Outcome Report
Trapped in Conflict: Evaluating Scenarios to Assist At-Risk Civilians
An International Committee of the Red Cross (ICRC) and InterAction Roundtable
July 2015

I. Background

A closed-door roundtable convened on 24 April 2015 brought together U.S. policymakers, humanitarian actors, and other stakeholders to discuss options for assisting civilians trapped in the midst of hostilities, cut off from essential aid, or facing imminent or ongoing risk of targeted attacks, with a view to enrich ongoing policy discussions in the U.S. and in international forums. In these circumstances, various forms of "intervention" – including evacuations, ceasefires, safe havens, buffer zones, and no-fly zones – are contemplated. Such measures may be based on the consent of the parties to the conflict or – absent consent – be militarily-enforced. These proposals often come from organizations not operationally present in the conflict, and frequently neglect to fully assess the ramifications of the sorts of interventions which may be contemplated. The purpose of the roundtable was not to endorse any one option over another, but to establish some key considerations that should underpin decision-making when policymakers contemplate intervention options.

Roundtable participants included policymakers at the State Department, Department of Defense, senior congressional staff, policy advisors at humanitarian agencies, prominent researchers and human rights advocates, UN personnel, and various elements of the U.S. Armed Services.[1] To ground the discussion, the roundtable focused on recent and current experiences in several contexts, including the Central African Republic, South Sudan, Iraq, Libya, and Syria. Participants considered political, legal, and logistical questions relevant to humanitarian pauses, evacuations, and a variety of military operations intended to enhance the protection of civilians. This outcome report presents some of the key dilemmas and insights that emerged at the roundtable and incorporates additional comments received from the participants and other reviewers. Where appropriate, the ICRC and InterAction refined key conclusions based on applicable international law or policy guidance.

II. Framing the discussion[2]

Civilians living in any war zone face threats to their security. This roundtable focused on the most extreme situations – where civilians are trapped and out of options. This may occur when:

- Civilians are at imminent risk of targeted violence based on ethnic, political, religious or tribal affiliations;
- Civilians are located in the crossfire of intense hostilities, although not necessarily specifically targeted;
- Civilians are prevented from fleeing by warring parties; and/or
- Goods, medical supplies, and humanitarian personnel are unable to enter an area and reach the civilian population, and/or civilians are unable to access basic services.

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[1] This roundtable convened a diverse group of experienced personnel under the Chatham House rule. This outcome report, which seeks to capture the rich discussion that took place, includes a variety of reflections of individual participants. Statements in this document may not be attributed to the conveners or the institutions that participants represent.

[2] This section summarizes some of the framing comments made by representatives of the ICRC and InterAction at the start of the roundtable.

Clarity about the desired outcome of any action taken to assist those at risk is an essential pre-condition to successful efforts to enhance the protection of civilians and to ensure that the measures do not result in additional harm to them.[3] This requires an analysis of the security situation with a view to understanding the threat environment, including which populations are most at risk and why, as well as the actors influencing the security environment. Second, an understanding of the normative and regulatory structures is required; international humanitarian law (IHL) provides a framework to understand the obligations of the parties to an armed conflict.[4] The "Professional Standards for Protection Work" provide common standards that should guide protection work by humanitarian and human rights actors.[5] In short, an analysis of threats to civilians, relevant legal rules and professional standards should inform possible courses of action, and subsequent planning and implementation, to ensure the best possible protection outcomes.

Protection can be understood in a number of ways by different actors: as an objective and outcome to be achieved; as security provided to people at risk; as international and domestic legal obligations that seek to protect civilians, civilian structures, and persons detained or in the custody of warring parties; as a set of activities by disparate actors. Activities to enhance protection can include: ensuring compliance by the relevant parties with their obligations and respect for the rights, dignity, and integrity of individuals; ending violations of IHL; or other specific actions to reduce risk and enhance the security of individuals.

Acknowledging the disparate roles and mandates of various actors seeking to enhance the protection of civilians in armed conflict is crucial when analyzing whether and how to intervene and who might do so successfully to assist an at-risk population. Humanitarian, military and other actors may all undertake measures to assist civilians facing grave risk, and have different obligations in doing so. Humanitarian actors operate on the basis of the principles of humanity, impartiality and independence.[6] In addition, many humanitarian actors rely on their neutrality to be able to operate in situations of armed conflict. In situations beyond the capacity and mandate of humanitarian and human rights organizations, such as the implementation of a no-fly zone, states may identify an appropriate role for military force to establish the necessary conditions for the protection of civilians. An intervening military force must comply with international humanitarian law in carrying out its operations. The involvement of military actors should

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[3] See "Professional Standards for Protection Work," ICRC, 2013 Edition, Standard 4, which states "Protection actors must avoid harmful effects that could arise from their work." Available here, (hereinafter "Professional Standards for Protection Work").

[4] The Geneva Conventions of 1949, the Additional Protocols, Customary International Humanitarian Law, and other applicable treaties provide rules which seek, for humanitarian reasons, to limit the effects of armed conflict. IHL protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. Additionally, Article 1 common to all four Geneva Conventions sets out the obligations of states to both "respect and ensure respect" for IHL in all circumstances. Regarding the latter, see Knut Doermann, "Common Article 1 to the Geneva Conventions and the obligation to prevent international humanitarian law violations," *International Review of the Red Cross*, available here, (hereinafter K. Doermann).

[5] "Professional Standards for Protection Work," above note 3.

[6] Recognising that humanitarian action is often carried out in politically sensitive contexts, humanitarian principles provide guidance to ensure that humanitarian action can be distinguished from the activities and objectives of other actors and thus is not considered improper interference in states' domestic affairs. In practical terms, ensuring that humanitarian action is conducted on the basis of these principles helps to facilitate consent and acceptance by all relevant actors on the ground, access to vulnerable populations, and the safety of humanitarian personnel and beneficiaries. Humanity, neutrality and impartiality are recognized by UN Member States as fundamental guiding principles underpinning humanitarian action in General Assembly Resolution 46/182 (1991) which sought to strengthen to strengthen the coordination of humanitarian assistance and established the Emergency Relief Coordinator (ERC) mandate. General Assembly Resolution 59/141 (2004) which sought to further strengthen humanitarian coordination, added independence as another important guiding principle for humanitarian action.

additionally trigger considerations of the impact on the ability of humanitarian actors to operate independently and impartially (and their being perceived to do so) during the operation and thereafter.[7]

III. Discussion and Key Issues

A. Evacuations of At-Risk Civilians

Sustained and uninhibited access to civilian populations during armed conflict requires concerted efforts on the part of humanitarian organizations, including through continuous dialogue with the parties to conflict.[8] However, sustained and uninhibited access is not always possible. In the case of threats of imminent targeted attack on civilians, their protracted exposure to crossfire, and long-term denial of access to assistance and services, evacuations of civilian populations are sometimes undertaken.

Evacuations may be considered, for example:
- To rescue civilians from situations of active hostilities;
- To rescue civilians from deliberate attacks against them; and
- To transfer those at greatest risk, such as the sick and wounded, to a safe place for treatment.

Evacuations are considered by some an admission of failure to ensure protection and access by other means. Many participants felt that evacuations should be considered an action of last resort, when all other options to ensure that civilians are safe from attack and have access to the assistance they need have been exhausted. This is due to the grave and long term consequences of displacement as well as the risk of "instrumentalization"[9] by warring parties, who may see an evacuation (and displacement) of a given civilian population as a military or political victory. Participants noted that "last resort" should be interpreted with the best interests of the population in mind and should not delay what might be an appropriate and necessary evacuation to rescue trapped civilians.

Humanitarian actors require consent of the warring parties to carry out evacuations securely... Some observed that an exclusively humanitarian evacuation, organized and implemented by humanitarian agencies and with the consent of the warring parties, is not always possible. In the absence of the consent of the parties, for instance, a military force may be the only actor able to undertake an evacuation. Additionally, in practice, some humanitarian organizations have sometimes sought protective accompaniment by military forces when carrying out an evacuation. However, if the military force undertaking the evacuation is seen as aligned with one side in the conflict, they may come under attack from an opposing force, thereby jeopardizing the evacuation and the civilian population being evacuated.

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[7] "Professional Standards for Protection Work," above note 3, standard 22, which states: "When engaging with UN peacekeeping operations and other internationally mandated military and police forces, protection actors must do so in a manner that does not pose further risks to civilians, nor undermine the ability of protection actors to operate, and be perceived as operating, in an impartial and independent manner."

[8] Of note, all parties to a conflict have a general obligation to facilitate humanitarian relief. See ICRC, *Customary International Humanitarian Law*, Vol. 1: Rules, Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), Cambridge University Press, Cambridge, 2005, (hereafter referred to as ICRC Customary Law Study). Rule 55 states that "parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control." The full text of this rule can be found here.

[9] "Instrumentalization" refers to the coopting of humanitarian activities into the objectives of political or military actors.

Military forces should only undertake an evacuation "when the military are the only actors on the ground or the humanitarians lack the capacity and/or resources to respond to critical needs of civilians."[10]

Evacuations pose security risks to all involved, including civilians and those carrying out the evacuation. Indeed, "poorly conceived or carelessly implemented protection activities can aggravate or even generate additional protection risks for vulnerable populations."[11] Any actor supporting or carrying out an evacuation should consider all risks to the civilian population and their own staff, and undertake measures to avoid harmful effects that could result from the evacuation.[12] Humanitarian agencies should consider how their actions may contribute to military or political goals, and mitigate the effects of "instrumentalization" by warring parties on the affected population. Registration of evacuees with a view to avoiding disappearances is one such mitigation measure that should be employed by any actor (humanitarian or military) conducting an evacuation.[13]

The at-risk population must remain at the center of assessment, planning and execution of evacuations. This means that actors seeking to assist an at-risk population should engage them in a dialogue so as to appropriately identify and respond to their needs.[14] Actors contemplating any evacuation should seek to ensure the affected population understands the process and potential outcomes, including the possibility that they may be screened and even detained by authorities, as well as the status of property left behind. Other considerations may arise after the evacuation is carried out, such as legal status and services available, documentation of transfers, restoration of family links, security of property and assets, and guarantees of return.

Further, in situations where an evacuation becomes necessary, not all members of the affected civilian population may be able to be evacuated (i.e. due to logistical/resource issues or restrictions imposed by authorities). In such situations, humanitarian agencies should assess and prioritize the most vulnerable groups within the affected population, in accordance with the humanitarian principles.

Key considerations
- **Evacuations should be voluntary; full and informed consent from individuals being evacuated should be sought as far as possible under the circumstances.[15]** The affected population must be consulted and play a central part in determining whether an evacuation is the best available option. As far as possible, the affected population should also play an active part in the planning, design and

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[10] See OCHA's "Civil-Military Guidelines and References for Complex Emergencies" (2008), paragraph 45, page 30, available here; other relevant, country-specific guidance and references can be found on OCHA's civil-military coordination publication page, here.

[11] "Professional Standards for Protection Work," above note 3, Standard 4 states that: "Protection actors must avoid harmful effects that could arise from their work."

[12] *Ibid.*

[13] The ICRC has found that registering detainees and other vulnerable populations can help reduce their vulnerability to disappearances, safeguard their treatment and maintain family contacts. See ICRC "Enhancing Protection for Civilians in Armed Conflict and Other Situations of Violence," 2012, pgs. 51-56. Available here.

[14] "Professional Standards for Protection Work," above note 3,Standard 7, "Protection actors must seek to engage in dialogue with persons at risk and ensure their participation in activities directly affecting them."

[15] Article 17 of Additional Protocol II to the Four Geneva Conventions of 1949 prohibits the forced movement of civilians in non-international armed conflict (NIAC). Rule 129 of the ICRC Customary Law Study also precludes such transfers during armed conflict. While not binding, the UN Guiding Principles on Internal Displacement were developed with a view to precluding forcible displacement. See Report of the Representative of the Secretary-General, Mr. Francis Deng, submitted pursuant to Commission on Human Rights resolution 1997/39, Addendum, Compilation and Analysis of Legal Norms, part II: Legal Aspects Relating to the Protection against Arbitrary Displacement, E/CN.4/1998/53/Add.1, 15 February 1998, available here.

implementation of any evacuation.[16] Consent of the affected population involves explaining the options before them, the process for those being evacuated, including the possibility that they may be screened by authorities prior to leaving the area (and possibly detained[17]), as well as the status of property left behind. Conditions of detention, where civilians may face ill-treatment, separation from their family and poor living standards, may well be worse than civilians' current circumstances. **Any actor conducting an evacuation should register evacuees** with a view to following the fate of those detained, avoiding disappearances and restoring and maintaining family contacts.[18] In some instances, access constraints may make such consultation difficult or impossible; in such cases, actors should act in the best interests of the at-risk population.[19]

- The affected community **should not be treated as a homogenous group, as some sections of the population experience different risks or are more vulnerable than others**; considerations for these vulnerable groups should inform the evacuation planning and implementation.[20] One participant noted that the CAR Protection Cluster's development of a strategy and its mapping of communities at risk were recognized as valuable planning and decision making tools for humanitarian and UN peacekeeping actors to facilitate an evacuation.

- **Evacuations should be an option of last resort**, when other reasonable alternatives have been exhausted. **The priority should be seeking to obtain continuous, unhindered access to populations and ongoing means to enhance their protection;** in this regard, evacuations should be treated as one-off events rather than a pattern of action. In contexts such as Syria and CAR, a great many crises play out simultaneously across the country that need broad, strategic planning and negotiation to avoid situations where evacuation becomes the only option for an affected community. Several participants felt that the need for an evacuation indicates a broader failure of protection of civilians. When faced with such extreme circumstances, actors with influence on parties to the conflict should revise their strategy for securing compliance with IHL and addressing specific vulnerabilities of the affected population so as to preclude the need for future evacuations.

- **Actors implementing evacuations must conduct a risk analysis with a view towards ensuring the evacuation will have a positive impact for civilians.[21] Consent by the relevant warring parties, and clear security guarantees from the parties, are essential to any humanitarian evacuation.** Participants underscored that consent of all parties concerned is essential to ensure, as far as possible, the security of the affected population in humanitarian evacuations, during and after the operation, and to mitigate against unintended consequences (such as long term displacement, instrumentalization, and threats against those not evacuated). Without obtaining consent and security guarantees that can be enforced, there is an increased risk that armed elements may manipulate or attack an evacuation convoy. One participant noted that this occurred in CAR, where anti-Balaka forces attacked evacuating

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[16] Above note 14.

[17] In a non-international armed conflict (NIAC) between government armed forces and one or more non-State armed groups, domestic law, informed by the State's human rights obligations, and IHL constitute the legal framework. Common Article Three of the Four Geneva Conventions of 1949 and customary IHL provide for humane treatment as well as other fundamental protections for detainees in NIAC; the ICRC may offer its services to visit detainees. During a NIAC, civilians may be detained for "imperative reasons of security" but detention must cease as soon as the reasons that necessitated it disappear. Internment is hence subject to procedural guarantees, such as a review every six months. Additionally, states must adopt domestic measures in order to provide the grounds and procedures regulating detention. For more on the law regulating detention in a NIAC, including additional protections for detainees, please see here.

[18] Above note 14.

[19] *Ibid.*

[20] In November 2014, the Global Protection Cluster (GPC) facilitated a thematic roundtable on "Humanitarian Evacuations in Armed Conflict," the summary of which can be found here.

[21] Above note 14.

civilians on the road to the relocation site.[22] There is an obvious tension posed by the need for consent, since evacuations may become necessary when armed elements deliberately target or impose siege-like conditions on civilians. Where consent and security guarantees are not possible, an evacuation may require military force.

- Where military force is required to facilitate an evacuation, **any humanitarian organization that chooses to participate in the evacuation must take measures to ensure their activities are (and are perceived as) impartial and independent**. Such measures can help mitigate negative perceptions that may arise from a humanitarian agency coordinating an operation with a military actor.[23]

- Several participants underscored that **lack of access to trapped or besieged populations severely limits humanitarians' ability to assess the situation on the ground**, especially in a conflict such as Syria, where for years humanitarians have been denied access to parts of the country. On one hand, evacuation of besieged populations may be an important measure to ensure their protection and well-being. However, the lack of humanitarian access to populations in these locations may make it difficult to carry out evacuations safely and in a manner that all sides accept and support.

- One participant noted the importance of a **clear framework of operational requirements and principles for the action to be undertaken** in order to inform negotiations with relevant stakeholders. That framework should seek to ensure the security of humanitarian staff and the people being evacuated, focus on assisting the most vulnerable people in the community, and resist political pressure that may have adverse consequences for at-risk civilians.

- Actors involved in evacuations must **ensure that their actions are consistent with IHL**, including provisions relating to unlawful deportation or transfer. As part of the difficult process of weighing the risks and benefits of a proposed evacuation, actors should keep in mind issues of reparation, accountability, reconciliation and ensuring the possibility of return to areas of origin in the future.

- While actors involved in evacuating civilians cannot guarantee the right of return for those being evacuated, several participants suggested that **humanitarians minimally can, and should, advocate for the right of voluntary return, seek to ensure the security of property and assets left behind, and ensure populations are well informed of their options**. Return should be voluntary for those who wish to go home once it is safe to do so. It may be possible that no guarantee of return can be agreed upon, but if lives are at risk, this disagreement should not necessarily hold up an evacuation. Rather, the possibility of return – and creating conditions conducive to return – should continue to be pursued as a matter of priority.

- Several participants highlighted the need to **distinguish between situations where people are already uprooted and trapped as IDPs** – as in CAR – **and situations where civilians are trapped in their homes** – as is the case in most besieged locations in Syria. The decision to leave is much different for those who must abandon their homes in order to be evacuated, and this distinction should be considered in the planning process.

- **Humanitarian organizations are often uniquely qualified and positioned to impartially assess a situation where evacuations may be considered**. In the planning process for an evacuation, **all actors should be aware of the political and media narratives and optics** of the situation. These outside pressures can influence the response. For example, leading up to the operation to rescue Yazidis

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[22] Josep Zapater, "Humanitarian Evacuations in the Central African Republic," *Humanitarian Exchange Magazine*, Issue 62 (September 2014), available here.
[23] See "Professional Standards for Protection Work*,"* Standard 22, which states: "When engaging with UN peacekeeping operations and other internationally mandated military and police forces, protection actors must do so in a manner that does not pose further risks to civilians, nor undermine the ability of protection actors to operate, and be perceived as operating, in an impartial and independent manner."

trapped on Mt. Sinjar in northern Iraq, the media narrative in the U.S. revolved around the atrocity prevention angle of a religious minority under attack. A strong media spotlight, heavily informed by counter-terrorism discourse, resulted in high level political attention, particularly in the U.S. This may have impacted decisions regarding whether and how to aid the Yazidis on Mt. Sinjar. Subsequent humanitarian assessments established a clearer picture of the humanitarian needs of the trapped population, which led to modifications of the planned operation. Political and media pressure may be unavoidable, but actors seeking to assist at-risk populations should adhere to humanitarian principles.[24]

- Participants highlighted the **specific logistical and legal considerations inherent in evacuations undertaken by military forces**, such as the Mt. Sinjar operation in fall 2014. When deploying ground or air forces to secure a corridor or enable an evacuation, it was noted that military actors must take into account where those forces will be based, flight permissions from neighboring countries, coordination with civilian elements for assessment and collaboration, and legal considerations regarding state sovereignty. Coordination with local authorities, the national government (if receptive and appropriate), and national military forces is also important. In the Mt. Sinjar case, several participants explained that a number of options were considered to deliver aid, including the use of Iraqi planes with support from U.S. aircraft, in order to avoid putting U.S. troops on the ground. Aid diversion was also a possibility, which required weighing the risk of diversion against the expected humanitarian benefits and the potential to mitigate this risk.

B. Safe havens

Under Chapter VII of the UN Charter, the UN Security Council is authorized to act to restore international peace and security when it determines the existence of a threat thereto, allowing the UN to take measures deemed necessary in that situation.[25] Such measures may include the imposition of safe areas to secure an endangered population, even without the consent of the parties to a conflict. Subsequent UN resolutions have upheld these rules and created UN-facilitated safe areas, such as UNSC Resolution 819, which established "safe areas" in Bosnia and Herzegovina during the war in the 1990s. As a practical matter, the creation of a safe zone – absent consent of the parties – will usually require some element of force to deter attacks and protect those inside the zone.

The Geneva Conventions of 1949 and Additional Protocol 1 – which cover IHL pertaining to international armed conflicts (IACs) – contain provisions governing the establishment of a variety of zones with agreement from parties to a conflict. These include neutralized zones for non-combatants and wounded combatants, "non-defended localities," and demilitarized zones within conflict situations.[26] These geographically defined areas are subject to conditions and agreement by the parties to conflict in order to maintain their civilian nature and impartiality. While similar treaty law does not exist for non-international armed conflicts (NIACs), state practice has established a prohibition on attacking zones established to shelter the wounded, the sick and civilians from the effects of hostilities in both IACs and NIACs as a rule of customary international law.[27]

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[24] "Professional Standards for Protection Work," above note 3, Standards 1-7.

[25] Chapter VII of the Charter of the United Nations can be found here.

[26] Hospitals and "safety zones" are described in Article 23 of the First Geneva Convention of 1949 and in Article 14 of the Second Geneva Convention of 1949; neutralized zones come under Article 15 of the Fourth Geneva Convention of 1949; "non-defended localities" fall under Article 59 of Additional Protocols I; and demilitarized zones are described in Article 60 of Additional Protocols I. These Articles and the complete list of the Geneva Conventions can be found on the International Committee of the Red Cross website, here.

[27] See ICRC Customary Law Study, Rule 35, which states: "*Directing an attack against a zone established to shelter the wounded, the sick and civilians from the effects of hostilities is prohibited.* State practice establishes this rule as a

Many participants felt that the case of people seeking safety inside UNMISS[28] bases in South Sudan highlighted the need for preparedness and prevention in situations where civilians seek safety from widespread violence by fleeing in large numbers to areas presumed to be safe because of their international, military or political nature. Preparedness requires context-specific analysis and understanding of the population and conflict situation, in particular starting from the perspective of the affected population. This includes establishing an understanding of how at-risk populations themselves seek to mitigate the risks they face and how the presence or actions of an outside actor may change the behavior of civilians, for example by creating a pull factor.

As with evacuations, consent from the parties to a conflict is the priority, but if no other option to protect civilians exists, a safe haven may be the best scenario. In the case of South Sudan, civilians facing imminent risk fled to UNMISS bases, in effect converting these bases into "protection of civilians (PoC) sites." Despite the challenges and shortfalls associated with the PoC sites, the strong perception among many actors is that UNMISS averted a larger catastrophe and saved many lives by opening its bases to civilians fleeing the violence. This experience offers valuable insight that may be applicable to comparable courses of action in a planned and negotiated manner.

Key considerations
- As protracted armed conflicts proliferate, several participants underscored the need for **prevention and preparedness** efforts in situations where civilians will be displaced so as to avoid a scenario where UN or other compounds are seen as the only option to seek safety. Context-specific analysis and an understanding of communities' self-protection methods can inform actions to mitigate mass violence and displacement in a conflict like South Sudan.[29] Such mitigation may include activities to reduce vulnerability and exposure to violence, increased patrolling by peacekeepers in hot spots, and better ongoing analysis and early warning to anticipate and prepare for outbreaks of violence and mass displacement. Effective analysis also enables better communication with an affected population about its security concerns. For example, a deep understanding of the security situation can help a humanitarian or peacekeeping operation assess threats and communicate with the population concerned about its ability to mitigate threats and enhance their security.

- **A safe haven may act as a pull factor** for those seeking security as well as access to humanitarian aid and services. One expert participant explained that the UN has tried to address the overcrowding of the PoC sites in South Sudan by trying to identify those seeking security and allow them entrance while discouraging those whose main purpose was to seek humanitarian aid. This distinction may contribute to an understanding of the different vulnerabilities people face and, therefore, appropriate responses

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norm of customary international law applicable in both international and non-international armed conflicts."
Available here.

[28] On July 8, 2011, the Security Council established, under Chapter VII authority, the United Nations Mission in South Sudan (UNMISS) to support the Government of South Sudan in peace consolidation, state building, economic development, protection of civilians, and rule of law. After the political crisis that erupted in December 2013, and amidst intensifying ethnic violence, the Security Council expanded the troop and police strength and made the mission's main focus the protection of civilians, human rights, and creation of security conditions conducive to the delivery of humanitarian assistance. Since the crisis erupted in late 2013, more than 120,000 civilians have fled to six UNMISS bases around the country, seeking shelter and protection from violence that has left tens of thousands dead and millions displaced. For a summary of the history of UNMISS and the current Security Council mandate, see here.

[29] For more information on community self-protection methods and community perceptions, and the importance to protection activities, see Aditi Gorur "Community Self-Protection Strategies: How Peacekeepers Can Help or Harm" *Stimson Center, Civilians in Conflict Project*, Issue Brief No. 1, August 2013, available here and Alison Giffen "Community Perceptions as a Priority in Protection and Peacekeeping," *Stimson Center, Civilians in Conflict Project*, Issue No. 2, October 2013, available here.

to their needs. Additionally, several participants noted that declaring a "safe haven" risks implying that other areas are unsafe; this may undermine the norm that all civilians are to be respected and protected in all circumstances.

- Several participants felt that the **establishment of a safe area near an international boundary could result in a tightening of borders by neighboring states**. Such border restrictions may lead to *refoulement*,[30] and undermine security for civilians that are unable to reach a safe area or flee to a safe refugee outside their country. Declaring a safe area could also create the illusion of security for civilians, and may result in their taking risks they would not otherwise take, including returning to their country of origin in adverse conditions. Actors that advocate for or seek to establish a safe area should seek to mitigate adverse consequences that may result from such an activity. For example, one participant suggested that the establishment of any safe area should be accompanied by assurances from neighboring states that rights for asylum seekers will be respected.

- The **civilian and weapons-free character of any safe area should be ensured** to provide confidence to parties to a conflict that the area is not being used as a haven by armed actors. Assuring armed actors that a safe haven is weapons-free will enhance the security of civilians inside the area. In some cases, UN peacekeepers tasked with protecting a safe haven may be limited by their mandate and/or capabilities to protect civilians from external threats or security challenges within the safe haven (e.g. crime, sexual violence, political or ethnic violence, etc).

- There are **significant operational differences between safe havens established through negotiation by humanitarian actors and those that depend on credible deterrence by armed actors**, such as a UN peacekeeping mission compound. Many participants felt that the priority should be for negotiated consent and recognition from parties to the conflict and/or other actors responsible for violence that a certain area or population is not to be subject to attack. However, as with evacuations, consent from relevant parties may not be forthcoming. Appropriate analysis of the situation, including the calculus of the parties to the conflict, will determine whether a safe area may be negotiated by humanitarian actors or would, as a practical matter, require a military deterrent.

- **Several participants felt that humanitarians should be part of the negotiation and implementation process for a safe haven**. In South Sudan, the PoC sites were a *de facto* creation, resulting from the movement of people at risk to areas they deemed secure. It was only after this movement that humanitarians began working with UNMISS to provide services in the bases. Humanitarian actors should be clear about what services they can and should provide in these situations and how they will relate to the peacekeeping mission and the parties to the conflict in doing so.[31] Several participants underscored that the creation of a **militarily-enforced safe haven is dependent on a clear willingness**

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[30] *Non-refoulement* is articulated in Article 33 of the 1951 Convention Relating to the Status of Refugees: "No Contracting State shall expel or return ('fouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality or membership of a particular social group or political opinion." UNHCR and others contend that the principle of non-refoulement constitutes a rule of customary international law. See Sir Elihu Lauterpacht and Daniel Bethlehem, "The scope and content of the principle of *non-refoulement*: Opinion," in E. Feller/V. Turk/F. Nicholson, *Refugee Protection in International Law*, 2003, 149-163, available here. In the same article (113-155), Lauterpacht and Bethlehem also observe that *non-refoulement* is increasingly being interpreted as "non-rejection at the border." Further, "As regards rejection or non-admittance at the frontier, the 1951 Convention and international law generally do not contain a right to asylum. This does not mean, however, that States are free to reject at the frontier, without constraint, those who have a well-founded fear of persecution. What it does mean is that, where States are not prepared to grant asylum to persons who have a well-founded fear of persecution, they must adopt a course that does not amount to *refoulement*. This may involve removal to a safe third country or some other solution such as temporary protection or refuge."

[31] "Professional Standards for Protection Work," above note 3, Standards 20 -24.

and capacity to enforce it. Many actors, whether UN troop contributing countries (TCCs) or intervening militaries, are reticent to commit the personnel and assets necessary to secure a safe haven due to risk to their own personnel as well as financial constraints. Moreover, should they fail to protect the civilians, their credibility and legitimacy will be tarnished. Finally, many military and police do not have the doctrine, training or equipment to protect safe havens in some environments. For example, some security forces that participate in peacekeeping operations may not be prepared to respond to complex security challenges, such as an attack on a safe haven by a mob comprised of armed and unarmed civilians.[32] As tragically witnessed in Srebrenica, declaring a safe haven without explicit security guarantees from all relevant parties or adequate military force can lead to disaster.

C. No-Fly Zones and Buffer Zones: Past and Potential Scenarios

In some situations where civilians face significant risks, military assets have been used to establish no-fly zones (NFZs), sometimes linked with the creation of militarily-enforced buffer zones. Participants discussed NATO's 2011 intervention in Libya and debated whether that intervention averted a massacre in Benghazi, as the Obama Administration and many others contended.[33] "Lessons learned" from NATO's 2011 intervention in Libya informed a debate on key points that policymakers should consider when contemplating military intervention intended to protect civilians. Many participants weighed the potential impact of a hypothetical NFZ and/or buffer zone in Syria, particularly as some politicians and advocates have urged western governments to undertake this option.[34] However, other scenarios were discussed as well and participants focused on identifying key considerations relevant in a variety of contexts.

The UN Charter – not IHL – provides the legal basis for the establishment of militarily-enforced protected spaces absent consent of the state authorities. As discussed previously, IHL treaties provide some guidance for establishing "protected zones," but the creation of such zones *depends* upon the consent of warring parties. Several of the considerations relevant to NFZs and buffer zones echo the concerns arising in the case of evacuations and safe havens but nevertheless bear repeating.

Key Considerations
- **A no-fly zone imposed by one or more states on another state (without consent) may violate state sovereignty, and initiate an international armed conflict (IAC).** If not agreed by parties to the conflict, an intervention to establish a NFZ or buffer zone could put the implementing coalition of forces in direct confrontation with the host government, potentially escalating the conflict as well as regional and global tensions.

- In some contexts, establishing a militarily-enforced NFZ or buffer zone could entail **significant offensive operations against the forces posing the threat to civilians**, at least temporarily, **leading to serious consequences for the civilian population concerned**. The extent of force required to deter attacks would depend *inter alia* on the motivation and capability of a potential attacker. Participants with substantial expertise highlighted that establishing a NFZ in a hostile environment would first require suppressing, through targeted strikes, the air defenses of the forces posing threats to the civilian population. Similarly, they noted that establishing a buffer zone could involve significant ground

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[32] For a discussion on these issues by a group of experts convened by the ICRC, see Expert Meeting Report prepared and edited by Gloria Gaggioli, "The Use of Force in Armed Conflicts: Interplay between the Conduct of Hostilities and Law Enforcement Paradigms," 2013. Available here.

[33] On March 28, 2011, President Obama contended that the intervention was necessary to prevent a massacre of civilians in Benghazi, Libya; see here. Additionally, Ken Roth, Executive Director of Human Rights Watch, Anne Marie Slaughter and other influential figures lauded the military intervention; see here. For a critical analysis of the implications and outcome of the Libya intervention, see Alan J. Kuperman's *Foreign Affairs* article, here.

[34] Kristina Wong, "Senators urge Obama to create civilian safe zones in Syria," The Hill, April 22, 2015, available here. For more information, see here.

operations to "clear out" weapons-bearers and secure weapons caches that might threaten civilians or create greater instability.

- Military operations are generally not effective through air power alone; participants with relevant expertise explained that **ground forces** (whether military or intelligence) are absolutely necessary to vet targets and feed operators information so as to **ensure air operations distinguish between fighters and civilian populations** in the course of military operations.

- Several participants explained that **air operations may also not be adequate to prevent or mitigate violence** being perpetrated on the ground. In fact, **the threat of an air operation could speed up violence on the ground**, including attacks against civilians that the intervention is meant to stop, or cause armed actors to shift to tactics that cannot be targeted from the air. Policymakers and those advocating military intervention should consider how actors on the ground might respond to external military intervention in weighing whether to intervene and/or in designing the intervention.

- Participants highlighted that **military doctrine related to the protection of civilians is in its nascent stages of conception**. As such, military interventions that have the declared objective of protecting civilians run the risk of morphing into operations to defeat an enemy rather than intervening impartially on behalf of a civilian population at risk. The intervening force may align itself with one party to the conflict rather than endeavoring to create an environment where all civilians are respected. As a result, while intervention may begin with the objective of enhancing the protection of the civilian population, additional objectives of a political character could come to dominate the operations, carrying unanticipated and unintended consequences including the potential for greater risk to more civilian populations. Policymakers and those advocating for military intervention should be aware of and anticipate these possibilities.

- **Establishing a NFZ or buffer zone may blur the lines between military objectives and humanitarian goals**. Such military action could negatively affect the perceptions of the neutrality of humanitarian agencies in the view of warring parties and civilian populations, undermining the security of humanitarian actors. In the same vein, this could give rise to unintended consequences or new risks posed by military intervention to the civilian population as well as humanitarian agencies.

- **A buffer zone could compromise the rights of people seeking asylum**, as neighboring countries may see the creation of a buffer zone as an opportunity to enact or tighten border restrictions, particularly if that country is already hosting many refugees. Such restrictions may lead to *refoulement*.[35] Even though international law prohibits *refoulement*, neighboring countries could claim that a protected space inside the country from which people are fleeing removes the need to consider asylum claims or determine refugee status. Policymakers and advocates should be cognizant of these potential unintended consequences.

- Participants noted that a buffer zone, established without consent of some or all parties to a conflict, could be **perceived as a target, posing new risks for civilians seeking safety**. In addition, a buffer zone could also become a magnet for armed opposition groups, which could create additional risks for civilians seeking safety. For instance, security forces outside a buffer zone may step up attacks against that zone if it is perceived as a safe haven for armed opposition groups.

- **NFZs or buffer zones are sometimes proposed as a quick fix to assist civilians in conflict.** Some participants highlighted that there is rarely a "reality-based discussion" on the operational and policy issues inherent in enforcing NFZs or buffer zones. Some participants underscored the costs associated with such operations, as well as the challenging operational and political dimensions. These participants noted that policymakers and advocates should thoroughly consider the implications

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[35] See above note 30.

inherent in violating state sovereignty and initiating an international armed conflict, as a NFZ and/or buffer zone would likely entail. Other participants added that policymakers should assess the efficacy from the perspective of beneficiaries and operational agencies, and also consider and plan for the "day after" – i.e. the longer term consequences – before deciding on a course of action. Finally, many participants agreed that actors proposing NFZs and/or buffer zones with a view to assist civilians in conflict should undertake detailed assessments and planning to determine possible risks to civilians of the action, weigh the risks against the benefits, and mitigate unintended consequences.

- Military interventions to protect civilians**, such as the establishment of a NFZ or buffer zone, may offer short-term relief to the civilian population in some instances, but military options alone are unlikely to resolve conflict in the absence of a sustainable political settlement.** Even if successful, the ongoing non-compliance with IHL on the part of the parties to the conflict will still need to be addressed. In addition, several participants noted that military options should be considered within the context of a broader political strategy to resolve the conflict itself.

VI. Main Conclusions[36]

- Actors contemplating or planning any of the types of interventions discussed here should consider the **relationship between humanitarian actors and the population.** The "population" in any given area includes a variety of actors, including armed groups or other weapons bearers, political actors, and ordinary civilians. The population is incredibly diverse, and all of these different actors may perceive humanitarian groups or external actors differently.[37] Relationships between humanitarians and these disparate actors in any given area are important because perceptions of humanitarian agencies will impact how and whether security guarantees, including consent by warring parties, for humanitarian action are achieved, including specific timeframes and operational details. Some geographical areas may have no governing authority. Participants noted the importance of considering this web of disparate actors and relationships in any given geographical area so as to determine which actor may be best positioned to act in the face of the problem to be solved.

- Humanitarian, political and military actors should all consider the **implications of interventions for civilians trapped in conflict;** these actions are not just a one-off exercise, but are rather part of a broader dynamic of impeded access and a failure of protection. Implications can be short-term or long-term, and thus demand anticipation, careful planning, and analysis of scenarios. All actors should be conscious of new risks or additional harm that may arise due to the action taken or a lack of anticipation. For instance, a safe area may become a magnet for armed groups, endangering the civilian population for whom the space was intended. Similarly, civilians evacuated by humanitarian agencies could be detained by the state, separating them from their family or potentially creating new protection risks (such as the possibility of torture or otherwise inhumane treatment). The potential for new risk or unintended harm does not mean that external actors should never undertake such measures on behalf of civilians. Rather, potential risks and benefits should be carefully and fully assessed *before* an intervention occurs so as to ensure that potential negative effects are mitigated and the intervention contemplated results in a net positive for the at-risk civilian population.

- Whatever action is pursued, the **desired effects and outcomes should be articulated**. This requires focusing on more than just tasks, but also how different components of an operation might be sequenced to bring about the outcome.

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[36] These conclusions do not indicate that participants reached a uniform consensus on these points. Rather these were points especially emphasized by participants or highlighted more than once.
[37] For an interesting field study exploring the dimensions of civilian involvement in armed conflict, see Center for Civilians in Conflict, "The People's Perspectives: Civilian Involvement in Armed Conflict," May 11, 2015, available here.

- Extreme situations of violence, such as the contexts discussed during this roundtable, require **context-specific analysis** and **continuous consultation with at-risk populations to appropriately identify and respond to their protection needs**.[38] Several participants felt that when civilians express a desire to be relocated this should be given significant weight in decision-making.

- Several participants underscored the importance of **strengthening relationships with local actors** who can help facilitate humanitarian access in a context with fragmented authority. This does not dilute the need for relationships and support for humanitarian activities from national level authorities. Rather, **humanitarian action in a situation with fragmented authorities requires a multi-level approach**, whereby humanitarian access should be supported by national and local authorities. For example, in Syria, a localized approach could mean employing different strategies in various areas throughout the country, since the situation in northern Syria differs greatly from the situation in the south. However, this raises the question of whether humanitarians have invested enough in negotiation and other capacities necessary for diverse levels and types of engagement.

- Some participants underscored the importance of assertive **leadership**, **flexibility to adapt to evolving dynamics, and an ability to advocate for certain standards to be met** on the part of humanitarian agencies and other actors carrying out operations to assist at-risk civilians.

- Many participants underscored that the **broader context of persistent risks to civilians and non-compliance with IHL cannot be ignored**, otherwise situations will continue to fall into the category of needing "last resort" options. Dealing with the macro level context and **developing a toolkit or "menu of options"** to reduce threats to civilians, and reduce people's vulnerabilities to threats, will help to address systemic patterns of risk and avoid situations where there is no other perceived choice but to evacuate civilians or enact a NFZ, buffer zone or safe haven.

- Several participants affirmed that the **constant refrain of proposals for buffer zones, safe havens, NFZs, and military intervention reflect a paucity of good options** and a **lack of clarity among many actors about what these actions actually entail**; education and awareness-raising may be a first step toward mitigating misunderstandings. Several participants suggested that, as a next step, researchers could build an evidence base of past experiences and examples to exhibit the historical implications of the types of interventions discussed.

- Actors should recognize the limits of what they can do, whether military, political, or humanitarian when faced with grave humanitarian crises. In Syria and other challenging crises, many participants suggested that the UN and its Member States should use the tools available to them to ensure respect for IHL and secure humanitarian access. Others additionally emphasized the importance of assessing **the full scope of threats and vulnerabilities which contribute to civilians' exposure to violence during armed conflict and make every effort to comprehensively minimize these risk factors**. The ICRC highlighted that all states have a legal obligation to "ensure respect" for IHL in any armed conflict, including by exercising caution to ensure that weapons transferred are not used to commit serious violations of IHL.[39] The Arms Trade Treaty (ATT) would impose a greater level of scrutiny on state parties when it comes to arms transfers. Many participants highlighted the need to stop weapons flows altogether, and secure a broad political solution in Syria. Others emphasized that humanitarian action is not a substitute for a lack of progress towards achieving a lasting political solution. Finally, several participants from humanitarian organizations emphasized that humanitarian, military, and political actions should not be conflated; if a military or political intervention takes place, it should not be referred to as "humanitarian."

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[38] "Professional Standards for Protection Work," above note 3, Standard 7, "Protection actors must seek to engage in dialogue with persons at risk and ensure their participation in activities directly affecting them."
[39] K. Doermann, above note 4.

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