THE PROTECTION OF CIVILIANS
IN ARMED CONFLICTS

WELL-TRODDEN PATHS AND NEW WAYS FORWARD

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Members of the Advisory Council on International Affairs

Members of the Joint Committee on the Protection of Civilians in Armed Conflicts

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Contents

Foreword

In November 2015 the AIV received a request from the Minister of Foreign Affairs for advice on the protection of civilians in armed conflicts. In his request, he refers to shocking forms of violence, attacks that target civilians and a total lack of respect for life and human dignity. In addition, specific groups of civilians (religious minorities, women and girls, LGBTI people, journalists) are the targets of sexual and other forms of violence, torture, kidnapping, forced displacement, and recruitment into armed groups. In most situations the international community does not succeed in protecting civilians effectively. The Minister also observes that a solid normative framework for the protection of civilians (POC) exists, but that its implementation lags far behind. The Minister of Foreign Affairs put the following questions to the AIV:

- How can Dutch policy on POC in relation to conflict prevention be fleshed out further?
- How can the integrated approach be applied and improved to better address POC, with a special focus on the conflict prevention phase?
- Which instruments and channels can the Netherlands utilise to this end, in terms not only of bilateral support and initiatives but also of multilateral and multi-stakeholder cooperation?
- How can the Netherlands contribute to a better response, based on early-warning mechanisms, for instance in the framework of the 'Responsibility to Protect' (R2P), both at intergovernmental level and in specific situations in the field?
- If elected to a non-permanent seat on the UNSC, in what way could the Netherlands add value in the area of POC during its term?

The request for advice emphasises prevention. The AIV has interpreted prevention in two ways, namely as the prevention of conflicts and as the prevention of acts of violence that give rise to casualties among the civilian population. Conflict prevention is appropriate when a conflict is still latent and violence has not yet attained a high level of intensity. The prevention of civilian casualties is relevant both when a conflict is latent and when it has erupted into intense violence. Once a violent conflict has come to an end, there should be few if any casualties among the civilian population caused by violence, but people may still fall victim to the indirect consequences of the conflict, such as hunger or disease. This advisory report focuses primarily on the latent and manifest conflict phases.

The AIV has previously published a number of advisory reports on subjects that are related to the protection of the civilian population in armed conflicts, including the following: 'Employing Private Military Companies' (advisory report no. 59), 'Crisis management operations in fragile states' (advisory report no. 64), 'Transitional Justice' (Advisory report no. 65) and 'The Netherlands and the Responsibility to Protect' (advisory report no. 70). Aspects that have already been dealt with in these earlier advisory reports will at most be touched on briefly here.

To prepare this advisory report, the AIV appointed a joint committee chaired by Professor C.P.M. Cleiren (AIV and Human Rights Committee, CMR). The other members of this committee were D.J. Barth (Peace and Security Committee, CVV), P.C. Feith (CVV), A.P. Hamburger (CMR), Ms M. Schouten (Development Cooperation Committee, COS), Ms E.N. van der Steenhoven (COS) and Ms H.M. Verrijn Stuart (CMR). Ms S. Löwenhardt, L.A.C.M. Slegers, Ms E.K. Spauwen and F. van Pelt acted as civil service liaison officers at

the Ministry of Foreign Affairs. J. Smallenbroek served as executive secretary, assisted by trainees Ms T.J.E. van Rens and P.N. Kaandorp.

The committee spoke to H. Rouw, Program Lead Protection of Civilians at PAX, and to F.M. Koks, Senior Legal Administrative Adviser on International Law at the Ministry of Defence. The AIV is very grateful to them for sharing their insights.

The AIV adopted this advisory report on 1 July 2016.

I Introduction

In this advisory report the AIV will argue that the existing instruments for the protection of the civilian population in armed conflicts are insufficiently effective and that new modalities should be sought. In relation to the existing instruments it concludes that there is insufficient compliance with international law, which is sometimes intentionally violated and even abused. The AIV also concludes that, for many reasons, international military missions do not succeed in providing sufficient protection for the civilian population. This does not mean that these instruments are superfluous – quite the contrary. Efforts should continue to focus on compliance with international law and on improving the functioning of international missions, but this will not suffice to ensure the protection of civilians in conflict areas. There is scope for improving these existing instruments, including practical aspects of Dutch involvement in the protection of civilians. In addition, new modalities must be found. A second point of emphasis in this advisory report, besides the search for new ways forward, is a renewed focus on prevention and conflict mediation.

The subject of this advisory report is both topical and urgent. The conflicts in countries such as Syria, Iraq, Yemen, and Libya have led to unacceptably high numbers of civilian casualties; in besieged cities the warring parties are denying the local population humanitarian aid; and recently there have been attacks on hospitals and schools. There are many other examples of large-scale civilian casualties of violent conflict, including those who suffer from hunger or disease as well as those who are killed or wounded. Entire societies are being destroyed, with people losing all their possessions and being robbed of their livelihoods. They then become dependent on humanitarian aid or are forced to flee. Many leaders, both of states and of non-state armed groups, value power politics and military advantage more highly than human dignity. For them, one human life more or less is of no account. Ideological and religious motives often play a role here, or are used as a justification. States, international organisations, and non-governmental organisations must take responsibility for protecting these civilians. This advisory report explores the legal and political channels through which this can be achieved and the restrictions that must be taken into account.

The protection of civilians is primarily the obligation and responsibility of the state to whose jurisdiction they are subject. However, since this advisory report is addressed to the Dutch government and States General, it adopts a different perspective: it seeks to determine what third countries, international organisations, and non-governmental organisations can do to improve the protection of civilians in conflict countries. In light of this focus, there will be little discussion here of the role played by the parties to conflicts. This must not however be taken to detract in any way from these parties' obligation and responsibility to provide protection to all those who are subject to their jurisdiction. For the same reason, this advisory report will not dwell on the causes or background events leading up to conflicts.

The AIV has dealt with a variety of subjects that are relevant to the theme addressed here in earlier advisory reports. Given the limited compass and perspective of the present report, the AIV cannot deal with all the aspects in these reports that are relevant to the present subject, but will refer to them wherever it is deemed useful.

The advisory report is structured as follows. Chapter II starts by defining and discussing the concept of 'protection of the civilian population in armed conflicts' and distinguishes it from the concept of 'responsibility to protect'. This is followed by a description of the changed nature of armed conflicts: urbanisation, increasing complexity, and the use of social media. There is then a description of the normative framework for the protection of civilians, with an exploration of its scope and limitations for the deployment of diverse instruments. This chapter also discusses the legal basis for the deployment of instruments for POC in armed conflicts in third countries, as well as the limitations of that normative framework. The changed nature of armed conflicts has implications for compliance with, and enforcement of, the normative framework. This chapter concludes by presenting a number of new ways forward with regard to promoting compliance with international law on the protection of the civilian population.

Chapter III deals with a range of instruments, each of which is assessed for political feasibility and effectiveness. This chapter distinguishes between three phases in a conflict: latent conflict, manifest conflict, and post-conflict. This chapter urges the need for policy that places greater emphasis on prevention and examines obstacles that hamper preventive activities. It also analyses the reasons for the limited effectiveness of military missions in protecting the civilian population.

Chapter IV presents the summary, conclusions and recommendations.

II Definitions of protection of the civilian population and legal framework

II.1 Definition of protection of the civilian population

In its request for advice, the government observes that there is not yet any internationally agreed definition of the concept of 'protection of the civilian population'. The same point is made in a memorandum drafted by the UN Secretariat's Department of Peacekeeping Operations (DPKO) and Department of Field Support (DFS).[1] According to that memorandum, troop-contributing countries, member states, the UN Security Council, bodies set up by the UN General Assembly, staff within peace missions, DPKO, and DFS have different – sometimes conflicting – views. DPKO and DFS classify these views in terms of three paradigms. Some of those involved see protection of civilians as a concept encompassing international humanitarian law and human rights law, a view that is sometimes referred to as the 'rights-based approach'. Others see POC as ensuring that civilians are safe from physical harm. A third group see protection of the civilian population as the inherent end result of peacekeeping and therefore believe that it is redundant as a distinct mandated task within UN peace missions.

The lack of international agreement on the definition of the concept of 'protection of the civilian population' reflects the differences of opinion that exist between countries. For instance, China and the Russian Federation accord considerable weight to respect for the national sovereignty of states. They view this concept as a safeguard against undesirable interference in domestic affairs, where action is taken under the guise of humanitarian intervention while the true aim being pursued is regime change. A number of other countries (such as Brazil and Turkey) fear the selective application of the concept of 'protection of the civilian population'.[2]

The present advisory report defines the protection of the civilian population as follows:

- all activities that seek to promote the safety, physical integrity, and dignity of the civilian population, especially of vulnerable groups;
- the prevention of war crimes and other acts of violence against civilians;
- the safeguarding of access to humanitarian aid and the promotion of full respect for the rights of the individual, in accordance with international law, in particular human rights and international humanitarian law.[3]

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1   Draft DPKO/DFS Operational Concept on the Protection of Civilians in United Nations Peacekeeping Operations. See: <http://www.peacekeeping.org.uk/wp-content/uploads/2013/02/100129-DPKO-DFS-POC-Operational-Concept.pdf>, consulted on 14 January 2016.

2   Security Council Report, Cross-Cutting Report on Protection of Civilians in Armed Conflict no. 3, 29 October 2010, pp. 29-30.

3   See also Foreign & Commonwealth Office, research analysts' paper: 'Protection of Civilians: developments since 2009', September 2015. See: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479097/RA_Newsletter_Nov_2015_Protection_of_civilians.pdf>.

The concept of 'protection of the civilian population' applies in the three phases distinguished in this advisory report: latent conflict, manifest conflict, and the post-conflict situation. However, international humanitarian law applies primarily during hostilities – that is, in the phase of manifest conflict. It does not apply until the level of violence has exceeded a certain threshold value.[4] This implies that the term 'civilian' has a different meaning in the manifest conflict phase than in the phases before and after this phase. In the manifest conflict phase, civilians are contrasted with the military (combatants). The distinction between combatants (military personnel) and non-combatants (civilians) is fundamental to international humanitarian law. This law does not apply, however, in the latent or post-conflict phases and the distinction between civilians and combatants is not relevant in those phases. Furthermore, the distinction between civilians (in the sense of non-combatants) and military personnel (combatants) is not in practice a sharp one,[5] for instance because a civilian may temporarily take part in the conflict. At that point in time, the civilian concerned has the status of combatant and is a legitimate military target, but may regain civilian status at a later stage. This blurs the distinction between civilians and combatants. In the latent and post-conflict phases, the 'civilian population' includes all persons who are subject to the jurisdiction of the state.

II.2   The protection of civilians and the 'Responsibility to Protect'

These two concepts are very similar, but there are also important differences. Both have to do with protecting the civilian population from large-scale violence. In this context, both concepts are based on the primary responsibility of the government to protect the civilian population (i.e. all those who are subject to that state's jurisdiction) in its country. The international community plays a secondary role. In both concepts, the central concerns are human dignity and human security, rather than state security. Both require the use of a wide range of instruments, in which foreign intervention with the deployment of military assets is a last resort that is used only when all other instruments have been exhausted.

There are a number of differences. The 'protection of the civilian population' generally refers to the concept of 'protection of the civilian population in armed conflicts' in relation to international law, which consists of rights and obligations primarily incumbent on states (enshrined in international humanitarian law, human rights law and refugee law). The 'Responsibility to Protect' does not consist of rights and obligations, but refers to the responsibilities of states, international organisations, and non-governmental organisations. The Responsibility to Protect is about protecting the population from genocide, war crimes, crimes against humanity, and ethnic cleansing (mass atrocities), whereas 'protection of the civilian population' embraces all forms of human security. In this advisory report, the AIV applies the concept of 'protection of the civilian population' to all three phases of a conflict, including the latent and post-conflict phases. After all, human rights law and refugee law also apply in these phases.

Besides these substantive differences, there is also a difference in terms of political support. The concept of 'protection of the civilian population in armed conflict' is not only firmly rooted in international law, but is also seen as one of the priority tasks of

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4   L. Lijnzaad and M. Zwanenburg, 'Internationaal Humanitair Recht' (International humanitarian law), in
     N. Horbach, R. Lefeber and O. Ribbelink (eds), *Handboek Internationaal Recht,* p. 560.

5   Ibid., pp. 565-571.

UN peace missions, insofar as the mandate of the mission includes the protection of the civilian population. The Responsibility to Protect is also rooted in that law, but it remains a controversial concept. One of the questions about which no consensus exists is whether military intervention on the basis of the Responsibility to Protect principle requires a mandate from the UN Security Council in the case of a humanitarian emergency. The Committee of Inquiry on Iraq observed on this matter that this is still a controversial subject, on which there are as yet no general rules.[6] In its advisory report on the Responsibility to Protect, the AIV emphasised that the use of force in the context of a foreign intervention without UN Security Council authorisation is prohibited under existing international law. Partly on the basis of events in the years leading up to the AIV advisory report, the AIV urged a high level of restraint in this area. In the absence of a Security Council mandate, such intervention could be legitimised on the grounds of an exceptional humanitarian emergency, but this should never be treated as a licence for unauthorised action by third parties.[7] The AIV supports the Netherlands' efforts to achieve the further development of, and political support for, the concept of Responsibility to Protect.

II.3   The nature of modern conflicts: complexity, urbanisation, social media and the role of women

Over the past few decades, conflicts have become more and more complex. In addition, they are increasingly fought in and around cities. These changes have an impact on compliance with international law. Moreover, they have the effect of increasing the degree of involvement and vulnerability of the civilian population. Social media also play an important role in modern conflicts.

The complexity of conflicts has increased sharply. More and more frequently, they involve not only states but also non-state parties, such as armed opposition groups, terrorists, cross-border criminal networks (trafficking in arms, persons, drugs, diamonds) and warlords, who exploit local grievances, some of them legitimate. The wide availability of small arms and ammunition in conflict areas further exacerbates the level of violence. The warring parties sometimes receive military or financial support from foreign governments on account of geopolitical or humanitarian considerations, adding international dimensions to the conflict. Some regular armed forces make use of private military companies. In addition, conflicts may spill over into neighbouring countries, for instance if one of the parties has a base of operations there, thus blurring the distinction between domestic and international conflicts. Many parties use a wide range of weapons (hybrid warfare). Various conflicts are caused by poor governance, for instance if particular population groups are excluded. The political elite may use the state for self-enrichment and it may abuse the security apparatus to maintain its position of power. Consequently, most modern conflicts are multi-layered. In many cases, the hostilities have no clear beginning or end, and periods of violence alternate with periods of relative peace. This growing complexity is an impediment to finding political solutions to conflicts. The complexity of conflicts is further exacerbated by climate

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6   *Rapport Commissie van onderzoek besluitvorming Irak* (Report of the Dutch Committee of Inquiry on the War in Iraq), Boom, Amsterdam, 2010, pp. 268-269.

7   AIV, 'The Netherlands and the Responsibility to Protect', advisory report no. 70, The Hague, June 2010, p. 52. See also A.C.M. Wester, 'Promise and Pitfalls of the Responsibility to Protect and Lessons to be Learned from the Case of Libya', doctoral dissertation, University of Amsterdam.

change. In many parts of the world, climate change will put more pressure on economic, social and political systems, potentially increasing risks that can trigger violent conflicts. In November 2015, the Netherlands hosted an initial conference on the connections between climate change and peace and security; a second conference will take place in November 2016.[8]

Conflicts are increasingly fought in and around cities. By 2030, 60% of the world's population will be living in cities. Of this urban population, 60% will be under 18 years of age. There will be around 40 megacities, most of them in developing countries. As a result of urbanisation and the tensions that may arise within urban areas, the main centres of conflict will increasingly be in urban rather than rural areas.[9] In cities it is difficult to distinguish combatants from non-combatants: combatants may easily blend in with the masses, while non-combatants will want to defend their property. Moreover, any building can serve as a shelter, but it can also be used as a base from which to launch attacks or to set ambushes. This blurs the distinction between dwellings and military objects. Hostilities may come from any direction, producing a confusing situation in which providing humanitarian aid may be a high-risk operation. The use of explosive weapons leads almost inevitably to large numbers of civilian casualties, disproportionate to the military objective. In addition, urban infrastructure may be damaged, potentially disrupting the water and energy supply, for instance. Modern cities soon become uninhabitable in such conditions. The attacking party may lay siege to a city, blocking supplies of military materiel, food, and medical items. Humanitarian aid is often impeded by the warring parties and used as a weapon. The battles for Aleppo in Syria and Fallujah in Iraq are cases in point. Civilians find themselves increasingly at the epicentre of the conflict and are difficult to protect. After the conflict has ended, the cities are in a ravaged state. Repairing devastated houses and urban infrastructure is a prerequisite for the return of refugees and displaced persons, but such repairs are expensive and time-consuming. The traditional military doctrine of urban warfare is obsolete, since it is based on the complete isolation of a city and the complete control of the surrounding area. Urban districts are becoming too large and too complex for this doctrine to be applied. This will change the nature of conflicts fought in and around cities, with as yet unforeseeable consequences for the protection of the civilian population.[10]

A third change is the growing role of social media in conflicts. Social media enable the rapid dissemination of information. As a result, attention can be focused on conflicts and human rights violations can be documented within a short space of time. Social media also facilitate the rapid mobilisation of large groups of civilians. They played this role during the uprisings across the Arab world. Social media create new opportunities for protecting civilians, but at the same time they present new risks.

Social media create new opportunities, partly because civilians and civil society organisations can use them to warn and help each other quickly and on a large scale. People use Facebook and Twitter in Egypt, Libya, Syria and Iraq to alert each other about

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8   See: <http://www.planetarysecurity.nl/>.

9   See: <http://nationalinterest.org/feature/battleground-metropolis-the-future-urban-warfare-12467>.

10 'Megacities and the United States Army: Preparing for a complex and uncertain future', by Chief of Staff of the Army, Strategic Studies Group. See: <https://www.army.mil/e2/c/downloads/351235.pdf>.

concrete threats posed by extremist groups and attacks, sometimes with the aim of mobilising help. In addition, social media are used to put pressure on the warring parties to do their utmost to prevent civilian casualties. Civilians in conflict areas also use social media to inform their relatives elsewhere about their situation or to disseminate information that may be useful to (other) displaced persons and refugees. Social media are particularly useful for women's organisations, since they are far more accessible than traditional media. Women's organisations are frequently unable to make their voices heard through traditional sources, but there are few obstacles to expressing their views on social media.[11]

At the same time, social media also generate new risks for the civilian population in armed conflicts. Parties to a conflict, including states, intimidate civilians through social media in the hope of stifling dissent. In Libya, for instance, women's rights activists taking a stand against extremists on Facebook have received threats on Facebook; and some, like Salwa Bugaighis, have subsequently been murdered.[12] In addition, social media make it possible for states, in particular, to monitor people's views. They can be exploited by the parties to a conflict to track down their critics. They can also be used as a platform for the dissemination of propaganda and misleading information, for instance to mobilise support in other countries. The battle for hearts and minds is an important part of modern warfare. Social media are also sometimes used as a platform to incite hatred and violence, the aim being to further inflame the conflict.[13]

Although in the past women were seen mainly as (potential) victims of violence, we are now seeing women taking an increasingly active role in the protection of civilians – a fourth major change. In Kenya and Somalia they do so by creating informal networks enabling refugees to go into hiding, while in Colombia and Nepal, women have made contact with the warring parties. Women's organisations issue early warnings of increased violence and may mediate between parties. This more active role of women is becoming increasingly visible and is attracting growing recognition. At the same time, however, there is a visible increase in the use of violence against women as a weapon of war. UN Security Council resolution 1325 refers to the different roles that women may play in the various phases of a conflict. It contains guidelines for the ways in which women's involvement must be actively sought in peace processes and in the protection of the civilian population.[14] The resolution was adopted by the UN Security Council, and is therefore binding on all UN member states. For its implementation, the Dutch government, together with a large number of non-governmental organisations, published the National Action Plan on Women, Peace and Security 2016-2019. In a recent letter to the House of Representatives of the States General, the government explained how the relevant UN resolutions on Women, Peace and Security are to be further integrated into

11 See: e.g. <http://www.volkskrant.nl/buitenland/-niemand-luistert-naar-de-syrische-vrouw~a4271202/> (in Dutch).

12 See: <http://edition.cnn.com/2014/06/27/world/africa/libya-salwa-bugaighis/index.html>.

13 See: e.g. <http://www.nrc.nl/next/2016/06/13/online-verspreiden-vooral-de-vrouwen-terreur-1627685> (in Dutch).

14 S/RES/1325 (2000).

the Netherlands' foreign and security policy.[15] The Netherlands' policy on gender and peace and security in the period 2007-2013 was evaluated by the Policy and Operations Evaluation Department (IOB).[16]

II.4   The legal framework: avoiding harm to civilians when conducting hostilities

In the context of the subject of this advisory report, a distinction must be made between the legal framework for individual states and (other) warring parties for the protection of the civilian population that falls within their jurisdiction and the legal framework for interventions by individual states, international organisations, and private organisations to protect the civilian population elsewhere. The former is most notably the obligation of warring parties to respect the physical and mental integrity of the civilian population. This legal framework is clear and scarcely disputed, although in practice compliance is poor. The latter relates to the scope for actors including other states and non-governmental organisations to intervene in cases in which the physical and mental integrity of the civilian population of a country are under threat and the government of the country concerned is unwilling or unable to protect them. The issue here, therefore, is the legal framework that determines when actors may deploy certain instruments to help protect the civilian population in third countries. This question is addressed in the following section.

The first of these two legal frameworks – aimed at the protection of the civilian population by the warring parties – is constituted by international humanitarian law, refugee law, and human rights law. International humanitarian law includes the laws of war and the 1948 Genocide Convention. The laws of war comprise treaty law (such as the four Geneva Conventions of 1949 and the two additional protocols of 1977) and customary law. Hereafter this report will for brevity's sake refer simply to 'international humanitarian law'. At the heart of international humanitarian law is the distinction between military targets on the one hand and civilians and civilian objects on the other. Those who are not (or are no longer) taking part in the armed conflict are not legitimate military targets and should be spared in the conflict. In addition to this principle of distinction, the use of force by and between states is also guided by the principles of proportionality and precaution.[17] The Refugee Convention obliges states to grant asylum to those who have fled from their country 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion'. Refugees may not be expelled to a country in which their lives or freedom would be in jeopardy on any of the said grounds (non-refoulement). The present advisory report barely touches on the refugee problem. In the opinion of the AIV, an adequate treatment of the complex question of the protection of refugees requires and merits separate attention in the form of a more targeted study. Such an approach falls outside the remit of this report. The AIV has chosen to focus in this advisory report on the protection of civilians who are within a conflict area, not on those who have left it. Human rights law encompasses a wide range of rights that may be relevant

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15 House of Representatives of the States General, 26150, no. 150.

16 Policy and Operations Evaluation Department, 'Gender, peace and security. Evaluation of the Netherlands and UN Security Council resolution 1325', IOB Evaluation no. 399.

17 See: AIV/CAVV, 'Autonomous Weapon Systems: the Need for Meaningful Human Control', advisory report no. 97 (AIV) and no. 26 (CAVV), The Hague, October 2015, pp. 23-25.

to the protection of the civilian population in armed conflicts, but it does not apply to the conduct of hostilities. However, human rights law does regulate law enforcement, including in conflict areas.

Articles 6 to 8 of the Rome Statute give precise definitions of genocide, crimes against humanity, and war crimes. With these definitions, the Statute provides a recent confirmation of existing international law, distilling universally recognised definitions of crimes.

Non-state armed groups (and their members) also have an obligation to avoid harm to civilians when conducting hostilities and to respect human rights. However, international humanitarian law for armed conflicts to which at least one of the parties is not a state is more limited than that for armed conflicts between states.[18] In a joint advisory report, the AIV and the Advisory Committee on Issues of Public International Law (CAVV) stated that common article 3 of the Geneva Conventions and Protocol II to these Conventions provide sufficient substantive grounds for these obligations and that situations not covered by them can be addressed by holding individuals criminally liable.[19] Many conventions do not explicitly impose obligations on non-state groups. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict is an exception in this respect. Article 4 of this Protocol forbids non-state armed groups from recruiting children or using them as combatants.

It is becoming more and more common for states to enlist the services of private military companies during armed conflicts. There is nothing in international law that regulates the status of the employees of private military companies. In 2007 the AIV issued an advisory report on the employment of private military companies.

There are still a great many grey areas when it comes to the use of such companies, however.[20] The Montreux Document sets out the obligations that apply to states that hire private military companies, to the states where these companies are established, and to the states in which they are active.[21] The document was the end result of a conference organised by the Swiss government and the International Committee of the Red Cross (ICRC).

II.5 The legal framework for the protection of the civilian population in armed conflicts in third countries

The protection of the civilian population is in the first place the obligation of the state in which the civilians are located. Where a state is unable or unwilling to provide the necessary protection, there is a wide range of instruments that actors (other states, international organisations, non-governmental organisations) can use to exhort or support the state, to put it under pressure or threaten it, or to compel it to protect the civilian population. States have a large measure of freedom in this respect, but certain

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18 Lijnzaad and Zwanenburg, op. cit., pp. 561-562.

19 AIV/CAVV, 'Failing States: A Global Responsibility', advisory report no. 35 (AIV) and no. 14 (CAVV), The Hague, May 2004, p. 21.

20 AIV, 'Employing Private Military Companies: A Question of Responsibility', advisory report no. 59, The Hague, December 2007, pp. 16-17.

21 ICRC, The Montreux Document, Geneva, August 2009.

legal restrictions apply. In addition, some of these instruments can be deployed for the same purpose against non-state armed groups and leaders. If the parties to a conflict continue to be unwilling or unable to protect the civilian population, other actors may take the initiative to do so.

In broad outline, there are two legal restrictions when it comes to relations between states. First, states and other actors must respect the sovereignty of other states and may not, in principle, interfere in the internal affairs of other states (non-intervention). The second restriction is that the use of force is permissible only in exceptional cases. The UN Security Council is competent to authorise exceptions to both these restrictions.

The first restriction, the norm of non-intervention in domestic affairs, constitutes an impediment, in principle, to actors deploying diplomatic, political, economic, legal or in the last resort possibly military means, to resolve many modern conflicts in a third country, since these are generally complex domestic conflicts. On the other hand, states can remind each other of their obligations under international law, such as the Geneva Convention or human rights treaties. Furthermore, sovereignty is not only a norm providing protection from undesirable interference in domestic affairs by other states; it also includes a state's responsibility for the welfare of its civilian population. The second restriction relates to the use of force. In international relations, force may only be used in self-defence in the face of an imminent threat, with a mandate from the UN Security Council, or with the consent of the state where force is to be used.

II.6   Instruments for the protection of the civilian population in armed conflicts in third countries

These restrictions aside, states and other actors have great freedom under the law to exhort or support states, to put them under pressure or threaten them, or to compel them to protect the civilian population. The following paragraphs give a number of examples. These instruments can also be combined and used simultaneously – the so-called 'integrated approach'. This heightens the effectiveness of the individual instruments.

Exhortation may take the form of démarches, which may be made behind the scenes or quite the opposite – that is, widely publicised. Another option is for a state to be exhorted to take action by holding out the prospect of a reward, financial or otherwise. Support may take the form of technical assistance, offers of funding, mediation, economic or military aid, or the secondment of police officers. Non-governmental organisations can also deploy instruments of this kind, in some cases financed by states or international organisations.

States and non-state armed groups and their leaders can be put under pressure through the establishment of an international committee of inquiry by, say, the UN Security Council or the Human Rights Council. Another form of pressure is the publication of statements expressing concern or disapproval, a method frequently employed by the EU, the Human Rights Council and various human rights organisations. Leaders of states and non-state actors can also be put under pressure, for instance, by warning them that their actions may lead to prosecution before the International Criminal Court.

Regulating trade in certain raw materials can block the funding of non-state armed groups or channel a state's revenue in a particular direction. For instance, during the sanctions against Iraq an oil-for-food programme was introduced, which allowed Iraq to

sell a limited quantity of oil, the proceeds from which had to be spent on humanitarian aid for the Iraqi people. Another well-known example is the regulation of the trade in raw diamonds (the Kimberley Process), which aims to prevent non-state armed groups being able to finance their fighting from the illegal diamond trade.

In addition, efforts may be made to force the state to curb the use of force by imposing economic sanctions, targeted sanctions against leaders, or an arms embargo. The UN Security Council can oblige states to take such coercive measures. The EU can adopt sanctions autonomously, either supplemental to or separately from UN sanctions. The legal basis is the Common Foreign and Security Policy (articles 21 to 41 of the Treaty on European Union). The Netherlands has the Sanctions Act 1977, which provides the basis for implementing decisions by the UN Security Council or the EU. Opinion is sharply divided on the effectiveness of imposing economic or financial sanctions to alter a government's behaviour. However, economic or financial sanctions will almost always affect the entire population, a result that is at odds with the protection of the civilian population. Sanctions targeting specific individuals, organisations or companies address this concern, but these sanctions too are held by some to be of limited effectiveness.

Sanctions regimes force companies to restrict their activities in or with certain countries. In addition, companies may decide on their own initiative to restrict their activities in or with a particular country, for instance because they see the risk of large-scale violence as posing a threat to their profit margins. Divestments send a powerful signal to the government of a conflict country.

The effectiveness of some instruments is dependent on cooperation. A single country imposing economic sanctions tends to have little impact; this measure is therefore usually adopted in partnership with other countries. In other cases – providing support, for instance – cooperation with the conflict country itself may be necessary. As regards the other instruments mentioned above, states, international organisations, and non-governmental organisations may adopt these unilaterally. Non-state actors that want to be active in a conflict country will have to deal with a great many legal restrictions, since they will need to adhere to that country's laws.

II.7   Compliance with international law

The growing complexity and urbanisation of conflicts are blurring the distinction between civilians and combatants, which impedes compliance with international law. After all, international humanitarian law presupposes two opposing, hierarchically organised and disciplined armed forces, which are clearly distinguished from the civilian population, a legal distinction that bears almost no relation to present-day reality.

In many cases international law is intentionally violated, abused or even rejected, both by states and by non-state parties to a conflict. Ethnic or religious differences play an important role in many conflicts. From this vantage point, all members of a particular ethnic group or all those who practise a particular religion are potential targets, whether they are civilians or combatants. This was a major factor in the genocide in Rwanda. Another example is Daesh, for whom anyone who is not Sunni is a legitimate target. Daesh essentially rejects international humanitarian law. Sometimes this distinction between civilians and combatants is intentionally obscured by the use of human shields – the forcible placement of persons who enjoy protection under international humanitarian law in or around legitimate targets in order to deter an attack on those targets. In addition, parties to a conflict sometimes take action calculated to increase

civilian casualties, in the knowledge that this will undermine support in Western countries for intervention (especially military intervention).[22]

The intentional violation of international law may be part of the strategy of a warring party, for instance to sow terror, to destroy the cohesion of the local community, or to break resistance. Sexual violence is a much-used tactic. Sexual violence frequently targets women and girls, but may also be used against men. Sexual violence against men is a major taboo in many societies and such incidents are therefore often not recorded. Little is known about the extent, nature or psychosocial consequences of sexual violence against men.[23] The victims of sexual violence (whether male or female) often end up in a difficult position within society. Countering the systematic use of sexual violence is therefore an important task for international missions in conflict countries.

The growing complexity of conflicts, and in particular hybrid warfare, makes it more difficult to establish who is responsible for violations of international law. States can conceal their involvement by using non-state armed groups. Where digital warfare is concerned, attribution is generally problematic. If it cannot be established who is responsible for a violation, there can be no prosecution.

It is a consequence of asymmetrical warfare that the weakest parties can invoke the law before judicial forums in a bid to achieve there what they could not achieve in the unequal armed conflict: they choose this path as a supplementary or alternative instrument. It is not uncommon for interest groups, individuals, and non-governmental organisations that try to use the law against the use of force in armed conflicts to be marginalised and criminalised. The term 'lawfare' is sometimes used in this context, a term with negative connotations, carrying the suggestion that those who invoke the law pose a danger to the national and military interests of states. In particular, states that use the term 'lawfare' in this negative sense make clear by doing so that they have little respect for human rights or humanitarian law and that they experience the non-violent path of the law as an approach that undermines their power.[24]

Sometimes those seeking to provide humanitarian aid are denied access in order to make a siege successful. There is growing recognition that the arbitrary refusal to grant humanitarian access is a violation of international law, for which the state denying such a request is liable.[25] In practice, consent is often given for the provision of humanitarian aid, but administrative obstacles are created to hamper the aid, making it difficult to demonstrate liability.

A specific problem relates to the violations of international law committed by some members of UN peace missions. Many such cases involve sexual abuse. Insufficient

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22 AIV, 'Crisis Management Operations in Fragile States: the Need for a Coherent Approach', advisory report no. 64, The Hague, March 2009, p. 52.

23 See: <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR27/12.pdf>.

24 See: also <http://www.slate.com/articles/news_and_politics/jurisprudence/2005/04/legal_combat.html>.

25 'Strengthening of the coordination of emergency humanitarian assistance of the United Nations', report of the Secretary-General, 17 April 2015, A/70/77 and E/2015/64, p. 12.

(visible) action is taken in response to such abuses. This creates the impression that the civilian and military members of UN peace missions can commit crimes with impunity, which undermines the legitimacy of the UN. The UN put in place a policy on sexual exploitation and abuse in 2003, and in 2015 the Office of Internal Oversight Services of the UN (OIOS) investigated its implementation.[26] It found *inter alia* that accusations of sexual abuse have somewhat declined, that civilian personnel are accused of sexual abuse more often than military personnel, and that the personnel of certain troop-contributing countries are accused far more frequently than those of others. In over one-third (36%) of all allegations made in the period 2008-2013, the victims were minors. The OIOS further observed that the procedures for investigating accusations are too complicated because competencies are divided among many actors and there are wide variations in the sanctions against perpetrators. Victims of sexual abuse seldom receive any compensation. The OIOS's recommendations include streamlining procedures, clarifying certain elements of policy, investigating the ways in which personnel are prepared for missions, and analysing discipline among the contingents of some troop-contributing countries.

II.8   New ways forward

Social media add a new dynamic to conflicts, serving as platforms for informal and ad hoc cooperation. In spite of the new risks they pose, as noted above, they also provide new ways of protecting civilians and new opportunities for civilians to protect themselves. The Netherlands possesses expertise in information and communication technology that can be used in this area.

Since armed groups by definition defy or resist the authority of states, the enforcement of international humanitarian law vis-à-vis non-state parties is extremely problematic. Furthermore, armed groups may not necessarily comply with this legal regime. There is no good mechanism by which to call them to account. Armed groups may have a variety of reasons for not complying with international humanitarian law.[27] In many cases, an armed group is fighting well-organised and well-equipped armed forces. Non-compliance with international humanitarian law enables the group to somewhat offset this military disadvantage. Child soldiers may be deployed to redress an acute shortage of troops. Waging terror may be a way of demonstrating power, as in the case of the Revolutionary United Front in Sierra Leone. In addition, compliance by individual soldiers is contingent on training and where necessary punishment, which some groups are unable or unwilling to administer.

Terrorists and armed groups whose only objective is economic gain have little reason to adhere to humanitarian or other provisions of international law. In fact violating international law may even be part of their strategy, for instance to sow fear or to drive civilians out of areas that are rich in natural resources. In cases like these, appealing

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26 Office of Internal Oversight Services, 'Evaluation of the Enforcement and Remedial Assistance Efforts for Sexual Exploitation and Abuse by the United Nations and Related Personnel in Peacekeeping Operations', 15 May 2015.

27 H. Jo, *Compliant Rebels, Rebel Groups and International Law in World Politics,* Cambridge University Press, 2015, pp. 58-60.

to norms is ineffective.[28] Non-state armed movements pursuing a political objective, such as independence or autonomy, may come to appreciate that they can acquire legitimacy by taking part in a political process and by complying with humanitarian and other provisions of international law. Such a movement may seek to acquire legitimacy in the eyes of states and international organisations, for instance if it aspires to form a government. Alternatively it may seek legitimacy in the eyes of the local population, for instance because it needs their support, or in the eyes of the diaspora, for instance because this diaspora exerts influence on the political and military support that the movement receives from foreign governments. Conducting a dialogue with such a movement may possibly improve its compliance with international humanitarian law. Some non-state armed groups do comply fairly well with international law: the Farabundo Martí National Liberation Front in El Salvador is one such example.

Since non-state actors play an important role in modern conflicts, researchers and non-governmental organisations have explored new ways of improving compliance with international humanitarian law by non-state parties. Non-state armed actors are not party to international conventions, nor are they involved in negotiating them, as a result of which they may not feel bound by international law. It is also possible for non-state armed groups to be unaware of their obligations under international humanitarian law. The non-governmental organisation Geneva Call promotes compliance with international humanitarian norms by armed non-state actors.[29] Since it was founded in 2000, Geneva Call has initiated dialogues with some 90 armed non-state actors. It has developed an innovative mechanism known as a 'Deed of Commitment'. Non-state armed groups that sign up to a Deed of Commitment agree to be bound by specific international humanitarian norms and obligations and to account publicly for their compliance. To date, 49 armed non-state actors have signed the Deed of Commitment against antipersonnel mines, 18 have signed the Deed of Commitment protecting children in armed conflicts, and 16 the Deed of Commitment for the elimination of sexual violence and gender discrimination. This is an innovative way of promoting knowledge of, and compliance with, international law.

Any choice of a strategy for the protection of civilians must be preceded by a good analysis of the motives of the armed movements involved. It is these motives that determine an armed group's willingness to agree on a political compromise and its willingness to comply with humanitarian and other provisions of international law.[30]

28 E. Schmid, 'Re-focusing on protecting civilians' basic safety and why we need to know why people kill: on the latest reports of the Secretary-General on the protection of civilians in armed conflict', *Journal of International Peacekeeping* 13 (2009), pp. 356-382.

29 See: <http://www.genevacall.org>.

30 Schmid, op. cit., p. 369.

III The protection of the civilian population in different phases of a conflict

This chapter discusses a range of instruments that can be deployed for the protection of the civilian population in armed conflicts. The instruments are listed by the phases in which they are applied: latent conflict, manifest conflict, and post-conflict. In practice these three phases are not easy to distinguish, but overlap. A latent conflict can be said to exist when as yet no large-scale violence has broken out, but there may nonetheless be many violent incidents in this phase. In the post-conflict situation, violence has greatly decreased, and a peace agreement has generally been signed. It is possible for the situation in the post-conflict phase to relapse into large-scale violent conflict.

Several considerations are relevant to the process of deciding which instruments to deploy: most notably legitimacy, political feasibility, effectiveness, and the perceptions of the local population. The legitimacy of instruments (i.e, the legal basis) was discussed in the previous chapter. This chapter will examine the political feasibility and the effectiveness of instruments. Another significant factor is the perception of foreign involvement in the eyes of the local population, but this will differ from one case to the next. It is open to question whether members of international missions on the ground are sufficiently aware of the way the local population views their presence. Mission members will likely assume that they are seen as guardians of the peace, but the local population may nonetheless view them in terms of undesirable foreign influence. In practice, members of international political and military missions seldom make analyses of local perceptions of their mission. That perception is influenced in part by the amount of collateral damage caused by the mission and the mission's transparency about such incidents.

III.1   Latent conflict

III.1.1 Early warning
In the latent conflict phase, intelligence gathering is crucial. After all, a good analysis of the conflict is key, and it is important to assess the extent to which tensions are rising and whether there is a risk of violence erupting (early warning). Signals pointing to imminent violence must be noted in good time. There are many potential sources for this. States, international organisations, and non-governmental organisations can all gather intelligence, for instance by sending observers to a country with a latent conflict and by conducting talks with civilians, local organisations and research institutions. Religious leaders may be good sources of information, since they generally know the views of their followers. States frequently already have an embassy that fulfils this information-gathering role. Local networks (which may be informal) – for instance of human rights defenders – are important early warners. Professional organisations of lawyers and journalists are also often quick to pick up signals of this kind. Refugee flows and human rights violations (especially cases in which human rights defenders, journalists and lawyers are facing intimidation or harassment) are indications of rising tensions. Refugees in the diaspora may also serve as an information source. The Human Rights Council has many special rapporteurs, each with a mandate for a specific theme or for a country or region. In addition, the human rights situation in every UN member state is discussed every four years in the Human Rights Council during the Universal Periodic Review. These reports may reveal signs of latent conflict. In practice, international organisations do not have any capacity for intelligence gathering, but are dependent on the intelligence services of member

states. These are sometimes reluctant to share information, owing, for instance, to a desire to protect their sources. A number of research institutions and non-governmental organisations maintain databases with information about latent or active conflicts. The International Crisis Group and the Uppsala Conflict Data Program are well-known examples.

The previous chapter referred to the role of social media in modern conflicts. Since social media are used by both civilians and warring parties, they are a rich source of information. All actors who are trying to prevent and/or manage conflicts can take advantage of this source, to gain insight into local dynamics and to identify the most vulnerable groups. It is a problem, however, that the reliability of such information is sometimes hard to establish, partly because of deliberate misinformation campaigns by parties to a conflict.

In the long term, futures studies can provide insight into the possible development of tensions, for instance if projected population growth is likely to lead to supply shortages. However, notwithstanding the abundance of sources from which information can be garnered, this information is not always combined. It is imperative to also obtain local information and to collate all the information that is received. Furthermore 'early warning' should be swiftly translated into 'early action', something that frequently fails to happen.

The Minister of Foreign Affairs has noted that the challenges that arise in the fields of security and stability do not keep within well-defined geographic borders or thematic boundaries. The Netherlands will therefore focus increasingly on regional cooperation and functions within the diplomatic network. The Minister has also announced the establishment of an early warning unit in order to ensure more proactive identification of signals of destabilisation, and the decision to make additional capacity available to apply the 'integrated approach'.[31] The AIV endorses these additional policy commitments.

III.1.2 Prevention

It is undeniable that states, international organisations, and non-governmental organisations have a responsibility to protect civilians, including those in third countries, from potential large-scale violence: they have a moral responsibility to prevent civilians from being harmed. This is reflected in international law. Thus, the parties to the Genocide Convention (1948) undertake to prevent and to punish genocide. The concepts 'protection of the civilian population' and 'responsibility to protect' also presuppose a responsibility on the part of states, international organisations and non-governmental organisations to prevent large-scale violence against civilians, both in their own countries and elsewhere.

The High-level Independent Panel on Peace Operations (HIPPO) observed that while UN member states have called for a culture of prevention, for instance at the 2005 World Summit, little has come of this endeavour. At the UN Secretary-General's request, HIPPO conducted an evaluation of UN peace operations and issued its report in June 2015. It concluded that the UN and its member states are failing to prevent conflicts. The panel pointed out that in addition to the UN, regional organisations and non-governmental organisations are also developing capabilities for prevention and mediation. The panel

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31 Letter from the Minister of Foreign Affairs to the House of Representatives of the States General regarding Dutch diplomacy, 32734, no. 29, 11 September 2015, p. 2.

urges that prevention and the quest for political solutions be given precedence.[32] Presumably prevention receives so little attention because its effectiveness is difficult to measure and results only become visible after some time has passed. Nonetheless, the AIV believes that prevention is of great importance, partly because it is better to prevent casualties and also because prevention may close the gap between early warning and the deployment of drastic and more costly instruments.

Preventive diplomacy

Preventive diplomacy seeks to achieve agreement in the short term between the parties to a dispute or conflict, with a view to preventing a violent conflict.[33] The activities concerned may include mediation, offering good offices and facilitating talks or reconciliation. Nowadays, international and local non-governmental organisations such as PAX, Sant'Egidio, the Carter Center, the Centre for Humanitarian Dialogue, and the European Institute of Peace also play a considerable role in preventive diplomacy. In addition, local religious leaders may be able to build bridges between religious or ethnic groups if all the parties to a conflict recognise their authority. Preventive diplomacy may also involve sending a political mission. A Mediation Support Unit has been set up within the Department of Political Affairs of the UN Secretariat, which can facilitate mediation and provide advice and technical support to mediation processes in the short term. This unit has a team of standby experts at its disposal.[34] Furthermore, in recent years the UN has set up regional political offices whose tasks include preventive diplomacy.

Keeping communication channels open is essential to preventive diplomacy. In its advisory report, 'The Arab Region, an Uncertain Future', the AIV emphasised the importance of communication. Opportunities for exerting influence are greatest if communication with all parties takes place at an early stage of the conflict, before any violence has erupted. If states or international organisations later have to reverse their policy of excluding certain parties from talks, this creates an extra obstacle to mediation.[35] Contacts between states or international organisations on the one hand and non-state armed groups on the other can be construed as signs of recognition or legitimacy. If a non-state armed group has been defined as a terrorist organisation, states will not want to communicate with it. Non-governmental organisations can play a special role in this situation, since they can mediate between states and the armed opposition without this having political consequences or consequences under international law. An example of this was given in Chapter I: the efforts of Geneva Call to persuade non-state armed groups to comply with certain norms of international humanitarian law. Women's organisations also play an interesting role, as was seen recently in Kenya, Burundi, Sudan, Libya, and Colombia. These organisations – which have which have origins in different groups but share a single overriding purpose – are able to mediate between warring parties. States can help non-governmental organisations to play this role by giving them financial support.

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32 Report of the High-level Independent Panel on Peace Operations on Uniting our Strengths for Peace: Politics, Partnership and People A/70/95 – S/2015/446, sections 62-81.

33 R. Muggah and N. White, 'Is there a preventive action renaissance? The policy and practice of preventive diplomacy and conflict prevention', NOREF report, February 2013, p. 1.

34 See: <http://peacemaker.un.org/mediation-support>.

35 AIV, 'The Arab Region, An Uncertain Future', advisory report no. 79, The Hague, May 2012, pp. 31-32.

Preventive activities have the best chance of success if they are undertaken at an early stage of a latent conflict. If mediators are involved before any violence has taken place, the mediator will have far more room to manoeuvre. Once violence has been used, tensions and conflicts take on a dynamic of their own that is hard to defuse. For instance, parties may be intent on revenge. The second advantage is that early intervention gives a mediator more time to build up a network of contacts and to win the confidence of the parties to the conflict. The mediator will then be able to approach a wide spectrum of actors, such as the parties to the conflict, non-governmental organisations, women's organisations, media representatives and a range of government agencies. The mediator can also try to increase the mutual trust between the parties by taking confidence-building measures, for instance by organising meetings about noncontroversial subjects in a neutral location. Preventive activities require the deployment of highly qualified mediators.[36]

Other factors that may contribute to success are confidentiality (silent diplomacy), preventing loss of face, impartiality, and long-term involvement. The mandate of an international organisation defines the events to which it can respond with initiatives. The UN's mandate is very wide, but in practice the likelihood of opposition from permanent or other members of the UN Security Council imposes restrictions. A restricted mandate (confined to a specific mission) may be an advantage, because in this case a preventive activity implies a less far-reaching violation of the principle of non-intervention and will therefore be more acceptable for the country in question. In this respect, non-governmental organisations sometimes have greater freedom.

The HIPPO report argues that the UN Security Council should be involved at an earlier stage of a latent crisis.[37] According to the American non-governmental organisation Security Council Report, most UN member states actively oppose any discussion in the Security Council of the situation of their country and try to keep it off the agenda.[38] The HIPPO report says the same thing in different words.[39] Silent diplomacy and other forms of confidential international involvement are more politically acceptable to the countries involved than an open discussion in a high-profile body. Conflict countries evidently believe that being discussed in the UN Security Council amounts to being pilloried. It is therefore better to postpone formal notification to the UN Security Council and any discussion in this body until it has become clear that all forms of confidential international involvement will fail.

Conflict prevention
Conflict prevention is about limiting or removing risks that could lead to the outbreak of violent conflict.[40] In other words, it is about long-term structural changes. States, international organisations, and non-governmental organisations may all have a role to play here. Conflict prevention must also include monitoring, as already noted. One

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36 E.F. Babbitt, 'Preventive Diplomacy by Intergovernmental Organizations: Learning from Practice', International Negotiations 17 (2012), pp. 349-388.

37 HIPPO, op. cit., para 72.

38 Security Council Report, 'The Security Council and UN Peace Operations: Reform and Deliver', Research report no. 2, New York, 5 May 2016, p. 5.

39 HIPPO, op. cit., para 73.

40 Muggah and White, op. cit., p. 1.

concrete form it may take is mediation between the parties to the conflict. Facilitating reconciliation is another way of resolving a conflict and preventing it escalating into violence. Sometimes security sector reform or strengthening the rule of law during a latent conflict may contribute to a more inclusive society, thus reducing domestic tensions. Various donors finance programmes of this kind, but generally after a conflict has ended.[41] The AIV believes that it could be helpful to consider programmes of this kind as part of conflict prevention.

Even at an early stage, when a conflict is still latent, the deployment of a military mission can help to protect the civilian population. With this in mind, the African Union authorised the deployment of an African Prevention and Protection Mission in Burundi in December 2015.[42] When President Pierre Nkurunziza announced his intention to amend the Constitution to enable him to serve for a third term, political unrest developed in the country. In the light of Burundi's history, there were fears that this unrest could escalate into a violent conflict. Since Burundi's government opposed the deployment of this mission, however, the African Union scrapped the plan.

Development cooperation can contribute to conflict prevention by removing the causes of a conflict, for instance if these revolve around scarce resources, the supply of which can be increased or regulated. Such efforts will be most effective if the activities are launched before tensions arise, even before the latent conflict stage. Sometimes a conflict can be predicted, for instance as a result of increasing population pressure. Preventing it calls for mitigation measures, which generally take a long time to have the desired effect. Lengthy procedures may mean that funds are not released until the conflict has already broken out. UN development agencies already have a presence in most developing countries, and the EU has regular development and political relations with a great many countries.

The political feasibility and effectiveness of prevention
Preventive diplomacy and conflict prevention by states and international organisations often meet with opposition from conflict states because they amount – virtually by definition – to interference in domestic affairs. After all, most latent conflicts spring from domestic social or political imbalances. Solutions sometimes require interventions in the country's constitution and form of government. Preventive diplomacy and conflict prevention are not technical solutions; the issues are always politically highly sensitive, and this limits the intervention's political feasibility. Intervention by other states or international organisations may therefore be seen as a violation of a country's sovereignty. Since sovereignty includes a state's responsibility to protect the safety of its civilian population, states can hold each other to account in this regard. More proactive forms of preventive diplomacy or conflict prevention can quickly conflict with the non-intervention principle.

The effectiveness of preventive diplomacy and conflict prevention depends – among other things – on the cooperation of all parties to the conflict. After all, mediation without their participation is impossible. Removing the causes of a conflict will generally require measures to be taken within the territory of the state concerned, which cannot be done without that state's cooperation. Those seeking to intervene will probably encounter the least opposition from a conflict country where the mediator's mandate is limited and

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41 AIV, 'Security and Stability in Northern Africa', advisory report no. 101, The Hague, June 2016, p. 43.

42 See: Peace and Security Council of the African Union, PSC/PR/COMM.(DLXV), para 13.

the actions are viewed less as interference in domestic affairs. The degree to which an organisation can address the causes of a latent conflict will also be determined by its mandate. The installation of a small team from the UN Secretariat for about one year in Nepal in 2005 helped to bring about a ceasefire between the government and rebel forces that ended attacks on thousands of civilians. Missions of this kind are acceptable to governments, because they are small, operational for a limited period of time, offer support, and are not so intrusive.[43] It is possible to engage in preventive diplomacy without visibly infringing the sovereignty of states. This can be achieved by working behind the scenes or – within the UN – by adopting a new working method.[44] Preventive diplomacy by foreign non-governmental organisations may be seen as less threatening than state diplomacy, certainly if the organisation operates behind the scenes. But even if all the parties concerned are willing to cooperate with efforts that seek to prevent a conflict, the effectiveness of the preventive action cannot be guaranteed.

If preventive diplomacy and conflict prevention succeed, the result is the *absence* of an armed conflict; in consequence, their effectiveness can scarcely be demonstrated. After all, it is not certain that a conflict would have broken out if no measures had been taken to prevent it. Nonetheless, it is generally accepted that violent conflict in the former Yugoslav Republic of Macedonia was successfully prevented by the UN and the OSCE's High Commissioner on National Minorities until the end of the 1990s, and by the EU and NATO in the years after that.[45] From 1993 onwards the High Commissioner on National Minorities was active in Macedonia to help defuse tensions between Macedonians and the Albanian minority. A UN military mission was active there from 1992 onwards, initially as the United Nations Protection Force and from 1995 to 1999 as the United Nations Preventive Deployment Force. It was partly thanks to these interventions that the country remained outside the wars that raged in the former Yugoslavia and that tensions between Macedonians and the Albanian minority remained manageable.[46] However, in 2001 skirmishes broke out between the Macedonian army and Albanian rebels, leaving approximately 100 people dead and 100,000 displaced. At the end of 2001 peace was restored with the help of the EU and NATO. The government undertook to do more to protect the position of the Albanian minority and the rebels were disarmed.[47] The tensions between these population groups have still not been laid to rest entirely, but they are manageable. Long-term commitment is frequently essential to achieve success with preventive diplomacy and conflict prevention.

43 Report of the Secretary-General's internal review panel on United Nations action in Sri Lanka, November 2012, para 85.

44 Security Council Report, Cross-Cutting Report on the Protection of Civilians in Armed Conflict no. 4, 30 October 2009, p. 3.

45 E.F. Babbitt, 'Preventive Diplomacy by Intergovernmental Organizations: Learning from Practice', International Negotiations 17 (2012), pp. 359 and 362.

46 J. Voorhoeve, 'Veilige gebieden, falen en slagen bij het beschermen van burgers in oorlogstijd' (Safe areas: failure and success in protecting civilians in wartime), Atlas Contact, Amsterdam/Antwerp, 2015, pp. 325-332.

47 Z. Daskalovski, 'The Macedonian Conflict of 2001: Between Successful Diplomacy, Rhetoric and Terror', Studies in Post-Communism, Occasional Paper no. 7, (2004).

The efforts made by the UN together with the OSCE and subsequently by the EU together with NATO illustrate the integrated approach in the latent phase of a conflict. This approach managed to prevent a great deal of human suffering, besides which it was much cheaper than intervention in a violent conflict. In most cases, an integrated approach will not be needed during a latent conflict; instead, it will be sufficient to send a political team, as happened in Nepal. If mediation is successful, this will remove the need to deploy troops.

III.1.3 Other instruments
Conflicts can also be settled by arbitration. This involves parties to conflicts placing their dispute before a panel, which issues a binding decision on the dispute. This is not a customary procedure in intrastate violent conflicts, but states frequently present their disputes to an arbitration panel, for instance under the auspices of the Permanent Court of Arbitration or the International Court of Justice. One of the few examples of arbitration between a state and an armed opposition movement is that concerning the Abbey region. Sudan and the Sudan People's Liberation Movement put their dispute about the borders of Abyei to the Permanent Court of Arbitration in 2008. It should be noted that, aside from responding to requests for an advisory opinion, the International Court of Justice is not competent to hear disputes in which individuals, non-governmental organisations, companies or other private entities are involved, unless a state is prepared to defend their interests before that court. The Permanent Court of Arbitration does possess this competence.

In the phase of latent conflict, coercive measures may be necessary: for instance, sanctions such as the freezing of bank accounts or an arms embargo. Such measures are most effective if they are instituted by all states in concert, for instance on the basis of a decision taken by the UN Security Council.

During a latent conflict, mass atrocities or human rights violations may take place. If the perpetrators are prosecuted by local or international courts in this phase it may reduce the risk of escalation. For the victims, it is seldom possible in practice to seek a remedy before the court. Section III.3 considers remedial action in more depth.

III.2   Manifest conflict

III.2.1 Diplomatic, political, economic and legal instruments
The remarks on preventive diplomacy made in the previous section largely apply in this phase as well. Diplomacy is an important instrument in all phases, but its objective shifts depending on the phase of a conflict. In the latent conflict phase, the objective is prevention. Once violent conflict has broken out, achieving peace takes highest priority. This means launching peace negotiations. Intensive diplomacy is frequently required before peace negotiations can be launched, and substantial diplomatic efforts will also be essential during the negotiations. The parties to a conflict may display a lack of political will, and it is generally not easy to persuade parties to come to the negotiating table. As interim objectives on the path to a comprehensive peace agreement, three subjects must be on the agenda.

1. Ceasefire: a halt to hostilities will reduce the risk of civilian casualties.
2. Humanitarian access for UN agencies and non-governmental organisations: even if hostilities continue, sufficient opportunities must be created for the provision of humanitarian aid by UN agencies, the Red Cross movement, and non-governmental organisations. Negotiations about humanitarian access are in principle separate from

the conflict. The neutrality of these organisations is not always recognised, however, and humanitarian emergencies are used as a weapon.

3. Protection of the population: compliance with international humanitarian law leaves more and more to be desired and must be promoted.

Regional intergovernmental organisations can play a role as mediators, but if neighbouring countries are involved in a conflict, whether openly or covertly, they are likely to be regarded as parties to the conflict and should therefore perhaps be represented as such at the negotiating table. Regional intergovernmental organisations are sometimes dominated by one country, which may also raise questions about their neutrality.

Local communities often engage in activities of their own during an armed conflict to protect their physical integrity.[48] They may do so in three ways. 'Non-engagement' refers to strategies in which civilians have no interaction with the parties to the hostilities, such as fleeing or going into hiding. In the case of 'non-violent engagement', civilians may adopt interactive strategies such as negotiating with the parties to the hostilities, making payments to them, offering their labour, or engaging in peaceful resistance. The third option, 'violent engagement', includes both spontaneous and organised acts of violence by civilians, such as setting up self-defence militias or supporting armed groups, for instance by supplying recruits. These three strategies may be adopted individually or collectively, and all may be in play simultaneously.

Not only warlords but also units of government forces in conflict countries may appropriate some of the proceeds from the illegal extraction of raw materials, as takes place in the Democratic Republic of Congo. The country's instability provides them with the opportunity to extract raw materials illegally, and so prolonging the instability is in their interests. Such appropriation enables warlords to finance their fighting and commanders of regular troops to enrich themselves. Preventing trade in illegally extracted raw materials is one way of curbing violence, hopefully reducing the number of civilian casualties caused by violations of international humanitarian law and human rights. Trade can be regulated by the certification of legally extracted raw materials. Such regulation is politically feasible when pressure builds up as a result of public indignation and/or new legislation. Examples include the certification of diamonds (the Kimberley Process), tin and coltan.[49]

The Netherlands' interventions in armed conflicts are characterised by an integrated approach geared towards the simultaneous attainment of political, military and development goals. Within NATO, 1 (German/Netherlands) Corps has been tasked within NATO to further elaborate the integrated approach. To this end, it and dozens of civilian partners (both governmental and non-governmental organisations) have founded the Common Effort Community. This initiative arose from the conviction that achieving a common civil-military approach involving all the relevant actors in a crisis region is the best way of finding an enduring solution to a complex crisis.[50] These relevant actors

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48 B. Jose and P.A. Medie, 'Understanding Why and How Civilians Resort to Self-Protection in Armed Conflict', International Studies Review (2015) 17, pp. 515-535.

49 For a discussion of the certification of trade in raw materials, see AIV, 'Crime, Corruption and Instability: an Exploratory Report', advisory report no. 85, The Hague, May 2013, pp. 37-44.

50 See: <http://1gnc.org>.

include states, international organisations, international and local non-governmental organisations, and both civilian and military organisations. Furthermore, the approach must be geared towards all phases of the conflict.[51] In its advisory report 'Crisis Management Operations in Fragile States: the Need for a Coherent Approach'[52] the AIV reflected on this approach and formulated recommendations. Since the subject is discussed in that report, it will not be dwelt on in depth in the present context.

III.2.2 The deployment of military missions by international organisations
The limitations of military missions
Every state has an obligation to protect the civilian population in its territory. In practice, there is insufficient compliance with international law, which is sometimes intentionally violated and even abused. This often leads to calls for international intervention. International law does not give states the universal competence to protect civilians in other states, with the exception of consular assistance to their own nationals. If countries are unable or unwilling to protect their civilian population and peaceful remedies have been exhausted, this responsibility often rests on the shoulders of other states and on those of international and non-governmental organisations. The UN Security Council is the only international body in the world that can authorise violence in or against a country, with the exception of self-defence or action taken with the consent of the country concerned. Another advantage of the UN is that virtually all countries belong to the UN. This makes the UN a valuable platform for consultations. Furthermore, the UN can mobilise resources from virtually all countries. Reforming the organisation and procedures of the UN could perhaps make protection more effective, but in-depth reports have been published on these issues, to which the AIV has little to add.[53]

The deployment of military assets can help to protect the civilian population in the wider sense, as defined above, but the success of such actions is not guaranteed. There have been examples of successful deployment, but also of cases in which military missions proved incapable of offering real protection to the civilian population. The deployment of military missions may have a variety of effects. A military mission may protect the civilian population from violence perpetrated by parties to the conflict. In addition, it may create a safe environment in which civilians can engage in economic activities, enabling them to provide for themselves. A mission's effectiveness in protecting the civilian population is generally a key factor in the final verdict on its success or failure. However, an international mission can only protect the civilian population if diverse conditions are met, and even then its role and capacity are limited. These conditions and factors are illuminated in the following paragraphs.

Holt and Taylor refer to the 'broken chain' to explain why the UN Security Council's intentions fail to be translated into effective protection in the field.[54] A mandate from the UN Security Council is the first step in setting up an international mission. Some

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51 See: <http://wo-men.nl/wp-content/uploads/2016/06/Common-Effort-Community.pdf>.

52 AIV, 'Crisis Management Operations in Fragile States: the Need for a Coherent Approach', advisory report no. 64, The Hague, March 2009.

53 See e.g. V. Holt and G. Taylor, 'Protecting Civilians in the Context of UN Peacekeeping Operations', independent study commissioned by DPKO and OCHA, November 2009, and HIPPO, op. cit.

54 Holt and Taylor, op. cit., p. 5.

conflicts that cause large numbers of civilian casualties, however, never feature on the agenda of the UN Security Council. For instance, in the period 1989 to 2012, the UN Security Council did not adopt a single resolution on 10 out of the 25 most violent conflicts (in terms of deaths caused by the violence of war). The UN Security Council has become deeply polarised on the admissibility of measures to protect the civilian population in situations of armed conflict. In addition, its members often disagree on the desirability of international involvement in an armed conflict. Furthermore, the governments of conflict countries quite often object to the subject being placed on the UN Security Council's agenda. After all, discussion in the UN Security Council draws attention to the possibility of a latent conflict in their country erupting into violence. In practice, in many cases the combination of the interests of major powers and concerns about erosion of sovereignty prove stronger than concerns for the humanitarian consequences of a conflict or fear that it may spread to neighbouring countries. As a result, the subject is not put on the UN Security Council's agenda.[55]

Once a subject does appear on its agenda, the UN Security Council's members must agree on a mandate. Power-political considerations may impede agreement on a mandate, as in the case of Syria. The African Union has incorporated into its Constitutive Act principles forming the basis on which African countries may intervene (politically, diplomatically, or militarily) in other African countries, even without those countries' consent. Among regional organisations this is unique, although in practice the principle of non-intervention has remained a dominant force within the African Union as elsewhere, even when faced with a risk of large-scale violence. This is clear from the African Union's response to the crisis in Burundi. The African Union's main challenges continue to lie in the realm of military operations.[56]

Differences of opinion concerning the definition of the protection of the civilian population often impede the unequivocal implementation of a mandate. In the first few decades of the UN's existence, military missions were deployed almost exclusively in conflicts between states, after the conclusion of a peace agreement. In that period, three principles were formulated for the deployment of UN peace missions: the consent of all parties, neutrality, and the use of force only in self-defence or in defence of the mandate. The context in which military missions are deployed today is different, however – namely in complex, domestic conflicts in which no peace deal has been concluded. The mandates of UN missions have therefore evolved and become more robust. In addition, mandates for hybrid missions have been developed, and mandates that lie between Chapter VI and Chapter VII of the UN Charter. Some governments do not want any external interference in a domestic conflict and refuse to consent to a military mission, or do so only under great pressure. A conflict country that has objected to the conflict being placed on the agenda at the UN Security Council will probably also object to the deployment of an international mission. If a military mission takes robust action in the interests of protecting the civilian population from one or more of the parties to the conflict, it may lose its neutrality in the eyes of local parties, as a result of which the mission itself may become one of the warring parties. In these circumstances, the mission itself

55 P. Wallensteen and P. Johansson, 'The UN Security Council: Decisions and Actions', in *The UN Security Council in the 21st Century*, S. von Einsiedel, D.M. Malone, B.S. Ugarte (eds.), Lynne Rienner Publishers, London, 2016, pp. 45-49.

56 AIV, 'Security and Stability in Northern Africa', advisory report no. 101, The Hague, June 2016, pp. 34-35.

then becomes a legitimate military target under international humanitarian law. In this context, the third principle, that violence may be used only for self-defence or in defence of the mandate, also becomes difficult to apply. It is frequently unclear what tasks may be pursued with force within the mandate. In spite of the nature of present-day conflicts, numerous troop-contributing countries continue to adhere to the three traditional principles.[57] Opinion is divided within the UN Security Council concerning the use of force. Some members prefer alternative courses of action. In addition, some troop-contributing countries believe that the use of force poses too great a risk to their troops, while others see the protection of the civilian population as the highest priority.

Owing partly to experience gained in recent decades, the willingness to supply troops has declined among Western countries. It has become clear for example that the capacity of diverse actors to intervene effectively is smaller than previously supposed.

Whether troops actually employ their mandate for the use of force depends in part on the military doctrine of the troop-contributing country and the rules of engagement. Dr Stuart Gordon (Department of International Development, London School of Economics) states that most organisations and countries have not yet succeeded in incorporating the active protection of civilians into their military doctrine. The UN leads the way in this respect, but there the development of doctrines is impeded by differences of opinion among the member states.[58]

The mandate must be translated into rules of engagement: that is, rules for the commander of a military operation that lay down the formal framework for the nature and manner of the use of force. The rules of engagement are not instructions but a framework of powers and limits for the use of force. In international deployments, the rules of engagement are formulated within the framework of the organisation concerned. A troop-contributing country may diverge from the agreed rules of engagement and communicate such differences to the units concerned as supplementary guidelines.[59] Some commanders are more inclined to use their powers to protect the civilian population than others. In its discussions with experts, the AIV has established that the Netherlands' procedure for formulating rules of engagement pays sufficient attention to protecting the civilian population. The same applies to the comparable procedures of the EU and NATO.

The political and legal relations between the UN and the government of the conflict country present the UN with dilemmas if government troops are the source of threats to civilians. The UN is often reluctant to call governments to account for violations of international law out of fear that criticising the government could lead to a loss of humanitarian access; it is more inclined to call non-state parties to the conflict to account.[60] Military action against government troops is a logical step from the perspective

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57 HIPPO, op. cit., sections 124-130.

58 S. Gordon, (2013). 'The Protection of Civilians: An Evolving Paradigm?' *Stability: International Journal of Security and Development.* 2(2), 40, pp. 1-16. See: <http://doi.org/10.5334/sta.cb>.

59 See: <https://www.defensie.nl/downloads/publicaties/2013/11/20/defence-doctrine-en>, pp. 67-68.

60 Report of the Secretary-General's Internal Review Panel on United Nations action in Sri Lanka, November 2012. See: <http://www.un.org/News/dh/infocus/Sri_Lanka/The_Internal_Review_Panel_report_on_Sri_Lanka.pdf>, consulted on 28 January 2016.

of protecting the civilian population, but it is a difficult path to take in terms of the political and legal relations between the UN and the conflict country. One difference between the UN and the African Union on the one hand, and the EU and NATO on the other, is that the former are involved in conflicts in their member states, whereas the EU and NATO generally deploy missions to countries that are not members of the EU or NATO. The UN and the African Union have political and legal relations with the governments of conflict countries that the EU and NATO do not, although the latter two must also respect the sovereignty of other states.

A major obstacle to deploying an international military mission for the physical protection of the civilian population is the limited capacity of international missions in relation to the size of the population and of the country where the mission is deployed. The authority to use force for the protection of the civilian population is generally restricted in the mandate by two additional clauses:
• 'within its capabilities and areas of deployment'; and
• 'under imminent threat of physical violence'.
However, there is no agreement on the meaning of the phrase 'under imminent threat of physical violence'. Furthermore, the mandates of most missions include the words 'all necessary means', which leave a great deal of room for interpretation. Because of these different interpretations, mandates are implemented in different ways. Some troops do not interpret the words as giving them a mission to exert themselves actively for the protection of the civilian population.[61]

Poly-interpretable mandates, unclear operational guidelines, and the discrepancy between mandate and resources significantly limit the protection of civilians by international missions. This can be remedied either by expanding the resources or by formulating a less ambitious mandate, provided these measures do not undermine the protection of the civilian population. The Netherlands should exert itself in the UN to safeguard the quality and practicability of mandates and the consistency between mandate and resources.

The presence of an international military mission arouses high expectations among the local population regarding the protection of civilians. Those expectations are usually impossible to meet because of the mission's limited capacity, and this may undermine its legitimacy in the eyes of the local population. A dialogue with local communities about the protection of the civilian population may moderate their expectations, besides also providing the mission with crucial information. Vulnerable groups are often excluded from such dialogues, and moreover information is often withheld from them, yet men and women often have different protection needs. Therefore, the work of international missions must include taking steps to involve vulnerable groups in the dialogue, so that the mission can take their protection needs into account when planning activities.[62] For instance, if a military mission includes a substantial number of women soldiers, this will make it easier to involve local women in the dialogue about protection needs.

61 Office of Internal Oversight Services, 'Evaluation of the implementation and results of protection of civilians mandates in United Nations peacekeeping operations' (A/68/787), 7 March 2014.

62 'Engaging with Communities', Oxfam briefing paper 141, November 2010. See: <https://www.oxfam.org/sites/www.oxfam.org/files/bp141-engaging-with-communities-221110-en.pdf>, consulted on 14 January 2016.

From this perspective, the presence of gender expertise within a military mission is also important.

There is always a risk, when using force against armed actors who are threatening the civilian population, that this use of force will itself result in civilian casualties. Commanders thus face a difficult choice between preventing future violence against civilians inflicted by the warring parties and the possibility of civilian casualties being caused by the mission's own actions (collateral damage). Reports on any collateral damage caused by international missions should be as transparent as possible. It should be noted that collateral damage does not imply any violation of international law.

President Obama has issued an executive order on measures to address the consequences of the use of force in armed conflicts. In this executive order, Obama states *inter alia* that the United States will investigate incidents involving civilian casualties. The US government will acknowledge its responsibility for the casualties and offer condolences to the victims or their surviving relatives, as well as making *ex gratia* payments. In addition, the United States will publish information every year about civilian casualties resulting from the use of force outside areas of active hostilities. The executive order states that the order does not create international obligations and that no party can derive any rights from it.[63]

The former UN Under-Secretary-General Jean-Marie Guéhenno takes the position that the way to improve the protection of the civilian population is not so much by greatly expanding the numbers of troops but by the sensible use of force. Perceptions of a peacekeeping force are more often formed by local incidents than by major confrontations: one failed operation can undermine the troops' credibility, whereas a small but successful operation may have a very favourable impact. Local commanders have an important role to play here: they must assess the situation rapidly and take due account of its political as well as its military dimensions. Guéhenno points out the relationship that exists between the use of force and political factors. States, international organisations and non-governmental organisations must take responsibility for protecting the civilian population, but the political question is whether this can best be achieved by a victory or through negotiation. It is unwise to eliminate a militarily weak opponent if they enjoy wide political support among the population.[64] The limited capacity of international military missions imposes restrictions for other reasons, too. Before a commander decides to use force, he must assess the risk that the party that has been attacked will exact retribution by carrying out a counterattack on vulnerable military or civilian parts of the international mission. The leadership of commanders in the field, who must decide when to intervene given the political context and limited military capacity, is therefore crucial.

Proposals have been made in the HIPPO report and elsewhere to strengthen the effectiveness of UN missions. The HIPPO report suggests, for instance, setting better priorities in the mandates of UN peace missions and reviewing them regularly. This could make it possible to adjust the priorities in successive mandates for the same conflict

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63 See: <https://www.whitehouse.gov/the-press-office/2016/07/01/executive-order-united-states-policy-pre-and-post-strike-measures>.

64 J-M. Guéhenno, 'Robust Peacekeeping and the Limits of Force', in *The UN Security Council in the 21st Century*, S. von Einsiedel, D.M. Malone, and B.S. Ugarte (eds.), Lynne Rienner Publishers, London, 2016, pp. 373-392.

and to deploy the mission's limited capacity more effectively ('sequenced mandates').
The UN Secretary-General has endorsed this recommendation, partly because reviewing
mandates more frequently would provide more opportunities for consultations with the
host country and troop-contributing countries.[65]

The Kigali Principles[66] were drafted with a view to restoring the 'broken chain'. These
principles call for a stronger commitment to the protection of civilians on the part of
troop-contributing countries. Countries that sign up to the Kigali Principles pledge *inter
alia* to ensure that their troops are well prepared before a mission, not to hesitate to
use force to protect the civilian population, to make materiel available, to identify and
reduce potential threats as early as possible, and to prosecute military personnel who
are suspected of crimes. The first countries to sign up to these principles were Rwanda,
Ethiopia, Italy, the Netherlands, Uruguay, Sri Lanka, and Uganda. As of 12 May 2016,
28 UN member states had endorsed the Kigali Principles, including 21 countries that
contribute troops or police officers to UN missions. In May 2016 the United States also
endorsed the Kigali Principles, which may encourage other countries to follow suit. The
AIV considers it important for the Netherlands to keep working to actively promote these
principles.

Creating safe areas
Safe areas can be created in one of two ways. A safe area can be designated on the
basis of an agreement between the warring parties and then completely demilitarised.
A written agreement would appear difficult to achieve, however, in a region in which
numerous parties are engaged in conflict, as is the case in Syria. Creating designated
safe areas through negotiations between the warring parties would appear most feasible
if these areas are intended to provide protection for supporters of all parties. There
would then be shared interests. This method is contingent on sufficient trust existing
between the parties, a condition that is seldom fulfilled in armed conflicts.

Another method of creating safe areas is by maintaining a credible deterrent, whereby
the parties must be shown that sufficient determination and resources exist to maintain
an enclave in enemy territory. Successful examples include Operation Provide Comfort
and the designation of two no-fly zones above Iraq after the 1991 Gulf War with the aim
of protecting the Kurdish and Shi'ite populations.[67]

Creating safe areas can easily lead to false expectations, however. Civilians may leave
their homes in the hope that they will be better protected in the safe area than at
home. In consequence, extremely large concentrations of civilians may mass together,
protected by a relatively small number of military personnel. This concentration of
civilians can then become a target. A recent example is the protection zones established
by the United Nations Mission in the Republic of South Sudan. In February 2016 one of
these zones in Malakal was attacked, and a large part of the camp, in which members of

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65 'The future of United Nations peace operations: implementation of the recommendations of the High-
   level Independent Panel on Peace Operations', report of the Secretary-General, A/70/357-S/2015/682,
   sections 57-60.

66 See: <http://civilianprotection.rw/wp-content/uploads/2015/09/REPORT_PoC_conference_Long-version.
   pdf>.

67 See: e.g. <http://www.kvbk-cultureelerfgoed.nl/MS_PDF/1992/1992-0071-01-0025.PDF> (in Dutch).

the Shilluk population were sheltering, was destroyed. Parts of the camp in which other population groups were sheltering were left virtually untouched. Lessons can be learned from past experience concerning best practices in creating safe areas.[68]

III.3   Post-conflict

This advisory report devotes relatively little attention to the post-conflict phase because the request for advice emphasises prevention. What is more, the AIV has dwelt at length on different aspects of the post-conflict phase in its advisory reports 'Crisis management operations in fragile states'[69] and 'Transitional Justice'.[70]

In the post-conflict phase, diplomacy focuses primarily on the goal of launching peace talks. These talks generally lay the foundations for reforms in society and in governance. It is important that women participate in peace talks, so as to ensure that their voices are heard. Women's experiences both before and during the armed conflict will generally be different from those of men: while men are fighting, women necessarily take over their economic tasks and other roles. In general, those killed in fighting are men, while women are more frequently victims of human rights violations, hunger, disease, and other indirect consequences of the fighting. This also means that women perceive security differently – a conceptualisation closer to the notion of human security. In other words, women often have a different perspective concerning what would be a desirable outcome, and may therefore play a different – and distinctive – role at the negotiating table.

The government of a country is responsible for the safety and dignity of its civilian population and may be supported in this task by an international mission. In practice, the governments of post-conflict countries prove incapable of living up to this responsibility. Their state institutions are generally debilitated or even absent. The long-term involvement of the UN or another international organisation is a prerequisite for achieving stability and for promoting democracy and the rule of law. Assessing when a government has built up the necessary capacity for the effective protection of the civilian population is not easy, but it is crucial to deciding when an international mission can withdraw from the country.

In December 2005 the UN set up the Peacebuilding Commission, a body whose remit is to advise post-conflict countries. This Commission functions with some difficulty, partly because of the great political challenges that often accompany the post-conflict phase. There is also a Peacebuilding Fund, which suffers from a lack of financial resources.

Once a conflict has ended, the main way to assure the protection of the civilian population is by creating a safe environment. Instruments that can play an important role in this regard include demobilisation, disarmament and reintegration; security sector reform; and strengthening the rule of law. The aim of such activities should be to prevent any further civilian casualties resulting from violence and to ensure that civilians' rights

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68 See: e.g. Voorhoeve, op. cit.

69 AIV, 'Crisis Management Operations in Fragile States: the Need for a Coherent Approach', advisory report no. 64, The Hague, March 2009.

70 AIV/CAVV, 'Transitional Justice: Justice and Peace in Situations of Transition', advisory report no. 65 (AIV) and no. 19 (CAVV), The Hague, April 2009.

are respected. In practice, however, acts of violence frequently continue to occur and the transition from conflict to post-conflict tends to be more fluid than sharp.

The role of an international mission in this phase is in part to support the armed forces and the police of the host country (strengthening the rule of law and reforming the security sector) and thus contribute to the protection of the civilian population, but not to protect the civilian population itself. If government troops pose a threat to the public or to certain population groups, this creates tension between two parts of the international mission's mandate – namely, the protection of the civilian population and the support of the local armed forces and the police. The mission has to act as the government's watchdog at the same time as serving as its partner. In South Sudan and the Democratic Republic of the Congo, for instance, this tension continues to make itself felt. In spite of the peace agreements that have been concluded, it is impossible to speak of a post-conflict situation in these countries, since hostilities between the different parties are still ongoing.

This is also the phase in which the causes of the conflict must be removed and social tensions reduced. Reconciliation, restoring cohesion, coming to terms with the past, punishing war criminals and building up inclusive institutions are important in this connection.

In this phase, activities are most likely to have a lasting effect if they are initiated and implemented by the former parties to the conflict, which thereby signal their political commitment to these measures. In practice, the state is generally weak after a conflict. The long-term involvement of other states and of international and non-governmental organisations is necessary to prevent countries slipping back into armed conflict. Gaining the government's consent is therefore essential. If the state withholds its consent, there is a risk of protracted instability, as in the case of Libya. Examples of successful post-conflict UN interventions are the missions carried out in Timor-Leste and Kosovo. In both these cases the UN itself set up a transitional administration to prepare these territories for their future status as independent states.

Once a conflict has ended, remedial measures (reparations) can promote an enduring peace.[71] After all, making reparations can help to close a chapter in the territory's history. The law governing remedial measures for victims is an area of international law that is not yet well developed. According to the ICRC, there is a norm of international customary law that prescribes that states which are liable for violations of international humanitarian law must make reparations to the victims.[72] This norm theoretically also applies to armed non-state actors, but is extremely difficult to enforce in their case. A similar norm is also being developed for commercial companies. In 2005 the UN General Assembly adopted a resolution laying down 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law'.[73] In this resolution, the UN General Assembly states that victims have a right to

71 For a discussion of remedial measures, see: <http://www.ohchr.org/Documents/Publications/ ReparationsProgrammes.pdf>.

72 British Institute of International and Comparative Law, seminar on New Developments in the Law of Reparations, 28 January 2014, London. See: <http://www.biicl.org/research-reparations>.

73 Annex to Resolution A/RES/60/147, also known as the Van Boven/Bassiouni principles.

reparations and provides guidelines for the way in which this right can be enforced at national level. Although the norm that victims have a right to reparations is gradually gaining acceptance at international level, the scope for victims to actually hold states to account under national law is very limited. The same applies in relation to the UN, partlybecause the UN enjoys immunity. In consequence, very few examples exist of victims who have obtained reparations.

The AIV and CAVV also note in their advisory report on Transitional Justice that reparations frequently receive too little attention in post-conflict situations. Reparations may be material and/or symbolic, and may be granted individually and/or collectively. They include acts of restitution – restoring an earlier situation, for instance by releasing persons from captivity, restoring civil rights or restitution in the form of property – and diverse kinds of compensation and rehabilitation. Other kinds of reparations may include an official apology or a commemorative monument. Reparations may thus assume many different forms and may be institutionally embedded in a variety of ways. For instance, they may be incorporated into a peace agreement, or institutionalised in national legislation or in a national commission. In their report the AIV and CAVV express a preference for collective reparations, such as the building of a new school for a stricken community. Individual measures may generate tension within a community if the perception arises that certain groups are receiving preferential treatment. The perspective of victims must play an important role here. Donors should be more willing to contribute to such remedies, partly to prevent measures that have been announced proving a major disappointment to the victims. In this context, it should be noted that the International Criminal Court takes the view that property and assets should be seized at an early stage, so that they can be used following a conviction to give financial compensation to victims. However, the Court is dependent on states and on international cooperation to effect such seizure.[74] The legislation of the Netherlands and the EU (and that of many other countries) do not as yet provide any scope for this. The AIV's advisory report on Transitional Justice concludes that contextual factors determine the specific form of remedial measures that is chosen.

Punishing the perpetrators of war crimes serves many objectives, including helping to achieving closure about the past. The International Criminal Court, international tribunals, and national forms of justice have important roles to play here. A salient example is the special court in Senegal that convicted the former dictator of Chad, Hissène Habré, of war crimes in May 2016. This was the first time that a former African head of state had ever been convicted by a national court in another country. The possibility of punishment is an important element in the fight against impunity, and may be of great value with a view to prevention, reparations, restoration, and maintaining peace.

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74 Annex I, para. 137 to ICC, 17-03-2006, ICC-01/04-01/06-37 (The Prosecutor v Thomas Lubanga Dyilo) and article 75(4) in conjunction with article 93(1)(k) of the Rome Statute.

IV Summary, conclusions and recommendations

The subject of this advisory report is both topical and urgent. Entire societies that until recently were relatively prosperous are being disrupted or destroyed. People are losing their lives, becoming disabled, losing their livelihoods, or being displaced. This causes untold human suffering. States, international organisations and non-governmental organisations irrefutably have a responsibility to protect civilians, including those in third countries, from large-scale violence. In the first place this is the obligation of the state in which these people are located and of the non-state armed groups that are active there. This advisory report is not about their obligations or options as regards protecting the civilian population, but about the means at the disposal of other states, international organisations, and non-governmental organisations to fulfil this moral imperative when states and non-state armed groups prove unwilling or unable to fulfil their duties.

This advisory report has argued that the existing instruments for the protection of the civilian population are insufficiently effective, partly as a result of the changed nature of armed conflicts. The numbers of civilian casualties in armed conflicts are unacceptably high, in spite of the existence of a solid normative framework, consisting of international humanitarian law, human rights law, and refugee law. There is insufficient compliance with international law, which is sometimes intentionally violated and even abused. International missions do not achieve sufficient success in fulfilling their mandates for the protection of civilians. In short, there is a gap between objectives and results achieved. On the one hand, the existing instruments must be improved, while on the other hand new avenues need to be explored to provide better protection to civilians during armed conflicts. This advisory report examines what third countries, international organisations and non-governmental organisations can do to promote the protection of the civilian population in conflict countries. It pays particular attention to prevention and conflict mediation. The report gives examples of ways in which existing instruments can be improved and suggests new ways forward: using social media to alert civilians, implementing the Kigali Principles to improve the fulfilment of international missions' mandates, and persuading non-state armed groups to agree to be bound by international law by getting them to sign Deeds of Commitment. In addition, the AIV concludes that too little is being invested in the prevention of armed conflicts. In this connection it is important to seek out methods that imply less visible intervention in domestic affairs, creating a better balance between the principle of non-intervention and the responsibilities of states, international organisations and non-governmental organisations to protect the civilian population in third countries.

These actors have a moral imperative to take responsibility for preventing large-scale violence against the civilian population in their own and other countries. International law reflects this moral imperative.

Recommendation 1: The Netherlands should encourage international debate on the need to take responsibility to prevent conflicts, both nationally and internationally.

Definition of protection of the civilian population and demarcation from the Responsibility to Protect

At international level no agreement has yet been reached on a definition of protection of the civilian population. In this advisory report, 'protection of the civilian population' is

defined as follows: all activities geared towards promoting the safety, physical integrity, and dignity of the civilian population, in particular of vulnerable groups; prevention of war crimes and other acts of violence against civilians; safeguarding humanitarian access, and promoting full respect for the rights of the individual, in accordance with international law, in particular human rights and international humanitarian law. In Chapter II, the concept 'protection of the civilian population' is distinguished from the concept of 'responsibility to protect'.

The present advisory report defines the civilian population as all those who are subject to the jurisdiction of a state, with the exception of combatants during an armed conflict. The distinction between civilians and combatants is essential to international humanitarian law, which applies only during a violent armed conflict. The situation of refugees has not been considered here. The advisory report focuses on the civilian population within conflict areas. A proper consideration of the problem of the protection of refugees would require, and indeed merits, a separate study, which could not be carried out within the scope of this advisory report.

The nature of modern conflicts: complexity and urbanisation
The nature of conflicts has been transformed over the past few decades. Modern conflicts are generally complex domestic conflicts. Nonetheless, they frequently have international dimensions. They are complex because they involve a whole range of different actors and are frequently multi-layered. In addition, conflicts are fought out more and more frequently in and around cities. The distinction between civilians and combatants, which is the organising principle of international humanitarian law, has become blurred as a result of these developments. Sometimes combatants deliberately seek to avoid distinguishing themselves from civilians. Furthermore, compliance with the law is very unsatisfactory, both by states and by movements such as Daesh, for instance, which place themselves outside the legal order or even abuse international law. This limits the effectiveness of the provisions of international law that apply to the protection of civilians in armed conflicts. In addition, these developments exacerbate the vulnerability of civilians. The legal frameworks are not sufficiently attuned to the nature and complexity of the conflicts, and both political efforts and capacity for protection have proven inadequate. There is therefore a considerable gap between the objective of protecting the civilian population and reality. Academics and non-governmental organisations are searching for new ways to promote compliance with international law by non-state armed groups. Analysis of the underlying reasons for attacks on civilians by parties to a conflict will benefit efforts to tackle the problem. In addition, non-governmental organisations are making agreements with non-state armed groups regarding compliance with international law and the monitoring of this compliance.

Given that the causes and symptoms of complex crises are closely interrelated, an integrated approach is essential at every phase of crisis management. For the prevention of conflicts during an armed conflict, and in the post-conflict phase, a range of instruments must be deployed cohesively and simultaneously. States, international organisations and non-governmental organisations each have their own comparative advantages and can therefore supplement each other. The distinction between relations with states and those with armed non-state parties is important. For instance, non-governmental organisations are subject to fewer political and legal restrictions in their communications with armed non-state actors. They can play a specific role in mediation in all phases of a conflict. This advisory report has named several examples of non-governmental organisations that fulfil such a role: Geneva Call, PAX, Sant'Egidio, the Carter Center, the Centre for Humanitarian Dialogue and the European Institute of

Peace. Dialogue with local civil society and other organisations is key to making an adequate analysis of the conflict and to gaining a good picture of perceptions among the local population regarding international involvement. Which actors and instruments should play a more or less prominent role in this regard will depend on the specific context.

Recommendation 2: The Netherlands should make more use of the comparative advantages of non-governmental organisations and make the necessary funding available to do so. The Netherlands should support organisations that maintain open communication channels with as many parties to a conflict as possible, so as to be able to inform non-state armed groups of their obligations under international law regarding the protection of the civilian population, to encourage them to pledge to be bound by that international law, and to be able to call them to account for any non-compliance with these norms.

Social media present new opportunities and at the same time create new risks for the protection of civilians. Numerous ad hoc informal partnerships are being set up on social media for this purpose. The Netherlands possesses expertise in information and communications technology, which can be used for this purpose.

Recommendation 3: Where human rights defenders who use social media are subjected to real threats, the Dutch government should support them by actively contributing to the deployment of expertise.

The issue of protecting civilians in armed conflicts is relevant to many other subject areas: refugees, humanitarian aid, military interventions, the causes of conflicts, the role and status of non-state armed groups, and so on. A separate advisory report could be devoted to each one of these areas. The AIV is willing and indeed intends to study a number of these areas in the near future.

The legal framework
The legal framework for individual states and (other) warring parties to protect the civilian population that is subject to their jurisdiction is clear and is scarcely disputed, despite the serious shortcomings in compliance. This framework is made up of international humanitarian law, refugee law and human rights law. International humanitarian law centres on the distinction between military targets on the one hand and civilians and civilian objects on the other. Non-state armed groups, private military companies and other companies also have an obligation to avoid harm to the civilian population during hostilities and to respect human rights, although the relevant legal framework for these actors is less well-developed than for states. International humanitarian law applies during an armed conflict. Human rights law and refugee law also apply during the latent-conflict and post-conflict phases.

The protection of the civilian population is in the first place the obligation of the state in which they are located. Where this state is unwilling or unable to provide the necessary protection, there is a wide range of instruments that other actors can deploy to exhort or support the state, to put it under pressure or threaten it, or to compel the state to protect civilians. Furthermore, a number of these instruments can be used for the same objectives vis-à-vis non-state armed groups and leaders. The deployment of these instruments is subject to two main legal restrictions. States may not interfere in the internal affairs of another state, although states may remind each other of the obligations they have entered into, for instance in the framework of human rights conventions. Furthermore, states can call each other to account regarding their

obligation to protect the civilian population, given that this is an aspect of sovereignty. The second restriction is that the use of force is admissible only in exceptional cases. The UN Security Council is competent to authorise exceptions to both these restrictions. These restrictions aside, states and other actors have considerable legal licence to exhort or support states, to put them under pressure or threaten them, or to compel them to protect the civilian population. If the parties to a conflict remain unable or unwilling to protect the civilian population, other states, international organisations or non-state actors can themselves take initiatives to protect the civilian population. Resolution 1325 of the UN Security Council contains guidelines for the role that women can play in the activities developed by states to prevent, control and resolve conflicts.

Recommendation 4: Violence against the civilian population is often encouraged, committed or permitted by leaders of parties to an armed conflict. In all phases of a conflict, international bodies (the UN, the Human Rights Council, the EU, the Council of Europe, the OSCE, the African Union) should do more to remind the leaders of parties to armed conflicts of their responsibilities under international law regarding the protection of the civilian population and to warn them that they may be called to account for their actions in due course, whether at national level or before the International Criminal Court or another international tribunal. The Netherlands should set an example in this regard.

Latent conflicts
To prevent a latent conflict erupting into violence, gathering intelligence on events on the ground is essential. There is generally no lack of information; rather, information is dispersed among many sources and actors. There are many public sources from which signals can be picked up regarding latent conflicts, such as the local population, refugees in the diaspora, local media, reports issued by local and other civil society organisations, and documents issued by the Human Rights Council. Social media play an ever greater role in modern conflicts and thus contain a wealth of information that could be exploited to better effect. Flows of displaced people and refugees are also a clear indicator of growing tensions. In addition, states have embassies and intelligence services at their disposal that fulfil this information-gathering role. International organisations are dependent on member states to gather secret information. It is important to dismantle existing barriers that hamper exchanges of available information among partners. Existing databases maintained by academic institutions and non-governmental organisations can be used to create an annual monitor of latent conflicts. The European Commission could ask a number of institutions to contribute to the preparation of an annual monitor for the Foreign Affairs Council. In practice, latent conflicts are not always placed on the agendas of such bodies, and an annual monitor could help to institutionalise such inclusion. Within the EU, this could assume a form comparable to that of the financial-economic semester. This would emphasise the urgency of these issues and create political pressure for international involvement. Efforts could likewise be made to achieve the systematic inclusion of latent conflicts on the agenda within the UN.

Recommendation 5: The Netherlands, together with other countries, should encourage international organisations and non-governmental organisations to keep existing databases of latent conflicts up to date and exploit them to maximum effect as a basis for a cohesive strategy to prevent latent conflicts erupting into full-scale violence. Following on from this, the Netherlands should promote the systematic inclusion of latent conflicts on the agenda within the EU and the UN.

Many regional organisations and non-governmental organisations develop capabilities

for conflict prevention. Prevention can ward off a great deal of human suffering and is considerably less costly than deploying an international mission during an armed conflict. The scope for influencing parties to a conflict is greatest when the conflict has not yet erupted into full-scale violence. The AIV believes that more effort should be invested in preventive diplomacy and conflict prevention.

Preventive diplomacy seeks to forge agreement in the short term between parties to a dispute or conflict, with a view to preventing the outbreak of violent conflict. Conflict prevention is about reducing or eliminating risks that could lead to the outbreak of a violent conflict.

During a latent conflict, there is a tension between the protection of the civilian population on the one hand and the principle of non-intervention in domestic affairs (sovereignty) on the other. The threats to the civilian population often relate to domestic tensions, and so the involvement of foreign actors will almost always amount to interference in domestic affairs.

Because of this tension, preventive diplomacy is at its most effective when it takes place confidentially, behind the scenes. It is therefore advisable to leave such activities to mediators acting on behalf of an international organisation. Specific preventive activities should preferably not feature on the agenda of an international organisation, since this would be a breach of confidentiality. Most international organisations' instruments for preventive diplomacy are as yet underdeveloped and underfunded. Maintaining open communication channels with the warring parties is essential to effective efforts in this area. Preventive diplomacy is contingent on the long-term commitment of highly qualified negotiators.

Conflict prevention may assume many forms, such as development cooperation, the preventive deployment of a military mission, arbitration, coercive measures (e.g. an arms embargo), the prosecution of perpetrators, the strengthening of the rule of law, and security sector reform. Climate change and trade in illegal small arms are factors that can aggravate conflict. Efforts to combat them can support conflict prevention.

Recommendation 6: The Netherlands should encourage international organisations to make a larger share of their regular financial resources available to develop autonomous initiatives for preventive diplomacy and conflict prevention. In addition, the Netherlands should itself help shape this emphasis on preventive diplomacy and conflict prevention by making contributions to international organisations and non-governmental organisations that are earmarked for this specific purpose.

Manifest conflicts
If a conflict erupts into violence, efforts to achieve peace enjoy the highest priority. The warring parties must be brought together as soon as possible with the aim of achieving a ceasefire and making agreements about humanitarian access and the protection of the civilian population. In this phase, the warring parties can be put under pressure, for instance by cutting off their financing or by imposing an arms embargo.

In a violent conflict it is imperative to consider not only the (limited) resources of governments but also the independent role of civil society. Non-governmental organisations in the Netherlands and in conflict regions work in close partnership, particularly in times of conflict. Local groups work together with Dutch organisations to move population groups rapidly to places of safety (as happened in Burundi, Libya, Yemen and Syria, for instance),

to launch negotiations with the warring parties, and to safeguard local communications structures. Here too, the integrated approach is crucial: civil society organisations play an important role in the protection of civilians.

In principle, the only way to legitimise intervention by other states and actors in a conflict country is to obtain a mandate from the UN Security Council. In practice, there are many obstacles to obtaining such a mandate and translating it into the effective protection of the civilian population. These include geopolitical considerations, the need for the consent of the conflict country, a lack of willingness to call conflict countries to account for violations of international humanitarian law, the limited capacity of military missions, differences between troop-contributing countries in their willingness to use force for the protection of the civilian population or to place themselves at risk, and the impact on the peace process. The Kigali Principles, to which the Netherlands is one of the signatory countries, were formulated to overcome these obstacles.

International military missions are modest in size compared with the size of conflict countries and their populations. It is not feasible, either politically or financially, to deploy enough troops to give adequate protection to the entire civilian population in all conflict regions. Troop-contributing countries can increase the effectiveness of their efforts by training and conducting exercises together. In addition, political opinion is divided as to the ways in which mandates should be translated into the protection of the civilian population on the ground. International military missions must use force with restraint. Besides stepping up financial and political efforts in the areas of preventive diplomacy and conflict prevention, it is also imperative to actively explore what new concepts, instruments and flexible partnerships could be used to protect the civilian population during modern conflicts.

The three traditional principles for the deployment of UN peace missions are: the consent of the warring parties, impartiality and the limited use of force. These principles are difficult to apply in complex domestic conflicts, but various troop-contributing countries nonetheless adhere to them. This results in unclear mandates, differences of opinion concerning the definition of 'protection of the civilian population' and a reluctance to take action to protect civilians. It should be noted that a shift can be traced in the practice of UN peace missions over the past 15 to 20 years away from typical Chapter VI operations towards operations based on so-called mixed mandates (Chapters VI and VII). Operations under Chapter VII permit more robust military action.

The needs of the local population should serve as a key point of departure when planning activities relating to the physical protection of the civilian population on the ground. To this end, consultations must be held with the local population (including vulnerable groups, since they will have specific needs). Holding such consultations will increase the effectiveness of protection and will create realistic expectations among the local population.

The advisory report notes that military doctrines for the protection of the civilian population are as yet poorly developed, that mandates and rules of engagement provide sufficient scope for the protection of the civilian population, but that the capacity of international missions is generally insufficient for the proper performance of all the tasks in their mandates. The Kigali Principles call on countries to make the necessary resources available to bridge the gap between mandate and resources. The AIV wholeheartedly supports the pioneering role that the Netherlands and Rwanda have taken in this regard. Another way of bridging the gap between mandate and resources

is by adopting sequenced mandates to make them less ambitious. In practice, the leadership of mission commanders plays a crucial role.

Recommendation 7: The Netherlands should provide active support to troop-contributing countries, where necessary or desirable, to ensure that they are well prepared before taking part in military missions seeking to protect the civilian population. This could take the form of offering training sessions for military commanders and if necessary also for other members of international missions. The effective deployment of military assets could be further improved by troop-contributing countries undertaking joint training and exercises. The Netherlands should play a leading role in promoting this.

Post-conflict phase
In this phase, attention will focus *inter alia* on removing the causes of the conflict, demobilising and reintegrating troops, reforming the security sector, undertaking efforts to achieve reconciliation and bringing war criminals to justice.

After a peace agreement or ceasefire has been concluded, the hostilities should come to an end. In practice, however, the violence of war continues to pose a risk to the civilian population in the post-conflict phase. The state's monopoly on the use of force often continues to be challenged and institutions are weak. If government troops are among those guilty of violating the physical and mental integrity of the civilian population, an international mission will find itself faced with tension between the task of protecting the civilian population and the task of reforming and strengthening the local police and armed forces. After all, the latter efforts could actually increase the capacity of the local police and armed forces to violate the physical and mental integrity of the civilian population. Against this background, the long-term presence of international missions is desirable to simultaneously strengthen institutions, to help establish the state's monopoly on the use of force and to promote respect for human rights. Inadequate efforts on the part of states and of international and non-governmental organisations increase the risk of a country sliding back into armed conflict.

Recommendation 8: The Netherlands should undertake a longer-term commitment in post-conflict phases, especially in cases in which the Netherlands was involved in brokering the end to a violent armed conflict.

One aspect that frequently receives too little attention in post-conflict situations is the matter of remedial measures for victims of violations of international humanitarian law and human rights. This is an area of international law that is as yet poorly developed. Such reparations may take different forms, such as compensation for lost property or the restoration of property that has been seized, political leaders offering their apologies in recognition of the suffering that has been caused, bringing perpetrators to justice, or truth-finding. Reparations may be material and/or symbolic. The precise form that is chosen will necessarily depend on the context and on the victims' wishes. Although the norm that victims have a right to reparations from states, companies or international organisations is gradually gaining acceptance, the practical scope for victims to actually obtain such reparations is very limited.

Recommendation 9: The Netherlands should encourage troop-contributing countries to acknowledge their liability for any violations of international law that may be committed by members of their missions under the flag of an international organisation. The Netherlands should urge them to provide transparency and to develop policy for remedial measures.

The use of force with the aim of protecting civilians in conflict regions may unintentionally lead to casualties among the civilian population. Military commanders sometimes have to make a difficult choice between preventing future violence against civilians inflicted by the warring parties and the possibility of civilian casualties being caused by the mission's own actions (collateral damage). Such collateral damage must be distinguished from the above-mentioned violations of international law. The United States has announced its intention to provide transparency, to accept its responsibility and to offer *ex gratia* payments to victims or their next of kin.

Recommendation 10: The Netherlands should encourage countries taking part in military missions under the flag of an international organisation of which the Netherlands is a member to provide transparency regarding collateral damage, accept responsibility and make (financial) reparations to victims or their next of kin.

Membership of the UN Security Council
In 2018 the Netherlands will be a member of the UN Security Council. The Netherlands will hold the Presidency for the period of one month. This presents a special opportunity to launch initiatives.

Recommendation 11: The Netherlands can exploit the opportunity afforded by its membership of the UN Security Council by drawing attention to one or more of the following themes, for instance by placing them on the agenda of one of the UN Security Council's meetings: ways of enforcing compliance with international humanitarian law; the selection and training of troops to be sent on a mission; the role of social media in early warning mechanisms and during violent conflicts; and the moral imperative of states, non-governmental organisations and international organisations to take responsibility for preventing conflicts.

Request for Advice

To the chair of the Advisory Council on International Affairs
Professor Jaap de Hoop Scheffer
P.O. Box 20061
2500 EB The Hague

Date   12 November 2015
Re   Request for advice on protection of the civilian population in armed conflicts

Dear Professor De Hoop Scheffer,

In late October 2015, the Secretary-General of the UN and Peter Maurer, President of the International Committee of the Red Cross, warned of the enormous impact of conflicts on civilians. In a joint press statement entitled 'World at a Turning Point' they called on states to take measures to improve the protection of civilians (POC) in armed conflict. The number of people fleeing their homes as a result of conflict and violence is now the highest since the Second World War: approximately 60 million.

Situations like those in Syria, South Sudan, Yemen and Nigeria are characterised by shocking forms of violence, attacks targeting civilians and a total lack of respect for life and human dignity. In addition, specific groups of civilians (religious minorities, women and girls, LGBTI people and journalists) are the target of sexual and other forms of violence, torture, kidnapping, forced displacement and recruitment into armed groups. The widespread and visible impunity associated with violations of civilians' rights in conflict situations contributes to the spiral of violence and instability. And in most situations the international community does not succeed in protecting civilians effectively. In the Netherlands we are experiencing the consequences of this directly, as evidenced by the sharp increase in the number of refugees since the summer of 2015.

POC has its basis in international humanitarian law, refugee law and human rights law. Primary responsibility for POC rests with the national authorities of the country concerned. However, non-state parties to conflict also have responsibilities under international law, including customary international law. Where those parties are unwilling or unable to protect civilians, international actors have a role to play. The UN has the broadest mandate in this respect, stretching from conflict prevention to tackling impunity for crimes against civilians during conflict.

UNSC and UNSG
The UN Security Council (UNSC) addresses POC in the framework of various country situations on its agenda, for instance where POC is included in a peace mission's mandate. However, it is clear that conflicting interests in the UNSC regularly impede rapid action. Syria is one of the most glaring examples of this.

The UN Department for Peacekeeping Operations distinguishes three possible ways of implementing POC: through dialogue, protection against physical violence and the creation of a 'protective environment'.

In his 18-monthly reports to the UNSC, the Secretary-General of the UN (UNSG) discusses the five core challenges in POC: reinforcing compliance and accountability with regard to international law (especially during combat), engaging more systematically with non-state armed groups, reinforcing the role of peace operations in POC, improving humanitarian access and strengthening accountability for violations.

Three UN reports: a new direction?
At the request of the UNSG, a High-level Independent Panel chaired by former Timorese President José Ramos-Horta issued a report in June 2015 on the future of UN peace operations. One of the report's key messages is that far more should be invested in tools such as conflict prevention and mediation, in order to resolve the problems that lead to conflicts. The question is what implications this recommendation has for the situations mentioned in this context and for Dutch policy on POC and human rights. An expert advisory group also issued a report this year on the UN peacebuilding architecture at the request of the UN member states, and a report was released on the implementation of UNSC resolution 1325 on women, peace and security (2000).

Dutch policy and efforts
The Netherlands underscores the importance of POC. This commitment follows from article 90 of the Dutch Constitution and is reflected in Dutch foreign policy as a whole. POC lies at the interface of human rights and security, as indicated in the 2012 policy memorandum 'Protection of Civilians in Armed Conflict', the 2013 International Security Strategy and the 2013 letter to parliament on human rights, 'Justice and Respect for All'. Among other points, the POC policy memorandum addresses the Netherlands' priorities in this area: conflict prevention, joint action with partners, the integrated approach, gender and ensuring sufficient capacity. The Netherlands has embedded POC in the assessment framework for constitutionally mandated letters to parliament on the deployment of military units abroad ('article 100 letters'). The Netherlands also plays an active role in conflict areas with respect to its human rights priorities. It has identified POC as a policy priority, is a major donor of humanitarian aid and has endorsed the Kigali Principles on the Protection of Civilians.

Although a solid normative framework for POC has been put in place and the Netherlands is making good progress with its own integrated approach, the Dutch government has noted that in various parts of the world implementation is lagging far behind.

The government therefore requires further analysis of POC in a variety of situations around the world, and recommendations with regard to the added value of Dutch policy and efforts. With regard to the spectrum of conflict, the government is specifically interested in the conflict prevention phase.

This analysis should address the following individual questions:

• How can Dutch policy on POC in relation to conflict prevention be fleshed out further?
• How can the integrated approach be applied and improved to better address POC, with a special focus on the conflict prevention phase?
• Which instruments and channels can the Netherlands utilise to this end, in terms not only of bilateral support and initiatives but also of multilateral and multi-stakeholder cooperation?

- How can the Netherlands contribute to a better response, based on early warning mechanisms, for instance in the framework of the 'Responsibility to Protect' (R2P), both at intergovernmental level and in specific situations in the field?
- If elected to a non-permanent seat on the UNSC, in what way could the Netherlands add value in the area of POC during its term?

I look forward to receiving your report.

Yours sincerely,

Bert Koenders

Minister of Foreign Affairs of the Kingdom of the Netherlands

List of abbreviations

AIV	Advisory Council on International Affairs
CAVV	Advisory Committee on Issues of Public International Law
CMR	Human Rights Committee
COS	Development Cooperation Committee
CVV	Peace and Security Committee
DFS	Department of Field Support
DPKO	Department of Peacekeeping Operations
EU	European Union
HIPPO	High-level Independent Panel on Peace Operations
ICRC	International Committee of the Red Cross
LGBTI	Lesbian, Gay, Bisexual, Transsexual and Intersex people
NATO	North Atlantic Treaty Organization
OIOS	Office of Internal Oversight Services
OSCE	Organization for Security and Co-operation in Europe
POC	Protection of Civilians
UN	United Nations
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General

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