

Convoys, Cross-border, Covert Ops: Responding to state-led arbitrary aid denial in civil wars. Lessons from Syria, Myanmar, and Ethiopia.

Executive Summary

The world is plagued by more conflicts that last longer. Many of these wars are intra-state conflicts, or civil wars. In many of these crises, the state (or de facto state) effectively dispenses with their responsibilities under international law by failing to protect the population—in many cases representing the primary protection risk—and by arbitrarily denying humanitarian aid access or intentionally causing starvation.

Sovereignty and territorial integrity are increasingly fraught issues that lie at the heart of the challenge that arises when the state denies aid access in civil wars. This issue is central to the United Nations (UN) Charter and international law, and has been codified into various United Nations Security Council (UNSC) resolutions and legal positions pertaining to humanitarian operations over the years.

States that block aid assert sovereignty to deflect international interference; too often, they find international allies to support them. Access issues often fall along geopolitical fault lines. The political splits between the United States (US), Russia, and China have led to an increasing sense that having the support of even one permanent member of the UNSC that is willing to veto resolutions on a state's behalf can lead to almost complete impunity. Russian aggression in Ukraine in 2014 and 2022 has heightened the sensitivity of this issue.

In the past, the humanitarian system operated in a more informal, ad hoc manner; sovereignty/consent concerns were addressed as required, and borders were crossed if needed. The formalization and expansion of the aid sector happened to coincide with a period of international cooperation on these matters. A risk-averse and bureaucratized aid sector now faces a geopolitical quagmire, and these concerns have become intractable.

A UNSC resolution determined Syria's cross-border aid solution in 2014, but the geopolitical environment for enabling any similar agreement has declined significantly since then and is unlikely to improve in the near term. Meanwhile, the resolution has empowered bad actors and set a dangerous precedent.

Initiatives such as Responsibility to Protect (R2P) and Human Rights Up Front have all but fallen by the wayside, despite images of young protestors in Myanmar holding R2P signs in the hopes

it would promote action on their behalf. The 2018 UNSC resolution 2417 on arbitrary aid denial and starvation in conflict has yet to be properly implemented.

In this age of impunity, blocks on humanitarian access appear to be increasing. The humanitarian system particularly struggles when access constraints amount to arbitrary or systemic denial from the state party, particularly in an intra-state conflict or political crisis. Natural disasters in states already affected by conflict, such as the recent Turkish–Syrian earthquake and Cyclone Mocha in Myanmar and Bangladesh, effectively cause the system to collapse altogether. A state-centric, UN-dependent humanitarian system is consistently failing in these contexts.

Ultimately, a new path must be charted at the highest levels. The UN must take a different legal interpretation of its mandate, but this is unlikely until there is more courageous leadership in place. Member states must eventually agree to a UNSC or United Nations General Assembly resolution or humanitarian declaration that reaffirms the right to humanitarian assistance in all contexts, which would force the UN to pivot its conservative legal position. Building the case for such a declaration must begin now to ensure the necessary pieces are in place once there is a more enabling environment within the UN and the geopolitical environment.

The first step in building such a case is to reclaim the lost space on international norms and reassert the right to humanitarian assistance. Defining arbitrary and systematic denial and diligently monitoring and publishing information about the nature of access restrictions (and the needs that go unmet as a result) would help expose how common the practice is, its scale, and which parties normally perpetrate it. An independent organization should monitor this phenomenon globally and provide information and analysis to the UNSC, regional states and major donors, and civil society to enable further action, both diplomatically and through public advocacy.

Ending the culture of impunity around arbitrary aid denial, starvation, and attacks on humanitarian infrastructure and works would also help reclaim some of the space that has been lost around this fundamental right. Preparatory work to prosecute starvation as a weapon of war is moving ahead in Ukraine and Tigray, and should be expanded through the International Criminal Court (ICC) and universal jurisdiction. Through advocacy and legal cases, a longer-term effort to highlight this problem, stigmatize those who perpetuate it, and create the necessary political momentum and appetite for high-level solutions can help create an environment that can facilitate solutions.

In addition to justice and accountability efforts, considering these concerns in peace processes and transitional justice work will also help to reduce recidivism and repair the damage, restore social cohesion and support long-term peace.

Too often, a lack of progress or ambition in ending a conflict results in an overly politicized humanitarian access discussion that replaces genuine negotiations or attempts to resolve the underlying conflict. Resolving humanitarian access issues through international agreements is

enormously resource intensive; focusing solely on access concerns fails to help resolve the conflicts themselves, even though they impact the conflict dynamics. For example, in northwestern Syria the status of an area housing millions of people is negotiated solely through a humanitarian access agreement, which has generated a protracted 'life support' situation that is still controlled by those who denied access to the affected population. Enormous amounts of diplomatic resources have been diverted in this process away from efforts to resolve the conflict or address the status of the area and those living there. Even the occurrence of such negotiations depends on the engagement and political positions of major donors in particular.

This is closely linked to the lack of a unified strategic vision or action from major donor states, which tend to silo their diplomatic, political, stabilization, and humanitarian efforts. This has a knock-on effect on their funding streams, diplomatic or mediation efforts, and how (and whether) their engagement on humanitarian assistance and access issues forms part of a broader strategy to resolve the conflict. Where humanitarian access is being arbitrarily denied, particularly when access issues are escalated, the reasons and consequences are inherently political. Actors should streamline their engagement into a unified approach and avoid the temptation to manage protracted conflicts as solely humanitarian files. An integrated approach would also help ensure donors are best able to support humanitarian responses through varied funding streams and allow actors to be more agile at the operational level.

There is also an absence of principled UN leadership at the operational level. UN agencies currently take an extremely conservative legal position. Given the difficulties associated with balancing member states' views, these legal positions are unlikely to be altered in the short term. Individuals affected by these crises cannot wait. Alternative solutions that do not depend on the UN are needed.

Many donors, INGOs, and local organizations believe they are able to work in these environments without additional legal findings, but they have recently been hesitant to do so. One reason for this is a misreading of the humanitarian principles. It is entirely within the remit of these principles to serve needs through the most appropriate route and modality; a far more holistic view of the principles should thus be taken. To some degree the principles have become conflated with preferred operating procedures in a bureaucratic and UN-centric system in which clusters, risk, and market share are more dominant factors in driving operations than meeting needs. Identifying ways to more quickly prompt a range of actors to pivot to new ways of working in these crises, outside of the capital-based UN-dependent system, is likely to be the most effective driver of change in the short term.

In Syria and Myanmar, it took at least 2 years for responses to even begin working differently to the capital and state-permissions focused approach that was failing to secure access. That is too long. In Ethiopia, they never did. In future conflicts it will be vital to quickly determine whether the state is likely to deny access so that aid agencies can engage in early operational planning for alternative ways of working. Using data from Syria, Ethiopia, and Myanmar, as well as similar contexts, this report proposes a typology checklist that can be used alongside local

contextual information to help agencies, donors and others rapidly identify when this kind of crisis may be unfolding so that timely action can be taken.

More information and data are needed. Although there is an enormous amount of humanitarian data and analysis, there is little useful timely information in these contexts; this must be remedied from the outset in countries likely to experience blocked access. Independent information on population, needs, access constraints, context analysis, and scenario planning should be collected as soon as possible to support operations. This initiative should dovetail with information gathering by a new high-level humanitarian access organization.

Donors have a core role to play in helping to pivot to new ways of working in these contexts. Installing multi-mandate envoys at the state level and appointing an independent response-wide focal point who can help coordinate across modalities and sectors during the set-up phase is also important. Utilizing a well-rationalized access strategy and operational plan, donors can support a new ecosystem and architecture in which a range of well-rationalized partners implement assistance wherever needs arise, through the most appropriate routes and modalities.

At the ground level, when looking to pivot to cross-border or remote work, genuine partnerships are key. These partnerships may need to be supported by non-humanitarian budget lines, but certainly involve interlocutors taking on elements of the role and risk such as adapting reporting methods to the context and deriving programme choices from local needs rather than donor priorities.

By employing a combination of these political and operational approaches, all kinds of actors can better assist those in need today, while putting the building blocks in place to ensure this problem is eventually remedied for all.



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