



KEYNOTE PAPER

The politics of protection

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Abstract

The dramatic progress of the global relief system in recent years has meant that generally we no longer have massive casualties, as we did only a decade ago, from lack of basic food, shelter and medicines. But millions of vulnerable civilians from conflict areas continue to remain gravely at risk as humanitarian protection remains a major weakness of the international response system.

The author¹ argues that, despite all the efforts that have been made, the international system has been unable to substantially improve effective protection for civilian conflict victims. In this paper, the author suggests some reasons why he thinks this is so and what might be done about it. He approaches the subject by highlighting issues such as responsibility and intervention, the protection architecture with its different actors, as well as the challenges of implementation. He suggests that although the protection of civilians is fundamentally linked to political and security issues it is frequently dealt with as a separate aspect of this broader equation. There was also a need to deal more effectively with non-state actors who are party to many current conflicts. UN peacekeeping mandates and resources for civilian protection needed to be strengthened and UN protection agencies needed to be more proactive. He concludes that there has been major progress in the last decade regarding civilian protection at the international level but this has not led to more effective protection in the field. However, progress has provided an exceptional window for much more effective implementation of basic safeguards than we have seen to date.

¹ The views expressed in this paper are solely those of the author and do not necessarily reflect the views of the Centre for Humanitarian Dialogue

Introduction

When I first came to the Refugee Studies Programme (as it then was) in 1986, during a sabbatical year from UNHCR, my aim was to try and write an analysis of the international response to the Indochina refugee crisis, which I had worked on for some years. I chose the title for this, somewhat ambitiously, as “The Politics of Humanitarianism”.

Fortunately my now dear friend, Professor Gil Loescher was also here and bravely (though I am afraid in vain) tried to suggest how to put my UN-influenced ramblings into a more digestible form. So to come back nearly a quarter of a century later to the RSC on a similar topic, obviously says something about my own lack of progress and perhaps a little also about the tenacity of the problem. For the Indochina refugee response was as well - in my view - a massive failure of the international protection system in many ways. And many of those failures continue to bedevil protection efforts today.

The dramatic progress of the global relief system in recent years has meant that generally we no longer have massive casualties, as we did only a decade ago, from lack of basic food, shelter and medicines. But millions of vulnerable civilians from conflict areas continue to remain gravely at risk in many respects, despite this progress. The most crucial area of humanitarian protection - particularly of civilians in and from conflict areas - remains a major weakness of the international response system and needs urgent review if it is to be improved.

Of course wars - and particularly civil wars - cause civilian casualties; directly and indirectly. This is both intentional and incidental. A recent credible study estimated that there had been some 15 million deaths from more than 20 major conflicts since the end of the Cold War. Most of these were not “battle deaths” but were conflict-related in various ways. And this takes no account of the wider lack of protection - from sexual violence, forced displacement, child abuse and widespread lawlessness, among others.

If one looks at the dominant headlines relating to the most recent conflicts and crises - for example in Sudan, the Democratic Republic of the Congo, Somalia, Sri Lanka or Pakistan - where there has been massive displacement and prolonged violence, they are almost without exception about the abuse of civilian populations, by governments or rebels, and seldom about lack of humanitarian relief. Despite all the efforts that have been made, the international system has been unable to substantially improve effective protection for civilian conflict victims in recent decades. I will suggest some basic reasons why I think this is so and what might be done about it. Having seen too many discussions over many years trying to define - or redefine - “protection” in such contexts, this is an area I normally avoid. “Protection” still has basic security and military connotations for many outsiders and field staff - especially the military. (When US Envoy Richard Holbrooke said recently that ‘protection of civilians’ was his first priority in Afghanistan, he clearly was referring to protection from “collateral damage” by US bombing and artillery, rather than any broader safeguarding of basic rights.)

There is scope for a more practical definition of the term, going beyond physical security, which in conflict areas particularly is often the essential starting point. Perhaps contentiously I would suggest that humanitarian protection in crisis situations cannot always attempt to encompass the full gamut of humanitarian and human rights, which often the population at large do not enjoy. To insist on this may in some cases be counter-productive. But I would also urge that the role of lawyers should be limited in this challenging debate, if it is ever to be helpfully resolved!

Reality politics

The challenge of protecting civilians in conflict areas is much more difficult than delivering relief aid and it is fundamentally linked to political, security and sometimes economic issues. Yet frequently protection is dealt with as a special and somewhat separate aspect of this broader equation. There is a danger that the often rather tired debates about “humanitarian space” may inadvertently increase this gap and further weaken the response. This is not an argument for the negative “politicisation” of humanitarian action - by the military, for example - but I believe that we need to be less apprehensive about dealing directly with political and security actors and issues, without compromising basic principles. We all - humanitarians and rights advocates - too often talk amongst ourselves, where we may comfortably agree on the problems and failures of all parties, without being open to addressing those responsible more directly.

If we want to be more effective in protecting vulnerable populations we have to be willing to deal directly with abusive regimes, violent rebels, or even violent outsiders - many of whom may include war criminals (as in Rwanda, Kosovo and Cambodia). This should not compromise their ultimate accountability, but nor should it be determined by fluctuating political blacklists.

(In Cambodia, the dreadful Khmer Rouge had a formal seat at the table and signed - as part of the UN-supported Supreme National Council of Cambodia (SNC) - eight major human rights treaties that the UN mission presented to the SNC. When the Khmer Rouge later left the SNC, parts of the mission nearly collapsed.)

The more we work in dangerous conflict areas the more we may also need military support - including armed escorts (sometimes even by local militias) - just to deliver basic humanitarian aid to needy populations. This has to be done carefully but sometimes cannot be avoided, unless one has the luxury of withdrawing from such situations. The UN and its agencies, of course, seldom enjoy this privilege and may therefore be seen to compromise more readily - but the call is never a simple one. Unfortunately, security support for humanitarian action had become one of the new unavoidable realities, including for protection.

We also need to remember that at heart the UN is a supremely political body, where major policy decisions (including support for UN humanitarian agencies) are ultimately made by the Security Council or the General Assembly, two of the world's most intensely politicised institutions. Even for the UN protection-mandated agencies, political factors influence the appointment of their heads, their funding and the support of their governing bodies. A recognition of this reality is the starting point for trying to positively influence the outcome of these processes, which donor states are well-placed to do.

Responsibility and intervention

State responsibility for the protection of civilians is an important and essential principle. But in the most abusive situations, where host states are usually also violators, regional or international action may be essential if lives are to be saved. This is not an argument for political or military action to be taken lightly, or under the guise of “humanitarian intervention” (as Mr Blair proclaimed for Kosovo - and where one of the first NATO Commanders there even claimed he was a “Humanitarian General”!) But it is an argument to make humanitarian and human rights issues less the subject of easy rhetoric and more a real priority in New York and Geneva, especially in the UN Security Council. The price for worthy proclamations on the protection of civilians has to be – or should be – more consistent and concrete support for protective field operations in conflict areas. This requires, in particular, sustained pressure by concerned governments and influential NGOs for stronger peacekeeping protection mandates and UN action which prioritises civilian protection, including in the crucial post-conflict transition phase.

Although senior UN humanitarian officials have been able to address the Security Council in recent years - which was previously strongly resisted - this has not regularly translated into more consistent action by the Council to address the problems they have highlighted in tangible terms. (Unless, of course, Member States think it is politically appropriate to do so, as in Kosovo, where more than 45,000 NATO-led troops flooded into that tiny country in a few weeks. In contrast Darfur and the Democratic Republic of the Congo have struggled for years to get less than half that number. Poor Somalia, of course, has no Western troops and is unlikely to get any.)

The Security Council has to be persuaded that in both the short and longer-term a more worthwhile investment in properly-resourced peacekeeping operations to address the most dire situations is far better value than subsequently trying to pick up the security, political and economic pieces. A rapidly imploding Somalia seems likely to again show the fallacy and tragedy of failing to address spiralling violence, despite the awful lessons of Bosnia and Rwanda.

Protection architecture

At the institutional and international level there is no doubt that there has been major – and even quite radical – progress in the last decade. Regrettably, this has not led to more effective protection in the field for most civilians caught-up in today’s wars. This is not in any way to denigrate the brave efforts of the many devoted humanitarian staff deployed in difficult and dangerous conflict areas – often young and highly motivated – hundreds of whom have lost their lives in recent years. The failure of the system is not their failure – on the contrary, it is despite their valiant efforts.

In many respects, Kofi Annan’s keynote speech at Ditchley Park in 1998 on the right to intervene to prevent large-scale human rights abuses became a starting point for a major shift in the international response to civilian protection. In the decade following, civilian protection became a standing item on the UN Security Council agenda, with regular briefings by the UN Secretary-General and the Emergency Relief Co-ordinator. The Responsibility to Protect Commission² followed, and ‘R2P’ (that awful acronym) became one of the new mantras. (I must add that it is a mantra which has considerable political baggage and which needs in my view to be very carefully handled).

More concretely, within a few years of Ditchley, the Security Council was mandating all new UN peacekeeping operations to have a ‘civilian protection responsibility’ under Chapter 7 (the enforcement Chapter) of the UN Charter. Mandates varied and caveats were applied, but an important bridge has been crossed. (At least hopefully we will not in future face the dilemma we confronted in Cambodia in 1992, where the United Nations Transitional Authority in Cambodia (UNTAC) peacekeeping General refused to take action against Khmer Rouge who massacred Vietnamese-Cambodians on Lake Tonle Sap, on the grounds that this was an internal Cambodian issue, outside UNTAC’s mandate.)

At the same time, the ICTY and the ICTR – the international criminal courts established for former Yugoslavia and Rwanda (to be replaced by the International Criminal Court (ICC) under the Rome Treaty) have had a difficult-to-quantify but key role in advancing accountability for mass abuse. For the first time since the Second World War, highest level officials complicit in crimes against humanity have faced the real prospect of international judicial accountability. Despite the critics, both in the G77 and the US Congress, one needs only look at the ICC’s impact in Sudan and Kenya recently to see the importance of this new mechanism. For many of us who have had to deal for years with the impunity of abusive regimes, the ICC process is an historical and radical innovation. It is the only credible route to high level government accountability for the mass abuse of civilians, which ultimately is the only level that really deters. Comparable progress on accountability at the national level and more effective execution by governments of ICC arrest warrants, remain two of the outstanding challenges which need more government support.

² Formally the International Commission on Intervention and State Sovereignty established in September 2000.

The implementation gap

Despite this impressive institutional progress in the past decade, the real test is to translate this into operationally effective protection for civilian conflict victims. While we will, of course, never be able to protect all civilians in lawless conflict zones, more could be done, by governments, the UN and its agencies. Security Council members in particular have to be persuaded to provide stronger protection mandates (with adequate means to carry them out and more accountability for non-performance) if the new peacekeeping operations are to play their intended role. Donor governments, many of whom claim civilian protection to be a foreign policy priority, must be pressed to also prioritise this area in their funding of the UN and its agencies. Most have been relatively slow to do so. UN protection-mandated agencies especially need to be urged to be more proactive and responsive in this critical area where new arrangements should be considered.

The reform of the UN humanitarian sector in recent years had produced some tangible progress in the area of humanitarian relief. Today the international system is more effective in mobilising basic humanitarian relief for populations in new crises than at any time previously. We no longer see the earlier tragedies repeated, such as the 50,000 Rwandans who died from cholera in a few weeks in camps in eastern Congo in 1994. Ten years later, in a much larger and more complex emergency in Darfur, there was virtually no starvation and no mass outbreaks of epidemics, thanks largely to the rapid deployment of thousands of aid workers by NGOs and the Red Cross, as well as UN agencies.

Unfortunately, protection has not benefited from the same improved response. As Darfur quickly became a major protection crisis, the UN and its key agencies dithered for some years as to who should lead the system on the massive IDP protection challenge. Despite a specific request from the UN Secretary-General, the then High Commissioner for Refugees refused to play this role in 2004, an issue not resolved until 2008. (Subsequently, UNHCR also declined to take the protection lead for IDPs in Zimbabwe, leaving the role to an unqualified IOM to manage).

Unfortunately as well, UNICEF, which historically was very proud of its child protection role - and which has the most widely ratified of all protection treaties in the Convention on the Rights of the Child - no longer consistently prioritises protection in its global humanitarian field operations.

The establishment of the Office of the UN High Commissioner for Human Rights (OHCHR) in 1993 - after years of debate - was intended partly to help fill this protection gap, and in some ways has done so. But donor governments have remained divided as to whether the OHCHR should be primarily a field-based organisation and a number of offending host States have also been reluctant to allow an OHCHR presence. The result is that it has often struggled to be able to mount effective field operations in some of the major new trouble spots. This had not been helped by an inconsistent approach to human

rights in major UN peacekeeping operations, with human rights often seen as a problematic and somewhat special domain. This has also reflected the reluctance of most Secretary-Generals and their senior managers in New York - especially in political affairs and peacekeeping - to allow human rights to have an equal place in politically sensitive UN field operations.

Without protective UN cover, NGOs who work in this area are especially vulnerable, as we have seen recently in the Sudan and Sri Lanka. When agencies or their staff can be expelled by host states with impunity for undertaking protection interventions, their capacity to do so is critically weakened. This equally applies to the expulsion of UN staff, where the institutional response has usually been very weak. Despite obvious political sensitivities, field managers have to be supported if the system is to function. Without consistent political backing, protection agencies face an almost impossible task - an area which I believe urgently needs high-level attention, both within the UN and with its governmental and other partners.

The expanded mandates from the Security Council also mean that increasingly UN peacekeepers have an important role to play in this area. Yet they are being systematically asked to protect civilians in conflict areas where they often lack the necessary resources or capacity even to protect themselves. As a recent high-level advisory group in New York has suggested, this problem is compounded by lack of UN clarity as to what exactly this task should entail, bearing in mind that most UN peacekeepers have never been trained - or in some instances even properly briefed - on how to carry out such a role.

To push UN military peacekeepers into the front-line of civilian protection, as has happened in Darfur and in eastern Congo, for example, is both unfair and ineffective. UN peacekeepers are needed to provide basic security, logistical support and to secure difficult areas. But the first line of regular civilian protection should be a civilian and police task, as it is in most of our countries, once basic security is secured. (In East Timor, we had to insist that enthusiastic Portuguese military units were only the last resort - not the first - in confronting rioting Timorese youths. Experienced Canadian police safely defused the problem.)

Effective police-keeping is a much-overlooked component in civilian protection activities and unfortunately there continues to be a dearth of trained police available from governments for current UN peacekeeping operations. A specially trained, stand-by UN police group (at least, at the managerial level, as proposed in the Brahimi Report) is long overdue. The new "integrated" UN peacekeeping operations can also pose special dilemmas in this respect. Too often the protection concerns of humanitarian and human rights components in these missions are subsumed by more pressing political priorities - including relations with the host State, which is the natural preoccupation of many pressured Special Representative of the Secretary-General's. To some extent this is a reflection of the real place of protection within the Security Council and the UN. Yet local expectations are usually very high in this area and can have fatal consequences if not properly addressed.

Local knowledge

There has been a lot of discussion of ‘bottom up’ or national protection mechanisms and how these should relate to international efforts. But many international organisations have limited contact with local counter-parts and often lack good analysis of the underlying causes of conflicts and local violence (International Committee of the Red Cross (ICRC) analysis being a notable exception). International peacekeeping is particularly susceptible to this problem. Peacekeeping missions are usually hastily put together with disparate international actors, most of whom have very limited if any local knowledge. The learning curve is often dramatic and sometimes insurmountable.

To be effective, protection must encompass preventative measures as well as post-facto responses to abuse. This can be a more difficult area and depends on a basic understanding of the causes of the violence. This is especially so in many of today’s conflicts which, despite their political origins, have often degenerated into criminalised and even commercialised activities. Non-traditional civil conflicts endanger civilians in a variety of ways. Attacks on civilians in these situations may have a range of motives, not all of which are self-evident and which need proper analysis if they are to be countered. UN political affairs should systematically be required to produce an analysis of the basic causes of the conflict, including attacks on civilians, prior to the deployment of any new peacekeeping missions. (The impressive background information recently produced, for example, by two Swedish researchers in regard to the motivation for sexual violence in the Democratic Republic of the Congo, is an invaluable starting point for any effective response. Regrettably, it is seldom done.)

International NGOs frequently have better local contacts and counterparts than does the UN. But even here there can be a lack of sustained local capacity-building and support, especially in major emergency situations where immediate delivery is usually the priority over more nuanced local understanding. This is an area which needs special focus by all international agencies – and especially those involved in protection activities – as local resistance to outside intervention is increasingly expressed through hostile reaction, including to brave local actors.

Other actors

Governments and the UN are statist institutions who relate much less easily to non-state actors. With the current preponderance of conflicts between governments and other groups, this can be a major handicap to a more effective response. As one senior diplomat from New York recently complained, the Security Council passed resolutions on the Sri Lanka conflict having only heard one side (i.e: the Government). Of course governments generally are in favour of this sovereign right. But the current reality is that non-state actors - rebel groups, opposition movements, local insurgents or warlords - are in most

cases critical participants in today's conflicts. This new situation, with relatively few inter-state conflicts, is one which the international system has been slow to adapt to. This limits protection responses as the UN, among others, increasingly struggles with the need to gain humanitarian access to anti-government areas, without politically recognising rebel groups.

The problem is further compounded by the political designation by some States of particular belligerent groups as "terrorist" organisations (terminology for which there is still no agreed definition). This usually complicates essential negotiations. States often put pressure on the UN to follow their political designations, even while they themselves may be inconsistent in their approach, as in the case of Sudan's Justice and Equality Movement recently. The more acute global politicisation of this process since 2001 has been a major impediment in this area.

Conflict resolution and peace mediation, by definition, demand dialogue with groups who may well be responsible for mass abuse of local populations. While ultimate accountability is an essential part of peace-building, dealing with the perpetrators is usually unavoidable to protect civilians in the interim. Here the discrete work of some non-governmental groups may be an essential gap-filler, as governments and the UN are often hampered in addressing this reality. Dealing with non-state belligerents in preparation for eventual peace settlements may also be needed to begin the essential process of getting all parties to recognise that a structured, law-based administration is the ultimate long-term protection for their own populations.

National protection

Long-term protection of vulnerable populations can only be ensured by properly functioning national judicial and legal systems. Action for the early recovery of this local capacity needs to be taken from the outset of any international intervention. Upon arrival in Kosovo, where it was backed by a massive NATO presence, the UN mission faced a spate of revenge arson and other attacks by the returning population on the Serb and Roma minorities. Kosovo had no functioning police or legal system. When NATO troops finally arrested some of the most blatant arsonists, there were no prisons to hold them or courts to try them. Eventually they were released from military detention without charge, seriously damaging the mission's credibility with the local minority populations.

Providing the basic elements for a functioning legal and judicial system in post-conflict situations should be one of the first priorities. International agencies and mechanisms – including peacekeeping missions – cannot adequately substitute for this. In extreme cases this may need temporary, ad hoc tribunals, internationally supported and – as far as possible – nationally staffed.

Bringing back expatriate national experts, even on a short-term basis, is often needed to kick-start this process. Without these measures, any international substitute will be inadequate and is usually quickly resisted. The rule of law recovery gap in the international system continues to be a critical area in need of more support and earlier attention. The key elements for it also need to be elaborated, as far as possible, in any formal peace agreements and related constitutional reforms.

Civilian casualties

Effective advocacy for civilian protection requires credible data. Despite its obvious importance, there is still no internationally established register of civilian casualties in conflicts. While there may be valid debates about their magnitude, in part this is because there has been no sustained effort to set up an effective monitoring system, despite well-known difficulties in doing so. With 100,000 UN peacekeepers now deployed worldwide, and many more national and international civilians involved in responding to conflict and crisis areas, there is a vast potential field resource which could be mobilised in support of this. While figures will not always be verifiable, criteria and procedures could be developed to provide a credible framework for this process. As the Oxford Research Group (ORG) has impressively demonstrated, such a register would not only properly recognise civilian losses, but would also help to avoid the endless debates about civilian casualty levels, including in situations such as Iraq and Afghanistan. To be credible the register should be established under UN auspices, specially funded and internationally supported, with clear criteria.

The current situation, where some governments publicly refuse even to attempt to record civilian casualties, including by international forces, is a major impediment to more effective protection efforts. While most countries are meticulous in recording - and remembering - their military losses, sadly the same is not done for civilian casualties. The ORG campaign to address this deserves to be strongly supported by all concerned with civilian protection.

Public advocacy

In many respects, protection is the most “political” aspect of all humanitarian action. Inevitably, it is the most sensitive issue for those who are alleged violators. At the same time, it may be the litmus test of the success of humanitarian and peace-making interventions. Without effective civilian protection and population stabilisation, conflicts are usually prolonged. To be more effective, protection activities require political backing, at different levels and in various ways, both within the UN and with governments. To obtain this there is often a need for strong national lobbies, particularly within donor

states and with international and regional organisations. Here international advocacy agencies have a special role to play and it should be strengthened.

There is also a need for informed and sustained media coverage, especially of some of the more prolonged - and less newsworthy - crises. Too often we have had to cajole the media in order to obtain this. Both areas need to be better mobilised and utilised by concerned agencies. Media coverage in particular is a sensitive area which needs careful handling, but the very 'political' nature of protection also makes it a prime area for increased national and international coverage and advocacy. Its potential to mobilise political action is immense. As a Foreign Office official once confided years ago: "When John Pilger writes a piece on our neglect of Cambodia, we are flooded with public calls for action, which are hard to ignore."

Conclusion

The need to keep a proper distance between responding to humanitarian crises, including protection, and the politics which created and nurtured them, is an understandable and justifiable one in many respects. But if we are to be more effective in protecting the victims of these crises we cannot work in isolation from the essential causative factors. ICRC and many NGOs are right to want to keep a safe distance from the political compromises that often go to the heart of UN action. At the same time someone - and some of us - have to be willing to deal directly with those who are responsible for these situations.

In all these approaches we have to be alert to "protection" being used as a cover for political action, as in the case of Kosovo. If humanitarian protection was the real reason for the biggest NATO invasion force in recent history, the question has to be why was it justified for the relatively few casualties in Kosovo, while millions more victims in Africa and elsewhere have never provoked anything like the same response? (In this respect, Boutros-Boutros Ghali's politically contentious phrase, "White man's war", may not be easily ignored.)

Selective human rights - or humanitarian - interventions are by definition partial and not universal. Often the very perception of a biased approach has reduced the basic credibility of international humanitarian action. When I once had to intervene with a senior Tanzanian official protesting his Government's expulsion of Rwandan refugees in 1996, he sharply reminded me that we were not saying the same things to European governments who were trying to close borders to asylum-seekers. And when Thailand was reproached in the 1980's for their expulsion of Vietnamese boat arrivals, the Secretary-General of the Thai National Security Council publicly quoted the US expulsion of Haitian boats as a comparable and justifying action.

I firmly believe that international humanitarian law and human rights principles are the basic underpinning of the protection regime, as well as its genesis. But we also have to accept that in many of the most egregious situations, we are working in essentially lawless environments, often without any history of the rule of law. When normal law processes, as we know them, do not apply, we have to adapt our approach. Arguments of political self-interest and likely international reaction to mass-violations are, among others, often essential aspects of intervention in this uneven discourse. Frequently the international response, including by the UN, is too timid to make full use of this potential leverage. In the end, even the most abusive regimes or rebel movements usually claim to abide by international standards of treatment. Politically, even if not ethically, they cannot afford to do otherwise. We need to be creative in exploiting this disguised sensitivity. The real progress in the international framework for civilian protection in the past decade has provided an exceptional window for much more effective implementation of basic safeguards than we have seen to date. The challenge is huge, but so too are our potential resources and, hopefully, our determination.

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