Introduction

Protecting civilians essentially means minimising the negative consequences of conflict for those who are not actively engaged in fighting or ancillary activities. One might assume that shielding civilians from harm is a global public good upon which consensus can readily be achieved. Yet the reality is more blurred. Already the notions of both 'civilian' and 'protection' are contested, for instance. So too are the interpretation and application of many of the legal obligations which intend to ensure that civilians are safeguarded. In addition, protecting civilians oftentimes is in tension with other stakes while also involving costs and trade-offs. As such, some justify civilian harm by national security imperatives or the exercise of a people's right to self-determination. Others perceive the concept as political cover for Western neo-imperialism.

This chapter begins by discussing key terms and concepts in the protection of civilians – 'civilian' and 'protection' in particular – while illustrating their unsettled and complex character. Key moments in history in international law, policy, and practice over the last century and a half are recalled. This aims to provide the context and conceptual clarity before delving into more details. Following this introduction, the book is divided into two parts.

Part I covers the international rules pertaining to the protection of civilians. It does so in two ways. First, the main branches of applicable international law are reviewed as they relate to the protection of civilians: *jus ad bellum* (the law on inter-State use of force), international humanitarian law, international human rights law, disarmament law, international criminal law, and refugee law. A separate chapter is dedicated to the prohibition of sexual violence. Then the protection of specific groups of civilians is addressed: women; children; persons with disabilities; older persons; the internally displaced; medical and humanitarian personnel; and lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons.

Part II of the book reviews the institutional policies of certain key States and leading international organisations. The heterogeneity of the policies and practices within the United Nations (UN) system bear witness to the manifold challenges inherent in the protection of civilians. The fact that no UN-wide strategy on the protection of civilians yet exists is discussed. Some within the United Nations declare such a strategy unnecessary;

others believe its conclusion and adoption are practically unachievable. Within the UN Security Council, however, since the final years of the last millennium, the protection of civilians has been transformed from an issue of peripheral importance to one that lies 'at the core' of its work to maintain international peace and security.[1] That does not imply, however, that the permanent or non-permanent members of the Council agree as to either the nature of protection that should be afforded to the civilian population in countries of concern or the actors that should ensure its provision.

At regional level, the African Union (AU), the European Union (EU), and the North Atlantic Treaty Organization (NATO) have all played roles of significance in the protection of civilians, though not all have been equally protective. The same is true for Brazil, India, Norway, South Africa, Switzerland, the United Kingdom, and the United States. Their policies and practices are reviewed in turn. In the non-governmental realm, the International Committee of the Red Cross (ICRC) – also the subject of a dedicated chapter – is a critical reference. So too are the many local and international non-governmental organisations (NGOs) that seek to protect civilians on a systematic or ad hoc basis in the field: the Center for Civilians in Conflict (CIVIC), Geneva Call, the International Rescue Committee, Médecins sans Frontières, and Save the Children, among many others. Amnesty International, Bellingcat, and Human Rights Watch further seek to ensure accountability for violations of international law perpetrated against civilians. No single volume could possibly hope to describe in sufficient depth, much less to evaluate, the achievements and shortcomings in their work, whether considered individually or collectively.

1.1 WHO ARE 'CIVILIANS'?

If civilians are to be protected, who are civilians? This is a short and deceptively simple question, but one that is not readily capable of receiving a brief answer that is also comprehensive.[2] Modern conflicts, which tend to involve a multitude of non-State actors to the extent that observers have termed this the 'civilianization of conflict',[3] further complexify the answer. In general terms, however, civilians are *non-military* persons. This lay understanding, which dates back to the latter half of the eighteenth century of

[1] Statement by the President of the UN Security Council, UN doc. S/PRST/2015/23, 25 November 2015, at: http://bit.ly/2HTRqQN, p. 3.

[2] This is, in part, due to the complexities of the fragmentation of international law and its vernacular whereby specialised law-making often takes place with relative ignorance of legislative activities in adjoining fields and of the general principles and practices of international law. The result can be conflicts between rules or rule-systems. Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, Report of the Study Group of the International Law Commission, Finalized by Martti Koskenniemi, UN doc. A/CN.4/L.682, 13 April 2006, at: https://bit.ly/2NkHMvr, para. 8.

[3] See for example, A. Barros and M. Thomas (eds.), *The Civilianization of War: The Changing Civil–Military Divide, 1914–2014*, 1st ed., Cambridge University Press, Cambridge, 2018. See also A. Wenger and S. Mason, 'The Civilianization of Armed Conflict: Trends and Implications', *International Review of the Red Cross*, Vol. 90, No. 872 (2008), 835–52.

the current era (CE),[4] and based on the moral distinction that killing civilians is worse than killing soldiers,[5] persists to this day and is a helpful starting point. The true etymology of the notion of civilian, however, is of a 'citizen'. Derived from the Latin *civilus*, it was used in this sense in the Roman empire in the first century before the current era (BCE).[6] Julius Caesar, for instance, was writing of a 'civil' war, meaning one between citizens of Rome.

Ralph Mamiya has traced the modern concept of civilians, and the duty on belligerents to refrain from violence against them, to the laws and customs of war that evolved in the early twentieth century CE, especially in the period following the end of World War I.[7] Considered seminal is the 1923 article in the *International Review of the Red Cross* by Dr Frédéric Ferrière, the original French title of which translates as 'A draft international convention on the situation of civilians during war who have fallen into the power of the enemy'.[8] Already in Ferrière's article the complexity of the issue of civilians and their protection was laid bare. In advocating for international legal regulation of the issue, he declared that due distinction would need to be made between civilians who could be called up for military service and those who could not. This latter group, he said, comprised those civilians who 'deserve' to be accorded 'a certain level of security', identifying in this regard 'the infirm, the sick, those who were too old to bear arms and the elderly, children and youth who were not old enough to join the ranks of the military, [and] women and girls'.[9]

In 1929, a diplomatic conference of States was convened in Geneva to adopt for the first time an international convention on the status and treatment of prisoners of war.[10] The Final Act of the conference contained a unanimous recommendation that 'extensive examination be made with a view to concluding an international convention on the condition and protection of enemy civilians on the territory of a belligerent or on territory

[4] The sense of civilian as a 'non-military' person is said to be attested by 1766. 'Civilian', *Online Etymology Dictionary*, accessed 1 June 2019, at: http://bit.ly/2Kk2nxc.

[5] S. Lazar, *Sparing Civilians*, 1st ed., Oxford University Press, New York, 2017.

[6] In his *Commentarii de Bello Civili*, Julius Caesar was discussing the Roman Civil War of 49 BCE and 48 BCE. In late Middle English, the term 'civilian' described a practitioner of civil law: its origins for this sense were in the Old French *droit civilien*.

[7] R. Mamiya, 'A History and Conceptual Development of the Protection of Civilians', in H. Willmot, R. Mamiya, S. Sheeran, and M. Weller (eds.), *Protection of Civilians*, 1st ed., Oxford University Press, Oxford, 2016 (hereinafter, Willmot et al., *Protection of Civilians*), p. 65 note 6. In 1899, the Hague Convention II on the Laws and Customs of War on Land employed the term civilian but only in relation to espionage. In this regard, civilians who openly delivered 'despatches destined either for their own army or for that of the enemy' were not to be considered spies. Art. 29, Convention (II) with Respect to the Laws and Customs of War on Land; adopted at The Hague, 29 July 1899; entered into force, 4 September 1900. See similarly Art. 29, Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land; adopted at The Hague, 18 October 1907; entered into force, 26 January 1910.

[8] F. Ferrière, 'Projet d'une Convention internationale réglant la situation des civils tombés à la guerre au pouvoir de l'ennemi', *International Review of the Red Cross*, 1923, 560–85, at: https://bit.ly/3sDm323.

[9] Ibid., pp. 566–7.

[10] In their earliest iterations in 1864, 1906, and 1929, the Geneva Conventions otherwise focused on alleviating the suffering of wounded or sick soldiers.

occupied by him'.[11] An important area of unfulfilled law-making had been identified. Following the call, the International Convention on the Condition and Protection of Civilians of enemy nationality who are on territory belonging to or occupied by a belligerent was drafted in Tokyo, although it was never formally concluded and adopted by States. The 1934 draft text defined civilians as persons 'not belonging to the land, maritime or air armed forces of the belligerents, as defined by international law'.[12] Separately, the same year, the Monaco Convention on 'sanitary cities and localities',[13] an instrument which also did not enter into force as binding international law, contained a section dedicated to the protection of the 'civil population'.[14] The Monaco Convention defined the civil population as including 'all persons who are not enlisted in the army'.[15]

The aftermath of World War II marked a milestone in international law with the adoption of the first legally binding instrument explicitly and exclusively dedicated to the protection of civilians in armed conflict. Thus, the Fourth Geneva Convention of 1949 is formally entitled the Convention relative to the Protection of Civilian Persons in Time of War.[16] The provisions are based on the text of the 1934 draft text elaborated in Tokyo, with the 1949 Convention thus focusing on the protection of civilians in occupied territory as well as of foreign nationals in the territory of a party to an international armed conflict.[17] While the four Geneva Conventions of 1949 do not, individually or collectively, explicitly delineate who are civilians, they do generally serve to reinforce the general distinction between the members of the armed forces (combatants) on the one hand and the civilian population (non-combatants) on the other.

The 1977 Additional Protocol I to the Geneva Conventions[18] would later use this bifurcation as the starting point for its *explicit* definition of civilians in a situation of international armed conflict. But the complexity of the definition also showcases the elements of nuance brought to the question by international humanitarian law (IHL).

[11] Final Act of the Diplomatic Conference, issued at Geneva, 27 July 1929, at: http://bit.ly/3iofHio, Recommendation VI.

[12] Art. 1(a), Draft International Convention on the Condition and Protection of Civilians of Enemy Nationality who are on Territory Belonging to or Occupied by a Belligerent; elaborated at Tokyo but not concluded, 1934.

[13] First Convention on Sanitary Cities and Localities; adopted in Monaco, 27 July 1934; never entered into force (hereinafter, 1934 First Convention on Sanitary Cities and Localities).

[14] The ICRC has observed that the text of the draft Convention was drawn up by a Commission of doctors and jurists that met in Monaco on 5–11 February 1934 in response to a wish expressed at the Seventh International Congress of Military Medicine and Pharmacy held in Madrid in 1933. ICRC, 'First draft Convention adopted in Monaco (Sanitary cities and localities), 27 July 1934', at: http://bit.ly/3sGDqPk.

[15] Art. 1, Chap. IV, 1934 First Convention on Sanitary Cities and Localities.

[16] Convention (IV) relative to the Protection of Civilian Persons in Time of War; adopted at Geneva, 12 August 1949; entered into force, 21 October 1950.

[17] In general terms, an international armed conflict is one occurring between two or more States, including where sovereign territory is occupied by a foreign State. The issue is discussed briefly in Chapter 2 and in further detail in Appendix 2.

[18] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; adopted at Geneva, 8 June 1977; entered into force, 7 December 1978 (1977 Additional Protocol I). As of 1 April 2022, 174 States were party to the Protocol. See the ICRC list of States Parties, at: https://bit.ly/2Oe2Iin.

Thus, under its Article 50(1), the 1977 Additional Protocol I classifies a civilian in the negative, deeming him or her to be any person *other than* the following:

> Members of the armed forces of a Party to the conflict,[19] including members of militias or volunteer corps that form part of such armed forces. This is so, whether or not the armed forces belong to a government that is recognised by the enemy.[20]
>
> Members of militias and or volunteer corps, including organised resistance movements, which belong to a Party to the conflict but which are not part of its armed forces. This is so, as long as they are under 'responsible command'; bear a fixed distinctive sign recognisable at a distance; carry arms openly; and comply with IHL.[21]
>
> Inhabitants of a non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units (this is known as a *levée en masse*). They lose their civilian status (but gain the right to be considered and treated as prisoners of war, provided they carry arms openly and respect IHL).[22]

The notion of a combatant is thus cast widely in IHL. It is not limited to those who belong formally to the regular armed forces.[23]

The 1977 Additional Protocol I confirms that the civilian population 'comprises all persons who are civilians'.[24] In case of doubt whether a person is a civilian, the Protocol further stipulates, 'that person shall be considered to be a civilian'.[25] But there are different categories of civilian under IHL and varying levels of protection that this body of law affords to them, as Chapter 2 describes. In particular, when civilians participate 'directly' in hostilities – in any armed conflict – they lose the protections under IHL to which they were entitled as civilians, in particular that of immunity from direct attack.

The 1977 Additional Protocol I formally applies only in international armed conflict. Yet the concept of loss of immunity applies equally in all 'non-international' armed conflict, that is to say, where a State is engaged in sustained combat against an organised armed group. In such conflicts, however, a particular issue of dispute pertains to whether those who 'belong' to non-State armed groups are no longer to be considered civilians as a matter of law. In 2009, the ICRC averred in its controversial Interpretive Guidance on the notion of 'direct participation in hostilities' that organised armed groups constitute the

[19] 'The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party.' Art. 43(1), 1977 Additional Protocol I. Under paragraph 3 of the article, it is confirmed that paramilitary forces and gendarmerie may be incorporated within the armed forces, such as occurs in Belgium and France.

[20] Art. 4(A)(1) and (3), Convention (III) relative to the Treatment of Prisoners of War; adopted at Geneva, 12 August 1949; entered into force, 21 October 1950 (hereinafter, 1949 Geneva Convention III).

[21] Art. 4(A)(2), 1949 Geneva Convention III.

[22] Art. 4(A)(6), 1949 Geneva Convention III.

[23] That said, military medics and religious personnel belonging to the armed forces are 'non-combatants', meaning that they do not have the right to participate directly in hostilities. The contested interpretation and application of this notion is discussed in Chapter 2.

[24] Art. 50(2), 1977 Additional Protocol I.

[25] Art. 50(1), 1977 Additional Protocol I.

armed forces of a non-State party to a non-international armed conflict and consist of individuals whose 'continuous function it is to take a direct part in hostilities'.[26]

The ICRC concept of continuous combat function, which remains contested, does not appear in any IHL text. If, however, it does exist as a matter of law, it serves to deprive a person of civilian status, thereby potentially rendering him or her liable to attack under IHL at all times, including when unarmed and even when asleep. Indeed, 'continuous combat function' and its concomitant consequences could even apply even to child members of organised armed groups, including those recruited when under fifteen years of age, an act that is a serious violation of international law.[27] Only when rendered *hors de combat* by wounds or sickness or upon surrender are those who were until that time participating directly in hostilities fully protected from attack.

In sum, under IHL, civilians in a situation of international armed conflict are all those who are not members of armed forces of a party to such a conflict, members of an organised resistance movement (that meets certain criteria), or who do not engage in a *levée en masse*. In a situation of non-international armed conflict, civilians are ostensibly all those who are not members of regular (State) armed forces. It may be the case, however, that members of organised armed groups who have a continuous combat function are also not civilians for the purposes of the application of IHL. The approach of the United States, however, 'has been to treat the status of belonging to a hostile, non-State armed group as a separate basis upon which a person is liable to attack, apart from whether he or she has taken a direct part in hostilities'.[28] In this case, it is not clear how membership is to be determined, however. In peacetime – meaning any situation outside armed conflict[29] – civilians are all persons who are not members of State armed forces.[30]

1.2 WHAT IS 'PROTECTION'?

Just as the notion of civilian is difficult to define, so too is the notion of protection. There is no universally accepted definition in international law of 'to protect', 'protection', or 'protected' as these terms pertain to the safeguarding of civilians from violence and indirect effects thereof. Moreover, this is the case even though both terms are employed widely in international law, in particular in IHL and in international human rights law.

A range of attempts have been made to define protection outside the realm of treaty law. With respect to the United Nations and its relations with operational non-governmental

[26] N. Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, ICRC, Geneva, 2009, chapter II.

[27] Ibid., p. 60.

[28] United States (US) Department of Defense, *Law of War Manual*, June 2015 (updated December 2016), Washington DC, 2016, para. 5.8.2.1.

[29] See, for example, Art. 2, 1949 Geneva Convention III: 'In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict . . . '.

[30] This includes members of the police or of another law enforcement agency where the law enforcement agency is not incorporated within the armed forces.

agencies, the Inter-Agency Standing Committee (IASC)[31] has defined protection, based on years of prior work by the ICRC, as '*all activities aimed at obtaining 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, IHL, refugee law)*'.[32] This sets ambitious aims for protection activities – nothing less than 'full respect' for the legal rights of individuals is sought – while at the same time being exceptionally broad in scope, encompassing 'all' activities that pursue such a goal.

The IASC definition's operational utility is, however, debatable. Indeed, in 2015, the report of an independent review of protection in humanitarian action, published on behalf of the Standing Committee,[33] concluded that the definition 'does not facilitate a clear, operational and robust system level approach to protection deficits'. This is because it is interpreted by 'humanitarian actors and other stakeholders, in many different ways'.[34] The Standing Committee's review argued that the lack of a common understanding of the UN definition of protection 'contributes to dysfunctional approaches that fail to identify, at the system level, the diverse range of actions required, including challenging imminent threats to life for at-risk populations'.[35] The views of many interlocutors cited in the report on the IASC are rather less flattering: 'dysfunctional', 'all over the place', and 'useless' were some of the descriptors they applied, or it was deemed to mean 'everything and nothing'.[36] Despite this criticism, the review report did not call for a new definition to be developed and agreed upon, although it did recommend that the existing IASC definition be 'unpacked' to make it 'accessible'.[37] So far, this has not happened.

Within civil society, the Core Humanitarian Standard, concluded by an array of international NGOs in 2014, also offers a definition of what constitutes 'protection'. In similar terms to the IASC definition, the Core Humanitarian Standard refers to '*all activities aimed at ensuring the full and equal respect for the rights of all individuals, regardless of age, gender, ethnic, social, religious or other background*'.[38] The Standard recalls that IHL, international human rights law, and international refugee law 'set out fundamental legal standards relating to the protection of individuals and groups'.[39] To

[31] Created by UN General Assembly Resolution 46/182 in 1991, the IASC is 'the longest-standing and highest-level humanitarian coordination forum of the UN system, bringing together the executive heads of 18 UN and non-UN organizations to ensure coherence of preparedness and response efforts, formulate policy, and agree on priorities for strengthened humanitarian action'. UN Office for the Coordination of Humanitarian Affairs (OCHA), 'The Inter-Agency Standing Committee', at: http://bit.ly/3izskXR.

[32] *IASC Policy on Protection in Humanitarian Action*, United Nations, New York, 2016, at: http://bit.ly/31y0qTg.

[33] N. Niland, R. Polastro, A. Donini, and A. Lee, *Independent Whole of System Review of Protection in the Context of Humanitarian Action*, report commissioned by the Norwegian Refugee Council on behalf of the Inter Agency Standing Committee and the Global Protection Cluster, Norwegian Refugee Council, May 2015, at: http://bit.ly/301dcUn.

[34] Ibid., p. 63.

[35] Ibid.

[36] Ibid., p. 23.

[37] Ibid., p. 63.

[38] *Core Humanitarian Standard on Quality and Accountability*, CHS Alliance, Group URD, and the Sphere Project, Geneva, 2014, Glossary, p. 19.

[39] Ibid., p. 8.

further emphasise the breadth of the concept, however, the definition clarifies that protection 'goes beyond the immediate life-saving activities that are often the focus during an emergency'.[40] The Standard is expressly said to be 'underpinned by the right to life with dignity, and the right to protection and security as set forth in international law, including within the International Bill of Human Rights'.[41]

Others have proposed different definitions of protection. In a major academic work on the protection of civilians published in 2016, its four editors suggested that the international community would be 'well served' by adopting a definition of the protection of civilians along the lines of the following:

> [T]he act of protecting from violence and minimising harm towards those not directly participating in hostilities, in conflict situations. Such acts are undertaken pursuant to the rights and responsibilities of national authorities, belligerents, and the international community, and are governed by a legal framework of positive and negative obligations based on the UN Charter, IHL, IHRL [international human rights law], and refugee law. In this context, the state of being protected manifests primarily as fulfilment of the rights to life and physical integrity, whether citizen or alien. Direct protection activities are those that have a proximate causal connection resulting in the immediate and direct physical protection of civilians. Indirect protection activities are those that have a less proximate causal connection vicariously resulting in the protection of civilians.[42]

This description of protection tends to be intricate and legalistic yet contains a number of significant elements. It describes the object of protection as those not directly participating in hostilities during an armed conflict, thereby denoting all so-called 'innocent'[43] civilians (meaning those not actively engaged in armed struggle in support of one party to an armed conflict against another, whether State or non-State). It is also, though, made explicit that the notion of civilian is restricted to situations of armed conflict. Thus, protection from acts of violence in peacetime, including against major terrorist attacks and even with respect to the commission of crimes against humanity or genocide, would not be encapsulated. This renders the proposed definition incomplete. For while policies on the protection of civilians do indeed focus on armed conflict, many also address protection measures in other situations of armed violence. A broader understanding is needed of the contexts in which civilians need to be protected. The proposition also does not say much about measures for protection.

Although there have been additional definitions and specifications of the concept,[44] some have suggested that the notion of protection is not one that is capable of universally

[40] Ibid.
[41] Ibid., p. 2.
[42] Willmot et al., *Protection of Civilians*, Conclusion, p. 431.
[43] The word comes from the Latin *innocens*, meaning one who does not harm others. H. Slim, 'Civilians, Distinction, and the Compassionate View of War', in Willmot et al., *Protection of Civilians*, p. 16.
[44] DPO, *The Protection of Civilians in United Nations Peacekeeping*, Policy, New York, 1 November 2019, para. 23; *NATO Policy for the Protection of Civilians*, endorsed by the Heads of State and Government participating in the meeting of the North Atlantic Council in Warsaw, 8–9 July, para. 9; *Draft Guidelines for the Protection of Civilians in African Union Peace Support Operations*, African Union, Addis Ababa, 2012, para. 1; *Protection of Civilians Military Reference Guide*, 2nd ed., *Army Peacekeeping and Stability Operations Institute*, Army

applicable or acceptable definition. Perhaps, to coin the famous words of Justice Potter Stewart of the US Supreme Court (albeit with reference to a very different concept), 'one knows it when one sees it'.[45] Or alternatively, as one international public health expert, Robin Coupland, has suggested, it may be the case that 'protection' is just an 'unsatisfactory term'.[46] While both positions are defensible, this work does not endeavour to sustain either but proposes that:

> *Protection of civilians is the defence of civilians against violence and the alleviation of harm in conflict and other situations threatening their physical and mental integrity through the application of preventive and responsive measures.*[47]

As Coupland has observed, preventive measures in favour of civilians are executed through one of three avenues: by reducing *physical capacity* to undertake unlawful violence against civilians; by reducing *psychological capacity* to undertake unlawful violence against civilians; and by reducing the *vulnerability* of civilians to violence.[48] This categorisation leads to the following avenues for the protection of civilians:

- *Physical capacity to undertake violence against civilians is reduced*, through a combination of arms control, the lawful use of force, and the prosecution and incarceration of perpetrators of criminal acts. Policies can provide for civilian harm mitigation measures that are not required by international humanitarian law, for instance a requirement that there be near certainty that civilians will not be harmed during an attack.[49]
- *Psychological capacity to undertake violence against civilians is reduced*, by ensuring respect for domestic and international law and through the deterrent effect of effective investigation, apprehension, and prosecution of others as well as the lawful use of force and the threat thereof.[50] Training, codes of conduct, norms, and organisational culture are further means in this regard.
- The *vulnerability of civilians to violence is reduced* through a combination of 'humanitarian' protection measures (such as through the provision of shelter and the

War College, Carlisle, PA, January 2018, p. 3. For details and discussions of these definitions or specifications, see the chapters on the respective institutions.

45 US Supreme Court, *Jacobellis* v. *Ohio*, 378 US 184 (1964), at 197.

46 Email from Robin Coupland to Tobias Vestner, 3 November 2020.

47 The World Health Organization (WHO) has defined violence as 'the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that results in injury, death, psychological harm, maldevelopment or deprivation'. WHO, 'Definition and Typology of Violence', at: http://bit.ly/3sHfdZc. The definition was first expounded in 1996 in the WHO Global Consultation on Violence and Health publication *Violence: A Public Health Priority*, WHO doc. WHO/EHA/SPI.POA.2, Geneva, 1996. Complex emergencies are situations of disrupted livelihoods and threats to life produced by warfare, civil disturbance, and large-scale movements of people, in which any emergency response has to be conducted in a difficult political and security environment. WHO, *Environmental Health in Emergencies and Disasters: a Practical Guide*, Geneva, 2002, para. 1.6.

48 Email from Robin Coupland to Tobias Vestner, 3 November 2020.

49 For a differentiation of types of measures, see for example, M. Keenan and A. W. Beadle, 'Operationalizing Protection of Civilians in NATO Operations', *Stability: International Journal of Security & Development*, Vol. 4, No. 1 (2015), 1–13.

50 This could mean placing military or police forces near vulnerable populations, conducting patrols, or proactively using force against those who might harm civilians.

assurance of safeguarded areas) and 'social' protection measures (e.g. forms of social welfare), which reduce the motivation for risk-taking.[51]

This understanding of protection as possessing an especially broad preventive nature is consonant with the duty to protect life under the right to life in international human rights law. Thus, as the Human Rights Committee has affirmed, the application of the right to life under the International Covenant on Civil and Political Rights (ICCPR)[52] demands that States must both respect and ensure the right to life, including by exercising due diligence to protect the lives of individuals against deprivations caused by persons or entities whose conduct is not attributable to the State.[53]

This further indicates another dimension of the modern understanding of the protection of civilians, namely that civilians are not only to be protected from one's own actions as a military actor but potentially also from the conduct of others. While IHL predominantly – though not exclusively – foresees that parties to armed conflict shall avoid harming civilians during combat, international human rights law and notably the UN and NATO protection of civilians or ('PoC') policies also foresee the latter. Humanitarian organisations' work obviously contributes to the more extensive approach to protection.

If measures to prevent civilian harm fail, measures to alleviate the harm should also be undertaken to assist and support civilians. The provision of health care to victims of violence, the provision of food and shelter to those in need, as well as assistance to refugees and internally displaced persons are just a few examples of such support. There must be judicial investigations into alleged criminal conduct against civilians. States, international organisations, and humanitarian organisations all provide such measures – and are in certain circumstances obligated to do so under international law.

1.3 WHO PROTECTS CIVILIANS?

This leads to an initial consideration of the range of actors and entities who are obligated under international law to protect civilians or do so by proper initiative. The proposed scholarly definition from 2016 identified a number of key actors who have such responsibilities under international law: governments, military forces (armed forces and armed opposition groups), as well as the international community more broadly. Falling within this broad notion are the United Nations and other international or regional organisations, which are required to protect civilians in particular by virtue of customary international law. The detail of the international legal obligations incumbent on these different actors as well as their policies are set out in the relevant chapters.

[51] World Bank, 'Social Protection: Overview', last updated 29 March 2019, at: http://bit.ly/2XNJHsF.

[52] International Covenant on Civil and Political Rights; adopted at New York, 16 December 1966; entered into force, 23 March 1976. A total of 173 of 197 States recognised by the UN Secretary-General, the depositary of the Covenant, were party to it as of 1 April 2022.

[53] Human Rights Committee, General Comment No. 36: Article 6: right to life, UN doc. CCPR/C/GC/36, 3 September 2019, para. 7.