

Humanitarian diplomacy and protection advocacy in an age of caution

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Key messages

- United Nations (UN) humanitarian and political leaders have a key role in promoting respect for international humanitarian and human rights law by all conflict parties and should be held accountable for delivering on this task.
- Lack of clarity on the different roles and responsibilities of UN entities and leaders, and a failure to harness the organisation's multidisciplinary capacities and authority, inhibit more robust engagement by UN leaders with conflict parties and third-party states on their responsibilities to protect civilians.
- UN leaders that do undertake 'protection advocacy' are not given adequate political or technical support – they are challenged by a still-fragmented UN system, competing and incomplete analyses, an overly technocratic approach to protection and little political backing from headquarters.
- More effective protection advocacy by UN leaders requires a more coherent culture of protection across the organisation, including clarification of roles and responsibilities and strengthened tools and capacities for engaging conflict parties.
- Ultimately, UN leaders will only be effective in their advocacy with conflict parties if they are supported by member states. Member states have tasked UN leaders to speak up on behalf of victims of armed conflict – they must end this 'age of caution' and provide the diplomatic and other support UN leaders need to fulfil this critical task.

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Introduction

The UN Charter, which entered into force in 1945, specifically tasks the organisation with promoting ‘international peace and security’, including through the ‘peaceful settlement of disputes’. Consequently, mediation and coordinating diplomatic efforts to secure peace are two of the organisation’s core functions. In its early years, the UN’s peace diplomacy was conceived as primarily addressing inter-state conflict. However, the geopolitical shift resulting from the end of the Cold War provided the impetus for the UN and its leadership to become more intensely involved in intra-state conflicts and to promote greater protection of civilians affected by armed conflict, reflected in its Agenda for Peace, developed in 1991. While the UN was developing its Agenda for Peace, the UN Secretariat had also been charged with responsibility for the coordination of international humanitarian action under UN General Assembly (UNGA) Resolution 46/182 (passed at the end of 1991). The practical and policy links that developed organically in the 1990s between peacekeeping, the protection of civilians and the coordination of humanitarian assistance were formalised by the UN Security Council (UNSC) in 1999 in its elaboration of a framework for the ‘protection of civilians’ (PoC). This framework continues to provide a basis for the UN’s efforts to protect civilians affected by armed conflict today.

In the last two decades, the number of conflicts has continued to rise and their impact has become more severe. Civilian casualties have increased, as have attacks on aid workers and health facilities, and record levels of people are being forcibly displaced – all reflecting a lack of respect for international humanitarian and human rights law (IHL/IHRL) by states and non-state actors alike. UN leaders, from the Secretary General (UNSG) and heads of UN agencies, to Special Representatives (SRSGs), Special Envoys and Humanitarian and Resident Coordinators (HCs, RCs) in the field, have a unique role and responsibility to enhance the protection of civilians affected by war and to promote greater compliance with IHL/IHRL by conflict actors. However, there have been increasing concerns from various stakeholders that, due to both internal and external factors, UN organisations

and leaders have become more cautious in their engagement with conflict parties and third-party states on protection issues. This briefing note seeks to understand to what extent senior UN leaders are fulfilling their responsibilities in this respect, to explore the extent of and reasons for a more cautious approach and to identify what factors inhibit the effectiveness of their engagement with conflict actors on protection issues.

This paper is part of a multi-year research and public affairs project undertaken by the Humanitarian Policy Group (HPG) at ODI on protection advocacy: ‘Advocating for humanity? Securing better protection for conflict-affected populations’. It is based on semi-structured qualitative interviews with more than 15 serving and former senior UN officials (including SRSGs, Under-Secretary Generals (USGs), Deputy Special Representatives (DSRSGs), Special Envoys and RCs/HCs) covering a broad spectrum of political and humanitarian responsibilities. It also draws upon other research undertaken for this project, including a briefing note (Metcalf-Hough, 2020), a scoping study on protection advocacy by the Global Protection Cluster (GPC) (Lilly and Spencer, 2020) and consultations with other key stakeholders within and outside the UN system. The purpose of this note is to outline the ways in which UN senior officials have interpreted their role in protection advocacy and to draw on their experience to identify the challenges and opportunities to promote protection advocacy and humanitarian diplomacy as a critical tool to secure better outcomes for conflict-affected populations.

The UN’s role in protecting civilians

The foundations of the UN’s protection role

In the UN’s 75th anniversary year, 2020, it is worth reflecting that its coordinating role in humanitarian assistance and its involvement in PoC developed only four decades *after* its foundation. Although in the early days of the UN a number of its specialised agencies were tasked with activities aimed at protecting vulnerable groups such as refugees or children, these were perceived to be short-term or emergency activities arising out of the ending of the Second World War. The Cold War politics that dominated the UN’s agenda in its first few decades ‘tended to

deny both the intent and the extent of civilian casualties in its proxy wars' and firmly shut the door to any form of UN or non-governmental organisation (NGO) engagement (Slim, 2004). In 1971, the UN Secretariat's views on supporting the victims of conflict were reflected in a report that recommended the UN avoid becoming involved in humanitarian operations as this was an area best left to the Red Cross Movement (Tsui and Myint-U, 2004). Throughout the 1970s and 1980s, with the exception of refugee programmes – where involvement suited the geopolitics of the day – the UN mainly provided disaster relief while strongly respecting state sovereignty. Civilian protection remained largely the preserve of the International Committee of the Red Cross (ICRC), whose legal mandate, set out under the Geneva Conventions, allowed them a greater degree of access to civilians in conflict areas.

The foundations for the current framework for PoC came from the major shift in geopolitics that arose after the collapse of the Soviet Union. The end of the Cold War in the 1990s ushered in a new era for the UN, with renewed support from its member states for multilateral action as a means to address international concerns over the 'new wars' of the post-Cold War era. These wars required two strands of international action: preventing armed conflict through a peacebuilding/peacekeeping agenda and mitigating the impact of war by providing humanitarian and other assistance. The UN was thus effectively tasked with delivering both agendas in places where there was civil war. The first agenda was outlined in Boutros-Ghali's Agenda for Peace and the second was outlined in the first PoC report presented to the Security Council by Kofi Annan in 1999 (UNSC, 1999). Both sets of actions stemmed from a growing international recognition of the limits to national sovereignty: as Boutros-Ghali (1992) stated, 'the time of absolute and exclusive sovereignty had passed'.

The new UN doctrine that emerged was one that determinedly recognised the need to protect human rights in war alongside, and in some cases above, the rights of states (Slim, 2004). It was informed and bolstered by a period of 'unusually committed humanitarian diplomacy' (Milliband, 2019). The new role for the UN included conflict prevention, peacemaking, peacekeeping and peacebuilding. Member states increasingly required the UN to

focus on intra-state wars and frequently assigned the organisation a role in the conflicts of so-called failed or failing states such as Somalia, where UN armed engagement in the conflict was justified in terms of 'humanitarian intervention'. This led to confusion as to whether the humanitarian role of the UN was to provide lifesaving assistance to ameliorate the consequences of conflict or to intervene and, through use of armed force, provide physical protection to the civilian population or end the conflict itself.

Providing clarity on these issues and reconciling what are at times competing agendas continues to be a major challenge. International humanitarian organisations persistently raise concerns over what they consider to be the inherent contradictions involved in integrating peacekeeping and humanitarian functions within the UN presence in a country or crisis area. The ICRC have argued that where the UN uses physical force in its peacekeeping role it becomes defined as a combatant and a party to the conflict from which humanitarian organisations should be distanced so as to maintain their neutrality and thereby their access to populations in need (ICRC, 2005).

Kofi Annan, in his tenure as UNSG, championed and extended the concept of PoC in armed conflict. His period in office, from 1997 to 2006, was notable for continued debate and discussion within the UNSC on this issue, securing UNSC resolutions that strengthened PoC through reasserting the centrality of and promoting respect for IHL/IHRL. In his first report on PoC in 1999 (UNSC, 1999), Annan introduced the distinction between legal protection and physical protection, thereby laying the foundations for establishing accountability mechanisms such as international tribunals and later the International Criminal Court (ICC). Landmark UNSC resolutions were passed, including UNSC 1325 on women, peace and security (2000). Key senior appointments were also made, which for the first time specifically had a protection mandate. These included a SRSG tasked with addressing concerns relating to children in armed conflict and another on issues of sexual violence in conflict – both have become thematic issues of concern under the UNSC agenda and specific reporting mechanisms have been created to support UNSC action.

However, it is the six-monthly PoC reports of the UNSG – which provide the main platform for raising thematic and context-specific concerns relating to PoC – that were a key protection legacy of his tenure. The Office for the Coordination of Humanitarian Affairs (OCHA), in partnership with its fellow members of the Inter-Agency Standing Committee (IASC), has been responsible for drafting the UNSG’s report and continues to collate and update the various policies and approaches to protection of civilians as part of the ‘aide memoire’ for the UNSC (see Box 1). This aide memoire was introduced to support the UNSC to more systematically plan, prioritise and monitor civilian protection and to identify best practice to better direct UN peace operations and missions. Given this authority, the aide memoire also serves as a comprehensive framework for the UN’s broader role in PoC.

In 2005, OCHA, under leadership of the then USG for humanitarian affairs/Emergency Relief Coordinator (USG/ERC), Jan Egeland, launched a major reform of the international humanitarian system. This led to the current humanitarian coordination architecture and structures, including recognising protection as core to the wider humanitarian response. The characterisation by the humanitarian community of the conflict in Darfur, Sudan in 2004 as a ‘protection crisis’, marked by the lack of a timely and effective international response, provided the initial stimulus for this reform process. The purpose of the reform was to improve the consistency and the quality of services provided by key groupings of humanitarian organisations, to make funding more reliable and predictable so as to better address forgotten emergencies, and to strengthen country-level coordination.

Box 1: Protection of civilians aide memoire

In 2001, the Security Council requested OCHA to prepare an aide memoire that would serve as a practical guide for its action on PoC issues. The guide was conceived of as a diagnostic tool to highlight the objectives for UNSC action that needed to be included in the mandates of UN peace operations and to suggest issues that the UNSC must consider in meeting these objectives. The aide memoire has expanded vastly in scope, from seven pages in 2002 to well over 200 in its 2019 iteration, and now addresses UN action on PoC broadly, rather than solely in the context of UN peace operations. The current aide memoire has three sections:

1. Section 1 covers general protection concerns.
2. Section 2 outlines concerns related to children in armed conflict.
3. Section 3 sets out protection concerns related to women in armed conflict.

The general protection concerns are divided into eight areas as follows:

1. Protection of aid assistance to the conflict-affected population.
2. Displacement.
3. Protection of the wounded and sick.
4. Humanitarian access and the safety and security of humanitarian workers.
5. Conduct of hostilities.
6. Small arms and light weapons.
7. Compliance, accountability and rule of law.
8. Media and information.

The compilation of material in the aide memoire provides a comprehensive and inclusive framework for defining the UN’s role in protecting civilians. Its increasing size has made it appear to be more of a technical document rather than the original intention of providing a diagnostic and planning instrument for UNSC members.

Source: <https://poc-aide-memoire.unocha.org>

One key element of the reform was to establish clusters (working groups) to strengthen capacity in areas where critical gaps had been identified. After discussions, five clusters were established, including the protection cluster. There was considerable debate about whether to create a protection cluster and which UN agency should lead it, reflecting the diverse range of topics, approaches and agencies involved in protection work at that time. Since its formation in 2006, the protection cluster, led by UN High Commissioner for Refugees (UNHCR), has evolved at global and country levels, providing analysis of protection concerns, identifying priorities and coordinating programmatic and, to a lesser extent, advocacy responses. The reform process also sought to strengthen the role of the HCs by better defining their function and responsibilities, including leadership on PoC and advocating for greater compliance with IHL and IHRL (see IASC, 2009).

The UN's approaches to protection have continued to evolve in response to new crises and events. The very public failure to respond effectively to PoC in the conflict in Sri Lanka in 2009 resulted in the 'Rights up front' report and framework for action, which has since shaped the UN's internal approaches to protection and protection advocacy (UN, 2014). The 'Rights up front' agenda aimed to promote a stronger rights-based approach to protection advocacy and to strengthen coordination between the various UN entities on human rights issues. Events in Syria in particular prompted the IASC to issue a statement in 2013 reasserting the centrality of protection in humanitarian action and emphasising the importance of protection as a shared responsibility that needs to inform all humanitarian action (IASC, 2013). The World Humanitarian Summit (WHS) in 2016 garnered stronger commitments from the UN system as well as member states to uphold the IHL-derived norms that safeguard humanity in war and sought to redefine those commitments with respect to the changes in the international context. However, concerns over the UN's handling of the Rohingya crisis in Myanmar influenced the recent launch of the UNSG's 'Call to action for human rights' (UN, 2020). Here, he stated that 'a culture of human rights must permeate everything we do, in the field,

at regional level and at Headquarters. I look in particular to our leaders in the field, including Heads of Mission and Resident Coordinators, to play their part' (ibid.: 4). However, as indicated by the evidence collated for this briefing note, the evolution over the last two decades of such a wide-ranging, extensive protection framework has increased the risks, and the reality, of a fragmented approach and an overly complex agenda for the UN's leadership to take forward.

UN leadership: roles and responsibilities in protection advocacy

The roles, responsibilities and accountabilities of the UN leadership in terms of the protection of civilians have been elaborated over time and in various policy documents and resolutions. The following outlines the differing roles, mandates and responsibilities conferred on UN entities and individual leaders in respect of protection and specifically regarding engagement with conflict actors on protection issues.

The Secretary General and Special Envoys

Since the 1990s, successive UNSGs have provided strategic leadership through both their own actions to promote respect for IHL/IHRL and their oversight of various reforms aimed at improving UN system-wide responses to the protection needs of civilians. The UNSG's advocacy role is derived from Article 99 of the UN Charter, which requests him/her to 'bring any matter which in his opinion may threaten the maintenance of international peace and security' to the UNSC. The provision of 'good offices' also effectively authorises the UNSG to intervene at the highest level of government and to appoint Special Envoys or Representatives to work with member states and parties to conflict. Interviewees for this briefing note stressed the value of these Special Envoys in internationalised armed conflicts, where they have a convening power 'to make the member states with particular influence on the ground sit together to allow humanitarian actors to have access to the civilian population' (HPG interviews, 2020). The UN Secretariat's role in PoC has mainly developed under the auspices of the UNSC and the authority for context-specific political or military intervention by entities of the UN Secretariat to protect civilians lives with its member states.

The Under-Secretary General/Emergency Relief Coordinator and OCHA

UNGA resolution 46/182 established OCHA with the tools and mechanisms needed to coordinate humanitarian assistance. The resolution was based on pre-existing approaches to disaster relief that acknowledged the primacy of the state. However, there is no specific mention of ‘armed conflict’ in the guiding principles attached to the resolution, nor is there any mention of PoC. For this reason, neither the USG/ERC nor HCs had any defined responsibilities for protection until recently. In 1999, through then USG/ERC Sergio Viera de Mello’s engagement with the UNSC, a series of issues were introduced that formed the PoC agenda, leading to the USG/ERC function being given guidance and support by the UNSG to engage on protection concerns (Barber, 2015).

Today, the USG/ERC has regular access to the UNSC through the provision of briefings at UNSC debates on countries that are on the UNSC list of contexts of concern, at special sessions on thematic issues and through the biannual PoC report. There is also recognition that the USG/ERC, and by extension HCs, may engage with any non-state actors or armed groups in order to gain humanitarian access. One senior official interviewed stated that ‘Humanitarians should be able to talk to anybody (even ISIS if they let you), to allow you to provide aid to those in need and to remind them of the accountability they have to people on the ground’, but went on to conclude that in practice it was very difficult to keep this theory alive. The USG/ERC’s privileged access to the UNSC and role as Chair of the IASC provides them with a strong platform to promote the humanitarian community’s concerns and play a proactive and forward-looking role in addressing protection issues. However, many interviewees questioned whether this role had been sufficiently and effectively deployed in recent years, reflecting wider concerns echoed by stakeholders throughout this project that UN leadership had tended to adopt a more cautious and pragmatic stance to humanitarian diplomacy in the face of geopolitical challenges (see below).

Heads of protection-mandated UN entities

UN protection agencies are mandated through the UNGA with roles that include both the direct provision of protection services and assistance

and an advocacy function. UNHCR is tasked to ‘assume the function of providing international protection ... and of seeking permanent solutions for the problem of refugees’ (UNGA, 1950). The agency itself is recognised as having a key protection leadership role through both its original mandate but also more recently as the lead agency for the protection cluster. However, UNHCR’s role in protection advocacy more broadly is often mediated by the responsibility to safeguard delivery of their legal mandate to provide protection and assistance to displaced populations (refugees, returnees, stateless persons and internally displaced

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people). This was eloquently described by one interviewee: ‘we have two big souls that have to coexist humanitarian and protection we have to do these together ... there is a trade-off everywhere. You just have to ensure you compromise less with principles. There is no perfection in protection’. (HPG interviews, 2020) For its part, the UN Children’s Fund (UNICEF) is mandated to ‘advocate for the protection of children’s rights, to help meet their basic needs and to expand their opportunities to reach their full potential’ but often faces similar issues in terms of the balance between advocacy and programmes, particularly given its dual mandate for humanitarian and development work in this field.

The High Commissioner for Human Rights (HCHR) is mandated to ‘to promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights’ and ‘to engage in a dialogue with all Governments in the implementation of his/her mandate with a view to securing respect for all human rights’ (UNGA, 1994: op. para. 4). The Office of the HCHR (OHCHR) has taken an increasingly important role in advocacy on protection of civilians at global and country levels in the last two decades, expanding its earlier field focus on technical capacity-strengthening activities to include human rights monitoring and advocacy, staffing human rights units in UN peacekeeping missions, and in

some instances coordinating the protection cluster. The required focus on promoting IHRL means that OHCHR's approach to protection advocacy often differs markedly from other agencies. While this has proven advantageous, its increasing engagement at country level has brought to the fore some of the challenges that exist in developing common UN protection strategies involving overlapping but differing priorities and strategies.

Special Representatives as Heads of Mission

At the country level, the SRSG is not only the prime UN interlocutor with national authorities and the parties to conflict but, in some cases, will also be responsible for delivering on a UNSC mandate that makes specific reference to PoC. While the SRSGs that engaged in the interviews demonstrated a strong concern for PoC, they also recognised that they often manage complex mandates with seemingly contradictory approaches to protection embodied within the same UNSC resolution. This is particularly concerning in mandates that involve support to rebuilding national security institutions.

The SRSGs interviewed recognised that PoC was a central part of their function but argued that PoC objectives need to be addressed from a less narrow perspective than that generally held by the humanitarian community – that protection concerns are complex and as such often require a multidisciplinary approach combining peacekeeping, peacebuilding, development, diplomatic and human rights as well as humanitarian interventions. The professional background of SRSGs also determines their understanding and approach to PoC. Those with a humanitarian or human rights background were better able to link PoC with the peacebuilding and statebuilding elements of their mandates and made protection the cornerstone of their strategies. SRSGs from a political or diplomatic background acknowledged their responsibilities but were less inclined to integrate protection objectives into their wider response strategies.

Humanitarian Coordinators

HCs, some of whom are also designated as DSRSGs, have defined responsibilities for protection advocacy in their terms of reference as follows: 'promoting respect for international humanitarian and human rights law by all

parties and coordinating the advocacy efforts of relevant organisations and using private and/or public advocacy as appropriate' (IASC, 2009). The HC plays an important strategic role in the development of protection strategies through their coordination of the Humanitarian Response Plan (HRP). The HCs interviewed expressed concern at the emphasis placed on their management skills and ability to manage clusters and coordinate the appeal process, at the expense of their role to ensure an effective protection response by the Humanitarian/UN Country Team (HCT/UNCT). Some officials interviewed for this briefing note felt that there was a 'tick-box' approach to protection, that it was something that needed to be undertaken but was not the main focus of an HC's job. Many also felt that HCs (and other senior leaders) are not adequately supported in their protection advocacy, and that they lack the appropriate political support (i.e. diplomatic engagement to support or back up their criticisms of conflict parties), technical resources and tools (i.e. analytical and communications tools and specialist staff) for protection advocacy.

Executive-level strategic coordination of protection

Protection crises such as those that occurred in Sri Lanka and Myanmar have highlighted the fundamental challenges at executive level in developing and agreeing a common system-wide, strategic protection response. Successive UNSGs have faced challenges in reconciling the views and approaches to addressing protection crises within the UN senior leadership and have sought to put in place internal coordination mechanisms in their executive office with varying degrees of success. Past approaches have included a Senior Action Group (SAG) chaired by the UNSG, which brought together principals of UN Secretariat departments and UN agencies as well as establishing subsidiary working groups. However, these have proven largely insufficient as indicated in Myanmar, where the tensions between different UN entities led to 'stalemates, contributing to each of the entities involved to continue with their prior policy trajectories' (Rosenthal, 2019: 21).

Recognising the challenges to developing system-wide strategies, the current UNSG established an executive committee to help him

make strategic decisions across the three pillars of the UN. Designed to be nimble and effective, it is supported by a strategic coordination unit within the UNSG's office. However, interviewees expressed concerns that this had not yet brought major improvement in terms of senior-level strategic coordination and that the difficulties in developing a unified approach at the principals' level was also apparent at the country level. They explained that agencies with protection mandates continue to assert their responsibility to fulfil their individual mandated role, in preference to a more unified or collective approach. Interviewees recognised that agency mandates were often used to assert territorial agency funding interests to the detriment of ensuring a whole-of-system response.

Protection advocacy in practice: identifying the challenges to effective protection advocacy

As indicated earlier, UN humanitarian and political leaders face a range of challenges – both external and internal to the UN system – in their ability to deliver on their role to promote IHL/IHRL (see Box 2 for a discussion on the definition of protection advocacy).

Box 2: Defining protection advocacy

Many interviewees made a distinction between 'protection advocacy' and 'humanitarian diplomacy'. Some senior officials saw their role in terms of the latter, which they understood as their quiet or private engagement with states or non-state actors that was part of more formal diplomatic processes. Most understood 'advocacy' as a more public, visible form of engagement, using the media, statements or other tools to publicly condemn states and non-state actors for violations of IHL/IHRL. Most also articulated that effective engagement on protection required a combination of approaches – a more measured public stance at certain times, with a more robust approach to conflict parties in private. This was particularly the view among SRSGs, who are generally required to manage the competing agendas of the UN in conflict situations. Several also felt that a greater (though not exclusive) focus on quiet diplomacy better supported the SRSG role in convening, negotiating and mediating with other states that are able to influence conflict parties – i.e. third-party states.

Several leaders said they felt under pressure from different stakeholders to engage in certain types of advocacy: humanitarian actors tended to lobby them to make more public criticisms, whereas members of the diplomatic community were fearful of such public advocacy, arguing instead for quieter diplomacy. In this regard, the Rights up Front initiative was seen by some interviewees as having further polarised such approaches to humanitarian diplomacy with the result that 'what the UN lost was an understanding that ultimately somebody has to shake hands with the devil' (HPG interviews, 2020). These pressures further indicate the complexity of the tasks facing many of these leaders, and how challenging it is to maintain an appropriate balance of quiet diplomacy and more public criticism of conflict parties – a balance that will achieve greater respect for IHL/IHRL by conflict parties and therefore better PoC.

External challenges

Leaders interviewed for this research highlighted three key developments in the global context that challenged the UN's protection role and specifically inhibited the impact of their own and the UN's institutional advocacy. Foremost among these was the major shift in member states' commitment and support to PoC. This comes in sharp contrast to the assertion by member states at the 2005 World Summit that, if a state was unwilling or unable to protect its people, the international community should use diplomatic, humanitarian and other means to protect them. The last decade has been characterised by an unwillingness, even a failure, of states to collectively act to halt violence against civilians in Syria, Yemen and elsewhere (UNGA, 2005). This had done much to erode the authority of the UN and undermined its efforts to seek greater respect for and compliance with IHL/IHRL.

Second, many interviewees highlighted a related concern over the increasingly polarised or fractured nature of geopolitics. It is no longer just Russia, China and the US seeking to re-establish, maintain or extend their spheres of political influence; the Gulf countries and Turkey have also sought to extend influence and control in Yemen and Somalia. Not only has

this geopolitical shift resulted in increasingly internationalised conflicts, it has also created a deeply divided UNSC that, in the view of several leaders interviewed, has effectively limited or obstructed UN action to protect civilians.

Third, changes in the nature of warfare are seen as significantly impacting who the UN could and should engage with on PoC. This reflected concerns not only over the restrictions resulting from counter-terrorism legislation but also included new challenges arising from the ‘atomisation’ of conflicts. These may have origins in popular uprisings but have subsequently evolved into conflicts between multiple armed actors without clear hierarchical structures and with rapidly shifting alliances and agendas (HPG interviews, 2020). The fragmentation and localisation of conflict in protracted crises has created similar problems in terms of the proliferation of armed groups.

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Diminishing international commitment to protection of civilians

A senior UN official and long-time observer of the UNSC commented that, although it was doubtful that there was ever a ‘golden age’ of humanitarian diplomacy, it was evident that for a number of years the principle of PoC was respected ‘in theory alone’ (HPG interviews, 2020). He added that ‘the steam has gone out of the movement that argues that the international community has a legitimate interest in what governments are doing behind their own doors’ (HPG interviews, 2020). Another official highlighted the impact of the populist agenda and right-wing politics on even moderate and committed supporters of multilateralism and the ‘freezing effect wrought by extremist political minority groups’ on asylum and protection policies (ibid.). Both individuals characterised the UNSC as being hamstrung by multi-polar politics – the stark political divisions between permanent

members is such that the UNSC has been unable to agree on a collective response to any of today’s armed conflicts and this inaction has thus allowed superpower-sanctioned impunity to prevail. Neither saw any immediate prospects for change in a UNSC ‘which fails because it could never be unified’ (ibid.).

These continued divisions between the UNSC members are understood by many interviewees to have severely weakened the authority of the UN system overall in terms of the respective efforts of individual leaders, departments and agencies to promote greater compliance with IHL/IHRL. In crises such as Syria, this geopolitical crisis has effectively restricted the UN’s operational activities in supporting and protecting the civilian population. Several leaders interviewed asserted that the UN’s weakness in terms of protection was compounded specifically by the recent US retreat from its leadership role in diplomacy in many conflicts. However, while recognising that the UN’s authority had diminished, some leaders argued that this provided more scope for its involvement in mediation. Others were more critical, asserting that the advocacy by UN leaders and entities has become quieter specifically in order to try to maintain its operational presence on the ground – and its finances. As several interviewees indicated, the situation in Syria has demonstrated that, in the absence of UNSC agreement on how to protect civilians, the UN needs to establish alternative, ad hoc diplomatic platforms to mediate with state and non-state actors on such issues. Jan Egeland’s role in establishing such a platform for securing humanitarian access in Syria was viewed very positively; several interviewees felt that this ad hoc initiative that brought together the US, Russia and a core group of other states to find practical ways of addressing humanitarian challenges was a positive step forward, given the absence of concerted UNSC action. As such, the experience gained in Syria was perceived as a good example of how to conduct humanitarian diplomacy on specific protection-related issues in other internationalised conflicts.

The continued gridlock in the UNSC also raised major concerns among UN leaders about the loss of international accountability for major violations of IHL/IHRL. Many felt that the current state of

the UNSC fosters a climate of impunity, manifest in the increasing abuse of civilians in armed conflicts around the world (e.g. record numbers of people displaced, increasing attacks on healthcare workers and facilities), while also negating the use of some of the key tools of humanitarian diplomacy, such as sanctions, investigations and the establishment of tribunals. Country-based UN leaders also perceived links between the growing climate of impunity among state parties to conflicts and the increasing use of domestic counter-terrorism legislation to control and restrict the work of humanitarian organisations. Several argued that maintaining international accountability mechanisms was critical because of the deterrent effect on states' behaviour, particularly for those states that did not recognise the applicability of IHL/IHRL to their actions. In this respect, many welcomed the initiative of Luxembourg and other non-permanent UNSC members in establishing the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (IIIM), under the auspices of UNGA in 2016.¹

Leaders also raised concerns that the current situation in the UNSC was leading to the erosion of its PoC agenda. Whereas until recently the mandates of UN peace missions or operations would as a matter of course include relevant operative paragraphs on protection in their mandates, Russia and China have rejected recent mandates with protection elements as was recently the case in the proposed UN mission in Sudan. Leaders also expressed concerns at the fragmentation of the agenda that, in their view, stemmed from the proliferation of themes discussed by the UNSC and conferred by them on the UN in mission mandates and resolutions. Several explained that the UNSC's PoC framework is suffering a 'Christmas tree effect', with the overarching priorities obscured by the addition of more and more sub-themes. A number of interviewees explained that the UNSC's focus on sub-themes – by default or by design – meant it is now largely ignoring overarching priorities

including respecting and ensuring respect for IHL/IHRL and securing international accountability. Many interviewees also explained that the proliferation of sub-themes negatively impacts the effectiveness of UN missions/operations since it has increased the complexity of mission tasks and related structures and thereby reduced the UN's agility to respond to rapidly changing contexts. The multiplicity of themes in mission mandates has also required increasing numbers of specialised staff (but without provision of additional resources to fund such posts), added to the reporting burden and further complicated strategic planning.

Proxy wars and localised conflict in a digital age: the challenge of complex mandates

Several leaders interviewed noted the new challenges posed to effective protection that have arisen from the changing nature of armed conflict and the behaviour of conflict parties. Most of the UN's peacekeeping and humanitarian activities are focused on the protection of civilians in countries facing protracted conflict, many of which have also become internationalised in recent years. The conflicts in the Democratic Republic of Congo, Libya, Somalia, South Sudan and Yemen now involve external parties who engage through a proliferating number of proxy forces. As a result, armed forces on the ground have become increasingly factionalised, more localised and the chains of command

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have weakened. One interviewee outlined the challenges as follows: 'war is not the same as before. It's not soldiers on the ground engaging with locals. It's by proxy. It makes it difficult to understand with whom you will discuss or engage. Who is the threat? Who do we need to protect from?' (HPG interviews, 2020). The

1 See www.iiim.un.org.

situation has become more complicated as government forces in some of these crises are equally factionalised, drawn from disparate militia groups used by the state to prey on the civilian population.

Many of these conflicts are also now fought through digital technology: command structures are managed by mobile phones and social media is used to promote local hostilities. New types of weapons, including unmanned weapons, pose new challenges for respect for IHL and conflicts are becoming urbanised, with fighting focused in densely populated areas, heightening risks to civilians. The changing nature of warfare has thus created increasing protection needs and added greater complexity to the ways in which these needs can be met. It has brought into starker relief the critical but hugely challenging role that UN leaders – from across the pillars of the UN – play in promoting compliance with even the most basic tenets of IHL/IHRL. As a consequence, peacekeeping mandates have become increasingly complex in seeking to balance the UN's responsibility for PoC with peacebuilding priorities that support or empower the state and its military.

Leaders highlighted two practical challenges that stem from or have been exacerbated by the geopolitical environment and the nature of armed conflict today. The first relates to the longstanding problem of managing a mandate that is both complex and seemingly contradictory. The fluidity and rapid pace of today's conflicts make it difficult to identify who is a civilian and who a combatant or non-state armed actor at any one time, making it complicated to identify perpetrators of abuse. Second, the simultaneous localisation and internationalisation of conflicts requires a strong understanding of both local conflict drivers and broader geopolitical drivers in order to better comprehend the shifting motivations, agendas and priorities of different conflict actors and how these might be leveraged in order to secure their greater compliance with IHL/IHRL. The lack of a shared understanding or knowledge of these dynamics among UN entities on the ground continues to create divisions between the humanitarian community and senior mission leaders over PoC concerns and inhibits development of shared strategies for response.

Challenges within the international humanitarian system

Many interviewees described the challenges to effective protection advocacy that stem from within the UN and wider international humanitarian system. These were summarised as a climate of caution, continuing doctrinal challenges and divisions over the practice of humanitarian diplomacy, concerns over the 'technocratisation' of protection and the distancing of humanitarian actors from affected people, and the challenges of donor-driven protection.

The 'age of caution'

In a recent UN University lecture, Mark Malloch Brown noted that the UN at 75 had now entered into 'a new age of caution' and argued that this ageing institution had become more cautious in its behaviour in response to the populist antipathy to multilateralism (Malloch Brown, 2020). Many of the challenges to protection advocacy identified in the interviews arise from a more cautious approach by UN leadership and other international humanitarian organisations that have become increasingly financially dependent on maintaining a presence in countries facing protracted crises. Some interviewees expressed concern that this age of caution is characterised by a retreat from protection advocacy and that humanitarian diplomacy is more focused on maintaining presence, rather than on promoting compliance with IHL/IHRL. In this new period of humanitarian pragmatism, the challenges to protection advocacy in regional conflicts are made more complex and require compromise on adherence to IHL/IHRL between states. Many HCs thus feel particularly vulnerable in undertaking protection advocacy and are uncertain of the support that they would get from the UN leadership in-country or at headquarters (HQ). These concerns were amplified by recent reforms to the RC system and perceptions of increasing job uncertainty. Many interviewees argued that, for the broader humanitarian community, the imperative to maintain presence – almost above all else – has been recognised by states and parties in conflict and has encouraged more serious violations of IHL/IHRL and reinforced the climate of impunity.

UN doctrinal challenges and policy confusion

One of the key concerns raised in the interviews related to the doctrinal differences and overlapping frameworks that exist both at UN HQ and on the ground. As noted by one interviewee, the PoC agenda of the UNSC, the 2005 ‘Responsibility to protect’ commitment of member states, protection of civilians within UN peacekeeping doctrine, the ‘Rights up front’ action plan and classical human rights protection all exist concurrently within the UN system but there is no real clarity on how leaders (and staff) should manage or apply these multiple frameworks. Consequently, misunderstandings of and differences between these frameworks have led to deep divisions between and within UN missions, UNCTs and HCTs. One interviewee noted how doctrinal differences created obstacles to the creation of protection strategies:

trying to get the humanitarian and development actors in the same space as the human rights and political actors along with the military and security people and get them to agree that, despite their different mandates, they needed a shared analysis and information on threats to the population, was difficult. But even within the UN that was difficult, bureaucratically hard work because the gravitational pull in each constituency is too strong. Especially so with the more immature humanitarians who won’t sit in the same rooms as military people (HPG interviews, 2020).

These divisions are acutely reflected in the longstanding disputes and tensions over approaches to protection advocacy. As indicated in past reviews, including the Rosenthal review, the UN continues to create an artificial dichotomy between quiet diplomacy and public advocacy, instead of using both in a complementary manner to its advantage. Rather than addressing longstanding divisions within and beyond the UN system, the proliferation of frameworks for protection has compounded existing differences between the UN Secretariat, agencies, funds and programmes, inhibiting

the development of common analyses of needs and a shared understanding of what responses, including quiet diplomacy and more public advocacy, are required and by which UN actor.

Technocratisation and professionalisation of protection

One of the most striking aspects of the interviews with UN leaders was the high level of concern about the development of a ‘protection industry’. For many, these concerns stemmed from the huge surge in interest in protection responses in the mid-2000s that were largely driven by the designation of the conflict in Darfur as a ‘protection crisis’. The upsurge in interest in protection resulted in a massive increase in the number of organisations and individual staff in NGOs and across the UN system engaged in protection work; many interviewees were concerned that the sheer numbers and diversity of this new protection community (later the protection cluster) presented major challenges to securing common analysis, standards and priorities. Some interviewees also raised concerns at the increasing technocratic approach to protection with a far greater focus on protection programming to mitigate the impact of violence and less action to prevent or halt violence. There were also worries that international humanitarian actors in general were becoming increasingly distant from communities affected by conflict – partly justified by rising security concerns for aid workers. They argued that not only was the separation of humanitarian actors from local communities perceived to be undermining the basis of their advocacy, but it also failed to appreciate or build on the efforts of communities to manage their own protection.

Donor-driven protection activities

The scale of financial dependence of humanitarian organisations on donor states in protracted crises means that donors inevitably influence how many international organisations identify and respond to protection concerns, including through advocacy. This was expressed by several senior leaders interviewed, who asserted that some international organisations are increasingly dependent on funds from a handful of key donor states and often use funding for their presence in protracted conflicts to sustain their global status and operations. These

high levels of financial dependence are, in the view of some leaders, creating distortions in the identification of protection needs and increasing divisions between UN missions and organisations involved in the protection of civilians. One interviewee specifically noted that both UN and NGO agency protection plans were based on what would attract a specific donor rather than on what a shared analysis identified. Another expressed concern that agencies' dependence on humanitarian financing is a factor in delaying the voluntary return of displaced civilians to their communities from camps in which there had been a heavy investment in health and education infrastructure. Both emphasised the need for more effective inclusion of the donor community in protection advocacy.

The way forward

It is evident from this research that the UN system broadly and UN leaders at HQ and those dealing with specific crises have a critical role to play in enhancing protection outcomes for conflict-affected populations. It is also clear, however, that there are myriad factors that continue to inhibit their engagement with, and ability to influence, conflict parties in order to secure greater compliance with IHL/IHRL and thereby better PoC. These factors are mostly longstanding and both internal and external. There have been multiple efforts and initiatives over the last two decades to try to address or mitigate these factors. But there remains no coherent culture and practice of protection across the UN system and insufficient clarity on the different roles and responsibilities of entities and leaders within it. There is also limited understanding or practice of capitalising on the organisation's multidisciplinary capacities and its authority to enable more robust engagement with conflict parties and third-party states on their responsibilities to protect civilians. But the fault does not lie with the organisation alone. The UN's ability to call out perpetrators of violence against civilians, and to effectively influence the behaviour of conflict parties vis a vis civilians, is intimately tied to the willingness of member states to support them in this effort. And, as evidenced in Syria, Yemen and elsewhere, the collective of member states are not taking action

“There remains no coherent culture and practice of protection across the UN system and insufficient clarity on the different roles and responsibilities”

to enable the UN to adopt a stronger voice on protection of civilians.

The current concept and purpose of protection advocacy by the UN system remains rooted in the spirit that existed as the UN and its member states entered the new millennium. But current practice by UN leaders is not living up to even their own expectations. Recognising this, the UN leaders interviewed for this briefing note commonly emphasised the need for change in three key areas: first, creating a more coherent culture on protection across the UN system and clarifying approaches, roles and responsibilities accordingly; second, strengthening the tools and capacities for protection advocacy, ensuring leaders are equipped and supported in this function; and third, strengthening the call for greater action by member states to address the 'accountability gap', to increase international accountability for violations of IHL/IHRL, both in terms of justice and as a tool of prevention.

Creating a more coherent organisation-wide culture on protection

Creating a clearer and more coherent culture on protection within the UN is critical to enable a more robust 'voice' on protection concerns. This requires three areas of action:

1. Ensuring that engagement with conflict parties and third-party states is more forward-looking and proactive – enabling the organisation to intervene quickly to try to stop violence before it occurs or engaging consistently over the long term to prevent it from escalating.
2. Adopting a more streamlined approach that simplifies the UN system's common focus and objectives on protection in a given context.
3. Providing greater clarity on the roles of different entities within the UN system and how they should be used in strategic coordination to ensure maximum impact, holding individuals accountable when they fall short in this respect.

Ensuring that protection advocacy or diplomacy is effective means that the UN approach must be more forward-looking, so that the organisation can identify risks to civilians and seek to address them as early as possible. It also requires consistent and long-term engagement with conflict parties to prevent violence from escalating and bring it to an end. Such an approach can and should be integrated into the UN planning processes at country level, including the Integrated Strategic Framework (ISF) in mission context, the Humanitarian Needs Overview (HNO), HRP and, as appropriate, the new Sustainable Development Cooperation Framework. This requires deepening the understanding among all parts of the UN system that, in situations of armed conflict, protection is not simply an issue to be ‘mainstreamed’ in the different areas of the UN’s response. Rather, all relevant UN entities should come together around a common goal of securing greater respect for IHL/IHRL, thereby securing better protection outcomes for conflict-affected civilians. This goal should be at the centre of the UN’s multi-faceted response to armed conflict and premised on a common understanding that engagement with conflict parties and third-party states, using a strategic combination of tactics, is key to achieving this goal.

Adopting a shared understanding of the risks civilians face, of the wider social, economic, political and cultural factors that exacerbate those risks and how these can be better addressed or mitigated, including through advocacy, is obviously critical to achieving this goal. Developing a shared analysis requires a simplified or streamlined framework – one that involves all relevant (political, peacekeeping, peacebuilding, development, human rights and humanitarian) parts of the UN system and which maintains focus on the overarching concerns while also understanding the details of specific thematic issues such as child protection and sexual and gender-based violence. The leaders interviewed universally stated that there is no need for another new framework or policy, rather that the existing multiplicity of tools needs to be simplified and streamlined. The existing aide memoire on PoC offers a possible way forward in this respect: it is a UNSC-endorsed framework; it enables an overarching perspective while also requiring attention on a clearly defined set of

sub-themes that are considered common priorities for the UN system; and it is already used to varying degrees as a tool for framing protection responses. Given its long-standing use and its practical content, the aide memoire could thus evolve as a core tool for developing shared protection analyses at country level by the UN system, identifying agreed priorities and determining appropriate response strategies, including advocacy. Revitalising and expanding the use of this tool would also have greater chance of endorsement by member states given it was originally developed and endorsed by the UNSC and in light of recent discussions in the Council open debate, led by Estonia, about the need to review and strengthen existing tools on PoC.

As noted earlier, UN leaders lamented the increasingly fragmented nature of the organisation’s engagement in PoC. They argued that this had led to confusion around roles and responsibilities and limited the attention on and response to the overarching global trend of declining respect for IHL/IHRL by states and non-state actors. In terms of the senior UN leadership, responsibilities for promoting greater respect for IHL/IHRL are for the most part implicit or recognised through policy statements such as ‘Rights up front’, but these responsibilities are not systematically clarified in terms of reference or in the compacts between the UNSG and senior officials. Ensuring that specific protection objectives are included in all such terms of reference and compacts would reaffirm that efforts to promote IHL/IHRL in order to secure better protection of civilians – whether through public advocacy, quiet diplomacy or a combination thereof – is a core task and individual leaders could be held to account for delivering on it. Spelling out roles more explicitly would also help clarify which leaders are responsible for which action in terms of promoting IHL/IHRL – for example between an SRSG and a DSRSR/RC/HC – ensuring greater complementarity of effort.

Strengthening skills and tools for advocacy and diplomacy

Increased accountability for individual UN leaders should also come hand in hand with increased support for these leaders to succeed. The effectiveness and impact of diplomacy or advocacy by leaders on protection issues depends very much on their individual skill sets and the

capacities that they can draw upon to support them in this function. Effective advocacy requires a set of political skills and a level of agility or speed of action that are not commonplace in the UN system, even among its most senior leaders. The importance of the ‘good offices’ function, of private diplomacy and, where appropriate, use of public communications are fairly well recognised, but not all leaders have the political skills to deploy such tactics strategically to effectively engage conflict actors, as they themselves admit. Many HCs and more senior officials also lack experience in or knowledge of the legal, policy and operational frameworks for protection. This skills gap can be addressed through targeted recruitment processes as well as specific training and capacity-strengthening support for current and future leaders, using internal resources and expertise. Augmenting political skills should also involve looking outside the UN system to learn from experts in the field of mediation and diplomacy in both civil society and governmental spheres. Creating a cadre of senior leaders with diverse skills, backgrounds, nationalities and experiences that reflect the diversity of member states requires long-term investments in recruitment, training and mentoring of individuals identified earlier in their careers as potential leaders. Current mentoring of DSRSG/RC/HCs is an important starting point but needs to be part of a more systematic approach that includes building key political as well other management and coordination skills.

Noting the multidimensional nature of UN leaders’ jobs, they should also be provided with the human resources needed to help them manage competing priorities and ensure their consistent engagement on protection issues. This is addressed in peace support missions through creation of human rights and other teams, but for non-mission contexts and in light of the UNSG’s report on the RC system, there is often a gap. In this respect, expanding on the recent practice of deploying human rights advisors to RC and RC/HC offices, this should involve providing specialised staff to be determined by the nature of the UN’s role and priorities in a given context. At minimum, this should include advisors with technical expertise in the legal, policy and operational frameworks for protection and/or on developing and delivering strategies of engagement with conflict actors. Such

expertise has been provided in some situations, but it has generally been a localised rather than global initiative. SRSGs and HCs also need support in the form of more in-depth, coherent analysis of protection trends and conflict dynamics. This will require greater investments by the protection cluster and UNCTs and HCTs in their own analytical capacities to ensure that the analysis presented to leaders to be used as the basis for their engagement with conflict parties is as coherent, comprehensive and accurate as possible.

Finally, strengthening skills and capacities can only be effective when it is accompanied by the necessary diplomatic support from HQ for protection advocacy and diplomacy. Building the skills of and capacities available to individual leaders should engender greater confidence and trust between them and their HQ. HQ leaders should trust that, when country-based colleagues speak out, they are doing so on the basis of a professional calculation of the risks involved, and country-based leaders should have greater confidence that they will be supported politically by their HQ when they engage states and non-state actors on sensitive issues – whatever the backlash may be.

Strengthening international accountability

Continued reference was made by UN leaders throughout the research for this briefing note to the link between the diminishing effect of their protection advocacy and the global trend of impunity for even the worst violations of IHL/IHRL. They felt strongly that the current gridlock in the UNSC, and its failure to hold states and non-state actors to account for their obligations under IHL/IHRL, has systematically undermined this body of law and the UN’s efforts to promote adherence to it. They stressed the importance of member states finding ways to navigate the current impasse at the UNSC, including through securing alternative mechanisms within UNGA or ad hoc coalitions of like-minded states. Finding new or alternative ways to address the accountability gap is crucial to ensuring that advocacy by UN leaders and institutions are part of a global, multilateral effort to promote respect for IHL/IHRL, bringing the necessary *collective* pressure to bear on conflict parties to change their behaviour. The

various diplomatic contact groups that have been formed to address specific conflict situations, including those supported by Special Envoys of the UNSG, are one form of coalition that could be used individually or as part of a wider network of states willing to take action to secure increased

accountability and support the protection goals that the UN system is trying to achieve. Without decisive action by a critical mass of member states to uphold IHL/IHRL, the ability of UN leaders and institutions to secure better protection of civilians in armed conflict will remain severely limited.

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