

THE ROLE OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS AND THE RED CROSS AND RED CRESCENT MOVEMENT IN FACILITATING ACCESS TO COVID-19 VACCINES IN “LAST-MILE” AREAS

JESSICA BUCHLER*

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* Jessica Buchler graduated from the New York University (NYU) International Legal Studies LL.M. program in 2022. She is a Brazilian national with previous work experience at the International Committee of the Red Cross (ICRC) in Geneva and the Ecuadorian Red Cross in Ecuador. Jessica has also held positions with the World Bank’s Legal team and its Fragility, Conflict, and Violence (FCV) Unit in Washington. Currently, Jessica serves as Associate Security and Policy Officer at the United Nations in New York. This paper was written in the context of Jessica’s LL.M. studies at NYU. All views expressed in this paper are her own.

I. INTRODUCTION

This paper looks at the important role played by humanitarian actors, with a focus on the International Committee of the Red Cross (ICRC) and the International Red Cross and Red Crescent Movement (“Movement”), in facilitating access to COVID-19 vaccines in hard to reach, and/or conflict-affected areas. First, this paper summarizes the work of the ICRC and the Movement in health, especially on vaccinations. Then, it looks at the specific challenges faced by humanitarian actors while facilitating health-related work and operations in complex settings. The challenges include politicization, lack of trust and hesitancy, especially in communities with low level of trust in institutions. In addition, indemnity issues pose an additional barrier for vaccine procurement. After analyzing the barriers to the ICRC and the Movement’s work in health during a pandemic context, this paper looks at what has been done so far, taking note of the protections granted by International Humanitarian Law (IHL). Humanitarian actors have accomplished significant work results across operational and advocacy domains. However, in the face of future pandemics and conflicts, there may be a need to do even more. This article examines potential future actions, taking a forward-looking approach that envisions a heightened role for the ICRC and the Movement in health-related work during both ongoing and potential new pandemics.

II. THE ICRC’S AND THE MOVEMENT’S WORK IN HEALTH, VACCINATIONS AND PANDEMIC PREPAREDNESS, AND RESPONSE

The ICRC and the Movement are humanitarian actors mandated, *inter alia*, to ensure that people affected by conflicts can get access to basic health care.¹ This includes planning, logistical and financial support to local health authorities, training, negotiation, and participation in vaccination campaigns.² Unlike the World Health Organization (WHO) and other global health actors, the ICRC is

1. Including the International Federation of the Red Cross (IFRC) and the National Societies in different states. National Societies are local Red Cross societies like the American Red Cross, the Israeli Magen David Adom, and the Syrian-Arab Red Crescent. *Health*, INT’L COMM. RED CROSS, <https://www.icrc.org/en/what-we-do/health> [https://perma.cc/6YFG-ZTPQ].

2. *COVID-19: People living in conflict zones cannot be forgotten in global vaccination effort*, INT’L COMM. RED CROSS (May 18, 2022), <https://www.icrc.org/en/document/covid-19-people-living-conflict-zones-cannot-be-forgotten-global-vaccination-effort> [https://perma.cc/RC4C-ZSSU].

purely a humanitarian actor,³ acting upon request or acceptance of offer from States.⁴ Thus, health-related work can at times pose challenges of political misconceptions and trust in vaccines that might hamper the ICRC’s operational involvement. Therefore, the ICRC’s conduct of health-related work is strengthened by its focus on facilitating access to essential services (including vaccination) in last-mile areas through negotiation, influencing, and playing a neutral intermediary role.⁵ This approach is crucial in certain regions. For instance, the ICRC estimates that between sixty and eighty million people live under the exclusive control of non-state armed groups,⁶ and many more live in areas in which non-state armed groups operate.⁷ Hence, there is a large group of vulnerable people in need of assistance and protection in the context of prevention and response to pandemics.

When the WHO declared the COVID-19 outbreak a pandemic, the initial priority of the ICRC was guaranteeing continuity of field operations, especially because in certain states, the pandemic represented only one of many other serious issues to be dealt with simultaneously.⁸ Once the race to manufacture and distribute COVID-19 vaccines started, most of the debate concentrated on equitable

3. Following the principles of humanity, impartiality, neutrality, independence, voluntary service, unity, and universality. *The Fundamental Principles of the International Red Cross and Red Crescent Movement*, INT’L COMM. RED CROSS (June 11, 2020), <https://www.icrc.org/en/publication/4046-fundamental-principles-international-red-cross-and-red-crescent-movement#:~:text=Humanity%2C%20impartiality%2C%20neutrality%2C%20independence,natural%20disasters%20and%20other%20emergencies> [https://perma.cc/4CKB-Z353].

4. The ICRC can offer its services in situations of non-international armed conflicts through the “right of humanitarian initiative”, recognized by the international community and enshrined in Common Article 3 of the Geneva Conventions. Geneva Convention Relative to the Treatment of Prisoners of War, art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

5. INT’L COMM. RED CROSS, *supra* note 2.

6. The term armed groups “denotes a group that is not recognized as a State but has the capacity to cause violence that is of humanitarian concern.” Non-state armed groups are included in this category. They are armed groups which are recognized as a party to a non-international armed conflict and, therefore, are bound by IHL. INT’L COMM. RED CROSS, ICRC ENGAGEMENT WITH NON-STATE ARMED GROUPS, ICRC POSITION PAPER 2 (2021).

7. *IHL and COVID-19: Vaccinations Under the Control of Non-State Armed Groups*, INT’L COMM. RED CROSS (Mar. 31, 2021), <https://www.icrc.org/en/document/ihl-covid-19-vaccinations-territory> [https://perma.cc/L89L-8FJ4].

8. *Coronavirus: COVID-19 pandemic*, INT’L COMM. RED CROSS, <https://www.icrc.org/en/what-we-do/covid-19-pandemic> [https://perma.cc/ZX9K-K7FQ] (last visited Feb. 14, 2023).

vaccine access *between* states.⁹ However, the ICRC focused its humanitarian diplomacy and services to ensure equitable access *within* states, especially as COVID-19 vaccines started arriving in states at war.¹⁰ This approach poses several challenges, including issues of building trust with local populations and authorities, safeguarding equal distribution in areas neglected by national vaccination programs, maintaining a neutral, impartial, and independent image, and negotiating with armed groups without demonstrating bias or imposing western concepts of global health.¹¹ Further, humanitarian actors are likely to encounter additional challenges if dealing with states and companies to secure vaccine access and distribution.¹² This happens in the event of humanitarian organizations' involvement in the COVAX program,¹³ especially within the humanitarian buffer,¹⁴ as well as in the unlikely event of direct vaccine procurement from states or companies.¹⁵

9. See Charles Deutscher, *COVID-19 vaccine: three considerations for equitable access within countries at war*, INT'L COMM. RED CROSS BLOGS (Mar. 24, 2021), <https://blogs.icrc.org/law-and-policy/2021/03/24/covid-19-vaccine-equitable-access/> [https://perma.cc/7YAE-88U8].

10. *Id.*

11. *Id.*

12. KATHERINE DELAND, INTERNATIONAL PEACE INSTITUTE, VACCINE EQUITY IN CONFLICT-AFFECTED AREAS: THE CHALLENGES OF DEVELOPMENT, PRODUCTION, PROCUREMENT, AND DISTRIBUTION 10-11 (2022), <https://www.ipinst.org/wp-content/uploads/2022/04/Vaccine-Equity-in-Conflict-Affected-Areas-Web.pdf> [https://perma.cc/M4MT-DZFH].

13. The COVAX program is led by the WHO, Gavi, and the Coalition for Epidemic Preparedness Innovations (CEPI). It is one of the pillars of the Access to COVID-19 Tools (ACT) Accelerator, which is an initiative seeking to boost the development, production, and equitable access to COVID-19 tests, treatments, and vaccines. *What is COVAX?*, GAVI, <https://www.gavi.org/covax-facility> [https://perma.cc/3KBA-GHSW] (last visited Aug. 11, 2023).

14. The Inter-Agency Standing Committee (IASC) defines the "Humanitarian Buffer" as "a mechanism established within the COVAX Facility to act as a measure of 'last resort' to ensure access to COVID-19 vaccines for high-risk and vulnerable populations in humanitarian settings. Populations of concern in humanitarian settings may include refugees, asylum seekers, stateless persons, internally displaced persons, minorities, populations in conflict settings or those affected by humanitarian emergencies, and vulnerable migrants irrespective of their legal status. Both COVAX Participants and humanitarian agencies can apply for Humanitarian Buffer doses. The Humanitarian Buffer is only to be used where there are unavoidable gaps in coverage in national vaccination plans and micro-plans, despite advocacy efforts." *The COVAX Humanitarian Buffer*, INTER-AGENCY STANDING COMM. (Dec. 31, 2022), <https://interagencystandingcommittee.org/inter-agency-standing-committee/covax-humanitarian-buffer> [https://perma.cc/R5PY-MMD5].

15. *Id.*

III. ISSUES AND BARRIERS FOR HUMANITARIAN ACTORS ENGAGING IN COVID-19 VACCINATION EFFORTS

Purely humanitarian actors are required to always maintain neutral and impartial conduct. While this brings benefits—such as facilitated access and dialogue—it mostly poses a challenge in the field of public health. For instance, if a humanitarian actor inadequately pushes for a vaccination campaign in a community which is hesitant, it could compromise public perception of the organization’s work as a whole and, as a result, impede humanitarian actors’ ability to continue working with remote communities. In fact, upholding neutral and impartial conduct is even more important than the result of operations and programs, because without access and continued acceptance from local communities and authorities, most humanitarian organizations would not be operational. Maintaining neutral and impartial conduct and building community engagement is particularly difficult in the field of global health, and has become even more so since the beginning of the COVID-19 pandemic.¹⁶ Even with the advantage of being present in remote and conflict-affected areas, the ICRC and the Movement must still understand local specificities to build genuine community engagement, especially when there is lack of trust in vaccines or those administering them.¹⁷

A. *The Correlation of Health with Peacebuilding and the Risk of Politicization*

The WHO has advocated for the integration of health and peacebuilding activities.¹⁸ Indeed, the Director-General, Dr. Tedros Adhanom Ghebreyesus, has argued that: “there cannot be health without peace, and there cannot be peace without health.”¹⁹ However, this framing can be highly problematic for humanitarian actors. For the ICRC and the Movement—and potentially other humanitarian organizations—peacebuilding should never be the objective of health interventions, although it is possible that in certain situations, peace may result from health activities, at least in the form of a truce or

16. Deutscher, *supra* note 9 (presenting considerations for facilitating equitable access to vaccines, especially in the context of a pandemic and when operating in ‘last-mile areas’).

17. *Id.* (underscoring the importance of promoting acceptance within communities, rather than focusing on fighting hesitancy).

18. *Global Health for Peace Initiative (GHPI)*, W.H.O., <https://www.who.int/initiatives/who-health-and-peace-initiative> [https://perma.cc/6JYZ-SRU8] (last visited May 21, 2023).

19. *Id.*

armistice.²⁰ While other actors might view pandemic response and vaccination efforts as an opportunity to promote peacebuilding in areas of conflict, the ICRC and the Movement are cautious to avoid the politicization of health interventions. They have made it clear that engagement and dialogue with armed groups, for instance, in areas outside of a State's control, do not legitimize their existence, but are crucial for, *inter alia*, vaccine rollout and service delivery.²¹ Avoiding contact with all parties to a conflict can risk damaging the humanitarian space and access, as well as exacerbate mistrust within affected communities.²² In the event that health workers or vaccination campaigns become associated with political agendas or peacebuilding efforts, field staff can be placed in danger of attacks and reprisals.²³ In fact, the ICRC documented more than 600 cases of violence against medical staff or patients worldwide in relation to the COVID-19 pandemic in six months of 2020 alone.²⁴ This underscores the innate danger of health service provision in areas affected by conflict, as well as the interconnected issues of fear, lack of trust, and anger in the environments in which humanitarian actors operate.

Still, this does not mean that humanitarian actors must work in a silo to avoid the politicization of their activities. For example, the ICRC

20. See e.g., *Webinar on Humanitarian Operations during COVID-19: A conversation with Peter Maurer of the ICRC*, CTR. FOR STRATEGIC & INT'L STUD. (May 2020), <https://www.csis.org/analysis/online-event-humanitarian-operations-during-covid-19-conversation-peter-maurer-icrc> [<https://perma.cc/G5MN-CSP9>] (describing the ICRC's efforts to convince the Taliban to offer a humanitarian space for vaccinating women and children in rural landscapes in Afghanistan in 2000).

21. *International humanitarian law and COVID-19: Vaccinations in territories under the control of non-state armed groups*, INT'L COMM. RED CROSS (Mar. 31, 2021), <https://www.icrc.org/en/document/ihl-covid-19-vaccinations-territory> [<https://perma.cc/W764-GXNM>].

22. *Id.*

23. Deland, *supra* note 12.

24. ICRC: *600 Violent Incidents Recorded Against Health Care Providers, Patients due to COVID-19*, INT'L COMM. RED CROSS (Aug. 18, 2020), <https://www.icrc.org/en/document/icrc-600-violent-incidents-recorded-against-healthcare-providers-patients-due-covid-19> [<https://perma.cc/V5UQ-CA34>]; see also *Health-care Providers, Patients Suffer Thousands of Attacks on Health-care Services Over the Past Five Years*, INT'L COMM. RED CROSS (May 3, 2021), <https://www.icrc.org/en/document/health-care-providers-patients-suffer-thousands-attacks-health-care-services-past-5-years> [<https://perma.cc/5EDA-3QAF>] (discussing the high number of documented attacks against health-care professionals, including in the context of the COVID-19 pandemic); Jacqui Thornton, *Violence Against Health Workers Rises During COVID-19*, THE LANCET (July 30, 2022), <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2822%2901420-9> [<https://perma.cc/K9TN-XRB3>] (highlighting the increase of attacks against healthcare workers since the beginning of the COVID-19 pandemic).

and the Movement have partnered with the United Nations to issue calls to governments and companies to develop and equitably distribute affordable, effective, and safe vaccines globally.²⁵ Furthermore, some members of the international community agreed to Security Council Resolution 2565,²⁶ which called for a “sustained humanitarian pause” to help vaccination efforts.²⁶

B. *Issues of Trust and Persuasion*

Convincing governments and communities that COVID-19 is a problem relative to other pressing challenges can be difficult.²⁷ Relatedly, the ICRC often works with communities that have low levels of trust in institutions.²⁸ This renders it essential to convey public health information in a way that resonates with local communities, especially considering that in non-state-controlled and hard-to-reach areas, messages of global news may never arrive due to inability or unwillingness to conduct outreach.²⁹ Therefore, the ICRC works with health authorities to support vaccination campaigns and contributes to trainings and know-how to increase vaccine uptake and tackle vaccine misinformation.³⁰ This is often done through National Societies and

25. In June 2020, the ICRC and the United Nations issued a call on governments, the private sector, international and civil society organizations to accelerate efforts to develop, test, and produce a safe and affordable “people’s vaccine” to protect everyone, everywhere and bring the crisis to an end. *Note to Correspondents: Uniting for a People’s Vaccine Against COVID-19*, U.N. SECRETARY-GENERAL (June 3, 2020), <https://www.un.org/sg/en/content/sg/note-correspondents/2020-06-03/note-correspondents-uniting-for-peoples-vaccine-against-covid-19> [<https://perma.cc/BQR6-P5KB>].

26. S.C. Res. 2565 (Feb. 26, 2021). The humanitarian pause does not apply to military operations against the Islamic State in Iraq and the Levant (ISIL, also known as Da’esh), Al Qaeda and Al Nusra Front, and all other individuals, groups, undertakings and entities associated with Al Qaeda or ISIL, and other terrorist groups, which have been designated by the Security Council. *Id.* ¶ 5.

27. See *Coronavirus: COVID-19 pandemic*, INT’L COMM. RED CROSS, <https://www.icrc.org/en/what-we-do/covid-19-pandemic> [<https://perma.cc/SG4B-8RRG>] (last visited Feb 14, 2023) (discussing the difficulties of explaining the gravity of a pandemic to communities facing other, seemingly more immediate, threats to life).

28. See *Six essential lessons for a pandemic response in humanitarian settings*, INT’L COMM. RED CROSS (July 2, 2020), <https://www.icrc.org/en/document/six-essential-lessons-pandemic-response-humanitarian-settings> [<https://perma.cc/3JFT-PCWL>] (setting out the difficulties faced by humanitarian actors when facilitating access to vaccines, especially in a pandemic context and while operating in ‘last-mile areas’).

29. Deutscher, *supra* note 9.

30. See *generally*, INT’L COMM. RED CROSS, THE ICRC’S OPERATIONAL RESPONSE TO COVID-19 AND ITS BROADER IMPACT ON COMMUNITIES (2020) (listing the various ways in which the ICRC responded to the COVID-19 pandemic).

the IFRC, who are the first responders in emergencies and, as a result, tend to have strong community ties.

Addressing misinformation and strengthening support to local actors is key to ensure equitable access to vaccines.³¹ It is important to work with communities to build trust and strengthen confidence on the efficacy and safety of vaccines, before aggressively addressing hesitancy.³² Additionally, as outlined above, issues of mistrust might lead to violence against health workers and people affected by the virus due to fears of contracting the virus, anger because of the passing of a family member, or a lack of trust regarding prevention and treatments. Therefore, raising awareness regarding the role of health workers and demystifying misconceptions about the virus and vaccines is essential moving forward.³³

C. Indemnity Issues³⁴

Indemnity issues are at the core of equitable vaccine distribution and have impeded the success of mechanisms such as COVAX and its humanitarian buffer.³⁵ Although this paper does not seek to address the humanitarian buffer mechanism in totality, it is important to note that indemnity is one of the main problems to its operationalization and to the prospect of humanitarian organizations purchasing

31. *Actions must speak louder than words: 5 asks to achieve equity in vaccine delivery*, INT'L COMM. RED CROSS (Oct. 28, 2021), <https://www.icrc.org/en/document/5-asks-to-achieve-equity-vaccine-delivery> [<https://perma.cc/9GSM-3MEE>].

32. *See COVID-19: IFRC calls for urgent action to tackle vaccine hesitancy in Europe amid increase in violent incidents*, INT'L COMM. RED CROSS (Sept. 30, 2021), <https://www.ifrc.org/press-release/covid-19-ifrc-calls-urgent-action-tackle-vaccine-hesitancy-europe-amid-increase> [<https://perma.cc/U4DH-EZ7V>] (discussing disinformation campaigns about vaccines' side effects and potential risks, which sparked violence in Europe).

33. *See 'Please, don't tell anyone!': healthcare stigma in the COVID-19 era*, INT'L COMM. RED CROSS (Nov. 12, 2020), <https://blogs.icrc.org/law-and-policy/2020/11/12/healthcare-stigma-covid19/> (addressing the stigmatization of people affected by the virus and healthcare workers).

34. In a broad sense, indemnity means protection against, or compensation for, a loss or liability. Indemnity can also come out of a contractual obligation. Where a party promises to pay an identified loss if a particular trigger event happens. *Glossary Indemnity*, THOMSON REUTERS, PRACTICAL LAW, [https://uk.practicallaw.thomsonreuters.com/5-107-6256?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/5-107-6256?transitionType=Default&contextData=(sc.Default)&firstPage=true) (last visited May 10, 2023).

35. INT'L COMM. RED CROSS, *supra* note 31 (The United Nations and the International Red Cross and Red Crescent Movement issued a call to governments, partners, donors, the private sector, and other stakeholders to achieve equity in vaccine delivery).

COVID-19 vaccines for delivery in last-mile areas.³⁶ All COVAX facility participants, as well as national and international humanitarian agencies, are eligible to apply for vaccine doses from the humanitarian buffer.³⁷ When humanitarian agencies apply for doses allocated through the COVAX humanitarian buffer, manufacturers will request that liability be addressed directly by the agencies.³⁸ However, no organization has the capacity to provide unlimited indemnity.³⁹ In fact, manufacturers are imposing unreasonable indemnity clauses to states procuring vaccines, which paints a grim scenario for humanitarian organizations seeking to do so.⁴⁰

One of the requests made by the ICRC in “5 asks to achieve equity in vaccine delivery” was that manufacturers lift all barriers to allow humanitarian agencies to access COVID-19 vaccine doses.⁴¹ This included waiving the requirement for indemnification, particularly for the most vulnerable populations that can only be reached by humanitarian agencies using the humanitarian buffer.⁴² Gavi and the Inter-Agency Standing Committee (IASC) estimate that more than 167 million people are living in low and middle-income countries and are at risk of being omitted from national vaccine plans.⁴³ Removing indemnity barriers would allow stronger participation of the ICRC and

36. *Id.*

37. INTER-AGENCY STANDING COMM., *supra* note 14.

38. See *Gavi and humanitarian agencies partner to deliver COVID-19 vaccines to the most vulnerable people in the world*, GAVI (Nov. 16, 2021), <https://reliefweb.int/report/world/gavi-and-humanitarian-agencies-partner-deliver-covid-19-vaccines-most-vulnerable-people> (calling vaccine manufacturers to waive indemnity requirements for humanitarian organizations and explaining the challenges faced to overcome indemnity issues).

39. W.H.O., THE HUMANITARIAN BUFFER BRIEFING PRESENTATION 10 (July 27, 2021), https://apps.who.int/gb/COVID-19/pdf_files/2021/05_08/Item3.pdf.

40. Young Park, *Non-Disclosure Agreements and Equitable Access to COVID-19 Vaccines*, N.Y.U. J. INT'L L. & POL. 117, 120 (Feb. 17, 2022), https://www.nyuilp.org/wp-content/uploads/2022/03/Park_online_formatted-117-129_Final.pdf [<https://perma.cc/HD43-9C9P>] (“While some liability protection may be warranted, the lack of transparency makes it difficult to check the reasonableness of the terms and media reports of extensive indemnity clauses raise fears of unjust demands by pharmaceutical companies.”).

41. INT'L COMM. RED CROSS, *supra* note 31.

42. *Id.*

43. Inter-Agency Standing Committee, *Statement by Gavi and Principals of the IASC to Deliver COVID-19 Vaccines to the Most Vulnerable People in the World* (Nov. 16, 2021), <https://interagencystandingcommittee.org/inter-agency-standing-committee/statement-gavi-and-principals-iasc-deliver-covid-19-vaccines-most-vulnerable-people-world> [<https://perma.cc/2HAF-2LF9>].

the Movement in vaccination programs inside and outside of the humanitarian buffer.⁴⁴

A few manufacturers—Clover, Johnson & Johnson, Sinopharm, and Sinovac—have agreed to work with COVAX and waive indemnification requirements for humanitarian organizations delivering doses under the humanitarian buffer.⁴⁵ However, the indemnity granted does not come with full recognition of responsibility in the case of adverse effects.⁴⁶ In the context of country-manufacturer negotiations, some manufacturers have imposed restrictive clauses which waive liability for problems related to the manufacture, storage, transportation, distribution, prescription or administration of the vaccine.⁴⁷

Thus, to guarantee more vaccines for more people and take one step closer to vaccine equity, more manufacturers need to follow and expand upon the steps of Clover, Johnson & Johnson, Sinopharm, and Sinovac.⁴⁸ This would not only push the humanitarian buffer to speed-up vaccination rollout, but also make room for other options such as direct purchases of vaccines by international organizations and NGOs.

IV. BENEFITS OF THE ICRC'S AND THE MOVEMENT'S WORK IN COVID-19 VACCINATION EFFORTS IN LAST-MILE AREAS

Based on the above analysis of the barriers that hamper the ICRC's and the Movement's work in COVID-19 vaccinations in last-mile areas, this section of the article sets out a potential framework to overcome these challenges in the future. Some of the issues described above, such as fear of politicization, can be circumvented by staying true to humanitarian principles and avoiding biased situations that might be interpreted as favoring one side of the conflict over the other.

Partnering or coordinating with local and international organizations, as well as states, is important, especially in pandemic

44. INT'L COMM. RED CROSS, *supra* note 31.

45. Inter-Agency Standing Committee, *supra* note 43.

46. Ben Parker & Paisley Dodds, *Emergency COVID vaccination scheme in legal jeopardy*, THE NEW HUMANITARIAN (June 9, 2022), <https://www.thenewhumanitarian.org/news/2021/6/9/COVAX-covid-vaccine-buffer> [https://perma.cc/PCW3-MJ92].

47. Madlen Davies & Rosa Furneaux, *Vaccine Contract Forces a Government to Pay if Pfizer Makes Mistakes*, BUREAU OF INVESTIGATIVE JOURNALISM (Mar. 10, 2021), <https://www.thebureauinvestigates.com/stories/2021-03-10/vaccine-contract-forces-dominican-republic-government-to-pay-if-pfizer-makes-mistakes> [https://perma.cc/V9GC-HKRJ].

48. Inter-Agency Standing Committee, *supra* note 43.

times where significant resources and collaboration are needed to deliver diagnostics, treatment, and vaccines to communities who need them as fast as possible.⁴⁹ Such partnerships are particularly useful because they bring together the expertise of global health actors, while the ICRC and the Movement contribute their humanitarian expertise in reaching last-mile areas, such as non-State-controlled areas, areas of protracted conflict, other situations of violence, and detention centers.⁵⁰ However, it is important to maintain a clear distinction between the modalities of work of the ICRC and the Movement and those of other actors such as the WHO, Gavi, and UNICEF, who hold different, and at times, specific mandates.

The ICRC and the Movement are in a privileged position to overcome trust and hesitancy issues. Close contact with beneficiaries and acceptance by local authorities and armed groups are crucial to establish a consistent and reliable line of communication with all parties to a conflict.⁵¹ Building trust by working with and within communities is important to demystify erroneous information about the virus and the vaccine.⁵² On this basis, the ICRC and the Movement have had some success in running awareness campaigns aiming at listening to people’s concerns.⁵³ For instance, the ICRC established a partnership with the Georgian National Society to raise awareness about vaccination at the community level.⁵⁴

49. The ICRC and the Movement work together in partnership in different contexts, always coordinating with states and at times with other organizations also present in a specific context. Further, during the COVID-19 pandemic, the ICRC has united voices with the United Nations to call on all relevant stakeholders to ensure equitable and effective access to COVID-19 vaccines across the globe. *See* INT’L COMM. RED CROSS, *supra* note 31.

50. *See, e.g., Omicron highlights need to step up global vaccinations, including in conflict zones*, INT’L COMM. RED CROSS (Dec. 2, 2021), <https://www.icrc.org/en/document/icrc-omicron-highlights-need-step-global-vaccinations-including-conflict-zones> [<https://perma.cc/74TB-VUYY>] (underlining the importance of a global, decisive and collective effort in reaching communities out of reach of vaccination campaigns).

51. Hajer Naili, *Neutrality in Humanitarian Actions Means Talking to All Parties to a Conflict*, JUST SECURITY (Mar. 28, 2022), <https://www.justsecurity.org/80882/neutrality-in-humanitarian-actions-means-talking-to-all-parties-to-a-conflict/> [<https://perma.cc/H7KF-NMU7>].

52. *Six essential lessons for a pandemic response in humanitarian settings*, INT’L COMM. RED CROSS (July 2, 2020), <https://www.icrc.org/en/document/six-essential-lessons-pandemic-response-humanitarian-settings> [<https://perma.cc/YM9Q-KLHP>].

53. *COVID-19 Vaccination: Support to People Affected by Armed Conflict and Violence and Those Living in Hard-to-Reach Areas*, INT’L COMM. RED CROSS (May 17, 2022), <https://www.icrc.org/en/document/covid-vaccination-armed-conflicts> [<https://perma.cc/62Q5-VQK5>] (listing COVID-19 related work by region).

54. *Id.*

A. *Protections Guaranteed by International Humanitarian Law (IHL)*

The ICRC and the Movement's work on vaccinations so far rely on and benefit from the protection provided by IHL under the Geneva Conventions ("GCs").⁵⁵ Healthcare personnel, facilities, and logistics involved in the transport, distribution, and administering of vaccines enjoy protection when they are exclusively assigned by a competent authority of a party to a conflict.⁵⁶ This means that personnel involved in vaccination efforts must be respected and protected at all times, unless they lose their protected category status due to involvement in the conflict or conduct outside of humanitarian functions.⁵⁷ They are also entitled to use the emblem of the red cross, red crescent, or red crystal.⁵⁸

IHL provisions show that there shouldn't even be the need for ceasefire resolutions such as the UN Security Council Resolution 2565, as the Geneva Conventions are clear about the rules that must be followed by parties to an armed conflict in the case of health-related emergencies. That is, the Geneva Conventions confer protection to health workers, facilities, and transportation involved in vaccinations with the aim to reduce the suffering of populations living under conflicts.⁵⁹ The protection covers detention centers,⁶⁰ occupying

55. The Geneva Conventions and their Additional Protocols are the pillars of international humanitarian law (IHL). The ICRC acts as the guardian of IHL, and one of its main tasks is to spread knowledge about, abide by, and ensure respect to IHL. Yves Sandoz, *The International Committee of the Red Cross as guardian of international humanitarian law*, INT'L COMM. RED CROSS (Dec. 31, 1998), <https://www.icrc.org/en/doc/resources/documents/misc/about-the-icrc-311298.htm> [<https://perma.cc/59R5-PZKS>]; see also Cordula Droegge, *COVID-19 response in Conflict Zones Hinges on Respect for International Humanitarian Law*, HUMANITARIAN L. & POL'Y (Apr. 16, 2020), <https://blogs.icrc.org/law-and-policy/2020/04/16/covid-19-response-respect-international-humanitarian-law/> [<https://perma.cc/8YS7-NPQE>] (emphasizing the importance of respecting international humanitarian law in order to respond adequately to the needs of communities).

56. Alexander Breitegger, *COVID-19 Vaccines and IHL: Ensuring Equal Access in Conflict Affected Countries*, HUMANITARIAN L. & POL'Y (Nov. 5, 2020), <https://blogs.icrc.org/law-and-policy/2020/11/05/covid-19-vaccines/> [<https://perma.cc/5GX3-N46F>].

57. *Id.*

58. *Id.*

59. INT'L COMM. RED CROSS, *supra* note 7.

60. Geneva Convention Relative to the Treatment of Prisoners of War, arts. 22, 29, 30, 31, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter Geneva Convention III] (describing the health, hygiene and security protections prisoners of war are afforded in their places of internment); Geneva Convention Relative to the

powers,⁶¹ persons specifically at risk,⁶² internally displaced persons, refugees, migrants, asylum seekers,⁶³ children and education,⁶⁴ and sanctions regimes.⁶⁵ Thus, in situations of armed conflict, IHL offers the protection necessary to ensure safe provision and access to health care, including vaccinations.⁶⁶ The ICRC and the Movement have the benefit of operating in contexts where IHL and its protections apply, provided that the parties to the conflict abide by them⁶⁷

V. WHAT THE ICRC HAS DONE SO FAR

The ICRC’s operational response to COVID-19 focuses on five pillars.⁶⁸ They include: (i) the adaptation of existing programs to a pandemic context, (ii) focus on areas or contexts where the ICRC has the most added-value, such as the “last-mile,” (iii) work in coordination

Protection of Civilian Persons in Time of War, arts. 85, 91, 92, Aug. 12, 1949, 75 U.N.T.S. 287 [hereinafter Geneva Convention IV] (describing similar requirements in the context of civilian persons).

61. Geneva Convention IV, art. 56.

62. Common art. 3 Geneva Conventions I-IV; arts. 12 and 15 Geneva Convention I; art. 16 Geneva Convention IV; art. 10 Additional Protocol I; art. 7 Additional Protocol II. This includes older persons, those with weakened immune system, with pre-existing health conditions or at increased risk of becoming severely ill if contracting COVID-19.

63. Geneva Convention IV, arts. 35, 44, 45(4), 49, 70(2), 147; Geneva Convention Additional Protocol I, art. 73; Geneva Convention Additional Protocol I, art. 17.

64. Geneva Convention IV, arts. 24, 50, 94, 142; Geneva Convention Additional Protocol II, art. 4(3)(a).

65. Common arts. 3, 9 and 10 Geneva Conventions I-IV; Geneva Convention Additional Protocol I, arts. 70, 71; Geneva Convention Additional Protocol II, art. 18(2). States and international organizations enforcing sanctions regimes should make sure that they are consistent with international humanitarian law and do not have an adverse impact on principled humanitarian responses to COVID-19.

66. *COVID-19 vaccines and IHL: ensuring equal access in conflict-affected countries*, INT’L COMM. RED CROSS (Nov. 5, 2020), <https://blogs.icrc.org/law-and-policy/2020/11/05/covid-19-vaccines/> [https://perma.cc/LS9W-59G3].

67. In general, armed groups and parties to a conflict may or may not comply with IHL. While lack of compliance is widely documented, there are several reasons as to why belligerents choose to comply with IHL, including for legitimacy or recognition, due to military interests, the role of local culture, ethics, and religion imperatives, amongst others. See, in general, *IHL in Action*, an ICRC platform that collects IHL success stories, <https://ihl-in-action.icrc.org/> [https://perma.cc/GHM9-UCSE] (describing the work of *IHL in action* in documenting belligerents’ compliance with IHL). See, also, Juliane Garcia Ravel, Madalena Vasconcelos Rosa, *IHL in action: seven patterns of respect*, INT’L COMM. RED CROSS BLOGS (Nov. 2020), <https://blogs.icrc.org/law-and-policy/2020/11/19/ihl-in-action-seven-patterns-respect/> [https://perma.cc/BT9X-VGVV] (describing patterns that may influence and lead belligerents to comply with IHL).

68. CTR. FOR STRATEGIC & INT’L STUD., *supra* note 20.

with and support the National Societies as part of a coordinated Movement approach, (iv) support to existing health systems and infrastructure, and (v) advice and dialogue with authorities.⁶⁹ Still, the nature of services provided depends on the needs identified in a specific context. Altogether, the ICRC and the Movement accounted for the administration of 21 million doses of COVID-19 vaccines in 2021 in areas impacted by armed conflict.⁷⁰

A. *Strengthening Health Systems*

While often operating in contexts affected by armed conflict and other situations of violence, the ICRC strives to ensure that affected communities have access to basic health care.⁷¹ In fact, states affected by armed conflict situations often have their health systems and infrastructures severely damaged.⁷² The support offered by the ICRC ranges from providing basic services and essential medical technologies to supporting the prevention of violence against health workers and facilities. The National Societies are important first responders, working as auxiliaries to a state's health structure.⁷³ The same rationale applies to vaccination programs, including for COVID-19. For instance, the ICRC has supported the strengthening of health infrastructure to provide vaccinations to communities in eastern Ukraine, including those affected by the armed conflict.⁷⁴

69. *Id.*

70. INT'L COMM. RED CROSS, *Equitable access to COVID-19 vaccination is a humanitarian imperative* (Apr. 12, 2022), <https://www.icrc.org/en/document/equitable-access-covid-19-vaccination-humanitarian-imperative> [https://perma.cc/3VNG-F9P5].

71. *Health Activities: Caring for people affected by armed conflict and other situations of violence*, INT'L COMM. RED CROSS (June 12, 2020), <https://www.icrc.org/en/publication/4232-health-activities> [https://perma.cc/9NZ4-ZM8H].

72. *COVID-19 in conflict zones – Visualizing the risk*, INT'L COMM. RED CROSS (May 5, 2020), <https://www.icrc.org/en/document/covid-19-conflict-zones-visual-story> [https://perma.cc/83BD-DJW9].

73. *About National Societies*, IFRC, <https://www.ifrc.org/who-we-are/international-red-cross-and-red-crescent-movement/about-national-societies> [https://perma.cc/K6JK-R92X] (last visited May 15, 2023).

74. INT'L COMM. RED CROSS, *supra* note 50.

B. *Supplying Cold Chain and Logistics*

The ICRC provides cold chain support to National Societies or directly to Ministries of Health and health centers,⁷⁵ which is essential for the rollout of vaccination programs.⁷⁶ For example, the ICRC supports national health facilities in Ethiopia and in the Tigray region with logistics such as cold chain, refrigerators, cold boxes, and per diem for health workers to alleviate the financial burden of the State.⁷⁷ The ICRC also provides personal protective equipment (PPE) and training for health staff who work on immunization programs and handle waste management.⁷⁸

C. *Supporting Vaccination Campaigns*

The ICRC can also support existing vaccination campaigns upon request from the State. For instance, in Myanmar, the ICRC has supported existing COVID-19 vaccination campaigns in border areas⁷⁹ In addition, the ICRC has transported Ministry of Health vaccination teams in Mozambique to conflict-affected regions of the country.⁸⁰ Still, support to vaccination campaigns very much depends on whether the vaccine being administered has received an “emergency use listing”

75. See *FAQs, what is the cold chain?*, PAN AM. HEALTH ORG., <https://www.paho.org/en/immunization/cold-chain#:~:text=The%20cold%20chain%20is%20a,temperatures%20to%20maintain%20their%20potency> [https://perma.cc/KD4S-Z3QK] (last visited May 15, 2023) (“The cold chain is a set of rules and procedures that ensure the proper storage and distribution of vaccines to health services from the national to the local level. The cold chain is interconnected with refrigeration equipment that allows vaccines to be stored at recommended temperatures to maintain their potency.”).

76. Vaccines must be continuously stored in adequate temperatures to maintain their potency and avoid deterioration. Thus, supplying cold chain is an essential activity in vaccination rollout. See UNICEF, *What is a cold chain?*, <https://www.unicef.org/supply/what-cold-chain> [https://perma.cc/XQM2-VZMU] (last visited May 15, 2023); ICRC, Updated ICRC position and approach to support equitable access to COVID-19 vaccines (January 2021), (on file with author).

77. ICRC, *Covid-19 vaccination: ICRC's work in armed conflicts and inaccessible places* (August 2021), <https://reliefweb.int/report/world/covid-19-vaccination-icrc-s-work-armed-conflicts-and-inaccessible-places> [https://perma.cc/F3W5-XM6G].

78. *Egypt: ICRC donates protective equipment to health ministry to support fight against COVID-19*, INT’L COMM. RED CROSS (Dec. 20, 2021), <https://www.icrc.org/en/document/egypt-icrc-donates-protective-equipment-health-ministry-support-fight-against-covid-19> [https://perma.cc/3ZLK-T5CS].

79. ICRC, *COVID-19: People living in conflict zones cannot be forgotten in global vaccination effort* (May 2022), <https://www.icrc.org/en/document/covid-19-people-living-conflict-zones-cannot-be-forgotten-global-vaccination-effort> [https://perma.cc/7YYR-LVFC].

80. *Id.*

to the vaccine being administered by the WHO.⁸¹ However, if the vaccine is not WHO-approved, the ICRC can still assess requests for support on a case-by-case basis.⁸²

D. *Negotiating Access*

Perhaps one of the most important roles of the ICRC is making use of its neutral, impartial, and independent approach to negotiate access to frontlines and reach communities that would otherwise be isolated. According to IHL, those within controlled territories must have access to basic health care, especially to prevent and combat the spread of contagious diseases and epidemics.⁸³ However, some government authorities may not want to allot vaccines to people who seek to overthrow them (e.g., in non-state-controlled areas or occupied territories). This is where the role of the ICRC as a neutral intermediary is particularly important. For example, in Colombia, the ICRC is supporting the Ministry of Health with the transportation of vaccines in hard-to-reach conflict-affected areas and is planning to provide cold chain items necessary for vaccine deployment and preservation.⁸⁴ The ICRC has also negotiated access for vaccination teams in communities under the influence of non-state armed groups for COVID-19 vaccinations.⁸⁵

VI. COULD THINGS BE DIFFERENT IN THE FUTURE?

As noted above, the ICRC and the Movement have already done important work to tackle the current COVID-19 pandemic. Taking further steps could be challenging because humanitarian actors have a lot to lose when working in areas outside of their scope and mandate. Nonetheless, analyzing options for future involvement is important given the persistent challenges posed by COVID-19 and the risk of future epidemics.

81. INT'L COMM. RED CROSS, Updated ICRC position and approach to support equitable access to COVID-19 vaccines (January 2021), (on file with author).

82. Telephone interviews conducted with humanitarian workers of the movement.

83. Art. 56, Geneva Convention IV.

84. INT'L COMM. RED CROSS, *Confidential dialogue with weapon bearers in Colombia* (Mar. 23, 2022), <https://www.icrc.org/en/document/confidential-dialogue-weapon-bearers-colombia> [<https://perma.cc/LLR5-MPNN>].

85. INT'L COMM. RED CROSS, *supra* note 2.

A. *Direct Purchase of Vaccines*

The ICRC has never directly engaged in the procurement of vaccines.⁸⁶ Instead, it has mainly supported the distribution and administration of those purchased by states.⁸⁷ Importing vaccines into a country falls under the mandate and expertise of other agencies, including UNICEF, WHO, and Gavi, which has been the norm since before the COVID-19 pandemic.⁸⁸

However, this does not mean that purchasing COVID-19 vaccines is off the table. In line with its position and approach, the ICRC might assess the option of directly purchasing vaccines.⁸⁹ This may become relevant in a limited number of contexts where national authorities are unable or unwilling to include their whole territories in the budgeting, importation, and distribution of vaccines (for example, in areas not under the control of the government or in disputed territories) and where the humanitarian buffer is not operational.⁹⁰ In contrast, the IFRC has tried to directly purchase COVID-19 vaccines,⁹¹ and Médecins sans Frontières (MSF), an important humanitarian actor outside of the Movement, is also involved in vaccine and medication procurement.⁹²

B. *Formal Agents Like the Humanitarian Buffer*

The humanitarian buffer is a part of the COVAX structure.⁹³ Amidst its complex structure and many actors involved, the ICRC and the IFRC are some of the actors behind the organization and structure of the humanitarian buffer, helping put forward the necessary requirements for its operationalization. The main reason delaying ICRC’s application for doses under the humanitarian buffer is because of the hesitancy from vaccine manufacturers to assume full

86. INT’L COMM. RED CROSS, *supra* note 81.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. Telephone interviews conducted with humanitarian workers of the movement.

92. MSF, Quality Assurance (3 February 2022), <https://www.msf.org/msf-quality-assurance> [https://perma.cc/Z34D-X462].

93. Talha Jalal, *The COVAX Humanitarian Buffer Explained*, GAVI (Mar. 30, 2021), <https://www.gavi.org/vaccineswork/covax-humanitarian-buffer-explained> [https://perma.cc/DP8G-SEJE].

responsibility in case of serious side effects, even if some have removed indemnity clauses.⁹⁴

It seems unlikely that the ICRC and the Movement will create or request the creation of a new mechanism soon, since the humanitarian buffer has only been active since early 2021 and delivering vaccines since late that year.⁹⁵ First, the humanitarian buffer would need to deliver more shots,⁹⁶ and manufacturers would need to pave the way for further engagement by removing indemnity clauses and assuming full responsibility in case of serious side effects.⁹⁷ Still, if the buffer cannot deliver vaccines to people in the last-mile, the ICRC and the Movement could, eventually, come up with their own structure to deliver vaccines to such areas in the future, be it in the context of the COVID-19 or other pandemics. Indeed, a purely humanitarian structure, composed only of the ICRC and the Movement actors could be an option if the humanitarian buffer does not achieve its goals. In fact, for coordination purposes, it might be simpler to have a separate purely humanitarian structure.

C. *Creation of a Policy Framework and Lessons Learned*

The creation of a new policy framework based on lessons learned from COVID-19 and past epidemics seems to be an easier and more logical first step to take. The ICRC and the Movement have always been present in health emergencies and engaged in vaccination efforts.⁹⁸ COVID-19 was a game changer as it saw no geographic barriers and affected both headquarters' work and field operations in

94. Parker & Dodds, *supra* note 46.

95. Kaiser Family Foundation. *The COVAX Humanitarian Buffer for COVID-19 Vaccines: Review and Assessment of Policy Implications* (November 2022), <https://www.kff.org/global-health-policy/issue-brief/the-covax-humanitarian-buffer-for-covid-19-vaccines-review-and-assessment-of-policy-implications/> [https://perma.cc/7NLG-5FWC].

96. Until December 2021, the humanitarian buffer had only delivered a small quantity of vaccines in Iran. UNHCR, *Over 1.6 million COVID-19 vaccines land in Iran to increase protection of Afghan Refugees* (Nov. 16, 2021), <https://www.unhcr.org/ir/2021/11/16/over-1-6-million-donated-covid-19-vaccines-land-in-i-r-iran-to-increase-protection-of-afghan-refugees/> [https://perma.cc/48BL-662S].

97. INT'L COMM. RED CROSS, *supra* note 31.

98. See, e.g., *Health Activities: Caring for people affected by armed conflict and other situations of violence*, INT'L COMM. RED CROSS (June 12, 2020), <https://www.icrc.org/en/publication/4232-health-activities> [https://perma.cc/TE7A-P9TW] (providing an overview of the general health programs implemented by the ICRC and Movement).

all contexts.⁹⁹ In this sense, even though the ICRC and the Movement relied on both existing and innovative strategies, there is no uniformity in their response across regions, or even across states.¹⁰⁰ Producing a comprehensive document outlining the challenges faced and lessons learned over the two years of operations during the COVID-19 pandemic could be a useful tool for other actors in the field. In fact, an evaluation conducted by the IASC on the COVID-19 humanitarian response identified that the humanitarian system failed to draw on lessons learned, either because those had not been institutionalized based on previous responses, or because lessons were drawn upon only when the health emergency was already significant¹⁰¹

VII. CONCLUSION

While there is no set formula on how to ensure vaccine equity during a pandemic of a novel virus, particularly in hard-to-reach areas, the work of the ICRC and the Movement provides a useful blueprint for the contribution of humanitarian organizations. There is no easy way to overcome the challenges posed by issues of indemnity, mistrust, politicization, acceptance, and negotiation. IHL offers a direction and blanket of protection to the ICRC’s and Movement’s actions in conflict affected areas, but there is no uniform document providing clear guidance for operations in pandemic times.

To ensure the most equitable vaccine access possible while protecting healthcare professionals, it will be important to strategize and understand the needs of different contexts. Establishing a more significant role for purely humanitarian actors such as the ICRC and the Movement offers many advantages for response efforts. Particularly, this would benefit last-mile areas which have currently been left behind in vaccination programs, thereby exacerbating vaccine inequity and the surge of new variants.¹⁰²

The ICRC’s work is key to tackling the COVID-19 and other pandemics, especially in last-mile areas. To increase impact, however, the ICRC and the Movement should embrace new mechanisms of

99. INT’L COMM. RED CROSS, *The ICRC’s operational response to COVID-19*, Preliminary Appeal 13 (2020).

100. Of course, the operational response depends on specific needs of each context.

101. Inter-Agency Standing Committee, Inter-Agency Humanitarian Evaluation of the COVID-19 Humanitarian Response (Mar. 2023), <https://interagencystandingcommittee.org/system/files/2023-03/Inter-Agency%20Humanitarian%20Evaluation%20COVID-19%2C%20Executive%20Summary.pdf> [https://perma.cc/VB8X-TSSV].

102. INT’L COMM. RED CROSS, *supra* note 50.

vaccine procurement and distribution, even though such mechanisms may be beyond the scope of current operations. More feasible measures, such as a greater involvement with the humanitarian buffer and the creation of a framework and best practices, could be implemented in the near future to strengthen the ICRC's and the Movement's activities in responding to health emergencies.