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International Humanitarian Law
and Humanitarian Access
(Workshop No 4)

Concept Paper

Document prepared by

**The International Committee of the Red Cross in consultation with
the International Federation of Red Cross and Red Crescent Societies**

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Workshop on international humanitarian law and humanitarian access

Concept paper

Objective

This workshop will address challenges to humanitarian access in the framework of international humanitarian law. The participants will be invited to share their experience in gaining access to populations in need of humanitarian assistance and to discuss the obstacles encountered and the means of overcoming them. They will examine the relevant rules of international humanitarian law (IHL) and consider how to strengthen their implementation. This topic is particularly relevant as the ICRC, the National Societies and their International Federation are increasingly working in partnership to implement, disseminate and develop international humanitarian law, as are governments and others through such bodies as National IHL Committees.

Rationale

One of the main challenges that humanitarian workers face in contemporary armed conflicts is obtaining safe and unimpeded access to populations in need of assistance and protection. They may fail to obtain such access for any number of reasons: security-related, political, logistical. One key factor in gaining access to vulnerable populations is perceived respect for State sovereignty. In some situations, denying access may also be part of the military strategy. Access has certainly become more problematic in recent years, as today's armed conflicts become more fragmented and complex, involving multiple actors, including semi-organized armed groups and purely criminal groups. Failure to obtain access means humanitarian organizations are unable to conduct proper assessments of the needs of affected populations, to implement and monitor relief operations or to ensure appropriate follow-up.

The legal regime applying to humanitarian access under international humanitarian law is complex and may need further clarification. It is based on the Fourth 1949 Geneva Convention relative to the Protection of Civilians in Time of War and on the 1977 Additional Protocols. Customary rules are also applicable and supplement certain treaty provisions. This legal regime emphasizes the primary responsibility of States and parties to armed conflicts to respect international humanitarian law in all circumstances. Further details on the applicable law are available in Annex 1.

The Council of Delegates has expressed concern about humanitarian access on several occasions. Resolution 11 of 1993, in particular, reaffirmed that "access to the victims is the indispensable condition for humanitarian work, that such access is the ultimate aim of [the principles of humanity, neutrality, impartiality and independence], and that humanitarian relief operations which are in conformity with these principles cannot therefore be regarded as constituting unlawful intervention in the internal affairs of a State". Resolution 8 of 1997 also emphasized that parties to armed conflicts have the obligation to respect and protect humanitarian relief personnel, as acts of violence against such personnel are likely to put affected populations in jeopardy through lack of protection and assistance. This workshop will also follow up on the debate launched by the Commissions at the 2005 Council of Delegates on "access to victims and vulnerable people" and "neutral and independent humanitarian action".¹ More recently, the last International Conference of the Red Cross and

¹ *Background documents and guiding questions for debate in Commissions, CD 2005 – 4 and 10/1, and Consolidated reports of the Commissions.*

Red Crescent also reaffirmed "the obligation of parties to an armed conflict, as well as third States, to grant humanitarian relief and relief workers rapid and unimpeded access to civilian populations in need, subject to and in accordance with international humanitarian law, including sovereign consent" (Resolution 3 of 2007).

States have recognized the Movement's unique role in providing humanitarian assistance to victims of armed conflicts and other situations of violence. On this basis, and in strict adherence to the Fundamental Principles, the Movement's components are particularly well placed to gain access to vulnerable populations in all circumstances. In addition, National Societies are in a unique position as "auxiliaries in the humanitarian services of their governments". According to the Movement's Statutes, this must be acknowledged in domestic law. Whereas auxiliary status does not affect National Societies' independence, it does help define their humanitarian role within their own countries. The ICRC and the International Federation also enjoy privileged status, as recognized under the Geneva Conventions, the Movement's Statutes and in specific agreements with certain governments. Relationships with governments are therefore essential for all the components of the Movement in gaining access to people in need of humanitarian assistance. Given the growing number of players involved in humanitarian assistance during armed conflicts, continuous coordination is also essential to ensure that their efforts are complementary.

This workshop is particularly timely as others have recently undertaken similar initiatives. The Swiss Government has launched an expert consultation process aimed at identifying the relevant measures that could be taken to improve the provision of humanitarian relief. A first meeting in June 2008 saw constructive dialogue between government and military experts, academics and humanitarian organizations.² The most recent *Report of the UN Secretary-General on the protection of civilians in armed conflict* also contains a special annex on the same question, identifying different types of obstacles to humanitarian access and making proposals and recommendations for addressing them.³ The workshop outcomes will delineate the Movement's specific and complementary approach on this issue.

Expected outcomes

1. The participants will identify the main challenges they face in reaching populations in need of humanitarian assistance.
2. They will assess the role of international humanitarian law in gaining access to these populations.
3. They will identify the main tools the Movement's components should use in overcoming obstacles to humanitarian access.
4. They will address the relevance of humanitarian access to the Movement's future work and priorities, including the next Council of Delegates and International Conference.

Organization of the workshop

Co-sponsoring National Societies, Chairs, *Rapporteurs*, Speakers

² Federal Department of Foreign Affairs, *Expert Meeting: "Humanitarian Access in Situations of Armed Conflict"*, 30 June – 1 July 2008, Montreux, Switzerland, Chair's Summary.

³ S/2009/277, 29 May 2009.

Guiding questions

1. What are the main constraints on humanitarian access that currently pose the greatest challenges to the Movement's components in providing humanitarian assistance to populations affected by armed conflicts?
2. What are the most effective means available to the Movement's components in overcoming these constraints (national implementation of international humanitarian law, dissemination, advocacy, negotiation, etc.)? In this regard, how should the applicable legal framework be used in order to better secure humanitarian access?
3. What are the Movement's specificities in respect of humanitarian access? In this regard, what are the advantages and challenges presented by the National Societies' auxiliary role?
4. What are the main risks and implications for the Movement's Fundamental Principles in negotiating humanitarian access with parties to armed conflicts?

Background documents

1. ICRC: *Rules of international humanitarian law applicable to humanitarian access*. (To be prepared)
2. Council of Delegates, Seoul, 2005, *Access to Victims and Vulnerable Persons - Consolidated report of the Commissions*, 18 November 2005.
3. Council of Delegates, Seoul, 2005, *Neutral and Independent Humanitarian Action - Consolidated report of the Commissions*, 18 November 2005.
4. 30th International Conference, Geneva, 2007, Resolution 3 *Reaffirmation and implementation of international humanitarian law*, "Preserving human life and dignity in armed conflict", 26-30 November, 2007.