

HPG research proposal

Humanitarian protection

Background and progress to date

The question of how to protect civilians and refugees from deliberate harm is a matter of increasing debate in both the humanitarian and political spheres. Although these are categories of people who are notionally ‘protected persons’ under the law, the practice of states and warring parties in recent years has arguably tended to render them more, not less, vulnerable. External mechanisms for protection, such as those provided by the ICRC and UNHCR, are being put under increasing strain. The relevance of the legal regimes on which their interventions are based is questioned and political and security factors have diminished the space within which they are able to operate.

The trend towards more closely aligned political and humanitarian agendas has arguably further complicated the protection of people against threats to their immediate security, even where, as in Kosovo, political and military intervention is purportedly designed to achieve just that. Subordinating humanitarian concerns to other political priorities (including peace agendas) may serve to compromise protection objectives. Yet the ability to influence policy and behaviour on which non-violent protection strategies rest – by persuasion, incentive, sanction or otherwise – depends on an appeal to interests (of, say, warring factions in Congo) that seem increasingly hard to satisfy. These developments and the increasing emphasis put on this issue by the UN and other political and humanitarian actors make this a crucial time to examine more closely the concept of protection and its application in practice.

This study, running over two years, is designed to provide an overview of the subject of humanitarian protection, and will be followed by further more detailed studies on specific aspects of the subject. The current programme of work aims to evaluate the scope and consistency of the conceptual frameworks employed by different actors in approaching protection issues; the nature and effectiveness of their operational approaches to humanitarian protection; and the relationship between these external interventions and the attitude and practice of states and warring parties. A theme of the ODI research is the interface between the humanitarian and political interpretations of

protection, and the extent to which these are compatible. The idea of the ‘responsibility to protect’ is explored against the actual practice of states and humanitarian agencies. The research considers the factors that seem to determine the extent of compliance with the relevant areas of international law by states and warring parties; and more generally the factors - at local, national and international level - that tend to enhance or to diminish the security of civilians. The practice of agencies in pursuing ‘humanitarian protection’ is examined against this backdrop. One sub-theme is an examination of the relationship between the assistance activities of humanitarian agencies and the protection of the populations in question.

This study differs from work previously undertaken in this area in a number of ways. First, it considers the humanitarian and political aspects of protection in parallel, including factors relating to the local political economy. Second, it does not set out to promote any one approach: for example, it makes no prior assumptions about the ability of agencies to enhance protection by their presence in proximity to communities. Third, it will base its conclusions on a research process that combines scrutiny of field-level practice with consultation at various levels and with a wide spectrum of actors – not just with those directly concerned with protection.

The aim is to provide an independent analysis that can help practitioners and policy-makers to make better-informed decisions about intervention, and to contribute to the effective working and development of existing mechanisms by providing practice-oriented recommendations.

A group, including members from the mandated protection agencies, is being formed to help steer the work through consultation at the design and subsequent stages of the project. The work will draw on analytical material already available on this subject from work done by ICRC, UNHCR, OCHA and others, as well as on relevant agency documentation. It is proposed to hold a workshop involving peer review groups to discuss the preliminary findings of this research and to elicit further analysis, prior to the more extended consultation and interview process in Phase 3 of the project.

Phase 1 Mapping of Concepts and Approaches

Complete by April 2004 (funded through existing Integrated Programme contributions)

This element of the project is concerned to examine the range of protection concepts currently in use, describe the scope of each, explore the model of protection that each assumes and determine the extent to which these models actually relate to the problems faced by civilians and displaced people. These concepts vary in their scope (protection of whom, from what?), in their definitions of protection (physical protection, legal protection), and in the way in which they conceive the role of the ‘protector’. According to which model is adopted, ‘State protection’ (by the sovereign authority), ‘international protection’ (by third-party states) and ‘humanitarian protection’ (by agencies) are variously stressed, or treated in isolation. While much work continues to be done on the protection of specific groups – for example refugee protection – little attention has been paid to the range of concepts as a whole, their internal coherence and the extent to which they are mutually compatible.

This phase entails reviewing relevant documentation and interviewing key agency and foreign ministry staff to map the various conceptual models, and to analyse them against the questions outlined above. Those consulted will be asked to relate their analysis closely to actual examples of contexts in which these models have been applied by their respective agencies or governments, in an attempt to bridge what is often a wide gulf between ambition and practice. This will include examples of how decisions about relief intervention have been shaped by protection considerations, as well as decisions about more specific protection-related activities.

Many of the outputs from this phase of the project are now completed, including a review of agency and governmental concepts and approaches to protection and a paper on humanitarian intervention with force. These will inform the writing of a discussion paper, to be used as a basis for further consultation. The Afghanistan case study, described below for convenience, forms part of this first phase and has been completed.

Phase II Case Studies

November 2003 - May 2004 (funded through existing Integrated Programme contributions)

This element of the project, involving three main case studies, will examine in more detail the way in which the various models described above are operationalised. The practice of political and humanitarian actors seeking to intervene for protection is

relatively unexamined, yet increasing importance is placed on just such activities. What is the range and nature of these protection activities? How effective are they? What are the constraints to success (e.g. political, structural, financial). What factors would tend to increase the chances of success, and what changes could be recommended? The attempt to answer these questions forms the heart of this phase of the research.

Researching these issues constitutes Phase 2 of the project, which overlaps with and is informed by Phase 1. The research involves document and literature reviews, field and practice-oriented consultation, relating to specific country and regional contexts. Each study takes a historical perspective as well as providing an analysis of current realities. Subject to security and access considerations, three of the following will be studied:

- **Afghanistan** (already undertaken, November 2003). This case study considers the security of civilians in Afghanistan, including that of almost two million returnees, in a notionally 'post-conflict' context. It explores the way people perceive their own security and the factors that determine this; the fulfilment of political responsibilities to protect, and the functioning of the existing national and international security apparatus; and the role of humanitarian and human rights actors in helping to ensure civilian security.
- **Somalia** (March/April 2004). A study, parallel to that on Afghanistan, to consider the security and protection of civilians in a 'transitional' state, where the apparatus of the state is weak, the incidence of violence is high, and where many look to traditional clan structures for protection.
- **Democratic Republic of Congo** (March/April 2004). A study focussed on the eastern provinces of the country in which ongoing conflict presents a daily threat to the safety of civilians, as well as a political threat to both internal and regional stability. Amongst the themes of this study will be the relationship between humanitarian concerns and political agendas, including peace processes; the role and capacity of international actors to protect civilians; and the relationship between violence, displacement and health.

- **A review of civilian protection in South-East Asia** (March/April 2004). This study considers the security and protection of civilian populations in a range of contexts including Aceh, Maluku, West Timor (Indonesia) and Mindanao (Philippines). Amongst the key themes of the study will be the role of the state and its agents as, simultaneously, potential protector and abuser; the civilian-combatant distinction; and the impact of the ‘global war on terror’ on counter-insurgency strategies and (consequently) on civilian security.

These field studies may be complemented by short desk reviews of protection issues in other contexts, for example, the security of Serbs returning to Kosovo. While the case studies were originally scheduled for completion in the financial year 2003/04, delays in this and related projects mean that they will now be completed post-April 2004 (in the FY 2004/05).

The Protection Project Phase III (Do160)

This is the culmination of the overview study on humanitarian protection, the first two phases of which are described above. The work in Phase 3 involves the following elements:

1. Completion and editing of the results of the three field studies, for publication on the internet.
2. Production of a draft synthesis report as a basis for consultation. This will build on the earlier discussion paper, and incorporate the findings from the various case studies as well as the document and literature reviews.
3. A series of structured interviews with governmental, inter-governmental and non-governmental actors (headquarters level) based on the findings from Phase 1 (policy mapping) and Phase 2 (case studies) of the project. The purpose of this element is to test the hypotheses and conclusions derived from the initial policy mapping and from the case studies with policy-makers in agencies and governmental departments. Those to be consulted include:
 - Foreign and aid ministries:

- US Department of State; USAID
- Dutch Ministry of Foreign Affairs
- Canadian Department of Foreign Affairs; CIDA
- UK Foreign and Commonwealth Office; DfID
- UN offices and agencies: OCHA, DPKO, UNHCR, UNICEF, UNHCHR
- Members of the Red Cross Movement - ICRC and other;
- International humanitarian NGOs (including MSF, IRC, Oxfam and CARE) and related co-ordinating bodies (SCHR, InterAction, ICVA);
- International human rights agencies (Human Rights Watch, Amnesty);
- Academics concerned with humanitarian and protection issues.

4. Further literature-based research into identified topics as necessary. This will allow some further exploration of topics raised in consultation as being key to the subject, and further research into related initiatives in the humanitarian and political spheres.

5. Writing of final report and accompanying briefing paper. The findings of the study will be recorded in the form of an HPG Report and associated formats (Briefing Paper, CD-Rom, web materials). It is anticipated that this will be completed by December 2004.

6. A series of dissemination workshops in London, Geneva and New York. These are intended as a vehicle for communicating key findings, generating further discussion, acting as a catalyst for policy review, and highlighting areas that require further investigation. These will take place in late 2004 / early 2005.

This overview study will set the framework for what is envisaged as a rolling programme of research on protection issues within Cluster 1 of the Integrated Programme. Findings to date have been used to identify the provisional research topics outlined below which, subject to revision, will form the basis of further work in the following year (2005/06)