

**Bertrand G. Ramcharan (Ed.)**

# **Human Rights Protection in the Field**

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# Human Rights Protection in the Field

*edited by*

Bertrand G. Ramcharan

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## INTRODUCTION

Human Rights are violated on a massive scale the world over. International Humanitarian Law is flouted without compunction in conflict after conflict. Some twenty-five million people have been internally displaced. Some fourteen million refugees have taken refuge in foreign lands. Civilians are deliberately targeted in war. Women are raped. Children are abused. The protection of human rights can no longer take place only from offices in capitals or the headquarters of international organizations. Protection is needed on the ground, where people are at risk. It is far from an easy task.

United Nations peacekeeping operations regularly have, these days, human rights components with a variety of functions. Humanitarian agencies are called upon to respond to protection challenges more and more. Human rights and humanitarian NGOs deploy staff on the ground in the hope of helping people in need and bringing their plight to the outside world. The Office of UN High Commissioner for Human Rights has field offices that try to protect people to the extent they can. Sometimes, specifically human rights field operations are established as in Haiti.

How are human rights field offices faring? What can we learn from the experiments so far for future operations? How can we discharge the responsibility to protect in today's conflict and crisis-riddled world? That is the objective of this volume: to look at what has been tried so far and to try to come to a better understanding of how protection can be developed in the future. The difficulties are many, but try we must. For a start, there is the question, what is protection?

### *The Meaning of Protection*

'Strengthening Protection in War' is the title of a publication of the International Committee of the Red Cross that summarises the reflections of four workshops of humanitarian and human rights organizations. The participants in the workshops considered that the concept of protection encompasses "... all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law and refugee law. Human rights and humanitarian organizations must conduct these

activities in an impartial manner (not on the basis of race, national or ethnic origin, language or gender.”<sup>1</sup>

The participants in the workshops considered a protection activity to be any activity which:

- prevents or puts a stop to a specific pattern of abuse and/or alleviates its immediate effects;
- restores people’s dignity and ensures adequate living conditions through reparation, restitution, and rehabilitation;
- fosters an environment conducive to respect for the rights of individuals in accordance with the relevant bodies of law.

They recognized that “No single organization is able to meet the sheer diversity of protection needs as this requires a wide array of skills and means”. It is therefore natural that various organizations operate in the same arena and often cater to the same beneficiaries, regardless of the situation.<sup>2</sup>

To develop better protection approaches we must understand the roots of the problems of violations.

### *The Roots of the Problem of Violations of International Humanitarian Law*

An ICRC study of *The Roots of Behaviour in War* reached the conclusion that “supervision of weapons-bearers, strict orders relating to proper conduct and effective penalties for failure to obey those orders are essential conditions which must all be met if there is to be any hope of securing better respect for International Humanitarian Law. The ICRC will have to engage in a whole range of representations and activities, combined in a coherent effort of diplomacy, if it hopes to make progress in this regard.”<sup>3</sup>

Another conclusion reached by the ICRC in the same study was the following: “(W)e have to make international humanitarian law a judicial and political rather than a moral issue.”<sup>4</sup> A related ICRC publication, *The Roots of Behaviour in War: Understanding and Preventing IHL Violations* spelled this out further as follows: “The study’s main lessons may be summarized by the following three points: (1) Efforts to disseminate IHL must be made a legal and political matter rather than a moral one, and focus more on norms than on their underlying values, because the idea that the

<sup>1</sup> ICRC, *Strengthening Protection in War* (2001), pp. 20–21.

<sup>2</sup> *Ibid.*, p. 28.

<sup>3</sup> ICRC, *The Roots of Behaviour in War. A Survey of the Literature* (2004), p. 110.

<sup>4</sup> *Ibid.*, p. 111.

combatant is morally autonomous is mistaken. (2) Greater respect for IHL is possible only if bearers of weapons are properly trained, if they are under strict orders as to the conduct to adopt and if effective sanctions are applied in the event they fail to obey such orders. (3) It is crucial that the ICRC be perfectly clear about its aims when it seeks to promote IHL and prevent violations: does it want to impart knowledge, modify attitudes or influence behaviour? *The ICRC must develop strategies genuinely aimed at preventing violations of IHL.*<sup>5</sup>

We know that that there is a bedrock of rules and principles.

### *A Bedrock of Principles and Rules*

In its Advisory Opinion of 8 July, 1996 on the *Legality of the Threat or Use of Nuclear Weapons* the International Court of Justice held that “the protection of the International Covenant on Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in time of national emergency. Respect for the right to life is not, however, such a provision. In principle, the right not arbitrarily to be deprived of one’s life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, falls to be determined by the applicable *lex specialis*, namely the law applicable in armed conflict which is designed to regulate the conduct of hostilities.”<sup>6</sup>

In a later Advisory Opinion, on the *Legal Consequences of the Construction of A Wall in the Occupied Palestinian Territory*, the Court reaffirmed that the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind found in Article 4 of the International Covenant on Civil and Political Rights. As regards the relationship between international humanitarian law and human rights law, “there are thus three possible situations: some rights may be exclusively humanitarian matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law.”<sup>7</sup>

An ICRC Report, “International Humanitarian Law and the Challenges of Contemporary Armed Conflicts”, submitted to the 28th International Conference of the Red Cross and Red Crescent in December 2003 reached

<sup>5</sup> Pp. 2–3. Emphasis added.

<sup>6</sup> I.C.J. Reports 1996 (1), para. 25.

<sup>7</sup> I.C.J. Reports 2000, para. 106.

the following conclusions: “First, the ICRC believes . . . that the four Geneva conventions and their Additional Protocols, as well as the range of other IHL treaties and the norms of customary law provide a bedrock of principles and rules that must continue to guide the conduct of hostilities and the treatment of persons who have fallen into the hands of a party to an armed conflict. Second, some of the dilemmas that the international community grappled with decades ago were, in general, satisfactorily resolved by means of IHL development. Today, the primary challenge in these areas is to either ensure clarification or further elaboration of the rules. Thirdly, international opinion—both governmental and expert, as well as public opinion—remains largely divided on how to deal with new forms of violence, primarily acts of transnational terrorism.”<sup>8</sup>

The highest protection organ of the United Nations, the Security Council, has been endeavouring to generate greater protection for civilians in armed conflicts. The UN Aide Memoire is evidence of this.

*Protection of Civilians in Armed Conflict: UN Aide Memoire*

The UN Aide Memoire on the Protection of Civilians in Armed Conflict<sup>9</sup> set out an agenda for protection of civilians including the following:

1. Prioritize and support the immediate protection needs of displaced persons and civilians in host communities through measures to enhance security for displaced persons, measures to enhance security for civilians who remain in their communities and for host communities living in or around areas where refugees or internally displaced persons take shelter.
2. Facilitate safe and unimpeded access to vulnerable populations as the fundamental prerequisite for humanitarian assistance and protection through appropriate security arrangements, engagement in sustained dialogue with all parties to the armed conflict, facilitation of the delivery of humanitarian assistance, compliance with obligations under relevant international humanitarian, human rights and refugee law, and counter-terrorism measures in full compliance with all obligations under international law, in particular international human rights, refugee and humanitarian law.
3. Strengthen the capacity of local police and judicial systems to physically protect civilians and enforce law and order through deployment of qualified and well-trained international civilian police, technical

<sup>8</sup> Pp. 5–6.

<sup>9</sup> S/PRST/2003/27.

assistance for local police, judiciary and penitentiaries, reconstruction and rehabilitation of institutional infrastructure, and mechanisms for monitoring and reporting of alleged violations of humanitarian, human rights and criminal law.

4. Address the specific needs of women for assistance and protection through special measure to protect women and girls from gender based discrimination and violence, rape and other forms of sexual violence; implementation of measures for reporting on and prevention of sexual abuse and exploitation of civilians by humanitarian workers and peacekeepers; mainstreaming of gender perspective, including the integration of gender advisers in peace operations.
5. Address the specific needs of children for assistance and protection through prevention of and putting an end to the recruitment of child soldiers in violation of international law, initiatives to secure access to war-affected children, negotiated release of children abducted in situations of armed conflict, effective measures to disarm, demobilize, reintegrate and rehabilitate children recruited or used in hostilities, specific provisions for the protection of children, including where appropriate, the integration of child protection advisers in peace operations, implementation of measures for reporting on and prevention of sexual abuse and exploitation of civilians by humanitarian workers and peacekeepers, family reunification of separated children, and monitoring and reporting on the situation of children.
6. Put an end to impunity for those responsible for serious violations of international humanitarian, human rights and criminal law through establishment and use of effective arrangements for investigating and prosecuting serious violations of humanitarian and criminal law; exclusion of genocide, crimes against humanity and war crimes from amnesty provisions; referral of situations, where possible and appropriate, to international courts and tribunals.

Specific attention has been given to the issue of protecting children in armed conflicts.

### *Protection of Children in Armed Conflicts*

A Report of the Secretary-General submitted to the fifty-ninth session of the General Assembly in 2004 provided a Comprehensive Assessment of the United Nations System response to children affected by armed conflict.<sup>10</sup>

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<sup>10</sup> A/59/331.

The report grouped recommendations for improving and sustaining efforts on CAAC into four categories, which constitute the medium-term strategic priorities for the United Nations system to improve its response to children affected by armed conflict:

- A. Continued vigorous advocacy for children and armed conflict.
- B. An effective and credible monitoring and reporting system on child rights violations.
- C. Enhanced mainstreaming of CAAC issues across the United Nations system.
- D. Improved coordination of CAAC issues across the United Nations system.<sup>11</sup>

On advocacy, the report concluded that there was continuing need for a SRSG-CAAC as an independent advocate reporting directly to the Secretary-General and recommended the introduction of appropriate mechanisms for measurement of progress against benchmarks established each year. The mandated functions of the SRSG-CAAC should focus on the following:

- Integrating children's rights and concerns into the United Nations' peace and security, humanitarian and development agendas throughout all phases of conflict prevention, peace-building, peacemaking and peacekeeping activities.
- Unblocking political impasses to secure commitments from political actors on child protection on the national and regional levels and ensuring adequate follow-up to these commitments.
- Ensuring the inclusion of children and armed conflict concerns in all relevant reports submitted to the Security Council by the Secretary-General.
- Reporting child rights violations to relevant bodies, e.g. the Secretary-General, the Security Council, governments and regional mechanisms, and advocating the inclusion of appropriate measures in resolutions, e.g. sanctions, for actors who are violating CAAC norms and standards.
- Leading a collaborative process to produce the annual Secretary-General's report to the Security Council on CAAC. The report should focus on progress in the application of CAAC norms and standards including reporting on child rights violations in situations of conflict; suggestions for measures to ensure compliance to norms and standards; and high-level analysis of CAAC trends with recommendations on

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<sup>11</sup> Ibid., para. 46.

improvements to the United Nations system response, particularly with suggestions on how United Nations peace and security mechanisms can respond better to CAAC and progress on the development of a monitoring and reporting system for child rights violations.

- Producing an annual report to the General Assembly and the Commission on Human Rights, using inputs from key United Nations actors. The report should include a high-level analytical assessment of the state of CAAC in all conflict situations (i.e. not just countries on the Security Council's agenda); progress in the United Nations system's advocacy, mainstreaming and coordination efforts on CAAC issues; and prioritized next steps for the United Nations system in improving its response to CAAC.
- Providing proactive advocacy support to the Secretary-General, Heads of Agencies, Special Representatives, RCs/HCs and other high-level United Nations officials, primarily through inter-agency committees such as ECHA, the Executive Committee on Peace and Security (ECPS), the Senior Management Group, and annual meetings of RCs and HCs.
- Co-chairing a coordination mechanism at United Nations Headquarters on children affected by armed conflict.
- Maintaining a high-profile public awareness on CAAC issues as required to achieve political advocacy objectives including cooperation with the Department of Public Information (DPI).<sup>12</sup>

The report urged that the advocacy role of the ERC and the High Commissioner for Human Rights should also be systematically resorted to in support of CAAC concerns and issues.<sup>13</sup>

The report urged that a robust monitoring and reporting system for child rights violations in conflict situations should be developed in three distinct stages:

- (i) Developing an accepted, standardized and practical methodology to identify, document and verify child rights violations.
- (ii) Setting up and coordinating of networks of actors on the ground to document child rights concerns.
- (iii) Establishing responsibilities and procedures for disseminating and leveraging the information.<sup>14</sup>

The protection of women has also engaged the attention of the Security Council.

<sup>12</sup> Ibid., para. 49.

<sup>13</sup> Ibid., para. 51.

<sup>14</sup> Ibid., para. 52.

*Protection of Women*

In its resolution 1325 (2000), the Security Council called upon all parties to armed conflict to respect fully international law applicable to the rights and protection of women and girls, especially as civilians, in particular the obligations applicable to them under the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, the Refugee Convention of 1951 and the Protocol thereto of 1967, the Convention on Elimination of All Forms of Discrimination against Women of 1979 and the Optional Protocol thereto of 1999 and the United Nations Convention on the Rights of the Child of 1989 and the two Optional Protocols thereto of 25 May 2000, and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court. (Paragraph 9). The Council further called on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict. (Paragraph 10).

Enhancing Protection of Refugees has particularly engaged the attention of the UN High Commissioner for Human Rights.

*Protection of Refugees*

The United Nations High Commissioner for Refugees published in 2002 an “Agenda for Protection” whose programme of action has six goals:

1. Strengthening implementation of the 1951 Convention and 1967 Protocol;
2. Protecting refugees within broader migration movements;
3. Sharing burdens and responsibilities more equitably and building capacities to receive and protect refugees;
4. Addressing security-related concerns more effectively;
5. Redoubling the search for durable solutions; and
6. Meeting the protection needs of refugee women and children.<sup>15</sup>

The protection of internally displaced persons has also been highlighted.

<sup>15</sup> UNHCR, *Agenda for Protection* (2002), p. 29.



*Protection of Internally-Displaced Persons*

The Guiding Principles on Internal Displacement provide that National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons. The Principles contain, in addition to general principles, guidance on protection from displacement (prevention), protection during displacement, humanitarian assistance, and principles relating to return, resettlement and reintegration.

A Special Representative of the Secretary-General on Internally Displaced persons has sought to generate protection for IDPs and there is a special inter-agency unit on displaced persons within the UN system.

The protection role of United Nations peacekeeping operations has received high-level attention.

*UN Field Operations and Human Rights: The 'Brahimi Report'*

The 'Brahimi report' advocated:

- The essential importance of the United Nations system adhering to and promoting international human rights instruments and standards and international humanitarian law in all aspects of its peace and security activities.
- Improving respect for human rights through the monitoring, education and investigation of past and existing abuses, providing technical assistance for democratic development; and promoting conflict resolution and reconciliation techniques.
- Addressing variables that affect peace implementation such as issues of ethnicity or religion or gross violations of human rights.
- Addressing past violations of human rights.
- Working for respect of minority rights: "Long-term preventive strategies . . . must . . . work to promote human rights, to protect minority rights and to institute political arrangements in which all groups are represented".