# Encompassing Reality:

## The International Committee of the Red Cross's engagement in transnational governmentality, and its subsequent implications regarding neutrality and independence

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# Abstract

This research aims to increase our understanding of a rarely discussed aspect of aid provision in conflict settings: namely, how NGO's and humanitarian organisations have highly changeable (and often convenience-suiting) positions of authority and spatial influence relative to the states they operate in. Such organisations have been known to 'position' themselves in many ways. Sometimes they act as an authority above the state (e.g. asserting authority that goes 'above' a state's authority) or as a local organisation 'below' the state, or acting with the state, in place of the state, or entirely externally from it. They can also position themselves as grassroots-focused, national, or international bodies as they choose. Such organisations often encircle and overlap with various state institutions, territories, and groups. This leads to a very complex understanding of the exact level and nature of their control. When an international aid organisation decides to intervene in a developing region, they implement practices and policies that have a significant effect on both the state and citizens of that region, and often consequently make decisions of public interest. This arguably affords the organisation a reasonable level of influence that may even have the potential to affect the spatial control of the state in question over their own territory.

Thus, this study will focus on exploring the myriad of ways in which one particular humanitarian organisation, the International Committee of the Red Cross (ICRC), engages with, utilises, and protects itself and its work by using various 'spaces' and 'levels' of authority interchangeably. The study will explore the mechanisms through which the intentional influencing of space and authority is performed, primarily through using Ferguson and Gupta's Transnational Governmentality theory, and understand how humanitarian organisations are effectively carving out a role in 'governance' which was previously only held by the state. It will assess ICRC staff's opinions on their roles and duties, and relate this information back to two key topics for humanitarian organisations: their claim to neutrality and independence.

## Acknowledgements:

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## List of abbreviations:

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| **ICRC** | **International Committee of the Red Cross** |
| **IFRC** | **International Federation of Red Cross Red Crescent societies** |
| **IHL** | **International Humanitarian Law** |
| **NGO** | **Non-governmental organisation** |
| **UN** | **United Nations** |
| **UNICEF** | **United Nations Children's Fund** |
| **UNMISS** | **United Nations mission in South Sudan** |

# Introduction

**The Central Complication**

This research aims to increase understanding of how humanitarian organisations have the capacity to utilise highly changeable positions of authority and spatial control, and subsequently influence the states they operate in. The central complication of this research thus relates to how international organisations can use an extremely varied and changeable set of authoritative 'positions' and 'spaces' during their provision of services in beneficiary countries, sometimes working from a position of higher authority, lower authority, equal authority, or working entirely separately from the state departments. The reason for this is that international humanitarian organisations have an ability to depict themselves, and thus be treated, as any one or even all of the following; local, regional, national, and often international bodies, and can change or utilise these images as needed. Furthermore, in the course of delivering these services, humanitarian organisations can often overlap extensively with state institutions, in some cases even taking over the management of traditionally 'state-run' services from the state, which further complicates the already unclear and ill-defined balance of spatial jurisdiction and authority between these two actors, and affects the state monopoly on 'control' and 'governance'. It could even be argued that by doing so, they are making decisions that affect citizens without having any mechanisms of democratic accountability.

This complication is further built on due to the fact that this overlapping of spaces has the potential to profoundly impact the claims often made by such organisations that they are both 'neutral' and 'independent' of the state, despite these two actors' increasing interconnectedness and abilities to coincide. The level of neutrality and independence reflected by organisations is a topic that has been much debated in recent times, with some scholars arguing that, contrary to what international aid organisations claim, that NGO neutrality has not been possible in many circumstances; specifically that it is "virtually impossible for material assistance to have a neutral effect in a conflict situation"[1] and that the UN and various NGO's have claimed neutrality while engaging in distinctly non-neutral activities.[2] However, due to the increasingly overlapping spatial reaches of both humanitarian organisations and state authorities in areas such as the provision of healthcare, emergency shelter, education, and so on, humanitarian organisation and traditional state roles are becoming increasingly blurred and intermingled. Many such organisations actively work to support the state and strengthen

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[1] Lischer, S. K. (2006). *Dangerous sanctuaries: refugee camps, civil war, and the dilemmas of humanitarian aid*. Cornell University Press. p.143

[2] Anderson, K. (2004). Humanitarian inviolability in crisis: The meaning of impartiality and neutrality for UN and NGO agencies following the 2003-2004 Afghanistan and Iraq conflicts. *Harvard Human Rights Journal*, *17*, p.44

national infrastructure, democratic processes, and build up the educational and healthcare capacity. For humanitarian organisations, their engagement with transnational governmentality, cooperation and interaction with various state authorities, as well as their ideological biases, raises questions about the accuracy of their claims of both neutrality and independence.

**Case study, Concepts, and Research Question**

This research will address the above complication through an in-depth case study of how the staff of one particular organisation, the International Committee of the Red Cross (henceforth abbreviated as ICRC), understand their status relative to the state's they operate in, and will examine how they utilise certain 'positions' and 'spaces' to carry out their functions, which often overlap with traditional state functions. To assess the organisation, the theory of transnational governmentality, created by Ferguson and Gupta, will be used. This will mainly be done by looking at its two key concepts; verticality and encompassment. The authors define these terms as follows: Verticality is defined as *"...the central and pervasive idea of the state as an institution somehow "above" civil society, community, and family. Thus, state planning is inherently "top down" and state actions are efforts to manipulate and plan "from above," while "the grassroots" contrasts with the state precisely in that it is "below," closer to the ground, more authentic, and more rooted."* [3]

The second image is that of encompassment, where the authors argue *"...the state (conceptually fused with the nation) is located within an ever-widening series of circles that begins with family and local community and ends with the system of nation-states. This is a profoundly consequential understanding of scale, one in which the locality is encompassed by the region, the region by the nation-state, and the nation-state by the international community. These two metaphors work together to produce a taken-for-granted spatial and scalar image of a state that both sits above and contains its localities, regions, and communities."* [4]

This theoretical framework will be explained in detail in future chapters. For now, we can summarise that this analytical frame assesses the varied and changing ways in which authoritative superiority is shown in the interactions between state and aid organisation, how conduct is directed by the actors mentioned, and how influence is spatialised. As part of this study, we will assess senior staff and policy-maker's opinions on the nature of their role, how they understand their vertical positioning, and how they act upon this. We will look at how these organisations effectively 'encompass' or surround the

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[3] Ferguson, J., & Gupta, A. (2002). Spatializing states: toward an ethnography of neoliberal governmentality. *American ethnologist*, *29*(4), p. 982
[4] Ibid.

state and its citizens. Finally, the findings of this assessment will be used to question how such opinions and policies may ultimately affect the ICRC's claim to neutrality and Independence.

To begin, one must understand that the ICRC coordinates the world's oldest and largest private relief system for conflict situations. It is the branch of the wider Red Cross movement which operates exclusively in armed conflicts and other situations of violence[5]. According to the ICRC's official mission statement: "*The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of armed violence and to provide them with assistance.*"[6] Hence, the ICRC is one of the most prominent actors in conflict zones worldwide, and thus is very influential.

The ICRC makes for a particularly interesting case study in this regard, as it possesses many varied and even conflicting characteristics. On the one hand, though the organisation has been established as a simple private organisation under Swiss law[7], this is then complicated by the fact that it has been offered many higher privileges relative to national states which other similar international organisations, and certainly most private organisations, have not been granted. States have given the ICRC the status of being a 'subject of international law'[8], placing it in a role under the state level. However, on the other hand, the ICRC is also a creator of international law; it has had a fundamental role in the establishment of International Humanitarian Law (IHL) and Human Rights Law, particularly in conflict settings, due to their creation and establishment of the Geneva conventions; which many states are now signatories of, and are thus 'under' these obligations. The ICRC and the International Federation of Red Cross and Red Crescent societies, or IFRC (the latter of which deal primarily with development and disaster relief) are also the only non-intergovernmental entities which have Permanent Observer status at the UN.[9] This allows the ICRC to participate as observers in the work of the UN principal organs including the UN General Assembly, Economic and Social Council (ECOSOC), and its subsidiary organs such as committees and commissions, despite not representing any state.[10] Furthermore, this status enables the ICRC to deliver statements, participate in deliberations, contribute to UN resolutions, outcome documents and reports, and work with member states to

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[5] International Committee of the Red Cross (2010, October 29) *The ICRC's mandate and mission.* Retrieved from
https://www.icrc.org/eng/who-we-are/mandate/overview-icrc-mandate-mission.htm
[6] Ibid.
[7] Rona, G. (2004, February 28*) The ICRC privilege not to testify: confidentiality in action.* Retrieved from
https://www.icrc.org/eng/resources/documents/article/other/5wsd9q.htm
[8] Ibid.
[9] Koenig, c. (1991) Observer status for the ICRC at the United Nations: a legal viewpoint. *International Review of the Red Cross,* No. 280. pp. 37-48.
[10] Ibid.

reflect the interests of National Societies and the vulnerable people they serve.[11] Finally, in the nearly 80 countries in which the ICRC carries out significant operations, its international legal personality, judicial immunity and testimonial privilege (e.g. the right not to be called as a witness) is recognized either by treaty or by legislation.[12] Despite this, in many ways the organisation is considered to be 'below' states and national law due to its status as an aid organisation. All of this adds some perspective to the many possible considerations one must take regarding the levels of verticality and encompassment, and how the ICRC differs in circumstance from many other international aid organisations.

As stated, this study will also seek to use its findings to assess the level of neutrality and independence that the ICRC practices in reality. This is highly important for the organisation as they cite neutrality and independence as two of their seven key organisational aims, what they call the 'seven fundamental principles' that the Red Cross movement bases its identity on. These are essentially the ideological principles for how the organisation should operate. They define these principles as follows;

Neutrality: "*[Regarding the] Principle of Neutrality: In order to continue to enjoy the confidence of all, the Red Cross may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.*"[13]

Independence: "*The Red Cross is independent. The National Societies, while auxiliaries in the humanitarian services of their Governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with Red Cross principles.*"[14]

This begs the question, given the shifting nature of their 'status' below, and then occasionally seeming 'above' the state, do ICRC staff truly believe they are 'neutral and independent' despite their seemingly increasing involvement in the governing affairs of states? how does the ICRC influence certain conduct? and why do they engage in these practices and processes that often seem to dictate to states how they should govern? This brings me to my central research question, which is;

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[11] Ibid.

[12] Rona, G. (2004, February 17) *The ICRC: In a class of its own.* Retrieved from https://www.icrc.org/eng/resources/documents/misc/5w9fjy.htm

[13] International Committee of the Red Cross (2010, March 16) *The fundamental principles of the Red Cross*. Retrieved from https://www.icrc.org/eng/resources/documents/misc/fundamental-principles-commentary-010179.htm

[14] International Committee of the Red Cross (2010, March 16) *The fundamental principles of the Red Cross*. Retrieved from https://www.icrc.org/eng/resources/documents/misc/fundamental-principles-commentary-010179.htm

*How has The ICRC's engagement with transnational governmentality affected how they perceive themselves in relation to the state, and subsequently, their claim to being neutral and independent, in their operations from 2016-2017?*

**Academic Significance**

This research is academically significant for a number of reasons. Firstly, it addresses an identified gap, as there have been very few (if any) in-depth case studies documented relating to transnational governmentality, and so the theory lacks empirical evidence. This research will aim to alleviate this gap by providing an empirical case study of a humanitarian organisation and its operational history, which will back up what has, until now, been a theory-based debate. The reason transnational governmentality was selected for this study is predominantly because most of the elements of the theory fit the query; it focuses on how international organisations increasingly impact on state spatiality through the aspects of verticality and encompassment. Ferguson and Gupta bring significant insight to this subject by arguing that a stronger focus should be placed on studying the extent of non-state institutions changing capabilities to spatialise their control and authority, and to stake claims based on a belief of having superior generality and universality. The authors have argued that the practices of these international organisations make issues such as authority, spatiality, and legitimacy highly relevant for further analysis.[15] Transnational Governmentality places emphasis on how organisations are actively directing, calculating, and positioning themselves in many different ways in relation to the state, which makes this academic frame highly relevant for this study, and central to the primary inquiries of this research. Finally, the central concepts used in this research: 'verticality', 'encompassment', 'neutrality' and 'independence', can all benefit from increased academic study.

**Social Significance**

This research asks a number of socially significant questions. The complex reality of international aid organisation's positions is often over-simplified, and very little is tangibly understood about *how* exactly they engage in state affairs, and about the international staff's own self-perceptions and motivations. The opinions of the international staff ultimately form the basis for the goals, policies and actions of the organisation. Understanding these opinions, mechanisms and mentalities of spatialising influence in a territory is consequently crucial for any study on the subject of humanitarian organisations. Furthermore, the issue of how NGO staff perceive their status and role is one which has been understudied. I would argue it is critical to adequately understand how and why the ICRC

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[15] Ferguson, J., & Gupta, A. (2002). Spatializing states: toward an ethnography of neoliberal governmentality. *American ethnologist*, *29*(4), pp. 981-996

intervenes in particular conflict settings. This is important because understanding how movable and inconsistent spatial self-images are calculated and used by the ICRC is part of understanding how the ICRC can assert the authority and influence needed to complete their work. This study will seek to closely examine the arguably state-like role that such organisations are actively carving out for themselves through their operations in unstable settings, particularly through their provision of justice, legal, medical, food and other related services, and how these policies carry implications for the traditional state hierarchy, legitimacy and authority. All of this has significant implications regarding the work and nature of the humanitarian sector today. Furthermore, this study will examine not only the actions of, but also the nature of international aid organisations, the shifting roles and responsibilities of these organisations, and offer some explanation behind the changing nature of state governance and authority. All of these aspects have serious implications for society in the states concerned, and directly affect civilian lives on the ground.

In summary; the deliberate positioning of international organisations is a highly important aspect that can complement and benefit future research initiatives surrounding this topic. The complication highlighted in this research, namely the nature of how the staff of international organisations can engage in transnational governmentality, and its implications for neutrality and impartiality, is an aspect that has not been comprehensively addressed with an organisational case study. This reflects a significant gap in our understanding of such organisations, which this research will address.

# Chapter 2:  Methodology

## 2.1 Research Design

The information for this research was collected through qualitative methods. This included observation from working within a national Red Cross society, document analysis, and participant interviews with high level ICRC staff, including senior policy makers and regional heads of office. When conducting this study, qualitative methods were most appropriate, since this research focuses on the socially constructed perceptions of 'authority', 'governing' and 'influence' (which the concepts of verticality and encompassment closely concern). This research seeks to explore the nature of how the hierarchical structure works when applied to international organisations and states, and thus is concerned with understanding the nature of how, through its policies and practices, the ICRC actively tries to position itself both 'below', 'above' and 'around' the state.

This is not only consistent with the ontological, epistemological, and theoretical nature of the puzzle, but also, qualitative methods fit most aptly with the analytic framework that is being used for this study. Since transnational governmentality principally concerns itself with how governing can come from many international sources through organized practices (mentalities, rationalities, and techniques), it follows logically that to conduct research on practices, one needs to carry out socially-oriented, qualitative research that can delve into the meanings, beliefs, and considerations that form such practices. Furthermore, since a significant part of transnational governmentality theory focuses on how organisations exercise power through embedded institutions, procedures and reflections, one must ask and research not just 'if', but rather 'why' and 'how' these emerging institutions and procedures enforce control and authority. The attitudes and beliefs that form such structures often also sustain them, and so, understanding these attitudes and beliefs is crucial. Qualitative assessment will assist us most readily in this matter.

In terms of sampling, this study relied on snowball sampling for the interview process. All interviewees are direct employees of the ICRC, and are varied in terms of rank, region and department. This includes ICRC personnel from the different major ICRC head offices around the world, including the London office, and Geneva office, as well as other locations where staff requested anonymity. I believe this is the fairest way to gain a representative overview of the organisation. Once initial contact was made, further contact with other individuals was established. This resulted in in depth interviews with various ICRC staff including; Pascal Daudin (Senior Policy Advisor, Policy and Humanitarian Diplomacy Department in Geneva), Paul Castella (Head of Mission, ICRC London office), Jérémie Labbé (Policy Advisor, Policy and Humanitarian Diplomacy Department in Geneva) as well as other senior level staff

who consented to be interviewed, but wished to remain anonymous. Participant observation was also done of the Netherlands Red Cross staff, and the visiting Irish, British, and ICRC Red Cross staff for conferences and meetings held in the Hague. Hence, the experiences and attitudes reflected in this study come from a wide range of internal actors from highly diverse backgrounds.

## 2.2 Data Collection

The data collection was done by splitting the research into four phases, as described below.

*Phase 1: Understanding how the ICRC currently positions and exhibits itself through its organisational practices and activities*

In the first phase, the study focused on understanding what the ICRC was doing to position themselves relative to the states they operate in, focusing on the period 2016-2017. The sub-question underlying this phase was; How does the ICRC outwardly portray an image of both verticality and encompassment through their provision of each of the following; A) Livelihood? (e.g. cash and goods) B) justice and law? C) healthcare services? D) basic infrastructure?

This was done by looking for indicators of verticality and encompassment. As discussed earlier, verticality involves efforts to manipulate and plan 'from above', placing other groups 'below'. Verticality can be summarised as the efforts made by one actor to reinforce an image of being in a higher authoritative or hierarchical position than another actor. Thus, indicators of verticality are; the intent or ability to modify, influence, manipulate, dictate, or otherwise display a level of authority *above* some other actor, which in turn affects that actors conduct. As per Ferguson and Gupta's earlier definition, encompassment refers to the nature of being 'surrounded' by the influence of an actor. For example, the state 'surrounds us' in this way through policing, justice and other disciplining methods. As such, conduct is from 'all-around' them. Thus, the main indicators of encompassment are the intent or ability of one actor to surround, encircle, or otherwise place another actor inside their wider 'ring' or 'space' of influence, which in turn affects the second actors conduct. One of the ways this is done, as mentioned in the definition, is the use of the local, regional, national, international spheres. Finally, one of the ways that transnational governmentality theory encourages us to measure and/or evaluate the extent of its presence is through assessing the extent of an organisations spatial control. That is; its possession of a vertical and encompassing nature. Thus, these two indicators will be measured by first, their presence, and second their frequency, in the interactions and operations of the ICRC.

This data was collected through; document analysis, including studying internal reports and documents about Red Cross projects and identifying the key practices which relate to verticality and

encompassment in terms of external policies, participant observation of ICRC, Irish Red Cross, Netherlands Red Cross, and British Red Cross actions and behaviours in terms of both external policies and day to day practices, and finally In-depth interviews with the same individuals regarding their opinions on how (or whether) the Red Cross movement portrays verticality and encompassment. This yielded data on; the processes of how verticality and encompassment are exhibited by the ICRC, understanding of the level of verticality and encompassment that exists in their day to day practices, and finally understanding of the staff's opinions on ICRC verticality and encompassment.

*Phase 2: Understanding how the Red Cross staff perceive their role in relation to the state.*

This phase was carried out by continuing to observe the day to day comments and practices of the wider National Red Cross staff members to see how they consider the state in regard to their work, what the ICRC encourages the national society to do in a recipient country, and trying to ascertain the extent to which the state has a role in the ICRC decision-making process. The underlying sub-question was; what can we observe about whether the ICRC works with the state, against it, externally from it, or in place of the state in their overseas operations?

Indicators of the above were; the presence or non-presence of ICRC-state co-operation efforts, the degree and frequency of ICRC-state interactions, the common themes in staff rhetoric regarding the state, the common themes in rhetoric used in internal policy reports regarding the state, whether the ICRC seek permission from the state before carrying out relief operations, and when and why the ICRC choose to carry out a relief operation within a territory.

The data collection technique was based on; document analysis of internal reports, policies and press releases published or valid as of 2016-2017 to identify official statements regarding state interactions/positioning, participant observation of ICRC, Irish Red Cross, Netherlands Red Cross, and British Red Cross staff behaviours in terms of their attitudes on this topic, and In-depth interviews with the same individuals, with questions asked relating to how the ICRC positions itself regarding the state, the nature of the authority structure underlying the ICRC's interactions with state authorities, and finally, enquiring about historical and contextual examples of operations. This yielded data based on the attitudes and beliefs held by ICRC personnel about their status as an organisation and their relationship with the state authorities.

*Phase 3: Understand the intent behind these practices and how the Red Cross staff believe these practices affect the nature of the organisation.*

Phase three was entirely dependent on in-depth interviews with ICRC staff, as this was the only way of understanding the staff's own intentions and beliefs. The main sub-question for this phase was; How have the policies and practices of the ICRC affected their own self-perception of their neutral and independent nature? The indicators of this were based on the staff's answers to set interview questions. The questions asked included; their opinions on the 'nature' of the organisation and its mandate, what the 'goals' of certain ICRC policies were, their opinions and experiences regarding the fundamental principles of 'neutrality' and 'independence', and their beliefs regarding why certain operations were conducted in certain ways. The level of consensus and disagreement, as well as their opinions on the validity of the questions were carefully noted.

The expected data yield was to understand what the staff believe the intentions of their practices are, and how they believe these practices affect the nature of the organisation, and its claim to neutrality and independence.

*Phase 4: Analysis of data*

In the final phase, the findings of the research were compiled, the gathered data was comprehensively analysed, and the main conclusions were noted and recorded. Transnational governmentality theory was used to help to understand the governing trajectories of humanitarian organisations and their interactions with states. This was done by compiling all relevant data on the indicators, for example, verticality within 2016-2017, and using transnational governmentality to help understand this data. The core assumptions of the theory were thus applied to the main conclusions drawn from the research.

## 2.3 Opportunities and Limitations of working with Red Cross

This research was made feasible by the fact that the author was granted an internship position within the Netherlands Red Cross. This opportunity afforded me access to analyse internal Red Cross and ICRC documents, to observe how ICRC practices affected the national societies, and granted an increased ability to contact ICRC staff members and personnel for interview. This was the authors second experience working in a national Red Cross head office, after also spending a year and a half as an employee of the Irish Red Cross.

In the Netherlands Red Cross, work was undertaken in the 510 Data Team on two different projects, their vulnerability and capacity assessment project, and their cash transfer programming project, over a period of three months from February to May 2017. The former project focused on the identification and registration process of 'vulnerable' members of a community, and the latter project concerned

researching new possibilities to send cash to disaster-affected populations directly, e.g. direct peer-to-peer transfers. Studying this project over three months significantly helped with understanding how the wider Red Cross movement and the ICRC works, which institutions it cooperates with and which institutions it bypasses, and how the Red Cross movement tries to spatialise its reach.

Furthermore, a level of knowledge about the wider movement, and an understanding of how the national and international offices interact with each other could be gained this way. Access to the online databases for the International Federation of the Red Cross' (IFRC's) operations, which contains an archive of official IFRC, ICRC, and Red Cross-national society internal reports, press statements, and policy documents, was made accessible as a source of valuable data for this research. Contact was made with other national societies, including the Malawi Red Cross, British Red Cross and Irish Red Cross, which provided some additional insight into the ICRC's activities and policies.

In terms of limitations, one of the main limiting factors was that direct observation from within an ICRC head office was not undertaken. Though the document analysis and interviewing possibilities were not negatively affected by working from within a national society office due to shard databases and frequent contact (a national society office focuses primarily on their own country) it must be acknowledged that the level of direct ICRC observation opportunities was greatly reduced, as observing an ICRC office would have been more beneficial. Despite this, the Netherlands Red Cross is in many ways under the authority of, and closely works with, the ICRC, so this still afforded ample opportunity to study the overarching international body. Direct observations of ICRC interactions with state authorities could also not be gained. There was a reliance here on internal reports, external secondary books and articles, policy documents, and ICRC interviews through skype. As this study focused on policy actions and staff self-perceptions, on the ground observations were not critically necessary. Finally, a level of bias in ICRC reports, which shows the organisation in the best light, was to be expected, however internal reports proved to be more frank.

# Chapter 3: Transnational Governmentality

## 3.1. Academic debate

In the current academic debates surrounding state-NGO relations and their effects, it has been argued by an array of authors how the spatial control of international organisations has had an impact on the state in question. The current literature on this subject is split. For example, authors such as Lund have stated that because of the emergence of non-state 'political' actors (including NGO's), states are being deemed as increasingly incompetent due to the multiple parallel structures and split sites and levels of authority present in a region.[16] However, this view is of course not accepted by all. Authors such as McLoughlin have argued that the majority of the current literature concludes that NGO's are likely to become subordinated to the state through any act of collaboration[17], which would be difficult for NGO's to prevent as almost all must interact with the state at some level. Other authors such as Sending and Neumann have concurred that in their view, the majority of literary sources state that non-state actors are becoming more powerful and states are becoming weaker.[18] Despite this, they themselves counter-argue that this 'power transfer' does not actually serve to weaken the state, but instead is just a new and transforming form of governance, which is actually accepted by the state, and that an increase of power for non-state bodies doesn't necessitate any decrease in state power.[19]

Arguably, one of the most significant and contested debates taking place is the emerging state-like nature of NGO's. For example, it has been argued by Lund that public authority no longer falls exclusively within the realm of governments and their institutions, and that the current practices of international organisations now make questions about authority, legitimacy, and spatiality highly relevant.[20] Development operators are often, in essence, making decisions in the public interest.[21] In terms of empirical knowledge, there are significant numbers of detailed ICRC reports, other NGO reports and ethnographic research papers centred around the provision of non-state services. The lists of these multi-sectoral services are substantial. Due to the fact that such activities are typically provided by the state, authors such as Riehl have openly argued that studies have shown in the case of countries like Uganda and South Sudan, NGO's have taken the role of local administrators[22], and that this state-like service provision is an intended bid for political impact and direction on the part of

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[16] Lund, C. (2006). Twilight institutions: public authority and local politics in Africa. *Development and change*, *37*(4), p. 689
[17] McLoughlin, C. (2011). Factors Affecting State–Non-Governmental Organisation Relations In Service Provision: Key Themes From The Literature. Public Administration and Development, 31(4), p.247
[18] Sending, O.J., & Neumann, I.B. (2006). Governance to governmentality: Analyzing NGOs, states, and power. *International studies quarterly,50*(3), p.668
[19] Ibid., p.651
[20] Lund, C. (2006). Twilight institutions: public authority and local politics in Africa. Development and change, 37 (4), p. 685
[21] Ibid.
[22] Riehl, V. (2001). Who is ruling in South Sudan?: the role of NGOs in rebuilding socio-political order. Nordic Africa Institute. (Vol. 9) p.4

NGO's.[23] This is an aspect that has been debated often; Foucault's governmentality theory, as well as governance theory, has also been previously applied to non-state institutions in past academic debate, with much recent literature adhering to the belief that international aid organisations are becoming increasingly political in nature.[24] Foucault's governmentality is most closely concerned with what has been termed "the conduct of conduct"; namely, the large array of ways in which human conduct is directed and influenced by calculated means.[25] Foucault himself defined Governmentality as being *"…understood in the broad sense of techniques and procedures for directing human behaviour. Government of children, government of souls and consciences, government of a household, of a state, of oneself."*[26] Stemming from this discourse, authors such as Rose, O'Malley, and Valverde have argued that Foucault's governmentality (or the art of governing) is embodied by initiatives taken by an actor to answer the following questions; who or what is to be governed, why should they be governed, how should they be governed, and to what ends should they be governed.[27] This summarisation of governmentality would perhaps be a beneficial one to keep in mind as we move on to the next section.

## 3.2 Transnational governmentality

Transnational governmentality theory is an expansion on Foucault's governmentality theory, which has been coined by authors Ferguson and Gupta. At its core, transnational governmentality theory sets out to explain the relationship between states and a wider range of contemporary supra-national and transnational organisations that significantly overlap and involve themselves in what can be perceived as traditional 'state' functions.[28] The theory infers that there is currently a transfer of the operations of government to non-state entities taking place, e.g. transfers of core institutions of government such as schools, police, post offices, healthcare centres, etc. to non-state entities. Many of these regulatory operations of the state (which represent state economic power) are in turn being taken over by other organisations.[29] In the first half of their article, Ferguson and Gupta present a solid and convincing theory as to how states come to be understood as entities with a set of particular spatial characteristics, and how changing relations between practices of 'government' and national territories are emerging, which may be challenging the 'long-established modes of state spatiality'. It could be summarised that this framework, at its core, concerns itself with how power can be

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[23] Ibid.

[24] Seybolt, T.B. (1996). The myth of neutrality. Peace Review, 8(4), p.521

[25] Dean, 1990: 10 In Ferguson, J., & Gupta, A. (2002). Spatializing states: toward an ethnography of neoliberal governmentality. *American ethnologist*, *29*(4), p.989

[26] Foucault, M. (2014). *On the Government of the Living: Lectures at the Collège de France, 1979-1980*. Springer. p.82

[27] Rose, N., O'Malley, P., & Valverde, M. (2006). Governmentality. *Annu. Rev. Law Soc. Sci.*, *2*, 83-104.

[28] Ferguson, J., & Gupta, A. (2002). Spatializing states: toward an ethnography of neoliberal governmentality. *American ethnologist*, *29*(4), p.989

[29] Ibid.

expressed through managing and asserting influence over a given space. The authors identify two principles that they believe are key to state spatialisation: verticality (that the state is "above" society) and encompassment (that the state "encompasses" its localities).[30] They then use these concepts to understand the images, metaphors and practices used by the state to help it be understood as a concrete, overarching, spatially encompassing reality.[31]

Ferguson and Gupta's theory tells us that through the use of specific sets of metaphors and practices, states display themselves as entities with particular spatial properties, which they describe as properties of "vertical encompassment". Doing this helps states in three ways; to secure their legitimacy, to naturalize their authority, and to depict themselves as being both superior over, and encompassing of, other non-state institutions and power centres.[32] The operation of these metaphors and practices is what Ferguson and Gupta refer to as 'the spatialisation of the state'.

In the second part of their article, they present their concept of transnational governmentality as a way of understanding how new practices of state authorities, and also new forms of localised NGO "grassroots" politics may call into question the principles of verticality and encompassment that, they argue, have been historically used to legitimate and naturalize states' authority.[33] They build on this by showing its relevance to the question of globalization, and argue that due to the increasingly transnational political economy today, new challenges are being posed to these familiar forms of state spatialisation. They show how the state may try to use the broader space of 'national' over 'local', but using the same logic, international or grass-roots organisations can use the broadness of 'global scale' and 'world opinion' over 'national'.[34] They go on to discuss the relation between 'weak' African states and an emerging network of international organizations and transnational non-governmental organisations (NGO's), and show how these organisations are confounding the conventional understandings of traditional state spatiality. To highlight this argument, they present us with a question; are institutions such as the World Bank, IMF, and WTO making policy decisions that affect the lives of people all over the world without having the normal mechanisms of democratic accountability? Or are such bodies simply facilitating efforts at 'good governance' which are mostly proposed and enforced by national governments, as such organisations would counter?[35] In the case of African states, the authors argue that many nation states are not able to exercise the powers normally associated with a sovereign nation state, and furthermore that in a few cases, due to lack of

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[30] Ibid. p.981
[31] Ibid. p.982
[32] Ibid. p.982
[33] Ibid. p.981
[34] Ibid. p.989
[35] Ibid. p.990

ability to govern or provide, the states do not function at all as 'states' in any conventional sense of the term. Thus, although transnational governmentality is not unique to Africa, it is more readily visible in this region.[36] When international organisations step in to 'fulfil' these roles, this 'governance from afar' may then transfer sovereignty away from African states, as some of this governance is no longer being done nationally.

Ferguson and Gupta's final arguments are that organisations such as World Vision and Oxfam (amongst others) ultimately play huge roles in organising local affairs and services where states have failed to do so. In this way, though they are not states, they behave in a state-like fashion.[37] The author's central argument is that this new system is not replacing the nation state system, but it is actively overlaying it and co-existing with it, and that "the verticality that has historically been monopolised by the state are being challenged by a transnational 'local' that fuses the grass-roots and the global."[38] Thus, non-state actors are becoming increasingly influential and powerful, and are now horizontally overlaying the organs of the state, sometimes as rivals, servants, watchdogs; but in any case, operating in the same global space.[39]

In conclusion, reviewing the literature has shown there has never been any academic writing done that focuses on the ICRC when linked with transnational governmentality. This is surprising, as due to their rather unique positioning, this is an organisation that would be particularly suitable for such a study. Consequently, informed by previous research on this topic, this study will add to the debate on the governmental nature of NGO's and non-state organisations by adding some empirical perspective, using transnational governmentality theory, to make sense of this complex relationship between state authorities, non-state actors and the concept of governance.

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[36] Ibid. p.991
[37] Ibid. p.994
[38] Ibid. p.995
[39] Ferguson, J., & Gupta, A. (2002). Spatializing states: toward an ethnography of neoliberal governmentality. *American ethnologist*, *29*(4), p.994

# Chapter 4: The ICRC and Verticality

Verticality is the first component that needs to be considered for this research, and the ways in which it presents itself in the actions of the ICRC are both varied and complex. Typically, when we think of NGO's and humanitarian organisations, we think of them being below, or subject to the state. Charities, NGO's and other humanitarian organisations must abide by the laws and regulations of the states they operate in, whether it be registering themselves with the state, the state placing restrictions on how they may acquire funding or the practices allowed. They are thus perceived as a lower authority, subject to the law like all others. However, this study would propose that this perception is not fully accurate. As previously mentioned, in terms of verticality (the hierarchy of authority) the ICRC can present itself in many ways and 'levels' of authority, seemingly as is convenient to them, since they function as both an overarching international organisation, but also as a locally focused organisation working at a more grass-roots level. They are unusual in the sense that they can act from 'above' and from 'below' the state. Through the Red Cross national societies, the ICRC can also present itself on the 'national' level, but equally, on either the 'local' or 'international' levels if they wish, depending on what they need. As previously stated, this is a calculated and intentional effort, which helps the organisation manage a given situation to their greatest advantage in order to complete their work.

## 4.1. Authority Structures

In interviews, when asked questions relating to the authority structure between the ICRC and the state, most interviewees generally argued the organisation was not really 'above' or 'below' the state, and said instead that they see the ICRC as being a separate, independent entity to the state entirely.[40] There was some variation in the answers given, with some employees stating that if they had to pick one, they would see the ICRC as being either equal to, or else under the authority of the state. By some, it was argued that the ICRC generally stand at an equal footing in their discussions with state authorities.[41] With others, the opinion was also expressed that the ICRC were usually placed in a position of being under the state in terms of authority, as they are always guests within a country, subject to the law like everybody[42], and only in a position to provide guidance and instruction.[43] For example; if the states do not wish to avail of ICRC assistance, there is very little the organisation can

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[40] Authors interview on 12th May 2017 with Jeremie Labbe, ICRC Policy Advisor
[41] Ibid.
[42] Authors interview on 16th May 2017 with Paul Castella, Head of Mission, ICRC London Office
[43] Authors interviews on 17th May 2017 with Pascal Daudin, Senior ICRC Policy Advisor, and on 16th May 2017 with Paul Castella, Head of Mission, ICRC London Office

do.[44] One employee summarised that though the ICRC can impact the state, they cannot control the state, and so questions on being 'above or below' were difficult to answer.[45]

As such, we know states are capable of setting down rules for the ICRC and dictating certain actions, e.g. to act from above. These methods do not need to be overt. As the interviews undertaken for this research revealed, the recipient state can choose to deny the organisation access to an area, deny them adequate security or protection, or even deny visas for staff to prevent their entry into a country etc.[46] States can also deny humanitarian activities for political reasons, as being threats to the sovereignty of the state.[47] As was pointed out by one senior ICRC interviewee, states can also decide to make the confidential information that the ICRC gave it public without ICRC's consent.[48] However, such reactions by the state arguably only serve to confirm to us that the ICRC does have the acknowledged capability to impact state's vertical authority and legitimacy, and their presence in a country can instil certain beliefs about that state regarding competence. Such reactions show that states worry about this, and accept the reality of this 'threat' to their sovereignty and spatial control.

The ICRC could also be seen as 'below' states when one considers their relationship to western governments. The ICRC, already pre-disposed to certain typically western cultural beliefs about how society should be conducted, can only have this reinforced due to the fact that the ICRC works largely under the funding of western governments, which will be discussed in depth in later chapters. For now, we can state that due to this dependency on western governments, the organisation is arguably not in a position where their policies can deviate very far from the wishes of these donor governments.

In short, the arguments being made above are simple and reasonably accurate; that the local grass-roots space that the ICRC can fill by working on-the-ground in vulnerable regions is subject to regulation by the higher level, e.g. the 'national' level, and even when the ICRC works at the 'national' level they are in turn subject to regulation by the 'international'. However, I would argue that there is more to this relationship structure, and that it would be a mistake to conclude that humanitarian organisations are always beneath the state(s). The reality of this authoritative relationship is far more complex. The ICRC arguably also have a level of verticality over the state in many circumstances when

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[44] Authors interview on 12th May 2017 with Jeremie Labbe, ICRC Policy Advisor
[45] Authors interview on 21st May 2017 with anonymous senior ICRC employee
[46] Authors interview on 16th May 2017 with Paul Castella, Head of Mission, ICRC London Office
[47] International Committee of the Red Cross (2011, November 28) Opening statement by Jakob Kellenberger, President of the International Committee of the Red Cross: 31st International Conference of the Red Cross and Red Crescent, Geneva, 28 November to 1 December 2011. Retrieved from https://www.icrc.org/eng/resources/documents/statement/31-international-conference-opening-kellenberger-2011-11-28.htm
[48] Authors interview on 24st May 2017 with anonymous ICRC employee

they act through representing the 'international' level, making this issue of 'verticality' and 'authority' varied, changeable and fairly unpredictable.

## 4.2 The ICRC and Spatiality

I would argue that the ICRC act from 'above' the state mainly in two ways; the first by acting morally and ideologically 'above', and the second by exerting physical and systematic influence on the state from 'above'. The ICRC intentionally try to influence states through persuasion, mobilisation, denunciation, support and substitution. These 'influencing' roles can vary from advising governments, training military and prison staff to respect international humanitarian law, and acting as intermediaries between warring parties. This intent to influence (and often, success) is still a factor that can be considered in vertical terms.

In terms of moral or ideological verticality; we can observe that according to their policy document entitled 'The ICRC: Its mission and work', it is stated that;

*"Combining activities is often supported by what the ICRC calls its humanitarian diplomacy. The aim is to influence – and if necessary modify – the political choices of States, armed groups, and international and supranational organizations in order to enhance compliance with international humanitarian law and to promote the ICRC's major objectives.'"[49]*

Inherently, one could argue that this intent to impact and/or modify the behaviour of states must carry with it a seeming belief in the superiority of the organisations own ideals and opinions over the states, otherwise there would be no perceived necessity to improve or modify the states choices at all. Furthermore, we can also accept that to suggest something requires modification reflects the belief that it is currently insufficient. We can conclude from this that this perceived insufficiency of certain areas of state competence or capability, combined with the ICRC's belief that they could guide states in a better way, infers that at least they consider the ideas, methods and practices they stand for to be 'above' the state's own.

ICRC intervention, by its nature, inevitably depicts or implies the belief on the part of the ICRC that the recipient states are rather weak, as it implies they are in need of assistance or guidance. Indeed, it was even said in a preparatory document drafted by the ICRC for their first periodical meeting on international humanitarian law that *"often against the backdrop of underdevelopment, the State,*

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[49] International Committee of the Red Cross. *The ICRC: Its mission and work.* Retrieved from https://www.icrc.org/eng/assets/files/other/icrc_002_0963.pdf

*together with its usually weak institutions, is thwarted by cultural, religious or ethnic factors, the divided nature of society… or by its own lack of legitimacy.''*[50]

As a counter to this perception of illegitimacy and weakness, ICRC proximity is stated as having the effect of increasing the credibility of the dialogue between affected persons, the authorities and other actors.[51] In reality, this belief serves to grant the ICRC a de facto form of trust, reliability and legitimacy which is perceived as 'above' that of the state.

It can separately be argued that by stating that they act only to address violations of universal humanitarian law and human suffering, the ICRC is underlining their claim of 'legitimate governance' predominantly in two ways. The first of these is through a rhetoric of 'morality' wherein the ICRC claims that it carries the moral duty to alleviate suffering in whatever ways it can. The second way the ICRC legitimises its activity is through its protection and enforcement of International Humanitarian Law and Human Rights Law, and their subsequent treaties, which legally pressure (though in practice, do not always compel) those states which have ratified them to adhere by these universal regulations. For example, during the 'war on terror', ICRC concern about the USA's violations of IHL regarding the torture of detained terror suspects in Guantanamo Bay eventually resulted in the intentional 'leaking' in 2007 of a confidential ICRC report detailing the torture and abuses inflicted on detainees.[52] This action served to exert a level of reputational and legal pressure on the Bush administration to address these violations. In any case, both of these aspects, morality and international law, can be argued to be based upon 'universal' values which stand above national opinion. Though of course harder to apply in practice than simple moral judgements, legal regulations such as the Geneva conventions (which the ICRC established) are created on the basis that 'international law' takes precedence over 'national law', which is used to legitimise the ICRC's involvement in sovereign state affairs. One could argue that this is plausibly one of the only ways in which the ICRC can ensure it remains on a level footing with the states it works with, as typically, 'organisations' would fall under the spatial influence of the states they operate within. By portraying itself as part of a wider circle of authority beyond the individual state, the ICRC is lifted somewhat out of this position,

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[50] International Committee of the Red Cross. *Armed conflicts linked to the disintegration of State structures: Preparatory document drafted by the International Committee of the Red Cross for the first periodical meeting on international humanitarian law.* Retrieved from https://www.icrc.org/eng/resources/documents/misc/57jplq.htm
[51] International Committee of the Red Cross. *ICRC Protection Policy: Institutional Policy*. Retrieved from https://www.icrc.org/eng/assets/files/other/irrc-871-icrc-protection-policy.pdf
[52] Harman, S., & Williams, D. (Eds.). (2013). Governing the world?: cases in global governance. Routledge. p.174

## 4.3 ICRC's Modes of Action

There is also verticality in terms of physical or systematic influence. This can be seen in their policy documents when one examines the primary methods and mechanisms the ICRC uses when dealing with state authorities, which the ICRC calls its main 'modes of action': "*The ICRC's modes of action are: raising awareness of responsibility (persuasion, mobilization, denunciation), support, and substitution (direct provision of services).*"[53]

The use of tactics such as those listed in these modes of action could each be understood as a means by which the influence of the organisation is or could be spatialised. In this chapter, we will deal with the first three of these modes of action.

"**Persuasion** *aims to convince someone to do something which falls within his area of responsibility or competence, through bilateral confidential dialogue. This is traditionally the ICRC's preferred mode of action…*"[54]

Thus, our first mode, persuasion, seeks to guide state authorities to carry out their duties in line with the 'universal' standards that have been set out according to international humanitarian law. The intent to influence or modify behaviour using such law is evident.

"*The organization may also seek outside support, through* **mobilisation** *of influential third parties (e.g. States, regional organizations, private companies, members of civil society or religious groups who have a good relationship with the authorities in question)…*"[55]

Mobilisation seeks to use the wider circles of international influence, including other states and international bodies (such as the UN), to guide the state in question down a certain path which will result in increased state capability to deal with conflicts appropriately, and thus, less suffering of affected populations. For example, as discussed earlier, the ICRC and the IFRC are in fact the only non-intergovernmental entities which have 'Permanent Observer status' within the UN[56] which allows them to deliver statements, participate in deliberations, contribute to UN resolutions, outcome

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[53] International Committee of the Red Cross. *The ICRC: Its mission and work.* Retrieved from https://www.icrc.org/eng/assets/files/other/icrc_002_0963.pdf
[54] International Committee of the Red Cross. *The ICRC: Its mission and work.* Retrieved from https://www.icrc.org/eng/assets/files/other/icrc_002_0963.pdf
[55] Ibid.
[56] International Committee of the Red Cross. *Observer status at the UN*. Retrieved from: https://fednet.ifrc.org/en/offices/new-york/about-us/observer-status-at-the-un/

documents and reports, and otherwise mobilise member states to reflect the interests of vulnerable people.[57]

"*Faced with an authority which has chosen to neglect or deliberately violate its obligations... the ICRC may decide to break with its tradition of confidentiality and resort to public **denunciation.**"*[58]

Denunciation could in some ways be understood as the 'punishment' for the perpetrators of violations (abuses) who are not willing to engage with the ICRC or adequately address the violations committed. The confidential approach used by the ICRC allows them to engage in talks with state and non-state actors alike, with full confidentiality as to the content of their discussions. However, this mode of action also makes it clear that this agreement of confidentiality is not unconditional.[59] The information that was previously gathered from confidential discussions may be released to the public domain with the intent of further highlighting and proving such abuses. Though this mechanism is rarely used by the ICRC due to its potential to harm the likelihood of states willingness to interact with the organisation, it nonetheless remains an open and acknowledged option. In short, all of these modes share one thing in common; an attempt to influence or bring about certain state conduct by utilising overarching 'international' laws, opinions, and structures.

One can also perceive vertical authority in the sense that the ICRC ultimately decides which countries they wish to intervene in. They can be invited in by states who are struggling to control or contain conflicts, but they usually operate by identifying the states where civilians are vulnerable (most likely to be undergoing suffering) due to conflict related causes. The ICRC then takes the initiative to seek those states permission to carry out humanitarian relief operations, which states may find diplomatically difficult to refuse. In this way, their choosing of when and where they will get involved indicates they act under their own authority.

In terms of how the ICRC tries to ensure IHL is upheld, we can also draw a number of conclusions about their vertical positioning. Firstly, simply by nature of its emphasis on promoting International Humanitarian Law, the ICRC is ascribing to a 'higher' set of law, which the ratifying state's (and hence, national law) legally falls underneath. The Geneva Conventions are understood to place certain restrictions on the ratifying states, and this is accepted by the signatories. As the ICRC so closely link themselves with IHL, the ICRC can use this higher legal positioning to depict themselves as being

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[57] Ibid.
[58] International Committee of the Red Cross. *The ICRC: Its mission and work.* Retrieved from https://www.icrc.org/eng/assets/files/other/icrc_002_0963.pdf
[59] International Committee of the Red Cross. *Observer status at the UN*. Retrieved from: https://fednet.ifrc.org/en/offices/new-york/about-us/observer-status-at-the-un/

'above' national law if needed. In any case, they can justify not acquiescing to national law by offering a valid legal argument why they would not do so if they witness violations of IHL.

The ICRC does not only concentrate its efforts on addressing and alleviating the suffering caused by conflict, but goes further than this to actively target the *cause of such violations.* Quite often, it is the actions of the state authorities themselves, including the police, the military, prison officials, etc., which actively fuels the discontentment and subsequent violence that the ICRC is seeking to address. As such, the ICRC's protection activities must be designed and prepared with the possibility that such activities may be directed at authorities and any other 'perpetrators' of violations.[60] There has been acknowledgement on the part of the ICRC that it is ultimately the omissions or violations of states (or other authorities) that triggers ICRC action.[61] Authors such as Sassoli go further to suggest that the purpose of International Humanitarian Law is that it effectively protects citizens from the state, if necessary.[62] Thus, if International Humanitarian Law protects people from the state, and the ICRC acts to ensure IHL is upheld, then the ICRC is effectively acting to protect citizens from the state. This would also indicate a vertical relationship of authority, since the ICRC, intentionally or unintentionally, is positioning itself as something close to a regulator; though their capacity to enforce such regulations can of course be debated.

Verticality of course does not only relate to the ways in which ICRC has positioned itself 'above' the state, it also relates to how the ICRC can prevent themselves from being placed 'under' the state. The ICRC possesses certain degrees of impunity from states. An example of this would be the accepted legal stipulation that states cannot ask the ICRC to testify in court. In an article published in the 'International Review of the Red Cross' journal, it was stated:

"*In its 1999 decision in the case of Simic et al., the International Criminal Tribunal for the former Yugoslavia (ICTY) recognized that international customary law gave the ICRC the absolute right not to divulge information relating to its activities… In the context of legal proceedings, the ICRC retained the right not to divulge information if it considered that doing so would be detrimental to the discharge of its mandate...In addition, many of the headquarters agreements the ICRC has signed with States in*

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[60] International Committee of the Red Cross. *ICRC Protection Policy: Institutional Policy*. Retrieved from
https://www.icrc.org/eng/assets/files/other/irrc-871-icrc-protection-policy.pdf
[61] Ibid.
[62] Sassoli,M. (2002) State responsibility for violations of international humanitarian law. *International Review of Red Cross*, Vol. 84 No846 p.402

*which it conducts operations also contain a specific clause guaranteeing such immunity for ICRC staff in respect of the courts of the country concerned.*"[63]

This can, of course, be perceived as somewhat one sided; on the one hand, the ICRC promotes and advocates respect for international/national legal mechanisms. However, due to their policy of confidentiality, it also refuses to take any part in the initiation of indictments by testifying. However, this illustrates the ways the ICRC has removed itself somewhat from state spatial and territorial control. The reasoning behind ICRC impunity is easily justifiable, due to the potential for any testimony given to shatter their image of neutrality, which guarantees them the ability to engage with the various stakeholders' party to a conflict. Confidential discussions with rebel forces or state bodies would not occur if there was the potential for the ICRC to be bound to release such information into the public domain. Nonetheless, it remains a factor which reinforces this image of international organisations being in many ways exempt from (or above) typical state jurisdiction.

The ICRC admits that in critical situations, they will act first and only consult the authorities later.[64] Therefore, operations can technically be undertaken without the express consent of the state, displaying that the ICRC can, if needed, make use of a level of vertical capability 'above' the state. Despite this, it must be understood that the vast majority of ICRC operations are carried out with both the knowledge and consent of the state in question, including all of their current operations as of 2016; indeed, it is this trust that forms part of the reason that the ICRC is allowed access to carry out its work. During the interviewing process, one ICRC employee stated that though they technically can work without the states consent, in the long term it jeopardises their relations with the state, which makes their work more difficult.[65] However, it is also true that historically there have been cases where the ICRC did not have the direct consent of the state to work inside their territory, and chose to carry out these operations nonetheless, which shows such a thing can be done in exceptional humanitarian circumstances. This is done most often in the form of cross-border relief operations (this term meaning humanitarian aid delivery lacking prior consent from state authorities). Many of these situations have been documented by David P. Forsythe in his works. For example; he noted that in the armed conflict between Iraq and Iran that ran from 1980–88, the ICRC had been engaging its traditional role as a neutral intermediary, as well as having a presence there during the aftermath of that conflict.[66] Despite this role, the ICRC had also discreetly undertaken a cross-border relief

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[63] International Committee of the Red Cross. *ICRC's Confidential Approach: Means of ensuring state and non-state respect for the law.* Retrieved from: www.icrc.org/eng/assets/files/review/2012/irrc-887-confidentiality.pdf
[64] Huber, M. (1946) *Principles, Tasks and Problems of the Red Cross in International Law.* Geneva: ICRC. p.53
[65] Authors interviews on 17th May 2017 with Pascal Daudin, Senior ICRC Policy Advisor
[66] Forsythe, D. P. (2005). The Humanitarians: The International Committee of the Red Cross. Cambridge University Press. p.102

operation along the Iran–Iraq border for the benefit of Kurdish civilians on the Iraqi side.[67] As Forsythe points out, we can logically assume it is unlikely that any advance warning or notice was given to Saddam Hussein of their provision of assistance to a section of the population who he considered his domestic enemies, or that any such permission to aid them was received.[68] In cases like this, the ICRC justified this decision by arguing that relieving the desperate humanitarian needs and/or violations of international humanitarian law in these regions was of paramount concern, making such action morally (and in terms of IHL, legally) necessary. In other words, the ICRC were able to position themselves above the level of national legal jurisdiction, using their 'international' legal positioning.

 Indeed, in previously 'ungoverned' places like Liberia (and currently, Somalia), that was without effective central government, requesting consent or acting 'under' national law was out of the question. The ICRC instead did what it could by trying to secure the cooperation of local paramilitary forces.[69] In truth, the organisation arguably took decisions in the states interest in place of such an authority. For example, between 1991-1992, the ICRC reluctantly (while debating ethics) decided to pay journalists to come and witness the atrocities happening in Somalia.[70] As a result, over a five week period, over 700 journalists were brought in from Kenya, were briefed and otherwise taken care of by the ICRC during their stay, and then transported back.[71] This resulted in wide news coverage of the situation in Somalia by the BBC, Le Monde, etc.[72] In this way, the ICRC was able to actively mobilise a large array of actors to finally acknowledge the ongoing humanitarian situation.

However, it is also the case that the ICRC has been known, in extreme circumstances, to conduct operations despite express state disapproval, not only lack of consent. Starting in 1976, the ICRC delivered aid and assistance to Tigray and Eritrea (which were at that time in a state of rebellion against Ethiopia) by participating in a cross-border humanitarian operation with trucks being sent from Sudan.[73] They were also requesting permission from Tigrayan representatives to visit Ethiopian fighters being held in detention. In this context, the ICRC went as far as to remove the Red Cross emblem from its trucks, aiming to protect themselves from Ethiopian air attacks on their convoys. This cross-border effort only ended in May 1987. Forsythe states that "*While international humanitarian law may not be very clear when applied to this type of situation, there is no doubt but that the ICRC*

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[67] Ibid. p.102

[68] Ibid. p.102

[69] Forsythe, D.P. (1996). *The International Committee of the Red Cross and humanitarian assistance: A policy analysis*. Retrieved from https://www.icrc.org/eng/resources/documents/article/other/57jnav.htm

[70] Forsythe, D. P. (2005). The Humanitarians: The International Committee of the Red Cross. Cambridge University Press. P.116

[71] Ibid.

[72] Ibid.

[73] Forsythe, D. P. (1996). The International Committee of the Red Cross and humanitarian assistance: A policy analysis. *International Review of the Red Cross Archive*, *36*(314), 512-531.

*"gatecrashed" in Tigray, from the Ethiopian point of view."*[74] This can further be backed up by the fact that ICRC relief trucks were at one point fired on (though ineffectually) from elements on the Ethiopian side after they proceeded to deliver aid without state permission.[75]

Furthermore, in a number of cases the ICRC decided to simply inform a government that it was going to deliver humanitarian relief in a complex war situation, but it did not directly ask permission to do so. One demonstration of such behaviour happened in 1979 after the Vietnamese invaded Cambodia. Finding a large amount of civilians in need, both the ICRC and UNICEF decided to engage in a cross-border relief operation from Thailand.[76] Despite the direct objections of the government in Phnom Penh[77], the ICRC and UNICEF continued these relief efforts, citing a humanitarian duty to assist in cases of civilian suffering and IHL violations. It is quite likely that the two organisations did so only because they were aware that the Cambodian government, at the time, had no available means of enforcing its objections.[78] The officials in Phnom Penh were eventually forced to simply accept the presence of the international relief organisations.

It should be highlighted at this point that such initiatives are very rare, and only undertaken under grave circumstances, due to the potential to backfire and result in the state refusing in future to co-operate with the ICRC. As was openly stated in the interviews conducted, the point of the ICRC's work is to encourage and ultimately enable the state to be able to fulfil its own duties under international humanitarian law,[79] and ICRC operations are considered a temporary solution. Consequently, almost all interviewees argued that going against the wishes of the state is not conducive to the organisation's long-term aim, and hence is illogical.[80] Regardless, as we have seen, exceptions to this can clearly be made.

In conclusion, in extreme humanitarian circumstances, initiatives have been historically taken by the ICRC (if reluctantly) which show that the organisation does possess the capability, if not the desire, to carry out operations regardless of state consent. To explain this in vertical terms; there have been times where the ICRC have placed themselves above the state level by ignoring state orders or wishes, believing the humanitarian situation to be too severe to acknowledge such orders. Thus, the ICRC is

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[74] Forsythe, D. P. (1996). The International Committee of the Red Cross and humanitarian assistance: A policy analysis. *International Review of the Red Cross Archive*, *36*(314), p. 512-531.
[75] Ibid.
[76] Forsythe, D. P. (2005). p.79-81
[77] Ibid.
[78] Ibid.
[79] Authors interview on 12th May 2017 with Jeremie Labbe, ICRC Policy Advisor, and on 17th May 2017 with Pascal Daudin, Senior ICRC Policy Advisor
[80] Authors interview on 12th May 2017 with Jeremie Labbe, ICRC Policy Advisor, on 17th May 2017 with Pascal Daudin, Senior ICRC Policy Advisor, and on 21st My 2017 with Anonymous ICRC employee

capable of, and has previously acted in, a position above state authority. It is fair to acknowledge that from the ICRC's position, they are in fact quite transparent about these circumstances. Articles discussing these very same case studies were published in the ICRC's own magazine, the International Review of the Red Cross, in 1996.[81] I would argue this shows the ICRC can have a significant role in terms of making decisions in the public interest, in authority, and in the affairs of the state, whether or not this is desired by the state in question. Thus, the state no longer has a monopoly regarding the conduct of state affairs or 'space' of public governance, so long as humanitarian organisations possess these vertical capabilities. I would conclude that the reason that the vertical nature of the ICRC is often overlooked is probably due to two reasons. Firstly, the organisations themselves likely do not wish to state that they ever act 'above' the state, as diplomatically, it makes recipient states far less likely to accept their help. Secondly, the notion of ICRC verticality over the state is less obvious to witness in the day to day operations due to the often-confidential nature of the ICRC's work.

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[81] Forsythe, D. P. (1996). The International Committee of the Red Cross and humanitarian assistance: A policy analysis. *International Review of the Red Cross Archive*, *36*(314), p. 512-531.

# Chapter 5: ICRC and Encompassment

## 5.1 The nature of encompassment

When studying the ICRC using the framework of transnational governmentality, we must ask ourselves particular questions. How does this 'spatialisation' work? What is its nature? What methods does the ICRC use to attempt to spatialise its influence? What form does this influence take, and is it intended? As stated previously, transnational governmentality theory encourages us to measure the extent of its presence is through assessing the extent of an organisations spatial control (e.g. possession of a vertical and encompassing nature). To this end, this chapter will look specifically at the notion of 'encompassment', and will illustrate how ICRC engages in encompassment with concrete examples from their operations in South Sudan in 2016.

State encompassment refers to the nature of the state being both 'above' and 'around' us, the individuals. By controlling this area of 'space' or influence above and around us, it subsequently controls the conduct of the individuals living in this space. This study seeks to understand not how the state can control this space, but how international humanitarian organisations can also spatialise their reach to be above and around both the state, and by extension, above and around those individuals living within the state.

When one starts to look into the ICRC's policies, the myriad of ways and methods in which 'encompassment' is shown becomes quite pronounced early on, and we can see the organisation is able to carve out quite a wide sphere of spatial influence. According to the ICRC's policy documents, the organisation actively aims to 'encircle' states which are not adequately fulfilling their obligations to international humanitarian law. Examples of this encompassment can be seen once again when one examines the remaining 'modes of action': support, and substitution (direct provision of services).

*"If authorities are unable to take action, the ICRC provides **support** where necessary to enable them to assume their responsibilities."[82]*

The ICRC offer support to states who wish to fulfil their obligations under IHL, but who are unable to do so, by offering support such as expert advice and mediation[83], and offering goods and services to

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[82] International Committee of the Red Cross. *The ICRC: Its mission and work.* Retrieved from https://www.icrc.org/eng/assets/files/other/icrc_002_0963.pdf

[83] International committee of the Red Cross. (2008, July 7) The neutral intermediary role of the ICRC: at the heart of humanitarian action. Retrieved from https://www.icrc.org/eng/resources/documents/interview/neutral-intermediary-interview-070708.htm

affected communities.[84] This support can also take the form of mobilisation of third parties, assistance with the building up of infrastructure, and teaching members of the states military, police forces, or to other combatant parties how to respect and comply with IHL, with the aim of rectifying 'violations'.

We can see how there is consequently attempt on the part of the organisation to intervene in "the conduct of conduct" that Foucault's governmentality theory seeks to explain. There is evidence here that the ICRC uses such policies in a calculated way to actively direct and influence human conduct, or more specifically, *state* conduct. We can also see that the ICRC is partially doing this using the mechanism of 'encompassment', that is, using the idea of 'international' presiding over 'national', which in turn presides over the 'local' which the ICRC is attempting to affect the conditions of.

## 5.2 Substitution

Arguably, it is the final ICRC 'mode of action' that presses the notion of 'encompassment' most directly; substitution. The substitution that is spoken of here occurs when the ICRC (and thus, the wider international community) takes the place of the state regarding the provision of certain services, and in this way, acts *de facto* as a substitute for the state. In this way, they are not only physically encompassing the communities benefitting from such assistance, but are also using the notion of the 'wider international community' to encompass the state and fill the gaps in its capabilities. The idea is that if the nation state cannot uphold its duties, the international community (which is always larger, more powerful, and always 'surrounding' the nation) will then step in and take action.

The ICRC defines 'substitution' as follows;

*"When the competent authorities do not take or are unable to take appropriate measures (owing to lack of means, or unwillingness, or when no such authorities exist), the ICRC takes direct action in their place **(substitution)** to meet the needs of the people or populations affected. If the situation is critical, the ICRC acts first and then speaks to the authorities to persuade them to take appropriate measures or to help them examine possible solutions."* [85]

In a different policy document, the ICRC also goes on to state:

*"**Substitution** (or direct action) is the direct provision by the ICRC of services that the authorities are unable to provide (owing to lack of means, or unwillingness, or when no such authorities exist). If the*

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[84] International Committee of the Red Cross. *The ICRC: Its mission and work.* Retrieved from https://www.icrc.org/eng/assets/files/other/icrc_002_0963.pdf

[85] International Committee of the Red Cross. *Observer status at the UN*. Retrieved from: https://fednet.ifrc.org/en/offices/new-york/about-us/observer-status-at-the-un/

*situation is critical, the ICRC acts immediately and speaks to the authorities to persuade them to take appropriate measures or to help them examine possible solutions.''* [86]

In practice, this means that the ICRC (and other international bodies) effectively take the place of the state regarding whatever 'duties' the state is unable or unwilling to fulfil, whilst gradually encouraging the state to fulfil their obligations. They do this with the idea that it is temporary, while they try to build up the states capacity. This substitution is almost always done with state consent, or at least, prior notice. Interviews with leading ICRC figures revealed that there are a number of ways this substitution can happen. In many cases, the state asks the ICRC directly for their assistance and the two parties then divide the state responsibilities between both; for example, that the state will take care of sanitation in a given region, but the ICRC will be responsible for healthcare or education. In this way, the ICRC steps in to address the gaps that the state cannot or will not fill. Interviews revealed that they offer this service even if state has not asked for it directly, though they generally need the states permission first to carry out such operations.

One of the most interesting examples of this 'substitution' in terms of the idea of encompassment is what happens when the ICRC go into an area that is effectively 'ungoverned'. These are regions where, though they reside within the territory of a state, the state authorities have very little presence or control, or even no control at all. The ICRC actively intervenes in many of these deeply chaotic regions, where control over the territory is often contested widely by different groups. When the ICRC move into these 'ungoverned' regions, they are sometimes the only noted providers of security, healthcare, food, etc. in the region, which in reality, arguably leaves them as the only 'governing' body in that location. The territory in question can translate into tens of thousands of people, with the ICRC will respond by offering what are often typically thought of as 'government provided' services.

To illustrate this point, we can look at the recent examples of ICRC action in South Sudan, where state control, outside of the capital, is often weak to non-existent. The ICRC established a delegation in South Sudan's capital, Juba, when the country became independent on 9 July 2011, although the organization's operations in southern Sudan began in 1986 following the outbreak of conflict between the Sudanese government and the Sudan People's Liberation Movement.[87] A perceived legitimacy crisis, and what authors such as Kate Almquist Knopf have called '*perceptions… of senior government*

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[86] International Committee of the Red Cross. *ICRC Protection Policy: Institutional Policy*. Retrieved from https://www.icrc.org/eng/assets/files/other/irrc-871-icrc-protection-policy.pdf
[87] International Committee of the Red Cross. (2013, February 13) *The ICRC in South Sudan*. Retrieved from https://www.icrc.org/eng/where-we-work/africa/south-sudan/overview-south-sudan.htm

*malfeasance, self-interest, and disregard for citizen priorities…"* [88] within South Sudan can be evidenced by the increasing emergence of non-state actors operating within South Sudanese territory to carry out service provision that the state cannot provide.

The ICRC now have a hand in many of the practical elements of governance in South Sudan, including resource allocation, authorising certain practices, engaging global actors and administering rights. This overview illustrates how the ICRC is embedded in a myriad of 'spaces' within the state apparatus, and furthermore, shows how they are involved in the day to day continuation of typically 'state' services.

### 5.2.1 Healthcare

According to the ICRC's 2013 overview, the ICRC medical team in South Sudan provides trauma, emergency surgical care, paediatric and physiotherapy services, and also delivers training to hospital staff.[89] It was also noted that *"The ICRC is building a new operating theatre* [at Malakal Teaching Hospital]*… and upgrading the water system at the hospital."[90]* The ICRC also provide medical supplies and essential drugs to Juba Teaching and Juba Military Hospitals and have previously taken over management of mortal remains in the aftermath of fighting.[91] They support the two main physical rehabilitation centres in the country, in Juba and Rumbek."[92] They estimate the organisation conducted more than 143,000 outpatient consultations across South Sudan in 2016.[93] The ICRC has also in certain cases taken the role of the emergency services. For example, it was reported in the Sudan Tribune in February 2013 that the ICRC had deployed a rapid response surgical team to Akobo West county after a Murle militia attack left over 100 civilians dead and several injured.[94]

### 5.2.2 Livelihood and Basic Infrastructure

The ICRC provides large scale food assistance, and reported that in 2016, 950,000 food rations were distributed to people in need[95], nearly 234,000 people received seeds and tools for farming[96], and

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[88] Knopf, K. A. (2013). Fragility and state-society relations in South Sudan. National Defense University Fort McNair DC, Africa Center for Strategic Studies. P.1

[89] International Committee of the Red Cross. (2013, February 13) *The ICRC in South Sudan*. Retrieved from https://www.icrc.org/eng/where-we-work/africa/south-sudan/overview-south-sudan.htm

[90] International Committee of the Red Cross (2016, July 12) *ICRC update on operations in Juba, South Sudan*. Retrieved from https://www.icrc.org/en/document/icrc-update-operations-juba-south-sudan

[91] Ibid.

[92] Ibid.

[93] International Committee of the Red Cross (2017, January 27) *Hundreds of thousands of South Sudanese received food in 2016.* Retrieved from https://www.icrc.org/en/document/hundreds-thousands-south-sudanese-received-food-2016

[94] Sudan Tribune (2013, February 11). *ICRC steps up medical efforts in Jonglei's Akobo county.* Retrieved from http://www.sudantribune.com/spip.php?article45473&debut_page=20

[95] International Committee of the Red Cross (2017, January 27) *Hundreds of thousands of South Sudanese received food in 2016.* Retrieved from https://www.icrc.org/en/document/hundreds-thousands-south-sudanese-received-food-2016

[96] Ibid.

793,000 livestock were vaccinated, benefiting 167,000 people.[97] These large-scale animal vaccination programmes are run in collaboration with the Ministry of Animal Resources and Fisheries.[98] As of March 2017, due to a famine, the ICRC began to air-drop food in rural parts of South Sudan, such as Maar, in Jonglei Province, where access by road had become impossible due to the ongoing conflict.[99] The food supply in local markets had dried up due to the road blockages[100], leaving this section of the community entirely dependent on ICRC aid.

Regarding infrastructure, the ICRC repairs and builds public water points and treatment plants in rural and urban areas affected by armed violence. The ICRC also sets up emergency water distribution systems when shortages are severe.[101] In a report from July 2016, the ICRC reported that it was engaged in working on a water treatment station at the Nile to provide clean water to the population.[102]

### 5.2.3 Legal and Justice

The ICRC provide instruction, legal advice and support to the South Sudanese government and armed forces on the process of acceding to and implementing the main instruments of IHL[103], for example, the 1949 Geneva Conventions which South Sudan acceded to in July 2012. They also monitor the application of IHL and make confidential representations to parties to the conflict if necessary, which may include state or non-state forces. They are also involved in detention work within prisons in South Sudan[104], embedding itself into the state justice sector. ICRC representatives visit places of detention to monitor and where necessary improve conditions and treatment, and the findings and recommendations produced are shared confidentially with the detaining authorities.[105] The ICRC then provides advice and material support to implement any recommendations.[106]

### 5.2.4 Engagement with UN

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[97] Ibid.

[98] International Committee of the Red Cross. (2013, February 13) *The ICRC in South Sudan*. Retrieved from https://www.icrc.org/eng/where-we-work/africa/south-sudan/overview-south-sudan.htm

[99] International Committee of the Red Cross. (2017, March 30*) South Sudan: Food from the skies as communities slip deeper into hunger.* Retrieved from http://www.icrcnewsroom.org/open.asp?ID=1494&title=South_Sudan__Food_from_the_skies

[100] Ibid.

[101] International Committee of the Red Cross. (2013, February 13) *The ICRC in South Sudan*. Retrieved from https://www.icrc.org/eng/where-we-work/africa/south-sudan/overview-south-sudan.htm

[102] International Committee of the Red Cross (2016, July 12) *ICRC update on operations in Juba, South Sudan*. Retrieved from https://www.icrc.org/en/document/icrc-update-operations-juba-south-sudan

[103] International Committee of the Red Cross. ICRC overview of operations 2013 (2012, November). Retrieved from https://www.icrc.org/ara/assets/files/reports/2013-appeals-overview-operations.pdf

[104] International Committee of the Red Cross. (2015, October 14) *ICRC Detention Work: why, where, who*? Retrieved from https://www.icrc.org/en/document/icrc-detention-work-why-where-who

[105] Daudin, P. and Reyes, H. (1996, January 1). *How visits by the ICRC can help prisoners cope with the effects of traumatic stress.* Retrieved from https://www.icrc.org/eng/resources/documents/misc/57jmts.htm

[106] Ibid.

The ICRC try to maintain independence from combatant parties, including the United Nations Mission in South Sudan (UNMISS).[107] However, the ICRC's approach is partially built on engaging in dialogue with all armed actors (here also including UNMISS). The ICRC are reported to have encouraged UNMISS to conduct long-range patrols in areas where is not present or the civilian population caught in crossfire between warring parties.[108] Thus, they can encourage or discourage certain UN actions.

In spatial encompassment terms, we can simplify this structure. In a normal spatial case, the local circle is surrounded by the regional circle, which is surrounded by the national authority. If the area is ungoverned, this means that the 'local' circle, though it *should* be surrounded by first the 'regional' and then the 'national' authority circles, is effectively not. Nonetheless, the 'international' authority circle is still present around all of these levels (local, regional and national) and in the absence of the regional and national circles, is the only circle now capable of encompassing and conducting the 'local', with no intermediary in between. This leaves the ICRC and similar bodies as the only effective 'governing' international bodies within such regions, since they possess the necessary spatial reach and legitimacy.

Part of what serves to reconfirm this image is the assertion that is made in an article published in the International Review of the Red Cross, which stated;

"*States that are in the process of disintegration are nevertheless still recognized as States and are therefore subject to international law, even in the absence of a government able to ensure the continuity of the State's functions. By the same token, the treaties to which the failed State is a party remain in force.*"[109]

This would appear to reconfirm the notion that even in the case of absence of government, the 'state' and its constituent parts are nonetheless still 'encircled' and thus held to account by such treaties, and by extension, by the international community (and indeed by the ICRC itself). As it is, this subsequent capability for total encompassment would fit very clearly within the 'transnational governmentality' theory. Thus, we can confirm that this wider circle of 'international', which is actively used to surround and encompass the state, does appear to have a clear usage and an intended purpose to this effect.

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[107] Donges, H. (2016, June 23) Global Peace Operations Review. Retrieved from http://peaceoperationsreview.org/thematic-essays/protection-of-civilians-needs-to-be-understood-as-a-collaborative-strategy-and-not-a-campsite/
[108] Donges, H. (2016, June 23) Global Peace Operations Review. Retrieved from http://peaceoperationsreview.org/thematic-essays/protection-of-civilians-needs-to-be-understood-as-a-collaborative-strategy-and-not-a-campsite/
[109] International Committee of the Red Cross. *Armed conflicts linked to the disintegration of State structures: Preparatory document drafted by the International Committee of the Red Cross for the first periodical meeting on international humanitarian law.* Retrieved from https://www.icrc.org/eng/resources/documents/misc/57jplq.htm

Furthermore, by claiming that the humanitarian laws they are trying to enforce are universal laws, the ICRC is, intentionally, in a strong position to spatialise its reach.

## 5.3 Other forms of Encompassment

Beyond assessing the modes of action, there are further ways in which this encompassment is evidenced. Even internally within the state, the ICRC is capable of showing a high level of encompassment of the different government departments through their involving themselves in different branches within the authoritative structure, not simply over the state as one singular entity. As we have seen, the authorities that the ICRC works alongside can be any of the following: security forces, legislative bodies, educational authorities, detention-work and prisons, judicial, health and other authorities.[110] Their ability to work, if desired, with one or more of these, (or arguably, without one, if desired) is also part of their spatial capability. Thus they internally encompass the separate state institutions, granting them increased opportunities to influence these separate units, and thus affect the whole.

The ICRC can also be seen to financially or economically encompass a state. As per the definitions given, encompassment does not only relate to the presence of an actor in another's 'space' but the ability to influence conduct. The ability to finance some initiatives over others, of course, remains one of the most obvious ways of conducting conduct. To illustrate this, let us note the ICRC set aside a yearly budget of 131.2 million to cope with the crisis in South Sudan in 2015.[111] With this in mind, it is also worth noting that according to the Central Intelligence Agency's 'World Factbook', South Sudan's total budget revenue in 2013 amounted to US$437 million (CHF 423 million) with expenditures for the same year amounting to a much larger sum of US$2.259 billion(CHF 2.189 billion).[112] If we allow ourselves to presume that South Sudan's expenditure remained similar in 2015 (as more recent figures are not available) this would tell us that the ICRC's total budget for humanitarian efforts in South Sudan would amount to approximately one third of what the South Sudanese Governments own government was able to pay in the same period. This of course has significant implications regarding South Sudan's reliance on ICRC aid alone, not even including other NGO's, and this financial dependence is one of the major ways in which the ICRC can be seen to financially and economically encompass the wider population.

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[110] International Committee of the Red Cross. *ICRC Protection Policy: Institutional Policy*. Retrieved from https://www.icrc.org/eng/assets/files/other/irrc-871-icrc-protection-policy.pdf

[111] International Committee of the Red Cross. (2014) *ICRC overview of operations, 2015.* Geneva, ICRC. p.9

[112] Central Intelligence Agency. *The world factbook: Budget.* Retrieved from https://www.cia.gov/library/publications/the-world-factbook/fields/2056.html

Another vital aspect to consider is the inherent social structure of the ICRC - national society relationship, where one can observe that the ICRC is considered by national societies to be very much 'around' them. The Red Cross volunteers in a community are surrounded by their wider national Red Cross society. The Red Cross national society is surrounded by the International Red Cross movement- e.g. the ICRC and the IFRC. These encompassing 'circles' can clearly be observed from the attitudes and practices of those working in the national societies in both vertical and encompassing terms, e.g. The ICRC makes policy decisions which the national societies then have to follow. However, we can deduce that if the ICRC encircles all the national societies, it must also encircle the staff, delegates, operations and even the aid beneficiaries in the terrains that national Red Cross societies represent. Any policies decided at the top levels also trickle down.

One final aspect to consider is not only systematic and structural encompassment, but the ICRC's physical encompassment. The ICRC has tangibly spatialised its reach by the simple fact that they are physically present in almost every region in a conflict state, and almost in every conflict state in the world. For an example of the former, we can again look to South Sudan. The ICRC has three sub-delegations, in Malakal city, Bentiu town and Wau city, from where it covers the northern regions of the country. It also works in Jonglei and Western Equatoria states[113], marking a wide ICRC presence across the various territories. This extensive operational space means the ICRC is one of the largest aid organisations, if not the largest, on the ground in South Sudan. To give an idea of just how extensive (or surrounding) this operation is; the President of the International Committee of the Red Cross (ICRC), Christine Beerli, described this humanitarian operation in South Sudan as being the largest currently in Africa.[114]

However, one could go a step beyond the regional level within a state, and also assess their presence in every state in the world. Indeed, the wider Red Cross movement is the only international humanitarian organisation which can truthfully claim to have not only a head office in every country, but a functioning national Red Cross society in almost every recognised country in the world today (190 national societies in total).[115] If we accept the ICRC surrounds all national societies, this global encompassment offers the ICRC a staggering physical presence, and a capability to influence both

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[113] International Committee of the Red Cross. (2013, February 13) *The ICRC in South Sudan*. Retrieved from https://www.icrc.org/eng/where-we-work/africa/south-sudan/overview-south-sudan.htm

[114] Sudan Tribune (2016, January 16*). South Sudan remains ICRC's largest humanitarian operation in Africa.* Retrieved from http://www.sudantribune.com/spip.php?article57704

[115] International Committee of the Red Cross. *National Societies*. Retrieved from http://www.ifrc.org/en/who-we-are/the-movement/national-societies/

national and global affairs as a result of their vast physical presence across a very large 'space' of world terrain.

For now, we can conclude that in practice, the ICRC possesses a very wide 'space' of encompassing activity in the sense that it is one of the only organisations in the world which could be fairly termed as 'globally encompassing'. In many countries, not only in South Sudan, the ICRC has a wide involvement in the many different sectors of state service, and day-to-day 'running' of various state-like functions due to the nature of their service provision. This can take the form of direct engagement with the state apparatus, or in substitution for it. In this way, the ICRC's spatial encompassment can clearly be seen through; first, their physical spatial presence across the territory, second, their financial investment in the state, and third, their involvement in such a wide array of state institutions, departments, and services. For obvious reasons, these combined factors serve to allow the ICRC a significant capability to surround state structures, which fits within the notion of 'encompassment'.

# Chapter 6: Neutrality and Independence

## 6.1 Overview of the Principles

One of the recently re-fuelled debates taking place in recent academic literature is the debate over NGO neutrality.[116] Though the ICRC is not an NGO (it does not claim to be non-governmental, but instead calls itself an international humanitarian organisation), it carries out a highly similar role through its addressing of humanitarian needs and provision of humanitarian assistance. In their policy documents, the ICRC are clear about their commitment to the principles of neutrality and independence, as can be seen through their being mentioned in the organisation's official mission statement.[117] The ICRC state that neutrality and independence are two of their seven fundamental principles, and in their publications, they repeatedly stress the importance of being neutral and independent, emphasising how these form both their identity and the reasons for their continued ability to work.

The ICRC are arguably not concerned with theoretical or philosophical understandings of neutrality and independence, which is exactly why they have their own defined interpretation of each concept. Consequently, I would argue that there is little point in doing as many studies have previously done, and evaluating such an institution on the author's own interpretation of 'neutrality'. Rather, it would be more beneficial to evaluate the extent they carry out these principles in terms of their own

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[116] Rieff, D. (2002). Humanitarianism in crisis. *Foreign Affairs*, pp. 111-121.
[117] International Committee of the Red Cross (2010, October 29) *The ICRC's mandate and mission.* Retrieved from https://www.icrc.org/eng/who-we-are/mandate/overview-icrc-mandate-mission.htm

definitions. The ICRC's definitions for Neutrality and Independence are given in the introduction, but are discussed more in depth by the ICRC as follows;

"**Neutrality** *enables the ICRC to keep everyone's trust by not taking sides in hostilities or controversies of a political, racial, religious or ideological nature. Neutrality does not mean indifference to suffering, acceptance of war or quiescence in the face of inhumanity; rather, it means not engaging in controversies that divide peoples. The ICRC's work benefits from this principle because it enables the organization to make more contacts and gain access to those affected.*"[118]

"*...the ICRC's* **independence** *is structural: the Committee's members are all of the same nationality and they are recruited by co-optation. The ICRC is therefore independent of national and international politics, interest groups, and any other entity that may have some connection with a situation of violence. This gives the ICRC the autonomy it needs to accomplish the exclusively humanitarian task en -trusted to it with complete impartiality and neutrality.* "[119]

In the chapter below, I wish to discuss the accuracy of these images of neutrality and independence, and the level to which they are adhered to within the ICRC. I will begin by assessing certain discrepancies between firstly the ICRC's official written stance on these principles, and secondly the ICRC staff's private opinions on how these principles are used in day to day work. I will then bring my insights together in the final section, and argue that both neutrality and independence should in fact be understood as two usable, operable, and beneficial images, which help organisations such as the ICRC overarch and extend their influence into a given space, and show how transnational governmentality theory can help us to explain this phenomenon.

## 6.2 ICRC staff views on Neutrality and Independence

Let us begin by assessing the notions of Neutrality and Independence, and how they are portrayed by the ICRC. The practice of neutrality, according to the ICRC's view, means that in a conflict they are bound to; maintain contact with all the different factions, to not exclude any group from talks, and to remain unaffiliated. It is worth remembering that this includes both state and non-state actors, weak and strong groups, and arguably, many groups who have committed ruthless acts of violence. Despite not taking sides in hostilities, the ICRC nonetheless have an active role in carrying out confidential discussions between and engaging with all sides of the hostilities. As such, ensuring total neutrality

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[118] International Committee of the Red Cross. *The ICRC: Its mission and work.* Retrieved from
https://www.icrc.org/eng/assets/files/other/icrc_002_0963.pdf
[119] Ibid.

can be complicated; as the ICRC is highly involved with political negotiations, as well as political groups, on a day-to-day basis. In a preparatory document drafted by the International Committee of the Red Cross for a periodical meeting on international humanitarian law, there was an openly stated acknowledgement that humanitarian organisations (which the ICRC counts itself as being) are de facto political. Such a statement is not really surprising, as the ICRC of course concerns itself with a number of inherently political issues; the actions of weapon bearers and of the various authorities[120]; the access to medical care and other basic services[121]; the vulnerability of individuals or population groups and their exposure to risk, and even can act as mediators between state and other factions in conflict situations.[122] What complicates this matter is that these are all issues which the ICRC already has a strong vested opinion on in terms of IHL. Indeed, one could easily argue that the ICRC cannot truly be neutral, due to its inherent obligation to 'favour' and support any actor who will encourage or maintain respect for IHL, and address those violations which have brought the ICRC to the discussion table in the first place. Its stated aims arguably prevent even its own definition of neutrality from taking hold.

According to the ICRC's online casebook entitled 'How does law protect in war?' it is stated;

*"The ICRC engages in dialogue with all those involved in an armed conflict or other situation of violence who may have some influence on its course, whether they are recognized by the community of States or not. No one is excluded."* [123]

It is not difficult to understand that by the very nature of this, the ICRC is bound to engage with the 'violators' which they inherently oppose and seek to remedy. Given this set of circumstances, remaining purely neutral is of course going to be a fairly futile effort, as a biased actor arguably cannot truly claim to be 'neutral'. This line of argumentation has of course been made before, and arguably, there would be nothing further to add to such a discussion than that which has already been mentioned by authors such as Rieff[124], Anderson[125] and Lischer[126]. Indeed, the organisations efforts to influence actors by vertical and encompassing means, as shown throughout this study, would indicate

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[120] International Committee of the Red Cross. *ICRC Protection Policy: Institutional Policy*. Retrieved from https://www.icrc.org/eng/assets/files/other/irrc-871-icrc-protection-policy.pdf
[121] Ibid.
[122] International committee of the Red Cross. (2008, July 7) The neutral intermediary role of the ICRC: at the heart of humanitarian action. Retrieved from https://www.icrc.org/eng/resources/documents/interview/neutral-intermediary-interview-070708.htm
[123] International Committee of the Red Cross. *Casebook: Law.* Retrieved from https://casebook.icrc.org/law/icrc
[124] Rieff, D. (2002). Humanitarianism in crisis. *Foreign Affairs*, pp. 111-121.
[125] Anderson, K. (2004). Humanitarian inviolability in crisis: The meaning of impartiality and neutrality for UN and NGO agencies following the 2003-2004 Afghanistan and Iraq conflicts. *Harvard Human Rights Journal, 17*, p.44
[126] Lischer, S. K. (2006). Dangerous sanctuaries: refugee camps, civil war, and the dilemmas of humanitarian aid. Cornell University Press. p.6

that far from being 'neutral', they are highly invested in the conduct of conduct, which may leads them to favour one actor over another.

I would further argue the ICRC cannot be called independent (from states), as an organisation cannot be 'independent' from state authorities if their work inherently depends on engagement with such authorities. One ICRC representative in London stated that he was not sure that claiming Independence was of much use to the organisation anymore, firstly due to where their funding comes from, and also due to the location of their head offices.[127] Indeed, far from being independent from Western governments, the ICRC is in fact highly dependent on them for their own continued existence. This is primarily due to funding. 85% of ICRC funding (the life line of any organisation) comes from voluntary contributions from the states party to the Geneva Conventions. Moreover, seventeen out of the twenty largest donors to the ICRC in 2016 were western governments, according to the organisations summary of contributions.[128] For this reason, one can understand the ICRC as being 'under' western governments. not simply due to funding, but also their many head office locations in western states, and in specific areas of strategic interest. For example, after the Cold War, The ICRC created a new office in Brussels; which is also of course the headquarters of both the European Union, a major donor, and NATO.[129] This implies that the ICRC are thus in a position where the opinions of these Western donor governments must be taken strongly into account in order to ensure their continued funding, and as such, they are not independent of states at all.

With this in mind, one of the most interesting aspects of discovery when carrying out this study was finding the significant discrepancy between, on the one hand; the views expressed by the policy documents on the importance and even necessity of full neutrality and independence, and on the other hand; the views expressed by the staff members on these principles when interviewed. Even regarding the ICRC's own definitions of neutrality and independence, many ICRC interviewees distanced themselves slightly from these principles. When staff members were asked whether ICRC staff are always able to be neutral and independent, most replied simply that they try to be, and that

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[127] Authors interview on 16th May 2017 with Paul Castella, Head of mission, ICRC London office

[128] International Committee of the Red Cross. (2017, February 1) *The ICRC donor support group*. Retrieved from https://www.icrc.org/en/document/icrc-donor-support-group

[129] Forsythe, D. P. (2005). The Humanitarians: The International Committee of the Red Cross. Cambridge University Press. p.100

the goal is to be as impartial as possible[130]. However, most also openly acknowledged that, similarly to what is stated above, neutrality is often impossible to accomplish.[131]

Many interviewees expressed the view that these principles are 'guiding tenants', and not core commandments that can (or even should) be adhered to perfectly.[132] One of the policy advisor's interviewed stated that neutrality and independence were simply tools of access, not philosophical principles, and that they only had value so long as they allowed the ICRC to do their work.[133] The interviewees seemed to feel that what was most important was to be *seen and perceived* as being neutral and independent, with perhaps an implication that it was not so important to actually *be* either of these things in the pure philosophical way. This attitude, to be fair, does come close to being implied in some of the policy documents that have been published. For example, it was stated in a policy document entitled "The ICRC: It's mission and work" that; "*The ICRC's humanitarian work is impartial, neutral and independent. Experience has taught it that this approach offers the best chance of being accepted during an armed conflict or other situation of violence, in particular given the risk that actors at a local, regional or international level may become polarized or radicalised.*"[134]

To summarise, it seems that despite their being a strong rhetoric on the organisations strict abiding to true neutrality in policy documents and articles, ICRC staff seem far less inclined to agree that true neutrality is actually possible, and lean towards the notion that the *image* of neutrality is more important.

## 6.3 Understanding the use of Images: Neutrality and Independence through transnational governmentality theory

With the above in mind, one must ask why these images of both neutrality and independence are nevertheless ardently portrayed and emphasized by the ICRC? To begin, I would argue that claiming independence can also be used to help distance the ICRC from western governments, as well as from accusations that such powerful governments are also using a degree of verticality and encompassment over and around non-state actors including the ICRC, which would of course be unwanted by such

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[130] Authors interviews on 12th May 2017 with Jeremie Labbe, ICRC Policy Advisor, on 16th May 2017 with Paul Castella, Head of Mission ICRC London, on 17th May 2017 with Pascal Daudin, Senior ICRC Policy Advisor, and on 21st My 2017 with Anonymous ICRC employee

[131] Authors interviews on 12th May 2017 with Jeremie Labbe, ICRC Policy Advisor, on 16th May 2017 with Paul Castella, Head of Mission ICRC London, on 17th May 2017 with Pascal Daudin, Senior ICRC Policy Advisor, and on 21st My 2017 with Anonymous ICRC employee

[132] Authors interview on 12th May 2017 with Jeremie Labbe, ICRC Policy Advisor, and on 17th May 2017 with Pasal Daudin, Senior Policy Advisor

[133] Authors interview on 17th May 2017 with Pascal Daudin, Senior ICRC Policy Advisor

[134] International Committee of the Red Cross. *The ICRC: Its mission and work.* Retrieved from https://www.icrc.org/eng/assets/files/other/icrc_002_0963.pdf

organisations. As discussed, the ICRC is often inadvertently acting as the middle man in a vertical chain; positioned under Western governments, but as discussed, often over recipient states. If this is accepted, this would also fit in with transnational governmentality theory's assertions that international organisations and agencies may be directly imposing policies on African states, which is made possible by their fiscal weakness.[135] If African nations are dependent on the aid given by organisations such as the ICRC, and the ICRC is dependent on western governments, then African nations are inherently dependent on, and being influenced by, these western governments as well. As a result, ICRC actions (and wider NGO involvement in developing countries) could be unintentionally facilitating western verticality above the recipient states. Thus, as Ferguson and Gupta argue, there is a 'governance' of African economies from afar, which transfers sovereignty away from Africa.

As we have seen, the regulatory operations of the state are being taken over by other non-state organisations. This has a number of implications. On the one hand, this has a short term benefit to the beneficiary state, and may be desired by some overburdened and under-financed developing states. However on the other hand, as Ferguson and Gupta have suggested, this has the potential to carry much of the transfer of governing to non-state entities (and even their overarching donor states) which entails a transfer of power if the running of these economies is left up to non-state entities. This transfer is done by the use of constructed norms, day to day practices, and the creation of particular images which ultimately help control the conduct of conduct.

This brings us to ask, why do the ICRC try so hard to maintain this image of being so 'purely' neutral and independent in their articles and policies? Why do all staff agree that this image is so critical to maintain, even if it is not necessarily true? To this end, Ferguson and Gupta can help us understand this issue. Similar to how states '… *invest a good deal of effort in developing procedures and practices to ensure that they are imagined in some ways rather than others*'[136]; so do international organisations. There is a recognition on the part of the ICRC that some rituals, images and procedures are required to naturalise and ensure that they remain free to carry out their work. Logically, actors such as state or rebel groups would not permit any such overlaying or coexisting within their space if the ICRC might work against them. By creating and enforcing images of neutrality, the ICRC sustain a measure of control as they are never forced to choose a side, which would limit their access to certain regions (e.g. their space of activity) and jeopardise their work. Similarly, by claiming and animating this image of independence, this in turn helps create a reality where the ICRC can remain '… *horizontal*

[135] Ferguson, J., & Gupta, A. (2002). Spatializing states: toward an ethnography of neoliberal governmentality. *American ethnologist*, *29*(4), p.992

[136] Ibid., p.984

*contemporaries of the organs of the state'*[137], which aids the ICRC normalising and reinforcing the notion of their equal operating power within the same global space. Through repetitive social practices, this image is not only normalised, but made effective and operable, which is to the ICRC's advantage.

Irrespective of this explanation for why the ICRC acts in this way, I would conclude by arguing that instead of the organisation declaring that it *is* neutral and independent, it may be time for them to acknowledge a fairer assessment (and a more accurate one) and decide to simply state that the ICRC *aims* to be neutral and independent. Doing so is, of course, diplomatically sensitive; but arguably if the notions of total neutrality and independence are not perceived to be there anyway, as many authors have argued, then there is little point in claiming it at all. This would help to combat the significant gap between the organisations written, stated beliefs, and the higher level of staff's own personal attitudes; and consequently, the on-the-ground reality. There is a policy shift question here that remains relatively unacknowledged; from what 'should' be happening to what currently 'is' happening, which the ICRC would benefit by addressing more transparently.

To summarise; transnational governmentality theory presents us with a credible and useful way of understanding how the actions of the beneficiary state can be manipulated from above, and why, despite that full neutrality and independence are not within the organisations realistic capabilities, the organisation nonetheless puts large effort into evoking and sustaining this image. This theory helps us understand why the staff perceive these principles as guidelines that should certainly be attempted (and *seen*) as much as possible, yet at the same time are not considered to be truly realistic goals. Finally, the theory helps us understand how creating and fostering an image of neutrality and independence are seen as conducive to the organisations continued work.

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[137] Ibid., p.994

# Conclusion

To conclude; ultimately, upon collecting and analysing the data I have gathered, I believe that transnational governmentality theory does help us understand the complex governing trajectories of humanitarian organisations, and that this frame does help us understand how the ICRC perceive themselves in relation to the state. This is because the ICRC intentionally possess a wide spatial involvement in many different sectors of state service, often overlapping with state governing authorities, and they do carry out the day-to-day 'running' of various state-like functions. This can take the form of direct engagement and support with the state apparatus, mobilisation of influential third parties, persuasion, denunciation of the state, or substitution for it.

In terms of verticality, the ICRC can be seen to act both from 'above' and 'below' the state. Both developing and western states can act as a higher authority above the ICRC, particularly when the ICRC is operating in their territory, as they are then under state's legal jurisdiction. Beneficiary states can hence set down terms for the ICRC, either legally, transparently, or covertly. Western states could technically 'dictate' in certain ways to the ICRC through ideology and funding. However, the ICRC can also position itself above the state level. They do this by way of both a 'moral' or ideological rhetoric, or through physically attempting to control and influence within the 'space', which can be seen from their modes of action (persuasion, mobilisation, denunciation), their choosing of where they operate, their use of a 'higher' body of international law above national law, their accepted impunity in court, and their (rare) acting without state consent.

The ICRC's spatial encompassment can clearly be seen through the other two modes of action (support and substitution), their physical spatial presence across within the territory, their financial investment in the state (which one could term economic encompassment), their involvement in such a wide array of state institutions, departments, and services, and finally, their physical presence in almost all conflict zones in the world. For obvious reasons, these combined factors serve to allow the ICRC a significant level of influence in the affairs of the state's in question. Through the Red Cross national societies, The ICRC can present itself on the 'national' level, but equally, on either the 'local' or the 'international' levels if they wish, depending on what they need. These are movable and inconsistent spatial self-images that the ICRC actively and intentionally utilise.

Overall, it also seems that full neutrality and independence are not, truthfully, within the organisations realistic capabilities. They can only be adhered to to a limited extent. In the staff's view, these principles are perceived as guidelines that should be attempted as much as possible, but will likely not

be achieved completely. In line with transnational governmentality theory, neutrality and independence can in fact be understood as intentionally created and purposefully sustained images, which the ICRC utilise in order to carry out their work. As such, there is a discrepancy between the written edicts and the staff opinions within the ICRC, and as such, a policy shift question remains.

It is clear that the ICRC can often have a significant role in terms of making decisions in the public interest, in authority, and in the affairs of the state, whether or not this is desired by the state in question. Thus, we can conclude that in line with transnational governmentality theory, the state no longer holds a monopoly regarding the 'space' of public governance. The conduct of state affairs is no longer solely in the hands of government institutions, so long as humanitarian organisations such as the ICRC also possess certain vertical capabilities. In this way, the evidence gathered in this study demonstrates that Ferguson and Gupta were correct, and must conclude that international organisations are indeed confounding the traditional understanding of state spatiality, particularly in developing regions.

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