# PFF Background Paper
# Protection in the Context of Humanitarian Action: Challenges and Opportunities

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# Contents

## *Abstract*

The bulk of humanitarian action occurs in armed conflict settings and this will likely persist into the foreseeable future. This paper examines global level changes that have positive as well as negative implications for crisis trends, the circumstances that threaten the safety and dignity of at-risk groups, and the challenge this presents a humanitarian system that has in-built deficiencies that need to be addressed to give effect to its protection responsibilities. Structural problems include the lack of a common understanding of the essence of protective programming and the strategic measures needed to secure protective outcomes. This paper proposes that supply-driven humanitarianism – interventions shaped by what is on offer by individual agencies rather than addressing the priorities of crisis-affected populations – is jettisoned in favour of an over-arching whole-of-crisis strategic approach. Such an approach needs to be informed by the views of those at imminent risk as well as the measures they take to stay safe and increase their survival options. It also proposes a series of actions geared to strengthening the agency and leverage of humanitarian actors operating within or beyond the formal system.

## I. Introduction

Evidence from diverse crisis environments, such as South Sudan, Somalia, Syria or Sri Lanka, demonstrates that it is not realistic to conceive of effective humanitarian action in the absence of concerted and productive attention to threats that present the greatest risk of endangering the lives and survival chances of populations affected by sudden, slow-onset or protracted crises.[1] In these crisis situations, threats driven by violent and abusive policies were of critical concern to endangered communities. However, experience shows that such protection deficits are rarely prioritized by humanitarian actors or receive the type of action necessary for the realization of outcomes that enhance the safety and acknowledge the dignity of at-risk groups.[2] Evidence also shows that the formal humanitarian apparatus "is not a system in any recognizable state",[3] given the tendency of individual agencies to operate in line with their institutional agendas notwithstanding their professed commitment to, and participation in, the Inter-Agency Standing Committee (IASC). The IASC is tasked with providing overall direction and coordination of a system-wide response. The phenomenal and continued growth of a broad range of actors[4] involved in efforts to mitigate suffering in recent times has added to the complexity of mobilizing and maintaining effective relief operations particularly in protracted crisis settings.[5]

Humanitarian action faces multiple challenges as the costs of responding to the growing incidence of crises, large and small, continue to increase in an era of profound change and uncertainty. The need for increased funding can also be attributed to the inefficiencies of an overly bureaucratic and multi-layered international humanitarian system.[6] Humanitarian actors are struggling with the implications of a shift from a sole super-power to a multi-polar world. This includes an emerging post-Westphalian

political order and the rapid intensification of globalization processes that are redefining the role of the state and the nature of international relations.[7] Contemporary crises are, primarily, the result of governance failures at the national and international level. This frequently translates into armed conflict where unregulated warfare reigns supreme. In addition, large-scale disasters associated with calamitous natural hazard events highlight the limited investment in risk reduction, such as the Ebola epidemic in West Africa that exposed the failure of governance including international support for development.[8]

As crises become part of a "new normal" that threatens to overwhelm existing capabilities, it exposes the deficits of traditional modes of action that have been dominated by the provision of goods and services with limited reference to crisis dynamics that exacerbate vulnerability and exposure to risks that undermine the safety, deepen the discrimination, or intensify the harm faced by crisis-affected populations. The upward trend in humanitarian need highlights the urgency of re-thinking supply-driven humanitarianism that has routinely sidelined or downgraded the importance of prioritizing protective action essential for safeguarding lives at imminent risk. Meaningful acknowledgement of the central and critical role of affected populations in their own safety and survival is an indispensable starting point in shifting to demand-driven humanitarian programming. Inevitably, this will require going beyond the rhetoric surrounding protection issues and giving meaningful effect to its declared centrality in humanitarian action.[9] There are many interpretations of the formal IASC definition of protection.[10] Widespread confusion surrounding "protection", both in terms of discourse and decision-making at the strategic and operational level, has significant ramifications for effective humanitarian outcomes.[11]

> For the purposes of this paper, *protective humanitarian action is crisis specific analysis and needs assessment informed by protection perspectives coupled with efforts to enhance safety from armed violence, abuse, discrimination, exploitation and persecution, as well as respect for the dignity of all crisis-affected individuals. Protective programming includes dedicated, results-oriented interventions, as well as the mainstreaming of protection principles throughout all sectors and activities.*

Increasingly, whatever the source, nature or location of a crisis, those who are adversely affected are in a position to communicate how they are suffering, what they are doing to help themselves, and the type of help they expect from those beyond the crisis zone. Similarly, the rapid advance of technological innovation, information tools and the emergence of diverse social movements, jihadist and other extremist groups, play a significant role in shaping narratives and expectations in situations of political upheaval, state failure, and other crises that result in the need for humanitarian action.[12] The real-time views, voice and agency of those who are directly affected provide new and unique opportunities to humanitarian actors who prioritize threats of highest concern to at-risk groups. However, even though the protection dimension of humanitarian action has

received some overdue attention in recent times, it is not yet part of the DNA of the humanitarian system.

Based on past and recent humanitarian performance, coupled with the challenges associated with the turbulence that characterizes contemporary times, it is vital that any Planning From the Future (PFF) contribution addresses protection concerns as these will likely become more demanding, fraught, and complicated given current trends and trajectories.

Thus, this paper contributes to furthering appreciation of the vital importance of addressing protection needs by examining the external, contextual factors, as well as internal humanitarian systemic issues, that facilitate or constrain protection outcomes in the context of contemporary and emerging crisis settings. It suggests ways in which problems can be tackled, and opportunities maximized, in the immediate future (2015-2020).

## II. The New Normal, Change and Crises: Protection Implications

Big picture changes that shape the conditions in which crises occur, coupled with political economy considerations that inform policies or lack thereof, play a role in the level of exposure to threats that jeopardize the safety and dignity of at-risk individuals. This section examines change pertinent to recent and near future crisis environments in order to highlight ongoing and potential protection implications.

The end of bi-polarity after the demise (1990) of the Cold War, the call for a New World Order upon the launch (1991) of the first Gulf War after Saddam Hussein's forces invaded Kuwait marked the dawn of a new era that promised positive change as well as daunting challenges. The prospect of a rules-based global order and a credible United Nations was tempered by genocide in Rwanda and the Balkans coupled with the intensification of armed conflict from Angola to Afghanistan.[13] It also included a U-turn in the West on refugees who abruptly lost their strategic Cold War significance as the plight of internally displaced persons (IDPs) moved centre stage.[14]

The changed stance on refugees effectively meant reduced commitment to meet state responsibilities for the protection inherent in the right to seek and receive asylum in the rich world as exemplified by Fortress Europe, the U.S.-Mexican border barrier to deter those labelled "illegal migrants" and Australia's determination to detain, or transfer elsewhere, all boat-borne applicants for refugee status, whatever their country of origin or cause of their flight.[15] This is in sharp contrast to the Cold War era Orderly Departure Programme (ODP) that came into being as tens of thousands of "boat people" fled Vietnam when a victorious communist government took control at the end of the war in 1975. The ODP (1979-89) allowed Vietnamese, who met particular criteria, a safe and organized departure, rather than taking flight on rickety boats. This was the first time UNHCR "extended its assistance on a large scale to help persons to leave their country of origin".[16] Late 2015, it is too early to tell whether the European Union (EU) and other

Western democracies will persist in shrinking from their international obligations, as set out in the 1951 Refugee Convention. This includes the categorization of those who have a *bona fide* claim to refugee status as undeserving "illegal" or economic "migrants" even though they have fled the terror of places such as Afghanistan and Iraq and their desperation pushes them into the arms of smugglers and rubber dinghies to cross the Mediterranean to reach a secure environment.

By the start of the new millennium, post-Cold War aspirations of greater security and serenity had to contend with a world dominated by US hegemonic interests and the changes unleashed by the forces of *uber* globalization processes and technical innovation. These redefined the meaning of power and its relationship to economic, political, military and environmental considerations as well as the significance of electronic horizontal social networks that challenge millennia of vertical intergenerational communication and contribute to identity politics and radical extremism.[17]

## Globalization, Changing Power Dynamics

Globalization, a key factor in the dynamics that have spawned multiple challenges to a US-led, Western-dominated global power structure, is one of the most significant transformative processes of recent times.[18] A dynamic process, globalization is shaped by tensions inherent in unprecedented levels of interconnectedness that simultaneously expand and shrink, pull together and fragment people, power, and polities. This happens as different forms of exchange, including culture, capital, and computerized technologies transcend and blur national boundaries and challenge traditional values.[19]

A tight web of interconnectedness means that the local and global are intertwined as never before, as illustrated by the collapse of the investment bank of Lehman Brothers, in 2008. When this major US investment bank went bankrupt, it threatened to upend the global economy, highlighted the fragility of the international financial system and led to a US trillion-dollar intervention package, using taxpayer's money, to stabilize panicked markets.[20] It also highlighted the cascading nature of many contemporary crises and the extent to which some states have limited capacity to counter threats that are transnational or originate beyond their borders. In such circumstances, states and other local actors may face added difficulties addressing problems that exacerbate protection concerns such as trafficking issues, the spread of armed violence, or involuntary displacement.

Globalization, as such, is not new and its evolving implications are contested. Its roots can be traced to the rise of modernity in the late 15th and early 16th century when science, coupled with political power set sail, so to speak, for new horizons. Walter Mignolo describes modernity as a European narrative of change, riches, and salvation that masked "coloniality". This, he explains, is "the darker side of modernity" involving power structures of dominant and subordinated states and a legacy of hierarchies including in relation to knowledge and values.[21] By contrast, Hardt and Negri concluded

that globalization will lead to new forms of "sovereignities" whereby masses of transnational and networked groups contest global monopolies that will re-balance relationships between the "haves" and the "have-nots".[22] Although there is no agreement on the likely evolution of globalization processes few would disagree that a critical issue concerns power, how it is governed and how it is used. The impact of changing power structures on issues such as inclusiveness or marginalization has a direct bearing on protection concerns in crisis settings.

The nature of power is changing. It includes the internet, social media networks, satellite technology, the rise of civil society groups and what constitutes effective governance institutions or military advantage in armed conflict settings. It also includes the financial system or, what Paddy Ashdown calls the new style money-changers or speculators who were key architects of the boom and bust story that led in 2008 to the world's worst recession since the Great Depression of 1929.[23] This collapse brought to the fore the untrammelled power of banks and the implications of an unregulated financial system. As economies collapsed, externally imposed austerity measures contributed to soaring levels of unemployment, homelessness, migration, and a spike in suicides.[24]

Importantly, and for the first time since the initiation of the Westphalian state system in 1648, power is seeping, vertically, from state-ruled processes and institutions to ungoverned spaces that are prone to chaos, criminality, and crises of great complexity.[25] Globalization subjects the world to forces that "challenge the Westphalian state-centric view of international politics" and points to the significance of non-state entities in shaping a post-Westphalian order.[26] Power is also shifting horizontally from Western nations to Pacific rim countries, a move that signals the beginning of the end of some 400 years of the dominance of Western power, institutions, and values on the global stage.[27] This has significant implications for humanitarian action in general and for protection concerns in particular as the West's assumed monopoly on moral authority is challenged by its own actions and that of its allies such as Saudi Arabia. This is already the case concerning respect for the rule of law, including international humanitarian and human rights standards as evidenced by actions associated with the Global War on Terror (GWOT), among others. Official attitudes to refugee flows headed to the rich world as endangered groups seek to escape the mayhem of crisis zones such as Afghanistan, Iraq and Syria that are, in part, a product of the strategies and military actions of Western powers also illustrate the hollowness of policies and narratives that claim a special affinity with principles of justice, equality and humanitarian values.[28]

The US and Western alliances will likely retain much of their clout into the near future, but many argue that the era of Washington dominance is declining and that international politics "is entering a period of transition, no longer uni-polar but not yet fully multi-polar".[29] Similarly, the multifaceted process of globalization including the emergence of network power challenges traditional concepts of the state as well as its actual role at the national and international level.[30] This has implications for the legitimacy of the state and its institutions. In the past, the legitimacy of the state and its

governance apparatus rested on its ability to secure the safety and human security of its citizens within its borders. Beyond national frontiers, states acquired legitimacy as acknowledged members of Westphalian inspired notions of international community including the norms of respect for sovereignty, non-intervention, and the legal equality of states enshrined (1945) in the UN Charter.[31] There never was a golden age of sovereignty, whatever the thrust of contemporary nationalist and populist narratives. However, notions of what it is to be sovereign and what it takes to deliver on responsibilities in this regard have not kept pace with change that challenges or outpaces traditional forms of governance at the national and international level. An international law system, including that which is of direct interest to humanitarian actors, is founded on state-centered solutions that may prove inadequate or irrelevant in a seemingly irreversible process of globalization.[32]

The erosion of state authority, agency and legitimacy, coupled with the rise of a broad range of powerful if diverse entities that operate in competition with, in parallel to, or in consultation with state machinery, pose many questions about the function and effectiveness of governance systems that are, in principle, accountable to their constituents. A few random examples include Apple that has a knack of paying low corporate taxes but remains the worlds "most valuable, publicly traded company by a large margin"; its economic output in 2014 was larger than that of Oman at US$81 billion.[33] The Gates Foundation spends more on global health annually than most countries or, indeed, the World Health Organization (WHO). To-date, the Gates Foundation has funded grants to the tune of $33.5 billion and was instrumental in setting up the GAVI alliance "which has played a major role in boosting immunization rates" particularly in the poor world.[34] Its achievements are laudable, but concerns have been raised by health practitioners, among others, about the Foundation's general lack of accountability and transparency and the increasingly supersize nature of philanthrocapitalism.[35] The rapid rise of ISIS or *DAESH,* coupled with its ambitions and brutal tactics have made it a household name wherever there is a wifi connection. The notoriety of *DAESH* has been attributed to a number of factors including the terrorizing tactics of the Assad regime, the US occupation of Iraq and the country's subsequent disintegration including the marginalization of the Sunni population. The emergence of ISIS has also been linked to the long history of denial of Palestinian rights and the failure of the so-called Arab Spring coupled with the woeful state of Middle East politics. ISIS is known for its ruthless savagery, ideology, myths, propaganda wizardry as well as the pragmatism of ISIS *supremo* Abu Bakr al-Baghdadi; in an uncertain and unstable time al-Baghdadi has pledged to restore the dignity and rights of Muslims and shows "an unparalleled grasp of the limitations facing contemporary powers in a globalized and multipolar world".[36]

As the locus of power and autonomy changes and a growing variety of actors and networks acquire influence and international significance, limitations on the autonomy of states with limited political clout will become more pronounced in concert with the globalization of power and authority.[37] Recent (2014, 2015) situations of humanitarian

concern as diverse as those in the Central African Republic, South Sudan and along the routes taken by refugees and others seeking asylum and a safer future in the European Union illustrate the problems that occur, from a protection perspective, when states are unable or unwilling to secure the safety, and ensure respect for the rights of citizens, civilians and refugees that reside in, or traverse, their territory. Some relief actors are conscious of the need to find productive ways of interacting, for example, with extremist and jihadist militants as well as other actors including state authorities that threaten the safety and wellbeing of those in need of humanitarian support. The formal system, as well as its many partners, must acknowledge the importance of fresh thinking on the many current and emerging challenges that need to be addressed if humanitarian action on protection issues is to prove relevant and effective in the future.

## Global Governance Gaps

Ongoing globalizing processes already outpace existing and evolving global governance.[38] Global governance gaps and related structural problems add to the challenges of a fast-changing world and its relationship to crises.[39] Such gaps include the UN Security Council's (SC) composition and paralysis or non-action in crises such as Sri Lanka and Syria, when its inability to address threats to international peace and security has had devastating ramifications for the safety and protected status of civilians.

Dysfunctional, undemocratic, and ineffectual global governance is also a factor in the context of environmental degradation and climate change, growing inequality within and between nations, unregulated financial markets and economic shocks, disregard for international humanitarian and human rights law including by powerful states and extremist non-state armed actors, nuclear proliferation, harmful uses of technological innovation or system failures, pandemics, weak intergovernmental institutions and mechanisms to partner with non-state and exclusivist state entities as well as inadequate means to address those marginalized by globalizing forces.[40] Experience shows that global governance mechanisms whether in the form of treaties, policies, inter-governmental bodies or trans-national arrangements will be contested, ignored, or circumvented if such tools lack political authority and perceived legitimacy. Effective global governance requires a greater degree of inclusiveness, transparency, cooperation and accountability than currently exists.[41] The gap in global governance adds to the multiplicity of inter-linked factors that shape an evolving global order beset by crises.[42] Global governance failures and deficiencies have many real, accumulated and potential implications for the safety of marginalized and at-risk groups in crisis settings when the impact of structural violence and unregulated armed conflict erodes or eradicates tenuous coping mechanisms and humanitarian actors are unable to address or mitigate patterns of harm that jeopardize or exhaust survival options. Governance failures coupled with inadequate or ineffective humanitarian action in relation to protection deficits contribute to high morbidity and mortality rates.

The combination of rapid global integration and related structural problems of fragmentation and marginalization within and among states, the diminished capacity of national authorities to deal with issues that are transnational in nature, and a context of weak global governance, points to a likely increase in systemic risks and an era of perpetual crises.[43] Changing trends also point to a long period of high demand for humanitarian action in a world of such rapid and radical change that many traditional humanitarian certainties and *modus operandi* will need to be rethought and reconstituted. This is of particular significance in relation to protection concerns that, traditionally, have not featured adequately in crisis analysis or in humanitarian strategies and their translation into effective response programmes.

Rapidly changing crisis dynamics at the local and global level underscore the importance that all humanitarian stakeholders acknowledge the implications of a diminishing or post-Westphalian state-centred international political and legal system – including its treaties, policies, implementation and accountability mechanisms – for humanitarian action in general and protection work in particular. Disturbing trends[44] concerning the prevalence of fragile, dysfunctional or disintegrating states and an out-dated global governance apparatus, coupled with the lack of consensus on the policies and measures needed to safeguard the lives of citizens and civilians caught in chaotic and catastrophic crisis settings, require action by societies and governments. Action is needed to give meaningful effect to widely accepted norms concerning the safety and well-being of individuals in distress and principles that underpin notions of a shared humanity that pre-date the Treaty of Westphalia in 1648. This effectively requires mechanisms that are insulated from power politics and agendas driven by narrow state interests. This could involve, for example, a tripartite humanitarian governance apparatus that includes states, UN humanitarian bodies and non-state actors including a rotating membership of *bona fide* groups with specialized expertise and knowledge on different aspects of crisis dynamics such as arms sales, health care in conflict settings, the situation of besieged communities, the terror tactics of states and NSAA, IHL compliance etc.

## Trends, Issues Driving and Framing Future Crises

The incidence of disasters associated with natural hazard events, including in the context of climate change, has been on the increase. This trend will likely persist in the foreseeable future. Although the number of people directly affected by disasters is on the decline, average annual death rates increased to 68,000 in the period from 1994 to 2013.[45] Disasters and other types of crises that hit large cities or densely populated areas will, in all likelihood, continue to have devastating human, social and economic consequences.[46] At the same time, the growing number of countries reaching middle income status together with a swelling of the ranks of the middle class is, according to the UN, likely to result in demands for "better environmental protection and more transparency in how government operates".[47] As the number of Least Developed Countries (LDCs) declines, there is greater investment in disaster risk reduction

initiatives at the national and regional level so that more governments than before are better positioned to respond to crises and "are increasingly asserting their sovereignty in relation to disaster relief".[48] An ALNAP study in this regard found that many disaster-affected governments wish to orchestrate the overall relief response noting that some international relief efforts "have been criticized for ignoring, sidelining or actively undermining local capacities" while some officials "may regard aid agencies as being over-resourced, unaccountable, and donor-driven, with overpaid staff".[49] This effectively means that as national actors – governments, NGOs and others – assume a bigger role in responding to disasters associated with natural hazard events, there will be less need for external support except in mega events that outstrip national coping capabilities or hit several countries simultaneously. This also means that the bulk of humanitarian action in the near future will continue to be in armed conflict settings.

In terms of armed conflicts, there is evidence to show that interstate wars have "declined dramatically since the end of World War II, and the incidence of civil war has declined substantially since the end of the Cold War".[50] This is welcome news but the dynamics and details of these trends, including in relation to protracted conflict, are contested from different angles given on-going debates on the comparability and credibility of available data; this relates to the metrics used, which types of armed violence are covered in different data sets, the absence of systematic data on fatalities including in relation to non-state armed actors (NSAA) as well as deaths in some situations of civil disturbance.[51] More people have been killed on average in international wars than in civil war settings.[52] Nevertheless, there is data to indicate that as the incidence of warfare declined in recent years, the number of fatalities increased from 56,000 in 2008 to 180,000 in 2014.[53] It is worth noting that data on civilian casualties is notably sparse, difficult to collect, and is not done systematically.[54]

Given the political, economic, social and governance factors that contribute to high vulnerability and risk levels, it is to be expected that some conflict-affected countries will also be disaster-prone and poorly equipped to deal with slow or sudden-onset emergencies.[55] The need for external support in such settings will persist into the foreseeable future. Experience in disaster zones as diverse as Afghanistan, Somalia and South Sudan highlight the challenging nature of protection concerns in such settings given the longevity of the war and related feuds over governance models, significant displacement, erosion of community networks, high levels of insecurity and limited infrastructure.

Some of the other trends and issues that are likely to be important features of crises of different kinds in the future include changing demographics such as population growth and an increasing proportion of elderly people in all societies. Trends of increasing concern also include unplanned urbanization, population movements – migrants, internally displaced, asylum seekers and refugees – affected by, if not always directly linked to growing inequality, marginalization and armed violence; the spread of consumerism, rising expectations, and extremist ideologies. Such trends, coupled with the growth of middle-income countries and a greater proportion of crisis-affected

populations being part of an urbanized middle class, will likely play a critical role in the determination of who is most at-risk and which self-protective measures can be supported.[56] Given the information technology revolution and the rise of social media networks, affected populations will, most likely, have a louder voice in the future in articulating why and how their lives are jeopardized and what needs to be done to address life-threatening situations. This offers great potential for the rapid identification of needs related to protection concerns as well as more timely and protective humanitarian action that benefits from the support of engaged citizens everywhere.

Global change, coupled with an upward trend in the incidence, scale, longevity and impact (short and long-term) of calamitous events,[57] that generate humanitarian need beyond what is possible to address locally, will pose significant challenges to concerned actors operating in and outside the IASC framework in the years ahead. Issues at the strategic and operational level will differ and evolve between crisis settings depending on a host of factors such as levels of preparedness and solidarity between the disaster affected and relevant governance apparatus, as well as the severity of the calamity. In all settings, however, it is reasonable to anticipate that the measures needed to address the protection concerns that invariably arise in situations of upheaval will be constrained by obstacles as well as opportunities to address problems as has been the case in the past including, for example, in relation to gender and other types of discrimination, the direct impact of war on civilians, and gender-based violence.

State failure including the loss of a central and legitimate monopoly on violence, and the prosecution of the Global War on Terror (GWOT), coupled with changes in the conduct of warfare, will likely pose the most significant challenge to life-saving and the normative frameworks that emerged at the end of WWII and more recently to safeguard and protect war-affected and up-rooted civilians. When this is coupled with other globalizing and geo-strategic trends that contribute to, or generate situations of breakdown as illustrated by interventions in Afghanistan, Iraq, Libya, Syria and Yemen, as well as the life-endangering risks associated with the projected increased incidence of climate related disasters, the protection needs of crisis-affected populations will likely increase. This, in turn, will oblige greater scrutiny of the relationship between the sources and drivers of crises and the protection ramifications for at-risk groups as the ongoing (2015) drama surrounding the flow of refugees and others into the European Union from countries such as Syria, Eritrea, Iraq and Afghanistan demonstrate.

Challenges to the humanitarian imperative and, by extension, protective humanitarianism will likely intensify as the environments in which crises occur change, becomes more polarized and complex, and humanitarian efforts are instrumentalized to the detriment of the safety of affected populations in contested or dysfunctional governance settings.

The next section examines the systemic issues related to protection concerns that humanitarian actors will need to confront to undertake protective humanitarian action now and in the future.

## III. Protective Humanitarianism: Challenges and Opportunities

Inter-agency humanitarian action gained prominence in the 1990s as the demise of Cold War bi-polarity ended geopolitical predictability in relation to crises and UN General Assembly Resolution 46/182 (1991) set out a framework for coordinated humanitarian action. It also established roles and mechanisms including that of the Emergency Relief Coordinator (ERC) and the IASC. 46/182 did not make specific reference to protection issues but underlined concerns about "the loss in human lives, the flow of refugees" and the "mass displacement of people" as well as the need for more effective coordinated action.[58]

It is not possible within the parameters of this Briefing Paper to provide a detailed analysis of various initiatives, since the early 1990s, geared to improved protection in emergency situations. Nor does it examine the implications of humanitarian policies or actions, for example in relation to funding or food security, that have a bearing on protection considerations. However, it is worth underlining that since the adoption of 46/182, and in the aftermath of a series of deadly crises in the mid-1990s, there has been considerable investment in a range of measures such as norm-making, policy development and guidance, training, operational reviews and efforts to strengthen accountability to affected populations in order to make field operations more protective.

The ERC-commissioned 2005 Humanitarian Response Review gave rise to a Humanitarian Reform programme that was re-visited with the launch of the Transformative Agenda in 2011. These initiatives did give dedicated attention to protection matters with a focus on the internally displaced. The non-uprooted including those who are unwilling or unable to flee such as the besieged, continue to receive relatively limited attention. As noted in the *Whole of System Review*, the reform initiatives failed to address "the issue of leadership and joint decision-making" that have significant implications for protection including in relation to the way issues are prioritized or de-prioritized and the persistence of silo approaches to crisis-affected populations.[59] The reform initiatives also reinforced the separation of refugees from the rest of the humanitarian caseload and, by extension, the persistence of parallel coordination frameworks under the auspices of UNHCR and the IASC. These issues, and a number of related problems that tend to intersect with each other, are of particular relevance in the context of contemporary crises and emerging trends. They point to the significance of the protection challenges that will determine the severity of calamitous events in the foreseeable future.

## Humanitarian Space, Access, Presence

Traditional problems that undermined or limited *humanitarian space* and by extension inhibited or restricted the presence and support of humanitarian actors have become more difficult in many crisis settings.[60] Complicating factors often center on a long pattern of instrumentalization of humanitarian action in support of political or other agendas and the blurring of distinctions between the role and functions of humanitarians and those of political and military actors including in the context of UN peace missions with mixed or "integrated" objectives.[61] Concerns about staff security in the context of high levels of volatility and armed violence in conflict settings as well as the absence of trusted relations with warring parties and other relevant interlocutors are a significant factor in the limited or non-presence of humanitarian organizations in various locations.[62] The spread of "new humanitarianism" in concert with neo-liberal securitization agendas whereby relief work in the context of "hearts and minds" campaigns linked to stabilization, counter-insurgency and counter-terror initiatives has polarized perceptions and diminished space for neutral and independent humanitarian action.[63] In addition, some locations such as Baluchistan and North Waziristan in Pakistan have effectively acquired a "no go" status given the absence of organized humanitarianism in both war-affected provinces. Similarly, as noted in the MSF study *Where is Everyone?,* humanitarians have a history of concentrating in certain locations or focusing on particular groups; in the Democratic Republic of the Congo, for example, some 70% of the overall IDP population, who are living with host communities, "generally do not receive targeted assistance of any kind".[64] It is also worth noting that although traditional *humanitarian space* constraints are not an issue in places such as the Greek island of Lesvos, where some 132,000 people seeking asylum arrived in October 2015, the formal humanitarian system has very limited presence in locations where over-crowded dinghies arrive from Turkey.[65] Were it not for local residents, the Greek Coastguard and a transient population of individuals who mostly volunteer for short periods, many more lives would be lost than the 3,460 who have died attempting to cross the Mediterranean in the first ten months of 2015.[66]

The intensification of globalization and competing value systems such as capitalism, ethno-nationalism, Buddhist extremism and Jihadism, coupled with the reverberations of GWOT, anti-terror legislation, and the muddled history of military interventions presented as humanitarian or in support of human rights have all added to the challenge of negotiating and safeguarding *humanitarian space*.[67] So has the presence of different types of NSAA some of which are antagonistic to humanitarian support that is perceived as Western although ISIS in Syria, for example, has on occasion permitted the provision of vital supplies distributed by local relief networks.[68] Experience shows, however, that productive interaction with extremist militant groups on protection matters will, in many instances, prove difficult as has been the case with state actors such as the Assad and Rajapakse regimes in Syria and Sri Lanka respectively.

In addition, the modified and changing role of states in an evolving global order has challenged and transformed traditional notions of sovereignty in complex ways.[69] The

exercise of state sovereignty "is increasingly subject to internationally recognized norms" that prohibit egregious human rights violations such as genocide, ethnic cleansing, slavery and torture.[70] Changing narratives on sovereignty by crisis-affected governments that routinely ignore the primary responsibility of states to give effect to the humanitarian imperative have contributed to the diminution of *humanitarian space* in various disaster environments from Sri Lanka to Syria, from Myanmar to Pakistan.[71]

Whatever their origin or nature, threats to humanitarian values, including impediments to undertaking humanitarian action in a timely manner, are, at core, a fundamental disregard for the safety, dignity and well-being of people in situations of extreme distress. Contempt for the respect due to all human beings by virtue of their humanity and inherent human rights incorporates a broad spectrum of harm that stretches from willful negligence by states and other actors in the face of life-threatening risks to deliberate, targeted and violent attacks designed to maximize suffering. This is currently the case in armed conflict settings as diverse as South Sudan and Syria.[72] Warfare, whether regulated in line with international humanitarian law or of the no-holds-barred variety, has always posed problems for civilians both in terms of battle-field fatalities and deaths attributed to indirect and accumulated deprivation as a result of displacement, the destruction of livelihoods, homes and essential services, and the absence or erosion of credible governance and rule of law.[73] Armed conflict environments are set to remain a major pre-occupation of humanitarians in the years to come and will necessitate dedicated and concerted action by all concerned about lives at imminent risk. An analysis of 2013 humanitarian funding and recent trends in this regard shows that conflict settings and neighbouring refugee hosting countries receive the bulk of available resources; "all of the ten largest recipients in 2013 were affected by protracted or recurrent crises" notwithstanding Typhoon Haiyan that hit the Philippines at the end of the year.[74]

The erosion of *humanitarian space,* and the ramifications of this from a protection perspective, is also linked to the nature of the relationship between humanitarian and other actors engaged in crisis settings. A key concern of some humanitarian organizations is the prospect of being associated with policies, programmes or external interventions that state or non-state actors find objectionable from a political or strategic perspective. Crises such as those in Afghanistan, Mali, Myanmar, Pakistan, Sri Lanka, Sudan and Syria to name but a few demonstrate the stance of *de facto* authorities that are antagonistic to policies or initiatives that are perceived as linked, for example, to accountability for war crimes, human rights violations or crimes against humanity, or involve external military action for whatever purpose including those authorized by the Security Council in line with the Responsibility to Protect (R2P) doctrine.

There is no consensus within the IASC on the desirability of, or appropriate modalities for mobilizing and nurturing synergies with groups or initiatives such as those associated with R2P, Human Rights UpFront, human rights organizations and related mechanisms, and the International Criminal Court as well as different types of UN and

regional peace-making or peace-enforcement missions with or without specific protection-of-civilians responsibilities.

On the topic of UN peace-enforcement missions or other such operations concerned with peacekeeping or peace-building, there is significant agreement within the humanitarian community on the importance of not blurring distinctions between different types of actors and insulating humanitarian action from partisan politics.[75] There are varying perspectives on the issue of synergies between humanitarian and human rights in the context of not endangering *humanitarian space.* On the one hand, humanitarian and human rights actors often share common analysis of threats but pursue different modes of action to address or mitigate them. In addition, there is often a great deal of mutual misunderstanding concerning their respective roles and responsibilities even though there is broad consensus on the importance of maximizing complementarities.[76]Other issues that complicate or constrain complementarities include the tendency of humanitarians to prioritize access and the provision of assistance whatever the setting including when they have limited presence or ability to be operational. Humanitarians are, in general, reluctant to be associated with human rights monitoring mechanisms linked to accountability processes and tend to disapprove of public pronouncements that do not take potential ramifications for relief work into account.

Overall, the discourse on the potential of synergies between different sets of actors concerned about protection issues in crisis settings will likely remain complicated for the foreseeable future. This will be particularly true in armed conflict settings where state authorities, extremist groups, or GWOT-associated activities pose problems that undermine the safety of at-risk groups. Whether different protection-oriented entities and mechanisms from within and beyond the IASC framework operate in tandem or as distinct initiatives, as is routinely the case with the ICRC, it is crucial that humanitarians clearly articulate their objectives and approach to achieving enhanced protection in a principled manner. It is also important that the different factors that limit *humanitarian space,* and by extension a response geared to addressing *all* identified needs, are identified and their repercussions articulated whatever the nature or extent of humanitarian presence in particular crisis settings. The humanitarian community should also identify issues that are within its remit to address in the context of maximizing *humanitarian space* including in relation to protective action.

## Leadership: Supply-Driven Humanitarianism, Advocacy

There is widespread confusion within and beyond the formal humanitarian arena on the fundamental essence of protective humanitarian action. This is one of the key conclusions of the 2015 *Whole of System Review of Protection*. It bemoans the absence of a common understanding of what protection, or protective humanitarian programming, means in practice. It is not something novel, new or mystifying even if there has been limited attention at the strategic level to identifying and addressing protection concerns. An agreed or common understanding of protective programming is an important

starting point. It is crucial, for example, during the analysis of a crisis situation and identification of needs that, in principle, guides the formulation of an overall humanitarian strategy and its translation into programming geared to protective outcomes.[77]

Limited consensus on the significance of threats that undermine the safety of at-risk groups is compounded by inadequate commitment to addressing protection needs. One of the striking findings of the *Whole of System Review* is the "widespread perspective among humanitarians that they do not have a role to play in countering abusive or violent behaviour even when political and military strategies and tactics pose the biggest threat to life".[78] This translates in diverse ways in different crisis environments. In Syria, for example, there is a lot of reference in humanitarian documentation to protection initiatives such as "child friendly spaces" in contrast to threats such as sieges or indiscriminate warfare including barrel bombs that pose direct threats to children and their families. In South Sudan there was inadequate contingency planning and preparedness notwithstanding the history of this lengthy crisis and warning signs of growing ruptures in the government a few months prior to the eruption of fighting in December 2013 when thousand were killed and hundreds of thousands were obliged to flee and remain displaced.[79] The humanitarian community was caught unawares and unprepared including for those who sought safety and shelter in UN bases where poorly organized and poorly-named "protection of civilian" sites rapidly became scenes of tension and distress as a series of problems such as gender-based violence, flooding and criminality added to other protection concerns including the recruitment of child soldiers by different warring factions.

Events in Sri Lanka during the end stages of the war (2008-2009) led to the IASC re-affirming its commitment to the *Centrality of Protection* in it decision-making and programming. The IASC statement was driven, primarily, by the findings of the UN Internal Review Panel Report on Sri Lankan. It concluded there was a systems failure to challenge or attempt to counter deadly policies and military tactics when 40-70,000 civilians, trapped in what was, effectively, a free-fire zone were killed during the end phase of the war.[80]

Different actions are needed to transform the *Centrality of Protection Statement* into meaningful outcomes for at-risk populations. Some of these actions are discussed in the section that follows on architecture and its role in relation to supply-driven humanitarianism. This refers to programming that reflects what is available – for example food, medical care, child friendly spaces – rather than initiatives designed to address the priority concerns of crisis-affected populations. In armed conflict settings, it is routine that safety, including freedom from abusive practices and indiscriminate warfare, is the primary preoccupation of war-affected communities whether they are on the move or in their usual place of residence.

Many agencies prioritize and are content with "protection mainstreaming", sometimes described as "do no harm" that, in essence, is minimum good programming that is

sensitive to conflict and power dynamics. In any setting, such an approach is an important factor in the realization of effective humanitarian outcomes. However, coupled with remedial programmes that are vital in helping many individuals such as survivors of gender-based violence to recuperate, such interventions cannot be perceived as a substitute for reducing or eliminating exposure to the most deadly threats that puts lives at risk in armed conflict situations.

Experience shows that the development of sound contextual analysis is critical for the realization of results that helps save lives whatever the nature or severity of threats. This should identify opportunities as well as constraints that shape the survival options of at-risk groups. Rigorous and objective analysis is an essential foundation for the formulation of an over-arching humanitarian strategy that frames a coordinated response geared to protective outcomes. This should be the norm in all sudden-onset and protracted crisis settings. Strategies should reflect a strategic vision, give direction, and provide a framework within which different actors can contribute to a collective, joined-up endeavour that prioritizes those who are most endangered. This involves identifying threats and patterns of harm that are most dangerous or deadly and working to counter these. It also necessitates a step-change in humanitarian perspectives and practice. Humanitarians have not yet acknowledged in a meaningful way that compassion cannot be effective if it is not shaped by the priority concerns of individuals confronted with acute life-endangering situations. Closely related to this is the absolute importance of analyzing, and supporting as deemed appropriate, the strategies and self-help protection measures of at-risk groups that frequently play the biggest role in keeping their families safe.

Currently, a combination of factors that range from inter-agency politics to the identification of needs based on status and particular categorizations tend to pre-determine responses and programming focus. Those who are up-rooted – IDPs, refugees – are routinely prioritized over those who are stuck because of geography or poverty, are besieged or are unwilling to flee.[81] Similarly, women and children are routinely categorized as populations in need of support which means that others including, men, youth, as well as particular social or ethnic groups receive less attention whatever their level of need.[82]

Supply-driven humanitarianism has many downsides and raises questions about the leadership, prioritization and commitment to effectiveness of the humanitarian apparatus. Increasingly, the ramifications of supply-driven programming will likely receive attention from crisis-affected populations as more join the ranks of "accidental activists" and use social media and other informational technology tools to draw attention to their situation. As the 2015 flow of refugees to Europe illustrate, many in need of international protection are more than capable of voicing their views on the reasons for their plight and what needs to be done about it. Many echo the concerns of one fearful Syrian resident of Homs in 2011 when she noted that "We don't want food – we want to be protected from what is happening here."[83]

An important feature of effective humanitarian leadership is the ability to bring attention to, and action on, policies and activities that put lives at risk. It is not possible to determine on the basis of available literature whether humanitarians are, in recent times, less invested in advocacy than in the past when dedicated campaigns made significant normative, strategic or operational advances on issues such anti-personnel landmines, IDPs and GBV. However, there is lots of evidence that underscores the need for concerted attention that mobilizes protective action on a growing list of concerns. These encompass long-standing issues such as the prevention of sexual exploitation and abuse, the use of child soldiers, counter-terror legislation, limited support for refugees seeking asylum in the rich world, and the changing character of war as well as strategies that involves the deliberate targeting of civilians. In addition, warzones as diverse as the Central African Republic, Sri Lanka, South Sudan, Syria and the Ukraine illustrate the destructive role of external sponsors of different sets of belligerents. All UN SC P5 members have a major stake in the global arms trade including to the Middle East while simultaneously closing the door to refugees or ignoring outstanding appeals for humanitarian funding.[84] The 2015 Mediterranean coffin ship saga underscored the importance of humanitarians engaging with such realities as well as the policy disarray and lack of solidarity that defines EU refugee failures. It is well known that the EU has focussed on restricting safe land access to Europe while strengthening border controls that effectively push desperate asylum seekers into the arms of smugglers and perilous Mediterranean sea-crossings.[85]

Humanitarians need to invest in improving their understanding of the changing character of warfare and its implications for civilians so that they are better able to engage with state and non-state warring parties, and their backers, to identify possibilities for advancing compliance with core humanitarian values. The ability of humanitarians to challenge militarized or repressive governance systems is notoriously difficult but recent events show that crisis-affected groups are imaginative and energetic in highlighting the cruelty of warfare and the devastating effects of other types of disasters. They are also vocal in their expectations of help that is meaningful in thwarting abuse and taking action themselves. The humanitarian system needs to engage with such activists and find meaningful ways of supporting and working with them as deemed appropriate.

Current trends, as noted above, indicate that the bulk of humanitarian action will, for the foreseeable future, remain pre-occupied with the needs of people affected by armed conflict. It is, thus, worth examining what this implies, from a humanitarian protection perspective.

## Changing Character of Warfare: High Cost to Civilians

Different perspectives on the character and conduct of so-called “new wars” tend to re-affirm Clausewitz’s aphorism that the essence of war is a continuation of politics by other means.[86] Analysis of the conduct of twenty-first century warfare highlights a range of concerns that warrant consideration in the organization of protective

humanitarian action.[87] Key factors include the number of fragile states and their low levels of legitimacy in the context of globalizing and polarizing trends that drive identity politics, the momentum of armed opposition groups, and a broad array of challenges to the way societies function. Communication technology facilitates the promotion of divergent ideas including, for example, human rights norms or militant radicalization with religious connotations.

Belligerents often employ strategies that seek to destroy the social, political and economic structures in what is often termed total war. As warfare becomes more urban so does the risk of high civilian casualties and the disruption or breakdown of essential services. The privatization of war, including the use of commercial and mercenary groups is conducive to the growth of militias and criminality that operate outside IHL strictures. The prosecution of wars by armed groups or states that do not enjoy broad political support, as is currently the case in Syria, is at greater risk than usual of the use of tactics that are indiscriminate, terrorizing, and harmful to civilians. This is also the case in asymmetric conflicts when there is little or no expectation of reciprocity, little distinction made between civilians and combatants, and total war tactics are rationalized when opponents are dehumanized or labelled "terrorists". The Obama administration, for example, considers "all military-age males (killed) in a (drone) strike zone" combatants "unless there is explicit intelligence posthumously proving them innocent".[88] Rapidly evolving and readily available communication and war-related technology, combined with strategies, tactics and narratives designed to instil fear and weaken the will of opponents, is changing and expanding what constitutes the battlefield in contemporary conflict. Warfare – including GWOT and the many military campaigns that echo its rationalizations in capitals as diverse as Colombo, Damascus, Mogadishu, Moscow, London and Teheran – that is antagonistic to the purpose and meaning of IHL or is designed to maximize suffering will, invariably, result in high casualty rates and render the laws of war ineffective.[89]

Many of the changing characteristics and conduct of warfare point to the likelihood of significant human costs as well as circumstances that suggest an upward trend in the violation of fundamental humanitarian norms. The deliberate and routine violation of IHL's core obligations – distinguishing civilians from combatants, taking all necessary precautions to ensure avoidable harm, and prohibition of means and methods of warfare likely to cause excessive suffering and losses that are not proportional to military objectives – as well as complex challenges to a rule-based global order, effectively delete the notion of incidental harm, otherwise known as collateral damage, as it puts civilians, literally, on the firing line.[90] It also puts into question humanitarian action that is blind to threats that pose the biggest danger to human life or lacks the instinct, commitment and creativity to generate measures geared to achieving life-saving outcomes in *all* situations including settings where elementary considerations of humanity are deliberately contravened.

No-holds-barred warfare should be a critical and central concern of the humanitarian community that needs to go beyond calls for compliance with well-known core

humanitarian law standards. There needs to be real investment in the systematic investigation and publication of patterns of warfare that demonstrate wilful disregard, or worse, for the protected status of civilians. Similarly, it is past time that all concerned constituencies, including those at the receiving end of unregulated warfare, had a say in the generation of independent mechanisms geared to securing compliance with core IHL provisions. The humanitarian system should routinely identify and address, within the scope of its competence, patterns of warfare-related harm that endangers the lives of civilians.

## Humanitarian Architecture: In-Built Deficiencies and Opportunities

Humanitarian architecture includes old and new structures, as well as mechanisms, that are in constant need of remodelling given the genesis of many of these in pre- or post-World War II Europe. Current trends, particularly in terms of warfare, population movements, the growth of middle-income countries and the rise of civil society organizations tend to indicate that the existing humanitarian infrastructure will prove increasingly inadequate or will be paralleled by new initiatives such as refugee camps for Syrians in Turkey that are managed by the country's Disaster and Emergency Management Presidency with little if any UNHCR engagement.[91]

As noted above, supply-driven humanitarian action is likely to face increasing challenges as populations in distress are more vocal about their priority needs that are often different to the help available from traditional humanitarian actors that conduct needs assessment in line with the usual package of services and support they are in a position to provide and present to donors for funding. As technology and tools to address material needs evolve, it remains to be seen whether the demand for protection increases substantially as urbanized, middle-income, internet savvy, informed populations in fragile, fragmented or conflict-torn states suffer massive shocks that deplete or destroy routine coping mechanisms and puts their lives at risk. Recent experience such as the end days of the war in Sri Lanka, when the formal humanitarian system effectively concluded that a total war approach was not its problem, and the mushrooming of local groups and initiatives concerned with the protection threats emanating from the Syrian internal and regional proxy war, may well be indicative of the future. If this is the case, it is likely that dispersed *diasporas*, local and global activists groups, as well as those who are directly affected will seek alternative answers, including the organization of initiatives that function independently of formal organized humanitarianism, to address issues of greatest concern to crisis-affected groups.

There is broad awareness among stakeholders that "change is happening outside or at the margins of the formal humanitarian system" as diverse actors occupy or influence spaces that were once the preserve of Western-style humanitarianism.[92] There is also growing recognition of the need for meaningful investment in building partnerships and networks that strengthen capacity and improve access to resources while "rebalancing relationships between Global South actors" and the IASC humanitarian apparatus.[93] The

significance of Global South actors needs to be better acknowledged and reflected in strategic level decision-making.

At the same time, complex and protracted crises illustrate the need for a common strategic framework for all who are adversely affected to avoid a supply-driven approach that often involves competition for funding and profile. The absence of an overarching and protective strategy often works to the disadvantage of those at greatest risk such as besieged communities in Syria. A 2015 study found that there were some 650,000 besieged Syrians, a figure that is more than three times the UN estimate that underplays the magnitude and severity of the consequences of such tactics for those who are not up-rooted.[94] In 2012, UNHCR, Afghanistan, Iran and Pakistan signed off on a "Solutions Strategy" aimed at generating conditions conducive to voluntary repatriation. At the same time, industrialized country asylum data indicated a 30 per cent increase in Afghan asylum applications while the impact of increasing insecurity on safety and livelihoods was one of several factors that shaped the decision-making of those who sought asylum but were often identified as "economic migrants".[95] A broad pattern of silo-style approaches to the overall humanitarian caseload underscores the need for a core, overarching strategic approach that takes account of the circumstances of *all* in need of humanitarian support and facilitates an impartial and protective response.

It is well understood that crises affect people and communities in different ways and that humanitarian action that claims to be impartial has a responsibility for *all* in need of help that is vital for their survival. However, this rarely, if ever, plays out in practice notwithstanding significant investment in efforts designed to enhance the humanitarian programming cycle.[96] A coordinated response should, in principle, relate to *all* who have humanitarian needs including those who are directly war-affected and at the receiving end of military operations that are conducted in a lawful manner, or otherwise, as well as the many who have been up-rooted and obliged to flee, internally or across borders, as well as those who are stuck or unable to relocate to a safer location. It should also identify those who are particularly vulnerable or at risk given their age, gender or reduced capacity to cope in a situation of political upheaval, widespread violence and lawlessness, destruction of public infrastructure, and erosion of livelihoods and essential services.

In contrast to an over-arching strategic approach, the formal IASC response to the situation routinely described as the "Syrian crisis", that has inter-connected humanitarian consequences within and beyond the Middle East region, involves a number of parallel or overlapping initiatives and coordination structures. These include in-country and cross-border coordination mechanisms as well as a regional humanitarian coordinator whose portfolio does not include refugees. Coordination structures also include UNRWA for Palestinian refugees. In addition, UNHCR has a dedicated, triple function (donor, implementing agency, coordinator) set-up in various neighbouring countries for refugees and host communities, as well as separate modalities for Syrians seeking refuge elsewhere. However, a Real-Time UNHCR

Evaluation of its response to the Syrian refugee crisis does not address the situation of refugees seeking asylum in Europe illustrating the extent to which those affected are not part of one overall, proactive strategy to diminish suffering and related protection problems.[97] Another review on the Syrian response found that even though the international community has launched "a coordinated regional response", in practice "operations are highly fragmented between areas, groups of affected people, and response sectors".[98]

Concerns about the gaps and inefficiencies that characterize multiple, parallel humanitarian coordination apparatuses are also relevant to the situation in northern Iraq where there are refugees from Syria and Iraqi IDPs fleeing Islamic militants who are fighting in Syria as well as Iraq. Notwithstanding a long-negotiated UNHCR-OCHA policy agreement on "mixed caseloads", affected groups located in close proximity to each other receive different types of status-based entitlements. This has led to the organization of parallel services such as health care facilities or shelter programmes for IDPs and refugees whether resident in camps or spontaneously settled in urban neighbourhoods. Parallel sector and cluster coordination mechanisms struggle to reduce disconnects in relation to funding, services and protection concerns.[99] The situation of Yazidis who fled Mount Sinjar in Iraq and became refugees in Syria before crossing into Iraqi Kurdistan, where they were categorized as IDPs, illustrates some of the issues associated with mandate-driven humanitarian infrastructure and related protection implications. In an environment of intensified warfare, generalized violence and fragmentation of society along sectarian and ethnic lines, coupled with inadequate and competing funding streams for humanitarian programmes, the overall scope of humanitarian action is limited. It is concentrated in particular areas including camps for the internally displaced and refugees even though "92 per cent of IDPs live in urban" areas in Iraq where the risk of renewed displacement is high.[100] This in effect means a high proportion of unmet protection and other needs including for minorities and individuals who face significant threats to their safety.

Experience from various locations shows that the current humanitarian architecture is not well positioned to address or mitigate protection problems or other concerns faced by populations living outside camps where the spontaneously settled and host communities often receive limited attention and support.[101] Similarly, coordinated humanitarianism often does a poor job of identifying and factoring in community-based or self-help protection mechanisms thanks in part to a supply-driven culture and the absence of an overall strategic approach to issues that arise in relation to concerns about safety, abuse, marginalization, exploitation and dignity.[102]

The *Whole of System Review of Protection* recommended a "whole of crisis" approach for situations such as Syria where vulnerability, exposure to risk, and coping mechanism constitute a complex web of needs and survival options that are often shaped, ameliorated or mitigated by the way in which humanitarian action is organized and support is, or is not, provided. It is well documented, for example, that if assistance or measures to enhance protection are provided only to IDPs, this will often operate as a

pull factor for others, who are equally in need, but did not receive help.[103] A coordinated "whole of crisis" approach would involve an overarching coordinator who has the authority to mobilize the system to operate in sync within a "one caseload, one strategy, one appeal" framework.[104] Such an approach would require sound contextual analysis and an objective assessment of needs that takes account of community-based or self-protection measures as a basis for the development of an overarching humanitarian strategy that is protective. Such an approach would help break down the artificial barriers that exist between the IASC coordination system for crisis-affected populations within their own country and UNHCR's coordination and operational structure for refugees and refugee hosting communities.

At this point in time it appears that there is little support among UN humanitarian agencies and the OECD club of donors to re-think existing structures and traditional humanitarian response models although different ideas that have a bearing on architecture are being discussed in the lead up to the 2016 World Humanitarian Summit (WHS). For example, there is much talk in WHS circles about separating needs assessments from operations in order to ensure a systematic, independent, across-the-board objective assessment of needs that is separate from agency supply-driven interests. There is also a robust discussion on follow-the-money issues. These include the extent to which available resources are not allocated on the basis of assessed and prioritized need. This can mean, for example, limited support for innovative action on acute or unanticipated protection problems given donor and agency preferences for initiatives that are predictable both in terms of inputs and anticipated outcomes that meet "value for money" criteria.

There is also an evolving debate on the use of cash or electronic voucher cards that will likely play an increasing role in response initiatives in crisis zones where such support is appropriate and feasible in the future.[105] There appears to be limited literature concerning insights on the possible implications, from a protection perspective, of the greater use of vouchers and decreased reliance on supply chains for the provision of food and non-food relief items. An evaluation of the use of cash and vouchers during the 2011-2012 period of the famine in Somalia found that the distribution of relief items occurred in a socio-political context that was very exploitative. It found little systematic coordination with protection initiatives but the transfer of cash was less visible than the provision of material goods that routinely resulted in the extortion of a certain percentage through illegal "taxes" as well as an increase in the incidence of burglary that often led to rape.[106] It is likely that that direct cash transfers to crisis-affected households and individuals will increase autonomy and choice and may also reduce the emergence of negative coping mechanisms such as early marriage for girls, prostitution or transactional sex that is often exploitative. It is unclear for example whether in refugee hosting countries such as Greece, Lebanon or Pakistan redeemable vouchers would improve access to health care facilities or in protracted war zones to bakeries as was the case in many Afghan cities when the Taliban were in charge in Kabul and

female-run bakeries were a positive given deeply entrenched discrimination against women and girls.

Looking to the future, it is reasonable to anticipate that humanitarian infrastructure designed for an earlier era will prove increasingly inadequate and dysfunctional. This is likely to become more obvious in situations where populations in distress seek help from external actors that interpret need in line with their business model or pursue action that is in keeping with donor agendas. As technology and tools tailored to address material needs evolve it remains to be seen whether the demand for protection increases substantially as urbanized, middle-income, internet savvy, informed populations in fragile, fragmented or conflict-torn states suffer massive shocks that deplete or destroy routine coping mechanisms and puts their lives at risk.

## IV. Forward Agenda

In a fast-moving global environment where headline crises compete for attention and the humanitarian system is struggling to keep pace, many individuals, whether senior humanitarian decision-makers, donor personnel, or frontline practitioners acknowledge that change is necessary, inevitable and is already happening. This was readily apparent when an unprepared Europe and a slow-moving humanitarian apparatus struggled throughout much of 2015 to acknowledge and address the reality of a fast-moving mixed flow of people anxious to reach EU territory and the prospect of safe and dignified new beginnings. This was in dramatic contrast to a host of pop-up initiatives by local communities and short-term but highly motivated volunteers who responded with ingenuity to meet urgent life-saving needs. Actions by first responders included rescue by fishermen at sea, the resuscitation of half-drowned children on island beaches, and the mobilization and provision of dry clothes, water, food, urgent health care and a warm welcome to those seeking asylum. There is no consensus on what needs to change but different initiatives continue to emerge including those related to the findings and recommendations of the *Whole of System Review of Protection in the Context of Humanitarian Action*.

Following is a summary of proposed actions that emerged from the research undertaken for this paper. In the context of the larger PFF project, it is important to underscore the urgency of addressing issues that have dramatic, real-life implications for the safety, dignity and survival of those in need of protective humanitarian action both now and in the foreseeable future.

**Rapid Change, Global, Local**: Humanitarian actors working within or beyond formal humanitarian frameworks need to acknowledge the many changes that are unfolding and their implications for the safety and wellbeing of crisis-affected populations. This includes understanding the agency and aspirations of people who have been obliged or are unable to flee life-threatening dangers and whose greatest need is often safety and a dignified means of survival. A changing global order beset by crises also requires humanitarian actors to invest in understanding how globalization processes, for

example, are changing power dynamics and the capacity of states to meet their responsibilities as well as the risk factors and opportunities that greatly determine the survival chances of populations in situations of acute distress. Humanitarians also need to face up to the gaps in global governance that have direct and dramatic consequences for at-risk groups in fragile or disintegrating state systems. This includes, for example, understanding the profound changes implicit in the emergence of a greatly modified or post-Westphalian system of inter-state relations. This involves addressing issues such as the normative and other implications of transnational population movements or the marginalization of state-based international legal regimes from a humanitarian protection perspective.

**Realizing Protection**: There is an urgent need for the IASC to rectify its intellectual and operational confusion concerning the translation of its formal definition of "protection in the context of humanitarian protection" at the strategic and operational level. This requires unpacking the formal definition so that its meaning and relevance is unambiguous and is articulated in a way that is easily understood and communicated effectively in different conflict and disaster contexts.

**Humanitarian Space:** Humanitarians have long experience of negotiating, or working to maintain the *space* necessary to give effect to the humanitarian imperative. Contemporary and evolving challenges, whether in relation to traditional notions of sovereignty, the role of NSAA, GWOT, the blurring of distinctions between peace-enforcement or human rights accountability agendas and humanitarian action, and the deliberate disregard of the protected status of civilians, require dedicated and concerted action by the IASC. The formal system needs to invest in relationships as well as narratives that help counter policies and activities that undermine support for humanitarian values and, by extension, the space needed for protective humanitarian programming.

**Unregulated Warfare:** Despite a well-established, and fairly robust normative, legal and policy framework specific to safeguarding the protected status of civilians, IHL is routinely flouted by states, with or without democratic credentials, and by NSAAs operating with or without the support of particular population groups. Almost 70 years since the 1949 Geneva Conventions it is time to reassess the limitations of voluntary compliance with IHL strictures on the means and methods of warfare including military strategies that are designed to maximize harm to civilians. This situation requires bold and committed initiatives such as the systematic recording and publication of civilian casualties and the development of independent fact-finding mechanisms that have the authority, at least morally, to hold to account those responsible for egregious IHL violations. To give effect to its *Centrality of Protection* declaration, the IASC including in particular agencies such as UNHCR that lobbied for, and acquired ten years ago, lead responsibility on humanitarian protection matters, should *routinely* address, within the scope of its competence, the direct impact of war on civilians.

**Architecture, Whole of Crisis Framework:** Given the supply-driven nature of the formal humanitarian apparatus and the implications of this for effective interventions and protective outcomes, there is a dramatic need for objective analysis of the sources and dynamics of crises. Equally, to facilitate appropriate prioritization of humanitarian need, an independent needs assessment mechanism should identify the issues of greatest concern to affected communities as well as their views and the measures they employ to stay safe and sustain their survival options.

Objective crisis analysis and needs assessment should shape the construction of an overarching, whole-of-crisis strategy that provides a protection-informed framework for programmes and initiatives at the operational level geared to addressing and mitigating the situation of *all* in need of humanitarian action whatever their status, location or categorization. Such a strategy should reinforce the absolute importance of upholding and securing respect for the 1951 Refugee Convention and 1967 Protocol. Thus, in the context of the Syrian crisis, for example, an overarching strategy would include refugees, IDPs, the non-uprooted or ISPs (Internally Stuck People) such as besieged communities, affected host communities within Syria or in neighbouring countries, including Palestine refugees, as well as the implications of the massive upsurge in the spontaneous movement of boat people and others seeking refuge in Europe and elsewhere.

In such large-scale emergencies, an overall Humanitarian Coordinator should oversee the implementation of the core, whole-of-crisis strategy and the mobilization of resources through a crisis-specific appeal. Considerations of mandate and status should give way to the prioritization of needs.

**Architecture, Meaningful Partnerships, Governance:** The role of new or not so new stakeholders, from donors to civil society groups, involved in relief work needs to be acknowledged by the IASC and meaningful partnerships developed so that local initiatives in line with principled and protective humanitarianism are supported, politically and financially, in a way that does not constrain their creativity and maximizes their proximity to affected populations and unique position to enhance protection outcomes. This includes, for example, timely access to resources in a way that does not constrain or endanger the safety and creativity of local groups working on the frontlines of volatile and violent crisis settings.

The existing humanitarian architecture reflects numerous reform or partial reform initiatives and tweaking of structures and entities that mostly date from the early or mid-twentieth century. Effective humanitarian action requires an architecture relevant to 21st century realities including profound political, societal and aspirational changes that have already occurred and will continue to evolve. A governance *forum* involving states, UN entities and a range of non-state agencies including representative participation by Global South actors, could facilitate a more inclusive and accountable approach to timely and protective programming while also working against the instrumentalization of humanitarian action.

Humanitarian actors, in and outside the IASC, need to invest in concerted and evidence-based **advocacy campaigns** geared to policy change on issues of acute concern that have significant implications for the protected status of civilians as well as the safety and dignity of all crisis-affected populations. All messaging on protection concerns should amplify the voice of crisis-affected "accidental activists" who have long played a role in crisis settings but, thanks to contemporary information technology, are better positioned than before to generate attention to, and traction on, a broad range of issues from the role of arms traders, and the vested interests in this regard of all P5 Security Council members, to the protection implications of GWOT and counter-terror legislation.

**Research** is needed into the protection implications of the changing character of 21st century warfare in order to strengthen humanitarian advocacy and policy development in this regard. Research is also needed to identify ways in which pertinent data, for example in relation to civilian casualties or mortality and morbidity rates, can be generated in a systematic manner in order to inform advocacy and other initiatives geared to reducing the direct impact of war on affected populations. Innovative use of cash and vouchers in humanitarian programming has many positive features but would benefit from dedicated research on the protection dimension of such initiatives.

## About the Author

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## Notes

[1] South Sudan, Operational Peer Review, 2014; Bradbury, Mark "How do you solve a problem like Somalia?" New Internationalist Blog, 2012; Syria Operational Peer Review, 2015; UN SG Internal Review Panel Report, Sri Lanka, 2012.
[2] Niland, Norah., Polastro, Riccardo., Donini, Antonio., Lee, Amra "Independent Whole of System Review of Protection in the Context of Humanitarian Action, *IASC, GPC, NRC* Geneva, 2015.
[3] Holmes, John quoted in Cornish, Paul "Humanitarian Response and International Engagement in Fragile States", Report of the Canada-UK Colloquium, Wiston House, Steyning, West Sussex, 1-3 November 2011, p. 19.
[4] Not all such actors are new in the sense of being recently established; for some, it is more a question of being acknowledged or being more prominent and influential in the humanitarian sector. Non-traditional actors operating outside or in tandem with the traditional humanitarian system include non-OECD donors, new Global South NGOs, community-based organizations, human rights organizations, military forces, non-state armed actors, private sector companies, *diaspora* groups and regional organizations. In addition, individual volunteers often emerge in crisis settings such as Nepal after the 2015 earthquake or to assist the many thousands who crossed into Europe seeking refuge from diverse war zones in 2015.
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