

MONITORING INTERNATIONAL HUMANITARIAN LAW IN IRAQ

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Ensuring Humanitarian Access in Iraq

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The term *humanitarian access* refers to the ability to engage directly with those in need during times of conflict (especially non-combatants and vulnerable groups) for the purposes of safely and effectively delivering humanitarian assistance. Put simply, it relates to the ability to deliver assistance where it is needed. Meeting core humanitarian needs in Iraq will imply:

- Ensuring access to adequate water, sanitation and shelter;
- Continuing provision of basic food inputs to the population;
- Ensuring access to healthcare facilities during conflict; and
- Monitoring the implementation of basic human rights and of the protection of civilians under the [Fourth Geneva Conventions](#).

By 24 March 2003, shortly after the initiation of hostilities, the issue of humanitarian access and provision of basic services in southern Iraq [Latest News on Humanitarian Access in Basra](#) came to the fore as the city of Basra, the second largest city of Iraq with an estimated 1.5 million inhabitants, faced serious interruptions in water and electricity supply. On the same day, President George W. Bush noted that the United States would begin delivery of humanitarian goods once access through port facilities at Umm Qasr was secured.

By 5 April 2003, humanitarian access to Umm Qasr and the surrounding areas had improved, with a number of humanitarian agencies delivering assistance to Umm Qasr, and U.N. humanitarian agencies assessing the potential for delivering assistance to Basra.

The ongoing conflict in Iraq has the potential to seriously exacerbate the current humanitarian vulnerability and dependency of the Iraqi population and demonstrates the importance of planning and information sharing to ensure appropriate access to the civilian population in need of assistance. However, in light of the modifications to the United Nations "Oil-for-Food" Programme ([OfFP](#)) mandated in U.N. Security Council resolution [1472](#) (2003) which provide for UN control over the accumulated oil revenues in the Program, we can expect that UN agencies will have access to sufficient resources in the months to come to respond to the humanitarian needs in Iraq. During its consultations on the humanitarian situation in Iraq on 3 April 2003, the U.N. Security Council [recognized](#) the need to ensure adequate access for relief assistance.

For over a decade, the Iraqi population has suffered from chronic food insecurity and dependence on a centrally-controlled food ration system; reduced access to safe water and adequate healthcare; and the deterioration in sectors such as electricity, essential to meeting humanitarian needs. Due to the distribution of additional food rations by the Government of Iraq in recent months, the [U.N. estimated](#) in January 2003 that household food stocks throughout the country are sufficient for approximately 6 weeks. Bulk food

stocks in Iraq are likely sufficient for no more than 4 weeks. Of the current (est.) 27 million population, approximately 60 % (or 16 million persons) were estimated to be fully dependent on the food ration prior to the conflict. [UNICEF](#) asserts that approximately 4.2 million children and a further 1 million pregnant and lactating women are highly vulnerable as regards to their nutritional status. UNICEF [estimates that](#) 100,000 children under five in Basra are at risk of death from diarrhea and dehydration due to reduced access to safe water.

As a result, the civilian population is left with very little means to cope with the effects of the hostilities. In this context, sustained access to civilians during hostilities in Iraq, and to vulnerable groups in particular, will be critical in providing for their basic humanitarian needs. In addition to physical access to populations in need, humanitarian and military actors will need to facilitate access to the relevant information to ensure effective planning and coordination of humanitarian assistance.

Legal Aspects of the Duty to Ensure Humanitarian Access

The principles guiding humanitarian access during conflict, and the attendant duties and obligations of parties to a conflict under international law, are stated in:

1. The [Geneva IV](#) relative to the Protection of Civilian Persons in Time of War (1949) and the [Additional Protocol I](#) to the Geneva Conventions;
2. Customary humanitarian law.

The provisions of these instruments and documents cover multiple facets of humanitarian access during conflict, including: provision of humanitarian assistance to former combatants and non-combatants; safety of humanitarian personnel; ensuring access to vulnerable groups etc.

From the outset, one must distinguish between a situation of an *ongoing military campaign* from one of *military occupation* as the two are regulated by different sets of rules and standards. During an ongoing military campaign, the invading party does not have a legal duty to assist the population in need. However, it has a clear duty to facilitate access of relief convoys in favor of the civilian population in need. At the moment that an invading party becomes an occupying power (i.e. when the invading party seizes control over a given territory) it takes over the responsibility of providing the necessary assistance to the civilian population from the national state. Thus, the level of diligence expected and the legal duties activated under occupation are greater than during an ongoing military campaign. The criteria for recognizing a situation of occupation are factual: they relate to the effective military control of the invading party over a territory and population.

● Ensuring humanitarian access to the population during a military campaign

Essentially, the initial duty to assist the population belongs to the government of the national state. An invading party does not have a duty to assist the population unless it occupies part or the whole territory of that state and thereby takes on the wider obligations of the national state. It does, however retain specific obligations to allow access to relief actions in favor of the population and to abstain from starving this population as a means of combat ([Article 51](#) of Protocol I.)

[Article 23](#) of the Fourth Geneva Convention of 1949 provides for protection of populations from certain consequences of war. This provision requires the parties to the conflict allow the “free passage” of consignments of medical goods intended for civilians of another party, as well as passage of essential

foodstuffs, clothing and medicines for children and expectant mothers. “Free passage” of consignments means that they should not be subject to seizure by parties to the conflict, and should not be considered as “war contraband.”

[Article 70](#) of Additional Protocol I of 1977 extends the scope of Article 23, requesting that parties to the conflict allow and facilitate relief actions in favor of all the civilian population in any situation other than occupation, if this population is not adequately provided with food, medical supplies, clothing, bedding, means of shelter, or other supplies essential to the survival of the civilian population. Note that this remains the case regardless of whether the city is surrounded, under siege, or under attack: access to humanitarian assistance must be facilitated. These relief operations should be undertaken:

- with the consent of the Parties concerned;
- under the principles of humanity and impartiality; and
- without any adverse distinction in terms of race, ethnicity, religion, or other discriminatory distinctions.

Additional obligations include:

- The Parties to the conflict cannot delay access, except in cases of urgent necessity in the interest of the civilian population concerned.
- The Parties to the conflict and other states concerned shall encourage and facilitate effective international co-ordination of the relief actions. This implies providing information to relief agencies such as the UN and the ICRC on the status of civilian needs, and the most appropriate means of access.

● **Ensuring humanitarian access to the civilian population in Occupied Territory**

The legal regime differs substantially once the invading party is occupying the territory of the adverse party: once the national state is no longer in a position to exert a control over its population due to the military presence of the invading party in part or the whole of its territory. Thus, when the invading party obtains effective control over a city, this comprises occupation- and activates the legal duties arising thereto.

[Articles 55](#) and [Article 59](#) of the Fourth Geneva Convention articulate the duty of the Occupying Power to provide necessary assistance to the population of an occupied territory if this population is inadequately supplied. This assistance may be undertaken by either the Occupying power, other states, the ICRC, or equivalent impartial humanitarian organizations. [Article 69](#) of Additional Protocol I expands the scope of this obligation by addressing the needs of the population in terms of food, medical supplies, clothing, bedding, means of shelter, or other supplies essential to the survival of the civilian population. For more on the customary law status of Protocol I, see the [Feature on Applicable Laws](#).

The current challenges relating to ensuring humanitarian access in Iraq include:

Under the present circumstances, the UN, ICRC and other humanitarian agencies have identified a number of challenges to ensuring proper access to the civilian population -- particularly in the South of Iraq. The challenges are:

1. Access to the civilians in need has been hampered by the military operations in the South. Humanitarian access routes have not been secured, clearly identified, or guaranteed by either party to conflict; The need

for access has been particularly acute in situations where opposing parties to the conflict each have control over sections of a given territory (e.g. Coalition encirclement of cities such as Basra, while Government of Iraq forces control the city center [as of 3 April 2003]);

2. From the early start of the military operations, there has been insufficient planning with regard to how best to facilitate access for ensuring the continued functioning of essential civilian infrastructure (e.g., the water and sanitation sectors);

3. There has been little or no information on changing needs of civilians in regions of Iraq engaged in conflict, or coming under the control of invading forces; and

4. There has been a lack of adequate communication between humanitarian actors and parties to the conflict regarding how best to establish unimpeded access to civilians in need.

Recommendations

These recommendations are derived from the interpretation of the IHL rules cited above and aim to guide practitioners on measures to support the proper application of the IHL rules pertaining to humanitarian access.

1. IMMEDIATE OPENING OF A HUMANITARIAN CORRIDOR FROM VARIOUS POINTS OF LAND AND SEA TO ALLOW CURRENTLY AVAILABLE PROVISIONS TO REACH THE CIVILIAN POPULATION IN NEED.

Under the present circumstances, it is recommended that the parties allow the opening of dedicated humanitarian corridors to enable relief agencies to have access to the civilian population in need. These corridors should offer a number of entry points on land and sea and should be made secure by the forces controlling the territory. Attacks against these convoys are clearly forbidden. These humanitarian corridors should also serve as exit route for civilians trapped in conflict zones.

2. THE SETTING UP OF A CENTRAL COORDINATION BODY, RUN BY CIVILIAN AID AGENCIES, TO PLAN FOR CURRENT AND ANTICIPATED CIVILIAN NEEDS.

As the responsibility to assist the civilian population in military campaign belong to the national state, or if it is unable to discharge its responsibility, to third party humanitarian agencies, the parties to the conflict should allow and facilitate the setting up of a civilian body for the coordination of humanitarian assistance, until either the occupying forces or the government of Iraq are in a position to manage the supply of assistance.

3. THE CREATION OF A HUMANITARIAN INFORMATION SYSTEM WITH DAILY UPDATES ON CIVILIAN NEEDS AND AVAILABLE ACCESS ROUTES.

In view of the lack of information on the civilian needs and the difficulty of access, the parties to the conflict should keep humanitarian agencies informed of the situation of the civilians in the conflict zones to facilitate the supplies of essential goods for the survival of the population.

4. BEGIN PLANNING NOW FOR OCCUPATION, AND MEETING THE INCREASED LEGAL OBLIGATIONS FOR HUMANITARIAN ASSISTANCE IN VARIOUS PARTS OF THE COUNTRY.

This briefing note has been prepared by the International Humanitarian Law Research Initiative at the Harvard Program on Humanitarian Policy and Conflict Research. This initiative provides basic information on legal aspects of the current conflict in Iraq. It has been developed by a team of Harvard-based experts on IHL to meet the needs of policy makers, practitioners and the media concerning current challenges in the application of international humanitarian law in Iraq.

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