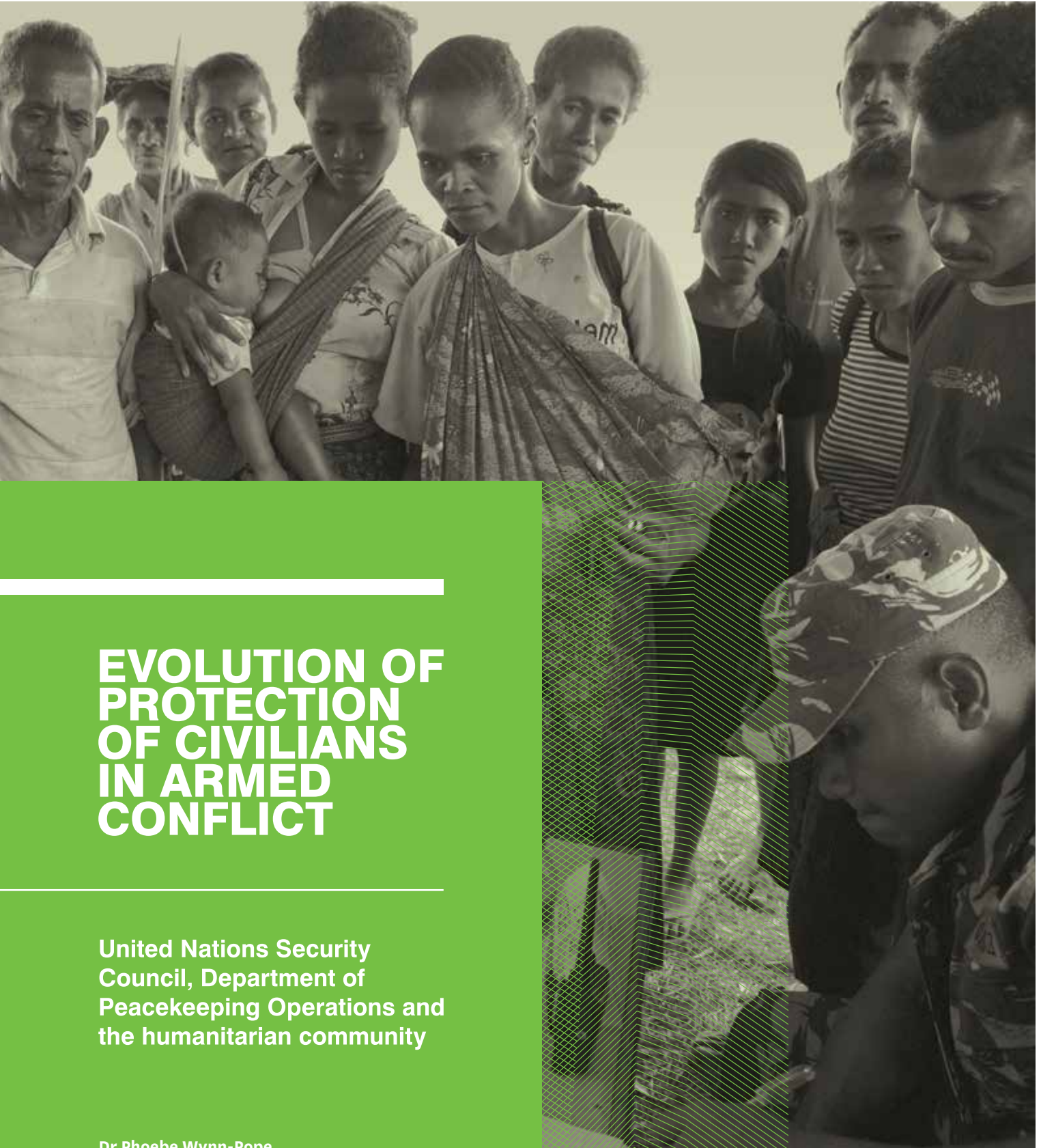Australian Government

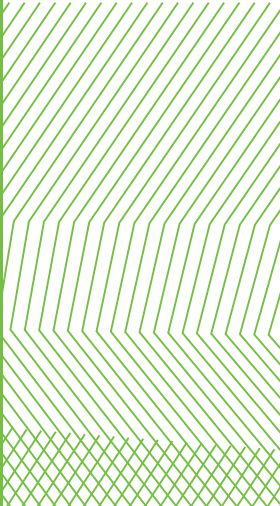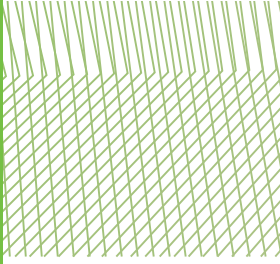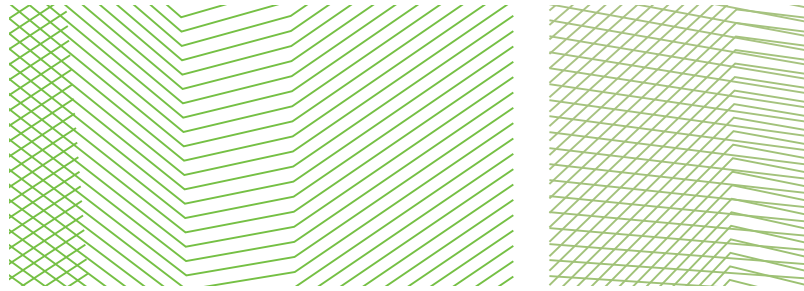**Australian Civil-Military Centre**

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EVOLUTION OF PROTECTION OF CIVILIANS IN ARMED CONFLICT

United Nations Security Council, Department of Peacekeeping Operations and the humanitarian community

Dr Phoebe Wynn-Pope

CONTENTS

INTRODUCTION

International responses to conflict and complex humanitarian emergencies are diverse and multifaceted. Different actors – among them non-government organisations (NGOs), the United Nations (UN) protection mandated organisations, UN peacekeeping forces, both military and police – all have a role to play to mitigate the impact of armed conflict on civilian populations.

Over the last 13 years a significant amount of work has been done to improve the international community's response in relation to the protection of civilians (POC). This has been led by different actors – the UN Security Council, the Department of Peacekeeping Operations (DPKO) and the humanitarian community made up of UN humanitarian agencies, the International Committee of the Red Cross (ICRC), and NGOs – all working in the same complex humanitarian contexts.

Despite the development of POC, there is a perceived 'disconnect' between the understanding of different forms of protection, the different disciplines practising or working on the POC, and the different guidance and legal regimes imposing obligations on both state and non-state actors in the area of protection.

This paper is the first contribution to a broader research project that aims to determine whether the perceived disconnect between actors involved in protection work is real or anecdotal. By exploring the evolution of protection language and policy through the UN Security Council, DPKO and the humanitarian community, it is possible to develop an improved understanding of some of the reasons for distinct protection policies and definitions that exist between different actors. Some initial variations in the interpretation of POC are quick to emerge, giving rise to additional questions about how the distinctions can be better understood.

The thematic concern the UN Security Council has with POC was derived from international humanitarian law (IHL) and protections offered to civilians are based around an 'imminent threat of physical violence'. Over time the Security Council has expanded the range and scope of activities that are considered to constitute POC, and now a wide range of human rights protection concerns, sometimes unrelated to violence are included in Security Council POC discourse. This erosion of the nexus between POC and violence may be one of the reasons for differing perceptions of POC.

The DPKO has been developing operational guidance for UN peacekeeping and missions on POC policy and practice. This guidance also originated in IHL and has expanded to include many activities that may be seen as traditional peacekeeping activities or human rights protection work. The language and categorisation of different POC tasks and activities by DPKO is in contrast to the language and categorisation of tasks by the humanitarian sector, therefore the same terminology is often used in different contexts. This provides another potential cause for disconnect between different protection actors.

Another space of overlap and differentiation is in the political sphere. Whereas humanitarian agencies are motivated by the humanitarian imperative and develop their programs on the basis of need, the Security Council and mandated UN missions are necessarily motivated by political considerations and objectives in their drive towards peace and security. The implications of different actors using POC as a primary objective or as a task contributing to a broader political objective are unclear. While

Shangil Tobay, Darfur – A women's village consultation in a camp in Darfur to discuss protection and security needs and concerns. *Adrian McIntyre/Oxfam 2006*

POC has been identified as a priority for UN missions[1] there is a need for further research into the effect these complementary but differing objectives may have on cooperation and coordination of POC.

This paper provides a brief overview of the history of POC from the perspectives of the UN Security Council, the DPKO, and the humanitarian community. In doing so it offers a perspective on the development of policy and practice relating to POC as it has occurred over a relatively short period of time. The comparison provides a window through which it is possible to gain insight into the opportunities for cooperation and coordination, and also the reasons for a disconnect in the understanding and practice of POC.

A BRIEF HISTORY – CONCEPTS OF PROTECTION

The concept of protection has long been associated with vulnerable populations in armed conflict and therefore, in modern times, is strongly linked to customs and laws of war. The emergence of codified international humanitarian law at the end of the 19th century in Geneva, and its subsequent development through the Hague and Geneva Conventions, has often led to the observation that the principles enshrined in that law are Western-centric, and therefore culturally disconnected from much of the world. However, the idea of protecting certain categories of persons from the effects of armed conflict can be found long before the advent of modern international humanitarian law. Mahabharata texts from ancient India observe the idea of a 'just war' and that wars should be conducted with certain rules,[2] including the idea that wounded warriors were hors de combat and therefore protected. In the 4th century BC, Sun Tzu also wrote, in *The Art of War*, of the obligation to care for the wounded and prisoners of war.[3]

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1   UN Security Council Resolution 1894. The Security Council determined that resource prioritisation at missions should go towards POC.

2   Manoj Kumar Sinha 2005, 'Hinduism and international humanitarian law', *International Review of the Red Cross*, p. 853.

3   Sun Tzu, *The Art of War*, 1975–76 (S Griffith trans. 1963) in Waldemar A Solf 1986, 'Protection of civilians against the effects of hostilities under customary international law and under Protocol I', *American University Journal of International Law and Policy*, p. 117.

Early religious and political texts promote the idea of a just war, recognising that there may be circumstances when war is necessary, and fought for just purpose. In 634 AD, as the Moslem Arab Army set forth on the invasion of Christian Syria, Caliph Abu Bakr outlined rules that resemble protections found in modern international humanitarian law. These include protection for civilians, rules against pillage, protection for the food supply of the local population and for religious personnel.

> *Do not commit treachery nor depart from the right path. You must not mutilate, neither kill a child or aged man or woman. Do not destroy a palm tree, nor burn it with fire and do not cut any fruitful tree. You must not slay any of the flock or the herds or the camels, save for your subsistence. You are likely to pass by people who have devoted their lives to monastic services; leave them to that to which they have devoted their lives.[4]*

The French Revolution and Napoleonic wars of the 19th century appeared to put an end to the era of limited warfare as the entire nation was mobilised for the war effort, thereby blurring the distinction between combatants and civilians.[5] Nevertheless, it was this mobilisation of the population that led to recognition of the need for clear and codified rules that in some way place limits on the conduct of armed conflict and provide guidance for military forces.

In 1859, at the battlefield of Solferino, 40,000 wounded and dying soldiers were found by Swiss businessman Henri Dunant (later to be founder of the ICRC). This experience provided the impetus for the development of the first multilateral treaty governing the treatment of sick and wounded in the field – which became the First Geneva Convention (1864). Since that time there has been a continuous development of international humanitarian law treaties and conventions providing protection and limiting the means and methods of warfare.

PROTECTION OF CIVILIANS IN MODERN INTERNATIONAL HUMANITARIAN LAW

The 1949 Geneva Conventions and their Additional Protocols of 1977 form the most comprehensive set of conventions outlining the limits to the means and methods of armed conflict. The Fourth Geneva Convention for the Protection of Civilians in Armed Conflict for the first time provided legal protection for civilian populations. These protections were not only generally understood by combatants, but also codified and therefore agreed between states. Although there had been some efforts to draft treaties to protect civilians in the 1930s none of them were finalised. It is significant, however, that not all civilians are protected by the Fourth Geneva Convention, but only those who find themselves either in territory occupied by the enemy, or in the territory of the enemy and in general only those who were in an international armed conflict. In 1949, the protective responsibility of the state was still recognised as an inherent and sovereign duty and it was inconceivable to create an international treaty that would effectively legislate on the relationship between a state and its own people.

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4   M Khadduri 1955, *War and Peace in the Law of Islam*, The John Hopkins Press, Baltimore and London, p. 102.

5   Waldemar A Solf 1986, 'Protection of civilians against the effects of hostilities under customary international law and under Protocol I', *American University Journal of International Law and Policy*, p. 120.

Since that time the development of human rights instruments has eroded international resistance to legislating on the interaction between a state and its people. Human rights have provided significantly enhanced protection to populations outside situations of armed conflict and have also contributed to the protections afforded to civilians in armed conflict. In 1977, the two Additional Protocols to the Geneva Conventions were developed and provided much stronger protections for civilian populations in both international and non-international (internal) armed conflicts. For the first time protection was afforded to all civilians caught up in the armed conflict, and the Protocols included enhanced obligations on parties to the conflict to provide for the needs 'essential for the survival of the civilian population' – including humanitarian access, protection of humanitarian relief workers, and a general prohibition on starvation.[6]

Despite the development of the law, and protections provided by the law, in reality civilians have been increasingly targeted since 1949. It is estimated that one in every ten casualties in the Frist World War was a civilian. By the Second World War, this figure had increased to five in every ten casualties. By 2000, the figure had increased to nine in ten casualties in armed conflict as civilian.[7] This trend is alarming, particularly in light of significant legal developments, including the establishment of international tribunals, designed to end impunity and limit the effects of armed conflict on civilian populations.

6   'Prohibition of starvation as a means or method of warfare' is found in Additional Protocol I to the Geneva Conventions, Article 54(1).

7   Javier Solana 2003, EU High Representative for Common Foreign and Security Policy, *A Secure Europe in a Better World: European security strategy*, European Union Institute for Security Studies, Paris, p. 5, http:// www.iss.europa.eu/uploads/media/solanae.pdf.

DEVELOPMENT OF PROTECTION PRACTICE IN HUMANITARIAN CONTEXTS

International law by its nature has traditionally favoured the interests of states rather than the interests of their constituents and has been of little benefit to civilian populations persecuted or neglected by their own governments. The human rights movement of the late 20th century developed norms regulating states' behaviour towards their own citizens, but this international framework, often unsupported by adequate domestic legislation, has repeatedly proved lacking where a state manifestly fails to fulfil its obligations under the international human rights regime.

Similarly, international humanitarian law has sought to provide increasing protection to civilians caught up in armed conflict but has also proved inadequate in the face of intransigent states. There is appetite among the international community for the establishment and support of international tribunals for the prosecution of international crimes, with the International Criminal Court being the primary example; however, the deterrent or protective effect of these is yet to be demonstrated.

The international community, through the United Nations, has been developing a broader view of its protective responsibilities for populations at risk of gross human rights violations perpetrated either by their own state, or by parties to the conflict in time of war. Consequently there has been a growing interest in the POC in armed conflict at the Security Council and the United Nations, and more generally in the humanitarian community. The nature of protection and its implementation varies from actor to actor working in the humanitarian sphere. As a result scholars and practitioners speak of a 'disconnect' between how protection is understood and by whom.

This research has traced the development of protection over the last ten years in order to cast light on the alleged disconnect in understanding between different protection actors, in terms of mapping out when and where the disconnect originates.

ORIGINS OF POC AS A THEMATIC ISSUE AT THE UN SECURITY COUNCIL

At the beginning of the 1990s the Cold War ended and hope emerged that the once-paralysed UN Security Council could now fulfil its role as guardian of international peace and security. This hope was reflected in the first Chapter VII intervention in Somalia in 1992, in response to the violence that was hampering relief efforts in the face of famine. President Bush (senior) indicated that it was time for 'a new world order' that would not tolerate the neglect or abuse of civilian populations.[8] However, this hope was short-lived and soon a series of new threats and challenges facing the United Nations and the international community emerged. There was a proliferation of internal armed conflicts where civilians increasingly became targets of violence, genocide in Rwanda, forced rape and impregnation in Bosnia, and the massacre of 8,000 men and boys in Srebrenica led to calls of 'never again'. The failure of the international community to protect was evident.

Despite the framework of international humanitarian law and international human rights and refugee law that aimed to protect civilians and vulnerable populations, the challenges facing the United Nations seemed insurmountable. The fundamental principles of sovereignty and non-intervention in the affairs of another state – pillars of the UN Charter – demonstrate a corollary belief that the international community

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8   US President George HW Bush: 'Now, we can see a new world coming into view. A world in which there is the very real prospect of a new world order. In the words of Winston Churchill, a "world order" in which "the principles of justice and fair play … protect the weak against the strong …" A world where the UN, freed from cold war stalemate, is poised to fulfill the historic vision of its founders. A world in which freedom and respect for human rights find a home among all nations.' Address to Congress, 6 March 1991, http://www.al-bab.com/arab/docs/pal/pal10.htm.

was limited in how far it could intervene between a state and its population. Throughout the 1990s there were unresolved debates regarding the right to humanitarian intervention in the corridors of power at the United Nations and elsewhere, but at the same time a new discourse began.

In 1998, Kofi Annan – Secretary-General to the United Nations – in a report to the Security Council on the Situation in Africa, noted that 'protecting civilians in situations of conflict' was a 'humanitarian imperative'.[9] He referred to protection within the framework of human rights protection and noted that both monitoring and reporting needed to be undertaken along with support for international mechanisms that would put an end to impunity. He did not, at that time, propose material protection for civilians in the form of military force, but he acknowledged that POC required the attention of the UN Security Council.

Ten months later, on 12 February 1999, the UN Security Council held the first Open Debate on the Protection for Civilians in Armed Conflict in which it 'affirm[ed] the need for the international community to assist and protect civilian populations affected by armed conflict'.[10] The Security Council went on to note that it was willing to respond, in accordance with the UN Charter, to situations where civilians had been deliberately targeted, or where relief and assistance had been deliberately obstructed. While it made no indication of what such a response might entail, the Security Council asked the Secretary-General to report back with concrete recommendations as to how the Security Council 'could improve the physical and legal protection of civilians in armed conflict'.[11] The report was to determine whether there were any gaps in legal norms, and describe how international law might be more effectively implemented. The Protection of Civilians in Armed Conflict became a thematic concern of the Security Council.

In September 1999, the Secretary-General presented his first report on POC in Armed Conflict, noting that such protection would be 'largely assured if combatants respected the provisions of international humanitarian and human rights law'.[12] The report concentrated on how the Security Council could promote respect for and adherence to existing legal regimes. Activities included urging member states to ratify the relevant international treaties; to consider using enforcement measures in cases of non-compliance; to encourage states to ratify the new Statute of the International Criminal Court; and to urge member states to 'adopt legislation for the prosecution of individuals responsible for genocide, crimes against humanity and war crimes'.[13]

In certain instances – such as in the former Yugoslav Republic of Macedonia – the Secretary-General recommended that the deployment of preventive peacekeeping forces might be appropriate, and he urged the early investigation of disputes.[14] He suggested that the media should be included in all peacekeeping and peacemaking operations and that, wherever possible, 'appropriate measures [should be] adopted to control or close down hate media assets'.[15] Targeted sanctions should be used more to 'deter and contain those who commit egregious violations of international humanitarian and human rights law' and against those who continually flout the authority of the Security Council.[16]

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9   Report on the Causes of Conflict in Africa, S/1998/318.

10   Protection of Civilians in Armed Conflict, UN SCOR, 3977th meeting, UN Doc S/PV/3977, 1999.

11   Presidential Statement on the Protection of Civilians in Armed Conflict, S/PRST/1999/6.

12   Report of the Secretary General to the Security Council on the Protection of Civilians in Armed Conflict, UN SCOR, UN Doc S/1999/957, 1999, p. 35 (Report on the Protection of Civilians).

13   ibid., pp. 3–6.

14   ibid., Recommendations 12, 13.

15   ibid., Recommendation 16.

16   ibid., Recommendation 22.

This report was the first report at the United Nations focusing solely on the requirements for enhanced POC. The Secretary-General recommended that the Security Council improve the capacity of the United Nations to plan and deploy rapidly, ensuring all contingents being deployed are appropriately trained in human rights and humanitarian law issues.[17] Mindful of the mistakes made in Rwandan refugee camps, the Secretary-General proposed the separation of combatants and armed elements from civilians in refugee and internally-displaced persons camps, including the deployment of international military observers, increasing support for national security forces, and the relocation of camps that are too close to international borders.[18] He made recommendations to ensure that all UN peacekeeping missions include 'specific measures for disarmament, demobilization and destruction of unnecessary arms and ammunition'.[19]

The Secretary-General further recommended that, as a last resort, 'in the face of massive and ongoing abuses, [the Security Council] consider the imposition of appropriate enforcement action'.[20] In this recommendation the Secretary-General outlined five factors for consideration to 'enhance confidence in the legitimacy and deter perceptions of selectivity or bias towards one region or another' if enforcement action was required.[21]

In conclusion, the Secretary-General secured the place of POC in the international discourse for the coming decades when he noted, 'The plight of civilians is no longer something that can be neglected … It is fundamental to the central mandate of the Organisation. The responsibility for the protection of civilians cannot be transferred to others.'[22] This statement passes over the fact that in the first instance the responsibility for POC lies with the state under both IHL and international human rights law (IHRL) and with parties to the conflict under IHL. In the period since 1949 there has been an emerging global sense of responsibility for civilians in armed conflict. The protective role increasingly adopted by the United Nations through the Security Council's thematic concerns could be seen as a reflection of this.

The Security Council responded to the Secretary-General's report on POC with the first UN Security Council Resolution on the theme of Protection of Civilians in Armed Conflict: Security Council Resolution 1265. This Resolution emphasised the importance of 'implementing appropriate preventive measures to resolve conflicts', urged all parties to comply with their obligations under IHL and human rights law, the need to end impunity for genocide and crimes against humanity, as well as ensuring safe access for humanitarian relief. The Security Council welcomed the Secretary-General's report and decided that the Council would remain seized of the matter.

A month later the UN peacekeeping force in Sierra Leone was established, and included authorisation by the Security Council under Chapter VII to 'take necessary action … to afford protection to civilians under imminent threat of physical violence'.[23] This was the first peacekeeping mission with Chapter VII

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17   ibid., Recommendations 28, 29.

18   ibid., Recommendations 35–37.

19   ibid., Recommendation 38.

20   ibid., Recommendation 40.

21   ibid., Recommendation 15. These factors were the scope of the breaches of human rights and international humanitarian law, including the numbers of people affected and the nature of violations; the inability of local authorities to uphold legal order or identification of a pattern of complicity by local authorities; the exhaustion of peaceful or consent-based efforts to resolve the situation; the ability of the Security Council to monitor actions that are taken; and the limited and proportionate use of force, with attention to repercussions for civilian populations and the environment.

22   Report of the Secretary General to the Security Council on the Protection of Civilians in Armed Conflict, UN SCOR, UN Doc S/1999/957, 1999, paragraph 68.

23   Operative paragraph 14 of Security Council Resolution 1270, UN Doc S/Res/1270, 1999.

authorisation to use force to protect civilians, and it was considered a significant advance over the limited protective mandates of past peacekeeping missions.

RESPONSIBILITY TO PROTECT

As POC in Armed Conflict was emerging as a thematic issue at the Security Council, another parallel, but notably separate, discourse was occurring which would similarly have a profound effect on how the international community viewed their responsibility towards vulnerable populations.

For some time the Secretary-General had been asking the international community to grapple with the issues of protection. The failure of the United Nations to respond in Rwanda weighed with him deeply. In 1999, after the strong debate about the legality or legitimacy of the NATO intervention in Kosovo, given a lack of authority for the use of force from the UN Security Council, Annan asked:

> *To those for whom the greatest threat to the future of international order is the use of force in the absence of a Security Council mandate, one might ask – not in the context of Kosovo – but in the context of Rwanda: If, in those dark days and hours leading up to the genocide, a coalition of states had been prepared to act in defence of the Tutsi population, but did not receive prompt Council authorisation, should such a coalition have stood aside and allowed the horror to unfold?*

He summed up the complexity of the debate with a follow-up question:

> *To those for whom the Kosovo action heralded a new era when states and groups of states can take military action outside the established mechanisms for enforcing international law, one might ask: Is there not a danger of such interventions undermining the imperfect, yet resilient, security system created after the Second World War and of setting dangerous precedents for future interventions without a clear criterion to decide who might invoke these precedents, and in what circumstances?* [24]

While the Security Council progressed discussions on POC, the Canadian Government, in response to the questions asked by Kofi Annan, and deeply concerned with matters of human security more generally, established the International Commission on Intervention and State Sovereignty (the Commission). The Commission was tasked with resolving the conflict between the moral and humanitarian imperative for the international community to intervene in the affairs of a state in the face of grave humanitarian crises, and the fundamental principle of state sovereignty.

In 2001, the Commission handed down its report titled 'Responsibility to Protect' and turned the debate on its head. Throughout the 1990s discourse had concentrated on whether there was a legal right or obligation on states to intervene for humanitarian purposes – a discourse that found little consensus. The Commission determined that it was not about the right of states to intervene, but rather the responsibilities of states to protect. Specifically, they recognised that it was, in the first instance, the responsibility of the state to protect its own population but when states were either unable or unwilling to do so, that responsibility necessarily reverted to the international community – that is, all other states.

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24   Report of the Secretary-General on the Work of the Organisation, UN GAOR, 54th sess., Supplement no. 1, UN Doc A/54/1, 1999.

The Responsibility to Protect (R2P) gained support both at the United Nations and with international NGOs and civil society.[25] The idea of a common international responsibility for protecting communities against humanitarian disasters and atrocity crimes was promoted around the world, and at the UN World Summit in 2005 the concept of a Responsibility to Protect was unanimously adopted.[26]

The World Summit definition of R2P was, however, criticised by some as being 'R2P lite' as it excluded communities suffering broader humanitarian crises (famine, drought, neglect) from the protection of the international community. R2P, as agreed at the World Summit, invoked the responsibility of the international community only in the face of mass atrocity crimes – genocide, crimes against humanity, war crimes and ethnic cleansing. Consistent with existing international humanitarian and human rights law, R2P noted that the state was primarily responsible for the protection of its own population, but the Outcome Document noted that that:

> *We [the United Nations] are prepared to take collective action in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organisations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.*

In 2009, the Secretary-General reported to the General Assembly on the implementation of R2P. In his report he suggested that there were three pillars to the R2P concept, each pillar being equally important and concurrent. The first pillar recognises and reinforces the sovereign responsibility of states to protect their own populations; the second pillar relates to the responsibility of the international community to assist states, wherever possible, to fulfil their responsibilities under pillar one; the third, and most contentious pillar, gives rise to the possibility that when a state is either unable or unwilling to protect its own population that it is the responsibility of the international community to act, up to and including the use of force with the authority of the Security Council, under the Charter of the United Nations.

It should be noted that R2P has been included in this paper as a form of protection as the promotion and development of the concept – occurring in parallel with POC debates at the Security Council – has influenced the way the international community sees its role with regard the protection of vulnerable communities from the most heinous international crimes. The precise influence of R2P on the development of POC is a matter for further research, but it is noteworthy that following the 2005 agreement on the R2P principle at the World Summit there was a proliferation of publications on 'protection' by the humanitarian sector. Whether this proliferation was in response to R2P or developed completely separately is unclear. Nonetheless, it should be noted that the protections offered under the POC framework are significantly broader than the protection offered under R2P, which relates only to the crimes of genocide, crimes against humanity, war crimes and ethnic cleansing and which continues to generate significant debate in the international community.

25 See the work done by the World Federalist Movement leading to the establishment of the International Coalition for R2P: http://www.responsibilitytoprotect.org/index.php/former-r2pcs-project/about-r2pcs, viewed 31 October 2012.

26 *World Summit Outcome: resolution adopted by the General Assembly*, UN GAOR, 60th sess., Agenda Items 46 and 120, UN Doc A/Res/60/1, 2005.

PROTECTION OF CIVILIANS TODAY – UN SECURITY COUNCIL

Since the first UN Security Council resolution on POC (Resolution 1265) there have been three additional thematic resolutions[27] reaffirming and strengthening the commitment of the Security Council to the issue. In addition, there have been nine Reports of the Secretary-General, nine Presidential Statements, and bi-annual Open Debates on POC in Armed Conflict.

Notably, the second Presidential Statement endorsed the first edition of the aide memoire, a document developed by UN OCHA to assist the Security Council in its work on POC. The aide memoire is intended to be a 'practical tool that provides a basis for improved analysis and diagnosis of key protection issues'[28] and since 2002 has been updated four times.[29]

Generally the Security Council has required the Secretary-General to report on POC every 18 months. In January 2009 the Security Council established an informal expert group on POC. This group meets regularly and makes recommendations regarding the extension of UN mission mandates, receives briefings from OCHA, and other UN protection actors such as the High Commissioner for Human Rights.

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27   Thematic Protection of Civilians resolutions UN Doc S/Res/1296, 2000, UN Doc S/Res/ 1674, 2006 and UN Doc S/Res/1894, 2009.

28   Presidential Statement S/PRST/1010/25, 22 November 2010.

29   The most recent edition was endorsed by Presidential Statement S/PRST/2010/25, 2010, and published in 2011.

The Secretary-General's report to the UN Security Council in May 2009 noted five core challenges facing the effective achievement of POC:

- enhanced compliance by parties to the conflict with international law – in particular, in the conduct of hostilities

- improved compliance with the law by non-state armed groups

- greater protection through more effective and better resourced peacekeeping and other relevant missions

- better humanitarian access

- stronger accountability for violations of the law.[30]

These five core challenges, which remain relevant today, are entirely compatible with the activities identified in the Secretary-General's first report to the UN Security Council on the POC in Armed Conflict 10 years earlier. They reflect the fact that POC is not only a humanitarian task but also a task that requires 'focus and action in the peacekeeping, human rights, rule of law, political, security, development and disarmament fields'.[31] The wide range and extent of tasks and activities identified as contributing to POC at the UN Security Council may be partly responsible for the lack of clarity between the different roles and responsibilities of the various protection actors and the real definition and role of POC in the humanitarian action paradigm.

In November 2009 the Security Council noted the Secretary-General's report[32] and passed resolution 1894 on POC. In the 10th year of the POC debate, and the 60th anniversary of the Geneva Conventions, Resolution 1894 significantly upgraded the commitment of the United Nations to POC by:

- reaffirming the principle of a Responsibility to Protect and the relevant provisions of the 2005 World Summit Outcome Document[33]

- expressing its intention to mandate UN peacekeeping and other relevant missions, where appropriate, to assist in creating conditions conducive to safe passage of humanitarian assistance[34]

- … [stressing] that mandated protection activities must be given priority in decisions about the use of available capacity and resources, … in the implementation of mandates.[35]

Security Council Resolution 1894 also requested the Secretary-General to develop operational guidance for UN peacekeeping missions. This in part led to the development of the DPKO Operational Concept and the DPKO/Department of Field Support (DFS) Comprehensive Framework for POC.

The five challenges identified in 2009 have been reiterated by the Secretary-General in his reports of 2010 and 2012 and continue to provide a framework for the work of the Security Council and the United Nations. In the most recent report, however, the Secretary-General notes that 'Eighteen months on, the abysmal state of the protection of civilians has changed little'.

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30 Report of the Secretary-General to the UN Security Council on Protection of Civilians S/2009/277, 2009, paragraph 5.

31 ibid., paragraph 8.

32 ibid.

33 Security Council Resolution UN Doc S/Res/1894, 2009, pre-ambular paragraph 7.

34 ibid., paragraph 15(b).

35 ibid., paragraph 19.

PROTECTION OF CIVILIANS AT THE UN DEPARTMENT OF PEACEKEEPING OPERATIONS

The challenges of POC mandates for UN peacekeeping operations are evident in the ongoing civilian-related violence occurring in places where there have been sustained UN peace operations – such as the Democratic Republic of Congo and Sudan.

In November 2009, the report of an independent study jointly commissioned by DPKO and OCHA was published, titled *Protecting Civilians in the Context of UN Peacekeeping Operations*. The report contained recommendations for the entire range of UN protection actors including the Security Council, troop and police contributing countries, the UN Secretariat and the peacekeeping operations implementing POC mandates.[36]

Among many things, the report noted that there was a lack of coordinated and systematic approaches to both the meaning and the implementation of POC mandates and that Security Council deliberations and mission mandate preparations often did not take into consideration the nature of threats to civilians.[37] The gaps in policy guidance, planning and preparedness fundamentally hampered the capacity to protect civilians, which was central to the role of the United Nations, to the expectations of the populations where UN peacekeeping missions were operational and 'central to the legitimacy and credibility of the entire UN system'.[38] The report made recommendations across four key themes to improve the effectiveness of UN peacekeeping missions in protecting civilians. These included first, linking the Security Council to the field; second, mission-wide strategy and crisis planning; third, improving the role of uniformed personnel; and fourth, political follow-up – achieving mission aims.

The recommendations under these themes were directed to the full range of actors that influence the 'creation, interpretation and implementation of protection of civilians mandates'[39] but did not include recommendations to the broader humanitarian community. Many of the recommendations sought to provide clarity on policy and what was meant by 'POC'. One of the key recommendations was for the DPKO to develop an 'operational concept of protection of civilians to assist with the development of planning, preparedness, and guidance for future peacekeeping missions'.[40] The report noted that the concept should aim to prevent widespread physical harm to the civilian population and should include the use of political, military, police and other mission resources to accomplish this.[41]

In 2010, DPKO published a Draft Operational Concept for the implementation of POC mandates by UN peacekeeping operations. In the opening paragraph, the first reference to POC was footnoted as follows:

> *The protection of civilians in armed conflict has a universally recognised legal basis in international humanitarian law (IHL). A cardinal principle of IHL is the principle of 'distinction'. This requires all parties to armed conflicts to differentiate civilians from 'combatants' whose function is to conduct hostilities during armed conflict. Under IHL, civilians are 'protected persons' – they cannot be targeted and their life and dignity must be respected. Civilians are presumed not to directly participate in the*

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36   Protecting Civilians in the Context of UN Peacekeeping Operations: success, setbacks and remaining challenges, OCHA – DPKO, 2009.

37   ibid., p. 6.

38   ibid., p. 4.

39   ibid., p. 13.

40   ibid., p. 13.

41   ibid., p. 216.

hostilities and are therefore entitled to full protection from attack. Civilians lose this protection only if, and for as long as, they 'directly participate in hostilities'. IHL prohibits combatants from posing as civilians and provides special protection for vulnerable populations of civilians such as children.[42]

Through this statement DPKO identified POC as a function of international humanitarian law. This may provide a second insight to the apparent disconnect in understanding between different protection actors in relation to the concept of POC. Often UN peacekeeping operations work outside the context of armed conflict, even if they are working in 'other situations of violence'. The question of the applicability of IHL in such contexts remains contentious and even where IHL does exist it may not be sufficiently broad to cover the range of protection activities that may be required. As a consequence, many of the tasks identified by the Security Council and by DPKO itself fall outside the remit of the protections offered by IHL and instead reflect the broader protections offered under IHRL and international refugee law (IRL). DPKO's initial positioning of POC in IHL and then subsequent expansion to a broad array of human rights protections therefore adds to the breadth and scope of the concept without clarifying its meaning.

This is reflected later in the Operational Concept where it is acknowledged that the full range of protection activities may be taken into consideration, and that these may include a wide array of tasks consistent with IHL and IHRL as reflected by the Inter-Agency Standing Committee's (IASC) definition of 'protection'.[43]

The Operational Concept established a three-tiered approach to POC – affording protection through the political process, providing protection from physical violence, and establishing a protective environment. The tiers are not intended to be sequential; rather, they are seen as complementary and activities pertaining to the satisfaction of each strategic tier may be undertaken simultaneously.

It is intended that the Operational Concept would provide a framework against which UN POC mandated missions would develop mission-wide strategies that would take into account different environments, capabilities and capacities of differing UN missions and for this reason the *Framework for Drafting Comprehensive POC Strategies in UN Peacekeeping Operations* was developed. The aim of the strategies is to bring about some coherence in approach, 'minimize gaps, avoid duplication and maximize the missions' ability to ensure the protection of civilians through the use of … available capacities (civilian, military, police and support elements of the mission)'.[44]

To date, several missions have developed mission-wide strategies, but what is not clear is how these strategies interact with UN humanitarian agencies and how the integrated mission is affected by the wide array of activities and tasks that are now classified as part of a strategy for POC. This approach impacts not only the effectiveness of POC but also the humanitarian enterprise itself. POC can be an objective, but it can also be used as a task to achieve a broader objective, such as securing lasting peace. It is when POC becomes a tool for achieving political ends, however, that difficulties can arise between UN peacekeeping and mission personnel and the humanitarian community. This consequence of differentiating POC as either a task or an objective might be a third area requiring clarification in the definition and purpose of POC activity between different protection actors.

42   Operational Concept on the Protection of Civilians in UN Peacekeeping Operations, UN, DPKO – DFS, 2010, footnote 1.

43   See the next section for the ICRC – IASC definition of 'protection'.

44   Framework for Drafting Comprehensive Protection of Civilians Strategies in UN Peacekeeping Operations, 2011, paragraph 1.

PROTECTION IN THE HUMANITARIAN SECTOR

The end of the Cold War and events and crises of the 1990s had a significant impact on the practice of the humanitarian sector. In 1991 the UN Department of Humanitarian Affairs, established under General Assembly resolution 46/182, was created with the following aim:

> [to] mobilize and coordinate the collective efforts of the international community, in particular those of the UN system, to meet in a coherent and timely manner the needs of those exposed to human suffering and material destruction in disasters and emergencies. This involves reducing vulnerability, promoting solutions to root causes and facilitating the smooth transition from relief to rehabilitation and development.

The resolution provided a framework for post – Cold War humanitarian action, clearly expressed the humanitarian imperative, and re-asserted the notion that humanitarian action should be based on the principles of humanity, impartiality, independence and neutrality – principles deeply rooted in international humanitarian law. In addition to establishing a principled framework for humanitarian action, the resolution also established the Department of Humanitarian Affairs, the precursor to the Office for the Coordination of Humanitarian Affairs, or OCHA.

Many UN humanitarian agencies are mandated to fulfil certain roles. There are, however, two organisations that have a particular role in protection. First, the UN High Commissioner for Refugees is mandated under the Refugee Convention to provide protection and assistance to refugees. More recently, UNHCR has also assumed responsibility for internally displaced people. Second, although it is not a UN agency, the ICRC has a mandate to provide protection in armed conflict; this is established in law in the drafting of the first Geneva Convention of 1864. Among other UN agencies with specialist protection skills and mandates are UNICEF, which has responsibilities relating to the rights of women and children; the World Food Programme, which has a mandate to provide food in crises; and the Office of the High Commissioner for Human Rights, which is responsible for the protection of human rights more generally.

There are, however, many humanitarian organisations that are not mandated in law and are able to determine their own role within accepted humanitarian principles and practice. Traditionally, such organisations have worked to meet the material needs of people affected by armed conflict and other crises, but experience in the early 1990s led to the realisation that in some instances, where material needs are generated by the actions of the parties to a conflict, providing assistance alone can prolong and contribute to war and have other unintended consequences.[45] Some humanitarian organisations began to include protection as an aspect of their work, recognising that humanitarian action called for both assistance and protection to be effective. In contrast, human rights organisations have always focused on protection and the encouragement of duty bearers to fulfil their responsibilities and adhere to the law.[46]

In 1996, the ICRC began a process of consultation on how POC could be strengthened in wartime. Human rights and humanitarian agencies participated in a series of workshops designed to improve understanding of protection and the complementary roles humanitarian and human rights organisations can play. The aim was to find common ground on definitional questions about what was protection and what constituted a protection activity.

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45   Mary Anderson, *Do No Harm: how aid can support peace and war*, Lynne Rienner, Boulder CO, 1999.

46   ICRC, *Strengthening Protection in War: a search for professional standards*, International Committee of the Red Cross, Geneva, 2001, p. 8.

In 2001, *Strengthening Protection in War* was published, and the definition of 'protection' as expressed in that publication was adopted by the Inter-Agency Standing Committee. It remains widely supported and used.

> *The concept of protection encompasses '… all activities aimed at ensuring the full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law. ie. human rights law, international humanitarian law and refugee law. Human rights and humanitarian organisations must conduct these activities in an impartial manner (not on the basis of race, national or ethnic origin, language or gender).*[47]

In addition, the ICRC workshops had sought to define what kinds of tasks could be considered protection activities. An 'egg' protection framework was developed, identifying three types of protection activity in the face of any pattern of abuse:

- responsive action, designed to prevent or mitigate an established pattern of abuse or violation

- remedial action, aimed at restoring people's dignity through rehabilitation and reparation following violations or abuse

- environment-building action that contributes to the establishment of a 'political, social, cultural, institutional, economic and legal' environment conducive to respect of the rights of the individual.[48]

For some years *Strengthening Protection in War* was for the humanitarian community the central text on protection. In 2005, however, ALNAP (the Active Learning Network for Accountability and Performance in Humanitarian Action) developed a guide to protection, explaining and expanding the framework the ICRC had established. Since then many agencies have developed their own guides and adjusted the definition of 'protection', but these two seminal texts form the basis of protection practice in the humanitarian community and continue to be influential.

More recently two further texts have been published, reflecting the development and professionalisation of protection practice – *Professional Standards for Protection Work*, published by the ICRC in 2009, and the protection chapter developed for the SPHERE Standards in 2011.[49]

PROTECTION IN THE COMMUNITY

Communities' self-protection mechanisms and their capacity for physical safety, economic survival and local service delivery by and for themselves should be of increasing interest to organisations concerned with protection work, yet this is often a missing piece in the protection matrix.[50] Barrs, for example, analyses community measures for self-protection on the basis that the protection efforts NGOs, and possibly those of the United Nations, 'very often do not pass the test of sustainability amid violence'.[51]

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47 ibid., p. 20.

48 ibid., pp. 22–24.

49 SPHERE can be found at http://www.sphereproject.org.

50 Casey Barrs, Preparedness Support: helping brace beneficiaries, local staff and partners for violence, under the Auspices of the Cuny Centre, New York, October 2009.

51 ibid., p. 2.

Barrs notes that there are three main ways in which local communities seek physical security. The first is through affinity groups: while flight is common, the immediate destination is almost always family, friends, or groups with whom those in peril feel some affinity.[52]

The second is through accommodation, which is when local communities try to accommodate dangerous players in order to de-escalate or gain some immunity from violence. There are many examples of local leaders negotiating access, neutrality or freedom of movement from armed actors in their vicinity. Accommodation is also about armed actors feeling that no threat is emanating from communities. Information and communication are crucial to retaining understanding and some sort of 'peace' between the two groups.[53]

The third way local communities try to secure their own physical safety is by recognising that when affinity groups and accommodation have failed avoidance becomes an important strategy. This often involves displacement, but it also entails 'pulling material fuel from the path of violence'. Barrs argues that in extreme situations it might require, for example, stripping community assets so there is less for violent groups to plunder for their own provisioning. Another means of accommodation might be to accede to conscription.[54]

The acknowledgement and involvement of communities in their own protection is often disconnected from protection strategies used by the international community. There is clearly much that can be done to learn from communities' self-protection mechanisms and to build these mechanisms into the protection strategies, processes and activities that are undertaken on behalf of the civilian population in order to help them prepare for violence in the worst high-risk scenarios.

The parallel development of protection at the UN Security Council, the DPKO and in the humanitarian sector has led to a wide protection network being established. Given that the practice of 'protection' has expanded so much, it is reasonable to ask why it is that civilians appear to be increasingly the targets of violence and increasingly the victims of war.
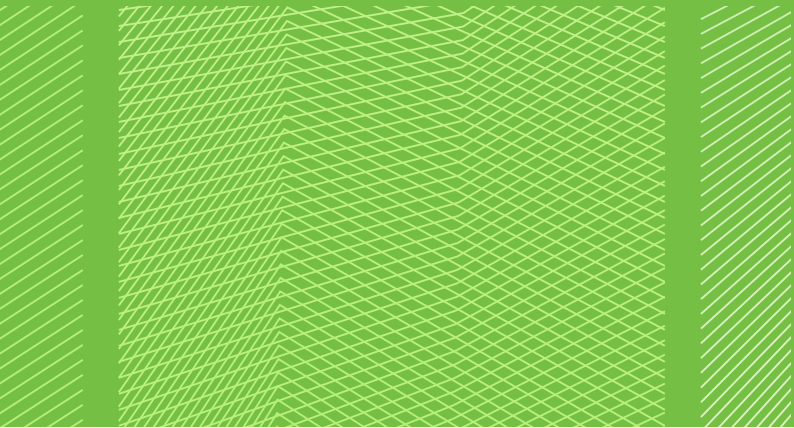
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52   ibid., p. 4.

53   ibid.

54   ibid., p. 5.

THE RELATIONSHIP BETWEEN DIFFERENT PROTECTION ACTORS

OVERVIEW

Commonly repeated are the assertions that 'everyone understands protection differently' and that there is no single definition of protection. A corollary assertion is that this different 'understanding' then leads to misunderstanding and confusion, both in policy making and in the field. This is the subject of a research project being conducted by Oxfam Australia, and this paper is part the project. At this point, however, it is worth exploring where the source of that 'disconnect' might be on the basis of a preliminary analysis of the relevant documents.

What is evident from the research to date is that all protection actors have a common interest in preventing, or at least mitigating, the effects of violence on civilian populations and that therefore all protection actors are ultimately working towards a common objective when it comes to POC.

Protection actors often understand both the strengths and the limitations of their own capabilities, but they do not necessarily understand or make accurate assumptions about the strengths and limitations of the capabilities of other protection actors. In addition, the fundamental principles, philosophies and mandates guiding action by UN peacekeeping forces, mandated organisations and humanitarian NGOs can differ, and this can affect both the capacity of different actors to respond to different contexts and the way different actors understand the response of others.

How protection is practised is necessarily dependent on both the resources and the capabilities of the different protection actors. The military, for example, have the capacity to use force and interpose themselves, as a last resort, between civilians and the perpetrators of violence. This option is not available to humanitarian actors; nor would it be desirable for it to be available to them. There are, however, many activities that are becoming increasingly common practice among different protection actors striving for similar protection outcomes, and it is possibly in this common dimension that there is the greatest disconnect.

The apparent lack of understanding of the differing strengths and capabilities, the fundamental principles, and the areas of common activity between different protection actors means that difficulties continue to arise in relation to protection and POC in armed conflict.

In the humanitarian sector it is recognised that there may be a different understanding of 'protection of civilians' and 'protection' and that perhaps 'humanitarian protection' is yet another category, but it is difficult to find agreed definitions for these various terms.

For some military actors 'POC' is about the means and methods of warfare – about the principle of distinction between combatants and civilians – and includes precaution in attack. For military actors in UN peace operations, however, POC is an entirely different role reflected in IHL, IHRL, the aide memoire, and is defined by their own military establishments and the DPKO.

But these distinctions are not necessarily helpful for protection actors in the field, who are required under a Chapter VII mandate to take 'all necessary measures for the protection of the civilian population', or for civilian protection actors whose beneficiary community is constantly wracked by violence.

Concurrent policy development at the United Nations and in the humanitarian community has led protection activities to cover a range of responses largely related to the principles, mandate and

capabilities of the organisation in question.[55] This has led not to differing definitions of protection – as the IASC's definition is broadly accepted by all actors but rather to different ways of implementing protection activities. This may also be reflected by the different target groups highlighted in definitions and mandates: the UNHCR's clear focus on refugees and internally displaced persons is an example. As a result, protection has evolved to encompass a range of activities, in some instances far removed from the point of violence or abuse that might have been the original objective of protection.

The emergence of POC at the UN Security Council was founded on the principles of IHL and relied to a large extent on the protections offered within that body of law. The *aide memoire* has been developed over four editions involving an ever-widening range of activities and responsibilities. The international humanitarian law basis for POC mandates of UN peacekeeping operations has been expanded to include other protective legal frameworks such as international human rights law and refugee law.

The DPKO developed its Operational Concept and then, in conjunction with the Department of Field Support, a Protection of Civilians Strategic Framework in order to provide clarity for missions developing context-specific protection strategies that would enable them to work toward the fulfilment of their protection mandate. The three-tier framework developed by DPKO was undertaken independently and not influenced or guided by the humanitarian framework developed 10 years earlier.[56] Similarly, the protection 'egg', combined with the updated SPHERE Standards (2011), provides a framework for the development and understanding of protection work carried out by the NGO sector.

By comparing the three tiers of the DPKO Operational Concept and the three elements of the humanitarian protection egg it is possible to obtain an overview of where the activities of UN mission and peacekeeping operations overlap and coincide with the protection activities of the humanitarian sector. This in turn begins to provide some scope for seeing where misunderstanding and disconnect arise and provides insight in relation to questions for further research.

THE DPKO THREE-TIER APPROACH AND THE HUMANITARIAN 'EGG' FRAMEWORK: A COMPARISON

Protection through the political process

Protection through the political process is Tier 1 of the DPKO Operational Concept note. Protection at this level includes UN missions' 'overarching mandate to support the implementation of a peace agreement or an existing political process'.[57] While acknowledging that peace is the most effective form of protection for civilians, the Operational Concept note observes that there are a number of ways a mission can support the political process, among them the following:

- the use of good offices – generally high level diplomacy and representation

- facilitating mediation

- supporting reconciliation processes

- acting as liaison between the government and the parties to the peace process as well as the international community.

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55   Humanitarian Policy Group – ICRC Round Table Summary 2011, 'The concept of protection – towards a mutual understanding'.

56   Author interview with DPKO, August 2012.

57   DPKO–DFS 2010, Operational Concept on the Protection of Civilians in UN Peacekeeping Operations, United Nations, New York, p. 9.

This work can be undertaken by both military actors but is more commonly done by political representatives of the UN mission.

Mandated humanitarian agencies often participate in this process through advocating for governments and parties to the conflict to endorse critical IHL, human rights and refugee law mechanisms as a part of peace agreements and the re-establishment of the rule of law. Although this might also be seen as 'environment building' (Tier 3 of the Operational Concept Note) the direct connection with the political process also allows for some activities to be included in this tier.

The humanitarian egg framework does not have a similar tier of protection, and generally the NGO sector chooses to remain aloof from political processes. The increasing practice of advocacy – and, in particular, persuasion, mobilisation and denunciation as advocacy strategies – can, however, be seen as directly contributing to protection through political processes by urging a change in the behaviour and policy of duty bearers. Interpreting advocacy as protection through political processes might be controversial in the NGO sector, which is disinclined to participate directly in political processes or to be seen to be doing so. While human rights actors are generally comfortable operating in political space, the fundamental principles of humanity, impartiality and independence have in some cases limited the capacity of humanitarian organisations to become involved in the political processes. The dangers of a presence/advocacy trade off and the implications for the capacity to deliver humanitarian assistance make the political space complex and difficult, although not impossible, for humanitarian actors to occupy. Consequently, there is no specific guidance called 'political action' in the egg protection model, despite lengthy guidance on the role of advocacy. Despite this advocacy, along with a number of activities nominated in the 'environment building' tier, it could actually have synergy with the DPKO Operational Concept's first tier.

In this sphere of action it appears that any disconnect that exists is a function of language and not of activity or objective. UN actors, through political persuasion, good offices and diplomatic pressure, and the humanitarian sector, through persuasion, denunciation and mobilisation, are seeking to affect the behaviour and policy of duty bearers. The objective is similar, the modes of action are different, and the complementarity of action plays a crucial role in understanding the different actors' limitations and building on their strengths.

Physical protection

The DPKO Operational Concept's second tier of protection is physical protection, which includes efforts to 'prevent, deter, and, if necessary, respond to situations in which civilians are under the threat of physical violence'.[58] While requiring any increase in military activity to be matched by an increase in political engagement, the Operational Concept recognises four phases of physical protection:

- Phase 1, Assurance and Prevention, includes low-level activities and is largely about reassuring the local population about the mission's intent to protect and indicating to potential perpetrators that they will be held accountable.

- Phase 2, Pre-emption, refers to when it appears that measures taken under phase 1 are not sufficient and there is a need to increase political pressure and increase patrolling and other deterrent activities in order to demonstrate mission resolve.

- Phase 3, Response, is activated when the threat of physical violence is imminent. It is in this phase that measures are taken to deter potential perpetrators and force may be deployed.

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58   ibid., p. 8.

Province Oriental, North Eastern Democratic Republic of the Congo (DRC) – Awareness raising exercise held by members of the local protection committee and women's association in Bangadi village. *Caroline Gluck/Oxfam 2012*

- Phase 4 involves consolidation actions undertaken to stabilise the situation after acts of violence and violations have occurred.

The physical protection activities in this tier of response from UN missions tend to fall to the military and police forces. There are, however, many pre-emptive actions that do not require the use of force but instead involve management of public order, conflict mediation, monitoring of human rights violations, political engagement, patrolling, and ensuring freedom of movement and route security for the delivery of humanitarian assistance and the movement of refugees and internally displaced persons. Although such actions might be seen to contribute to the stabilisation of an environment where threats of physical violence are diminished, or even to contribute to the political process, the direct connection between activity and physical safety ensures that these actions are seen to be part of the physical protection tier.

It is possible to compare this tier with the NGO 'remedial' activities from the egg framework, which for humanitarian agencies includes 'any immediate activity undertaken in connection with an emerging or established pattern of violation and aimed at preventing its recurrence, putting a stop to it and/or alleviating its immediate effects'.[59] The aim of these humanitarian actions is to reach civilians suffering immediate violations. This may be done through substitution, the provision of humanitarian assistance, or presence and accompaniment. It is well recognised that unarmed humanitarian workers and organisations cannot offer direct physical defence of communities and protection from violence, yet many of the actions that the Operational Concept note includes as physical protection are currently performed by the humanitarian sector. Safe programming activities aimed at reducing risks to communities, presence as protection, and working with communities at risk to strengthen their self-protection capacity all relate to the provision of physical protection. The value of the contribution of unarmed actors in this regard might be underestimated, but while the United Nations is incorporating a wide range of preventive actions under 'physical protection' the role of the humanitarian community should also be incorporated to ensure a comprehensive response.

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59   H Slim & A Bonwick 2005, *A Framework for Protection: a guide for humanitarian agencies*, ALNAP, London, p. 43.

The workshop held by the Overseas Development Institute and the ICRC to explore the difference between military and civilian actors in protection identified the use of coercion as one of the primary differentiators.[60] The idea that physical protection is solely the province of the military and the police is commonly supported as being predominantly related to this concept of physical security. But the way physical protection has been defined in the Operational Concept note has potentially provided grounds for misunderstanding between various actors. The four-phase approach considers many activities that do not involve the immediate interposition of troops for the protection of civilian populations – activities that are often undertaken by civilian and humanitarian actors. Developing frameworks for physical protective responses, then, should take this into consideration, thus providing some clarity in relation to the roles different actors can play.

Environment building

The third tier of the DPKO's Operational Concept refers to those activities that are aimed at 'creating an environment that enhances safety and supports the rights of civilians'. This has three elements:

- promotion of legal protection

- facilitation of humanitarian assistance and advocacy

- support for national institutions.

The tasks, carried out by many different UN mission actors, include promoting an understanding of and adherence to human rights, refugee and international humanitarian law, as well as focusing on commonly mandated tasks such as child protection and the prevention of sexual and gender-based violence. Securing access for humanitarian assistance is a part of this environment-building tier.

For the non-government sector, however, environment building is much broader and is multidimensional, with a focus on protections that are 'political, social, cultural, institutional, economic and legal – conducive to full respect for the rights of the individual ... likely to involve the establishment of more humane political values, improvements in law and legal practice, the training of security forces and the development of an increasingly non-violent public culture'.[61] This broad array of aims could be seen to encompass wide-ranging development goals leading towards economic, social and political stability.

It is unlikely that humanitarian organisations would see humanitarian assistance as an 'environment building' activity, and it is interesting that the DPKO included humanitarian assistance in this response tier. Does this also raise questions about a disconnect in understanding between the humanitarian community and UN missions and the way they perceive their respective roles? Humanitarians would consider humanitarian assistance activities as central to the survival of the civilian population and thus a protection activity much closer to the point of abuse than environment-building activities are generally considered to be. It might be that transition and development programming are more suitable activities for inclusion in the environment-building category of the Operational Concept.

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60   Humanitarian Policy Group – ICRC Roundtable on Civil–Military Coordination, *The Concept of Protection: towards a mutual understanding*, Geneva, 12 December 2011.

61   H Slim & A Bonwick 2005, *A Framework for Protection: a guide for humanitarian agencies*, ALNAP, London, p. 43.

Remedial action: the humanitarian 'egg' framework

The humanitarian egg framework for protection identifies 'remedial action' as those activities that are not concerned with direct physical protection but are more closely connected to violations than activities that contribute to environment building:

> *Remedial action is aimed at restoring people's dignity and ensuring adequate living conditions subsequent to a pattern of violation, through rehabilitation, restitutions, compensation and repair. Remedial activities are longer term and aim to assist people living with the effects of a pattern of abuse.*[62]

Remedial action activities include family tracing, health and livelihood support, education, and judicial investigation and redress.

The framework established by the Operational Concept has a strong focus on actions that work to prevent a pattern of abuse emerging and to protect populations from violence by establishing a safe and respectful environment. The humanitarian community also works toward this objective, but the ALNAP framework for protection also focuses on 'restoring people's dignity … subsequent to a pattern of abuse' and is perhaps cognisant of the fact that in some instances it is impossible to protect to the point that violations do not occur. In contrast, it is noteworthy that the Operational Concept note, while interested in environment-building activities, has little to say on the rehabilitation of those who have suffered violations and abuse.

A matter for further consideration is whether it can be argued that action under the remedial rubric of the protection egg could be considered 'rehabilitation' and should not be considered 'protection'. Although working with people subsequent to a pattern of abuse is fundamental to both recovery and the prevention of further violations, some actions defined in this area might not constitute 'protection' in the sense of preventing violations and abuse. This is a definitional question whose clarification would be beneficial in order to resolve some of the misunderstandings and misconceptions about the content and practice of protection.

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62   ibid.

CONCLUSION
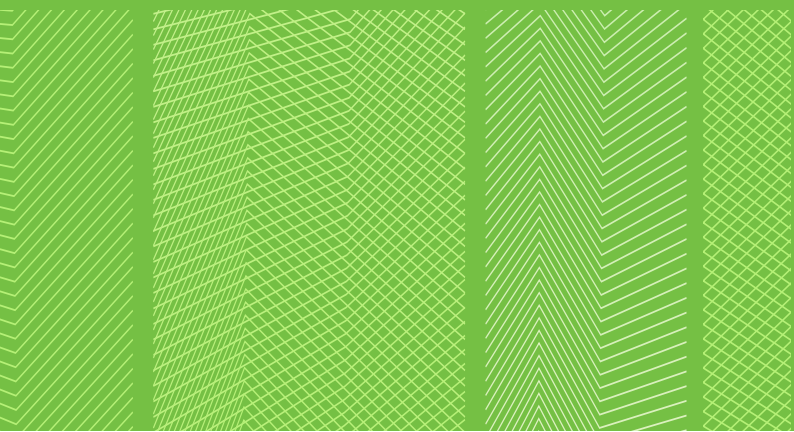
This comparison of the DPKO's Operational Concept and the humanitarian 'egg' framework for protection offers a brief insight into the definitional question of what is or is not protection and where different actors classify the same activity as working toward the same objective in a different manner. The comparison demonstrates the wide array of actions that are considered to be protection and recognises that some actions are far removed from the point of violence or abuse and that many different actors have the capacity to perform many of the same protection tasks.

The comparison also begins to provide insight into the way actions contributing to similar objectives are variously described and defined by different actors. First, for example, the Operational Concept considers humanitarian assistance under the rubric of 'environment building', whereas humanitarian organisations would see such assistance as being in the first line of response. In contrast, NGOs, perhaps considering that they have no place in the 'physical protection' tier of the Operational Concept, engage in many activities short of the use of force that in fact fit within that tier, as defined by the Operational Concept.

It would seem inevitable, then, that a disconnect begins to emerge, creating a degree of confusion between different actors, not only in terms of what is being done but also in terms of who has the ability to do it.

Second, although the humanitarian community has a widely accepted framework for protection, as defined and outlined by the ICRC and ALNAP, different agencies continue to develop and define what they mean by and how they practice protection. This in part reflects the lack of homogeneity in the humanitarian community, but even within agencies there is not necessarily clarity on some fundamental questions, such as the following:

- What is the difference between 'protection' and 'protection of civilians' for humanitarian actors?

- Is there a difference between 'humanitarian protection' and 'protection'? If there is, what is it?

- Does the 'humanitarian' nature of protection arise because this is protection work carried out by humanitarian agencies?

- Or is 'humanitarian' derived from international humanitarian law?

- Or could it be 'humanitarian protection' because it is humanitarian in nature and can therefore be practised by any actors – civilian or military?

The lack of homogeneity in the non-mandated humanitarian sector, and the actors' ability to shape definitions to suit their capacity and capabilities, could be one reason why protection has become a broad practice encompassing activities far from its humanitarian law origins.

Third, both the humanitarian community and the United Nations appear to have conflated POC from the narrow protections offered by international humanitarian law to encompass more general human rights protections. This raises questions about whether there is a nexus between POC and armed conflict or other situations of violence, and whether there is a necessary proximity to violence for protection actions to be considered 'protection'. For example, is training in international humanitarian law always a protection activity? Are there some instances when it may be considered to be something else? Is such training a protection activity only in contexts where there is proximity to violence or armed conflict? The same questions might arise for security sector reform and other actions such as transitional justice programs.

DRC, Mpati Camp, Goma – Oxfam protection team runs a training session for members of village protection committees and 'agents de change' (change agents).
Caroline Gluck/Oxfam 2012

Fourth, what influence does international human rights law have on the definitions and practice of POC? What are the international community's legal obligations in relation to the POC in armed conflict, or are the obligations more political and moral than they are legal? Should POC be understood within the limits of the protective responsibilities of states and parties to a conflict and how those responsibilities are counterbalanced with the longstanding norms of non-interference, national sovereignty, and so on? If this is the case, what is the role and impact of non-mandated protection actors? And what of populations requiring protection outside the context of armed conflict?

It appears from the brief comparison between the DPKO and humanitarian frameworks offered in this paper that it is possible to begin to identify reasons for a disconnect in understanding of protection between different actors. These different conceptions may be as a result of an actor's capacity, capability, political nature and fundamental organisational objectives that they are working towards, or they might be related to the implementation of protection activities, the nature of the environment, and the proximity of the threat. Developing an evidence base for conclusions drawn from the hypotheses and ideas emerging from this paper will be the challenge for the next 12 months of this project.