



# Protecting Civilians in Uncivil Wars

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Program on the Protection of Civilians

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## 1. Executive Summary

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It is mainly civilians that die as a result of contemporary armed conflicts: most succumb to disease and the effects of malnutrition but a significant number are slaughtered or suffer other forms of violent death. Policies to protect civilians during warfare, however, remain incoherent conceptually and poorly implemented in practice.

This working paper aims to advance debate in this area in three ways. First, it outlines a framework for thinking about the different dimensions that need to be addressed as part of a comprehensive and coherent civilian protection agenda:

- The nature of the threats facing civilians during armed conflict. Here we distinguish between direct and indirect forms of harm and identify four important types of actors which often harm civilians: local armed forces, non-state armed actors, self-defence groups, and foreign peacekeepers, soldiers and contractors.
- The sources of the contemporary protection agenda stem from six interrelated streams of policy: 1) the development of international humanitarian law (IHL); 2) the adoption of protection agendas by humanitarian agencies; 3) the UN Security Council's focus on civilian protection; 4) the incorporation of protection mandates for peace operations; 5) the embracing of protection by some regional organizations; and 6) the political commitment to the Responsibility to Protect.
- The pillars upon which the protection agenda should rest. We argue that a unified and comprehensive conception of protection should rest on the three pillars: of physical protection from immediate harm; satisfaction of needs essential for the sustenance of life; and the freedom to exercise fundamental human rights.
- The principal agents of protection. These can be divided into five broad categories: states, local communities, humanitarian agencies, peacekeepers and international judicial institutions. While all these agents are potentially significant, to date, too little attention has been paid to understanding how to enhance the resilience of local communities.

Second, it identifies some important gaps and tensions in the current agenda. The first and arguably most significant gap is that between *expectations and capabilities*. Profound gaps remain between what agents are expected to deliver (either by insiders or outsiders) and what they are capable of, or committed to, delivering. The second gap is the lack of *operational guidance* available for external agencies which wish to engage in civilian protection operations. A third problem is the lack of coherence and effective coordination between different actors. The fourth challenge is the tensions between *self-protection activities* of local communities and *external agendas*. Finally, there is a tension between the *primary responsibility of the state and the way protection is commonly conceived and pursued*. In particular, one of the least well understood elements of the “responsibility to protect” principle is the question of what states need to do to meet their obligations. Taken together, these problems have left the protection agenda somewhat limited and contradictory in certain respects.

Third, it emphasizes three issues that urgently require more detailed research:

- How to enhance state capacity in relevant areas?
- How to bolster the resilience of local communities at risk of harm?
- How to strengthen the ability of peace operations to carry out relevant protection tasks?

When thinking about how to protect civilians in uncivil wars, political leaders should stop repeating the discredited cliché of “never again” and instead start investing serious resources into figuring out “who’s next?” and how they might be protected.



## 2. Introduction

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It is mainly civilians that die as a result of contemporary armed conflicts.<sup>1</sup> Although most of them succumb to disease and the effects of malnutrition a significant number are slaughtered or suffer other forms of violent death.<sup>2</sup> This fact is not unique to the contemporary era but the period since the end of the Cold War has witnessed an unprecedented level of international activity ostensibly aimed at reducing levels of civilian suffering during armed conflicts. Such activity resulted from the confluence of moral, political, legal and prudential considerations. First, the world's governments have intensified their political commitment to protect civilians in light of a strengthening moral norm that genocide and mass atrocities are unacceptable wherever and whenever they occur.<sup>3</sup> Second, there has been growing international support for the idea that states have a legal responsibility to respond to atrocities that are considered crimes under international human rights and humanitarian law.<sup>4</sup> Third, a variety of prudential calculations have persuaded states to take civilian protection issues more seriously. Specifically, it is widely recognized that it is harder to build peace and maintain order in environments where atrocities go unaddressed;<sup>5</sup> it is also well known that civilian deaths damage the legitimacy of counter-insurgency operations and make them harder to win; and it has become clear that relief workers face greater risks in circumstances where the combatant/non-combatant distinction is blurred.

Yet despite these commitments peacekeepers and other actors are not well prepared to deal with the daunting challenges posed by civilian protection agendas. As one analysis of the twentieth century concluded, '[n]o century had better norms and worse realities' when it came to the protection of civilians in war.<sup>6</sup> Sometimes, the world reacted to crimes against civilians by despatching peacekeepers 'without sufficient capacity, clear guidance and doctrine, adequate training, or a solid concept of operations to uphold mandates to "protect civilians".'<sup>7</sup> More often, no troops were dispatched at all to protect civilians. Not only have these sins of omission and commission badly damaged the reputation of liberal states and international

institutions, they have facilitated the massacre of thousands of civilians in the world's war zones.

Efforts to strengthen the protection of civilians are inhibited by a lack of consensus on what protection ought to entail, where the sources of protection lay and how those sources relate to one another, which actors should be engaged in protection, and how their activities should be coordinated. As a result, whilst considerable activity has occurred, the contemporary agenda remains limited and incoherent in some important respects. This article aims to advance the debate in three ways. First, we propose a framework for thinking about the different dimensions of a comprehensive and coherent civilian protection agenda: the nature of the problem i.e. threats facing civilians during armed conflict; the sources of the contemporary protection agenda; the pillars upon which the protection agenda should rest; and the principal agents of protection. Second, we identify several problems with the current agenda: the gap between capabilities and expectations; the lack of operational guidance; coordination and coherence problems; the tensions between internal and external modes of protection; and the role of the state. We finish by suggesting three important areas for further research and action: enhancing state capacity in relevant areas; bolstering the resilience of local communities at risk of harm; and strengthening the ability of peacekeepers to protect civilians.



### 3. The Problem: Threats to Civilians during Armed Conflict

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Many factors contribute to civilian suffering during periods of armed conflict. Viewed in the abstract, this makes for a broad and daunting agenda which can encourage a tendency to prioritize everything and thereby nothing. However, establishing priorities is easier to do with reference to specific empirical settings. The starting point for analysis and action must therefore be identifying the ways in which civilians are threatened in both a general sense and with reference to specific armed conflicts. Or as the ICRC has put it, analysis must start with an assessment of who does what to whom?<sup>8</sup>

In general terms it is useful to distinguish between direct and indirect forms of harm.<sup>9</sup> In some instances civilians will be the direct target of atrocities committed by a potentially wide range of actors. Any list of atrocities is potentially very long but a useful starting point is the seventeen types of violations identified by the Truth and Reconciliation Commission of Sierra Leone in its study of that country's civil war. These were: abduction, amputation, arbitrary detention, assault/beatings, destruction of property, drugging, extortion, forced cannibalism, forced displacement, forced labour, forced recruitment, killing, looting, physical torture, rape, sexual abuse, and sexual slavery. Civilians can also be harmed indirectly. Among the most common forms of indirect harm are those which occur through loss of livelihood and displacement (which are central factors exacerbating the likelihood of civilians succumbing to disease or malnutrition) and instances of mistaken or unintentional killing through inaccurate bombardment and/or targeting or the use of indiscriminate weapons (e.g. antipersonnel mines and cluster bombs).

With this broad distinction in mind it is important to understand which actors threaten civilians in armed conflicts and why. Here four categories of actors are particularly important:

- Local armed forces: these are likely to cause harm to civilians either when they are ordered to do so, or when they are undisciplined and/or unprofessional.<sup>10</sup>
- Unofficial, non-state armed actors: including insurgencies, paramilitaries, militias and organized groups of thugs.<sup>11</sup>
- Self-defence groups: which might emerge from noble motives (such as defending livestock or community property) but degenerate into more predatory organizations.<sup>12</sup>
- Foreign peacekeepers, soldiers and/or contractors: Whether it is the scandals at Abu Ghraib, the behaviour of Blackwater employees in Iraq, or UN peacekeepers engaging in organized criminal activities and/or sexual exploitation and abuse of locals, local civilians often suffer harm at the hands of foreigners.<sup>13</sup>

The subsidiary question is why, despite the very clear prohibition of such acts, civilians are targeted. Although the relevant literature remains divided, it seems clear that both the direct and indirect targeting of civilians requires some form of justificatory ideology.<sup>14</sup> These ideologies have tended to take two forms: those that reject the application of civilian immunity to certain racial, national, ethnic, religious, linguistic, sexual or physical groups (e.g. Nazism, extreme nationalism, doctrine of collective responsibility, Stalinism) and those that privilege perceived necessity over the moral and legal restraints on war.<sup>15</sup> Both types are more likely to facilitate the targeting of civilians in contexts of impunity, where there are no immediate negative consequences for violating the norm of civilian immunity.<sup>16</sup> In such contexts, belligerents may target civilians in order to achieve tactical goals at lower costs to themselves (e.g. as a strategy of counter-insurgency or a tactic for recruiting child soldiers), to accomplish strategic objectives by claiming and “cleansing” particular territories and eliminating whole groups; to punish communities for supporting the enemy; and to violently assert control over the civilian populations.<sup>17</sup> In addition, leaders might create a culture of impunity towards the abuse of the civilian population as payment for military services – civilians can be killed, raped, kidnapped into (often sexual) servitude and have their assets taken or destroyed as a form of payment.<sup>18</sup>

From this necessarily brief overview of how and why civilians are targeted in war, it is clear that the protection agenda needs to include measures designed to

challenge the enabling conditions and sometimes stand between the civilian population and their tormentors.



## 4. Sources of Protection

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Contemporary interest in protection stems from six interconnected streams of thought and policy which developed in reaction to different aspects of civilian suffering during war:

- the development of international humanitarian law (IHL);
- the adoption of protection agendas by humanitarian agencies;
- the UN Security Council’s focus on civilian protection;
- the incorporation of protection mandates for peace operations;
- the embracing of protection by some regional organizations;
- the political commitment to the Responsibility to Protect.

Although interrelated, the streams reflect the particular concerns and interests of the respective norm carriers and thus emphasize different components of protection. This has left important gaps and tensions in the contemporary protection agenda which are addressed in part 5 of this article.

### *The Development of International Humanitarian Law*

The global effort to strengthen IHL – as well as the concomitant development of international criminal law – has become the legal bedrock for civilian protection. As is well known, IHL had its origins in the mid-late nineteenth century with the development of the US Government’s “General Orders No. 100” (better known as the Lieber code) and the emergence of the Red Cross movement inspired by Henry Dunant.<sup>19</sup> After the Second World War, IHL was developed and codified in the four Geneva Conventions (1949), two additional protocols (1977), and in a range of protocols covering the use of Certain Conventional Weapons (1980, 1995, 1996, 2008). Of particular importance were Common Article 3 of the 1949 Geneva Conventions, which committed parties in non-international conflicts to respect the human rights of all those placed *hors de combat*, and the Convention on the Protection of Civilian Persons (Convention IV), which—among other things—offered legal protection to non-combatants in occupied territories.<sup>20</sup> The first Geneva Protocol

(1977) extended the protection afforded to non-combatants by insisting that armed attacks be strictly limited to military objectives (Article 52, Protocol I). Combatants were forbidden from attacking non-combatants or their property, though so-called “dual use” facilities remained lawful targets. Article 51(5) outlawed attacks on military objects which “may be expected to cause” excessive civilian casualties, and forbade the indirect targeting of non-combatants. Protocol I also insisted that in cases of doubt, people should be assumed to be non-combatants. The principle of discrimination set out in the Protocol also provided the legal and moral foundation for subsequent campaigns for conventions banning weapons considered inherently indiscriminate and is now a core part of international criminal law.<sup>21</sup> IHL has thus created a normative standard of civilian protection that not only restricts the use of certain weapons and behaviour but also seeks to punish perpetrators of individual or mass crimes.

### *Humanitarian Agencies*

Traditionally, humanitarian agencies viewed “protection” as the responsibility of “mandated actors” such as the International Committee for the Red Cross (ICRC), the UN Children’s Fund (UNICEF) and the UN High Commissioner for Refugees (UNHCR) to promote the legal protection of individual human rights. As such, ICRC officials tended to equate “protection” mainly with the verification of government compliance with IHL in cases of detention.<sup>22</sup> For its part, UNICEF was mandated to develop country-level reporting mechanisms in relation to the protection of children in armed conflict while UNHCR was mandated by the 1951 Refugee Convention and subsequent protocol (1967) to provide legal protection to refugees.<sup>23</sup> To the extent that other emergency relief organizations referred to protection, they typically saw it as a natural counterpart to the impartial delivery of humanitarian assistance. This began to change in the 1990s when some organizations recognized that effective humanitarian assistance was dependent on security and stability.<sup>24</sup> In extreme cases, this view noted that assistance without protection could produce the so-called “well fed dead” – civilians given food, housing and medical support by humanitarian agencies only to be killed by armed groups. The result was a broader approach to protection by a variety of actors; from Oxfam to the international financial institutions.<sup>25</sup> This, in turn, produced a raft of different theories and strategies for the development, management and assessment of protection programs.<sup>26</sup> While the

expansion of the protection agenda was important, it highlighted significant areas of ambiguity to humanitarian work and in some cases, perhaps most notably Médecins Sans Frontières (MSF), encouraged a reaction against the idea that humanitarian agencies alone can deliver protection.<sup>27</sup>

### *The UN Security Council*

Since 1998, the UN Security Council has explicitly debated a relatively broad and unfocused civilian protection agenda that has encompassed compliance with IHL, operational issues connected to peace operations and humanitarian access, as well as the Council's role in responding to emergencies and tackling disarmament issues.<sup>28</sup> On 17 September 1999, the Council unanimously adopted Resolution 1265. This expressed the Council's "willingness" to consider "appropriate measures" in response "to situations of armed conflict where civilians are being targeted or where humanitarian assistance to civilians is being deliberately obstructed;" called on states to ratify key human rights treaties and work towards ending the "culture of impunity" by prosecuting those responsible for genocide, crimes against humanity and "serious violations of international humanitarian law;" and expressed the Council's willingness to explore how peacekeeping mandates might be reframed to afford better protection to endangered civilians.<sup>29</sup>

In 2004, the Council issued an *Aide Memoire* on civilian protection, which was subsequently adopted and developed by the UN's Office for the Coordination of Humanitarian Affairs (OCHA) to guide its work.<sup>30</sup> The Security Council issued a further landmark resolution (number 1674) on the protection of civilians in April 2006. This reiterated its demand for access to be granted to humanitarian agencies, stated the Council's willingness to take action in cases where civilians are deliberately targeted and reaffirmed the Responsibility to Protect principle (see below). In 2007, new Secretary-General Ban Ki-moon called for measures to strengthen the right to humanitarian access and the creation of a working group to explore avenues for translating the Council's commitment to protection into tangible outcomes for endangered populations.<sup>31</sup> Neither elicited much support.

### *Peacekeeping Mandates*

The Council has also supported the civilian protection agenda through the mandates it has crafted for peace operations. Although peacekeeping operations have sometimes

contained human rights components, it was very rare for civilian protection to be considered a core part of the mission.<sup>32</sup> It was not until the publication of the UN's Panel on Peace Operations – the so-called “Brahimi Report” – in 2000 that peacekeepers who witnessed violence against civilians should officially “be presumed to be authorized to stop it, within their means”.<sup>33</sup> Starting in 1999 with the UN mission in Sierra Leone (UNAMSIL), the Security Council has regularly invoked Chapter VII of the UN Charter to create protection mandates, albeit while inserting some important geographical, temporal and capabilities-based caveats.<sup>34</sup>

### *Regional Arrangements*

The protection agenda has also been fostered at the regional level, especially in Europe and Africa. The foundations for Europe's engagement with civilian protection were laid in the 1970s with the Helsinki Accords. Over time, these provided the basis for a Conference on Security and Cooperation in Europe (CSCE) mechanism which by the 1990s incorporated specific references to protection issues, including the protection of children and protection against torture.<sup>35</sup> When the CSCE was transformed into an organization – the OSCE – in 1995, it was given additional institutional capacities in relation to human rights. Among those capacities was the establishment of the High Commissioner for National Minorities (HCNM). This was intended to employ quiet diplomacy to help states protect the rights of national minorities and prevent the escalation of ethnic divisions into violent conflict.<sup>36</sup> Beginning with its engagement in the Bosnian conflict, NATO has also incorporated the protection of civilians into its crisis management work more broadly.<sup>37</sup> As part of its common foreign and security policy the EU also started to develop a civilian protection role, exemplified by the French-led multinational force in eastern DRC (*Operation Artemis*, 2003). Although less well established, the African Union (AU) has also provided a vehicle for the development of civilian protection. Article 4(h) of the AU's Constitutive Act enshrines the Union's right to intervene in the affairs of its member states in issues relating to genocide, war crimes and crimes against humanity, and the AU peace operation in Darfur (AMIS) included a civilian protection mandate.<sup>38</sup>

### *The Responsibility to Protect*

In late 2005, world leaders unanimously adopted the Responsibility to Protect (RtoP) principle in paragraphs 138-140 of the UN World Summit Outcome Document. In April 2006 the Security Council reaffirmed the principle in Resolution 1674.<sup>39</sup> As agreed by Member States, the RtoP rests on three pillars.<sup>40</sup> The first is the responsibility of each state to use appropriate and necessary means to protect its own populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement. The second pillar refers to the commitment of the “international community” to encourage and help states to exercise this responsibility. The third pillar refers to the international responsibility to respond through the UN in a timely and decisive manner when national authorities are manifestly failing to protect their populations from the four crimes identified above. The Secretary-General, Ban Ki-moon identified translating the RtoP “from words to deeds” as one of his main priorities and appointed a Special Adviser on the matter.<sup>41</sup> The principle has also become part of the working language of international engagement with political crises such as the UNAMID operation in Sudan and the diplomatic efforts to resolve the post-election conflict in Kenya. However, its exact scope and meaning remain the subject of debate, not least when in May 2008 Bernard Kouchner invoked RtoP to legitimize the forcible delivery of humanitarian assistance to Myanmar and in August of the same year, the Russian Foreign Minister claimed that his country was exercising its RtoP by invading Georgia in support of South Ossetian separatists.



## 5. Pillars of Protection

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Ironically, one of the principal strengths of the civilian protection norm—the breadth and depth of the normative consensus underpinning it—is also a source of weakness because there is little agreement across the six streams about what protection means, what it entails and which agents are best placed to provide it. In our view, a unified and comprehensive conception of protection should rest on three pillars:

1. the physical protection from immediate harm;
2. the satisfaction of needs essential for the sustenance of life;
3. the freedom to exercise fundamental human rights.

Although each element is usually emphasized by particular agents of protection (i.e. the first by military peacekeepers, the second by humanitarian agencies, the third by mandated actors), any holistic conception of protection must incorporate all three.

### *Physical protection from immediate harm*

This entails numerous tasks but it is useful to distinguish two broad types. *Direct* protection implies measures designed to protect civilians under immediate threat of physical harm. Measures such as guarding and demilitarizing refugee and IDP camps, patrolling villages and establishing checkpoints, protecting safe corridors, using force to maintain humanitarian access or coerce perpetrators of abuses, as well as providing personal protection to vulnerable individuals can be considered direct forms of protection because they involve the use of military and/or police personnel to deter threats and protect civilians who are likely to come under attack. Although non-military actors can play a part in risk reduction and reporting it is important to recognize that unarmed civilian organizations are rarely able to directly protect civilians in imminent danger.<sup>42</sup> *Indirect* measures contribute to the establishment of an environment conducive to civilian protection but do not provide immediate protection. Military and police measures such as enforcement operations against armed groups, securing humanitarian access, and apprehending those suspected of crimes against the civilian population and civilian measures such as disarmament and

demobilization, capacity-building and training, integrating protection considerations into activities such as camp design, improving the quality of information provided to local communities, and measures to strengthen the rule of law, may create the necessary environment for protection and reduce the likelihood of attacks but they do not protect civilians in immediate danger.<sup>43</sup>

*The satisfaction of needs essential for the sustenance of life*

As noted above, most civilian casualties of war result from indirect effects, such as disease and deprivation, and these indirect risks are intensified and multiplied by displacement.<sup>44</sup> As such, protection should be concerned with preventing and mitigating the most damaging indirect effects that armed conflicts have on civilians. Oxfam, for example, envisage protection as involving the provision of the necessities of life (food, shelter, medicine, means of earning a living) and freedom from impediments on those necessities.<sup>45</sup> Among other things, the satisfaction of needs requires support for local coping strategies, access to stricken populations, the prevention of displacement where possible, and provision of safe havens when needed.<sup>46</sup>

*The freedom to exercise fundamental human rights*

This involves maintaining an environment conducive to the satisfaction of rights granted to individuals by international human rights and humanitarian law. One of the first attempts to develop a protection agenda for humanitarian agencies, spearheaded by the ICRC (1996-2000), produced a consensus that protection encompassed “all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law, and refugee law.”<sup>47</sup> Focusing on already existing rights helps to clarify the extent and focus of the protection agenda, set minimum standards, and provide common benchmarks for evaluating behaviour. However, there are inherent limits to what a rights based approach can achieve. The scope of rights is limited because not all states have ratified the relevant treaties and there is a fundamental disconnect between formal obligations and levels of compliance. Moreover, educating people about their rights is only part of the equation: they also need to be able to exercise those rights. In the eye of the storm, such opportunities are rarely available.<sup>48</sup>



## 6. Agents of Protection

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To be effective over time, protection clearly requires action in all three areas identified above. However, we also need to be clear about the strengths and limitations of the different agents of protection. We suggest that there are five main agents of protection: states, local communities, humanitarian agencies, peacekeepers and international judicial institutions. Each agent acts according to its own conception of protection and while there is sometimes coherence and coordination, this is ad hoc and patchy at best. This section evaluates the role of each of these agents in order to identify critical limitations in the contemporary protection agenda.

### *States*

States not only have the primary responsibility to protect civilians, they are also usually the principal agent of protection. Indeed, a variety of social contract theories insist that the first duty of states is to protect their populations from insecurity.<sup>49</sup> As such, it is only when a government fails to protect its population that the question of alternative agents of protection arises. This might occur for a number of reasons. In one scenario, well-meaning governments might lack the capacity to effectively protect their citizens from rebel groups. In other cases, governments may be divided, with some factions committed to protecting their populations but lacking the capacity to effectively control the state's military forces. In situations of state collapse there ceases to be any meaningful distinction between the government's armed forces and various militia groups. On other occasions governments pursue a deliberate policy of targeting segments of their population.<sup>50</sup>

These different dynamics are important because the precise nature of the state's failure to protect will shape the opportunities for and constraints upon the adoption of external measures. Clearly, states lacking the capacity to protect populations from rebels or external forces are more likely to request international assistance than those that have deliberately targeted civilians. In these latter cases external agents will be confronted by major additional obstacles associated with the

norm of sovereignty and non-intervention. Most notably, humanitarian agencies will not be granted unfettered access and will be forced to negotiate and cooperate with the perpetrators of crimes against civilians to gain limited access. In addition, the UN Security Council's deep reluctance to authorize peace operations without host state consent means that a mixture of diplomatic skill and coercion will be required to permit the deployment of peacekeepers. These political problems are eased somewhat in cases of state collapse but they present a different range of logistical and security problems.<sup>51</sup> In most cases, however, external agents of protection will be required to cooperate with a government that has failed to protect its civilian population either because of volition, neglect or incapacity.

The range of measures that states can take to protect their populations is too vast to list here in any but the most perfunctory fashion, but it is useful to think of the state's role in relation to the three pillars of protection identified above. First and foremost, physical protection requires that states abide by IHL and ensure that their security forces understand and respect the law. In addition, states should uphold the rule of law and ensure that key crimes against civilians – genocide, war crimes, ethnic cleansing and crimes against humanity – are written into the domestic penal code and that individual criminal responsibility for these crimes is established.<sup>52</sup>

States also play a significant role in the satisfaction of life-sustaining needs. Many famines and disease outbreaks that accompany armed conflict and disproportionately affect the civilian population were products of either deliberate policy or wilful neglect by states.<sup>53</sup> The Ethiopian famine in 1984 provides the best example of the former and the 2008 cholera outbreak in Zimbabwe is a good example of the latter. States that are incapable of meeting the basic needs of their population as a result of incapacity or because of unexpected shocks such as rebellions or natural disasters can request external assistance to meet those needs.

In relation to the protection of fundamental rights, the most obvious way in which states can protect civilians is by signing, ratifying and – most importantly – implementing relevant legal treaties, including the nine “core” treaties identified by the UN High Commissioner for Human Rights and the guiding principles relating to the treatment of IDPs.<sup>54</sup> When states lack the resources or technical expertise to properly implement these core human rights treaties, external assistance is also available through institutions such as the Office of UN Human Rights Commissioner. One hopeful development is the establishment of National Human Rights

Institutions.<sup>55</sup> Although there are various models, these institutions share certain similarities in their role and function.<sup>56</sup> They are a particularly important component of a state's protection regime because they can ensure that rights are interpreted and implemented in a context-specific fashion, monitor patterns of rights violation, oversee the integration of rights into national policy, and provide an institutional setting for individuals to lodge complaints.

In situations where a state is failing to protect its population, the foremost aim of international engagement must be to encourage the state to change course and fulfil its obligations, either by ceasing attacks, stepping up efforts to uphold the rule of law, or requesting external assistance. The principal means to achieve this is diplomacy.<sup>57</sup> Thus, Kenyan civilians were eventually protected from further bloodshed in the wake of the post-election violence there in 2007 by an internationally brokered power-sharing agreement that followed calls for both parties to fulfil their responsibilities to protect civilians by prominent global figures such as Kofi Annan and Ban Ki-moon.<sup>58</sup> Likewise, diplomatic efforts by the UN Secretary-General and ASEAN persuaded the government of Myanmar to protect its population from deprivation by granting access to humanitarian agencies in wake of Cyclone Nargis.<sup>59</sup> Sometimes, persuasion will not suffice and coercive techniques may be required. Part of the problem is that coercion (whether military or economic) has a poor record of success.<sup>60</sup>

### *Local Communities*

External actors often overlook the fact that populations in danger usually take (often quite effective) measures to protect themselves.<sup>61</sup> External actors are seldom present in large numbers in the eye of an emergency when most of the killing and displacement is actually underway.<sup>62</sup> Typically, international assistance arrives after the peak of the violence.<sup>63</sup> In the inevitable gap between a crisis erupting and outside help arriving (if it does at all), civilians have to make provision for their own protection by escaping violence, protecting their property and reducing threats.<sup>64</sup>

Modes of self-protection fall into three broad types: *in situ* self-protection; flight from danger; and armed resistance. *In situ* self-protection involves measures to protect the community from direct attack and from the deprivation caused by violent conflict. Tactics include travelling only by particular routes or only at night, gathering in large groups for added protection or dispersing into smaller groups for concealment, spending time in different locales by tending farms during the day and

hiding in the surrounding countryside at night, concealing vulnerable groups or belongings at night, establishing “neighbourhood watch”-type systems to provide early warning of impending risk, and paying bribes (in cash, food or assets) to government agents, rebels or vigilante groups in return for protection.<sup>65</sup> Protection against deprivation is fostered through the development of “coping economies.”<sup>66</sup> Groups use their ever-decreasing asset base in whatever way they can to either survive or prop-up their declining standard of living. Where possible, they might engage in illegal production and smuggling to augment their income or pillage money, supplies and assets from neighbours, ethnic minorities, groups associated with the “enemy,” or international humanitarian agencies. Indeed, humanitarian workers tend to be targeted more by small armed groups looking for cash, supplies and assets than by larger armed groups, even in cases where these larger groups are responsible for most of the attacks on civilians.<sup>67</sup>

A second self-protection strategy is flight: leaving the area under threat. Decisions about flight are rarely arbitrary.<sup>68</sup> People typically flee to where they believe it will be safer, either because of familial or identity based relationships or the promise of assistance from national authorities or humanitarian agencies. Often, people flee several times in search of safety. Although flight in the face of imminent danger is a good means of physical protection in the short-term, as noted above, those who flee are often left relatively unprotected in the longer-term and much more vulnerable to threats associated with deprivation. Most of the world’s displaced are deprived the “essentials of life,” namely “shelter, food, medicine, education, community and a resource base for self-reliant livelihood.”<sup>69</sup> Indeed, mortality rates among IDPs are higher than among any other group, with the possible exception of those who stay behind.<sup>70</sup> Compounding the obvious humanitarian problems associated with displacement is the political problem that IDPs remain under the nominal authority of the government that has either directly threatened them or manifestly failed to protect them.<sup>71</sup> As we noted earlier, those authorities often deny humanitarian agencies the access they need to support displaced people, intensifying the challenge of operating in an insecure environment.

A third way in which local communities might respond to imminent threats is through violent resistance. One tactic is to send money, assets and recruits to major rebel groups. In 1998-99, for example, many Kosovar Albanians joined the Kosovo Liberation Army (KLA) simply as a way of protecting their properties and families.

People might also band together to establish community militia to protect themselves. An example of this was the various self-defense groups (*kamajors*) that emerged during the civil war in Sierra Leone.<sup>72</sup> But the phenomenon is more common than generally acknowledged. In Darfur, for example, one of the reasons for the apparent fragmenting of the rebel movement was the emergence of dozens of small armed organizations, many of which were groups of armed men formed to protect their community.

All these activities create additional risks. The decision to remain *in situ* in order to protect property and belongings leaves local communities exposed to potential attack, and the risks usually increase with time. While the various *in situ* coping strategies tend to produce better outcomes than flight, the longer a conflict persists the less feasible those strategies usually become as a community's asset base dwindles over time. Likewise, paying government agents, militia groups or vigilantes for protection might enhance physical protection in the short-term, but is likely to create further risks in the future. Payments encourage predatory behaviour on the part of established armed groups and create an incentive structure for the establishment of new groups. Moreover, insurance payments tie a local community to a particular armed faction and expose the civilian population to retribution and punishment from other armed groups. Similarly, other coping strategies such as engaging in illegal trade or using force to seize assets from other groups might buy a degree of short-term protection but inadvertently contribute to the further deterioration of security, exposing the community to potentially heightened risks further down the line. As noted above, flight is a particularly high-risk strategy. Although it may sometimes represent the only feasible form of physical protection, displaced people suffer heightened deprivation and the community risks losing most, if not all, of its assets, including its land. Finally, although armed resistance might provide a short-term palliative, it makes matters worse just as often as it helps. Sometimes, armed resistance provokes reprisals against civilians as in the case of Kosovo where the KLA's use of violence prompted the Serbian authorities to escalate from a strategy of political and civil rights violations to a campaign of ethnic cleansing.<sup>73</sup> In other circumstances, as in Darfur, self-defense groups become part of the problem. Less well equipped and funded than larger militia groups, self-defense groups use violence against civilians, aid agencies and sometimes peacekeepers to secure assets, money and weapons.<sup>74</sup> In short, therefore, flight, resistance and succumbing to extortion may

all buy a degree of short-term protection, but this protection is uncertain, incomplete, risky and might increase risks in the longer-term.

### *Humanitarian Agencies*

The traditional view of humanitarian agencies was that they could contribute to protection in three main ways: 1) they could deliver life-sustaining assistance; 2) they could use their influence to support individuals and groups within government that can promote respect for civilians; and 3) they could “bear witness” to crimes against civilians (the hope being that the prospect of NGOs reporting on the actions of perpetrators might affect the latter’s calculations).<sup>75</sup> Unfortunately, the evidence suggested that humanitarian presence tended to have only marginal impact on the protection of civilians, especially in frontline regions. In Darfur, for example, humanitarian presence did decrease the reported harassment of civilians and improved freedom of movement but these effects were most noticeable in areas not considered strategically important by the belligerents and only in the immediate vicinity of the respective agency’s offices. Elsewhere, presence had little bearing on the protection of civilians.<sup>76</sup>

More recently, it has been recognized that humanitarian agencies can add to their potential protection activities not least by discouraging local communities from adopting risky behaviour and improving local lines of communication and hence decision-making.<sup>77</sup> One recent report identified six strategies in particular that have been used by humanitarian agencies:

1. Use humanitarian assistance to reduce vulnerability by targeting aid at vulnerable groups or at groups that might cause harm to others as part of their coping strategies.
2. Help prevent displacement by providing secure access to land, helping communities to sustain themselves and reducing dependency on displacement camps.<sup>78</sup>
3. Reduce civilians’ exposure to threat, for example by supplying stoves that require less firewood thus reducing the need to leave the camps and villages to acquire fuel, providing paid work to reduce the need to adopt risky coping strategies, competition for resources and perceived incentives associated with joining armed groups, and designing camps to maximize safety by including fences and reducing exposure to vulnerable areas.

4. Place conditions on the delivery of assistance, for example by requiring that national authorities guarantee access and provide a safe and secure environment.
5. Help local communities to make better informed decisions about their own protection by providing accurate information about the presence of threats and location of assistance.<sup>79</sup>
6. Report abuses to stimulate responses from more appropriate actors such as states and international organizations.

Each of these activities carries the potential for backlash, especially when attempted in isolation, because humanitarian agencies rely on the consent and cooperation of local communities, armed groups and governments in environments where goodwill is in very short supply. Targeting resources at vulnerable populations without the armed protection of peacekeepers might make those groups more attractive targets to predatory armed groups; providing aid to those who might become threats to the civilian population risks encouraging and rewarding the abuse of civilians; although it is clearly preferential for individuals to remain in their homes, it is important to recognize that this is sometimes simply not possible and the strategy of preventing displacement is only viable in regions not directly affected by armed conflict; and finally, attaching conditions to aid only works if the government wants to reduce (or wants to be seen to be reducing) civilian suffering.<sup>80</sup>

### *Peacekeepers*

As noted above, most peace operations created after 1999 have included civilian protection mandates and since 2002 the UN's Standing Rules of Engagement for peace operations have authorized the use of force "to defend any civilian person who is in need of protection".<sup>81</sup> Typically, the protection of civilians by military peacekeepers involves one or both of two types of activity. The first involves the positioning of military forces between the civilian population and those that threaten them in order to deter and respond to attacks.<sup>82</sup> The second, less frequent type of activity involves measures designed to eliminate or restrict the activities of armed groups that threaten civilians.

In the first type, protection usually involves measures short of offensive force such as erecting military barriers around civilian populations, patrolling at-risk areas, and gradually reducing threats through negotiated disarmament.<sup>83</sup> Sometimes, even if

forces are not explicitly mandated or configured for civilian protection tasks, the areas in and around peacekeeping bases and offices get treated as de facto “safe havens” as civilians relocate there in search of protection.<sup>84</sup> Specific tasks given to peacekeepers include, discouraging the abuse of civilians and improving stability by patrolling, defending civilians under imminent threat, protecting civilians in transit and upon return to their homes, taking special measures to protect women and girls from sexual and gender-based violence, supporting institution-building in areas such as human rights and law enforcement, protecting and assisting humanitarian workers by defending their camps and convoys and securing access to needy populations, delivering humanitarian assistance, defending displacement and refugee camps from external attack and providing security inside camps, separating combatants from non-combatants in refugee camps, and defending “safe zones” for civilians.<sup>85</sup> Peacekeepers may use force more coercively to protect civilians by conducting rescue operations to free civilians kidnapped by criminal groups or repel attacks on the civilian population.<sup>86</sup>

The second type of military activity involves the use of force against the perpetrators of attacks on civilians in order to eliminate them, degrade their military capabilities or restrict their activities. These activities are much rarer than the first type. At the more limited end of the scale they may involve the apprehension of indicted war criminals by peacekeepers, as in the Balkans. At the other end of the scale, military peacekeepers may conduct campaigns to degrade the ability of certain groups to attack the civilian population.<sup>87</sup> For example, NATO responded to the August 1995 attack on the Sarajevo marketplace with *Operation Deliberate Force*, an air and artillery bombardment of Bosnian Serb forces aimed at eliminating their capacity to target Sarajevo’s civilians.<sup>88</sup> In 2000, British troops used force to eliminate a rebel group in Sierra Leone known as the “West Side Boys” that had attacked civilians, kidnapped and raped women and girls and seized British peacekeepers.<sup>89</sup> More recently, in 2005 MONUC forcibly disarmed groups in Ituri district and adopted a robust civilian protection posture in South Kivu, targeting Hutu *Forces Démocratiques de Libération du Rwanda* (FDLR) militia associated with the 1994 Rwandan genocide and subsequent abuse of civilians in the DRC. When the FDLR refused to cooperate, MONUC used helicopter gunships to destroy up to sixteen of its camps.<sup>90</sup>

Although some positive developments have occurred in the design and conduct of peace operations, many remain incapable of protecting civilians from attack. For example, in 2008/9 MONUC was unable to prevent a wave of violence against civilians sparked by a conflict between Laurent Nkunda's *Congrès national pour la défense du peuple* (CNDP) and the FDLR which displaced approximately 200,000 civilians. Shortly afterwards, because it was not deployed in the far north-east of the DRC and lacked the necessary resources, MONUC could not protect civilians from the Lord's Resistance Army (LRA) which conducted a series of massacres in north eastern DRC in response to a concerted military offensive against it by Uganda, the SPLA and the FARDC.<sup>91</sup> Peace operations in Afghanistan, Burundi, Côte d'Ivoire, Darfur, Sierra Leone, Somalia, and Sudan, amongst others, have confronted similar challenges and proven unable to protect civilians from attack. There are at least three reasons for this.

The first is the enduring gap between expectations and capabilities caused by a combination of demand-side and supply-side factors. On the demand side, states are typically reluctant to consent to the intervention of a large and well-equipped peacekeeping force unless they calculate that it is in their interests to do so, which is rare. On the supply-side, international society – and its wealthiest members especially – have grown increasingly reluctant to commit troops to civilian protection missions outside their areas of strategic interest.<sup>92</sup> As a result, most operations do not have the capabilities needed to provide comprehensive protection to civilian populations.<sup>93</sup> This is evident if we recall two rules of thumb commonly used to calculate the necessary force size for civilian protection operations.<sup>94</sup> The first is based on the assumption that 2-10 troops are required for every 1,000 inhabitants within the crisis zone. The second method is based on the protection force being at least the size of the largest indigenous armed force. On these indicators several peace operations remained significantly under-staffed (see table 1).

**Table 1: Ideal and Actual Size of Peace Operations with Civilian Protection Mandates<sup>95</sup>**

<i>Region</i>	<i>Local Population</i>	<i>Mission</i>	<i>Required Size: Method 1</i>	<i>Required Size: Method 2</i>	<i>Actual Size (Dec. 2008)</i>
Darfur, Sudan	c.6 million	UNAMID	12,000-60,000	40,000-45,000	15,130
South Sudan	c.8 million	UNMIS	16,000-80,000	40,000	10,025
North Kivu, DRC	c.5 million	MONUC	10,000-50,000	20,000	6,000

The result is that even relatively large peacekeeping missions are seldom able to provide protection throughout their area of operations. Consequently, military protection efforts usually focus on specific geographic areas, be they “safe havens/areas/zones,” “safe corridors” for transit, or undesignated areas close to the peacekeepers’ bases. The rationale for designating safe areas is that through the concentration of force, peacekeepers can carve out secure areas.<sup>96</sup> The problem with this approach is that it only protects those civilians that are able to make it into the safe zone, encourages displacement as civilians flee their homes for the safety of the safe zone, and facilitates the concentration of civilian populations making them more vulnerable to atrocities if the peacekeepers fail to defend the zone (as happened in Srebrenica in 1995). In addition, protecting civilians in one area leaves them vulnerable to violence elsewhere: by default, creating “safe zones” renders other areas “danger zones”.<sup>97</sup>

The second problem is that there is no clear doctrine to guide military forces in their civilian protection activities. The UN’s recent “principles and guidelines” document for peacekeeping operations identifies civilian protection as requiring “concerted and coordinated action among the military, police and civilian components” of a peace operation and that it “must be mainstreamed into the planning and conduct of [the UN’s] core activities.” Yet it did not spell out what protection entails or how it could be achieved.<sup>98</sup> Similarly, key states such as Canada, the United States, the UK, the Netherlands, France and India as well as organizations like

NATO, the EU, ECOWAS and the AU have also been slow to include specific guidelines on civilian protection in their military doctrines.<sup>99</sup> While their doctrine points to civilian protection as a possible role, none singles it out or elaborates on how military force should be used for protection purposes.<sup>100</sup> As such, civilian protection activities remain *ad hoc* and dependent on the initiative and ingenuity of individual commanders.<sup>101</sup> This poses a particular problem in multinational operations where national rotations and priorities make it difficult to establish or implement long-term strategies.

Third, it has proven difficult to eliminate threats to civilians entirely and using force against militia groups may make it harder to secure their cooperation in the future. Cases where peacekeepers succeed in eliminating threats are rare – the British assault on the West Side Boys in Sierra Leone and NATO’s strikes against the Bosnian Serbs provide the best examples but the former involved a small and politically insignificant militia group and the latter came in the context of wider military reverses on the ground. More often, armed groups are weakened but may regroup and return to attacks on civilians. Although it succeeded in weakening the FDLR and restricting its freedom of movement, MONUC neither destroyed the militia nor forced it to disarm.<sup>102</sup> The FDLR responded by negotiating an alliance with the DRC government, prompting the 2008 conflict with the CNDP which had devastating effects on the civilian population. The point here is that in most cases, military efforts by themselves are unlikely to eliminate threats to the civilian population.

### *International Judicial Institutions*

International judicial institutions such as the International Criminal Court (ICC), special tribunals such as those created for the former Yugoslavia and Rwanda, and hybrid national tribunals (e.g. in Sierra Leone and Cambodia) contribute to protection by holding some of the perpetrators of atrocities to account. Proponents argue that by ending impunity such institutions will help deter would-be perpetrators of atrocities and afford legal protection to the victims.<sup>103</sup>

The idea that some crimes are so heinous as to fall under universal jurisdiction is not new but efforts to internationalize and institutionalize individual criminal responsibility in the wake of the Nuremberg and Tokyo trials were stymied by political disputes. The first tentative steps were taken in the mid-1990s when the Security Council established *ad hoc* tribunals to prosecute the perpetrators of grave

crimes in Bosnia and Rwanda.<sup>104</sup> The Rome Statute establishing the ICC in 1998 held that the court's jurisdiction could be invoked when a state party proved unwilling or unable to investigate evidence pointing to the commission of widespread and systematic war crimes, crimes against humanity and genocide. The ICC prosecutor could initiate proceedings in cases where s/he was able to persuade a panel of judges that a case fell under the court's jurisdiction, where a complaint was made by a signatory state, or when a case was referred to the prosecutor by the Security Council. The Security Council also reserved the right to postpone investigations by one year. To date, the Security Council has referred the situation in Darfur to the ICC and the governments of the DRC, Uganda and the Central African Republic have requested that the ICC investigate and prosecute crimes committed in their countries. The court opened its first case in January 2009, against the Congolese militia leader Thomas Lubanga.

It is thus far too early to pronounce on the court's effectiveness or its potential to deter the commission of atrocities. Early anecdotal evidence from Darfur and Uganda, however, suggests that while the threat of prosecution is sometimes factored into perpetrators' calculations, it has failed to prevent the commission of crimes.<sup>105</sup> This brings us to an additional problem, which is that criminal proceedings might undermine political efforts to end crimes against civilians because the threat of future prosecution provides a disincentive for leaders to negotiate an end to violence, accept the deployment of peacekeepers or step down from power.<sup>106</sup> This issue has been widely debated in relation to the ICC's attempts to indict Sudan's President Bashir and the leader of Uganda's Lords Resistance Army, Joseph Kony.



## 7. Gaps and Tensions in the Protection Agenda

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Although recent decades have witnessed considerable activity directed towards the protection of civilians in war and significant progress has been made, especially in the humanitarian sector, important gaps and tensions remain.

The first, and arguably most significant, is the gap between *expectations and capabilities*. In short, across each actor type identified in the previous section there are profound gaps between what agents are expected to deliver (either by insiders or outsiders) and what they are capable of, or committed to, delivering. Thus: some states simply lack the capacity to protect their citizens, and many others lack the political will to do so; humanitarian agencies cannot sustain life in the face of immediate physical threats and find it difficult to deliver aid effectively in insecure environments; although military peacekeepers have the theoretical capacity to provide physical security more often than not they are deployed without the numbers, equipment or expertise necessary to complete a civilian protection mandate; and while IHL promises an end to impunity it lacks the judicial authority or policing capacity to deliver protection on the ground. In these four instances, expectations about what ought to happen do not match reality. In some cases, this may be because those expectations are unrealistic. As MSF has repeatedly argued, it is a mistake to think that humanitarian agencies are able to protect civilians from direct harm. But in other cases, the gap is a product of choice prompted by countervailing interests. The clearest example here is the peacekeeping gap. The principal reason for the gap between the number of peacekeepers needed to protect civilians and the number deployed is international society's inability to muster sufficient political will.

Even if sufficient resources were found to close the expectations-capabilities gap, lack of *operational guidance* for the UN and regional organizations would remain a problem. Put simply, while there has been an outpouring of guidance for humanitarian NGOs, the proliferation of civilian protection mandates has not been met with a similar proliferation of guidance about how to “do” civilian protection in the field. This problem is most acute in relation to the role of host states and

peacekeepers but it is also apparent in relation to the way that humanitarian agencies provide protection and in the absence of guidance on how local communities might better protect themselves. In relation to peacekeepers, although the Security Council has increased the frequency of its civilian protection mandates it has not issued clear guidance as to what this entails. This includes a failure to clarify the meaning of caveats referring to the mission's "areas of deployment," "capabilities" and the need to protect civilians "without prejudice to the responsibility" of the host country.<sup>107</sup> In the absence of clear guidance, actors are left to make decisions on an *ad hoc* basis, without the benefits of past lessons learned and best practices.

A third problem is the lack of coherence and effective coordination.<sup>108</sup> Although civil-military coordination in complex emergencies has been significantly strengthened in the past two decades, the preceding analysis identified a number of areas in which protection activity in one area might negatively impact upon activities in another. For example, there is the potential that political efforts to persuade the government to fulfill its obligations might impair humanitarian work by casting doubt on its impartiality. This fate befell the UN's Humanitarian Coordinator in Darfur, Jan Pronk, when he publicized his concerns about the government of Sudan's failure to comply with its obligations towards its civilian population and used public diplomacy to persuade the government to change course. In response, the government of Sudan accused Pronk of politicizing aid and deported him.<sup>109</sup> Likewise, the controversies surrounding the indictment of Joseph Kony and Omar al-Bashir by the ICC, points to the potential for the judicial arm of the civilian protection agenda to undermine political efforts to bring the targeting of civilians to an end. Similarly, where NGOs and peacekeepers coordinate their activities and – for instance – peacekeepers protect aid workers, perceptions of humanitarian neutrality may be diminished. Although no direct evidence has yet been presented to support this claim, it is commonplace for analysts to argue that closer ties between aid agencies and military forces places the former at greater risk by undermining the protection afforded to them by neutrality.<sup>110</sup> Finally, there is potential for incoherence between agents who might be encouraging or discouraging flight. We noted earlier that when peacekeepers are deployed they tend to create explicit or de facto "safe zones," which encourage flight. This might undermine the efforts of local communities and aid agencies to remain *in situ*.

This brings us to a fourth problem: the tensions between *self-protection activities and external agendas*. Because, to date, relatively little attention has been

paid to the steps that communities take to protect themselves, not only are external efforts not calibrated to complement local efforts but certain types of activities might actually impede local protection efforts. On the one hand, it is important to recognize that external agents alter the calculations of local actors. For example, the establishment of military camps, feeding depots and medical centers might encourage displacement and undermine local coping strategies. Promises of protection might encourage local actors to engage in risky behavior, be it resistance, flight, or refusing to flee imminent danger because of the promise of external protection. Arms embargoes designed to protect civilians might have a disproportionate impact on the ability of self-defense groups to acquire arms whilst support for rebel groups may be counter-productive to protection. Also, failure to satisfy needs and replenish assets may lead communities into taking more desperate measures.

Finally, there is a tension between the *primary responsibility of the state and the way protection is commonly conceived and pursued*. It is widely acknowledged that the consent and cooperation of the host state is a vital determinant of protection. Indeed, even when peacekeepers are deployed with a Chapter VII mandate to protect civilians, the host state can make protection much easier by cooperating or much harder by not doing so. It is also worth recalling that the vast majority of UN peace operations with civilian protection mandates are deployed to *support* the host state.<sup>111</sup> Yet, one of the least well understood elements of the RtoP principle is the question of what states need to do to exercise their responsibility to protect their populations. Beyond the study of sanctions – which evidence suggests can often be counterproductive – we have little idea about the strategies needed to persuade states to fulfill their responsibility to protect civilians.<sup>112</sup> More research is needed to understand which agents should be responsible for this effort, how it might impact on humanitarian neutrality, the potential effect of ICC investigations and indictments, and which tactics have proven effective in persuading states to cooperate when external assistance is needed.

Together, these problems have left the protection agenda somewhat limited and contradictory in certain respects. In the final section we identify some areas which need much greater research and attention if these problems are to be overcome.



## 8. Advancing the Civilian Protection Agenda

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Our suggested protection agenda rests on the three pillars of physical protection from immediate harm; the provision of vital needs; and the freedom to exercise fundamental human rights. Implementing such a broad agenda clearly requires a multidimensional approach involving a wide range of actors, many of whom have very different goals, interests and worldviews. While a subject as politically sensitive as civilian protection is unlikely to produce anything approaching universal consensus – and it is certainly not our intention to argue that any single actor should assume responsibility for the totality of the agenda – it is important to address some of the major deficiencies of current thinking and practice. Instead of a conclusion, we propose three areas that require much greater attention if civilian protection is to be made more effective.

### *Enhance State Capacity*

Fundamentally, the long-term solution to the protection problem revolves in large part around the conundrum of how to build political communities (probably states) that are both willing and able to protect all their citizens from atrocity. After war, this agenda inevitably raises several difficult dilemmas relating to legitimacy, security, political economy, autonomy and coordination.<sup>113</sup> At other times, the trick will be to incentivize governments to protect their populations. In general, we suggest that it is crucial to enhance state capacities in three broad areas. First, the country's security forces (military, police, and intelligence) need to be professionalized and brought under civilian control.<sup>114</sup> Of course, once a crisis has broken, security sector reform programmes will not provide instant solutions to the problems of predatory soldiers and dysfunctional security organizations. In the longer-term, however, such programmes are a necessary part of the protection agenda. Second, policies need to strengthen the rule of law by building effective policing and judicial systems. Where appropriate, national efforts can draw support from international institutions such as Interpol or the ICC to help end the culture of impunity for perpetrators of atrocities.

The third area concerns systems of state governance and the questions of who rules and how? In the long-term, incentives need to be created to encourage systems of governance “by and for the people,” and which establish checks and balances upon executive power in order to promote respect for the rights of individuals and minorities. A reasonable place to start is to engineer structures of governance that stress republicanism’s emphasis on deliberation, representation and constitutionalism.<sup>115</sup>

### *Enhance the Resilience of Local Communities*

Until states prove both willing and able to protect their civilians, more action needs to be taken to strengthen the resilience of local communities at risk of severe harm. As an initial step, this will require investigation into what factors are most associated with episodes of severe political instability and what factors can stabilize region’s on the brink of crises.<sup>116</sup> Naturally, the enduring strength of sovereignty and the non-interference norm will make it particularly difficult to take action in precisely those communities most at risk from their own governments. But such difficulties do not warrant abandoning the objective of enhancing community resilience. In order for this to happen, outsiders need a better understanding of local coping strategies and how communities manage various kinds of crises from famine to physical assaults. Then these activities need to be supported. Ideally, understanding can be built through dialogue and protracted engagement with communities and mapping techniques can be used to build a clear picture of the sources of protection in given regions. In the midst of an emergency, however, there is neither the time nor capacity to conduct these types of activities to the extent needed. In the immediate onset of crises, greater emphasis must go towards limiting displacement not least through attempts to keep local coping economies functioning and ensuring humanitarian access to as much of the at-risk population as possible. In dire circumstances where atrocities are already being committed, external actors may need to think more carefully about how to collaborate with local armed resistance groups, as well as trying to prevent these groups transforming from “protectors” into “predators”.<sup>117</sup> Of course, knowing which armed groups to support and which to undermine will always be incredibly difficult and subject to contestation but future collaborative choices will be made easier if more research can shed light on why certain armed groups engage in predatory behaviour.

### *Strengthen Peace Operations*<sup>118</sup>

When states and various local community groups fail to protect civilians, external parties should assume a greater burden of the responsibility. As the most significant form of such external engagement, peace operations need to be better prepared to carry out or facilitate protection activities across the three pillars discussed above. In general terms, this will mean enhancing the level of (human, financial, and material) resources available to peacekeepers. This brings us to the question of how to encourage troop contributing countries to commit the necessary resources to peace operations in an era of declining commitment on the part of the West.<sup>119</sup> One key to recalibrating national interests may be stress the link between strategic interests, the protection of civilians, and the effectiveness of peace operations. Other components of strengthening peace operations include developing relevant doctrine for the military and policing tasks associated with civilian protection, and preparing peacekeepers for the considerable challenges ahead by investing in rigorous training programs both well before and after their deployment.<sup>120</sup> On the other hand, as peace operations will increasingly be judged on how they perform with regard to civilian protection, peacekeepers who abuse their position and inflict harm upon locals must be publicly punished.

When thinking about how to protect civilians in uncivil wars it would therefore make more sense for political leaders to stop repeating the discredited cliché of “never again” and instead start investing serious resources into figuring out “who’s next?” and how they might be protected.



## 9. References

<sup>1</sup> Although precise figures are impossible to ascertain, one study of nine conflicts in sub-Saharan Africa put the average proportion of civilian casualties as between 87 and 92 percent of the total number of casualties. Bethany Lacina and Nils Petter Gleditsch, 'Monitoring Trends in Global Combat: A New Dataset of Battle Deaths', *European Journal of Population*, Vol.21, Nos.2-3 (2005), pp.145-166.

<sup>2</sup> For every direct civilian death caused by war an estimated 4-10 additional people suffer indirect deaths. See Human Security Centre, *Human Security Report 2005* (Oxford: Oxford University Press, 2005), pp.127-134.

<sup>3</sup> See the moral and political commitments to protect human rights set out in, among other places, the UN Charter (1945), the Universal Declaration of Human Rights (1948), the UN General Assembly's World Summit Outcome Document (2005) and a variety of recent UN Security Council resolutions.

<sup>4</sup> The key documents here are the Convention on the Prevention and Punishment of the Crime of Genocide (1948) and the Rome Statute (1998) as well as a variety of UN Security Council resolutions.

<sup>5</sup> In 2000, the UN Panel on Peace Operations – the so-called Brahimi Report – insisted that 'peacekeepers – troops or police – who witness violence against civilians should be presumed to be authorized to stop it, within their means, in support of basic United Nations principles.' *Report of the Panel on UN Peace Operations* (New York: UN doc. A/55/305-S/2000/809, 2000), p.x.

<sup>6</sup> David Reiff, *A Bed for the Night* (New York: Simon & Schuster, 1993), p.70.

<sup>7</sup> Victoria K. Holt and Joshua G. Smith, *Halting Widespread or Systematic Attacks on Civilians* (Washington DC: Henry L. Stimson Center, 2008), p.40.

<sup>8</sup> ICRC, *Enhancing Protection for Civilians in Armed Conflict and Other Situations of Violence* (Geneva: ICRC, September 2008), p.15.

<sup>9</sup> For an alternative characterization of "seven spheres" of civilian suffering see Hugo Slim, *Killing Civilians: Method, Madness and Morality in War* (New York: Columbia University Press, 2008), p.39.

<sup>10</sup> This underlines the importance of attempts to professionalize Africa's military forces called for by Herbert Howe in *Ambiguous Order: Military Forces in African States* (Boulder, CO: Lynne Rienner, 2001).

<sup>11</sup> On the ways in which some of these non-state actors can be harnessed to state agendas see John Mueller, 'The Banality of Ethnic War', *International Security*, Vol.25, No.1 (2000), pp.42-70.

<sup>12</sup> Examples might include the White Army in southern Sudan or the *kamajors* in Sierra Leone.

<sup>13</sup> See, for example, Karen J. Greenberg and Joshua L. Dratel (eds.), *The Torture Papers* (Cambridge: Cambridge University Press, 2005); Sandra Whitworth, *Men, Militarism and UN Peacekeeping* (Boulder, CO: Lynne Rienner, 2004); Peter Andreas, *Blue Helmets and Black Markets* (Ithaca, NY: Cornell University Press, 2008).

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<sup>14</sup> See Slim, *Killing Civilians*, Alexander B. Downes, *Targeting Civilians in War* (Ithaca, NY: Cornell University Press, 2008); Stathis N. Kalyvas, *The Logic of Violence in Civil War* (Cambridge: Cambridge University Press, 2006).

<sup>15</sup> Slim, *Killing Civilians*, pp.1, 179; Downes, *Targeting Civilians*, p.121.

<sup>16</sup> Gregory Stanton, 'Could the Rwandan Genocide have been Prevented?', *Journal of Genocide Research*, Vol.6, No.2 (2004), p.216.

<sup>17</sup> As identified by Downes, *Targeting Civilians in War*; Kalyvas, *The Logic of Violence in Civil War* and Benjamin Valentino, *Final Solutions: Mass Killing and Genocides in the Twentieth Century* (Ithaca: Cornell University Press, 2005).

<sup>18</sup> One documented case of this is the war in Darfur, when the Government of Sudan created a culture of impunity as payment for *janjawiid* assistance. See Julie Flint, testimony before the US Senate Foreign Relations Committee, 15 June 2004, available at [http://www.globalsecurity.org/military/library/congress/2004\\_hr/040615-flint.pdf](http://www.globalsecurity.org/military/library/congress/2004_hr/040615-flint.pdf).

<sup>19</sup> The General Orders No. 100 are reproduced in full and discussed in Richard Shelly Hartigan, *Lieber's Code and the Law of War* (Chicago: Precedent, 1983). On Dunant and the Red Cross see Forsythe, *The Humanitarians* (Cambridge: Cambridge University Press, 2005) and Caroline Moorhead, *Dunant's Dream: War, Switzerland and the History of the Red Cross* (New York: Carroll and Graf Publishers, 1998).

<sup>20</sup> See A. V. Freeman, 'War Crimes by Enemy Nationals Administering Justice in Occupied Territory', *American Journal of International Law*, Vol.41, No.3 (1947), p.581 and O. Durr, 'Humanitarian Law of Armed Conflict: Problems of Applicability', *Journal of Peace Research*, Vol.24, No.3 (1987), p.268.

<sup>21</sup> L. Doswald-Beck, 'The Civilian in the Crossfire', *Journal of Peace Research*, Vol.24, No.3 (1987), p.253.

<sup>22</sup> Forsythe, *The Humanitarians*, p.168 and Jean-Francois Quéguiner, 'Precautions Under the Law Governing the Conduct of Hostilities', *International Review of the Red Cross*, Vol.88, Issue 864 (2006), pp.793-821.

<sup>23</sup> S. O'Callaghan and S. Pantuliano, *Protective Action: Incorporating Civilian Protection in Humanitarian Response* (Overseas Development Institute, Humanitarian Policy Group, Report, 26 December 2007), p.10.

<sup>24</sup> Mark Duffield, 'NGO Relief in War Zones: Towards an Analysis of the New Aid Paradigm', *Third World Quarterly*, Vol.18, No.3 (1997), pp.527-542.

<sup>25</sup> See O'Callaghan and Pantuliano, *Protective Action*, p.13; Oxfam International, *Beyond the Headlines: An Agenda for Action to Protect Civilians in Neglected Conflicts* (Oxford: Oxfam GB for Oxfam International, 2003); Hastie et al, *Protection: Mainstreamed, Integrated or 'Stand Alone' Programmes?* (Oxford: Oxfam Discussion Paper, 2007); Paul Collier, *The Bottom Billion* (Oxford: Oxford University Press, 2008).

<sup>26</sup> Recent examples are Deborah Mancini-Griffoli and Andre Picot, *Humanitarian Negotiation; A Handbook for Securing Access, Assistance and Protection for Civilians in Armed Conflict* (Geneva: Centre for Humanitarian Dialogue, 2004); Hugo Slim and Andrew Bonwick, *Protection: An ALNAP Guide for Humanitarian Agencies* (London: ALNAP/Overseas Development Institute, 2005),

Liam Mahoney, *Proactive Presence: Field Strategies for Civilian Protection* (Geneva: Centre for Humanitarian Dialogue, 2006). Others are in development.

<sup>27</sup> These, and other, criticisms are aired in F. Fox, 'New Humanitarianism: Does it Provide a Moral Banner for the 21<sup>st</sup> Century?', *Disasters*, Vol.25, No.4 (2001), pp.275-89; Rieff, *A Bed for the Night*, Fiona Terry, *Condemned to Repeat? The*

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*Paradoxes of Humanitarian Aid* (Ithaca, NY: Cornell University Press, 2002). On MSF's position see O'Callaghan and Pantuliano, *Protective Action*, p.8 and OCHA, *Special Report: Civilian Protection in Armed Conflict* (New York, OCHA Integrated Regional Information Network, 2003).

<sup>28</sup> At Canada's request, the Council adopted a presidential statement calling for the Secretary-General to submit periodic reports on how the UN might improve the protection of civilians. See UN doc. S/1998/318, 13 April 1998. For an overview see Security Council Report, *Protection of Civilians* (Cross-Cutting Report No. 2, 14 October 2008).

<sup>29</sup> The resolution enjoyed broad support within the Council and the wider membership, which was invited to participate in the dialogue. UN doc. S/PV.4046, 16 September 1999. However, there were some notable exceptions. India and Egypt, for example, expressed scepticism about the Secretary-General's approach. See S/PV.4046 (resumption 1), 17 September 1999.

<sup>30</sup> OCHA, *Aide-Memoire for the Consideration of Issues Pertaining to the Protection of Civilians* (New York, OCHA Policy Development and Studies Branch, 2004); and Mark Bowden, 'The Protection of Civilians' in B. G. Ramcharan (ed.), *Human Rights Protection in the Field*, special issue of *International Studies in Human Rights*, 87 (2006), p.61. OCHA proposed a revised version in early 2009, which was welcomed by the Security Council, S/PV.6066, 14 January 2009.

<sup>31</sup> Ban Ki-moon, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, UN doc. S/2007/643, 28 October 2007. For the Council's reaction see UN doc. S/PV.5781, 20 November 2007.

<sup>32</sup> See K. Månsson, 'Use of Force and Civilian Protection: Peace Operations in the Congo', *International Peacekeeping*, Vol.12, No.4 (2005), pp.503-519 and K. Månsson, 'Integration of Human Rights in Peace Operations: Is There an Ideal Model?', *International Peacekeeping*, Vol.13, No.4 (2006), pp.547-563.

<sup>33</sup> Brahimi Report, p.x.

<sup>34</sup> For details see Victoria K. Holt and Tobias C. Berkman, *The Impossible Mandate? Military Preparedness, The Responsibility to Protect and Modern Peace Operations* (Washington, DC: The Henry L. Stimson Center, 2006).

<sup>35</sup> S. Neil McFarlane and Yuen Foong Khong, *Human Security and the UN* (Bloomington: Indiana University Press, 2006), p.183.

<sup>36</sup> See Walter A. Kemp, *The OSCE in a New Context* (London: Royal Institute of International Affairs, 1996).

<sup>37</sup> Macfarlane and Khong, *Human Security*, p.174.

<sup>38</sup> Richard Gowan and Ian Johnstone, *New Challenges for Peacekeeping* (New York: International Peace Academy Working Paper series, March 2007) and Paul D. Williams, 'From Non-Intervention to Non-Indifference: The Origins and Development of the African Union's Security Culture', *African Affairs*, Vol.106, Issue 423 (2007), pp.253-79.

<sup>39</sup> For more details see Alex J. Bellamy, *Responsibility to Protect* (Cambridge: Polity, 2009); Gareth Evans, *The Responsibility to Protect* (Washington DC: Brookings Institution, 2008).

<sup>40</sup> Ban Ki-moon, 'On Responsible Sovereignty: International Cooperation for a Changed World', speech, Berlin, SG/SM/11701, 15 July 2008.

<sup>41</sup> Ban Ki-moon, 'Annual Address to the General Assembly', 25 September, SG/SM/11182, 25 September 2007.

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<sup>42</sup> Andrew Bonwick, 'Who Really Protects Civilians?', *Development in Practice*, Vol.16, Nos.3/4 (2006), p.274.

<sup>43</sup> Holt and Berkman, *The Impossible Mandate?*, pp.37-42.

<sup>44</sup> See Lacina and Gleditsch, 'Monitoring Trends in Global Combat'. On the heightened risks caused by displacement see Roberta Cohen and Francis M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington DC: Brookings Institution, 1998).

<sup>45</sup> Oxfam, *Beyond the Headlines*, p.6.

<sup>46</sup> Oxfam, *Beyond the Headlines*, pp.16-17.

<sup>47</sup> S. Giossi Caverzasio, (ed.), *Strengthening Protection in War: A Search for Professional Standards* (Geneva: ICRC, 2001), p.19. This definition was also adopted by the UN's Inter-Agency Standing Committee (IASC) which comprises all the UN's major agencies and offices Inter-Agency Standing Committee, *Protection of Internally Displaced Persons: Inter-Agency Standing Committee Policy Paper Series*, No. 2 (New York: United Nations, 2000), p.4.

<sup>48</sup> Bonwick, 'Who Really Protects Civilians?', p.271.

<sup>49</sup> See Thomas Hobbes, *Leviathan* (Oxford: Oxford University Press, 1998), p.111; Michael W. Doyle, *Ways of War and Peace* (New York: Norton, 1997), pp.214-8.

<sup>50</sup> See Slim and Bonswick, *Protection*, pp. 27-8.

<sup>51</sup> China acquiesced in the US-led intervention in Somalia in late 1992 on the grounds that because no central government existed, Somalia was no longer sovereign and therefore intervention could not be a violation of a sovereign's right to non-interference. See Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), p.186.

<sup>52</sup> Kofi Annan, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN doc. S/2004/616, 23 August 2004 and Chandra Lekha Sriram, 'Prevention and the Rule of Law: Rhetoric and Reality' in Angnes Hurwitz with Reyko Huang (eds.), *Civil War and the Rule of Law* (Boulder: Lynne Rienner, 2008), pp.80-82.

<sup>53</sup> See Kurt Jonassohn with Kain Solveig Björnson, *Genocide and Gross Human Rights Violations in Comparative Perspective* (New Brunswick, NJ: Transaction Publishers, 1998), p.44; David Keen, *The Benefits of Famine* (Princeton, N.J.: Princeton University Press, 1994).

<sup>54</sup> The former include the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Geneva Conventions (I-IV), the 1977 Geneva Protocols (I-II), 1980 Convention on the Prohibitions or Restrictions on the Use of Certain Conventional Weapons and additional protocols (I-IV), 1997 Ottawa Convention on the Prohibition, Use, Stockpiling, Production and Transfer of Anti-Personnel Landmines, and the 2008 Convention on certain Cluster Munitions. The nine core human rights treaties are: International Convention on the Elimination of All Racial Discrimination; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination Against Women; Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; International Convention for the Protection of All Persons from Enforced Disappearance, Convention on the Rights of Persons with Disabilities. On the guiding principles see Roberta Cohen, 'Developing an

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International System for Internally Displaced Persons', *International Studies Perspectives*, Vol.7, No.2 (2006) pp.81-101.

<sup>55</sup> The National Human Rights Institutions Forum estimated that 117 of the world's States had some form of institution on 6 January 2009.

<sup>56</sup> National Human Rights Institutions should be compatible with the 1993 Paris Principles, which reflect a global consensus on the appropriate role and characteristics of national human rights institutions. The Paris Principles were set out at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in 1991 and relate to the functioning of national institutions. They were subsequently adopted by the UN Human Rights Commission (Resolution 1992/54, 1992) and by the General Assembly (Resolution 48/134, 1993).

<sup>57</sup> The Genocide Prevention Task Force (GPTF) provides a useful summary of the cooperative and coercive tools states can use to secure compliance. See GPTF, *Preventing Genocide: A Blueprint for US Policymakers* (Washington, DC: US Institute for Peace, 2008), p.61.

<sup>58</sup> Roberta Cohen, 'How Kofi Annan Rescued Kenya', *The New York Review of Books*, Vol.55, No.13, 14 August 2008.

<sup>59</sup> Jurgen Haacke, 'Myanmar, the Responsibility to Protect, and the Need for Practical Assistance', *Global Responsibility to Protect*, Vol.1, No.2 (2009); Asia-Pacific Centre for the Responsibility to Protect, *Cyclone Nargis and the Responsibility to Protect* (2008), at [http://www.r2pasiapacific.org/documents/Burma\\_Brief2.pdf](http://www.r2pasiapacific.org/documents/Burma_Brief2.pdf)

<sup>60</sup> See Robert J. Art and Patrick M. Cronin (eds.), *The United States and Coercive Diplomacy* (Washington DC: USIP Press, 2003) and David Cortright and George A. Lopez, *Sanctions and the Search for Security* (Boulder, CO: Lynne Rienner, 2002).

<sup>61</sup> Bonwick, 'Who Really Protects Civilians?', p.274; Slim and Eguren, *Humanitarian Protection*.

<sup>62</sup> Bonwick, 'Who Really Protects Civilians?', p.274.

<sup>63</sup> For example, at the beginning of the Darfur emergency in 2003 there were very few agencies present in either Darfur or in Chad and no peacekeepers or military observers. It was not until May 2004 – approximately eighteen months after the killing and displacement began – that international agencies began arriving in the region in significant numbers. See David Keen, *Complex Emergencies* (Cambridge: Polity, 2008), p.146.

<sup>64</sup> O'Callaghan and Pantuliano, *Protective Action*, p.4.

<sup>65</sup> Bonwick, 'Who Really Protects Civilians?', p.274; O'Callaghan and Pantuliano, *Protective Action*, p.4; C. Dolan and L. Hovil, *Humanitarian Protection in Uganda: A Trojan Horse?* (London: HPG Background Paper for the Overseas Development Institute, 2006), p.5.

<sup>66</sup> Michael Pugh and Neil Cooper, *War Economies in a Regional Context* (Boulder, CO: Lynne Rienner, 2004), p.9.

<sup>67</sup> *Ibid*, pp.17-40.

<sup>68</sup> O'Callaghan and Pantuliano, *Protective Agenda*, p.4.

<sup>69</sup> Francis M. Deng, 'Divided Nations: The Paradox of National Protection', *The Annals of the American Academy of Political and Social Science*, Vol.603 (2006), p.218.

<sup>70</sup> Cohen and Deng, *Masses in Flight*, p.227.

<sup>71</sup> Deng, 'Divided Nations', p.218. Nor are refugees always in a much better position, see K. Morjane, 'The Protection of Refugee and Displaced Persons' in B. G.

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Ramcharan (ed.), *Human Rights Protection in the Field*, special issue of *International Studies in Human Rights*, Vol.87 (2006), p.79.

<sup>72</sup> See Paul Richards, *Fighting for the Rain Forest: War, Youth and Resources in Sierra Leone* (Oxford: James Currey, 1996), pp.152-4

<sup>73</sup> See Alan J. Kuperman, 'Humanitarian Hazard: Revising the Doctrine of Intervention', *Harvard International Review*, Vol.26, No.1 (2004), pp.64-8 and Alan J. Kuperman, 'The Moral Hazard of Humanitarian Intervention: Lessons from the Balkans', *International Studies Quarterly*, Vol.52, No.1 (2008), pp.49-80.

<sup>74</sup> It seems that the 2007 attack on AMIS forces in Haskanita was primarily motivated by a desire for equipment, following government attacks that left the rebels depleted. See Julie Flint and Alex de Waal, *Darfur: A New History of a Long War* (London: Zed Books, 2008), pp.262-67.

<sup>75</sup> See L. Mahoney, *Proactive Presence: Field Strategies for Civilian Protection* (Geneva: Centre for Humanitarian Dialogue, 2006), pp.14-27; ICRC, *Enhancing Protection*, p.27. As discussed below, the potential role of judicial organizations depends in large part upon such witness testimony to provide the evidentiary basis for future prosecutions. See Mahoney, *Proactive Presence*, p.13.

<sup>76</sup> Bonwick, 'Who Really Protects Civilians?', p.276.

<sup>77</sup> The following six points are set out in O'Callaghan and Pantuliano, *Protective Agenda*, pp.34-8.

<sup>78</sup> ICRC, *Annual Report: Sudan* (Geneva: ICRC, 2005), pp.116-7.

<sup>79</sup> Slim and Bonwick, *Protection*, pp.95-6 and O'Callaghan and Pantuliano, *Protective Agenda*, p.35.

<sup>80</sup> N. Leader, *The Politics of Principle: The Principles of Humanitarian Action in Practice* (London: HPG Report 2 for the Overseas Development Institute, 2000), p.47.

<sup>81</sup> These are not a matter of public record but are cited in D. S. Blocq, 'The Fog of UN Peacekeeping: Ethical Issues Regarding the Use of Force to Protect Civilians in UN Operations', *Journal of Military Ethics*, Vol.5, No.3 (2006), p.205.

<sup>82</sup> Thomas G. Weiss, 'The Humanitarian Impulse' in David M. Malone (ed.), *The UN Security Council* (Boulder, CO: Lynne Rienner, 2004), p.48.

<sup>83</sup> Holt and Berkman, *The Impossible Mandate?*, p.52.

<sup>84</sup> For example, when a Uruguayan MONUC battalion entered Bunia in eastern DRC in 2003, thousands of civilians sought shelter near its bases despite the fact that the battalion was neither configured nor mandated for civilian protection duties. DPKO (2004), *Operation Artemis: The Lessons of the Interim Emergency Multinational Force* (Peacekeeping Best Practices Unit, Military Division, October 2004), p.7.

<sup>85</sup> This list draws on three Reports of the UN Secretary-General on the Protection of Civilians in Armed Conflict: UN docs S/1999/957, 8 September 1999; S/2004/431, 28 May, 2004; S/2005/740, 28 November 2005. A more detailed list was articulated by Holt and Berkman on the basis of consultations with military leaders. See Holt and Berkman, *The Impossible Mandate?*, p.46.

<sup>86</sup> For example, in October 2008 MONUC used helicopter gunships to halt the advance of Laurent Nkunda's CNDP forces towards the major centre of civilian population at Goma, some thirty miles north at Kimbumba. See UN Radio, 'MONUC Battles Rebel Fighters in Eastern DRC', 28 October 2008 and Michelle Faul, 'UN Attacks Rebels to Protect Civilians in Congo', *Associated Press*, 27 October 2008.

<sup>87</sup> See GPTF, *Preventing Genocide*, p.83, table 3.

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- <sup>88</sup> The objective of *Operation Deliberate Force* was ‘to reduce the threat to the Sarajevo safe area and to deter further attacks there or on any other safe area’. See Henning-A. Frantzen, *NATO and Peace Support Operations 1991-1999* (London: Frank Cass, 2005), p.66.
- <sup>89</sup> See Richard Connaughton, “Operation Barass,” *Small Wars and Insurgencies*, Vol.12, No.2 (Summer 2001), pp.110–119.
- <sup>90</sup> Holt and Berkman, *The Impossible Mandate?*, p.165.
- <sup>91</sup> Thanks to William Durch for this point.
- <sup>92</sup> Alex J. Bellamy and Paul D. Williams, ‘The West and Contemporary Peace Operations’, *Journal of Peace Research*, Vol.46, No.1 (2009), pp.39-57.
- <sup>93</sup> Thus, between 2000 and 2004, the UN Secretary-General advised against the adoption of protection as a core role for MONUC, even after it had been mandated by the Security Council, on the grounds that the mission lacked the necessary resources. See Månsson, ‘Use of Force and Civilian Protection’, pp.507, 512.
- <sup>94</sup> Michael O’Hanlon and Peter W. Singer, ‘The Humanitarian Transformation: Expanding Global Intervention Capacity’, *Survival*, Vol.46, No.1 (2004), p.97, n.7.
- <sup>95</sup> Sources: ‘Report of the International Commission of Inquiry on Darfur to the UN Secretary-General: Pursuant to Security Council resolution 1564, 18 September 2004’, Geneva, 25 January 2005, p.27, para.78; Amnesty International, *Democratic Republic of Congo: Crisis in North Kivu* (21 Nov. 2008), at <http://www.amnesty.org/en/library/info/AFR62/014/2008/en>.
- <sup>96</sup> Mary Kaldor, *New and Old Wars* (Cambridge: Polity, 1999), p.125.
- <sup>97</sup> Ian Johnstone, ‘Dilemmas of Robust Peace Operations’, in *Annual Review of Global Peace Operations 2006* (Boulder, CO: Lynne Rienner, 2006), p.7.
- <sup>98</sup> UN DPKO, *UN Peacekeeping Operations: Principles and Guidelines* (New York: UN, 2008), p.24.
- <sup>99</sup> Arguably the most advanced attempt to develop military planning tools to respond effectively to mass atrocities is the Mass Atrocity Response Operations (MARO) Project run out of Harvard University with the collaboration of the US Army’s Peacekeeping and Stability Operations Institute. See <http://www.hks.harvard.edu/cchrp/maro/index.php>
- <sup>100</sup> Holt and Berkman, *The Impossible Mandate?*, pp.114-28.
- <sup>101</sup> Holt and Smith, *Halting Widespread or Systematic Attacks on Civilians*.
- <sup>102</sup> Holt and Berkman, *The Impossible Mandate?*, pp.166-7.
- <sup>103</sup> William Schabas, *An Introduction to the International Criminal Court* (Cambridge: Cambridge University Press, 2008), p.57.
- <sup>104</sup> Gary J. Bass, *Stay the Hand of Vengeance* (Princeton, NJ: Princeton University Press, 2000), p.221 and Richard J. Goldstone, *For Humanity: Reflections of a War Crimes Investigator* (New Haven: Yale University Press, 2000).
- <sup>105</sup> See Flint and de Waal, *Darfur*, pp.241, 257, 262 and Jan Egeland, *A Billion Lives: An Eyewitness Report from the Frontlines of Humanity* (New York: Simon and Schuster, 2008), pp.197-214.
- <sup>106</sup> See J. Snyder and L. Vinjanmuri, ‘Trials and Errors: Principle and Pragmatism in Strategies of International Justice’, *International Security*, Vol.28, No.3 (2003-04), pp.5-44; Daniel Sutter, ‘The Deterrent Effects of the International Criminal Court’, *New Political Economy*, Vol.23, No.1 (2006), pp.9-24.
- <sup>107</sup> Holt and Smith, *Halting Attacks on Civilians*, p.11.

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- <sup>108</sup> For a relevant discussion see Roland Paris, 'Understanding the "coordination problem" in postwar statebuilding' in Roland Paris and Timothy Sisk (eds.), *The Dilemmas of Statebuilding* (London: Routledge, 2008), pp.53-78.
- <sup>109</sup> Mohammed Ali Saeed, 'UN Envoy accused of Waging War in Sudan', *Mail & Guardian* (Johannesburg), 20 October 2006.
- <sup>110</sup> See Sarah Kenyon Lischer, 'Military Intervention and the Humanitarian "Force Multiplier"', *Global Governance*, Vol.13, No.1 (2007), pp.99-118.
- <sup>111</sup> Holt and Smith, *Halting Attacks on Civilians*.
- <sup>112</sup> See Ban Ki-moon, 'Implementing the Responsibility to Protect', Report of the UN Secretary-General, A/63/677, 12 January 2009.
- <sup>113</sup> For an excellent discussion of the central challenges and dilemmas involved see Paris and Sisk (eds.), *The Dilemmas of Statebuilding*.
- <sup>114</sup> See Howe, *Ambiguous Order*.
- <sup>115</sup> See Michael Barnett, 'Building a Republican Peace', *International Security*, Vol.30, No.4 (2006), pp.87-112.
- <sup>116</sup> For relevant discussions see UK Prime Minister's Strategy Unit, *Investing in Prevention: An International Strategy to Manage Risks of Instability and Improve Crisis Response* (London: TSO, 2005); Jack A. Goldstone et al, 'A Global Forecasting Model of Political Instability', unpublished paper (2005) at <http://globalpolicy.gmu.edu/pitf/PITFglobal.pdf>
- <sup>117</sup> See William Reno, 'Patronage Politics and the Behavior of Armed Groups', *Civil Wars*, Vol.9, No.4 (2007), pp.324-42.
- <sup>118</sup> By peace operations we are referring to all those missions, UN or otherwise, involving foreign uniformed personnel that are deployed to a conflict zone with the consent of the host government.
- <sup>119</sup> See Bellamy and Williams, 'The West and Contemporary Peace Operations'.
- <sup>120</sup> See Holt and Berman, *The Impossible Mandate?; GPTF, Preventing Genocide*, chapter 5.



*The Asia-Pacific Centre for the Responsibility to Protect is an Associate of the Global Centre for the Responsibility to Protect. The Centre's mission is to advance the Responsibility to Protect principle within the Asia-Pacific Region and worldwide, and support the building of capacity to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.*

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