

INDEPENDENT REPORT

Expert Roundtable on the Protection of Humanitarian Personnel

MELBOURNE, 3 DECEMBER 2010

Compiled by independent rapporteurs
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Autonomous Territories/ Israel - Ramallah. Evacuation of a casualty by Palestinian Red Crescent's volunteers.

SUMMARY

On 3 December 2010, representatives of the humanitarian community, academia, think tanks, the media, the military, police, and a variety of governmental agencies met at an expert roundtable co-hosted by the International Committee of the Red Cross (ICRC), the Australian Red Cross (ARC) and the Asia Pacific Centre for Military Law (APCML) to discuss issues related to the protection of humanitarian personnel.

The primary aim of the Roundtable was to foster a better understanding of issues related to the protection of humanitarian personnel across a broad cross-section of stakeholders that are connected, directly or indirectly, to the humanitarian space. The Roundtable's secondary aim was to start a dialogue between those stakeholders with a view to developing practical responses to the challenges posed.

Over the course of the day it was revealed that all stakeholders are aware of the fact that there has been a decline in the respect and protection afforded to those who seek to provide humanitarian assistance and that increasingly, at least in some contexts, humanitarian personnel are the target of attacks. At the same time, it was clear that to find comprehensive and realistic solutions to the problem more information, and a deeper understanding of the meaning of available information, is needed. This report details a number of issues that require investigation as a priority.

The Roundtable participants acknowledged that stakeholders have been relatively slow to mobilise around the question of the protection of humanitarian personnel. It was generally accepted that the humanitarian community itself must lead the way in formulating constructive responses.

Equally, however, it was recognised that all other stakeholders represented at the Roundtable have a role to play in enhancing protection. The responsibilities and potential roles each group can play, as articulated by the Roundtable, are outlined in this report.

This report reflects the rapporteurs' personal interpretations of the discussions undertaken by the participants of the Roundtable. The report does not necessarily reflect the views of all participants, neither does it necessarily reflect the views of the ICRC, the ARC, the APCML, the rapporteurs, or their employers. As the roundtable was conducted under the Chatham House rule, the views described herein are not attributed to individual participants.

A GLOBAL TREND OF INSECURITY FOR HUMANITARIAN PERSONNEL

Operational Security Management in Violent Environments presentation

The context for the Roundtable was the increasingly violent and complex environment in which humanitarian actors find themselves operating.

The Roundtable's discussions were informed by a presentation at the outset by Ms Vicki Metcalfe, Research Fellow, Humanitarian Policy Group (HPG), Overseas Development Institute (ODI). The presentation outlined key trends in humanitarian personnel security, as detailed in the latest ODI (Humanitarian Practice Network (HPN) Good Practice Review (December 2010) entitled ***Operational Security Management in Violent Environments***. The study builds on a HPN study of the same title conducted 10 years earlier.

HPN's recent study reveals that:

Key trends

- + Available information indicates that there has been a steady increase in the incidence of serious attacks on humanitarian personnel in the last decade, with a particular spike since 2006. This increase takes into account the fact that the number of humanitarian personnel in the field has increased over the study period – relative rates have increased.
- + 75% of all incidents since 2006 are concentrated in six States (Sudan, Afghanistan, Somalia, Sri Lanka, Chad, Iraq and Pakistan), with a spike in incidents since 2006 concentrated in Sudan (Darfur), Somalia and Afghanistan. There was a slight decline in the number of incidents in other contexts, perhaps due to the increased security measures implemented by humanitarian actors.
- + Trends in the conduct of hostilities generally (the changing nature of warfare (including the increase in asymmetrical non-international armed conflict), a lack of traditional chains of command, increased difficulties in identifying belligerent parties, the use of civilians as human shields, and a general lack of respect for IHL) place civilians in general, including humanitarian personnel, at increased risk.
- + Available information indicates that, increasingly, humanitarian personnel are not simply caught in the crossfire, but are deliberately targeted. In Afghanistan, for example, where reporting is most comprehensive, information suggests that politically motivated attacks are increasing – they accounted for 39% of incidents in 2007, growing to 65% in 2008.
- + Motivations for attacks on humanitarian personnel and their assets can be hard to pinpoint in high intensity conflicts. At least three different motivations have been identified as lying behind deliberate attacks:
 - ▶ Criminal - motivated by financial gain (non-State actors are increasingly criminal);
 - ▶ Aid considered an obstacle to the objectives of belligerents – to gain or maintain control over an area or to undermine central authority;
 - ▶ Political – direct (whereby an organisation is itself the primary target due to its own actions/statements, or to prevent the delivery of aid to punish a population) and associative (whereby humanitarian actors are associated with 'the enemy' (government, rebel group or foreign power));
- ▶ The caveat on these findings is that information is patchy, meaning no comprehensive data set is available, in part because humanitarian agencies are not always willing to share information relating to either their own personnel, or incidents of which they are aware. Available data sets also only capture 'serious' events – death, serious injury and kidnapping for a prolonged period. There is

an alarming frequency of 'lesser' events. It was recognised that an increased analysis of data to further explore these 'lesser' security threats and incidents, could lead to better early warning about an escalation of the threat.

What is the impact and what has been the response?

According to HPN, the result of the increasingly frequent attacks is reduced access to vulnerable populations, less information and analysis of needs, less assistance delivered, and less protection provided. In addition, due to this lack of access, there is less awareness and acceptance of humanitarian actors.

Since the first HPN study, humanitarian organisations have improved their security approaches in response to these emerging trends. There is an increasing investment in the development of security expertise consisting of dedicated resources, standard operating procedures and security training. There have also been increased examples of cooperation and coordination across organisations at headquarter level. This is also evident in the field as more collective structures are put in place, particularly in Afghanistan, Somalia and in South Sudan. A crucial addendum to these activities is the 'Saving Lives Together' project, a UN/NGO initiative that is reportedly having some positive impact in the field with regards to shared information and training.

Although national authorities are obliged to ensure the protection of humanitarian personnel under UN Security Council Resolution 1894, some governments are unwilling or unable to carry out this primary responsibility. The Security Council has paid special attention to this issue, condemning attacks on humanitarian personnel and, under Resolution 1502, urging Member States to punish such crimes. A tension was identified whereby States are expected to protect humanitarian personnel in circumstances where they are unable to protect their own citizens.

Key strategies

In general, the security approaches of humanitarian organisations are based on one or more of the 'acceptance', 'protection', and 'deterrence' approaches:

- + **Acceptance** must be earned, not just assumed; it requires a significant investment over time in areas including outreach, humanitarian diplomacy, interpersonal relationships, political skills and a deep knowledge of the context – at both the local and macro levels. Core organisational mandates and messages must be clear and adhered to. Many humanitarian

organisations have no clear strategy in relation to winning acceptance or any means to determine whether or not acceptance has been achieved. Restrictions on humanitarian engagement with non-State actors, such as anti-terrorism legislation and policy, may be negatively impacting upon acceptance. There needs to be a recognition that in some settings, foreign humanitarian actors will never be 'accepted' by communities.

- + In certain high-risk environments, **protection** (remote management, 'bunkerisation', low-visibility programming) is practised to reduce threats. This entails risks. Remote management increases risks to national staff, negatively impacts on programme quality and increases the risk of corruption. More broadly, restricted movement results in limited contact with affected populations and local authorities, which can lead to a limited understanding of needs, vulnerabilities and threats, as well as a limited awareness and acceptance of humanitarian organisations, in addition to reduced, and lower quality, programming.
- + **Deterrence** (suspension of programmes, withdrawal of staff, the use of legal and diplomatic leverage (counter threats, sanctions), or even the use of force) has been the most controversial security strategy employed to date. Anecdotal evidence suggests that the neither suspension nor withdrawal are effective given that most humanitarian organisations ultimately return, despite no significant reduction in the threat that led to the suspension/departure or punishment of the perpetrators. Armed protection is controversial. It can impact on independence and by association impact on the activities of the humanitarian community more broadly in the immediate or long-term future.

Recommendations going forward

The recommendations made by the study to address the concerns raised include:

- 1 Increased investment in risk assessment to better inform the management of security risks.
- 2 The adoption by all humanitarian organisations of a combination of the acceptance, protection and deterrence strategies – over-reliance on any one approach carries risk.
- 3 Improved mitigation of the secondary risks of remote management.

- 4 Improved coordination and the collective management of security – at present there is only a limited sharing of information and a poor investment (financial and political) in coordination functions.
- 5 Deployment of staff with the appropriate expertise to manage crises, attention to the process management of serious incidents.
- 6 Increased donor support to mitigate the costs of security management.
- 7 Increased dialogue with, and assistance from, other sectors.

The threat faced by humanitarian personnel

The Roundtable participants acknowledged the need for discussions to be informed by accurate information. The Roundtable questioned whether the reliability of data sets could be improved, pondering in particular the issue of whether a central tracking service or database could be created and maintained. The Roundtable noted that capturing accurate information might assist in the development of coordination architecture.

A number of queries about the scale and nature of the threat faced by humanitarian workers that cannot be answered by existing data, and which could be pursued in the future, were raised by the Roundtable:

- + Do different trends exist for larger, more established organisations compared to newer and smaller, less-established organisations? Do different categories of organisations employ different security strategies?
- + Should we be talking about humanitarian personnel security in situations of armed violence, as opposed to armed conflict? Overall, more people die in armed violence than in armed conflict. Is this trend replicated in the humanitarian personnel subset?
- + Is there a need to disaggregate data? Can trends be extrapolated from data relating to Sudan, Somalia and Afghanistan (the location of the most significant risks faced by humanitarian personnel), or does this data distort our understanding of the threats currently faced by humanitarian personnel?
- + Is it possible to evaluate the effectiveness of domestic and international accountability mechanisms? Do they act as a deterrent? Has the movement towards an acceptance that there can be no peace without justice had an impact on the safety of humanitarian personnel?
- + Does association with different denominations or faiths dictate a heightened or lesser vulnerability to attack? Or do mandate and organisational objectives matter less than how well these are communicated and explained?

The Roundtable participants challenged the view that the situation for humanitarian personnel is more dangerous now than in the past. Chechnya in the 1990s, for example, was deemed to have been an equally non-permissive operating environment. In this context, it was suggested that it is the position of humanitarian organisations within their operating environments that has changed (rather than the environment per se). It was further suggested that some actors (namely private security companies who protect for profit), could have an interest in exaggerating threats for their own reasons.

The Roundtable canvassed a number of theories that might explain the increase in attacks against humanitarian personnel. It was noted that more complex international interventions are becoming common. Political security, peace building, State-building and development agendas commonly co-exist, and compete with, humanitarian action. Humanitarian action has increasingly been used as a military tactic: a soft armament in a broader range of weaponry. Both competition and cynicism, it was suggested, impact negatively on the acceptance of humanitarian organisations.

The trend towards multi-mandated agencies was raised as another contributing factor impacting on the perception of humanitarian actors. Is it possible to be independent and impartial when pursuing political or economic goals? The point was made that in an era of global communications, the pursuit of single but different mandates in multiple locations can create equal problems.

In this context, some participants placed emphasis on the increasing politicisation of aid, citing, for example, controversial international interventions, tied funding and heightened government intervention in programming. With many non-governmental (NGOs) now accepting large proportions of their funding from government, there is, it was asserted, a perception that the independence of NGOs is being eroded such that at least some NGOs are best seen as a tool of foreign policy.

Conversely, it was argued that all aid is, and always has been, inherently political to a certain extent. In a conflict



Afghanistan, Kandahar: Sand bags protect the entrance to an ICRC building from possible blast damage.

situation, it was suggested, the consequences of humanitarian action are not neutral: diminishing the impact of belligerent activity, highlighting the harm belligerents are responsible for, and encouraging international opprobrium, necessarily impacts on the course of a conflict.

A point that was raised at a number of different points during the Roundtable's discussions, and which is addressed in more detail below (*see What Does it Mean to be a Humanitarian?*), was the vast proliferation of humanitarian organisations in recent years. The multiplication of humanitarian organisations has confused understandings of who humanitarian organisations are, and what they stand for. This, it was suggested, has impacted on the acceptance of humanitarian organisations across the board as a result of the difficulty of distinguishing between many of them.

A final theory for the increased incidence of attacks related to the changing nature of modern conflicts. It was observed that a high degree of criminality is generally woven into the insurgencies that characterise the most intractable armed conflicts presently in existence. In this context it was noted that the work of humanitarian organisations can result in increased stability, whereas instability is what insurgents and criminals generally desire in order to improve their position by wealth or power.

LEGAL PROTECTION

To complement the presentation of HPN's analysis of the threat currently faced by humanitarian personnel, Dr. Alison Duxbury, Associate Professor of the Melbourne Law School and Associate Director of the APCML, provided

an overview of the legal protections enjoyed by humanitarian personnel. At the outset, Dr. Duxbury noted that while other areas of international law were relevant (principally human rights law) her presentation would focus on international humanitarian law (IHL) on the basis that the statistics presented in HPN's report indicate that most attacks on humanitarian workers occur in the context of armed conflict.

Who is a humanitarian worker for the purpose of international law?

Dr. Duxbury noted that a range of international actors are described as 'humanitarian' in common parlance, including the ICRC/National Red Cross and Crescent Societies, a wide range of NGOs, the UN's specialised agencies and a range of international organisations. To an increasing extent, elements of the armed forces providing humanitarian services (such as the delivery of aid) and the personnel of private security firms (who are increasingly moving into the field of humanitarian and disaster relief, as well as State-building) use the term 'humanitarian' to describe their activities. Is the meaning of 'humanitarian' under IHL as flexible?

Dr. Duxbury explained that the Geneva Conventions themselves refer to the ICRC and the National Societies, as well as to 'aid societies', 'relief societies', 'civil defence organisations' and 'civilian medical personnel'. Scattered references suggest that protection shall only be extended to organisations or societies that can be described as 'impartial' and 'humanitarian'. Neither term is defined by the Conventions. The Commentaries, however, suggest

a broad interpretation. They state that humanitarians are ‘concerned with the condition of man, considered solely as a human being, regardless of his value as a military, political, professional or other unit.’¹ In a similar vein the Commentaries provide that to be impartial, an organisation does not have to be international. Nor does it necessarily have to be neutral. While neutrality is described as a beneficial characteristic, what is required is that the organisation not discriminate, but give priority on the basis of need.

Looking beyond IHL, international instruments provide limited guidance. The *Convention on the Safety of UN and Associated Personnel* (which provides protection to certain international personnel operating in situations outside of an international armed conflict) defines the ‘Associated Personnel’ referred to in the Convention’s title as ‘persons deployed by a humanitarian non-governmental organisation or agency under an agreement with the Secretary-General of the United Nations or with a specialised agency or with the International Atomic Energy Agency to carry out activities in support of the fulfilment of the mandate of a United Nations Operation’. The UN Special Rapporteur on Human Rights has defined human rights defenders as those ‘who, individually or with others, act to promote or protect human rights.’ Although this is necessarily context specific, personnel undertaking such activities could also be described as ‘humanitarian’. In its 2003 Resolution on Humanitarian Assistance, the Institute of International Law adopted something of a circular definition, stating that humanitarian assistance includes: acts, activities, human and material resources for the provision of goods and services of an exclusively humanitarian character.

As concluded by Dr. Duxbury, the definition of a humanitarian organisation or humanitarian personnel under international law is less than clear.

What protections are extended to humanitarian organisations under IHL? Who is responsible for providing such protection?

As civilians, humanitarian personnel are protected from attack on the basis of the principle of distinction. According to both Article 48 of Additional Protocol I (applying in international armed conflicts) and Article 13 of Additional Protocol II (applying in non-international armed conflicts) operations shall only be directed against military objectives.

Also applicable to humanitarians as civilians are the fundamental guarantees of humane treatment found under Article 75 of Additional Protocol I, Article 4 of Additional Protocol II, and Common Article 3.

As for the more detailed protections provided by *Convention (IV) relative to the Protection of Civilian Persons in Time of War* – the majority do not apply to most humanitarian workers. While the right of the ICRC and other humanitarian organisations to undertake humanitarian activities (subject to the consent of the Parties to the conflict concerned) is recognised by the Fourth Geneva Convention, the majority of humanitarian personnel fall outside the definition of ‘protected persons’, meaning that the bulk of the protections provided by the Convention do not extend to them.

A limited number of protections apply specifically to humanitarian workers.

For example, under Article 20 of the Fourth Geneva Convention ‘persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases shall be respected and protected’.

Under Article 62 of Additional Protocol I, civil defence organizations (defined as those establishments organised or authorised by the competent authorities of a Party to the conflict to perform humanitarian tasks intended to protect the civilian population against the dangers, and to help it recover from the immediate effects, of hostilities or disasters, such as the management of shelters, rescue, medical service, detection of danger areas, provision of emergency accommodation and supplies, and emergency assistance in the restoration and maintenance of order in distressed areas) shall be respected and protected. Article 71(2) further provides that relief personnel participating in relief actions to provide clothing, bedding, means of shelter or other supplies essential to the survival of the civilian population of any territory under the control of a party to the conflict and objects necessary for religious worship, which are humanitarian and impartial in character and conducted without any adverse distinction, shall be respected and protected.

In addition, the ICRC Customary International Law Study declared that there exists under customary international law a rule applying in both international and non-international conflicts, which provides that ‘humanitarian relief personnel must be respected and protected’.²

¹ Commentaries to Article 9, Second Geneva Convention

² Jean-Marie Henckaerts & Louise Doswald-Beck, Customary International Humanitarian Law, Volume I: Rules, International Committee of the Red Cross, 2005, 105.

Outside the protections offered by the Geneva Conventions and their Additional Protocols, also identified as relevant by Dr. Duxbury were UN General Assembly Resolutions 29/211 (2003) and 64/77 (2009), as well as Security Council Resolution 1502 (2003), which call for humanitarian personnel to be protected.

As noted above, the *Convention on the Safety of UN and Associated Personnel* provides protection to those persons falling within its ambit in situations outside an international armed conflict. Article 7(1) prohibits attacks on UN and Associated Personnel in addition to any action that prevents such personnel from discharging their mandate. Article 7(2) obliges parties to take all appropriate measures to ensure the safety and security of UN and Associated Personnel. Article 8 provides protection against interrogation, while Article 9 establishes a list of crimes including murder, kidnapping and other forms of attack.

Finally, a specific protection against attack is provided, indirectly, under the *Rome Statute of the International Criminal Court*. It is a war crime to direct attacks intentionally 'against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations' in both international (Article 8(2)(b)(iii)) and non-international (Article 8(2)(e)(iii)) armed conflicts.

Dr. Duxbury discussed the meaning of the obligation to respect and protect. She noted that the phrase entails a clear obligation not to attack persons entitled to this protection. She further suggested that the phrase can be read as implying a positive obligation to take measures to ensure that relevant societies or organisations are able to perform their functions and to provide assistance where necessary.

It was noted that under Article 13 of Additional Protocol I, civilian medical units do not lose their right to protection if they carry light individual weapons for self-defence or for the defence of the wounded and sick in their charge. Similarly, under Article 65 of Additional Protocol I, civil defence organisations retain their right to protection when carrying light individual weapons for the purpose of maintaining order or for their own defence. It was suggested that the use of private security escorts is equally unlikely to impact on the right of protection in these contexts, on the basis that the personnel comprising such escorts are unlikely to meet the definition of direct participation in hostilities and, as such, would retain their status as civilians. The use, however, of private security escorts can affect armed actors' perceptions of humanitarian organisations and, therefore, in practice, their protection.

Are States obliged to facilitate humanitarian assistance?

The Geneva Conventions provide in different provisions that relief societies etcetera 'may', or 'shall', undertake their work. Any work undertaken, however, is generally dependant upon the provision of host State consent. The Conventions presuppose an obligation on States in control of territory subject to armed conflict to provide humanitarian assistance in the first instance.

Other considerations relevant to the facilitation of humanitarian assistance include the prohibition on starvation as a method of warfare under IHL and the basic rights provided for under international human rights law (particularly the non-derogable provisions of the *International Covenant of Civil and Political Rights*) and the International Law Commission's *Draft Articles on Protection of Persons in the Event of Disasters*.

Dr. Duxbury concluded that while an obligation to facilitate humanitarian assistance can arguably be implied from international law, the contours of this obligation are far from clear.

WHAT DOES IT MEAN TO BE A HUMANITARIAN?

The 'who' and 'what' of humanitarian

The uncertainty surrounding the meaning of 'humanitarian' under international law captured the attention of the Roundtable and spilled into a debate of the meaning of the term in general. Participants noted that the term 'humanitarian' is used today in conjunction with a range of different agendas including those of stabilisation operations, Provincial Reconstruction Teams, private security companies, religious NGOs, humanitarian arms of extremist groups and insurgent groups. Another example cited was the newly established Australian Civilian Corps: can an entity working for the same employer as the military qualify as a 'humanitarian' organisation? It was agreed that the proliferation of both actors and activities that are labelled 'humanitarian' has led to an increasingly complex operating environment.

Participants agreed that the proliferation of NGOs in the humanitarian sector has introduced a number of

actors that can only be described as unprofessional. Such organisations are a liability to the greater group. Other humanitarian organisations have moved away from field operations and towards political advocacy in order to affect change, which can also adversely impact on the sector as a whole, by reason of association.

THE RESPONSIBILITIES OF HUMANITARIAN ORGANISATIONS

Against this backdrop, the Roundtable considered what humanitarian organisations must themselves do in order to help ensure the safety of their employees and volunteers. There was a general acknowledgement that before seeking assistance from external stakeholders in relation to protection, humanitarian organisations should ensure that their own house is in order.

To address concerns relating to the ever-expanding use of the term 'humanitarian' and the proliferation of humanitarian organisations, including the growth of a considerable number of small, inexperienced, unprofessional organisations, participants suggested that there might be a need to reach an agreed definition of a 'humanitarian organisation'. It was suggested that this could be achieved through a system of accreditation. Several participants noted that reporting in relation to recent NGO deaths in Afghanistan had concerned groups that those who had worked a lifetime in the humanitarian sector had not heard of, who had run into trouble in areas avoided by more established organisations for reasons related to security. It was suggested that an accreditation system that required organisations to adhere to minimum standards before deploying into emergency or conflict situations might overcome some of these concerns.

The question of accreditation of course raises other issues: who would be responsible for administering such a process? What would it entail? The difficulties in operationalizing accreditation have stifled debate as to whether it would be effective or not. It was further observed that while accreditation would be aimed at boosting the professionalism of the sector, the effect could drive a further wedge between larger, international and/or Western-based agencies and smaller, local or non-Western agencies. In addition, it was acknowledged that there is an inherent resistance to regulation among the humanitarian community.

In this context, it was suggested that it is important for the sector to gain a better understanding of how

humanitarianism is expressed in other cultures. It was noted that IHL is sometimes viewed as a Judeo-Christian concept, and is not inclusive of how others understand the term 'humanitarian', despite the fact that the core values of humanitarianism exist across most, if not all, cultures and religions.

To address these major strategic issues, the Roundtable highlighted the critical need for leadership. It was suggested that the current lack of leadership in the sector has hindered the development of solutions to the complex and important challenges of professionalism, perception and security. It was observed that leadership could facilitate another identified need, which is to develop greater clarity as to what humanitarian organisations want of their own sector and what is needed from external stakeholders.

Participants from humanitarian organisations at the Roundtable remarked that greater honesty and more humility and reflection is needed within the humanitarian sector. While it was acknowledged that the sector is often competitive and that overcoming this in order to undertake meaningful self-reflection would be a challenge, it was agreed that this was critical. Reflection needs to encompass the role humanitarian organisations play in conflicts and the identification of what their associated responsibilities are. This should include a review of current mandates. One question that was asked in this context was how many humanitarian organisations are actually doing good at the immediate stage of a crisis when security is a more significant risk? Also requiring review is personnel policy. It was observed that, in general, too many inexperienced personnel are sent into areas where the security risk is high, although it was acknowledged that the application of any sort of restrictions could have dramatic impacts on programming. In this context it was observed that humanitarian organisations often advocate for greater transparency, but when it comes to initiatives such as the Humanitarian Accountability Project, little commitment and buy-in has been demonstrated.

In conjunction with self-reflection, it was suggested that there is a need to improve strategic communications and perception management. An unanswered question raised by the Roundtable was how can humanitarian organisations better explain what they are, why they are present, and what they want to achieve? It was observed that this is particularly critical in situations where there is a lack of public understanding of the role played by neutral humanitarian organisations that may provide services such as first aid training or education in relation to IHL to 'the enemy' of domestic stakeholders. The challenge

is to find a way to explain the important role played by neutral and impartial organisations to the public.

In terms of the applicable legal framework, one major gap that was identified by participants of the Roundtable is the lack of legal awareness and capacity of humanitarian organisations. It was suggested that there is a need to incorporate legal expertise alongside other humanitarian technical skill sets for both operational and advocacy purposes.

THE ROLE OF EXTERNAL STAKEHOLDERS

External stakeholders participating in the Roundtable (academia, think tanks, the media, the military, police, and a variety of governmental agencies) were tasked to consider three questions:

How does the work of your sector affect the security of humanitarian personnel?

What are the responsibilities of your sector for humanitarian security?

What actions can your sector take to improve humanitarian security?

In their discussions, all external stakeholders acknowledged that their actions can affect the security of humanitarian personnel, that each has moral, if not legal, responsibilities, and that all could do more to contribute towards the improvement of the security of humanitarian personnel.

Government

Government participants noted that, in identifying governmental responsibilities for the security of humanitarian personnel, there is a need to distinguish between situations where the Government is a belligerent and those where it is not. Where the Government is a belligerent, protection obligations under IHL apply, meaning that there are legal obligations to provide security to humanitarian personnel in certain contexts and to ensure that military operations minimise risks to such persons.

Examining the role of the Government as donor, it was noted that there is usually a stark contrast between

the security arrangements put in place for government officers and what donors are prepared to spend on the security of partners. While it was recognised that it would be difficult to convince donors to contribute more to the security management of humanitarian organisations, it was suggested that creative thinking may shift donor priorities. One example suggested was the introduction of a duty of care approach, with donors held legally responsible for organisations' security by means akin to corporate manslaughter legislation. At the same time, the question of whether resources would be better directed towards the provision of relief assistance itself was raised. It was recognised that security funding should not be at the expense of aid assistance.

It was further recognised that governments could introduce greater regulation to the sector through funding. One mechanism that it was suggested could be introduced was a requirement that evidence of adequate security measures be provided in funding applications and as a precursor to the conclusion of contracts. In a similar vein it was observed that for some time there has been an effort underway to diversify the recipients of Government funding. It was observed that contrary to this policy, there may be merit in awarding funding to more-established, more professional organisations that are better equipped (in the sense of experience, perception and resources) to ensure the safety of their employees and volunteers.

Outside of the funding context it was suggested that the Government could work towards the greater regulation of the sector by working towards a code of conduct. This could be a step towards an equivalent international arrangement. Such regulation would be a complement to existing Australian legislation, particularly that which has extraterritorial application, which regulates the conduct of Australians (and others under Australian jurisdiction) while overseas.

On the international plane it was recognised that the Government can use its influence to encourage others to enhance the protection of humanitarian personnel. The Government can seek to build an international acceptance of, and adherence to, IHL, human rights norms, international criminal law and other existing rules related to humanitarian safety, as well as continuing to develop new rules, such as the Arms Trade Treaty. It could also work towards the development of specific protection norms by looking, at the first instance, at the need to develop provisions that apply in a broader range of contexts, or to a broader range of actors, compared to existing international rules outlined in the presentation made by Dr. Duxbury.

The Government is uniquely positioned to make representations to foreign governments to encourage them to provide protection to humanitarian personnel on their territory, and to ensure that there is accountability for any violations of the law. In this context, the Government is also able to offer technical assistance to enhance the ability of other States to investigate and prosecute relevant crimes.

It was observed that, at present, the Government provides travel advice that may be relevant to the security assessments of humanitarian organisations. It was noted that the travel advice provided is the same as that used by the Government in making its own security decisions. It was nonetheless acknowledged that the classification of certain information prevents it being shared and that the Government could look at ways of declassifying information relevant to security so that it can be shared with humanitarian organisations.

In the context of information it was further observed that, on occasion, governments use NGOs as tools for their own ends. Often, for example, government officials have dealings with humanitarian organisations in order to gather information from them. It was accepted that governments need to think carefully about the possibility that any contact with a government (particularly in the context of an armed conflict where the government in question is perceived as an interested stakeholder) could place humanitarian personnel in harm's way.

Another existing function that should be utilised to full effect is the Government's consular functions. In situations of known danger, the Government can play a role in facilitating the safe return of Australian overseas.

One recurring issue throughout the Roundtable's discussions related to the Whole of Government approach to humanitarian action. The question was posed as to whether AusAID, an agency that shares an employer with the military, can provide 'humanitarian' assistance in the sense of the Geneva Conventions.

Military and police

The military's role in providing humanitarian assistance, and the effect this can have on the safety and security of humanitarian personnel was a major theme of the Roundtable's discussions. A range of views was expressed as to the appropriateness of the provision of humanitarian aid by the military. Some participants were of the opinion that the military has an enduring role to provide humanitarian assistance, particularly in situations where other actors are unable to do so as a result of security considerations. Others, however, queried whether the use of military forces to provide aid was principally aimed at winning hearts and minds, and not truly aligned with traditional humanitarian goals. These concerns highlight the need for both police and military actors to consider at the initial planning stage of any intervention their potential impact on the operational environment, which can affect the safety of humanitarian actors.

Overall, less controversial was the indirect role of the military and police in making the delivery of humanitarian assistance possible by, for example, establishing humanitarian spaces or otherwise establishing a secure environment in which



Afghanistan, Zaranj, Nimorz Province.

humanitarian personnel can operate, providing logistical support, and building the capacity of local police and military forces.

In terms of civil-military cooperation, there was broad agreement that there is a need to establish more effective platforms for civil-military dialogue in order to enhance coordination from the strategic to the tactical level. The military saw a role for itself in creating this platform in situations where there is a vacuum, but ideally saw a body such as the UN Office for the Coordination of Humanitarian Affairs facilitating this engagement. The Roundtable considered that dialogue would be enhanced if the military were regularly invited to humanitarian fora in order to grow an understanding of objectives, priorities, concerns and gaps in both knowledge and operational ability.

Merit was seen in identifying interlocutors to facilitate the sharing of information on an ongoing basis. In this context, while recognising the limitations that exist, military representatives recognised the need to declassify information regarding security, including situational analyses and rules of engagement, to the greatest extent possible.

The need to clarify mandates in relation to the protection of humanitarian workers was identified as another priority. The opinion was expressed that the tasks implied by the 'protection of civilians' mandate (which includes the protection of humanitarian personnel) remains unclear. In this respect it was noted that mandates are not always well understood and that different militaries acting within the same theatre can be inconsistent. A further dilemma was created when protection of civilians is not a specifically mandated task. Military representatives noted that within the Australian context, 'protection of civilians' was rapidly being integrated into military doctrine.

It was noted that the police play a distinct role from the military in the situations in which humanitarian organisations operate and that it was necessary to give further thought to how the work of the police affects the security of humanitarian personnel, what the responsibilities of the police are for humanitarian security, and the actions that can be taken by police to improve the security of humanitarian personnel.

The media, academics and think tanks

In relation to the media, it was noted that in situations of armed violence, armed conflict or disasters, media organisations can provide a critical interface between humanitarian organisations and governments or donors.

Information provided by the media can be crucial to growing an understanding of the challenge faced by humanitarian organisations.

It was noted, however, that many journalists parachute into areas where humanitarian assistance is being provided and remain there only for a short period of time. It was recognised that in reporting on situations in which humanitarian organisations are operating, or on the activities of humanitarian organisations themselves, journalists must be cognisant of the potential consequences of their reporting for humanitarian personnel. It was further observed that journalistic ethics can be crucial in the settings in which humanitarian organisations often operate. Protection of the anonymity of sources was identified as being of particular importance in situations where retaliation against those speaking out in relation to the actions of parties to a conflict, for example, was a distinct possibility.

Looking forward, it was suggested that reporting that brings attention to the issue of the protection of humanitarian personnel could be recognised by a humanitarian journalism award.

It was also recognised that journalists themselves often require protection in the field and that they benefit from numerous provisions of IHL. The comment was made that insufficient attention may have been provided to these issues by both the international community and media organisations themselves.

It was suggested that editorial style media reporting, as well as think tanks and academics have a critical role to play in shining a light on the dark side of the issues being discussed by the Roundtable.

Think tanks and academics in particular have the ability to bring people together to discuss issues related to humanitarian protection and have the ability to investigate many of the unanswered questions raised by the Roundtable, and to capture lessons learned in order to ensure that policy responses to humanitarian security issues are as informed as possible.

It was further suggested that think tanks and academics have an important role to play in providing expert advice in relation to the environments in which humanitarian organisations operate. They have the ability to put conflicts, violence or disasters in longer-term historical, geographic and cultural context. Such knowledge has the potential to greatly advance humanitarian organisations' understanding of the situations they face, which will in turn contribute to greater acceptance, thereby enhancing security.

RECOMMENDATIONS

As noted at the outset of this report, the day's discussions were not primarily aimed at finding solutions to the range of challenging issues canvassed, rather it was to recognise the importance of continuing interaction with a view to formulating an informed strategic policy response over time.

With that aim in mind, this final section of the report is, in the view of the rapporteurs, one of the most critical. Outlined below are a number of the recommendations made by the Roundtable's participants, as well as a series of questions that were raised, but not answered, on the day. It is hoped that this section of the report will provide guidance as to the areas that might be usefully focused on in the future.

A priority need for increased information and analysis

The Roundtable recognised that the development of strategic responses to the problems faced in relation to the security of humanitarian personnel requires a comprehensive understanding of security incidents, their causes, and current responses to such incidents.

There is a clear need to try to improve the data available – about the frequency of incidents; the type of humanitarian organisations involved in each incident; correlations between attacks on humanitarian personnel and attacks on other groups such as journalists; statistics comparing deliberate targeting versus cross-fire events; motivations for attacks; responses to security threats and their effectiveness; and measures of accountability (at both the national and international level).

As better data and analysis emerges, attempts to reach a shared understanding of the implications of such information must be engaged in by all stakeholders. This understanding must, in turn, be used to inform those policies and practices aimed at increasing the protection of humanitarian personnel.

A need for self-reflection

The Roundtable identified a need to examine the identity and activities of organisations operating in the 'humanitarian space'. An understanding of the diversity of actors claiming

to wear the humanitarian badge was seen as critical to a specific question of security.

In this context, the majority of Roundtable participants were of the view that the multiplication of 'humanitarian' organisations, and, in particular, the growth of smaller, less professional, organisations, is negatively impacting on the perception, or operating ability, of the sector as a whole. That said, there is a need to unravel the many strands that constitute this assumption: what has caused the proliferation of 'humanitarian' organisations? Can existing 'humanitarian' organisations be neatly divided along the lines of professional/unprofessional, large/small, experienced/inexperienced or is the reality more complex? Is it possible to 'wind back the clock' in terms of limiting the sector's growth or any negative impact caused by proliferation?

A related issue identified by the Roundtable was the need for all humanitarian organisations to re-evaluate their mandate(s) regularly. In every situation, humanitarian organisations should question whether, and how, they can make a positive contribution, without having any negative impact. This is as crucial for smaller, unprofessional organisations that are formed in response to an event, motivated by the desire to do good, but perhaps without a deep understanding of the humanitarian space, as it is for large 'multi-mandated' humanitarian organisations operating in complex environments. The critical question in relation to the former may be whether they are genuinely 'value-adding' at all; in relation to the latter it may be whether their diversity of activities risks sending mixed messages. A further question in this context is whether any identified problems can be alleviated by improved strategic communications that more effectively articulate the mandate(s) of humanitarian organisations and counter misinformation and assumptions, or whether the problem is deeper than an effective communications strategy.

A number of questions relating specifically to security were identified by the Roundtable as requiring further study: is a lack of professionalism one of the reasons for increased security threats faced by humanitarian organisations? Are, for example, existing security measures adequate, but not being properly implemented? At the same time, assumptions regarding increased professionalism must be examined: could increased professionalism create barriers that impede connections with communities? Alternatively, would professional adherence to an acceptance-based security approach guarantee better relations with the communities concerned? What is the best way to manage humanitarian coalitions and networks to best provide a coherent message for communities to understand mandates and objectives?

Based on an assumption that increased professionalism correlates with better security practices, the Roundtable recommended that consideration be given to how regulation of the humanitarian sector could be increased in order to ensure that security risks are minimised, acknowledging that not all humanitarian actors will agree to regulation.

Security practices

While there appears to be an emerging understanding of the reasons for the increased threat faced by humanitarian personnel (changing nature of armed conflict, politicisation of aid etcetera), little consideration appears to have been given to the question of whether these causes can be addressed, or whether they now intractable factors that must be taken into account as part of a humanitarian organisation's operating environment. This is a gap that must be addressed.

In terms of the security practices of humanitarian organisations, the Roundtable considered that it would have benefitted from a better understanding of the impact (if any) of policy and guidance that has been developed to date. Is an effective and ongoing dialogue in relation to best security practises on foot? Are common indicators and benchmarks in the process of being developed? Can lessons learned be transferred from one operating environment to the next? Regardless of whether or not answers to these questions are obvious from the viewpoint of humanitarian organisations, it was considered that there needs to be an increased information flow to other stakeholders who have an important role to play in the protection of humanitarian personnel.

The Roundtable recommended that further study in particular be devoted to the intersection of the protective strategies of acceptance, protection and deterrence. Should these be seen as distinct, and even alternative, strategies? To what extent can they co-exist? In relation to acceptance it was noted that there is a need to better understand the external factors that impact negatively on acceptance so that such impact can be more effectively mitigated.

A final recommendation in relation to the security practices of humanitarian organisations related to the impact of such practices on the provision of humanitarian assistance. Given that humanitarian organisations increasingly cannot operate in all areas, and therefore cannot access certain vulnerable populations, what dangers are created by risk aversion?

A review of the law?

In general, the Roundtable favoured the view that, in the first instance, it was necessary to take steps to enhance the adherence of parties to a conflict to existing IHL, rather than develop new rules.

That said consideration was given to the question of whether there is a need for clarity to be provided in relation to the meaning of 'humanitarian' under the Geneva Conventions and their Additional Protocols, at least in the form of commentary. Value was also seen in considering further whether new rules providing broader protection than the Convention on the Safety of United Nations and Associated Personnel are warranted (either in terms of gaps in existing law or the appropriateness of singling out one category of civilians), and, if so, the prospects of the successful conclusion of such a treaty.

The provision of protection by external stakeholders

While issues associated with the military's provision of protection to humanitarian organisations have been relatively well ventilated, the Roundtable considered that there was a need to continue work in relation to civil-military relations outside the contexts of Afghanistan and Iraq. The Roundtable also identified a need for an ongoing objective assessment of the impact of any 'humanitarian' role played by military forces. While some saw this aspect of the military's role as an important and enduring part of modern operations, other participants questioned the effectiveness of 'hearts and minds' style aid programmes on concerned communities, and noted the negative impact it appears to have on other actors in the 'humanitarian' space. These issues require a deeper understanding and analysis.

By comparison, the role of other governmental actors in relation to protection is under-explored. One specific question raised was whether a duty of care arises from the funding of humanitarian organisations? How would such a duty be fulfilled? What would be the resource implications of the recognition of any sort of duty? Another particularly critical gap in current thinking identified by the Roundtable concerns the role played by the police. How does the work of police affect the security of humanitarian personnel? What actions (if any) can police take to improve humanitarian security?



Israel/Occupied Territories, Qweiwis, south of Hebron, Masafer Yatta zone. Local journalist reports on families whose houses were destroyed.

ICRC/VON TOGGENBURG, Christoph, 14/02/2007

Information exchange

A clear focus of the Roundtable's discussions concerned how the security of humanitarian personnel could be improved by better access to better information. It was recommended that information relevant to security held by civilian or military components of the Government should be declassified, whenever possible. More generally, it was recommended that the military and humanitarian sectors create more opportunities for ongoing dialogue at the strategic through to the tactical level to enhance understandings, as well as cooperation.

It was also agreed that the expertise of academics and think tanks in relation to the historic, geographic and cultural aspects of the situations in which humanitarian organisations operate needs to be captured and better utilised by humanitarian and other organisations.

Reporting from the front line

The Roundtable agreed that there is a need to foster a better awareness of the impact that media reporting can have on the security of humanitarian personnel, both among journalists and humanitarian workers.

Much of the current reporting from conflict situations comes from embedded journalists, thereby limiting the ability of the humanitarian story to be told. The

Roundtable recognised that the media has the ability to shed light on the risks faced by humanitarian personnel and how such risks are (or are not) being managed and that this should be pursued.

Intersecting debates

The Roundtable observed that there is a need to explore the synergies that exist between discussions relating to the protection of humanitarian personnel and the protection of civilians (POC) debate. These concepts are closely linked, but the impact of one upon the other has not been well articulated. 'Protection' is a term increasingly used in peacekeeping contexts, but traditionally it has a different meaning in the humanitarian setting. A greater understanding of the meaning(s) of this term is critical to further developing civil-military relations. Equally important is reaching an understanding of how protection mandates can be more effectively operationalised and the role of the military in relation to the protection of humanitarian personnel when no specific POC mandate exists.

Another relationship needing exploration, or at least explanation, is that between POC and the Responsibility to Protect (R2P). There is a risk that the politics associated with R2P could colour understandings of POC if the distinction between these concepts is not clearly delineated and explained.

CONCLUSION

At the outset of this report it was noted that the primary aim of the Roundtable was to foster a better understanding of issues related to the protection of humanitarian personnel across a broad cross-section of stakeholders that are connected, directly or indirectly, to the humanitarian space, and that its secondary aim was to start a dialogue between those stakeholders, with a view to developing possible responses to the challenges posed. These aims were successfully met. There is much scope, however, for the initial work of the Roundtable to be continued.

The Recommendations section of this report identifies a number of concrete suggestions that could be implemented in the short to medium term. A range of issues that require further study and exploration are also identified. Not all further work needs to be started from scratch – much of it is already underway in one form or another either in Australia or overseas. As our understanding of these

issues evolves, what is critical is for all stakeholders to engage in a continual review of policies and practices, both individually, and as a collective. Much has been done to raise awareness, and to translate such awareness into action – but in order to provide the humanitarian personnel depended upon by so many vulnerable communities with protection much more still needs to be done.

Whilst the participants of this Roundtable were able to engage in the range of theories and debates around how to address these issues, the reality of what it means to have fellow humanitarian workers, friends and colleagues killed was ever-present and central. The future challenge is to be able to address not only on what happens when humanitarian organisations operate in such non-permissive environments, but also that there could be equal and as important repercussions if they do not.