictions on humanitarian action.

The practice and policy section begins with an article from Yves Daccord reflecting on the challenges facing humanitarian action on the 150th anniversary of the founding of the International Committee of the Red Cross (ICRS). Kristin Bergtora Sandvik and Kjersti Lohne analyse the implications of using drones in humanitarian operations. Samuel Carpenter looks at humanitarian action in urban areas, and Kamila Wasilkowska, Olivia Collins and Anne-Marie Schreyer-Roy present the findings of a research study on the gender impacts of cash transfers in Somalia. Margie Buchanan-Smith, Youssif El Tayeb and Abdul Jabbar Abdulla Fadul examine the impact of conflict on trade in Darfur, and Bill Flinn ends the issue with a call for a shift in the international community's approach to post-disaster housing reconstruction.

As always, we welcome any comments or feedback, which can be sent to hpn@odi.org.uk or to The Coordinator, 203 Blackfriars Road, London SE1 8NJ.

Preserving the integrity of humanitarian negotiations

Gerard Mc Hugh and Simar Singh

Humanitarian negotiation is a special form of engagement, for exclusively humanitarian purposes, with communities, parties to armed conflict, governments and other actors. In armed conflicts and other situations of crisis, humanitarian negotiations can often be a necessity. These negotiations are carried out according to humanitarian principles and have a unique and strong foundation in international law and policy that many other forms of engagement do not enjoy. For these and other reasons humanitarian negotiations occupy a distinctive 'space' among other forms of engagement.

However, in the face of numerous pressures the unique space for humanitarian negotiations is being eroded. This not only undermines the sustainability of existing humanitarian efforts, but also leads to missed opportunities for securing better humanitarian outcomes. There is a need to preserve the integrity of humanitarian negotiations if they are to remain an effective and powerful tool. At a minimum, this means that the objectives, arrangements, processes and outcomes of humanitarian negotiations should not be compromised in a way that diminishes their exclusively humanitarian nature.

This article highlights the importance of preserving the integrity of humanitarian negotiations as a means of achieving better humanitarian outcomes. It suggests some initial steps that can be taken to achieve this objective.

What makes humanitarian negotiations unique?

The effective and timely provision of humanitarian assistance and protection is contingent on the ability of humanitarian personnel to be able to engage freely with all relevant actors in the areas in which they operate. This includes affected communities, government authorities, civil society, donor organisations, UN bodies, state forces, non-state armed groups and development and humanitarian actors. Such humanitarian engagement can take several forms, including liaison, advocacy, negotiation and mediation.

Humanitarian negotiations have been defined as negotiations undertaken by civilians engaged in managing, coordinating and providing humanitarian assistance and protection for the purposes of ensuring the provision of humanitarian assistance and protection to vulnerable populations; preserving humanitarian space; and promoting respect for international law.[1] Humanitarian negotiations are thus a distinct type of humanitarian engagement, one that involves seeking a mutually acceptable way

forward when humanitarians and other parties are not initially in agreement on a particular issue or set of issues. Humanitarian negotiations represent a discrete part of the broader body of practice undertaken by a range of actors on engagement for the purposes of the protection of civilians.

Humanitarian negotiations are unique because of how they are undertaken – in an impartial, neutral and independent manner – and also because of what they are intended to achieve: better humanitarian outcomes. Therefore, in practice as well as in terminology, humanitarian negotiations differ from negotiations relating to peacebuilding, human rights and other issues.

Further reinforcing this unique character are provisions of international law and policy that provide a mandate for the conduct of humanitarian negotiations. The normative framework pertaining to this type of engagement includes provisions from multiple sources of international law, in particular general international law and International Humanitarian Law.[2]

In the body of general international law, the provisions of numerous resolutions and decisions of the UN Security Council, the UN General Assembly and the UN Economic and Social Council, as well as various international principles and frameworks, provide a basis for undertaking humanitarian negotiations with both state and non-state actors.[3] Of particular relevance is UN General Assembly Resolution A/46/182 of 1991, which explicitly affirms the need for UN humanitarian actors to enter into negotiations, when necessary, with all parties to a conflict in order to facilitate humanitarian action.[4]

The need to negotiate with all parties to a conflict for the purposes of ensuring access to and the protection of vulnerable groups has been reaffirmed in reports of the UN Secretary-General on the protection of civilians in armed conflict, children in armed conflict and women, peace and security. For example, in his 2010 report on the protection of civilians in armed conflict, the UN Secretary-General stated that 'engagement with armed groups for humanitarian

1 Gerard Mc Hugh and Manuel Bessler, *Humanitarian Negotiations with Armed Groups: A Manual for Practitioners* (New York: United Nations, January 2006), p. 5.

2 See for example Geneva Convention III, Art. 9; Geneva Convention IV, Arts. 10, 17, 23, 59; Additional Protocol I, Art. 70; Additional Protocol II, Art. 18; UN Convention on the Rights of the Child, Art. 22; and ICRC, Customary International Humanitarian Law, Rules 55 and 56.
3 See for example UN Security Council resolutions 1612 (2005), 1882 (2008), 1894 (2009); UN General Assembly Resolution 62/95 (2007); UN Economic and Social Council Decision 2003/5 (2003); African Union, *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ('Kampala Convention')* (2009) Art. 5(7); UN Economic and Social Council, *Guiding Principles on Internal Displacement* (1998) Principle 25 (3).
4 UN General Assembly Resolution A/46/182 (1991), Paragraph 35(d).

ends is clearly possible and, indeed, necessary in order to negotiate safe humanitarian access to those in need'.[5]

In the body of International Humanitarian Law, Article 3 common to the four Geneva Conventions of 1949 (Common Article 3) states that '[a]n impartial body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict'. This is often referred to as the 'humanitarian initiative'. This offer by itself is likely to necessitate engagement with the parties to a conflict; if the offer is accepted the ensuing modalities may further require humanitarian negotiations.

Current challenges to humanitarian negotiations

It is clear then that the need and normative basis for negotiation with all relevant parties for humanitarian purposes are well established, and could even be considered a matter of customary practice. However, several factors present serious challenges to the effective conduct of humanitarian negotiations, and consequently impinge on humanitarian assistance and protection. These include increasingly insecure operating environments for humanitarian actors; the criminalisation by certain states of engagement with various proscribed groups; and the continuing trend towards the integration of UN political, development and humanitarian functions. Some of these factors have eroded the space for humanitarian negotiations by compromising their integrity.

In addition to these external factors, a number of internal factors, within or between humanitarian organisations, can lead to humanitarian negotiations being undertaken in a manner that is not consistent with the core humanitarian principles of humanity, neutrality, impartiality and independence. These include inadequate or inappropriate internal policies and strategies on negotiations and the lack of adequate organisational capacity to conduct effective humanitarian negotiations.

A number of these factors were at play in Afghanistan in 2008, when the government banned all contact by international organisations with 'Anti-Government elements', even for humanitarian purposes. With this limitation on their independence and a lack of willingness to challenge the government, several humanitarian organisations were unable to work directly in certain areas (as this necessitated negotiation with non-state armed groups), reducing humanitarian assistance to civilian populations living in those areas. A handful of organisations undertook negotiations with non-state armed groups through intermediaries as a means of (indirectly) reaching agreement on the implementation of critical humanitarian programmes. However, this practice raised additional risks, not least the prospect of exposing intermediaries to security threats (especially in cases where the intermediaries were community leaders or tribal elders). In addition, there was a risk that intermediaries would not communicate the objectives and intended outcomes of the negotiations as humanitarian organisations intended them.

5 UN Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, S/2010/579 (2010), Paragraph 55.

Similarly, in the occupied Palestinian territories (oPt) in 2010 some donor governments adopted a policy of 'no contact' between humanitarian organisations and Hamas, the de facto authority in the Gaza Strip. In reality a 'don't ask, don't tell' policy was tolerated. However, many humanitarian organisations, apprehensive of the uncertain consequences of going against some donors' demands, intentionally held back on their negotiations and engagement with the authorities in the Gaza Strip. This directly resulted in missed opportunities for improving humanitarian outcomes and had wider ramifications for future progress on a range of humanitarian issues.

Linking humanitarian negotiations with political or other negotiations also compromises their integrity and can prove detrimental to humanitarian efforts. This was the case during 2012 and early 2013, when regional and international efforts to facilitate dialogue on humanitarian access between the government of Sudan and the Sudan People's Liberation Movement-North (SPLM-N), as the parties to the conflict in the border states of Southern Kordofan and Blue Nile, at times tied humanitarian objectives to political and security objectives in the dialogue process and proposed agreements. Indeed, the presentation of a joint proposal by the UN, the African Union and the League of Arab States (the 'Tripartite Proposal for Access to Provide and Deliver Humanitarian Assistance to War-Affected Civilians in Blue Nile and Southern Kordofan States') in February 2012 set a political tone for the negotiations that followed, around the operational modalities for humanitarian access. One important consequence of conflating political and humanitarian objectives in the proposed agreement was that, if either party was not ready to proceed on political and security issues at a particular time, progress on humanitarian access was also hampered.

An additional challenge is that political actors may attempt to use humanitarian negotiations as a 'soft' starting point for political negotiations. Some governments and non-state armed groups may be willing to enter into humanitarian negotiations that are designed to lead into political negotiations, in the hope that they will gain legitimacy in the eyes of international organisations and actors by taking this first step.[6] When humanitarian negotiations are presented as a stepping stone to political negotiations this can however diminish incentives for full implementation of any agreed outcomes concerning humanitarian issues. This was the case in Côte d'Ivoire in 2005, when the Forces armées des Forces nouvelles (FAFN) entered into negotiations to sign an Action Plan to end the recruitment and use of children in their ranks. In doing so, the FAFN's main intent was to ensure that it was 'de-listed' (a political action undertaken by the UN) from the annex of the annual report of the UN Secretary-General on Children and Armed Conflict, a step the group hoped would assist in enhancing its political legitimacy. Ultimately the group stopped short of delivering fully on its commitments to end all grave violations against children, once its political objective of being de-listed had been achieved.

6 David Petrasek, 'Vive la Différence? Humanitarian and Political Approaches to Engaging Armed Groups', *Accord*, no. 16, 2005.

Dialogue with an opposition group and community in Darfur, 2007

principles. This includes, for example, humanitarian organisations refusing to accept externally imposed conditions on whom they can negotiate with, including conditions imposed by donors and by the governments of the countries in which they operate. In Afghanistan, for example, some humanitarian organisations have opted not to accept funding from donors that are parties to the conflict.

It is also critical that the objectives, processes and outcomes of humanitarian negotiations are not tied to political or other objectives.[7] Humanitarian organisations should thus not participate in mixed-objective or purposely conflated (political and humanitarian) negotiations. So-called 'multi-mandate' organisations or human rights advocacy organisations, as two examples, may not adhere to a strictly neutral, impartial and independent approach. These organisations therefore cannot expect effective humanitarian outcomes from negotiations. In many cases, communities themselves evaluate how neutral and impartial relief organisations are, based on their actions (not their words). This is why it is important that humanitarian negotiations are only undertaken by neutral, impartial organisations.

There is also a need for a clear, visible and communicated separation between the activities of humanitarian organisations and those of other actors when operating in close proximity to political missions, peacekeeping forces or parties to armed conflict. In Somalia, with the establishment of a new UN mission in June 2013, it will be critical to ensure a clear separation between humanitarian and political or other roles, given that all functions of the UN will be integrated under a single mission that is specifically tasked with providing support to the Federal Government of Somalia.

Finally, humanitarian actors can take proactive steps within their own organisations and agencies by establishing clear policies that state how and under what conditions humanitarian negotiations can be undertaken, communicating these policies effectively within the organisation and building the capacity of humanitarian practitioners to engage effectively in negotiations. Where possible and beneficial, it is also important to coordinate approaches to humanitarian negotiations, at different levels of operation (local, national, international), with other humanitarian actors working in the same context.

The impact of some of these challenges can be countered by the approach that humanitarian agencies take, underscoring the critical importance of adhering to humanitarian principles. In the Democratic Republic of Congo (DRC) in early 2010, two international humanitarian organisations enjoyed access to locations in North and South Kivu provinces when many UN and other humanitarian organisations could not enter these same areas. One of the reasons why these organisations were able to sustain access was that they had made determined efforts to negotiate with all parties active in these areas in an impartial manner, and had worked with a clear separation from the UN peacekeeping mission, which was considered by some to be a party to the conflict.

Similarly, during different stages of the conflict in Sri Lanka between 2003 and 2009, some humanitarian organis-ations managed to successfully negotiate with both the government and the Liberation Tigers of Tamil Eelam (LTTE) on a range of humanitarian issues, including access to areas affected by conflict and the release of children in the ranks of armed forces and groups. While they alone were not sufficient, conducting negotiations for exclusively humanitarian reasons and maintaining a neutral approach were among the reasons cited by these organisations for the successful outcome of their negotiations.

Preserving the integrity of humanitarian negotiations

For humanitarian personnel to use humanitarian negotiations as an effective tool to facilitate humanitarian action, there is an urgent need to actively preserve the integrity of these negotiations in the face of the pressures described above. As a first step, this means ensuring that humanitarian negotiations are, like any other humanitarian activity, undertaken in accordance with core humanitarian

7 OCHA Policy Development and Studies Branch, *Peacebuilding and Linkages with Humanitarian Action: Key Emerging Trends and Challenges*, Brief No. 7, 2011.

HUMANITARIAN NEGOTIATIONS

Conclusion

Humanitarian negotiations are distinct from other types of negotiation and from other types of engagement more broadly. As some of the examples presented above and other experiences from recent practice show, stretching the practice of humanitarian negotiation beyond its specific objectives and intended outcomes can dilute its unique character and erode the normative basis of such engagement. If they are to remain a useful instrument in the toolbox of humanitarian practitioners, it is essential that the objectives, processes, arrangements and outcomes of humanitarian negotiations are not compromised. While many factors present challenges to the effective conduct of humanitarian negotiations, the extent to which the integrity of these negotiations can be preserved will be influenced to a significant degree by the determined and principled actions of humanitarian organisations and practitioners themselves.

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Rebels with a cause? The role of armed non-state actors in the protection of civilians

Stuart Casey-Maslen

Many organisations operating in or near conflict zones have chosen – for valid reasons – to focus on securing operational access to populations in need, but at the implicit or explicit cost of not addressing protection issues. In October 2011, with the support of the Human Security Division of the Swiss Federal Department of Foreign Affairs, the Geneva Academy published the results of a two-year study into ways to enhance compliance by armed non-state actors with international norms, especially those protecting civilians.[1] The study found that greater engagement is needed with armed non-state actors on the targets of their attacks; on the means and methods of warfare they choose to employ; and on the way they treat civilians and captured or wounded prisoners.

The challenges are enormous. As Hugo Slim observed in his thoughtful book *Killing Civilians*, even the word 'civilian' is contentious. International humanitarian law makes a critical distinction between civilians who participate 'directly' in hostilities (and who may be attacked in a situation of armed conflict) and those who do not (and who must accordingly be respected and protected). Yet international humanitarian lawyers are far from agreement on precisely what acts constitute direct participation in hostilities.

Accordingly, given the controversies and intricacies of the law, we can hardly be surprised that armed non-state actors have a variety of interpretations as to who is a legitimate target. Those calling for global jihad are especially broad in their definition of targets of military operations. In a May 2012 statement, for example, al-Qaeda in the Arabian Peninsula (AQAP) invited Muslims in Yemen to 'target Americans everywhere'.[2] In an open letter written in reply to the UN Assistance Mission in Afghanistan (UNAMA)'s 2012 annual report on the protection of civilians,[3] the Taliban provided a detailed definition of who they consider to be civilians:

> *According to us civilians are those who are in no way involved in fighting. The white-bearded people, women, children and common people who live an ordinary life, it is illegitimate to bring them under attack or kill them. But it has been disclosed to us that the police … those personnel of the security companies who escort the foreigners' supply convoys and are practically armed, similarly those key figures of the Kabul admin who support the invasion … They are directly involved in the protraction of our country's invasion and legally we do not find any difficulty in their elimination, rather we consider it our obligation.[4]*

It is not always the case that armed groups broaden the range of targets beyond what the law allows. In the 1996 Israel–Lebanon Ceasefire Understanding, which senior Hezbollah officials have said they support,[5] it is stated that 'the two parties commit to ensuring that under no circumstances will civilians be the target of attack and that civilian populated areas and industrial and electrical installations will not be used as launching grounds for attacks'.[6] Good and bad practice abounds.

1 *Rules of Engagement: Protecting Civilians through Dialogue with Armed Non-State Actors*, Geneva Academy of International Humanitarian Law and Human Rights, Geneva, October 2011, available at http://www.geneva-academy.ch/docs/publications/Policy%20studies/Rules-of-Engagement-EN.pdf.

2 WorldAnalysis.net, *AQAP: Statement on the Targeting of US Officers in Hodeidah*, 24 May 2012, available at http://worldanalysis.net/modules/news/article.php?storyid=2157.

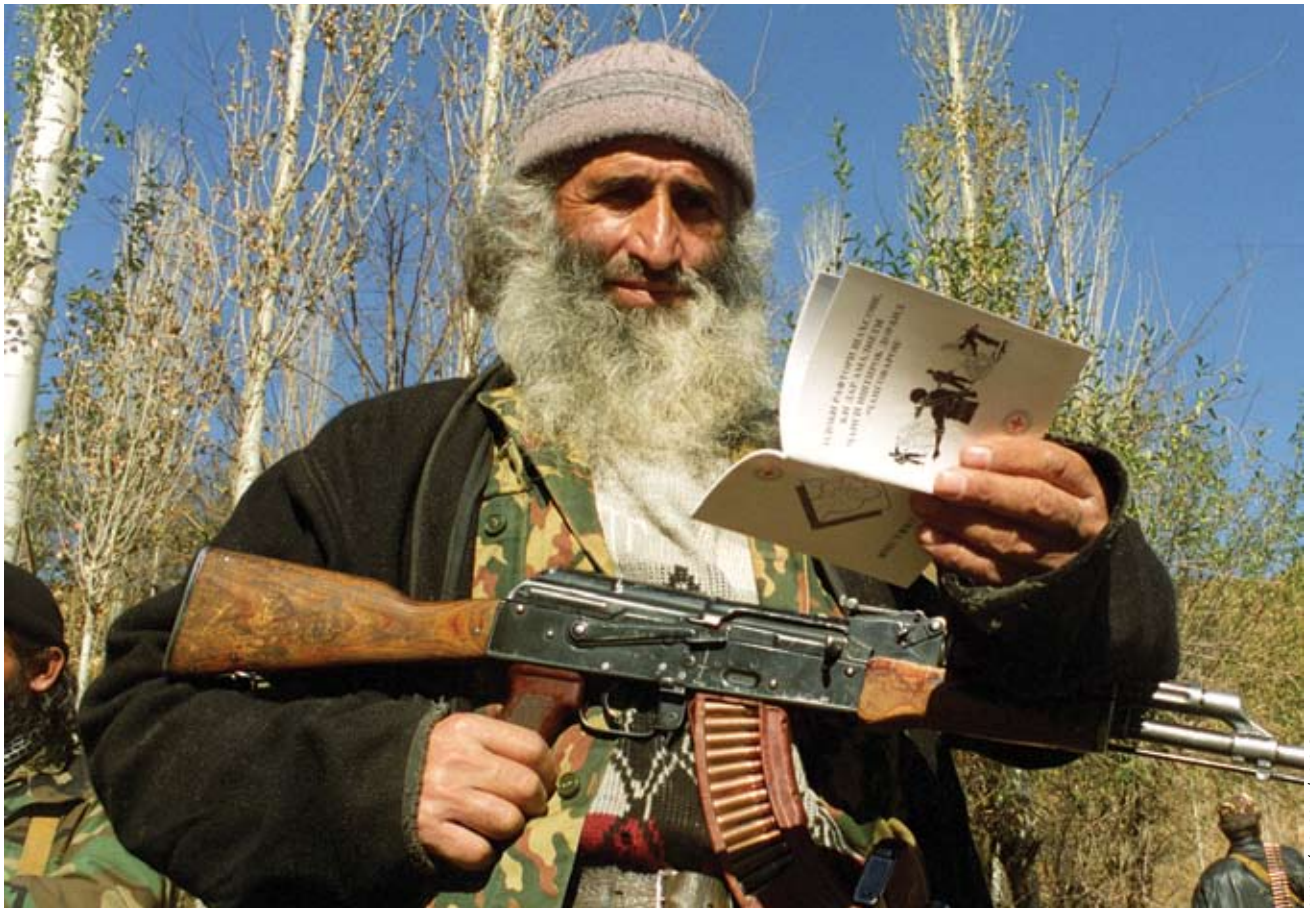3 UNAMA, *Afghanistan – Annual Report 2012: Protection of Civilians in Armed Conflict*, February 2013.

4 Islamic Emirate of Afghanistan, *An Open Letter to the UNAMA about the Biased Behaviour of this Organization*, 22 February 2013, available at http://blogs.mediapart.fr/blog/lynx/010313/open-letter-unama-about-biased-behavior-organization.

5 Amnesty International, *Israel/Lebanon – Under Fire: Hizbullah's Attacks on Northern Israel*, September 2006, p. 5.

6 *Israel–Lebanon Ceasefire Understanding*, 26 April 1996, available at http://www.usip.org/files/file/resources/collections/peace_agreements/il_ceasefire_1996.pdf.

Dissemination of the laws of war to opposition groups in Tajikistan

'Rules of engagement'

Too few organisations actively engage in explicit protection work with armed groups in conflict zones. We believe that this needs to change, and change urgently. But it is not enough merely to engage; such engagement needs to be planned, sustained and regularly assessed. Accordingly, we have proposed ten 'rules of engagement' to guide those who seek to promote humanitarian norms with such actors.

First, understanding *why* a given actor does not comply with certain international norms is key to efforts to improve compliance. There is, of course, no guarantee that such efforts will be successful even with a good understanding of a group's motivations as well as the corresponding reasons for its violation of international norms. It is, though, almost certain that *without* such detailed knowledge, efforts to promote norms will fail. Although challenges to better compliance are diverse, it is possible to summarise them according to five main factors: strategic military concerns, likelihood of prosecution (nationally and/or internationally), lack of knowledge, political or religious ideology, or lack of 'ownership' of norms that they have not contributed to making.

Second, engagement needs to embrace the broadest possible range of armed groups. The only caveats to this principle are that, when deciding whether or not to engage with a given armed group, the potential consequences of that engagement for the civilian population should be the primary concern. Furthermore, certain donors or governments may seek to prevent any form of engagement, even for purely humanitarian purposes, with groups that they term 'terrorist'. Efforts to promote humanitarian norms may fall foul of national legislation that criminalises material support (broadly defined) to any entity designated as terrorist.[7] Humanitarian organisations will therefore have to consider whether their actions may endanger their staff or put them at risk of prosecution under counterterrorism legislation.

Third, to maximise the likelihood of success, engagement should be initiated as early as possible, conducted at a high level by all concerned parties, and sustained throughout the duration of armed violence. It may be possible – and it is certainly desirable – to build on pre-existing relationships with particular groups. Former members of other armed groups or indeed the group itself may be able to play a helpful role in engagement. They may also be able to demonstrate with greater credibility how the group can attain their objectives without violating applicable norms.

Fourth, those engaging with armed non-state actors should stress from the outset that their engagement does not affect the status of the armed group under international law. They should, however, be aware that, even though their engagement cannot change the legal status of a group, it will be seen by some (especially the

7 See, for example, the US Supreme Court decision in *Holder v. Humanitarian Law Project*, 130 S.Ct. 2705, June 2010..

concerned government) as contributing to a perception of legitimacy. Governments such as India and Turkey have been vociferous in their opposition to external engagement, while the Philippines and a select few others have been more open to NGOs and academic bodies assisting in mediation or protection efforts.

Fifth, the situation in any given conflict should be monitored for particular 'windows of opportunity' that may offer a greater chance of successful engagement on specific humanitarian concerns with any given armed group. A discussion of norms may be easier during a lull in fighting or a ceasefire, for example, than when conflict is intense. Leadership or military strategy may change, helping to facilitate discussion of compliance with norms. Fragmentation or splintering of groups, sometimes as a result of military strategy or tactics, is a challenge, though it can also provide an opportunity to engage. In Nigeria, for example, the Islamist group Boko Haram has carried out more than 700 attacks that have killed more than 3,000 people. In January 2012, Jama'at Ansar al-Muslimin fi Bilad al-Sudan (commonly known as Ansaru) announced that it had split from Boko Haram, claiming that it was 'inhuman' for killing 'innocent' Muslims.[8]

There are potentially advantages and disadvantages to links with peace negotiations. For example, where a peace process is faltering it may be appropriate to keep engagement wholly outside it, the reason being that if norms are included in a peace agreement and the negotiations fail or the peace agreement unravels, commitments to comply with certain norms may also fail. At the same time, a parallel process can be seen as giving impetus to a future or moribund peace process. It may thus constitute confidence-building measures while other, potentially more sensitive issues are still to be resolved.

Sixth, since armed groups have what are termed 'incentives' for complying with or violating international norms, those engaging with armed groups should seek to understand and build on positive incentives. Incentives often cited by groups themselves include the need for popular support ('winning hearts and minds'); the self-image of the group; the group's own internal beliefs; reciprocity; projecting a good national or international image; and ties with the population. These should be identified and built on in a systematic fashion. Negative incentives most often quoted by armed groups centre on what are perceived as violations by state actors and a system of international justice that unfairly targets non-state actors. Other negative incentives include lack of knowledge or understanding of particular norms; a situation when an armed group is fighting for its very survival with limited options; being termed terrorists; the perceived complexity of international law; and the need to recruit large numbers of fighters (whatever their age) to withstand superior state armed forces.

Seventh, as part of the process of engagement, armed groups may need to be informed about their international legal obligations. In retrospect, armed groups that we have spoken to believe that a better knowledge of international law could have reduced the impact of armed conflict on civilians. In some cases, for example, such groups have not been aware of the prohibition on child recruitment and the potential liability before the International Criminal Court (ICC) and other tribunals. Dissemination efforts can take place at a senior level or be conducted with those engaged in promoting compliance. Thankfully, despite considerable opposition, there is increasing understanding that armed groups are bound not only by customary international humanitarian law, but also by customary human rights law.

Eighth, agreements and undertakings by armed groups should be reflected in writing wherever possible, even if, initially, they are made only orally. A variety of mechanisms exist for non-state actors to commit to respecting international norms, such as unilateral declarations, special agreements, Memoranda of Understanding, 'Ground Rules', Action Plans or Deeds of Commitment. These offer a valuable opportunity for such actors to express their adherence to international norms. Great care should be taken to ensure that agreements do not endorse behaviour in violation of the international obligations of an armed group, or that they simply pay lip service to compliance (or, worse, use it as a propaganda tool). But the work of Human Rights Watch with respect to the use of landmines in Libya in 2011, for example, has shown that groups can be called to account when they breach their commitments.[9]

Ninth, for an armed group to improve its compliance with humanitarian norms, it must disseminate, monitor and enforce these norms within its ranks. Armed groups should therefore be encouraged to develop and adopt a code of conduct that reflects the local context while respecting international standards. Some, such as the Taliban in Afghanistan, have quite elaborate codes of conduct, but their fighters do not always respect them in practice. The work of the United Nations Assistance Mission in Afghanistan (UNAMA) has demonstrated that armed groups can be held to account when confronted with violations of their own rules.

Those promoting compliance with norms should be aware that sanctions against a member of an armed group may be summary in nature and in the past have involved corporal punishment or execution. (The Geneva Academy would not consider corporal punishment or execution appropriate under any circumstances.) Measures of reparation (either on an individual or group basis) or local forms of justice that respect international norms and standards will be more appropriate. Other sanctions may include detention (where this is feasible), removal from the ranks of the group, demotion or removal of the fighter's weapon or other privileges for a specified period.

8 See, for example, Jacob Zenn, 'Cooperation or Competition: Boko Haram and Ansaru After the Mali Intervention', *Combating Terrorism Center (CTC) Sentinel*, Vol. 6, Issue 3, March 2013, http://www.ctc.usma.edu/posts/march-2013.

9 See, for example, Stuart Hughes, 'Libya Conflict: Rebels Accused of Reneging on Mines Vow', BBC News, 19 April 2011, http://www.bbc.co.uk/news/world-africa-13138102.

Tenth, monitoring is a critical element in promoting compliance with norms. It should be external, where possible, but there should also be an opportunity for an armed group to complain about the behaviour of the government's armed forces against which it is fighting. It is important that those engaging with armed groups are seen to be impartial with respect to allegations against any party to the conflict. Where humanitarian norms have been violated by members of armed groups, and especially where civilians have been targeted, such abuses should be publicly acknowledged.

Certain norms, such as the destruction of anti-personnel mines, may require the commitment of time and resources by the armed group. Technical assistance may be needed to enable the group to fulfil its undertakings, for example with respect to the destruction of certain weapons and ammunition. Care will have to be taken, however, to ensure that those promoting better compliance with norms do not become complicit in any future criminal behaviour by an armed group or become engaged in developing military strategy. For example, following the neutralisation of anti-

personnel mines, materials should not be recycled into further arms or ammunition.

In taking these issues forward, the Geneva Academy is conducting a follow-up project to *Rules of Engagement*, again with the support of the Human Security Division of the Swiss Federal Department of Foreign Affairs, to look in more detail at how armed groups perceive international norms, especially those protecting civilians. Greater understanding of the internal dynamics within armed groups around targeting and means and methods will ultimately, we hope, see fewer civilian deaths and injuries. Armed non-state actors must, wherever possible, ensure that those who do not participate directly in hostilities are not targeted during their operations, and that incidental civilian harm is reduced to an absolute minimum. The challenges are immense, but the need is even greater.

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Engaging armed non-state actors on humanitarian norms: reflections on Geneva Call's experience

Pascal Bongard

Armed non-state actors (ANSAs) are active in most armed conflicts today and are responsible for many violations of international humanitarian law (IHL). Increasingly, humanitarian and human rights organisations have had to grapple with how to influence ANSA behaviour and enhance their compliance with international standards. This article reflects on some of the lessons emerging from the work of the Swiss-based non-governmental organisation (NGO) Geneva Call since 2000.

The context
According to the International Committee of the Red Cross (ICRC), there were at least 48 internal armed conflicts around the world during 2011.[1] Civilians are the primary victims of these conflicts, and are exposed to abuses of all kinds, including deliberate attacks, hostage-taking, torture, rape and other forms of sexual violence, use as human shields, forced displacement, destruction of property and looting. Many of these abuses – though by no means all – are committed by ANSAs. However, the nature of international law makes it difficult to address the behaviour of these groups. Existing IHL treaties and compliance mechanisms are predominantly focused on states, and, while they have obligations under IHL, ANSAs cannot become parties to relevant international treaties and are generally precluded from participating in norm-making processes. Thus, ANSAs may not feel bound to respect rules that they have neither contributed to creating nor formally declared their willingness to adhere to.

1 See Vincent Bernard, 'Editorial', *International Review of the Red Cross*, no. 882, June 2011, p. 261.

Geneva Call's approach
Geneva Call aims to promote and enhance ANSA compliance with international humanitarian norms.[2] It was established in 2000 by members of the International Campaign to Ban Landmines (ICBL) in response to the realisation that an inter-state treaty was not sufficient to eliminate anti-personnel mines, and that both states and ANSAs had to be persuaded to renounce these weapons. While initially focusing on landmines, Geneva Call has recently expanded its work on international norms pertaining to the protection of children – notably the recruitment and use of children in hostilities – and to the prohibition on sexual violence in armed conflict.

In its efforts to promote ownership of international standards, Geneva Call has adopted an inclusive approach, whereby ANSAs have the opportunity – through signing a formal instrument called a Deed of Commitment – to express their adherence to specific humanitarian norms and to be held accountable for their pledge. To date, the organisation has developed three such documents: the Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action in 2000, the Deed of Commitment for the Protection of Children from the Effects of Armed Conflict in 2010 and the Deed of Commitment for the Prohibition of Sexual Violence in Situations of Armed Conflict and towards the

2 Geneva Call uses the term 'humanitarian norms' to refer to both IHL and those norms of international human rights law which should govern the conduct of ANSAs in situations of armed conflict or armed violence, regardless of their binding nature.

*Geneva Call monitoring the destruction of stockpiled anti-personnel mines
by the Polisario Front, Western Sahara, 2011*

Elimination of Gender Discrimination in 2012.[3] The three Deeds of Commitment reflect international standards. They are signed by the ANSA leadership and countersigned by Geneva Call and the Government of the Republic and Canton of Geneva, which serves as the custodian of the signed documents. For Geneva Call, engaging ANSAs is a long-term effort: it involves constructive and sustained dialogue to persuade them to sign the Deeds of Commitment or undertake similar commitments, and continues after signature through implementation support and monitoring to ensure that commitments translate into actual practice. In recent years, Geneva Call has increasingly provided ANSAs with customised training on broad IHL rules, as well as advice on how to incorporate these rules into their codes of conduct and other internal regulations.

Lessons learned

A number of observations and lessons can be drawn from Geneva Call's experience over the past 13 years. First and most importantly, the experience of Geneva Call – and of other organisations – demonstrates that constructive engagement with ANSAs can be effective and can yield tangible benefits for the protection of civilians. With regard to the ban on anti-personnel mines, for example, more than 50 ANSAs have agreed to renounce these weapons, either by signing the Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action or through other measures. As with states, a number of ANSAs are still reluctant to join the ban but, according to Landmine Monitor,[4] global use of anti-personnel mines by ANSAs has decreased in the past decade. In 2000,

there were 18 countries where ANSAs were confirmed as using this weapon; today there are only six. The impact of Geneva Call's work on the protection of women and children in armed conflict remains to be seen, but seven ANSAs have signed the Deed of Commitment for the Protection of Children from the Effects of Armed Conflict and five have signed the Deed of Commitment for the Prohibition of Sexual Violence in Situations of Armed Conflict and towards the Elimination of Gender Discrimination.

In the early years of Geneva Call's existence, many had doubts about the value of commitments made by ANSAs, considering them propaganda exercises. The reality is more nuanced. Without seeking to minimise the challenges that compliance presents, Geneva Call's experience shows that ANSA commitments should not be automatically dismissed and merit consideration in their own right.[5] Since its founding 13 years ago, Geneva Call has encountered few allegations of non-compliance. With one exception (the Moro Islamic Liberation Front (MILF) in the southern Philippines), no conclusive evidence of violations of the Deeds of Commitment has been found to date. Moreover, most signatory ANSAs have taken measures to enforce their obligations through orders, training and sanctions against group members for non-compliance, for instance. Most ANSAs have conducted or facilitated assistance activities (mine action, child protection) in areas under their control. For example, with technical support from specialised organisations, ANSAs have destroyed over 20,000 stockpiled anti-personnel

3 The text of the three Deeds of Commitment is available on Geneva Call's website: http://www.genevacall.org.

4 See ICBL, *Landmine Monitor 2012*, pp. 12–14.

5 Geneva Call has recently launched an on-line directory of ANSA commitments, encompassing about 400 unilateral declarations, codes of conduct, agreements and other documents related to IHL and human rights issues. The database is available at www.theirwords.org.

mines, along with thousands of improvised explosive devices and abandoned explosive ordnance.

Another lesson that emerges from Geneva Call's experience is that, contrary to a commonly held view, ANSAs are willing to accept external oversight and to cooperate in the scrutiny of their compliance. Nearly all signatories to the Deeds of Commitment have abided by their monitoring obligation, providing information and reports to Geneva Call on their implementation and allowing field follow-up missions. No signatory has ever refused to receive a Geneva Call delegation in areas under its control, even after allegations of non-compliance. In one case – the Kurdistan Workers' Party (PKK) – an on-site visit could not be undertaken owing to the concerned state's opposition, but in three other instances Geneva Call was able to conduct verification missions with the active cooperation of the suspected ANSAs, namely the MILF in 2002 and 2009 and the Puntland authorities in 2007.[6] By contrast, despite serious allegations of violations by several states party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (the Ottawa Convention), no fact-finding missions have taken place pursuant to Article 8 of the Convention.

In what came as a surprise to many observers, Geneva Call's experience also shows that opposing states may cooperate in the humanitarian engagement of ANSAs. To be sure, some states facing internal armed insurgency have opposed ANSA engagement and have denied, or restricted, Geneva Call's – and other organisations' – access to areas where these insurgent groups operate. Some states have also adopted measures that criminalise dialogue with groups designated as 'terrorist organisations', or have introduced no-engagement conditions in their funding agreements. These restrictions pose serious challenges to engagement work. However, again, the reality is more nuanced than a simple assertion that all states object to dialogue with ANSAs. Many have supported engagement efforts and have allowed Geneva Call to engage with ANSAs on their territory.[7] At the initiative of Geneva Call, a few – such as the governments of the Philippines, Senegal and Sudan – have even agreed to meet opposing ANSAs to discuss humanitarian issues. Colombia has allowed Geneva Call to meet imprisoned leaders of ANSAs and temporarily released one of them to allow him to attend a forum organised by Geneva Call. The Philippines facilitated a verification mission conducted by Geneva Call on its territory to investigate alleged breaches of the Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action by a signatory group. Other states have prohibited direct interaction on the part of Geneva Call, but have allowed its local partners to meet ANSAs. Still others

have funded Geneva Call to engage with ANSAs proscribed on their terrorist lists.

Lastly, Geneva Call's experience shows that ANSA commitments may positively influence the policies both of states and of other ANSAs. States may be encouraged to join a treaty because the opposing ANSA has made a similar commitment. A case in point is Sudan, where the signing of the Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action by the Sudan People's Liberation Movement/Army (SPLM/A) in 2001 was instrumental in Khartoum's decision to ratify the Ottawa Convention two years later. According to the former Director of the UN Mine Action Service: 'it is clear from conversation with senior officials of the Government that they would not have felt able to ratify the Treaty if the SPLM/A had not already made a formal commitment to observe its provisions in the territory under its control'.[8] ANSAs may also influence one another. A number of signatories have introduced Geneva Call to other ANSAs and promoted their adherence to the Deeds of Commitment. Peer influence may also come into play if the signatory ANSA becomes part of the national government or succeeds in creating a new state. In such instances, the policy adopted while an ANSA may be continued when in government. Concrete examples exist in Iraq and South Sudan. Less than six months after declaring independence, the newly created Republic of South Sudan joined the Ottawa Convention through the rarely used process of succession, becoming the 158th State Party. The SPLM/A, which is today the ruling party in South Sudan, had signed the Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action ten years earlier. In Iraq, two Kurdish signatories to the Deed of Commitment which became part of the national government after the fall of Saddam Hussein's regime in 2003 successfully advocated for ratification of the Ottawa Convention.

Conclusion
Although it is too early to draw definitive conclusions on the basis of Geneva Call's experience to date, the lessons described above are instructive. They demonstrate – quite counter-intuitively for many people – that ANSAs can play a positive role in contributing to civilian protection. Of course, not all ANSAs agree to abide by international standards or act in good faith towards their commitments. Yet, to view ANSAs as perpetrators only and ignore their potential protective role would encourage repressive approaches, miss opportunities for constructive engagement and ultimately fuel more IHL violations. As the UN Secretary-General has put it: 'While engagement with non-State armed groups will not always result in improved protection, the absence of systematic engagement will almost certainly mean more, not fewer, civilian casualties in current conflicts'.[9]

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6 For details, see Pascal Bongard and Jonathan Somer, 'Monitoring Armed Non-State Actor Compliance with Humanitarian Norms: A Look at International Mechanisms and the Geneva Call Deed of Commitment', *International Review of the Red Cross*, No. 883, September 2011.

7 The United Nations General Assembly and regional intergovernmental organisations, such as the European Union and the African Union, have also expressed support for ANSA humanitarian engagement.

8 Quoted in Geneva Call, *Armed Non-State Actors and Landmines. Volume I: A Global Report Profiling NSAs and Their Use, Acquisition, Production, Transfer and Stockpiling of Landmines* (Geneva: Geneva Call, 2005), p.1.

9 UN Security Council, *Report of the Secretary General on the Protection of Civilians in Armed Conflict*, S/2009/277, 29 May 2009, p. 9.

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Taliban policy and perceptions towards aid agencies in Afghanistan

Ashley Jackson

While the operating space for aid agencies in Afghanistan has diminished as the conflict has intensified and the insurgent presence has expanded, humanitarian engage-ment with the Taliban remains taboo. In practice, how-ever, many aid agencies working in insecure areas engage with insurgents to gain access to those in need of assistance. Yet little substantive research has been conducted on Taliban attitudes towards aid agencies. In 2012, researchers conducted some 150 interviews with the Taliban, aid agency staff and ordinary Afghans, examining Taliban attitudes and policies towards aid agencies and humanitarian and development work. Field research focused on two provincial case studies, Faryab and Kandahar, to examine these issues in depth.

Taliban structure and hierarchy

The Taliban are formally organised around two main power centres in Pakistan: Quetta, which is the seat of the Political Commission, and Peshawar, the seat of the Military and Finance Commissions. Subordinate to these are the commissions the Taliban have established to deal with policy and strategy, including on aid agency engagement. They have also established a code of conduct for fighters, the *Layha.*

Within Afghanistan, Provincial Military Commissioners, with subordinate district-level Military Commissioners, supervise Taliban operations and report to regional Military Commissions. Complementing these military functions, Shadow Governors act as the 'civilian' authority at provincial level and aim to reinforce the visibility of the Taliban as a viable alternative to the Afghan government. In theory, military commanders and political figures at regional, provincial and district level should adhere to the dictates of the leadership.

While the political leadership may give the appearance of a viable structure and openness towards aid actors, its ability to ensure that military commanders and fighters on the ground adhere to its instructions is limited. In practice, the Taliban are a movement with a weak centre, 'federal' in character and still struggling to internalise its structure. The degree to which – and the manner in which – institutions actually function and influence decision-making is variable, although interviews with provincial and district commanders showed some evidence of these structures playing a role at local level. The vagueness and imprecision of 'official' policy accords significant discretion to local commanders in practice, making local negotiations critical.

Taliban policy on aid access

The Taliban leadership has an articulated policy on aid agency access, overseen by the Commission for the Arrangement and Control of Companies and Organisations. According to interviews conducted with the Commissioner, Qari Abas, agencies are required to register with the Taliban at senior leadership level. Registration requires agencies to meet several conditions, including neutrality, respect for Taliban notions of 'Afghan culture' and, in certain circumstances, payment of tax.

HUMANITARIAN exchange

Taliban armoured personnel carrier passing through Wardak Province, Afghanistan

The Taliban leadership appears not to discriminate between organisations, whether UN or NGO, Afghan or international: a list of 26 registered organisations provided to researchers by Abas included UN agencies, national and international NGOs and human rights organisations. Agencies that the Taliban claim are registered rely on funding from a wide range of sources, including both the UN and the US government, and research implied that agencies operating with this funding would be tolerated as long as they followed the Taliban's rules. However, many local commanders were suspicious of funding from International Security Assistance Force (ISAF) troop-contributing countries – even where agencies taking such funding were permitted to work. Additionally, the Taliban leadership does not appear to discriminate among activities, albeit some types of work, such as road construction, were objected to when they appeared to go against the Taliban's military interests.

In order to register, aid agencies interviewed reported liaising with trusted interlocutors to gain access to the Taliban leadership. Negotiations were reported as occurring in Pakistan or Dubai, as well as in Afghanistan. Once registered, agencies are advised to communicate with provincial-level or local commanders in their areas of operation. Local Taliban are then expected to monitor the activities of aid agencies and their adherence to the rules.

The rough outlines of this policy were fairly well understood by provincial Taliban leaders in both case study locations, Faryab and Kandahar. Registration at the senior level was critical; while some commanders were willing to strike local deals with unregistered agencies, these were more precarious and vulnerable to disruption by rival or more senior commanders. Local fighters were capable

of monitoring agency adherence and enforcing rules, reporting that they observed projects through informants within aid agencies. Projects were monitored for efficiency but also to ensure that aid workers were not 'spying'. When rules are broken, the consequences are severe, ranging from warnings to the temporary closure of projects and attacks on aid workers. The leadership was eager to stress that violence is not indiscriminate, but local commanders are authorised to expel, attack and harass aid agencies.

Taliban perceptions of aid agencies

In general, the Taliban had difficulty distinguishing between different actors, particularly at the local level (NGOs, UN agencies, the UN Assistance Mission in Afghanistan (UNAMA), for-profit contractors, Provincial Reconstruction Teams (PRTs) and so on). In some instances attitudes towards NGOs, and specifically Afghan NGOs, were more positive than towards the UN. Where commanders could distinguish between the various components of the UN, UNAMA was viewed less favourably than other agencies. UNAMA's support to the Afghan government is explicitly described by some Taliban as compromising the position of all UN agencies, particularly in Kandahar, probably due to the heavier aid agency and UN presence as compared to Faryab.

There was often a high degree of hostility towards aid actors. Accusations of spying for foreign governments were repeatedly expressed. Some more radical Taliban felt that, because NGOs cooperate with parties to the conflict, they are legitimate targets. Counterinsurgency tactics seem to have influenced the perceptions of some Taliban, particularly in Kandahar. Many Taliban reported that they were amenable to granting aid agency access until they saw agencies working only in government-

controlled areas and only coming into previously insecure areas after they had been 'cleared' – confirming their suspicions that agencies were aligned with the government and international forces.

Criticism was not limited to accusations of espionage or taking sides. Most Taliban saw aid distribution as imbalanced and programmes as ineffective and short-term, echoing comments from many elders interviewed. Beyond ideological rhetoric, they expressed concerns about 'honesty', with one Faryab commander stating that the work of these agencies was 'totally disposable, not permanent' and 'they just help you enough to survive'. There was also anger at the perceived ineffectiveness of aid, with another commander commenting that 'huge amounts are spent in Kandahar but we have not seen any project during the last decade that has brought any positive change to our lives'. Poor project quality reinforced suspicions that aid agencies had ulterior motives.

There was also a fear that aid agencies would fail to respect Afghan culture and Islamic values, as defined by the Taliban. Western views of women's rights were especially contentious, and were widely seen as a prime example of the morally corrosive implications of Western-defined 'development'. Both Taliban and aid agency staff reported incidents of the Taliban exerting pressure on aid agencies on work with women, including banning female staff from working in health clinics or in schools. At times, there appeared to be room for negotiation. Some aid workers reported that they were able to overcome initial Taliban opposition to working with women, and many felt that the Taliban would allow at least some engagement with women as long as 'Afghan culture' was seen to be respected (for example, on the condition that female employees only work with Afghan women).

There were also Taliban who held positive views of aid agencies, albeit they were in a minority. Positive associations often directly related to personal experiences. These ranged from one fighter's father working for a UN agency to a Taliban commander citing UN agencies and NGOs providing school supplies for his children. Despite widespread suspicion, these comments underscore the importance of high-quality, needs-based programming and transparency. They also suggest that experiences with one aid agency, whether positive or negative, are likely to influence views of aid agencies in general.

Influencing factors
While the political leadership of the Taliban is in favour of granting conditional humanitarian access, the military leadership seems to respond to increased military pressure by restricting access. The military leadership appears not to explicitly violate official access policy, but it is clearly subordinate to military objectives. A commander from Kandahar stated that aid access 'changes in time of fighting between foreign troops because we don't trust them and we don't let any NGOs have access to our areas'.

There were also more direct, and dangerous, consequences for aid agencies. In several instances, ISAF military opera-

tions appeared to have led to or were used to justify attacks on aid agencies. After ISAF raids and airstrikes in Faryab, for example, a Taliban commander claimed to have attacked NGO staff he believed had tipped off international forces. What proof of this he had was unclear. Aid agency staff may be the only 'outsiders' travelling to a certain village, and underlying suspicions of aid agencies may make them the most likely suspects when something goes wrong.

While military pressure led to constraints on access, the inverse – that less military pressure led to greater access – was not always true. Where the Taliban were strong and unchallenged, the military leadership did not always object to granting conditional access, but in some districts of Kandahar there were severe restrictions on access based on previous negative experiences with or perceptions of aid agencies or the fear that they would undermine this control. In districts where the Taliban were weaker, commanders sometimes allowed limited access as a way to improve community support.

ISAF's kill/capture campaign, targeting senior and mid-level commanders, has also led to increased volatility in the Taliban command, a growing reliance on 'foreign' fighters and the appointment of replacement commanders with few ties to local communities. Research found substantial differences in attitudes towards aid agencies among local Taliban, who had largely pragmatic reasons for fighting and were generally more amenable to aid agency presence, and Taliban from other parts of Afghanistan or from Pakistan and Uzbekistan, who were more likely to be ideologically motivated and more hostile to aid agencies.

More moderate local Taliban were typically well-connected with communities and more likely to listen to appeals from elders for aid, while the hardline, jihadist Taliban were perceived to be disruptive to aid access. Fighters coming from outside also generally have little regard for the Taliban's political leadership and social policies. In Kandahar, this was particularly pronounced. One Kandahari elder stated that the Taliban used to be more cooperative, but the 'Taliban from Pakistan are oblivious to our suffering and now we can't even think of development or relief work in our areas'.

Community 'acceptance' or transfer of risk?
Aid agencies consistently reported relying on elders or other community members to negotiate access. In certain circumstances, pressure from communities and elders did appear to influence Taliban commanders, but this only appeared to work where elders where either trusted by the Taliban, or local commanders were not predisposed to limit access. Even Taliban who acknowledged that such negotiations occur were suspicious of aid agencies, fearing that elders might be 'corruptible' by NGOs.

But there are significant risks. Those who vouch for aid agencies face dangerous consequences if they violate the Taliban's rules. A commander in Faryab stated that, if an 'NGO is spying or doing something against our law, then

we will punish the elders'. This calls into question the ethics of approaches that require community members to risk their lives in order to obtain assistance.

Conclusion

Engaging with the Taliban on issues of aid access is fraught with numerous challenges, and the withdrawal of international troops will bring even greater uncertainty. Greater engagement is required, and indeed some aid agencies have established structured dialogue at all levels with the Taliban. The extensive access of the International Committee of the Red Cross (ICRC), guided by a policy of structured engagement and talking to all sides, shows the importance of engagement. UN engagement with the Taliban, as well as with the government, to facilitate polio vaccinations has long provided safe access to areas under Taliban control. Other agencies interviewed, particularly those working in the south and south-east, felt that engagement with high-level leadership as well as local commanders was essential within broader community acceptance approaches in enabling them to continue to work in volatile areas. Yet findings from this research clearly demonstrate that such approaches are not the norm; aid agencies need to enhance their understanding of this issue and pursue more rigorous approaches to working in Taliban areas.

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Humanitarian negotiations in Afghanistan: WFP's experience

Harry Johnstone

Even for aid agencies with a longstanding presence in Afghanistan, the challenges of securing access are growing. Problems caused by the insecure and fragmented operating environment are compounded by the uncertainties surrounding the transition to Afghan control of security and the drawdown of international combat troops in 2014. Aid agencies are increasingly being forced to rethink their strategies and approaches, and adopt new methods and mechanisms to ensure that they are able to reach those in need of assistance.

Access constrained

The World Food Programme (WFP), the largest operational humanitarian agency in Afghanistan, has worked continuously in the country since 1962. Throughout the Soviet war, the subsequent civil wars and the latest period of conflict following the fall of the Taliban in 2001, WFP has implemented emergency relief and recovery activities, providing food-based assistance to vulnerable communities. The organisation has faced growing operational challenges over the past decade. Since 2006 insecurity has dramatically increased, peaking around 2010–11, and remains a major obstacle, preventing humanitarian agencies including WFP from delivering services in parts of the country controlled by armed non-state actors. While humanitarian agencies have some form of access to around 80% of the country, access to certain pockets remains a major challenge.

Based on February 2013 data, WFP can fully access (i.e. without escorts) 90 of Afghanistan's 399 districts. Most of these districts are in the relatively secure provinces of Badakhshan, Balkh, Bamiyan, Kabul, Panjshir, Samangan and Takhar. Otherwise WFP must access districts either using armed escorts, or can only venture to the district centres, not into more remote territory. In more volatile areas, such as the southern, central, south-eastern and eastern provinces (Helmand, Ghor, Kandahar, Ghazni, Khost, Kunar, Logar, Paktya, Paktika, Nangarhar, Nuristan, Uruzgan, Wardak and Zabul), WFP can only access districts using national or international non-governmental organisations or contracted commercial entities. In eight districts in the northern and north-western provinces of Badghis, Farah and Faryab and the eastern province of Nuristan, WFP and its partners have no access at all.

Working through partners

In areas that are beyond the boundaries set by the UN Department of Safety and Security (UNDSS) – i.e. areas that UN staffers are strongly advised to avoid for security reasons – WFP uses commercial transporters to deliver assistance, and Programme Assistance Teams (PATs), comprising INGOs/NGOs or commercial companies, such as CTG Global, to ensure effective implementation at the community level. In July 2011 WFP was contracting 80 such teams, rising to 143 by mid-2012. PATs represent six different service providers, ranging from private human resources companies to consultancy firms and NGOs, costing WFP over $2.5 million a year.

Originally intended to enable access to Afghanistan's 'no-go' areas, today PATs also work in low-risk areas, where they supplement the work of Food Aid Monitors. Challenges involved in working with PATs include high staff turnover, capacity limitations, the near-total absence of women in the teams, management problems at the field office level and disputes over differing salary levels. These issues have been addressed through new Field Level Agreements, investment in intensive training, revised roles and responsibilities and changed management and recruitment arrangements. This ensures that PATs can conduct feasibility studies to assess needs, understand the concepts behind WFP's portfolio of activities and use

HUMANITARIAN NEGOTIATIONS

WFP monitoring mission to Shahrak district, Ghor province

the WFP monitoring toolkit and follow WFP's reporting requirements. Commercial transporters are identified by WFP's logistics arm. They follow their own safety and security precautions and are responsible for their own security. WFP has an agreement with these entities whereby, if any food assistance is lost, the agency is reimbursed by the company.

WFP is also increasingly working with national and international NGOs that are able to access communities under the control of armed non-state actors. These organisations have usually spent many years working in these communities, gaining their trust and building respect among key actors. WFP is also working through communities to negotiate access with armed non-state actors. WFP very rarely, if ever, negotiates directly with non-state actors; the most effective method is to use community representatives to advocate on behalf of the organisation. WFP's experience in Kandahar and neighbouring provinces, regions where the government has little control, is that representatives of communities will often come to WFP or other agencies to report their needs, be they focused on health, education or rural development. These representatives take responsibility for their communities' food security and negotiate with the actors controlling their territory. Community representatives also frequently take responsibility for handling WFP project monitors' access and security by securing and delivering letters signed by armed non-state actors. However, these assurances only supplement the risk assessments conducted by the commercial transporters and PAT monitors who physically access the territory, and no broad system of assurance is in place.

Relying on community acceptance and mediation can pose risks for those directly involved. In 2009, a community representative responsible for implementing a food assistance project in a district in Kandahar province was seized by an armed non-state actor and accused of distributing American food. After the community explained WFP's food distribution mechanisms, the man was released and was able to continue the food distribution. In western Afghanistan, WFP succeeded in negotiating some access to Ghor province based on one national staffer's unique standing and personal relations in the area. Thus, WFP did not need to rely on the community to mediate on its behalf. The national staffer's networks and reputation meant that WFP was granted access to a region controlled by a criminal actor not directly affiliated with any insurgency, who had preserved some form of authority over several districts in the province for years. WFP successfully monitored food distributions by adopting low-profile approaches. These examples reflect how WFP is dealing with a range of non-state actors with varying motivations, interests and attitudes. As a result, the organisation has to be pragmatic and flexible to seize opportunities when they arise.

In some circumstances, WFP has persuaded local state authorities to speak with armed non-state actors as part of access negotiations. A district-level government representative spoke to Taliban factions in Quetta on behalf of WFP to gain permission to continue a food distribution in schools in a nearby district on the Afghan side of the border. The initial outcome of this meeting was mixed; one faction was in favour of the food distribution continuing, while another was not. WFP worked through an Afghan community representative in Kandahar province,

who succeeded in obtaining a phone contact in Quetta. By telephone, he set up an appointment with the Quetta-based representative, outlining the exact purpose of his visit. At the meeting he explained to the Quetta contact that the food was intended for both boys and girls and was coming from a humanitarian agency. Eventually, the distribution (of oil and high-energy biscuits) was allowed to continue.

A new strategy

While WFP has worked through communities and other local authorities to ensure that activities support communities in need, there is no structured approach to negotiating directly with non-state actors. Under its new Country Strategy, WFP is emphasising its commitment to address *all* humanitarian needs, based on an even more pronounced adherence to humanitarian principles. A more structured approach to outreach is now being implemented, including greater use of local radio (in which WFP's humanitarian purpose is communicated), engagement with local authorities to explain WFP's working methods and a greater focus on outreach at other operational and strategic levels. It will take time and flexibility to communicate this operational shift and gain trust and acceptance. The organisation can achieve access for limited periods in specific pockets of the country through ad hoc negotiations, but more comprehensive access will only come with greater acceptance among communities and non-state actors.

The risks associated with distributing food that is branded with the logo of a NATO troop-contributing nation are clearly felt by these communities. Communities in one district in Helmand province have asked WFP to change the logos, or have sought to re-bag food because of the risks associated with receiving a commodity paid for by a government deemed to be an 'aggressor' in their eyes, and no doubt in the eyes of local insurgents. WFP tries to persuade donors to remove logos from food for humanitarian purposes. After a series of meetings, one of WFP's major donors is now considering waiving the requirement to mark assistance in specific areas experiencing conflict.

With the withdrawal of international forces and the PRTs, it may become easier for humanitarian agencies to achieve acceptance. The PRTs were conceived and funded by NATO troop-contributing nations to implement visible, physical construction projects in areas where NATO troops were deployed. They often sought to win the 'hearts and minds' of the Afghans, using aid to further a military strategy. This conflation of civilian aid with military objectives, and the disbursement of assistance by entities that were party to the conflict, arguably undermined the perceived neutrality and impartiality of assistance. In parallel, an 'aid effectiveness' discourse has seen aid agencies assert their support for the Kabul government, in line with the Paris Declaration, in what has been a conflict context. As a result, aid lost a degree of legitimacy; some humanitarian aid agencies have been targeted by armed non-state actors, and others have lost acceptance in parts of the country that have been fought over.

As the withdrawal of international combat troops continues, the focus of aid is likely to swing back to 'back to basics' humanitarian principles grounded in the appropriate allocation of assistance according to needs, impartiality and neutrality. In line with this trend, WFP is keen to widely communicate its humanitarian principles, to achieve optimal impact in line with its humanitarian objectives.

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Negotiating humanitarian access with Hamas in Gaza

Antonio Galli

Humanitarian access negotiations with Hamas in the Gaza Strip highlight the many challenges humanitarians encounter when engaging with non-state actors. After winning the Palestinian Authority (PA) parliamentary elections in 2006, Hamas began transitioning from an Islamic charitable/militant organisation to a party responsible for state institutions and the provision of public services. Yet Hamas remains in many ways a non-state actor; those running its ministries are guided by its senior leadership in Qatar and Egypt, have little control over its paramilitary branch, the Izz ad-Din al-Qassam Brigades, and are suspicious of Western aid organisations' potential 'collaboration' with Israeli and other intelligence agencies. Hamas now has the institutional means to exert greater control over humanitarian agencies; however, the realities of its new state-like position have tempered its approach.

Hamas relies on popular support and is seeking international legitimacy. However, as a registered terrorist organisation in the United States, the European Union (EU), Canada and Japan, many countries have a 'no-contact' policy with the organisation. Since June 2007, Hamas' rule over Gaza has also been subject to a blockade by Israel and Egypt, exacerbating an already fragile humanitarian situation. Under such conditions, and despite its concerns about aid agencies, Hamas' interests have created a willingness to cooperate with aid organisations. UN bodies such as the UN Relief and Works Agency (UNRWA) and NGOs provide a range of assistance to the 1.6 million residents of Gaza, 80% of whom are aid recipients, greatly easing the burden on governing institutions.[1] The treatment of aid organisations is also seen as a measure of Hamas' moderation, and therefore credibility, with the international community.

Negotiating access for day-to-day operations

This tension in Hamas' motivations has had a significant impact on the humanitarian community's ability to effectively negotiate access. In August 2011, the de facto Ministry of Interior announced that international NGO staff entering Gaza would need to apply for residency cards or short-term travel permits. The following December, the authorities stated that UN and INGO personnel must coordinate their entry and exit, while national staff would need to obtain permits to exit through the Hamas checkpoint, Arba-Arba, leading to the Erez crossing with Israel. While officially these procedures were intended to manage movement to and from its territory, Hamas informally stated that they were also meant to prevent agencies from facilitating the exit of individuals suspected of collaborating with Israel. It was also clear that Hamas expected that further coordination would help confer international legitimacy on its rule.

While these requests did not necessarily violate international humanitarian law (IHL), they did present several operational challenges. Agencies had previously accepted applying for permits and/or coordination with Israel, and these new procedures would only add a further layer to an already complex bureaucratic process, increasing delays and making it more likely that entry would be denied. The move also raised concerns that this would set a precedent for further access constraints, and that the process would be used to interrogate staff. The UN Department for Safety and Security (UNDSS) also opposed having UN personnel leave their armoured vehicles at Arba-Arba since they could be targeted by Israeli fire. For some INGOs, anti-terror legislation and the no-contact policy imposed by several donors prohibited them from complying.

While anti-terror legislation and donors' no-contact policies made it difficult for some INGOs to engage with Hamas, UN General Assembly Resolution 46/182 gave UN actors operating under the Emergency Relief Coordinator (ERC), such as the Access Coordination Unit (ACU) within the UN Office for the Coordination of Humanitarian Affairs (OCHA), the mandate to negotiate with all relevant parties.[2] Since 2008, the ACU had built technical-level relationships with Hamas officials, providing an opportunity to discuss the humanitarian principles guiding aid operations, as well as to better understand Hamas' interests, structure and perspectives. This engagement played an important role in creating acceptance and trust, while allowing the ACU to expand contacts beyond officials in the Ministry of Foreign Affairs to include key actors within the Ministry of Interior, the Protection Unit and the Border Crossing Authority. When Hamas began imposing access constraints, this channel was important in helping to clarify the concerns of the local authorities.

1 The United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *Five Years of Blockade: The Humanitarian Situation in the Gaza Strip*, June 2012.
2 Resolution 46/182 states that the ERC is responsible for 'Actively facilitating, including through negotiations if needed, the access by the operational organizations to emergency areas … by obtaining the consent of all parties concerned'.

Before the negotiations took place, the ACU attempted to coordinate with affected organisations within the Humanitarian Country Team (HCT) in order to assess the impact these measures would have on agencies' movement and programmes. Consultations were also held with key donors and diplomatic missions to share information on policies and approaches, and ensure acceptance of the UN's engagement. Attempts were also made to reach a common HCT policy that could be presented to Hamas, preventing it from playing organisations off against each other. However, efforts at arriving at a common policy were not entirely successful given the varying positions of different organisations.

Following preparations, several rounds of negotiations took place between officials in the ministries of foreign affairs and interior and the ACU/OCHA, with the Humanitarian Coordinator leading key discussions. The process began by outlining the concerns of both parties, allowing for a dialogue on solutions that would address their respective needs and strike a balance between Hamas' desire for a level of control over agencies' movements and agencies' desire for unimpeded access. The ACU/OCHA highlighted the obligations under IHL and the HCT 'Minimal Framework for the Provision of Humanitarian Assistance in Gaza' endorsed by the de facto authorities in 2009, which provided for 'free and unimpeded access'. However, the provisions of IHL do not necessarily prohibit such permit and coordination requests, and Hamas simply ignored its commitments in the HCT framework.

Ultimately, the most effective arguments were those that appealed to Hamas' interests. The UN focused on the practical implications for the HCT's ability to provide effective and timely assistance to the civilian population in Gaza due to additional access constraints on humanitarian staff. The population's aid dependence, and Hamas' dependence on popular support, meant that the de facto authorities were reluctant to take steps that might compromise their public standing. Although the negotiators made it clear that the scope of negotiations was limited to humanitarian and not political issues, and did not confer political legitimacy on the organisation, Hamas' desire to be seen as a legitimate state-like actor created a willingness to adopt a position in line with the best practices of states in respecting humanitarian principles.

By using a structured dialogue and appealing to the authorities' interests (without compromising IHL and while maintaining neutrality and independence), the UN was able to resist a number of Hamas' demands. The de facto authorities eventually agreed that UN personnel would not need to pre-coordinate their movements or exit vehicles for ID inspection. Hamas also rescinded its request that UN and INGO national staff obtain permits for exiting through Arba-Arba. Unfortunately, a number of INGOs had already begun applying for residency cards and entry permits, leaving Hamas unwilling to reverse its position. By accommodating the requests of UN agencies, Hamas was also able to diminish the level of engagement on this issue by the humanitarian community as a whole. Despite

this, the new arrangements helped ensure humanitarian access during periods of relative calm.

Humanitarian access during Operation Pillar of Defence

The reliability of access negotiations with Hamas was tested during Operation Pillar of Defence. In November 2012, the Israeli Defence Force (IDF) launched an eight-day aerial operation against Palestinian armed groups in Gaza targeting roughly 1,500 sites – including populated areas – while armed groups launched a similar number of rockets and mortars at Israeli population centres. In the course of the hostilities, 167 Palestinians and six Israelis were killed and some 17,000 civilians were temporarily displaced.[3] From the outset, the ACU deployed personnel to coordination centres in Gaza, Jerusalem and the IDF Coordination and Liaison Authority at the Erez crossing (Erez CLA) in order to facilitate civil–military coordination efforts with both Israeli and Hamas authorities.[4]

During the operation, the ACU made several attempts to relocate non-essential UN and INGO staff from Gaza to Israel. In each case, their movement was cleared with Erez CLA, which kept the crossing open despite it being targeted by mortar fire. Coordination through the Hamas checkpoint proved more difficult. Hamas officials abandoned their offices for underground locations once hostilities started and were reluctant to use cellular communications for fear of targeted assassinations by Israeli forces. This led to a weakening of Hamas' chain of command and to conflicting responses in the field. It would often take several hours to establish contact with the Ministry of Foreign Affairs, and several more before it approved access.

Official approval did not prevent obstacles on the ground. The initial convoy was stopped at Arba-Arba by a gunman claiming to work for the Ministry of Interior, forcing it to return 12km to Gaza City through airstrikes and rocket fire until further discussions eventually allowed it to pass. When a second convoy attempted to exit the checkpoint was closed, forcing the UN to seek clear conditions for access with Hamas. Hamas authorities claimed that the checkpoint had been closed for the safety of its staff (who had come under Israeli tank fire), who would not be able to register the movement of humanitarian staff (although ambulances were being allowed through). The authorities later explained that their procedures were also intended to prevent the departure of collaborators, whom they suspected humanitarian actors might be assisting.

Despite difficult communications, the UN explained that the security of staff was of paramount concern to both Hamas and the humanitarian community, which for the

latter required consistent access to and from Gaza. The UN highlighted that a lack of access would hamper agencies' ability to provide adequate assistance and protection to civilians during the hostilities. Media reports at the time about Hamas denying access to humanitarian personnel added to the pressure to find a solution. Hamas eventually agreed to create a temporary registration point several hundred meters from the checkpoint, and to open the checkpoint daily between 12:00 and 14:00, which allowed regular access to and from Gaza.

Following a ceasefire on 22 November, UN actors worked to establish more consistent and clearer channels of communication and coordination during emergency situations. These discussions led to the establishment of a round-the-clock hotline manned by staff from the de facto Ministry of Interior to address operational and security issues, though it remains to be seen how this mechanism will function in the event of another emergency.

Lessons

The experience of negotiating access with Hamas provides several lessons that should be taken into account when revising the Inter-Agency Standing Committee (IASC) guidance on engagement with non-state actors. First, engagement should begin at an early stage. Developing trusted channels of communication early on allows access constraints to be addressed rapidly, which is critical to effectively maintaining and improving access. While it is important during negotiations to emphasise each party's obligations under IHL, and to ensure that humanitarian policies and positions are informed by IHL, displaying an understanding of the non-state actor's concerns and appealing to their interests are often more effective tools.

While existing IASC guidance and the ERC have stated that humanitarian negotiations do not confer legitimacy on armed non-state actors, it is hard to avoid this impression by armed groups and members of the international community, particularly in contexts with an integrated UN mission where those leading humanitarian negotiations might be linked to peacekeeping forces that might be seen by some as a party to the conflict. Such assumptions need to be taken into account when deciding on the structure and composition of negotiations with non-state actors. Finally, effective negotiations require a high level of cohesion within the humanitarian community, which is often difficult to achieve in practice. Operational requirements and differing positions amongst a diverse range of humanitarian actors often lead to independent approaches to access constraints, which might result in the expansion of agency space for some, but could have an adverse impact on humanitarian space as a whole.

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3 B'Tselem, *Human Rights Violations During Operation Pillar of Defence*, May 2013.

4 UNDSS staff were also deployed to Erez CLA, where the ACU and UNDSS worked in cooperation.

The disappearance of cross-line aid in Darfur, Sudan

Jonathan Loeb

Ten years of conflict in Darfur between the Sudanese government and an array of rebel groups and militias have caused a humanitarian emergency. In the early stages of the conflict, between 2004 and 2009, some two dozen agencies provided 'cross-line' humanitarian assistance in territory controlled by rebel movements. Although urgent humanitarian needs persist in these areas, by 2011 all cross-line aid had stopped. This article explores the issues around humanitarian access to rebel and contested areas in Darfur, and analyses the reasons why such assistance has come to an end, leaving hundreds of thousands of people in desperate need.

The 'golden age' of access, 2004–2006

Major violence erupted in Darfur in April 2003, causing large-scale displacement and loss of life. For the first few months of the fighting virtually no humanitarian assistance was delivered to conflict-affected populations, and the humanitarian community's presence in Darfur was limited to the few organisations that had been there prior to the conflict. The Sudanese government restricted the movements of aid agencies in Darfur and prohibited other agencies from entering. For their part, the rebel movements in Sudan had no humanitarian policy and no contact with humanitarian organisations.

Government restrictions on humanitarian access were lifted in May 2004, two months after the signing of a humanitarian ceasefire agreement by the major parties to the conflict. Although there had been significant international pressure on the Sudanese government to allow access, the change of heart in Khartoum was arguably prompted by a belief that the military campaign against the rebels had met its objectives, and that resisting international pressure was no longer in the government's interests. Whatever the reasoning, humanitarian organisations began arriving in Darfur en masse in June 2004.

The rebels benefited materially from medical assistance and food aid; they also benefited politically as the provision of assistance increased support for the rebels among the local population. The presence of aid agencies also arguably made the government less likely to mount attacks against the rebels. Aid personnel spent significant time in the deep field to develop relationships with rebel commanders and negotiate mutually acceptable mechanisms for the delivery of assistance into rebel territory. A few organisations, including the International Committee of the Red Cross (ICRC) and Médecins Sans Frontières (MSF), negotiated their own access directly with rebels. For the majority of agencies, the UN Office for the Coordination of Humanitarian Affairs (OCHA) and the UN Department of Safety and Security (UNDSS) negotiated 'ground rules' setting out the procedures governing humanitarian access. The main point of contention during the negotiation of the 'ground rules' was the rebels' demand to vet all national staff entering their territory because the rebels believed that

many national staff were government spies. A compromise was reached whereby aid agencies would supply the name, age and gender of their staff. Although the nationality and ethnicity of staff were not explicitly required, these could easily be determined by the rebels based on the names of staff members. The majority of the humanitarian community believed that the compromise was justified and were sympathetic to the rebels' vetting request, in part because the government's Humanitarian Affairs Commission (HAC) made similar attempts to control which Sudanese nationals were hired by UN agencies and international NGOs. The HAC reportedly vetted most, if not all, national staff hired by international agencies, and many aid agency staff had personally been pressured by national and local HAC officials to hire particular individuals.

Growing insecurity and deteriorating access, 2006–2009

In May 2006, the Darfur Peace Agreement (DPA) was signed by the Sudanese government and one of the three main rebel groups in Darfur, the Sudan Liberation Army/Minni Minnawi (SLA/MM). In the aftermath of the DPA the security situation for humanitarian organisations in Darfur deteriorated dramatically. Harassment of humanitarian staff and attacks on humanitarian property were widespread, prompting nearly all humanitarian organisations to revise their security protocols; many were forced to shut down operations, and some considered withdrawing from Darfur altogether.

Increasing insecurity was largely attributable to the proliferation of armed groups following the DPA, and their growing belligerence towards humanitarian actors. Splinter factions from signatory and non-signatory rebel movements began to behave like bandits, as did some members of the original rebel movements. Arab militia groups theoretically allied to the government (the *janjaweed*), which had initially not interfered with aid operations, also began attacking aid agency personnel and property.

The actions of the *janjaweed* can largely be explained by their relationship to the peace process. A premise underlying the peace process was that the interests of the *janjaweed*-affiliated tribes were being represented by the Sudanese government; in reality, this was never the case. The outcome of the DPA demonstrated to these groups that the government was not protecting their interests. As a result, they began to act more like autonomous entities than proxy militias; they also became increasingly intolerant of aid operations from which they had never benefited and which they perceived to be exclusively serving their enemies.

The new-found hostility towards aid agencies among the rebels stemmed in part from a perception, both among non-signatory movements and the wider civilian population,

Dissemination session to Justice and Equality Movement combatants in Durum, Darfur

that the humanitarian community was biased in favour of signatory factions. It was also a result of the changing structure and interests of the rebel movements in the wake of the DPA. Most groups had lost their chain of command and low-ranking members were no longer accountable to their superiors, they often controlled little territory and were no longer accountable to their communities, and their supply chains had often been cut and they were often in desperate need of supplies. They could also more easily get away with acts of banditry as aid agencies were often unable to determine who had attacked them.

Despite the growing insecurity, cross-line operations continued, and aid agencies were able to maintain access to vulnerable populations outside of government-controlled territory by revising their security protocols, establishing contacts with *janjaweed* groups and newly formed rebel factions and renegotiating access. Maintaining access came at a cost: renegotiation often involved compromising humanitarian principles, such as providing 'aid for peace' to certain groups, and more stringent security protocols, such as travelling only by air, distanced aid agencies from the communities they were assisting, and the armed groups with which they needed to work.

The NGO expulsions in 2009 and the collapse of cross-line aid

In 2009, the International Criminal Court (ICC) indicted the sitting president of Sudan, Omar al-Bashir, for war crimes and crimes against humanity. The government responded to the indictment by expelling 16 aid agencies,

including the majority of NGOs working in rebel-controlled territory. UN agencies and the remaining international NGOs prioritised IDP camps in government areas, and the lost capacity in rebel areas was never replaced, in part because international organisations were reluctant to attempt new programmes in rebel areas for fear that this would jeopardise their programmes in government territory.

Following the independence of South Sudan in 2011, the government in Khartoum became openly opposed to the presence of international aid workers anywhere in Sudan, and especially in areas controlled by rebels. The government's logic is simple: the presence of aid agencies contributed to the secession of South Sudan and the indictment of Bashir, and contributes to the strengthening of rebel movements and the proliferation of permanent IDP camps in Darfur. In contrast, where aid agencies are absent – as was the case when violence erupted in South Kordofan and Blue Nile in 2012 – the response has been limited to increased statements of disapproval by Western countries.

By the end of 2012 the consequences of this cruel logic were on display for everyone to see. Virtually no aid agencies were working in rebel-held or contested areas, and there was almost no communication between aid agencies and rebel movements. The rebel movements bear some responsibility for this lack of communication as the major groups have abandoned all semblance of a humanitarian policy. However, the humanitarian community must share some of the blame, as nearly all aid agencies have stopped

trying to access rebel and contested areas. The few INGOs that are still attempting to secure access have no support from donors or the senior UN political leadership, and the UN Assistance Mission in Darfur (UNAMID) provides them with no security. The African Union, the UN and donor countries no longer prioritise humanitarian access in Darfur; even the United States, historically the most forceful advocate for assistance to rebel areas, has ceased all serious advocacy efforts. MSF-Spain, the only international NGO with facilities and (national) staff inside rebel-controlled territory, runs a hospital in Jebel Si, North Darfur, but has been unable to supply it for over a year. The Danish Refugee Council (DRC) is the only international NGO that has been able to expand its operations into rebel areas during 2011 and 2012. A DRC worker explains the organisation's approach as follows:

> we deal directly with community leaders and not with the rebels …. And we always ask the community leaders to inform HAC of their requests … That might be why the GoS has let us in … We also work with the Arab population, doing agricultural and education support. We work with both sides. We distribute to both sides.

A way forward

The policies and behaviour of the parties to the conflict are principally responsible for the disappearance of assistance in rebel areas. The Sudanese government often knowingly and purposefully prevented humanitarian assistance from reaching civilians in rebel-controlled and contested areas. Rebel movements rarely prioritised the humanitarian needs of the communities under their control. International actors are also at fault. International interventions not only failed to support meaningful peace, justice and security initiatives, but also made it progressively more difficult for humanitarian actors to access and assist vulnerable populations. Belligerent actors and international interventions left aid agencies with a limited purview in which to design and implement the humanitarian response to an enormous crisis. As a result, it is difficult to determine the extent to which the decisions made by aid agencies during the different stages of the conflict contributed to the emergence, deterioration and collapse of cross-line assistance. Aid agencies must ask themselves if the collapse could have been prevented, or if it was an unavoidable consequence of the geopolitical situation in Darfur.

Those humanitarian actors still concerned with providing assistance to *all* vulnerable populations in Darfur must determine if there is anything that the humanitarian community can do to re-establish access and deliver assistance throughout Darfur. Many contend that the humanitarian community is capable of expanding access and assistance despite the many serious obstacles to doing so. Others believe that humanitarian space in Darfur is destined to shrink further, and predict a complete prohibition on international aid workers.

Reopening humanitarian access to rebel and contested areas in Darfur will involve high-level advocacy and diplomacy directed at senior Sudanese government officials. These officials will not be receptive to the appeal. The heterogeneity of centres of power within the government demands that political pressure is delivered in a sustained and coordinated manner. The complexity of the humanitarian community makes the coordination this would require difficult. Individual and collective leadership by senior members of the humanitarian community will be essential to persuade government officials to modify their position. The UNAMID SRSG in particular must be much more assertive with respect to access. He should also be transparent with the government about his intentions in this regard (remembering that being transparent does not imply asking for permission).

High-level pressure must be augmented by continual pressure by humanitarian actors directly towards lower-level national and local government officers, particularly HAC officials in Khartoum and Darfur. As political pressure is applied, donors should allot funds specifically for assistance inside rebel and contested areas. NGOs and UN agencies in Darfur must reprioritise working with vulnerable populations outside government territory. Aid agencies should be honest and transparent with the government about their objectives outside government territory. Developing personal relations with local community leaders and local HAC members will be crucial for the success of any project. Aid agencies should develop plans for entirely locally staffed projects. Projects can be managed remotely by national and international staff in government territory in Darfur, in Khartoum or from abroad. Aid agencies must re-establish a network of contacts with rebel and *janjaweed*-affiliated groups. This should include not only political leaders but also local field commanders. Where necessary, UNAMID or OCHA should act as intermediaries between international and armed groups. Aid agencies should facilitate meetings outside Sudan between armed groups, aid agencies, community leaders and government officials in order to re-establish trust with the rebels and ultimately develop protocols for entering rebel territory.

Jonathan Loeb is an independent consultant. This article is based on a case study of cross-line aid in Darfur, to be published by the Humanitarian Policy Group later this year.

HUMANITARIAN NEGOTIATIONS

Counter-terrorism and humanitarian action

Kate Mackintosh and Ingrid Macdonald

In early 2011, the Humanitarian Policy Group (HPG) and the Norwegian Refugee Council (NRC) hosted a workshop with members of the Inter-Agency Standing Committee (IASC) Humanitarian Space and Civil Military Relations Task Force on counter-terrorism and humanitarian action. Humanitarian practitioners had expressed concerns with the implications of counter-terrorism measures for humanitarian operations, particularly in contexts such as the Horn of Africa, occupied Palestinian territories (oPt) and Afghanistan. Overall, the workshop exposed deep levels of anxiety concerning perceived risks, a lack of clarity as to what the exact risks were and a culture of secrecy, including a 'don't ask, don't tell' attitude.

Waiting for medical attention from the African Union Mission in Somalia (AMISOM)

Practitioners are concerned that they could incur criminal liability by coming into contact or engaging with non-state armed actors listed as terrorist entities. They say that it is practically impossible to avoid all contact with non-state armed actors active in or in control of territory where humanitarian operations are taking place. In order to negotiate access to populations in need of assistance and protection, and to maintain the acceptance of local actors and the population, contact with non-state armed actors is crucial in facilitating safe and effective humanitarian responses. The core humanitarian principles – underpinned by international humanitarian law and UN General Assembly Resolution 46/182, as well as numerous other UN resolutions – require humanitarian actors to treat state and non-state parties to an armed conflict on an equal basis, and to respond to the needs of the civilian population, without consideration of political or other factors. Impartial humanitarian bodies may also engage with all conflict parties in order to negotiate access: in the language of the Geneva Conventions, to 'offer their services'. (Their engagement 'shall not affect the status of the parties to the conflict'.)[1] Counter-terrorism measures which seek to or may inadvertently prohibit or criminalise engagement for humanitarian purposes, or humanitarian activities, may therefore clash with the foundations and methods of principled humanitarian action.

Independent study on donor counter-terrorism measures and humanitarian action

In response to these concerns, the Co-Chairs of the Task Force – NRC and the UN Office for the Coordination of Humanitarian Affairs (OCHA) – commissioned an independent study on the impact of donors' counter-terrorism measures on principled humanitarian action.

Led by independent experts Kate Mackintosh and Patrick Duplat, with the support of a team of researchers and the guidance of an expert Advisory Group, the report analyses relevant UN Security Council resolutions and sanctions regimes, as well as relevant counter-terrorism law in 15 jurisdictions, and reviews the resulting counter-terrorism policies of ten significant humanitarian donors, including some of the conditions imposed and actions taken in the context of counter-terrorism risk management. The report goes on to consider how humanitarian actors have reacted to such measures, and the impact on humanitarian operations in two case studies, Somalia and Palestine. It also offers recommendations to reduce the adverse impacts of counter-terrorism law and related donor measures on humanitarian action. The study has involved consultations with donors, UN and non-UN humanitarian actors and counter-terrorism bodies, and a session at the NRC Principles in Practice conference held in Brussels in December 2012.[2] The study was published at ECOSOC on 17 July 2013.

Counter-terrorism laws and sanctions regimes

The study looks at global, regional and national sets of counter-terrorism laws and sanctions regimes. At the international level, the most influential instrument is UN Security Council Resolution 1373, adopted in September 2001 following the 9/11 attacks in the US. The resolution obliges states to implement measures to deny individuals or entities engaged in terrorism direct or indirect access to funds, financial assets or goods and services. Along with the International Convention for the Suppression of the Financing of Terrorism (one of 14 multilateral treaties addressing different aspects of terrorist acts), the resolution has influenced much

1 Common Article 3 to the Geneva Conventions of 1949.

2 See http://principlesinpractice.org and www.nrc.no.

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counter-terrorist law and practice at national level. Significant non-legal measures include the UN General Assembly Global Counterterrorism Strategy and the Financial Action Task Force (FATF), an inter-governmental body established in 1989 to combat money laundering and terrorist financing.

At the national level, many criminal laws prohibit the provision of financial or other material support to terrorism. Some states require intent to support a terrorist act to attract criminal liability, whilst others only require knowledge that a group is listed and that it received contributions. In other words, once a group is designated terrorist, no intent to contribute to a crime or knowledge that commission of a crime would be assisted is generally required to prohibit support to the group. The UK goes further, as the provider need only have 'reasonable cause to suspect' that resources may be used in a criminal act, and in Australia it is sufficient to be 'reckless' as to whether funds will be used to facilitate or engage in a terrorist act. This significantly increases the possibility that humanitarian action, or ancillary engagement, could fall foul of the law.

Counter-terrorism sanctions consist of measures introduced by states that are designed to freeze assets and ensure that resources are not made available to a designated entity. In general, no intent to support terrorism is required to violate counter-terrorism sanctions. States can impose sanctions independently, or as part of regional or international bodies. The UN Security Council has imposed counter-terrorist sanctions on those associated with Al-Qaeda and the Taliban. Other UN sanctions regimes may be maintained for different reasons, but still apply to groups designated as terrorists by individual states, such as the Somalia UN sanctions regime, which targets Al-Shabaab (among others). Sanctions regimes generally include some kind of humanitarian exemption, such as that exceptionally introduced to the Somalia sanctions regime by UN Security Council Resolution 1916 in March 2010. In addition, licences may be available at national level for humanitarian actors (and others) to carry out limited activities in areas under the control of sanctioned entities. However, these licences can take a long time to obtain and are not always granted.

The study found that sanctions and counter-terrorism laws do not prohibit contact or engagement with non-state armed actors listed as terrorist entities for humanitarian purposes. Instead, most prohibitions focus on whether some form of material support is provided directly or inadvertently to the entity or those associated with it. The main challenge for engagement is in terms of donor policies; of particular note here is Gaza, where certain donors have sought to prohibit contact through contractual agreements, principally to avoid legitimising Hamas as the de facto authority.[3]

3 The fear that humanitarian engagement may lend legitimacy to non-state armed actors was foreseen and allayed in the Geneva Conventions by the stipulation that such contact 'shall not affect the status of the parties to the conflict'.

Donor policies and practices

Whilst the approach of the donors looked at in the study differs, it is clear that partners are expected to be aware of and respond to national counter-terrorism legislation and related risk management policies. Australia, Canada and the US insert counter-terrorism clauses in all funding agreements (the UK has discretion to insert clauses in 'high-risk' contexts). These clauses generally require humanitarian actors to be aware of counter-terrorism legislation and to take concrete steps to ensure that funds are not used directly or indirectly to support terrorism and/or designated groups. Most clauses also require that these obligations are passed on to implementing partners, contractors or sub-grantees. All require notification where funds are utilised by, or a 'link' discovered to, an entity designated as terrorist.

Donors may also use broader risk management frameworks, including partner accreditation schemes which assess compliance with counter-terrorism legislation (Australia), or require general compliance with policies related to partner risk management. Similarly, donors may have guidelines which refer to the need to be aware of national counter-terrorism legislation (Denmark, Canada, the EU, the Netherlands, the UK and the US). These frameworks place the burden on humanitarian partners to ensure compliance, and require procedures to be in place to mitigate risks.

Donors may also have direct oversight of humanitarian actors to ensure compliance, such as government-monitored restrictions on overseas financial transactions. Another example is formal or informal partner vetting, where specific information is required to vet a partner and determine its suitability against counter-terrorism guidelines. In the case of the US and the oPt, such vetting can extend to beneficiaries, meaning that people in need can be excluded from assistance if they are flagged as being associated with terrorism or designated terrorist groups.

The impact on humanitarian actors

The study found that counter-terrorism law and measures affect humanitarian action on three levels: structural, operational and internal.

Structural impacts include limitations on the ability of organisations to operate according to the principles of neutrality, impartiality and independence, and to meaningfully engage with local actors, which may influence how an organisation or sector is perceived. In Gaza, it appears that programmes are designed firstly to avoid contact with or support to Hamas, and only secondly to respond to humanitarian needs. In some cases, programmes exclude whole groups of people on the basis of their geographic location. The role of Palestinian NGOs has also diminished, with some refusing grants due to counter-terrorism clauses.[4] Local NGOs may also be excluded as some donors focus on larger, international partners which are seen as better able to implement counter-terrorism precautions.

4 Ma'an Development Center, *Matrix of Control: The Impact of Conditional Funding on Palestinian NGOs*, August 2011.

Operational impacts include changes or restrictions in funding to specific geographic areas, beneficiaries or partners; changes or restrictions in programmes; self-censorship or self-imposed restrictions; decisions not to take funding from certain donors; and the increased use of subcontracts as agencies seek to pass on the risks and liabilities to local implementing partners. In Somalia, there was a dramatic reduction in humanitarian funding to southern Somalia after Al-Shabaab was designated as a terrorist group, particularly from the US. Between 2008 and 2010, US aid to Somalia decreased by 88%, despite a severe food crisis.[5] At least three NGOs stopped operating in southern Somalia in 2010, in part due to lack of funding. Some actors reported a 'chilling effect', where decisions regarding where and how to operate were made in part to minimise exposure to legal liability. In Gaza, the designation of Hamas as a terrorist group by some states has seen projects cut or blocked, programmes suspended and planning and programme design based on avoiding constraints rather than meeting needs. One NGO could not carry out a planned distribution to 2,000 families because it could not share its beneficiary list with the Hamas Ministry of Social Affairs. Another could not progress with a planned psychosocial project because a school headmaster was perceived as too senior in the Hamas administration. Self-imposed limitations are also common; one NGO has excluded two kindergartens from its school feeding programmes because of potential ties with Hamas. In Somalia, humanitarian actors do not propose certain projects as they are considered to pose too great a risk.

Internal impacts include slower operations and increased costs. Many agencies use a global database run by a private company to screen staff, contractors and partners against 179 terrorism lists. Islamic NGOs in Somalia report particular trouble receiving project funds due to international banking restrictions that delay disbursement. In both Gaza and Somalia, waivers entail burdensome procedures and it is not always clear what they cover. The combination of uncertainty and concern over legal liability also makes agencies reluctant to share information, and to coordinate and collaborate.

The impacts of counter-terrorism measures vary between different organisations. The UN (and to a certain extent the International Committee of the Red Cross (ICRC)) benefit from privileges and immunities not available to NGOs. UN agencies (sometimes collectively) negotiate more flexible counter-terrorism clauses directly with states, without

5 'IASC Real Time Evaluation of the Somalia Drought Crisis Response', 31 May 2012, http://reliefweb.int/report/somalia/iasc-real-time-evalu-ation-humanitarian-response-horn-africa-drought-crisis-somalia-0.

engaging partners. Moreover, the application of national laws depends on where an organisation is based, and the nationality of its staff and donors. Islamic NGOs appear to face greater scrutiny from certain states and financial institutions in a general climate of suspicion towards Muslim charities.

Strategies to cope with counter-terrorism measures include a high level of self-limitation and self-censorship. Instances of over-compliance have resulted, as well as a stifling of the principled debates that would normally be expected from the humanitarian sector. Risks and liability are being passed on to local implementing partners through sub-contracts, and there is a lack of consistency across the various funding agreements, adding to the administrative burden, uncertainty and risks.

Conclusion

Sustained dialogue around the implications of counter-terrorism measures is required, both between humanitarian actors and donors and more broadly across the humanitarian, security and political sectors. Such exchanges should foster discussion on the impacts of counter-terrorism measures on humanitarian action, and promote understanding that the purpose of principled humanitarian action is to provide protection and assistance to populations affected by crisis, not to further the objectives of an armed group, whether designated terrorist or not.

Information sharing, increasing understanding of counter-terrorism measures, reducing fear and self-censorship and ensuring that operational staff have appropriate guidance and support are all crucial areas for improvement. Humanitarian actors must ensure that they have appropriate due diligence procedures in place to mitigate aid diversion, balanced against the trend to pass liability and risk on to implementing partners. Such initiatives are under way within the IASC Task Force on Humanitarian Space and Civil Military Relations. States should provide exemptions for humanitarian action so as not to hinder critical humanitarian work, and should take care not to undermine the valuable role played by national and local humanitarian actors in making response effective. Critical to this is allowing contact or engagement with non-state armed actors for humanitarian purposes, as provided for by international humanitarian law.

Kate Mackintosh and **Patrick Duplat** are lead authors of the independent study on donor counter-terrorism measures and humanitarian action. **Ingrid Macdonald** is Resident Representative Geneva, Norwegian Refugee Council. She supported the drafting of the article.

HUMANITARIAN NEGOTIATIONS

Dunant's dream, 150 years on: a sober celebration?

Yves Daccord

In February 2013, the International Committee of the Red Cross (ICRC) marked the 150th anniversary of its creation – the inspired response of a young Swiss businessman, Henry Dunant, to the horrors he witnessed on the battlefield at Solferino. Amid the carnage of dead and dying soldiers, Dunant was quick to recognise the need for organised humanitarian relief, for trained volunteers and for medical services that would treat wounded soldiers on both sides of the frontline. He also recognised the need for international cooperation to achieve this. The creation of the ICRC and subsequently of national Red Cross and Red Crescent societies saw the development of concerted and coordinated humanitarian action for war victims, on the basis of international humanitarian law. The concept of neutral, impartial and independent humanitarian action carried out by workers under the protection of a distinctive emblem lies at the heart of the Red Cross and Red Crescent Movement.

Humanitarianism in crisis?

Today's humanitarian environment would be unrecognisable to Dunant. Both the nature of modern warfare and the humanitarian response to it would most likely leave him bewildered. Does this mean that the fundamental principles are outdated and unrealistic notions that have no place in contemporary humanitarian action? Has humanitarian aid become just another cynical aspect of politics? Has Dunant's noble endeavour – to uphold humanity and dignity even in the midst of armed conflict – turned into a pipedream? Have the profound changes in the humanitarian environment dashed all hopes of a concerted, coordinated response to human suffering?

A quick scan of recent or ongoing conflicts – from Syria to the Democratic Republic of Congo (DRC) to Afghanistan – might seem to justify such a gloomy prognosis. In Syria, civilians in every part of the country have been suffering the consequences of intensifying fighting, yet the response of humanitarian organisations – facing major political and security constraints – has fallen dramatically short of meeting their needs. The overt politicisation of international aid has hindered humanitarian access to people on all sides of the military and political divide. In the DRC, the blurring of the political, military and humanitarian mandates of the UN integrated mission has made the challenge of providing impartial and neutral humanitarian aid to people affected by the chronic armed conflict all the more difficult. It has also further highlighted the apparent inability of many humanitarian actors to respond in emergency phases of armed conflicts. In Afghanistan, the use of relief aid as a tool of conflict management and counter-insurgency strategies has created confusion between humanitarian agencies operating according to the fundamental principles and other actors. This has resulted in a prevailing perception

Henry Dunant (1828–1910) in 1863, at the time of the founding of the Red Cross

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that all humanitarian organisations working in the country have political objectives, whether or not they resort to using military escorts.

A changing world

Many of the numerous challenges confronting principled humanitarian action would have been unimaginable in Dunant's day. However, these challenges are by no means insurmountable. Principled humanitarian action may be in crisis, but there are opportunities to salvage it. While the increasing complexity of major crises and their impact on affected people pose multiple challenges to humanitarian actors, perhaps the greatest challenge lies within the changing landscape of humanitarian assistance itself.

On the one hand, we are seeing a marked resurgence in state-based assertions of sovereignty, with increasing numbers of host states actively blocking, restricting or controlling humanitarian response on their territory. Non-Western host states increasingly want to be seen to deal with their own political and humanitarian crises – partly in line with their own responsibilities, and partly because they are sceptical about the effectiveness and intentions of the international humanitarian community. One outcome of this is that humanitarian response

is becoming increasingly localised, with a possible weakening of the protection dimension of the overall humanitarian effort. On the other hand, an increasingly broad range of actors are responding to humanitarian emergencies, including the private sector, new NGOs and foreign military forces, often with ways of operating that differ from traditional approaches and that are not necessarily based on humanitarian principles. Overall, these changes are challenging the relevance of 'traditional' humanitarian action and coordination mechanisms – particularly at the international level – and further fuelling competition between actors.

The apparent inability of many humanitarian organisations to gain access to affected populations in the emergency phase of armed conflicts is striking. Yet this lack of proximity is only partly due to security constraints and host government control of aid. There is another major reason, which is the deliberate choice of most UN agencies and many large international NGOs to effectively outsource their response to local partners. As the chain from donor to UN agency to international NGO to local partner and eventually to beneficiary becomes longer and longer – and monitoring becomes increasingly problematic – this raises important questions about the efficiency and effectiveness of the overall response, especially about who has final accountability for ensuring this. It also means that a direct perspective on the real needs and resilience of beneficiaries is lost.

In various emergency contexts – Somalia, Libya and Mali to name just a few recent and ongoing examples – Muslim organisations and Red Crescent societies from countries such as Turkey and Qatar rapidly deployed on the ground while many international humanitarian organisations and agencies were still talking about coordination in regional capitals. New constellations of humanitarian actors, often with Red Cross and Red Crescent societies at the centre, will become increasingly prominent. Donors too are becoming increasingly diversified, both states and non-governmental donors. More and more 'non-traditional' or 'emerging' state donors are operating outside the Organisation for Economic Cooperation and Development (OECD)'s Development Assistance Committee (DAC) and independently of the Good Humanitarian Donorship initiative. A noticeable trend of non-DAC donor governments is to channel funds through host states rather than humanitarian organisations, and they often favour interventions in neighbouring countries. Humanitarian financing to the Syria crisis is one example. At a UN pledging conference for Syria in January, hosted by Kuwait, donors in the Middle East – including Kuwait itself, the United Arab Emirates and Saudi Arabia – outperformed the leading global economies by a huge margin in terms of actual commitments and contributions, both inside and outside the UN funding appeals.

A final point on the acceptance and perception of humanitarian aid concerns the changing role and perception of the so-called 'victims', those we aim to protect and assist. The ever-increasing availability of new web-based technology means that 'auto assessment' by beneficiaries themselves is becoming a reality. There are many examples of this, from major natural disasters such as the Haiti earthquake to the ongoing violence and armed conflict triggered by the Arab Spring. Quite rightly, beneficiaries themselves are identifying needs and becoming more involved in formulating responses, as partners rather than passive victims. Still, we need to do much more to improve the way in which we interact with beneficiaries.

Lessons for the future

From an ICRC perspective, it is critical to draw lessons from these trends and engage accordingly. The institution clearly recognises the need to better connect with other responses, and to broaden its support base through engagement with more diverse stakeholders – and to make the most of the opportunities that such diversity brings. The ICRC's aim is to ensure a constant, relevant operational presence that remains faithful to its fundamental principles of humanity, impartiality, neutrality and independence, while adapting to changing realties. In practice this requires an approach that is needs-based, with proximity to beneficiaries, and entails engagement with all stakeholders – thereby gaining the widest possible acceptance and respect, and through this, the widest possible humanitarian access to people in need of protection and assistance.

Different humanitarian actors confront the challenge of gaining acceptance in different ways. For the ICRC, it is of primary importance to further strengthen and develop partnerships within the Red Cross and Red Crescent Movement, the largest humanitarian network in the world, supported by millions of volunteers. This is particularly important at the local level in order to acquire a thorough understanding of the situation on the ground and the needs of the various communities involved. In all, the ICRC has active partnerships with over 100 National Red Cross and Red Crescent societies, each with their own legal identity and role, but all sharing the same fundamental principles. These partnerships take different forms: some are primarily operational and concentrate on emergency response, while others focus on capacity-building in specific areas such as conflict preparedness. In challenging operational contexts such as Syria, Mali, Afghanistan, Somalia, Sudan, South Sudan and the DRC, the National Society is already a vital partner.

The ICRC's approach to partnership and coordination is pragmatic as well as principled. It strives to work closely with those who share its vision of field-based action and relevance, and who have close proximity to people affected by armed conflict or other situations of violence. With this in mind, one international NGO with whom the ICRC works closely in various challenging contexts is Médecins Sans Frontières (MSF).

The common ground between the ICRC and other humanitarian actors, regardless of their particular mandate or approach, must be the principles of humanity and impartiality, with aid prioritised and allocated strictly on the basis of humanitarian needs. There must be a genuine commitment to match the rhetoric of 'principled humanitarian action' with a meaningful response on the ground. This requires transparency and clarity on such

fundamental issues as beneficiary numbers, access and capacities. Increasingly, flexible local coordination arrangements tailored to a specific context are becoming the norm. In this sense, strength can be found in diversity, with no one mandate or approach being the 'correct' one.

At the other end of the spectrum, the ICRC is also working to develop strong relationships with an increasing number of states around the world, aimed at gaining a greater understanding of their perspectives and views on humanitarian action, and then to integrate this insight into its activities and operations. At the same time, the institution stands to gain increased legal, diplomatic, operational and in some cases financial support.

Failure to reach out effectively on all these levels could have serious consequences. Lack of acceptance could endanger the security of staff in the field. Indeed, the ICRC's 13,000 staff members are its key asset. Investing more in its own workforce – striking the right balance of diversity, developing leadership and striving for the highest professional standards – is essential to secure acceptance and support, ultimately making a real difference for people affected by war or disaster.

While the ICRC's landmark anniversary of 150 years of humanitarian action provides an opportune moment to reflect on the various changes in the humanitarian landscape over the years – and the necessity to adapt to those changes – it is also important to bear in mind what has and must remain constant. Dunant's vision of humane treatment for wounded and captured soldiers on both sides of the frontline – extended to providing protection and assistance to all people affected by armed conflict, on the basis of humanitarian need alone – must surely remain the bedrock of humanitarian action as much today as it was then. The desire and ambition to uphold human dignity, even in the midst of armed conflict, must be as fundamental to the humanitarian response around today's battlefields in Syria or Mali or Afghanistan as it was at Solferino. Ultimately it is this common ground that will help humanitarian actors reconcile their differences and move forward with a genuine commitment to filling the gaps and avoiding the duplications of humanitarian aid – a genuine commitment to effective action rather than words in a turbulent world with ever-more complex needs.

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The promise and perils of 'disaster drones'

Kristin Bergtora Sandvik and Kjersti Lohne

The dire humanitarian consequences of the use of unmanned aerial vehicles (UAVs, or drones) in conflict have become all too familiar. In contrast, there has been much less public discussion about the potential humanitarian uses of drones. So-called 'disaster drones' offer humanitarian agencies a range of possibilities in relation to crisis mapping, search and rescue and (some way off in the future) cargo transport and relief drops.

How can the humanitarian community benefit from the technological advances that UAVs and other unmanned or automated platforms offer without giving further legitimacy to a UAV industry looking for civilian applications for drones developed for military purposes? Are there particular ethical, legal and financial implications with respect to procuring disaster drones? This article gives an overview of current and foreseeable uses of disaster drones and '(ro)bots without borders', highlighting the need for a more thorough understanding of the commercial logic underpinning the transfer of technology from the military to the civilian and humanitarian fields, and the systematic attempts being made by the UAV industry to rebrand itself as a humanitarian actor. It also shares insights from a recent workshop on the potential role of drones in Red Cross search and rescue operations, and concludes by linking the issue of the disaster drone to broader questions regarding humanitarian technology.

Current and foreseeable uses of 'disaster drones'

Drones were first used in a 'humanitarian' capacity in Bosnia in 1994, when the US deployed the Gnat 750 to provide overhead surveillance for NATO convoys. Since then, they have been increasingly used for mapping and monitoring disaster sites, and in search and rescue operations, including in wildfires in California in 2007, the Haitian earthquake in 2010 and at the nuclear disaster site in Japan in 2011. NATO and the European Union (EU) are using surveillance drones in their peace support operations. In the Democratic Republic of Congo in 2006, the EU provided the UN Stabilisation Mission (MONUC) with four Belgian UAVs. EUFOR, the EU mission to the UN Mission in the Central African Republic and Chad (MINURCAT), used drones for aerial surveillance. The UN approved the use of drones by the MONUSCO mission to monitor the conflict in Eastern DRC in late 2012, though these were to be provided by member states as the UN does not – yet – own any drones.

Part of the appeal of drones is their ability to undertake 'dull, dirty and dangerous' jobs. In the military, some of the dullest, dirtiest and most dangerous work is related to supplying troops. While the mass use of drones to transport cargo is still some years away, since late 2011 the US military has tested the capacity of unmanned Kaman K-

UNITAR humanitarian reconnaissance drone

borders'[7] movement, but taking a non-commercial approach, ARIA (Autonomous Roadless Intelligent Arrays) is seeking to provide rural areas in Africa with a humanitarian drone skyway network designed to 'fight poverty from the air'.[8]

The UAV industry as a humanitarian actor?

The humanitarian potential of UAVs has been touted by the industry for a long time, with 'drone stakeholders' stressing that 'drones don't just end human life, they also save it'.[9] Lobbying groups such as the US Association of Unmanned Vehicle Systems International (AUVSI), the British Unmanned Aerial Vehicle Systems Association (UAVS) and ASTRAEA (Autonomous Systems Technology Related Airborne Evaluation and Assessment) are shaping the debate about drones in civilian airspace. The concept of 'humanitarian drones' plays an important role in expanding the market for UAVs with government customers by identifying and lobbying for new 'humanitarian' uses, and in relation to the general public, where vendors feel increasingly threatened by activists and critical news coverage of the civilian consequences of the use of drones in combat.

Parallel to the promotion of UAVs as a technology for use in humanitarian operations, we are also seeing a general attempt by the industry to brand UAVs as a humanitarian technology in efforts to build legitimacy in the eyes of increasingly concerned domestic audiences. Last year the *Guardian* newspaper in the UK reported that UAVS had recommended that 'drones deployed in Britain should be shown to "benefit mankind in general", be decorated with humanitarian-related advertisements, and be painted bright colours to distance them from those used in warzones'. According to the general-secretary of UAVS, '"If they're brightly coloured, and people know why they're there, it makes them a lot more comfortable ... We want to be associated with safe, civil applications [of UAVs] that have a humanitarian, ecological and environmental benefit"'.[10] In an effort to allay public concerns, AUVSI launched the not-so-subtly named website 'Increasing human potential' (http://increasinghumanpotential.org) towards the end of 2012.

Max helicopters to deliver heavy cargo to remote outposts in Afghanistan.[1] According to the manufacturer, these drones will eventually be put to civilian use, including in the delivery of humanitarian relief.[2]

Tomorrow's 'bots without borders'

In addition to defence contractors looking for new markets, civilian manufacturers and research institutions are investing substantial resources in developing 'everyday' uses for UAVs. While many of these actors routinely list 'humanitarian applications' in the promotion of their products, a different group of actors, who might be seen as a new breed of 'techie humanitarians', have also entered the race.[3] One example is the OpenRelief project, launched by developers at the 2012 Linux Japan conference, which aims to build a low-cost, remote-controlled robotic plane to assess disaster damage in hard-to-reach areas.[4]

Another example is the Matternet project, whose ambitious vision is to create 'the next paradigm for transportation'. Through a network of small drones, goods and medicines will be delivered to remote settlements, directed across the internet.[5] In preliminary trials in 2012, Matternet delivered medicines to a relief camp in the Haitian capital Port-au-Prince.[6] Belonging to the same 'bots without

1 'UAVs Hauling Cargo Into the Future', *StrategyPage*, 27 October 2012, http://www.strategypage.com/htmw/htairmo/20121027.aspx.
2 Harry Weisburger, 'Heli-Expo 2011: Unmanned K-Max Deploying to Afghanistan This Summer', *AINOnline*, 7 March 2011, http://www.ainonline.com.
3 See http://digitalhumanitarians.com and http://crisismappers.net for examples. See also Dr Robin Murphy's blog *Rescue Robotics* at http://www.rescuerobotics.blogspot.nl.
4 Libby Clark, 'OpenRelief Launches Open Source Disaster Relief Drone', *Linux Foundation*, 7 June 2012, http://www.linuxfoundation.org.
5 See http://matternet.us.
6 Alexandra Gibb, 'Drones in the Field', *OpenCanada.org*, 10 December 2012, 'An Internet of Airborne Things', *The Economist Technology Quarterly*, December 2012, http://www.economist.com.

7 'Bots Without Borders', IRIN, 22 June 2009, http://www.irinnews.org.
8 Jack C. Chow, 'Predators for Peace', *Foreign Policy*, 27 April 2012, http://www. foreignpolicy.org.
9 Matthew Harwood, 'Drone Stakeholders Stress Robots' Humanitarian Upside', *Security Management*, 8 November 2011, http://www.securitymanagement.com.
10 Ryan Gallagher, 'Surveillance Drone Industry Plans PR Effort To Counter Negative Image', *The Guardian*, 2 February 2012.

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The view from below: issues for potential users

In the future humanitarian organisations will increasingly engage in discussions about the politics and logistics of procuring drones. As 'humanitarian technology' has become a more commercially interesting field, the humanitarian enterprise needs to get better at dealing with the vendors of these products. However, the use of 'humanitarian drones' also raises important ethical and legal issues, which will need to be fleshed out and discussed.

In March 2012, the Norwegian Red Cross, the Peace Research Institute Oslo (PRIO) and the Norwegian Board of Technology, a semi-independent body for assessing new technology, held a workshop to discuss the potential of drones in search and rescue (SAR) operations.[11] Representatives from the government, the military, research institutions and the UAV industry also participated. In many jurisdictions, debates on the opening of civil airspace for drones have high public visibility. Who will be responsible for the drone, and for safety issues when the distribution of command responsibility between voluntary organisations, government-operated SAR units and local police departments is unclear? In the workshop it became evident that personal data and privacy considerations were complicated: if imagery collected by a drone is stored, there are strict requirements as to how this information can be accessed, aggregated and distributed. What will be the implications for humanitarian operations in countries with less robust or even non-existent regulatory frameworks for data protection and privacy?

The licensing and training of drone pilots (to ensure the safety of people on the ground and other aircraft) and

11 See http://www.prio.no/News/Item/?x=1711.

the problem of obtaining speedy access to segregated airspace emerged as additional challenges. Should voluntary organisations become civil aviation companies themselves, or should they outsource their use of drones? Finally, the Red Cross participants pointed to the question of who will pay. Drone technology is still relatively expensive, and many models suffer frequent technical problems or high rates of loss during missions. It would be deeply problematic should the procurement of drones crowd out less 'sexy' investments vital to sustain search and rescue operations.

Conclusion

The humanitarian sector is extremely optimistic about the potential for technology to improve service delivery. Based on general trends in the UAV industry and the considerable interest the Red Cross workshop attracted from the Norwegian UAV industry, it will be important to consider the consequences when UAV manufacturers that are also defence contractors target the humanitarian technology market. As the industry eyes civilian applications for its products, it is likely that governments, as humanitarian donors, will be subject to extensive lobbying efforts, both to procure 'humanitarian drones' and to push for the inclusion of humanitarian drones as part of international engagements, similar to the planned UN drone deployment in Eastern DRC. Humanitarian agencies must give greater thought to the practical, ethical and legal implications of these developments.

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Humanitarian action in urban areas: five lessons from British Red Cross programmes

Samuel Carpenter

More than half of the world's population has been urban since 2007/2008, and this is projected to rise to 60% by 2030, when almost 5 billion people will be living in cities. This global trend is radically changing the crisis landscape, both in terms of vulnerability and humanitarian need. A host of academic studies and popular books have warned of the growing risks associated with the speed and scale of urbanisation.[1] Yet the operational implications of urbanisation for humanitarian action have been underexplored.[2] This article outlines the changing

1 For example, D. Dodman et al., *Understanding the Nature and Scale of Urban Risk in Low- and Middle-income Countries and Its Implications for Humanitarian Preparedness, Planning and Response*, a synthesis report produced for the UK's Department for International Development (DFID), September 2012; M. Davis, *Planet of Slums* (London: Verso, 2006).
2 Two exceptions are E. Lucchi, 'Moving from the "Why" to the "How": Reflections on Humanitarian Response in Urban Areas', *Disasters*, 36 (S1), 2012; and F. Grünewald, 'Aid in a City at War: The Case of Mogadishu, Somalia', *ibid*.

nature and scale of risk and vulnerability accompanying the process of urbanisation, and presents five lessons from British Red Cross programmes addressing the practical challenges and opportunities of humanitarian action in urban areas.[3]

Urban risk and vulnerability

Cities are increasingly faced with significant risk of disasters, including extreme weather events, earthquakes and epidemics. Such natural hazards are increasingly likely to trigger additional, man-made hazards such as fire in overcrowded settlements or technological disasters, as with Japan's 'triple crisis' of 2011. Compounding this urban risk, we are also witnessing increasing vulnerability *in* cities. Nearly 1.5bn people live in informal settlements and slums without

3 These lessons were identified through a scoping study conducted as part of the British Red Cross Urban Learning Project: A. Kyazze, P. Baizan and S. Carpenter, *Learning from the City: British Red Cross Urban Learning Project Scoping Study* (London: British Red Cross, 2012).

Urban resident, Port-au-Prince, Haiti

access to adequate health care, water and sanitation. Disasters often strike in contexts marked by chronic poverty or high levels of political or criminal violence.

Vulnerability in urban areas is heightened by a lack of land and tenure rights and precarious settlement conditions in low-lying areas, hillsides and river banks. Health risks can become concentrated in densely packed cities, where populations often expand beyond the capacity of the public health system to cope. The built environment can be a major source of vulnerability, with poor design, choice of construction systems and building materials common in rapidly urbanising, unregulated environments.

Five lessons
Due to the 'rural bias' of humanitarian action, the sector has arguably been slow to wake up to the operational significance of urbanisation. However, many humanitarian agencies and inter-agency initiatives are now starting to grapple with the changes in approach that urban settings demand. Drawing on the experiences of our delegates and partner Red Cross and Red Crescent National Societies in Haiti (Port-au-Prince), Djibouti (Djibouti-ville), Mongolia (Ulaanbaatar), Nepal (Kathmandu) and Uganda (Kampala), the British Red Cross (BRC) has identified five key lessons as part of our effort to enhance the relevance, quality and impact of our work in urban areas.

The first lesson concerns the importance of significant up-front investment, both of time and resources, in high-quality context analysis and assessments. While quality analysis and assessments are also critical in rural areas, given the relative novelty of urban operations for many staff and the complexity of urban systems an extensive and robust assessment is often vital to programme effectiveness. Satellite mapping tools can prove particularly useful here, as we have found in our earthquake preparedness work in the Kathmandu Valley. Yet given the dynamic nature of urban areas, especially relating to markets and people's movements, it is clear that effective assessments must be iterative. The International Federation of Red Cross and Red Crescent Societies' participatory approach for safe shelter awareness (PASSA) has proved particularly useful in Port-au-Prince in ensuring a more participatory and accountable methodology.[4] PASSA changed the whole direction of the BRC's recovery programme in the Delmas 19 area of the city; the community's identification of the risks they faced led to a much broader urban reconstruction and regeneration programme, integrating water and sanitation, livelihoods and markets.

The second lesson concerns the need to better understand cash and markets in urban areas. Many evaluations of urban response and recovery operations have highlighted the importance of cash and markets, as in urban areas people generally depend more on external suppliers and the market for goods and services, rather than producing their own food or fetching their own water. Yet BRC's experience in cash and livelihoods programmes in responses in Djibouti-ville and Port-au-Prince highlights particular challenges for cash programming in urban areas. In the peri-urban slums of Djibouti-ville, for example, identifying beneficiaries and targeting assistance to the most vulnerable was especially difficult. In urban

4 PASSA aims to raise awareness among the 'everyday vulnerable' of the 'everyday risks' related to their built environment. The PASSA manual is available at http://www.scribd.com/doc/61429462/Participatory-Approach-for-Safe-Shelter-Awareness-PASSA-Manual.

areas people often have multiple livelihood strategies, which can make tools that prescribe the identification of geographical livelihoods zones for assessment, analysis and targeting problematic. But even when there are clear groups to direct assistance towards, such as internally displaced people or refugees, political and ethnic tensions may prevent these groups from identifying themselves, as with refugees in Jordan fleeing the crisis in Syria, for example. Gaining the trust of such groups, through a strong understanding of and sensitivity to local, national and regional political and conflict dynamics, is essential to ensure that the most vulnerable are not missed.

The third lesson is that, whatever the nature of the programme, understanding complex urban communities and engaging with a representative range of stakeholders in a sophisticated and sensitive way is vital to success. Such engagement is also essential to ensuring that beneficiary accountability standards are met. However, urban communities can be difficult to engage with. A review of the IFRC's vulnerability and capacity assessment approach carried out in 2011 found that the most significant problem in applying it in urban areas was the lack of an obvious 'community' to work with. Indeed, residents may live in one neighbourhood but commute as daily labourers into another part of the city. Furthermore, the way in which people use their time may be less uniform than in rural areas. As Red Cross staff in Kathmandu noted, most people are tied formally or informally to the market economy, and thus the daily rhythm of jobs, commuting and juggling priorities will generally take precedence over a risk reduction workshop, say. Yet this should not be an excuse for neglecting community engagement, as local people are always first on the scene in the event of a disaster, and can thus greatly benefit from preparedness measures, such as training in first aid and search and rescue.

In Port-au-Prince, the BRC delegation has invested substantial time and resources in developing a Community Mobilisation Team. These professional facilitators act as interlocutors between the community and BRC staff, ensuring that messages from the BRC are consistent and clear, and collecting, consolidating and appropriately acting upon feedback from the community. Creating a single point of contact between the community and the delegation has improved communication and ensured consistent messaging. This gain has been supported by moving the delegation to the heart of Delmas 19, helping to build trust and familiarity and removing the barriers that can separate Western aid agencies from the local population. Yet the level of scrutiny and pressure placed on staff when operating in the heart of a congested urban area inevitably brings with it greater intensity and associated stress.

Investment in information technology can also be of significant importance in taking effective communication with urban communities to scale. In Haiti, the National Society and the IFRC, in partnership with telecommunications firm Trilogy International, have created an interactive, two-way communication platform using SMS and interactive voice response technology to enhance accountability to communities and help reach women and other underrepresented groups.[5]

The fourth lesson is that land tenure issues often undermine reconstruction efforts in urban areas,[6] meaning that navigating legal and political systems is often central to ensuring the success of an urban shelter programme. Indeed, land tenure issues have been among the biggest challenges faced by the BRC team in Port-au-Prince, where only 40% of plots were registered with an owner. Agencies will inevitably find themselves in difficult discussions about land rights, the role of landlords and legal protection for landless people. Local land tenure arrangements are typically informal, complex and fluid, and thus require a similarly nuanced response. To this end, within the IFRC's disaster law programme,[7] Red Cross legal experts have been examining regulatory barriers to post-disaster shelter and exploring potential solutions in different contexts.

The fifth lesson is the need to better understand and engage with urban systems, and form partnerships with local groups and institutions. Recognising the likely scale of future urban disasters and the range of skills required to engage with issues such as urban violence and climate change, partnerships will be increasingly important in ensuring effective responses in urban areas. For the Red Cross and Red Crescent Movement it is vital that engagement with those outside the humanitarian sector does not undermine adherence to the Movement's fundamental principles, or perceptions thereof. However, it cannot be ignored that municipal authorities, mayors, local governments and national disaster management authorities have a particularly important role in urban disaster management, and should be a key point of contact.

In response to the challenges facing humanitarian action in urban areas, some have called for a new, area-based – rather than sector-based – method of coordination.[8] This is appealing given the general absence of many potential public and private sector partners from the cluster system convened by the UN Office for the Coordination of Humanitarian Affairs (OCHA). Indeed, this approach is one which the BRC has taken in Haiti – what the Federation has dubbed the 'Integrated Neighbourhood Approach'. However, such a geographically delimited approach is not without its problems, not least identifying where the humanitarian mandate ends and that of government or development agencies begins. Yet if well managed, such an approach provides a significant opportunity for a more joined-up response, harnessing the capacities of

5 For more information see http://www.humanitarianinnovation.org/projects/large-grants/ifrc-haiti.

6 The IFRC has sought to highlight the need for a more sustainable approach to shelter reconstruction in urban areas. See, for example, S. Schneider et al., *Sustainable Reconstruction in Urban Areas: A Handbook* (Geneva: Swiss Resource Centre and Consultancies for Development International Federation of Red Cross and Red Crescent Societies, 2011).

7 See http://www.ifrc.org/dl.

8 For example, see Grünewald, 'Aid in a City at War'.

government agencies (including civil defence, emergency services and line ministries), the private sector and civil society.

The scope and limits of humanitarian action in urban areas

Urbanisation is changing the nature and scale of risk at an unprecedented rate. All humanitarian agencies must adapt to meet the challenges of working in urban areas. There is, however, also a need to recognise the limits of what can be achieved through humanitarian action in these settings. While humanitarian action can be lifesaving and critical to people in need, it is important to be humble about its capacity to truly transform situations, particularly given the short timeframes of most programmes.

In light of the range of programmes the BRC supports, the question of when to engage, when to exit and how to support vulnerable communities in urban areas often involves very difficult decisions. This challenge is also faced by other agencies. For example, how should agencies engage in situations of urban violence that seem to have no beginning or end, or where health indicators in slums continually rise above emergency thresholds? There are no easy answers to these questions, and the sector is only now beginning to address them in a strategic manner.[9] What is clear, however, is that ensuring that our programmes, at whatever stage of the disaster management cycle, ultimately contribute to strengthening individual, community or national resilience should be central in guiding decisions around the activities of the Red Cross and Red Crescent Movement in urban areas.

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9 For example, Concern Worldwide, Kenya is leading a USAID Office for Foreign Disaster Assistance (OFDA)-funded programme to develop Indicators of slow-onset Urban Emergencies (IDSUE).

Gender impact analysis: unconditional cash transfers in South Central Somalia

Kamila Wasilkowska, Olivia Collins and Anne-Marie Schreyer-Roy

Between 2011 and 2012, in response to famine, the Somalia Cash Consortium (Action Contre la Faim, Adeso, the Danish Refugee Council and Save the Children)[1] distributed between six and nine months' worth of unconditional cash transfers to over 40,000 households in the regions of Hiran, Gedo, Lower Juba and Mogadishu in South Central Somalia. The decision was made to target a majority of female beneficiaries (80% were female while 20% were male). One of the assumptions was that women in Somalia are generally responsible for preparing food as well as for childcare, so directing cash transfers to women rather than men would be more beneficial for the food security of the whole family. There was also an assumption that cash transfers for women could potentially alter social relationships at household and community level (though this was not an explicit objective of the programme).

As the Cash Consortium started to reflect on the impacts of these transfers on affected populations, the agencies involved recognised that there were numerous gaps in understanding around cash and gender in South Central Somalia; even programmes that appeared gender neutral may on closer analysis turn out to affect men and women differently. To address some of these gaps and contribute to future programming, the Cash Consortium commissioned a research study to better understand the impact of unconditional cash transfers on men and women in an emergency context. This article outlines some of the key findings of the study.

1 The Cash Consortium was formed in mid-2011 to coordinate the four agencies' aid response to the huge humanitarian needs in South Central Somalia.

Study methodology

The study took place between October and November 2012, using a team of local Somali-speaking researchers in Gedo, Hiran and Mogadishu to undertake data collection.[2] The fact that each team was local to the area under study ensured that they were familiar with the operating context. A triangulated data collection approach was implemented, comprising eight focus groups, 31 in-depth interviews and 109 questionnaires. This ensured that data could be cross-checked for emerging themes, and provided flexibility in the way sensitive questions were asked.

Key findings

The study found that targeting women was widely accepted. We found two key reasons why women were widely accepted as cash transfer beneficiaries:

1. Women's traditional gender role was that of 'household managers'

This made women responsible for managing daily subsistence spending, such as deciding on what food to buy and how to feed their children. As a result, targeting women as beneficiaries was seen to be an extension of their gender roles, and was easily accepted (both by the wider community and within households).

2. The size of the cash transfer determined who controlled it

'Men are good for managing a lot of money but women are more suitable for household management than

2 Due to access and security issues, the team was not able to include Lower Juba in the research study.

Women in Hiran, Central Somalia displaying beneficiary identification cards after receiving cash grants

men' – Aisha, a cash beneficiary who currently lives in an IDP camp in Mogadishu

Female beneficiaries' ability to control the cash was closely linked to the relatively small size of the transfers, at around $100[3] a month. Questions arise as to whether larger amounts (e.g. $300–$400), given with the objective of supporting income-generating activities, would lead to greater resistance from the community. This should be taken into consideration when determining the size of the grant and the targeting criteria, if one of the objectives is to transform gender relations.

Giving the cash to women increased women's overall control of household finances. Conversely, giving cash to male beneficiaries did not appear to increase men's control of cash at the household level. Out of a total of 109 male and female beneficiaries interviewed, women reported a lower baseline level of control over resources than men (67% for women and 90% for men). Following the cash transfer there was a 15% increase in the proportion of women with control over cash, and a slight decrease (to 85%) in the proportion of men with control over cash. This decrease may be a result of male beneficiaries handing over control of the cash transfer to their wives, who are seen as 'household managers'.

'It is my wife who makes the decisions. I bring the money, but she is responsible for managing the house, and I am only responsible for doing things outside the house' – Mohammed, male cash transfer beneficiary who lives in an IDP camp in Mogadishu.

By gaining control over household spending, women were also able to make decisions on expenditure patterns. Of the

beneficiaries the researchers spoke to, the majority (78%) said that women and men had different spending priorities. Female beneficiaries in Gedo and Hiran (but not Mogadishu) were twice as likely as male beneficiaries to spend the cash on their children's education. Displaced people living in camps were less likely to spend the cash on school fees, though this may be a result of the increasing number of free IDP schools in Mogadishu, enabling beneficiaries to spend their cash on other items.[4] These findings on gendered spending patterns complement other research that finds female beneficiaries often spend more on the education of their children.[5]

In addition to meeting their basic food and non-food needs, one of the most significant impacts of the cash transfers was an increase in social status within the community. The study found a high degree of sharing of the cash, and a strong link between this sharing and increased social status. The majority of beneficiaries (83%) said that the cash had had a positive impact on their social status. Women reported greater participation in social functions, while men felt more included in religious functions. The greatest gains in social status (in order) were reported by widowed and divorced beneficiaries, pastoralists, agriculturalists, IDPs in camps, older recipients and women in general. Thus, while cash transfers had a positive impact on social status in general, that impact appeared greatest for the most vulnerable population groups, such as female-headed households and IDPs.

4 E. Gillian, *Somalia, Schooling Continues for IDPs and Incoming Children Amidst Drought Crisis*, UNICEF, 2012.

5 See for example Australia Aid, *Promoting Opportunities for All – Gender Equality and Women's Empowerment: Thematic Strategy*, November 2011; DFID, *Cash Transfers: Literature Review*, 2011; B. Herz and G. Sperling, *What Works in Girls' Education: Evidence and Policies from the Developing World*, Council on Foreign Relations Press, 2004; J. Yoong, L. Rabinovich and S. Diepeveen, *The Impact of Economic Resource Transfers to Women Versus Men: A Systematic Review*, Institute of Education, University of London, 2012.

3 The cash was intended to meet basic needs in an emergency context, rather than to support longer-term livelihoods. The amount was based on the Minimum Expenditure Basket (MEB).

A key and unexpected finding from the study was that, as a result of the cash transfers, beneficiaries were better able to support the wider community and give *qaaraan*. A traditional Somali coping mechanism, *qaaraan* involves giving money to relatives, friends and community members. In the case of beneficiaries, giving *qaaraan* increased their social networks and bestowed on them specific productive benefits, such as an increase in social status, as well as reinvigorating reciprocal lending networks. The way beneficiaries in South Central Somalia used cash transfers (a relatively new aid modality) was modelled on this traditional coping strategy. This adaptation to local culture demonstrates the flexibility of cash transfers. Giving part of the transfer as *qaaraan* may provide a cushion against future adversity, and may have longer-term implications beyond the lifespan of the programme by strengthening social support networks.

Despite the positive outcomes of the cash transfer programme, women did report some protection risks and fear of conflict (though they did not report specific incidents of violence associated with the cash). Polygamous households saw an increased risk of conflict where one wife received the cash and the other(s) did not, and more thought about how best to deal with polygamous households is needed. Where one wife meets the vulnerability criteria and the other does not, should agencies give cash transfers to both wives in order to avoid conflict? This could potentially increase inclusion errors as some beneficiaries would not meet the targeting criteria. It could also increase conflict within the wider community, who would probably perceive this targeting as unfair. There is little research concerning how to deal with polygamous households in cash transfer programming (or in aid delivery in general for that matter). These questions also need to be asked of cash programmes outside of Somalia, in areas where polygamy is also practiced. In general, greater attention should be given to monitoring protection risks

and finding innovative ways of collecting data about such a difficult and sensitive subject.

Conclusion

Cash transfer programmers should be cautious in concluding that women are empowered as a result of receiving cash transfers, specifically if only implemented over a period of a few months. The social justifications that enable women to manage cash are often based on gender stereotypes, i.e. that women can acceptably manage small amounts of cash, but not the larger sums that may transform gender relations. Nonetheless, there were specific positive effects from giving cash to women. For example, targeting female beneficiaries helped to close the gap between men and women over who controlled finances within the household, and encouraged spending on education. While both men and women experienced significant increases in social status, these gains were gendered and dependent on one's position in society, for example being an IDP. Encouragingly, we found that some of the most vulnerable groups, such as widowed and divorced beneficiaries, experienced the greatest gains in social status, and that by giving *qaaraan* these groups were 'elevated' in the eyes of the community. While there was some evidence of increased conflict in polygamous households where only one wife received the cash transfer, more work is needed in thinking through how polygamous households should be approached. Overall, the study shows that many changes were gendered, but not all. Ensuring that programmes consider the varying needs of different populations is crucial to minimising the risks that are specific to cash transfers, and improving positive outcomes for all.

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Understanding trade and markets in a protracted conflict: the case of Darfur

Margie Buchanan-Smith, Youssif El Tayeb and Abdul Jabbar Abdulla Fadul

Trade has been the lifeblood of the economy of the greater Darfur region for centuries. This includes long-distance trade between Darfur and neighbouring countries and central Sudan in commodities such as livestock, gum arabic and cereals. It also includes trade within Darfur, often between livelihood groups whose livelihood strategies depend upon one another, for example trade between agriculturalists and pastoralists. Indeed, prior to the start of the current conflict in 2003 markets in Darfur were a key point of connection for Darfurians and for many others who did business within these markets, and an important factor in building social ties. Understanding how trade and trading relations have been impacted during the conflict is crucial to understanding how livelihoods have been affected, and how they can be supported, both while the conflict continues and when, eventually, it is resolved.

Although there are useful tools to carry out one-off analyses of markets to inform humanitarian programming, for example the Emergency Market Mapping and Analysis tool (EMMA), *ongoing* analysis of trade and markets in situations of protracted conflict is rare. Collaborative work by the Feinstein International Center of Tufts University (Tufts/FIC) and by the national NGO the Darfur Development and Reconstruction Agency (DRA) has attempted to fill this gap in the case of Darfur. The DRA has set up a community-based market monitoring network in three Darfur states (North, West and Central Darfur) in the last couple of years, and will soon extend the network to South and East Darfur states. Local community-based organisations (CBOs) are involved in regular weekly and monthly data collection and analysis, and quarterly trade and market bulletins for each state are produced in English and Arabic.[1] Tufts/FIC

1 See http://sites.tufts.edu/feinstein/2011/market-monitoring-in-darfur.

has provided advisory support to DRA and the market monitoring network and has also carried out a series of in-depth market studies in Darfur: a study in 2008 that provided an overview of how trade had been impacted by the conflict,[2] a study of how the conflict has impacted the livestock trade in Darfur in 2012,[3] and a forthcoming study in 2013 on the cash crop trade in Darfur.

The impact of conflict on trade

All of this work has illustrated clearly the devastating impact the conflict has had on trade. At the most obvious level, many primary markets in rural areas closed down in the early years of the conflict when villages were destroyed and there was large-scale displacement. At this time

The camel market in Serif Umra, North Darfur

there was much looting, of livestock herds and of trade convoys moving between towns. A number of traders went bankrupt as a direct result of the conflict, or shifted to less risky business ventures.

During a decade of conflict the costs of trade have risen relentlessly, for a number of reasons. First, transport costs have increased because of the fees that now have to be paid at the numerous checkpoints on Darfur's roads to ensure safe passage. Second, armed escorts are usually required and must be paid for, whether formally or informally. For example, government troops provide escorts for convoys of trucks on one of Darfur's main trade routes, between the towns of El Fashir and Nyala, pushing up transport costs. Sometimes traders pay for their own armed escorts, especially livestock traders: in 2011, armed guards accounted for 25% of the total transport costs of trekking cattle from El Geneina in West Darfur to Omdurman in Central Sudan. Third, insecurity and numerous checkpoints mean that trade convoys must travel slowly: before the conflict it used to take one day in the dry season to travel between Geneina and Nyala, whereas now it takes two to three. This pushes costs up and is a problem for perishable commodities. Traders often have to take longer and more circuitous routes to avoid conflict hotspots. For example, it took traders 45 to 60 days to trek cattle from El Geneina to Omdurman before the conflict began; during the conflict it could take as long as four months as traders adapted their route through more secure areas. The threat of looting persists, for livestock herds being trekked between

markets and for trade convoys, substantially increasing the riskiness of trading.

It is not only the Darfur conflict that has negatively affected trade; conflict in neighbouring countries has also had an impact. Cross-border trade has long been a feature of Darfur's economy, to Libya, Chad and the Central African Republic. However, the conflict in Libya in 2011 halted one important trade flow, the export of camels from Darfur, depressing prices for almost a year.

Overall there has been a contraction of key parts of the economy. The livestock trade, for example, which is critical to Darfur's economy, is estimated by traders to have contracted substantially, some said by as much as 50%, and the quality of the livestock brought to market has also deteriorated. Not only has trade in Darfur's traditional commodities contracted, the conflict has also caused distortion in the economy. The rapid process of urbanisation triggered by the conflict and especially by displacement, combined with the large and unprecedented international presence in Darfur, has fuelled a construction boom and the trade in building materials and manufactured goods. Whereas Nyala used to be a major exporter of livestock and cash crops produced in Darfur, it is now a major importer of manufactured goods from Central Sudan.[4]

The policy context and trade

Taxes on trade have risen exponentially during the conflict years, often doubling or increasing by as much as 400%. This is partly a consequence of local authorities attempting to maintain revenues while the economy contracts. It is also a consequence of the proliferation of taxes at state and locality levels since decentralisation, which has given state and locality authorities the mandate to set their own taxes in order to finance basic services for which they are now

2 Margie Buchanan-Smith and Dr. Abdul Jabbar Abdulla Fadul, *Adaptation and Devastation: The Impact of the Conflict on Trade and Markets in Darfur*, June 2008, http://sites.tufts.edu/feinstein/2008/adaptation-and-devastation.

3 Margie Buchanan-Smith and Abdul Jabbar Abdulla Fadul, with Abdul Rahman Tahir and Yacob Aklilu, *On the Hoof: Livestock Trade in Darfur*, September 2012, http://sites.tufts.edu/feinstein/2012/on-the-hoof-livestock-trade-in-darfur.

4 See Margie Buchanan-Smith et al., *City Limits: Urbanisation in Sudan: Nyala Case Study* (London: ODI, 2010).

responsible. This is acting as a strong incentive for traders and other businesses to operate in the informal sector, where they can avoid a heavy taxation burden. It is also causing traders to alter their routes to avoid passing through localities with the highest tax rates, for example livestock traders trekking herds of animals through and out of Darfur.

The importance of monitoring and researching trade in a conflict environment

The combined market monitoring and one-off trade studies in Darfur have performed a number of important functions.

1. Understanding conflict dynamics through trade

Trade and conflict are closely intertwined: by monitoring trade it is possible to also gain insights into conflict. Certain trade routes have opened and closed according to the ebb and flow of conflict. Trading activity has also shifted between secondary markets according to which areas are perceived as most secure. Thus, certain livestock markets that were major centres of trade before the conflict have become shadows of their former selves as other more minor markets pre-conflict have overtaken them, principally because they are in more secure locations.

On the Hoof, the study of the livestock trade in Darfur, revealed how livestock traders from different ethnic groups that were otherwise hostile to each other had made agreements in order to maintain cross-border trade in camels from Serif Umra market (the centre of the camel trade) in North Darfur to Libya and Egypt. These trade agreements may offer an opportunity for peace-building between warring groups.

2. Understanding the impact on rural livelihoods through trade

Needs assessments and humanitarian aid programming tend to focus on household assets and how these have been depleted and/or can be replaced. This is important where there has been violent conflict, displacement and looting. But it only tells part of the story, especially in situations of protracted conflict. Understanding what has happened to trade and the trade environment helps in understanding longer-term trends and wider pressures on livelihoods, as well as indicating how livelihoods may have adapted.

Ongoing market monitoring by DRA has revealed a collapse in the trade of some cash crops in Darfur, including sesame. This appears to be a 'conflict-sensitive' crop which must be harvested within a week of reaching maturity. This kind of precise timing is not compatible with unpredictable access to fields in an insecure environment. Other cash crops, such as *tombac* (chewing tobacco), are more conflict-resistant as they do not require daily cultivation and can instead be cultivated in chunks of time according to when access to fields is possible. *Tombac* is also not palatable to livestock, so is less at risk from grazing, reducing the risk of conflict between farmers and herders. However, the *tombac* trade has been affected by the outbreak of conflict in South Kordofan and Blue Nile states, both important markets for *tombac* grown in

Darfur, and by the trade embargo between Sudan and South Sudan in 2012. This has affected the whole *tombac* economy in North Darfur, comprising farmers, internally displaced people (IDPs) working as agricultural labourers and traders. Tax raised on *tombac* was a major source of revenue for the government: this fall in production thus also hits government revenues.

3. Providing early warning through market monitoring

As well as providing insights into the conflict and into some of the pressures on rural livelihoods, ongoing market monitoring has also played an early warning function, especially during 2011/2012. After a poor rainy season in 2011 DRA's data analysis revealed rapidly rising cereal prices and deteriorating terms of trade between cereals and livestock in parts of North Darfur. Drawing attention to these pockets of acute food insecurity in North Darfur, the market monitoring bulletins helped to trigger a response by the government and international agencies.

4. In a contracting economy, identifying areas of potential economic opportunity

As well as showing how the conflict has negatively impacted trade and livelihoods, the market monitoring and in-depth trade studies have also identified areas of potential economic opportunity and growth in an economy that is contracting overall. For example, *On the Hoof* identified a growing trade in hides and skins in Darfur during the conflict years. The hides are currently exported untreated, indicating potential to develop the leather industry in Darfur. This could be a source of much-needed employment and income in urban areas. DRA's ongoing market monitoring has demonstrated the extreme seasonal variability in fresh tomatoes and onions, indicating potential for off-season production and agro-processing. Both of these opportunities deserve detailed feasibility studies, and have been raised with key decision-makers in the government and in international aid agencies.

Conclusion

The experience in Darfur over the last decade illustrates clearly how conflict disrupts and can destroy trade, and thus local economies and livelihoods. In the absence of ongoing and effective monitoring and analysis of trade patterns and trends, this aspect of the impact of conflict can be overlooked and may be poorly understood, especially if aid programming takes a micro-perspective. Yet any attempts to support livelihoods must take account of the wider macro-economy. The combined market monitoring and in-depth trade studies carried out by DRA and by Tufts/FIC are critical in providing this information for the Darfur region. Policymakers and decision-makers within government and the international aid community need this kind of information and analysis to inform decisions about how livelihoods can be supported through the market, and how the economy can be rebuilt. Ongoing market monitoring can also offer an insight into conflict dynamics and identify peace-building opportunities through trade.

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PRACTICE AND POLICY NOTES

Changing approaches to post-disaster shelter

Bill Flinn

For decades, development and humanitarian architects have stressed the importance of an enabling approach to reconstruction that recognises the central role that affected people play in rebuilding their homes in the wake of disaster. Yet this rhetoric has seldom translated into action, and shelter responses are typified by the provision of inadequate, inappropriate and badly built shelters to a small proportion of the affected population. The success of a shelter response tends to be measured by the number of units provided, and there is pressure to help as many people as possible as quickly as possible. Agencies are prompted to provide larger quantities of smaller, cheaper, temporary houses, at the expense of quality and durability.

This article argues for a shift in the international community's approach to post-disaster housing reconstruction. It is an argument for less physical building and a greater concentration on helping affected people rebuild their homes themselves. Two central and connected themes support this argument: the growing concern to incorporate disaster risk reduction (DRR) into the rebuilding process; and the sheer scale of the challenge of rebuilding.

Reducing disaster risk

There is an increasing acknowledgment that DRR is a major requirement for coping with emergencies and enhancing community resilience. It makes more sense to protect communities from disasters ahead of time than to wait for them to happen before responding.[1]

This Save the Children analysis from 2010 points out the benefits of closing the door *before* the horse has bolted (for every dollar spent on DRR, seven dollars of losses can be prevented). However, it is difficult to predict where and when the next disaster will strike, and not easy to raise funds for a disaster that has not yet happened. Nonetheless, there is country-level evidence that risk reduction and preparedness can save lives and reduce the cost of reconstruction. In Cuba, for instance, a national focus on DRR has drastically reduced loss of life from hurricanes; while Hurricane Katrina killed 1,800 people in the United States in 2005 and Cyclone Nargis killed 146,000 people in Myanmar in 2008, three hurricanes that crossed Cuba during the 2008 season killed a total of seven people.[2] In Bangladesh, cyclone fatalities have declined dramatically over the past 40 years through disaster preparedness measures, the mobilisation of the Bangladeshi Red Crescent and the construction of community cyclone shelters.

While it is often difficult to raise money for preparedness, disasters do attract funding and there is a prevailing view that the opportunity disasters present for measures to reduce vulnerability and risk in the future should not be missed. Yet post-disaster efforts to reduce vulnerability are held back by the understandable rush to respond. There is often a failure to recognise that effective DRR demands a steady, slow approach. After a disaster, efforts to get messages across about reducing risk through safer building methods or materials are often limited to rapidly produced posters and leaflets, despite commitments under the 2005 Hyogo Framework for Action to include DRR as part of any post-disaster response.

Scale: the numbers defy imagination

Disasters are never the same and the international community's response differs widely depending on a whole gamut of circumstances. Small-scale rural emergencies may be adequately addressed without the involvement of the international community at all. In contrast, well-funded major urban disasters in the media spotlight attract huge numbers of international NGOs. No two disasters are the same.

Running the risk of generalisation, in most disasters with large shelter components the coverage achieved by the relief effort falls woefully short of the scale of need. The amount raised for the Indian Ocean tsunami far outstripped any disaster before or since and was unique in providing enough funds to meet housing needs. Normally, only 10–20% of housing needs are met, frequently with temporary rather than more permanent housing. To cite a few examples: one year after Cyclone Sidr the number of dwellings built by aid agencies in Bangladesh (2007) represented 7% of need; in Padang, Indonesia, after the 2009 earthquake it was 14%; and in the Pakistan floods (2010) it was 2.5%. Eighteen months after the earthquake in Haiti around a third of housing needs had been met. In all of these cases the dwellings constructed were 'transitional' shelters intended to bridge the gap between a tent and a permanent house. While the transitional shelter can often serve a vital function, it has also been criticised as wasteful of materials and frequently becomes *post facto* permanent.[3]

These are percentage figures. But when the total numbers are taken into consideration, it becomes apparent that the size of the task is quite beyond the capacity of aid agencies. Cyclone Nargis in Myanmar (2009) destroyed 450,000 houses, Cyclone Sidr in Bangladesh (2007) 400,000, the Pakistan earthquake (2005) 400,000 and the floods in Pakistan in 2010 an extraordinary 1.6 million homes. To put this into perspective, the number of houses built in England by the entire construction industry is typically in the order of 150,000 a year. Very few agencies that engage in shelter after disaster have departments or staff dedicated to construction. Nearly all rely on external consultants drawn from a very small pool.

It is hard to draw any other conclusion: the aid community clearly does not have the capacity to provide post-disaster housing on a significant scale, and this must be the responsibility of national governments and their donors.

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1 Save the Children UK, *At the Crossroads: Humanitarianism for the Next Decade*, 2010, p. 17.
2 For more on Cuba's approach to DRR, see Oxfam America, *Weathering the Storm*, 2004.
3 DEC, *Urban Disasters – Lessons from Haiti,* 2011.

Families rebuilding using their own resources in a Saharawi refugee camp, Western Sahara

Recognising this, NGOs try to concentrate on the most vulnerable – the old, the infirm, the disabled, women-headed families, families with many children. Yet in practice these vulnerable groups, including the homeless and landless, tend to be overlooked by shelter programmes. In Bangladesh it proved extremely difficult to build even temporary shelters for families illegally squatting on state-owned land; in Haiti little could be done for tenants or for families living illegally on steep ravine slopes. It is much easier to provide transitional houses for families that own their land and have a bit of space free of rubble. These are almost certainly not the most needy.

A different approach to shelter after disaster

People made homeless by a natural disaster 'are the first responders during an emergency and the most critical partners in reconstruction'.[4] There are few principles in the world of shelter that can be said to be universally true, but perhaps this is one that most will agree on. In the jargon of the aid world, this is the community's social capital and its greatest asset. However, this point is frequently overlooked in the quest for a product and the measurement of impact by the length of the beneficiary list.

If the international community can only meet 20% of the need, then we can only conclude that 80% is met by affected people themselves, rebuilding their homes using their own labour or hiring the local builder. Once again, Haiti provides graphic illustration: 18 months after the earthquake some 50,000 permanent houses had been built using Haitians' own resources. The international community had no influence on the quality of the construction. Houses are being rebuilt incorporating pre-earthquake weaknesses. Haiti also demonstrates another phenomenon that will be increasingly dominant: the money that flowed in from the diaspora in the form of remittances outstripped the total value of aid money several-fold. Haiti is being rebuilt by Haitians.

With disasters on the increase[5] and funds limited, it is inevitable that most families will rebuild their homes using their own resources. This is the challenge that the shelter sector has to step up to. How, in the aftermath of a major disaster, do we intervene to ensure that safer and more durable – yet still affordable – houses are built? One approach might be training in building for safety. This does not imply a total change of emphasis away from construction and towards a training-only approach: many of the current approaches to shelter after disaster – cash transfers, the provision of materials, demonstration projects – can incorporate a training element that ensures that safer building practices permeate the community. Currently there is a startling lack of engineering and construction capacity in the sector – something that must be addressed to increase quality and to ensure that we build back better and more safely.

Hard decisions have to be made to balance the imperative to meet immediate needs with the long-term benefits of a more developmental approach that promotes a culture of safer building. This article argues for less building and more facilitation of good, safe building practice in the knowledge that affected families, immediately or once the transitional shelter has fallen apart, will ultimately take responsibility for the safe building of their new home.

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4 World Bank and GFDRR, *Safer Homes, Stronger Communities*, 2010.

5 See Roger Musson, *The Million Death Quake* (Basingstoke: Macmillan, 2012).

Humanitarian Practice Network

The Humanitarian Practice Network (HPN) is an independent forum where field workers, managers and policymakers in the humanitarian sector share information, analysis and experience.

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