

1

Humanitarian Principles and International Law

Protect: To defend or guard from danger or injury; to support or assist against hostile or inimical action; to preserve from attack, persecution, harassment, etc.; to keep safe, take care of; to extend patronage to: to shield from attack or damage.¹

The concept of protection is an ancient one, cited liberally in the Hebrew Scriptures and later in the New Testament, the Koran, and other religious writings. The word “protect” comes from the Latin *protegere*, meaning to shield, cover, protect, defend. Over the ages in Western civilization, the term has been used in various ways: God’s protection, royal protection, diplomatic protection, self-protection, protection under the law, and, more recently, equal protection, trade protection, consumer protection, social protection, environmental protection, copyright protection, and so on. “Protection” is a nice word, a noble word. It is used by historians, political scientists, anthropologists, lawyers, politicians, and even theologians with somewhat different meanings. But it always has a positive connotation.

Since the establishment of the modern international system based on nation-states, usually dated from the Treaty of Westphalia in 1648, it is a recognized responsibility of states to protect their citizens from harm, to defend them from danger, to save them from persecution—in short, to keep them safe. The ability to protect one’s citizens is intrinsic to the very definition of a state. If a state cannot protect its people, it has failed as a state.²

But there are times when states are not able to protect all of their people and when international law—particularly international humanitarian law, human rights law, and refugee law—provides for protection by others. Most recently the 2005 World Summit adopted the doctrine of “responsibility

to protect,” which affirms the centrality of the state as the protector of its people but also sets out a series of measures to be taken by the international community when a state is unable or unwilling to protect its citizens.

This book focuses on the understandings and practice of protection in the international humanitarian system, but humanitarians have no monopoly on the term. Protection has become central to UN discussions—and decisions—on peacekeeping. All but one of the eleven peacekeeping missions initiated in the past decade have included the protection of civilians in their mandate.³ Protection of civilians has become a UN-wide priority.

Protection in the Humanitarian World

The concept of protection was central to the development of international humanitarian law (IHL), the first component of the concept of protection, which initially stemmed from the need to protect soldiers who were wounded, captured, or otherwise *hors de combat*. IHL was expanded in 1949 to include measures to protect civilians, and since then the International Committee of the Red Cross (ICRC), the guardian of IHL, has tried to provide guidance on such thorny issues as distinguishing civilians from combatants and the question of the responsibility of nonstate actors to uphold IHL, including protection of civilians. ICRC also has moved to respond to new forms of warfare and has played a leadership role in the campaign to ban antipersonnel land mines. In other words, over the past 150 years or so, IHL has expanded its original remit to protect prisoners of war and wounded soldiers into a broad range of activities designed to protect civilians who are affected by but are not direct participants in conflicts.

The development of a second fundamental component of the concept of protection occurred in the aftermath of the European wars of the twentieth century, when protection of refugees emerged as a response to the plight of individuals who had fled their countries because of those wars or because of persecution. Because their governments were no longer able to protect them, it was the responsibility of host governments and the international community to do so. Just as the International Committee of the Red Cross became the guardian of international humanitarian law, the United Nations High Commissioner for Refugees (UNHCR) became the custodian of international refugee law. Still later in the twentieth century, the growing recognition that people who were displaced from their communities but remained within the borders of their countries also needed

protection led to the development of international norms for protecting internally displaced persons.

A third component of the notion of protection comes from international human rights law. The Universal Declaration of Human Rights refers to “protection” ten times: “Human rights should be protected by law,” “All are entitled to equal protection under the law,” and so on. In fact, much of the modern human rights movement is about expanding the scope of protection: protection of the rights of racial and ethnic minorities, of children, of women, and of gay and lesbian people; protection of the cultures of indigenous people; and so on.⁴ The expansion of the groups in need of protection paralleled the expansion of the understanding of human rights from its early, almost exclusive focus on the civil and political rights of individuals to its inclusion of the economic, social, and cultural rights of both individuals and communities. By the end of the 1990s, explicit reference to the protection of civilians emerged in UN Security Council resolutions.

As universal human rights broadened to include more groups, so too the concept of protection expanded in human rights discourse. Protection meant not only physical protection of people from violence and legal protection of refugees from deportation but also protection from hunger, illness, and discrimination. Similarly, one can trace the expansion of protection in the humanitarian field from protection of soldiers (*hors de combat*) to protection of refugees, to protection of children in armed conflict, to protection of internally displaced persons, to protection of women against sexual and gender-based violence, to protection of civilians.

The intersection of the concepts of protection, humanitarian response, and human rights is a close and mutually reinforcing one, although the actors in these three spheres often seem to function in their own particular “territories,” with few genuinely collaborative efforts.

Protection in the Wider World

It is useful before jumping into the historical development of concepts of protection and current practices to step back for a moment to look at the big-picture developments on the international scene.

The current international order is in transition, and what the future order will be is unclear. There are new possibilities for global governance and renewed interest in multilateral efforts to address climate change, resolve conflicts, and hold war criminals accountable. On many different fronts, conceptual developments are occurring on parallel tracks, often without

much cross-fertilization, but all represent a desire to do more to protect people whose governments cannot—or will not—protect them. It is almost as if there is a universal yearning for a global system that can keep people safe.

Development. The concept of economic development has expanded from the emphasis on national economic growth in the 1950s to include concerns about equitable distribution of resources; community empowerment; rule of law; environmental issues; and, most recently, human security. Human security moves away from the focus on national security to consider what causes individuals to feel secure. Although the concept remains a bit ambiguous and is interpreted in different ways, it generally refers to “freedom from threat to the core values of human beings, including physical survival” but also to community, economic, environmental, food, health, personal, and political security⁵ and to health and access to education.⁶ The concept of human security, it is important to recall, originated with the United Nations Development Program, but it parallels the expanded notion of protection evident in both the humanitarian and human rights worlds.

Security. Military approaches to security have broadened dramatically in recent decades, from launching interstate wars to responding to insurgencies, failed states, and terrorism. The U.S. military’s current emphasis on stabilization operations recognizes that issues such as rule of law and humanitarian response are as important to security as combat operations. Security is not just about fighting and winning wars any more, it is about embracing a whole range of actions that are actually quite similar to those incorporated in the expanded notions of human security and human rights. “Winning hearts and minds” is seen as key to defeating insurgencies. In July 2008 the U.S. secretary of defense, Robert Gates, declared, “We cannot kill or capture our way to victory” in the long-term campaign against terrorism, arguing that military action should be subordinate to political and economic efforts to undermine extremism.⁷

International Accountability. The movement to bring perpetrators of war crimes and other atrocities to justice gathered momentum in the 1990s, with the establishment of international tribunals in the former Yugoslavia and Rwanda, the prosecution of war criminals by domestic courts in other countries, and the adoption of the Rome Statute in 1998, which was the basis for the establishment of the International Criminal Court. Such measures to increase accountability and establish new judicial mechanisms were not only intended to punish those guilty of war crimes, genocide, and crimes against humanity but also to deter combatants from committing mass atrocities and hence to protect civilians.

Security Council, Peacekeeping, and Responsibility to Protect. Since 1948, there have been sixty-four UN peacekeeping operations, and since the end of the cold war, the number of those operations has expanded dramatically. Today there are more than 100,000 UN peacekeeping troops, working in fifteen missions,⁸ most of whom are charged not only with keeping the peace (a bit of a misnomer in many of the newer missions) but also with protecting civilians. Protection of civilians has emerged front and center in Security Council deliberations. And when the 2005 World Summit unanimously adopted the responsibility to protect doctrine, it suggested that the governments of the world were committed to ensuring that war crimes, ethnic cleansing, and genocide would be prevented through an effective international response.

The UN's Quest for Coherence. UN reform efforts over the past decade are evidence of dissatisfaction with piecemeal approaches to the world's problems and a desire to find a coherent, holistic approach. Rather than having a dozen different UN agencies (and their supporting constituencies) embark on programs to respond to particular needs in a given country, the reasoning goes, the UN could increase its impact and effectiveness through a coherent and coordinated approach. Thus the idea of integrated missions, the one-UN initiative, the capstone doctrine on UN peacekeeping, the Peacebuilding Commission, and the doctrine of responsibility to protect emerged—all recognizing that development, humanitarian response, politics, security, and peace are fundamentally linked. All of those reform initiatives represent a desire for the United Nations to become more effective, more coordinated, and more relevant in addressing the world's problems. It is almost as if, having been blocked by cold war rivalries for so long, the UN is now searching for its place in the world, and the question of the protection of civilians is central to that quest.

Different developments concerning protection are explored in greater detail in ensuing chapters, but it is important to note here the convergence that has emerged in many diverse fields toward a holistic focus on protection. As concepts, protection, human rights, and human security have much in common. They all have moved beyond a concern with physical protection of the individual to a more expansive understanding—that to protect people, uphold their rights, and provide for their security means to address their social, economic, cultural, and political needs. In their efforts to be all-inclusive, these three concepts—human rights, human security, and protection—also have expanded so much that they are ambiguous, vague, and difficult to put into operation.

Origins of the Modern International Humanitarian System

The understanding of protection in modern political discourse has been shaped by three historical strands. In the middle of the nineteenth century principles of humanitarianism and *international humanitarian law*, which was intended to protect persons affected by war and armed conflict, began to emerge. In the middle of the twentieth century, *refugee law* was developed to protect people who had left their countries because of fear of persecution and whose governments were unable or unwilling to protect them. After World War II, *international human rights law* developed as a cornerstone of the new international order. Governments were now obliged to protect their citizens during times of peace as well as during conflict, and that obligation was a matter of international law, not just a private matter between a state and its citizens. All three of these legal traditions originated in Europe in response to particular historical events, and all served the political interests of the major powers of the time. All three were codified as universal legal obligations, and they have since been accepted by the vast majority of the world's governments. Although implementation of the binding legal instruments has been (and probably always will be) uneven, the concept that people have a right to protection has become central to the international system.

While international humanitarian law regulates the protection of persons and the conduct of hostilities in armed conflict, international refugee law focuses specifically on protecting persons who have fled their countries because of persecution. International human rights law imposes standards that governments must adhere to in their treatment of persons in times of both peace and war.

Each of the three strands included binding international agreements identifying the persons to be protected, the standards of protection, and the parties responsible for providing the protection. All of them chip away at the notion of state sovereignty, the cornerstone of the international system since the Peace of Westphalia in 1648. Moreover, each strand is identified with a particular international institution: the International Committee of the Red Cross is the guardian of international humanitarian law; the United Nations High Commissioner for Refugees has a supervisory role in the 1951 United Nations Convention Relating to the Status of Refugees; the UN Commission on Human Rights, reconstituted in 2005 as the Human Rights Council, oversees various mechanisms concerned with implementation of various human rights legal instruments.

The normative framework represented in the three legal traditions has led to new political initiatives from various quarters—from calls for humanitarian intervention in the early 1990s to unanimous endorsement of the concept of responsibility to protect by the 2005 World Summit. The recognition that certain groups have particular unmet needs for protection has led to new policies, norms, and initiatives. In 1998, the representative of the secretary-general on internally displaced persons presented to the UN Commission on Human Rights the Guiding Principles on Internal Displacement, which uphold the rights of people who, although forced to flee their communities, remain within the borders of their own country. Over the past decade there has sometimes been tension between those advocating on behalf of particular groups, such as women, children, and internally displaced persons, and those arguing that singling out groups for special attention means that others are left out. The evolution of the concept of protection of civilians and the increasing emphasis on vulnerability analysis at the operational level is a response to some of the criticisms.

While it probably is true that the existing instruments for ensuring protection—the conventions and covenants, the ICRC, UNHCR, and UNICEF (United Nations Children’s Fund)—could not have come into being without the support of powerful governments that saw some political advantage in creating them, it also is true that the concept of protection has become a powerful tool in defending some of the most vulnerable members of society from actions of their own governments.

This chapter traces the historical emergence of two of these three historical strands: international humanitarian law and refugee law. International human rights law is discussed in chapter 2.

Humanitarianism and International Humanitarian Law

Humanitarian principles have been part of human existence since the beginning of recorded history. In fact, anthropologists tell us that the social norm of charity was a necessity, not just a nice thing to do, for prehistoric societies.⁹ The idea that it is good to protect and provide for the most vulnerable members of society—the widows and orphans, disabled and sick, foreigners and paupers—is central to all religious traditions. For example, *zakat*—which involves giving alms to the poor in part to help engender social equality—is one of the five pillars of Islam, which are obligatory acts for each Muslim.¹⁰ Long before the development of international humanitarian law, social institutions were established in different parts of the world to care for and protect vulnerable people. Egyptian pharaohs, we are told in the Hebrew Scriptures,

saved grain to feed their people during times of famine. The monasteries of Europe provided sanctuary to travelers and fed the poor.

Modern humanitarianism is generally dated to the mid-nineteenth century, when a remarkable reform movement grew up in Europe and North America, largely out of the Christian evangelical tradition of service. At that time civil society actors were challenging the institution of slavery and undertaking the reform of hospitals, mental institutions, and prisons. Nursing made its appearance as a profession with Florence Nightingale, who set off to care for British soldiers wounded during the Crimean War, and Clara Barton, who worked with the wounded and missing during the U.S. Civil War. At the height of the colonial period, thousands of missionaries and evangelists set off for distant lands, bringing the Gospel but also education and health care with them. By the end of the century, philanthropy was in full swing, with wealthy industrialists forming foundations as “private organizations with public purposes.”¹¹

The Industrial Revolution also was in full swing during the nineteenth century, permitting the production of new weapons that made wars more deadly, and mass conscription increased the proportion of the population at risk in war.¹² Wars between European states and the U.S. Civil War produced millions of casualties. Battlefield medical treatment was primitive, and most wounded in battle simply died. Prisoners of war were treated poorly. The U.S. Civil War produced more than 400,000 Union and Confederate prisoners, many of whom died in appalling conditions.¹³ Major military powers reportedly provided more veterinarians to care for horses than doctors to care for soldiers wounded in battle.¹⁴

It was in the context of terrible military casualties in warfare coupled with a growing abolitionist and reformist movement that Henri Dunant, a Swiss entrepreneur, stumbled on the battlefield of Solferino in 1859, where some 40,000 Austrian and Italian troops—then at war with one another—lay wounded and dying on the battlefield. He was shocked at the carnage and enlisted women in the neighboring villages to assist the victims on both sides. Dunant returned to his native Geneva from Solferino, seized with the idea of creating an independent, neutral organization that would minister to wounded soldiers on all sides of a conflict in the name of humanity.

Dunant published *A Memory of Solferino*, a book about his experiences, and began mobilizing support for his idea of an independent humanitarian organization. Specifically, he called for the establishment of local, voluntary relief committees and the protection of the volunteers.¹⁵ He managed to bring together representatives from sixteen nations at a conference

organized by the International Committee for the Relief of the Wounded in October 1863. At the conference, the committee was transformed into the International Committee of the Red Cross, and it adopted the Red Cross emblem that is so well known today—the reverse of the emblem of the Swiss flag. A year later the Swiss government convened a diplomatic conference at which the twelve nations attending drafted and adopted the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. The Convention of 1864 became the first component of what came to be known as international humanitarian law.

At the same time that Henri Dunant was mobilizing support for voluntary relief committees, Clara Barton was serving as a nurse for the Union army during the U.S. Civil War. Shortly after the war ended, President Abraham Lincoln asked her to take charge of getting information on all the missing men in the Union army. She pursued that task diligently, tracking down the names of thousands of soldiers who had died in the war. Facing exhaustion, she traveled to Europe on her doctor's orders in 1868 to rest and regain her health, and there she was drawn into discussions with the brand-new ICRC and efforts to start national societies. When she returned from Europe, she lobbied hard for U.S. recognition of the ICRC. When the American Red Cross was founded in 1881, Barton served as its first president.

And so the Red Cross movement was born. The ICRC was established to assist soldiers wounded in war (and others who were no longer engaged in hostilities), and national Red Cross societies were created to assist civilians.¹⁶ Clara Barton's work in tracing Union soldiers became the nucleus of a large part of the ICRC's work in tracing family members.

ICRC's mandate to aid wounded soldiers during war expanded over time to include prisoners of war, soldiers wounded or imprisoned during other types of armed conflict, and eventually civilians. ICRC's work with detainees began during World War I, when operations expanded greatly, and the ICRC was awarded the Nobel Peace Prize in 1917 for its efforts. The ICRC's role as a neutral intermediary between warring parties also gained credence during that time. After the war, ICRC and the newly formed League of Red Cross Societies responded to the mass famine in Russia, where 32 million people faced death from starvation.¹⁷ The same crisis in Russia would prove pivotal in the development of the international refugee system.

The League of Red Cross and Red Crescent Societies—now the International Federation of Red Cross and Red Crescent Societies (IFRC)—was the umbrella group charged with coordinating the growing number of national societies. Established with only twelve national societies in 1919, the IFRC

today encompasses 186 national Red Cross and Red Crescent societies with 97 million volunteers and 300,000 staff members.¹⁸

Over the years, the Red Cross movement expanded in scope and activities. The interwar period, during which the Russian famine and later the Spanish Civil War challenged the Red Cross to respond to widespread human need, was especially important. The interwar years also were a time of increasing tension between the ICRC and the national Red Cross/Red Crescent societies; while they were linked by a common name and history, in practice there were major differences between them. The ICRC was closely tied to the Swiss state, and from the beginning it was shaped by Swiss history, politics, and values—particularly neutrality, which has been a principle of Swiss foreign policy since the Napoleonic wars and has served to protect it from involvement in European wars. Over the decades, ICRC preserved the Swiss value of neutrality—in fact, one study found that “in the more than 140 years of the ICRC’s existence, and even with the opening of the organization’s archives, there is little evidence of the ICRC *intentionally* trying to favor one state or political party—with the major political exception of its deferring to the priorities of the Swiss state during the Second World War.”¹⁹

While the ICRC clearly was (and is) a Swiss institution, the creation of the IFRC was driven by the American Red Cross. As Forsythe notes, “After all, in the First World War the Americans had deployed four times as many volunteers in the American Red Cross as the government had deployed soldiers in the U.S. expeditionary force.”²⁰ From the beginning, the ICRC saw the League of Red Cross and Red Crescent Societies as a threat to its leadership and tried to limit its authority. In the end, ICRC managed to preserve its domain—humanitarian protection in conflict situations—leaving the less glamorous field of natural disasters to the IFRC. But relations between the two Red Cross entities were tense for much of the last half of the twentieth century. A rapprochement between the two came about in 1997 with the negotiation of the Seville Agreement, which spelled out which organization would take the lead in specific circumstances and committed the two organizations to effective collaboration in practice. While the ICRC positioned itself as a neutral intermediary and custodian of international humanitarian law, the Red Cross/Red Crescent societies, which had an official relationship with their national governments, were not immune to political pressures.

The history of the Red Cross/Red Crescent societies is fascinating, but unfortunately it is beyond the scope of this book.²¹ Some of the themes that emerge from its history, however, are the same issues that confront the humanitarian movement today: expansion of mandates; tensions and turf

wars between humanitarian actors; difficult political decisions over cooperating and collaborating with governments; growth in number of staff (in 1939, on the eve of World War II, the ICRC had three administrative staff members, but it quickly expanded to assist more than 30 million people during the war); and questions about accountability, staff security, and relations with partners in the international humanitarian system.

The seven organizing principles of the Red Cross/Red Crescent movement have become central to the humanitarian enterprise. Those principles include three principles that relate exclusively to the movement itself,²² but the other four have been hallmarks of humanitarian assistance throughout the international community. In fact, when people refer to humanitarian action, they usually refer to work carried out under commitment to the principles of

—*humanity*: to prevent and alleviate human suffering, without ulterior motives

—*impartiality*: to relieve the suffering of individuals solely on the basis of their needs, with no discrimination related to nationality, race, religious beliefs, or political opinions

—*neutrality*: to refrain from taking sides in hostilities or “engage[ing] at any time in controversies of a political, racial, religious or ideological nature”

—*independence*: to maintain autonomy from governments.²³

Those principles have formed the basis of many mission statements and codes of conduct, including, for example, the ICRC’s code of conduct for the Red Cross and Red Crescent societies and for nongovernmental organizations.²⁴ (Chapter 6 discusses the principles and the difficulties of implementing them in the world today.)

Efforts to come up with humanitarian laws to apply during wars and conflicts have a long history. The just war tradition emerging in the twelfth to the fifteenth centuries was based on Christian religious tradition, the chivalric tradition (itself with roots in older understandings of warriorhood), Roman law, and experiences with the use of force in the service of the emerging political order.²⁵ The Peace of God movement, which originated in southern France in the late tenth century, represented the earliest efforts to protect persons associated with the church, peasants, and others from looting and violence by soldiers and armed groups.²⁶ The movement included initiatives by local clergy to convene town councils to which nobles were invited to commit themselves to common standards of behavior during warfare. Those initiatives were not always successful. However, by the thirteenth century, the principle of protecting noncombatants was firmly fixed in the canon law of the Roman Catholic Church, and subsequent development of the idea of

protecting noncombatants took place within the chivalric tradition. Knights were to fight only other knights and were not to use arms against groups such as women, children, the elderly, or the ill, infirm, or mentally deficient. The tradition was clear: “only people who actually take part in war are to be treated as combatants; others, regardless of status, are non-combatants.”²⁷ Hugo Grotius, the father of international law, emphasized the importance of protecting noncombatants in warfare—a tradition codified in military law.²⁸

The Geneva Conventions of 1864 and 1906 focused on combatants who have been rendered incapable of participating in combat because of injury or illness.²⁹ The Hague Convention (IV) Respecting the Laws and Customs of War on Land of 1907 defines a much more extensive list of persons and property to be protected: prisoners of war (articles 4–20); occupied territory and its inhabitants (articles 42–56), including “public buildings, real estate, forests, and agricultural estates”; and “the property of municipalities, that of institutions dedicated to religion, charity and education, [and] the arts and sciences [and] historic monuments, works of art and science.”³⁰ The convention even stipulates that “[f]amily honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected,” in occupied territory. While there is no definition of a “noncombatant” class, there is a general understanding that civilians are not to be attacked.

International humanitarian law, also known as the law of armed conflict or law of war, is a collection of rules that protects civilians and soldiers who are no longer participating in hostilities. Its purpose is to limit and prevent human suffering in times of conflict. International humanitarian law is directed primarily at states, which have a duty to respect it and ensure that it is respected. IHL is applicable only in times of armed conflict, and it does not deal with the question of whether the use of force by states or other actors is legal. Nor does it apply in natural disasters or in situations in which states abuse their citizens. In other words, IHL accepts the reality that wars will take place and seeks to mitigate the effects of war on civilians. It is a pragmatic approach, far from pacifism, which sees war itself as evil.

In August 1949, an international conference in Geneva finalized the text of four conventions for protecting the victims of armed conflict. However, the Geneva Conventions of 1949 were not the first international treaties regulating wars. Agreements for protecting wounded soldiers had been in existence since the original Geneva Convention of 1864, and additional conventions had been signed since then, protecting prisoners of war and setting the rules for the conduct of hostilities. But the 1949 conventions provided a definitive codification of the laws of war as they were then understood, and

Box 1-1. *Instruments of International Humanitarian Law*

Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, Geneva, August 22, 1864

Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, October 18, 1907

Convention (I) for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field, Geneva, August 12, 1949

Convention (II) for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, Geneva, August 12, 1949

Convention (III) Relative to the Treatment of Prisoners of War, Geneva, August 12, 1949

Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva, August 12, 1949

Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977

Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977

Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Adoption of an Additional Distinctive Emblem (Protocol III), December 8, 2005

they have remained the cornerstone of the law of armed conflict. According to the ICRC, they are the only international laws to have obtained universal acceptance—every country in the world is a party to them.³¹

Today, the principal instruments of international humanitarian law (box 1-1) are the four Geneva Conventions of 1949 and their three additional protocols, issued in 1977 and 2005, supplemented by other instruments, such as the 1925 Geneva Protocol banning the use of gas, the 1977 Ottawa Convention on the Prohibition of Anti-Personnel Mines, and the 1980 Convention on Certain Conventional Weapons. The Geneva Conventions apply to

international armed conflicts, and they stipulate that civilians and people no longer taking part in the hostilities, such as captured or wounded soldiers, must be spared and treated humanely. In addition, article 3 of all four conventions authorizes the ICRC to offer its services in the event of noninternational armed conflicts and provides for certain minimum protections for the victims of such conflicts. That expansion from wars to armed conflicts was a major shift in terms of increasing the responsibility of the international community for developments within states. It led to a broader understanding of the responsibility of the international community for enforcing the rules for right conduct in armed conflict and to a shift toward viewing violation of the rules as a crime of war for which individuals could be prosecuted. Currently 194 states are party to the Geneva Conventions, and between 157 and 162 states are party to the protocols of 1977 and 2005.³²

When the conventions were drafted in 1949, they were intended to apply to wars fought between the uniformed armed forces of nation-states. They were based on the European experience. Although the wars of liberation and struggles for independence in much of the global South constituted many of the conflicts in the second half of the twentieth century, they were not a reference point for the development of international humanitarian law. The two additional protocols of 1977 broadened the scope of IHL in addressing the wars that were characteristic of the postcolonial period—for example, national liberation wars and internal conflicts.

The first three of the Geneva Conventions set out a series of rules for governments on the treatment of wounded soldiers and prisoners of war. But the fourth convention contains a set of protections for civilians, both those living in occupied territories or otherwise in the hands of a party to a conflict. The two additional protocols of 1977 greatly extended the protection of civilians in international armed conflicts, particularly by forbidding attacks that could be expected to cause disproportionate harm to civilians. Subsequent specific conventions have placed limits on the weapons that combatant forces can use, such as land mines and cluster munitions.

International humanitarian law prohibits making the civilian population or individual civilians the object of attack, using starvation of civilians as a method of warfare, and launching indiscriminate attacks affecting the civilian population. Apart from the rules on the conduct of hostilities, IHL also seeks to protect civilians who find themselves in enemy hands during armed conflict by specifically prohibiting murder, torture, mutilation, rape, corporal punishment, collective punishments, taking of hostages, and denial of the right to a fair trial to civilians subject to criminal process.³³

While the ICRC is proud of the universal acceptance of international humanitarian law by states, awareness and dissemination of the law are far from universal. A survey commissioned by the ICRC on the understanding of IHL in eight countries found that slightly less than half of the 4,000 respondents had heard of the Geneva Conventions and slightly more than half of those familiar with the conventions thought that they limit the suffering of civilians in wartime.³⁴ International humanitarian law and the ICRC have been criticized for making war more likely by making it more humane.³⁵ It is important to remember, however, that it was in the interest of the great powers of the time to create and support a neutral humanitarian institution that could serve as an intermediary between warring parties. It also was in the interests of militaries to support strong and binding laws of war. Indeed, probably the most stalwart defenders of international humanitarian law are military officers who insist that their enemy prisoners be humanely treated in accord with the Geneva Conventions—to ensure that their own soldiers will be humanely treated if captured or wounded.

Yet violations of international humanitarian law have been common over the past century—for example, by occupying powers such as the Soviet Union in Afghanistan and by military forces engaged in interstate conflicts, such as Iranian and Iraqi forces at war in the mid-1980s. Rebel groups ranging from the Khmer Rouge in Cambodia to the Mozambican National Resistance Movement (RENAMO) often have slaughtered civilians with little concern for the provisions of the international conventions. Such violations continue today, although ICRC and other mediators have found that insurgent groups often are aware, at least in general terms, of international humanitarian law—and with the establishment of the International Criminal Court and other judicial mechanisms, they are eager to avoid being charged with war crimes. While the Geneva Conventions may have seemed irrelevant to Charles Taylor's forces when they mutilated and murdered women and children in Liberia, Taylor is now facing trial on eleven counts of war crimes and crimes against humanity under the provisions of the Special Court for Sierra Leone for his actions in supporting rebel forces in Sierra Leone. At the same time, many believe that international humanitarian law has been weakened by U.S. actions to fight terrorists, particularly the use of enhanced interrogation techniques and indefinite detention of prisoners as enemy or unlawful combatants rather than as prisoners of war when international humanitarian law precludes torture.³⁶

The humanitarian component of protection thus comes from efforts to limit the effects of war, to protect both soldiers who are no longer

combatants and civilians. The humanitarian component includes a body of law (international humanitarian law), an international agency legally entrusted with upholding the law (the ICRC), a complex web of quasi-governmental Red Cross/Red Crescent national societies, and a set of common humanitarian principles.

While international humanitarian law applies only to situations of armed conflict, as noted above, humanitarian principles serve as the bedrock for all humanitarian action, including in natural disasters. While ICRC is the custodian of international humanitarian law, in fact most agencies, whether intergovernmental or nongovernmental, see themselves as acting in accord with those principles.

The word “humanitarian” has come not only to mean provision of life-saving assistance (in contrast, say, to long-term development assistance or to actions to promote human rights) but also to represent the values of independence, neutrality, and impartiality. And as explored in the next chapter, the term “humanitarian” has been appropriated by all manner of actors who have no commitment to—and sometimes no familiarity with—the core humanitarian principles developed more than one hundred years ago. They include, for example, actors that provide assistance to people in need but only if they are members of a particular religious group, those that provide humanitarian aid to support national foreign policy objectives, and those that distribute humanitarian assistance as a profitmaking enterprise.

PROTECTION AND ICRC

The role of the International Committee of the Red Cross in protection is unique. It is the only humanitarian actor with a mandate to take action to prevent attacks on civilians; all other humanitarian agencies focus primarily on working with the victims of such attacks.³⁷ In seeking to deter attacks on civilians by government forces or armed opposition, ICRC carries out behind-the-scenes negotiations with a variety of armed entities on the basis of its neutrality and impartiality. While most other humanitarian actors sometimes adopt pragmatic approaches to ensure access—for example, accepting armed escorts to protect their staff in dangerous situations—ICRC stands virtually alone in rejecting that approach in almost all situations.³⁸

As part of its work in building a supportive environment for protection, ICRC also exercises a leadership role within the international community in promoting and upholding standards and guidelines for action. Following five years of consultations, the International Committee of the Red Cross adopted the following definition of protection—a definition that

subsequently was accepted by the Inter-Agency Standing Committee, the body established by the UN General Assembly to coordinate humanitarian work among the world's major humanitarian actors:

Protection is defined as all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law, namely human rights law, international humanitarian law and refugee law.³⁹

That is a broad definition: *all* activities; *full* respect for the rights of the individual. This definition, which was adopted by the Inter-Agency Standing Committee in 1999, has become the standard definition for UN agencies, the ICRC, the Red Cross/Red Crescent societies, and nongovernmental organizations.

ICRC also proposed a protection framework in which three types of activities may be considered to promote protection and may occur simultaneously:

—Responsive action: activities undertaken to respond to an abuse, aimed at stopping it, preventing its recurrence, or alleviating its immediate effects

—Remedial action: activities aimed at restoring people's dignity and adequate living conditions

—Environment-building action: activities intended to promote an environment conducive to full respect for the rights of the individual.⁴⁰

Activities to protect people thus cover a broad range, including direct material and psychosocial assistance to victims of human rights abuses; advocacy; awareness raising; strengthening of civil society; pursuit of justice; and establishment of institutional mechanisms for response or prevention.

The humanitarian community has adopted the ICRC-promoted principle that protection means upholding all rights of the individual, not just ensuring physical security. Education is protection. The threat of indictment by the International Criminal Court is protection. Training programs on human rights is protection. The placement of latrines, the provision of reproductive health services, and livelihood projects all are protection. Handbooks have been developed, conferences organized, and policy guidelines formulated on incorporating protection into every aspect of humanitarian response.⁴¹

In fact, it is hard to think of any activity carried out by a humanitarian organization in the field that could not be considered protection. Building shelters, registering voters, negotiating with the government, informing the public, disabling land mines, and developing preschool curriculums—all can be considered protection activities. When asked whether the definition has become so broad as to be meaningless, ICRC staff respond that it is

important to have a common “chapeau,” an umbrella under which different organizations can develop their own definitions, just as ICRC has done. Without that common overarching definition, there is the risk that organizations will do very different things.⁴²

To respond to the large number of humanitarian actors, ICRC also took the lead in developing minimum standards for humanitarian organizations engaged in protection to provide basic guidance about what activities can and cannot be considered protection.⁴³ Although the process took two years, the standards were drafted in a consultative process and, with the exception of guidance on relations between humanitarian agencies and military forces, they proved to be remarkably consensual.

Refugee Law

A second important component of protection comes from the development of the international refugee regime.⁴⁴ By the nineteenth century, an essential function of a national government was to protect its citizens when they were abroad. Citizens traveling in other countries who found themselves in trouble could appeal to their governments for help, and the government, usually through its embassy or consulate, could protect its citizens.⁴⁵ That was an important exercise of national sovereignty; in fact, there was a general understanding (though never codified in international law) that intervention in another state to protect one’s own nationals constituted a legitimate use of force.⁴⁶ Thus, when Israel intervened in Uganda in 1976 to rescue nationals held hostage and when the United States intervened in Iran in 1980 to try to rescue detained Americans, both states claimed that their actions were in self-defense.⁴⁷

People have fled their countries because of violence and persecution since the beginning of recorded history. However, it was the Russian Revolution, in 1917, and the resulting exodus of refugees that led the international community to begin to establish the norm that it was the responsibility of the international community to assist those who did not have a national government to protect them. As Gil Loescher points out, between 1 and 2 million people, mainly Russians from the Russian Empire, were uprooted as a result of “the collapse of czarist Russia, the Russian Civil War, the Russo-Polish war, and the Soviet famine of 1921.”⁴⁸ Interestingly, the same crisis was an impetus for the development of the Red Cross movement. But the Russian crisis was not contained within Russia’s borders. Civilians poured out of Russia as the newly established Soviet Union revoked the citizenship of many of its inhabitants. The Russians streamed into Germany and France,

where they had few prospects, and the governments of those countries began to expel them from their territory. It was clearly a political problem affecting relations between European powers and a problem that violated the territorial sovereignty of states as unwanted people arrived at the borders. And so the international system began to respond in ways that it did not when the Turkish genocide of Armenians took place, when 2 million Poles migrated to Poland following the German-Polish, Austrian-Polish, and Russian-Polish partitions under the 1919 Treaty of Versailles, or when there were other mass movements of people in other parts of the world.

The first organized international effort on behalf of refugees began in 1920, when the League of Nations gave Fridtjof Nansen the task of negotiating the repatriation of Russian prisoners of war and a year later appointed him the first High Commissioner for Refugees, with responsibility for the Russian refugee problem.⁴⁹ Nansen began by working on the practical issues facing the Russian refugees, but when it came to finding long-term solutions, the refugees had few alternatives. They could not return home or settle elsewhere—many of them did not have travel documents. The Russian government had made large numbers of people stateless by taking away the citizenship of those it considered enemies of the revolution. Without citizenship, those individuals had no rights abroad and no embassy to appeal to; nonetheless, they could not appeal to the host state for protection. The resulting state of affairs “underlin[ed] the urgent importance of an *international* status for the newly unprotected.”⁵⁰ “At first, the High Commissioner’s staff attempted to protect them by providing consular services and diplomatic interventions with host governments that threatened their expulsion and deportation.”⁵¹ Travel documents that came to be known as “Nansen passports” in effect provided diplomatic protection to the Russian refugees, allowing them to travel outside the country where they had taken refuge. Over the thirty-year period between 1921 and 1951, the activities of successive High Commissioners for Refugees expanded, with an emphasis on resettling, finding employment for, and supporting hundreds of thousands of refugees in their efforts to become economically self-sufficient. But the commissioner’s protection role was limited to providing diplomatic protection, primarily through provision of travel documents.

While the international community responded to the Russian refugees, the response to others forced to flee their countries was uneven. From the beginning, protection of and assistance to refugees was both a political and an economic issue.⁵² It was relatively easy to mobilize support for work with Russian refugees because of the hostility that most members of the League

of Nations felt toward the Russian revolutionary government.⁵³ It was more politically sensitive for states to respond to people leaving friendly countries, especially during a time of global economic depression accompanied by increasingly restrictive immigration policies. League member states therefore deliberately limited the mandate of the High Commissioner and avoided adopting any formal definition of “refugee” for fear of opening the door to movements of other groups of people. In fact, during the 1930s, European states closed their borders to Jewish “refugees” and others fleeing fascism, in part because of fears that if they allowed some to enter, many more would soon appear on their frontiers.⁵⁴ Rather than issuing a general definition of “refugee,” states named specific refugee groups to be protected (Turks, Russians, Armenians, Greeks, and so forth).

In 1930, following Nansen’s death, the responsibilities involved in protecting refugees were transferred to the league’s secretariat, and in 1933 yet another weak refugee organization, the High Commissioner for Refugees from Germany, was created, this time with strict instructions not to get involved in political issues. But it was a difficult time, with states unwilling to accept any of the refugees as legal immigrants even when all other means of affording protection had failed. The High Commissioner for Refugees from Germany, James G. McDonald, resigned in protest, claiming that his hands were tied by his inability to confront the causes for the exodus of predominantly Jewish German refugees. Addressing the causes of the refugee problem was a political, not a humanitarian, task: “In his letter of resignation, James McDonald referred to the need to set aside state sovereignty in favor of humanitarian imperatives and to resolve the Jewish refugee problem at the level of international politics.”⁵⁵ In 1938 an international conference convened at Evian, France, to deal with the Jewish refugee question, but the conference rejected Western action in spite of growing evidence of the scale of persecution in Germany. The High Commissioner was unable to protect the thousands of Jewish refugees. However, “[t]he institutions created to respond to refugee problems during the interwar period did leave one lasting and important legacy. Twenty years of organizational growth and interstate collaboration had firmly established the idea that refugees constituted victims of human rights abuses for whom the world had a special responsibility.”⁵⁶

In the period following World War II, Europe was awash in millions of displaced people, including Germans trying to return to their country, ethnic Germans driven out of neighboring countries, and people uprooted because of the war.⁵⁷ Refugee camps were set up to house the displaced persons and

a UN organization, the United Nations Relief and Rehabilitation Agency (UNRRA), was created to assist them until they could be repatriated. But many of the displaced persons did not want to return, particularly to the Soviet Union or to countries under Soviet control. The mass repatriations of 1945 slowed and came to an almost complete halt by the end of 1946, leaving more than 1 million people in camps with few prospects for a solution. While UNRRA was supposed to oversee repatriation, increasing tension with the Soviet Union led some governments, particularly the U.S. government, to resist forcing refugees to return. The United States provided 70 percent of UNRRA funds, and in 1947 it decided to withhold its funds, effectively killing the agency. The United States pressed for the creation of a new organization, the International Refugee Organization (IRO), whose mission was not the repatriation of refugees but their resettlement.

The Western bloc insisted that the mandate of the IRO be broad enough to offer protection to individuals with “valid objections” to repatriation, including objections based on “persecution, or fear, based on reasonable grounds, of persecution because of race, religion, nationality or political opinions and objections” of a political nature, judged by the organization to be valid.⁵⁸

The criteria used by the IRO to define people in need of protection were the precursor to the definition of “refugee” included in the 1951 United Nations Convention Relating to the Status of Refugees (1951 UN refugee convention) and reflected U.S. political interests in supporting those who did not wish to return to the Soviet Union. Again, “the United States, which underwrote over two-thirds of its costs and controlled its leadership, played the key role in investing IRO’s refugee protection with specific ideological content.”⁵⁹ The 1951 UN convention provided the following definition of “refugee”:

[A]ny person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.⁶⁰

Building on experiences with earlier groups of European refugees, the convention is based on the idea that the international community has a responsibility to people fearing persecution because they no longer enjoy

the protection of their country of origin. The convention provides a set of rights for refugees, most fundamentally the right of *non-refoulement*—the right not to be forcibly repatriated to their country of origin. That definition was designed to meet the needs of individuals fleeing persecution in the post–World War II period. The 1967 Protocol Relating to the Status of Refugees removed the geographical restriction, extending the convention’s provisions to all those meeting the definition of refugees laid out in the 1951 UN refugee convention.⁶¹

Refugee protection does not extend to persons who have committed a crime against peace, a war crime, or a crime against humanity; a serious non-political crime outside the country of refuge; or acts contrary to the purposes and principles of the United Nations. However, those who have committed such crimes, although ineligible for refugee status, do have rights under international human rights law and international humanitarian law.

Today 147 states are party to either the 1951 UN Convention Relating to the Status of Refugees or its 1967 protocol, and the UN definition of refugees has been incorporated into the laws of many countries. The 1951 UN refugee convention provided the basic definition of refugees and enumerated the rights to which they are entitled. Central to the implementation of the convention was the establishment of a UN agency to protect and assist refugees.

In contrast to the narrow definition of refugee status in the 1951 UN refugee convention, in 1969 the Organization of African Unity (OAU) developed the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa that expanded the UN definition to include individuals displaced by generalized conditions of violence:

The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

In 1984, representatives of ten Latin American governments adopted the Declaration of Cartagena, which incorporated a definition of refugee broader than that of the 1951 UN refugee convention. In addition to the criteria in that convention, the Cartagena declaration defined as refugees those “who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have

Box 1-2. Instruments of Refugee Law

Convention Relating to the Status of Refugees (1951)

Protocol Relating to the Status of Refugees (1967)

OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969)

Acuerdo de Cartagena (1984)

seriously disturbed public order.” Box 1-2 summarizes the basic instruments of refugee law.

The development of a regime to protect refugees was in the interests of the large powers in the post–World War II period. While civil unrest is the responsibility of the state involved, once people begin to cross borders, it becomes an international issue. A system was needed to ensure that the movement of people fleeing persecution did not become a security issue for the states to which they fled. In 1950 UNHCR was established, with a temporary mandate of three years and a budget of \$300,000, to help an estimated 1 million people, mainly European civilians, displaced in the aftermath of World War II.

While UNHCR was established in the context of the cold war to suit the political interests of the major powers, there was from the beginning a tension between humanitarian principles and political interests. Paragraph 2 of the UNHCR charter states that “[t]he work of the High Commissioner shall be of an entirely non-political character and shall be humanitarian and social.” Its humanitarian, nonpolitical nature was affirmed in the preamble to the 1951 UN refugee convention. In the fourth paragraph of the preamble, the contracting states “expressed the wish that all States, recognizing the *social and humanitarian nature of the problem of refugees* [emphasis added] will do everything in their power to prevent this problem from becoming a cause of tension between States.”⁶² Even though political actions create refugee movements, UNHCR was enjoined from political engagement, which meant that the organization’s hands were tied when it came to addressing the causes that provoked the flight of refugees. At the same time, UNHCR was given a mandate to protect refugees, which often meant that it advocated with governments on their behalf. The tension between UNHCR’s nonpolitical role and its mandate to protect has characterized the agency’s work since its inception.⁶³

REFUGEE PROTECTION AND UNHCR

Providing international protection on behalf of refugees is UNHCR's core function—a function that has been affirmed by the UN General Assembly.⁶⁴ UNHCR's Executive Committee (ExCom) assumed its functions in January 1959, and discussion of international protection has been regularly included on the agenda of one of ExCom's two annual sessions. In 1975, ExCom established a subcommittee to study in more detail some of the more technical aspects of the protection of refugees and to report its findings to ExCom. The subcommittee was replaced in 1995 with the Standing Committee on International Protection. ExCom's conclusions have served as an impressive body of soft law related to refugee protection.

During the cold war, UNHCR's protection function served the interests of Western powers. People fleeing communist regimes were deemed to be in need of international protection, and UNHCR worked to find durable solutions for them, often assisting in their resettlement in the United States and other Western democratic regimes. But when the United States and other Western powers felt constrained by working with a UN body that, after all, included the Soviet Union, they created a new organization, the Intergovernmental Committee on European Migration (ICEM) to handle logistical issues related to the resettlement of refugees. ICEM, which later became the International Organization for Migration (IOM), always existed in a sort of uneasy tension with UNHCR. But UNHCR's work also supported the foreign policy objectives of the United States and other Western nations, including their decisions regarding who deserved international protection. Refugees were seen as both a security issue and a tool to be used in the ideological war against communism. For example, with the exodus of more than 200,000 refugees following the Hungarian uprising in 1956, the General Assembly noted that solutions were to be pursued but "under due safeguards in accordance with [the High Commissioner's] responsibility . . . to provide international protection to refugees within his mandate."⁶⁵ Loescher and Milner observed that

throughout the Cold War, refugees and the security problems they raised were addressed as part of a broader and wider set of geo-political considerations and an understanding of security based on two major assumptions: that most threats to a state's security arose from outside its borders; and that these threats were primarily if not exclusively military in nature and required a political if not military response.⁶⁶

UNHCR responded in ways that supported the U.S. position in the cold war, partly for pragmatic reasons (the United States was, after all, the largest funder of UNHCR) but also because it coincided with the definition of refugee in the 1951 UN refugee convention. Until 1967, the definition of “refugee” was limited to Europeans, which meant that UNHCR was not involved even when there were massive movements of people from other countries, such as the displacement of an estimated 14.5 million people following the partition of India in 1947. The geographic restriction was lifted through the adoption of the 1967 Protocol Relating to the Status of Refugees, enabling UNHCR to work in many other countries, but the emphasis still was on responding to the needs of those affected by the proxy wars between the United States and the Soviet Union.

The cold war affected not only asylum but also UNHCR’s protection work in developing countries. Perhaps nowhere was that more evident than in Afghanistan. When millions of Afghans fled the Soviet invasion in 1979, UNHCR launched its largest assistance program, but it bowed to pressure from Pakistan and the United States to make assistance to the refugees contingent on their support of U.S. and Pakistani political interests. Refugees had to be registered to be protected and to receive assistance; however, to register, they needed to demonstrate membership in one of seven approved Afghan political parties.⁶⁷

After the end of the cold war, UNHCR was able to exercise more independence, but it had to struggle to get the attention—and the support—of the United States to protect and assist refugees who were not of U.S. strategic interest. That difficulty was coupled with a growing asylum crisis as people fleeing conflicts increasingly sought protection in developed countries, and UNHCR’s protection role frequently put it at odds with the U.S. government.

While governments in the global North accepted UNHCR’s work in countries of the South, things began to change when increasing numbers of asylum seekers began to arrive on their doorsteps. Germany, for example, experienced an increase in the number of asylum seekers from 9,627 in 1975 to 110,000 in 1985 and 350,000 in 1989.⁶⁸ Similar increases were experienced in other developed countries. Improved transportation and communication, coupled with deteriorating conditions in the neighboring countries to which refugees initially fled, seem to have been the major reasons for the increased flow.

Governments of developed countries have enacted increasingly restrictive policies over the past two decades to make it more difficult for asylum seekers

to reach their territories or, if they do, to receive asylum. Accelerated refugee determination procedures, visa requirements, fines against airlines transporting asylum seekers without proper documentation, and use of detention of asylum seekers served to reduce both the number of asylum seekers arriving in Northern countries and the number actually granted refugee status. Other initiatives to deal with the asylum crisis in the North included support for regional solutions and the development of the concepts of subsidiary and complementary protection, which were intended to prevent people from being sent back to places where their lives might be in danger without giving them refugee status. In the United Kingdom, for example, asylum seekers whose claim for refugee status was denied might be allowed to remain in the country temporarily on humanitarian grounds.

For governments of countries hosting refugees (two-thirds of which were in developing countries), there were other protection challenges, including cross-border attacks, militarized refugee camps, friction between refugees and host communities, and violence within refugee communities, and in some cases governments closed their borders to refugees or imposed other limitations on protection.⁶⁹

During the 1990s a whole host of questions were raised about protection of refugees and about UNHCR's role—or the role of any humanitarian agency—in protecting people in situations in which the political will to address the causes of insecurity was lacking. From the failure of UN safe areas in Bosnia to the lack of action to prevent genocide in Rwanda and the global shrugging of shoulders over Somalia, protection of refugees took second place to strategic concerns. In 1992, the UN High Commissioner for Refugees, Sadako Ogata, began to report regularly to the Security Council on the potentially destabilizing effects of the refugee and displacement crisis. UNHCR engaged in new ways of providing protection, including temporary protection, cross-border delivery of assistance, preventive protection (working in countries of origin so that would-be refugees could be assisted and protected without having to leave the country), and working with military resources to deliver assistance. According to Gil Loescher,

[f]or the world's most powerful states, the provision of humanitarian assistance was financially and politically a relatively low risk option because it satisfied the demands of the media and public opinion for some kind of action to alleviate human suffering. But it was also used repeatedly by governments as an excuse for refusing to take more decisive forms of political and military intervention.⁷⁰

By the turn of the twenty-first century, protection of refugees was in danger, in large part because of increasing restrictions on asylum by the liberal democratic governments that had been the bedrock of the refugee protection regime. If wealthy countries were arguing that they could not afford to accept more refugees, why should governments of much poorer countries adopt more generous policies? The refugee regime had been characterized by the consensus that refugees had a special claim on the international community and that it was the responsibility of the international community to provide protection and assistance to refugees—not just the responsibility of the governments of the countries in which they happened to arrive. But by the mid-1990s, European governments were devoting considerable energy to discussions of which government was responsible for examining asylum requests for would-be refugees who had traveled through several European countries. Governments began to apply the UN definition of refugees in a more restrictive way, and increasingly questions were raised about the suitability of the definition in an age in which most refugees are displaced by war and violence rather than by individual persecution and travel to developed countries in search of protection. Many Iraqis and Iranians fleeing the Iran-Iraq war, for example, had a hard time proving that they were singled out for persecution.

Traditionally, people fleeing for political reasons followed traditional paths of economic migration. So in the 1980s, large numbers of Central Americans seeking protection from the consequences of the region's conflicts followed well-established migration routes through Mexico into the United States. But the line between economic and political motivations for flight became increasingly blurred. Some Central Americans fled because they had been specifically targeted by guerrilla groups or death squads, but many more fled because the conflicts had disrupted markets, transportation, and livelihoods. When they fled to neighboring countries, they generally were accepted as refugees on *prima facie* grounds, but when they sought protection in the United States, they entered the asylum system, which required individual determination of refugee status. UNHCR's efforts to protect asylum seekers increasingly brought it into conflict with the governments of the developed liberal democracies that were the main funders of its operations.

Even as UNHCR's protection role was becoming more difficult, the agency was under strong pressure from donor countries to become more active in emergency response generally.⁷¹ According to Loescher, the biggest shift at UNHCR in recent years has been from its focus on protection to its focus on emergency assistance: Writing in 2008, he asserted that "UNHCR

is not primarily concerned with preserving asylum or protecting refugees. Rather, its chief focus is humanitarian action.”⁷² While the needs of refugees and others affected by conflict certainly merited increased humanitarian response, there also was an element of political interest. If refugees could be adequately cared for and protected in their regions of origin, they would be less likely to seek protection further afield—particularly in Europe, North America, and Australia.

In 2000, the UNHCR launched a three-year process of global consultations on protection, struggling to regain donor governments’ support for the 1951 UN refugee convention and for refugee protection.⁷³ Generally, the consultations were intended to reaffirm states’ commitment to the convention, to resolve interpretive inconsistencies, and to devise new tools and approaches to situations not fully covered under the convention. The process, which included two years of focused expert meetings, resulted in two documents: the 2001 Declaration of States Parties to the 1951 Convention and the Agenda for Protection, which the UN General Assembly endorsed in 2002.

At the same time, the mandate of UNHCR was expanding. In some cases, UNHCR began to work more extensively with people who were displaced within their own country. Working with internally displaced persons (IDPs) brought the agency into different sorts of relationships with governments of affected countries. Unlike providing assistance to host governments to support their protection of refugees arriving from neighboring countries, working with IDPs meant that UNHCR had to become involved in what were essentially domestic political concerns. Because of donor pressure—and the fact that the vast majority of the world’s refugees had no prospect of being able to return to their homes in the foreseeable future—the agency needed to demonstrate its commitment to finding long-term solutions for refugees. The 1990s therefore were heralded as the decade of repatriation. UNHCR’s engagement in countries of origin was key to ramping up repatriation, but inevitably its engagement involved the agency in more political issues.⁷⁴

While UNHCR’s mandate includes both protection and assistance, protection clearly was the agency’s *raison d’être*. Others could deliver relief, but UNHCR ensured that refugees would be protected. The Director of International Protection was the second-most important person in the organization, and a certain mystique grew up around UNHCR’s protection role. Loescher reports that changes in the organization in the past decade seemed to indicate a relative downgrading of UNHCR’s protection work, perhaps because many of the protection issues confronted by UNHCR in the 1990s involved asylum practices in wealthy countries that were the main funders

of UNHCR. The decline in UNHCR's protection work has been of much concern to refugee advocates. For example, in 2003 NGOs argued against reductions in or stoppages of food rations by agencies including UNHCR and WFP, because such actions "effectively play a role in the forcible return of displaced persons" to unsafe conditions, such as in the case of Burundian refugees in Tanzania and Afghan IDPs.⁷⁵

In the past several years, UNHCR has moved to expand its operations in several areas, by becoming more actively engaged in situations of internal displacement, by addressing at least some migration issues through the so-called asylum/migration nexus, and most recently by indicating a willingness to address displacement resulting from natural disasters and long-term climate change.⁷⁶ As the number of refugees in the world declines, there is growing attention to other categories of people forced to move, a tendency resisted by some donors and some within the organization who fear that it will lead to a decline in UNHCR's ability to protect refugees. Internal debates within both UNHCR's secretariat and its governing body have been heated, with some asking how UNHCR can expand its work to encompass more groups when its protection and assistance programs for refugees still have many shortcomings.

UNHCR's standing in the international community has in large measure depended on its commitment to refugee protection; for example, its ability to persuade governments to allow refugees to remain in their territory has depended on the agency's moral authority as well as its persuasive powers. Guy Goodwin-Gill observes that

[f]or UNHCR, the politics of protection derives, as a matter of institutional principle, from the responsibility entrusted to it by the General Assembly. Protection must be humanitarian and "non-political" but it is also about individual rights and solutions. The art for UNHCR is not to allow solutions or assistance to have priority over protection. For if it cannot provide protection, it will be judged a failure and accountable, and not merely excused because it tried hard in difficult political circumstances.⁷⁷

The centrality of UNHCR's work in protection is echoed in current discussions of peacekeeping operations in which there is growing consensus that the success of the operations will be judged by how well they protect civilians. Refugee protection then was important not only for the institutional development and perhaps even survival of UNHCR; it also was an essential component in the way that the international community has thought about

protection of groups besides refugees. Refugees were to be protected because they crossed international borders, creating an international issue. Over the decades, refugees also were perceived to be a security issue, although the number of refugees involved in military actions, sometimes called “refugee warriors,” was always a minority of the world’s refugee population.

It is interesting to note that the international refugee regime was created in response to the collapse of the Russian empire in 1917 and underwent major changes (some would say collapsed) with the fall of the Berlin wall in 1989. In other words, the refugee regime was bookended by events occurring in Russia. The events of 1989 were responsible for fundamental changes in the nature of refugee protection and in UNHCR’s role in that system.

Before looking at the third component of protection—the international human rights system, discussed in chapter 2—it is useful to digress a bit and look at a relatively recent group of people claiming a need for protection—internally displaced persons.

INTERNALLY DISPLACED PERSONS

Most people who are displaced by either conflict or natural disaster remain within the borders of their own country; they are internally displaced persons. Those displaced by conflict and violence are estimated to number about 27 million, with another 36 million displaced by sudden-onset natural disasters.⁷⁸ In comparison, there are about 15 million recognized refugees in the world, about 4.8 million of whom are Palestinian refugees registered with the *United Nations Relief and Works Agency* for Palestine Refugees in the Near East (UNRWA); the remaining 10 million fall under the mandate of the UN High Commissioner for Refugees.⁷⁹

While the history of the international community’s engagement with refugees dates back to the 1920s, the recognition that large numbers of people are displaced within the borders of their countries dates back only twenty years or so. In the early 1990s, a small group of human rights advocates began pressing the UN Human Rights Commission to take up the issue of IDPs, and in 1992 they succeeded in having a resolution passed creating the position of Representative of the Secretary-General (RSG) on Internally Displaced Persons.⁸⁰ Over the course of the next six years, Francis Deng, the first RSG, worked to compile existing international law applicable to IDPs and to formulate guiding principles to address the gaps in international standards. Within the course of a decade, the issue of IDPs was firmly on the international agenda. Roberta Cohen and Francis Deng explain the reasons for recognizing the IDP issue were of international concern. First, the numbers

of IDPs were increasing. A report by Sadako Ogata, then UN High Commissioner for Refugees, estimated that some 10,000 people a day were displaced in 1993 and 1994, including both refugees and IDPs.⁸¹ As tools for estimating the number of internally displaced improved, the number of IDPs was found to surpass that of refugees. But beyond the numbers, governments were concerned with preventing would-be refugees from reaching their territories; they wanted to address the needs of IDPs so that IDPs would not have to leave their countries. Dubernet goes so far as to suggest that protection of IDPs was a deliberate device to "contain" potential refugee flows.⁸² Improvements in communications, the end of the cold war, and the growing recognition that consolidation of peace requires supporting displaced people through reintegration programs or finding other solutions to their displacement often were factors in decisions to give more attention to IDPs.⁸³

There is no legally binding instrument upholding the rights of internally displaced persons specifically, as there is for refugees. However, international humanitarian law stipulates that civilians cannot be displaced in international armed conflicts, although the provisions are less straightforward for internal armed conflicts. However, according to Lavoyer, "as victims of armed conflicts or disturbances, internally displaced persons unquestionably come under the mandate of the ICRC. They consequently enjoy the general protection and assistance it affords to the civilian population."⁸⁴ But while international humanitarian law, international human rights law, and, by analogy, refugee law, are applicable to IDPs, the legal provisions for IDPs certainly do not have the visibility accorded to those for other groups protected by those international instruments.

The Guiding Principles on Internal Displacement were developed to address that gap. Presented to the UN in 1998, those principles reflect and are consistent with existing international human rights law and international humanitarian law and restate in greater detail existing guarantees that apply to IDPs in particular. However, the guiding principles are not an international convention or treaty or a legally binding instrument. There are occasional calls to develop an international convention on IDPs, but doing so has been resisted as a time-consuming process with uncertain prospects for success. However, once ratified by fifteen states of the African Union, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, which is based on the guiding principles, will enter into force as a legally binding instrument. The Kampala Convention, as it is known, was adopted by African heads of state and government at a special summit in Kampala, Uganda, on October 22–23, 2009. It will be the first

legally binding instrument related to preventing mass displacements and addressing the vulnerabilities and needs of those who have been displaced. IDPs are defined in the UN Guiding Principles on Internal Displacement as

[p]ersons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.⁸⁵

The definition of an IDP is quite different from the definition of a refugee; it refers specifically to persons or groups of persons, unlike the definition of refugee, which focuses exclusively on the individual. Moreover, the accepted causes of displacement are broader, including natural or human-made disasters as well as the effects of armed conflict. For example, a person fleeing Port-au-Prince, Haiti, because of the devastation of the January 2010 earthquake is an IDP if he or she moves elsewhere within the country, but if the same individual, fleeing the same earthquake-caused devastation, goes to another country, he or she is not a refugee under the 1951 UN refugee convention. Similarly, while a person forced to leave his or her community because of a large-scale development project, such as dam construction, is an IDP under the definition in the guiding principles, that person would not be a refugee under the 1951 convention if he or she crossed an international border.

Responsibility for protecting and assisting IDPs lies with national authorities, which is obviously problematic in cases in which national authorities have contributed to the displacement. IDPs—although they far outnumber refugees—have a descriptive rather than a legal definition, have no binding international convention, and have no dedicated UN agency charged with their protection and assistance. Furthermore, because international recognition of the particular needs of IDPs dates back only ten or twenty years, there is much less academic scholarship, jurisprudence, and international awareness concerning IDPs than there is concerning refugees.

Humanitarian reform processes initiated in 2005 were intended in large measure to address the lack of an institution with dedicated responsibility for IDPs and the inadequacy of informal collaborative mechanisms to designate lead agencies on an ad hoc basis. Currently UNHCR has been given responsibility under the cluster system for protection of IDPs displaced by conflict, for emergency shelter, and for camp management. But the system is

still in a state of transition, and the extent to which the needs of IDPs will be met remains uncertain.

While UNHCR has a mandate to protect and assist refugees, the primary responsibility for protecting IDPs lies with national authorities, even though national authorities often have created or contributed to the displacement in the first place. On a practical level, that means that while UNHCR generally counts on good relations with governments of host countries, such relationships often are more difficult in the case of IDPs.

THE PALESTINIANS

As a result of the Arab-Israeli war of 1948–49, some 700,000 Palestinians fled their country. By July 1948, the ICRC was providing protection and assistance to those affected by the war.⁸⁶ In November 1948, the UN General Assembly established the UN Relief for Palestine Refugees (UNRPR) to take care of the immediate needs of the refugees;⁸⁷ a month later, the UN created the UN Conciliation Commission for Palestine (UNCCP) to protect the rights of the refugees and to negotiate durable solutions to their situation. UNRPR contracted with the ICRC, American Friends Service Committee (AFSC), and the League of Red Cross Societies (LRCS) to provide humanitarian assistance.⁸⁸ However, a year later, as legal scholar Lex Takkenberg notes, two key factors led the UN General Assembly to create another entity charged with assisting the Palestinian refugees:

The draft came in response to the announcement that the non-governmental agencies providing relief to the more than 700,000 Palestinians, who had become refugees as a result of the 1948–9 Arab–Israeli War, would be unable to continue the aid operation beyond the autumn of 1949. In addition, during the second half of 1949, the United States, as chair of the UNCCP, began seeking alternatives to repatriation as the solution to the plight of the refugees.⁸⁹

So one year after establishing the UNRPR, the General Assembly established the agency that would replace it, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). UNRWA began its operations in 1950 as a temporary agency with a three-year mandate. UNRWA was set up to provide assistance to Palestinian refugees—primarily by creating jobs and supporting their local integration—but not to resettle them or to seek a political solution to the conflict that had forced them from their communities.

Unlike that of UNHCR, UNRWA's mandate extended only to the provision of assistance to the refugees, not to protection. Not only was a separate UN agency established for the Palestinian refugees, but around the same time, as Takkenberg points out, the UNHCR Statute excluded Palestinian refugees receiving assistance from UNRWA.⁹⁰ Takkenberg concludes that the “fact that UNRWA was only intended to provide assistance and that, as a consequence of this provision, the Palestinians would lack international protection, was not considered. It was also not considered what ‘level’ of assistance would be sufficient to exclude the Palestinians from the jurisdiction of UNHCR.”⁹¹

In addition, in 1951, when the UN refugee convention was drafted, it was decided to exclude Palestinian refugees who were assisted by UNRWA from the convention. According to Takkenberg, analysis of the *travaux préparatoires* of the 1951 convention reveals that Arab states, who favored the exclusion clause, were concerned that if included under UNHCR's mandate, the issues specific to Palestinian refugees would become lost among those of myriad refugee populations.⁹² Unlike that of UNCCP, UNRWA's mandate was nonpolitical and not explicitly oriented toward “protection” of Palestine refugees. Indeed, protection was viewed as separate from assistance and was not to be included in UNRWA's mandate.

Thus, a separate system emerged in the international community's response to Palestinians, one that did not emphasize protection. According to UN General Assembly Resolution 393 of December 2, 1950, the agency's role was geared toward the integration of Palestine refugees in the countries to which they had fled or subsequently had been resettled pending repatriation to Palestine. The agency also sought to prepare the refugees “for the time when international assistance is no longer available, and for the realization of conditions of peace and stability in the area.”⁹³

Some Palestinians were allowed to integrate into host countries, but most stayed in camps in the region, in accordance with the desires of Arab governments that opposed both resettlement and assimilation, which would have made it difficult for them to contest the legitimacy of the newly established Jewish state or to construct a Palestinian state in the future. Arab states insisted that Palestinians be excluded from resettlement programs. In this respect, in the early 1950s UNRWA served a useful purpose by providing “stability in a strategically important region by materially assisting the refugees and by preserving the internal security of the Arab states as a bulwark against communist subversion.”⁹⁴

It is the state's responsibility to protect those within its boundaries, but when the Israeli military seized control of the West Bank and the Gaza Strip during the 1967 war, those areas became "occupied territory." Under international humanitarian law, the responsibility to protect the population lies with the occupying power—in this case, the Israeli state. International protection was to be provided by ICRC, while UNRWA's role as initially conceived—in contrast to UNCHR's role with refugees—was not to protect Palestinian refugees (particularly not vis-à-vis the Israeli authorities) but to provide basic assistance. While that assistance was extended for humanitarian reasons, it also was intended to prevent the Palestinians from becoming a destabilizing force in the region. The reasoning seemed to be that UNRWA would feed them, educate them, and provide health care but avoid taking steps that would threaten the status quo. It is to UNRWA's credit that it has been able to expand its protection role over the past six decades, as evidenced, for example, in the deployment of staff with particular responsibilities for protection.

As decades passed and UNRWA continued serving an ever-expanding refugee population, the agency evolved to include protection more explicitly in its programming. The outbreak of the intifada in December 1987 transformed the nature of Palestinian resistance to continued Israeli rule in the occupied Palestinian territory. Frustrated by the inability—or unwillingness—of Arab governments to successfully take up their cause and impatient with the leadership of their own organizations, Palestinians, particularly young Palestinians, took on a more confrontational role.

The intifada also brought about further changes in the role of UNRWA. Over the years, UNRWA earned the respect of the Palestinians for its humanitarian work and the commitment of its staff, but there also was some ambivalence. UNRWA is seen by most refugees as a strong advocate on their behalf. But there are some who are more critical of UNRWA's role, seeing the agency as one "selected by the international community to perpetuate the status of the Palestinians as refugees."⁹⁵ In response to the protests and violence of the intifada, Israel closed the schools, sometimes for long periods of time. UNRWA estimates that about half of the teaching time for the first two years of the intifada was lost because of school closures and strikes. The violence strained UNRWA's capacity, although it began providing health care to nonregistered inhabitants of the occupied Palestinian territory. But the agency—like all humanitarian actors—was unable to prevent the violence. Under international humanitarian law, ICRC is charged primarily

with overseeing the protection of civilians under occupation. But in the case of the occupied territory, ICRC depended on the cooperation of the Israeli authorities. At times, they were willing to let ICRC play that role; at other times, they prevented it from performing even minimal services.

In 1988, as casualties and abuses mounted, the UN secretary-general asked UNRWA to increase its international staff “to improve the general assistance provided to the refugee population.”⁹⁶ In response, UNRWA hired “refugee affairs officers” to monitor the human rights situation in the occupied territory and to report on violations. There is some evidence that their presence served to deter violence in some cases.⁹⁷

There are differing interpretations of the extent to which UNRWA has been involved in protection, even in the absence of an explicit protection mandate. Of course, within the meaning of the Inter-Agency Standing Committee’s definition of protection—aimed at obtaining full respect for economic and social rights—UNRWA clearly is involved in protection.⁹⁸ Lex Takkenberg, a legal scholar and longtime UNRWA employee, maintains that UNRWA has been engaged in protection activities since its inception. He points to UNRWA’s early emergency assistance and works projects, noting that “although officially committed to resolution 194, UNRWA’s initial attempts towards initiating massive public work projects were tantamount to advocating local integration as an alternative solution to the refugee problem.”⁹⁹ Given those two forms of assistance and UNRWA’s role in facilitating Palestinians’ labor migration, mainly to the Persian Gulf, and its long-standing education, health, and relief programs, Takkenberg notes:

From this perspective it may be argued that UNRWA has been providing international protection to the “Palestine refugees” under its care from the very moment of its establishment. However, in the absence of an explicit protection mandate similar to that of UNHCR, the more traditional aspects of international protection, often referred to as legal and political protection, were for a long time not expressly addressed by the agency.¹⁰⁰

While UNRWA’s efforts to protect Palestinian refugees have expanded over time—including the creation of new staff positions such as refugee affairs officers and later operation support officers and a senior policy protection adviser¹⁰¹—other actors, such as the ICRC and the UN’s Office for the Coordination of Humanitarian Affairs, have carried out important protection functions. In 2009, for example, ICRC’s annual report notes that it “repeatedly sought compliance by Israel with its obligations under

IHL towards the Palestinian population living under its occupation, as well as respect for civilians by Palestinian authorities and armed groups.” The report goes on to state that over the course of the year, ICRC made more than 1,650 oral and written representations to the Israeli authorities regarding the adverse impact of Israeli policies and practices on the civilian population. ICRC has shared confidential reports with authorities on the treatment and living conditions of detainees and, in 2009, on the conduct of hostilities during military operations in Gaza. In addition, ICRC’s assistance policies in the occupied territory include support to thirty hospitals and provision of food and essential household items to individuals as well as water, shelter, agricultural, veterinary, and microeconomic initiatives. ICRC has made a major commitment to the occupied territory; in fact its operations there are its second largest in the world, after those in Darfur.¹⁰²

UNRWA has had a more difficult row to hoe than UNHCR has had in protecting Palestinian refugees. A UNRWA paper found that “[t]he success of the UNHCR in offering real and substantial refugee protection, outside of the context of asylum, has almost always been contingent on active UN Security Council intervention or consent of the parties to the conflict.”¹⁰³ Although Palestinian issues have been the objects of numerous Security Council resolutions, the Security Council has not championed and enhanced the protection role of UNRWA, nor has the occupying power, the Israeli government.

The tension between protection and assistance is vividly illustrated by Israel’s attack on Gaza in late December 2008. The surprise Israeli military operation, code-named Operation Cast Lead, had the stated goal of ending rocket attacks into Israel by armed groups in Gaza, including those affiliated with Hamas. The attack by Israeli armed forces included the repeated firing of white phosphorus munitions over densely populated areas of Gaza.¹⁰⁴ Over the course of twenty-two days, aerial and land attacks killed 1,400 Palestinians, including women and 340 children, and wounded 5,000 others.¹⁰⁵ The attacks constituted an “unprecedented destruction of civilian infrastructure across the Gaza Strip, including hospitals, schools, mosques, civilian homes, police stations, and United Nations compounds,” according to Al-Haq, an NGO affiliated with the UN and the International Commission of Jurists based in Ramallah, in the West Bank, which had field workers in Gaza during the operation.¹⁰⁶ In the course of the campaign, the Israeli military shelled well-marked UNRWA installations, including schools and its headquarters in Gaza City, which were shelled with at least three high-explosive and white phosphorus munitions. At the height of the crisis, UNRWA schools and other UNRWA installations provided shelter—and protection—for up

to 50,000 people.¹⁰⁷ Israeli spokespersons justified the attacks as a response to firing by militants from those locations, but international observers and UNRWA denied that claim.¹⁰⁸

When Secretary-General Ban Ki-moon visited the Gaza Strip and condemned the attacks on UN installations, “fire and plumes of smoke were still clearly visible, smoldering behind him, as he spoke in front of the UNRWA compound.”¹⁰⁹ The secretary-general said that he was “appalled” by what he saw and said that two days prior he had received apologies from top Israeli officials for the UN attacks and assurances that they would not happen again. Ban said, “I strongly demand a thorough investigation into these incidents, and the punishment of those who are responsible for these appalling acts.” Later in 2009, a UN Human Rights Council fact-finding mission conducted an investigation. Led by Richard Goldstone, a former judge of the Constitutional Court of South Africa and former prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda, the mission conducted a three-month investigation into the actions of the Israeli military and Palestinian armed groups during Operation Cast Lead. The mission, which presented its findings in a report in September 2009 to the council, found that serious violations of international human rights and humanitarian law were committed by Israel and that Israel committed actions amounting to war crimes and possibly crimes against humanity.¹¹⁰ The mission also found that Palestinian armed groups had committed war crimes as well as possible crimes against humanity.¹¹¹ The mission recommended that the Security Council establish a body of independent experts to report to it on the progress of the Israeli and Palestinian investigations and prosecutions and called for the Security Council to refer the matter to the International Criminal Court prosecutor if the experts did not find that there was progress within six months.¹¹²

UNRWA has followed a protection strategy similar to that employed by many NGOs and international organizations: protection by presence, protection by monitoring, and protection by negotiation or advocacy.¹¹³ As seen in the concluding chapter of this volume, those strategies have strengthened the resilience of communities and have mitigated some of the effects of the occupation. But when the bombs fell in Gaza in January 2009, UNRWA was not able to protect Palestinians; that responsibility ultimately lay with the Israeli state. As in other conflict situations, the role of humanitarian actors in protecting civilians from overwhelming military force is limited.

International humanitarian law mandates that civilians be protected in situations of armed conflict by all parties to the conflict, including

governments and nonstate actors. But when those responsible for protecting civilians are unwilling or unable to do so, humanitarian actors often try to step into the breach, doing what they can to keep people physically safe and to ensure that their basic human rights are upheld. Humanitarian actors have been courageous and creative in coming up with measures to protect people when bullets are flying, bombs are falling, and land mines are maiming civilians going about their daily lives. And in many cases, they make the convincing case that the situation would have been much worse for civilians if it had not been for their actions. That is undoubtedly true, in situations ranging from Darfur to Gaza to land mine-affected areas of Angola. However, such efforts cannot keep people safe in the absence of will and cooperation from the parties to the conflict, a fact that humanitarian actors recognize. Consequently, they have devoted substantial energy over the years to trying to build an environment conducive to protection, by encouraging armed parties to respect international humanitarian law, and by engaging in public advocacy. It is not an indictment of the shortcomings or lack of commitment by humanitarian actors to point out that their efforts are often not very effective in keeping people safe. That responsibility lies elsewhere.