

Protection of civilians in armed conflict

Bridging the gap between law and reality

Eva Svoboda and Emanuela-Chiara Gillard



Key messages

- It is not the absence of law requiring state and non-state parties to armed conflict to respect and protect civilians that is causing protection problems, but a persistent failure to comply with the law.
- Accurate information on violations is essential for enhancing compliance with the law and to an effective response. Security Council Resolution 1612 of 2005 established a valuable mechanism for collecting information on violations against children in armed conflict. A similar information-gathering arrangement could be created in relation to other violations of IHL.
- Successive UN Secretaries-General have appointed Special Representatives on Children and Armed Conflict and on Sexual Violence in Conflict. Consideration should be given to establishing a similar office with a mandate to consider IHL more broadly.

Introduction

Throughout history ways have been sought to limit the effects of war and protect civilians by regulating how wars are fought. Yet one need only look at the conflicts in Syria, the Central African Republic, South Sudan, Libya and Yemen to see the challenges these efforts continue to face. Conflicts such as these – and the loss of life, dignity and livelihoods that they cause – compel us to ask what tangible progress has been made in enhancing the protection of civilians in armed conflict.

Since the end of the Second World War there have been significant normative developments. Today, belligerents are subject to far more limitations on how they fight. But do they abide by them? Lack of compliance with international humanitarian law (IHL) exacts a heavy price on civilians.¹ It would be simplistic – and historically incorrect – to say that there was ever a time when

¹ This paper focuses on IHL, but other bodies of public international law, most notably international human rights law and refugee law, lay down important additional protections for people caught up in armed conflict.

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Photo: A woman rides a donkey alongside UNAMID troops in an IDP camp in Khor Abeche, South Darfur.
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compliance was particularly good, let alone perfect. That said, systematic violations of IHL by parties to armed conflict must not be seen as inevitable or insurmountable. While armed non-state actors (ANSAs) are not formally parties to international treaties, the rules of IHL applicable in non-international armed conflict are nevertheless binding on them. Violations of IHL by ANSAs are as much of a problem, and pose as much of a threat to civilians, as violations by states.

The humanitarian sector has changed significantly over the last two decades. The number of NGOs specialising in protection has grown, and mainstreaming protection is increasingly part of the general humanitarian programming of non-specialist agencies. Protection has taken centre stage within the sector. Or has it? The recent *Independent Whole of System Review of Protection in the Context of Humanitarian Action* noted that, despite initiatives such as the Inter-Agency Standing Committee (IASC) Principals' Statement on Centrality of Protection in Humanitarian Action and Human Rights Up Front, which were meant to instil a 'protection reflex' within organisations, leading to early and effective action, there has not been a commensurate effort to translate the concept of protection into actions, programmes and responses.² Bridging the gap between the protection afforded by the law and the situation on the ground remains a formidable challenge.

The protection framework

The law

It is not the absence of law requiring state and non-state parties to armed conflict to respect and protect civilians that is causing protection problems, but rather a persistent failure to comply with these obligations. While, ideally, new rules could be elaborated to enhance protection or clarify specific issues, there does not appear to be a willingness among states to engage in a treaty-making process, and in any case there is no guarantee that any new instruments would be more protective than existing law.

Given this, a better course would be to strengthen the normative framework by developing guidance to

facilitate the interpretation of existing law in areas where it is not clear, or by providing policy guidance on how to implement the law in practice. Experience has also shown that it is wiser strategically to focus on specific issues of immediate operational relevance, rather than broader endeavours.

A number of such processes are under way, including a project by the UN Office for the Coordination of Humanitarian Affairs (OCHA) and the University of Oxford to elaborate guidance on the law regulating humanitarian relief operations. An initiative to protect educational facilities is at a more advanced stage. In May 2015 Norway hosted a meeting where states issued a declaration committing themselves to protect schools and universities from attack by endorsing the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict.³

Promoting compliance with the law

There are a multitude of approaches for promoting compliance with IHL, ranging from dissemination and training to 'naming and shaming' violators, pursuing individual criminal and state responsibility, the imposition of targeted sanctions and engaging with violating parties to assist them in remedying their wrongdoing.⁴

All possible mechanisms and approaches must be considered. There is no single ideal solution for enhancing compliance. On the contrary, it is precisely a mix of methods that is often necessary. Which combination is best suited in a particular situation depends on a variety of factors, including the type of violation, the party whose compliance one is trying to enhance and the party trying to promote compliance. It is frequently overlooked that achieving better compliance is a long-term process.

In terms of accountability for violations of IHL, various judicial mechanisms exist at the international and domestic level, covering both individual criminal responsibility and the responsibility of parties to armed conflict. Since the establishment of international criminal tribunals in the 1990s individual criminal responsibility

3 See <http://www.protectingeducation.org/guidelines>.

4 Since 2012 Switzerland and the International Committee of the Red Cross (ICRC) have undertaken a major consultation process on how to improve compliance with IHL by developing stronger international mechanisms. See <https://www.icrc.org/en/document/strengthening-compliance-international-humanitarian-law-ihl-work-icrc-and-swiss-government>.

2 See <https://protection.interaction.org/wp-content/uploads/2015/05/Final-WoS-Report.pdf>; <http://www.un.org/sg/rightsupfront/>; and <https://www.humanitarianresponse.info/system/files/documents/files/IASC%20Principals%20Statement%20on%20the%20Centrality%20of%20Protection.pdf>.

has been the focus of much attention – possibly too much – in particular regarding prosecutions by the ICC. Placing too much reliance on this mechanism for promoting accountability raises false expectations and overlooks the challenges involved in establishing the ICC’s jurisdiction, and the fact that the ICC is complementary to national criminal jurisdictions in cases where these jurisdictions are unwilling or genuinely unable to carry out investigations or prosecutions. More must be done to strengthen the capacity and confidence of national institutions to carry out investigations and mount prosecutions in accordance with international law, and to enhance judicial cooperation and assistance between states.

The focus on individual criminal responsibility must not lead to neglect of the responsibility of parties to armed conflict for violations of IHL.⁵ This responsibility is broader in scope, as not all violations of IHL are war crimes. An additional important dimension of this type of responsibility is the possibility of reparations for victims of violations. Civil society has played an important role in galvanising attention on violations of IHL and in bringing proceedings against parties to armed conflict before national courts. This must continue.

The obligation of parties to armed conflict to examine and investigate allegations of violations of IHL has also received considerable attention.⁶ National investigations of specific incidents or of the conduct of campaigns as a whole can achieve a range of objectives, including the imposition of disciplinary and criminal measures and the provision of reparations to victims, and existing practices may be reviewed and amended to achieve better compliance with the law. Consideration should be given to the development of guidance on how to discharge the obligation to conduct effective investigations, and good practice in doing so.

Information-gathering and analysis

Accurate information on violations is essential for enhancing compliance with the law and for an effective response. Pursuant to Security Council Resolution 1612 of 2005, relevant UN agencies and other actors have

established a valuable mechanism for collecting information on six violations against children in armed conflict.⁷ A similar information-gathering arrangement could be set up in relation to other violations of IHL. This could be established at the request of the UN Secretary-General, and coordinated by the Under-Secretary General for Humanitarian Affairs/Emergency Relief Coordinator.

In recent years a variety of fact-finding mechanisms have been established.⁸ Essential to their credibility is an impartial mandate and expertise in relevant areas of international law, and IHL in particular, as well as in other disciplines, such as medicine, forensics and ballistics. Clarity of purpose of the mechanism and its operating modalities is also critical, and may encourage parties to armed conflict to cooperate with the process. The International Humanitarian Fact-Finding Commission (IHFFC), established under Article 90 of Additional Protocol I (AP I), brings together independent experts in relevant fields. Without prejudice to the role envisaged for the IHFFC under AP I,⁹ entities establishing fact-finding mechanisms, including the UN Secretary-General, the Security Council and the Human Rights Council, should draw on its expertise, even on an ad hoc basis.

While credible information is key, better analysis is also required. What are the violations in a particular context? Who are the perpetrators? And, equally important but all too frequently overlooked, what are the underlying motivations: lack of understanding of the law; lack of willingness to comply with the law; inability to comply with the law because it is too demanding, for example because sophisticated weapons are unavailable?

5 On this issue see <http://iow.eui.eu/2015/07/not-by-international-criminal-tribunals-alone-alternatives-for-pursuing-accountability-for-violations-of-international-humanitarian-law>.

6 See, for example, the UK’s public inquiry into the treatment of detainees in Iraq, *The Report of the Baha Mousa Inquiry*: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279190/1452_i.pdf, 2011. See also Michael N. Schmitt, ‘Investigating Violations of International Law in Armed Conflict’, *Harvard National Security Journal*, 2(31), 2011.

7 UN Security Council Resolution 1612 on children and armed conflict (2005) established a UN-led monitoring and reporting mechanism (MRM) to document and report on six grave violations against children in armed conflict, and created the UN Security Council Working Group on Children and Armed Conflict. This Policy Brief refers exclusively to the information-gathering arrangements referred to in the Resolution, and does not suggest that institutional arrangements such as the Working Group be replicated for a broader range of violations of IHL.

8 See, for example, the International Commission of Inquiry on Darfur, the UN Fact-Finding Mission on the Gaza Conflict and the Panel of Experts on Accountability in Sri Lanka.

9 Article 90 AP I foresees a quite narrow role for the IHFFC, namely carrying out confidential enquiries into allegations of grave breaches of IHL in international armed conflicts, with the consent of all parties involved.

Better analysis is also essential for enhancing the protective impact of the operational response. Detailed and disaggregated analysis of threats, vulnerabilities and capacities, ideally carried out in close contact with affected communities, must underpin operational decision-making.¹⁰ A broad contextual and historical understanding of the conflict is required, as well as continuous review throughout the implementation of programmes to ensure that necessary adjustments are made in a timely manner. Analysis must include the perspective of affected people, what they consider threats and what strategies they employ to address them. Far too often humanitarian organisations do not sufficiently involve affected communities in the planning and implementation of responses.

A dedicated focal point on IHL within the UN system?

It has been suggested that the United Nations system should establish a permanent and dedicated senior position to focus on IHL.¹¹ There are various possible options. For example, in recent years mechanisms associated with the Human Rights Council have considered topics and situations related to the protection of civilians in armed conflict and IHL, including the Special Rapporteurs on IDPs, on the Promotion and Protection of Human Rights while Countering Terrorism and on Extrajudicial, Summary or Arbitrary Executions. The Working Group on Arbitrary Detention has also looked at these issues. This work has been extremely valuable in raising awareness of violations and protection challenges. Because of institutional arrangements, however, issues have been considered through the lens of international human rights law in the frequently politically polarised environment of the Human Rights Council. A Special Rapporteur on IHL is likely to face the same challenges.

Another option would be to establish a position elsewhere in the UN system. Successive Secretaries-General have appointed Special Representatives on Children and Armed Conflict and on Sexual Violence in Conflict, whose work has contributed to advancing the institutional framework for enhancing the protection of these categories of people, and has had a positive impact at field level. Consideration should be given to establishing a similar office with a mandate to consider

IHL more broadly. Such an institutional arrangement could reduce the risk of politicisation of the position. The precise mandate of a Special Representative for IHL could be developed progressively as states gain confidence in the position, and a clearer picture emerges of what is necessary and feasible.

Dissemination and education

There are a variety of programmes for disseminating knowledge of IHL to a range of audiences, including states and their armed forces, judges, legislators, ANSAs, the staff of international and non-governmental organisations and the general public. Despite this, there is a persistent lack of familiarity with the law, including by the staff of humanitarian agencies (at all levels). While it is right that more complex legal discussions take place among experts, more must be done to promote awareness of the basic tenets of the law.

Dissemination is a constant endeavour, which must be pursued in peacetime as well as during armed conflict. The law must be incorporated into military manuals and operational orders and directives, both by states and ANSAs. Both must establish mechanisms to investigate and discipline or punish those found to have violated the law. Awareness of the law and self-regulation by parties to armed conflict is central to promoting compliance.

While understanding the legal framework relevant to the protection of civilians is essential for engaging with parties to armed conflict and for planning an operational response, legal analysis must be put in its proper context: it forms the background to the response, which is also influenced by operational and policy considerations. Legal solutions must not be sought for what are essentially operational challenges.

The operational framework

The protection architecture

Activities for the protection of civilians have gained in prominence within the humanitarian sector over the past 20 years. What used to be the almost exclusive realm of the International Committee of the Red Cross (ICRC) and UN High Commissioner for Refugees (UNHCR) has gradually found its way into the programming and rhetoric of many other organisations. Yet despite increased attention on protection it was felt within the humanitarian sector that this had not automatically translated into action. Initiatives such as the IASC Principals' Statement on

10 Interaction, *Results-Based Protection Practitioners' Roundtable Summary Report*, June 2013, <https://protection.interaction.org>.

11 BRC/DFID/HPG, 'Conversations that Matter', 8 July 2015, <https://www.worldhumanitariansummit.org/node/504040>.

the Centrality of Protection and Human Rights Up Front have yet to live up to expectations.¹² Today, even if an organisation's main activity may not be protection *per se*, it is nonetheless expected to mainstream protection in its programming. However, protection mainstreaming has at times resulted in mere 'box-ticking' exercises; installing adequate lighting next to latrines, for instance, is not protection mainstreaming, but simply good programming.

As the concept of protection of civilians has filtered into humanitarian action – at least on a strategic level, even if perhaps less successfully on an operational level – there has also been an increased focus on the protection of specific categories of civilians: women, children, the elderly, the disabled, refugees, IDPs; and a proliferation of organisations concerned with protection threats to these specific groups. Although well-intentioned, this focus on particular groups risks fragmenting the response and overlooking civilians who do not fit into any category. Notwithstanding the particular needs of each of these categories, they are all first and foremost civilians. The starting point must be a holistic analysis of the entire humanitarian caseload: while it is right that specialised agencies focus on particular categories, this must not lead to situations where vulnerable people (for example host communities) are sidelined, or where the response does not reach those most in need.

The concept of protection is difficult to define and ultimately fluid. This means that it cannot be readily attached to a profession such as water engineer, midwife, psychologist or lawyer. According to the *Whole of System Review*, when asked about protection many aid workers respond by saying that they are not 'protection specialists'.¹³ There is a need to 'de-mystify'¹⁴ the concept by moving away from the notion that protection is the sole remit of 'specialists', and do more to mainstream protection across all sectors of the humanitarian response. All organisations involved in humanitarian response must have a better understanding of protection. Concretely, this means understanding the applicable legal framework, threats and vulnerabilities, the violations committed and the consequences for affected people, and responding accordingly. But this does not necessarily mean that all organisations must or

indeed can tackle all needs. Needs must be addressed by actors with the right experience and skills. Ultimately, there must be a better combination of protection mainstreaming and specific protection expertise.

When protection expertise is insufficient in the field it can be reinforced by the Protection Standby Capacity (Procap). Introduced in 2005, Procap has strengthened protection in many contexts. More is needed: a significantly enhanced Procap ('Procap+'), a 'rapid protection force' – the name is ultimately irrelevant. The humanitarian system must be able to rapidly deploy an adequate number of sufficiently senior individuals experienced in protection, who can support Humanitarian Country Teams both at the strategic and operational level, and to do so for an extended period of time. This requires the establishment of a permanent position (a Protection Advisor) directly attached to the Humanitarian Coordinator, and a significant reinforcement of the Procap pool.

Access

Primary responsibility for meeting the needs of civilians lies with the party to the conflict with control over them. If this party is unable or unwilling to meet these needs, offers to carry out relief operations may be made. Once such offers have been accepted, parties must allow and facilitate the rapid and unimpeded passage of relief consignments, personnel and equipment. All too often, however, passage is anything but rapid and unimpeded. There are a wide range of access constraints; while all have a significant impact on civilians, not all are deliberate and not all constitute violations of international law. In most conflicts, it is a combination of different constraints that prevents aid from reaching civilians in need.

Some recent conflicts have cast considerable political light on the question of humanitarian access. While it is important for parties that arbitrarily impede relief operations to appreciate that there are consequences for such violations of international law, humanitarian actors must not lose sight of the fact that obtaining consent for relief operations and overcoming the challenges of actually delivering assistance once consent has been granted is fundamentally a matter of negotiation between those seeking to provide assistance and the parties to the conflict. Such negotiations are best pursued in a gradual manner, away from the political limelight, to build mutual confidence – actor by actor, specific need by specific need, location by location –

¹² See <http://icrtblog.org/2014/11/25/rights-up-front-and-civilian-protection-an-uneven-first-year>.

¹³ *Whole of System Review of Protection in the Context of Humanitarian Action*.

¹⁴ *Ibid*.

rather than in a binary, ‘all or nothing’ manner. Political action is not a substitute for this delicate process. Recent situations where civilians have been at risk of targeted violence, or where they have been trapped between warring sides and unable to flee or receive assistance, have given rise to calls for humanitarian pauses, evacuations, corridors, safe havens and no-fly zones. Which arrangement is most appropriate depends on the specific circumstances of each situation. Careful consideration must be given to a range of issues, including needs, whether simpler alternatives for providing assistance exist, the willingness of the parties to the conflict to agree to a particular arrangement, the capacity of humanitarian or other actors to implement any arrangement safely and, most importantly, whether it will actually have a protective effect, as well as the likelihood of any negative or unintended consequences. Whatever arrangement is chosen must be in response to the actual needs of civilians, not to promote a political agenda.

In view of the increasingly frequent calls for these arrangements, and the number and complexity of issues to be taken into account when assessing their feasibility, consideration should be given to elaborating guidance on the various possibilities, and the necessary elements required for their implementation.

Strategies for self-protection

There is a tendency to assume that protection is about how civilians can be protected by ‘outsiders’, i.e. somebody other than affected civilians themselves. In discussions on the protection of civilians, the main protagonists seem to be belligerents, peacekeepers and humanitarian organisations. This neglects the role of affected people, who are often the first line of defence in safeguarding their safety and livelihoods. While not always necessarily ‘right’ in principle (early marriage as a strategy to avoid sexual violence, for instance), the actions affected communities take must be the starting point for any international action. Following that, humanitarian organisations must involve affected communities in the design, implementation and evaluation of programmes.

Affected people are not passive in the face of threats; they make arrangements with belligerents, work to prevent violence against their communities, document violations, train communities on where to find refuge during attacks and teach armed groups the basics of IHL. The use of communications technology and media has significantly amplified their voice, and it is thanks to mobile phones and the internet that news gets out of places where

international organisations have no or only limited physical presence. The use of apps to record incidents or document violations of IHL and international human rights law or to teach fighters about their obligations¹⁵ would have been unthinkable even a few years ago.

Technology is not without its risks. Issues such as data protection need to be carefully examined before asking people to submit highly sensitive information. Checking the veracity of information is equally challenging, and the perception that affected communities and humanitarian organisations are providing information on violations may have a detrimental impact on their safety.

Politics and aid

Humanitarian action has always taken place in politicised environments. Humanitarian organisations need to understand the context they are operating in, while ensuring that humanitarian action does not further the political goals of belligerents or donors. In other words, they need to be politically attuned, and not politicised or instrumentalised.

The debate on the politicisation of aid has resulted in calls for a renewed commitment to humanitarian principles to more clearly define the boundaries of humanitarian action in opposition to political action.¹⁶ Many organisations have adopted the principles – including by subscribing to the *Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organisations in Disaster Relief* – and use them either explicitly or integrated as part of their overall approach. While this expression of commitment is positive, it has not always been accompanied by sufficient attention to the operational relevance of humanitarian principles and how humanitarian agencies should use them in their work.¹⁷ Operating according to humanitarian principles alone does not guarantee access: working according to humanitarian principles, while at the same time providing assistance that is timely, effective, relevant and appropriate, makes it more likely that an organisation will obtain access.

¹⁵ See, for example, *Geneva Call*: <http://www.genevacall.org/mobile-application-rules-war>.

¹⁶ While humanitarian principles are not in themselves part of IHL, both are central to the protection of civilians.

¹⁷ S. O’Callaghan and L. Leach, ‘The Relevance of the Fundamental Principles to Operations’, *International Review of the Red Cross*, 95 (890), 2013.

Humanitarian actors must do better at understanding what principled humanitarian action means, and actually operate in a principled manner. More must also be done to help others understand why principled humanitarian action is necessary, for instance by providing examples of where principles have been particularly useful.¹⁸ A key challenge is that humanitarian actors do not have a common position as to what constitutes a principled approach in a specific situation. If one actor yields to political pressure, the risk is that this will create a precedent for others to compromise principles and undermine perceptions of the impartiality and neutrality of all humanitarian actors.

States are often accused of using humanitarian action as a palliative in situations that ultimately can only be resolved by political action. Humanitarian organisations regularly call on states not to blur the distinction between political and military objectives and humanitarian aims, while not necessarily drawing the same distinction as clearly as they expect states to do. In recent years aid agencies have increasingly looked to the Security Council to deal with humanitarian issues, such as access, in the expectation that it will provide solutions, without attempting to do all they can to resolve what are fundamentally humanitarian problems. Are humanitarian agencies expecting too much of the Security Council and too little of themselves? Humanitarian organisations must look first to their own capabilities and skills to resolve operational issues, before turning to what is essentially a political body. Conversely, the Security Council needs to maintain the focus of its efforts on the prevention and resolution of conflicts. Counter-terrorism measures are one illustration of the potentially negative effects of political decisions on humanitarian action.

Security and counter-terrorism measures

States fighting ANSAs are sometimes reluctant to accept the applicability of IHL, and often designate these groups as ‘terrorist’. Some states fighting armed groups within their own borders increasingly justify their actions by appealing to the international fight against terrorism. The trend in recent years has been to look at what are essentially humanitarian issues through a security lens. As a result, civilians – especially those in areas controlled by proscribed groups – are seen primarily as a security threat, rather than as victims of armed conflict. Similarly, discussions around how to address influxes of migrants

and refugees, for example across the Mediterranean, are framed increasingly in security terms.¹⁹

Any analysis of a conflict or a situation of displacement or migration based solely on a security paradigm is likely to result in a response which seeks primarily to protect national security interests: criminalising the provision of medical assistance to civilians under the control of proscribed groups, preventing humanitarian organisations from engaging with armed non-state actors through increasingly stringent counter-terrorism measures such as sanctions and policies; and detaining migrants and refugees. Many of the individuals and groups these measures target are crucial in granting access to humanitarian actors. Humanitarian actors argue that IHL allows them to offer their services to all parties to a conflict, but that some counter-terrorism measures limit their engagement. Both IHL and counter-terrorism measures attempt to protect civilians from harm, but the breadth of some counter-terrorism measures is such that they may make assisting civilians under the control of the ‘terrorist side’ unlawful. This view, according to which one party to a conflict is criminal per se, contradicts IHL, which regulates the behaviour of all parties equally. Just as important, yet all too often forgotten, is the fact that IHL does not confer legitimacy, political status or formal recognition on ANSAs.²⁰

Some humanitarian organisations are wary of engaging with ANSAs for fear of violating counter-terrorism measures, while many who do engage are reluctant to admit this openly. Reputational risks are just as much a concern as breaking the law. At a time when states see engaging with ANSAs as not only illegitimate but illegal, the case must be made that such negotiations are essential if humanitarian action is to be effective. National security considerations are obviously important, but they must not prevent humanitarian organisations from engaging with those who are in a position to grant access to affected people. Paradoxically, while most states agree with the need to negotiate with ANSAs and see it as an integral part of humanitarian work²¹ – at least in theory – they also maintain the need for counter-terrorism measures, even if they are detrimental to humanitarian aid.

19 See for example warnings that ISIS is smuggling fighters to Europe among migrants and refugees: <http://www.bbc.co.uk/news/world-africa-32770390>.

20 Article 3 common to the four Geneva Conventions of 1949.

21 See for example A/RES/46/182 (1991), S/2013/689, S/PRST/2013/2.

18 See <https://www.icrc.org/en/cycle-principles>.

Ways forward

Conflicts are inherently messy, complex and difficult to resolve. Despite existing laws belligerents regularly violate obligations intended to protect civilians. However, this should not be taken as an excuse to accept the devastating impact of conflict on civilians. It is not the absence of binding law that is causing protection problems, but a persistent failure to comply with the law, compounded by operational shortcomings. A number of courses of action, mechanisms and processes can improve the protection of civilians, both on the normative as well as the operational level.

In relation to the protection framework, engagement in and support of processes to elaborate guidance on the interpretation of existing law, or that provide policy guidance on the law's implementation in practice, would be helpful. In addition, compliance mechanisms must be strengthened by enhancing efforts to build the capacity and confidence of national institutions to carry out investigations and prosecutions of allegations of violations of IHL. This includes enhancing judicial cooperation and assistance between states. Violations are neither inevitable nor insurmountable, and can be mitigated by the continued use of the entire range of national and international judicial and non-judicial means for promoting compliance with IHL and accountability for violations. When violations do occur it is essential to understand their circumstances, and the reasons for them. To that end it is crucial to enhance the capacity to analyse information on violations of IHL, including underlying motivations, and of threats, vulnerabilities and capacities to enhance the protective impact of operational responses. Following that, and in order to investigate violations, it is important to elaborate guidelines on the obligations of parties to armed conflict and other states to investigate allegations of violations, and identify and share good practices in such investigations.

In addition, this Policy Brief suggests the following with regard to the protection framework:

- Consider establishing a mechanism for collecting information on violations of IHL, drawing on the experience of the mechanism established for the implementation of UN Security Council Resolution 1612.
- Consider making ad hoc use of the IHFCC when establishing fact-finding mechanisms.
- Consider establishing a position similar to the Secretary-General's Special Representatives on Children and Armed Conflict and on Sexual Violence, with a mandate to consider IHL more broadly.
- Intensify dissemination of IHL to a broad range of audiences, including states and their armed forces, judges, legislators, ANSAs, the staff of international and non-governmental organisations and the general public, in peacetime as well as during conflict.
- Incorporate IHL into military manuals and operational orders and directives and establish internal investigative and disciplinary mechanisms.
- Promote awareness of humanitarian principles to a similarly broad range of audiences.

Humanitarian organisations face operational, security, logistical and ethical dilemmas in their attempts to respond to the needs of people affected by conflict. At the same time, belligerents and states more generally are often unable or unwilling to ensure that those in need receive access to assistance and protection, including in areas controlled by proscribed groups. States and humanitarian organisations therefore need to engage in a frank conversation on the challenges and risks inherent in negotiations with belligerents. Negotiating with all parties to conflict – state and non-state – is basic to humanitarian action; humanitarian organisations must be able and willing to engage in such negotiations, and states must allow them to do so. Access can be constrained for a variety of reasons, and it is therefore important to consider elaborating guidance on the various possible modalities for reaching people in need, and the necessary elements for their implementation.

The following could enhance the protection of civilians on an operational level:

- Reinforce the existing pool of Procap members.
- Establish a permanent Protection Advisor position reporting directly to the Humanitarian Coordinator.
- Ensure that humanitarian principles, especially good practice, are shared more widely among humanitarian agencies.
- Respect the distinct roles and responsibilities of states and humanitarian organisations. The Security Council must not use humanitarian action as an alternative to political solutions to conflicts. Conversely, humanitarian actors must not turn to the Security Council to resolve operational problems.