PROTECTING CIVILIANS IN INTERNAL ARMED CONFLICT
THE INTERNATIONAL COMMITTEE OF THE RED CROSS AND THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

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This thesis examines the approaches taken by the International Committee of the Red Cross (ICRC) and the Office of the High Commissioner for Refugees (UNHCR) to the protection of civilians during internal armed conflict, both at the level of global policy and at the level of implementation in the Colombian context. The thesis explains how the ICRC and UNHCR approach protection, why each has adopted its particular approach, and how and why the effectiveness of each approach is limited. In doing so, it offers a theoretical framework for explaining the approaches taken by international organizations (IOs) to new tasks within their mandates as well as policy implications for the ICRC, UNHCR and other humanitarian agencies. From a theoretical perspective, this research shows that factors internal to the IO carry greater explanatory power than external factors. Most significantly, when an IO expands into a new issue-area, it frames the new task in terms of the existing tasks within its mandate, replicating the specific goals and the means of pursuing those goals. The extent to which the approach is then adapted to the specificities of the new issue-area depends on the ‘bureaucratic personality’ of the IO, and specifically the extent to which decisions are informed by field-level experience. Internal conflicts by definition include armed non-state actors, and the analysis in this thesis emphasises both their significance in determining civilian security and their neglect in existing approaches to protection. While the ICRC seeks to reduce the threat posed by all armed actors (state and non-state) in its work at the field level, it relies heavily on an international legal framework which prioritises states and this partially undermines its attention to non-state actors at the field level. UNHCR retains a state-centric focus at both the field level and the level of global policy. From a policy perspective, therefore, the thesis advocates greater attention to armed non-state actors both at the level of practice and in the development of protection norms.
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Abbreviations

ACNUR – Alto Comisionado de las Naciones Unidas para los Refugiados (United Nations High Commissioner for Refugees)

AUC – Autodefensas Unidas de Colombia (United Self-Defence Forces of Colombia)

ELN – Ejército de Liberación Nacional (National Liberation Army)

EPL – Ejército Popular de Liberación (Popular Liberation Army)

ERP – Ejército Revolucionario del Pueblo (People’s Revolutionary Army)

ERPAC – Ejército Revolucionario Popular Antiterrorista de Colombia (Colombian Revolutionary Popular Antiterrorist Army)

EU – European Union

Excom – Executive Committee (of the Office of the United Nations High Commissioner for Refugees)

FARC – Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia)

FTS – Financial Tracking Service (ReliefWeb)

GDP – gross domestic product

ICC – International Criminal Court

ICISS – International Commission on Intervention and State Sovereignty

ICRC – International Committee of the Red Cross

IDP – internally displaced person

IFRC – International Federation of Red Cross and Red Crescent Societies

IGO – intergovernmental organization

IHL – international humanitarian law

IHRL – international human rights law

INGO – international nongovernmental organization

IO – international organization

IOM – International Organization for Migration

IRL – international refugee law

M-19 – Movimiento 19 de Abril (19th April Movement)
MSF – Médecins Sans Frontières

NGO – nongovernmental organization

OCHA – Office for the Coordination of Humanitarian Affairs

OHCHR – United Nations Office of the High Commissioner for Human Rights

PIU – plan integrado único para la atención y protección de la población en situación de desplazamiento (local durable solutions plan for displacement)

PPC – protection de la population civile (protection of the civilian population)

PPP – practical protection project

UN – United Nations

UN OIOS – United Nations Office of Internal Oversight Services

UNAMID – African Union/United Nations Hybrid operation in Darfur

UNDSS – United Nations Department of Safety and Security

UNHCR – Office of the United Nations High Commissioner for Refugees

UNICEF – United Nations Children’s Fund

UNRWA – United Nations Relief and Works Agency for Palestine Refugees in the Near East

US – United States

USD – United States dollars

WFP – World Food Programme
Introduction

The complex emergencies of the 1990s prompted reflection within the humanitarian sector, and greater recognition that providing material assistance to conflict victims is insufficient in the context of armed conflict, and too often results in the ‘well-fed dead’. This phrase gained common currency among aid workers and commentators in respect of Bosnia in the early 1990s, and points to the apparent futility of providing aid to those who will shortly meet a violent death. A New York Times (1992, p. 296) article summed up the underlying sentiment: ‘The people of Bosnia remain unprotected. What good will it do for them to have food in their stomachs when their throats are slit?’ The article argues for more concerted political and military action to protect the Bosnian population.

However, in Rwanda in 1994, such action once again failed to materialise. Further soul-searching took place among humanitarians and the wider international community following the genocide and the subsequent militarisation of the refugee camps in neighbouring countries. A joint evaluation of emergency assistance to Rwanda echoed many of the critiques of the Bosnian response: ‘Humanitarian action cannot substitute for political action. This is perhaps the most important finding of this evaluation’ (DANIDA 1996, p. 46). From the Bosnian, Rwandan and numerous other experiences emerged two general conclusions. First, that ‘the protection of civilians from attack and/or persecution is not at the centre of most humanitarian action’, and second, that ‘[g]overnments have used humanitarian assistance as a way to avoid more difficult interventions’ (Paul 1999, p. 1).

Subsequently, greater emphasis has been placed on the protection of civilians, and the Darfur emergency was the first to be described as a ‘protection crisis’ (Pantuliano and O'Callaghan 2006, p. 6). However, there is a consensus among humanitarians that outcomes are falling short of intentions, and the increased emphasis on protection by humanitarian actors has failed to yield a corresponding improvement in the security of the civilian population. Thus Marc DuBois, Executive Director of Médecins Sans Frontières (MSF) – UK, reports that his ‘last visit to Darfur...
revealed no shortage of the “well-fed raped” or the “well-fed harassed and intimidated” (DuBois 2009, p. 2).

The protection of refugees, internally displaced persons (IDPs) and other civilians is one of the most challenging dimensions of contemporary responses to humanitarian crises. In this thesis, I examine the protection approaches of the International Committee of the Red Cross (ICRC) and the Office of the United Nations High Commissioner for Refugees (UNHCR) during internal armed conflict. Analysing their understandings of protection and the implementation of their approaches in the specific context of Colombia, I assess how well these two organizations address the problems at the core of protection concerns: violence and its perpetrators.

The ICRC and UNHCR are arguably the two most important humanitarian agencies for protection, but neither was originally set up to protect civilians during internal conflict. Formed in 1863, the ICRC was initially concerned with wounded and sick members of the armed forces in international conflicts and gradually extended its mandate to include prisoners of war and civilians, and to encompass non-international conflict and lesser situations of violence. Set up in 1951, UNHCR was initially concerned with refugee protection and solutions, and its mandate has since expanded to include people in ‘refugee-like situations’, IDPs and those at risk of displacement. In this thesis, I show how these pre-existing mandates and areas of focus have constrained institutional imagination in developing policy approaches for the protection of refugees, IDPs and other civilians in the midst of internal armed conflict. The failure to fully adapt the resulting approaches to the political realities of the new contexts in which they are operating limits the scope of protection offered by these two organizations. I thus offer theoretical insights as to the behaviour of international organizations (IOs) and policy implications for the protection of civilians in internal conflict.

My analysis suggests that internal factors are more decisive than external factors in shaping the policy approaches taken by IOs to address new issue-areas within their mandate. In particular, the work of the IO on pre-existing issue-areas is replicated in the approach taken to the new issue-area.
Where the replicated approach is not subsequently adapted, there is high risk of dysfunctionality in the approach which may not be appropriate for the new context or task it is intended to address. This thesis shows that the ICRC has adapted well in respect of one set of activities it undertakes for civilian protection in internal conflicts – namely those practical activities undertaken in conflict contexts – and that this adaptation has taken place over time. The ICRC has not adapted well in respect of its second set of activities, that of developing a normative framework for the protection of civilians in internal conflict. The approach taken by UNHCR is not well adapted at all. A number of policy prescriptions also follow from this analysis, most notably the need for UNHCR to take better account of the specificities of conflict settings and for the ICRC to rethink the normative framework on which it bases its in-conflict interventions to make it more adequate for changing the behaviour of non-state armed groups.

**Background and approach**

Civilian protection has become central to the rhetoric of a wide range of actors including the United Nations (UN), international humanitarian agencies, non-governmental organizations (NGOs), politicians, military forces and the media. Moreover, as described in chapter one, an increasing number of institutional actors within the international community are engaged in practical efforts to protect civilians during armed conflict. Some of these actors, such as the ICRC and UNHCR, have traditionally been concerned with protection – though the categories of person that they seek to protect have expanded over time. Others, such as the UN Security Council and Oxfam, previously focused on other activities and have only recently become explicitly concerned with civilian protection.

The idea that certain categories of people should have a protected status during conflict is not new, and neither is the frequent disregard of such status by armed actors (Best 1983; Keen and Lee 2009; Slim 2003). What is new is the idea that protection can and should be an *activity* undertaken
by IOs.¹ As I explain in chapter one, this shift is a consequence of the way that contemporary conflict is perceived, and of changing perspectives on state sovereignty and the role of IOs in world affairs.

A good deal of work has been published on the changing character of conflict, and in particular on the deliberate targeting of civilians and an increased proportion of civilians casualties. For example, Mary Kaldor has argued that in the so-called new wars, civilians have increasingly become part of the calculus of war, and that the harm they suffer is often not incidental to the conduct of war but the result of deliberate tactical and strategic decisions (Kaldor 1999). The ‘new wars’ are supposedly characterised by economic rather than political motivations, armed parties who seek to prolong rather than win wars, and strategies include ethnic cleansing and deliberate displacement of populations. However, the newness of these characteristics is disputed (Berdal 2003; Kalyvas 2001; Newman 2004). Certainly civilians very often are part of the calculus of war, but so they were in the 1886–1908 conflict of the Congo Free State and the Mexican Revolution of 1910–20 (Newman 2004, p. 182). The deliberate targeting of civilians is not a trait unique to contemporary conflict.

Related to these supposed qualitative differences is the claim of a quantitative difference, suggesting that civilians comprise a vastly higher percentage of victims in contemporary conflicts. There is a much-cited but seemingly unsubstantiated claim that nine in every 10 casualties in contemporary conflict is a civilian. Yet older wars also had high incidence of civilian casualties, and in any case a more considered analysis of existing data on contemporary conflict suggests a much lower percentage (Roberts 2009). Thus this claim also appears to be much exaggerated. However inaccurate, such perceptions gained traction in both academic and policy communities, including among UN agencies and the European Union (Roberts 2009, pp. 24-26). In this way, the notion of new wars – and in particular the intentional targeting of civilians and the alleged 9:1 ratio

¹ I use this term in its broad sense to include not only intergovernmental organizations (IGOs) but also international nongovernmental organizations (INGOs).
of civilian to combatant casualties – have played a part in motivating international responses to protect civilians in internal conflicts.

The institutionalisation of protection in the twentieth century and the increasing concern shown for protection by international organizations are also indicative of two more general shifts in international relations. First, the international system has evolved such that individuals, and not only states, are able to bear rights internationally and in international law (Forsythe 2006; MacFarlane and Khong 2006; Sohn 1982). Second, IOs play a more central role in world politics than ever before, coordinating the action of states and undertaking activities themselves across a range of issue-areas including security, trade, environmental affairs and human rights (Barnett and Finnemore 2004; Gutner and Thompson 2010). The institutionalisation of protection with which this thesis is concerned demands the involvement of the international community in activities within the jurisdiction of states. This represents a significant departure from traditional notions of sovereignty and the principle of non-intervention, and it is in this context that IOs have taken up the idea of providing protection to civilians in conflict.

The thesis starts from the observation that despite the obvious importance of civilian protection, and the significant (financial, human and intellectual) resources devoted to it, the international community has only limited success in this area. Given that protection outcomes are not something that can be easily (if at all) measured, it is not possible to quantify success. However, many civilians remain insecure and unsafe in conflict situations, and individuals involved in protection within the humanitarian sector themselves believe there is scope to improve protection outcomes. Thus we can conclude that success is at best limited.

Through analysis of how protection is understood and approached by two IOs (the ICRC and UNHCR) and examination of the activities they undertake in a particular context (Colombia), I address three central research questions:

- How do the ICRC and UNHCR approach civilian protection in internal conflict?
- Why has each adopted its particular approach?
How and why is the effectiveness of each approach limited?

In order to tackle these questions, I start by setting up a conceptual framework. This comprises two parts. First, I set out a framework for analysing how humanitarian IOs go about their protection work. This is based on an analysis and critique of the concept(s) of protection espoused within the humanitarian sector. Second, I develop a set of five hypotheses to explain why IOs adopt particular approaches to any given issue-area. These are derived from existing literature on IO behaviour. I then characterise the ICRC and UNHCR approaches to protection according to the first framework (to answer question one above), and I test the five hypotheses from the second framework in order to explain why these particular approaches were adopted (to answer question two above). In characterising each approach and analysing the institutional experience of implementing those approaches in the Colombian context, I highlight the practical and normative restrictions on the approach, and I draw out any problems with the assumptions or logic underpinning it (to answer question three above).

**Importance of the topic**

This thesis is concerned with the protection of civilians in internal armed conflicts. At its most basic, civilian protection is concerned with saving the lives of individuals; from a policy perspective, it is difficult to think of a greater concern. The vast majority of conflicts in the contemporary world are non-international, thus it makes sense to focus on the protection of civilians in internal conflicts. However, it is worth interrogating these points further, in light of recent data on trends in armed conflict.

That the incidence of international conflict has declined significantly is a truism. That the incidence of internal conflict has also declined significantly since the end of the Cold War is, however, rarely reported. The most recent Human Security Report documents a 30% decline in the number of internal conflicts between 1992 and 2008 (the last year for which data were available). Since 1998 there has also been a downward trend in deaths from one-sided violence (the use of lethal force, by governments or non-state armed groups, against civilians that causes 25 or more
deaths in a calendar year). On the surface these figures suggest we should be less rather than more concerned about civilian protection in contemporary internal conflicts.

However, internal conflicts are not going to be obsolete any time soon, and these positive trends come with two caveats. First, the incidence of internal conflict may be on the increase again. Breaking down the time period, we see a 40% decline in the number of internal conflicts between 1992 and 2003, followed by a 25% increase between 2003 and 2008 (Human Security Report Project 2011). The increase since 2003 may turn out to be a blip or may turn out to be the start of a new upward trend. Second, in terms of the intensity of internal conflict, the longer-term decline in the number of wars (conflicts that cause more than 1000 battle deaths per year) is more pronounced than the decline in overall conflict numbers. This implies that there has been an increase in minor conflicts (those resulting in fewer than 1000 battle deaths per year), and suggests we should be particularly concerned with these lower intensity conflicts. Furthermore, the downward trend in deaths from one-sided violence has been accompanied by an upward trend in the proportion of that one-sided violence perpetrated by non-state actors from 25% in 1989 to 80% in 2008 (Human Security Report Project 2011). This indicates we should focus attention on violence against civilians perpetrated by non-state armed groups.

Direct conflict-related deaths are only one of many indicators of the suffering faced by civilians in conflict. Even limiting the discussion to the direct consequences of violence, injuries less than death are also common, and sexual violence and forced displacement are both widespread in many contemporary conflicts (Bastick et al. 2007, pp. 21-35; UNHCR 2011c). There is a lack of quality data on sexual violence during armed conflict, and the UN Security Council has tasked the Secretary-General with establishing ‘monitoring, analysis and reporting arrangements on conflict-related sexual violence’. A focus on forced displacement is problematic because displacement can be conceptualised both as a threat and as a protection strategy. In sum, we do not have perfect data

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on the effects of internal conflict on civilians. Judging by the data we do have on one-sided violence, the negative effects may have decreased since the end of the Cold War but we do not yet know whether those improvements will be sustained, and further there are still massive numbers of civilians who are the victims of violence during internal armed conflicts.

What we do know is that thousands of civilians are killed in conflicts around the world every year, that there has been an increase in the numbers of minor conflicts, and that the proportion of violence perpetrated by armed non-state actors has also increased. Thus the protection of civilians in internal conflicts remains an important topic of research, and an emphasis on minor conflicts and the violence perpetrated by non-state armed groups may be particularly productive.

Existing literature and contribution

The thesis is situated in two main bodies of literature. First, it draws on and contributes to theoretical literature within the field of international relations on the behaviour of IOs. Much of this focuses on IGOs specifically, but some also incorporates consideration of INGOs. Existing literature on IO behaviour divides into four broad (and overlapping) categories: (1) explaining the conditions under which IOs are created (Abbott and Snidal 1998; Keohane 1982); (2) explaining how IOs are designed (Haas 1990; Koremenos et al. 2001; Pollack 1997); (3) explaining IO behaviour (Barnett and Finnemore 2004; Hawkins et al. 2006; Nielson and Tierney 2003); and (4) assessing the extent to which, and the ways in which, IOs (and the international regimes they oversee) shape state behaviour (Boli and Thomas 1999; Keohane 1984; Krasner 1983; Mearsheimer 1995). The third and fourth categories are particularly concerned with the level of autonomy that IOs are able to exercise, and the power they wield to effect changes in international relations.

This thesis fits within the third category and, more specifically, relates to the issue of mandate expansion. Some scholars have begun to analyse why IO mandates expand to include new issue-areas (Barnett and Finnemore 2004; Betts 2012). However, rather than asking why mandate expansion has occurred in the ICRC and UNCHR, I take such expansion to be my starting point.
From there, I ask why these organizations have adopted particular approaches to addressing the new issue-area within their mandate (in this case, civilian protection during internal armed conflict). By analysing the protection approaches taken by two IOs and explaining the reasons for their choices of approach, therefore, this thesis makes a theoretical contribution to our understanding of IO behaviour.

While the existing literature does not address this particular question, it does provide general explanations for IO behaviour. In this way, it provides the tools from which to hypothesise the factors that are likely to shape the approach taken by an IO on any given new issue-area. Therefore, in chapter two I analyse literature on IO behaviour to derive five potential explanations as to why IOs adopt their particular approaches to address new tasks within their mandates. These hypotheses are then tested in chapters three and five in order to explain why the ICRC and UNHCR adopted their respective approaches to the protection of civilians during internal conflict.

Second, this thesis is situated within a body of work on humanitarian policy and protection. There is an expanding body of literature concerned with the nature of humanitarianism. Since the end of the Cold War, and in light of a number of perceived failures such as in Bosnia, Rwanda and Sudan, humanitarian action has been subject to a great deal of criticism from journalists (Polman 2004; Rieff 2002), academics (de Waal 1997; Keen 1994; Marriage 2006) and from within the humanitarian sector itself (Cosgrave 2007; DANIDA 1996; Terry 2002; Vaux 2001). Such criticism has spurred discussion as to how humanitarian response can be improved or made more effective, and debate surrounding what it means to be humanitarian (Barnett 2011; Barnett and Snyder 2008; Hopgood 2008; Stockton 1998).

A major area of contention in these discussions concerns the proper role of traditional principles of humanitarian action and particularly whether humanitarian agencies should seek to be neutral in the context of armed conflict or whether they should take on more political roles (Fox 2001; Leader 2000; Weiss 1999). This thesis speaks to the debate regarding the role of particular principles in protection activity, analysing how principles of humanitarian action are interpreted.
Introduction

and implemented by the ICRC and UNHCR, and what consequences this has for the kinds of protection activities they are able to undertake.

There is also an emerging body of work, much of it policy-focused, on the role of humanitarian agencies in protecting civilians (Ferris 2011; InterAction 2006; O'Callaghan and Pantuliano 2007; Slim 2008; Slim and Bonwick 2005). In chapter one, I analyse this literature in depth in order to show how ‘protection’ is understood in the humanitarian sector and what problems that understanding may pose in practice, as well as to set out a framework for characterising the protection approaches taken by the ICRC and UNHCR. This structures the analysis in chapters three to six where I explain and critique the approaches taken by these organizations.

There are two important reasons for offering critiques of existing approaches to protection. First, identifying the limitations of these approaches can help to readjust inflated expectations in the public rhetoric of some IOs and the international community more broadly. While each agency in its operations at the very local level often has a sense of what it can and cannot hope to achieve, such information is not shared outside of the agency and is not understood in general terms, but rather relates to the specificity of a given context. In chapter one, I discuss the danger of unrealistic expectations among both those whom humanitarian agencies seek to protect, and those actors who may have the capacity to provide more meaningful protection. Second, explaining not only the ways in which these approaches are limited in scope, but also the reasons for those limitations, can contribute to improved policy responses. In analysing the ICRC and UNHCR approaches to protection, I identify problems with the assumptions and internal logic of each approach that are likely to limit its effectiveness.

There is a third body of literature, concerning international law and norms in international relations, with which this thesis engages, albeit less centrally than the work on the behaviour of IOs, and on humanitarianism and civilian protection. Both the ICRC and UNHCR have sought to create and diffuse particular norms connected to civilian protection, and each has responsibility for a body of international law concerned with protection. Understanding how international law has
emerged, and how it is interpreted and implemented, is thus important to explaining the approach to protection within the ICRC and UNHCR (Abbott et al. 2000; Cassese 2004; Lowe 2001).

Both the ICRC and UNHCR oversee legal and normative frameworks for the protection of civilians in internal conflicts, and these frameworks purport to apply to armed non-state actors. In chapter one I argue that influencing the behaviour of such actors is an important component of protection. In order to assess the adequacy and appropriateness of these legal frameworks for shaping the behaviour of non-state armed groups, I draw analogies from work on how international law and norms emerge and affect the behaviour of states (Chayes and Chayes 1998; Checkel 2005; Finnemore and Sikkink 1998; Franck 1990; Franck 1995; Hurd 1999; Kingsbury 1998; Petrova 2010). However, my work also highlights the state-centric nature of this existing literature regarding compliance with international law and norms, and a significant gap in our knowledge as to the determinants of compliance by non-state actors with international law and norms.

**Research methods and design**

1. **Case selection: the IOs**

This thesis examines the protection approaches of two different IOs. Many organizations are important in shaping the protection agenda, and in undertaking protection activities in practice, but it is beyond the scope of this thesis to consider all humanitarian agencies engaged in civilian protection. I have focused my study on these two IOs for three main reasons:

First, I believe the ICRC and UNHCR to be the most significant in terms of the scale of their own operations as well as their wider influence on other protection actors. I use financial expenditure as an indicator of the size and scale of protection operations. The Financial Tracking Service (FTS) of ReliefWeb reports that UNHCR and the ICRC received the largest amounts of funding (USD208m and USD164m respectively) for the three year period 2006-2008 for protection/human rights/rule of law activities of any of the agencies included in the FTS. The United Nations Children's Fund (UNICEF) was in close third place (USD130m) after which there was a big jump to the Office of the High Commissioner for Human Rights (OHCHR) (USD64m). While these are not perfect
measures, they suggest that the ICRC and UNHCR have the largest protection budgets of all humanitarian organizations.

Both the ICRC and UNHCR also wield influence on other protection actors through a number of mechanisms. Each has responsibility for developing a particular branch of international law on protection. The ICRC especially is seen as a moral authority on protection, and during the second half of the 1990s led a series of annual workshops on protection involving professionals from the fields of human rights and refugee law, humanitarian law, field work and academia (Giossi Caverzasio 2001); a second series took place in 2009 (ICRC 2009). UNHCR is influential as the lead agency for the Global Protection Cluster under the ‘cluster approach’ of the UN humanitarian reform initiative, and in this capacity has developed protection handbooks for use by other humanitarian actors as well as UNHCR itself (Crisp et al. 2007; Global Protection Cluster Working Group 2010). Through its work with IDPs since the early 1990s, UNHCR has also developed a degree of moral and expert authority which enhances its influence (Barnett and Finnemore 2004).

Second, the two IOs I have chosen are the only institutions that have a truly international sphere of operations, and also have explicit mandates in international law relating to protection. Their global

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3 Data for the FTS is provided by donors or recipient organizations thus the figures do not include any funding which both the donor and the recipient choose not to report; thus donations within the Middle East, for example, may be underreported (Harmer and Cotterrell 2005). There may also be some double counting. Furthermore, the categorisation of funding as for ‘protection/human rights/rule of law’ may be defined differently by different data providers and may include activities other than those whose sole (or even primary) purpose is civilian protection.

4 The UN cluster approach refers to a coordination structure involving both UN and non-UN humanitarian organizations at both the global level and country level. Each cluster focuses on a particular aspect of emergency response: food security; camp coordination/management; early recovery; education; emergency shelter; emergency telecommunications; health; logistics; nutrition; protection; and water, sanitation and hygiene. At the global level the approach aims to strengthen preparedness and technical capacity. At country level, the aim is to improve predictability, accountability and partnership to improve prioritisation of resources and coverage of response. Each cluster has a clearly defined lead agency, and a provider of last resort. For conflict-induced IDPs, UNHCR is the Global Cluster Lead for the three clusters of protection, emergency shelter, and camp coordination and camp management. In situations where internal displacement is exclusively due to natural or man-made disasters, UNHCR has joint responsibility at the field level with UNICEF and the OHCHR. The ICRC does not participate in the cluster approach, though it acts as an observer at in many of the global-level cluster meetings.
reach and their legal mandates make them particularly interesting cases. The ICRC derives its mandate from the 1949 Geneva Conventions and 1977 Additional Protocols, according to which the organization is tasked with protection and assistance during conflict, specifically through the oversight of international humanitarian law (IHL). UNHCR is mandated by successive resolutions of the UN General Assembly and is charged with overseeing international refugee law (IRL) in the form of the 1951 Convention and its 1967 Protocol. While this does not, for the most part, relate to the protection of civilians during armed conflict, the UN General Assembly has frequently referred IDP protection to UNHCR, and under the new cluster approach, UNHCR is the lead agency at the global level for civilian protection in armed conflict contexts.

UNICEF and the OHCHR are the only other mandated protection agencies. UNICEF is mandated to promote and protect child rights (as enshrined in the 1989 UN Convention on the Rights of the Child) by supporting the work of the Committee on the Rights of the Child. I do not include UNICEF in my analysis because of its specialised focus on children, and because its mandate is for child protection broadly conceived rather than for the protection of children during conflict per se. The OHCHR is mandated by the international community to promote and protect the human rights that are guaranteed under international law and stipulated in the Universal Declaration of Human Rights of 1948. While various aspects of human rights law are applicable to civilians during armed conflict (though many are not, since all but the most basic human rights are derogable during times of national emergency), the organization does not have responsibility for the implementation or oversight of a body of law relating specifically to protection.

International non-governmental organizations such as Oxfam, and UN agencies such as the World Food Programme (WFP), may engage in protection work, but they do not have a legal mandate from the international community requiring them to do so. The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) does not have a specific protection mandate, and although it does engage in some protection work, its focus is on direct relief and works programmes. Further, it is operational only in one region and does not have responsibility
for overseeing a particular treaty or body of international law. Thus I do not focus on such organizations.

Third, while the ICRC and UNHCR share many similarities in their understanding of protection (Forsythe 2001), the two cases also offer variation along some important dimensions: notably their relationships with states and their organizational structures, cultures and history. While both are financially dependent on a relatively small number of states, and both have a legal mandate from states to supervise particular bodies of international law, UNHCR is politically dependent on states in a way that the ICRC is not. The ICRC maintains formal independence in setting its broader mandate while the UNHCR mandate is set by the UN General Assembly. Internally there are also significant differences between the two IOs in terms of organizational structure and culture. The position of the High Commissioner is extremely important in setting UNHCR policy direction, whereas the ICRC president plays an important role in public relations but has less input into policy direction. Within UNHCR, policy decisions are made through top down processes and the rationale behind decisions is not widely communicated. In the ICRC, by contrast, delegates in the field have greater input into policy making, and the reasons for particular policy decisions are well communicated and understood throughout the IO. Finally, while neither IO was initially set up to work on the protection of civilians during internal armed conflict, each IO had previously worked on a different set of issue-areas thus providing variation in terms of the broader IO mandate.

The pair of chapters on the ICRC (chapters three and four) and the pair on UNHCR (chapters five and six) each represent a case study in its own right. Taken together they combine the advantages of in-depth cases studies and the advantages of comparative analysis. In chapters three to six I draw out the insights that can be gleaned from each case individually, and in the conclusion I add those insights that derive from a comparison of the two cases.

The unit of analysis in this thesis is the IO. More specifically, I analyse the ‘ICRC approach’ and the ‘UNHCR approach’ to protection. Just as numerous critiques of realist approaches to IR have pointed out the problems of treating the state as a black box, so too is it problematic to treat an IO
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as a black box. However, for the purposes of this thesis, there is good reason to treat both the ICRC and UNHCR as unitary actors. Both the ICRC and UNHCR have centralised decision-making structures (even if the processes by which decisions are made involve different levels of input from the field level) and within each IO, there is sufficient continuity of understanding of their respective institutional approaches to justify their treatment as unitary actors. This is unquestionably the case for the ICRC. For UNHCR the picture is more complicated. There is less clarity as to what the protection approach is and entails, thus it was more difficult to characterise. Nonetheless, there is an underlying shared understanding of the objectives, activities and actors in in-country protection. Thus in characterising the approaches taken by the ICRC and UNHCR to the protection of civilians in internal conflict, I treat the IOs as unitary actors and speak of a singular approach within each IO.

That said, I do examine the internal workings of each IO in order to explain why these institutional approaches to protection have been adopted. Moreover, in considering the implementation of the approaches separately from the characterisation of the approaches, I explicitly unpack the black box into two levels and examine the relationship between them: global policy at the headquarters level, and the implementation of that policy at the field-level. While this still obscures variation within each level and oversimplifies the ‘field-level’ in particular, it nonetheless provides an important corrective to studies which ignore even this basic distinction, and facilitates an assessment of the global level policy approach in the light of field-level experiences of implementation.

2. Case selection: Colombia

I use the Colombian context to examine the implementation of the ICRC and UNHCR protection approaches. Analysing the protection work of the two organizations in a concrete setting serves two purposes. First, it provides an illustration of how their policies are translated into practice thus providing a fuller picture of their protection approaches, particularly in terms of the activities undertaken. Second, their experiences at the level of implementation offer insights into the extent
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to which the approaches are adapted to the contexts for which they are intended, and into the
effectiveness of those approaches in practice. I selected Colombia for two main reasons.

The first relates to policy importance. Although the conflict in Colombia has been of relatively low
intensity in terms of fatalities, with around 2150 conflict-related deaths annually between 1988 and
2002 (Restrepo et al. 2006), it has had a serious impact on civilians with particularly high levels of
internal displacement: depending on definitions and data collection methods, there are between 2.6
and 4.3 million IDPs (of a total population of 45.6 million). While the conflict in Colombia is
largely contained within the borders of the country (with occasional spillovers into border regions
of Ecuador and Venezuela), arguably Western states have a particular responsibility to take an
interest in a conflict which is substantially financed through US (and to a much lesser extent EU)
funding for the Colombian military, and through income from drug trafficking (to Western states)
for the illegal armed groups.

Second, Colombia is one of only a few countries where both the ICRC and UNHCR have large
operations (as measured by financial commitment). Additionally, the ICRC has access to all parts
of the country and UNHCR is working with a relatively strong state, and these are key factors for
the implementation of their respective approaches. As it offers a near-ideal working environment
for both IOs, Colombia presents something of a ‘least likely case’ for problems with the
implementation and outcomes of their approaches to protection (George and Bennett 2005, p. 121).
This suggests that any problems revealed in the Colombian context are likely to be at least as bad
elsewhere, and should direct us to a reconsideration of the policies themselves.

3. The Colombian context

In this section, I provide a brief overview of the Colombian conflict and the key actors in that
conflict. This is not intended to be a comprehensive analysis and does not examine the causes or
motivations behind the conflict, the complexity of which renders succinct explanation impossible.
In this section, therefore, I seek only to provide sufficient outline of the conflict parameters and
participants to frame the analysis of ICRC and UNHCR activities in Colombia in chapters four and six.\textsuperscript{5}

The origin of the armed conflict in Colombia is most commonly dated to the formation of the main guerrilla groups in the 1960s (Richani 2002), but many cite its historical roots in the civil war known as \textit{La Violencia} during the middle of the twentieth century (Bergquist et al. 1992), or even as far back as the independence of the country from Spain in 1810. While some authors emphasise the connections between different periods of violence (Eisenstadt and García 1995; Sánchez 1985), others underline the lack of continuity between different phases of violence (Pécaut 1999, p. 153; Safford and Palacios 2002, p. 346). The origins of the Colombian conflict are not the only contested dimension; so too is the existence and characterisation of the conflict itself.

Official Colombian discourse concerning the conflict varies with (and often displays inconsistencies within) each administration. During and since his presidency, Álvaro Uribe (2002-2010) has insisted the country was in a post-conflict phase. The current president, Juan Manuel Santos, considers conflict to be ongoing, and this has led to a rift between Uribe and Santos (who had served as Defence Minister in Uribe’s government) (Wells 2011). In terms of determining the international legal and policy framework, the relevant questions are whether or not there is armed conflict, and if there is, whether that armed conflict is of international character or not. Different cross-country datasets employ different definitions of ‘civil war’ and ‘armed conflict’, usually defining these categories in terms of arbitrary thresholds in the number of battle-related deaths. They further employ different methods of calculating battle-related deaths thus yielding different data and different conclusions as to the start date and nature of the Colombian conflict (Restrepo et al. 2006, p. 104). The ten cross-country datasets analysed by Restrepo et al (2006) cited different start dates for the Colombian conflict (ranging from 1963 to 1986) but all considered the conflict to

be ongoing at the time of their last update. Therefore it is reasonable to conclude there is a conflict in Colombia. This conflict is primarily of an internal character. Thus we can conclude that the situation is one of conflict of a non-international character. In relation to the Colombian context, I use the terms conflict, armed conflict and internal conflict interchangeably.

The Colombian conflict involves a number of different (traditional and ‘new’) armed groups and is dynamic in nature. The longstanding groups still in operation are the military forces of the state (army, navy, air force and police), and two main left-wing guerrilla groups: the Revolutionary Armed Forces of Colombia and the National Liberation Army (known by their Spanish initials FARC and ELN respectively). During the 1980s, wealthy landowners created private armies to protect themselves and their economic interests from guerrilla violence. The paramilitary organizations that resulted formed a national, umbrella organization in 1997, known as the United Self-Defence Forces of Colombia (AUC). In 2003, the AUC began to demobilise, and by the end of the demobilisation process in mid-2006, more than 30,000 paramilitary combatants had formally demobilised (Oficina Alto Comisionado para la Paz 2006, p. 8). However, in reality many of the structures remain because some paramilitaries never demobilised and others rearmed after demobilising. There has thus been an emergence of so-called new groups using the same structures, controlling the same zones and including some of the same individuals as the former AUC blocs in Colombia (Denissen 2010; International Crisis Group 2007; Porch and Rasmussen 2008; US State Department 2009, 2010). I refer to these groups as the new groups, emerging groups or neo-paramilitaries.

The public forces are highly structured and well financed. Currently, they are militarily ‘on top’ in the conflict and this impacts positively on their behaviour towards civilians. Nonetheless, in recent history they have posed a threat to civilians through various acts, intentional and unintentional. The US 2008 Human Rights Report on Colombia mentions extrajudicial killings, forced disappearances

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6 A number of other left-wing guerrilla groups have ceased to exist – for example, the EPL (1967-1991), the M-19 (1973-1990), Quintín Lame (1984-1991), and the ERP (1985-2007).
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and insubordinate military collaboration with new armed groups and former paramilitaries who never demobilised (US State Department 2009, 2010). Links between the national military and the former AUC paramilitary organizations have been well documented and confirmed by the Supreme Court. These links permeated all levels of the public forces and went beyond the military to politicians at both local and national levels (Hanson 2008). Through acts of both omission and commission, the army in particular has facilitated atrocities perpetrated by the former paramilitary blocs against the civilian population and as such the public forces have had an (albeit sometimes indirect) impact on civilian security. Incidents of collaboration between some members of the government security forces and the emerging armed groups have also been documented (US State Department 2009, 2010). The public forces have also been directly responsible for reducing civilian security. For example, in the early years of the Uribe administration, the “falsos positivos” scandal emerged. In efforts to meet targets for combating the guerrilla, Colombian security forces (often with the involvement of paramilitaries) have murdered civilians and then dressed them in guerrilla uniforms to pass them off as guerrillas killed in combat (US State Department 2009, 2010).

The FARC is estimated to have 8,000-10,000 troops, down from a high in 2002 of around 18,000 (International Crisis Group 2010; United States Southern Command). The ELN is thought to have 2,200-3,000 troops (Hanson 2009). The ELN has posed a lesser risk to civilians than the FARC (Restrepo and Spagat 2004, p. 4). Both groups pose threats to civilians primarily through kidnapping, extortion, bombs, landmines, and the recruitment (with varying degrees of coercion) of civilians (particularly teenagers) into their forces. Kidnapping for ransom was once the primary means of generating income for the FARC, and to a lesser degree for the ELN, which also relied heavily on extortion of oil companies. However, they now both derive most of their income from involvement in the production of illegal narcotics, and rates of kidnapping have declined since the 1990s (Hanson 2009). Guerrilla bombings in both large urban and in rural areas have been a significant cause of civilian injuries, and also of some deaths (Restrepo and Spagat 2004).
Landmines are used extensively, but in Colombia the majority of landmine casualties are military (International Campaign to Ban Landmines 2009, p. 296).

While massacres have also been committed by Colombian guerrilla groups, they were more commonly the tool of the former paramilitary organizations (Restrepo and Spagat 2004). Assassination or the threat of assassination has been used by the former AUC paramilitary groups and the neo-paramilitaries to punish or prevent civilian behaviour which runs counter to paramilitary interests. Specifically, individuals have been targeted if they collaborated (or were thought to collaborate) with the guerrilla, if they are trade unionists or leaders of displaced or indigenous communities, or if they are involved in land or human rights activism. Whereas the guerrilla groups have generally carried out assassinations quite openly, a number of disappearances have been attributed to the paramilitaries. According to the Office of the Human Rights Ombudsman of Colombia, the official number of disappeared in Colombia is over 60,000, and the true number may well be higher than the official number (Defensoría del Pueblo 2011). Sexual violence against civilians is perpetrated by paramilitaries more than any other party to the conflict. Of a sample of testimonies of incidents of sexual violence connected to the armed conflict collected by the Constitutional Court, 58% were attributed to paramilitaries, 23% to government forces and 8% to guerrillas (Oxfam 2009, p. 14).

As the newest actors in the context of organised violence in Colombia, the emerging groups are the least known quantity. In 2011, the Government spoke of 15 groups with around 2,800 members, while NGO estimates ranged between 7,100 and 8,200 (International Crisis Group 2011). It appears that the most organised and widely-present groups are the Águilas Negras, ERPAC, Daniel Barrera, the Rastrojos, the Urabeños, and the Paisas. The level of continuity or distinction between the former AUC and these emerging groups is disputed, as is the question of whether they constitute parties to the conflict, or criminal bands. The government defines all of the new groups as criminal gangs unconnected to the conflict, but wider opinion is divided as to their exact nature (International Crisis Group 2007, p. 1).
The official characterisation of different armed groups is important. First, it shapes the state response to these armed groups: those classified as being related to the conflict are dealt with by the army, while those classified as criminal gangs are dealt with by the police. Second, it determines how the state responds to the victims of violence perpetrated by these groups. For example, people who are forced from their homes by the groups the government classifies as criminal gangs are not considered to be displaced by the conflict, and as such are not entitled to IDP assistance from the government. However, the nature of many of these groups is as yet simply unknown. Their level of organisation, their political objectives (if any), their economic interests and relationships, the level of control they have over territory and populations, and their connections with traditional armed groups are not clear. The years ahead may reveal that some groups are clearly connected to the conflict while others are not.

To date, these emerging groups remain smaller and less stable than the former AUC paramilitary groups, and they do not report to a central authority (Verdad Abierta 2010). Nonetheless the threats they pose to civilians seem to echo those of the former AUC, albeit on a smaller scale. For example, labour and union leaders as well as land activists have continued to be targeted for assassination in the department of Córdoba (Welsh 2010). Similarly, leaders of displaced communities have been threatened in Bolívar department in an attempt to prevent land restitution (Verdad Abierta 2011). Threats are made to individuals, but there have also been several reports of neo-paramilitaries circulating pamphlets with more general threats against leaders, NGOs or guerrilla collaborators among others, and this creates a climate of fear.Disappearances continue to be carried out by the emerging groups, and as they have grown in size, the number of massacres has increased (Verdad Abierta 2010). According to my interviews in Colombia, some of the new groups have been using sexual violence as a weapon of war, including incidents of public gang rape by the Rastrojos.

In some cities, demobilised AUC combatants have re-grouped into urban gangs. In Medellín, for example, a reduction in violence following the demobilisation process has since been reversed and there are now thought to be between 400 and 600 gangs in the city, many of whose members are
former AUC combatants (Amnesty International 2005; Rozema 2008). The links with the conflict extend beyond continuity of personnel to economic connections since the city gangs are involved in the micro-trafficking of drugs produced by parties to the conflict. The consequences of this urban violence for local communities also echo the consequences of the wider conflict for affected rural communities. In Medellín, for example, urban gangs perpetrate homicides, forced disappearances, forced recruitment and abuse of minors, limitation of movement and public transport, extortion of public transport and small shops, restrictions on access to educational and healthcare facilities and sexual violence. Within the city, there are “invisible borders” demarcating the neighbourhoods controlled by different gangs. Children often stop going to school because they cannot cross into the next neighbourhood, and intra-urban displacement is common.

Civilians in Colombia face the greatest threats in areas where more than one armed group is present. The multiplication of groups has thus led to increased negative impact on civilian security. Contestation of a zone is most common where the area is of strategic importance – either to armed groups in general (for example, an area that is rich in natural resources or serves as an important transport route) or to a particular group (such as areas that are home to FARC fronts that are thought to be financing other fronts, and are thus key targets for the national military). Contestation of territory occurs not only in the rural areas, but also within the big cities such as Medellín, and with similar consequences for civilians (Rozema 2007).

In sum, Colombia is characterised by an internal conflict fought by multiple armed parties, and significant levels of urban violence perpetrated by groups not necessarily directly connected to the wider conflict. There are several armed non-state actors who pose serious threats to civilians. In addition, the public forces pose direct and indirect threats. It is in this context that the ICRC and UNHCR work to protect the civilian population, and in chapters four and six I examine their efforts at doing so.
4. Sources

The thesis is based on data from key informant interviews, policy documents produced by the ICRC and UNHCR, and secondary literature. Chapters one and two draw mainly on academic literature to set out the conceptual frameworks and context for the thesis. Chapters three to six triangulate between interviews, policy documents and secondary literature in order to characterise, explain and critique the approaches taken by the ICRC and UNHCR to civilian protection in internal conflict.

Chapters three and five examine the institutional approaches to protection as articulated at the global policy level of each IO. There are several published institutional histories of the ICRC (Boissier 1985 (1963); Durand 1984; Forsythe 2005; Hutchinson 1996) and UNHCR (Holborn 1975; Loescher 2001a), and these provide sources for my analysis of their respective organizational cultures and institutional histories. Additionally, there exists some description of the understanding of protection within each IO (Bugnion 2003; Forsythe 2001)\(^7\) which contributes to my characterisation of their approaches to protection. For the ICRC, I draw mainly on secondary literature, but a large part of this is written by former or current members of ICRC staff, and in many cases represents a deliberate statement of ICRC policy. For UNHCR, a greater range of policy documents are publicly available. My analysis in chapters three and five focuses on the assumptions and logic of each approach, and the reasons that each IO adopted its particular approach. As my focus here is on the content rather than the application of the approaches, it is appropriate to draw heavily on internal policy documents. I assess the coherence rather than the impact of their policies, and this does not require the same degree of corroboration with external sources.

Chapters four and six examine the implementation of protection policy by the ICRC and UNHCR in Colombia. The aim here is two-fold: (1) to understand how the approaches at the global level are

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\(^7\) These, however, are notable exceptions in what is otherwise an absence of attempts to conceptualise different understandings of protection.
translated into practice at the local level; and (2) to draw lessons from the experience of implementation with respect to the appropriateness and adequacy of the policy approaches. There exists little or no secondary literature on the operations of either of these two IOs in Colombia. Thus these chapters are based almost exclusively on interviews I conducted during fieldwork in Colombia between July and September 2010. These chapters are concerned with the experience of policy implementation, and thus it was important to reveal what the two IOs do in practice in Colombia. Analysis of this experience offers insights as to the adequacy and appropriateness of the policies themselves.

I travelled to all the field offices in which I was able to set up a meeting, and in most cases I met with the head of the office. Interviews were conducted in English or Spanish, and followed a semi-structured format. The key advantage of these interviews is that they provide original and firsthand accounts of the work of both IOs across Colombia. The disadvantage of relying on data from interviews with staff from the IOs under scrutiny is that they may wish to present a picture of their work which is somewhat at odds with reality. Given this concern, my analysis of the interview data takes into account not only what my interviewees recounted but also the metadata (Fujii 2010). In other words, I pay attention not only to their descriptions of their work, but also to consistency or contradictions across the descriptions by different interviewees, to the questions interviewees asked me, and to their confidence or uncertainty in explaining their work.

A list of interviewees is provided in annex 1. Many of my interviewees spoke openly and frankly with me about the nature of their work and the problems they face, as well as about their perspectives on the Colombian conflict and the different actors in that setting, and I am very grateful for this input. In order to avoid compromising the position of either the ICRC or UNHCR, or of any individual members of staff, and to assure the confidential nature of the interviews, I do not attribute data to specific interviewees.
The thesis is structured as follows. **Chapter one** provides empirical and conceptual background on civilian protection. I show how and why protection has taken on an increasingly prominent role in international politics and humanitarian action, and how this in turn has contributed to lack of clarity on the meaning of protection. I argue that conceptual confusion and contestation impacts negatively on protection in practice, and I show how a tendency to conflate the objectives and activities of protection has enabled activities to be pursued without due attention to goals and outcomes. I make the case for a narrow understanding of protection, focused on physical safety and security. Drawing out the different dimensions and definitions of the concept of protection, I also provide a framework through which the ICRC and UNHCR approaches to protection analysed in chapters three to six can be categorised and understood. Finally, I outline existing explanations for shortcomings in protection outcomes and argue that they are underspecified because they focus on problems with the implementation of policy rather than critiquing the logic and assumptions of the policies themselves.

**Chapter two** reviews literature on institutional change and IO mandate expansion. I draw analogous hypotheses from existing explanations of institutional change to set out a framework with which to assess the extent to which the approaches taken by the ICRC and UNHCR to protect civilians in internal conflict are driven by external factors (state preferences and the external institutional environment) and internal factors (core values, other issue-areas and bureaucratic personality).

**Chapter three** uses the framework from chapter one to characterise the ICRC approach to civilian protection during internal conflicts and, drawing on the hypotheses from chapter two, argues that this approach is best explained as a consequence of internal factors, most notably the work of the IO on other issue-areas. For the ICRC, civilian protection is primarily about threat-reduction, and in conflict contexts both states and non-state armed groups are seen as key protection actors. However, the IHL framework which underpins ICRC work in internal conflict was developed
through analogy to IHL for international conflict. It has not been sufficiently adapted for internal conflict, remaining state-centric and neglecting non-state armed groups.

Chapter four illustrates how the ICRC approach to protection is put into practice in Colombia. While the ICRC does focus on the perpetrators of violence – both state and non-state – in its work at the field-level, its work is framed around an international legal framework which prioritises states. ICRC delegates in Colombia prefer not to use this legal framework in their dialogue with armed non-state actors. This suggests either that the assumption that a legal framework extends protection is problematic, or that this is not the most appropriate legal framework for dealing with these non-state armed groups.

Chapter five mirrors chapter three, but with respect to UNHCR. Again, the work of the IO on pre-existing issue-areas is shown to be the most significant factor shaping the approach taken to the in-country protection of civilians. Specifically, I argue that the UNHCR approach to protecting civilians during internal conflict has been shaped by the institutional understanding of protection as per the original UNHCR mandate to provide protection and solutions for refugees. I show how UNHCR thus emphasises the realisation of rights (broadly conceived) and the role of the state. The bureaucratic personality of UNHCR does not allow for field level experience to feed back into policy decisions. As a result, the approach has not been well adapted to the specific task of protection during armed conflict. Specifically, the approach neglects violence and the perpetrators of violence, and this limits the potential of UNHCR protection activities.

Chapter six analyses the implementation of the UNHCR approach to protection in Colombia. I show that UNHCR Colombia seeks primarily to link up populations of concern with the social agencies of the state to help them claim their rights as enshrined in domestic law. To a great extent, UNHCR activities neglect the core protection concerns of affected populations (conflict and violence), and the role UNHCR plays in supporting the state calls into question its neutrality and its ability to hold the state to account.
In the conclusion, I draw out the key theoretical insights and policy implications of my analysis, as well as suggesting the broader relevance of my findings and areas for further research. I conclude that the approaches taken by the ICRC and UNHCR to protecting refugees, IDPs and other civilians during internal armed conflicts are shaped more by factors internal to the IO than by external factors. Of the internal factors at work, the nature of each IO’s prior work on other issue-areas within its mandate is the most significant factor and the understandings, objectives and methods of protection are replicated from the old tasks to the new task. The effectiveness of the approach to the new issue-area depends on the closeness of fit between issue-areas and, where there is not a close fit, on the extent to which the approach is adapted to the new issue-area. To the extent the approaches are not well-adapted to the new issue-area, the scope of protection offered by the approach is limited. To extend this scope, I suggest UNHCR should pay greater attention to the perpetrators of violence and the ICRC should rethink the normative framework on which it bases its work to take better account of armed non-state actors. To the extent that they can extend the scope of protection they provide, they should do so, but they should also acknowledge its limits. Given the practical and normative constraints on humanitarian organizations, I argue that protection by such actors will always be limited in scope. Honesty about their limitations is essential both to ensure they do not make (potentially life-threatening) false promises to civilians about the kind of protection they can offer, and to minimise the potential for their work to be used by others (particular powerful donor states) to conceal political inaction and to justify restrictive asylum policies.
Chapter 1: Context, concepts and critiques of protection

This chapter provides empirical and conceptual background for chapters three to six. I show how and why protection has taken on an increasingly prominent role in international politics and humanitarian action, and how this in turn has contributed to a lack of clarity on the meaning of protection. I argue that conceptual confusion and contestation impacts negatively on protection in practice. A tendency to conflate the objectives and activities of protection has enabled activities to be pursued without due attention to goals and outcomes and, related to this, evaluations of protection in practice have focused on the implementation of activities rather than on the impact of those activities or the coherence of the policies of which those activities form a part.

The chapter critically reviews literature on conflict, humanitarian action and protection from a variety of sources. In explaining the increasing prominence of protection in international politics, I draw on academic literature on various aspects of forced migration and humanitarianism. Analysis of the concepts and meanings of protection within the humanitarian sector and of evaluations of protection work is based mainly on a critical examination of handbooks on protection for humanitarian agencies and their staff, policy statements and humanitarian policy research. The discussion of civilian security is primarily based on secondary literature from the multidisciplinary field of conflict studies.

In what follows, I start by examining changes in the world which have raised the profile of protection in international politics generally and in humanitarian action specifically. I then analyse the concept(s) of protection within the humanitarian sector, explaining how protection is understood, and providing a framework to explain the approaches taken by different agencies. This facilitates the systematic characterisation of the ICRC and UNHCR approaches in chapters three and five. I demonstrate some of the practical problems associated with the ways in which protection is commonly conceptualised and understood, and I make the case for protection to be narrowly defined with the objective of protection conceptualised in terms of civilian security. I follow this with a discussion of the determinants of civilian security and the implications of this for
the objectives of protection. Finally, I provide a critique of existing explanations for shortcomings in protection within the humanitarian sector, arguing that such explanations are underspecified because they fail to analyse the efficacy of the policy approaches themselves, focusing instead on problems of implementation and factors beyond the control of humanitarian agencies.

The rise in importance of the protection of civilians

In this section I describe the growing importance attached to civilian protection by various actors at the international level, and outline the main reasons for its increased salience. The change is evident in the parlance of the UN General Assembly, the UN Security Council, national governments and militaries, international humanitarian agencies, and the media, and in the mandates of UN peacekeeping forces. The growing importance of civilian protection is characterised by four inter-related shifts, related to: (1) the actors involved; (2) the intended beneficiaries; (3) the content of protection activities; and (4) the contexts in which those activities are undertaken.

First, more actors are engaging in civilian protection than ever before. There has been a trend for non-mandated humanitarian organizations\(^1\) to take on increasing roles in protection. These actors include the UN Office for the Coordination of Humanitarian Affairs (OCHA), the International Organization for Migration (IOM) and a number of INGOs that have traditionally focused on humanitarian assistance, such as Oxfam and World Vision. Members of this latter group have sought to incorporate protection into their agenda either through adding protection-specific programming or by seeking to make their relief programming protection-sensitive, and various manuals have been written to assist them with these tasks (InterAction 2004, 2006; Oxfam 2005; Paul 1999; Slim and Bonwick 2005). The expanded mandate of these agencies is a reflection of the trend towards subcontracting public functions to NGOs and a shift from bilateral funding to the

\(^1\) Four organizations have a specific mandate in international law for the protection of (particular categories of) civilians: the ICRC, UNHCR, UNICEF and OHCHR. Other organizations, including UN agencies and NGOs, thus fall into the category of ‘non-mandated’ organizations.
funding of INGOs (Duffield 1997, pp. 527, 532). Additionally, the Security Council and international peacekeeping forces have increasingly become involved in civilian protection, as evidenced by the exponential growth in Security Council resolutions explicitly referring to the protection of civilians, and the increasingly frequent mention of protection in peacekeeping mandates.

Until 1999, the Security Council did not make reference to the protection of civilians in peacekeeping mandates (Holt and Berkman 2006). In earlier missions, notably Bosnia in 1992-3 and in Kosovo in 1999, a civilian protection role was implicit in mandates from the Security Council. Since 1999, however, multiple Security Council Resolutions have made explicit reference to civilian protection in mission mandates for peacekeeping forces. Numerous reports of the Secretary-General, presidential statements, and Security Council thematic debates have also been concerned with the protection of civilians. However, the increased willingness to mandate foreign military forces to protect civilians in conflict situations does not necessarily equate to an increase in effective protection. The case of Darfur since 2003 is illustrative. The Security Council was criticised for taking so long to mandate an international military force into Darfur (Grono 2006). Once the African Union/United Nations Hybrid operation in Darfur (UNAMID) was in operation, it was argued that it was under-equipped and under-resourced (Amnesty International 2009, p. 2). Further, it has been claimed that overemphasis on getting UN troops in (and on the control, number, mandate and financing of the force) led to the neglect of questions about the strategic purpose and concept of operations (de Waal 2007). As a consequence, UNAMID is deemed to have had limited effectiveness in protecting civilians.

Second, the scope of protection has been extended beyond refugees and non-combatants in conflict situations to encompass those displaced by any form of disaster and those at risk more generally.

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The agencies with protection mandates in international law have come under pressure to protect various groups beyond their traditional populations of concern. For example, UNHCR is now concerned with IDPs as well as refugees. Originally created to deal only with those who had crossed an international border, the agency gradually expanded its role with new populations identified as being of concern, and shifted the emphasis of its activities. In the 1980s, the main shift was away from legal protection towards the provision of assistance to refugees in camps. In the 1990s, UNHCR took on a more general role in humanitarian relief and engaged with repatriation operations. Since the late 1990s, UNHCR has taken on increasing responsibility for IDPs on an ad hoc basis and now, more formally, under the UN cluster approach, through which UNHCR is mandated to play a lead role in coordinating protection for IDPs.

Third, for many actors, the meaning of protection has expanded to include a broader range of activities. Traditional and new protection actors are engaged both in practical efforts on the ground and in the further development of the legal and normative framework for protection. There has been ‘an explosion of norm-building regarding protection of civilians threatened by conflict’ since the end of the Cold War (MacFarlane and Khong 2006, p. 165). An example of a specific legal development is the Ottawa Treaty to ban landmines, which came into force in 1999. The Guiding Principles on Internal Displacement, published by the UN in 1998, provide a soft law framework for the protection of IDPs. In 2005, heads of state at the 2005 World Summit endorsed ‘the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity’ including military action under chapter VII ‘should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity’.⁴

Within the humanitarian sector specifically, there has also been an expansion in the number of activities undertaken in the name of protection. Humanitarian agencies have both undertaken new

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⁴ UN General Assembly 2005 World Summit Outcome, 24 October 2005, A/RES/60/1.
activities and redefined existing activities as protection. Such redefinition is facilitated by the broad
definition of protection being employed by many actors (discussed in the next section of this
chapter). Additionally, linkages established between particular assistance activities and traditional
protection concerns have led an increasing range of activities to be seen as related to protection
(InterAction 2004). Greater emphasis on protection by humanitarian agencies takes different
forms in different organizations and may entail: (1) viewing assistance activities through a
‘protection lens’ so as, at a minimum, to avoid generating side effects from the provision of
assistance that impact negatively on protection outcomes (e.g. considering lighting around
latrines); (2) using assistance interventions strategically in order to meet not only the assistance
objectives but also protection objectives (e.g. providing fuel-efficient stoves); or (3) introducing
specialist or stand-alone protection programming dedicated to meeting protection objectives (e.g.
monitoring and reporting of IHL violations). In the oft-cited example of a situation in which
sexual abuse against women occurs as they walk long distances to collect water or firewood, the
provision of assistance (water or fuel supplies) in a more safely accessible location (for example,
close to the refugee camp) reduces their vulnerability and hence contributes to their protection.

Fourth, the range of situations in which protection activities are undertaken has expanded to
include ongoing conflict or generalised violence, natural disasters and post-conflict situations.
UNHCR, for example, has become more involved with protection in the midst of armed conflict
and with repatriation in post-conflict situations. The ICRC, on the other hand, increasingly works
on protection in contexts of violence that fall below the threshold of armed conflict including, for
example, situations of political violence. While its core mandate is to protect those hors de combat
in the context of armed conflict, the ICRC retains a right of ‘humanitarian initiative’ upon which
its protection work in other situations of violence is based. According to article 4(2) of the Statutes
of the ICRC, it ‘may take any humanitarian initiative which comes within its role as a specifically
neutral and independent institution and intermediary, and may consider any question requiring
examination by such an institution.’ This right of humanitarian initiative has been increasingly
invoked in recent years as the ICRC more and more works in situations of violence that fall short of armed conflict.

Three key sets of actors have driven these changes: (1) a number of states (especially Western countries of asylum), and in particular their strategies and negotiations within the Security Council and the General Assembly; (2) international humanitarian organizations; and (3) epistemic communities. None of these three is entirely independent of the other two and their actions have been mutually reinforcing. Further, their actions have been conditioned by particular events and by the broader political context within which they are operating. During the 1990s, there were a number of so-called complex emergencies, ‘humanitarian crises that are linked with large-scale violent conflict – civil war, ethnic cleansing and genocide’ (Keen 2008, p. 1). As Diane Paul suggests, the ‘crises in Rwanda, the former Yugoslavia, Chechnya, Sierra Leone and elsewhere are considered complex in part because the traditional response to humanitarian crises – meeting needs for water, food, medicine and shelter – doesn’t get at the crux of the matter: the need for physical safety; for protection from deliberately inflicted harm’ (Paul 1999, p. 1). It is in the context of such events that a number of actors have pushed civilian protection up the international agenda.

At the level of states and multilateral political organizations such as the UN, there has been a shift in thinking about civilian protection. The end of the Cold War had two important consequences in this regard. First, it yielded the end of the bipolar structure that had constrained multilateral international action within sovereign states. Second, direct participation of major powers in ongoing conflicts was much reduced. Up until the end of the Cold War, the major powers were often primary protagonists in civil wars around the world, and as such were ‘in denial’ with regard to atrocities against civilians, preferring to view civilian casualties as an unfortunate but inevitable by-product of conflict (Cohen 2001; Slim 2004). In the 1990s, they were spectators more often

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5 Following Haas (1992), I define an epistemic community as ‘a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area.’
than protagonists and were thus more willing to recognise and acknowledge the level of civilian suffering, and the fact that it was often deliberately inflicted. There has also been a growing acknowledgement – among both states and multilateral organizations – that the state itself is very often the source of threat to its citizens, and that violations of individual human rights within a state may have impacts on other states (MacFarlane and Khong 2006, p. 165). These factors opened the way for greater political commitment to civilian protection.

Additionally, European and North American states adopted increasingly restrictive asylum policies and practices in the 1980s and 1990s as a result of four main factors: (1) increasing numbers were seeking asylum in the early 1990s (Gibney 2004, p. 4; Loescher 2001a, pp. 316, 319); (2) refugees were no longer seen to be of ideological and strategic importance (Chimni 1998, p. 351; Gilbert 1998; Loescher 2001a, p. 13); (3) there was rising domestic unemployment in northern states (Gibney 2004, pp. 97, 121; Loescher 2001a, p. 316); and (4) racism and the changing geography of asylum applicants who were no longer white Europeans fleeing central Europe but ‘jet age’ refugees able to cover much longer distances, mainly from Africa and Asia (Gibney 2004, p. 96).

As a consequence of the increasing reluctance of states to accept refugees, in-country protection came to be seen not only as a humanitarian solution but also as a means to contain would-be refugees in their countries of origin (Dubernet 2001; Duffield 1997; Phuong 2004; Shacknove 1993).

International humanitarian organizations have also played a part in pushing the protection agenda. As outlined in the introduction, a consensus has emerged that in complex emergencies the provision of relief assistance is insufficient, and has too often resulted in ‘well-fed dead’; worse, it has sometimes aggravated conflict and insecurity (Lischer 2005; Terry 2002). O’Callaghan and Pantuliano explain that the ‘realisation that, in many crises, the overwhelming direct threat to the civilian population is not lack of material assistance but lack of safety has caused many aid actors to reconsider the role of assistance in crises, and ask whether it should be accompanied, or even driven, by protection concerns’ (2007, p. 5). This has resulted in greater advocacy efforts to
highlight particular examples of civilian insecurity, and such advocacy may in turn have reinforced wider concern for protection issues among Western governments.

The increased focus on protection among international humanitarian organizations has itself been conditioned by the changing agenda of donor governments because most agencies are financially reliant on a small number of North American and Western European states. Powerful states have provided funding for humanitarian assistance to satisfy public demands for some kind of response while introducing or maintaining restrictive asylum procedures and avoiding more decisive political or military intervention in conflict contexts (Loescher 2001a, pp. 13-14). The increase in funding for emergency relief has been accompanied by a decline in overall development funding (Duffield 1997, p. 539). More specifically, the prioritisation of protection by donor states has encouraged humanitarian agencies to introduce protection programming or to repackage existing programming as protection to meet changing donor priorities (Pantuliano and O’Callaghan 2006, p. 18).

Concurrent with the increased emphasis on civilian protection by states, multilateral political institutions and international humanitarian agencies, a number of epistemic communities have also pushed the protection of civilians in conflict higher up the international agenda. For example, the idea of ‘human security’ was introduced by the United Nations Development Programme (UNDP) with the 1994 Human Development Report (UNDP 1994). Whereas security has traditionally been defined (primarily in military terms) in reference to the state, notions of human security shift the referent object from the state to the individual. Promoted in particular by Canada, Japan and Norway, the concept of human security has been further developed through the past ten years (Commission on Human Security 2003; Human Security Centre 2005; Tadjbakhsh and Chenoy 2007). Also during the 1990s, a group of researchers promoted the notion of ‘sovereignty as responsibility’ and highlighted the plight of IDPs and the lack of a legal framework for their protection (Cohen and Deng 1998; Deng et al. 1996).
The Brookings-Bern Project on Internal Displacement in particular was instrumental in driving the IDP agenda and in pushing for IDPs to be recognised as a category of concern. Individuals such as Roberta Cohen, Francis Deng, Walter Kälin and Erin Mooney played an important role in advocating for a separate humanitarian category for IDPs. Their publications in the 1990s focused not only on raising the profile of IDP needs, but also on reconceptualising the international community’s approach to sovereignty and intervention in situations in which national governments are unable or unwilling to protect their own citizens. The growing recognition of the particular needs of IDPs led the UN Secretary-General to appoint a Representative on Internally Displaced Persons in 1992. Subsequently, the Guiding Principles on Internal Displacement were published in 1998.

The concept of sovereignty as responsibility is also an intellectual antecedent of the Responsibility to Protect doctrine, and is explicitly discussed in the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS 2001, p. 13). The impetus for drafting this report came from Kofi Annan, then UN Secretary-General, but the Commission itself was composed of a group of independent individuals and funded by a number of international foundations as well as the Canadian, United Kingdom and Swiss governments. Based on worldwide consultations, the ICISS sought to reframe the terms of the debate on humanitarian intervention from a right to intervene to a responsibility to protect. The release of the report was overshadowed by the events of 11 September 2001, in the aftermath of which discussions on the use of force centred on the ‘war on terror’ rather than notions of protecting civilians. However, at the 2005 World Summit the key principles of the 2001 report were unanimously accepted by heads of state.  

Thus since the end of the Cold War we have seen an increasing number and greater diversity of international actors involved in protection and of intended beneficiaries, as well as an expansion of the range of activities undertaken under the rubric of protection and in the range of operational

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Chapter 1: Context, concepts and critiques of protection

contexts within which these activities are undertaken. These changes are the consequence of multiple factors relating in particular to the changing political context and driven by national governments, international organizations and epistemic communities. These expansions and the drivers behind them have shaped the way protection is understood, defined and conceptualised within the humanitarian sector, and this is the subject of the following section.

The concept(s) of protection

As more and more humanitarian agencies have used the term to describe their programming, the number of interpretations of ‘protection’ has correspondingly increased (Dolan and Hovil 2006, p. 3). The concept is rarely well-defined, and a shared understanding of protection is often wrongly assumed when in reality the concept of protection is (implicitly or explicitly) understood differently by different actors and in different contexts. Words lack meaning independent of their use and context, and a particular word such as protection means different things depending on the ‘language game’ within which it is used (Wittgenstein 2009). The focus in this section is on the meaning of protection within the humanitarian sector. I proceed on the basis that we need to understand the vocabulary of humanitarians in order to engage in a useful discussion of their work, but that we also need to challenge it and ask why it is different from everyday usage.

The humanitarian usage of the term ‘protection’ implies a much more expansive set of objectives and activities than everyday use would suggest. For example, the provision of psycho-social support to a rape victim is not protection in the everyday sense of the term, because it does not protect the victim from rape. For humanitarian actors, however, such an activity is very much a part of protection. DuBois (2010, p. 2) makes this point clearly, explaining that on witnessing a group of people beating a child on the ground, humanitarians would consider all of the following four responses to be protection whereas the public only think of the first: ‘1. Run across the street and stop the attacker; 2. Keep walking. Lobby for better street lighting; 3. Run home and write down everything you witnessed as a report for publication; and 4. Visit the family of the victim to offer replacements for torn clothing.’ This is not simply a bureaucratic point on definitions; some very real dangers emanate from the way humanitarian actors define protection differently from
how the rest of the world understands the concept. A promise of ‘protection’ can impact on civilian decisions regarding flight from danger or other self-protection strategies, and can serve as an excuse for political and military inaction by international actors. ‘Limited risk reduction or raising awareness should not be branded as “protection” activities when we know the word conveys so much more to the public’ (DuBois 2009, p. 10).

Not only is there a disjuncture between what is meant by protection in humanitarian circles and general usage of the term, there is a difference in terminology used by humanitarian agencies with respect to the civilians of the affected state and with respect to their staff. Whereas the language of protection is used with respect to civilians, the language of security is used with respect to staff. Thus humanitarian agencies speak of staff security and of civilian protection. Staff (particularly international staff)\(^7\) members are empowered individuals who have the right to security as an outcome, and their employers have the corresponding obligation to provide that security. By contrast, civilians of the affected populations, the intended ‘beneficiaries’ of humanitarian action, are constructed as victims lacking in agency. They lack any contractual relationship with international humanitarian actors whose responsibility to civilians stretches to protection as an activity with no guarantees of success. Of course, expatriate staff members of humanitarian agencies ultimately have no guarantee of their own safety and security, but three fundamental differences distinguish the notions of (expatriate) staff security and civilian protection.

First, the methods employed in the name of staff security differ from those of civilian protection. The provision of staff security will usually involve evacuation plans and will often include armed escorts and secure compounds. Second, and related, the level of acceptable risk is different for staff as compared with the target beneficiary population. For example, in some cases, refugee camps

\(^7\) International expatriate staff members (who come largely from the global North) are usually employed on far more generous terms than their local colleagues, not only in terms of salaries but also in terms of benefits such as health coverage (Fassin 2007). National staff members are often also subject to greater security threats (Stoddard et al. 2006). Despite this, in highly insecure contexts, most or all international staff members may be evacuated transferring heightened responsibility and heightened risk onto national staff.
have been deemed too dangerous for staff to be present at night. Third, there is often a significant
difference in the role of the individual in decisions concerning her own security/protection. Staff
members are attributed agency and often have some degree of control (or at least input into
decisions) over whether and how to operate and what security measures to take. By contrast
protection is largely seen as something that is ‘done’ to passive beneficiaries. There is a clear
distinction and a fundamental inequality between ‘the life that is saved, that of the victims, and the
life that is risked, that of those intervening’, between ‘those whose life is passively exposed,
because they are at the mercy of the bombs, and those whose life can be freely sacrificed, because
they have decided to stay’ (Fassin 2007, pp. 507, 512). In this context, the language of security is
empowering and is accorded to those with rights and to whom humanitarian agencies have an
obligation and responsibility, whereas protection implies a lesser commitment and refers to those
who lack agency.

In what follows, I interpret, explain and critique the ways that protection is commonly
conceptualised by humanitarian agencies and staff. I explain the ways in which the concept is
contested within the humanitarian sector, and I develop a framework within which I characterise
the protection approaches of the ICRC and UNHCR in chapters three and five. The framework is
summarised in Table 1 below.

Before analysing the meaning of protection itself, it is necessary to ask who is to be protected and
what they are to be protected from. Not all protection actors are concerned with the entire civilian
population. They may focus on a particular population of concern and may prioritise particular
themes. For example, UNICEF is concerned with the protection of children and UNHCR focuses
on refugees, IDPs and those at risk of displacement. The Mines Advisory Group works specifically
to clear landmines and other unexploded ordnances. Different approaches to protection can thus be
categorised according to their focus on threats against different groups of individuals (different
referent objects) and to the nature of the threats with which they are concerned. This is the first
dimension along which to characterise different protection approaches, as set out in Table 1.
Since words mean different things within different ‘language-games’, a dictionary definition of protection will not be sufficient, but the Oxford English Dictionary nonetheless offers a helpful starting point, defining protection as ‘the action of protecting someone or something; the fact or condition of being protected; shelter, defence, or preservation from harm, danger, damage, etc.; guardianship, care; patronage.’ Thus protection can be either an action or a condition or even, as in the case of shelter, a commodity. In the humanitarian context, the term protection may be used to refer to any of these things. References to protection by humanitarian agencies often imply it is a commodity to be delivered in much the same way as assistance. However, the ‘humanitarian protection agenda is not susceptible to the commodity-based approach that tends to characterise humanitarian assistance, nor to the kind of quantitative analysis that may underpin it’ (Darcy and Hofmann 2003, p. 6). Protection is not a physical item and cannot take physical form, thus protection by humanitarian agencies should not be understood as a commodity, but it can certainly be both an objective and an activity.

The objectives and activities of protection, though distinct, cannot be understood entirely independently from one another (Goodwin-Gill 1989, p. 17). Because protection can be both an objective and an activity, and the two are closely related, there is a dangerous tendency to conflate the two. In this way, the activity (or activities) of protection come to be seen as the objective(s). Thus humanitarians talk of a ‘protection gap’ in referring either to a lack of legal coverage and judicial protection, as in the case of Palestinian refugees under the auspices of the UNRWA, or to the lack of coverage of a particular area by humanitarian organizations due to, for example, access restrictions. However, ‘it is not the lack of protection activities or legal protections, it is the surplus of violence that should be fingered as the primary problem’ (DuBois 2009, p. 3). This underscores the need to conceptualise the objectives (and outcomes) of protection as distinct from its related activities. It also implies that legal protection does not equate to physical protection, and the

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8 UNRWA is mandated for relief and works and not for protection. However, those refugees who fall within the mandate of UNRWA are excluded from refugee status and rights under the 1951 Refugee Convention and its 1967 Protocol.
relationship between the two needs interrogating. The particular understanding of this relationship contributes to the second element in my framework for characterising an approach to protection (Table 1).

The most widely agreed-upon definition of ‘protection’ within the humanitarian sector came out of a series of workshops organised by the ICRC between 1996 and 2000, according to which the concept of protection encompasses ‘all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law and refugee law’ (Giossi Caverzasio 2001, p. 19). This definition conceptualises protection as an activity, though the activity itself is not specified and is only defined in terms of its related objective. The objective itself is characterised by its broad nature and its legal focus.

The breadth of this rights-based definition facilitated its widespread acceptance among both humanitarian and human rights experts from a diverse range of agencies. Instead of defining protection in terms of the overlap between different approaches, consensus was achieved through an inclusive – and hence broad – definition. However, it encompasses such an expansive range of rights⁹ that it allows a wide range of humanitarian activities to be reframed as protection without identifying core and shared protection concerns, and thus without developing coherent strategies to address those concerns (Bonwick 2006b, p. 271). The breadth of the definition makes the concept somewhat vacuous with the result that humanitarian agencies can fill it with almost whatever content they choose. This allows them to focus on those activities in which they have experience or those that are relatively easy rather than addressing the priority issues which tend to be the more difficult tasks associated with achieving safety and security. As such, much of the work undertaken in the name of protection entails monitoring of (rather than preventing) violence, or providing support to the victims of violence after that violence has occurred.

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⁹ International human rights law, for example, includes provisions on wages, working conditions and maternity leave.
The objective of protection according to this definition is full respect for the (legal) rights of the individual. Clearly no single protection actor alone is aiming to achieve all of this. Instead, each is concerned with one or some of the activities aimed at this objective. Even all third party protection activities combined probably do not actually seek to achieve this grand aim. If collectively they could achieve it, the definition would be unproblematic, but they cannot. The objective is far beyond their reach. The lack of prioritisation inherent in this definition thus becomes problematic.

The breadth and generality of the definition allows a huge variety of activities to be framed as protection work because in some way or another, they are aimed at ensuring some kind of individual rights in accordance with these bodies of law. Yet the objective of any given activity is not the objective stated above; it is some subset of that. Moreover, it is often not defined or specified. The combination of the breadth of this widely accepted definition and the fact that protection can refer to both an objective and an activity creates the conditions in which humanitarian organizations are able to avoid definition or specification of their protection objectives. Thus instead of starting from an objective and translating it into a programme of activities, the starting point becomes the activities and success is judged in terms of how well these activities are implemented.

The focus of the definition on legal entitlements, rather than on the threats that civilians face, has further contributed to confusion as to what actually constitutes protection by humanitarian actors (O'Callaghan and Pantuliano 2007, p. 5). Different approaches to protection may focus exclusively on judicial protection or physical protection or on some combination of the two. To the extent that protection is concerned with enhancing the rights of civilians, it implies obligations of other actors, primarily states. Rights-based approaches are usually accompanied by a legal framework for protection, though the extent to which an approach can be described as legalistic depends on how the law is used – merely as a source of standards and objectives in framing protection activity, as a means to other ends, or as an end in itself. In explaining the evolution of the ICRC and UNHCR approaches to protection in chapters three to six, I consider how the development and implementation of international law shape the institutional understandings of protection, and how
each IO views the relationship between legal and physical protection. The understanding of this relationship contributes to the definition of specific objectives of any given approach to protection, and as indicated above this contributes to the second variable in the framework set out in Table 1 below.

Within international law, there is explicit reference to ‘refugee protection’ and to the ‘protection of civilians’. Whereas the terms ‘refugee’ and ‘civilian’ are defined in the relevant treaties, the term ‘protection’ is not defined. Refugee protection can be understood through analogy to the national protection that states are expected to provide to their citizens (Goodwin-Gill 1989, p. 6); it is primarily seen as a legal concept (Helton 2003, p. 20), albeit one with political dimensions. In the context of protecting civilians in the midst of armed conflict, however, protection may encompass legal, political, humanitarian and rights-based approaches, all of which may overlap with one another. This poses a problem for conceptual clarity, and can cause operational confusion as protection may refer both to the provision of physical security, and to the establishment and maintenance of a special legal status for particular categories of protected persons (Roberts 1996, p. 9). For refugees in a non-conflict setting, physical protection is implicit in legal protection, because the legal protection means that the host state accepts responsibility for physical protection in the same way that the state is responsible for the physical security of its own citizens. However, in the context of conflict the state is either unwilling or unable to provide such protection. In such contexts, judicial approaches in and of themselves may be inadequate, and do not necessarily imply physical protection.

Similar to the question of whether a particular approach for protection focuses on legal or physical protection is the question of whether emphasis is placed on high level policy-interventions, or local level support for communities in their own protection activities, or something in between, and whether these efforts aim to bring about immediate or longer term changes. The protection

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10 See, for example, the 1951 Convention on the Status of Refugees, its 1967 Protocol, and the fourth Geneva Convention of 1949.
activities with the most immediate success are often on a smaller scale and at a local level, but many agencies focus their efforts on the public policy level where protection activities are less effective (Bonwick 2006a). Ultimately, changes in public policy are only valuable insofar as they have a positive impact on the lives of civilians. Thus to the extent that humanitarian agencies seek to effect high level changes in the policies of states (and other actors), this needs to be informed by analysis of whether and how the policy changes will play out at the local level.

While there are clearly arguments for both longer term and shorter term objectives as well as for both local level and wider scale activities, there is a greater danger with higher level objectives that activities are not informed by detailed contextual analysis. Dolan & Hovil (2006, p. 1) cite evidence of this problem in Uganda, noting that the ‘influence of global priorities – and the corresponding absence of community involvement in planning – is felt in the standardised categories of vulnerability which are used, at times to the detriment of those who are truly vulnerable in this particular context.’ Similarly, Bonwick (2006a, p. 19) found that in Colombia, protection ‘analysis does not seem to translate into appropriate objectives. When these are set, they seem to be at least one step removed from the people at risk. Many organizations, particularly those based in Bogotá, set objectives based around changes in public policy, without a serious analysis of how these changes would affect people on the ground.’ This again reflects the failure to conceptualise and specify the objectives of protection activity. Better specification of objectives is a necessary first step in analysing the relationships – and potential conflicts – between longer and shorter term, or global and local, objectives and activities. In chapters three to six, I analyse the specific objectives of the ICRC and UNHCR and assess the logic of how the activities in each IO’s approach are expected to lead to achievement of the objectives of that approach.

Whether protection objectives are long or short term, and high level or local level, they must ultimately be concerned with reducing the risks that civilians face. The level of threat and the level of vulnerability (in this case, of civilians or a particular subset of them) to that threat determine the level of risk in a particular context, and risk analysis is essential to protection activity (Darcy and Hofmann 2003, p. 6). As an objective, protection may entail risk-reduction either by reducing the
threat (for example, by influencing the behaviour of armed actors), or by reducing the vulnerability of civilians to the threat (for example, by evacuating civilians). Different approaches to protection focus on one or other of these methods of reducing risk, or may incorporate both. This categorisation thus contributes to our understanding of the specific objectives of any given approach to protection, as set out in the third section of Table 1 below.

Different approaches to protection are additionally characterised by different understandings of who the key actors are. The Protection Standards produced by the ICRC in dialogue with a number of humanitarian and human-rights professionals use the broad definition cited above, and suggest a hierarchy of (legal) responsibilities (ICRC 2009, pp. 29-33). The state has primary responsibility for the protection for those within its jurisdiction, and all armed parties to conflict also have responsibilities under IHL. Where the state in question is unwilling or unable to meet its protection responsibilities, member states of the UN and signatories to the Geneva Conventions bear protection duties, and finally the mandated protection agencies bear their own particular responsibilities. O’Callaghan and Pantuliano (2007, p. 3) similarly devise a hierarchy of factors determining civilian safety, arguing that the most critical factor is the actions of parties to the conflict, second is the actions that civilians take to protect themselves, and third is the interventions of third-party protection actors (including mandated agencies such as UNHCR and ICRC and non-mandated NGOs). This hierarchy is based on the level of impact of different actors rather than the level of responsibility, reflecting a greater concern with practical protection outcomes than the ICRC approach which centres on duties prescribed in international law. The focus on outcomes rather than responsibilities also allows for the inclusion of civilians as key agents in their own protection.

Third-party protection actors include humanitarian organizations, human rights groups, UN agencies, states and the ‘international community’ in all its forms, who seek to protect civilians. They are external to the conflict in that they come from outside of it, even if once they engage in a particular context they necessarily have an impact on the conflict and thus cease to be truly external. In the hierarchy set out by O’Callaghan and Pantuliano, belligerents and civilians
themselves are the key protection actors and their potential protective impact supersedes that of these external actors. The ways in which different protection actors perceive the roles of civilians and belligerents, and the ways in which they interact with civilians themselves and with the armed parties to a conflict (as well as with other protection actors such as the state and other humanitarian agencies) in their protection activity contribute to defining their understanding of protection. Thus in chapters three to six, I examine these dimensions of the ICRC and UNHCR approaches, analysing the roles each IO attributes to these different actors in the protection of civilians. This is shown in the fourth section in Table 1 below.

Having discussed the objects, objectives and actors that characterise particular approaches to protection, it is also necessary to consider the concrete activities undertaken by the IOs in question. Protection activity in the humanitarian sector is frequently divided into five ‘modes’: denunciation; mobilisation; persuasion; capacity-building and substitution (Slim and Bonwick 2005, p. 81). The first three are forms of advocacy to effect changes in the behaviour of the relevant authorities, and are aimed at reducing the threat to civilians. Denunciation involves pressuring (state or non-state) authorities to change their behaviour through public disclosure of their acts or omissions. Mobilisation entails sharing information in a discreet way with selected people, organizations and states that have the capacity to influence the authorities. Persuasion seeks to convince the relevant authorities to act differently through a process of private dialogue. Capacity-building aims to build up the abilities of the government to meet its own protection responsibilities – as such, it is suited to situations in which the relevant authorities are willing but unable to provide adequate protection for the population. Substitution refers to taking the operational place of the authorities where they are either unwilling to meet their responsibilities or unable (even with support). Most protection actors employ a combination of these modes, and the particular balance they strike between different modes contributes to defining their approach. These five modes contribute to my characterisation of the activities undertaken as part of any given approach to protection, and constitute part of the fifth dimension in Table 1 below.
Table 1: Characterising institutional approaches to protection

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>a. Objects of protection</strong></td>
<td>Who is to be protected, and against what are they to be protected?</td>
</tr>
<tr>
<td><strong>b. Normative frameworks</strong></td>
<td>What legal and normative frameworks are employed in the approach and how are they used? What is the relationship between legal and physical protection understood?</td>
</tr>
<tr>
<td><strong>c. Objectives of protection</strong></td>
<td>What are the specific objectives of the approach? Do these objectives relate to reducing the level of violence, threat or vulnerability?</td>
</tr>
<tr>
<td><strong>d. Key protection actors</strong></td>
<td>Which of the following are viewed as important protection actors: states; national military forces; non-state armed groups; civilians; and third parties such as humanitarian agencies? What roles are ascribed to each type of protection actor?</td>
</tr>
<tr>
<td><strong>e. Protection activities</strong></td>
<td>What activities are undertaken in pursuit of the specific objectives outlined above? Are the activities categorised as persuasion, mobilisation, denunciation, capacity-building or substitution?</td>
</tr>
</tbody>
</table>

In this section I have shown not only how different humanitarian organizations approach protection in different ways but also that there is a disjuncture between humanitarian and everyday usage of the term, and that this disjuncture may be damaging to civilians. Within the humanitarian sector, protection has come to encompass a vast array of activities, many of which do not fit with the everyday usage of the term, or with the understandings of the term by those outside of the humanitarian sector, including those civilians directly affected by armed conflict and those political actors who may be in a position to provide more meaningful protection or to address the causes of conflict and violence. This is dangerous because it risks undermining civilians’ own protection strategies and serving as a justification for political inaction and restrictive asylum policies. Thus protection would be better understood more narrowly than the consensus definition cited above, and in keeping with common usage of the term. ‘Put simply, protection is about
seeking to assure the safety of civilians from acute harm’ (O’Callaghan and Pantuliano 2007, p. 3).

Thus understood, we can think about the objective of protection in terms of civilian security (Humanitarian Policy Group 2007, para. 4).

Civilian security

If the objective of protection is the physical safety and security of civilians, then in order to define those activities that can meaningfully be termed protection activities, we need to understand something of the concept and determinants of civilian security. I conceptualise civilian security as a particular sub-category of human security. It fits within the category of human security in that it is concerned with the security of individuals rather than states or other levels of analysis. However, it is only a subset of that category as it is concerned not with the entire human population but with civilians during armed conflict. Following MacFarlane and Khong’s (2006, pp. 243-253) approach to human security, I define civilian security as the freedom of civilians from organized violence (in the context of an ongoing conflict).

Thus defined, protection activity must seek to increase the freedom civilians have from organised violence. A civilian can be seen as free from organised violence: (a) if such violence does not exist; (b) if such violence does not pose a threat to civilians; or (c) if the civilian is not vulnerable to the threats posed by organised violence. If there is no organised violence then no threats will emanate from it. All other things being equal, we can expect that the level of civilian insecurity correlates with the level of organised violence. However all other things are not equal, and even where the existence and level of organised violence is fixed, there may be variation in the level of threats that violence poses to civilians. It is theoretically possible (if highly implausible in practice) that organised violence can exist without impacting civilians. Where it poses no direct threats, it may nonetheless impact indirectly, for example through a lack of healthcare provision due either to state funding being diverted to military spending, or to a lack of medical personnel in conflict zones. Where organised violence poses a threat to civilians, there is variation in the vulnerability of civilians to such threats.
Collectively, then, these three categories constitute civilian security (understood as freedom from organised violence). Attributing relative importance to each of the three, or specifying the direct determinants of each and the relationships between them are matters of continuing debate in academic scholarship and the policy world. Therefore, in what follows I do not seek to provide a definitive account of the determinants of violence, threats and vulnerability, but rather to give a sense of the diversity of perspectives and the complex interaction of different factors.

1. **Overall level of organised violence**

A useful framework for thinking about conflict prevention draws attention to the variable of capability and intent of armed actors (Nicolaïdis 1996). Without capability/opportunity or without intent/motivation there will not be any organised violence. According to the Human Security Report Project (2011, p. 68), ‘[m]otivation and opportunity are necessary conditions for rebellion but neither is sufficient.’ This is correct in theory, but in practice the two are not entirely independent of one another, and arguably intent is more important than capability. First, because a major constituent of capability is human resources, and recruiting individuals to participate in organised violence requires some kind of motivation for those individuals. Second, because while weapons are a necessary capability, any particular weapon is substitutable (albeit different weapons may pose different kinds of threats). Further, weapons can be ‘home made’ as in the case of improvised explosive devices, or can be easily available household articles used for a purpose other than that for which they were intended as in the case of the Rwandan genocide of 1994 committed largely with machetes. Even for more hi-tech weaponry, there may be multiple supply sources.

Internal conflict, or any other form of mass organised violence, only occurs when a number of individuals behave violently. Thus the determinants of overall levels of violence relate to the reasons for the formation of groups that perpetrate organised violence, and the reasons that individuals join those groups to participate in organised violence. A major line of debate has been whether greed or grievance provides the best explanation for organised violence (Ballentine and Sherman 2003; Collier and Hoeffler 1998, 2004; Collier et al. 2009).
We know that low GDP per capita is a robust determinant of internal armed conflict (Collier and Hoeffler 1998; Human Security Report Project 2011). However, this macro-level correlation is consistent with multiple theoretical explanations at the micro-level, including both greed- and grievance-based explanations. For example, I might join a rebel group because alternative economic options are lacking and so the opportunity cost of fighting is low. Alternatively, even with a job in the regular economy, I might join the rebels because I anticipate earning more either during the conflict or when they win (greed). Or I might lack employment, and I might join the rebels because I blame the government for the fact I do not have a job (grievance). Further, low GDP may indicate lower state capacity either to protect civilians against violence or to suppress armed insurgency. As such, I might join the rebel group in order to protect myself and my family, as the government is unable or unwilling to do so. I might also believe that the government is too poor to defeat the rebels and that I do not have to fear the government if I join. Thus, my joining a rebel movement is consistent with at least five explanations, all in turn consistent with the macro-level observation of low GDP per capita.

The opportunity cost to an individual of engaging in organised violence may go beyond the (productive or reproductive) work that an individual must forgo in order to fight. There may also be social opportunity costs, either because the rules of the armed group forbid certain social relations as is the case, for example, in the Colombian FARC (Gutiérrez Sanín 2004), or because family or societal norms go against participation in violent conflict and participation entails some level of ostracisation. Such norms may also have an effect independent of the social opportunity costs they imply. However, norms are not necessarily pacific, and in some cases social networks and norms promote participation in violent conflict (Petersen 2001). Whereas traditional explanations have mostly focused on one factor – namely either greed or grievance – in explaining individual participation in violence, research at the micro-level shows that people have complex motivations for engaging in organised violence, documenting the multiplicity of motivations and the interaction between them (Humphreys and Weinstein 2008; Weinstein 2006).
2. Threats posed by organised violence

As with the overall level of organised violence, the threats that violence poses to civilians are directly determined by the behaviour of its perpetrators. In internal conflicts, the perpetrators of organised violence include national military forces and non-state armed groups. The framework for thinking about conflict prevention can equally be applied to threat prevention or reduction, and we can see the propensity to threaten civilians as determined also by a combination of incentives and capabilities (Nicolaïdis 1996). However, while capability is a necessary condition for organised violence to pose a threat to civilians, intention is not necessary. A bomb intended for a military target, for example, may also kill or injure civilians as collateral damage. Further, as seen above, in practice capability and intent are not entirely independent. Numerous cases around the world attest to the fact that where there are groups that are motivated to threaten civilians, they find the means to do so.

We can distinguish not only between intentional and unintentional threats, but also between direct and indirect violence. Different logics are likely to underlie direct and indirect violence against civilians. The former (for example, massacres) implies interaction between combatants and civilians (creating the potential for civilians to influence the combatant behaviour) whereas the latter (for example, bombings) is almost by definition unilateral (Balcells 2008, p. 13). Within the category of intentional targeting are the sub-categories of collective and selective targeting. Collective violence occurs when groups of civilians are targeted based on a shared characteristic such as ethnicity, neighbourhood, or other group-level identifier; civilians ‘who fit the profile of a rival sympathizer’ (Steele 2009, p. 422). Where information is incomplete, an armed group may use collective targeting to punish suspected defectors or rivals, or to push rivals to defect. Examples of these different types of threat are set out in Table 2 below.

Rationalist perspectives suggest armed actors will behave in ways which compromise civilian security when such behaviour is in their strategic interests – in other words, when it increases the security, power or resources of that armed actor (Snyder 2011, p. 37). Targeting civilians may be a rational strategy for combatants who seek to win a war as well as for combatants who are pursuing
other goals, such as economic advantage or personal power (Keen and Lee 2009, pp. 17-18). Conversely, abstention from attacking civilians and abiding by IHL may also be in the rational interests of combatants (Keen and Lee 2009, p. 18).

Numerous studies have demonstrated how the different characteristics of a conflict, or of the armed groups that participate in it, have an impact on the level of threats posed to civilians by that conflict. Proposed explanatory factors include regime type (Eck and Hultman 2007), the organizational structure of armed groups (Gutiérrez Sanín 2008; Weinstein 2006), political cleavages (Clausewitz 1976), civilian support for armed groups (Stepanova 2009) and control over territory (Kalyvas 2006). A constructivist perspective suggests that norms also shape behaviour at the international level in the absence of a common sovereign. Corresponding with this idea, in the context of conflict, ‘anti-civilian ideologies’ may exist among armed groups and provide a normative motivation or explanation for threats against civilians (Slim 2008). An ICRC study that sought to understand the reasons for IHL violations also pointed to group behavioural norms as key (Muñoz-Rojas and Frésard 2004).

In short, the determinants of organised violence and level of threat it poses to civilians are many and contested. In most cases multiple factors may determine the behaviour of state and non-state armed groups and the individuals within them, and these factors are very often not independent of one another.

3. **Vulnerability to threats**

The determinants of vulnerability are much less researched. Deductive logic suggests that they will vary depending on the nature of the threat, both in terms of the means of violence employed and in terms of whether the threat is intentional or unintentional, direct or indirect, and selective or collective.

For example, vulnerability to assassination (selective targeting) is likely to be dependent on the (perceived) activities and association of the individual and (at least in cases of direct selective targeting) on the location of the individual. Vulnerability to massacre depends on being part of a
particular collective group (which may simply be a neighbourhood) and/or being in the location that the massacre takes place. In many of these cases, civilians have some (albeit often limited) information about the differing levels of risk of different activities and behaviour. For instance, even if the precise location of landmines is unknown, civilians in a mined area will often know which paths are high risk. However, the ability of civilians to use this information to undertake protective strategies to reduce their own vulnerability will depend on the choices open to them in particular in pursuing their livelihoods strategies (Jaspars et al. 2007). Thus if a farmer has to travel along a particular path to get to his fields and has no alternative income-generating opportunities, he has limited options for reducing his vulnerability to landmines.

Table 2: Examples of threats to civilians

<table>
<thead>
<tr>
<th></th>
<th>Intentional</th>
<th>Unintentional</th>
</tr>
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<tbody>
<tr>
<td><strong>Direct</strong></td>
<td>Selective: assassination – shooting</td>
<td>Crossfire</td>
</tr>
<tr>
<td></td>
<td>Collective: massacre</td>
<td></td>
</tr>
<tr>
<td><strong>Indirect</strong></td>
<td>Selective: assassination – drone attack</td>
<td>Landmine</td>
</tr>
<tr>
<td></td>
<td>Collective: bus bomb</td>
<td></td>
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</tbody>
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Vulnerability to all these kinds of threats depends in part on location. Armed violence is by its nature physical, therefore vulnerability to such violence depends on proximity to the scene of violence (though in modern warfare the technology exists for the scene of violence to be far from the perpetrators). This demonstrates the importance of displacement as a protective strategy, and one that may be effective in reducing vulnerability to multiple threats. Given that civilians can very often reduce their own vulnerability by changing their behaviour and activities, it follows that the more choices open to civilians in pursuing their own protection strategies, the less vulnerable they will be. While poverty does not always increase vulnerability (the reverse is true, for example, where the threat comes from kidnapping for ransom), poverty and limited livelihoods options are likely to restrict the choices available to civilians thus in many cases they will increase vulnerability.
The levels of violence, threat and vulnerability in any given context are not independent of one another. While it is obvious that the levels and types of violence are likely to have an effect on the level of threat, and that the levels and types of violence and threat in turn will impact on vulnerability, the relationship may also run in the other direction.

4. Interaction between violence, threat and vulnerability

The strategies adopted by civilians to protect themselves may impact on levels of violence and threats to civilians. If a civilian takes up arms (albeit losing his claim to civilian status in the process) in order to reduce his vulnerability or that of his family, his action may have the effect of increasing overall levels of violence and the threats posed by that violence. Furthermore, even the act of fleeing to a more secure zone can impact on the security of other civilians. Refugee flows can contribute to the onset and course of civil war in the country of origin or the destination country (Salehyan and Gleditsch 2006). In the case of refugees, remittances may be sent home and used to support one side or other in the conflict (Lindley 2007). Forced migration may be not only the result of violent strategies to clear land, but may also result in the violent redistribution of land ownership (Engel and Ibáñez 2007, p. 336). Internal displacement may alter the composition of different areas or regions thus giving one side or other an advantage and so affecting the course of conflict and the threats faced by different individuals and groups (Steele 2009). There may also be a perverse effect of internal displacement such that hiding among others with similar characteristics reduces an individual’s or a household’s likelihood of being targeted selectively but as more individuals and households with similar characteristics cluster together, the community’s likelihood of being collectively targeted may increase if it is perceived to be affiliated with one side or another (Steele 2009).

Efforts by third parties may be directed at reducing violence, threats or vulnerability or some combination of these three. However, the determinants of these three factors are complex, contested and interrelated. Thus, without detailed knowledge of conflict dynamics in a given context, efforts to reduce any one of these factors are in danger of resulting in unintended and negative consequences for civilian security.
5. **Efforts by third parties to reduce violence, threats and vulnerability**

Whether seeking to reduce violence, threats or vulnerability, the problem is a ‘surplus of violence’ (DuBois 2010, p. 2). That violence is perpetrated by both national military forces and non-state armed groups. Strategies to reduce violence and threats must ultimately seek to change the incentives or capabilities of armed groups, whether public forces or non-state armed groups. They may do so directly or indirectly, and on an ad hoc or systemic basis, but they must in some way seek to change the behaviour of armed actors, both state and non-state. Armed non-state actors behave differently from public forces and face different opportunities, constraints and threats. The public forces of different states also differ from one another as do different non-state armed groups. This suggests that changing the behaviour of different groups requires: (a) an understanding of the different incentives and capabilities; and (b) a differentiated approach to changing them.

Civilian security is determined by the level of organised violence, the level of threats from that organised violence and the vulnerability of civilians to those threats. These three factors combined are comprehensive. The level of organised violence and the level of threats it poses ultimately depend on the behaviour of armed groups and the individuals within them. The vulnerability of civilians to threats from armed violence depends primarily on the ability of civilians to pursue protective strategies. This implies that an IO seeking to protect civilians in the midst of armed conflict should direct its strategies at changing the behaviour of armed actors or at supporting civilians in their efforts to reduce their own vulnerability. Strategies may be actor-oriented or may evoke structural change but ultimately if they do not seek to change the behaviour of armed actors or to enable civilians to reduce their exposure to the threats from armed actors, they do not serve to increase the freedom of civilians from organised violence and therefore do not result in protection. Beyond this, I do not specify what strategies or activities an IO engaged in civilian protection should undertake.

However, those strategies and activities do need to be informed by an understanding of the specific determinants of violence, threats and vulnerability in the local context in which they are implemented. In order to change the behaviour of armed actors it is necessary to understand that...
behaviour. As we have seen, often multiple explanations will be at play, and these may be different in different contexts, so successful strategies will require knowledge and understanding of each context. Reducing the threat or reducing vulnerability requires an understanding of the reasons for the threat or vulnerability, and different responses are appropriate to different reasons. The wrong diagnosis may result in a response that is at best ineffective and at worst counter-productive.

In chapters three to six, I analyse the extent to which the protection approaches of the ICRC and UNHCR are aimed at reducing violence, threats or vulnerability, and the ways in which they are expected to do so, explaining how internal and external factors limit their abilities to achieve such objectives. However, before moving on to my own analysis of the ICRC and UNHCR, I consider the main existing explanations for shortcomings in protection by humanitarian actors.

**Existing evaluations of protection**

First, it is argued that it is impossible for humanitarian organizations to protect civilians in armed conflict when faced with armed parties who deliberately target civilians. Agencies such as the ICRC and UNHCR lack coercive power to change the behaviour of armed parties to a conflict, and rely on being able to convince armed actors through a process of argumentation that protective behaviour (usually through restraint) is in their interests or to persuade them to behave according to a logic of appropriateness. These explanations, then, tend to place blame for shortcomings in protection outcomes on the impossibility of the task at hand – on exogenous factors over which the protection actors have no control – rather than on the protection actor or activities. This kind of explanation encompasses everything and nothing, and is not constructive in terms of thinking about how to improve responses. The factors that make the task ‘impossible’ need to be separated into those that place limits on what third party protection actors can hope to achieve, and those which the agencies can seek to change. Knowing the limits of humanitarian protection is important when setting objectives, so that those objectives are achievable, and so that energy and resources are focused on achievable objectives rather than hopeless ones.
Second, protection shortcomings are also explained through an almost opposite logic, with reference to lack of access and humanitarian space. Without access to populations at risk, protection actors cannot carry out a proper risk assessment, and cannot engage in local-level protection activities. In some contemporary contexts, the issue of access imposes serious constraints on the ability of protection actors to implement their programming, and this is often referred to as a ‘protection gap’.

Staff security can be seen as a particular problem for protection work as compared with other forms of humanitarian programming (such as food aid). Protection activities are, almost by definition, carried out in insecure areas. They may also be more likely to be perceived as political, and perceptions of political involvement are expected to increase the threats posed by armed actors to the staff of humanitarian agencies (Pantuliano and O’Callaghan 2006, p. 18). Where the local civilian population is at risk, it is highly likely that humanitarian staff will also be at risk. As such, access to those populations most in need of protection is often restricted on account of security concerns. It is argued that displaced populations remain unprotected due to inaccessibility for humanitarian organizations on account of security issues whereby the parties to the conflict deny access to, or deliberately target, aid agency staff (Hickel 2001, p. 705). Yet access is not an entirely exogenous variable; different protection actors gain different levels of access as a result of different methods, different reputations and different attitudes. Humanitarian space is thus something to be proactively created by humanitarian agencies (Abild 2010). Furthermore, the focus on the access of humanitarian agencies implies that if the agencies could gain access then protection would be assured. In other words, it equates the activity of protection with the objective of protection. However, given the previous explanation, we know that the presence of humanitarian agencies does not necessarily assure civilian security.

A third explanation for the inability of third party protection actors to carry out their programming relates to insufficient (or misplaced) international political and financial commitment. This can apply to all kinds of actors, though it is often more discussed in the case of military actors undertaking protection work given that this is seen as a greater political commitment by states (and
often a greater financial commitment too). Political commitment is also important in support of the work of humanitarian agencies. Bonwick (2006a, p. 15) finds that in Colombia indirect advocacy and denunciation activities have met with little success unless internationally targeted and resulting in pressure or some form of sanctions (e.g. withholding of aid) by international governments. Yet in Colombia, for example, government forces often flout the human rights conditions attached to aid without that aid being withheld.\textsuperscript{11} This highlights the fact that without international political backing (particularly from the US and the EU), the advocacy efforts of protection actors lack teeth.

While international political and financial commitment may depend more on the particular crisis than on the IO requesting that commitment, each of the two institutions I investigate in the following chapters has its own distinct financial and political relationship with states in the international system, and this has a bearing on its approach to protection. Political and financial commitment is not simply an exogenous constraint on humanitarian agencies. In the same way that agencies themselves have a role to play in creating access and humanitarian space, their work and discourse plays a part in shaping broader international commitment. Furthermore, humanitarian action itself can impede more decisive political action to resolve any given emergency. In Darfur, for example, the emphasis on substitution by humanitarian actors may have undermined the potential for a political solution, which will be necessary to ensure protection in the long term (Pantuliano and O’Callaghan 2006).

Fourth, and related to the issue of financial commitment, is the nature of accountability in humanitarian programming. This is cited as an explanation for IOs focusing on the wrong kinds of activities because those who pay for humanitarian action (mainly donor states) are not those who are intended to benefit from it. As such, accountability tends to be towards donors rather than the

\textsuperscript{11} Occasionally some aid to Colombia is withheld. For example, in April 2009, the UK government ended its bilateral military aid to Colombia (though financially this was not highly significant) following accusations of human rights violations by the armed forces and in November 2008, the US (Colombia’s biggest military donor) cut certain projects (Brodzinsky, 2009). However, in general the US sees the Colombian government as a partner in the ‘war on terror’ and in stemming the supply of illegal narcotics into the US.
populations to be protected. Thus there is a risk of moral hazard whereby protection actors may focus on measurable achievements and indicators which are monitored by donors at the expense of other, less quantifiable but more effective, protection activities. Given the impossibility of knowing the counterfactual, protection outcomes are difficult if not impossible to quantify. It is not possible to know what the levels of violence, threat and vulnerability would have been without the protection activities that took place. It may also be impossible to ‘measure’ the actual level of threat and vulnerability. Protection actors need to attract funding, and donors often require visible and quantifiable results. Because activities are often easily measurable, and outcomes are not, donors and humanitarian agencies often focus their monitoring and evaluation on the activities undertaken rather than the results they produce. Yet activities do not necessarily generate results in terms of actual outcomes for civilians.

In their discussion of the protection response in Darfur, Pantuliano & O’Callaghan (2006, p. 20) explain that the ‘urge to show results, particularly to donors, has led several organizations to focus on protection activities which have quantifiable deliverables, such as numbers of people trained.’ This may be misleading, because training does not always translate into effective protection, and emphasis on such activities diverts resources from other potentially more effective activities with less visible or quantifiable results. Greater attention can and should be paid to assessing outcomes and qualitative indicators such as access to land and freedom of movement (Humanitarian Policy Group 2007, para. 68). However, such indicators will often tell us little about the efficacy of specific protection activities or of particular humanitarian agencies. Without good measures of the impact of specific policies, the need to assess the coherence of those policies is all the greater.

With this in mind, my focus in chapters three to six is to interrogate the approaches to understand what their specific objectives are, how these objectives are expected to contribute to the physical safety and security of civilians, and how the activities undertaken in the name of protection are expected to achieve these objectives.

Fifth, the number, skills and experience of protection personnel are also suggested as factors in explaining protection outcomes. This is particularly the case for non-specialised agencies engaging
in protection with little previous experience of protection programming, but also applies to the more established and mandated agencies, and especially to military forces undertaking civilian protection activities, for which they are often not well trained or prepared. Risk assessment is fundamental to finding out which civilians face the most risk in order to prioritise who protection activities are aimed at protecting. Risk assessment is also necessary to determine the nature of that risk in order to decide what kind of protection activities will be most effective. But risk assessment is not straightforward, and requires particular skills, solid experience in protection work and an understanding of the local political and social context. Beyond risk assessment, devising an appropriate response also requires particular knowledge and skills. This points to the need for professional staff with protection-specific skills and experience (Darcy et al. 2007). It also suggests that staff with the right skills and experience may be able to work towards objectives without the related activities being prescribed, and moreover that the activities appropriate to a given objective may vary from context to context. Bonwick (2006b, p. 276) warns that ‘rolling out standardised ‘protection activities’ such as monitoring or denouncing violations, or educating people about their rights, is analogous to some of the worst practices of the relief community 20 years ago’. This indicates not only that context-specific knowledge is important for protection personnel, but also that at the practical level defining protection in terms of activities rather than objectives can be problematic.

In this section, I have outlined five kinds of explanation for shortcomings in protection. Because protection can be both an objective and an activity, the two may be conflated. Thus the activity (or activities) of protection come to be seen as the objective(s). The explanations discussed here are focused on the activity of protection – the level of implementation – and as such they are underspecified. They explain only why humanitarian agencies are unable to put into practice those activities that they state they want to implement. They do not clearly address the objectives that those activities (if properly implemented) are expected to achieve, nor do they examine the assumptions implicit in different approaches to protection or the logic according to which the activities are expected to yield positive protection outcomes. As any measure of protection policy
outcomes will be imperfect, it is especially important to interrogate the policies themselves and the assumptions on which those policies are based. Thus this is the approach I take in analysing the protection work of the ICRC and UNHCR in chapters three to six.

Conclusion

Protection has taken on increasing importance on the international agenda since the end of the Cold War, as a consequence of changes in the international political environment, and driven by various actors including a number of national governments, international humanitarian organizations and epistemic communities. This is the empirical context within which we can situate the protection approaches of the ICRC and UNHCR explained in chapters three to six.

The expansion in the range of actors concerned with protection has contributed to conceptual stretch and contestation such that among humanitarians protection has come to mean something beyond its everyday usage. Analysing the concept(s) of protection within the humanitarian sector, I have criticised these expansive understandings of protection and made the case for a narrower definition in line with common usage of the term protection, and focused on reducing violence, threats or vulnerability. Additionally, I have highlighted various dimensions along which different approaches to protection vary. These dimensions provide a framework for understanding the approaches to protection of the institutions examined in chapters three to six, and are summarised in Table 1 above.

Finally, I have outlined various existing explanations for the insufficiency of protection responses by the international community. These explanations focus on problems of implementation rather than on questioning the underlying assumptions of policies or on assessing the actual outcomes of those policies for civilians at risk. As such, these evaluations provide a picture of how well humanitarian organizations do the activities they set out to do, and of the problems that interfere with these activities. They do not tell us much about the impact of these activities in terms of protection outcomes, or about the adequacy of these activities and the policies of which they comprise a part. There is a need for greater efforts to assess the impact of protection activities on
the security of those civilians they purport to protect, even if this can never be an exact science, and even if attributing protection outcomes to specific protection activities or even to specific humanitarian agencies is impossible.

Given that these difficulties will always remain, there is also a need for greater critical reflection on the assumptions and logic underlying the protection policies and practices of humanitarian agencies, and this is the focus of this thesis. In chapters three to six, therefore, I examine the coherence of the approaches taken by the ICRC and UNHCR approaches to protecting civilians in armed conflict, and the implementation of those approaches in Colombia. I draw on the framework set out in Table 1 above to characterise the contemporary approaches of the two IOs, and I draw on the hypotheses set out in the next chapter to explain why these particular approaches were adopted.
Chapter 2: International Organizations

The mandates of IOs tend to expand, incorporating tasks for which the IOs were not originally designed (Haas and Haas 1995, p. 256; Koch 2009, p. 431; Rodio and Schmitz 2010, pp. 449-450). Mandate expansion may be driven by states, or by the IO itself (Barnett and Finnemore 2004, p. 9; Gutner 2005, p. 780). However, in this thesis mandate expansion is not the outcome to be explained, but rather the point of departure. To put it another way, rather than trying to explain why IOs expand their mandates to encompass new issue-areas, I seek to explain why IOs adopt particular approaches to new issue-areas.

Accordingly, this chapter provides a framework for explaining how IOs approach new issue-areas within their mandates. More specifically, it sets out five hypotheses (derived from existing literature on the behaviour of IOs) that highlight either external or internal factors as drivers of the approach. Together, these five hypotheses provide the framework I employ in chapters three and five to explain why the ICRC and UNHCR have taken their particular approaches to civilian protection.

For the purposes of this analysis, I define an issue-area as constituted by (a) an object e.g. civilians; (b) a domain e.g. non-international conflict and (c) a broad objective (with respect to that object in that domain) e.g. protection. These constituents may be more or less well defined, but there is often room for contestation over their meaning. It is this meaning that defines the approach with which the new issue-area is addressed. I define an approach as constituted by: (a) the object; (b) the specific objectives; (c) an understanding of the roles of different actors in achieving those objectives; and (d) the activities undertaken by the IO in the pursuit of these specific objectives. In chapter one, I have explained how approaches to protecting civilians during internal conflict may vary across each of these four dimensions.

The following hypotheses are not mutually exclusive, nor do I claim that any one of them will single-handedly explain the entire approach taken by each IO. Instead, in chapters three and five I
seek to test which of these hypotheses carry greater or lesser power in explaining the protection approaches taken by the ICRC and UNHCR, which aspects of each institutional approach (listed as (a) to (d) above) are explained by which hypotheses, and how the hypotheses interact with one another. I do not anticipate that the five are fully independent of one another, and indeed the borders between these different factors may be somewhat blurred.

ICRC and UNHCR

Before setting out the five hypotheses, it is worth briefly discussing the nature of the two IOs that this thesis is focused on. Both the ICRC and UNHCR are primarily ‘service organizations’ rather than ‘forum organizations’ (Rittberger and Zangl 2006). As such, they pursue particular goals rather than simply providing a forum for member states to debate particular issues and are best conceptualised as actors rather than arenas. However, UNHCR also fulfils this latter role, and while the ICRC does not comprise member states, it nonetheless operates as something of a forum for states in the development of IHL. Service organizations are often mandated to undertake complex and technical tasks, and they tend to be characterised by a larger bureaucracy with greater staff numbers and resources at their disposal.

UNHCR is an IGO, created by states and part of the UN system. The ICRC is *sui generis*, with both public and private characteristics (Forsythe 2001; Ratner 2011). Technically it is an INGO, set up by private individuals, without member states, and formally independent of any external actors. However, the ICRC is not a ‘normal’ INGO in that: (a) it derives its mandate in part from the broader Red Cross movement and from international law, and states play an important role in both of these; and (b) it is recognised in international public law as if it were a public international organization. Thus for the rest of this thesis, I will draw on literature that explains IGOs (rather than INGOs), and will indicate where the application of that literature to the ICRC is problematic.

External factors

The first two hypotheses I set out below relate to factors external to the IO. They suggest two ways in which actors and institutions outside of the IO may impact on its behaviour.
1. State interests

Mainstream rationalist perspectives in IR attribute the behaviour of IGOs largely to state interests. At the extreme end of the spectrum, neo-realists argue that IGOs simply serve the interests of powerful states and have no independent effect on state behaviour (Mearsheimer 1995). According to this view, an IGO would address any new issue-area within its mandate in line with the desires of powerful states.

Liberal institutionalists and regime theorists also view IOs as serving state interests, but they have a more expansive view of what those interests entail. They point in particular to the ability of IOs to help states to overcome cooperation problems and realise common interests in, for example, greater prosperity and security (Hasenclever et al. 1997; Keohane 1989; Keohane and Martin 1995; Keohane and Nye 1974). According to such approaches, IGOs are the agents of states. However, states cede some power to IGOs because centralisation and independence enable IGOs to support state interaction and undertake operational activities more efficiently than could a collective of states in the absence of any formal organization (Abbott and Snidal 1998). Thus IGOs are able to exercise autonomy, but only so much autonomy as states choose to grant them.

Further, organizational design affects which states have more power in the IO and therefore which states affect the agenda of cooperation (Koremenos et al. 2001). The classic example is the UN Security Council and the veto power of the permanent five members. While not the five most powerful states in the world today, the way that the Security Council was designed means that they continue to exercise significant power over the Security Council and world affairs more broadly. Thus the power balance within the IO does not merely reflect the international distribution of power as neo-realists would predict, but depends on the distribution of power institutionalised in the design of the IO. States choose how IOs are designed, but once they have been set up, that design is institutionalised and mediates the effect of state preferences and interests on the future behaviour of the IO and its impact.
Within this school of thought, principal-agent theory is used to conceptualise the relationship between states as principals and IGOs as agents. The principal-agent framework allows for the possibility that IGOs may act other than how their state-creators intended, but much of the literature focuses on ways that states as principals can ‘rein in errant behavior by IO agents’ (Nielson and Tierney 2003, p. 242). It only allows for autonomous behaviour at the margin, and it seeks to minimise the size of that margin.

In sum, mainstream rationalist IR theories predict that any significant institutional change would be driven by state interests. On marginal issues, the principal-agent relationships between states and IOs may leave scope for some degree of autonomous decision-making. Thus the level of autonomy granted to the IO in designing an approach with which to address a new issue-area will depend on how far decisions relating to how that new issue-area is addressed are deemed to be marginal. To the extent that this literature suggests some autonomy for the IO, particularly in terms of the more technical tasks it is mandated to undertake, we need to look to internal characteristics to determine how that autonomy plays out in practice (which I discuss further below). However, for the purposes of the general framework, the first hypothesis is:

\[ H_1: \text{The approach taken by an IO to a particular issue-area will be shaped by direct pressure from states.} \]

In examining the work of the ICRC and UNHCR in particular, this hypothesis would seem particularly relevant. Despite the fact that the ICRC was not created by states, it is financially reliant on a small number of relatively powerful states and has a particular mandate in international law which is defined by states. UNHCR is financially and politically dependent on states, and is formally mandated by states. Existing literature on both IOs suggests that state interests have at least been a partial driver of their behaviour (Forsythe 2005; Hutchinson 1996; Loescher 2001a).

2. External institutional environment

A second set of literature points to the institutional environment within which different actors operate as a key cause of their behaviour. IOs are situated within complex environments
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comprising not only states but also multiple institutions which may be overlapping or competitive. Therefore, IOs do not relate to states in isolation and the behaviour of IOs cannot be determined solely by the principal-agent relationship. Instead, this relationship must be situated within the broader context of interactions among states and external institutions as well as between the IO itself and external institutions.

Central to this idea is the notion of ‘regime complexity’, which refers to the interaction of multiple institutions. Analysis of the consequences of regime complexity shows how the external institutional environment impacts on state and IO behaviour when two or more regimes are nested, overlapping or parallel (Alter and Meunier 2009; Raustiala and Victor 2004). Most of these explanations take a rationalist approach, focusing on the opportunities, incentives and constraints generated by the institutional environment. For example, literature on ‘forum shopping’ shows how regime complexity can generate opportunities that states can strategically exploit. Specifically, states select between alternative international forums according to where they are most likely to achieve their desired policy outcomes (Busch 2007; Hafner-Burton 2005).

However, the external institutional environment may encompass more than competition for resources and a system of rational incentives and constraints. It also includes the external normative environment, and a great deal of work in the constructivist strand of IR has demonstrated that international norms have shaped state behaviour (Finnemore 1996; Klotz 1995; Price 1997; Risse et al. 1999; Tannenwald 1999). Multiple norms may be complementary or conflicting, and the interaction of different norms may impact on state behaviour in addition to the direct impact of individual norms (Pauwelyn 2003).

With respect to IOs specifically, Cooley & Ron (2002) employ a political economy approach to examine the impact of the external institutional environment on IGO and INGO behaviour, arguing that the material incentives and constraints imposed by this environment often result in dysfunctional behaviour. More specifically, the competition and marketisation of transnational civil society has created perverse incentives such that the IOs do not pursue the best approach to
achieving their stated goals. For example, in the face of militarised Rwandan refugee camps in Goma in 1994, some organizations did not speak out about the militarisation of the camps for fear that such denunciation would reduce international support for humanitarian aid efforts in that context, and that their short term contracts for the provision of that aid would not be renewed. IO behaviour and policy approaches may also be shaped by their external normative environment, as the IOs themselves internalise the values and goals of their external environment (March and Olsen 1989). For example, states and NGOs are seen to contribute to the external normative environment of the World Bank, exerting normative influences which shape the Bank’s policy and operational behaviour (Weaver 2007).

Thus this literature suggests that the external institutional environment would explain the approaches taken by an IO to address a particular issue-area within its mandate, and provides the following hypothesis:

\[ H_2: \text{the approach taken by an IO to address any given issue-area will be shaped by: (a) the need to remain relevant to states in a competitive environment; and (b) dominant international norms that have a bearing on the issue-area.} \]

This perspective, which draws our attention to the competitive nature of the environment in which IOs operate, also seems relevant to the IOs under examination here. UNHCR oversees a refugee regime which constitutes just one part of a broader refugee regime complex which itself impacts on the behaviour of states and on the behaviour of UNHCR (Betts 2010). Relevant to both the ICRC and UNHCR, a number of works explicitly or implicitly touch on the question of how the institutional setting in which humanitarian action takes place – variously labelled the humanitarian international (de Waal 1997), the international humanitarian order (Barnett 2009), the humanitarian marketplace (Crisp 2002), the humanitarian complex (Hilhorst 2002), and the humanitarian enterprise (Minear 2002) – impacts on the ways in which individual organizations within that institutional setting function (Duffield 1997, pp. 540-541; Hopgood 2008; Ramalingam and Barnett 2010). They are also subject to multiple (and potentially conflicting) norms (Weiner 1998).
Internal factors

While mainstream approaches to IR have traditionally focused on external factors in determining IO behaviour, more recent work (primarily within the constructivist school) has shifted attention to factors internal to the IO. The seminal work in this regard is ‘Rules for the world: international organizations in global politics’ by Michal Barnett and Martha Finnemore, and this provides the starting point of my analysis of how internal factors shape the approaches taken by IOs in addressing new issue-areas (Barnett and Finnemore 2004). In this section, I first outline the arguments and concepts from this book that are most relevant to this thesis. Building on the notion and explanatory value of ‘bureaucratic culture’, I then specify three interacting but analytically distinct internal factors (bureaucratic personality; core IO values; and other issue-areas within the IO) which correspond to the final three hypotheses.

Attaching explanatory power to bureaucratic culture, Barnett and Finnemore (2004) challenge the statism and functionalism of mainstream IR approaches to IOs, and seek to shift emphasis from explaining IO creation (to perform certain functions) to explaining IO behaviour (to assess whether and how they fulfil those functions). Their analysis seeks to explain IO mandate expansion as well as the development of new rules and routines with which IOs respond to the new problems they identify. They characterise IOs as bureaucracies and use this idea to explain the constitutive role of IOs in creating interests, actors and activities at the international level. The work of the IO will be shaped by the specific sources of authority that the IO acts on, and as bureaucracies IOs will work through impersonal rules (Barnett and Finnemore 2004, p. 11). Four types of authority are identified: rational-legal authority; delegated authority; moral authority; and expert authority (Barnett and Finnemore 2004, pp. 20-25). Drawing on different combinations of these four, IOs are able to exercise autonomy in their relations with states (Barnett and Finnemore 2004, p. 27).

Importantly for this thesis, Barnett and Finnemore introduce the notion of organizational pathologies to describe dysfunctional behavioural patterns that result from the bureaucratic culture and processes of IOs. ‘Bureaucracies ... can become obsessed with their own rules and captives of parochial outlooks and internal culture’ (Barnett and Finnemore 2004, p. 8). Five mechanisms
through which IOs may create pathologies are identified: (1) the ‘irrationality of rationalization’ through which ‘means (rules and procedures) may become so embedded and powerful that they determine ends and the way the organization defines its goals’; (2) ‘bureaucratic universalism’ through which generalised knowledge or rules are applied across different contexts and particular circumstances are not appropriate to such knowledge or rules; (3) ‘normalization of deviance’ whereby exceptions to rules become so commonplace that they are normalised and serious consideration of the costs or dangers of making the exception no longer occurs; (4) ‘insulation’ from external feedback from the external environment of the IO regarding IO performance; and (5) ‘cultural contestation’ whereby different divisions or internal cultures compete or clash within the IO (Barnett and Finnemore 2004, pp. 39-41).

In sum, the authority, knowledge and rules internal to an IO are important in explaining IO autonomy and behavioural choices, including those behavioural choices that may be dysfunctional. Rules and procedures, institutional history and identity, as well as the level of internal contestation and incorporation of external feedback are all expected to impact on IO behaviour. In my analysis, I seek to specify in more detail the role of these different factors in shaping the approaches IOs adopt to new issue-areas. Therefore in what follows, I divide the ‘social stuff’ of which IO bureaucracy is made into three separate constituents: (1) the core values of the IO; (2) the work of the IO on pre-existing issue-areas; and (3) the bureaucratic personality of the IO. The distinction between these three factors can be understood through analogy to a person.

I have a personality (which parallels bureaucratic personality), and my personality is distinct from the values and principles I subscribe to and seek to live my life by (which translates to the core values of the IO), and both are also distinct from the different roles I have filled through my life (which translate to the issue-areas within the IO mandate). For example, I may be a perfectionist, and I may be confident and articulate, and I may approach things systematically, and these characteristics comprise part of my personality but do not necessarily represent part of my value system. Conversely, I may subscribe to feminism, Buddhism or veganism, but the beliefs and principles underlying these stances do not define my personality. My personality and my value
system may well interact, but they are distinct. Additionally, throughout my life I have filled many roles (some which are ongoing). For example, I may be a student, an animal-rights activist, and a chess player.

These three categories interact: my systematic approach may make me a good chess player, my experience as a student may have made me confident and articulate, and my vegan beliefs may have combined with my confident and articulate nature to encourage me to become an animal-rights activist. There may also appear to be some overlap, but we can still distinguish the personality, the values and the role. For example, being a vegan can be understood as both subscribing to the principles of veganism and not consuming animal products, but I could equally believe in the principles and fail to act on them, or I could avoid consumption of animal products not out of any principled stance but simply because I do not like animal products. Similarly, bureaucratic personality, the core values of the IO and the work of the IO on its various issue-areas are likely to interact with one another, but they can be usefully distinguished in order to clarify their impact on IO policy approaches.

3. Core IO values

The first dimension of the internal environment I have identified is that of the core values, or normative underpinnings, of the IO. Each IO is characterised by a group identity which is comprised of shared understandings of the core mission and functions of the IO, its goals, and the means with which to pursue those goals (Barnett and Finnemore 2004, p. 19). The goals and the means by which they are pursued are the subject of the next section (other issue-areas), but the identity of an IO is also defined by its value system, and this value system can be expected to impact on its behaviour. By core values, I refer to the principles, rules and norms that are central to the identity of the IO.

Particular core values that are constitutive of identity have been shown to be determinants of state behaviour. For example, approaches to national security have been explained as a consequence of the particular legal and social norms institutionalised in any given state (Katzenstein 1996). Recent
scholarship on transnational activism has shown that states will act in ways which are moderately costly (in other words, counter to their obvious rational interest) where those ways are in keeping with the normative underpinnings of the state’s identity, and where transnational activists construct a linkage between the way of acting and the normative underpinnings (Busby 2010). In a similar vein, work on the allocation of international aid by donor governments has highlighted the importance of the different ways in which countries frame the purpose of aid (van der Veen 2011). All of these works indicate that the particular values that comprise part of a given state’s identity are drivers of that state’s behaviour.

Like states, IOs can also be characterised by a particular ‘ideology’ (Weaver 2007, pp. 504-506), or by commitment to particular values. While there may be dissent within any given IO as to the precise ideological content, and there may be a difference between the values espoused and the values that guide behaviour in practice, it is nonetheless often possible to identify a set of core values including principles and rules which are expected to guide IO behaviour. The expectation here is that the core values of an IO will be reflected in the approach taken by the IO to addressing a new issue-area and will, in turn, shape the particular activities undertaken by the IO in respect of that issue-area.

\[ H_3: \text{The approach adopted by an IO to address a given issue-area will be shaped by the core principles espoused by the IO.} \]

This hypothesis would appear to be especially relevant to humanitarian organizations such as the ICRC and UNHCR, as they are overtly principled organizations whose behaviour is supposed to be guided by a set of principles of humanitarian action. According to Gil Loescher, in ‘no other UN agency are values and principled ideas so central to the institutional mandate and raison d’être’ as in UNHCR (Loescher 2001c, p. 28).

4. Institutional history: other issue-areas

The approach to any new issue-area does not emerge within a vacuum but within the context of an IO with its own particular historical trajectory and with a pre-existing mandate to deal with a range
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Whereas a regime is concerned with a single issue-area, the IO associated with any particular regime is likely concerned with multiple issue-areas. Regime theory tends to ignore this plurality (despite the fact that it may create conflicts or complementarities which have significant bearing on the effectiveness of the regime), as well as the historical process through which each regime came into being. With particular emphasis on the work of the IO on pre-existing issue-areas, the fourth hypothesis is derived from literature on path dependence, historical institutionalism and ‘functional spillovers’.

In order to explain the contemporary work of IOs, it is important to understand their historical experience (Barnett and Finnemore 2004, pp. 11-12). In particular, in seeking to explain the approach taken by an IO to a new issue-area, we can think of the historical experience of the IO in terms of the goals it has pursued with respect to historical (or pre-existing) issue-areas, and the means with which it has pursued those goals. Drawing on notions of path dependence and functional spillovers, I derive two particular mechanisms through which these pre-existing issue-areas can be expected to impact on the approach taken to a new issue-area.

First, path dependence analysis involves consideration of self-reinforcing sequences and reactive sequences (Mahoney 2000, pp. 508-509). At its most basic, the notion of path dependence tells us little more than that history matters and calls our attention to tracing the causal chain. More specifically, the idea of self-reinforcing sequences or positive feedback tells us that in certain situations, decisions early on have an amplified impact later on, and that the path taken early on in a sequence (or decisions that were made) early on lead to a quite fixed trajectory where dramatic changes in direction would be very costly (Pierson 2004). For economists, self-reinforcing sequences represent the idea of increasing returns and the notion is based on the utilitarian premise of decisions being based on cost-benefit analysis. In addition, historical sociologists have identified functional, power and legitimation mechanisms that may produce self-reinforcement (Mahoney 2000, pp. 508-509). The prediction here is that the approaches taken by an IO to pre-existing issue-areas shape the IO understanding of problems and solutions, and the rules and means with which the IO addresses the new issue-area.
Second, neo-functionalist theories designed to explain European integration introduce the idea of a ‘functional spillover’ (Haas 1958, 1961). The underlying idea here is that an IO expands its mandate because carrying out the new task under the extended mandate will have a beneficial effect on one or more of the tasks the IO was already carrying out. Translating this idea to explain why a particular approach is adopted to deal with a new issue-area, we arrive at the prediction that the new issue-area would be addressed in such a way as to maximise the positive spillover effects on pre-existing issue-areas, or at least to minimise any negative spillover effects.

In sum, the pre-existing issue-areas within an IO can be expected to have two particular impacts on how that IO goes about the task of addressing a new issue-area within its mandate. On the one hand, we expect a replication of the goals, means and methods. On the other hand, we expect the new issue-area to be approached in a way that is likely to contribute to the pre-existing goals of the IO.

H₄: The goals and means that characterise the approach taken to a new issue-area will reflect those that characterise the approaches taken to pre-existing issue-areas, and will be designed to maximise positive spillover effects and minimise negative spillover effects on the pre-existing issue-areas.

This hypothesis seems applicable to the study of the ICRC and UNHCR, since both organizations are engaged in multiple issue-areas, and did not originally focus on the protection of civilians.

5. **Bureaucratic personality**

Finally, I have distinguished the notion of bureaucratic personality. This refers not to the *content* of the values, rules, goals and methods that comprise the work of the IO, but rather to the way in which those values and rules are applied, and the way in which decisions are made. Bureaucratic personality is thus defined by the style of management and organizational structure, the processes by which decisions are made and information is shared, and the flexibility or rigidity with which rules are followed and principles upheld.
Barnett and Finnemore characterise bureaucracies as hierarchical organizations organised according to impersonal rules and staffed by professionals with particular expertise, and particular types of behaviour are expected to flow from these attributes (Barnett and Finnemore 2004, pp. 17-18). However, among bureaucracies we can observe variation in the degree of hierarchy and in the extent to which rules and principles are adhered to. This leads us to two predictions as to the impact of bureaucratic personality on the approach an IO will adopt to address a new issue-area.

First, while bureaucracies by their nature are hierarchical, decision-making processes may be top-down or bottom-up, there may be a culture of secrecy or openness, and there may be significant or minimal delegation to officials at the level of implementation. All of this concerns the distribution of power and authority within the IO. In terms of the expected effect of such ‘bureaucratic personality traits’ on the approaches taken by an IO to any particular issue-area, IOs with more bottom up decision-making processes based on widespread information-sharing and consultation with field level operatives can be expected to adopt approaches better adapted to the specific tasks at hand. This is because they are less likely to fall victim to ‘bureaucratic universalism’ (Barnett and Finnemore 2004, p. 39) whereby ‘one-size fits all’ policies are adopted in contexts for which they are not well suited, or to ‘insulation’ (Barnett and Finnemore 2004, p. 40) whereby feedback from the external environment is not processed and used to inform policy.

Second, an IO may be conservative (resistant to change, and committed to a principled or rule-based approach) or pragmatic (quick to change, and content to eschew its own principles and rules in response to external pressures). The rules and principles alone do not determine IO behaviour because officials may face uncertainty as to which, if any, existing rules will solve new problems, and because particular rules may be interpreted differently by different individuals within an IO (Barnett and Finnemore 2004, p. 19). The role played by IO rules and principles thus depends on their interpretation and application by the IO. First, IOs may vary in the extent to which they operate on the basis of a particular set of rules and principles. In other words, they may take a more rigid or more flexible approach to the application of such rules and principles. Second, IOs may vary in the level of internal dissent and contestation as to the meaning and prioritisation of
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particular rules and principles. The more pragmatic (as opposed to principled) the IO and the
greater the level of contestation, the less the core values are expected to shape the approach taken
by the IO to address a new issue-area. Third, the attitude to change within the IO also determines
its level of conservatism or pragmatism. Some organizations are resistant to change, while others
will adapt quickly in response to new information and new pressures.

Thus the approach taken by an IO to any given issue-area is expected to be shaped by the
bureaucratic personality of the IO. Specifically, the level of conservatism or pragmatism, and the
style of decision-making within the IO, will mediate the way that external pressures, context-
specific information, and core principles and rules shape the approach. In this sense, bureaucratic
personality does not have an independent effect on the approach but acts as an intervening variable
between the first four factors outlined above and the approach that results.

$H_5$: The more pragmatic and the less hierarchical the IO, the more flexible the approach will be
resulting in less rigid application of the core values and better adaptation to specific contexts of
operation.

Conclusion

Various theoretical approaches purport to explain institutional change in IOs. Broadly speaking, we
can divide these explanations into two broad categories: those which focus on the environment
external to the IO; and those which focus on the internal workings of the IO. From this existing
literature, I have derived five hypotheses to explain how IOs might approach a new task within
their mandates. In chapters three and five, I apply this framework to the particular cases of the
ICRC and UNHCR, and assess the extent to which their approaches to protection are driven by
external factors (state interests and the external institutional environment) and internal factors (core
values, other issue-areas and bureaucratic personality).

These five factors are not independent of one another, and in many cases they are mutually
constitutive. In her analysis of the World Bank, Weaver (2007, p. 494) describes the borders
between the IO’s internal and external environments as ‘fluid, malleable, and intersubjective’. The
same can be said of the five factors I have identified above. However, in order to clarify the interaction between them, and to understand the role each plays in shaping the protection approaches of the ICRC and UNHCR, it is necessary to make analytical distinctions between each factor.

Understanding which factors shape which dimensions of each approach is interesting theoretically, but also has important policy implications, particularly if any aspects of these approaches to protecting civilians in the context of internal conflict are dysfunctional. To the extent that the dysfunctional aspects are the product of internal factors, it should be within the power of the IO to adjust its approach. To the extent that such aspects are the product of external factors, it does not necessary imply that the IO is powerless to change the approach, but it may need to do so indirectly by working to adjust state preferences, and to reshape the external institutional environment.
Chapter 3: The ICRC approach to civilian protection in internal conflict

In this chapter, I describe and explain the contemporary approach to protection within the ICRC. While my focus is on the protection of the civilian population during internal armed conflict, I show that in order to understand the institutional approach to civilian protection taken by the ICRC, it is necessary to contextualise it in the broader work and nature of the organization. The ICRC approach to protecting civilians has not developed in a vacuum but in the context of its pre-existing efforts to deal with other issue-areas; the ICRC had been established for more than eighty years by the time it took on an explicit international legal mandate for the protection of civilians in 1949, and this mandate only extended to civilians in non-international conflicts in 1977.

Drawing on the framework set out in chapter two, I argue that the overall approach taken by the ICRC to civilian protection in internal conflict cannot be adequately explained by external factors. Instead, we see that it has been shaped largely by factors internal to the IO. Most significantly, the ICRC understanding of civilian protection in internal conflict derives from the institutional understanding of pre-existing tasks within its mandate. Thus the approach to civilian protection in internal conflict closely mirrors the ICRC approaches to protecting other categories of person in other situations. To the extent that it is not an identical replication of ICRC approaches to pre-existing issue-areas, it has been adapted to the nature of the new task, and such adaptation is best explained by the interaction of top-down pressures (from states and the external environment) and bottom-up pressures (from the field-level). Bureaucratic personality affects the nature of that interaction, and the core values of the ICRC have imposed constraints on how far adaptation can go.

The chapter is based on a combination of primary and secondary sources. Much of the secondary literature on the ICRC was written by members (or former members) of ICRC staff (Aeschlimann 2005; Bugnion 2003; Henckaerts 2005; Junod 1951; Krill 2001; Mercier 1995; Plattner 1996; Thürer 2007; Troyon and Palmieri 2007) and thus represents something of an inside view. In many cases, such literature presents a deliberate explication of official views or policies.
The chapter proceeds in three main parts. First, I outline the origins of the ICRC, the relationship between the ICRC and states, the bureaucratic personality of the ICRC, its core values, and the process by which the ICRC mandate expanded to include the protection of civilians during internal conflict. This outline paints a picture of the IO and its relationship to its external environment, providing us with sufficient understanding of the ICRC to test the five hypotheses from chapter two. Second, I characterise the approach itself according to the framework set out in chapter one, explaining the objects, normative frameworks, objectives, actors and activities of protection. Third, I draw on the framework set out in chapter two to explain why the ICRC understands and approaches protection in this particular way, and how this understanding may limit the scope of protection offered.

**Understanding the ICRC**

1. **Institutional origins and evolution**

   In 1859, Henri Dunant witnessed soldiers of both sides in the Battle of Solferino dying on the battlefield without medical care or assistance, and responded by sending for medical supplies and recruiting local women to tend the wounded (Dunant 1959). This notion of providing humanitarian assistance to the victims of war was later institutionalised by Dunant and four fellow Genevans with the establishment of the ICRC in 1863, and the negotiation of the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field in 1864 (Boissier 1985 (1963), pp. 49, 117). Conceived as an organization whose role would be to coordinate national societies tasked with providing medical assistance in the field, the original ‘committee of five’ quickly decided it would be necessary to be operational, and from World War I onwards the ICRC has continually expanded the scope of its operations.

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Originally, then, the object of protection for the ICRC was not civilians but wounded soldiers, and the primary means was medical assistance. However, over time the mandate of the ICRC has expanded to include other categories of person, and other means of protection. This expansion has occurred through changes at the field level and subsequent changes in IHL. From its inception, the ICRC has had a dual emphasis on legal standards and on pragmatic action in the field: every new Geneva Convention has been developed following practical action on the ground to deal with situations not covered by then existing IHL. Currently in force are four Geneva Conventions, dated 12 August 1949, pertaining to: (I) wounded and sick in armed forces in the field; (II) wounded, sick and shipwrecked members of armed forces at sea; (III) prisoners of war and (IV) civilian persons. In 1977, these were supplemented by two Additional Protocols, relating to the protection of: (I) victims of international armed conflicts; and (II) victims of non-international armed conflicts.

In both international and internal conflicts, the contemporary ICRC approach to civilian protection centres on regulating the conduct of hostilities as well as on the entitlement of civilians to humanitarian assistance (and the corresponding duty of armed parties either to provide or facilitate such assistance). Taking war as inevitable, the ICRC does not concern itself with the justice of any given war (*jus ad bellum*), or the objectives of either side, only with the conduct of war (*jus in bello*).

The legal mandate for the work of the ICRC is seen to comprise three parts (ICRC 2010c): in international armed conflict, it derives from the 1949 Geneva Conventions and Additional Protocol I of 1977; in non-international armed conflict, the ICRC maintains a right of humanitarian initiative codified in common article 3 of the 1949 Geneva Conventions; and in internal tensions and disturbances, the ICRC maintains a right of initiative recognized in the Statutes of the International Red Cross and Red Crescent Movement. The right of initiative has become customary law, and it is not restricted to situations covered by IHL or to persons protected by IHL (Bugnion 2003, p. 355). In this way, the mandate of the ICRC extends beyond the supervision and development of IHL.
Chapter 3: The ICRC approach to civilian protection in internal conflict

2. ICRC and states

The ICRC is recognised in public international law, but it is not an intergovernmental organization and is incorporated as a private body under Swiss law (Forsythe 2001, p. 676; Ratner 2011, p. 464). As such, it is technically an INGO and is formally independent of states. This independence has been significant in determining ICRC identity and practice, and indeed in shaping organizational culture and the institutional attitude towards states. The original ‘committee of five’ which subsequently became the ICRC was a group of five private individuals who proposed their idea (for an international treaty) to a group of states. Unlike intergovernmental organizations which are set up by states and composed of member states, the impetus to set up the ICRC came from individuals, and states do not have membership or any formal control over the institutional agenda.

However, that does not mean the ICRC has been able to operate without taking state preferences into consideration. From the outset, ICRC policy and practice have been driven by a combination of state interests on the one hand, and humanitarian motivations on the other (Finnemore 1999; Forsythe and Rieffer-Flanagan 2007, p. 7; Hutchinson 1996, pp. 29-30, 348). Although not directly an agent of states, the ICRC understands its mandate as derived from IHL and as requiring the further development of IHL treaties. Since treaties are negotiated and signed by states, this requires the ICRC to work to develop IHL in such a way that is palatable to states. In this way, IHL is driven at least in part by state preferences. Once codified, IHL contributes to defining the mandate of the ICRC, thereby suggesting the work of the ICRC is indirectly driven by the state preferences. Additionally, the ICRC is financially dependent on voluntary contributions, the vast majority of which come from a relatively small group of states. In 2010, approximately 80% of funding came from the US, Canadian, Japanese and Australian governments and a further 10% from the European Commission (ICRC 2011, p. 90). The need for the cooperation of states with the development (and implementation) of IHL, as well as financial reliance on states, suggest that the ICRC must take state preferences into account when making institutional policy choices, and in this way states can be expected to have an influence on ICRC policy.
Furthermore, states may have a say in ICRC policy through their participation in the International Conference of the Red Cross and Red Crescent Movement. The International Conference takes place approximately every four years and brings together the ICRC, the national societies, the IFRC and those states party to the 1949 Geneva Conventions. The International Conference is a deliberative body and does not exercise formal control over the agenda of any of its participants. However, the Statutes of the International Red Cross and Red Crescent Movement are adopted by the International Conference and, as we have seen, the ICRC sees part of its mandate as deriving from these Statutes. In this way, therefore, states can exercise some direct influence on ICRC policy direction.

Certainly with respect to the system of states as a whole, the ICRC is seen to favour the political status quo, respecting state sovereignty and operating in conflict contexts with the consent of the armed parties. Only on rare occasions has the ICRC conducted cross-border operations without the consent of the state concerned. The ICRC also avoids involvement in international or partisan politics. This approach is justified on the basis that acceptance by states is necessary to maintain the activities (and even the existence) of the ICRC, and that such acceptance can only be achieved if the ICRC is seen not to interfere with state interests. However, the idea that the ICRC does not involve itself in international politics should be interrogated. First, the idea that the work of the ICRC does not interfere with state interests is based on the false assumption that lobbying for acceptance and implementation of public policy to safeguard the worth and welfare of individuals in distress does not intersect with the strategic or partisan goals of governments (Forsythe 2001). A good deal of existing work has shown how the provision of material assistance and protective measures for the victims of war can and do impact on the course of war (Anderson 1999; Lischer 2005; Stedman and Tanner 2003; Terry 2002). Second, it is premised on an artificial distinction between international law and international politics. The process by which international law is made is a political process which both impacts on, and is impacted by, state interests (Lowe 2007). Further, the effectiveness of law depends in part on the extent to which it reflects the political and social reality it seeks to regulate.
Despite taking state sovereignty very seriously (rhetorically at least) and taking state interests into account in developing the legal and normative framework on which its practical work is based, the independence of the ICRC plays out in two particular ways. First, the ICRC sets conditions for engagement in any state. So while it will not normally operate in a country without the consent of the state concerned, neither will it negotiate on a number of criteria it sees as essential to its operations. In this sense, the ICRC is comfortable asserting its authority in relation to states. Second, and related, the ICRC does not place great emphasis on demonstrating its relevance to states. Thus it does not change its priorities and activities in response to direct pressure from, for example, donor states.²

The ICRC views states in two distinct but related roles: as the parties to IHL treaties (and makers of customary law) and as parties to conflict. The roles are related in that the ICRC has sought to get states to become parties to those treaties in order to influence their subsequent behaviour as parties to conflict. However, the different roles elicit a different kind of interaction between the ICRC and the relevant states. With respect to the first role, the ICRC defers to and supports the system of states, acknowledging states as the primary actors in international relations and as those with the capacity to make law. With respect to the second role, the ICRC relates to states individually rather than collectively and asserts its own authority in order to change the behaviour of states. The relationship between the ICRC and states, and the impact of that relationship on the way the ICRC approaches the different issue-areas within its mandate, are determined not only by such rationalist considerations as financial dependence on states and the need for cooperation from states on the development of IHL, but also by the ICRC understanding of the role of states in protection, and of its own role in relation to states. These factors are constituted by, and constitutive, of the bureaucratic personality of the ICRC.

² Historically, the ICRC has formulated policy in response to the preferences of the Swiss state, and this is discussed in more detail later in this chapter.
3. Bureaucratic personality

The formal structure of the ICRC is designed to ensure a system of checks and balances on major policy developments, and to prevent any one individual wielding excessive power in policy and operational decisions.\(^3\) The ICRC is headed by the President and the top policy-making body is the Assembly, comprising 15 to 25 co-opted members of Swiss nationality. However, there is a dual executive and operational policy is largely made by the Director-General and the Directorate (Forsythe 2005, p. 202). The norm has been to appoint outsiders to the position of President, very often individuals with experience as senior officials in the Swiss administration. The role of the President is primarily to manage external relations rather than to direct policy goals and practice, and it has not been deemed necessary for the President to have humanitarian experience. By contrast, the Directorate comprises the Director-General and the heads of the five ICRC departments (Operations, International Law and Cooperation, Communication and Information Management, Human Resources, and Financial Resources and Logistics), all of whom have significant professional humanitarian experience within the ICRC (ICRC 2011, p. 60). Reflecting Swiss political culture, there is a preference for deliberation and collective decision-making (Forsythe 2005, pp. 202, 223).

In 2010, the ICRC had an average of 9817 national employees and 1500 expatriate staff working in field missions, and 840 staff working at headquarters in Geneva (ICRC 2011, p. 102). ICRC staff members who are sent on field missions as expatriates are known as delegates. This term is unique among humanitarian organizations, and was first used by the fledgling ICRC in 1864. It has a diplomatic connotation, and the first two delegates – one sent to approach the Danish belligerents and the other the Austro-Prussians (who were fighting over the Duchies of Schleswig and Holstein) – were to act as observers rather than to undertake any particular humanitarian activity (Troyon and Palmieri 2007). Originally the delegates’ primary role was to observe conflict zones and the

\(^3\) For more detail on the organisational structure, and how it has evolved through the history of the ICRC, see Forsythe (2005, pp. 201-241)
military medical services operating in those zones, acting as the eyes and ears of the ICRC, and reporting their observations back to Geneva. There has been a tradition of deferring to delegates in the field and of giving them considerable freedom of action based on the assumption that the person in the field could best diagnose the problem and formulate a solution (Bugnion 2003, p. 252; Forsythe 2005, p. 193).

Contemporary delegates have more defined activities to undertake, and include both general delegates and specific professions such as medical delegates. However, they continue with this tradition as ICRC representatives who observe situations of violence and report back, and who are ‘are expected to be creative, resourceful, and industrious within legal norms and agency guidelines’ (Forsythe 2005, p. 171). This enables knowledge and experience of the field to be relayed to headquarters and to be incorporated into future policymaking. Current ICRC practice continues a ‘long tradition of acting as a bottom-up and consensus-driven organization, with the head of delegation’s judgement on the strategy generally receiving deference in Geneva’ (Ratner 2011, pp. 470-471). While delegates are given significant autonomy on the one hand, they are working within well-defined boundaries on the other. Since 1975 the ICRC has communicated clear statements of policy throughout the organization (Forsythe 2005, p. 193). The rationale for policies is also widely explained, and thus the practice of delegates in the field is informed and constrained by these policy boundaries and by a number of institutional principles.

Known for taking a highly principled approach, the ICRC is often said to be the most ‘classical’ of all contemporary humanitarian agencies (Barnett 2005; Weiss 1999). The ICRC takes a long-term view and seeks to assure its access to the victims of all future conflicts by keeping to its principled approach and operating on the basis of discretion in order to gain the trust of combatants, not only in the contexts in which it currently operates but also in those contexts in which it may need to operate at a later date. Principles will not be put aside even when that might produce beneficial results in the short term, for fear of jeopardising ICRC protection capacity in the future. Thus the ICRC seeks to operate in a predictable manner and to avoid confrontation, particularly public confrontation. This aspect of the ICRC is in part a product of its Swiss origins. Swiss neutrality and
secrecy have played a part in shaping the culture of the ICRC and, at times, have also been instrumental in enabling the ICRC to operate in countries where other organizations were prohibited (Forsythe 2005, p. 24). In earlier years, there was something of a revolving door between the top levels of the Swiss confederation and the top levels of the ICRC. The Swiss commitment to confidentiality as evidenced by banking and business practices, for example, can also be seen to have influenced the ICRC approach to protection in terms of the institutional preference for confidential, bilateral and non-confrontational dialogue.

The institutional culture of the ICRC is in many ways conservative in the sense of adhering to traditional values and being averse to change. The conservatism and cautiousness within the ICRC has been reinforced by the dominance for much of the IO’s history of a highly legalistic approach to protection. Nonetheless, the ICRC has also been an innovator in terms of the development of IHL to encompass an expanded range of conflicts and other situations of violence, and an expanded range of categories of protected person. This innovation and expansion has occurred through a process of practice-led, incremental and principled change. The ICRC is often innovative in terms of practice, while remaining cautious in developing policy. New activities may be implemented in one particular setting and lessons can be learned very quickly to inform practice in other settings, but they will not be incorporated into policy until they have been tried and tested in multiple settings. ICRC policy will not be designed based on single experiences but on a whole body of experience, and it takes time to build up such learnings. Thus the organization has been slow to reform internal structures and processes, and wary of questioning its own internal principles and traditions (Forsythe 2007, pp. 89-91). The organization is cautious in nature, demonstrating a preference for tried and tested methods. Where change occurs, it is incremental and slow-paced, testing reactions at each increment. Further, any such change takes place within a clear framework of principles which are largely non-negotiable.

4. Core values of the IO

In this section, I explain the values core to the identity of the IO. Absolutely central to the ICRC’s identity is its commitment to mitigating the impacts of conflict and violence. This is all the more
the case since the clarification of the division of responsibility between the ICRC and the International Federation of Red Cross and Red Crescent Societies (IFRC) in the 1997 Seville Agreement which provides for the ICRC to take a lead role in situations of armed conflict and the IFRC in natural disaster contexts.

The work of the ICRC is guided by a set of core principles of humanitarian action – humanity, impartiality, neutrality and independence. I refer to these as the internal principles of the ICRC, principles to which the organization and its staff must adhere. These principles have also played a major role in shaping the conduct of humanitarian action more generally, and have been adopted by many other humanitarian agencies. However, as we shall see, many other agencies have moved away from strict adherence to these principles, often consciously and deliberately eschewing neutrality. In addition, the work of the ICRC – and specifically the legal framework around which this work is based – centres on a number of principles concerning the conduct of hostilities and the impact of hostilities on different categories of protection person. I refer to these as the external principles of the ICRC.

### Internal principles of the ICRC

In the doctrine of the Red Cross, the principle of humanity, from which all the other principles flow, obviously has to stand in first place. As the basis of the institution, it provides at the same time its ideal, its motivation and its objective. It is indeed the prime mover for the whole movement, the spark which ignites the powder, the line of force for all its action. If the Red Cross were to have only one principle, it would be this one.

Jean Pictet (1979)

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5 The International Red Cross and Red Crescent Movement comprises the ICRC, the IFRC, and the 187 national societies. The IFRC co-ordinates the humanitarian activities of the national societies, and is governed by a General Assembly comprising national society membership. The ICRC, as already explained, is independent. The Movement is thus best understood as a network, rather than a single organisation.

6 In fact there are seven Fundamental Principles of the Red Cross. The other three are voluntarism, unity and universality, but these three apply more to the national societies than to the ICRC.

7 Jean Pictet joined the ICRC as a legal secretary in 1937 and remained with the organisation until his retirement in 1984 by which time he held the position of vice-president. Dr Pictet was the main architect of
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According to the ‘fundamental principles of the Red Cross’, articulated in 1965\(^8\), the principle of **humanity** requires its adherents ‘to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, co-operation and lasting peace amongst all peoples’ (Pictet 1979). It is this principle of humanity that at times has driven changes and expansion in the ICRC mandate.

**Impartiality** in humanitarian action requires that assistance is provided on the basis of need and need alone, with no discrimination as to nationality, race, religious beliefs, class or political opinions. It is based on notions of non-discrimination and proportionality of response, requiring the prioritisation of the most urgent needs. We can see the principle of impartiality in Dunant’s efforts to provide assistance to wounded soldiers of both sides at the Battle of Solferino. Uncontroversial in contemporary mainstream (western) discourses of humanitarianism, the principle is not always straightforward to put into practice, particularly where access to certain populations is restricted by armed actors or other practical constraints (Harroff-Tavel 1989, p. 543). Furthermore, needs assessment with respect to protection as opposed to assistance may be more problematic and less amenable to quantification: theoretically, it is possible to rank a population in order of nutritional needs, for example, but it is much more difficult to determine whose security is most at risk.

The ICRC interpretation of the principle of impartiality entails institutional concern with all victims of armed conflict. The ICRC is concerned with all civilians affected by conflict or violence. Singling out a subset of conflict victims such as IDPs is seen to contradict the principle of impartiality because it may result in IDPs being prioritised over non-displaced civilians with greater needs (Aeschlimann 2005, p. 26). Nonetheless, in different contexts particular priority

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\(^8\) Contrary to popular belief, these principles ‘were not part of humanitarianism’s original DNA; rather, they [fell] into place over decades of action and debate and [did] not become part of the ICRC’s codes of conduct until the 1960s’ (Barnett 2011, p. 5).
groups are identified as having greater needs than other groups, and thus the ICRC may focus its attention on particular subsets of the civilian population (such as women or minors). Further, the ICRC does restrict its activity to assisting those affected by violence.

The principle of **neutrality** requires that its adherents do not take sides with any of the warring parties in a conflict, and that their work and assistance does not lend support to any one side or another. ICRC neutrality thus proscribes involvement in partisan politics (Forsythe and Rieffer-Flanagan 2007, p. 92). Neutrality in the ICRC can be understood through analogy to neutral states (such as Switzerland) in the context of international conflict, with the difference between a neutral state and a non-belligerent state helping to elucidate the defining characteristics of neutrality as: a duty of abstention (not providing military assistance to belligerents); a duty of prevention (not allowing its resources to be used for military purposes); and a duty of impartiality (applying equally to all sides in a conflict those rules according to which it conducts its relationship with combatants) (Plattner 1996).

The central role of neutrality in the work of the ICRC can be traced to two particular roots. First, from the very first discussions in Geneva in 1863 regarding the provision of aid to wounded soldiers on the battlefield, the question of whether belligerent nations would accord neutral status to hospitals and ambulances was an issue (Hutchinson 1996, pp. 35-38, 43-44). In this sense, neutrality is not a principle of conduct of the medical staff but rather a protected status, or an undertaking by belligerents not to attack medical facilities. However, such an undertaking would not be upheld for very long by one side in a conflict if the medical staff and facilities were seen to be operating to the military advantage of the enemy side. Hence the corollary of this undertaking by the combatants is an undertaking by those medical staff – and in contemporary operations by all ICRC staff – to operate according to the principle of neutrality. Second, the ICRC was and remains a Swiss organization which has historically had very close links with the Swiss government, and has undoubtedly been shaped by the norms of Swiss society and politics. The organization only began to employ non-Swiss professional staff in 1992. Even then, it was decided that the Assembly – the top policy-making body of the ICRC – should remain all-Swiss, ‘primarily because it
guaranteed that in a conflict – assuming the neutral Swiss state was not involved – no one from a fighting party would have any representative on the Assembly’ (Forsythe and Rieffer-Flanagan 2007, p. 4).

Increasingly, the value and appropriateness of neutrality has been questioned, and many agencies have chosen to abandon the principle in favour of taking a political stand, and sometimes rearticulating their position as one of solidarity or political-humanitarianism (Fox 2001; Leader 2000; Slim 1997; Weiss 1999). However, the ICRC has consistently sought to defend its commitment to neutrality against such criticism (Harroff-Tavel 1989, 2003; Sommaruga 1999) and is not alone in seeking to maintain a neutral approach: most of the major international humanitarian agencies also maintain a commitment to neutrality, even if each interprets the principle differently in practice. The principle of neutrality is both enabling and constraining. The particular constraints implied by a commitment to neutrality depend on how that principle is interpreted. For the ICRC, the principle of neutrality is mediated by the organizational tendency towards confidentiality, discretion and even secrecy, to proscribe public denouncement of the behaviour of particular armed actors. The silence thus imposed by the principle of neutrality (though even the ICRC has – on rare occasions – broken this silence) is deemed unacceptable by many agencies (Plattner 1996, p. 269).

On the other hand, it is the same principle of neutrality – and, importantly, the perception of neutrality by combatants and civilians in a conflict context – that is seen to facilitate access to populations in need; it is thus instrumental to the principle of impartiality, and to all of the field-level activities undertaken by the ICRC in the name of protecting and assisting the victims of conflict.

The principle of independence requires that its adherents operate independent of influence from states and other international organizations. For the ICRC, it entails the separation of humanitarian action from political and military action. Independence enables the ICRC to focus its attention on the contexts in which the needs are greatest and without providing support for one or another side in a conflict, because political actors are unable to pressure the organization into directing its efforts elsewhere. Independence is about having the power to set an agenda according to needs.
(that is, according to the principle of impartiality) as the organization assesses them, without outside influence. As with all these principles, there is an element of interpretation involved in translating the principle into practice. Whereas MSF considers its ability to respond independently to any given crisis to derive from its independent funding, approximately 90% of which comes from private sources not governments (MSF 2009), the ICRC is funded mainly by governments. Instead, the ICRC seeks to ensure its independence through formal independence from any states or political institutions. Thus the ICRC is not a member of any organization which would require it to yield any formal control of decision-making. The ICRC has observer status at the UN, but would not engage in any relationship that required it to be bound by the decisions of other actors be they states, IOs, or NGO-coordination bodies. Historical examples suggest the ICRC has not always acted independently of influence from the Swiss state (Forsythe 2005, pp. 205-206), but I am not aware of any evidence of individual states exercising particular influence on ICRC policy and focus since the end of the Cold War. Collectively, however, states directly and indirectly shape the direction of IHL, and this in turn shapes ICRC policy and practice, as discussed in the section below on legal frameworks.

Impartiality can be seen as the corollary of neutrality, and independence as a prerequisite for both neutrality and impartiality (Harroff-Tavel 1989). The ICRC institutional protection policy characterises the relationship between the three principles in the following terms: ‘neutrality and independence enable the ICRC to avoid becoming instrumentalized by some and rejected by others. Such an approach also guarantees an impartial analysis of the problems identified, which leads to impartial action’ (ICRC 2008, p. 758).

The three principles together are seen to construct humanitarian space, conventionally understood as a space in which humanitarian agents can operate (Thürer 2007). The ICRC does not see them primarily as moral principles but rather as instrumental to gaining the access to victims of conflicts, which in turn is seen as essential for the ICRC to be able to undertake its activities in accordance with the principle of humanity (Gnaedinger 2007). Thus neutrality, impartiality and independence generate access through “a “deal” whereby the belligerents agree to respect humanitarian
principles, and humanitarians will not interfere in conflicts’ (Leader 2000, p. 2): the logic being that because activities undertaken according to these principles do not (in theory) pose a threat to combatants, the combatants in turn agree not to pose a threat to humanitarians and allow them access to do their work. The bureaucratic personality of the ICRC mediates the impact of these principles on organizational practice, implying a specific interpretation of them (even when this may lead to pathological behaviour) and a rigid application of them. As such it is not the principles per se but the ICRC interpretation of them that enables the IO to undertake certain kinds of protection activity and that constrains it from undertaking other kinds.

**External principles**

In addition to these internal principles, the ICRC seeks to improve protection outcomes by encouraging adherence to a number of principles concerning the behaviour of belligerents in armed conflict, namely the principles of distinction, proportionality and precaution. These principles are also central to the identity of the ICRC. They are also key constituents of its approach to protection, whether of those hors de combat or civilians. In terms of the applicability and relevance of these principles in internal conflicts, the ICRC argues that since the 1977 Additional Protocol II on non-international armed conflicts, much customary law has developed on the conduct of hostilities and the general principles of distinction, proportionality and precaution, even if questions arise as to the interpretation of these customary law norms, which are rather generally formulated (Henckaerts and Doswald-Beck 2005). Moreover, there remains the question of how far these norms are adhered to in practice, and many of the activities undertaken by the ICRC (discussed later in this chapter) are aimed at increasing such adherence. These principles are central to the identity of the ICRC, and also constitutive of its approach to the protection of civilians in internal conflict. Therefore, in what follows I explain in particular the articulation of these principles with respect to civilian protection in internal conflict.

Central to the ICRC approach to civilian protection is the **distinction** in IHL between combatants and civilians. The notion of the civilian as a protected category dates back centuries, and the regulation of conflict according to this notion can be seen as the original protection norm in
international relations, albeit one that has frequently been ignored in practice (Keen and Lee 2009, p. 11). According to the principle of distinction, means and methods of warfare that do not distinguish between legitimate targets of attack (combatants) and protected persons (in this case, civilians) are prohibited. Distinction is described as the cornerstone of the 1977 Additional Protocols (ICRC 2007a). However, the centrality of this principle to the work of the ICRC far predates the institutional expansion into the issue-area of civilian protection in internal armed conflicts.

The principle of distinction was codified in the first Geneva Convention of 1864 (though this did not apply to civilians but to wounded or sick combatants), and over time, the ICRC expanded this codification to encompass other categories of protected person to whom the principle of distinction then also applied), including military seamen in the 1906 Geneva Convention, prisoners of war in the 1929 Geneva Convention, and civilians in international armed conflicts in the fourth Geneva Convention of 1949. With respect to internal conflicts, the principle of distinction is codified in Article 13(2) of Additional Protocol II, and is the subject of rule 1 of the 2005 ICRC study on customary IHL. The application of such a principle requires knowledge of who is a civilian and who is a combatant, and this is not always obvious in contemporary internal conflicts. With the aim of clarifying the difference, the ICRC has recently drafted interpretive guidelines for states on what constitutes direct participation in hostilities (Melzer 2009).

The principle of proportionality prohibits attacks even where there is a clear military target if the expected military advantage does not outweigh the risk to civilians and civilian property. The

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9 Article 1 states: ‘Ambulances and military hospitals shall be recognized as neutral, and as such, protected and respected by the belligerents as long as they accommodate wounded and sick.’ Article 6 states: ‘Wounded or sick combatants, to whatever nation they may belong, shall be collected and cared for.’

10 Aside from Article 3 (which is also common to the other three Geneva Conventions of 1949), the fourth Geneva Convention of 1949 applies only to international armed conflict.

11 ‘The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.’

12 ‘The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.’
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The principle of precaution supplements the principle of distinction and requires that combatants take into account the presence of civilians or civilian objects prior to any attack. Codified in Article 57(1) of Additional Protocol I and implicit in Article 13(1) of Additional Protocol II, the principle is articulated in rule 15 of the 2005 ICRC study on customary IHL: ‘In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.’

Additionally, and fundamentally, the principle of the equality of belligerent parties underpins the entire IHL framework, just as notions of the legal equality and equal sovereignty of states underpin all international human rights law. In both cases equality is a legal fiction but is considered necessary in order to organise armed parties and states and to generate their agreement for the respective legal frameworks. The principle of equality of belligerents ‘holds that all parties to an armed conflict have the same rights and obligations as a matter of law, irrespective of the ‘justness’ of the cause; the idea being that if one side is not bound by particular rules, the side that is bound

\[\text{\textsuperscript{13}}\text{According to Article 51(5)(b) of Additional Protocol I prohibits any ‘attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.’}\]

\[\text{\textsuperscript{14}}\text{Articles 57(2)(a)(iii) and 57(2)(b) of Additional Protocol I forbid attacks ‘which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated’.}\]

\[\text{\textsuperscript{15}}\text{‘In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.’}\]

\[\text{\textsuperscript{16}}\text{‘The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.’}\]
will not comply with them’ (Sivakumaran 2011, p. 241). In internal conflicts, the idea that opposing parties to conflict are equal is particularly unrealistic. Non-state armed groups are criminals under domestic law (and IHL respects this characterisation) and as such they are not equal to the armed forces of the state (Doswald-Beck 2006, p. 890). This means, to take just one example, that the forces of the state can legally detain members of a non-state armed group but not vice versa (Sassòli 2010, pp. 18-19).

In sum, the IHL framework is characterised by a number of principles with which the ICRC seeks to change the behaviour of armed parties to conflict. These principles, though articulated in greater detail in the treaties governing international armed conflict than in those governing internal conflict (primarily Common Article 3 and Additional Protocol II), are understood to apply across international and non-international armed conflicts, and with respect to different categories of protected person. The ICRC has underpinned its work to protect civilians in internal conflict with the same principles that underpinned its work in pre-existing issue-areas. The continuity of the principles of distinction, proportionality and precaution across the different issue-areas addressed by the ICRC is possible because of the close fit between those issue-areas. However, despite the close-fit, the issue-areas are not identical, and this is evidenced in particular with respect to the problem of applying the principle of equality of belligerent parties in internal conflict.

5. Expansion into a new issue-area: civilian protection in internal armed conflict
The subject of this chapter is the ICRC approach to protecting civilians in non-international armed conflict. This is not a task that the ICRC has always undertaken, but one that the ICRC has arrived at through a process of gradual mandate expansion. The ICRC was set up to work on the issue-area of protection and assistance for wounded soldiers in international conflicts. To arrive at the issue-area of protection for civilians in internal conflicts, the ICRC had to expand along two interacting axes: the object of protection (from wounded soldiers to civilians) and the domain of activity (international to non-international conflict). In terms of the object of protection, the ICRC extended its activities first to prisoners of war then to political prisoners then to civilian internees and finally to civilians in the midst of conflict. In terms of the domain, the ICRC extended its activities to
internal conflict first with respect to the war wounded and political prisoners, and later with respect
to civilians. The ICRC has since further expanded its domain to include internal disturbances and
tensions that fall short of armed conflict.

In its early years, the ICRC was initially cautious in working beyond its legal mandate from states
and ‘when it embarked upon the first major extension of its work, with its first visits to prisoner-of-
war camps in 1870, the ICRC initially created a separate organization to undertake the task’
(Armstrong 1985, p. 621). However, over time the ICRC gained confidence and developed the
notion of a right of humanitarian initiative by which it could offer its services even in situations
and on issues not covered by its legal mandate. During the First World War, for example, ICRC
work developed to encompass inspecting prisons and negotiating with authorities to obtain
improvements in conditions for detainees; operating a tracing agency to exchange information
about prisoners; and providing relief assistance to prisoners (Baudendistel 2006, pp. 246-247). This
role was then codified in the 1929 Geneva Convention and again in the third Geneva Convention
of 1949.

After 1917 the ICRC devoted considerable efforts to the victims of civil war in Russia (Forsythe
2005, p. 33). However, the Russian Revolution occurred in the context of an international war and
from the outset included foreign involvement thus the ICRC had a legal mandate to be present, if
not to be assisting victims of the civil war. ‘True to its traditions, the ICRC and Red Cross societies
from various neutral countries left discussion of the legal niceties until later. Indeed, they had little
choice: the hospital wards that ICRC delegates visited in 1917-18 contained wounded from both
the civil war and the international conflict’ (Armstrong 1985, p. 623). Subsequently in Hungary in
1919, the ICRC made reference to those ‘detained by reason of events’ in order to negotiate visits
to those detained in a situation that fell short even of internal conflict (Forsythe 2005, p. 34). In
that context, ‘the ICRC delegate, Rodolphe Haccius, acting to a considerable extent on his own
initiative, organized relief activities for political detainees as well as for the wounded, providing
the ICRC’s first unambiguous and deliberate action on behalf of political prisoners’ (Armstrong
Acceptance of the roles of IHL and the ICRC in internal conflict made significant advances in the Spanish civil war. The ‘ICRC fielded ten delegations on both sides of the bloody conflict, arranging prisoner exchanges, caring for displaced children, ameliorating the conditions of prisoners and hospital patients’ (Forsythe 2005 p.39). As a conventional civil war with two sides and a clear front, the ICRC was able to draw clear analogies with international war and negotiated with both sides to permit the ICRC to undertake many of its traditional activities. Additionally, in caring for displaced children, for example, the ICRC worked beyond its mandated activities, justifying its approach on the basis that it was morally obliged to respond to such needs as it observed in the course of its work. Despite mounting a large operation and successfully implementing several activities, notably prisoner exchanges, the ICRC was unable to have significant impact on a brutal conflict. However, the ‘application of IHL to the internal armed conflicts of later years had important precedents in the Spanish civil war’ (Forsythe 2005 p.40).

In its second meeting, in 1863, the ICRC had affirmed that it would not involve itself in civil wars (Armstrong p.622). However, the ICRC added internal conflict to its self-devised mandate in the early stages of the breakup of the Ottoman Empire, and with its work in Russia in 1917-18 and Hungary in 1919 (Forsythe 2005, p. 33). In 1921, the Red Cross conference formalised this role in institutional policy. In practical terms, the role further expanded in the Spanish civil war, and the application of IHL to internal conflicts and the role of the ICRC were subsequently codified in common article 3 of the 1949 Geneva Conventions and in Additional Protocol II of 1977. The Additional Protocols of 1977 go beyond the so-called Geneva tradition and also place limits on the means and methods of warfare (Best 1999, p. 628). More recently, in outlining its strategy, the ICRC states that it ‘is determined to pursue its universal humanitarian work to protect the lives and dignity of all persons affected by armed conflict and other situations of armed violence – no matter what form those situations take or what stage they have reached’ (ICRC 2007b, p. 2).

Expansion into these situations not covered by the legal mandate of the ICRC was justified on the basis of a moral imperative and analogies between the predicaments of those whom the ICRC was legally mandated to assist and those whom the ICRC sought to assist (Forsythe 2005, p. 34).
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Practical action on the ground came first, and was subsequently formalised in ICRC policy. Institutional policy was then later followed up with codification of the ICRC role in international law thus formalising its legal mandate. At each stage, analogies have been drawn between the then existing activities and responsibilities of the ICRC and those that it has sought to adopt. Norm entrepreneurs such as the ICRC may be able to achieve greater acceptance by states of the new norms they seek to promote if they are able to construct linkages between existing norms and emergent norms (Finnemore and Sikkink 1998, p. 908). As such ‘adjacency claims’ can facilitate wider acceptance of new norms, it is unsurprising that we see this tactic evident in the expansion of the ICRC into the issue-area of civilian protection in non-international armed conflict. Notably, while parallels have been made in terms of the moral equivalence of the new issue-areas and the pre-existing issue-areas, ‘functional spillover’ arguments have not played a part in justifying expansion. Civilian protection in internal conflict is not seen as instrumental to the work of the ICRC on other issue-areas (though the other issue-areas may have given the ICRC a comparative advantage in its civilian protection work). However, in expanding the ICRC mandate, and in keeping with the cautious approach to change within the IO, there has always been concern as to whether any potential new issue-area would damage the ability of the ICRC to carry out its existing mandate.

Thus ‘the invariable sequence of events has seen an ad hoc action by the ICRC develop into a general practice that later achieved the status of a customary norm in international law and was finally codified by treaties and conventions’ (Armstrong 1985, p. 621). Commenting on one of his experiences as an ICRC delegate during World War II, Marcel Junod explained: ‘As so often, we had to improvise a solution to meet a situation which no jurist had ever foreseen’ (Junod 1951, p. 169). Even if certain situations may be foreseen by lawyers or the ICRC, agreeing international conventions depends on the will of states. Forsythe (2005, p. 260) observes that ‘IHL is always one war late, in that states can only bring themselves to develop the law when they reflect on the horrors of the last war.’ More generally, a sense of guilt or need for atonement within the international community has been a key motivating factor in moments of expansion of...
humanitarianism (Barnett 2011, p. 15). Whether any current ICRC activities will eventually form the basis of new codified law remains to be seen, but we shall see in the next chapter that the ICRC seeks to act in response to need at the local level in Colombia and subsequently to develop those activities into general policy.

Characterising the approach

In this section I analyse how the ICRC approaches the protection of civilians in internal conflict. I characterise the approach according to the five dimensions set out in chapter one. Thus I start by outlining who the ICRC seeks to protect and what they are to be protected from. I then explain how the legal framework that underpins the institutional approach to civilian protection is both constitutive and constraining of that approach. I analyse the aims of the ICRC in its protection work and the role the ICRC ascribes to states, armed non-state actors and civilians in determining civilian security and protection. Finally I describe the main activities undertaken by the ICRC in pursuit of those objectives and in seeking to impact on the behaviour of those different actors.

1. Objects of protection

In the Red Cross order of ideas, protection can be defined as encompassing any humanitarian act whose purpose is to save the victims of conflict from any danger, suffering or abuse of power to which they might be subjected, to defend them and to give them assistance. 

François Bugnion (2003, p. xxxii)

As this quote from the ICRC’s former Director of International Law and Cooperation (and current member of the ICRC Assembly), the ICRC is concerned with the protection of all victims of conflict. This includes all civilians (and indeed extends beyond civilians). They are to be protected from the ‘abuse of power’. In other words, they are to be protected from the threats posed by the perpetrators of violence, the authorities (which, for the ICRC, extends beyond legal authorities to include non-state parties to conflict). The ICRC was inspired by the witnessing of a battle. From the outset, its raison d’être was mitigating the consequences of organised violence, and central to its vision for doing so was the idea of working in the midst of conflict. Thus within the issue-area of civilian protection, the ICRC seeks to protect all civilians, and it seeks to protect them from the negative consequences of conflict and organised violence.
2. Normative frameworks

The relationship between a given institutional approach to protection and any legal or normative framework which the approach utilises can be illuminated by considering which bodies of law feature in the approach, how and to what extent those bodies define the issues which fall within the approach, and how the law shapes the activities of the approach. For the ICRC, IHL is the most important body of law. As we will see below, at different times the IHL framework has been used in a more or less restrictive manner both in terms of defining the issues which the ICRC seeks to address, and the ways in which it seeks to address them. The ICRC sees legal protection primarily as a means to physical security and protection, but not the only means, and not always the most effective means.

The core of IHL comprises the four Geneva Conventions of 1949 and their two Additional Protocols of 1977. These are supplemented by a number of other treaties, some of which the ICRC had little or no involvement in developing. Additionally, there exists a body of customary law, much of which is articulated and explained in the 2005 study by the ICRC on customary IHL (Henckaerts and Doswald-Beck 2005). In respect of civilian protection in internal armed conflict, the following are applicable, relevant and employed by the ICRC: common article 3 of the four Geneva Conventions of 1949, Additional Protocol II, treaties banning particular weapons and methods of warfare, and customary law. To a lesser extent, the ICRC may also draw on the domestic legislation of the countries in which it operates. In characterising the institutional approach to protection, it is important to explain the extent to which, and the ways in which, these legal frameworks have a bearing on the work of the ICRC.

In what follows, we shall see that at times IHL has been used to justify restrictions of ICRC activity. However, throughout its history the ICRC has also demonstrated creativity in its use of the law and has often undertaken practical activities beyond the boundaries of IHL. Furthermore, the

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17 For example, although the ICRC supported the development of the 1997 “Ottawa Treaty” to ban landmines, it was one of many organizations involved in this process, and not a key driver.
ICRC sees developing and expanding IHL as a key part of its protection role. In this capacity, then, the ICRC has pushed the boundaries of IHL to encompass a wider range of issue-areas and in doing so has expanded its own formal mandate into these new issue-areas. While the ICRC wields significant power in the development of IHL, the IO itself cannot and does not create international law. The role of the ICRC in the development of IHL is examined in greater depth later in this chapter.

At times, ICRC action has been restricted by the organization’s framing of its mission with respect to IHL, and specifically with respect to the Geneva Conventions which provide its legal mandate. For example, during the Italo-Ethiopian War of 1935-6, the ICRC response to Italy’s use of poison gas was restricted to requesting National Societies to donate gas masks for medical personnel, and for wounded and sick combatants but not for civilians because at this time there was no Geneva Convention concerned with civilians (Baudendistel 2006, p. 290). Internal debate within the ICRC on this issue came down on the side of the lawyers who argued that the ICRC could take action only on behalf of those categories of person who were the objects of the Geneva Convention. Further, the ICRC would not speak out against the use of poison gas despite its illegality. Baudendistel (2006, p. 290) explains that in the opinion of the lawyers, ‘the ICRC had to base its action exclusively on the Geneva Conventions of 1929, for which it had a specific responsibility and not on Conventions regarding methods of warfare, such as the Gas Protocol of 1925.’

Similarly, in the Second World War, the ICRC remained silent about the Holocaust, among other issues. In the face of fierce criticisms levelled against it by the USSR and Yugoslavia after the War, the ICRC sought to defend its silence with a number of arguments, including reference to the fact that there was at that time no convention relating to the protection of the civilian population (Junod 1996, pp. 17-18). The ICRC also admitted that part of its caution arose from a desire not to antagonise Hitler both because that might endanger the work that the ICRC was doing in accordance with existing conventions (for example, for prisoners of war), and due to a lack of independence with respect to the Swiss state resulting in a failure to uphold the principle of
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neutrality because Berne feared German retaliation against the Swiss state if the ICRC spoke out about the concentration camps (Junod 1996, p. 19; Rieffer-Flanagan 2009, p. 899).

It was only after World War II in response to these field-level experiences and subsequent criticism that the ICRC took the explicit decision that conforming to the Geneva Conventions did not require the ICRC to restrict itself to the specific activities or persons of concern or contexts detailed in those treaties but rather meant applying the spirit of those treaties for the victims of all types of armed conflict through activities which may be unforeseen (Junod 1996, p. 11). In theory, the contemporary ICRC sees itself as the guardian of IHL generally, not only those treaties which it helped to develop or which explicitly mention its rights and duties. However, the ICRC has been criticised (from within – by François Bugnion\(^\text{18}\) for being overly reliant on the 1949 Geneva Conventions and the 1977 Additional Protocols when there are many other legal sources on which it could usefully draw in its protection work, and for too often taking ‘refuge behind semantic or literal readings [that] frequently fall short of the practice that the Committee itself has developed on the basis of the Conventions’ (Bugnion 2003, p. 398). On the other hand, there are two main ways in which the ICRC has always worked on issues beyond the boundaries of existing IHL.

First, the ICRC undertakes pragmatic action in response to situations or issues which are not covered by IHL. In reality every new convention the ICRC had developed was the offspring of practical action in accordance with the spirit but beyond the letter of prior treaties. Thus, on occasion during the early years of the ICRC, restrictions on the institutional mandate implied by IHL as it then stood were pragmatically bypassed by tasking individuals or agencies that were officially independent but in practice organised and directed by the ICRC to undertake activities which went beyond its legal mandate (Forsythe 2005, pp. 24-25). The legal mandate of the contemporary ICRC includes a right of initiative to undertake its traditional activities in situations not covered by IHL, which is interpreted in particular to apply to situations of violence below the

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\(^{18}\) François Bugnion joined the ICRC in 1970 and served as Director of International Law and Cooperation from 2000-2006. He is currently a member of the Assembly.
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threshold of armed conflict thus including, for example, internal disturbances and political violence (Bugnion 2003, p. 355; Forsythe 2005, p. 255). Additionally, even in those contexts in which IHL is applicable, the ICRC may work on issues beyond those covered by IHL.

Second, the ICRC understands a key part of its mandate to be the development of IHL. In this sense, the ICRC is not working beyond the boundaries of IHL as such, but rather is moving the boundaries of IHL. The ICRC does not and cannot create IHL, which consists of treaties agreed by states and customary law based on the customary practice of states. However, the ICRC has been instrumental in the development of both. The development of IHL treaties has largely been characterised by the ex-post codification of pragmatic ICRC action on the ground with moral imperative (and practical response) leading the law, not the other way around (Baudendistel 2006, p. 16; Bugnion 2003; Durand 1984, p. 85; Forsythe 2005, p. 18). The ICRC has provided a practical response to needs on the ground and has followed this up by drafting a treaty and lobbying for states to sign it. In this way, the ICRC played a major role in shaping the Geneva Conventions and their Additional Protocols.

Furthermore, the ICRC has exerted significant influence in the interpretation of various aspects of IHL, for example in recent work to clarify the notion of direct participation in hostilities (Melzer 2009). The ICRC has published an extensive study on customary IHL and compiled a database of customary IHL rules which is utilised in its protection work (Henckaerts and Doswald-Beck 2005). With respect to customary law in particular, the line between the creation of the law and its interpretation is not always a clear one. In the international legal order, ‘the power to shape understandings of what is to count as practice (statements or actions) and whose practice is to count’ is instrumental to the creation of customary law (Hurrell 2005, p. 41). Such power may not always be wielded only by states; indeed, with the 2005 study on customary IHL the ICRC employed its expert and moral authority (Barnett and Finnemore 2004) to exercise a form of productive power (Barnett and Duvall 2005). In this regard, in documenting and interpreting customary practice in the 2005 study, the ICRC can therefore be seen to have played an important role in creating customary law.
While the ICRC does work on issues beyond the boundaries of IHL in these two particular ways, its approach to protection is nonetheless constituted in large part by IHL. In contexts in which IHL is applicable, law is seen not only as delineating the issues on which the ICRC works but also as one of the key protection tools with which the ICRC addresses those issues (Aeschlimann 2005, p. 26). In such contexts, the core of ICRC protection work consists in presenting allegations of IHL violations to the alleged perpetrators in the hope of stopping ongoing violations and preventing future violations. In documenting these violations, the ICRC always refers to a specific rule of IHL, contained in one of the treaties or in the ICRC customary IHL database. In interventions with the perpetrators of violence, there is an institutional preference for drawing on IHL rules, but there is some flexibility.

In different contexts in which the ICRC operates, different parts of IHL apply or IHL does not apply at all, but this does not necessarily imply that the ICRC will undertake different activities (Bugnion 2003, p. 306). There is a single institutional protection methodology which applies in all situations of violence, including those in which IHL does not apply. As such, this methodology cannot rely on IHL. That is not to say that IHL has not shaped the activities that are undertaken in non-IHL contexts. The ICRC approach in all situations of violence is derived from its experience in conflict. In this way, IHL has shaped the ICRC understanding of protection, and many of the humanitarian consequences which the ICRC seeks to end or minimise in non-IHL contexts are identified and understood through analogy to violations of IHL. Such analogies inform not only the internal understanding of protection within the ICRC, but may also be explicitly drawn upon in interlocution with the authorities. Very often the ICRC invokes the whole body of humanitarian rules and seeks their application by analogy, even in those contexts where they were not directly applicable (Bugnion 2003, p. 306; Forsythe 1978, p. 275). Thus in internal conflicts, the ICRC will seek to apply rules beyond those governing non-international conflict by drawing upon the parallels with the more extensive body of rules applicable in international conflicts.

In some situations, customary law is seen as a more useful tool than the IHL treaties. This is particularly the case with reference to non-state armed groups since only states can sign up to
international treaties and thus non-state groups can and often do argue that such treaties are not applicable to them. The ICRC considers that customary IHL applicable to internal armed conflict is binding on non-state armed groups (ICRC 2005). However, the actions and statements of armed non-state actors were not major considerations in the ICRC customary law study (Henckaerts 2005, p. 180). As customary law is based on state practice, non-state armed groups may question its applicability in the same way that they question the applicability of treaties they have not signed.

Where the applicability of IHL is disputed by an armed party, it can sometimes be seen as a hindrance rather than a help in effecting the changes that the ICRC seeks, namely compliance with the protective principles underlying IHL in order to increase the physical safety and security of civilians. For example, the ICRC (as well as most of the world) considered that the 1990 Iraqi invasion of Kuwait was an international conflict to which most of IHL applied. However, as Iraq claimed that Kuwait was an Iraqi province, the ICRC deemed explicit references to the Geneva Conventions to be counter-productive and focused instead on negotiating changes in Iraqi policy that were in line with, but without reference to, IHL (Forsythe 2005, p. 103).

The ICRC sees law as a means to an end rather than an end in itself. As such, the ICRC is primarily concerned with the level of compliance with underlying principles. Indeed the ICRC is ‘ready to sacrifice promoting that law for the sake of other values’, namely the protection of victims (Ratner 2011, p. 461). Therefore, while IHL is usually a key tool, the ICRC sometimes draws on tools other than IHL in seeking to persuade armed parties to adhere to those principles underlying IHL. Where military manuals or codes of conduct specific to the weapons-bearers in question contain rules or guidance which echo or parallel general IHL principles, it is sometimes seen to be more effective to remind combatants of these internal regulations from their own armed group. In other situations, the ICRC may choose to emphasise moral principles and to de-emphasise IHL. In such cases, delegates may talk about the humanitarian consequences for civilians of particular conduct, rather than the illegality of such conduct. Thus the ICRC does not always see the legal frameworks as the only or best tool for effecting behaviour change.
3. Specific protection objectives

Under the broad aim of physical safety and security, the ICRC seeks specifically to reduce the threat posed to civilians by changing the behaviour of armed parties to conflict, based on an understanding of protection largely based on the duties of warring parties. The institutional protection policy of the ICRC states that ‘[p]rotection relates firstly to the causes of, or the circumstances that lead to, violations – mainly by addressing those responsible for the violations and those who may have influence over the latter – and secondly to their consequences’ (ICRC 2008, p. 752). The ICRC approach is thus proactive, seeking primarily to prevent harm and only secondarily to remedy it after the event. The specific objectives are about changing the behaviour of armed actors, both state and non-state.

However, the work of the ICRC goes beyond efforts to change the immediate behaviour of combatants in line with the standards set out in IHL. It also seeks to change the attitudes of armed groups towards IHL, specifically to change their understanding of what constitutes appropriate behaviour and their will to behave appropriately. Further, in working for the development and expansion of IHL, the ICRC seeks to change global understandings of what constitutes appropriate behaviour for armed parties to conflict. Despite the emphasis on working to change the behaviour of weapons-bearers and thus to reduce the threat they pose to civilians, the ICRC also seeks to work directly with civilians to reduce their vulnerability. This is a secondary aim in acknowledgement of the fact that the ICRC will not always be able to reduce the threats posed to civilians.

ICRC activity to reduce the threat to civilians from organised violence is thus not directed towards conflict prevention or resolution (in order to reduce the level of overall violence) but at changing the way in which armed parties to conflict conduct hostilities in such a way as to minimise the negative consequences of the conflict for non-combatants. The ICRC does not concern itself with reducing overall levels of violence, focusing mainly on threat-reduction (specifically through changing the behaviour of combatants) with some work on vulnerability reduction. The specific objectives and priorities of the ICRC in its approach to civilian protection in internal conflicts
translate into particular roles for different actors, namely civilians (in vulnerability-reduction), armed parties to conflict (in threat-reduction in the midst of armed conflict) and states (in developing the legal framework for threat-reduction). The roles ascribed by the ICRC to these different actors are explained in the next section.

4. Protection actors

For the ICRC, protection is ultimately seen to depend on the combatants. In a conflict context, the ICRC also understands civilians as important protection actors. The ICRC distinguishes itself from other humanitarian actors by, among other things, its ‘field presence and proximity to affected persons’ (Aeschlimann 2005, p. 25). The ICRC aims to stand ‘resolutely by the victims. It works closely with people affected by violence and armed conflict, listens to and respects them, empathizes with their plight and is determined to act for their benefit’ (ICRC 2007b, p. 2). Further, the ICRC acknowledges and seeks the support the existing capacities of civilians to protect themselves (ICRC 2008, p. 762). The role ascribed to the civilians by the ICRC is essentially two-fold. First, with respect to vulnerability-reduction, the ICRC aims to increase the choices available to civilians thus giving them greater option to pursue their own protection strategies. Second, with respect to threat-reduction, the ICRC sees civilians as a key source of information in terms of reporting IHL violations, and as the key decision-makers in what the ICRC may do with that information. However, threat-reduction is ultimately seen to depend on the perpetrators of violence.

The ICRC summary of a series of workshops on civilian protection in the 1990s affirms that ‘the duty to protect civilians traditionally belongs first and foremost to states’ (Giossi Caverzasio 2001, p. 9). The ICRC envisages dialogue, negotiation and coordination with states as central activities in its approach to protection. Specifically, the ICRC seeks to provide training and support to states on the implementation of IHL. While the primary responsibility for civilian protection may be seen to rest with states, the fact of ICRC presence in any given context suggests that the relevant state is not living up to this responsibility (whether through inability or lack of will). The ICRC implicitly acknowledges that the hierarchy of protection actors by responsibility may not match up with the
hierarchy of protection actors by impact. The application (or non-application) of IHL is seen to depend on the combatants and the ICRC role is perceived to be about encouraging the armed parties to apply IHL (Bughnion 2003, p. 443). As parties to conflict, the ICRC seeks to treat state and non-state armed groups equally (as per the principle of equality of belligerents, and in keeping with the principle of neutrality).

However, in developing the legal framework for protecting civilians in conflict the ICRC privileges the input of states over armed non-state actors. The IHL treaties were negotiated by states and in general only states have the option to sign up to them. The customary IHL which the ICRC has played a role in developing is based primarily on state practice (Henckaerts 2005, pp. 179-180; Kellenberger 2005, p. xvi). In the early days of the ICRC states were the parties to conflict with which the organization was concerned as only international conflicts came within its mandate. As explained earlier, the ICRC views states through two lenses: as actors in the creation of international law and as armed parties to conflict. As the ICRC role has expanded to encompass internal armed conflict, non-state armed parties to conflict have been treated as akin to states in their capacity as armed parties to conflict, and are bound by the same rules and norms. At the same time, armed non-state actors have remained largely excluded from the development of the international law that binds them.

As we have seen, in the development of IHL, the ICRC views states as the key actors. In terms of physical protection in conflict contexts, weapons-bearers and victims are the key protection actors.

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19 There are some exceptions to this, notably cases of provisional or unrecognised governments depositing instruments of accession. For example, the Provisional Government of Algeria deposited an instrument of accession to the four Geneva Conventions of 1949 on 20 June 1960, more than two years prior to independence on 3 July 1962 (Roberts & Guelff 2000, p. 356, supra note 3). The Provisional Revolutionary Government of the Republic of South Vietnam acceded to the 1949 Geneva Conventions on 3 December 1973 (Roberts & Guelff 2000, p. 361 supra note 15). The UN Council for Namibia deposited instruments of accession for the four Geneva Conventions of 1949 and the two Additional Protocols of 1977 on 18 October 1983, prior to independence in 1990 (Roberts & Guelff 2000, p. 359, supra note 12). These accessions were accepted by the depositary. Additionally, the Palestine Liberation Organization has attempted to accede to the 1949 Conventions and their 1977 Additional Protocols. However, the depositary declined to decide whether or not such accession was valid due to uncertainty over the existence of the state of Palestine (Roberts & Guelff 2000, p. 362).
These particular roles are reflected in the activities undertaken by the ICRC in pursuit of physical protection at the field-level, and in terms of developing the legal frameworks at the global level.

5. Activities

As the ICRC (2009, p. 21) argues, ‘[u]nderstanding the causes and circumstances behind violations is essential in order to identify the most effective means of addressing them – addressing only the symptoms can sometimes do more harm than good... Different contexts call for different protection responses, and an analysis specific to the context is key to determining both an initial course of action – and to informing its adjustment over time.’ The ICRC protection policy lists twelve activities\(^{20}\), and every protection strategy should be based on a selection of these activities, depending on which are appropriate in any given context (ICRC 2008, p. 766). Notably this is a list of generic activities applicable across the different issue-areas that the ICRC works on. Thus the activities undertaken by the ICRC for the protection of civilians during internal armed conflict are broadly the same as those undertaken for the protection of civilians and those *hors de combat* in international armed conflict, and in internal disturbances and other situations of violence falling short of armed conflict, and also for those deprived of their liberty.

The twelve main activities are categorised according to three aims: engage responsibility; support; and reduce vulnerability. The targets of these activities are the authorities (including armed non-state actors) and persons at risk. Engaging responsibility is concerned with threat-reduction through changing the behaviour of armed actors. Vulnerability reduction is concerned with reducing the vulnerability of those at risk, and support may be for authorities or for persons at risk. Support activities may be aimed at threat- or vulnerability-reduction. Throughout ICRC discourse there is clarity of thinking on these issues, and the rationale behind different activities is

\(^{20}\) (1) bilateral and confidential representations; (2) discreet representations to third parties; (3) public denunciation; (4) development of the law; (5) promotion of the law; (6) structural support for implementation of the law; (7) activities as neutral intermediary; (8) registration/monitoring of individuals; (9) presence and accompaniment; (10) self-protection capacity building; (11) risk education; and (12) assistance aimed at reducing risk exposure.
communicated and understood throughout the organization. However, a disjuncture exists between the formal policy which includes these twelve activities, and the more widely held institutional understanding and practice which often focuses only on dialogue-related activities.

Dialogue is aimed at reducing the threat to civilians from organised violence. In contexts where IHL is applicable, the ICRC sees threat-reduction as broadly equivalent to increasing compliance with IHL. The ICRC President explains that a major focus of the organization’s practical work is to secure ‘the practical implementation of humanitarian law’ (Kellenberger 2000). Compliance is a central problem in thinking about international law generally, and the problem is particularly acute with respect to IHL. As Hersch Lauterpacht (1975, p. 37) famously suggested, ‘if international law is, in some ways, the vanishing point of law, the law of war is even more conspicuously the vanishing point of international law.’ There are many factors which may determine compliance with IHL and in this section I show how and why the ICRC is able to undertake some activities which might increase compliance, and is constrained from undertaking others.

The ICRC sees enforcement of IHL – through such judicial proceedings as those of the International Criminal Court (ICC) – as complementary to its own work (Forsythe 2005, p. 275; La Rosa 2009). However, such enforcement is distinct from the work of the ICRC and staff members do not participate or testify in specific judicial investigations, believing that any such activity would compromise ICRC neutrality and confidentiality, and may endanger those civilians who provided the ICRC with information about violations of IHL. It is the neutrality and confidentiality that earns the ICRC the trust and access necessary to obtain information about violations of IHL (thus making them very often the most authoritative source of potential testimony for court proceedings) that also prevents them from sharing that information. Instead, the ICRC uses that information to seek to persuade weapons-bearers to change their behaviour. Its activities in regard of changing behaviour can be categorised into three time horizons.

In the short run, where the will of armed groups is fixed, the main ICRC protection activity is the documentation of violations of IHL and the presentation of those allegations to armed groups with
the aim that the violations will be investigated by the group and individual violators punished. Confidential dialogue and persuasion is the ICRC trademark, and in many contexts this is in practice the main protection activity. The practice of confidential dialogue derives from the institutional interpretation of neutrality. Though not ‘fundamental principles’ of the Red Cross, dialogue and confidentiality are seen as underpinning ICRC protection work as means to generate access (ICRC 2008, p. 758). There is a lack of compelling evidence as to whether neutrality has any significant impact on staff security and humanitarian access in general. It is widely accepted that the ICRC does have greater access to populations in most contexts than other major humanitarian organizations. However, the ICRC does not have unimpeded access across the globe, and there have been deliberate attacks on ICRC staff and compounds, for example in Chechnya in 1996 and Iraq in 2003 (Stoddard et al. 2006, p. 4) and with two delegates held hostage in Darfur in 2009-2010 (ICRC 2011, p. 85). Further, even to the extent the ICRC has better access than other organizations, this may be for a variety of reasons, though most assume it is related to the institutional commitment to, and interpretation of, neutrality.

Within the ICRC, neutrality and confidentiality are both seen as means to the same end – namely access. Additionally, depending on how neutrality is defined, it may also imply a need for confidentiality. Ann Rieffer-Flanagan suggests that neutrality is an essentially contested concept: it implies not lending support to one or other side in a conflict, but beyond that its contents are context-specific and contested (Rieffer-Flanagan 2009, p. 892). For much of the history of the ICRC, the principle of neutrality was mediated by an institutional inclination towards secrecy, and understood as a commitment to confidentiality and discretion. The 1975 Tansley report\(^2\) found that the uncritical commitment to discretion within the ICRC was dysfunctional, and that the ICRC sometimes maintained discretion not because it was necessary (to gain access to conflict victims,

\(^2\) The Tansley Report, published in 1975 and formally titled An Agenda for the Red Cross in 1975, was a study by Donald Tansley that reviewed the state of the Red Cross Red Crescent Movement, and explored the future of the Movement as a whole. Its findings are deemed to have had a significant impact on the subsequent policies of the ICRC and to continue to do so today.
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for example) but because it was comfortable (ICRC 1978, p. 326). Thus the Swiss tradition of discretion and confidentiality can be seen to have been inherited by the ICRC, and to have subsequently become an organizational pathology (Barnett and Finnemore 2004). Specifically, this represents the ‘irrationality of rationalisation’ through which means become so embedded that they come to define ends or even become ends in themselves.

The ICRC response to the Tansley Report on the issue of discretion was to clarify its policy as to when it should maintain discretion, and when it should speak out about violations of IHL (ICRC 1978). In the contemporary ICRC, confidential dialogue is preferred practice but not an absolute principle; rather it is seen as ‘proportional to the willingness of the authorities to take into account the ICRC’s recommendations’ (ICRC 2008, p. 758). This conditional confidentiality reflects a rethinking of the ICRC understanding of neutrality in the light of the many criticisms it faced after the Second World War and the Tansley Report. It remains the case that discretion is key to ICRC work, but in exceptional circumstances where confidential bilateral dialogue with those responsible for IHL violations fails to yield tangible results, mobilisation (as in the case of El Salvador, for example, where information was passed to Human Rights Watch, an organization that was able to pressure the government publicly) and denunciation may be employed (ICRC 2008, p. 766).

Given that such mobilisation and denunciation remains exceptional, success in these short run activities rests on either the existence within any given armed group of some will to behave according to a logic of appropriateness or the ability of the ICRC to convince the armed group through a process of argumentation that it is in the interests of the group to comply with IHL or its underlying principles. Additionally, where groups lack hierarchy or organization, the will to adhere to particular standards may be present among some elements of the group but those elements may be unable to control or punish the behaviour of other elements. Even among non-state armed groups that are well-structured and disciplined and where there is the will to behave ‘appropriately’, the work of the ICRC in the short run will depend on shared understandings of appropriateness.
In the long run, the ICRC seeks to increase the will of weapons bearers to adhere to internationally accepted standards of appropriate behaviour through a number of activities. The ICRC undertakes IHL dissemination and training to raise awareness of what such standards are. In 2010, for example, ‘32 specialized ICRC delegates conducted or took part in more than 100 courses, workshops, round-tables and exercises involving some 10,000 military, security and police personnel in more than 80 countries’ (ICRC 2011, p. 105). Likewise, the ICRC aims to increase the will to adhere to IHL through building trust and goodwill with armed groups (through, for example, other ICRC activities with detainees or with wounded combatants, as well as through the provision of effective assistance to civilian populations to demonstrate the worth of the ICRC). In this regard, ‘the ICRC maintained relations with the armed forces of 160 countries and with nearly 80 armed groups’ (ICRC 2011, p. 105). Such training and dissemination has long been an activity of the ICRC with state military forces, but only in the past decade or so has the ICRC routinely undertaken this kind of activity with non-state armed groups (Ratner 2011, p. 468).

In the very long run, where standards of appropriate behaviour are variable, the ICRC seeks to extend and raise these standards through the development of treaty-based and customary IHL. Thus the institutional understanding of the role of the ICRC in protection includes the development of IHL (ICRC 2007b, p. 3, 2010b). This is based on the implicit assumption that if a legal framework can be approved, then protection will be wider reaching and more systematic than would otherwise be the case (Forsythe 2005, p. 259). Such an assumption has underpinned ICRC activity from the very origins of the IO, as reflected in Dunant’s Memory of Solferino and his proposal for the first Geneva Convention of 1864. However, this assumption is not uncontested. For example, Valentino et al. (2006, p. 375) argue that ‘the laws of war might actually provide greater protection to civilians if they were selective and focused on creating mechanisms and institutions that facilitate cooperation among parties already inclined to respect certain restrictions on combat.’

As mentioned earlier, the ICRC does not and cannot create IHL. However, in the drafting of IHL treaties, and in the documentation and interpretation of customary IHL, the ICRC does play a role in shaping the content of IHL. The ICRC has drafted treaties, albeit usually with a good idea of
what states will find acceptable, gained through discussions with states and through pre-Conference consultations. This was the case with Additional Protocol II, the main treaty for the protection of civilians during internal conflict (Forsythe 1978). The drafts submitted by the ICRC have then been the subject of negotiation and amendment before a final version is adopted. The international law of internal conflicts has been developed in large part through analogy to the international law of international armed conflicts, and the construction of analogies has facilitated an expansion of the legal framework for internal conflicts (Sivakumaran 2011). The IHL framework for civilian protection in internal conflict thus mirrors that for pre-existing issue-areas within the ICRC, built on the same basic principles and mirroring many of the articles in the Geneva Conventions and sharing many of the rules in the customary law study. Notably, the 2005 ICRC customary IHL study collates all the relevant practice – combining evidence from international and non-international conflicts – on any given issue, and most rules set out in the study cover both kinds of conflict (Henckaerts and Doswald-Beck 2005, p. ii, supra note 31; Sivakumaran 2011, p. 231).

As we have seen, the ICRC has significant power to shape understandings of whose practice counts with respect to the development of customary IHL, and it privileges the practice of states (Henckaerts 2005, pp. 179-180; Kellenberger 2005, p. xvi). Given the importance of customary IHL to the work of the ICRC in internal armed conflict, such a state-centric approach to the development of IHL suggests that work is at odds with the fact that non-state armed groups are key determinants of civilian security and arguably at odds with the principle of neutrality. Although the ICRC may not take sides in any given conflict, it does favour state practice in developing the legal and normative framework which shapes its work.

IHL has often been said to reflect a compromise between state interests and humanitarian interests. The standards articulated in IHL thus reflect what is accepted to be appropriate behaviour for states even if many of them are intended also to be binding on non-state actors. ‘All law has to take into account, as closely as possible, the social reality it seeks to govern’ (Sassoli 2010, p. 15). International law needs to be adapted to the international political order (Zegveld 2002, p. 224). In
internal conflicts, non-state armed groups necessarily comprise part of that political order. They have different characteristics from national militaries, and different forms of behaviour may be realistic and appropriate. The importance of armed non-state actors in determining civilian security in internal conflict, and their neglect in the development of IHL, calls into question the extent to which the normative architecture developed by the ICRC, and on which it bases much of its practical work in conflict contexts, is adapted to the contexts for which it is intended.

Despite this emphasis on threat-reduction, the ICRC acknowledges that compliance with IHL remains imperfect. Thus in some situations, the ICRC may also work to reduce vulnerability (for example, through flight and refuge), and occasionally undertakes emergency evacuations, in particular to evacuate injured civilians when access for medical services is restricted. Where civilians have the option to relocate away from threats this can reduce their vulnerability significantly. Thus encouraging or facilitating mobility is one way third parties can seek to reduce civilian vulnerability. With no specific focus on refugees or IDPs, the ICRC cannot be said to have a general policy encouraging or even concerning mobility. However, implicit in its more general policies is a concern for refugees and IDPs. After the First World War the ICRC lobbied the League of Nations to set up an refugee agency, and there have been many instances of the ICRC playing a key role in the provision of assistance to refugees and IDPs (Krill 2001). Such assistance can be seen as indirectly facilitating mobility in that it removes some of the economic barriers to displacement (which very often entails leaving behind livelihoods and relocating to an area without livelihoods opportunities). The ICRC emphasises that those who are displaced are not necessarily the most vulnerable, while acknowledging that there are often some particular vulnerabilities associated with displacement (ICRC 2011, p. 49). With this in mind, the ICRC has an Internal Displacement Adviser within the Protection of the Civilian Population Unit in Geneva.

The main activities of the ICRC in respect of vulnerability-reduction are: the registration and follow-up of individuals at risk; strengthening the capacity of communities, families and individuals for empowerment and self-protection; risk education; and the provision of aid and services aimed at reducing exposure to risk (ICRC 2008, p. 767). The registration and follow-up of
individuals mirrors the ICRC approach to the protection of prisoners of war, and is based on the rationale that if authorities (in places of detention) or armed parties (in the context of conflict) are aware that individuals are known to the ICRC, and that the ICRC will ask questions about their whereabouts, those individuals are less likely to be mistreated, killed or disappeared. The provision of aid and services aimed at reducing exposure to risk is common to all issue-areas addressed by the ICRC. Such assistance is viewed as intrinsic to protection, and also as a means to gain access. The ICRC may also provide evacuation services or set up protected areas in an effort to reduce vulnerability. Additionally, ICRC work to reduce civilian vulnerability in the midst of conflict includes tracing of missing persons and transmission of ICRC messages, replicating the modus operandi of prisoner tracing.

In sum, the ICRC undertakes a number of activities aimed primarily at threat-reduction and secondarily at vulnerability reduction. The ICRC seeks to reduce the threat posed by armed violence by changing the behaviour of those who perpetrate organised violence. Efforts to change behaviour operate both in specific contexts through bilateral dialogue and training activities, and globally through the development of IHL. Within the ICRC, the actions of belligerents are seen as the main determinants of civilian security, and protection activity is primarily aimed at influencing the actions of belligerents by encouraging adherence to IHL.

**Explaining the approach**

Having provided a detailed characterisation of the ICRC approach to the protection of civilians in internal conflict, I now draw on the framework set out in chapter two in order to address the question of why the ICRC adopted this particular approach. I suggest that explanations relying on external factors alone are insufficient, and I show how the different internal factors have interacted to yield this particular understanding of, and approach to, protection.

As we have seen, the protection work of the ICRC is heavily based on IHL, both in terms of defining the issues that the IHL works on, and the way it approaches those issues. IHL for internal conflicts has been developed through analogy to the international law of international conflicts, and...
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as such mirrors that body of law (Sivakumaran 2011). Thus the legal and normative frameworks that underpin the ICRC approach to protecting civilians in internal armed conflict replicate or mirror the frameworks designed for pre-existing issue-areas.

The normative framework employed by the ICRC focuses on the duties of armed parties to internal conflict rather than on the rights of individuals. This cannot be explained by state preferences, as at the time the ICRC expanded into this new issue-area states were busy signing up to human rights treaties which focused on the rights of individuals rather than the obligations of states and other parties to conflict. In the same vein, this aspect of the approach cannot be explained by the external normative and institutional environment which was characterised by increasing commitment to human rights. If these external factors had been the primary drivers of the ICRC approach, we might expect that the ICRC would have sought to develop the law of internal armed conflict, and its own approach to protecting civilians in internal conflicts, through analogy to international human rights law and by making ‘adjacency claims’ to human rights (Finnemore and Sikkink 1998, p. 908). Instead, the IHL framework on which the ICRC bases its approach to protecting civilians in internal conflict was developed through analogy to IHL applicable to international armed conflict. This is thus best explained as a consequence of institutional history (and specifically the other issue-areas within the ICRC mandate) and the core values of the ICRC.

The emphasis on the obligations of armed actors reflects the context in which the ICRC originated – in the mid-nineteenth century, there was no such human rights discourse as that which followed the Second World War. Despite the fact that the 1949 Geneva Conventions and their Additional Protocols of 1977 are products of a context in which human rights were higher on the agenda, they are also products of the ICRC as the organization that drafted them (together with states and their representatives who negotiated the final texts) and the historical experiences of the

22 As evidenced in, for example, the 1948 Universal Declaration on Human Rights, the 1951 Convention on the Status of Refugees, the 1966 International Covenant on Economic, Social and Cultural Rights, and the 1966 International Covenant on Civil and Political Rights.
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ICRC. The first three Geneva Conventions of 1949 were based on earlier versions, and the fourth Convention was shaped by the first three. Similarly, the Additional Protocols of 1977 were shaped by the four Geneva Conventions of 1949. A particular notion of protection had become institutionalised in the ICRC in those early stages and continued to impact on later treaties and practice.

We have also seen that the ICRC often works beyond the boundaries of IHL, most notably by undertaking practical activities which fall outside the scope of IHL and by extending the reach of IHL. In both these ways of working, the ICRC draws analogies with existing IHL to justify expansion. Thus even where IHL is not applicable, the ICRC may negotiate on the basis of IHL by analogy in order to improve protection for populations of concern. Conversely, in some situations where IHL is applicable it is seen to be a hindrance rather than a help, and references to IHL are minimised or avoided. This pragmatic use of IHL reflects the ICRC understanding of legal protection primarily as a means to physical protection rather than an end in itself. The ICRC approach incorporates both an operational and a legal understanding of protection; it is about both the provision of physical security and the establishment of a special legal status for civilians (and others hors de combat). The special legal status and the legal framework as a whole are intended to be instrumental to the main aim – the physical security and safety of protected categories of person.

Thus the ICRC has prioritised its humanitarian protection functions over its IHL guardianship functions, and rarely makes public its assessments of the nature of particular conflicts or the violation of particular IHL rules, sometimes not even providing its legal assessment to the violators of IHL in question, at the risk of compromising its claim to be an authority on IHL (Ratner 2011). This particular understanding of the relationship between legal and physical protection, and the prioritisation of the latter, cannot be adequately explained through reference to external factors. There is nothing to indicate that powerful states prefer the ICRC to emphasise physical over legal protection and, if anything, the competitive external environment would lead us to expect that the ICRC would emphasise the half of its mandate which is unique to the ICRC, and with respect to
which it can make a particular claim to authority – that of IHL guardianship, whereas in fact the ICRC does the reverse.

Instead, this is better explained as a consequence of internal factors. The way that the ICRC understands the relationship between legal protection and physical protection underpins several of the issue-areas within the ICRC mandate (specifically, all those that are covered by IHL) and reflects the process by which policy has developed within the ICRC. Practical action has preceded legal codification, and that legal codification was always intended to support rather than supersede the practical activities. This understanding, therefore, can be attributed to institutional history and is a characteristic replicated across the different issue-areas on which the ICRC works.

The ICRC is not concerned with reducing overall levels of violence and does not engage directly in activities aimed at conflict prevention or resolution (with the exception of acting as a neutral intermediary between armed parties, a role which may play a small but important part in conflict resolution in some cases). Instead, the ICRC focuses on reducing threats and vulnerability. This understanding of protection objectives is replicated across multiple issue-areas within the ICRC mandate. The main emphasis is on threat-reduction, and this is understood in terms of changing the behaviour of those who pose a threat.

In pursuing this primary objective, the ICRC undertakes two broad sets of activities. In the midst of internal conflict, the ICRC undertakes interventions with armed groups – state and non-state – to increase their compliance with IHL. And in the longer run at the global-level, the ICRC seeks to develop IHL primarily through engagement with, and based on the practices of, states. Taking each of these sets of activities in turn, I suggest that both originally replicated activities that the ICRC undertakes on other issue-areas, but only the first has been well adapted to the specificities of internal conflict.

While the formal policy includes a range of other activities, the understanding of many within the ICRC is that dialogue is the main protection activity at the field level. The core of the ICRC approach to protecting civilians is to talk to civilians to document alleged violations of IHL and
then make bilateral and confidential representations to the alleged perpetrators in an effort to persuade them to change their future behaviour. This directly mirrors ICRC work with prisoners of war and other detainees. The ICRC talks to them in confidence about the conditions of detention and then makes representations to the relevant detaining authority in order to persuade the authority to meet the conditions set out in IHL for the treatment of prisoners. Again, then, this part of the approach to protecting civilians in internal conflict derives from institutional history. The preference for bilateral and confidential dialogue replicates the ICRC approach to all other issue-areas, but it has also become a core value, central to the identity of the IO. As such, ‘were the ICRC to choose a radically new set of tactics, e.g., through frequent public condemnations, or consideration of *jus ad bellum* in its assessments, it would, in essence, no longer be the ICRC’ (Ratner 2011). Where such aspects of historical approaches are not simply replicated but also become central to the IO identity, they are likely to be highly inflexible to adaptation.

On the one hand, the targets of these interventions – of the bilateral dialogue – in internal conflicts have been extended to include armed non-state actors. This adaptation has occurred over time, with specific interventions on violations of IHL taking place with armed non-state actors ever since the ICRC started working with an IHL framework for internal conflict, but with IHL training for non-state armed groups only following much more recently, around ten years ago (Ratner 2011, p. 468). On the other hand, the normative framework on which the ICRC bases its interventions and training activities has only been partially adapted.

Long-term activities to develop IHL for internal conflict have followed the pattern of IHL development for international conflict. Thus there has been a replication not only of much of the content of that body of law, but also of the process by which it was developed. The process by which international law is developed is expected to play a part in determining adherence to that law; where the process is seen as legitimate by those states that are subject to the law, adherence is expected to be greater (Franck 1990; Franck 1995). If the same is true of non-state armed groups, then the state-centric nature of IHL – and thus of the ICRC protection policy – is problematic in dealing with internal conflicts and, specifically, the non-state parties to such conflicts. Adherence
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to international law is also expected to depend on the explicit consent of those states are to be bound by it, and the feasibility of their complying with it (Chayes and Chayes 1998). Yet several aspects of IHL require behaviour which is not realistic or feasible for non-state armed groups in the context of armed conflict (Sassòli 2010). In this sense, the state-centric nature of IHL development may be dysfunctional. This would be an example of ‘bureaucratic universalism’ whereby pathological behaviour results from the transfer of rules from one context to another, despite the fact that those rules are not suitable for the new context (Barnett and Finnemore 2004).

The ICRC (2007b, p. 3) states that it ‘intends to promote the law and to have it recognized and applied as the relevant law in any armed conflict. It will continue to clarify and develop the law taking into account the real nature of conflicts in today’s world and working to prevent any erosion of the protection afforded to civilians and persons who are no longer fighting.’ However, it only takes into account that ‘real nature’ of internal conflicts on one level. By developing a legal framework that applies to all conflict parties including non-state armed groups, the ICRC does take into consideration the fact that such groups are a part of that ‘real nature’. But by developing the framework in such a way that does not take into account the nature of those armed groups, the ICRC does not fully take into account the nature of the conflicts in which they participate. In sum, by developing a framework that is not necessarily appropriate for changing the behaviour of non-state armed groups, the ICRC lacks a normative framework conducive to maximising the protective impact of its interventions.

The question remains as to why the in-conflict activities of the ICRC have been well adapted to the specific context of internal conflict, and the development of the normative framework has only been partially adapted. I suggest that bureaucratic personality mediates how the institutional principles shape practice, and how far policy is adapted in response to bottom-up pressures emerging from field experience. The ICRC organizational culture is characterised by strong adherence to principles and an approach to policymaking that is both cautious and informed by institutional experiences at the field level. As such, the approach has maintained compatibility with the other issue-areas within the IO, and has adapted slowly to the new issue-area through the
incorporation of field experience. The ICRC maintains significant independence from states in setting its agenda and protection approach, and this is particularly evident in the activities the ICRC undertakes with all the armed actors in conflict contexts.

Nonetheless, the ICRC operates within (and to advance) a state-centric normative framework which does not reflect the political and social reality of internal conflicts in which armed non-state actors are powerful determinants of civilian security. In the development of international law, field level experiences that suggest the normative framework may not be adequate for changing the behaviour of armed non-state actors do not result in a change of the framework. Instead, the dominant understanding of how international law can be created appears to hold sway in the ICRC. Thus the external institutional environment in this case applies pressure against significant adaptation of this part of the approach. Furthermore, the ICRC does not seek to develop any additional normative framework (such as the deeds of commitments that Geneva Call has negotiated with a number of non-state armed groups). Any such undertaking might be seen to undermine IHL and the argument that IHL is equally applicable to state and non-state armed forces.

Conclusion

The ICRC approach to protecting civilians in internal armed conflict is best explained by factors internal to the IO. Expansion into the issue-area of civilian protection in internal conflict was justified through analogies to pre-existing issue-areas within the ICRC (namely protection of sick and wounded combatants, prisoners of war and civilians in international conflicts). This facilitated informal and then formal mandate expansion, and thus extended international responsibility to a wider category of conflict victims. In this sense, the analogies have served an important purpose. However, drawing parallels between civilian protection in internal conflict and the pre-existing issue-areas has also impacted on the way that the ICRC seeks to protect civilians in internal conflict, and may have imposed limits on the scope of protection the ICRC is thus able to achieve.
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As IOs expand to encompass increasing numbers of issue-areas, objectives and norms, there is greater scope for clashes among the different issues, norms and objectives (Weiner 1998). By taking very similar approaches to each issue-area, maintaining significant independence from states such that objectives are set within the IO with little external pressure, and eschewing activities that conflict with the key internal principles of the IO, the ICRC has minimised such clashes. However, while uniform policies and a rigid approach to the norms underpinning those policies may minimise conflicts of interest and inconsistencies in the work of an IO, they may not yield optimal approaches for addressing the new issue-area. Replicating the approach across issue-areas is problematic because the new issue-area by definition differs from the old ones. Thus there is a high risk of the second type of organizational pathology defined by Barnett and Finnemore, ‘bureaucratic universalism’, where generalised approaches are applied across contexts, including in those for which the approaches are unsuitable.

This has not been a major problem for ICRC for two reasons. First, the ICRC has expanded its mandate cautiously and every new issue-area has been a very close fit with the pre-existing issue-areas within its mandate. Secondly, in many respects the ICRC has adapted the replicated approaches to the new contexts and to the specificities of the new issue-areas. This in turn can be attributed to a bureaucratic personality that favours bottom up influence such that field level experience is used to inform policy and replicated approaches are adapted – albeit slowly and over time. However, I have argued that the failure to fully adapt the normative framework on which the in-conflict protection activities of the ICRC are based has limited the effectiveness of those activities in internal conflict.

The ICRC approach to protection aims first and foremost to reduce the threat posed by combatants to civilians. It seeks to do so through changing combatant behaviour, specifically through gaining greater adherence to IHL. The methods available to the ICRC in seeking to increase adherence to IHL are limited by institutional constraints, namely the core value of neutrality and the ICRC interpretation of that particular principle, such that the ICRC must rely on methods of persuasion. In the vocabulary of constructivist scholarship in IR, the ICRC must appeal to a ‘logic of
appropriateness’ (March and Olsen 1989) in seeking to change the behaviour of armed actors. In the short run, generally accepted standards of appropriate behaviour are fixed, as is the will of individuals and groups to adhere to them. In the long run, the will of any given individual or group to adhere to those standards may also be variable. And in the very long run, the standards which constitute appropriate behaviour are also variable. While the short run and long run activities acknowledge the importance of non-state actors in determining civilian security, the appropriate standards of behaviour to which short and long run persuasion activities must appeal are developed in the very long run as part of a state-centric framework, and this may limit the ability of the ICRC to change the behaviour of non-state groups to conform to these standards. In internal conflicts, non-state actors by definition constitute at least half of the armed parties to the conflict, and those non-state actors are important determinants of civilian security.

The ICRC is not able to employ carrot or stick methods to incentivise armed actors to behave in a particular way and neither does it have coercive power; the ICRC delegate is a ‘warrior without weapons’ (Junod 1951). The ICRC is largely limited to methods of persuasion, and it is unlikely to be able to persuade actors to change their behaviour to comply with laws which those actors deem illegitimate or inapplicable. The ICRC implicitly acknowledges that IHL may not be a helpful referent when it chooses to discuss violations of IHL in terms of their humanitarian consequences rather than in terms of the violations themselves. The ICRC was founded on the premise that there will be greater compliance with protective principles where they are codified in a legal framework, and continues to hold this view, evidenced by its commitment to developing IHL and its recently articulated position that interventions should be rule-based because individual combatants are not morally autonomous (Muñoz-Rojas and Frésard 2004). In light of this, the fact that the ICRC prefers not to refer to the legal framework in dialogue with particular actors implies an understanding that the framework is not adequate or appropriate for those actors.

In the following chapter, I examine the ICRC experience of implementing this approach in Colombia. In particular, this demonstrates the inadequacy of the IHL framework as a tool for effecting changes in the behaviour of the non-state armed parties to the conflict.
Chapter 4: ICRC protection in practice in Colombia

This chapter illustrates how the ICRC approach to civilian protection is put into practice in Colombia. The purpose of this chapter is to provide a picture of how the global level policy explained in the previous chapter is implemented at the field level. Through analysis of the institutional experiences of implementation in the Colombian context, I draw out conclusions regarding the coherence and limitations of the approach as a whole.

There is no secondary literature on ICRC operations in Colombia, and thus this chapter is based primarily on my own field research in Colombia between July and September 2010. Focusing as it is on only one country of implementation, the analysis cannot be generalised into a description of the practical protection work of the ICRC across the globe. However, it draws on interviews with staff from eight of the twelve ICRC field offices in Colombia, and so provides a reasonably comprehensive picture of ICRC protection operations throughout this one country. In each of these eight offices, I interviewed the head of office (or sub-delegation) and in some I also spoke with additional national or expatriate staff. Given that almost all of the interviewees have worked for the ICRC in at least one other country (most in several other countries), I was able to establish where programmes are specific or tailored to the Colombian context, and where they represent worldwide policy.

The chapter starts with an overview of ICRC activities in Colombia and the ICRC characterisation of the context, before considering the principles and legal framework that underpin those activities. Turning to the practical implementation of the approach in Colombia, I examine the importance of access to victims and combatants, and then I describe and analyse the main protection activities before considering the impact of this work. I argue that the experience of ICRC field delegates in Colombia demonstrates the insufficiency of the legal framework which is intended to support their work, and that this limits the potential impact of this work.
Overview of ICRC operations in Colombia

The ICRC has been present in Colombia since 1969 (initially visiting detainees), and since 1997 has also been working on the protection of the civilian population. The ICRC conducts protection work in Colombia along these two axes: protection of the civilian population (abbreviated to its French initials PPC); and detention work. Given my focus on the security and protection of civilians in the midst of conflict, my analysis focuses on the PPC strand of work. The ICRC delegation to Colombia is headed in Bogotá, and supported by five sub-delegations, each of which includes a main office plus one or more field offices. Thus the Bucaramanga sub-delegation comprises the Bucaramanga office as well as the Ocaña and Saravena field offices, the Cali sub-delegation includes the Pasto field office, the Centro Colombia sub-delegation includes the Villavicencio and San José del Guaviare field offices, the Florencia sub-delegation includes the Puerto Asís field office, and the Medellín sub-delegation includes the Quibdó office.¹

Each ICRC country operation has its own plan for results, designed to include the modes of action seen as most appropriate to the specific needs and state capacity within that country. In 2005, the ICRC changed its approach in Colombia from generalist coverage of the country to priority zones. Now the organization seeks to focus its presence and activities on areas in which there are greatest needs or risks, and where the ICRC can have greatest impact. This in turn is seen to depend on where the ICRC can develop contacts with the armed groups, and where there is an absence of other international actors with a similar voice. On the one hand, such an approach is based around an assessment of needs, and to that extent is in keeping with the principle of impartiality (which requires the ICRC to focus its efforts according to, and in proportion to, needs). On the other hand, incorporating consideration of impact may be at odds with impartiality. Implicit in this approach is the assumption that the ICRC can have greatest impact where it can develop contacts with armed

¹ The eight offices I visited were: Bucaramanga, Cali, Medellín, Pasto, Puerto Asís, Quibdó and San José del Guaviare, Villavicencio.
groups – including non-state groups. This is indicative of the importance the ICRC attaches to combatants as the primary actors determining civilian security.

This approach based on priority zones means large parts of the country (including zones where civilians are victims of conflict) have no ICRC presence at all. There are around twenty priority zones in which the ICRC implements practical projects designed around the specific needs of the civilian populations in those zones (ICRC 2010a, p. 3). Examples include agricultural assistance projects such as the distribution of plantain seeds or animals, building of school refectories or dormitories, and in some cases health brigades to rural areas. Longer-term development projects are not within the mission of the ICRC.

In addition to geographical prioritisation, the ICRC also emphasises particular issues. There are five institutional protection priorities for the ICRC globally: mines/weapon contamination; medical missions; minors; women in war; and missing persons. These five priorities apply in Colombia as elsewhere. However, in different contexts, the civilian populations have different needs and some issues may be deemed to be more pressing in one context than another. In response to such variation, in at least some parts of Colombia, not all these issues are prioritised as the global policy anticipates. This is indicative of the commitment to impartiality at the field level of the ICRC in Colombia. However, the field offices often seek to focus on those protection themes on which they believe they can have most impact, and these may not reflect the greatest needs per se but rather the greatest needs that delegates believe they can have an impact on.

Further, ICRC delegates may avoid discussion with armed actors of those issues that are expected to have a negative impact on the relationship between the ICRC and those actors. Some institutional priorities – most notably issues around mines and weapons contamination – represent sensitive subjects with some combatant groups in some parts of the country. Conversely, themes which fall outside of the global institutional priorities are sometimes identified by delegates as being the key issues for civilians in a particular part of the country. Where delegates observe that other issues are provoking the most severe humanitarian consequences, they may seek to expand
ICRC work into these new arenas, even if these issues do not correspond to the global institutional priorities, or even to IHL as it currently stands. Such innovation in approach is in line with the ICRC commitment to the principles of humanity and impartiality. In Colombia, two such themes – fumigations and urban violence – have been identified for work by ICRC staff and are analysed in more detail later in this chapter.

The core of what ICRC delegates in Colombia refer to as protection work involves the documenting of protection cases or ‘PPC cases’ detailing alleged events or incidents that represent a violation of IHL. These are based on information provided by the civilian population regarding violations of IHL by armed actors. Once the information is verified, and if the victim agrees, the ICRC presents the case to the perpetrators of the violation. The presentation may be verbal or written, though it is more likely to be written in cases where state military forces perpetrated the abuse, or where the abuse was of a particularly serious nature. Based on the testimonies of victims (or their families in cases where the victim has been killed), these allegations relate to violations of IHL that have already taken place or are ongoing. Thus the interventions seek to change future behaviour (and avoid repetition of the particular violations documented in the protection case) or to end ongoing violations. In this way, information about past violations is used with the hope of preventing future violations.

**ICRC characterisation and analysis of the Colombian context**

Despite the fact that the previous government officially labelled Colombia as being a ‘post-conflict context’, in 2002 the ICRC officially stated that all the conditions of conflict of a non-international character exist in the country. This is contrary to the usual ICRC practice of not publicly defining a context, even if its use of IHL in any given case implies a particular assessment of the context. The delegates I interviewed clearly had a good understanding of the conflict dynamics in the

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2 See Ratner (2011, pp. 474-477) for analysis of the reasons that the ICRC sometimes keeps its position on legal matters ambiguous.
regions for which they were responsible, and employed this understanding to tailor their interventions with the various armed groups.

Political analysis is based on field trip reports and does not necessarily involve talking to the victims. The ICRC seeks to cross-check information by talking to the armed groups, the police, civilian leaders, the church, hospitals and other humanitarian organizations. It is seen as a significant advantage that the ICRC has access to the whole country so that it can receive first-hand information with which to build analysis. In addition, ICRC delegates spend a lot of time in the field (often three weeks in every four), are respected, and people know and understand their confidential approach to their work. Political analysis is also used for planning and budgeting. For example, if the analysis shows that manual eradication of coca crops leads to increased use of landmines, and that manual eradication is expected to increase in a particular region, then the ICRC will increase the budget for its operations in that region.

The ICRC has been additionally been conducting an analysis of how to classify the ‘emerging armed groups’. This involves an internal process to qualify the different groups depending on their level of organization, level of participation in the conflict, and the humanitarian consequences of their actions. Currently the ICRC works as if some of the emerging groups are part of the conflict and is waiting for analysis on others. The analysis is initially private, and the ICRC is considering how the traditional groups would react if the ICRC publicly classifies some of the new groups as parties to the conflict. It is possible that the ICRC would go public on classification, but even if there is no public statement, it would soon become apparent depending on which victims the ICRC responds to.

**Principles in practice**

In keeping with the global policy approach, a number of principles are seen as essential to the work of the ICRC in Colombia: neutrality, impartiality, independence, visibility and confidentiality. The ICRC Colombia perspective is that neutrality is necessary but not sufficient. On the one hand, being neutral is not enough to enable ICRC operations, and the *perception* of neutrality is also
assumed to be a precondition for the cherished access to victims and armed actors. On the other hand, genuine neutrality is seen as absolutely essential because in the long run, the perception of neutrality is seen by the ICRC in Colombia to be dependent on being 100% neutral in practice. For the ICRC in Colombia as elsewhere, neutrality means maintaining a distinction between military and humanitarian action but does not proscribe contact with military actors; on the contrary, the ICRC seeks as much contact as possible with the armed groups in the Colombian conflict, and much of its protection work is premised on such contact. Implicit here is the assumption that the armed actors are of primary importance in determining civilian security.

One way in which the ICRC seeks to assure neutrality is by ensuring that most contact with armed actors is by international staff. The rationale behind this is that there is a greater likelihood of national staff members being forced not to be neutral. For the international staff, they (and their families) can be out of the country within a few hours if they are seriously threatened. The perception of neutrality has posed a problem with some combatants: in some areas, the guerrilla say the ICRC is not neutral because they will take wounded combatants to the hospital, but the hospitals are obliged to report certain injuries and illnesses to the police, so the combatants risk arrest. In an attempt to remedy this, the ICRC explains the procedure and lets the group decide if it wants to go ahead with the medical evacuation or not. However, this problem reflects a general difficulty of acting with neutrality in internal conflicts in which states often have greater resources and facilities that non-state armed groups, and in a world in which states are seen as legitimate and non-state armed groups as illegitimate.

In addition to acting in accordance with the principle of neutrality, the ICRC seeks to ensure perceptions of neutrality by maximising the visibility of its work. ICRC staff do not travel or work in secret; they seek to demonstrate that they have nothing to hide, and they do not travel at night except in emergency, in which case they contact all the groups that they can to let them know. They also seek to be transparent with the armed groups about ICRC activities and to give the armed groups the opportunity to raise any objections to those activities. This is seen as critical to building confidence and trust with the armed groups. Trust is also considered to be important with
the communities in terms of projects, and the ICRC tells the communities only about projects they are actually going to undertake, not what they are thinking about doing. Thus the ICRC seeks not to make promises it cannot keep, and operational effectiveness is seen not only as of intrinsic importance but as instrumental to acceptance by communities and armed groups (Geremia 2009; ICRC 2010a, p. 13). In short, visibility, transparency and reliability are all seen to contribute towards trust and the perception of neutrality which, in turn, are seen to facilitate access.

Confidentiality towards both victims and combatants is also understood as key to gaining trust. The idea is that ‘sparse recourse to public denunciation and the formal refusal to collaborate with or testify in tribunals all serve to diminish any perceived threat deriving from the ICRC’s presence’ (Geremia 2009, p. 5). Where the ICRC seeks to change the behaviour of combatants in such a way that the combatants perceive the changed behaviour as against their own interests, however, the work of the ICRC could be perceived as a threat. For this reason, ICRC delegates in Colombia sometimes avoid discussion of particularly delicate issues, even if this goes against institutional policy. On the one hand, such avoidance is thought to help maintain a dialogue, but on the other hand it limits the range of issues on which the ICRC may be able to shape behaviour; it is both enabling and constraining.

In addition to the principles of humanitarian action that guide the behaviour of ICRC staff, we have seen in chapter three that legal principles (especially distinction, proportion and precaution) also play a major role in ICRC efforts to change the behaviour of armed actors, and that the principle of equality of belligerents underpins all of IHL. In the next section, therefore, I examine the application of the legal framework in the Colombian context.

**Legal frameworks**

In what follows, I consider how the legal framework – including IHL but also domestic legislation and other bodies of international law – informs the protection work of the ICRC in Colombia. Following the structure set out in the previous chapter, I explain which legal framework(s) are employed, the extent to which, and the way in which, the legal frameworks dictate which
Chapter 4: ICRC protection in practice in Colombia

...protection issues the organization works on, and how the legal framework shapes the way in which the organization works on these issues. Finally I consider how appropriate the legal framework is for protecting civilians in Colombia.

In Colombia, the ICRC overwhelming focuses on IHL, although at times it also draws on Colombian domestic legislation and the internal regulations of the armed groups. Colombia is party to the Geneva Conventions of 1949 and the Additional Protocols of 1977. Despite the previous government characterising the Colombian context as post-conflict, the government and military both apply IHL in accordance with the ICRC characterisation of the context as non-international armed conflict, and the ICRC is able to invoke IHL with respect to the state. Indeed, the Colombian Constitution states that IHL is applicable at all times, regardless of the existence of conflict (Kalshoven 1998). At times, particularly when the guerrillas have been in a militarily strong position, they have argued that as they did not sign the treaties, IHL is not applicable to them, although elements of their internal rules overlap with elements of IHL. However, in some parts of the country, the FARC have since started to talk about IHL and human rights in their dialogue with the ICRC. The ICRC also takes the opportunity to discuss customary IHL with the non-state armed groups, particularly as the ICRC takes the view that customary law is not susceptible to the argument that it does not apply to those who have not signed up to it. The 2009 ICRC Colombia annual report demonstrates how the organization relates all of the humanitarian consequences experienced by conflict victims in Colombia to violations of customary IHL rules (ICRC 2010a). However, as I have argued in the previous chapter customary IHL is based primarily on state practice and this calls into question its applicability to non-state armed actors. In the Colombia conflict, where the non-state armed groups are major contributors to civilian insecurity, this is problematic.

While IHL is deemed to be central to the work of the ICRC in Colombia, the scope of that work is not strictly delineated by the IHL framework. If IHL precisely dictated the issues addressed by the ICRC in Colombia, we would expect the ICRC to be concerned with issues if and only if they reflected violations of IHL. In other words the ICRC would address everything within the IHL...
framework and nothing beyond that framework. However, ICRC delegates in some regions ignore some issues and focus on others. Even where they are not ignoring a particular issue they do not act on every incident of IHL violation that is reported to them. Furthermore, they act on some issues, such as urban violence, which do not fall within the IHL framework, and they are collecting information on fumigations and their humanitarian consequences to inform a decision of whether and how to act in response.

The ICRC approach to protection centres around the documentation of protection cases, and these must refer to violations of IHL. Thus the ICRC does not formally document cases of breaches of civilian security that are not also breaches of IHL, and for the most part the ICRC only makes interventions on IHL violations. However, in other ways the organization does work on issues which go beyond the current remit of IHL where serious negative humanitarian consequences are observed from repeated acts which are not IHL violations. Historically this has been a mechanism through which the ICRC has pushed for IHL to be expanded (as we have seen in chapter three). Two particular examples of the ICRC pushing its work beyond the boundaries of contemporary IHL arise in the Colombian context, and relate to the issues of fumigations and of urban violence.

Aerial fumigations and urban violence are significant issues in determining the level of threats from organised violence for Colombian civilians in several regions of the country. However, neither issue represents an obvious or undisputed violation of IHL. Further, perhaps because both are also relatively recent issues, neither has traditionally fallen into the remit of the ICRC.

The fumigation of illicit crops is an activity carried out by, or in conjunction with, the public forces. That fumigation has serious humanitarian consequences is beyond doubt. It is a direct cause of health problems associated with the chemicals used, and of loss of livelihoods as licit crops are destroyed together with the illicit (Livingstone 2003, pp. 136-142). Fumigation is frequently also a cause of displacement as those affected flee the associated violence or seek alternative livelihoods elsewhere. The stated objective of fumigation is the elimination of coca cultivation, the ‘war on drugs’ being one of the major justifications for US financial, political and military support to Colombia. In addition, however, some commentators maintain that the fumigation is part of a
deliberate military strategy of desertification. Desertification benefits certain groups when it facilitates control of territory or clears the land for megaprojects.

Additionally, fumigation is often accompanied by violence as it conflicts with the interests of the armed groups involved in the cultivation of coca. A department-level analysis of violence in Colombia found that violence is not driven by coca production but rather by coca eradication and economic factors (Holmes et al. 2006). In some areas of the country, manual eradication is used instead of aerial fumigation to destroy coca crops. This is particularly so in Afro-Colombian and indigenous communities where they live in protected territories in which Colombian law prohibits fumigation. Given the low risk of fumigation on such territory, armed groups often use these zones for the cultivation of coca. Because fumigation is illegal, manual eradication is undertaken in its place. In order to prevent access of the eradicators, armed groups mine the surrounding areas, putting indigenous and Afro-Colombians at risk. Military actions linked to fumigation and eradication contribute to civilian insecurity, and additionally eradicators have been known to steal the possessions and produce of the civilian population.

Landel (2010) makes the case for at least some such fumigations in Colombia being violations of IHL, though she acknowledges that scientific and technical evidence which is not currently available would be required in order to prove this point. As such, the source of the ICRC legal mandate to work on this issue is unclear. Beyond IHL, the ICRC has the option to work on the basis of national law, but many of the humanitarian consequences result from fumigation activity which is not forbidden in national law. Nevertheless, the extent and severity of the humanitarian consequences are seen to compel the ICRC to work on this issue. The lack of a legal framework to protect civilians from the humanitarian consequences of fumigations presents a problem for the ICRC because the organization has no legal capacity to judge whether any particular incident of fumigation is acceptable or not, but the ICRC takes the view that it can, should and will support the affected populations. Nonetheless, fumigation is considered to be a particularly sensitive subject; it clearly serves political and strategic objectives for the Colombian government and military as well as being strongly supported by the USA (and indeed carried out by the US firm Monsanto). As
such, it is thought that if the ICRC acts quickly and exerts a lot of pressure on the Colombian government with respect to this issue, the organization will simply be perceived as anti-fumigation. Instead, as at mid-2010, the ICRC was in the phase of collecting cases, following the usual ICRC process of documentation, with a plan to review the cases, and eventually to discuss the issue with the government at the Bogotá level. This reflects the cautiousness inherent in the ICRC bureaucratic personality, and the institutional preference for building up a solid information base before taking action.

Despite numerous connections between urban violence in the cities and the wider armed conflict in Colombia, issues around urban violence are not considered to be part of the armed conflict and are not covered by IHL. In part because of this, expanding operations to include protection from urban violence has not been uncontroversial within the ICRC, but in 2010 a pilot project was already underway in Rio de Janeiro, and two initial projects were planned for Colombia: in Medellín and Buenaventura. Working in the cities represents a departure from traditional ICRC activities which have been largely focused on armed conflict in rural areas. Thus urban violence presents two particular challenges for the ICRC: working without the support of the IHL framework; and adapting an approach based on rural experience to the specificities of violence within cities. Nonetheless, there seems to be consensus among ICRC staff in Colombia that if the most serious humanitarian consequences from violence are in the city then the organization must work in the city. This consensus was by no means automatic and was arrived at after a debate. The decision to expand ICRC work to encompass urban violence was arrived at after internal discussion and participation from delegates at the field level, and some of my interviewees had initially been opposed to such expansion. Further, the subsequent decision and the rationale behind it were communicated to staff members who understand and consistently recount the same explanation.

There is an expectation that the conflicts of the future will more and more be infra-IHL, with more humanitarian consequences arising from internal disturbances and tensions or ‘other situations of violence’ that fall short of the definitions of armed conflict in the Geneva Conventions. Expansion into the issue of urban violence can thus be seen in the light of needing to stay relevant as the
incidence of conflict declines (responding to pressures from the external institutional environment). The ICRC justifies its involvement in this issue with three lines of argument: (1) that there are significant links between urban violence in Colombian cities and the wider conflict; (2) that the ICRC has the capabilities and is in a good position (via prison work) to establish contact with the perpetrators of urban violence; and (3) that the ICRC cannot ignore the humanitarian consequences of urban violence.

Despite the novelties and challenges posed by working in an urban context, the ICRC seeks to bring its particular experience and expertise to bear on the protection issues arising from urban violence. Drawing on its core competencies, the ICRC aims to reduce threats and vulnerability through talks in schools and community groups, and through the provision of light weapons awareness training. This idea of drawing on core competencies reflects the tendency to mirror policies or activities from an existing issue-area when expanding into a new issue-area. Working in schools is expected to facilitate proximity to the victims and potentially to provide access to gang members. It is believed that dialogue with the gangs requires a pragmatic step-by-step approach first getting agreement from the gangs that the ICRC can work on their territory on issues of urban violence, and then asking them if they are interested in having a dialogue with the ICRC. The ICRC can further draw on its core competency of working with detainees, with prisons providing a second entry point to meet and establish relations with leaders of criminal gangs. Thus the relationship between this new task and the pre-existing ICRC mandate is two-fold: (1) the activities undertaken with respect to urban violence replicate the activities already undertaken with respect to other issue-areas; and (2) work on a pre-existing task (specifically, prison visits) is expected to have a positive spillover effect on the new task.

While the ICRC has expanded beyond the specific issues delineated by IHL in its work on fumigations and urban violence, there are some IHL issues the organization de-emphasises in Colombia. The use of landmines and the taking of hostages are both common practices of the FARC and the ELN, but both are also illegal under IHL. These are sensitive topics with the guerrilla groups, and the ICRC does not want to endanger its dialogue with the combatants; as a
result, it sometimes chooses to ignore particular violations of IHL where it does not expect to have much or any impact, in favour of fostering a stronger dialogue and changing the combatants’ behaviour with respect to other violations of IHL. It is seen as necessary to build a very strong relationship before being able to raise these kinds of sensitive issues without compromising the dialogue on other issues.

For the period 1999 to 2008, Colombia was the country with the third highest number of reported casualties from landmines, after Afghanistan and Cambodia, though an unusually high percentage of these were military casualties\(^3\) (International Campaign to Ban Landmines 2009, p. 38). Mines are primarily used by the guerrilla in Colombia and their use by the FARC in particular has increased since 2000 (Human Rights Watch 2007, p. 15). The guerrilla use mines for two main purposes: to protect coca fields from manual eradication; and to protect the paths to guerrilla camps. The guerrillas see the mines as legitimate weapons that are necessary for their own security. However, the impact on civilians of the mines is incidental and is not something that is valued by the guerrilla – indeed if the area is one of civilian support for the guerrilla, civilian casualties from the mines are likely to be detrimental to the guerrilla by diminishing support for them. Thus civilian security is not in direct tension with guerrilla security, but indirect tension. In many cases, the FARC do inform civilians which areas to avoid because civilian landmine casualties represent a double blow to the guerrilla: not only do they impact negatively on civilian support, but they waste a landmine.\(^4\) At present, the areas where the FARC have their main camps, are also the areas where they have most civilian support and from which FARC members originate.

Thus in respect of such issues as kidnapping and the use of landmines, ICRC delegates at the local level weigh up the institutional priority against the damage it could do to their relationship with the

\(^3\) In 2008, for example, 507 of 777 reported casualties were military. However, it is possible that military casualties are over-reported and civilian casualties under-reported (International Campaign to Ban Landmines 2009, pp. 38, 296).

\(^4\) In some areas if a campesino is killed or injured in a FARC landmine planted in an area where civilians were advised not to go, the FARC charge the family 400,000 pesos (approximately USD 220) for the cost of replacing the landmine.
relevant armed group. In the worst case scenario, pushing an armed group to discuss a theme it does not wish to discuss could result in the ICRC being unwelcome in a particular area and if the armed group makes it unsafe for ICRC staff to travel to the area, they are unable to access the populations they seek to protect. This is not institutional policy and indeed might be controversial in Bogotá and Geneva. Arguably such a differential approach compromises the principle of equality of belligerents that underpins the existing IHL framework. As I was told by the head of one office, ‘it’s one thing to come to a FARC zone with health brigades and another to talk about weapons contamination. Geneva, Bogotá and [the sub-delegation in charge of this office] are all pushing to do weapons contamination because it’s an institutional priority. My response is “yes, when we have the green light from the groups”’. Potentially, avoiding the discussion of sensitive issues could entail departing from the principle of impartiality in the short run (ignoring the needs of those affected by landmines, for example) in order to assure access to all areas (a prerequisite for impartiality) in the long run. However, if interventions on a specific issue are expected to have zero impact then avoidance of that issue does not seem to contravene impartiality.

Thus the protection work of the ICRC in Colombia is structured around IHL, and the traditional protection activities it undertakes – documenting PPC cases and presenting them to combatant groups in an effort to change the conduct of the combatants through persuasion – are focused on violations of IHL. However, where humanitarian consequences are observed repeatedly and consistently from particular actions by organised groups – groups which are backed by violence even if the specific actions concerned (such as fumigation) are not, in and of themselves, violent – then the ICRC seeks to draw on its existing experience and expertise to innovate protection activity appropriate for the particular issue. It may be that fumigations, at least in certain circumstances, come to be seen as a violation of IHL as it currently stands, or it may be that customary IHL will develop which explicitly forbids fumigation under certain conditions. In either case it is likely that the documentation by the ICRC of cases of the humanitarian consequences of fumigation in Colombia and the ICRC interpretation of existing IHL will be contributors to any development of the legal framework. In the case of urban violence, it may be that the ICRC pushes the boundaries
of its practical activity without any deliberate goal of expanding IHL, though it is possible that in the long run expanded action on the ground will lead to developments in (codified or customary) IHL.

IHL has a role not only in determining which issues the ICRC seeks to address in its practical protection activity, but may also shape the nature of the activity on a given issue. For example, in the protection work of the ICRC in Colombia – which is based primarily on persuasion – the organization can try to persuade armed actors to change their behaviour by appealing to their obligations under IHL or instead by appealing to the humanitarian consequences of their behaviour. Whereas protection cases are only documented and presented to perpetrators when they involve an alleged violation of IHL, the extent to which the language and argument of IHL is employed in making the presentation depends on a number of factors. Different delegates have different styles and in verbal dialogue some prefer to discuss humanitarian consequences rather than IHL even with the public forces. Additionally, the delegate’s understanding of which approach is most effective in getting a particular interlocutor to change his or her behaviour informs the delegate’s approach.

In general, the ICRC in Colombia emphasises IHL when addressing interventions to the national military, and humanitarian consequences when addressing interventions to the non-state armed groups. With all parties to the conflict, the ICRC tends to begin its work by encouraging perpetrators to understand the humanitarian consequences of their actions. With the public forces, the ICRC may use IHL together with national legislation, and may also make reference to internal decisions and decrees of the military. Where such directives and decrees exist (often in line with the spirit of IHL), ICRC delegates report that these directives carry more persuasive power than IHL. For any given intervention, the ICRC may use multiple methods; the objective is to put an end to a particular violation, or particular humanitarian consequences, rather than to employ one particular method or another. Thus the IHL framework is of instrumental rather than intrinsic importance. Where it is deemed to be inappropriate or insufficient at the field level, it is substituted.
or supplemented with alternative arguments to achieve the same aims, but the state-centric nature of the normative framework itself is not challenged.

With the non-state armed groups, the ICRC finds it is often more effective to talk about humanitarian consequences rather than violations of IHL, and also to try to find common ground between the internal rules of the armed group and IHL. Sometimes this works but on some issues there is no common ground. For example, the use of landmines and the taking of hostages are common and accepted practice within the FARC and the ELN; they are not in contravention of any internal rules but they are in contravention of IHL. As already indicated, some delegates may avoid these issues altogether. In such cases, the ICRC implicitly accepts that it will not bring an end to these practices (at least in the short term), and instead tries to get the armed actors to take measures to minimise their humanitarian consequences. In the case of landmines, for example, the ICRC seeks to negotiate with the armed group to encourage them to inform civilians of the locations of mines. The ICRC recognises that where civilian security is in direct tension with guerrilla security (when the guerrilla groups see mines as essential to their security), then attempts to get the guerrilla to stop using mines are unlikely to meet with success. Instead they seek to find a way to increase civilian security without compromising guerrilla security. Similarly, where an armed group takes hostages the ICRC would negotiate to bring medicine to the hostage and transmit news to the family of the hostage.

The experiences of the ICRC in Colombia suggest that IHL is very often not a helpful tool in trying to persuade the guerrilla groups to change their behaviour. At the level of implementation, ICRC delegates do not see the IHL framework as the best protection tool where non-state armed actors are concerned. Nonetheless, this does not feed up to the policy level in the form of demands to develop a legal framework more appropriate to the armed non-state actors who in practice exercise significant power over civilian security. To the extent that IHL has been a useful point of reference with the non-state armed groups in Colombia, it was when the former AUC paramilitaries sought international recognition and thus wanted to be seen to adhere to international standards of appropriate behaviour, and more recently when the guerrilla groups have been increasingly on the
defensive and hence presumably trying to increase support by demonstrating the will to adhere to international standards. This suggests that some form of argumentation may be effective even where a particular actor does not concede that IHL applies to them: if the ICRC can persuade the actor that adherence to IHL is in their interests, it may be able to increase adherence to IHL. However, the ICRC does not usually employ such a tactic in Colombia, preferring to rely on an appeal to conscience in the face of humanitarian consequences or to the internal rules of a given armed group.

The preference for a dialogue around humanitarian consequences and the internal rules of the different groups suggest that ICRC delegates in Colombia find the IHL framework unhelpful for changing the behaviour of armed non-state actors. The focus on internal rules in particular suggests that the ICRC believes that a group is more likely to change its behaviour as per rules it has signed up to or created for itself. This implies that if non-state armed groups were given the opportunity to sign up to a normative framework for civilian protection, and to play a role in the development of that framework, it might provide a more effective protection tool.

**Implementing the approach**

In this section, I discuss the implementation of the ICRC approach in the Colombian context. I start by examining the role of access, and go on to outline the main activities carried out by the ICRC in Colombia. I characterise these activities according to the different types of protection objective and activity laid out in chapter one, explaining whether the objective of each activity is to reduce violence, threat or vulnerability.

Six different types of activity make up the PPC work at the field level in Colombia: interventions regarding specific cases of violations of IHL; thematic interventions regarding multiple cases which relate to the same type of IHL violation; informal day-to-day contact with armed actors; organised information or training sessions with the armed actors; assistance with the relocation of civilians; and practical projects which seek to protect indirectly. The first four mainly focus on
reducing the threat to civilians, the fifth on reducing the vulnerability of civilians; and the sixth includes aspects of both threat- and vulnerability-reduction.

1. Acceptance, access and proximity to victims and armed actors

Access to populations at risk and proximity to victims and armed actors is central to the ICRC approach, and interviewees described access as the ‘pre-protection’ and a ‘condition sine qua non’. Presence is seen as necessary for four main (and inter-related) reasons: (1) to be able to undertake political and conflict analysis; (2) to build trust with the communities and the armed groups; (3) to collect information from the communities; and (4) to be able to present that information to the armed groups and to persuade them to change their behaviour. In Colombia, the ICRC currently has access to almost every part of the country. However, this has not always been the case, and in 2002 for example, the ICRC stopped moving in certain areas because of security concerns. Today the distances and terrain in some regions make access difficult even where there is no problem on account of security for ICRC staff. For the most part, though, ICRC access to populations and combatants is determined by security considerations.

Staff security is seen to be determined by acceptance of the organization by the armed actors and by the local communities themselves. Acceptance in turn is perceived to result primarily from demonstrating the benefits of ICRC work – both for the communities and the combatants – and by maintaining neutrality and confidentiality (Geremia 2009, p. 5). Presence and visibility are also seen as vital, thus constructing something of a cycle: access facilitates presence, visibility and practical humanitarian action; and that visibility and action also generates acceptance and trust which in turn contribute to further access. Access is thus dependent on adherence to principles but also on trust and effectiveness. Thus access is seen as something the ICRC works to create rather than something which is simply exogenously determined.

Trust is seen as central to the protection work of the ICRC. If the civilians do not trust the ICRC, they will not tell staff what is happening on the ground. Without this information, the political analysis carried out by the ICRC would be undermined and the organization would be unable to
document protection cases. Trust with the armed groups is seen to be necessary if the protection cases the ICRC documents from the civilian population are to have any impact in terms of changing the behaviour of the armed groups, and this trust is seen as best achieved through regular contacts and visits. The protection work of the ICRC is focused on persuading combatants to adhere to IHL and to minimise the negative humanitarian consequences of their combat. The primary method of the ICRC in Colombia is confidential bilateral dialogue aimed at persuading combatants to adhere to their obligations in IHL rather than, for example, bringing to bear public pressure or creating rational incentives for the groups to adapt their behaviour. It is expected that such dialogue will be better facilitated, and will yield more positive consequences, when the groups trust the ICRC.

The effectiveness of protection interventions with a particular group is seen to be closely correlated with the level of contact with that group. At the field level in some parts of the country, the lower ranks of all the armed groups are visible to the ICRC. At higher ranks, the non-state armed groups are harder to have contact with. When the non-state groups were stronger it was much easier to access them at both lower and higher levels, and to develop dialogue. However, they are now more hidden and on the move. Both the FARC and the ELN have suffered major military losses over the past ten years and the sizes of their forces have greatly diminished. They have conceded a good deal of territory to the army, and in 2009, then FARC commander Alfonso Cano\(^5\) declared the FARC was shifting from a war of territory to a guerrilla war. Given that the group is increasingly on the defensive and less able to hold on to territory, it has employed classic guerrilla hit and run style tactics (Ávila Martínez 2010). Since around 2006, the ELN has reportedly shifted its political strategy to urban areas (Hanson 2009). As a consequence of their more defensive, mobile strategies the ICRC has less contact with the guerrilla groups. Furthermore, in much of Colombia, the ICRC

\(^5\) Alfonso Cano, whose real name was Guillermo Leon Saenz, had led the FARC from 2008 until he was killed by an army raid on 4 November 2011. On 5 November the FARC named Rodrigo Londoño Echeverry, better known as Timochenko, as the new leader. Analysts expect Timochenko to continue with Cano’s strategy.
has little or no contact with the so-called new or emerging groups. These groups are smaller and more disparate than their AUC predecessors (and than the national military, FARC and ELN) making it more difficult to build contact and relationships. The lack of hierarchy and clear structure make it more difficult to exercise leverage over the behaviour of such a group as a whole.

The ICRC tends to have a better relationship with the FARC in areas which are under full control of the FARC. Given that civilians are in any case more secure in such contexts (where one armed actor has control), this is an example of how protection is more difficult in the places or at the times it is most needed. A further problem with the FARC in some areas of the country is a lack of trust and confidence in the ICRC, particularly following Operation Jaque.\(^6\) That the openness of the FARC to discussions about IHL seems to depend on their relative military strength suggests that adherence to IHL by the FARC may also be more likely when the ICRC can convince the FARC through a process of argumentation that such adherence might be in the interests of the FARC than when the ICRC relies on persuasion to convince the FARC that adherence to IHL is the right thing to do.

The ICRC has not had particular problems with the emerging groups, though the level of contact in most parts of the country seems to have been minimal to date. As a minimum, the ICRC needs to have contact for security guarantees that its staff can cross the territory of the relevant armed group. Beyond this most basic dialogue, the depth of protection work that the ICRC is able to pursue is seen to depend on individual relationships. Thus far it does not appear the ICRC has engaged in significant protection work with the emerging groups.

The limited access to non-state armed groups is seen to have a negative impact on the effectiveness of ICRC protection work. Thus while argumentation might be more effective with a non-state

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\(^6\) Operation Jaque was a military operation undertaken by the Colombian forces in the department of Guaviare on 2 July 2008 to free fifteen hostages (the former presidential candidate Ingrid Betancourt, three Americans and eleven Colombia military and police personnel) held by the FARC. The operation reportedly involved the misuse of the Red Cross emblem, and the Colombian authorities have since investigated and found that one officer had individually decided to make unauthorised use of the emblem.
group that is weaker and looking for ways to increase support, the contact necessary in order to be able to engage in such argumentation is more difficult when groups are weaker. ICRC field delegates can meet with members of the public forces every day and thus have plenty of opportunity to try to convince them to change their behaviour when it is in violation of IHL. However, when a delegate can only see one of the other armed groups every six months, the protection work will not be as effective.

In short, access and proximity to those whom the ICRC seeks to protect, as well as regular contact and trust with the armed groups, are seen as essential to the ICRC approach to protection in Colombia. Implicit in this is the assumption that the behaviour of the armed groups is key to determining civilian security, and that civilians are important actors in determining their own security as well as the main source of information with respect of their security. The discreet and confidential approach that facilitates access and enables the ICRC to build strong relationships and trust with civilians and combatants alike also restricts the ICRC from speaking out about particular abuses of the civilian population, and from exerting anything more than persuasive pressure on combatants to change their behaviour. It is through this discreet bilateral dialogue that the ICRC undertakes its interventions with armed actors.

2. Specific interventions

The ICRC documents allegations of IHL violations provided to ICRC delegates by the victims or the victims’ families. If the victim (or his or her family if the victim was killed) agrees, then the allegation may be transmitted to the armed group accused of perpetrating the violation. The ICRC presents protection cases to the armed actors only as allegations, and expects the armed group to investigate. It is not seen as the job of the ICRC, nor within the organization’s capability, to prove or disprove the allegations. In the case of the non-state armed groups, the ICRC particularly emphasises that it is just an allegation and that the relevant group needs to conduct their own

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7 Protection cases that are not transmissible still contribute to ICRC analysis of the conflict dynamics.
investigation rather than assume guilt. This is seen as particularly important because some groups impose high penalties for violations of their internal rules. For example, sexual abuse by guerrilla fighters in Colombia is often punishable by death. In the long run, such investigations and punishments for violations are intended to reduce or prevent future violations. The focus is less on justice for the victim than on reducing the threat for potential future victims. The aim is to reduce the threat to civilians in the future by building an environment in which combatants adhere to IHL.

With the army and the police, the goal of the ICRC is to have investigations launched and sanctions imposed as appropriate; the ICRC wants to see the result of the investigation to judge if it is sufficient. With the non-state armed groups, the approach is more flexible, but the ICRC also aims for the relevant group to carry out an investigation, albeit often a less formal procedure than in the case of the public forces. This differential approach can be seen as implicit acknowledgement that belligerent parties are not equal and that in practice the ICRC does not expect the same response from different groups. However, even if such acknowledgement exists in practice, it does not lead to a challenge of the normative framework and its underlying principle of the equality of belligerents.

Where a particular violation is ongoing, the ICRC can negotiate with the armed groups to stop the violation. The aim of stopping ongoing violations of IHL is concerned with threat-reduction, and can be seen as both responsive action (preventing imminent abuse) and building a protective environment (to the extent it contributes to reducing the incidence of such violations in the future). Where the armed group will not stop the violation altogether, the ICRC seeks to persuade them to minimise the humanitarian consequences of the violation. For example, where the guerrilla will not stop using landmines, the ICRC may still be able to get them to inform the civilian population of the limits of an area within which the guerrilla agree not to mine, and to provide a way for the civilian population to contact them in emergency to find a safe way to hospital. Where an armed group is residing in civilian property, for example in a school, and the population asks the ICRC to intervene, delegates will negotiate with the combatants in the school, and if they refuse to leave then the ICRC response will depend which armed group is concerned. In the case of an army unit,
the ICRC will contact their superiors, and this usually results in the soldiers vacating the civilian property. With the other armed groups, who do not share the same level of commitment of the national military to adhere to IHL, and who lack internal procedures forbidding such behaviour, then negotiating a positive outcome is much more difficult. The organizational structure of armed groups is expected to impact on the threats posed to civilians (Weinstein 2006). The ICRC experience in Colombia suggests that their structure and also their internal normative frameworks impact on the leverage available to third party protection actors for changing combatant behaviour. It also underscores the difference between the national military and the non-state armed groups in Colombia.

The dialogue with armed actors is conducted at different levels: ICRC delegates in the field talk to battalion commanders, the heads of offices and sub-delegations deal with the relevant division commanders, and in Bogotá specialised police and armed forces delegates speak to the police and army at the highest levels. The Colombian conflict is dynamic, and changes in the nature of the conflict require changes in the approach to protection. For example, at the moment most PPC cases are resolved orally in one meeting, but this has not always been the case. Where verbal dialogue at the lowest levels does not yield positive results, specific protection cases may be taken to higher levels. Thus the ICRC delegates document specific situations or occurrences, and initially share the information orally with the local commander, and then written reports go up the chain of command.

This is more difficult with the non-state groups, where it is not so easy to contact the higher level commanders or to make written interventions: the ICRC relies mainly on oral presentation of protection cases with the non-state armed groups, although there is sometimes potential for written reports. However, Bonwick (2006a, p. 15) highlights ICRC discussions with guerrilla groups in Colombia that ‘appeal to basic humanity, morality and family values’ and argues that ‘despite being labour-intensive it is a key part of the protection portfolio, and would benefit from being expanded if people with appropriate skills, experience and charisma can deliver in the field.’
All of my ICRC Colombia interviewees reported that the ICRC gets generally positive responses when presenting protection cases to the relevant armed actors, the immediate expectation being that incidents will at least be investigated. The dialogue with the public forces appears to be particularly strong, and ICRC interventions tend to result in internal investigations and disciplinary action against individual violators. With the non-state armed actors, it is more complex. Firstly, it is harder to establish contact, particularly at the higher levels of the groups, and contact is a prerequisite for dialogue. Secondly, at present there is less will among the non-state armed groups to adhere to IHL than among the public forces. This highlights the fact that underpinning this approach to protection is the assumption that armed actors may be amenable to changing their behaviour in response to arguments as to the inappropriateness of that behaviour. Where such amenability is lacking, the ICRC alone does not have tools with which to put greater pressure on the actors through, for example, the provision of incentives or the threat (or use) of coercive measures. On a day-to-day basis, the ‘will’ of an armed group to adhere to particular standards of behaviour, or to comply with international normative frameworks, may be fixed but in the longer run, third party actors such as the ICRC may be able to shape that will and to help define what different armed groups consider to be appropriate behaviour. This is the rationale behind ongoing longer term contact and the provision of training in IHL.

Among ICRC staff there is some consensus that the policies, attitudes and behaviour of the public forces have changed considerably over the course of the conflict. Since the ICRC started working on PPC in Colombia, the general behaviour of the government forces has been seen to have improved. This improvement is attributed to pressure from a combination of international humanitarian organizations, the US and other international actors. There is concern for international opinion, and the forces receive significant financial and military support from the US, much of which is conditional on respect for human rights. Thus there is a clear and direct interest-based argument for the armed forces to avoid certain acts and behaviour which are contrary both to the human rights demands of the US, and to the security of civilians.
The public forces are highly-structured and well-financed. This makes changing their behaviour easier for a number of reasons. Firstly, they have the financial means to implement changes and to use weapons and tactics that are less deadly to civilians. The clear hierarchy within them means that decisions made at the top can be easily communicated and enforced down to the lower ranks; it also enables external actors to identify the appropriate level of interlocutor in order to discuss (and seek to influence) the conduct of the forces and their relationships with civilians. Given their status as a legal armed group with control over most of the country’s territory, it is also easy to access commanders with whom to hold such discussions.

Currently, the public forces are also militarily ‘on top’ in the conflict and this impacts positively on their behaviour towards civilians. Where the national military is relatively weak they have greater need to put pressure on civilians in order to obtain information. Additionally, where military success against the guerrilla is in short supply, attacking civilians offers the potential for ‘easy wins’ and damages the guerrilla support base, but this is much less necessary when the national military is on top. In short, where civilians present no threat – directly, or indirectly through their support to the guerrilla – to the public forces, it is not in the interests of the military to attack them. Nonetheless, in recent history the public forces have contributed to the insecurity of civilians through various acts, intentional and unintentional. Many of the acts which have been seen in the past now occur only as a result of individual misbehaviour or logistics problems and not of systematic policy. However, the occupation of civilian buildings such as schools by government troops still occurs with relative frequency. This endangers civilians by turning the centres of their villages into military targets at increased risk of violence from clashes between different armed groups. This impact on civilians may only be incidental to the goals of the military, but such behaviour is still in contravention of IHL and internal Colombian military directives.

Additionally, the US 2008 Human Rights Report on Colombia mentions extrajudicial killings, forced disappearances and insubordinate military collaboration with new armed groups and former paramilitaries who never demobilised (US State Department 2009, 2010). The public forces have also been directly responsible for reducing civilian security. For example, in the early years of the
Uribe administration, the ‘falsos positivos’ scandal emerged. In efforts to meet targets for combating the guerrilla, Colombian security forces (often with the involvement of paramilitaries) had murdered civilians and then dressing them in guerrilla uniforms and passing them off as guerrillas killed in combat (US State Department 2009, 2010). Opinion differs as to whether or not the ‘falsos positivos’ represented systematic policy or whether they were simply the product of moral hazard, setting incentives which promoted behaviour contrary to the actual objectives of the government (Human Rights Council 2010). The Colombian Centre for Research and Popular Education has documented allegations of ‘falsos positivos’ cases occurring as recently as June 2011 (CINEP 2011).

Any improvements in the behaviour of the public forces have to be understood in the context of the links between the national military and the former AUC paramilitary organizations. The links have been well documented and permeated all levels of the public forces. Through acts of both omission and commission, the army in particular has facilitated atrocities perpetrated by the former paramilitary blocs against the civilian population and as such the public forces have had an (albeit sometimes indirect) impact on civilian security. The timing of the apparent improvement in the conduct of the public forces with respect to civilians coincides with the emergence of the AUC as a major cause of civilian insecurity and it may be that the army in particular got the AUC to ‘do its dirty work’. Incidents of collaboration between some members of the government security forces and the emerging armed groups have been documented (US State Department 2009, 2010) but it is not yet clear whether or not there are systematic links between the ‘new’ groups and the public forces.

3. Thematic interventions

The ICRC may also make thematic interventions regarding particular types of IHL violation. Here ICRC staff gather evidence on a particular theme – such as occupation of civilian buildings, or weapons contamination – and present it collectively. The rationale behind this is three-fold. First, given the impact on humanitarian consequences is the primary aim, thematic interventions enable the ICRC to focus on those themes where it thinks it can have most impact. Second and related,
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thematic interventions give the ICRC the opportunity to focus its efforts on key trends where repetitive violations have been observed, often taking evidence of the trend to a higher level within the armed group than would normally be the case for single violations. Thus the ICRC tries to address the theme with those who have a bearing on policy within the armed group. Third, the ICRC hopes that by focusing only on certain types of violation at any one time, the interventions may be more effective. The rationale here is that by putting pressure on an armed group on a theme-by-theme basis, the ICRC does not ask too much of the group at once, and can get them to stop or reduce widespread violations of a particular type before tackling the next theme. Thematic interventions thus seek to reduce the threat to civilians from specific categories of IHL violation by building an environment in which the incidence of such violations is reduced.

4. Informal contact with the armed groups

Specific and thematic interventions relate to events that have already taken place or are ongoing, the protection activity is intended to be responsive or environment-building rather than remedial, and interventions are aimed at preventing future violations of the same type or bringing an end to ongoing violations. In other words, these work towards preventing harm to civilians rather than mitigating the damage after harm has occurred. Furthermore, the ICRC does not wait for armed groups to violate IHL before it acts. Every time ICRC delegates have contact with members of an armed group, the delegates proactively remind the combatants of their obligations under IHL. This is relatively informal, and usually verbal, communication which does not relate to specific or concrete events. Additionally, where threats are made against individuals, the ICRC seeks to take a pragmatic approach. Threats are not a violation of IHL as such, but may represent a potential violation. It is very difficult to assess the credibility or seriousness of a threat, but the ICRC does not want to risk ignoring a threat which is later acted upon, and so will not ignore threats altogether. Nevertheless, as no violation as such has taken place, the ICRC does not document a formal protection case. Instead, the ICRC would pass the concern on to the relevant armed group and require that the group gives the answer directly to the potential victim. The ICRC does not want to relay information from the group to the threatened individual because if the information
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turns out to be false (if, for example, the group assure the ICRC that the individual in question will be fine, and later the group actually kills him) the ICRC does not want to take responsibility and hence damage its reputation.

5. Training sessions for combatants

The ICRC organises events with armed groups which can encompass general explanations of ICRC activities as well as training in IHL and in first aid. Whereas one hour sessions provide an opportunity to establish contact and introduce the work of the ICRC to combatants, longer three- or four-day workshops are required to provide serious training in IHL. In Colombia, however, these longer sessions are only currently achievable with the state military forces. With the army in particular, several ICRC offices have organised multi-day workshops with practical exercises to instruct the soldiers in IHL. It is very easy to maintain contact with the national military, and it is part of their internal training plan to receive courses on human rights and IHL. Additionally, with the army, the ICRC undertakes ‘after action reviews’ in which they take real cases (without mentioning where the cases occurred or which units of the army were involved) and they develop practical exercises based on these cases. The ICRC also has the opportunity to work at a higher level with the national military, up to the level of the Ministry of Defence.

Bonwick (2006a, p. 9) explains that the ICRC has been working with the armed forces in Colombia and the ‘level of understanding of international humanitarian law (IHL) in the senior ranks of the military is now high, although this has yet to be translated to the operational level.’ This highlights the question of whether protection activities such as training the armed forces in IHL (which are relatively easy to measure) are translated into protection outcomes such as increased respect for IHL in practice and subsequently reduced threats to civilians (which are much more difficult to measure).

With the illegal armed groups, it is much more difficult even to organise such training events. With the guerrilla groups now on the defensive and not in control of much territory, they are increasingly mobile and will not take the risk of keeping a whole unit in one location for a few
days. With the non-state armed groups in the contemporary context, the ICRC is sometimes able to organise short first aid training sessions with the first aid used as a ‘sugar cube’ within which the ICRC is able to undertake the activity of explaining who they are and what they do. For the most part with the non-state armed groups, however, there is only very occasionally the opportunity for the longer workshops on IHL and humanitarian principles, and this is increasingly difficult as the army targets the groups and they need to keep on the move. Nonetheless the ICRC continues trying to organise such events, and by working with one front of the FARC or the ELN, or one paramilitary bloc, they can sell ideas to other fronts or blocs.

6. Relocating civilians

In exceptional cases, the ICRC in Colombia will pay for individual civilians to relocate elsewhere in the country. Such a policy makes particular sense in the Colombian context where violence is individualised and the conflict dynamics vary greatly from region to region, such that individuals who are threatened in one place may be safe in another. The ICRC Colombia policy of relocating individuals in grave danger is not referred to as a programme and is not publicised, and the ICRC tries to minimise this activity. However, in response to very immediate threats which appear credible, the ICRC may help a threatened person to move elsewhere in the country. In 2009, the ICRC assisted 362 people in this way (ICRC 2010a, p. 21). The ICRC is not a state and as such cannot offer asylum but might pay for travel to another area of Colombia. In cases where bus travel is not a risk (in many cases community leaders have been assassinated on bus journeys so this is often not an appropriate mode of transport), the ICRC can pay for a bus ticket, otherwise they might buy a plane ticket. They would never transport a threatened individual in an ICRC vehicle because of the impact it could have on the perceived neutrality of the organization. This relocation programme is specific to Colombia, and would not be applicable in most contexts.

This practice of relocating individuals represents an attempt to reduce the vulnerability of civilians at high risk, in situations where the ICRC does not expect to be able to remove the threat. Implicit in such a practice is the understanding that the ICRC cannot always reduce the threat to civilians through dialogue and persuasion. The ICRC is subject to institutional normative constraints as well
as limits to its practical capacity, and these constraints restrict its leverage over armed actors in some situations. In helping threatened civilians to relocate to a part of Colombia in which they should be safer, ICRC seeks instead to exercise leverage over their vulnerability and demonstrates understanding of the fact that location and mobility are key determinants of vulnerability. Nonetheless, such activity only benefits a relatively small number of civilians in Colombia.

7. Assistance projects

Protection and assistance are seen as inextricably linked within the ICRC, and the ultimate goal of assistance is protection. Protection for the ICRC is about saving lives and diminishing the humanitarian consequences of armed conflict. Assistance projects aim to contribute towards these objectives either directly or indirectly. There are four main channels through which ICRC assistance activities seek to contribute to protection: passive protection through presence; reduction of vulnerability of the civilian population; facilitation of ICRC access to the population and armed groups; and a mixture of capacity-building and pressure on the state to meet its obligations to the population. I will explain the supposed mechanism behind each of these channels in turn.

First, in the priority zones, where there are a lot of PPC cases, the ICRC seeks to develop activities that require presence, with the aim of providing a level of passive protection through presence. These practical projects require the ICRC to be present in the midst of populations identified as being at high risk, and this presence alone is thought to have a deterrent effect on armed groups. Even if the projects are primarily managed by national staff, seeing the ICRC car is understood to reduce violations. This is a form of responsive activity aimed at preventing imminent abuse; by being present in a community, the ICRC seeks to reduce the threat against that community. While the success of prevention is notoriously difficult to measure, the reactions of civilian populations to the presence of the ICRC (and other international actors) suggest that this kind of passive protection does have a positive impact in these communities at least for the duration of the presence. Whether or not such an approach simply displaces violence to other communities or to a later date, is less clear. There is also a danger that such presence may increase the threat of
violence within the communities because ICRC presence draws greater attention to those communities.

Second, these practical projects seek to reduce the vulnerability of civilians to the violence perpetrated by the armed actors. The projects are designed with the intention of meeting the most serious needs, and sometimes those needs are protection-related. The priority zone approach thus seeks to reduce the impact of violence on the civilian population through assistance projects. Examples include agricultural projects with civilian population designed so that they can work close to home and do not need to travel to their fields and so can avoid landmines along the way, or water projects to bring the water to the village again to avoid civilians having to travel through mined areas, or boarding houses in schools so children do not have to walk daily through mined areas to get to school. In some areas, the ICRC also provides landmine awareness training to civilians. These forms of vulnerability-reduction fit in the category of responsive action. To the extent that these activities involve taking on responsibilities which would normally fall to the state, they are examples of substitution.

Third, these practical projects also provide a reason for the ICRC to be present in those zones it has identified as being at highest risk and this facilitates access to the civilian population and also to the armed actors. Access to the civilian population occurs as they are the intended beneficiaries of these projects and are thus automatically involved on some level. Additionally, the projects bring the ICRC into the centre of the communities as a whole and thus facilitate contact with those communities. Access to the armed groups is facilitated because once the ICRC starts implementing one of these projects, the armed groups tend to arrive on the scene to find out what is going on. Once the armed groups are there, the ICRC can initiate a dialogue with them. Access to both the civilian population and the armed groups is seen as crucial, as ‘pre-protection’ for the reasons outlined above in the discussion about access. Since access in this sense is not in and of itself protection, but rather aims to contribute to future protection through persuasion as a means to prevent imminent abuses and to build a protective environment, these projects can also be seen as pre-persuasion, pre-responsive action and pre-environment-building.
Finally, through conflict-specific medical training and health brigades, the ICRC seeks to improve the health care provided to civilians. This may be through the direct provision of medical missions (substitution activity) or through building the capacity of the state healthcare system (capacity-building) and bringing pressure to bear on that system to provide healthcare personnel for remote conflict-affected areas (persuasion). The decision to implement such projects and the way in which they are designed depend on the existing level of healthcare provision in any given region and on the level of risk to personnel working for state healthcare institutions. In Chocó and Nariño, for example, the ICRC has previously provided health services directly to some conflict-affected communities. In terms of the modes of action outlined in chapter two, such activity is a form of substitution – taking the operational place of authorities. However, recently there has been increased possibility for the state to travel to more areas, and the focus of ICRC health work has moved to support and accompany state health brigades into zones they are afraid to go to. In these cases, the ICRC negotiates access for state health services with the armed groups and then accompanies them the first four or five times.

Eventually the aim is that trust is developed between the health personnel and the armed groups so that the ICRC can cease to accompany them. The ICRC may still work as a neutral intermediary to get security guarantees, liaising between the state health services and the armed groups, requesting permission from the armed group for the state health personnel to travel in the area and subsequently communicating the armed group’s concerns and conditions. The armed group might, for example, stipulate that the same health staff come each time, that they let the armed group know when they are coming, that they only ‘do health’ and that they do not report back any information to other agencies of the state. In some areas, the ICRC also provides physical rehabilitation for mine victims and training for health care staff in medical care for the war-wounded. These latter activities represent forms of remedial action, seeking to improve the lives of civilians who have already been injured in the course of the conflict.

The provision of assistance and the practical projects thus enables the ICRC to gain access to communities, to understand the local conflict dynamics, to develop relationships with the various
armed groups in a given region and to generate information from the civilian population on specific protection cases. The access, understanding, relationships and information are not ends in themselves, but are valuable insofar as they contribute towards greater security for the civilian population. The access is seen to be instrumental to the other three while the information and the understanding are used in documenting PPC cases. Finally, the understanding and the relationships are necessary to increase the impact of the cases when presented to the alleged perpetrators of IHL violations, with the desired impact being a positive change in the behaviour of the relative actor.

**Conclusion**

In Colombia, the ICRC seeks to protect civilians primarily by changing the behaviour of armed actors. At the field level, the ICRC operates a differential approach according to the actor, but the normative framework on which it bases its work — customary and treaty-based IHL — does not distinguish between different types of armed group, and has been developed in negotiation with states and not with non-state actors. The different armed groups threaten the security of civilians in different ways (Gutiérrez Sanín 2008; Restrepo and Spagat 2004). The ICRC approach does not offer different toolkits for different kinds of threats to civilians, or different kinds of armed actors. There is scope for variation in the style of interlocution adopted by ICRC delegates thus at the field level of implementation there is some differentiation in approach. However, in terms of methods, the ICRC is largely limited to persuasion and there is some acknowledgement among ICRC staff in Colombia that persuasion will only have an impact on certain acts, actors or circumstances. As elsewhere, the ICRC in Colombia is concerned mainly with violations of IHL though it also seeks to have an impact on those acts and events which are repeated and which have humanitarian consequences but fall outside the scope of IHL, specifically aerial fumigation of coca crops and urban violence.

The ICRC has been able to reduce significantly the threat to civilians posed by the public forces, but this was only possible because of strong will within the forces to adhere to IHL (which in turn is attributed in large part to international pressure and specifically conditions attached to military aid from the US). Further, it may have led to the displacement of illegal activities to paramilitary...
organizations. To the extent that the ICRC was able to change the behaviour of the public forces, it was in conjunction with other actors who were able to create rational incentives which helped generate the will to observe appropriate standards of behaviour. Additionally the public forces are relatively well financed, hierarchical and are currently militarily ahead in the conflict. These factors contribute to making the public forces better able to adhere to IHL, with relatively less impact on their ability to conduct hostilities. Given willingness and ability, the ICRC has been able to increase adherence through trainings in IHL and interventions so that when individuals within the armed forces violate IHL the violations are reported to their seniors and an investigation is carried out. With the non-state armed groups, the ICRC faces a more difficult job, given lower levels of will and ability. Particularly where threats to civilians arise from activities considered to be instrumental to the conduct of hostilities by these groups, or to the security of their combatants, the ICRC acknowledges it has little or no impact on reducing these threats.

Where the ICRC in Colombia cannot reduce the threat to civilians, therefore, it undertakes a small number of activities aimed at reducing the vulnerability of civilians to that threat. For example, it may implement assistance projects which reduce the need for civilians to travel through mined or conflictive territory, and in specific cases of severe and immediate threats, the ICRC may also support civilians to relocate within Colombia, away from the source of the threat. Historically it also had an arrangement with the Canadian embassy to expedite applications for asylum and resettlement in Canada. In these ways, the ICRC in Colombia has a small direct impact on facilitating mobility. Further, its provision of assistance to IDPs (particularly those who cannot access assistance from the Colombian government) indirectly facilitates internal displacement. In this way, the work of the ICRC is consistent with the empirical reality of what determines civilian vulnerability to threats from organised violence in the Colombian context.

There is some inconsistency between the underlying assumptions of the ICRC approach to protection and the reality of civilian insecurity in Colombia. The approach is centred on a state-centric legal framework, and maps out a hierarchy of actors in terms of responsibility for the protection of civilians which is at odds with the hierarchy of actors in terms of actual protection.
impact in the Colombian context, characterised as it is by multiple non-state armed groups. While
the ICRC does seek to treat all armed groups equally in its work at the field level in Colombia, it
relies heavily on the IHL framework which is state-centric and which the guerrilla groups have
argued is not applicable to them. Rather than pushing to change this framework, delegates in
Colombia often choose to work without reference to a legal framework in their interventions with
the guerrilla groups. Given the ICRC foundational assumption that if a legal framework can be
approved, then protection will be wider reaching and more systematic than would otherwise be the
case, the lack of any attempt to develop a legal framework that is approved by non-state armed
groups represents an inconsistency in the institutional approach to protection.

While the ICRC does focus on the perpetrators of violence – both state and non-state – in its work
at the field-level, its work is framed around an international legal framework which prioritises
states. The ICRC takes the view that agreement of a legal framework will lead to better protection
outcomes. However, ICRC delegates at the field level in Colombia prefer not to use the legal
framework at their disposition in their dialogue with armed non-state actors. This suggests either
the assumption that a legal framework extends protection is wrong, or this is not the most
appropriate legal framework for dealing with these non-state armed groups. One way or another,
the approach is therefore inconsistent. If it is the case that legal framework is not optimal for
changing the behaviour of armed non-state actors, it stands to reason that it is not optimal for
generating maximum overall compliance with the underlying protection principles. Thus the state-
centric nature of the IHL framework may be limiting the potential of the ICRC approach to
protection.
Chapter 5: The UNHCR approach to in-country protection in conflict

In this chapter I characterise the UNHCR approach in-country protection during internal conflict, and assess the relative explanatory power of the five hypotheses outlined in chapter two. UNHCR was created in 1951, not to protect civilians in the midst of armed conflict, but rather to provide or to negotiate international protection and solutions for refugees. Over time, the role of UNHCR with respect to refugees changed and expanded, and this institutional history has played an important part in shaping the UNHCR understanding of protection in internal conflicts, protection that is mainly directed at IDPs.

In what follows, I show how UNHCR has replicated its understanding of, and approach to, refugee protection and solutions in its approach to the in-country protection of IDPs during armed conflict. This approach, designed for the peacetime protection of those who have crossed an international border, has not been sufficiently adapted to the very different operational context of armed conflict in countries of origin. I suggest that the failure to adapt this approach adequately is in large part attributable to the particular bureaucratic personality and core values of UNHCR. Specifically, the bureaucratic personality does not allow for significant incorporation of field level experience into the policy making process, and the core values of UNHCR imply an understanding of the ‘problem’ in terms of forced migration rather than in terms of conflict and violence.

Being a public international organization, UNHCR is required to publish a great deal more than the ICRC in terms of policy deliberations and statements. Thus this chapter draws heavily on policy documents to chart the adoption of issue-areas within UNHCR, and to explain the approach undertaken to address the issue-area of in-country protection. I use evaluation reports and secondary literature to explain organizational culture and structure and the nature of the relationship between UNHCR and states.

Following the same structure as chapter three, there are three main sections to this chapter. First, I outline those factors that may explain the approach taken by UNHCR to the in-country protection of IDPs, refugees and other civilians during internal conflict. This includes an explanation of the
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background and mandate of UNHCR, analysis of the relationship between UNHCR and states, characterisation of core values and bureaucratic personality, and an account of the expansion of UNHCR into this issue-area of in-country protection. This provides us with an understanding of the IO that will enable an assessment of the hypotheses from chapter two. Second, I characterise the approach taken by UNHCR to protecting civilians during internal conflict, explaining its particular take on the five dimensions set out in chapter one. Third, I test the five hypotheses from chapter two to explain why this particular approach has been adopted, and I suggest how the effectiveness of the approach may thus be limited.

Understanding UNHCR

1. Institutional origins and evolution

UNHCR was originally set up to assist Europeans displaced by Word War II. The organization was not intended to be operational, and had an initial annual budget of only USD 300,000 and a total of 33 members of staff at the end of its first year of existence (Loescher 2001a, pp. 50-51). However, over time the agency became operational and expanded massively, both in the number and scale of its operations, and in the nature of the issue-areas within its mandate. In 2010, UNHCR spent USD 1.88 billion, and employed 6,314 staff members operating in 125 countries around the world (UNHCR 2011a, p. 2).

In terms of mandate expansion, the object of protection for UNHCR has expanded beyond those who have fled persecution across an international border to include, for example, those fleeing generalised violence, and those displaced within their country of origin (Betts 2012; Loescher 2001a; Loescher et al. 2008). Indeed UNHCR now addresses a number of issues that were not envisaged in 1951, such as protracted refugee situations, or even issues not foreseen in 1967, such as climate change induced displacement (Hall 2010; Milner and Loescher 2011; Slaughter and Crisp 2009).

1 For the history of UNHCR, see Holborn (1975), Loescher (2001) and Loescher et al. (2008).
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The legal mandate of UNHCR derives from its 1950 Statute\(^2\) and subsequent General Assembly Resolutions. It is specifically mandated to supervise International Refugee Law (IRL), the core of which is the 1951 Convention relating to the Status of Refugees\(^3\) and its 1967 Protocol.\(^4\) The 1951 Convention only applied to people who were refugees due to events prior to the Convention and states parties had the option to restrict it to events in Europe. The Statute of UNHCR envisages a greater role for UNHCR than the 1951 Convention, and carries no geographical or temporal restriction on the definition of a refugee. However, the difference between the two definitions has lost much significance over time, particularly since the 1967 protocol removed the geographic and temporal restrictions of the 1951 Convention.\(^5\)

General Assembly resolutions are only valid until the General Assembly produces an amendment or replacement. Through such amendments and replacements, the formal mandate of UNHCR has expanded significantly over the past 60 years. Additionally, UNHCR has been able to expand its *de facto* mandate through autonomous activity.

2. UNHCR and states

In order to be in a position to test the first hypothesis from chapter two, it is necessary to understand something of the relationship between UNHCR and states, and in particular the extent to which UNHCR must be responsive to donor and member state interests. Following McKittrick (2008, p. 3), I distinguish independence (‘the IO’s ability to carry out its mission without outside interference’) and autonomy (‘an IO’s ability to interpret its role and mandate; to make its own


\(^4\) UN General Assembly 1967. *Protocol Relating to the Status of Refugees*. 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267. Some states (such as the USA) have signed the Protocol but not the Convention because Article 38 of the 1951 Convention states that disputes can be referred to the International Court of Justice, and this clause is not repeated in the 1967 Protocol.

\(^5\) It is still possible for states who took the geographical limitation to maintain it but in practice very few states do. A notable exception is Turkey which, therefore, is not obliged to take refugees from Iraq, for example.
rules and administer its own affairs; and to decide how they will operate in implementing their interpretation’). Furthermore, I take the perspective that it is not simply the case that an IO is either autonomous or not. Rather, autonomy varies in degree and kind (Barnett and Finnemore 2004, p.11) and an IO may exercise different levels and types of autonomy with respect to different aspects of its work and behaviour.

UNHCR was created by states in 1950 with a limited mandate and correspondingly limited funding. It was originally conceived as a temporary organization with a mandate to operate until 31 December 1953, by which time it was hoped that the post-war refugee problem in Europe would be solved. The mandate was repeatedly extended through General Assembly Resolutions which renewed the existence of UNHCR for periods of two or five years until the agency was finally given an indefinite mandate in 2004. It is the General Assembly that has the power to make formal amendments to the mandate of UNHCR, and from this perspective it is clear that UNHCR is not an independent actor. However, General Assembly resolutions leave a lot of flexibility for UNHCR to define its own competence and role. Exploiting this flexibility, different High Commissioners have autonomously expanded activities in areas that have subsequently been recognised by the General Assembly. Thus in undertaking its practical operations UNHCR has been able to exercise autonomy not only in the implementation of any given operations but also in shaping its mandate and future direction.

The Executive Committee of the High Commissioner’s Programme (Excom) is the governing body of UNHCR and meets annually in Geneva, with a Standing Committee which usually meets three times per year. Excom started in 1958 with 25 member states and has steadily expanded to 85 member states (as of April 2011). Excom oversees the budget of UNHCR and is a forum for debate among member states on issues pertinent to the work of the organization. Excom issues conclusions relating to particular policy issues, which are essentially guidelines both for UNHCR

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and for states. Through these conclusions, those states who are members of Excom have a direct and formal influence on UNHCR policy.

UNHCR is part of the institutional architecture of the UN and subject to the authority of superior UN agencies, particularly the General Assembly and the Economic and Social Council (Palley 1996). UNHCR is politically dependent on states and operates with their consent. As a UN agency, UNHCR has to conform to broader UN policies, and particular procedures can restrict its ability to act autonomously. For example, UNHCR is subject to the security directives of the UN Department of Safety and Security (UNDSS), and on occasion (such as in Lebanon in 2006), the ability of UNHCR to carry out its humanitarian mandate has been compromised by security measures deemed to be unduly restrictive (Sperl et al. 2006). Furthermore, UNHCR activity may be used to further the objectives of other UN agencies thus constraining its ability to act autonomously. Additionally, as part of the UN, UNHCR must act in conformity with the norms that characterise the organization, and must manage the associated tensions between those norms, as for example between sovereignty and human rights.

Beyond UN-specific impacts on the ability of UNHCR to act autonomously, UNHCR is also dependent on states for access to populations of concern and for funding. UNHCR relies on voluntary contributions from states to finance its activities. Through earmarking of funding for specific activities or contexts, states may exercise direct influence on the focus of UNHCR operations. 7 However, as with all relationships, that between UNHCR and states is a two-way interaction and is shaped not only by pressures and influences exerted by states but also by the actions and reactions of UNHCR. In this regard, UNHCR sense of its own identity and role also play an important part in shaping the relationship. UNHCR views itself largely as a servant of states and seeks to demonstrate its relevance to states and to remain competitive in the ‘humanitarian marketplace’ (Crisp 2001; Ogata 2005).

7 See Loescher et al. (2008, pp. 91-97) for analysis of the politics of funding for UNHCR.
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States are not a homogeneous category and the nature of their relationships with UNHCR has varied across different states and across time. Indeed, the heterogeneity of state interests has on occasion enabled UNHCR to act autonomously by leveraging the divergent interests of different states to play some states off against others (McKittrick 2008). ‘UNHCR’s relationship with host states, and the division of responsibilities it has established with refugee-hosting states, has varied over time and differed significantly from country to country’ (Slaughter and Crisp 2009, p. 1). Countries of origin of refugee flows, and countries within which UNHCR undertakes activities for IDP protection have likewise had diverse relationships with UNHCR.

Certainly UNHCR is not independent of states, and cannot act without any consideration of state interests. However, UNHCR has been able to exercise expert and moral authority to act autonomously in a number of situations (Barnett and Finnemore 2004; Loescher 2001a, b; McKittrick 2008). Furthermore, the level of autonomy exercised by UNHCR may not be determined solely by pressures from states, but also by how UNHCR itself views states and its own position with respect to them.

3. Bureaucratic personality

Reflecting the hierarchical relationship anticipated between states and the IO, the Statute of UNHCR envisaged a vertical structure internally, investing all the authority in the person of the High Commissioner (appointed by the General Assembly), who would be assisted by a Deputy High Commissioner, and who would appoint staff who in turn would be responsible to the High Commissioner (Gottwald 2010, p. 11). Additionally there are now Assistant High Commissioners for Protection, and for Operations. UNHCR has a total staff of more than 7000, around 85 percent of whom are based in field operations. Around three quarters of field staff are national staff, and one quarter are expatriates (UNHCR 2011b).

Within UNHCR, the individual High Commissioners have been of the utmost significance in defining the direction of the institutional mandate. This contrasts with the role of the ICRC presidents which has been far more concerned with public relations than with setting policy
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direction. It is no coincidence that Loescher’s institutional history of UNHCR is structured chronologically by High Commissioner, charting the evolution of the IO under the leadership of each High Commissioner from Gerrit Jan van Heuven Goedhart in 1951 through to the end of Sadako Ogata’s period in office in 2001 (Loescher 2001a). The role of the High Commissioner in setting overall objectives and policy is sufficiently important to merit such a structure. Throughout the book, Loescher demonstrates the impact of the personality and the personal and professional background of each High Commissioner on institutional direction, mandate expansion and the relationship between UNHCR and states. In a 2005 evaluation commissioned by UNHCR to review its decision-making processes with respect to IDPs, the High Commissioner was found to be by far the most significant actor in deciding whether UNHCR should be involved in any given IDP situation (Mattar and White 2005, p. 47). Similarly, analysis of the drivers of mandate expansion through the history of UNHCR emphasises the role of the High Commissioners (Betts 2012).

UNHCR has been continually expanding, not only quantitatively (in terms of the number and size of operations, staff and budget) but also qualitatively into new issue-areas. For the most part pragmatism has been emphasised over caution, and certainly since the leadership of Sadako Ogata in the 1990s, pragmatic action has overtaken any remaining conservatism and the traditional emphasis on legal protection for refugees. UNHCR is a pragmatic IO in that it seeks to focus on immediate solutions, sometimes at the expense of honouring its own institutional principles (Roxström and Gibney 2003). This pragmatic organizational culture mediates the principles guiding the work of the IO, determining how those principles are interpreted in UNHCR and how they prescribe and proscribe particular activities.

Thus the organization maintains a principled stance in its rhetoric but many commentators have noted an increasingly pragmatic stance since the 1990s. In this way, UNHCR exploited ‘changes in sovereignty to venture carefully into domestic space while claiming that they were not being political because they shunned any involvement in partisan politics’ (Barnett 2005, p. 728). As UNHCR expanded into non-traditional activities, it became more a general humanitarian
organization than the world’s specialised refugee agency, and UNHCR ‘is no longer guided by clear principles. The senior leadership sincerely believes that it can contribute effectively to humanitarian crises by being pragmatic rather than basing its actions on traditional principles’ (McNamara and Goodwin-Gill 1999, p. 3). Thus UNHCR is flexible in its application of its core values, and quick to eschew its own values and rules in response to external pressures.

UNHCR is at the same time characterised by this pragmatism and by ‘an organizational culture that makes innovation and institutional change difficult’ (Loescher 2001a, p. 2). This apparent paradox is explained in two ways. First, UNHCR is pragmatic in response to direct pressure from states and to incentives created by the external institutional environment, but not in response to the field-level experience of UNHCR staff or the needs of refugees and IDPs. As Slaughter and Crisp (2009, p. 6) acknowledge, ‘the organizational culture of the UN can be one that encourages ‘safety first’ approaches that are acceptable to states, and which provides inadequate incentives for the rethinking and reorientation of long-established activities.’ Second, pragmatism may be evident in terms of the issue-areas adopted by UNHCR and the specific contexts in which it undertakes operations, at the same time that there is a lack of innovation in terms of how to address these issue-areas.

In UNHCR, strategic decisions tend to be made by senior management with little meaningful input from lower or middle ranking headquarters staff, and even less input from field staff (Gottwald 2010). Thus decisions about the approach to protection are made by those who are often far removed from the people they seek to protect and the contexts in which they seek to protect them. In particular, those senior management who are not career UNHCR staff may lack experience of the operational realities of the field and may be insensitive to the needs of those of concern to the IO, as well as lacking understanding of the internal structures and processes at lower levels (Gottwald 2010, p. 19; Loescher 2001a, p. 2). This lack of experience and understanding at the top

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might be mitigated with effective information and participation from field staff. However, the organizational culture of minimal staff input into decision-making and of poor information-sharing make for a system in which strategic decisions on policy direction and the overall approach to protection are relatively uninformed by empirical reality. The UN internal audit service flagged as higher risk (out of higher, moderate or lower) the weak and ineffective information-sharing between management and staff (UN OIOS 2008, p. 22).

Policy criteria and information from the field level are employed by senior management to legitimise decisions already taken rather than to inform decisions (Gottwald 2010, p. 21; Mattar and White 2005, p. 9). UNHCR’s financial dependence on donor states and its status as a UN agency both place top-down pressure on the decision-making dimension of organizational culture. For example, operations in Afghanistan were expanded in the first half of 2001 first because UN partners hoped to use humanitarian assistance by UNHCR to revive failing negotiations with the Taliban, and again after September 2001 when increased funding was suddenly available as donors expected refugee outflows (Mattar and White 2005, p. 11). This top-down influence of states and other UN bodies is not countered by a significant flow of influence from the field level.

A similar pattern of top-down decision making emerges even at the field level in terms of country-specific policies. ‘Protection strategies and country operations plans are often drafted by the senior management of UNHCR field offices without involving front-line staff – such as national staff, junior professional officers and United Nations Volunteers’ (Gottwald 2010, p. 18). The poor information flows naturally impact on monitoring, evaluation and learning within the IO. Loescher (2001a, p. 2) explains that ‘UNHCR is confronted with persistent problems of lack of learning and policy effectiveness.’ The UN internal audit risk assessment study judged weak monitoring and evaluation to be higher risk, anticipating it ‘may result in the inability of UNHCR to adapt its strategies to changing operational realities’ (UN OIOS 2008, p. 10).

In sum, the bureaucratic personality of UNHCR is pragmatic in response to changing demands from states and in terms of expanding into new issue-areas. However in terms of developing
approaches with which to address those issue-areas there is a lack of innovation, and policy effectiveness is likely to be impeded by weak information flows, minimal field-level input into decision-making, and limited monitoring, evaluation and learning from past experiences.

4. Core values

Like the ICRC, there are a number of principles within UNHCR that are intended to guide the work of the organization and its staff. Given the more flexible attitude that UNHCR takes towards its own particular values, the application of the different principles set out below is not as rigid as the ICRC’s adherence to its own core values. Nonetheless, these different principles have shaped the identity of UNHCR, even if they are less central than in the ICRC.

**Institutional principles**

As a consequence of the institutional inclination towards pragmatism, in any given situation, UNHCR may be flexible as to which principles it adheres to and which it pragmatically casts aside. For each specific principle, UNHCR also has its own particular interpretation, and in this section I outline the main internal principles of UNHCR with a brief explanation of the institutional interpretation of each.

The Statute of UNHCR stipulates that ‘the work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social’. The meanings of the terms ‘political’ and ‘humanitarian’ are both contested, as is the distinction between them, and their interpretation by UNHCR has changed over time (Sugino 1998). Originally included in the Statute to minimise tensions between East and West, the non-political nature of the mandate was interpreted as characterising the institution of asylum and implied that the granting of asylum was not to be seen as a hostile act and was not supposed to create tensions between the sending country and the receiving country. For UNHCR specifically, it meant not criticising countries of origin and not

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seeking to manipulate the causes of refugee flows (Sugino 1998, pp. 50-54). This stance changed through the 1980s, and by the end of the Cold War, UNHCR was increasingly involved in countries of origin, and increasingly outspoken about human rights violations. General Assembly resolutions and Excom conclusions continue to assert the ‘non-political and humanitarian’ character of UNHCR, but the interpretation of non-political has shifted. Thus the 1990s saw a new emphasis on neutrality and impartiality (Sugino 1998, pp. 56-58). As suggested in chapter three, however, neutrality and impartiality are also principles which are open to contestation and different interpretations.

Forsythe (2001, p.1) argues that UNHCR is non-partisan and cites three ways in which UNHCR can thus genuinely be said to be non-political: ‘it does not pronounce directly and explicitly on “who governs,” meaning who should govern in general; it does not pronounce on public policies beyond its mandate, and thus on the general nature of governance unrelated to refugee concerns; and it does not engage in military coercion in an effort to compel policy change.’ However, in another sense, that of lobbying for particular public policy, UNHCR is a political actor and indeed from this perspective its raison d’être is political (Forsythe 2001, p.1). Further, there may be overlap such that lobbying for particular public policy affects power struggles and thus impacts on who governs (Forsythe 2001, p.2). Thus far, UNHCR neutrality is very similar to ICRC neutrality. However, there are important differences between the two IOs in their interpretation and implementation of neutrality.

UNHCR works with states to seek permanent solutions to displacement and in this regard ‘is engaged in strengthening national protection capacity, working closely (although not exclusively) with governments’ (Tennant et al. 2010, para. 30). In internal conflicts, ‘such engagement may contribute to a perception that UNHCR is not entirely neutral, and may even be seen as endorsing a particular political or institutional model, or aligning itself with a party to a conflict’ (Tennant et al. 2010, para. 31). In short, the emphasis on solutions within UNHCR and the pre-eminence of the state in any such solution result in relationships that would not be considered as neutral by the ICRC, but that are central to the work of UNHCR.
In terms of impartiality, the categories of person with whom UNHCR is concerned has changed over time. UNHCR is concerned with displaced persons, originally refugees narrowly defined, then refugees more broadly defined (in terms of the reasons for which they left their country but nonetheless still those outside their country of origin) and subsequently those displaced within their country of origin, IDPs. The number of refugees may be a good indicator of the magnitude of suffering in a conflict (Loescher et al. 2008, p. xii). However, that is because there is assumed to be a proportional relationship between the two and not because the only people who suffer are those who are physically displaced. Thus in focusing on refugees and IDPs in conflict situations, UNHCR is seeking to protect a narrower group of people than the ICRC, which is concerned with all civilians affected by conflict. Impartiality is thus understood through a forced migration lens: UNHCR seeks to attend to forced migrants according to need, but not to those unaffected by displacement, even if they have equal or greater protection needs.

Having taken on coordination responsibilities for IDP protection under the cluster approach, UNHCR has two overlapping populations of concern, and differing responsibilities for each. Those at ‘risk of displacement’ fit within the coordination responsibilities of UNHCR as cluster lead for protection, whereas the personal responsibilities of UNHCR (and hence its own protection policies and programmes) are first and foremost for actual IDPs (albeit including support for host communities or non-displaced populations in areas of return) (UNHCR 2007 p.6).

Access to populations of concern is not seen as so important for UNHCR as for the ICRC. However, it is not clear whether access restrictions have shaped the approach or vice versa. Being part of the UN system may increase risks to UNHCR staff, and certainly restricts UNHCR autonomy in decisions as to when and where it can operate. UNDSS restrictions limited ‘access to affected populations, even under escort’ in several locations (UNHCR 2007b, para. 31). Within UNHCR rhetoric, humanitarian space is understood to include asylum space and protection space more generally (Feller 2009; Tennant et al. 2010). Thus access is understood not only in terms of UNHCR staff being able to access populations of concern, but also in terms of civilians being able to access safety and protection in conflict.
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Legal principles

Two fundamental principles underpin the IRL framework that is at the heart of the traditional work of UNHCR: asylum and non-refoulement. According to article 14(1) of the 1948 Universal Declaration of Human Rights, there is a right to seek and enjoy asylum. However, there is no right to be granted asylum. Therefore an asylum seeker or refugee has no enforceable claim against any specific country. Non-refoulement is intrinsically linked to the definition of a refugee – a state cannot send back a refugee on its territory or at its border ‘to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion’.

Formal recognition of refugee status is not required for the application of the principle of non-refoulement; protection from refoulement is the right of an asylum seeker, not only of a refugee. The rights of refugees and the obligations of states do not stop at the principle of non-refoulement. Refugees also have the right to a solution, in other words eventually to cease to be a refugee.

The right of states to grant asylum contradicts sovereignty because a component of state sovereignty is the right of the state to exercise jurisdiction over its citizens. However, a refugee-receiving country takes on the jurisdiction of refugees on its territory. This distinguishes refugees from any other kind of international migrants. Asylum can be understood through analogy to foster care for children. In normal circumstances, children will be cared for by their parents. However, if parents are unwilling or unable to take proper care of their children, social services may take children into foster care until they can either be returned to the care of their parents or adopted.

Like taking away the custody of children from their parents, the granting of asylum involves

11 There are three ways to end being a refugee: (1) a new state may actually be created as was the case with Timor Leste and Eritrea where the returnees were previously refugees from Indonesia and Ethiopia respectively, and then they got citizenship in the new country; (2) refugees may re-avail themselves of the protection of their country of origin; and (3) refugees may gain citizenship of a new country through naturalisation.
confiscating an element of sovereignty from the state of origin. Refugees maintain their citizenship but the state of which they are citizens is deprived of its right to exercise jurisdiction over them.

These principles cannot easily be applied to IDPs except in terms of the principle that they have the right to seek asylum if they cross an international border (at which point in any case they cease to be IDPs). The inapplicability of these principles to IDPs reflects the significant differences between the situation of refugees and IDPs. A parallel with non-refoulement can exist along the lines that IDPs should not be forcibly returned to regions within their country where they will be in danger. The problem is that in the context of conflict, very often IDPs continue to be in danger even in the places to which they have fled, and in many cases the state in question does not have the will or capacity to prevent such dangers. As such, a principle analogous to non-refoulement means little in practice without an equivalent to the principle of asylum enabling the IDP to live in safety in the place to which she has fled. However, it is harder to draw a clear parallel with asylum. In the case of IDPs, the state in question is not deprived of the right to exercise jurisdiction over them. It may be that some parts of a country are safer for particular individuals than other parts of the country (particularly where conflict is localised in particular regions or in ‘conventional’ civil wars with clearly defined fronts and different de facto authorities in control of different areas) but the level of safety does not depend on the legal jurisdiction, because the de jure authority is the same – the state – throughout the country. To only a limited degree, therefore, can notions of asylum and non-refoulement apply by analogy in the context of internal displacement.

Nonetheless, these legal principles, together with institutional principles set out above, are constitutive of UNHCR identity and indeed of the way in which UNHCR addresses the tasks within its mandate. Before turning to explain how UNHCR addresses the task of in-country protection during internal armed conflicts, in the next section I analyse the process by which UNHCR expanded into this new issue-area.
5. Expansion into a new issue-area: in-country protection in armed conflict

Originally, UNHCR conceived of protection primarily in terms of providing safe passage and refuge for civilians fleeing persecution who had crossed a national border. Although UNHCR was first involved with IDPs in the 1970s in Africa and Asia in situations where IDPs were mixed with refugees, it was not until the 1990s that UNHCR regularly extended its service to those displaced within their own countries (Mattar and White 2005, p. 3). UNHCR traditionally worked in third countries, and protection was conceived in terms of the legal principles of non-refoulement and asylum, rather than in terms of physical safety for either refugees in camps across the border from the country of origin, or IDPs within their own countries. Since the 1980s, the range of activities undertaken by UNHCR has expanded, new populations have been identified as being of concern, and emphasis has shifted: in the 1980s, the main shift was away from legal protection towards the provision of assistance to refugees in camps, and in the 1990s, UNHCR took on a more general role in humanitarian relief and engaged with repatriation operations (Loescher et al. 2008, p. 3).

From the late 1990s, UNHCR took on increasing responsibility for IDPs on an ad hoc basis and this role has now been formalised under the UN cluster approach through which UNHCR is mandated to play a lead role in coordinating IDP protection at the global level, and at the field level in conflict situations.

In the 1980s, UNHCR began to emphasise repatriation (as opposed to local integration or resettlement) as the preferred solution to the refugee problem. This was the consequence of increasingly restrictive asylum policies in both industrialised countries and the developing world, and pressure from states to find an alternative durable solution. Attention to repatriation meant that for the first time UNHCR concerned itself significantly with conditions in the countries of origin and, consequently, with the behaviour of those states from which refugee flows originated. Prior to 1985, UNHCR considered voluntary repatriation the preferred solution in principle, but resettlement was promoted in practice; from 1985 to 1993, voluntary repatriation was favoured, with emphasis on ensuring its voluntary nature; in 1993 the notion of safe return introduced the possibility for UNHCR rather than refugees themselves to determine when they should repatriate;
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and 1996 brought the doctrine of imposed return under which refugees may be sent back to conditions considered less than optimal by UNHCR (Chimni 2004; Loescher 2001a, pp. 283-286; Zieck 1997).

Conceptually it is a short step from repatriation to seeking to prevent refugee flows altogether, and Excom conclusion No. 40 (UNHCR 1985, para. c) states that the ‘aspect of causes is critical to the issue of solution and international efforts should also be directed to the removal of the causes of refugee movements. Further attention should be given to the causes and prevention of such movements’. This shift was in keeping with broader moves within the UN to address the “root causes” of conflict and human rights abuses within country of origin, as reflected in the study on human rights and massive exoduses by Prince Sadruddin Aga Khan for the UN Human Rights Commission (Aga Khan 1981). The prevention of refugee flows was driven by motivations that were not solely humanitarian, and UNHCR became involved in repatriations that were less than voluntary (Barnett and Finnemore 2004; Chimni 2004).

External pressures on UNHCR pushed the organization to work to repatriate refugees and to prevent new refugee flows from occurring. Changes in the character of refugee flows and shifts in the attitudes of states to those flows such that resettlement and asylum became increasingly unrealistic solutions put pressure on UNHCR to prevent outflows, to provide in-country protection and assistance and to repatriate those who have fled (Loescher 2001a, p. 283; Roberts 1996, pp. 13-14). The containment of potential refugee flows is a key motivation behind international involvement with the protection of IDPs, and the financial and political dependence of UNHCR on states is seen to have ensured that the refugee policy pursued by UNHCR has reflected the global move towards containment (Dubernet 2001; Duffield 2008, p. 154).

That the prevention of refugee flows was the aim – or at the very least an aim – of initial work by UNHCR with IDPs has been consistently acknowledged by UNHCR, the General Assembly and Excom. UN General Assembly Resolution 48/116 of 20 Dec 1993 (which was also endorsed by Excom conclusion 75 of 1994) makes six references to the prevention of refugee flows,
specifically reaffirming General Assembly support for UNHCR efforts to ‘to provide humanitarian assistance and protection to persons displaced within their own country in specific situations calling for the Office’s particular expertise, especially where such efforts could contribute to the prevention or solution of refugee problems’ (emphasis added). In 1994, UNHCR set out a number of preconditions and criteria to determine its involvement with IDPs, one of which is where ‘there is a potential for cross-border movement, and the provision of humanitarian assistance and/or protection to internally displaced persons may enable them to remain in safety in their own country’ (UNHCR 1994b, para. 15d).

In 1998, UNHCR produced an information note on its role with IDPs setting out its rationale and criteria for involvement in IDP situations, as well as the activities undertaken for IDPs (UNHCR 1998). This note again emphasised the importance of a link between IDPs and refugees in determining whether UNHCR should become involved in any given IDP context (UNHCR 1998, para. 11). At this stage, UNHCR did not consider that it could get involved in all IDP contexts, and viewed activities with IDPs as a means to prevent displacement not only in the form of refugee flows but also within the borders of a country (UNHCR 1998, para. 22). In specifying the nature of its activities for IDPs, UNHCR (1998, para. 12) asserts that ‘[b]y virtue of its unique mandate and its global operations on behalf of refugees, UNHCR has acquired protection and solution-oriented skills and an operational capacity which can be put to effective use in certain situations of internal displacement.’

In March 2000, UNHCR published a position paper on its role with IDPs, stating that UNHCR has an interest in IDPs ‘displaced by persecution, situations of general violence, conflict or massive violations of human rights’ because of ‘the similarity between such internally displaced persons and refugees, in terms of the causes and consequences of their displacement and their humanitarian needs’ (UNHCR 2000, p. 3). In this paper, UNHCR clarified that its involvement in IDP situations could be on the basis of a direct or indirect link with refugee situations. In other words, its concern could be provoked ‘not only by the risk or reality of a refugee outflow, but also by the “refugee-like” nature of internal displacement calling for the Office’s particular expertise in protection and
solutions’ (UNHCR 2000, p. 5). By 2007, IDP protection was seen as ‘an imperative in its own right’ and not only in connection to refugees (UNHCR 2007c, para. 34). Nonetheless UNHCR continued to stress that ‘IDPs are often displaced for the same reasons as those who have crossed an international border and they will have endured similar experiences’ (UNHCR 2007c, para. 36).

An analysis of these General Assembly Resolutions and UNHCR policy documents thus demonstrates that two main arguments were made for the initial expansion of UNHCR into IDP operations. The first is a practical argument, fitting with the idea of functional spillover (Haas 1958). According to this reasoning, IDPs often become refugees, protecting and assisting IDPs prevents refugee flows, and the prevention of refugee flows is constructed as a solution to the ‘refugee problem’. The second is a normative argument, based on the fact that refugees and IDPs are often in the same place and the same predicament. The ethical reasoning is that if UNHCR is protecting and assisting the refugees, it should also protect and assist the IDPs. Subsequently a third argument was added which cuts across the other two, and which identifies the expertise and experience of UNHCR with refugees as qualifying it to provide protection and solutions for IDPs. This last rationale removes the need for there to be a link between IDPs and refugees in a given context.

These three arguments for the expansion of UNHCR into IDP protection and assistance demonstrate how a link between issue-areas was constructed to justify expansion into the new issue-area. It is logical that these constructions may then have an impact on how the new issue-area is addressed. The first argument suggests that UNHCR would conceptualise IDP protection as a means to preventing further displacement rather than as an end in itself. The second and third arguments suggest that the specific objectives and activities undertaken by UNHCR with respect to refugee protection and assistance may form the template for IDP protection and assistance. By the time the cluster approach was first implemented in 2006, it was clearly established that UNHCR was concerned with IDPs – at least conflict-induced IDPs – regardless of their relationship to refugees and refugee flows. However, in the absence of a bottom-up influence on policy, because
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of the hierarchical structure and the top-down decision-making processes, the original arguments for expansion into the IDP issue-area continue to dominate how protection is understood.\textsuperscript{12}

A critique of these three arguments about the supposed links between refugee and IDP protection is also indicative of the inconsistencies to be found in the UNHCR approach to IDP protection. IDP protection as a means to prevent refugee flows represents a functional spillover argument with respect to one of the particular goals that UNHCR pursues (the prevention of refugee flows) but not with respect to refugee protection. Indeed the notion of ‘preventive protection’ is problematic precisely because the prevention of refugee flows is often not in the interests of refugee protection (Barutciski 1996; Chimni 1993; Frelick 1992). UNHCR does not operate in a vacuum, and just as its own work is shaped in part by international politics, so international politics is also shaped in part by the work of UNHCR. While on the one hand the notion of ‘preventive protection’ was a pragmatic response to increasingly restrictive asylum policies in potential host states, the same notion was used to justify further restrictions on asylum by those states. Thus Bill Frelick asks, ‘do we really expand the range of protection for those in immediate need by speaking of solutions that may well be beyond our capacity to effect in the short term?’ (Frelick 1992, p. 440).

Even if IDP protection is thought of as a functional spillover from the goal of preventing refugee flows, the argument is not flawless. While it is true that in some cases IDPs later become refugees, this is not always the case, and it may be that different factors determine whether an individual displaces internally or crosses an international border (Moore and Shellman 2006). That being the case, the first argument would require UNHCR to focus its efforts on the protection of IDPs who

\textsuperscript{12}This makes Colombia a particularly interesting context in which to study UNHCR operations in practice (chapter 6) because neither of the two main arguments really applies to Colombia. First, in Colombia, massive levels of internal displacement have not led to correspondingly huge refugee flows. According to UNHCR, as at January 2011, there were 3.7million IDPs in Colombia and fewer than 0.5million refugees and asylum seekers originating from Colombia (UNHCR 2012). Second, in the absence of wider regional conflict or any refugee return movement, Colombian refugees and IDPs are not in the same places. As such, to the extent that these two arguments impact on the approach taken in Colombia, the policy-consequences of these arguments must have become institutionalised.
were likely to subsequently cross an international border, yet none of the policy documents recognise any such distinction between different IDPs.

The argument that IDP protection is a moral imperative when IDPs are found in the same predicament as refugees is unconvincing because the logical conclusion would be not to stop at IDPs but to seek to protect all those – displaced or otherwise – in the same predicament and the same locations. With respect to material assistance this argument might hold in that refugees and IDPs are without their homes and lands, and are therefore more likely than non-displaced persons to lack their normal possessions and need assistance with shelter, cooking facilities and other physical goods. However, it is not at all clear that IDP and refugee protection needs are any worse than non-displaced. Furthermore, in terms of protection, refugees and IDPs are not in an identical predicament: in a conflict context, both refugees and IDPs are likely to be in a similar situation of physical insecurity due to conflict-related violence, but refugees additionally require legal protection that permits them to remain in the territory in the absence of holding the nationality of that territory. UNHCR expertise in refugee protection relates to this second refugee-specific task. It is not clear that UNHCR has ever had the ability to provide for the physical security of refugees in the midst of armed conflict. The argument that UNHCR should expand its operations to include IDP protection because there is an overlap between IDP protection needs and refugee protection needs is unconvincing unless UNHCR has the ability to meet the refugee protection needs precisely in the area of overlap.

**Characterising the approach**

Having explored the justifications given for the expansion of UNHCR into a regular role in in-country protection, I now turn to set out the approach taken by UNHCR to address this new issue-area and to explain why this particular approach was adopted. The section is structured according to the five dimensions of protection approaches set out in chapter one. First, I explain who UNHCR seeks to protect and what UNHCR seeks to protect them from. Second, I examine the normative frameworks employed by UNHCR and the role of those frameworks in protection. Third, I analyse the specific (and often only implicit) objectives of UNHCR with respect to in-
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country protection. Fourth, I examine the roles UNHCR ascribes to different actors in pursuit of these objectives. Fifth, I set out the activities UNHCR undertakes in the name of in-country protection. For each of these five dimensions, I additionally explain why UNHCR has adopted its particular interpretation and, where relevant, how that interpretation may limit the effectiveness of the protection work of UNHCR.

1. Objects of protection

In the context of armed conflict, the objects of protection for UNHCR are refugees, IDPs and those at risk of displacement. As the mandate of UNHCR has expanded, there has been a discursive shift regarding the objects of its protection work. While the organization once limited itself to the terms “refugees” and “asylum seekers”, from the mid-1990s to the mid-2000s it commonly referred to “persons of concern to UNHCR”, and by 2010 the favoured phrase was “people on the move” (Crisp 2010). In defining who is of concern to UNHCR, the cross-border and persecution elements of refugeehood have lost their salience, but the notions of movement and forced displacement remain central. As such, in the context of conflict UNHCR is concerned with those displaced or at risk of displacement due to conflict.

The notion of forced displacement is central not only in defining who is of concern to UNHCR, but also in defining the understanding of what those people are to be protected against. The note of a May 2007 consultative meeting between UNHCR and Excom sums this up: ‘The overall goals of UNHCR’s protection activities are to assist governments to ensure that IDPs are not discriminated against for reasons related to their displacement, have access to the same rights as other citizens, and that their specific displacement related protection needs are met’ (UNHCR 2007e, para. 31). While this notion is rarely stated so explicitly as here, implicit in UNHCR doctrine as a whole is the idea that IDPs and those at risk of displacement are to be protected from forced displacement and the impact of forced displacement. It is not the impact of violence or conflict per se, but the impact of displacement with which UNHCR is primarily concerned.
UNHCR frequently reiterates a rights-based approach to protection, which it defines as being ‘based on the principle that IDPs, like all other citizens, are entitled to full protection under international human rights and humanitarian law, as well as national law, at all stages of the displacement process’ (UNHCR 2007f, para. 26) (emphasis added). The underlying idea here is that those affected by displacement should not be adversely affected by that displacement, and should be able to enjoy the same rights as those unaffected by displacement. The analogy with refugee protection is obvious in that the content of protection laid out in the 1951 Refugee Convention and its 1967 Protocol is largely defined by analogy to the rights and benefits accorded either to nationals or to other aliens in the country of refuge. Essentially these treaties provide for a refugee to reside legally in the country of refuge, and not to be discriminated against in terms of economic and social rights.

In protecting those at risk of displacement from being displaced, or protecting those who have been displaced from discrimination of account of having been displaced, UNHCR draws on particular aspects of various different normative frameworks.

2. Normative frameworks

In what follows, I outline the main legal and normative frameworks employed by UNHCR in its work, and explain how these frameworks shape the approach taken to in-country protection.

The 1951 Refugee Convention and 1967 Protocol define who is a refugee and assign a set of rights to refugees and a set of corresponding obligations of states. Article 1A(2) of the 1951 Convention defines a refugee as someone who, ‘owing to 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, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his

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13 I referred to those ‘affected by displacement’ rather than simply IDPs as UNHCR also concerns itself with communities who host IDPs and refugees and who may be adversely affected by the inflows.
former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.’ However, states in Africa and Latin America found that the refugee definition in the Convention and Protocol was too narrow to capture the reality of contemporary refugee flows. As a result, regional approaches to refugee protection were developed.

In 1969, the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa expanded the refugee definition in member states to include not only those fleeing persecution for reasons of being members of a particular group but also those fleeing occupation, conflict and serious public order disturbances (Article 1.2). While those who come within article 1.2 of the 1969 OAU Convention are not ‘Convention refugees’, they are nonetheless entitled to the same protection and rights as those who come within the 1951 Refugee Convention definition. In Latin America, following the Central American crises of the 1970s and early 1980s, the 1984 Cartagena Declaration on Refugees also sought to expand the refugee definition within the region to include ‘persons 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 seriously disturbed public order’ (Conclusion N.3). As a declaration rather than a treaty, the expanded definition is not binding on Latin American states, but several have incorporated it into domestic legislation.

In the 1990s, UNHCR finally came to the conclusion that, for UNHCR, a refugee includes anyone defined as a refugee in the 1951 Convention, the 1969 African Convention or the 1984 Cartagena Declaration. However, refugeehood can still imply differential obligations of states depending on what treaties any given state has signed up to, and what is enforceable in that state. Further, international refugee law, including the various regional treaties on refugees, is applicable only to those who have crossed an international border. While the work of UNHCR in the context of armed conflict may include refugee protection (particularly in the context of regional conflicts), the main populations of concern are made up of IDPs. They are not covered by refugee law, and the legal protection capacity of UNHCR extends only to those who have crossed an international boundary. As such, there is a divergence between the functional responsibilities of UNHCR and
the legal obligations of states, and this middle ground has been characterised by a lack of specific legal obligations (Goodwin-Gill 1989, p. 16; Zieck 2010).

The Guiding Principles on Internal Displacement (Deng 1998) are the most important international normative framework for the work of UNHCR with respect to IDP protection during armed conflict. The Guiding Principles were not developed by or at the instigation of UNHCR. The UN High Commission on Human Rights (OHCHR) requested that the UN Secretary-General, Kofi Annan, appoint a representative on IDPs and in 1992 Francis Deng was appointed to this role, publishing the Guiding Principles in 1998. However, UNHCR has since been designated the UN agency with primary responsibility for IDP protection under the cluster approach, and envisages incorporating the Guiding Principles into ‘all IDP activities and operations’ it undertakes (UNHCR 2007d, para. 26). The Guiding Principles reflect, and are consistent with, IHL, IHRL and, by analogy, refugee law (Deng 1995; Kälin 2008).

At the regional level, the African Union ‘Kampala Convention’\textsuperscript{14} is the first binding Convention on IDPs (African Union 2009). The Convention was adopted by the African Union in 2009 but has not yet secured the requisite 15 signatures to come into force. Where they exist, UNHCR may also draw on national legal frameworks for IDP protection. An increasing number of states are drawing up IDP-specific legislation often based on the Guiding Principles. Colombia and Uganda are particularly notable in this regard. Additionally, domestic legislation more generally may be relevant for the protection of IDPs during armed conflict.

At times the legal framework underpinning the work of UNHCR has been interpreted in such a way as to restrict the institutional mandate and at other times UNHCR has exercised legal creativity to justify involvement in new situations. For example, in 1956 when the UNHCR mandate still limited its involvement to refugee flows from pre-1951, High Commissioner Auguste

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Lindt responded to the Hungarian refugee crisis with the argument set out by his legal adviser that this refugee flow related not only to the 1956 Hungarian uprising, but also to the changes that took place in the country as a result of the establishment of a people’s republic in 1947-8 (Loescher 2001a, p. 86). At other times, a legalistic interpretation of protection within UNHCR has been used to limit the situations in which the organization involved itself. For example, under the leadership of Prince Sadruddin Aga Khan in the 1960s, UNHCR assumed a policy of non-involvement in major internal conflicts on the basis that the displacements were largely internal, and that these situations were not of direct concern to UNHCR for constitutional and legal reasons (Loescher 2001a, p. 145).

The Guiding Principles are seen as having ‘played a significant role in shaping UNHCR’s operational responses for IDPs’ (Diagne and Entwisle 2008, p. 33). Certainly UNHCR seeks to address many of the issues within the Guiding Principles, and in many contexts does not work on issues beyond the scope of the Guiding Principles. However, the issues covered by the Guiding Principles and indeed the broader frameworks of IHL and IHRL are best understood as a menu from which UNHCR selects issues to work on rather than a prescriptive list. Thus there are issues covered by the Guiding Principles and the other applicable frameworks that are not addressed by UNHCR, even in contexts where they are relevant. For example, the Guiding Principles are applicable to non-state armed groups as well as to governments (Deng 2006, p. 221). Thus those issues which are not specifically about state responsibility imply obligations of non-state armed groups. As such, addressing these issues implies changing the behaviour of armed non-state actors to increase their compliance with international law. However, UNHCR focuses on the rights of IDPs with respect to the state, and not on the obligations of all armed actors.

Where relevant national legal frameworks exist, UNHCR may also use these in its IDP protection efforts. This includes dedicated IDP legislation where it exists, as well as more general legislation which has a bearing on the rights and welfare of IDPs. This may include, for example, laws on land and property ownership, or on social welfare or human rights more broadly. However, UNHCR will not necessarily allow its work to be restricted by what is covered in domestic legislation. In
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some contexts, UNHCR seeks to expand domestic legislation in line with the norms specified in the international frameworks. Thus the role of UNHCR is also about developing or strengthening national frameworks.

The Guiding Principles and domestic legal frameworks are not only important in determining which issues UNHCR seeks to address, they are also the favoured tools with which UNHCR seeks to address those issues. Diagne and Entwisle (2008) cite numerous examples of how the Guiding Principles are used by UNHCR as a tool with which to educate states as to their responsibilities and individuals as to their rights, and with which to persuade states to meet those responsibilities. Emphasising both the rights outlined in the Guiding Principles and the rights enshrined in national legal frameworks, this is the core of UNHCR protection work in many contexts. However, the extent to which the legal frameworks are primary tools depends on the specific context, and particularly on the will and ability of the state to protect its population.

Where there is a strong state,\textsuperscript{15} then the activities of UNHCR are either aimed at developing the national legal framework (often in line with international laws and principles, most notably the Guiding Principles but also regional legislation) or at persuading the state to adhere to its obligations as set out in these various legal frameworks, or informing individuals of their rights and how to claim them. In contexts where the state is weak, such an approach is impossible and nonsensical and activities are not focused on the realisation of rights and the responsibility of the state. In Somalia, for example, the activities of the protection cluster (co-led by UNHCR and UN OCHA) focus on the monitoring of population movements and protection concerns, and the profiling of IDPs, essentially information-gathering activities (Savage et al. 2007).

As outlined above, the content of refugee protection is defined in IRL in terms of the rights of refugees and the obligations of states. While UNHCR does not advocate for a special legal status

\textsuperscript{15} In this context a strong state is understood as one capable of assuming legal responsibilities and of accepting accountability for wrongdoings.
for IDPs, it nonetheless views protection in terms of judicial protection rather than the provision of physical security. The focus is on the legal entitlements of IDPs and those at risk of displacement rather than the threats they actually face, and it is not made clear whether or how such judicial protection is expected to translate into physical protection.

Analysis of relevant policy documents from the 1990s conceptualise legal protection as one among multiple means to protection. With specific reference to the physical dimension of refugee protection, UNHCR (1991, para. 10) explained that, ‘[a]t times, a legal principle is interposed between threatened action and the refugee; at others it is the very presence or diplomacy of a UNHCR officer. Assistance programmes are another important mechanism, sometimes the best, through which protection can be provided or at least reinforced.’ Similarly, with respect to IDPs, UNHCR took the view that ‘meeting the protection needs of the internally displaced and those at risk of displacement and promoting solutions is not only, and often not even primarily, a question of legal norms and remedies’ (UNHCR 1994b, para. 26). In spite of this statement, as UNHCR has expanded its IDP protection role, judicial protection has become the main focus of its work. What was described as only one, and often not the primary, means to protection has come to be seen as an end in itself.

Thus more contemporary policy documents emphasise ‘protecting the rights of the internally displaced’ (UNHCR 2007f, para. 20) and ‘the establishment of national laws, institutions and mechanisms that safeguard the rights of IDPs’ (UNHCR 2007f, para. 28). There is a great deal of reference to the realisation of rights, the protection of rights, and the safeguarding of rights. The particular rights with which UNHCR is concerned are not specified, but the Guiding Principles, IHRL and IHL are all invoked (UNHCR 2007f, para. 27).

3. Specific protection objectives

On one level, UNHCR sees a reduction in organised violence – in the form of conflict prevention or resolution – as the only way to properly protect refugees and IDPs in conflict settings. However, UNHCR sees this as the domain of states, and the activities that UNHCR undertakes in the name of
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The UNHCR approach to in-country protection in conflict are not directed at reducing overall violence. The exception to this is the reiteration in the documents that define UNHCR policy – including General Assembly Resolutions, Excom conclusions and documents produced by the Office itself – of the view that states should seek to prevent and resolve conflicts. However, UNHCR does not usually involve itself in addressing the causes of conflict in any given situation.

Likewise, UNHCR sees threat reduction and physical security as important components of protection, but not as part of its own work. UNHCR documentation suggests that the organization agrees that protection in the context of armed conflict is primarily about physical safety and security. For example, the note of a 2007 informal consultative meeting with Excom (UNHCR 2007c, para. 20) stipulates that ‘[p]rotection activities should first and foremost be designed to protect against threats to life, prevent torture or discrimination, and promote respect for dignity and the preservation of family unity.’ However, the objectives that UNHCR sets for its own work in conflict contexts do not match up with these primary aims. They do not for the most part relate directly to reducing threats from violence. Instead they fit better with the UNHCR understanding of, and approach to, refugee protection; an understanding and an approach which do not focus on issues of conflict and violence.

The specific objectives of UNHCR with respect to in-country protection during conflict include building state capacity, developing national legislation, and raising awareness of IDP rights at the level of central and local government, as well as informing IDPs and communities at risk of displacement of their own rights and the formal channels through which they can seek to claim those rights. UNHCR aims to promote ‘dialogue between national authorities, the displaced, and other relevant actors to ensure they all understand IDPs’ protection needs, underlying rights and obligations’ (UNHCR 2007e, para. 31). In particular, as indicated above, UNHCR is concerned with ensuring that IDPs are able to access the same rights as their non-displaced compatriots, and that the specific needs arising from displacement are met.
Most of the work that UNHCR carries out in the name of IDP protection is thus more in line with the pursuit of what UNHCR defines as solutions than with protection from immediate physical threat. UNHCR takes the view that ‘durable solutions in the IDP context are first and foremost about restoration of and the actual ability to exercise rights in a fulsome manner’ (UNHCR 2007c, para. 57). Protection and solutions are conceptually distinct, yet the aims of UNHCR’s IDP protection work fit much more closely with its own definition of solutions, rather than with the aim of protection against threats to life and torture cited above. Exploring the relationship between protection and solutions, UNHCR (1986) asserts that ‘just as providing immediate protection without identifying durable solutions should not be regarded as an end in itself, so solutions, whether permanent or temporary, cannot be divorced from the immediate needs of protection. There can of course be no effective solution if protection concerns are not taken fully into account.’ This discussion relates to refugee protection and solutions, but it is equally applicable to activities directed at IDPs. Despite asserting that there can be no effective solution if immediate protection needs are ignored, very often UNHCR does ignore those immediate needs in conflict contexts.

Within UNHCR discourse, protection and security are either understood as separate objectives and activities or security is understood as a subset of protection. Meeting notes and evaluation reports commonly include separate sections for ‘protection’ and ‘security’ as if to imply that protection is something other than physical security and safety (UNHCR 2007b, f). In the security rather than the protection section, the note of a January 2007 informal consultative meeting between UNHCR and Excom states that ‘UNHCR’s IDP protection activities ... will be based on partnerships with national and international actors that are able to contribute to the security of internally displaced populations’ (UNHCR 2007f, para. 53). Whereas refugee protection has been understood as legal protection, since the 1990s, physical security became an increasing concern in camp contexts. However, in such situations security has always been seen as the responsibility of states, and has not been an area in which UNHCR has had a great deal of success. This understanding is replicated in those contexts where UNHCR undertakes in-country protection.
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Related to the specific objectives implicit in the UNHCR approach to protection are the particular roles UNHCR ascribes to different actors in the protection of IDPs and others in conflict contexts. Just as the objectives take little account of some of the most pressing protection concerns that relate specifically to conflict and violence, so the actors deemed to be most important in protection are not necessarily those with most control over the conduct of conflict and violence. In the next section, I analyse how UNHCR perceives the role of different actors in protecting IDPs and refugees in the midst of armed conflict.

4. Protection actors

The approach taken by UNHCR to IDP protection is undoubtedly and unashamedly state-centric. States are sometimes seen as part of the problem, and are almost always seen as most of the solution. Armed non-state actors are seen as part of the problem but are not seen as part of the solution. UNHCR maintains a rhetorical commitment to participation by those who the IO seeks to protect, at least in the design of protection policies, if not in the implementation of those policies. However the extent to which the UNHCR approach to protection involves meaningful participation in practice is questionable. Finally, depending on the context, UNHCR views other UN agencies as having a role in protection and international and local NGOs as (most often junior) partners in protection.

UN General Assembly Resolution 53/125 makes it clear that UNHCR protection and assistance to IDPs must be ‘with the consent of the State concerned’.\textsuperscript{16} All UNHCR documents on the protection of IDPs highlight the responsibility of the state and, according to UNHCR, the ‘involvement of UNHCR and other international actors in situations of internal displacement thus does not lead to a delegation of responsibility from the State to international agencies’ (UNHCR 2007c, para. 25). Excom conclusions No.75 (1993), No.80 (1996), No.105 (2006) and No.108 (2008) all note that the primary responsibility for the welfare and protection of IDPs lies with the State concerned. In

practice, such statements prompt the question: while states may have ultimate responsibility for the protection of those within their territory, can they and do they have the greatest impact on the protection and security of those people?

The approach taken by UNHCR to refugee protection is based on the idea that states provide protection. Where one state fails to protect a citizen and that citizen is able to flee, another state takes on responsibility for the protection of that individual. With IDP protection, UNHCR maintains such a state-based approach, despite the fact the ‘IDP problem’ is fundamentally different as there is no second state involved. In the case of an IDP, one state has failed in its responsibility to protect that person, and UNHCR works to get that same state to resume its protection responsibility. This is a very different task, and the disjuncture between the understanding of protection that UNHCR has carried through from refugee protection and the actual requirements of in-country protection limits the scope of protection by UNHCR in the context of conflict.

During times of armed conflict, UNHCR acknowledges that ‘governments may not be in a position to ensure the necessary protection. The displaced may be in areas of territory over which the authority of the State is absent, or difficult to enforce, and State policies may themselves cause or aggravate forced displacement or hinder humanitarian work’ (UNHCR 2007c, para. 7). It is because the state is unwilling or unable to protect its citizens that UNHCR sees the need for international involvement. Where the state causes or aggravates forced displacement and civilian insecurity more generally, UNHCR can seek to generate or increase the government’s will to protect its citizens through persuasion, argumentation or the creation of rational incentives. Where the state is unable to enforce its authority over an area of territory, it is difficult to see how UNHCR as a humanitarian organization lacking in coercive capacity can facilitate the enforcement of state authority. Yet even in such situations UNHCR continues to advocate state responsibility, largely ignoring those actors who may have de facto authority and thus protective potential over that territory.
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The approach is conditioned by the way UNHCR understands its own role in relation to that of states, and this in turn derives from: (a) the status of UNHCR as a UN agency and comprising of member states; and (b) the roles of, and relationship between, UNHCR and states with respect to the issue-area of refugee protection. The state has primary responsibility for those who are internally displaced within its territory, and for UNHCR that means the state is the primary actor in protection, ignoring the fact that a mandate or duty to protect is no guarantor of protective action.

UNHCR views the police and military apparatus of the state as a potential threat to civilians (through abuse of human rights or forced displacement), and also as a potential actor to protect against threats from others (Global Protection Cluster Working Group 2010, p. 70). UNHCR thus envisages some form of interaction with state military actors. The Global Protection Cluster Working Group (2010, p. 71) outlines potential interaction including monitoring, advocacy, training, information sharing, and military support for humanitarian operations. For the most part, UNHCR views the national military and police as having an impact – positive or negative, depending on the specific context – on the security of UNHCR staff rather than the protection of IDPs (UNHCR 2007d, para. 13). Missing from most UNHCR discourse is consideration of the protective role national forces may play by abstaining from threatening civilians. For example, the note of a 2007 meeting between UNHCR and Excom lists a range of national actors with whom UNHCR establishes working relationships in its IDP protection: ‘central government structures and local authorities, human rights institutions, parliamentarians, the judiciary, NGOs, religious bodies and other members of civil society’ (UNHCR 2007f, para. 21). No mention is made of either state or non-state armed actors.

Indeed armed non-state actors are conspicuous by their absence in UNHCR documents regarding IDP protection. Despite that fact that UNHCR is concerned with internal armed conflicts, and that such conflicts necessarily involve non-state armed groups, such groups are rarely mentioned by UNHCR. Analysis of UNHCR policy documents on the protection of IDPs and refugees in conflict contexts and in respect of armed attacks on refugee camps reveal three kinds of reference to non-state armed groups.
First, there are those that affirm the applicability of IHL and the relevant provisions of the Guiding Principles to such groups. For example, UNHCR asserts that ‘[i]nternational humanitarian law is binding on both States and organized armed groups’ (UNHCR 2007c, para. 17). The Guiding Principles are intended to apply not only to states but also to ‘[a]ll other authorities, groups and persons in their relations with internally displaced persons’ (Guiding Principles, introductory para. 3c). There is no effort to justify the claim that these legal and normative frameworks apply to non-state actors, simply the assertion that they do.

Second, there are references that claim that successful protection from armed attacks can only occur when all parties to a conflict pursue policies based entirely on humanitarian principles (UNHCR 1988, para. 34; 1989, para. 45). Beyond such statements, however, there is no suggestion of how the protection work undertaken by UNHCR might encourage non-state actors to comply with humanitarian principles. UNHCR does not set out any strategy to increase the compliance of armed non-state actors with the existing legal and normative framework, and nor does it question how that framework might be adapted to induce greater compliance. With respect to IHL, this is perhaps unsurprising given UNHCR is not responsible for the development of IHL. With respect to the Guiding Principles, UNHCR did not devise them but does view them as a key protection tool and is arguably the main agency associated with implementing them. Thus we might expect greater effort to develop them in such a way as to achieve maximum compliance by armed non-state actors. However, UNHCR has thus far remained state-centric and views states as the ultimate protection actors, an understanding which I have argued is a legacy of the traditional refugee protection role of the IO.

Third, UNHCR does envisage some interaction with armed non-state parties to conflict. However, this is not with the direct aim of protecting refugees and IDPs, but with institutional neutrality and staff security in mind. For example, UNHCR (2007c, para. 39) recognises ‘that IDP situations will more typically than refugee operations involve UNHCR and other agencies working in tenuous environments including those not controlled fully by the national authorities. The dynamics of interventions will thus have to take into account interaction with armed groups and/or de facto
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authorities. Working with parties to a conflict and ensuring the neutrality of the Office are thus vital, and staff security is often times among the foremost issues of concern.’ There is no suggestion that UNHCR works to increase the compliance by armed non-state actors with the relevant rules and norms as a means to protecting IDPs.

Thus the approach taken by UNHCR to IDP protection does not for the most part view non-state armed groups as potential protection actors. This is illogical since: (a) UNHCR does view armed non-state actors as a significant cause of physical insecurity and danger to civilians, and a cause of refugee flows and internal displacement; and (b) UNHCR consistently argues that addressing the causes of displacement is necessary for effective protection and solutions. When a state is viewed as part of the problem (though unwillingness or inability to protect the population), UNHCR views the state also as part of the solution, and views its own role as one of providing support to the state. However, when other actors are part of the problem, the solution is still seen as the state, without any explanation of how support for the state is indirectly expected to solve the non-state part of the problem.

UNHCR claims to be ‘committed to the principle of participation, believing that refugees and others who benefit from the organization’s activities should be consulted over decisions which affect their lives’ (UNHCR 2007a), and has developed an operational tool for the participation of intended beneficiaries in the definition of the problems facing them and the design of solutions to those problems. However, the top-down decision-making process in UNHCR impedes meaningful participation from intended beneficiaries. François Gottwald explains that ‘[o]ne of the biggest obstacles is that the same UNHCR staff who are called to involve persons of UNHCR concern at all stages of decision-making do not enjoy the same right within UNHCR’s own internal decision-making processes’ (Gottwald 2010, p. 31).

In sum, states are seen as by far the most important actors in the UNHCR approach to protection. Armed actors are central in the protection problems facing IDPs as defined by UNHCR but are lacking from the protection solutions offered by UNHCR. It follows logically from a focus on the
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state that protection activities by UNHCR are directed primarily at changing state behaviour. In the next section, I analyse the activities undertaken by UNHCR explaining how they are expected to contribute to protection.

5. Activities

UNHCR emphasises that the activities it will undertake depend on the situation, the needs of IDPs, the relationships between IDPs and authorities and between UNHCR and authorities, and the will and ability of the affected state (UNHCR 1994b, para. 27; 2007c, para. 24). In various places UNHCR sets out or evaluates what it has done in a given situation, but nowhere does it provide an exhaustive list of potential activities. In what follows, therefore, I draw out the main protection activities documented by UNHCR, and characterise them as aimed at reducing violence, threat or vulnerability. UNHCR protection activities during armed conflict divide into four main categories: (1) monitoring; (2) provision of assistance to governments; (3) provision of information and training to individual IDPs and affected communities; and (4) advocacy or negotiation with various actors including affected states, other interested states, peacekeeping forces and non-state actors.

First, in terms of monitoring activities, UNHCR monitors the ‘general protection environment, including laws, access to justice, living conditions, and access to basic services’ (UNHCR 2007e, para. 32) and also undertakes IDP profiling (UNHCR 2007e, para. 39). In and of themselves these activities are unlikely to reduce violence, threats or vulnerability though there is some possibility that state and non-state actors will behave differently if they know their activities are being observed by international actors. Nonetheless, monitoring and profiling activities can serve an important purpose if they are used to inform efforts to change the behaviour of armed actors (to reduce overall levels of violence or to reduce threats to civilians) or to increase the choices available to civilians in reducing their own vulnerability. The danger, however, is that such monitoring activities become seen as an end in themselves rather than as a means to develop effective practical activities.
Second, UNHCR assists governments in the provision of social services (UNHCR 2007e, para. 34), and in resolving land and property issues (UNHCR 2007e, paras. 35-36), and works with governments to increase humanitarian access (UNHCR 2007e, para. 41). As with respect to returning refugees, the role of UNHCR in relation to IDPs is seen as one of promoting or reinforcing protection to be provided by their own government. Thus ‘the forms of protection and humanitarian assistance that can be provided by UNHCR, with the consent of the national authorities, to persons within their own country must serve primarily to promote or reinforce national protection, which must be provided by those authorities’ (UNHCR 1994b, para. 39). This means that many of the activities undertaken by UNHCR rely upon the existence of a functioning state apparatus and seek to strengthen the will and ability of the state to provide national protection.

Such activities may have an impact on violence, threats and vulnerability, but for UNHCR they are presented as ends in themselves and the mechanism through which they might be expected to contribute to civilian security is not explored. For example, the provision of social services can reduce vulnerability if it expands the choices available to those who can access those services, but for UNHCR the goal is simply to ensure that IDPs have equal access to social services as other citizens (UNHCR 2007e, para. 34). The resolution of land and property issues can reduce levels of violence and threat (for example by reducing incentives to appropriate property through violent means) and can reduce vulnerability (for example by expanding livelihoods options). However, for UNHCR the resolution of land issues is conceived as contributing to durable solutions rather than to physical security. Increasing humanitarian access can contribute to threat- or vulnerability-reduction depending on exactly what that humanitarian access leads to.

Where the state is unable to provide such protection, UNHCR may undertake ‘substitution’ activity where it temporarily provides services that should ordinarily be provided by the state. For example, UNHCR has taken on roles in camp management and the provision of shelter (both in refugee situations and, under the cluster approach, for IDPs). Not everything UNHCR does for IDPs is termed protection, and these activities are more obviously assistance activities but they can also
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contribute to vulnerability reduction. They may also have unintended side-effects on the level of threats faced by civilians, where camps become militarised for example or where they become targets for attacks.

Thus all of these activities in support of the state have the potential to increase the physical security and safety of civilians, but none of them will necessarily do so. Their impact will depend on the specific design of the policies and, in many cases, on the specific situations in which they are implemented. Therefore, where they are understood as ends rather than means, and their potential impact on violence, threats and vulnerability is not analysed, there is high risk that they will not be designed in such a way as to maximise their positive impact on civilian security.

Third, UNHCR undertakes a number of activities in which it provides services directly to populations of concern. These activities are broadly aimed at the realisation of citizenship rights and the prevention of discrimination against IDPs on the basis of their displacement. For example, legal documentation is provided with the aim of enabling IDPs to access social services and education, and to participate in elections (UNHCR 2007e, para. 33). This mirrors activities UNHCR undertakes with refugees which include the provision of identity documents and the negotiation of refugee status to ensure refugees can access social services and education in their host country.

In order to help IDPs access their citizenship rights, and those rights relating to displacement specifically, UNHCR provides legal aid to IDPs to inform them what those rights are, and training for IDP and community organizations to show them the official channels through which to claim their entitlements (UNHCR 2007e, paras. 37-38). This replicates the orientation activities UNHCR provides for refugees in several contexts. Additionally, UNHCR provides psycho-social support to IDPs (UNHCR 2007e, para. 40), and undertakes advocacy to prevent sexual and gender-based violence (UNHCR 2007e, para. 42). Such advocacy is likely to take the form of information campaigns regarding the law, and is not usually directed at specific potential or actual perpetrators.
of sexual violence. Instead, such campaigns often focus more on informing potential victims of the law and their particular rights.

Fourth, UNHCR undertakes more general advocacy activities at a number of levels. UNHCR advocates at the international level for increased political commitment to solve the crises that cause displacement. UNHCR sees reduction of organised violence as the ultimate means to protection and as the ultimate responsibility of governments, and insists that the ‘restoration of peace and the protection of human rights are the best ways to provide truly effective protection to the internally displaced’ (UNHCR 2007c, para. 58). Numerous notes on international protection by UNHCR similarly emphasise the responsibility of states in conflict resolution and prevention. In this, therefore, the role of UNHCR itself is limited to advocating for states to prevent and resolve conflicts. This includes not only the affected states, but also those in the broader international community. Most such statements made by UNHCR are in general terms and do not relate to specific conflicts.

In-country protection activities by UNHCR may also include advocacy with parties to the conflict, which is an attempt to reduce the threat itself (UNHCR 2007c, para. 27). In practice, however, such advocacy does not often extend beyond advocacy with the state. This is in keeping with the UNHCR view of the state as having primary responsibility for protection and as being the main actor in providing protection. However, it is problematic in that in the context of armed conflict the state may be unable to prevent other armed actors from using violence and threatening civilians.

As is the case for the ICRC, persuasion is the preferred mode of intervention for UNHCR and for the same reasons as the ICRC, UNHCR prefers to avoid denunciation. However, this preference is less entrenched for UNHCR and there is not a clear set of institutional criteria to determine when persuasion will be used or when other forms of advocacy may be employed. Further, UNHCR more often uses subtle ways of denouncing such as through human rights bodies and committees, or engages in ‘private advocacy’ – essentially activities that fall somewhere between mobilisation and denunciation.
In respect of efforts at persuasion, UNHCR expects to ‘intervene with local entities to prevent the involuntary return of the internally displaced to areas of danger’ (UNHCR 2007c, para. 27). This reflects the translation of the principle of non-refoulement to situations of internal displacement. It demonstrates the displacement-specific approach that UNHCR takes to in-country protection. Whereas forced return is just one of many threats armed actors may pose to civilians, and not necessarily the gravest threat, it is an issue particularly emphasised by UNHCR in its efforts at threat-reduction.

Additionally, UNHCR may ‘negotiate safe passage for relief supplies’ (UNHCR 2007c, p. 7). While this is likely to involve attempting to change the behaviour of armed actors, it is with the aim of protecting relief supplies and those transporting them rather than the intended beneficiaries of the relief. The aim with respect to those beneficiaries is vulnerability-reduction. UNHCR (2007c, para. 27) also purports to ‘facilitate freedom of movement, including the possibility for persons in danger to seek asylum’, in line with its traditional refugee protection function. The traditional role of UNHCR in refugee protection can be seen as working to reduce the vulnerability of individuals rather than to reduce the threat. UNHCR was concerned with providing individuals with an alternative home where they would not be vulnerable to the threat from which they fled, and this emphasis on vulnerability-reduction is replicated in the UNHCR approach to in-country protection.

Finally, it is worth noting that UNHCR undertakes a small number of activities deemed to contribute to ‘security’ as distinct from ‘protection’. For example, evaluations of operations in IDP contexts ‘recognized notable efforts by UNHCR and other cluster approach actors to improve the security environment of the affected communities themselves. Good practices included distributing mobile phones to populations of concern in inaccessible areas, working closely with local civilian police, and cooperating closely with integrated missions to highlight and respond to security concerns’ (UNHCR 2007b, para. 32). The ‘security environment’ is clearly not deemed to be an integral concern of the protection cluster and as such UNHCR distances itself from taking responsibility for the difficult task of increasing the physical security of affected communities.
Such activities may seek to contribute to threat or vulnerability reduction but they make no mention of the armed actors who are deemed to pose the threat to civilians. They instead focus on the role of civilian police or peacekeeping forces to intervene between civilians and the threats they face. The role of UNHCR is seen as one of cooperation with these forces, but not one of seeking to influence their behaviour.

In sum, the main activities of UNHCR involve supporting the state and informing IDPs of their rights. These activities are underpinned by monitoring of the different situations in which UNHCR operates, and are supplemented with more general advocacy. Additionally, ‘[a]t the global level, UNHCR is responsible for leading the development of standards and policies for IDP protection’ (UNHCR 2007c, para. 32). This is a long run activity which could represent violence-, threat- or vulnerability-reduction, depending on the standards and policies UNHCR develops. Importantly, this role means the approach taken by UNHCR itself, and set out in the policies and standards it devises, has a wider impact than the practical activities undertaken by UNHCR in specific contexts. This broad influence makes it all the more important to understand the reasons why UNHCR has adopted this particular approach, whether it may or may not be equally appropriate for other agencies, and whether and how it is limited. In the next section, I consider competing explanations for the approach taken by UNHCR, and in the chapter conclusion I highlight the limitations in the scope of protection offered by this approach.

**Explaining the approach**

Having answered the first central question with the above characterisation of how UNHCR approaches the in-country protection of civilians during armed conflict, I now turn to the second question, that of why UNHCR has adopted this particular approach. Here I draw on the hypotheses set out in chapter two to consider the role of the different external and internal factors in shaping this approach. Specifically, I argue that the approach taken to in-country protection has replicated the work of UNHCR with respect to its core mandate for refugees, and has not been well adapted to the specific characteristics of in-country protection in armed conflict, with likely negative consequences for its effectiveness. The failure to adapt can be attributed to a lack of significant
bottom-up pressures from field level experiences and, related to this, to the absence of channels through which any such pressures could feed into policymakers.

In the foregoing analysis, I have shown that in armed conflict contexts, UNHCR seeks to protect refugees, IDPs and those at risk of displacement from particular threats or discrimination related to displacement. There is nothing to suggest that either the focus on those who have been displaced or the focus on displacement-specific threats can be explained by direct pressure from states, who in recent years have often sought a more general humanitarian role for UNHCR. On the other hand, the external institutional environment more broadly may carry some explanatory power, but only in combination with UNHCR’s sense of its own identity. UNHCR has highlighted its experience with (externally displaced) refugee populations in order to make the case that it is in a strong position to meet the needs of internally displaced populations. In outlining the particular assets at its disposal with which to undertake the task of IDP protection, ‘the expertise, competence and capacity that UNHCR has developed in protecting uprooted populations’ is described as the most significant (UNHCR 2007f, para. 11). Whereas UNHCR might have focused on any of the other assets (moral authority, human, physical and logistical resources, relations with states, IGOs and NGOs) to make the case for a more general protection role, UNHCR emphasises its experience and expertise with respect to ‘uprooted populations’.

Clearly this reflects the original mandate of UNHCR with respect to refugees. It also seems that the focus on displacement has become part of the core identity of UNHCR, and that any such change in this focus would be difficult to effect, and would result in an organization that was not, in essence, UNHCR. However, while a focus on those who are displaced may be at the heart of UNHCR and its self-identity, the emphasis on protecting those of concern only from displacement-related threats seems to be less a question of identity and more the consequence of the failure to adapt the understanding of the main threats facing individuals of concern from the original task of refugee protection to the new task of IDP protection.
While there has not been significant replication of the international legal framework from refugee protection to IDP protection, particular aspects of that framework have been mirrored and an attempt has been made to draw on the same underlying principles in the work of UNHCR within conflict contexts. Moreover, even if the framework itself has not been replicated and there is much greater reliance on domestic legislation with respect to IDP protection, there are significant parallels between the way that UNHCR understands the relationship between legal and physical protection.

Like much of international law, IRL can be viewed as a pragmatic response to an imperfect world. It accepts that states will not always treat their citizens perfectly, and seeks to deal with this largely inescapable fact. It thus offers an alternative solution whereby another state offers legal protection to those who have fled their own state because it was unwilling or unable to protect them. Originally, UNHCR took a legalistic approach to refugee protection and focused on asylum. UNHCR worked with actual and potential host states, negotiating with them to protect the citizens of other states as per IRL. It did not attempt to make states more willing or able to protect their own citizens. However, with the expansion into IDP protection, UNHCR has maintained a legalistic approach and a modus operandi that favours negotiating with states for the protection of individuals on their territory despite the substantive difference between refugees and IDPs, namely that the latter have fled insecurity on the territory of the very same state and that the latter are threatened by armed conflict and the associated violence and not by the lack of a legal status to be on the territory in which they reside.

The focus on legal protection goes hand in hand with the emphasis on rights. Here we see an example of both the first and second types of organizational pathology identified by Barnett and Finnemore. First, ‘bureaucratic universalism’ comes into play as the understanding of legal protection as equivalent to physical protection is transferred without adaptation from the issue-area of refugee protection to that of in-country protection where such an understanding is inappropriate. Second, the ‘irrationality of rationalisation’ is evident as the focus on rights becomes so embedded...
that rights become seen as the sole ends of protection activity by UNHCR, and notions of physical
security are forgotten about.

Thus the specific objectives of the work undertaken by UNHCR in respect of in-country protection
during armed conflict relate to judicial protection or the realisation of rights broadly defined. In
keeping with traditional approaches to IHRL, these rights correspond to the obligations of states.
How can this focus on the state and neglect of armed non-state actors be explained? It may be that
states would prefer UNHCR does not engage with armed non-state actors. Affected states worry
that when international agencies interact with the non-state armed groups on their territories it
accords some international legitimacy to the groups. Where these groups are designated as terrorist
organizations, engagement with them is increasingly being criminalised (HPCR 2011; Pantuliano
et al. 2011). However, as a general rule states do not explicitly prohibit UNHCR from engaging
with non-state armed groups, and indeed UNHCR policy documents do envisage some engagement
with such actors (even if this is seen more in terms of staff security and operational neutrality than
in terms of the protection of refugees and IDPs).

Furthermore, the external institutional environment suggests a number of pressures which might
push UNHCR to emphasise the role of armed non-state actors rather than states. For example,
elsewhere in the UN various influential actors promote interaction with non-state armed groups as
a means to increase protection for civilians: in 2006, OCHA published a manual for humanitarian
practitioners on negotiation with armed groups (UN OCHA 2006); in a similar vein, in a 2009
report on the protection of civilians the UN Secretary-General stated that ‘humanitarian actors
must have consistent and sustained dialogue with all parties to conflict, State and non-State.
Moreover, while engagement with non-State armed groups will not always result in improved
protection, the absence of systematic engagement will almost certainly mean more, not fewer,
civilian casualties in current conflicts. Thus it would appear that in fact the emphasis UNHCR gives to working with the state runs contrary to the external pressures on the agency, and that external factors cannot explain the protection roles that UNHCR designates to different actors. Instead, we need to look to internal factors to understand the protection approach.

All aspects of the approach taken by UNHCR in the name of in-country protection during armed conflict closely mirror the approach taken by UNHCR to refugee protection in peacetime. Although three aspects of the new task make it fundamentally different from the old one, the approach taken by UNHCR is replicated from that traditional part of its mandate and is not adapted in line with these three significant differences. They are: (1) the existence of armed conflict; (2) the location of the protection efforts within the territory of the same state which has failed to protect the individuals and communities in question; and (3) the lack of a binding international legal framework with which to protect the internally displaced. The failure to adapt this approach to these specific features of in-country protections situations cannot be attributed solely to external pressures. As we have seen, for example, the emphasis on the state and the neglect of non-state armed groups seems to run counter to the pressures imposed by the external institutional environment.

Instead, this failure to adapt is best explained as a consequence of the replication of the approach (the influence of other issue-areas within the IO mandate) and of the bureaucratic personality which does not provide for significant feedback from the field level of implementation into the decision-making process. These two factors combine to constrain institutional imagination and thus to prevent more innovative solutions to the new ‘problem’ of IDP protection.

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Chapter 5: The UNHCR approach to in-country protection in conflict

Conclusion

A number of analysts have argued that attention directed by UNHCR to in-country protection erodes the institution of asylum with negative consequences for refugee protection (Barutciski 2002; Chimni 2000; Goodwin-Gill 2000). Thus there exists a body of literature which documents the ways in which a new-issue areas (IDP protection) within UNHCR impacts on a pre-existing issue-area (refugee protection). In this chapter, I have brought to light the reverse relationship: the impacts of the work of UNHCR on pre-existing issue-areas on the way that UNHCR approaches the in-country protection of IDPs and other civilians.

Excom conclusion No. 75 (UNHCR 1994a, para b.) encourages UNHCR to continue its involvement with IDPs, noting ‘that the many and varied underlying causes of involuntary internal displacement and of refugee movements are often similar, and that the problems of both refugees and the internally displaced often call for similar measures with respect to prevention, protection, humanitarian assistance, and solutions’. As explained earlier, numerous other documents make similar links between the work of UNHCR with respect to refugees, and the work of UNHCR with respect to IDPs. It was on the basis of arguments about the similarity of the two issues that UNHCR expanded into this new issue-area. As such, it is unsurprising that the conceptualisation of the problem of in-country protection and the activities directed at solving it would mirror those for refugees.

However, the two tasks are very different and the approach taken to in-country protection in the midst of armed conflict will only be effective insofar as it is adapted for the operational context of armed conflict. As we have seen, no significant adaptation has taken place, and we see evidence of organizational pathology as policies designed for one context are applied to situations in which they are not appropriate, and we see the relationship between means and ends in the original approach forgotten such that particular aspects of the approach become seen as ends in and of themselves, without analysis of whether and how they are expected to contribute to the physical security and safety of civilians in armed conflict.
Thus the UNHCR understanding of protection is about the realisation of (legal) rights with particular reference to the state as the actor responsible for guaranteeing those rights. In contexts of internal displacement, this focus on the state is limiting. Where the state is directly responsible for threats against civilians, UNHCR will only be able to reduce the threat where it is able to persuade or otherwise induce the state to stop those threats. Where other actors are responsible for the threats against civilians, by focusing on the state UNHCR will only be able to reduce those threats indirectly if the state is able to stop those other actors. Furthermore, UNHCR does not for the most part analyse how such activities might impact indirectly on the levels of violence or threats, and only to a limited degree does it consider how they may impact on the vulnerability of civilians to threats from organised violence.

Understanding the problems of the UNHCR approach is particularly important given its influential position among a wide range of humanitarian agencies. Under the cluster approach, as the lead agency for the global protection cluster, UNHCR additionally has responsibility for ‘leading the development of standards and policies for IDP protection, helping to build capacities among participating agencies, and coordinating operational support for new and ongoing emergencies’ (UNHCR 2007c, para. 32). As such, UNHCR has significant influence not only on its own institutional policies for protection, but also has the potential to shape the way other agencies approach the in-country protection of civilians. This makes it all the more important that any dysfunctional parts of the UNHCR approach are recognised as such so that the dysfunction is not transmitted to other agencies.

In the next chapter, I analyse the implementation of this approach in the context of the Colombian conflict. I show how the lack of adaptation of this approach to the task of in-country protection results in the failure to address the political realities and the most urgent protection needs in the Colombian context. I also demonstrate how a lack of clarity on institutional perspectives on a number of issues, and a lack of confidence among individual staff members in their own stances on particular issues, leads to a situation in which there are no significant bottom-up pressures for a change in policy, even if the channels existed to remit such pressures (though it seems likely that it
is the absence of such channels that has created an environment in which such pressures do not emerge).
Chapter 6: UNHCR protection in practice in Colombia

This chapter examines the implementation of the UNHCR approach to protection in the Colombian context. Through analysis of field level operations in Colombia, I draw out conclusions about the potential of the approach to contribute to the physical safety and security of civilians, and about the bureaucratic personality of UNHCR and the impact of that personality on the scope for incorporating field level experience to better adapt the overall approach to the task of in-country protection during armed conflict.

This chapter draws on publicly available information on UNHCR in Colombia, and field research between July and September 2010. I interviewed twelve members of UNHCR staff in ten of the thirteen UNHCR field offices in Colombia. In most offices, I met with the head of office, and where the head was unavailable I met with a protection officer. Half of the interviewees were national staff, and half were expatriates. The expatriate staff had all worked for UNHCR in at least one other country prior to their current missions in Colombia, and some had also previously worked for UNHCR in Colombia, usually in a different part of the country from their posting at the time of interview.

The chapter starts with an overview of UNHCR activities in Colombia and goes on to discuss the ways in which UNHCR analyses and understands the Colombian conflict and how this informs its approach to protection in that context. The next sections analyse how UNHCR interprets particular principles of action and the applicable legal frameworks in the Colombian context, and what this means for the protection work that is carried out. Following this, the main section of the chapter explains the UNHCR understanding and activities of protection in Colombia, discussing the specific objectives and the many activities that comprise the UNHCR Colombia approach. I argue that the effectiveness of the approach is limited by constraints that are imposed by the Colombian state and, most importantly, by the broader UNHCR understanding of protection and a bureaucratic personality that is not responsive to feedback from the level of implementation.
Overview of UNHCR activities in Colombia

UNHCR first became officially involved in Colombia in 1997,\(^1\) providing advice to the Colombian government on the drafting of IDP legislation, which resulted in Law 387\(^2\) (UNHCR 2008, p. 1). Subsequently the Colombian government requested assistance on protection and the prevention of displacement and in 1999 UNHCR signed a Memorandum of Intent with the government. This mandates UNHCR Colombia to strengthen national mechanisms for the prevention of displacement and the protection of IDPs (UNHCR 2008, p. 1). These origins have informed the ongoing approach in a number of ways. First, there is great emphasis on developing the national legal framework. Second, IDP protection is understood as national protection provided by the state. Third, the prevention of displacement is of primary importance and is often conceptually conflated with protection.

UNHCR Colombia understands protection as the realisation of rights, and prioritises the goal of preventing displacement. The particular rights with which UNHCR is concerned are those enshrined in domestic law, and it is the state that bears the corresponding duties. The work of UNHCR in Colombia focuses on the strengthening of state institutions, the strengthening of organizations and associations of the civilian population to enable them to better access their rights (in other words to better hold the state to its responsibilities) and, through presence in the field, ongoing monitoring of the situation in order to help the state meet its responsibilities.

The work of UNHCR in Colombia is thus primarily about getting the state to comply with its obligations with respect to the rights of those who have been displaced or are at risk of displacement. UNHCR seeks to achieve this through a combination of top-down and bottom-up methods. UNHCR Colombia has a specific mandate which is not about protecting populations

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\(^1\) UNHCR had started working in some parts of the country prior to 1997, operating from what was then the UNHCR regional office in Venezuela.

\(^2\) República de Colombia 1997. Ley N° 387 por la cual se adoptan medidas para la prevención del desplazamiento forzado; la atención, protección, consolidación y estabilización socioeconómica de los desplazados internos por la violencia en la República de Colombia, N° 387, 18 July 1997.
directly, but rather about: strengthening institutions and public administration (the top-down element); and strengthening the organizations of the displaced population (the bottom-up element). Accordingly, there are three main constituents of the UNHCR approach to protection in Colombia.

First, for individual IDP cases that UNHCR knows about, staff members seek to inform the individuals of their rights in national law, and to explain to them the procedures through which they can try to access those rights through the institutions of the Colombian state. Second, where communities are seen to be at risk of displacement, UNHCR seeks to develop practical protection projects with the aim of providing passive protection through UNHCR presence, and of bringing in the social agencies of the state. UNHCR also works with these communities to ensure they know what their rights are and how to claim them, and to build the capacity of community organizations so that they can better access these rights. Third, UNHCR focuses on institutional strengthening and capacity building. I outline each of these three parts briefly below and develop the analysis of the activities and the concepts and principles which underlie them throughout the chapter.

Where individuals or families have been displaced or are at risk of displacement, UNHCR refers their cases to the permanent institutions of the state. In Colombia, there is a route through the state apparatus for attention to IDPs. For concrete cases of individuals who have already been displaced, or are under serious threat, UNHCR helps them to follow this route. Individuals in Colombia may be at high risk of displacement because they have been involved (or are thought to be involved) in activism on issues which are sensitive for armed actors, including the public forces. For example, leaders of indigenous organizations and those who speak out on land issues are often targeted. UNHCR seeks to stay in contact with these people and if the people want to request protection from the Ministry of the Interior then UNHCR refers the case and follows up as much as possible. Additionally, there are families who do not want to leave their homes but have, for example, teenage sons and fear that one of the armed groups will recruit their children. UNHCR helps and directs them through the protection apparatus of the state. More generally, UNHCR also helps the municipal government to develop concrete protection routes. Here UNHCR works through its institutional alliances with, for example, the Human Rights Ombudsman’s Office. Occasionally in
extreme cases, the municipal government pays for a flight or transport for people to leave. UNHCR will liaise with the state and the ICRC, but would not relocate someone itself. Instead, UNHCR mainly seeks to make sure the state comes up with the appropriate response.

When UNHCR identifies communities at risk of displacement, protection is seen as synonymous with the prevention of displacement. UNHCR undertakes practical projects in order to gain presence, and in the hope of introducing or increasing the presence of the social agencies of the state. UNHCR also works to assist communities (particularly indigenous and Afro-Colombian communities) develop plans to resist displacement and enable them to stay in their zones of origin.

Additionally, for those who have already been displaced, UNHCR works to strengthen IDP organizations to inform them of their rights and build their capacity so that they are better able to claim those rights. The institutional strengthening and capacity building dimension focuses on assisting the state to meet its obligations with respect to the rights of displaced individuals and communities (and those at risk of displacement). There are three main elements to this: (1) working to help define what those rights and obligations are; (2) strengthening and assisting the state where it is unable to meet its obligations; and (3) lobbying the state where it is unwilling to meet its obligations. Thus, drawing on observations from chapter five, this can be described as a rights-based approach to protection, and one in which the state is perceived to be the main protection actor.

**UNHCR characterisation and analysis of the Colombian context**

Alongside emphasis on the role of the Colombian state in protection, UNHCR takes a very positive view of the will and ability of most institutions of the state to protect IDPs and those at risk of displacement. In general, the state is not seen as part of the problem, or at least not as a direct threat to civilians. However, it is of course seen as the core of the solution.

Every two to three years UNHCR Colombia publishes an evaluation of public policy relating to displacement. The January 2004 to April 2007 edition is a 500-page report in which UNHCR analyses the dynamics of forced displacement in that period, the public policy response to
displacement, and the national policy mechanisms in place. UNHCR does not question the existence of an armed conflict, and forced displacement is viewed as both an effect and a strategy of that conflict (UNHCR/ACNUR 2007, p. 51). The report implies that guerrilla groups, former AUC paramilitaries and the new armed groups are the main sources of displacement, acknowledges that the new groups have filled gaps left by the former AUC blocs and remains agnostic as to the links between the demobilised AUC and the new groups (UNHCR/ACNUR 2007, p. 76). Links between the public forces and either the AUC or the neo-paramilitaries are not acknowledged.

Colombia is seen as an atypical conflict context because battle lines are often not defined, and that makes the work of UNHCR officials difficult. The complexity of the conflict impacts upon the speed and nature of the protection projects undertaken by UNHCR. In other countries, UNHCR would initiate projects much faster, but in Colombia officials spend a great deal of time assessing conflict dynamics, the benefits of UNHCR presence, and the possibilities for designing useful projects.

Risk analysis is employed at the local level to decide where to focus. This analysis draws on various sources, primarily the risk reports of the Human Rights Ombudsman’s Office as well as forced displacement figures produced by Acción Social (the government aid agency), which are analysed to determine the areas of highest expulsion in order to focus prevention efforts. All zones with high risk of expulsion have a permanent UNHCR office. Additionally, UNHCR collates homicide figures from Medicina Legal (the forensic body in Colombia which has an obligation to carry out autopsies on the victims of all violent deaths), inter-institutional communication, information from the Comisión Nacional de Reparación y Reconciliación (CNRR – National Commission for Reparation and Reconciliation) which does a lot of community work, and maintains ongoing discussions with local communities and Pastoral Social (the charitable arm of the Catholic Church in Colombia, which provides social care and assistance, including to the displaced). All of this is used to help understand conflict dynamics.
UNHCR is permanently analysing where there are expulsions, and asking why the population is being displaced. Knowing why people are killed is seen as very important for protection, and it is not always found to be the most obvious or apparent reason. UNHCR analyses violence in each region to find out which groups are at risk (for example, Afro-Colombians, indigenous groups or women) as well as to see what rights are violated and what value UNHCR can add. As an example of how this analysis impacts on policy and focus, the Buenaventura office opened as a result of reflections by UNHCR on the dynamics of the conflict. Such analysis also informs project design. Whereas in a camp situation in Sudan, for example, UNHCR would start a project in a week, in Colombia staff members might spend two months trying to understand the context because they do not know where the danger is coming from – the danger for UNHCR and the beneficiaries.

Analysis of gaps at the national level focuses on the structural issues, specifically gaps in public policy and in the coverage of state services. UNHCR then seeks to work with the different branches of the state apparatus in Bogotá to fill these gaps. At the local level, from its field offices, UNHCR seeks to identify protection gaps and risks by understanding what is happening in different communities, and how different sub-populations are affected. With the information from this political and needs analysis, UNHCR seeks to help develop public policy in such a way as to minimise the identified gaps.

**Principles in practice**

The work of UNHCR Colombia is expected to be guided by the institutional principles outlined in the previous chapter. The principle most often referred to by staff members is neutrality, which is seen as central to the work of UNHCR in Colombia. Autonomy, independence and neutrality are seen as necessary to create the humanitarian space in which UNHCR can operate. However, their understanding of that neutrality – and their method of practising it – is quite different from that of the ICRC. A major difference undoubtedly stems from the fact that UNHCR staff are not allowed to interact with the non-state armed groups. Interestingly, several staff members were not aware that this was not the result of a UN directive, but rather a stipulation of the Colombian
government.\textsuperscript{3} A further difference stems from the fact that the role of UNHCR in Colombia is primarily to strengthen the state.

With respect to this latter point, staff members acknowledged that the mandate to work with the government made it more difficult for UNHCR to remain neutral than the ICRC. UNHCR seeks to assure its neutrality by emphasising that it works with the state, not with the government, and that this means relating to officials as occupiers of a particular role or position, and not as individuals. Nonetheless, providing advice (and indeed support) to the government is not seen as compromising neutrality. In any case, such a distinction reflects a Western conception of statehood that assumes that the government is temporary and the state apparatus is distinct from and independent of the government. In Colombia, this assumption is relatively unproblematic, but it is worth noting that in many of the contexts in which UNHCR operates the state and government are in fact conflated and this distinction does not hold true.

UNHCR emphasises that it is in Colombia at the invitation of the state and that it is tasked with strengthening the state but that it will not necessarily share the state’s view. Even communities that are hostile to the state apparently see UNHCR as trying to hold the state to account, whether or not it is totally successful. However, there is also something of a tension between strengthening and supporting the state, and holding the state to account. While this dual role is theoretically unproblematic, in practice when individual UNHCR staff members are working to support individual representatives of the state in various positions, it becomes difficult for them also to hold those same state representatives to account when they fail to meet their obligations. As with many issues in Colombia, there is some uncertainty among UNHCR staff members as to what the balance between these two parts of the UNHCR role should be. Some officials suggested they would never criticise the state and would always take joint responsibility as a partner rather than a

\textsuperscript{3} The Colombian government prohibits all organizations other than the ICRC (and, at times, the Catholic Church) from having contact with the non-state armed groups.
supervisor. Others suggested that part of their role was to criticise state institutions where UNHCR disagreed with their policies or practice.

Most UNHCR staff members I interviewed appeared to be in favour of the ban on talking to the non-state armed groups, as they viewed it as being in their own personal security interests. Very few seemed to have given any thought to how it might impact on their protection work per se, reflecting the wider institutional approach that largely ignores armed non-state actors. Of those who had considered the pros and cons of this ban, one concluded that it could be better not to have contact with armed groups because they can manipulate the aid, and “you lose a little every time you speak with them”. Another felt that the avoidance of contact had a positive impact on protection work because it gives UNHCR credibility – the neutrality is accepted and facilitates access. Some, however, noted that it would be advantageous to be able to speak to the armed groups in the way, for example, that UNHCR officials speak with the police – in a manner of interceding on behalf of the civilian population.

In reality, UNHCR does have contact with the illegal armed groups whenever the armed groups require it. The frequency depends very much on which zone UNHCR is operating in; some of staff have never come into contact with any non-state armed groups, while others are stopped every other mission. In these cases, there is a clear protocol which forbids giving or receiving information. All staff members receive security training when they join the organization, during which they are told to keep contact to a minimum, and where contact is unavoidable, to explain both the work of UNHCR and the institutional principle of neutrality.

The principle of neutrality is implicitly contested within UNHCR in Colombia in terms of what it means for UNHCR contact with the public forces. For some of my informants, it meant not talking to any of the forces – legal or illegal – and thus precluded interaction with the police and national military, except to inform them of missions for security purposes. Others felt there were no restrictions on talking to the public forces, but that at the local level they would be careful with contacts with public forces as well as with extremist leftist elements because they do not want to be
seen as leaning too much to one side or the other. What we see here is uncertainty as to what the principle of neutrality means in practice, and a lack of clarity on the precise relationship between UNHCR and the Colombian state. To some degree this flexibility could be functional in that it allows for the protection approach to be tailored to specific contexts, even within the single country context of Colombia. However, the lack of clarity on this and other issues seemed to create a sense of uncertainty and lack of confidence among staff members, which may make UNHCR susceptible to pressures from the state to act in a particular way.

The territorial consolidation plan⁴ of the Ministry of Defence has increased the presence of the state in rural areas with the public forces at the front. UNHCR very definitely does not enter into this because joint action with the military is seen to entail entering into war, thereby exposing UNHCR to targeting, and compromising UNHCR neutrality. UNHCR does run workshops on human rights and humanitarian principles with the public forces, and holds meetings with them. However, it would never go out on mission with the military and if the public forces arrive in a community while UNHCR is on mission there, the UNHCR team leaves. However, UNHCR does go out on missions with several of the civilian agencies of the state, in particular the Defensoría del Pueblo (Office of the Human Rights Ombudsman), Registraduría (Registry Office) and Procuraduría (Office of the Procurator-General).

UNHCR informs all parties to the conflict of its projects and missions – directly informing the public forces and indirectly informing the other armed groups, in large part for security purposes. Before going somewhere, UNHCR notifies not only the public forces, but also the church and recognised community leaders. UNHCR officials inform them of their work with the expectation that they will pass on the message to the non-state armed groups, who in turn will get a message back to UNHCR if they are not welcome. UNHCR seeks to give a lot of notice (to the army and

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⁴ The territorial consolidation plan is a civil-military initiative of the Colombian government with the aim of (re-)establishing state presence in zones in which it has been absent. The underlying logic is broadly that of stabilisation operations (as in Afghanistan, for example). For more detail on the Colombian initiative specifically, see Elhawary (2010).
the communities). UNHCR staff members reported that for the community it is so important that UNHCR can go, they make sure they check everything and if there is something going on that makes it unsafe for UNHCR to come, the communities will tell them to postpone the mission. In some zones, the communities will tell UNHCR the timing is not right up to fifty percent of the time. Until now there have been no serious incidents with the armed groups, but UNHCR is subject to mobility restrictions due to security concerns. UNHCR has to wait until situations have calmed down before staff can enter an area, and sometimes it is a difficult decision – there may be very real needs, but needs can also be manipulated. A mission would be called off if there was a hint of a threat to UNHCR staff.

In some regions the former AUC paramilitaries and their successors have infiltrated the state apparatus to such an extent that UNHCR is severely limited in its scope for action. In other parts of the country, UNHCR may be unaware of the scale of ‘parapolitics’ and in working with the state it would thus be unknowingly working with paramilitaries. This calls into question the neutrality of the work of UNHCR, even according to its narrowest interpretation of the principle (the prohibition of interaction with the illegal armed groups).

Legal frameworks
In Colombia, there is a very developed legal framework for IDPs, and that framework is absolutely central to the work of UNHCR. Focused almost exclusively on the national legal framework, the role of UNHCR encompasses technical assistance in the development and implementation of that framework, communication of new laws and decrees to the departments and municipalities, lobbying for the state to meet its obligations as set out in national law, and supporting individuals, groups and communities to claim their rights as enshrined in that framework. International law plays a minimal role in the UNHCR approach to protection in Colombia, in part because reference to international law alone carries little weight in getting the social institutions of the state to respond at the local level, and in part because in any case the national legislation is so well advanced that there is seen to be little need for recourse to any other body of law.
The focus on domestic law notwithstanding, within UNHCR there is substantial knowledge of both international and domestic legislation as relating to the rights of IDPs in Colombia, and this informs the overall approach. The strength of UNHCR knowledge of the domestic legislation stems at least in part from the role UNHCR has played in developing much of the domestic legislation on IDPs. Law 387, the core of IDP legislation in Colombia, predates the Guiding Principles. However, this law provides ‘comprehensive cover for most if not all the principles set out in the Guiding Principles’ and also ‘provides extensive provisions for the development of governmental entities responsible for its implementation’ (Carr 2009, p. 38).

In terms of developing the legal framework, field offices provide information about the situation on the ground which is intended to feed into the role of UNHCR in policymaking at the national level. The Colombian government denies that intra-urban displacement and displacement as a consequence of the fumigation of coca crops justify IDP status (which is only accorded to those displaced as a consequence of conflict) and its associated benefits. UNHCR is working with Acción Social at the national level to improve recognition of these various forms of displacement.

As yet there does not seem to be a consistent UNHCR Colombia position on fumigation\(^5\). In Bogotá, UNHCR works with the state and the constitutional court, arguing that fumigation is part of the conflict and is undertaken by a party to the war and those displaced by fumigation should thus be recognised. Additionally, in the 2004-2007 evaluation of public policy, UNHCR advocates for those displaced by fumigation to be registered as displaced, at least for the purposes of developing policies to prevent displacement (UNHCR/ACNUR 2007, p. 52). However, at the local level UNHCR does not for the most part engage with the state institutions on the issue of fumigation. Across the different field offices, UNHCR staff members held varied stances.

\(^5\) The aerial fumigation of coca crops causes displacement because (a) it destroys livelihoods both illicit (coca) and licit (due to inaccuracy); (b) the chemicals causes health problems in local populations; and (c) it is usually accompanied by clashes between the public forces and other armed groups.
Three broad positions can be identified: (1) it is not for UNHCR to say whether or not fumigation is a cause of conflict-related displacement; (2) the UNHCR position on fumigation is dependent on whether fumigation comes on its own or is linked to military activities, and in the Colombian case it is almost always linked to military activities; and (3) fumigation in and of itself is part of the conflict because it is about taking away the FARC’s means of survival. The divergent understandings are indicative of a broader issue. There is a tension in the dual role in which UNHCR identifies both as a servant of the states in which it operates, and as a servant of displaced individuals and communities. There is a lack of clarity within UNHCR Colombia as to how far the organization should state its own positions and hold the government to account, and how far it should allow the government to dictate the UNHCR mandate in the Colombian context. There is a risk that this uncertainty engenders a lack of confidence within UNHCR which enables the Colombian government to set the terms of engagement more than would otherwise be the case.

UNHCR has also worked to increase recognition of intra-urban displacement. The Colombian legal framework for IDPs is designed for rural displacement, and normative gaps exist with respect to intra-urban displacement. Acción Social claims that individuals are not IDPs – and thus not entitled to assistance – if they are not displaced by a party to the conflict. However, in a city such as Medellín, there is a high level of intra-urban displacement caused by the urban gangs which the government does not classify as connected to the conflict. UNHCR seeks to make visible the existence of intra-urban displacement, to have the phenomenon recognised by the state, and to ensure that its victims are able to claim the same assistance entitlements as those displaced by armed conflict in rural areas.

Definitional issues regarding who is recognised as an IDP notwithstanding, UNHCR sees the legal framework in Colombia as comprehensive. UNHCR thus understands the central problem to be that much of this legal framework is not applied in practice. Much of the work undertaken by UNHCR thus involves working with the state institutions at the departmental or municipal level to make sure local state agencies fulfil their obligations to IDPs and those at risk of displacement. Most often, this work involves citing the most up to date decrees, laws and judgements in national
Thus UNHCR works with local institutions to make sure national legislation is understood and implemented at the departmental and municipal level – often the local government and Acción Social are not aware of new legislation and requirements, and UNHCR is the only organization to receive information on new laws and decrees. UNHCR seeks to use the legal framework to improve institutions at the local level rather than to punish people or organizations. If an IDP wants to take legal action against the state, they can do so, but UNHCR does not.

Appealing to national legislation is central to the work of UNHCR in Colombia on account of the focus on the state as the primary protection actor, combined with an understanding, within UNHCR, that the only method of persuasion likely to have any impact on the Colombian state is explicit appeals to its obligations as enshrined in domestic law. The rationale is that UNHCR cannot ask more of the state than its obligation – or at most it can ask a little more, with the argument that the state has the capacity to do extra. In negotiating with state agencies for them to improve their provision of services to IDPs and those at risk of displacement, UNHCR staff members confirmed they would never start by asking state agencies to help because it has benefits for the displaced, but rather they would always start with the obligation. The expectation is that appeals to a logic of appropriateness alone would have little effect. More than in other countries, there is a focus on law in the work of UNHCR in Colombia. Law is central and crucial to all UNHCR work, because the argument of the needs of the victims is deemed insufficient. In lobbying the state, the language is normative and the discussion is all about obligations, constantly citing laws and constitutional court rulings. Thus the national legal framework is the key tool in the protection work of UNHCR in Colombia.

The legal framework is also central to the work of UNHCR with affected populations in Colombia. UNHCR works with communities so that they know the legal framework, on the basis that if they do not understand the law, they do not have the necessary tools with which to claim their rights. Educating and training displaced communities regarding rights and law mainly focuses on national law, and UNHCR bases a lot of its work in line with the decrees of the constitutional court. Information about domestic law and the rights of individuals is also disseminated through the
publication of various materials by UNHCR field offices. For example, pamphlets and calendars setting out key laws or decisions of the Constitutional Court relevant to the local community were widely distributed among the Afro-Colombian communities in the department of Chocó.

Implementing the approach

In this section I explain how the UNHCR approach to protection is implemented in Colombia. Globally, UNHCR is concerned not only with the protection of IDPs but also with the provision of material assistance. However, the amount spent by the Colombian government on assistance to IDPs dwarfs the UNHCR budget. This is the official reason why UNHCR does not do assistance work in Colombia and instead focuses on protection, seeking to identify the gaps that it can fill, and the areas in which it can add value. However, it also seems to be at least in part not because the state is well-equipped to assist Colombian IDPs, but rather because there are simply too many people for UNHCR to assist.

Despite the party line that UNHCR does not ‘do assistance’ in Colombia, there are exceptions to this rule. While some offices categorically reported that UNHCR does not deliver any goods in a particular department, others had been faced with assistance needs they felt they could not ignore and had thus organised some kind of response, albeit low profile and with the additional aim of using the response to try to gather information on the area, or delivering goods provided by the government to zones that the state agencies are unable to access for security reasons. Furthermore, UNHCR does undertake practical protection projects (PPPs) in Colombia; indeed the PPP is a UNHCR Colombia brand (though it is the descendant of the Quick Impact Projects originating in Central America in the early 1990s).

1. Prevention of displacement

As noted earlier, for UNHCR in Colombia, protection is virtually synonymous with the prevention of displacement, and the two terms are often used interchangeably by UNHCR staff. In several of my interviews it was only when pushed that interviewees separated the two concepts and recognised that they may be distinct. At the very least, the prevention of displacement is one of the
main functions of UNHCR work in Colombia, and is regarded by some UNHCR officials as the most important part of protection. UNHCR seeks to prevent displacement through three main inter-related activities. First, it aims to get the social institutions of the state physically into communities at high risk of displacement. Second, UNHCR seeks to be present itself, particularly in zones where the state does not or cannot go. Presence is thought to be protective in itself and thus to prevent displacement directly, but it is also a means through which to undertake the third preventive activity – identifying the causes of displacement and encouraging the state to respond appropriately.

There is also a divergence between the Colombian government’s understanding of prevention and that of UNHCR. The government understands prevention as an increase in the presence of public forces, but UNHCR recognises that sometimes the risk comes from those very same forces. UNHCR staff members commonly cite the example that if the army arrives in a community, the guerrilla groups think people are collaborating with the army, and when the army leaves the guerrilla threaten or attack the people because they are perceived as having collaborated with the army. This perspective ignores the fact that the public forces may also pose a direct threat to civilians in Colombia, and that the AUC and neo-paramilitary forces that have been a significant cause of displacement in Colombia often operate with at least the tacit support of the public forces.

Furthermore, UNHCR does not see all the problems in Colombia as security problems but rather views the low presence of the social institutions of the state as a significant contributor to displacement. For UNHCR, prevention is more about the presence of the civil institutions of the state than of the public forces. If a community wants to stay and resist displacement, UNHCR considers that the state needs to accompany them. However, UNHCR also provides training for the public forces on the prevention of displacement.

UNHCR does not only go to places after displacement, and normally knows affected communities long before their members are displaced. It is seen as necessary to identify causes of displacement in order to be able to encourage an effective response from the state and other humanitarian actors.
The logic being that if you do not go back to the causes, you cannot do anything about them. Analysis goes back and forth between the local level and the bigger context to work out causes of displacement, and this always requires being there in the communities, it cannot be done from the office in the town. In the Colombian context, UNHCR is only concerned with conflict-induced displacement. Thus the causes are by definition related to violence. However, it is not always clear how the objective of UNHCR with respect to the realisation of rights and getting the state to come good on its obligations will reduce violence or its impact on the population.

UNHCR maintains its field presence with the aim of monitoring the situation in order to put pressure on the state to meet its obligations and having early warning in order to prevent displacement. When staff members observe a risk, they communicate with the Office of the Human Rights Ombudsman – which is in charge of the Colombian early warning system. The field offices also stay in communication with the regional offices and the Bogotá office regarding the risk of displacement, drawing their attention to areas where leaders are threatened or there are others at high risk of displacement because these offices have access to the security apparatus of the state. Such an approach is at odds with the view articulated by UNHCR that prevention is best achieved by the presence of the social agencies of the state. This reflects the distinction that UNHCR makes between protection and security (explained in the previous chapter) and the fact that much of the work UNHCR does in the name of protection actually more closely resembles its own understanding of long-term solutions: where individuals are faced with an immediate physical threat, UNHCR requests the intervention of the Colombian military; but for most of its work, UNHCR seeks to prevent displacement by increasing the presence of the social agencies of the state.

Focusing on the prevention of displacement may be at odds with the protection needs of those at risk of displacement. Josep Zapater, a UNHCR official who formerly worked in Colombia, analyses the conceptual inconsistencies of the prevention of forced displacement and the problematic practical implications of relying on this concept for the design of programming (Zapater 2010). He describes participatory workshops undertaken by UNHCR in 2005 with
indigenous communities deemed to be at risk of displacement in which the affected communities questioned the construction by UNHCR of \textit{forced displacement} as the central problem. First, displacement is often a protective strategy in itself. Second, even when conceptualised as a threat, forced displacement is one among many conflict-related threats (including assassination, kidnapping, land appropriation), and may not be the most serious. At worst the objective of preventing displacement may be in conflict with the objective of protection and at best it may lead to a failure to prioritise the most severe threats or the most insecure civilians. Despite this, UNHCR continues to focus its work on Colombia on the prevention of displacement. This can be seen as a consequence of both the fact that notions of displacement are core to the identity of UNHCR, and also as a consequence of the priorities of the Colombian government.

To a limited degree, UNHCR staff members perceive differences between prevention and protection. First, much of the work of UNHCR in Colombia concerns those who have already been displaced. However, this work is often also concerned with preventing future displacement. In several regions of the country communities face multiple displacements, thus it is hard to separate response and prevention. Second, some of the risks of forced displacement fall outside the realm of UNHCR work, connected as they are to, for example, economic or infrastructure issues. It is interesting to note that while UNHCR Colombia is clear than its mandate is restricted to those displaced or at risk of displacement in connection with conflict (hence such issues fall outside the realm of its work), its approach does not for the most part deal directly with conflict and violence.

The objectives of UNHCR in Colombia are all framed around the realisation of rights. Specifically, in pursuit of protection and the prevention of displacement, UNHCR has developed an IDP framework along three strategic lines (UNHCR 2008, p. 2). First, it aims to promote and update the legal protection framework, and to realise a more effective state response to displacement. Second, UNHCR seeks to empower Colombian civil society through capacity building, direct assistance and improving participation in the design and monitoring of public policies. Third, UNHCR endeavours to strengthen state capacity to monitor displacement and the state response. A number
of activities are undertaken in pursuit of these objectives, the most important of which I explain below.

2. Practical protection projects

PPPs ‘seek to prevent displacement or protect displaced or returned communities’, and are generally undertaken in zones where the state is absent. They facilitate UNHCR presence in zones where there is high risk of displacement, particularly where territory is contested by competing armed groups, and where armed groups would not accept UNHCR presence without a concrete project (UNHCR 2008, p. 12). PPPs are seen as a means to ‘buy a way in’; assistance is provided to facilitate UNHCR presence and UNHCR has never had a problem with the FARC regarding PPPs. PPPs are thought to contribute to protection through three mechanisms: UNHCR presence is expected to provide direct protection; they provide contact with communities through which to deepen UNHCR understanding of particular contexts and risks of displacement; and they often involve bringing the social services of the state to the communities.

Examples of PPPs include the building of schools, the canalisation of water and the restoration of health centres. The underlying logic is that a PPP provides an apolitical excuse to be in an at-risk community more regularly, talking to people (not necessarily about sensitive issues), and also to increase the presence of the state. UNHCR does not consider itself to be a project organization, and interventions are intended to be self-sustaining. The philosophy of PPPs is that they allow UNHCR to go to territories where they otherwise would not be able to go because armed actors do not want them to come and talk about rights. Thus the PPPs allow UNHCR to get into contact with the communities, and to establish an international presence.

Presence is seen as one of the most important functions of UNHCR in a country like Colombia. Interviewees told me that communities want presence, and feel that they have not been forgotten when there is presence. There is a strong feeling that presence does prevent violence. The rationale is that a third party looking out for the communities can potentially report what happens and this deters the potential perpetrators of violence; it changes incentives by increasing the political cost of
displacing people in the region. While UNHCR staff members felt that the presence of UNHCR as a part of the UN has a stronger impact from other organizations, they also emphasised that Colombian NGOs are strong, and that their presence can also have an impact. As such, UNHCR sometimes works with local organizations to support them and to build capacity. This kind of passive protection by presence is aimed at threat-reduction, and while it may have proven ineffective in many contexts (such as the former Yugoslavia), it is deemed to work in Colombia.6

The presence facilitated by implementing a PPP also gives UNHCR the opportunity to collect information on the situation and risks in a particular zone. UNHCR acknowledges that the state displaces the civilian population for various reasons, but also considers that the state has the capacity to prevent displacement and that it does not do so sufficiently. This indicates there is a lack of will on the part of the state to protect the population in situ and thus to prevent displacement. The response of UNHCR is to focus on zones where the state is absent and to run small projects in these zones, not to solve the problem directly but to collect information and identify risk in order to take information to the state. In short, UNHCR sees the state as part of the problem, and also as part of the solution. It is not clear whether UNHCR believes the existing gap between the actual behaviour of the state is due to a lack of will or ability. Neither is it clear how UNHCR expects the state to be able to prevent displacement by non-state armed actors.

In some cases, the project may comprise part of a direct deal with the state to share responsibility. For example, UNHCR might offer to furnish a school if the government brings in teachers. In other cases, the projects may not be directly conditional on specific involvement from state agencies but more generally they may seek to make the situation of a particular zone or community more visible and to get the administration to pay attention to the zone.

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6 A number of NGOs also engage in protection by presence in Colombia, notably Peace Brigades International.
Visibility is a key aim of UNHCR in Colombia, though whereas the ICRC emphasises its own visibility in order to demonstrate its openness and neutrality, UNHCR seeks to make problems visible and so draw the attention of the state to these problems. The idea is to encourage the state social services to increase their presence in the hope that this will make displacement less likely. Thus in at-risk communities and zones, visibility and encouraging state attention is one of the aims of the PPPs. However, to the extent that UNHCR is successful in increasing visibility to the social agencies of the state, the visibility of these communities to armed actors is also likely to increase. This raises the question of whether PPPs draw more negative attention to people who are already threatened. One interviewee contended that for the most part, these people are already so threatened that the increased visibility cannot make their situation any worse. If this is the case, the question arises as to whether such severely threatened populations can be effectively protected by an increase in the presence of the social agencies of the state.

With respect to returns, UNHCR seeks to render visible the issues, for example if the government needs to demine before it is safe for communities to return. Thus the collection of information, analysis of risk and drawing attention to particular communities and issues may not only be directed at attracting the presence of the social agencies of the state in general but also at prompting specific policy responses from the state. In addition to encouraging state presence and policy responses through taking information and risk analysis to the state, or making visible particular communities and problems, UNHCR works with the state on practical projects with affected communities, and in the development of law and public policy.

3. **Joint projects with the state**

UNHCR provides support to those state agencies with some kind of responsibility for the displaced population. In terms of practical initiatives, UNHCR works directly with the state to fund or develop joint projects which will bring the social agencies of the state to communities where there is not a strong state presence. For the most part, the aim of these projects is to entice and encourage the state to extend the reach of its social agencies and to undertake concrete, useful projects which the state will eventually continue independently. In communities where UNHCR does not already
have a presence but particular agencies of the state do, UNHCR may undertake joint projects with
the aim of gaining access to new areas and thus extending its own reach. UNHCR additionally
supports control mechanisms that have a bearing on issues to do with displacement, such as the
Procuraduría (Office of the Procurator General). The Procurator General’s Office is responsible for
evaluating the compliance of state agencies with their obligations to the displaced population and
has the power to take disciplinary action in cases of non-compliance.

In terms of extending state presence, in some towns UNHCR has set up a “Casa de los Derechos”
(house of rights), providing a physical structure and bringing in the human rights ombudsman,
representatives of the municipal government, and of health and education agencies (UNHCR 2008,
p. 13). In less densely populated rural zones, UNHCR works with the state for the mobile provision
of social services to the municipalities. Together with the ICRC and the International Organization
for Migration, UNHCR has assisted the state to establish Units for Orientation and Assistance to
IDPs (UAOs) which provide information on IDP rights and access to representatives from those
social institutions of the state tasked with IDP assistance (UNHCR 2008, p. 8).

The two state agencies UNHCR works most closely with are the Office of the Human Rights
Ombudsman and Acción Social. A number of UNHCR staff members formerly worked for the
Ombudsman. In many areas, UNHCR sees the Ombudsman as the face of the government with the
community, and UNHCR undertakes joint missions with them in order to gain an introduction to
communities. Interestingly then, joint missions with the Ombudsman are used in some cases for
UNHCR to gain access to new populations where the state is already present, and in other cases for
UNHCR to introduce the state where it was previously absent.

Through a national project with the Office of the Human Rights Ombudsman, UNHCR subsidises
posts for ‘gestores comunitarios’, people to work for the Ombudsman in critical zones thus
bringing the presence of the state (UNHCR 2008, para. 49). Their role is to help the displaced
population and specifically to provide a link between the communities and the apparatus of the
state, to get IDP issues onto the agenda and into the budget of local government, and also to
provide eyes in the field in order to monitor the situation. UNHCR additionally finances units dedicated to working on displacement-related issues in both the Ombudsman’s Office and the Procurator General’s Office. Funding positions within the state calls into question the argument that the UNHCR budget is negligible relative to that of the Colombian government. However, the perspective taken by UNHCR is that if it pays for services that the government does not value it is able to demonstrate their worth and over time negotiate for the government share of funding to increase until the state takes full responsibility. At work here is a form of persuasion or argumentation (Risse 2000), not based on dialogue but on more practical demonstration of the underlying arguments (that the provision of such services is valuable).

UNHCR Colombia also operates joint projects with Acción Social (the government aid agency), which has a particular mandate for IDP assistance. For example, at the national level UNHCR and Acción Social formed and operate a Joint Technical Unit for the formulation of public policies on IDPs (UNHCR 2008, paras. 32-33). However, in many areas UNHCR will avoid joint missions with Acción Social, a state agency which plays an important role in the territorial consolidation plan and is a target in some guerrilla areas. As such, joint missions could be dangerous for UNHCR and its staff members. In general, UNHCR work with civilian branches of government depends on the context, and in some places security concerns prevent such joint missions altogether. In certain areas of Putumayo department, for example, government projects are banned by the FARC. UNHCR would generally do PPPs in these areas, and they would be UNHCR-exclusive projects.

An example of the role played by UNHCR in supporting the state comes from campaigns to register individuals and provide them with identity cards. This is seen as protection because without registration, people do not exist in the eyes of the administration, and administrative non-existence is seen to present an enormous protection problem. This underscores how protection is seen as something provided by the state apparatus, and something abstracted from the context of armed conflict and the armed actors that pose violent threats to civilians. It is unlikely that registration will have an impact on the behaviour of armed actors and thus it will have no impact.
on the level of organised violence or the threats posed by such violence to civilians. At best it may reduce vulnerability by facilitating travel and access to state services which may in turn increase the choices and opportunities open to civilians enabling them to pursue their own protective strategies. The state runs the campaigns and does the registration, but UNHCR supports the campaign with human resources, financial and transport contributions to get state personnel to places they otherwise would not be able to go. UNHCR encourages the state to mount registration campaigns and also accompanies them because it is safer for the functionaries to go with UNHCR. In a sense this ‘encouragement’ is indicative of the fact that there can be a sliding scale between support and lobbying, rather than a clear cut distinction.

Beyond these concrete projects undertaken jointly with the various social agencies of the state, UNHCR also works at both the national and local level to develop the legal framework and public policy responses to internal displacement.

4. Law and policy development

At the national level, UNHCR is permanently working with the constitutional court on IDP issues. The Colombian Constitutional Court is independent and activist, often holding the government to account on human rights issues (Nunes 2010). In 2004, the Constitutional court declared an ‘unconstitutional state of affairs’ because the government’s obligations to IDPs were not being fulfilled. More generally, the Court often issues decisions relating to IDP issues specifying how the legal framework must be implemented. UNHCR sees the Court as the key driver of the IDP response of the Colombian state, and as such views UNHCR support for the Court as a way of maximising leverage over national policy and practice (UNHCR 2008, para. 22). However, decisions of the Constitutional Court are often not fully implemented at the local level (Carr 2009; Meertens 2010).

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At the local level, UNHCR works with various institutions of the state such as the Defensoría del Pueblo (Office of the Human Rights Ombudsman), Acción Social (the government aid agency), and the Procuradoría (Office of the Procurator General) to improve their performance. It does so in a support role through the provision of technical and financial assistance to specific projects, as well as through channelling information from Bogotá to the departments and municipalities. Laws made in Bogotá are not implemented in practice and even information about the new laws does not get to most of the population. UNHCR therefore shares this information in different spaces, especially where the state is absent. UNHCR sees itself as facilitating the work of the state, not substituting for it.

UNHCR also supports the local agencies of the state in developing PIUs (planes integrados únicos para la atención y protección de la población en situación de desplazamiento – local durable solutions plans for displacement). The idea of the PIU is to develop a plan for public policy which includes, coordinates and integrates the work of the different state agencies. There is a PIU for every department, and every municipality should also have its own PIU which needs to be integrated into the departmental development plan. Despite the requirement for all municipalities to have their own PIUs, in some zones of the country this has not been achieved. In Chocó, probably the least developed department of the country, there are 30 municipalities, of which only around three actually had a PIU as at mid-2010. In the development and implementation of PIUs, UNHCR provides institutional support to the local government structure, helping them to think through the issues and familiarise them with the relevant laws.

PIUs are supposed to be developed with the participation of intended beneficiaries, and UNHCR seeks to support this articulation between state and civil society, working to get everyone around the same table to argue out a plan and to make sure the PIU prioritises the needs of the beneficiaries. However, UNHCR staff members noted that this is a complex and frustrating process, and there is a danger that the PIU becomes an end in itself rather than a means to better protection. In such a case, we see an example of the first type of organizational pathology identified by Barnett and Finnemore, that of the irrationality of rationalisation whereby means...
become so embedded they dictate ends (or in this case the means becomes an end in itself). Furthermore, the same claim could be made of many UNHCR activities in Colombia, where thought is often not given as to how any given activity is likely to translate into better protection.

In comparison with some other countries, institutionally UNHCR is well-respected in Colombia. The local-level state institutions do not dismiss what UNHCR says, and they know that UNHCR feeds the court in Bogotá. However, such lobbying work requires a level of follow up which UNHCR cannot sustain everywhere over time.

5. Rights awareness raising

In addition to calling the attention of the state to particular protection issues and gaps directly, UNHCR supports communities, groups and individuals in accessing their own rights – a form of indirect lobbying. UNHCR undertakes a number of projects throughout Colombia aimed at educating individuals, groups and communities in their rights as well as providing them with the information and skills necessary to claim those rights from the state.

At the individual level, UNHCR supports people of concern through the institutional routes – specifically through the process of IDP registration and helping them to access the rights they are entitled to as IDPs. UNHCR also takes cases that are representative or emblematic (e.g. a particular land case) and negotiates (often in support of the relevant community or organization rather than instead of it) and tries to push the case through to a positive conclusion.

Another example of UNHCR informing individuals and communities of their rights and assisting them in accessing those rights is a national project funded by UNHCR and the Norwegian Refugee Council to provide consultorios jurídicos (legal aid clinics) in eleven universities throughout Colombia (UNHCR 2008, p. 11). Through this project UNHCR trains law students in IDP law so that the students can provide legal aid clinics to individuals thus helping them to access to rights and state programmes. However, the focus here is on the right to material assistance, and IDPs are only entitled to this assistance for the first three months of displacement. On the one hand, the provision of such assistance may provide the material means to make displacement feasible thus
providing people with the option to leave their homes and livelihoods. In this way it is a form of vulnerability reduction that broadens the choices available to those who are threatened by violence. On the other hand, it does nothing with respect to reducing the threats posed by armed actors.

UNHCR works to help communities, particularly Afro-Colombian and indigenous organizations, providing them with knowledge of the law and helping them to build the skills and tools with which to access their rights as well as assisting them directly in their interlocution with the state. Approximately 2% of the Colombian population is indigenous. Estimates of the percentage of the population that is Afro-Colombian vary from 10% to 36%. Afro-Colombian, indigenous and campesino (peasant farmer) communities are those most affected by the armed conflict. The Constitutional Court has decreed the requirement for a plan de salvaguarda étnica (ethnic rescue plan) for indigenous communities as many such communities are deemed to be at risk of physical or cultural extinction. The state has the obligation to work with communities to develop these plans, and UNHCR informs the communities of this decision and then orientes and guides the community through the process with the state.

In some regions, UNHCR may focus on a particular theme, such as sexual violence. In these cases, projects are undertaken to improve understanding and knowledge of these themes. In these projects, UNHCR tries to have a real partnership with an organization, and seeks to avoid interfering with local autonomy. UNHCR only participates where invited, and focuses on the normative framework for IDPs. UNHCR will help with visibility where needed, and works on communal strengthening. Most projects are large part physical presence and large part training. Institutional policy stipulates that projects must be self-sustaining as UNHCR will not be in Colombia forever.

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More generally, UNHCR works to ensure that communities are functioning and that they have the strength and cohesiveness to represent themselves. This work is particularly focused on indigenous and Afro-Colombian communities. These communities vary significantly in their level of organization and their knowledge of their rights. In the department of Antioquia, for example, Afro-Colombians are the minority, and they are very weak institutionally. UNHCR works with them so they know their rights and are able to represent their communities and to help them, among other things, to resist conflict. The indigenous groups are the opposite, they are well organised and know their rights. In the department of Chocó, there are almost no Afro-Colombian ethnic organizations at the community level, and there are serious problems with the indigenous organizations. In all cases, UNHCR seeks to strengthen the community organizations and assist them with voice so that eventually they do not need UNHCR. UNHCR works with the organizations to get them thinking about what they need from the state, and to get them to come up with proposals for solutions. All the time, UNHCR is trying to join the communities and the state for the construction of public policy. This reflects the focus of UNHCR on judicial protection, and the importance attached to linking up the affected communities with the state. UNHCR also works to build the capacity of displaced organizations so that they too can effectively represent themselves. UNHCR works to ensure that they know the normative framework and also how to present themselves effectively. Concrete activities include, for example, workshops for displaced organizations on land issues.

6. Land protection projects

The land problem is crucial – one of the structural problems in Colombia. Land is a central issue in the Colombian conflict (Richani 2002; Thomson 2011). People have been displaced as a deliberate strategy to clear the land either to give a particular armed group control over the territory and strengthen their position in the conflict or so that the armed group or its supporters can benefit economically from that land – through coca cultivation, megaprojects, mineral extraction on the land or the transportation of goods and weapons across the land. Now as displaced populations
seek to return to their lands, issues of land restitution and reallocation arise. Activism on land issues is dangerous as those with vested interests threaten individuals engaged in land activism.

Issues to do with land ownership, dispossession and restitution are closely related to issues of protection and the prevention of displacement, and UNHCR works on these issues, but tends to adopt a low profile when doing so. Often there are land dispossessions and massive buying of land which appears to be legal but the land has been sold under pressure. UNHCR has lobbied in some areas to get a freeze on selling land (with some success). This is a particularly big issue in zones where, for example, there is a lot of very fertile land. The Santos government has articulated a commitment to improving land tenure and UNHCR is working with Acción Social on its Tierra project. In various parts of the country, UNHCR operates projects concerning lands where it is not clear who is the rightful owner. Restitution is very complex, and the leaders of communities who are reclaiming land are being assassinated or threatened. UNHCR works with the Ministry of the Interior to improve its response because the measures it takes do not come in time. With respect to mega projects, UNHCR tries to make visible the risks that such projects present to communities of megaprojects.

Land appropriation is a strategy of armed groups because it represents a form of financing. In this context, it has been shown that informality of property rights increases the likelihood that an armed group will attack (Velásquez Guijo 2008). This suggests that the formalisation of property rights may reduce the incidence of violence (and, potentially the duration or intensity of conflict as a whole) because it reduces the means available to armed groups to sustain their offensives. This highlights that a policy such as formalising property rights, something which may conventionally be considered as part of a longer term, post-conflict development project, may actually be highly valuable in reducing the intensity of conflict itself. UNHCR does not mostly think in terms of the violence-reduction aspect but rather in terms of abstract rights.
7. Monitoring returns

At the national level, as well as in many regions specifically, the Colombian government’s preferred solution to displacement is return. The government slogan and programme, ‘retorno es vivir’, is emphasised in regions such as Antioquia which have been labelled ‘post conflict zones’. The official UNHCR position in Colombia is that the conditions necessary for return are mostly not in place. UNHCR does not support returns because the security conditions are not present. For example, even if there is state presence, mines in rural areas make them unsafe. The people generally do not want to return because the conditions they require are not met – either there are still battles, or their livelihoods have been stolen.

UNHCR observes some returns in Colombia. Often people are trying to return out of desperation and lack of opportunities in the zones they have displaced to, but in the zones they return to there are no health centres, secondary and tertiary roads have been destroyed, there is no economic activity or livelihoods opportunities, and the area is still heavily mined. Thus repatriation is seen by UNHCR as an ideal but often also impossible. Local integration is officially a line of UNHCR work but it is not always clear what UNHCR does and it is not considered a priority. The role of UNHCR is to provide information and orientation about the programmes that exist and stay on top of the state institutions to ensure they keep good on their promises. Some of those relocated end up walking away due to lack of state support or badly designed relocation packages. UNHCR seeks to push for the needs and agendas of the communities to be taken into account in return plans, to bring attention to the returns in order to increase security and to get institutional attention to ensure socioeconomic needs are met.

8. Supporting displacement

The work of UNHCR in Colombia is characterised by the apparent paradox that on the one hand, central to UNHCR protection work is the prevention of displacement, and on the other hand, displacement is often a strategy undertaken by civilians to protect themselves. Furthermore, the origins of UNHCR lie in refugee protection – facilitating displacement by providing international protection to those who have fled from the source of their insecurity in their country of origin. An
increasing number of people are seeking to leave Colombia. Some UNHCR offices provide information on the process of seeking asylum outside the country, while others do not. UNHCR cannot provide asylum and cannot accompany individuals across the border but for the most critical cases it can connect people with a UNHCR office in a neighbouring country. The UNHCR offices close to the Venezuelan and Ecuadorean borders also provide country of origin information to the offices across the border.

Recruitment into the guerrilla forces, which may be accompanied by differing levels of force, is a common cause of displacement. Indigenous and Afro-Colombians are often forcibly recruited because they know the geography of the zones which makes them particularly useful to armed groups (not only the guerrilla but also the former AUC paramilitaries and ‘new’ illegal armed groups). In many cases, families displace to avoid recruitment especially if they have teenage children. Displacement from the threat of forced recruitment can be an effective protection strategy. The guerrilla groups are unlikely to follow a family who left to avoid recruitment so the family would probably be safe in one of the towns. A family in a guerrilla-controlled area must also normally leave if the son joins the army or police (or sometimes the guerrilla just forbids family contact with the son). In general the family has to leave, but there is always conversation – sometimes people are called to a meeting with a commander, other times they may request a meeting themselves – and this is true with any of the armed groups. This points to the relational dimension of civilian security and highlights the fact that we are dealing with individuals who can discuss and negotiate and reach agreements, even if such agreements are to give a family 48 hours to move away from the area.

Conclusion

The approach taken by UNHCR to the protection of IDPs in Colombia is undeniably and unashamedly state-centric. Three main factors contribute to this. First, the work of UNHCR is underpinned by the assumption that the state is the most important actor in protection and has the potential to prevent displacement and protect those who are displaced. Second, even if UNHCR wanted to expand its focus to include changing the behaviour of armed non-state actors, it would
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not be able to do so because the Colombian government prohibits the UN from talking to the non-state combatants. Third, the terms of UNHCR engagement in Colombia more generally were set by the Colombian government in the Memorandum of Intent, and are framed in terms of assisting the state to prevent displacement.

Armed non-state actors were rarely mentioned by my interviewees except when I asked a question about them specifically. Where they were mentioned, it was more likely to be about, for example, the FARC preventing UNHCR from carrying out its normal activities (for example a joint project with the state) than as a cause of civilian insecurity or as an actor whose behaviour UNHCR might seek to change. Essentially their activity was taken as exogenously determined. A number of UNHCR interviewees noted that UNHCR sometimes takes on a substitution role in zones that the state cannot access due to security threats emanating from non-state armed groups. Despite this acknowledgement that the state cannot even go to all parts of the country, the UNHCR approach to protection is focused almost entirely on getting the state to meet its obligations. This is problematic, particularly as those areas that are inaccessible to the state are often the same areas with the greatest protection needs.

UNHCR in Colombia takes a rights-based approach to protection, and focuses on the domestic legal framework. Most of the work carried out by UNHCR in Colombia revolves around technical assistance to the state, lobbying for the state to meet its obligations and capacity building in communities so that civilians know their rights in national law and how to go about claiming those rights. The work of UNHCR in Colombia thus focuses on bringing the state and civilians closer together so that the state makes good on its obligations and the civilians are able to realise their rights. The idea is that where the state is not responding appropriately, UNHCR seeks to show them how, and where the state does not have the will to respond, UNHCR offers concrete inducements or assistance through joint projects or provides public information and judicial assistance so that individuals can take their cases to the state. While these two roles are not intrinsically incompatible, in practice it can cause a difficulty that the same individual staff
members of UNHCR who are so often supporting the state and working together with state agencies are then required to put pressure on the state to change.

Throughout the work of UNHCR in Colombia runs the assumption that if the people and the state can be brought together such that the state comes good on its duties and the people are able to access their rights, then these populations will be protected. Such an approach is state-centric in the extreme, and inconsistent with the reality of the Colombian context in which civilians are not insecure due to a lack of formal rights, but rather because armed actors threaten them. Connecting state agencies and civilians does not directly reduce the threat to civilians from organised violence. It may serve to increase civilian security if improved state services provide civilians with greater opportunities which enable them to pursue strategies to reduce their vulnerability to threats. It may also reduce threats from organised violence indirectly if increased state presence in areas where the state was previously absent serves to prevent attacks by non-state groups. Equally it may increase threats if the increased presence of the social agencies of the state is accompanied by an increase in the presence of public forces in zones where a guerrilla group was previously dominant, given that the presence of multiple armed groups increases the level of threats faced by civilians.

In sum, the work of UNHCR in Colombia is no more adapted to the specific context of armed conflict than the general policies set out at the global level. A common theme emerging throughout this chapter is a lack of certainty and confidence among staff members as to the position of UNHCR Colombia on particular issues. Thus while it is clear that broadly speaking there is a common approach, individual staff members are unclear on particular aspects of that approach and particularly on the reasons for any given aspect. This seems to stem from the lack of information-sharing inherent in the bureaucratic personality of UNHCR and results in an absence of any significant bottom-up pressures by which field level staff might seek to influence policies on the basis of their experiences and their observation of particular protection needs. The absence of these pressures is likely reinforced by the lack of any means through which to channel them into policy even if the pressures themselves were there.
Conclusion

This thesis has started from the assumption that while the success of IO efforts at civilian protection are undoubtedly limited by external constraints, key reasons for limited success also lie with the organizations themselves, in the approach they have taken to civilian protection. Accordingly, the main tasks of the thesis have been threefold: (1) to characterise the ICRC and UNHCR approaches to the protection of civilians during internal conflict; (2) to explain why each IO adopted its particular approach; and (3) drawing on the case of Colombia, to highlight the limitations of each approach.

Drawing from the literature on IO behaviour, I have argued that the approaches taken by the ICRC and UNHCR to civilian protection in internal conflict have been shaped more by factors internal to each IO than by external factors. I have demonstrated in particular the salience of institutional history, and specifically the approaches taken by each IO to pre-existing issue-areas within its mandate. In UNHCR this has yielded an approach which is not well tailored to dealing with civilian insecurity in the context of armed conflict, whether international or non-international. In the ICRC, a closer fit between the old and new issue-areas, and partial adaptation to the particularities of internal conflict has made for a more appropriate approach, albeit one that is limited by its reliance on a state-centric body of international law.

In what follows, I explain the implications of my analysis for theory, practice and future research. First, I summarise the key findings of the main body of the thesis. Second, I explain the theoretical insights of this thesis with respect to the behaviour of IOs and in particular the way IOs can be expected to address new issue-areas following expansion of their mandates. In doing so, I consider the extent to which, and the areas in which, the findings of this thesis may be generalisable. Third, I set out the policy implications of my analysis with respect to the ICRC, UNHCR, other humanitarian agencies, and the international community more broadly. Finally, I suggest some directions and questions for further research.
Summary of key findings

Table 3: Characterising the ICRC and UNHCR approaches

<table>
<thead>
<tr>
<th></th>
<th>ICRC</th>
<th>UNHCR</th>
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<tbody>
<tr>
<td><strong>a. Objects of protection</strong></td>
<td>Civilians in armed conflict</td>
<td>IDPs and those at risk of displacement</td>
</tr>
<tr>
<td></td>
<td>To be protected from the negative consequences of violence</td>
<td>To be protected from the negative consequences of displacement</td>
</tr>
<tr>
<td><strong>b. Normative frameworks</strong></td>
<td>IHL</td>
<td>Guiding Principles, IHL, IHRL and domestic legislation</td>
</tr>
<tr>
<td></td>
<td>Legal protection is a means to physical protection, but not the only means.</td>
<td>The promotion of rights is an end in itself. Relationship between these rights and physical security is unclear.</td>
</tr>
<tr>
<td><strong>c. Objectives of protection</strong></td>
<td>Change the behaviour of armed actors</td>
<td>Realisation of rights</td>
</tr>
<tr>
<td></td>
<td>Threat-reduction</td>
<td>Linking of states and citizens</td>
</tr>
<tr>
<td></td>
<td>States (development of IHL)</td>
<td>Protection of IDPs from discrimination</td>
</tr>
<tr>
<td><strong>d. Key protection actors</strong></td>
<td>Armed actors – state and non-state (conduct combat in line with IHL)</td>
<td>States (meet their obligations with respect to IDP rights)</td>
</tr>
<tr>
<td></td>
<td>Development of IHL</td>
<td></td>
</tr>
<tr>
<td><strong>e. Protection activities</strong></td>
<td>Interventions with armed groups re violations of IHL</td>
<td>Assisting governments</td>
</tr>
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<td></td>
<td>Dissemination and training in IHL</td>
<td>Capacity building affected communities</td>
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<td></td>
<td>Development of IHL</td>
<td>Advocacy</td>
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In Table 3 above I provide a brief characterisation of the ICRC and UNHCR approaches to civilian protection, as per the framework for understanding humanitarian agency approaches to protection set out in chapter one. This summarises much of the analysis in chapters three and five and, while it is a somewhat simplified version of that analysis, it provides a quick overview of the answer to
the first question this thesis set out to address: how do the ICRC and UNHCR approach civilian protection in internal conflict?

1. The ICRC

The ICRC seeks to protect all civilians in internal conflict from the humanitarian consequences of violence. Mitigating the impacts of violence is core to the ICRC’s identity, thus this defines the institutional understanding of what civilians are to be protected from. As the ICRC has expanded into new issue-areas over the past 150 years, issues of conflict and violence have remained at the core of its mandate. In protecting civilians from the humanitarian consequences of violence, the ICRC views legal protection not as an end in itself but as a means to physical protection. During conflict in which IHL applies, legal protection is seen as the central means to physical protection, but not the sole means.

Thus the ICRC understands the broad objective of civilian protection in terms of physical protection from conflict and violence, and the specific objectives of its work in this regard include both threat-reduction and vulnerability-reduction. In practice, however, the ICRC emphasises threat reduction, as shown by the overwhelming focus on interventions with armed groups in Colombia. That the ICRC does not seek to reduce overall levels of violence can be explained with reference to its commitment to the principle of neutrality and its particular interpretation of that principle. The emphasis on threat-reduction mirrors the ICRC approach to protecting other categories of person (for example, prisoners of war) and civilians in international conflicts. This particular replication is not dysfunctional because there is a good fit between pre-existing and new issue-areas in terms of who needs protecting (civilians) and what they need protecting from (conflict and violence).

In terms of immediate protection in conflict contexts, the ICRC views combatants – or, more generally, weapons-bearers – as the primary determinants of civilian security and correspondingly as the most important actors in protection. This reflects the approach taken by the ICRC to the protection of prisoners of war and the protection of civilians in international conflict in that it is
authority-centric. However, the authorities in these two issue-areas are states, and in internal conflict the ICRC has extended its understanding of who is an authority to include armed non-state actors. This extension serves an important purpose in adapting the approach to the political realities of internal conflict, and has been driven by field-level experience. Part of the adaptation took place simultaneously with the replication (as specific interventions on IHL violations, or IHL violations by analogy, were undertaken with not only national military forces but also non-state armed groups), and part of the adaptation was subsequent (when training in IHL was provided not only to national militaries but also armed non-state actors).

The core activities undertaken in the midst of internal conflict to protect civilians – interventions with weapons-bearers – replicate activities on other issue-areas. These activities are constrained by the ICRC interpretation of neutrality, and also by the need to avoid interfering with pre-existing issue-areas within the ICRC mandate, such as access to sites of detention to visit those deprived of their liberty. Thus, the ICRC is unlikely to publicly denounce violations of IHL not only because of its understanding of neutrality as confidentiality, but also because such denunciation might prevent access to prisons thus impeding the protection of prisoners of war. To the extent that the ICRC relies on the IHL framework to shape its interventions during internal conflict, then states play a significant role in shaping those activities, because states played a central role in designing the IHL framework. However, the ICRC has also played a role in developing IHL. Further, the ICRC has significant autonomy in determining how far the framework shapes those activities and, as we have seen in the Colombian case, may choose to deemphasise IHL on occasion.

At the level of the development of IHL, however, the ICRC ascribes importance only to states. Treaty-based IHL is negotiated and signed by states, and the ICRC documentation and interpretation of customary IHL privileges state practice. Further, the content of IHL applicable to internal conflict (a body of law which I have argued the ICRC has played a significant role in developing) does not take into account the difference in capabilities, opportunities and threats experienced by non-state armed groups as opposed to states. The IHL applicable to non-
international armed conflict has been developed through analogy to the IHL of international conflict, and has not been sufficiently adapted to the political context of internal conflict.

2. UNHCR

UNHCR seeks to protect refugees, IDPs and those at risk of displacement. This is a subset of the whole civilian population, filtered by the way that UNHCR self-identifies as an organization concerned specifically with the displaced and displacement. Compared with the ICRC, there is much less clarity within UNHCR as to exactly what it seeks to protect these civilians against. Nonetheless, in the foregoing analysis, by piecing together the overall approach taken by UNHCR, I have shown that implicit in its more concrete objectives and activities is an understanding of protection as protection from forced migration and its effects. This is best explained as a consequence of replicating the approach taken to refugee protection, and failing to adapt that approach to the altogether different task of protection during armed conflict. As such, it is an example of ‘bureaucratic universalism’, one of the five organizational pathologies identified by Barnett and Finnemore.

For UNHCR, protection is understood as judicial protection. This understanding has been carried across from the traditional UNHCR function of refugee protection to the newer issue-area of IDP protection. The relationship between judicial and physical protection in the context of armed conflict is not clearly conceptualised. While physical insecurity is acknowledged, UNHCR does not see its own role primarily in terms of reducing such insecurity. Related to this legal understanding of protection, the specific objectives of UNHCR in respect of IDP protection centre on the realisation of rights, in particular citizenship rights, the right not to be displaced, and the right not to be discriminated against on account of having been displaced. The objectives have been shaped primarily by the approach of UNHCR to refugee protection and solutions. This is problematic because there is not a close fit between the issue-areas of refugee protection and solutions on the one hand, and IDP protection on the other. Further, these objectives have not been significantly adapted to the new issue-area and thus they do not reflect the immediate protection needs of IDPs and others of concern to UNHCR in conflict contexts.
It follows from the focus on judicial protection and the realisation of rights that UNHCR views the state as the primary provider of protection. In this sense, the central role UNHCR ascribes to states in IDP protection can be seen as a functional approach to the specific objective of rights-realisation. However, this objective could also be interpreted to imply significant roles for other actors, including non-state armed groups which are largely ignored by UNHCR. IHRL is increasingly held to imply obligations of non-state actors (Clapham 2006), yet UNHCR maintains a traditional interpretation that emphasises the responsibilities of states. Additionally, in the Guiding Principles, UNHCR has at its disposal a normative framework for IDP protection that is explicitly intended to apply to non-state armed groups, but UNHCR focuses on those sections of the Guiding Principles that imply obligations of states.

As I have shown, this emphasis on the state reflects both the role the state provides in refugee protection and solutions, and the UNHCR (and broader UN) commitment to state sovereignty and the strengthening of states. Given the focus on the state as the primary protection actor, it is unsurprising that the activities undertaken by UNHCR focus on the provision of support to the state, individuals and communities to bring the state closer to the population of concern to UNHCR. Activities include monitoring the situations and protection environments within which UNHCR operates, the provision of legal documentation to those of concern to UNHCR, direct provision or support to state provision of social services, promotion of land and property rights, provision of legal advice to IDPs and those at risk of displacement, provision of humanitarian assistance and management and coordination of refugee and IDP camps. These are best explained by institutional history, and broadly mirror those activities undertaken for refugee protection, with limited adaptation to the specificities of protection during armed conflict. This is problematic because there is a poor fit between the old and new issue-areas – the problem is different and requires a different solution – and also because UNHCR has very different tools at its disposal re refugees (whose legal protection is provided for in IRL) and IDPs (for whom specific international legal protection exists only in soft law form in the Guiding Principles).
In sum, for UNHCR, IDP protection and solutions (or, more accurately, protection and solutions for refugees, IDPs and those at risk of displacement in the context of armed conflict) are understood by analogy to refugee protection and solutions, which in turn are based on an implicit assumption of working in peacetime. This has resulted in a sub-optimal approach because: (a) there is not a close fit between the two issue-areas; (b) to the extent they overlap it is in an area of refugee protection at which UNHCR does not excel (refugee protection in the midst of conflict); and (c) UNHCR has a very different set of legal and normative tools at its disposition for each issue-area.

**Theoretical insights into IO behaviour**

This thesis has suggested that the approaches to civilian protection taken by the ICRC and UNHCR are best explained by factors internal to the organizations, rather than external factors, such as pressure from states or the external institutional environment. Most notably, both approaches owe a lot to institutional history. The ICRC and UNHCR are arguably the two most important humanitarian agencies for protection (in terms of global reach, financial resources and influence on other organizations), but neither IO was originally set up to protect civilians during armed conflict.

The ICRC was initially concerned with wounded and sick members of the armed forces and then with prisoners of war before being mandated to protect civilians in international armed conflict and later also in conflicts of a non-international character. UNHCR was initially concerned with refugee protection and solutions, and its mandate has since expanded to include people in ‘refugee-like situations’, IDPs and those at risk of displacement.

The approach taken to the pre-existing issue-areas, together with the logic of expansion used to justify expansion into the new issue-area, determine the approach taken to the new issue-area (in this case of the in-country protection of civilians during internal armed conflict). In making the case for mandate expansion, whether driven by internal or external factors, two arguments were made: that the IO in question is well-placed for the new job; and that working on the new issue-area will not interfere with the work of the IO on existing issue-areas. The first argument can be made in a number of ways. For example, in the case of the ICRC, we have seen justification for...
expansion on the basis of comparative advantage, specific relevant expertise, and analogies drawn between the existing mandate and the proposed new issue-area. The second argument can take a minimalist form in which it is claimed that the work on the new issue-area will not have a negative effect on the existing mandate, or a maximalist form in which it is claimed that the work of the IO on the new issue-area will in fact generate positive spillover effects for the work of the IO on its pre-existing mandate. In the case of UNHCR, for example, claims that IDP protection would not adversely affect on refugee protection were regularly reiterated both in terms of assurances that existing budgets will not be diverted to the new issue-area, and that in-country protection did not erode commitment to the principle of asylum. Further, a maximalist argument involved the construction of linkages between the protection of IDPs and the prevention of refugee flows.

The logic of expansion mediates the precise impact of other issue-areas within the IO mandate on the approach taken to the new issue-area. As we have seen in chapters three and five, in both the ICRC and UNHCR cases, expansion into the new issue-area (civilian protection in internal conflict for the ICRC and IDP protection in internal conflict for UNHCR) was justified by drawing analogies with pre-existing issue-areas within the mandate of each IO. Issue linkages were constructed on the basis of the moral equivalence of the old and new issue-areas and on the basis of each IO having relevant expertise derived from its work on the older issue-areas. Such analogies have been useful in expanding institutional mandates to include protection for new populations of concern. However, they also have an impact on how the new issue-areas are addressed, and this can be problematic because the new issue-area is, by definition, not identical to the old issue-areas.

In both cases, expansion was justified on grounds of the similarity of the new task with pre-existing mandate of the IO, and the approach taken to address the new issue-area in each case then largely mirrored the approaches taken to pre-existing issue-areas. Logically, such an approach will be effective only to the extent that: (a) the approach to the old issue-area was effective; (b) there is a close fit between the old and new issue-areas; and (c) where that the fit is imperfect, the approach is adapted so that the assumptions underlying it are in line with the nature of the new problem. The
closeness of fit depends on whether the problem is analogous, and whether the tools at the disposition of the IO to deal with the new problem are analogous. In practice, adaptation may be simultaneous or subsequent to the replication of approaches to pre-existing issue-areas, but for analytical purposes I conceptualise this as a two-step process: replication, then adaptation.

This thesis has shown that in the ICRC, the practical activities undertaken in conflict contexts have been adapted over time to take into account the specific characteristics of internal conflicts. However, the ICRC has not sufficiently adapted the normative framework on which these activities are based. The approach taken by UNHCR is not well adapted at all. The theoretical explanation for this – and here my conclusions are more tentative – seems to be that adaptation requires input from the new context, what I call bottom up pressures from the field level. However, bottom up pressures may be countered by top down pressures from states and the broader external environment. Depending on the bureaucratic personality of the IO there will be stronger or weaker channels for bottom-up and top-down influences on policy. Additionally, a set of core IO values can impose particular boundaries on action.

The role of the bureaucratic personality here is largely one of mediating the impacts of top down and bottom up pressures. It should be noted that these different pressures do not necessarily run in opposite directions. ‘Top down’ and ‘bottom up’ indicates the source of these pressures but not their content. It is quite feasible that in some situations both sets of pressures would push for the same kind of adaptation. These pressures are mediated by the bureaucratic personality of the IO. First, the emphasis placed on responding to particular external pressures (whether the emanate directly from states or from the broader institutional environment) depends on how the IO understands its own role with respect to states. Second, the existence and impact of bottom up pressures will likewise be conditioned by the particular norms of decision-making and information-sharing within the IO which will provide for stronger or weaker channels for bottom-up pressure. The core values are seen as playing a role in constraining the extent of adaptation. They are also there in the initial replication process because they are constitutive of the IO approaches to the old issue-areas (and thus also of the approach to the new issue-area). However, I separate them out as
those values that are core to the identity of the IO and thus are inflexible and so impose constraints on adaptation.

Where there is a poor fit and no adaptation (or insufficient or misdirected adaptation), we may see dysfunctions in the approach. Such dysfunction results in particular from the first two mechanisms identified by Barnett and Finnemore through which bureaucracies create pathologies. My analysis provides further specification of how such mechanisms can work in the context of an IO’s efforts to address a new issue-area within its mandate. Barnett & Finnemore (2004, p. 39) explain that ‘means (rules and procedures) may become so embedded and powerful that they determine ends and the way the organization defines its goals’ (the irrationality of rationalisation) and that bureaucracies tends to apply the same technical knowledge across different context, which can have disastrous results when particular circumstances are not appropriate for the general knowledge being applied (bureaucratic universalism). This thesis has shown how particular aspects of an approach may be translated from one issue-area to another, and how the reasoning behind these aspects is lost in the process of translation such that the particular procedures that are copied across may be inappropriate for the new task (bureaucratic universalism) but nonetheless become embedded as ends in themselves that come to define the new approach (irrationality of rationalisation).

As IOs almost invariably expand, and rarely dispense with earlier tasks altogether, they have an ever-expanding range of issue-areas within their mandate. In this context, it is important to understand how these pre-existing issue-areas will affect the new issue-area (so that the right IOs are tasked with the new jobs) and how the logic of expansion will impact on the new issue-area.

**Policy implications**

In this section, I map out four sets of policy implications that arise from this study of civilian protection in internal conflicts: for the ICRC; for UNHCR; for other humanitarian agencies; and for the broader international community. These implications focus especially on the treatment of armed non-state actors as my analysis has suggested that the relative neglect of such actors has
been a key factor in limiting the effectiveness of the work of both the ICRC and UNHCR. Internal conflicts by definition involve at least one non-state armed group, and very often multiple such groups. Reflecting on a conference on protection in 2009, Simon Addison noted that many ‘humanitarians working on protection programmes focus their attention on trying to influence the practices of states and international organizations, either because they consider these actors to be the final arbiters of civilian protection, or because they assume non-state actors to be inaccessible, or because they consider engagement with non-state actors to be ethically or politically compromising’ (Addison 2009, p. 8). The policy recommendations that follow suggest that this focus of attention needs to be shifted.

In the introduction and chapter one, I have highlighted the importance of armed non-state actors in determining civilian security, negating the suggestion that states and IOs are the final arbiters of protection. In many contexts, it may be that non-state armed groups are relatively inaccessible, though this is by no means always the case. If contact with armed non-state actors is deemed ethically or politically compromising, this must be weighed against the inevitable compromise in protection outcomes that results from ignoring key determinants of civilian (in)security. Where direct contact with armed groups is restricted due to access, ethical or political concerns, humanitarian agencies engaged in protection work still need to take the non-state actors seriously, and may seek to influence their practices indirectly without the need for contact.

In this thesis, we have seen that neither the ICRC nor UNHCR takes non-state armed groups as seriously as they might, and that UNHCR in particular takes a highly state-centric approach to the protection of civilians in internal conflict. The experience of the ICRC in Colombia suggests that the IHL framework is not well adapted to maximising the compliance of armed non-state actors. The ICRC seeks to influence the non-state armed groups in the same way and through the same means with which it seeks to influence and improve the behaviour of the public forces of the state. However it is impeded from doing so by two main obstacles. First, given their illegal nature (and, for the guerrilla groups, their current weak position in the conflict), it is more difficult to establish and maintain regular contact with the non-state armed groups. Second, the IHL framework on
which the ICRC bases its work with the public forces is largely deemed ineffectual or even counter-productive in interlocutions with the armed non-state actors. The ICRC has little or no control over the first of these obstacles, but in its capacity to develop IHL, it could seek a solution to the second obstacle.

With respect to the ICRC, then, my analysis suggests that the organization should revisit IHL as applicable to internal conflicts and the non-state armed groups that participate in those conflicts. I have pointed to two particular characteristics of the existing IHL framework which may make it inadequate for maximising the compliance of armed non-state actors: the process by which it was developed; and the content of the rules which comprise the framework. The ICRC should consider how the process through which IHL is developed can be changed to give it greater legitimacy in the eyes of non-state armed groups both in the process of IHL development and should give greater consideration to the differential capacities of non-state armed groups relative to states.

In terms of the development of IHL, it is useful to think separately about the development of treaties and of customary IHL. As I have argued in chapter three, the ICRC has played a significant role in the development of both. With respect to treaty-based law, non-state parties cannot become parties to international covenants. However, the ICRC plays an important role in drafting international IHL treaties and thus has an influence on the content of the law. In this respect, greater attention should be paid to the feasibility of adherence by armed non-state actors. With respect to customary law, it may be argued that states would not accept as customary those practices that were only customary of non-state armed groups and not of states. Certainly the notion that customary law can emerge from the practices of non-state entities is an unconventional notion, and one that the ICRC appears to have rejected in its customary law study. Nevertheless, in a body of law which has as its underlying principle the equality of belligerent parties, it seems necessary to treat such parties more equally in the development of that body of law. Given the significant expert and moral authority that the ICRC wields in this area, it is probably better positioned than any other organization to promote greater consideration of the practice of non-state armed groups in the development of customary IHL for internal conflicts. To the extent that
external constraints prevent the development of IHL in this direction, the ICRC could seek to
develop parallel deeds of covenant which non-state armed groups could sign. Currently, such
activity is undertaken by organizations such as Geneva Call on a limited range of IHL issues, but
not by the ICRC.

The problems this thesis has identified with the UNHCR approach to protecting civilians during
internal conflict relate in large part to the failure to adapt an approach designed from refugee
protection in peacetime to the significantly different task of in-country protection during armed
conflict. The focus on individuals who are displaced or at risk of displacement is central to
UNHCR identity, and thus is unlikely to be flexible. However, the emphasis on protecting these
individuals from the effects of displacement specifically seems to be the result of activities being
copied from refugee protection and then embedded in UNHCR practice to the extent that
objectives have been implicitly redefined to match these activities. This should not be so resistant
to change as it is not a core value of the IO. Thus UNHCR should seek much more to pay attention
to the specifics of conflict and violence, and to influence the behaviour of armed actors – both state
and non-state. This could be through direct engagement with such actors or, where external
constraints (such as the ban on interacting with non-state armed groups in Colombia) limit direct
engagement, it could be indirectly as, for example, through land reform projects in Colombia.
However, UNHCR could also do more to resist such external constraints. UNHCR is able to
exercise both moral and expert authority with respect to IDP protection, and could use that
authority more robustly to oppose restrictions imposed by states (whether the affected states or
donor states or other powerful states). This is important not only so that UNHCR can maximise its
influence on the behaviour of non-state armed groups (by employing both direct and indirect
methods to change that behaviour), but also to facilitate direct contact by other humanitarian
agencies.

For other humanitarian agencies, the conclusions of this thesis suggest more generally that greater
attention should be paid to armed non-state actors, echoing the UNHCR-specific
recommendations. At the level of developing the normative framework, it may be that the ICRC
has a particular role to play, but at the field level, a focus on violence and its perpetrators should be central to all humanitarian approaches to the protection of civilians. Again this may involve direct engagement with state and non-state armed actors, or it may seek to alter their behaviour indirectly through changing incentives. Perhaps the most important recommendation for the ICRC, UNHCR and other actors engaged in the protection of civilians is to be clear on the limits of their work, and not to overstate their protective scope of their activities.

My recommendation that the ICRC, UNHCR and other humanitarian agencies should place greater emphasis on changing the behaviour of armed non-state actors sits uncomfortably with broader shifts in the international political environment. Non-state armed groups are often classified as terrorist organizations by the US and other powerful states, and by powerful international political organizations such as the European Union. Legislation in many countries makes it illegal to provide support to organizations classified as terrorist, and the humanitarian exceptions to this prohibition have been narrowed in recent years. The need to take armed actors much more seriously implies a rethinking of counter-terrorism policies of the US and other countries that criminalise engagement with many armed groups (HPCR 2011; Pantuliano et al. 2011). Therefore my final policy recommendation is directed at states and international organizations both in their law-making capacities and as donors to those humanitarian agencies engaged in protecting civilians.

**Suggestions for further research**

In this section, I present three lines of investigation for research.

First, I have only examined in detail the operations of the ICRC and UNHCR in the Colombian context, and this poses some limitations with respect to drawing generalised conclusions on the basis of their experiences in Colombia.

For the ICRC, the Colombian experience demonstrated that the IHL framework may be an inadequate tool in dealing with armed non-state actors. Given that Colombia is deemed to offer a near ideal working environment for the ICRC, it is reasonable to expect that the problems of
implementing the core approach with be at least as grave elsewhere. However, there remains a possibility that there is something distinct about Colombian non-state armed groups that makes the IHL framework uniquely inappropriate for them. Both the analysis on the ICRC more generally in chapter three and knowledge of the Colombian armed groups themselves suggest this is unlikely, but it could be best probed through analysing the ICRC experiences of implementing its approach to civilian protection in other contexts of internal conflict. Furthermore, given that Colombia is a ‘least likely’ case in terms of problems of implementing its approach, an analysis of its experience in other conflicts may reveal additional problems in the approach that are widespread elsewhere but do not apply to Colombia.

For UNHCR, the case of Colombia has not revealed particular implementation problems but rather has illustrated the problems inherent in the approach outlined in the general analysis of UNHCR in chapter five. While this provides evidence to support the claim that such problems are not mitigated by a more context-specific approach at the field-level, it is nonetheless only evidence from one operational context. I have argued that the approach taken by UNHCR is not only state-centric but also relies on a Western-centric notion of the state. While this notion is unproblematic in Colombia, the state cannot be neatly separated from the government in many countries, and it is important to understand whether and how UNHCR adapts its approach to dealing with the state in such contexts.

In light of these caveats on the generalisability of my conclusions, an important area of future research would be to extend the analysis to additional contexts in which the ICRC and UNHCR operate. It would be particularly interesting to understand any differences in the protection approaches taken in contexts that differ from Colombia along a number of dimensions: (a) without a functioning state (e.g. Somalia); (b) where major powers and donors to the two IOs are direct participants in the conflict (e.g. Afghanistan); (c) where access restrictions have led to ‘remote programming’ (e.g. Iraq or Somalia); (d) where there are international peacekeeping forces also operating with a protection mandate (e.g. Democratic Republic of Congo); and (e) where humanitarian agencies are seeking to protect civilians in camp contexts (e.g. Darfur and Chad).
Second, as noted in the introduction, the incidence of high intensity internal conflict is in decline but the incidence of lower levels of conflict and lesser situations of violence is on the increase. Therefore, an important topic for research is the protection of civilians in contexts of violence that fall short of armed conflict. The ICRC has recognised that in the future situations of violence will more and more be infra-IHL and, as explained in chapter four, is developing policy on urban violence in particular. For UNHCR, the level of involvement in such contexts will depend on actual or constructed linkages between such violence and forced migration. In Colombia, we have seen that UNHCR has been working on issues of intra-urban displacement, a consequence of urban violence that may be just as common in contexts that are not connected with armed conflict. Possible cases for this research include Brazil, Haiti, Mexico, Nepal, and Uganda. In such contexts, other international actors may also play a significant role in protection.

Third, this thesis has suggested that the international legal and normative framework for protection, and IHL in particular, may not be well adapted to maximising the compliance of armed non-state actors. However, we do not know whether and how a different kind of framework might improve compliance. There is an extensive literature on the applicability of international law to non-state entities, some of which focuses on non-state armed groups (Cassese 1981; Clapham 2006; Sivakumaran 2006; Zegveld 2002). However, this work focuses mainly on what the rules are and why they are binding on these groups rather than on whether or how they generate compliance. Constructivist IR scholarship includes analysis of the process by which norms (including IHL norms) emerge and why states sign up to them (Finnemore and Sikkink 1998; Keck and Sikkink 1998; Petrova 2010; Risse et al. 1999). In both IR and international law, there is work on the factors determining state compliance with international law, but non-state armed groups are ignored (Chayes and Chayes 1998; Franck 1995; Hurd 1999; Kingsbury 1998).

While some practical efforts are being made by NGOs such as Geneva Call to develop legal agreements with the involvement of armed non-state actors, and some international lawyers are exploring ways in which IHL could be developed differently (Sassòli 2010), there is not a body of academic research on the determinants of compliance by non-state armed groups which could
inform these efforts to change the legal and normative framework. A better understanding of what determines compliance is needed to inform the changes I have suggested the ICRC should make in its work on the development of IHL. Therefore, an important question for future research to address is: under what conditions do armed non-state actors comply with international laws and norms regarding the protection of civilians in armed conflict?

Conclusion

In chapter one I argued that civilian protection should be aimed at making civilians physically safe and secure, and that this can be achieved through a reduction in violence, threats or vulnerability to violent threats.

Rather than concerning itself with these core protection concerns, UNHCR has instead focused on mitigating the impacts of displacement specifically (rather than violent conflict more broadly). This is because it has replicated its approach from refugee protection, a task in which these are not the core concerns. The replicated approach has not been adapted to the particular situation of in-country protection during armed conflict. The failure to adapt can be attributed to a top-down approach to policy making and a culture which does not encourage information-sharing. These traits make problems associated with the ‘irrationality of rationalisation’ more likely because when staff members do not know the rationale for a particular policy, the processes of that policy become disconnected from the objectives such that the processes can become embedded and field level staff members are not in a strong position to provide feedback on the efficacy of the processes (because they are not clear on the objectives). Even if they were in a position to provide such feedback, its impact on policy would be minimised due to the top down approach to decision-making and policy-making.

The ICRC does emphasise these core protection concerns of violence, threats and vulnerability to violent threats. This reflects the closeness of fit between the issue-areas from which the ICRC has replicated its approach, and the subsequent adaptation to include interaction with armed non-state actors as well as public forces in contexts of internal conflict. These interactions with armed non-
state actors appear to be limited in effectiveness, however, because they are based on a normative framework that has not been sufficiently adapted to maximising the compliance of these actors with its underlying principles. The adaptation of the in-conflict interventions can be attributed to the deference to field level delegates and the bottom up policy making processes that characterise the ICRC bureaucratic personality. The failure to adapt the normative framework reflects pressures from an external institutional environment in which the dominant understandings of international law and the making of that law allow only for state involvement.
Annex 1: List of interviewees

Reem Al-Salem, Head of Office, UNHCR Barranquilla. Interview held in Barranquilla, Colombia on 1 September 2010.

Adolfo Beteta Herrera, Head of Office (with Rita Palombo, Delegate), ICRC San José del Guaviare. Interview held in San José del Guaviare, Colombia on 18 August 2010.

Andres Celis, Coordinator of the Protection Unit, UNHCR Colombia. Interview held in Bogotá, Colombia on 10 August 2010.

Filipe Tomé de Carvalho, Head of Office, ICRC Pasto. Interview held in Pasto, Nariño, Colombia on 19 July 2010.

Mônica De Araujo Ribeiro, Head of Sub-Delegation, ICRC Bucaramanga. Interview held in Bucaramanga, Colombia on 24 August 2010.

Joan Sebastián Díaz, Senior Protection Clerk, UNHCR Neiva. Interview held in Neiva, Huila, Colombia on 16 September 2010.

José Egas, Head of Office, UNHCR Quibdó. Interview held in Quibdó, Chocó, Colombia on 9 September 2010.

Jacques Gay-Croisier, Head of Office, ICRC Quibdó. Interview held in Quibdó, Chocó, Colombia on 8 September 2010.


Elisa Guzman, UNHCR Medellín. Interview held in Medellín, Colombia on 7 September 2010.

Giovanni Lepri, Head of Office, UNHCR Villavicencio. Interview held in Villavicencio, Meta, Colombia on 28 September 2010.


Pascal Porchet, Head of Sub-delegation, ICRC Medellín. Interview held in Medellín, Colombia on 3 August 2010.

Lucia Ramírez, Protection Assistant, UNHCR Barranquilla. Interview held in Barranquilla, Colombia on 1 September 2010.

Ricardo Rojas, Protection Assistant, UNHCR Barranquilla. Interview held in Barranquilla, Colombia on 1 September 2010.

Ana Lucía Rosas, Head of Office, UNHCR Cúcuta. Interview held in Cúcuta, Norte de Santander, Colombia on 31 August 2010.
Annex 1: List of interviewees

Ana María Rubio, Head of Office, ICRC Villavicencio. Interview held in Villavicencio, Meta, Colombia on 28 September 2010.

Luis Sztorch, Head of UNHCR Sub-Office (South-West Colombia). Interview held in Pasto, Nariño, Colombia on 24 September 2010.

Serge Thierry, Head of Sub-delegation, ICRC Cali. Interview held in Cali, Colombia on 13 September 2010.

Pär Westling, Head of Office, UNHCR Mocoa. Interview held in Mocoa, Putumayo, Colombia on 22 September 2010.

Jeff Wilkinson, Protection Officer, UNHCR Apartadó. Interview held in San José del Apartadó, Antioquia, Colombia on 3 September 2010.


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