

Humanitarian Space: Concept, Definitions and Uses  
Meeting Summary  
Humanitarian Policy Group, Overseas Development Institute  
20<sup>th</sup> October 2010

The Humanitarian Policy Group (HPG) at the Overseas Development Institute organised a roundtable on the various meanings and uses of term ‘humanitarian space’. The meeting is the first of a boarder series that seeks to examine the evolving concepts and dynamics of humanitarian space and associated trends of politicisation and securitisation of assistance. The meeting was held under Chatham House Rule and what follows is a summary of the proceedings.

**Introduction: different meanings of ‘humanitarian space’ and why it matters**

The term ‘humanitarian space’ was originally coined by Rony Brauman at MSF to capture the idea of a space for humanitarian organisations to operate, but carrying the more conceptual meaning conveyed by the French word *espace*. The concept has since been subject to multiple interpretations, with definitions frequently tailored to individual mandates of humanitarian agencies or prioritising particular aspects of humanitarian activity or need. The most common understandings include: a) the physical access that international aid agencies and their partners have to populations in need; b) the aid agencies’ ability to adhere to the core principles of humanitarian action; c) the nature of the ‘operating environment’ that they work in, particularly security conditions; and d) the ability of populations themselves to reach needed lifesaving assistance and protection. Together, these concepts capture some of the objectives of humanitarian organisations, the means through which organisations respond, the environments in which these activities take place in and the ability of populations in need to survive and cope in times of crisis.

The ambiguous meaning of the term creates confusion within and outside of the humanitarian ‘system’. Organisations that are seeking to coordinate or collaborate so as to improve humanitarian space may in fact be working at cross purposes if there is no agreement on the issues or problems to be addressed. Those outside of the humanitarian sector are often confronted with different issues under the label of humanitarian space, creating diverse perceptions of what humanitarian action seeks to accomplish, which principles guide its action and how it relates to their own objectives and interests.

This meeting focused on the various meanings and uses of ‘humanitarian space’ in order to initiate a dialogue on how best to understand and apply the term, particularly in light of the broader meeting series and its attempt to review and better understand key trends and challenges affecting humanitarian space.

**What does International Humanitarian Law tell us about humanitarian space?**

The 1949 Geneva Conventions and Additional Protocols do not explicitly mention the term ‘humanitarian space’ and so International Humanitarian Law (IHL) does not

explicitly define it. Nevertheless, IHL is implicitly about creating ‘humanitarian space’ and a number of provisions of IHL can help understand, from a legal perspective, the nature of that space.

IHL is clear that responsibility for the well-being of the civilian population lies with the authorities or, in the case of occupation, the occupying power. However, as stated in Common Article 3 of the Geneva Conventions, referring to non-international armed conflict, “an impartial humanitarian body, such as the ICRC, may offer its services to the Parties to the conflict”. Furthermore, Article 18 of Additional Protocol II, applying to international armed conflict, states that “if the civilian population is suffering undue hardship owing to lack of supplies essential for its survival...relief actions for the civilian population which are exclusively humanitarian and impartial in nature and which are conducted without adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.” Human Rights Law also gives civilian populations the right to receive assistance where the authority is a state actor (on the basis of the right to life).

In the case of continuing needs, the parties to a conflict are required to provide access to relief organisations. Though this is conditional on the absence of serious reasons for fearing that relief consignments may be diverted and accrues an advantage to one side of the conflict. This reflects the fundamental pragmatism of IHL, which is always concerned with balancing military necessity with humanity. What constitutes a civilian is a complicating factor. There is an implicit assumption that it is possible to identify who is and who is not taking part in hostilities and that non-participating ‘civilians’ can be assisted in a political vacuum or ‘neutral’ space. In practice, civilians are not static or apolitical actors and in some situations belligerents might judge that providing them with humanitarian relief is in fact giving the enemy an advantage.

These provisions highlight certain factors that should be taken into account when thinking about humanitarian space. Clearly, it is not the exclusive domain of humanitarian actors: national and other authorities, which can include both civilian and military institutions, have the right and obligation to provide for the well-being of the civilian population. Humanitarian agencies are only sanctioned to provide relief if they have consent from the authorities (which is in line with General Assembly Resolution 46/182) and if that action is impartial and humanitarian in nature. There is no provision in IHL that specifies explicitly that humanitarian relief should be independent or neutral. However, the fact that humanitarian action can be legitimately refused by the authorities if it negatively affects military strategy carries the implication that humanitarian action should be neutral in order to avoid offering military advantage to the other side. IHL thus supports the formula that there is a right for humanitarian organisations to assist populations in conflict situations if their relief action is impartial, neutral and humanitarian.

IHL highlights the importance of consent. Access for humanitarian actors is not a given, but rather needs to be negotiated and earned. Whilst there is a provision in the Geneva Conventions for a monitoring body to assess the impact of assistance, this has never materialised in practice so in effect there is no arbiter in deciding whether there is a negative impact. Negotiation is therefore crucial and the principles of humanitarian action are a means to gaining access and reaching people in need. Whatever the rights to provide relief as embodied in international law, it is humanitarian organisations' persuasion and relevance on the ground that matters most in the end.

There is no explicit list or statement in IHL of what constitutes 'humanitarian action', but to the extent that it is defined by IHL, protection and relief are inter-related. Although the Geneva Conventions place greater emphasis on protection, in practice there is wider acceptance and understanding of humanitarian action as the provision of material assistance. Lack of clarity about what constitutes humanitarian action (where does 'humanitarian action' start and stop, what is 'development' and what is 'humanitarian?') complicates the question of neutrality, since development is state-centred. However, neutrality does not mean that humanitarian organisations should necessarily avoid working with the state or government but that they should engage with the various sides to a conflict.

Increasingly, moral and needs-based principles are taking precedence over IHL to guide what is considered legitimate action in situations of conflict. This is reflected in the Responsibility to Protect (R2P) concept and in the limited traction that IHL has in many of today's complex 'network' and 'trans-border' wars: the Geneva Conventions were not formulated for the post-Cold War context and powerful states have not been interested subsequently in renegotiating the core instruments of IHL. Nevertheless, customary international law plays a very important part in the continuing application and evolution of IHL, particularly in the context of internal conflicts. Security Council Resolutions and international criminal law have progressively eroded the distinction between international and non-international armed conflicts, with international legal principles increasingly treated as applicable to internal wars. A question remains however on whether evolving customary norms implicitly downplay the primary responsibility of the state to protect and assist civilians, and if so, how does this sit with human rights law which holds that the state should be responsible? Tensions around this question are evident in debates surrounding R2P (as an international responsibility versus state responsibility, and around its overall acceptance as a principle internationally).

Space for whom? What role for human rights, peace and development?

'Humanitarian space', understood as the operating environment in which humanitarian organisations seek to provide assistance, is not an exclusive space for humanitarians but is usually occupied by a variety of institutions and actors, such as the military, human rights organisations, development specialists, peace-builders, private corporations and businesses, national government and various religious and political organisations. The boundaries of these policy spheres are not always clear, which makes working in a shared

operating space more difficult. In order to avoid confusion and ambiguity, more efforts are needed to ensure clarity and mutual understanding of respective mandates and objectives.

Protection is clearly incorporated into the concept of humanitarian action in IHL, but, in practice, there is a lack of clarity of what protection actually means, particularly as it overlaps with human rights concerns. As a result, debates around humanitarian access in challenging operating environments are often couched as a trade-off between speaking out and humanitarian organisations' access to provide material relief, with the latter usually prioritised. For example, in Sri Lanka, there was minimal advocacy on the protection of civilians during the last phases of the war in 2008 on the basis that this would hinder humanitarian access. Similarly, in Ethiopia, organisations have been reluctant to monitor or advocate on the war in the south for fear of jeopardising their operations, some of which extend beyond the conflict areas. This reluctance is furthered by the fact that the Ethiopian government is a key US ally in the 'global war on terror' and criticising it could lead to a reduction in US humanitarian funding.

Many in the human rights community call for a better balance between human rights advocacy and access, reflecting the fact that 'humanitarian space', understood in terms of civilian welfare, is about people's protection as well as access to relief. They emphasise that if humanitarian actors cannot speak out directly there are alternatives such as working with human rights organisations behind the scenes (although belligerents or other authorities are often aware of which organisations are reporting evidence of human rights abuses and violations of IHL). Moreover, a depoliticised model of humanitarian relief that is purposefully distanced from protection risks exacerbating human rights violations, such as facilitating displacement and forced detention. It seems one cannot usefully draw a clear line between humanitarian assistance on the one hand, and protection and human rights on the other. Yet, as the institutions of international civilian protection have developed and expanded, the humanitarian community have retreated from them and sought to distance themselves. This is evident in the increasingly antagonistic relationship between humanitarian agencies and the International Criminal Court.

The idea of humanitarian action including both relief and protection highlights the importance of putting people at the centre of the concept of humanitarian space rather than defining it in terms of agency access. This is especially so as the differing mandates and customs of some agencies may limit or distort the full meaning of humanitarian space. This is the case for those that prioritise operational needs and are unlikely to confront governments on human rights or protection issues and may take a pragmatic approach to implementing the core principles of humanitarian action.

From a peace-building perspective, humanitarian assistance should be governed by the concept of conflict sensitivity. That is ensuring it is 'doing no harm' and not exacerbating conflict dynamics. This is very much in line with the provisions under the Geneva

Conventions that require agencies not to provide strategic advantage to belligerent parties. However, tensions arise when peace-builders see humanitarian assistance as a means to 'do good'; that is, build capacities for peace. Stabilisation and associated 'hearts and minds' interventions are deliberately concerned with politicising the civilian population in favour of the government, which, in a continuing conflict situation, is a belligerent under IHL. This expands the mandate of humanitarian action beyond addressing symptoms to tackling the causes of conflict. It calls for humanitarian assistance to work more coherently with others so as to more effectively attain the overarching goal of a just and peaceful society. Some humanitarian agencies have taken on this role and have willingly become part of comprehensive peace-building strategies, opting to save societies rather than just save lives. This is often driven by the greater profile and funding that can be obtained by taking this approach. Other humanitarian agencies reject this approach, arguing that it requires taking sides and limits the ability to negotiate with all parties to the conflict.

### Humanitarian space in practice: trends and challenges

Aid workers have increasingly come under attack, with murders and kidnapping showing substantial rises in the past decade, especially in Afghanistan, Sudan and Somalia. In response, aid agencies have developed strategies to better protect themselves. This has led to more professionalised risk management strategies, some of which include placing staff in fortified aid compounds, providing armed escorts, imposing curfews and working through remote management. This 'bunkerisation' is felt by many to have negatively affected the acceptance of humanitarian agencies as it obstructs their engagement with communities and other stakeholders. Whilst some of these measures are necessary, they are driven by standardised top-down policies and procedures across different contexts irrespective of the level or nature of actual risk on the ground, and probably also by the demands of insurance companies that are not concerned about issues of humanitarian space.

Other trends affecting humanitarian space include a tendency by governments, particularly of middle-income countries, to deny the existence of a humanitarian emergency. This has occurred in places such as Pakistan, Colombia and the Philippines and is usually the consequence of a concern to reinforce the perception that they are stable countries emerging out of crises. Negotiating humanitarian access is difficult if the government denies the need for humanitarian action, and the level of international humanitarian funding available in these situations is likely to be limited. The denial of a humanitarian emergency is often accompanied by a denial that they are experiencing armed conflict, often couching military activities as law enforcement operations or counter-terrorism. This carries the implication that IHL does not apply and thus further constrains the activities of humanitarian organisations.

Legislation that criminalises engagement with groups proscribed on terrorists list, even for humanitarian purposes, also restrains access. This is a growing problem since 9/11 and many humanitarian actors are either not engaging with these groups, often at the

detriment of populations residing in their areas of control, or are taking substantial risks to do so with the potential of legal action against them and a suspension of funding.

The challenges are exacerbated by the lack of collective action within the humanitarian system, often the result of weak leadership but also due to the lack of incentives to work together or adhere to joint approaches. If some organisations do not follow the principles of humanitarian action it is easier for the government to deny access to those that do. Many humanitarian operations used to be governed by sets of ground rules, yet this is no longer the case. Operations today are frequently characterised by fragmentation rather than coordination. This is partly because the UN system is not really built for negotiation, nor is it positioned to take strong positions against governments. The institutional culture is not to question and senior staff are easily intimidated and rarely inclined to use what leverage they might have on human rights violations for fear of being expelled.

Donor governments, however, have a key role to play in advocating for greater access or civilian protection. Yet, in practice, there is a reluctance to do so when they have important geopolitical interests at stake. And even where there is the political will to do so, this can be jeopardised by their declining influence in many parts of the world, such as in Sudan and Sri Lanka, where other ‘Eastern’ governments are increasingly engaged. This is not to say that they have no influence at all and in some instances governments will be sensitive to Western pressures. For instance, when there is interest in IMF decision-making or seeking to establish stable trade relations.

More attention should also be paid to advocacy *after* a crisis. The usual pattern is one of impunity for governments that have ignored or contravened IHL: as soon as the conflict is deemed over and the country is seen as shifting into a ‘post-conflict’ phase, the international community has a tendency to swiftly move back to friendly development relations. This is what is happening in Sri Lanka, with other governments observing closely.

**Ways forward: how can the concept help guide future action?**

There is some questioning on the usefulness of the term ‘humanitarian space’ across the sector. OCHA, for instance, discourages its use because it considers it a catch-all for diverse dynamics. It is not clear whether it relates to access, security or principles and as a result creates confusion for non-humanitarian parts of the UN. Yet, the breadth of the concept can also be seen as a strong point. It encourages recognition of the inter-connections between challenges to humanitarian action, which are often viewed and addressed in isolation to the detriment of effective responses.

Relating the concept of humanitarian space to public international law highlights the importance of not framing it simply as an issue of humanitarian access or agency operational space. People’s access to relief and protection should be at the centre of the concept and the legal frameworks governing behaviour in times of conflict are clear that the foremost responsibility for providing relief and ensuring the protection of the civilian

population falls on the belligerent parties, and otherwise on the state according to human rights law. Whilst humanitarians have a role to play, this is conditional and must therefore be based on negotiation, consent and the relevance or need for their assistance. The principles of humanitarian action are central to this as they regulate the behaviour of humanitarian agencies in order to gain acceptance.

The nature of humanitarian space, that is the extent to which the rights of the population to relief and protection are adhered to, is influenced by the evolving policies, institutions and processes that determine the political economy of a conflict. These can include cultural values and norms, the objectives and strategies of belligerent parties, the level of engagement by international powers, the impact of humanitarian organisations, the coping strategies of communities, and so on. Many organisations have a role to play, including human rights organisations, military actors, development specialists and peace-builders. The challenge for humanitarian organisations is how to engage (or not) with all the actors that affect humanitarian space so as to ensure populations are able to access assistance and protection. In this regard, it makes little sense to speak of humanitarian space contracting or expanding, but rather understand the nature of that space in order to determine the most appropriate roles and strategies of humanitarian organisations.

Specific challenges related to humanitarian space demand close attention. For example, does the acceptance model work for securing or maintaining access, and what conditions determine whether and when it is viable? What specific problems are created by UN integration and the use of assistance to promote security? What is the impact of the role of criminal tribunals? So far, there has been little strategic engagement from the international humanitarian community in response to these challenges. There may be value in a diversity of approaches, but the flip-side of diversity is the fragmentation of the humanitarian 'system'. If agencies want to see a particular aspect of humanitarian space improved or protected, they need to behave in a way that will support this. Humanitarian organisations need to ask what their comparative advantage is, and scrutinise this against core principles of humanitarian action and real adherence to these in practice. Joint red lines and ground rules used to be common practice – why are they so rare now? Could stronger minimum standards and joint commitment to core principles bring the humanitarian community together? What basic prerequisites and minimum responsibilities are needed in the face of challenges to key aspects of humanitarian space?

The subsequent roundtable discussions in the meeting series will discuss these questions in greater detail. They will use the term humanitarian space in a broad sense that focuses on the various trends and issues that affect people's access to protection and assistance, while being specific in terms of the challenges and implications they raise.