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**Background Document:
Preserving Humanitarian Space, Protection and Security**

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I Introduction

The term “espace humanitaire” was first coined by former Médecins Sans Frontières (MSF) President Rony Brauman, who described it in 1990 as: “A space of freedom in which we are free to evaluate needs, free to monitor the distribution and use of relief goods and have a dialogue with the people”.¹ It still lacks a formal definition, which has allowed it to mean different things to different actors and organizations. The various ways in which the term has been used have included the following: a) the denotation of physical locations that are outside the realm of attack by any parties to the conflict; b) the respect for the core humanitarian principles of humanity: independence, impartiality, and neutrality; c) the ability of international aid and protection agencies to mitigate the situation of civilians affected by the conflict; d) the operating environment that is conducive to effective humanitarian action. Interestingly, and despite the absence of a common agreement on its definition, there is widespread understanding that in recent times, there has been a steady and incremental erosion of humanitarian space.

One of the most prominent manifestations and consequences of the shrinking of humanitarian space is the increasing insecurity of humanitarian staff. An analysis of accumulated reports posted on ReliefWeb from 1997-2001 by Dennis King, reveals a disturbing increase in the number of aid workers who have been killed in the line of duty.² The data indicates that more civilian humanitarian aid workers are killed by acts of violence than in accidents.³ Almost half of the non-accidental deaths of humanitarian aid workers (47%) were the result of ambushes on vehicles or convoys.⁴ Among these incidents, 74% of fatalities were local staff and 26% expatriates.⁵ This partially reflects the fact that in times of heightened insecurity, humanitarian organisations rely increasingly on national staff and local partners to manage programs, effectively shifting the burden of risk.⁶

Other manifestations include the decreasing safety and security of beneficiaries, and access to them, which is also influenced largely by the decrease of opportunities for asylum and safe

¹ Wagner, p. 1.

² King, p. 1.

³ In Iraq alone, at least 88 international humanitarian and human rights workers have been killed between March 2003 and May 2007 (Hansen, Taking Sides, p. 13).

⁴ King, p. 2.

⁵ King, p. 3.

⁶ Report of the Secretary-General, p. 11.

areas. As the Secretary General of the United Nations pointed out recently, the “deliberate targeting of civilians has become more widespread in places such as Afghanistan, the Democratic Republic of Congo, Iraq, Somalia and others creating a climate of fear aimed at destabilizing and displacing civilian population”.⁷

A third manifestation is the crowding of the relief work environment with non-traditional actors, including the military, parastatal agencies and private contractors.

This paper aims to present an overview of the various factors that have led to the challenges of humanitarian space in conflict or peace building situations, and to propose a set of steps that humanitarian actors could take to meet these challenges. For the purposes of this paper, the concept of humanitarian space is applied flexibly to encompass all the forms in which it has been used.

II Factors Acting Upon Humanitarian Space

Some have argued that the shrinking of humanitarian space is a recent phenomenon that can largely be attributed to a number of factors.⁸ The most significant of those – which also frames the context in which the shrinking of the space is taking place – is the increasingly complex global political and security situation. There is a renewed form of polarisation at the international level: on the one hand, several States leading what is frequently referred to as the “war on terrorism”, and on the other hand, a series of non-State entities determined to oppose them.⁹ As a result, there has been a more explicit questioning of the utility of conforming to international law, both as a matter of principle and in terms of military efficiency.¹⁰ Furthermore, a number of States are using the pretext of the “fight against terrorism” to increase the pressure on internal opposition and resistance groups. This adds to the overall restrictive context and the end result is that the protection of civilians is being undermined.¹¹ Moreover, we have been witnessing the further erosion of the principles of distinction between combatants and civilians on one hand and proportionality on the other.¹²

Other significant factors include the following:

The blurred distinction between the roles of the military and humanitarian organizations:

This blurring can be largely attributed to an increasing military involvement in relief operations: Military actors, paramilitary and private contractors have recently emerged as significant actors in providing relief in individual and regional conflicts. They belong either to the UN, States, Regional, or sub-Regional Organizations. In Iraq, the US is using American private contractors not only for large-scale infrastructure repair, but also in sectoral areas that have been traditionally handled by the Government, UN and NGOs, such as water, health care, and education.¹³

The involvement of military actors in relief operations has sometimes been welcomed by either the sovereign State concerned, the local population, or the international community particularly when needs are on a very large scale, and the precarious security situation prevents

⁷ Security Council. Report of the Secretary-General on the protection of civilians in armed conflict, S/2007/643, 28 October 2007, p. 14.

⁸ Macrea and Harmer, p. 1-2.

⁹ Krahenbuhl, p. 505.

¹⁰ Macrea and Harmer, p. 4.

¹¹ Krahenbuhl, p. 506.

¹² SG Report on the protection of civilians in armed conflict, p. 7.

¹³ Macrea and Harmer, p. 9.

humanitarian agencies from reaching the most vulnerable¹⁴ Some of these, particularly paramilitary groups that are contingents of non-state actors, have used the delivery of relief and social services to their advantage to gain greater legitimacy. This is the case in Iraq, where they have often become the first resort for Iraqis seeking protection and assistance, filling the serious gap left by Government institutions.¹⁵

International Humanitarian Law (IHL) regulates the conduct of hostilities and the protection to be afforded to victims of armed conflict. It does not however contain any provisions that would rule out the supply of relief assistance by the military. In fact, according to the 1949 Geneva Conventions and their Additional Protocols, the responsibility for the population's survival lies with the authorities, or in case of occupation, with the occupying and responsible authorities. What IHL provisions do not say is that providing assistance is exclusively the preserve of civilian actors. If the occupying power has a duty to provide for the survival of the population, it is difficult to exclude the military. The phrase "relief actions [...] of an exclusively humanitarian and impartial nature",¹⁶ however, means that the military must not disguise itself as a civilian humanitarian actor in order to deceive the population and collect intelligence for future military action. To do so would pervert the intention of the law, and lead to uncertainty as to the respective roles of civilian humanitarian actors and the military. Generally, military personnel have combatant status and, as such, constitute legitimate military targets; civilian humanitarian actors do not.¹⁷

The increased involvement of military actors in the delivery of humanitarian assistance has led to confusion between 'humanitarian aid' and 'stabilization aid' and on occasion between civilian and military actors engaged in rehabilitation and relief work.¹⁸ Moreover military campaigns are increasingly using humanitarian activities as a tool to "win the hearts and minds" of the population, and are increasingly integrating humanitarian action into the range of tools available to them in the conduct of their campaign against insurgent activities.¹⁹ Such tools include the establishment of provincial reconstruction teams by military actors, as was the case in Afghanistan.²⁰

Close Alignment of Humanitarian actors with the Military: Humanitarian actors are increasingly running the risk of being perceived as instruments of military actors or occupying powers by closely coordinating and working with them. This confusion has been clearly the case in Iraq, where the association of agencies, companies, and other institutions with the US military and other allied forces, whether contractually or otherwise, risks aligning agencies with one side of the ongoing battle.²¹ In Iraq, the United Nations is entirely dependent on the Multi-National Forces (MNF) for security, presence and mobility – an arrangement that has been formalized and institutionalised through UN Security Council Resolution 1546 of 8 June 2004.²²

¹⁴ Forster, p. 2.

¹⁵ Hansen, *Taking Sides*, p. 14.

¹⁶ Article 18, para. 2, Additional Protocol II. A similar provision can be found in Article 70, para. 1, Additional Protocol I.

¹⁷ This is supported by customary international humanitarian law, which does not leave any doubt either that parties to both international and non-international conflicts must allow the rapid and unimpeded passage of humanitarian relief, which is impartial and conducted without any adverse distinction, subject to their right of control. They must also ensure the freedom of movement of humanitarian relief personnel so that they can exercise this function (Wagner, p. 2).

¹⁸ Macrea and Harmer, p. 8.

¹⁹ Krahenbuhl, p. 512.

²⁰ Krahenbuhl, p. 508.

²¹ Macrea and Harmer, p. 8.

²² Hansen, *Taking Sides*, p. 9.

The close alignment of humanitarian actors with the military also applies to the relationship that humanitarian actors have with UN peacekeeping operations, including integrated missions, which were first introduced in 2000. In integrated missions, the SRSG is responsible for the UN mission as a whole, including its political, military, and humanitarian responses. Much has been said about the potential benefits and drawbacks of integrated missions on the work of humanitarian agencies, which are beyond the scope of this brief paper. While they can promote dialogue and coordination between the military and humanitarian agencies, they may also compromise the neutrality of the latter. The integrated mission in DRC provides an interesting example, as it embodies both the positive and the negative impact that an Integrated Mission can have on the work of humanitarian agencies. In large part thanks to the personal efforts of the HC/DSRSG, MONUC took a lot more of the humanitarian concerns and considerations into account than in other previous integrated mission. At the same time, humanitarian agencies and MONUC did not always see eye to eye, when it came to dealing with the consequences of violations committed by the Congolese army, whose efforts MONUC was there to support.

Increased role as witnesses of serious human rights violations: Parties to the conflict have increasingly recognised the fact that through their work in areas of conflict, humanitarian agencies bear witness to violations, and sometimes expose and denounce them. This is more so the case in countries, where the International Criminal Court (ICC) has issued indictments for nationals, or is seized with cases in these countries. In such cases, humanitarian agencies and actors are perceived – either rightly or wrongly – to be providing evidence to the ICC. As a result, and in an effort to control monitoring and reporting that could be damaging to the reputation of parties to the conflict, those agencies have been expelled from the scene of suffering, or had their freedom of movement seriously limited, or been attacked.

Breakdown of law and order leading to higher levels of criminality: The breakdown of law and order in conflict and precarious post conflict situations has provided fertile grounds for the flourishing of criminal acts that are primarily motivated by financial gains, resulting in the looting of humanitarian supplies and assets. In Darfur for example, the disruption of chains of command resulting from the fragmentation of armed groups has led to increases in such acts.²³

Political manipulation by occupying powers and other de facto authorities of humanitarian assistance and actors: De facto, authorities generally benefit from the provision of services in their areas. Some of them derive considerable financial benefits from humanitarian operations by imposing charges on transports, levying taxes on imports and employees' salaries, and collecting rent for warehouses, offices and residences.²⁴ In addition, some municipal authorities and representatives of displaced ethnic communities use aid to achieve their political ends, to strengthen their sides, and to funnel aid disbursements to favoured local suppliers and contractors.²⁵

Furthermore, transitional administrations that have a legitimacy and capacity problem, are increasingly looking to use humanitarian aid to improve their standing with their populations and to achieve development objectives.²⁶ Humanitarian operations can intentionally or unintentionally bestow local and international legitimacy on rebel movements, local warlords, or other powerful individuals, particularly in their quest to negotiate access to affected populations.²⁷ In doing so, humanitarian agencies sometimes find themselves having to work with persons that have a poor human rights record, which may further strengthen the resentment

²³ Report of the Secretary-General, p. 11.

²⁴ Schweizer, p. 550.

²⁵ Schweizer, p. 560.

²⁶ Macrea and Harmer, p. 6.

²⁷ Schweizer, p. 549.

of the local population towards the role that these agencies play and further the perception that they are biased. The anti-Taliban warlords who fought with the Coalition Forces are a case in point. Many of them are themselves responsible for large-scale human rights abuses. Another example is South Kivu of DRC, where the local population had been terrorized by an armed group called Rastas. Since international NGOs were negotiating access with these rebels, the local population there suspected them of supporting rebel groups with food and medicine.²⁸ This was because the NGOs did not make the effort to convey to the population that the negotiations for access had been conducted in a principled and transparent manner.

Opposition by some armed groups to efforts aimed at empowering local communities: In Colombia, guerrilla groups believe that the attempts made by humanitarian organisations to empower local communities within their control, often result in the communities opposing them. They also believe that humanitarian workers siphon away their social support in the community.

Perceived lack of independence of humanitarian actors from Donors and their agenda: Most humanitarian agencies, UN and NGOs alike, depend to a large extent on funds from donor governments whose priorities are not influenced by humanitarian concerns alone.²⁹ Despite the newly globalised governance structure of some of the International NGOs and federations, their respective identities and at times their policies and programming preferences remain closely associated with their country of origin, and can display a striking tendency to mirror the policies and preferences of the home government.³⁰

Related to that is the insistence of some donors to fund programmes that are clearly out of sync with the country's needs. In Iraq, and since the war in 2003, most donors have channelled their funds to faltering reconstruction efforts, when it was clear that humanitarian relief efforts should have been the priority.³¹

Perceived lack of independence of humanitarian actors from Host Governments: This is particularly the case in Colombia, where there is a traditional lack of State (and often NGO/IGO) presence in guerrilla-controlled territories. As such, humanitarian workers are viewed suspiciously, and even in some cases presumed to be spies for the concerned Government with which they are in opposition.

Clash of the humanitarian agenda with the political agenda of the Host Government: In some cases, the Government is eager to downplay the number of displaced and their dire situation, as it is aware that they are a direct result of a number of policies that it supports. Since they are not recognized as affected, they are not seen to be entitled to humanitarian assistance, and could even be denied that assistance.

Perceived squandering of resources by humanitarian workers or their inappropriate use: Local communities and governments have often faulted humanitarian agencies for spending their resources mainly on themselves and their well being rather than the areas in which they operate. Others have criticised humanitarian workers for investing in projects whose utility and impact on the beneficiaries is questionable, and which have not been based on a proper assessment and prioritisation of the local needs, nor taken into consideration local knowledge and expertise.

²⁸ Mowjee, p. 11.

²⁹ Schweizer, p. 551.

³⁰ Stoddard (Chapter 3), p. 27.

³¹ Hansen, Taking Sides, p. 56.

Perceived specific social, cultural, and religious agenda by humanitarian workers: There is an increased perception in some parts of the World that the cultural, religious and political values of humanitarian organizations reflect those of Western societies and communities.³² Groups in affected areas, particularly in the Muslim World, often suspect that international organizations have a hidden agenda. Humanitarian workers may sometimes be viewed as agents working for Western governments, secularism, or Christianity. In this respect, outright faith based agencies have suffered particularly in some parts of the Islamic World.³³ This is an unfortunate situation, as recent research confirms that Islamic understandings of the ideals of humanitarian assistance and protection converge with the principle-based ethos underlying western dominated humanitarian institutions, thereby offering great potential for joint collaboration”.³⁴

Lack of culturally sensitive behaviour by some humanitarian workers: Some humanitarians may not show the required level of respect for the culture, structure, and communities in which they are based and in which they are working. They have big parties, where loud music is played, and a large quantity of alcohol is consumed – all this in the midst of societies that are fairly conservative. Some humanitarian actors have also been known to ignore a culturally sensitive dress code.

Also related is the fact that present day conflicts include a greater diversity of warring parties with larger grievances and objectives. The traditional “government-political guerrilla” divide is no longer suitable to understand the situation.³⁵ Moreover, current conflicts and situations of violence tend to last longer, while protracted transition periods often fail to produce sufficient action to address the underlying causes, increasing the likelihood of renewed hostilities in a number of conflicts.³⁶

Lack of prosecution for attacks on humanitarian workers: Despite the serious crimes that some actors commit against humanitarian staff and civilians, insufficient attempts have been made to hold perpetrators accountable. In Sri Lanka for example, insufficient progress has been made by the Government-established commission that was tasked with investigating among others, the murder of 17 staff from Action Contre La Faim in August 2006.³⁷

As a consequence of these significant changes, many of the assumptions that humanitarian organizations make, and on which they base their work, are becoming increasingly less relevant.³⁸ Whereas in the past, humanitarian agencies worked within a clear, solid, and predictable model – namely that by upholding the humanitarian principles of independence, impartiality, and neutrality, the agency’s access would be guaranteed – this basic tenet is now being challenged.

³² Macrea and Harmer, p. 1.

³³ Macrea and Harmer, p. 9.

³⁴ Hansen, Taking Sides, p. 15.

³⁵ Krahenbuhl, official statement, p. 1.

³⁶ Krahenbuhl, official statement, p. 2.

³⁷ Report of the Secretary-General, p. 12.

³⁸ Kent, p. 1.

III Proposed Actions by the IASC-WG

The IASC Working Group is requested to consider the following:

Policy and Strategy

- Devise a common, minimum, agreed-upon understanding of the concept of “humanitarian space”.
- Reassert the basic principles. The value of the traditional humanitarian principles of humanity, independence, impartiality and neutrality need to be vigorously reasserted by the top leadership of the UN and humanitarian agencies. Parties to the conflict have to be convinced that attempts to instrumentalise humanitarian action are likely to prove counter-productive and ineffective.³⁹
- Examine the relationship between development-oriented initiatives, such as the “Delivering as One”, with integrated peacekeeping missions, and humanitarian reform. Though the pilot in the eight countries aims mainly at harmonizing UN interventions in the development sphere, there is recognition that it has so far taken place in isolation from the humanitarian reform process, which needs to be rectified.
- Examine and clarify the type of cooperation that humanitarian agencies have with international criminal tribunals, and the impact that such cooperation has on the perseverance of humanitarian space.

Security

- Broaden the security perspective. The security of humanitarian personnel has to be viewed as more than just an issue of technical or physical protection. It is a matter of acceptance of the organization and its perception; individual behaviour of delegates; ability to listen, communicate, and project a consistent and coherent image of the organization to all parties involved in a conflict situation.⁴⁰ Therefore, tendencies to separate security management and operational management should be avoided.⁴¹ Furthermore, there should be a stronger link between security considerations and programmatic delivery. At the same time, the national staff of humanitarian organizations have to be better integrated in the security analysis and evaluation carried out in the respective contexts.⁴²
- Establish criteria for assessing and subsequently determining the extent to which security to humanitarian organizations is to be provided by military forces or occupying powers. Such military escorts, as opposed to those provided by indigenous national military forces of the State or UN peacekeeping forces, are associated with a different and heightened risk of real or perceived politicization of the humanitarian role.

³⁹ Macrea and Harmer, p. 11.

⁴⁰ Krahenbuhl, p. 510.

⁴¹ Krahenbuhl, p. 509.

⁴² Krahenbuhl, p. 510.

- Explore options for a stronger engagement of local NGOs, religious institutions, mosques/churches/etc and local religious charity organizations that have demonstrated a commitment to assistance and protection, particularly in areas where international humanitarian agencies have restricted access. There is a need to replicate existing examples, where NGOs have successfully established relations with the local clergy and religious local institutions and committees.

Operational Guidelines

- Strengthen remote management arrangements through the establishment of peer review networks among humanitarian actors, and encourage the sharing of innovative and effective methods in security management, localised humanitarian access, and needs assessment.
- Revisit the key documents on the use of military assets to emphasize the distinction between military and humanitarian actors, even in the exceptional cases where they may cooperate. These documents are: The Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief (Oslo Guidelines), the Guidelines on the Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies (MCDA Guidelines) and the Capstone Doctrine of DPKO. Additional doctrine should be developed for military actors who are providing relief independently from the humanitarian actors within the UN, ICRC, Red Cross/Crescent Society and NGO community (e.g. PRTs and related mechanisms).
- Strengthen inter-agency coordination. In insecure situations where humanitarian space is limited, poorly thought through actions by one humanitarian actor may have a negative impact on others. Coordination and a minimum level of harmonisation are therefore crucial, and the humanitarian reform process currently underway may have a positive role to play in this respect.
- Train Resident and Humanitarian Coordinators more extensively on principles of humanitarian intervention.
- Revisit evacuation protocols for NGOs and national staff of the United Nations.
- Humanitarian agencies need to ensure that their national staff reflect the cultural diversity of the country.
- Reaffirm and/or develop basic principles for armed forces and States providing relief, e.g. armed forces that are engaged in peace support operations should refrain from publicly saying that all actors, whether political, humanitarian, or military, share the same goals, when their missions are fundamentally different. They should refrain from announcing that humanitarian action actors seek to win the war, when humanitarian actors need to remain distinct from the political and security aspects of peace-building processes.⁴³ Armed forces and related institutions (e.g. PRTs) must not pose as non-military actors and/or mimic traditional humanitarian actors.

Interaction with Integrated Missions

- Establish criteria for assessing and subsequently determining the involvement of humanitarian organizations with an integrated mission. As a matter of general

⁴³ Foster, p. 2.

procedure, integrated missions should undertake public information campaigns regarding the respective and distinct roles of their members, with a view to informing all parties and civilian populations.

- Future Integrated Missions should devise written guidelines on civil-military coordination, along those furnished in DRC from the onset of these missions. They should include clear implementation procedures.⁴⁴

Code of Conduct

- Compile an inventory of codes of conduct that exist for humanitarian agencies, review them with the purpose of ensuring that regulations governing the display of culturally sensitive behaviour are included. Managers should provide feedback to staff and discuss the implications on the image of humanitarian agencies.

Sexual and Gender Based Violence

- Strengthen and better coordinate prevention and response by humanitarian actors and States, not only by warring parties whether State or non-State actors, but also those committed by peacekeeping personnel and humanitarian workers.

Prosecution of Perpetrators of Violence against Humanitarian Staff and Civilians

- Advocate national Governments to exert greater effort to bring those who have attacked humanitarian personnel to justice.⁴⁵
- Enhance accountability for instances of attack against humanitarian workers and grave denial of humanitarian access by State and non-State actors, through the referral of the most serious cases to the ICC.

Mass Information and Dialogues

- Humanitarian agencies have to be more open about their operations, and explain more effectively their objectives, mandate, and also differences between them and the military. Such a communication strategy should not only target Governments, donors, and agencies, but that try to reach the laymen among the populations to be assisted. To do so, international organizations need to increase their knowledge of, and develop broader relations with civil society and various existing or emerging non-State players, including traditional, economic, religious, and social leaders.⁴⁶
- Foster High-Level Dialogue with the leadership of the various establishments and organizations that are running military operations, to explain the objectives and modus operandi of humanitarian agencies and the importance of their work. This is particularly encouraged for integrated missions that have to have clearly established guidelines and mechanisms for dialogue and cooperation.
- Outreach programmes should be developed and implemented to bridge the gaps in perception, knowledge, and practice between international aid organizations, Islamic institutions, and Muslim faith based civil society.

⁴⁴ Mowjee, p. 34.

⁴⁵ King, p. 3.

⁴⁶ Krahenbuhl, p. 511.

- Organizations must give greater priority to the strengthening of negotiation skills training among staff at both the managerial and the field levels, as a matter of professional and organisational competence.
- New ways of communication are required with players that are potentially able to act in, or influence a given situation. Greater attention needs to be given to establishing a fruitful dialogue with those groups of population who may feel misunderstood, marginalized or rejected, including non-State actors.⁴⁷

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⁴⁷ Krahenbuhl, p. 510.

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