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**“The role of New Technologies of Information (NTIs) in the politics and practice of the international protection regime supporting civilians in conflict : identity crisis and regime alteration”**

Morgane Caujolle

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THÈSE

Pour obtenir le grade de

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**'Le rôle des Nouvelles Technologies de l'Information (NTIs) dans les politiques et pratiques du régime international de Protection des populations civiles: crise identitaire et altération de régime'**

**The role of New Technologies of Information (NTIs) in the politics and practice of the international protection regime supporting civilians in conflict: identity crisis and regime alteration**

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## Acknowledgment and Disclaimer

Undertaking this PhD while being a protection staff in the field was certainly a challenge, and to some extent, an intellectual 'escape' from harsh conflict realities and ground humanitarian paradoxes. It has similarly provided me with the most significant intellectual stimulation one can hope for. Little did I know about my own ignorance then. I humbly hope the content and findings of this research can contribute to the thinking of others – academic and humanitarian professionals alike.

I am especially thankful to Pr. F. Petiteville, who skilfully supported and guided me through those 4 years of research with rigorous academic advice, feedback, and the flexibility I needed to accommodate a parallel professional activity. I thank him for trusting my ability to become a researcher in addition to my passionate commitment to humanitarian work. I am also grateful to the ICRC and its IDevelop programme that facilitated the possibility of undertaking the PhD by: (1) supporting the proposal, (2) providing much-needed 30-days dedicated to support the research, and (3) reimbursing registration fees to the Doctoral School for the 4 years of the research. The views expressed in the research are my own and are in no way intended to represent the views of any of the organisations with which I am or have been associated with.

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## Abstract

The digital turn has fundamentally changed the way we understand conflict realities and their impacts on civilian populations. The research attempts to bring intelligibility to the current reconfiguration of the politics and practices around the 'management of precarious lives' with respect to the technological dimensions. The international protection regime supporting civilians in conflict encompasses implicit or explicit principles – notably Humanity – as well as norms, rules and decision-making procedures, around which actors' expectations and behaviour converge in a given area of International Relations (IR). Actors of the IPR include states, Non-State Armed Groups that are belligerents in conflict, humanitarian protection actors and human rights actors, and to a lesser extent, the general public. Humanitarians have a specific role as 'protection guardians' as their responsibility lies with convincing parties to a conflict to respect protective measures and provide protection to civilians in need. This therefore justifies an in-depth focus on humanitarian protection actors – while interactions, interdependences and links among all actors are cautiously considered within the research.

At the turn of the XXI century, initial reactions to the further weaving of digital tools into the various dimensions of warfare and of humanitarian work have been mostly positive and enthusiastic. However, the supplanting of grounded humanitarian protection practices with New Technologies of Information (NTIs) has not been without both ethical and technical challenges and dilemmas. For example, the traditional humanitarian principle of *Do No Harm*, which requires humanitarian actors to strive to minimise the harm they may inadvertently cause by their presence or through their activities, has been challenged by new 'digital paradoxes.' This has led both academic researchers and humanitarian practitioners to the question the adequacy of humanitarian ethics and governance practices to respond to meet the challenges raised with respect to NTIs. Grappling with one such ethical dilemma while working as a protection practitioner triggered the original incentive to pursue this research. Political Science has long been interested in humanitarian action, however, most recent research related to the integration technology therein focuses on tangible relief activities, while few researchers have started to tackle the uncomfortable questions of the (mis)use, implications (positive or negative), and unintended consequences of the use of NTIs in

relation to humanitarian protection. This research therefore explores *how* the role of NTIs affects both the politics and practice of the International Protection Regime (IPR) supporting civilians in conflict. The study links academic theory to humanitarian practice and views in order to substantiate and nourish the reflection. The research includes interviews with over 30 humanitarian professionals from five humanitarian organisations (ICRC, UNHCR, UN OCHA, NRC and DRC) and from three different categories of expertise: (1) Protection, (2) Information Management/Information Technology, and (3) Senior management/Policy and Innovation staff. The research has for its objective to raise and respond to some of the fundamental questions that are raised by the integration of New Technologies of Information (digital tools) into the International Protection Regime.

The findings point to an over-reliance on quantitative digital tools challenge traditional protection approaches and clouds the moral compass of protection professionals. Yet, if an appropriate balance has not yet been found, it is nonetheless sought. The combination of field expertise and humanitarian diplomatic skills have allowed protection guardians to play a role - consciously though cautiously – in renegotiating the terms of the IPR. The extrapolation of existing protective principles, norms, rules and procedures from the physical and psychological towards the digital dimension of the civilian body is underway. While both the parameters and perimeter of the IPR are being refined and renegotiated to accommodate NTIs, no global governance has yet been substantially designed, discussed and agreed upon. Current and future norm developments will likely further take shape through soft agreements based on multi-stakeholder participation; however, the risk that decentralised or contradicting developments of new norms may undermine the IPR is significant. Therefore, sustained academic research and policy reflection are required to enable humanitarians to work effectively and ethically, and to shed light digital intricacies that are part of the complexity of contemporary conflicts.



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# List of *Abbreviations*

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## **A**

Artificial Intelligence

AI · 114

Association of Professionals in Humanitarian Assistance and Protection

PHAP · 14

Autonomous Weapons Systems

AWS · 89

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## **C**

Cash-Based Interventions

CBI · 102

Catholic Relief Service

CRS · 189

Central Intelligence Agency

CIA · 174

Child Protection

CP · 108

Comprehensive Refugee Response Framework

CRRF · 304

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

CAT · 75

Convention on the Elimination of All Forms of Discrimination against Women

CEDAW · 76

Core Humanitarian Standard

CHS · 116

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## **D**

Danish Refugee Council

DRC · 78, 111

Data Entry and Exploration Platform

DEEP · 134

Data Protection Office

DPO · 136

Displacement Tracking Matrices

DTM · 108

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## **F**

Focus Group Discussions

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## **G**

Gender-Based Violence

GBV · 108

General Data Protection Regulation

GDPR · 201

Geographical Information Service

GIS · 108  
Global Compact  
GC · 76  
Global Compact for Safe, Orderly and Regular Migration  
GCM · 300  
Global Compact on Refugees  
GCR · 300  
Global Positioning System  
GPS · 130  
*Global War on Terror'*  
GWOT · 153

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## **H**

Harvard Humanitarian Initiative  
HHI · 140  
Humanitarian Information Centers  
HIC · 106  
Humanitarian Policy Group  
HPG · 129

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## **I**

Information and Communications Technology  
ICT · 116  
Information Management  
IM · 116  
Inter-Agency Standing Committee  
IASC · 108, 198  
International Committee of the Red Cross  
ICRC · 50  
International Conference on Assistance to Refugees in Africa  
ICARA · 254  
International Conference on Central American Refugees  
CIREFCA · 254  
International Criminal Court  
ICC · 64  
International Human Rights Law  
IHRL · 74  
International Humanitarian Law  
IHL · 51  
International Labour Organisation  
ILO · 112  
International Non-Governmental Organisations  
INGOs · 83  
International Organisation for Migration  
IOM · 66  
International Organisations  
IOs · 61, 82  
International Refugee Law  
IRL · 73

---

## **J**

Joint IDP Profiling Service  
JIPS · 134  
Joint Research Centre  
JRC · 125

---

## **L**

League of Nations  
LON · 66

---

## **M**

Médecins Sans Frontières  
MSF · 15  
Memorandum of Understanding  
MoU · 147  
Minimum Operational Security Standards  
MOSS · 144  
Multi-cluster Initial Rapid Assessment  
MIRA · 107

---

## **N**

Natural Language Processing  
NLP · 134  
Non-International Armed Conflicts  
NIACs · 72  
Norwegian Refugee Council  
NRC · 111  
NRC · *Norwegian Refugee Council*

---

## **O**

OCHA · *Office for the Coordination of Humanitarian Affairs*  
OHCHR · 81  
on-Governmental Organisations  
NGOs · 67  
Open-Ended Working Groups  
OEWG · 333  
Open-Source Information  
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open-source intelligence  
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Optional Protocol to the Convention against Torture  
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## **P**

Personal Identifiable Information  
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Precision-Guided Munition  
PGM · 161  
Protection of Civilians  
POC · 62

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## **R**

### Research and Development

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### Responsibility to Protect

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### Responsibility To Protect

R2P · 105

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## **T**

### Terms of Reference

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### Trade-Related Aspects of Intellectual Property Rights

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## **U**

### UN Group of Governmental Experts

UN GGE · 333

### UN Human Rights Council

UNHRC · 86

### UN Office for the Coordination of Humanitarian Affairs

UN OCHA · 26

### UNHCR · *United Nations High Commissioner for Refugees*

### United Nations

UN · 66

### United Nations Satellite Center

UNOSAT · 125

### United Nations Security Council

UNSC · 62

### Universal Declaration of Human Rights

UDHR · 74

### Universal Periodic Review

UPR · 77

### unmanned aerial vehicles

UAVs · 130

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## **W**

### World Food Programme

WFP · 174

### World War I

WWI · 64

### World War II

WWII · 59





# Introduction

According to Mark Duffield, “*the computational turn has fundamentally changed our understanding of the world and what it means to be human*” (Duffield, 2018: ix).

Our research attempts to “*bring intelligibility to the reconfiguration of the policies of precarious lives*”<sup>1</sup> as we specifically question the role of New Technologies of Information (NTIs) in pursuing the humanitarian protection endeavour (Fassin, 2010: 13). The human experience of conflicts and its impacts on civilian women, men, boys and girls – who are also wives and husbands, daughters and sons, siblings and more – has long attracted researchers’ attention. Since the mid-nineteenth century at least and as the humanitarian system developed in the twentieth century, humanitarian intervention has increasingly become the dominant instrument framing protection (De Lauri, 2016). In the 1990s, Political Science research on humanitarianism has gained traction and continues to attract academic interest as well as operational practitioners’ own questioning of experienced dilemmas. However, discussing humanitarianism can bear different meanings for different actors and no commonly agreed definition exists – a characteristic which, as we will see through the research, also concerns other cornerstone concepts such as humanity or dignity (Feldman & Ticktin, 2010; Ticktin, 2014). In the words of the International Association of Professionals in Humanitarian Assistance and Protection (PHAP), humanitarianism can be defined as a “*broad dedication to and belief in the fundamental value of human life,*” materialising through activities that involve “*addressing the needs of people affected by conflict, natural disaster, epidemic and famine.*”<sup>2</sup>

Logics of solidarity towards more or less distant ‘others’ in need can be pursued through different approaches: more than one ‘type’ of humanitarianism exists while all nonetheless seek a similar goal: to support those in need. Among the worth noting approaches are:

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<sup>1</sup> In French : « donner de l’intelligibilité à la reconfiguration de la politique des vies précaires »

<sup>2</sup> The full definition can be found on the website [here](#).

The ‘Dunantists,’ in reference to one of the Red Cross founders Henry Dunant and his *Souvenir de Solferino* (Dunant, 1862). The Dunantist tradition is said to recognise itself along the principles of the Red Cross, mostly associated with the International Committee of the Red Cross (ICRC), and guided by fundamental principles of humanity, neutrality, impartiality and independence (Daudin & Labbé, 2016). The Biafra war (1967-1970) led to a scission between the traditional Dunantists who privilege bilateral and confidential dialogue with parties to the conflict; and doctors who created Médecins Sans Frontières (or MSF), also known as Doctors Without Borders in 1971, with a view to ‘speaking out’ and exercising public denunciation when considered “necessary.” As of today, the Dunantist approach is viewed as the most prominent type of humanitarianism in the current global humanitarian system and is associated with Western values – although arguing for universalist concepts.

The ‘Wilsonians’ have a different approach than Dunantists in the sense that they consider their role in line with their country’s foreign policy; this brings a political shade to their approach that contradicts the Dunantists’ claim for neutrality, especially if the said country is involved in a conflict.

The faith-based humanitarianism is inspired by Christianity, Islam, Buddhism and other religions and spiritual practices. Although the same objective to alleviate others’ suffering is pursued, a preference in locations of interventions or funding decisions usually favours communities who are part of the same faith.

Different approaches of humanitarianism bring our attention to the various motivations and interests that animate humanitarian actors, a notion we will further investigate when it comes to inquiring both the practices and the politics of humanitarian protection. In De Lauri’s words, “humanitarianism consists of theories and practices, ideologies and contradictions, movements for change and conservatism” (De Lauri, 2016: 1). Indeed, the study of humanitarianism in general has regularly been focused within a ‘permanence-change spectrum,’ as ethical questions and politics are raised and explored when actors significantly stumble to reconcile principles with practical complex realities. Humanitarian experiences, challenges and at times failures have been a driving force for reflections and self-inquiry

exercises both from within the humanitarian system and stimulated by academic research. According to Donini:

*“The concept of humanitarianism is fraught with ambiguities. It connotes three separate but overlapping realities: an ideology, a movement and a profession. Together, they form a political economy in which actors compete for influence, space and market share. What unites the various facets of humanitarianism is a broad commitment to alleviating the suffering and protecting the lives of civilians caught up in conflict or crisis”* (Donini, 2010: 1).

Contradictions, ethical dilemmas and paradoxes have been unveiled in several occasions: for instance, Brauman discussed the dilemmas of humanitarian work; Slim explored ethical reflections linked to humanitarian work; and Terry pointed out to experiences of humanitarians becoming entangled in complex conflict dynamics, at times carrying harmful practices that may even result in fuelling conflict and violence (Brauman, 1996; Slim, 1997, 2015; Terry, 2002). Yet, as Betts and co-researchers mentioned focusing on the UN Refugee Agency, *“UNHCR history is a history of adaptation”* (Betts et al., 2012: 165).

Political Science scholars have also put an emphasis on humanitarianism in its different forms and dimensions. According to De Lauri, humanitarian action is often considered a *“non-political undertaking that should exclusively be motivated by ethical concerns – especially by practitioners, but also to some extent in the scholarly community”* (De Lauri, 2016: 112). Other views provide an opposite reading, as Forsythe explained that *“It is well recognised - at least among political scientists - that trying to advance a preferred public policy is a political act”* (Forsythe, 2001b: 1). He interestingly continues by arguing that for reasons of acceptability (or acceptance), a humanitarian actor might prefer to refer to what he calls *“this type of politics”* as humanitarian advocacy and management. The use of non-political semantics as well as reference to legal frameworks would allow humanitarian actors to maintain *“the fiction that it is totally non-political, or humanitarian, or neutral”* (Forsythe, 2001b). Referring to the UNHCR, Forsythe argues that one meaning of politics is to try to exert influence in the policy process, policy making or applying public policy; in this regard, he contends that:

*“it is precisely what UNHCR does in its protection activities. When it speaks of trying to create a humanitarian space for itself and persons of concern to it, it is in reality talking about creating, through persuasion and negotiation, a zone of humanitarian policy”* (Forsythe, 2001b: 1).

Often, the ‘political activities’ of International Organisations (IOs) are downplayed and mostly seen as technical, while their capacity to develop an issue, to mobilise collective attention, public debate, polarization, at times controversy and potential conflict is a form of politicisation (Petiteville, 2018). In doing so, IOs – including humanitarian protection actors – resort to legitimacy through expertise to justify their existence (Petiteville, 2021). Contradictions and concerns about survival however remain part and parcel of the humanitarian system. Bradley drew attention to an ICRC’s attempt to ‘stay relevant’<sup>3</sup> in a competitive humanitarian marketplace while also raising concerns related to its potential politicisation (acting outside of International Humanitarian Law frameworks), and subsequent potential longer-term erosion of its core mandate and negative consequences on its ‘moral authority’ (Bradley, 2020). A claimed ‘non-political’ approach is not to be confused with a ‘value-free’ approach: pursuing specific interests – to serve, assist and protect civilian populations - and achieving the objective to alleviate suffering requires exerting influence, or some would argue, soft power. Academic debates among researchers of political science and more specifically in International Relations (IR) have provided important insights to the research: for instance, Barnett and Finnemore argued International Organisations (IOs) try to act in a depoliticised manner, using their expertise and subsequent knowledge to enhance their authority - therefore relying on a constructivist view (Barnett & Finnemore, 2004). Attention to organisational cultures, routines and rules is considered to affect the way a problem, or an ‘issue’ is framed and dealt with, in turn determining the character of an action. Barnett further explains that he uses *“the debates on humanitarianism transformation to probe a multilayered, knotty and unstable relationship between humanitarianism and politics, ethics and power”* (Barnett, 2008: 235).

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<sup>3</sup> The example developed in the article is about ICRC’s investment in ‘urban violence’ outside of IHL frameworks.

In *Five shades of grey: variants of 'political' humanitarianism*, Bradley contends that the boundaries (or perimeter) of classic (Dunantist) humanitarianism have been contested – especially since the 1990s – while ground frustrations have reinforced debates on different forms and degrees of ‘political humanitarisms,’ including through unintended political consequences (Bradley, 2021). According to Barnett and Weiss, “*the relationship between humanitarianism and power is now more complex*” (Barnett & Weiss, 2008a).

At the turn of the XXI century, Joseph Nye explored the concept of soft – or co-optive – power, defined as “*the ability to get what you want through attraction rather than coercion or payments*” (Nye, 2004b). Soft power can be exercised by States, but also by International Organisations (IOs) such as the United Nations and Non-Governmental Organisations (NGOs). Soft power is considered more difficult to wield and its resources often work indirectly by shaping environments for policy, at times taking years for outcomes to materialise. Nye argued that there is a difference between soft power and influence, as influence also rests on the hard power through threats or payments, while soft power is “*more than just persuasion or the ability to move people by argument, though that is an important part of it. It is also the ability to attract, and attraction often leads to acquiescence. Simply put, in behavioural terms soft power is attractive power*” (Nye, 2004b: 6). Already then, a growing recognition of the multilevel interconnectedness between various international actors has mobilised IR specialists. Within this complex international landscape and specifically considering conflicts and subsequent humanitarian situations, humanitarian protection actors are considered to have the capacity to shape reality through the actions and the discourse they are involved in developing. For De Lauri, Barnett and Weiss, humanitarian actors have a role on the very world-making and constitutive force of humanitarianism: not only a product of our era, but also the ‘producer’ of a specific form of humanity (Barnett & Weiss, 2008a; De Lauri, 2016).

The XXI century offers multiple paradigm changes at once: some exogenous to the humanitarian system (IR meta-transformations towards enhanced polarisation and regionalisation, the development of NTIs), others are endogenous to it (humanitarian professionalisation and diversification of competences and skills). All commonly share to challenge the humanitarian system pre-established mechanisms and to question the

adequacy of ethics' ground applications, and all invite for further reflections. In recent years, it is the security dimension of humanitarian interventions that has mobilised attention from both practitioners and researchers: while Fast discussed 'Aid in Danger' and challenged the dominant narrative of a security deterioration in the field, Duffield pointed at the increased "bunkerisation" of humanitarian work (Duffield, 2018; Fast, 2014; Neuman, 2016). The physical distance from humanitarian professionals to populations they intend to support is to be understood within a dynamic of increased reliance on NTIs. According to Duffield, *"computational technologies (...) have come to shape a dominant, if particular, understanding of the world, how it works and the status of the human that inhabit it"* (Duffield, 2018: 6-7). The computational turn, or increased reliance on NTIs, can be defined as the steady, albeit asymmetrical, penetration of computers, the internet, mobile telephony, software platforms, social media, automated apps, artificial intelligence (AI) into all aspects of individual lives, along with national and international functioning structures. At the turn of the XXI century already, Nye had insightfully noted:

*"Winning hearts and minds has always been important, but it is even more so in a global information age. Information is power, and modern information technology is spreading information more widely than ever before in history. Yet political leaders have spent little time thinking about how the nature of power has changed and, more specifically, about how to incorporate the soft dimensions into their strategies for wielding power"* (Nye, 2004b: 1).

Leveraging the science and technology developments for their '*dramatic new dimensions to power resources*' remains one of the most difficult challenges for academic research in the XXI century, especially when it comes to exploring the materiality of digital tools with intangible notions. Duffield specifically observed a Paradox of connectivity, where *"the greater the reach and speed of connectivity, the more ground friction is generated"* (Duffield, 2018: 191). According to him, there is a formative ontological and epistemological relationship between a (physical) world which is seen as complex and dangerous, and the databased sense-making tools used to establish and understand this condition (Duffield, 2018). In his view, they however appear unconnected in any intrinsic sense, therefore generating resistance, irritation and a need to find a new balance. Kratochwil similarly

recognised the important and troubling role that NTIs play at the international level, as he recently warned that *“debates can lead us out of the cave, since much attention is being paid to indicators, measurements and data for logical inferences, while important conceptual issues are neglected”* (Kratochwil, 2022: 15). If NTIs have a long history of appropriation, the important question lies with identifying what can be gained and what could be lost in this global ‘digital’ transition. NTIs’ exponential development and its asymmetrical penetrations among societies, structures and humanitarian organisations represent a call to revisit and identify new humanitarian paradoxes through a digital lens. Implications (positive or negative), unintended consequences, and potential (in)adequation are necessary, if not fundamental, to explore.

Initial reactions to the further weaving of digital tools within the various dimensions of warfare and of humanitarian work have initially been mostly positive and enthusiastic. In the humanitarian sector, the ‘data revolution’ was seen to bring ‘solutions’ to complex issues, to gain time efficiency and transparency in funds’ usage asked by donors. Yet, in the era of complex and new ‘digital’ humanitarianism, studies aiming at contemplating how the use of NTIs affects humanitarian practice and policies have thus far mostly focused on assistance programmes, or what Forsythe called *“relief protection”* (Forsythe, 2001a). Assistance programmes are more easily measurable quantitatively as the direct tangible translation of ground activities – such as a distribution of non-food items (NFIs) for example – would be digitally interpreted through data-generated (lines of 1s and 0s) software allowing to visualise activities, including across time and location. While positive changes need to be recognised, the systematic transposition to all sectors of humanitarian work would not fit the complexities of protection work. The supplanting of grounded humanitarian protection practices with NTIs’ tools has not been frictionless, nor straightforward, and neither a simple matter of technological change. There has been a clear gap of research focusing on the complex intertwining of humanitarian protection work with NTIs while information is central to the protection endeavour, therefore rendering the need for such research even more fundamental.

In the last decade, very few academic researchers – noticeably two – have tackled the uncomfortable questions of the use of technologies in humanitarian work, and more precisely

in humanitarian protection. In 2014, Kristin Sandvik along with other researchers daringly argued that humanitarian technology was a critical research agenda (Sandvik et al., 2014). With *The Politics of Humanitarian Technology: Good Intentions, Unintended consequences and Insecurity*, Katia Jacobsen has paved the way for in-depth inquiries of intricate relations between tangible materials, their values and embedded politics with often intangible but crucial protection issues (Jacobsen, 2015). Sandvik explored a humanitarian innovation's theory of change, and investigated the struggle of sexual violence in conflict with the digital turn together with Lohne (Sandvik, 2017; Sandvik & Lohne, 2020). Both Sandvik and Jacobsen continued to push research out of already existing frames with *Do No Harm: a taxonomy of the challenges of humanitarian experimentation*, and *UNHCR and the pursuit of international protection: accountability through technology?* – they carry on being among the few to associate and question the relation of technologies with the humanitarian protection mandate (Jacobsen & Sandvik, 2018; Sandvik et al., 2017). Expanding from those cornerstone works, discussions from the traditional *Do No Harm* towards a *Do No Digital Harm* have recently been explored by both researchers and more consciously by humanitarian practitioners themselves (Burton, 2020; Dette, 2018; Devidal, 2023). Yet, there is a need to further connect theoretical academic research to agency-focused reflections on usually more very specific issues (i.e., sexual violence, child protection for example) that are close to field practices: a systemic review of the state of affairs of the International Protection Regime (IPR) through a digital lens would allow to reflect on crucial new paradoxes as well as subsequent attempts to find new grounds. The protection of civilians encompasses legal (i.e., refugees) and other sub-categories that have been created by the humanitarian system – we consider civilians overall while we also acknowledge the variety and complexity of risks and needs women, girls, boys and men face as they are affected by conflicts through physical, psychological and now digital dimensions.

The impetus for this research was born from a question arising from a field situation, which found no answer. The matter at hand related to the use of digital tools to share sensitive information while documenting protection concerns. Already then, the divide was stark at two levels: first, from an asymmetric use of technologies where civilians themselves ask humanitarians about digitally transferring sensitive content while humanitarian organisations may not have seized possibilities and risks with such approach; second, the



situation called for an ethical questioning of the protection staff responsibility regarding the pivotal Do No Harm – at a professional level but also beyond for the personal engagement to humanitarian action. From seating uneasily with this ground reality of ‘digital desert’ on the one hand, and hyper connectivity on the other hand, the need to better understand those new dilemmas and paradoxes and what it means for the IPR led us to undertake this academic research – which will attempt to respond to the following main question:

*To which extent the disturbing role of NTIs affects both the politics and practices of the International Protection Regime (IPR) supporting civilians in conflict?*

The main focus of our research is to explore how technologies and knowledge derived from the use of NTIs are constructed in social relations and interactions inherent to protection work. Political and ethical implications of NTIs as constitutive of protection practices and meanings will be further investigated in order to grasp the depth of IPR’s alteration. Our research will cover different types of technologies – including the internet, aerial and satellite imagery, software platforms, social media and big data, automated apps, artificial intelligence – under the umbrella notion of NTIs. While the level of penetration of those digital tools within societies and the humanitarian sector is disparate, the word ‘new’ is contemporarily bounded: it relates to the fact that those are emerging or being absorbed by individuals and organisations of different shapes, sizes and mandates since the turn of the XXI century, and even more so in the last decade (since 2010). The IPR brings together *“implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations”* – as we conceptually base the research on Stephen Krasner’s definition of international regimes (Krasner, 1982). The different actors of the IPR include States<sup>4</sup>; Non-State Armed Groups<sup>5</sup> (NSAGs) which have become omnipresent belligerents<sup>6</sup> in asymmetrical and often entrenched conflicts of the XXI century; protection actors - both humanitarians but also human rights advocates, and to a certain extent, the general public in an increasingly digitally and continuously connected world. All those actors

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<sup>4</sup> especially those who signed and committed to respect international conventions that recognise and provide civilians with protection – such as The Refugee Convention of 1951, the fourth Geneva Convention of 1949, the second Additional Protocol of 1979.

<sup>5</sup> NSAGs is an umbrella term that covers various shapes and forms of armed groups that have a political and territorial intent.

<sup>6</sup> Since the development of International Humanitarian Law (IHL) in the XX century, the term often used in IHL refers to ‘parties to the conflict’ when referring to belligerents. In this research, we will use both terms interchangeably.

play a role in the IPR by defending their interest and by trying to exert influence and power on others to suit their respective agendas. A specific emphasis will be put on humanitarian protection actors across the whole research. The rationale behind this focus is rather simple: humanitarian protection actors are the guardians of the protection mission, their respective mandates – for the United Nations High Commissioner for Refugees (UNHCR) and the ICRC specifically, were given by States and lies on bodies of International Law which they are entrusted to defend. This is a difficult mission where humanitarian actors' responsibility lies with convincing parties to a conflict and other states to respect protective measures and provide protection to civilians in need – within or outside the borders of their respective countries. Their specific roles as guardians of the protection mission therefore justify an in-depth focus on humanitarian protection actors – while interactions, interdependences and links among all actors are cautiously considered within the research.

As mentioned above, the role, uses and impacts of NTIs in facilitating, enabling, and shaping adaptations of international regimes has been explored in a limited way. With the example of protection, our research will attempt to fill this gap in research and knowledge by responding to the research question outlined above, i.e., how the disturbing NTIs variable affects the politics and practices of the IPR supporting civilians in conflict.

In doing so, we put forward three hypotheses which we will probe through the research:

First hypothesis: In a global information age governed by over-information and information gaps, new technologies and digital tools enabling and facilitating access, consolidation and analysis of information are not yet “absorbed” or “suited” to allow for optimal traditional protection work. The increased use of data put quantitative elements at the forefront, often overlooking qualitative aspects of protection analysis. We contend that this subsequently creates a discrepancy in how protection issues and risks are captured, at the expense of its intangible components (fear, dignity).

Second hypothesis: Protection guardians contribute to shaping the debate through (1) their expertise and field-based knowledge (including both quantitative and qualitative elements of protection information) and (2) their role in ‘humanitarian diplomacy’ – therefore re-negotiating the terms of the IPR.

Third hypothesis: The IPR's foundations are challenged by the paradigm shift the (mis)uses of NTIs among various actors of the system implies: regime alterations lead to a lessening of the protective capacity of the IPR.

In order to address the above hypotheses and bring elements of response through the research, we will call upon different fields of academic expertise, including political science and more specifically international relations, international law, sociology (sociology of actors and sociology of organisations), history, and science and technology. Complementing academic insights, the study links theory to practice in order to further substantiate and nourish the reflection: we will draw on humanitarian professionals' views in our field research. This specific perspective aims at reducing the gap between operational practice and academic research. The choice of a systemic approach – focusing on the protection of civilians and not specifically on one humanitarian organisation – was consciously made and has for objective to ensure a certain global perspective that would transcend daily humanitarian organisations' concerns. The research has for objective to provide a systemic (or global) assessment of the state of affairs of the IPR - which now includes a digital lens and intends to complement other types of research: more focused on certain issue-areas or more theoretical.

By definition, operational research also carries hopes for findings to be looped back into the practitioners' sphere, considered and used to nourish operational reflections and potentially contributes to informing institutional policy positioning. Barnett's remarks have a specific resonance as we consider our research:

*“Speaking personally, and I suspect for all of those who study humanitarianism, it is almost impossible to do field research without also wanting to find ways to ensure that the purpose of our scholarship is not only to be read by a handful of other scholars but also helps, in some small way, to inform those who are giving so much of themselves to help others and to help others who have so little find ways to improve their life circumstances”* (Barnett, 2008: 263).

Yet, it is often a challenge to ensure academic research finds its way to inform operational humanitarian organisations. Terry and Kinsella recently shared thoughts on the challenge of

connecting those two - academic and humanitarian operational – worlds. Terry shared useful insights noting that *“when you’re an independent consultant, it’s very hard to push through your recommendations or research findings if you are not embedded in the organisation. I also realised this was part of a broader phenomenon of impediments to the uptake of research findings: often academics and policy consultants were commissioned to conduct research but (...) their recommendations stayed on shelves”* (Terry et al., 2020: 186). Kinsella complemented adding *“I feel we often talk about the academic-practitioner divide and we assume it’s easily solvable if academics would just write more simply. I think it’s part of it, but I also think there’s a huge investment of time we do not acknowledge – it’s not an easy thing to do. It takes a lot of time and energy to do so”* (Terry et al., 2020: 198).

Agreeing with the above, the distinctive approach of this research lies on this double identity: the identity of a humanitarian professional who has worked and experienced protection problematics in different field missions,<sup>7</sup> and that of a political science researcher who intends to better grasp and interpret the multi-layered intricacies of NTIs’ impacts on the IPR. While some may see it as a challenge, the experience of the research, to the contrary, showed that the peculiarity of this double-identity proved an added value during the field research. Our approach specifically finds commonalities with the concept of ‘theory of practice’ developed by Pouliot, which sees experiences as adaptive and leading to actors’ adjustments (Pouliot, 2008). Such concept will constitute the thread of our analysis.

Indeed, the methodology chosen for the research rests on two mutually reinforcing approaches. On the one hand, an in-depth review of available academic literature from different fields of expertise that are relevant to our research topic provides a strong conceptual framework to frame the inquiry. A specific place is given to the concept of international regimes initially developed in the late 1980s: Krasner’s concept allowed to bring valuable insights on international issue-areas and observe the establishment and variations in both substance and forms of cooperative arrangements among various actors. On the other

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<sup>7</sup> It is important to note here that while the PhD was developed in parallel to continuous operational work, changes of position as well as operational work percentages were made in order to create optimal conditions for the research. For instance, a change of position was made away from direct protection work in order to take further perspective on the protection endeavour. Additionally, a change to 80% operational worktime was carried out to ensure more time for research for two years.

hand, our ‘field research,’ based on semi-structured interviews with humanitarian professionals, allowed to gather and analyse insights from over 30 humanitarian professionals from 20 different nationalities with specific profiles and working for five humanitarian organisations with a strong protection mandate or activities: the ICRC, UNHCR, the UN Office for the Coordination of Humanitarian Affairs (UN OCHA), the Norwegian Refugee Council (NRC) and the Danish Refugee Council (DRC). All interviews received consent to be non-nominally transmissible, therefore, some content is used in the research with information on the organisation and category – but has been individually anonymised. The operational experience in protection of the researcher of this study allowed for a certain familiarity<sup>8</sup> which fostered the sharing of frank and open views from practitioners. Humanitarian professionals in three different categories of operational roles were specifically targeted across the five organisations: (1) protection, (2) information management/information technology, and (3) senior managers/policy and innovation staff. A balance of field and headquarter staff was also sought in order to enrich the analysis. Semi-structured interviews provide various viewpoints from humanitarian organisations’ practitioners at different levels and allow for humanitarian professionals to share their thoughts, views, at times frustrations on four main broad topics:

1. The evolution of the use of NTIs in the humanitarian sector,
2. The evolution of the use of NTIs in protection work,
3. NTIs and quantitative methods,
4. The impact of the use of NTIs on knowledge-generation processes.

The mutually reinforcing approaches linking a conceptually anchored frame based on international regimes with ground humanitarian experiences and various expertise allow to interpret micro realities and macro-trends: the articulation of the two constitute the systemic review we bring forth in a consolidated analysis. The research intends to provide a non-deterministic perspective in the alterations of the IPR and humanitarian actors grappling with the digital dimension of their work, but also to humbly contribute to humanitarian policy debates on the role and implications of NTIs’ uses in conflicts and in humanitarian protection work.

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<sup>8</sup> A sense of being ‘among oneself’ or ‘*entre soi*’ in French – as humanitarian protection staff from various organisations often share the same challenges and at times, frustrations.

The research is segmented around three main parts, each composed of two chapters. The first part invites the reader to consider the IPR and the centrality of information, providing a strong conceptual frame for the research. *Chapter 1* revisits the genesis of the protection of civilians: mobilising insights from anthropology, history and philosophy to identify the roots of the core concepts of humanity and dignity while the categorisation of the ‘civilians’ was elaborated by men who developed the first rules of behaviour in waging war. *Chapter 2* will allow to frame the structuration of the International Protection Regime (IPR). We explore how the experiences of the two world wars have constituted triggers for a post-World War II (WWII) formidable development of international law protecting civilians. International bodies of law – International Humanitarian Law (IHL), International Human Rights Law (IHRL) and International Refugee Law (IRL) form the spine of the IPR. We then present the current system of actors constituting the IPR, including States themselves – legally responsible to abide by international bodies of international law they committed to,<sup>9</sup> at times being either alleged perpetrators or advocates for the protection of civilians; NSAGs which are belligerents in dozens of conflicts; protection guardians of the IPR, which includes both humanitarian protection actors,<sup>10</sup> but also human rights advocates such as Human Rights Watch or Amnesty International; lastly and to a certain extent, the general public. We then review how the 1980s constitute a threshold of change: the use of NTIs starts being incorporated in societies’ functioning, while humanitarian work transitions to become ‘semi-distant’, facing the intricacies of new asymmetric wars, tied with new protection issues and a significant self-inquiry within the humanitarian system.

In the second part of our research, we explore how practices in the use of NTIs lead to negotiating yet unexplored digital territories. The tangible and the intangible aspects of *how* NTIs impact both practices and subsequent politics of the IPR are specifically investigated. In *Chapter 3*, we review how the protection endeavour is built with information, both from primary and secondary sources, triangulation and verifications, thorough analysis to identify most suited responses to protect: to put civilians’ out of harms’ way, to avoid risks and to

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<sup>9</sup> It is important to note that not all States have signed all international Conventions that bring protective measures for civilians. Therefore, a legal analysis is required to be made when facing humanitarian situations so that humanitarian protection actors can identify which bodies of international law they can rely on in their argumentation – or appeal to wider principles around humanity, therefore adapting attempts to influence and exercise power.

<sup>10</sup> This notably includes the UNHCR, UN OCHA, ICRC, NRC and DRC we focused on in our research.

build an environment that would be less conducive for violations to occur. The direct engagement humanitarian protection staff in “doing” protection and “Doing No Harm” can be tangible, but often is not. The integration of NTIs in protection work has rightly been qualified as a “*fast moving and immature field*” (Sandvik et al., 2014). A general enthusiasm and optimistic view has welcomed new digital tools as providing ‘solutions’ and has materialised through the development of complex dashboards and faster ‘data-crunching;’ thus humanitarian professionals testing through ‘pilots’ trials of new tools in conflict situations nearly became the norm. Attempts to leverage a new paradigm led both ground practitioners and academic thinkers to signal the need to balance opportunities with systematic assessments of risks – including new digitally-induced risks for civilians. Humanitarian protection experts were not immune to digital changes – albeit often recognised to be among the most reluctant to adopt new tools. The intertwining of technological, managerial and normative approaches allows to develop an understanding of a ‘protection issue’ – a certain blurriness of the ‘potential’ negative consequences and risks behind or embedded within digital tools is clearly identified as a matter of concern. The chapter specifically explores how the ill-defined role of NTIs leads to certain limits and gaps: competitiveness between humanitarian actors, unequal connectivity, the fear of the loss of the ‘human touch’ in interacting with civilian populations are specifically important. The period of transition, which we call the “time-in-between,” the emergence of new issues and the development of principles, rules, norms and procedures to regulate them – remains mostly ungoverned as calls for the development of ‘principled means’ (or principled digital tools) to reach protection objectives have become increasingly heard by humanitarian organisations’ leadership.

In *Chapter 4*, we research how the exponential acceleration in NTIs’ development from the 2010s reinforces an existing drift – both in conflict and humanitarian practices. A drift where digital tools have metamorphosed faster than human ability of humanitarian professionals (or at times willingness) to use them, while increasingly recognising the need to remain aligned with fundamental humanitarian principles, including humanity. The intangible – or the difficult – questions related to ethical and political implications arising from the use of NTIs started within regular armies first – at times shivering the IPR foundations to serve a war narrative with a logic of security, opposing recent humanitarian sector debates driven by a

logic of protection led both by academia and practitioners (Duffield, 2016, 2018; Jacobsen, 2015; Rouvroy, 2016; Sandvik, 2017). The uncomfortable questions on ethics and political ramifications have moved from the margins to the centre and taken roots within larger reflections around a better consideration of risks that NTIs may leverage. It has also been a growing issue in humanitarian protection organisations' reflections, practices and policy making. A common recognition that 'relevant' questions were asked, notably around risks and protection guardians' own responsibility in using technologies of information in their work was identified through our field research. Humanitarian principles therefore started to be reviewed with a digital lens: the tradition 'Do No Harm' was revisited with 'Do No Digital Harm' and focused on the extension of the consideration of a person from their physical and psychological being to welcome a new addition: the digital body (Burton, 2020; Dette, 2018; Marelli, 2020). The important issue of trust is increasingly recognised along with the need for responsible collection, storage, sharing and use of sensitive data and information collected from conflict areas and concerning civilian populations directly or indirectly. As humanitarians started to seize the issue through integrating digital aspects into their codes of conduct, policies and dedicated more resources and expertise as a priority, a nascent governance - essentially pushed forward by the authority of humanitarian actors through their practice and expertise - has started to emerge.

In the third part, we research how protection knowledge (re)generates through the incorporation of the use of NTIs within protection work. The research contemplates the role of NTIs beyond a mere 'variable' as the implication of digital tools' uses, at times (intentional or non-intentional) misuses, by actors of the IPRs (States, NSAGs, and Protection Guardians) has significance for civilians' lives. In *Chapter 5*, we delve into *how* the (mis)uses of NTIs impact new knowledge generation processes. The congruence of concept with information and ideas contributes to creating knowledge required to pursue the protection mission. Difficulties linked to a certain loss of compass were identified at two levels. First, an un-ease for having to 'keep pace' with NTIs' absorption in humanitarian protectors' practice in a way that is considered aligned with protection principles and objectives – including in direct interactions between humanitarians and civilians themselves. Second, amidst information overload - on the one hand with the public sharing pictures and photos of their plight almost



‘as it happens’ and on the other hand what we called ‘data deserts’<sup>11</sup> – it becomes crucial for humanitarians to understand digital tools’ limits and biases in order to use them as suited means to support protection ends. As ‘truths’ in antagonised conflict settings are all the more digitally debated, the issue of trust also gains renewed significance. Contrasting with State-centred research in IR, we explore the communities of practices which mobilise to defend the protection episteme and find a new balance. Cognitive evolution views lead us to use existing theoretical frameworks developed by E. Haas on learning and adaptations to apply them to the IPR alterations and finding consistency with the ‘turbulent non-growth’ model as humanitarian actors seek to adapt. In using often digitally supported knowledge, various strategies are explored in order to influence: issue-linkage strategies or cross-issue persuasion among others.

In *Chapter 6*, we probe the search for common grounds of the IPR, mobilising IR theoretical works on international regime change, notably using works of Krasner and Young, theorising the challenge of adaptation and reviewing the opportunities along with related perils. Effectiveness and robustness of international regimes are notably discussed as to whether the IPR – often disrespected, even by its own signatories - could still exert influence over its actors and shape expectations of behaviour. Opportunities lie with humanitarian actors’ expertise, from which they derive a certain authority in international fora – bilateral or multilateral – while risks challenging the IPR common base, anchored in the XX century experiences - remain present. As change speaks not of a choice but of a necessity to adapt, opportunities for expansion seem tempting while inspiring caution. A constraint in recomposing the IPR lies with re-interpreting the core IPR for survival, using for example the Martens’ clause to advance narratives that would suit contemporary realities of conflicts. Beside humanitarian protection organisations’ expertise, views and advanced narrative – the issue of norm alteration is mounting. Finally, we recognise the current turbulences within the humanitarian system to be linked to the challenges of its core and redefinition of its contours: a matter of parameter as well as perimeter. We will contend that the emergence of new norms encompassing digital risks and protections has started and is yet to be further negotiated upon by actors composing the IPR – the decade of the 2020s will certainly give more prominence to ‘issues without borders’ at the international level. Current and future

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<sup>11</sup> We conceptualise ‘data deserts’ as places with no access to NTIs for information sharing, or places purposely cut off from outward communications by belligerents for political purpose.

norm developments will likely further take shape through softer agreements (not to say subtle) based on multi-stakeholder participations.

The *Conclusion* will attempt to respond to our main research question, offering a review of the three initial hypotheses in light of the research findings: NTIs significantly affect both the politics and practices of the IPR supporting civilians in conflict. Yet, despite foundations being substantially challenged, a ground-oriented and humanitarian protection expertise-driven development of new rules seeks to frame the ungoverned digital dimensions that concern civilians in conflict. In the inception of a new adapted governance on 'digital' protection, the emergence of new 'subtle' norms reveals to be pivotal. Nonetheless, most remains to be negotiated beyond the intra-humanitarian sphere towards other actors of the IPR for new norms to gain recognition and be accepted as the legitimate expected behaviour. Parties to conflicts – NSAGs and most significantly States' positioning - will be crucial to engage with in years to come. Lastly, widening the scope beyond humanitarian protection, we consider the development of a global digital governance as a critical research agenda. In doing so, we contemplate how fragmented developments of national laws and policies prepare for international contestations of established international NTIs' structures while diplomatic positionings among several multilateral negotiations in the years to come – with a culminating point in 2025 with the Summit for the Future and discussions around a potential Global Digital Compact - would call for further academic attention and research.

## **PART I: The International Protection Regime and the centrality of information**

The first part of our research intends to ‘set the frame’ on the core concepts, laws, and historically grounded past and present experiences and phases of violence, war, humanitarian response and most recently integrated new technologies of information. In doing so, we refer to various fields of expertise – which we consider a necessary step to ensure the appropriate definition and characterisation of our research. We notably mobilise reflections emanating from the fields of anthropology, history, law, political philosophy, political science and International Relations.

In many ways, civilian protection can be considered a rather recent concept, reason why we approach the research by first looking at the genesis of considerations on the very notion of what constitutes a ‘civilian,’ before then turning to the notion of protection of this specific category of persons within a society or human group. Borrowing from anthropology and history, *Chapter 1* first explores prehistorical hints of human behaviours as well as cross-religious moral considerations, before turning to modern warfare and paradigm shift induced by NTIs. Humanity, the cornerstone dynamic concept on which protection rests, is explored through reflections that relate both to the ‘self’ and the ‘other.’ Dynamic and malleable in shape, universally proclaimed and pragmatically bounded, humanity is the anchor to both the International Protection Regime (IPR) and the humanitarian endeavour. In the *second Chapter*, we further elaborate on the structuring of the IPR, relying on International Relations theories - notably the concept of international regime, while recognising how ground experiences of wars in the XX century which contributed to a formidable legal development shaping the IPR. Information, often and increasingly leveraged by new technologies, constitutes a central element in understanding mostly chaotic conflict situations as well as intricate and complex configurations of various interests among a multitude of actors. We therefore explore, present and unpack the system of actors that have a role, a stake and exert various forms of influence in the IPR – specifically elaborating on both belligerents in conflicts and humanitarian actors. Lastly, as the IPR is closely linked to the humanitarian system, we bring forward early elements of reflections on the humanitarian system various challenges and adaptations. This first part of our research puts together the various elements, resorting

to various academic expertise and a few ground experiences that are necessary to reflect the complexity of the subject-matter, that constitute the International Protection Regime: from concept to international law and actors involved; as well as the centrality of information.

## Chapter 1: Genesis of civilian Protection

As we set the frame to define our subject-matter: the relation between the international protection regime (IPR) and the new technologies of information (NTIs), we ought to explore the genesis of cornerstone concepts, most importantly “civilian.” Firstly, we will explore how various behaviours in different regions and historical periods enshrine a certain commonality in what can be considered as an intrinsic value of human life. While motivations may stretch from practical purposes to economic, political and moral drivers, the roots of restraints in combatants’ behaviour led the ground for the modern concept of ‘Humanity’ to be developed. This chapter will review different phases in the genesis of protection of the civilian populations, including through the lens of evolving narratives and concepts. Schütte , who reflected on the ‘protection of the civilian population’, views the subject-matter as cross-cutting, and thus uncomfortable for military experts as well as humanitarians, which results in having limited theoretical and empirical research (Schütte, 2015). Although agreeing on the gap of research on the concept and its cross-cutting nature, we will argue that the very complex and multi-dimensional nature of civilian protection led the various fields it entails to develop intra-sectoral expertise rather than cross-discipline research. Our research project, in its attempt to bridge a gap of reflection on the use and impact of NTIs on the International Protection Regime, will resort to various fields of expertise. Political Science is core to the reflection as it entails to power, while other disciplines related to social and technological sciences bring essential insights. This chapter aims at setting the frame on the motives and methods of restraints in warfare, resulting in the development of some protective mechanisms for civilians.

### I. Prehistorical hints on human behaviours

We can reflect on humankind behaviours in warfare based on ‘available information’. The latter will prove instrumental and guide the development of our research. In prehistorical times, analysis of remains suggests hunter-gatherer societies (40,000 to 10,000 BC) resorted to surprise attacks on other groups (Mirazon Lahr, 2016). While it is not possible to know whether a distinction was made between fighters and those not fighting, some reports

suggest women were not necessarily killed, allegedly for their reproductive functions. A demographic objective for a group survival thus may have motivated a certain restraint in attacks on some segments of hunter-gatherer's groups. Gat reflects on the evolution of anthropologists' thoughts and advances in evidence-based research, including the archaeological study of skeletal remains and traces of violence (Gat, 2015). According to him, archaeology contributes to further reflection on a previously dominant classic Rousseauian view of hunter-gatherer societies as being non-violent societies, pointing out to evidence collected suggesting high levels of violence found in bones' remains (Gat, 2015). Interestingly, violence traces were documented in higher volumes for male than on female remains. While available information on the state of affairs of inter-group (or inter-tribal) violence and warfare remains limited, the above complementary analysis from archaeology and anthropology viewpoints makes a case for a multi-disciplinary approach, which we will also pursue mobilising various fields of expertise while reflecting on warfare practices through the lens of NTIs and how it affects civilian populations.

During Antiquity (10,000 BC), more elements of information arising from archaeologists' studies allow for reflection on the conduct of warfare. According to Schütte, total annihilation was not the most practiced outcome of war – although the destruction of Carthage and most of its people may be a counterexample (Schütte, 2015). Non-combatants were both the target and the reward of a victorious war, especially women. Looting and appropriation of civilian dwellings and goods was also considered a routine activity of the victorious. As no written law framing combatants' behaviour yet existed, it is challenging to establish a trend on mechanisms of civilian protection. Yet, it is worth noting the practice of enslaving enemies (combatants and non-combatants), to perform work functions. If enslavement did not come with recorded forms of insurance or rules on (ill)treatment, lives were 'preserved' for the value they could bring (new births, manpower for infrastructures for example) for the winner. At the same time, this also allowed to ensure limited possibilities for counterattacks.

Both examples above could fall under a category of functional protection: for biological purposes or for the roles those enslaved were required to perform in the victorious' society. Political, demographic or economic incentives motivated various types of civilians' treatments. Fighters or combatants<sup>12</sup> then behaved based on what was permissible or

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<sup>12</sup> Different words are used to describe those taking up arms to fight in a conflict. It is therefore important to acknowledge that the word 'combatant' is mostly used in International Humanitarian Law in the frame of international armed conflicts,

considered 'right' according to contemporary moral values. Morality was thus the main angle to analyse behaviours, while legality was yet to be developed.

During that period, the modern concept of humanity understood as a shared commonness uniting all human beings was absent. To the contrary, the notion of 'commonness' was first extended to the intra-social or religious group, before being extended to the next-of kin, and eventually civilian populations of 'enemies.'

## II. Different religious moral considerations

The development of different religions represented a 'guide' for living a 'morally good' life. Religion contributes to define the 'morally acceptable behaviour' for the group of believers, regulating human interactions – including warfare. The link between religious teachings and the most recent development of modern law of armed conflict means that religious traditions represent sources of current international laws framing the protection of civilian populations in armed conflict. It is thus important to review different religions' stances and historically grounded interpretations. We acknowledge religious traditions and interpretations played a role in influencing values and behaviours, insofar contributing to the development of the concept of civilian protection. Our review, albeit non-exhaustive, will start by exploring the three major monotheist religions, before expanding to Hinduism and Buddhism in order to align our research with the claimed 'global' reach of humanity and protective valued lives.

- *Christianity*

Moral values associated with the inception of Christianity – based on Jesus's reported sayings and his followers' writings - are largely interpreted as pacifist and forgiving of those responsible for 'wrongdoing'. Accounts of refusal to retaliate against violence raise ethical questions for the Christian community: on whether to consider this ethics binding or rather contemporary to the society of the time (Mecklin, 1919). In the Christian Gospel of Matthew, Jesus reportedly said, *'Ye have heard that it hath been said, Thou shalt love thy neighbour,*

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while the word 'fighter' is used in the frame of non-international armed conflicts. Scholars and humanitarian practitioners often refer to the word 'fighter' to describe those continuously fighting as part of non-state armed groups. As we discuss here about times before the development of international law that regulate the conduct of warfare, we consider the two words can be interchangeable as they both define the category of persons who take up arms and fight.

*and hate thine enemy. But I say unto you, Love your enemies, bless them that curse you, do good to them that hate you.'*<sup>13</sup>

Ethical relativism was then applied through the development of various interpretations, from the *Pax Romana* (31 BC to 250 AC) period when Christianity arose and a peaceful gospel was spread, supported by a relative stability and advanced road systems, to the Crusades (1096-1271) and Eastern-Mediterranean campaigns. Mecklin already analysed dualism between '*the sphere of the perfect ideals of Jesus' pacifist ethic and the militant ethic of actual society*' (Mecklin, 1919).

In the large period of the Middle Age (V to XV century AD), recurrent wars led to the seeding of war ethics ideas and early codes of conducts. In 989, the Catholic Church at the Council of Charroux declared the '*Peace and Truce of God*,'<sup>14</sup> which called on limiting violence through measures to protect ecclesiastic properties, the Church's agricultural fields and unarmed clerics from attacks and that attackers should be repudiated in case of disrespect.<sup>15</sup> Gaining traction among conflicted Western Europe, the 'Peace and Truce of God' was then proclaimed by the Council of Toulouges in 1027. George Duby, renown Historian of the Medieval times, interestingly analysed the development of villages around churches as being linked to the sacred significance or immunity zones then proclaimed under *Pax et treuga Dei* (Duby, 1980). The development of a communal area, which we could view as an early public space, will be an important element of our analysis of the development of a series of mechanisms defining the protection regime. The rise of chivalric codes focused on 'fair and honourable' fights while civilian populations were regular victims of warfare through sieges or massacres. While it favoured peace, a certain acceptance of knightly activities was nonetheless recognised: the cognitive change lies with the official recognition that warfare activities should have limits (Bartholomew, 1999). However, according to Riley-Smith, the peaceful move, also constituted a steppingstone to the Crusades because the Peace and Truce were only enforceable by - *external* - military action, leading the Church to becoming more embroiled in warfare (Riley

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<sup>13</sup> Holy Bible, above n 21, Matthew 5:43-4

<sup>14</sup> In Latin : *Pax et treuga Dei*

<sup>15</sup> The Synod of Charroux stated: "When evil doers had sprung up like weeds, and wicked men ravaged the vineyard of the lord like thorn bushes and briars choking the harvest, the abbots and bishops and other holy men decided to call a council at which *praeda* would be forbidden, what had been taken unjustly restored to the church, and other blemishes on the face of the holy church of God scraped away with the sharp blade of anathema."



Smith, 1987). Arguments changed using interpreted God's will to justify waging a 'just war'<sup>16</sup> (Gratian's Decretum, 1140, reinforced Saint Augustin's doctrinal just war theory). The Christian rhetoric around the need to protect "innocents" often came in contradiction with the plural liability adopted for individuals belonging to a same group, and thus considered the enemy – fighting or not. Moral values evolved to bring some distinction between 'believers' that became more positively considered, at the detriment of 'non-believers' or minorities from other faiths.

- *Islam*

The rise of Islam during Hegira (622 AC) was followed by the development of a broad foundation of religiously grounded philosophical reflections and jurists' practical interpretations of Islamic concepts. According to Sardar Ali and Rehman, out of 6,666 verses in the Quran, some 70 address the conduct of hostilities (Sardar Ali & Rehman, 2005). The development of the Siyar<sup>17</sup> (laws of war) in the following centuries brings a wealth of elements of taxonomy distinguishing combatants to non-combatants, thus qualifying persons that should be 'protected' under Islamic precepts, military commanders and jurists' interpretations. According to the Oxford Dictionary of Islam,<sup>18</sup> there are two main aspects of the notion of Siyar. Firstly, the Arabic singular form (sirah) usually refers to the biography of Muhammad. The plural form (*siyar*) - سيار - is used for the exemplary lives of saints, typically found in collective biographies or biographical dictionaries, as well as for the history of political campaigns. Secondly, it relates to the conduct of the state in relation with other communities and technical meaning acquired by the term of the second century of Islam (800 AD). The second aspect of al-Siyar is the one we will explore, through military commands and jurists' interpretations.

#### *First Caliph Abu Bakr: guidance to soldiers' behaviours*

Records of the first Caliph Abu Bakr military command to his soldiers feature instructions recognising a need for distinction between combatants and non-combatants, the latter being

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<sup>16</sup> Saint Augustine, first theorist of the 'Just war' doctrine, considered permissible for nations to engage in just wars, but also viewed that war was not just if it was carried out for the "wrong reasons."

<sup>17</sup> Al-Siyar is often referred to as 'the laws of war'.

<sup>18</sup> The link can be found [here](#).

granted a certain immunity. Recommendations “not to” kill a child, nor a woman, nor an aged man were part of the military instructions (Aly, 2014; Sardar Ali & Rehman, 2005). Following an incident, another instruction “not to” bring harm to people who devoted their lives to monastic services go hand-in-hand with rules regarding inviolability of places of worship stated in the Quran.<sup>19</sup> Other military commands attributed to the First Caliph Abu Bakr relate to instructions “not to” mutilate dead bodies resonates with contemporary forms of protection of the dignity of the deceased.

#### *Jurists’ interpretations: developing a legal perspective on warfare*

Jurists’ interpretations can be understood as consensus of opinions (or *ijma* in Arabic) or individual opinions (or *qias* in Arabic). The VIII<sup>o</sup> century – or the second century after Hegira – was rich in jurists’ reflections around the conduct of hostilities, a period that also corresponds to Islamic geographical expansion. In addition to above military commands and jurists’ interpretations of Islamic precepts, the Islamic tradition features rules for a humane conduct of war. For instance, Muhammad Hamidullah listed 19 practices prohibiting the killing and enslavement of those made prisoners during war, including a ban on the abuse and maltreatment of prisoners and hostages (Sardar Ali & Rehman, 2005). The VII and VIII centuries are considered to be the formative period of Islamic law.

Two contemporary jurists of the period are worth specifically mentioning. Firstly, Imam Al-Awzai, a thinker who always refused to take official functions with decision-makers but wrote what is considered to be the first book on interpretations of Islam on the way to wage war (al-Siyar explained above). The book, strongly anchoring the notion of tolerance, formed a basis that was further commented on by contemporary pioneers thinking on the subject-matter. Al-Awzai focused on the treatment of enemy persons and enemy goods, reportedly featuring a strong belief that ‘men’ remain ‘men’ before being an instrument of war (Zemmali, 1988). In his writings, enemy women and children should not be killed because they do not take part in combat. While in captivity, they should not be killed. Also referring to the first Caliph Abu Bakr commands to military chiefs (632-634 AD), Al-Awzai took a stance against the killing of “*peasants, shepherds, the elderly, the mentally sick and those with uncurable*

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<sup>19</sup> The Quran, verse XXII:40, “and had it not been for God’s repelling some men by means of others, cloisters, churches, oratories and mosque, wherein God’s name is oft mentioned, would have been demolished.”

*diseases*” not taking part in conflict. Besides religious precepts of Islam, jurisprudence based on military commands also suggests the development of the concept of civilian protection during the period to mirror new realities encountered during the geographical expansion of Islam, as well as the society of the time. Imam Al-Awzai also featured different treatments for prisoners of war (POWs), depending on their willingness to convert to Islam, while stating no ordinance within the Quran reportedly includes death penalty for POWs. Finally, recommendations for enemy goods and properties deny devastation of livestock, trees, civilian dwellings and religious places. Looting is thus not allowed. Division of goods acquired during war is stated to be one fifth for the State and four fifth for the soldiers. In his view, the Islamic army is not entitled to go beyond the military necessity. As a pioneer thinker, he inspired the Hanafites that further developed and produced written documents on laws of war and humanitarian concerns.

Secondly, Muhammed Ibn al-Hassan al-Shaybani, contemporary jurist of Imam Al-Awzai, echoed the importance of the principle of tolerance on the basis of humanity, in the midst of war. According to Heba Aly, journalist specialised on humanitarian subject-matters, neo-classical Islamic interpretations agree on the categories of protected persons, which encompass children, women, elderly, peasants, religious and medical personnel. The ‘people of the book’ (Jewish and Christians) also had a more protected place within a Muslim society than others (specifically polytheist believers). A minority of scholars yet also interpret Islam to be fundamentally at war with the non-Muslim world and see Islamic law with (modern) international law as irreconcilable (Aly, 2014).

The current international legal framework is however generally considered as being based on Christian values inherited from some its pioneers (i.e., Grotius). At the turn of the XXI century and more specifically post-9/11, a renewed interest in Islamic teachings on the rules of war let to a plethora of new scholarly articles on Islam’s interpretations of warfare conducts.

- *Judaism*

Jointly with Christianity, Judaism has deep roots in the Old Testament, but interprets the scriptures along the lines of the rabbis of Babylonian Talmud. In that sense, the Talmud is generally considered as a reference point of further reflections on Judaism and ethics of war.

According to Solomon, it distinguishes between war against the Canaanites, which is a war of extermination, and other wars (Solomon, 2005). In the Deuteronomy (chapter 20), the second category has several constraints framing the conduct of hostilities. One of which is *“the females and small children are taken captive,”* while the males are put to the sword. No distinction is made between combatants and non-combatant but rather the distinction is based on sex and associated gender roles of the time. Rabbinic readings of scriptures favour compassion with enemies when a Jewish king is the victor, and as long as it does not undermine the war aim. In Medieval times, Moses Maimonides (1135-1204),<sup>20</sup> reportedly interpreted immunity of clerics beyond the Israeli people to the like of the opposing side and ought to be respected – provided that they are non-combatants. Isaac Arama (1420-1494) shows an evolution in interpretations as he comments on the Torah and features that Jewish people should take care not to commit damage and destruction to human beings (Solomon, 2005). In the 1930s, the concept of *tohar ha-nesheq* or “purity of arms” emerged, demanding minimum force in the attainment of military objectives, and discrimination between combatants and non-combatants. The concept, although often challenged by war realities, remains a guiding principle enshrined in today’s Israeli Defense Forces’ doctrine. While the precept is integrated into military codes, Chief Rabbi Shlomo Goren (1917-1994) articulated that *“human life is undoubtedly a supreme value in Judaism (...) this refers not only to Jews, but to all men created in the image of God.”*<sup>21</sup>

While the later developing international legal framework would be considered to be largely ‘inspired’ by Christian authors and values, the concept of ‘commonness’ of the human condition, basis of protection, emerged from various religions and ethical reflections. The below will intend to enlarge our review of various religious teaching worldwide – which interestingly finds some similarities.

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<sup>20</sup> Maimonides also interpreted three types of war based on the scriptures: firstly, religious wars commanded by God, secondly, defensive wars which were licit for all men who do have outstanding religious duties, and thirdly, optional wars which were fought on the behalf of kings and for the extension of Israel.

<sup>21</sup> Shlomo Goren, “Combat morality and the Halakha” in *Crossroads: Halakha and the Modern World*, Zomet, Jerusalem, 1987/5747, pp. 211–231.

- *Hinduism*

In ancient Hinduist texts, the principle of humanity is formulated as forming the basis of the rules of war. As such, a clear distinction between military targets and non-military persons and objects, that cannot be attacked, was made. The Hinduist religion is often interpreted to be a way of life – or *dharma*. Based on Sanskrit, the root of the word relates to ‘dhri’ which means ‘to hold together’ or the maintenance of peace and security through the law and order within a larger cosmic order (Subedi, 2003). In an interesting article, M. Sinha features that those who profess the Hindu *Dharma* and seek to follow it are guided by spiritual, social, legal and moral rules, actions, knowledge and duties which are responsible for holding the human race together (Sinha, 2005). One of the major written references in Hinduism, the Rig Veda, recognises “*there is one race of human beings,*” anchoring a universal perception of humanity. Yet, war is considered undesirable but pragmatically recognised to counter aggression, as a last resort when negotiation means failed. While the concept of Ahimsa (non-violence) is core to Hinduist beliefs, only in certain circumstances a war is considered righteous (Dharma Yuddha). The Rig Veda, for example, considers unjust to attack the sick or old, the children and women. When war occurs, rules govern and limit the use of weapons (of the time of Ancient India) that cause un-necessary suffering; it also prohibits inequality in fighting methods (Subedi, 2003).

- *Buddhism*

Buddhism is a religion that was founded in India some 2,500 years ago, by Siddhartha Gautama (563 BC – 483 BC); who was given the title of Buddha – or the enlightened one. Buddhism is considered to be one of the major world religions. Exploring correspondences between Buddhist ethics and humanitarian values, the principles of compassion and non-violence with humanity’s suffering is of particular relevance (Bartles-Smith, 2019). The Dhammapada features positions against violence:

*“Not by enmity are enmities quelled, whatever the occasion here. By the absence of enmity are they quelled. This is an ancient truth” and “one should never slay or cause to slay.”<sup>22</sup>*

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<sup>22</sup> *The Dhammapada* (trans. J.R. Carter, M. Palihawadana), New York, Oxford University Press, 1987

Yet, it makes reflections on Buddhism and the laws of human conducts of warfare an almost contradiction. On the one hand, the belief that all human beings are equal makes Buddhism intrinsically pacifist, making war irrelevant. On the other hand, as war is a reality, written references can be found related to wars of self-defence. Worth noting, Buddhist use of the word “killing” is not literal in many texts but rather used to portray the internal struggle against ‘evil’, whose metaphorical killing would enable to libertate oneself. The eightfold path embeds the Buddhist tradition of respect to all forms of life, thus forms the early stage recognising a universal dimension of the concept of Humanity. Some researchers, such as Kent, interpret Buddhism as limiting possible behaviours in war, including through the precept that innocent civilians should not be killed (Kent, 2010). According to Weeramantry, Buddhists’ philosophy on warfare attached importance to the pre-existing Hindu Jurists’ work on the conduct of hostilities, which, as portrayed above, evolves around values of fairness, measurement in violence and arms’ use, as well as protection of civilians.

Looking at Theravada attitudes towards violence, Dr. Mahinda Deegalle views the Pali canon indication towards non-acceptance of violent acts, even as a means to solve human and social problems, and strongly rejects physical violence in Dhammapada, verses 129 and 130 (Dr. Deegalle, 2003). Similarly to other religions, interpretations and use of Buddhist traditions to carry out warfare are regularly used. Historically anchored traditions make religious moral reflections being re-explored through societal lenses. For instance, in Sri Lanka, members of the Janatha Vimukthi Peramuna (PVJ) were alleged to have blurred the lines between sacred duty and murder, where Buddhist King Dutthagamani was said to wage a ‘sacred war’ against foreign invaders (Tamil) in the second century BC (Jerryson & Juergensmeyer, 2010). Ideological differences across various Buddhist traditions also led to different approaches to warfare. For instance, those who carried out the 1995 nerve gas – guerrilla - attack in Tokyo subway, which resulted in the killing of 12 civilians and injuring dozens,<sup>23</sup> had their ideology based on Lotus Sutra, one of the most influential scriptures in Mahayana Buddhism. According to some scholars’ views, certain interpretations were used for the militarisation of Buddhism, more accommodating to support State policies (Jerryson & Juergensmeyer, 2010).

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<sup>23</sup> The attack was reportedly perpetrated by members of the cult Aum Shinrikyo, based on a mixture of Mahayana Buddhism and yoga philosophy.

Figure 1: Summary of concepts and precepts suggesting the building of a category of ‘non-combatants’, or civilian populations

	<i>Christianism</i>	<i>Islam</i>	<i>Judaism</i>	<i>Hinduism</i>	<i>Buddhism</i>
<i>Concepts</i>	<i>Pacifist elements (‘love your neighbor’) but dualism in interpretations – at times justifying wars</i>	<i>Principle of tolerance and humanity</i>	<i>Difference made between ‘war of extermination’ and ‘other wars’ Respect for the human being</i>	<i>Humanity as the basis for the rule of war. If war is undesirable, it is pragmatically recognised to counter aggression</i>	<i>Principle of compassion and non-violence yet acknowledges wars of self-defense. Religion used in narrative for wars</i>
<i>Key references</i>	<i>-Peace and Truce of God (989)</i>	<i>-Abu Bakr (first Caliph) military command -Imam al-Awzai -Al-Shaybani</i>	<i>-Deuteronomy, chapter 20 -Maimonides -Isaac Arama</i>	<i>-Rig Veda</i>	<i>-Pali-canon -Kent</i>
<i>Taxonomy elements defining ‘protection’ for non-combatants, or civilian populations</i>	<i>-protection allocated to ecclesiastic properties, Church fields and <b>un-armed clerics</b>, development of an ‘immunity zone’, next to which civilian dwellings (villages) developed: -“Protect the <b>innocents</b>”, believers more positively considered than non-believers</i>	<i>-“<b>NOT TO KILL</b>” a child, a woman, an aged man -“<b>NOT TO</b>” bring harm to <b>people who devoted their lives to monastic services</b> -inviolability of places of worships -“<b>NOT TO</b>” <b>mutilate dead bodies</b> -<b>Those who do not take part in combat: shepherds, peasants, mentally sick, those with uncurable diseases</b></i>	<i>-“<b>females and small children</b> are taken captive”, while males are killed (distinction based on sex) -Immunity <b>of clerics</b> of the enemy, if non-combatants -Not to commit damage and destruction to <b>human beings</b> -‘Tohar an-nesheq or purity of arms, featuring a distinction between combatants and <b>non-combatants</b></i>	<i>-There is <b>one race of human beings</b> -it is ‘unjust’ to attack the <b>sick, the old, the women and children</b></i>	<i>-<b>innocent civilians</b> should not be killed -non-acceptance of violent acts</i>

Sections I and II of this *first Chapter* offered a brief overview of information on early hunter-gatherer's societies emanating from archaeologists and anthropologists' work. In addition, we reviewed different religious teachings and religious interpretations on warfare and treatment of different segments of societies, including those who would be categorised as the "civilian population." Historical accounts and available information point out to various groups that have been either excluded or included in the idea of humanity at different times of history: women, children, ecclesiastic people, believers are examples. Beside religious considerations based on ethical grounds and general principles, Badr refers to the corpus of Islamic law as being mostly 'manmade', derived from human experiences and knowledge (Badr, 1982). We would extend this view to other societies following various religious teachings. Despite the complexity of religious beliefs, ethical concerns and historically anchored warfare challenges, it is worth acknowledging a certain dualism: on the one hand, the preservation of peoples' lives and dignity, on the other, strategies considered necessary by the victorious. Although not systematic, a common recognition of lives' intrinsic value – or humanity – forms breeding grounds for the genesis of protection to develop.

Advancing further towards more recent history, our next part reflects on the paradigm shift ensuing to the modern warfare period, when ethics anchored in moral values also develop in more advanced legal reflections.

### III. Entering modernity-warfare: a paradigm shift

Often associated with the fall of Constantinople in 1453 and the discovery of the Americas in 1492, a shift in both thoughts and warfare means constitute a new phase in the genesis of the protection regime as we enter modern times.

#### 1. Setting the spine of international law regulating warfare

Francisco de Vitoria (1483-1546), jurist of the school of Salamanca, holds a less known but yet pivotal place in the inception of the paradigm shift on the conduct of hostilities. Although he never published, students' notes of his lectures (*relectiones*) reflect his ideas on international relations, the laws of nations, and more specifically on the treatment of some categories of



non-combatants during warfare. His lectures of 1538 and 1539<sup>24</sup> focused on the innovative idea of a universal international legal order valid for all peoples. Despite contradictions among its lectures, the humanity of native Indians in *De Indis* led him to advance reflections around the protection of “non-Christians” in times of war. He also argued that ‘innocents’ should not be killed intentionally. He additionally questioned the then predominant view of collective liability, advocating against the killing of those laying down their weapons. Based on the tradition of ‘Just war’ and previous thoughts from Thomas Aquinas, Vitoria’s analysis reflected on the contemporary reality of the Spanish conquest on Indian territories and regular confrontations with Muslims, for which his views differed from the above in harsher shades<sup>25</sup>. Vitoria remains an important pioneer in the paradigm shift at play then.

Balthazar Ayala (1548-1584), reflecting on the thirty-year war and advising the Military, wrote about a concern for the protection of unarmed populace and denied the lawfulness of killing civilians in *Three books on the Law of warfare and the duties connected with war and military discipline* (1582), *De Jure Belli Libri Tres* (1589). Gentili’s work with *De Jure Belli Libri Tres* in 1598 is also to be recognised (Schütte, 2015). The experience of the thirty-year war reportedly left scars on European consciousness, leading to the peace of Westphalia in 1648. Technology advances in military apparatus and means of war bore consequences on the capacity of soldiers to ‘kill the enemy’. In turn, increasingly available information on the suffering war implied fostered the development of the victimisation of the wounded soldiers and ‘innocent’ civilians. The plight of neighbours, clearly distinctive from the previous ‘far away’ crusades on a distant Levant, will be an important element in the development of a public opinion that governments would have to take into account thereafter. Yet, advances on the concept of civilian protection found shortcomings, namely with the practice of siege where besiegers’ tactics seemed to prevail. The genesis of protection can thus be considered staggered through different phases in history through various moral considerations and religious thinking.

Grotius, building on the work of his predecessors, wrote the masterpiece *‘De jure belli ac pacis’* (in English ‘On the law of war and peace’) in 1625 addressing both the conditions under

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<sup>24</sup> The two lectures, ‘De Indis Recenter Inventis’ of 1538 and ‘De Indis sive de Iure Belli Hispanorum in Barbaros’ of 1539, mirror wars of the time, namely with Indians the Spanish ‘conquistadors’ met and the war with the Muslims (Barbaros, or saracens).

<sup>25</sup> Vitoria reportedly concluded that Muslims could not wage a ‘just war’.

which one may resort to war or to force (*jus ad bellum*) and the law governing the conduct of hostilities (*jus in bello*) (Grotius, 1625). His notion of the laws of nations being pan-human, the author does not consider relations between Christians and others as being permanently confrontational. As narratives and notions evolve, Grotius only uses the word 'civilian' once in his book (page 8) and relates to civilians' rights and laws on property. To the contrary, the word 'innocent' is preferred when discussing protective measures for (Christian) 'innocents.' Grotius refers to his understanding of Christian religious teachings, interpreting them in favour of a distinction between combatants and the 'innocents': "*the Apostle, consigning to the office of kings the use of the sword, as an exercise of his divine commission to avenge all wrongs, instructs us to pray for kings, that, as true Christians, in their royal capacity, they may be a protection to the innocent*" (Grotius, 1625: 194). Considering the lives of innocents are scarcely secured in wartime, Grotius considered there are privileges in the laws of nature, partly taken from divine wisdom offering protection to the innocents. Yet anchored in Christian contemporary interpretations of his time, the author still considers the need for Christians to come together to crusade against the 'ravages of an impious enemy.' Grotius writes on the need for clemency by sparing innocent non-combatants (specifically naming priests, peasants, merchants and artisans) and resonates Cicero's advice stating the conqueror should restrict violence against civilians.

As larger armies were formed to become instruments of States and Governmental affairs during the XVII and XVIII centuries, the development of a more elaborately troops, and a certain professionalisation of 'soldiers' reinforced the taxonomy between soldiers (combatants) and non-soldiers (civilians). In 1762, Jean-Jacques Rousseau's central piece *The Social Contract* refers to his predecessors' views, such as Grotius's. His writing contributes to further anchor a distinction between wars as a matter of relation between States, and individuals when he considers "*men are not naturally one another's enemies*" (J.-J. Rousseau, 1762). Rousseau clearly states: "*war then is a relation; not between man and man, but between State and State, and individuals are enemies only accidentally, not as men, not even as citizens, but as soldiers*" (J.-J. Rousseau, 1762: 4; Schütte, 2015). Rousseau's innovative stance emphasises that waging warfare and the conduct of hostilities are a matter of politics, in which civilians are not involved, and soldiers are only an instrument of States or Governments. Rousseau's writing continued to gain popularity in the XVIII century insofar that

it contributed to widen the resonance of the idea of a civilian immunity in warfare more largely accepted. In 1793, the Convention's call for a '*levée en masse*' of 300,000 soldiers by each French Department through a "requisition" of all able-bodied, unmarried men between the ages of 18 and 25 was also a turning point. The constitution of the Army of the Republic led to an important popular mobilisation, further linking families' and authorities' convening to support their relatives at the war front through moral support and authorities' subsidies for poor families.

## 2. *Industrialisation: new technologies of information and weaponry – experiences from the Crimean war (1853-1856) and American Civil War (1861-1865)*

At the age of industrialisation, new technological innovations led to a different setting for warfare. Indeed, the invention of the telegraph in 1844 by Samuel Morse was largely developed for military purposes. During the Crimean war, the new technologies in the field of communications allowed Europe's populations to comprehend more completely the nature of a distant war through a graphic tour of the frontlines provided by the first war correspondents (Crossland, 2018). In Crossland's view, the Crimean war was the first of its kind as it featured the opinion of an increasingly informed public, a change Governments had to acknowledge. A triangular relation between the public, the media and Government led to new measures being taken to enhance armies' capacity to care for the wounded soldiers: British nurse Nightingale arrival in Scutari and French Chenu thereby contributed to further develop military-medical capacity and response mechanisms – such as triage and organisation of field hospitals.

The telegraph, previously used by the British army during the Crimean war as an inter-communication device, as well as during the Mexican war by the US forces, led the ground for enough awareness on the tool to switch its use to an integral part of the military effort during the American civil war (Bowles, 1991). In 1861, President Lincoln even recognised the importance of civilian railway telegraph operators and incorporated them into military service. Some 15,000 miles of telegraph cables were installed on the American East Coast during the war, facilitating the mobile telegraph wagon, also called 'mule pack', to share information on the latest battles' developments and receive communications and new orders. Besides military purposes, the cornerstone invention and use of the telegraph also opened

new sources of information for – timely – journalistic war reports. In turn, the faster sharing of the front news would play an important role in the development of a public opinion that heads of State would need to consider as heightened information on wounded soldiers (husbands, brothers, fathers) contributes to a collective consciousness on the suffering of war.

Aerial reconnaissance and photography through hot air balloons was also widely used during the American civil war, facilitating identification of the other party's movement and sharing that intelligence with military commanders in a timely fashion – relayed by the telegraph. Lastly, the use of railroads for military purposes was a crucial dimension of the North's capacity to move soldiers, armaments and supplies to most appropriate battlefields in a speedy manner. Besides new technologies allowing enhanced tactics of warfare, innovation also concerned armaments. In addition to the traditional and still mostly used smooth-bore muskets, two new arms are to be noted: firstly, the long-range weapon and the Minié bullet,<sup>26</sup> considered to be responsible for 90% of battle wounds, and secondly, the gatling gun, which made the war more deadly. In his study of military technical change during the American civil war, Bowles rightly points out that *"the impact of technology, at a given point in time and place, can be then fully appreciated by studying it as a function within a specific environment: being influenced by, and in turn influencing, society"*<sup>27</sup> (Bowles, 1991: 232). We understand Bowles' conclusion as reaching beyond the solely military field to also encompass society, especially with regards to the development of journalistic information supporting a better informed – *and concerned* – civilian population for their relatives. The small-arms American Civil War led to some 200,000 deaths and 500,000 wounded, and the study of wounds inflicted by new weapon machineries created grounds for public victimisation of soldiers. David Crossland refers to a *"burgeoning community of civilians concerned with the welfare of soldiers"* (Crossland, 2018: 32). As the US military-medical capacity was limited, with volunteer surgeons and assistant surgeons without credential checks to start with, new initiatives arose with the objective to care for wounded soldiers. In 1861, the United States Sanitary Commission (USSC) was established with large public support, making it impossible for the US Medical Bureau to ignore. Interestingly, over a hundred years later, besides

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<sup>26</sup> The NYT observer, in Pat Leonard's writing, called the Minié bullet '[The Bullet that changed history](#)' in 2012, for its devastating effect upon entering human flesh and for its high-velocity capacity to destroy bones upon impact.

<sup>27</sup> Extract page 232, concluding on incremental changes new military technology and development of technical knowledge in their use contribute societal changes.

numerous other wars and technological developments, the International Committee of the Red Cross (ICRC) included the Minié bullet in its report of experts on “*Weapons that may cause un-necessary suffering or have indiscriminate effects*” of 1973 (ICRC, 1973).

Impossible to ignore is the role of the Battle of Solferino, on 24<sup>th</sup> June 1859, opposing French and Italian forces to Austrian Habsburgs. The ferocious battle is also considered to be one of the bloodiest of the century, with 6,000 deaths and 35,000 wounded or missing (Burkle, 2019). Born from a humane indignation, Henri Dunant, a Swiss citizen passing in the area and unexpectedly confronted with widespread human suffering of wounded soldiers, took the initiative to support overwhelmed medical services (ICRC, 2013). Traumatized by this experience and eager to improve a better protection of persons *hors de combat* through an enhanced provision of medical services for the wounded, he published “*Souvenir de Solferino*” in 1862, used as both a testimony and open letter sent to decision-makers of the time. Two main proposals were put forward in the latter: firstly, to create relief societies (based on charity and voluntarism) which would be able to provide healthcare for the wounded in war time; and secondly, the adoption of a treaty protecting healthcare services on the battlefield (Dunant, 1862).

### 3. *Inception of the protection regime: Military manuals and first international agreement on the conduct of hostilities*

As previously illustrated with the military orders of the first Caliph Abu Bakr, military commands can bare weight in creating new norms of behaviours. More than a thousand years after, Francis Lieber wrote “*General order No. 100, instructions for the Government of the Armies of the United States in the field,*” signed by President A. Lincoln in 1863 – and also known as the Lieber code (Lieber, 1863). The code features some 157 articles that deal with the conduct of warfare. One of the important elements relates to the respect of customary practices such as the use of uniforms, which allows to differentiate between combatants and civilians, therefore offering protective measures for the latter. In article 22, Lieber manoeuvres with ability to set the frame of his military code, referring to the previous advances of civilisation and growing recognition of the distinction between “*the private individual belonging to a hostile country and the hostile country itself, with its men in arms.*”

*The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property and honour as much as the exigencies of war will admit” (Lieber, 1863).* In article 155, Lieber again reinforces this principle: *“All enemies in regular war are divided into two general classes - that is to say, into combatants and non-combatants, or unarmed citizens of the hostile government.”* The articles suggest Rousseau’s innovative view a century before the American Civil War entered a sphere of commons among societies of the time. Although civilians are recognised some forms of physical protection, an interesting point relates to the mention of ‘honour’, which we will further explore as linked to the notion of dignity. The distinction is fundamental, while the code intends to address already evolving types of war: a civil war opposing a Government and traditional army to an opposing party, considered to be a rebellion.

Limits to the protection of civilians yet exist, as article 17 also considers starving belligerent – armed and un-armed – as a (legitimate) method of warfare. Yet, in addition to being considered as the first codification of the customs of modern warfare, it sets an important precedent in the identification of the concept of military necessity (article 14),<sup>28</sup> in opposition with the prior dominating concept of military expedience: the time of measurement started.

On the European continent, similar developments occurred: a year after the ‘Souvenir of Solferino’ was published, in 1863, the International Committee of the Red Cross (ICRC)<sup>29</sup> was created in Geneva, and letters were dispatched to invite some State representative for an international conference to humanise war (Crossland, 2018). In 1864, twelve European States ratified the first code of International Humanitarian Law (IHL), or first Geneva Convention (ICRC, 1864). The first official international convention regulating the conduct of warfare was composed of ten articles protecting medical services and wounded soldiers. The tormented period led Government officials to be visibly keen to react to an informed public wanting insurances from their Governments that all was being done to care for (their) soldiers. In 1868, the Saint Petersburg Declaration, or the Declaration renouncing the use, in time of war,

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<sup>28</sup> Article 14 of the Lieber code states: “Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war. »

<sup>29</sup> The new humanitarian organisation was initially called ‘le comité international de secours aux blessés’ (the international committee of support to the war wounded) – the name was change to the International Committee of the Red Cross (ICRC) in 1876.

of explosive projectiles under 400 grammes weight gained 18 European signatories<sup>30</sup> (St Petersburg Declaration, 1868). It is the first formal agreement prohibiting the use of certain weapons in war, and openly refers to what is called “the laws of humanity” and reduce superfluous suffering (Morowitz, 1994). The legally binding one-page international agreement was a breakthrough as it considered technological innovation in warfare and subsequent suffering caused. Although the prohibition of exploding bullets was alleged broken soon after, during the Franco-Prussian war, considering the implications of new military technologies resulted in anchoring the importance of the humanitarian imperative in the laws of war (Gasser, 1993).

In many aspects, the Brussels Declaration of 1874, also convened at the initiative of the Russian Government can be seen as a continuation to the St. Petersburg Declaration. A set of 56 articles was discussed, but resistance led States to adopt the draft (with minor alterations) and since not all Governments were willing to accept it as binding, it was not ratified (Brussels Declaration, 1874). Despite its limitations, the Brussels Declaration brought recognition to guerrilla fighters which would fit within a minimum standard in order to be considered as belligerent. Conditions to be entitled to the same treatment and laws of regular “Armies” included for militias and corps of volunteers to be organised so that a head person is responsible for his/her subordinates; to ensure distinctive badge recognisable at a distance are worn, arms have to be carried openly, and lastly, to conform with the laws and customs of war. This considers recent ground challenges and experience of the “francs-tireurs”, leading the way to the development of less traditional (regular armies facing each other) types of war. In addition, new technological weapons, such as French ‘Mitrailleuse’<sup>31</sup> as well as practices of shelling civilian houses and churches were fresh European war experiences. At the time, many military men are thought to be willing to avoid new discussions on limiting new military technology (Crossland, 2018). Interestingly, this alleged resistance, or tension, between some military strategists and humanitarian imperative defenders will continue to

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<sup>30</sup> Austria-Hungary, Bavaria, Belgium, Denmark, France, United Kingdom (representing the British Empire), Greece, Italy, the Netherlands, Portugal, Prussia, the North German Confederation (i.e., Greater Prussia), Russia, Sweden-Norway, Switzerland, the Ottoman Empire, and Württemberg. The United States had not been invited to the conference and took no part in the convention, worth noting is that they were not considered a major State at the time. Brazil ratified the agreement in 1869.

<sup>31</sup> The French Mitrailleuse is a wheel-mounted volley gun capable of firing up to 100 rounds per minute, was a new technology that led to significant war deaths.

remain. Despite the semi-failure of the Brussels Declaration, lawyers from various nationalities continued codification efforts. For instance, Gustave Moynier, Swiss co-founder of the ICRC and founder of the Institute of International Law (IIL) in Geneva, spearheaded the issuance of a Military Code, also known as the Oxford Manual, with the aim to bring practical insights for the soldiers to use (Moynier, 1880). The preface both intends to reassure a clearly less conducive political arena for signing legally binding conventions like the first Geneva Convention of 1864, and to switch the narrative towards the added value of clarifying acceptable customs of soldiers' behaviours. Moynier sets the tone explaining from the start *"A positive set of rules, on the contrary, if they are judicious, serves the interests of belligerents and is far from hindering them, since by preventing the unchaining of passion and savage instincts -- which battle always awakens, as much as it awakens courage and manly virtues, - it strengthens the discipline which is the strength of armies; it also ennobles their patriotic mission in the eyes of the soldiers by keeping them within the limits of respect due to the rights of humanity"* (Moynier, 1880). Interestingly, the preface also, almost apologetically, seeks to reassure that the manual has not sought any 'innovation', as if new technologies leading to the futures of warfare were considered *de facto* impossible to include in any legal frame, because of military resistance or for the political added value to maintain a certain leeway.

In 1899, the political climate reveals to be ready for a new international legally binding agreement: the convening of the International Peace Conference led to the first Hague Convention on the laws of customs of war on land was adopted and subsequently ratified by fifty States, including the United States and Mexico (The Hague Convention, 1899). The Martens clause, stating *"Until a more complete code of the laws of war is issued, the High contracting parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilised nations, from the laws of humanity and the requirements of the public conscience"* is of cornerstone importance (Giladi, 2014). The clause simply denies that what is not clearly prohibited is thus allowed: reinforcing civilian populations entitlement to protection measures under international laws of war, international humanitarian law and customary principles – such as protection or respect of humanity. Often considered to offer a way to combine humanitarian concerns with war regulations, the important edict can be read as a



continuation of the permanent tension between military necessity, and humane and humanitarian considerations. Result of political and legal negotiations, the above-mentioned clause and the first Hague convention take multilateral diplomacy and agreements towards advancements to further develop an international consensus and regime in the protection of civilians during conflicts. At a second International Peace Conference in 1907, the convention was slightly revisited, seventeen countries<sup>32</sup> which signed the first Hague Convention did not ratify the second convention of 1907 (The second Hague Convention, 1907). The conventions and legal aspects will be further explored in the *second Chapter* of the research.

A second Geneva Convention was signed in 1907, adapting protective measures from the first convention to combat at sea (ICRC, 1907). In parallel, the Hague Conventions (1899 and 1907) mentioned above also addressed the conduct of warfare in multilateral agreements. Largely based on the pre-existing Lieber code,<sup>33</sup> the Hague Conventions represented significant advancements on rules and regulations in protecting civilians from becoming victims of war. Initially focused on those directly affected by conflict – wounded soldiers – or preventing civilians from becoming victims, the notion of protection from the consequences of war emerged.

#### IV. Humanity: a dynamic concept - universally proclaimed, pragmatically bounded

##### 1. Definition attempts: a malleable concept

In an interesting article, Evans considers religious teachings on the nature of humanity and rules of war as a “doubled-edged” sword (Evans, 2005). The author views religious teachings can either support the concept of a universal humanity or a divided one depending on writings and subsequent interpretations. Additionally, it can also support or undermine humane treatment during warfare and finally; it can be used to either justify and bring motives for compliance or non-compliance with humanitarian approaches. Going beyond religions

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<sup>32</sup> The seventeen countries which did not ratify the slightly adapted version the Hague convention of 1907 are: Argentina, Bulgaria, Chile, Colombia, Ecuador, Greece, Italy, Korea, Montenegro, Paraguay, Persia, Peru, Serbia, Spain, Turkey, Uruguay, Venezuela.

<sup>33</sup> The Lieber code was signed and issues by the President Abraham Lincoln to Union forces of the United States on 24 April 1863, during the American Civil War.

themselves, 'cultural values' associated to them seem to be subject to variables, mirroring challenges of various social human constructs or societies at different stages in history and up to nowadays. According to Bethancourt, successive visions of segmented humanity have been challenged and addressed in view to build a more unified vision of humankind (Bethancourt, 2016). In his view, some divides were (mostly) overcome, such as slavery, or the notion of barbarian (foreigners, a person without manner nor policed behaviour). As presented in the first three sections of this Chapter, various distinctions were recognised during warfare, from intra to inter social groups statuses, including the 'innocents' during conflict, thereafter, more specifically defined as for their non-combatant roles such as 'women', 'children', 'religious leaders' or even 'shepherds' or 'peasants', creating this shared attribute of non-combatant, or civilian population.

Humanity in its different expressions and forms does not appear to be static nor the subject of a commonly agreed-upon definition. As it relates to ethics as well as more personal and subjective sentiments, it also enfolds in state and individual behaviours – either supporting it or disrespecting its proclaimed intrinsic nature. Klose and Thulin specifically note the “extraordinary array of circumstances” where humanity relates to different meanings and different times (Klose & Thulin, 2016). Feldman and Ticktin resonate this claim, emphasising different and at times contradictory meanings resulted from theoretical and practical considerations (Feldman & Ticktin, 2010). If the efforts to define humanity were certain, parallel debates to seize its political and social scope may have led to further confusion, Feldman and Ticktin note:

*“There are simply too many understandings of humanity for it to be the final word. When everyone speaks in the name of humanity, no one can monopolise its meaning” (Feldman & Ticktin, 2010).*

Looking at the issue as a malleable concept, with overlapping entanglements under the overarching theme of humanity as a 'concept in practice' may be a useful reflective avenue (Klose & Thulin, 2016). It is this shift in meanings that both characterise the concept of a commonly shared humanity and challenges its strength. As societal debates are reflected in cornerstone writings, the word “humanity” enters the literature sphere of the nineteenth century with more clarity. 'A dictionary of the English Language' of Samuel Johnson in 1755,

regarded as a seminal reference of the English language, the word “humanity” appears with direct links to the French translation “*humanité*” and latin translation “*humanitas*” (Klose & Thulin, 2016). It was defined by three components, two of which can be considered classic while the third slightly novel: firstly, as the nature of man; secondly, as humankind relates to the collective body of mankind. Thirdly, an additional meaning is interestingly connected to the practice of benevolence or tenderness. This last meaning echoes Denis Diderot “Encyclopédie” of 1751, edited until 1772 (Diderot & D’Alembert, 1758). In the latter, Diderot and D’Alembert also conceive ‘humanity’ as linked to social practices, explaining it relates to “*a feeling of good will toward all men*” and further elaborate with “*this noble and sublime enthusiasm is tortured by the sufferings of others and tormented by the need to relieve such suffering*” (Diderot & D’Alembert, 1758; Klose & Thulin, 2016). Besides its ethical and general principle, the intangible concept of humanity is also substantiated with more practical precepts guiding societal behaviours. Worth noting, the word humanity was also used by the Swiss jurist and philosopher Emer de Vattel, in his book “The Law of Nations or Principles of the Law of Nature” in 1755, where he calls Nation’s duties ‘offices of humanity’, requiring reciprocal duties to provide mutual assistance and support. The 1755 devastating earthquake in Portugal led to State solidarity (Spain, Britain), further giving tangible meaning to an otherwise abstract concept.

## 2. The emergence of humanity as ‘sentiment’

As the Enlightenment period unfolds, predominantly Christian values of humanity are transported into more secularised societies in which a new consciousness of suffering emerges. According to Grigore, revisiting Erasmus’s writings, human nature is considered dignified by the conduct of every human individual and not by external instances like God or the Church: this is in Modern Europe a transition from ‘*humanitas christiana*’ or a humanity based on Christian values to ‘*humanitas politica*’ or a humanity based on solidarity, where similarity and common interest of all humans to create a basis for coexistence (Grigore, 2016). The French Revolution Declaration of the Rights of Man and Citizen reflects this novel common belief, mirrored in its first article:

*“Article first. Men are born and remain free and equal in rights. Social distinctions may be founded only upon a general good”* (Declaration of Human and Civic Rights, 1789).

Using Laqueur's interpretation in the emergence of humanity as a sentiment, humanity emanates from the development of a conception of human beings not only for their biological and physiological attributes but also as "ethical subjects" (Laqueur, 1989). This also relates to Agamben's *Homo Sacer* with his concept of 'bare life' (bodily defined), excluded from the law and society; and the 'good life' that citizens are entitled to under the law (Agamben, 1998). This facilitates the advent of a new category of universal solidarity which supersedes solely individual biological individuals.

It is important to consider the relation of the novel concept with its various cognates, such as human (biological dimension), humane (relates to compassion), humanitarian (socially engaged, charitable), as well as inhumane (lacking compassion), also developing hand-in-hand and at times in contradiction with humanity's anchorage (Feldman & Ticktin, 2010). Lastly, and as the negative word 'inhumane' suggests, humanity is not solely framed through the lens of compassion and sympathy, but also through insecurity and possible maltreatments. Taking a step further, Laqueur points out that the use of information with details about the suffering bodies engenders compassion and sympathy and triggers a 'moral imperative' to take action and improve a situation (wounded soldiers, civilian victims for example), developing humanitarianism (Laqueur, 1989). He further believes the development of a humanitarian narrative created dialectically its antithesis. Looking at the genesis of protection, we explore the role of new technologies of information to expose the plight of wounded soldiers first, and then civilians; in turn creating a 'public opinion' and early humanitarian actions to support victims of conflict. The exposure of suffering, facilitated through advancing NTIs, creates a triangle between State, public opinion, and victims of conflict, in turn supporting the development of a more legally advanced international regime to protect civilians. We thus agree with Laqueur's stance on acknowledging how 'exposing suffering' mobilises a public, or common reaction.

### 3. A common denominator: Humanity as non-negotiable

Inherited from the Enlightenment period, the narrative on humanity stands from the assumption of universal valence of the new global category. According to Grigore, in the thickest of the many understandings of humanity and human nature in the modern and post-modern eras, there is a common denominator: humanity is not negotiable and contingent,

but an ontological fact of every human being (Grigore, 2016). We argue that, at the turn of the nineteenth century, this notion of non-negotiable 'commonness' of human life and dignity opened the way for a further legal definition of the international protection regime of civilians in conflict.

Political attempts to bring distinctions and de-humanise parts or segments of populations, to justify wars or discriminatory policies, cyclically reappear— at times called 'savages', or 'barbaric', or more recently 'terrorists' (Feldman & Ticktin, 2010). In Agamben's view, the state of exception is an example of the reduction of the space between law and human action, making it impossible for humanity (and those who act on its behalf) to act (Agamben, 1998). Although divisions based on sex and gender became less acute, they remain preponderant in many societies while the 'battle against social exclusion' is still far 'far from being won' (Bethancourt, 2016). Bethancourt's useful review of various elements of distinction within humankind reminds that the XX and XXI century notion of a global humanity concept is also historically anchored, and still faces several challenges: the reconfiguration of a comprehensive notion of humanity is underway.

As previously demonstrated, the universally proclaimed but pragmatically bounded concept of humanity is to be understood within political, ethical and social entanglements. While efforts to define the concept mirrored its abuses, the elastic character of humanity, especially when it relates to warfare and the treatment of civilian populations, will serve as a constant basis for the establishment of an increasingly legally framed international protection regime (P. Betts, 2016). Corollary to its humanity basis, the concept of civilian protection will equally be characterised by some tangible, but also theoretical features, practiced in different shapes and forms on the war fronts.

In a *second Chapter*, we will explore the exceptional development of the international regime protecting civilians (or International Protection Regime – IPR). We will review the elaboration of legally binding international agreements defining protective measures for civilians in conflicts, while also conducting a "tour d'horizon" of the main actors involved in defending, disrespecting, and re-defining the IPR along with their respective uses of NTIs. The latter represents a key element of our times suggesting new opportunities and risks for civilian populations along with other actors concerned.

## Chapter 2: Structuring of the International Protection Regime

In this second chapter, we will use International Relations (IR) theories to support our reading of the post-World War II (WWII) period, characterised by an impressive development of international conventions: further defining protections attributed to civilian populations in conflict. Relying on reflections from political scientists, but also encompassing historians, sociologists and jurists, we will consciously take perspective on ground realities and increasingly available new technologies of information (NTIs) allowing to better grasp the development of the International Protection Regime (IPR) around the plight of civilian victims of conflicts.

### I. International Relations (IR) views on an increasingly complex world

International Relations theorists who belong to the Realist branch consider the norm in world relations should be permanent conflicts. If cooperation between states on different subject-areas is acknowledged, it is mostly seen as an epiphenomena of inter-state bargaining as part of the security realm and beyond. While the number and depths of wars may be tempting to give this branch of IR credit, it is not possible to deny cooperation between States. The first section below, which is not exhaustive, will introduce major elements of reflections from different branches and theories of IR, which we will use to reflect on the development and alteration of the IPR – subject matter of our research.

#### 1. Defining the ‘International Regime’

In IR studies, one of the concepts developed to reflect on cooperation between different actors – *where States have a central role*<sup>34</sup> - around a same issue was the concept of “international regime,” commonly defined as “*implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations*” (Krasner, 1982). Although widely used, Krasner’s reference definition was also criticised for a certain lack of clarity, which was later responded to with more

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<sup>34</sup> States have a central role in the cooperation and establishment of international regime as they are the ones signing international treaties and conventions, thus giving legitimacy to international bodies of law regulating issues of common concern.

explanations. For instance, 'principles' are understood as facts, causation and rectitude. Norms are standards of behaviour defined in terms of rights and obligations: for instance, the XX century, with an acceleration after WWII, witnessed a formidable development of international law, proposing a frame defining rights and subsequent actors' obligations, including for civilian populations. Hence, this concept is of cornerstone importance in our research. Rules are seen as particular prescriptions or proscriptions for action, we understand them as closely bound with norms. Lastly, decision-making procedures are portrayed as prevailing practices for making and implementing collective choices (Tarzi, 2003). This definition is useful as it enables to identify alterations of norms and rules as indication of regime changes.

- *The Neo-liberal perspective: complex interdependence*

Neoliberal views feature a different understanding of the system driving International Relations, through the pivotal concept of 'complex interdependence' (Keohane, 1982; Nye, 1987). Keohane and Nye recognise multiple channels of cooperation existing between states/societies. Through this "complex" architecture of exchanges, and although the State is still considered to be at the forefront, agendas and issues discussed are not considered to be primarily guided by security – such as the Realists defend - but rather by multiple interdependent interests. The line between foreign and domestic policy is thus tempered, and the creation of an international regime contributes to the development of interdependence while seeking common interest (Keohane, 1982). The reality of regional crises, such as Iraq, Syria, Afghanistan, impose to think beyond logics of domestic or international, but rather inter-connected local conflicts with a regional resonance and international involvements (humanitarian as well as political and military). Neoliberal theories of institutions can more easily accommodate the idea of a multilateral protection regime; although neoliberal theories of institutions' study mostly focused on economic and social issues, neoliberal thinkers do not preclude the possibility of establishing multilateral security institutions.

Using the concept of moral hazard borrowed from economic science, Pease reflects on the behaviour of main actors in a conflict (humanitarian community, donors states and belligerents) (Pease, 2004). Donor states are said to transfer their responsibility towards

victims of conflict through funding the aid industry rather than addressing the *political* root causes of such conflict, an important element which we will address while reflecting on the development of the humanitarian system. In turn, International Organisations (IOs) forming the aid community have an interest in staying relevant and needed while expanding their budgets. Those two elements are key in the maintenance and reconfiguration attempts international regimes inherently face, including the IPR.

Realist and neo-realist theorists mostly read world dynamics with a power and interest-based viewpoints, as rational utility-maximisers, including in terms of cooperation through international regimes. Initially largely dominant, other theories arose with alternative frames of reading mechanisms regulating inter-state relations through different instances of cooperation: multilateral fora, binding treaties, contributions to various International Organisations (IOs).

- *The Constructivists' view: the importance of ideas, conceptions and meaning*

In the IR field, constructivist views have become fully integrated in the spectrum of IR, opposing Realists' views. Challenging both neorealist and neoliberal theories, constructivists envision the functioning of International Relations through a social construction, thus driven by presently grounded forms of interactions and debates.

Basing reflections on three prominent constructivist authors – Wendt, Kratochwil and Onuf; Zehfuss considers the acceptance of “reality” as a common starting point is problematic (Zehfuss, 2002). According this author, if the duality between the material and the social world is recognised, the politics happening at this level and constituting a ‘represented’ reality are somewhat ignored. The political aspect of the construction of a reality may be overseen, while constructivists’ views focus on ‘intersubjective structures that give the material world meaning’. Intersubjective knowledge is considered both to empower and to constrain actors while contributing to defining social reality. Considered to be a “middle ground” approach as theorised by Adler, constructivists attempt to bound empirical reflections of reality with ontological and epistemological analysis of common and shared knowledge, placing themselves at the crossroads between individualism and structuralism, and materialism and idealism (Adler, 1997). Beyond academic debates on the limits and space for critical



approaches in the field of IR, Zehfuss specific point on the politics at play between the material and social dimensions of represented reality are worth considering in our research. Indeed, while the complexity of conflict zones and how it affects civilians can, in theory, be hardly fully captured, the politics behind the development of its social construction and subsequent 'representations or reality' may well bear weight in alterations of the IPR we intend to shed light on. The yet limited available literature studying the relation between NTIs and the humanitarian sector mostly uses constructivist perspective to explain and analyse changes as co-constitutive processes based on interaction and experience (Jacobsen, 2015; Jacobsen & Sandvik, 2018; Sandvik et al., 2014, 2017).

In the reference piece from Alexander Wendt, *"A Social Theory of International Politics,"* the conception of cooperation goes beyond the traditional materialistic-oriented consideration of IR, to put the notion of "ideas" at the forefront. Along with a cognitivist perspective<sup>35</sup>, constructivists feature cooperation cannot be completely explained without any reference to ideology, the "values" of actors, the knowledge available to its actors. This perspective will be cornerstone while exploring the processes of knowledge generation relating to protection violations, and subsequent humanitarian actors' reflections, actions and policy developments. For instance, since the turn of the XX century, the Protection of Civilians (POC) increasingly became a driving force in the United Nations Security Council (UNSC) resolutions. In reiterating normative and legal obligations during armed conflict more strongly, enhanced information sharing from field realities also allowed the UNSC to become more specific and targeted in its predicaments (OCHA, 2019). Contributions to *"shaping the debate"* through an evolving meaning of "protection" and its associated narrative and rules, will be specifically relevant when considering evolving discussions around the IPR. Martha Finnemore's analysis of the role of IOs in shaping conceptions, meaning and social value, with the example of the ICRC and the four Geneva Conventions, will be used in the reflection on the formation of the International Protection Regime (IPR) (Finnemore, 1996). Besides, the somewhat continuously elusive definition of protection and the development of multiple sub-terms (orbital terms) may be interpreted as difficult attempts to reassert the moral basis of protection, searching for a common denominator that could reinforce the stabilisation of the

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<sup>35</sup> Cognitivist theories, although not developed here, will be of specific interest after the first phase of field research, especially relating to the processes of « knowledge generation » on protection violation and subsequent actions.

international regime (Stevens, 2013). Cognitivist writers conceive international regimes as social institutions with recognised practices consisting of roles, rules and conventions that govern relations amongst their different actors (Tarzi, 2003). The structuration of the IPR through the establishment of those roles; rules and conventions are clearly shaped after the WWII (1945).

- *Theory of International Society*

Hedley Bull published “The Anarchical Society” in 1977, when IR were mostly dominated by Morgenthau’s realist theories. Yet, this milestone book brings forward the concept of international society, creating a distinction between an international system and the international society. In the former, states interact with each other but also consider the behaviour of each other in their calculations of the other; in the latter, instead, States conceive themselves as having certain common interests and values and to be bound by a common set of rules in their relations to one another (Little, 2007; Watson, 1987). Initially analysed with geographic limits and born in Europe, Bull and Watson then considered it expanded to a global international society (Bull & Watson, 1985).

The international society theory suggests a deeper level of interdependence than the liberal concept, which is not only based on the recognition of mutual vulnerability (or state sensitivity) to each other’s actions, but also on a shared sense that all states have a positive stake in building and maintaining long-term relationships (March & Olsen, 2006). Theories of international societies seek to account for the prevalence of order in international affairs despite the absence of a central authority or common world culture. Within this international society, it is understood that there are formal and informal rules which structure interactions by providing a foundation for the following: making judgements legitimate or illegitimate conducts, for advancing claims concerning mutually accepted rights and duties; and seeking vindication and redress when rules are violated, rights infringed, and duties ignored. States may violate the rules, and when they do there are few coercive or compliance mechanisms to sanction them, however, all members are expected to observe them and, in most cases, they are considered binding. Under those conditions, states assume external responsibilities and obligations that derive, not from domestic politics, natural law, or universal moral

principle, but rather from their membership in the international society. In this reading, betting on a future that might not be as accommodating as the current situation, creating protection mechanisms to protect oneself with a different set of cards that might not be as genuine as the current one is not a rejection of self-interest, but rather a longer-term calculation.

Cronin considers any regime that is created primarily to promote, preserve and/or extend the principles of a regional or global political order or collectivity (as opposed to providing direct benefits to its members) to be an institution for the common good (Cronin, 2003). Modern examples include the International Criminal Court (ICC), UNHCR and the UN Peacekeeping missions. In this sense, the creation and continuation of IPR represent a recurrent anomaly in a system mostly led by self-interest. The “common good” represents fundamental goals of a collectivity, the core of its *raison d’être*, and it aims at the preservation and general welfare of the collectivity itself. The IPR can thus be considered as part of “institutions for the common good.”

## 2. *The plight of civilians through the XX century wars: shaping both the humanitarian system and the International Protection Regime*

The multiplication of the number of International Organisations (IOs) is one of the principal characteristics of IR during the XX century: according to Keohane, while there were 30 IOs before World War I (WWI) – also called ‘the Great War’ (1914-1918), there were some 70 IOs before WWII and some 1,000 IOs in the 1980s (Roche, 2005). Following Nye and Keohane’s reflections in *Transnational Relations and World Politics* (1972), the world grew to become more interconnected and thus interdependent. In their views of complex interdependence that witnessed the rise of several international regimes, enhanced circulations of men, ideas, money and information became prevalent. The development of multilateralism through international organisations of cooperation favoured the open creation of new States’ behavioural codes around portrayed universal common values, including for the respect of human beings as part of the universalist concept of Human Rights (Roche, 2005).

Building on the genesis of the concept of protection (*Chapter 1*), we will explore the further definition of the concept of civilian protection, mirroring the development of a more

established humanitarian sector intended to respond to new wars' consequences. Since the beginning of the XX century, multiple experiences of wars and conflicts contributed to an enhanced consciousness of its humanitarian consequences. The use of new technologies of weaponry and information sharing brought first examples of industrialised warfare and increased violence against civilian populations as part of the Great War. In parallel, the war between Turkey and Armenia was later qualified as the Armenian genocide started in 1915. In the 1920s, the plight of various victims of war (civilians fleeing from Russia, Armenians, Greeks, civilian victims and prisoners from the Great War) became more prominent within European societies. The League of Nations (LON) (or Society of Nations) was created in 1920 with a global mission to maintain world peace and prevent wars through collective security. The organisation, headquartered in Geneva, Switzerland, was founded by 42 countries but rapidly expanded to reach 63 members in 1939, becoming the first global intergovernmental organisation. As it developed, one of its *bureaux* was dedicated to the protection of refugees, also commonly referred to as the Nansen Office. After WWI, other organisations were created, such as International Save the Children Union in 1920, the International Conference of Association of Disabled War Veterans led by René Cassin, with the purpose of supporting victims of war, and the League of the Red Cross Societies in 1919. The period was also conducive to the development of international law, as reflected by the signing of the third Geneva Convention, relative to the treatment of prisoners of wars, in 1929 (ICRC, 1929). Such reactive initiatives contributed to nurturing an international humanitarian network, which increasingly argued for "humanitarian rights"<sup>36</sup> based on place of origin, victim status, religion or ethnicity, conferred in a narrative of rescue (Cabanes, 2014). The premises to a wider notion of protection and "right" to human dignity were seeded.

WWII cut short the above nascent international regime to reach a new threshold in war: its humanitarian consequences on civilians, as well as subsequent displacements had been unequalled before. The post-war period revived the 'in-between world wars' conducive environment for the codification of a set of ideas, rules and rights through new conventions. Following the failures of the above-mentioned League of Nations (LON), a successor new multilateral organisation was created in 1945: the United Nations (UN). The post-WWII era

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<sup>36</sup> The legal framework entitling civilians to some forms of individual or collective protection was yet limited.

opened for a formidable period of international cooperation giving depth to an ‘international society’: featuring inter-states relations, multilateral fora of cooperation, discussions, negotiations and better informed and concerned citizens about civilians’ dignity. A plethora of new organisations with a humane and humanitarian focus were created, among which the International Organisation for Refugees, replaced in 1951 – year of adoption of the International Convention for Refugees - by the UN High Commission for Refugees (UNHCR). States explored the creation of formalised instances of cooperative behaviours and committed through different conventions to ensure minimum rights for all citizens, beyond national borders. The humanitarian commitment was further institutionalised through the creation of different organisations entrusted with a specific “protection” mandate, notably the UNHCR in 1950 and the Provisional Intergovernmental Committee for the Movement of Migrants from Europe (PICMME) in 1952<sup>37</sup>; which became the International Organisation for Migration (or IOM) in 1989 (UNHCR, 1950; IOM, 1952). Different international bodies of law, clarifying and codifying various types of protective rights and entitlements were largely ratified by States, including the Universal Declaration of Human Rights (United Nations, 1948), the fourth Geneva Convention in 1949, specifically addressing humanitarian protections for civilians in war zones (ICRC, 1949), and the Convention relating to the status of Refugees (UNHCR, 1951). What is commonly referred to as the “International Protection Regime” (IPR) was born and anchored in legal bases and intended to respond to challenges of the time.

From the 1950s onwards, humanitarian action further expanded beyond Europe and *“beneficiaries from humanitarian actions shifted from Europeans in needs to all people in need, the world over”* (Davey et al., 2013). However, considering the Cold War political ramifications, the people from the so-called “third world,” especially in the post-colonial period, became the primary focus of the humanitarian system. In the 1970s, famine struck seven countries of the Sahel while taking hold in Ethiopia, challenging both the capacities of different humanitarian actors to coordinate as well as revealing the deep causes of food shortages.<sup>38</sup> The Biafran war (1967-1970) featured an increased access to information – *through pictures* – shared with the public and triggering increased funding of Non-

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<sup>37</sup> The organisation initially created to respond to needs in Europe was then turned to the Intergovernmental Committee for Migration (ICM) in 1980 and to the International Organization for Migration (IOM) in 1989.

<sup>38</sup> The famine in the Sahel and Ethiopia can be considered as trigger-crisis for the line of thoughts linking humanitarian issues to structural development challenges.

Governmental Organisations (NGOs) which became a more prominent part of the humanitarian system (O'Sullivan, 2016). The creation of MSF in 1971 was partly motivated by the experience of some of its founders in the Biafra,<sup>39</sup> a scission in humanitarian approaches was observed and has since continued to remain: between confidential approaches and publicly outspoken ones. In the 1980's, a progressive institutionalisation of public attention through the practice of public denunciation further developed, making financing by the wider public of NGOs' activities a key player in the humanitarian system. Public indignation and what Fassin features as political manipulations in "*La Raison Humanitaire*" became part of the system (Fassin, 2010).

## II. A formidable legal development shaping the International Protection Regime (IPR) around proclaimed global values

### 1. Legal basis of the IPR

The notion of protection is based on different bodies of international hard law and customary law which are legally binding, and well as soft law which is not legally binding but rather constitute political statements of intentions. The following categories of international law constitute *defining legal elements* in the structuration of the IPR by establishing clear norms and rules.

- *The Hague Law*

The Hague Conventions of 1899 and 1907, also referred to as the laws of war, openly intend to revise the laws and general customs of war, both to define them more clearly and to lay down certain limits in order to reduce their severity (The Hague Convention, 1899; The second Hague Convention, 1907). Without being specific when it comes to the civilian populations, the Preamble yet refers to "*the laws of humanity and the requirements of the public conscience,*" which reflects the increasing recognition of the importance of humane treatments, even in war time. In 1899, a first Hague Peace Conference was convened to allow for States to discuss and revise the Declaration of Brussels from 1874 (see *Chapter 1*) on the

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<sup>39</sup> Doctors were then working for the Red Cross.

laws and customs of war. The Conference successfully adopted a Convention with respect to the laws and customs of warfare on land, which was revisited in 1907. Although the two Conventions only slightly differ in substance, 17 States<sup>40</sup> that ratified the 1899 Hague Convention did not ratify its new 1907 version, which resonates the importance of each State politics and interest at a specific time, reflecting ground realities and various power relations affecting international decisions to join in internationally recognised binding agreements – or abstaining from it. Provisions of the conventions are generally considered to embody rules of customary international law, which means that even State that have not ratified the Conventions are also bound to respect them. Within the Hague Conventions, Section III focusing on military authority over hostile territory provides basic provisions, or foundations, protecting the civilian population. For instance, article 46 features that “*family honours and rights, individual lives and private property, as well as religious convictions and liberty must be respected*” (The second Hague Convention, 1907). Prohibiting collective responsibility, article 50 proscribes general penalty to be inflicted on the population on account of the acts of individuals. Interestingly, article 52 somewhat limits requisitions ‘in service’ that can be asked from the population, solely for the necessities of the army of occupation: they must be in proportion to the resources of the country and of such nature not to involve the population in the obligation of taking part in military operations against their country.

- *International Humanitarian Law (IHL)*

While the beginnings of IHL were mentioned in *Chapter 1*, we will now explore the development of IHL as it specifically relates to civilian populations. The core of IHL is constituted by the four Geneva Conventions (ICRC, 1864, 1907, 1929, 1949) and its two Additional Protocols and solely applies in time of war (ICRC, 1977a, 1977b). The first bodies of IHL, despite provisions with limited scope, did not focus on protection of civilian populations against the effect of warfare. It is notably worth noting that in the two first Geneva Conventions of 1864 and 1907, mentions of the civilian population pertain not to their entitlement of new rights but rather to their role and responsibilities in conflicts. For instance, article 18 of the 1864 Geneva Convention first refers to “the inhabitants” that may be called by the Military to collect and care for the wounded and the sick, those who respond to the

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<sup>40</sup> Argentina, Bulgaria, Chile, Colombia, Ecuador, Greece, Italy, Korea, Montenegro, Paraguay, Persia, Peru, Serbia, Spain, Turkey, Uruguay, Venezuela.

appeal are granted protection. It then specifies that *“the civilian population shall respect these wounded and sick, and in particular abstain from offering them violence,”* thus attributing duties to civilians against perpetrating violence against adverse soldiers (ICRC, 1864). The equivalent is mirrored in article 21 of the 1907 Geneva Convention, attributing to civilian and neutral merchants the possible role of assistance to the wounded, the sick, the shipwrecked and collect the dead (ICRC, 1907). In the Additional Protocol I of 1977, article 17 reiterates the statement while slightly adjusting the language:

*“The civilian population must respect the wounded, sick and shipwrecked, even if they belong to the adverse Party, and shall commit no act of violence against them”* (ICRC, 1977a).

However, the evolution that took place through different wars in the XX century in terms of military technique, especially concerning aerial warfare, led the ICRC and States to work on developing more specific international bodies of law. In 1929, when the third Geneva Convention on prisoners of war was adopted, member States already had recommended that further studies should be carried out in view to create another convention on protecting civilians in enemy territory and enemy occupied territory. In 1934 at the International Conference of Tokyo, the ICRC had prepared a draft containing 33 articles on the subject-matter, which was approved and referred to as the “Tokyo Draft.” The text was initially planned to be submitted to Member States in 1940 at an international conference, which was postponed because of WWII. In 1949, with recent experience of a large scale and humanely devastating second World War, the 1949 - or fourth - Geneva Convention relative to the protection of civilian persons in time of war takes into account this latest experience and provides depth on regulating the status and treatment of protected persons through 159 articles (ICRC, 1949). It is important to note that this Convention rather leaves aside issues of limitations on weapons of warfare. In 1977, the two Additional Protocols of 1977 complement and supplement protections of the civilian populations both in situations of international armed conflicts and non-international armed conflicts (ICRC, 1977b, 1977a).

In the 1949 Geneva Convention, protected persons are defined through article 4 as *“those who, at any given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals”* (ICRC, 1949). The definition reflected fresh experiences of WWII and the subsequent identified need to supplement Section III of the Hague Regulations of 1907 on the



laws and customs of war relating to occupied territories (Kinsella, 2011). With the same spirit, a civilian is defined in the Additional Protocols as *“any person not belonging to the armed forces is considered a civilian”* while the same applies in case of doubt as to his or her status (ICRC, 1977a). Interestingly, this can be considered as a continuation of a negative definition identified in the genesis of protection through various historical practices: civilians are all those *not* fighting. Yet, within this broad category of civilians, sub-categories are identified for having specific statuses and rights, such as refugees or stateless persons; women and children are also considered for ‘special respect’ (ICRC, 1949, 1977a). Protections allocated in those bodies of international law form the basis of humanitarian protection work as it allows to define what a violation of persons’ safety and dignity is. Those protections include:

The fourth Geneva Convention of 1949 relative to the protection of civilians in time of war includes a second part that details *‘general protection of populations against certain consequences of war’* – from articles 13 to 26. The objective is to bind belligerents to observe certain restrictions in their conduct of hostilities and therefore to create protective barriers and shield civilian populations from war consequences. The Commentary of 1958 notably mentions that *“the Provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and was intended to alleviate suffering caused by war.”*<sup>41</sup>

Additionally, Article 3 common to the four Geneva Conventions is often referred to as a small convention within larger ones: it sheds a fundamental minimum humane treatment covering situations of non-international armed conflict, while other articles focus on international armed conflicts. It stipulates that persons taking no active part in the hostilities, thus civilians but also soldiers *hors de combat* and those who laid down arms, *“shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria”* (ICRC, 1949).

The respect for the human person is defined in the cornerstone article 27 of the fourth Geneva Convention, stipulating that *“protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and*

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<sup>41</sup> The Commentary of 1958 on the IV Geneva Convention of 1949 relative to the protection of civilian persons in time of war can be found [here](#).

*shall be protected especially against all acts of violence of threats thereof and against insults and public curiosity”* (ICRC, 1949). This central element was then supplemented by fundamental guarantees added in AP I.

Fundamental guarantees reinforce pre-established baseline for all persons not covered by ‘more favourable treatment by virtue of conventions or protocols’: they shall be treated humanely in all circumstances and shall benefit from the fundamental guarantees without any discrimination based on any pretext whatsoever. Certain acts are specifically prohibited, including violence to life, health and physical or mental well-being of persons, particularly murder, torture of all kinds whether physical or mental, corporal punishment, mutilation, outrage upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault, taking hostages, collective punishments, and threats to commit any acts beforementioned – article 75 of AP I. A more general reference features the prohibition of attacks on civilian persons and civilian property includes all acts of violence, whether committed in offense or defence, the prohibition of attacks launched indiscriminately – articles 49, 50 and 51 of AP I and articles 4 and 13 of AP II.

The presence or movements of the civilian population or individual civilians must not be used to shield military objectives, while provisions for the conclusion of local agreements for the evacuation of besieged or encircled areas for certain groups – article 17 of the fourth Geneva Convention. Strongly marked by WW II, dispositions prohibit deportation, individual or mass forcible transfers, from occupied territories to the territory of the Occupying Power or that of any other country – articles 42, 43, 45 and 49 of the fourth Geneva Convention. The starvation of civilians as a method of warfare is prohibited – article 54 of AP I and article 14 of AP II. Precautionary measures must be taken by parties to the conflict in order to ‘do everything feasible’ to verify that the objectives to be attacked are definitely military objectives – article 57 of AP I.

Interestingly, the above provisions point out to protections that focus on two levels: firstly, the physical dimension of a person, and secondly, an intangible aspect that relates to a person’s dignity and honour. This double-layered characteristic of protections recognised to civilian populations is echoed in humanitarian work intended to defend human safety and dignity.

Scholars have analysed ICRC's role in the development of the above international bodies of law, specifically in advocating and negotiating with States during the negotiations over the development of the two Additional Protocols of 1977 (Geiß et al., 2017). Yet, before any agreement was reached, Bothe reviews the organisation's pivotal role in reflecting on the legal loopholes while conflicts change and evolve: for instance it is worth noting the example of ICRC's *Draft Rules for the Limitation of the Dangers incurred by the Civilian Population in Time of War*, proposed to States in 1957 during the 19<sup>th</sup> International Conference of the Red Cross and Red Crescent in Delhi and thereafter referred to as Delhi Rules is worth noting. The document contained provisions accounting for the protection of civilians against the destructive force of newly developed weapons, recognising technology advances (Geiß et al., 2017). Although never adopted by States and source of considerable debates, we can consider this attempt is one in a series that contributed to developing more conducive grounds for negotiations of the two Additional Protocols, and more specifically covering Non-International Armed Conflicts (NIACs), some twenty years after, in 1977.

Other international treaties, focusing on prohibiting the use of certain weapons and military tactics, can also be considered as part of IHL in the sense that they contribute to frame the conduct of hostilities (ICRC, 2014). Although not focusing on civilian populations specifically, they indirectly bring further legal dispositions limiting the effects of warfare: examples<sup>42</sup> include the 1925 Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare and the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.

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<sup>42</sup> Other international treaties limiting the effects of warfare through putting a frame on certain weapons or categories of persons include: the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols of 1954 and 1999; the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction; the 1976 Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques; the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCW) and its five Protocols of 1980 (I, II and III), 1995 (IV), and 2003 (V); the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (APMBC); the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; the 2006 International Convention for the Protection of All Persons from Enforced Disappearance; and the 2008 Convention on Cluster Munitions (CCM).

- *International Refugee Law (IRL) and international law protecting stateless persons*

International Refugee Law is enshrined in the 1951 Refugee Convention and its 1967 Protocol (UNHCR, 1951, 1967). The UNHCR serves as the 'guardian' of the 1951 Convention and its 1967 Protocol.

At a time of formidable development of international law, the Refugee Convention bases itself on article 14 from the Universal Declaration of Human Rights, which recognises the right to seek asylum from persecution in other countries. Signed in 1951 by 24 States, the Convention entered into force in 1954 and was originally limited to events that occurred before 1<sup>st</sup> January 1951 and within Europe, linked to the WWII. The 1967 Protocol, which is its only modification, removed both temporal and geographical limitations of the Convention's coverage, *de facto* giving it a global resonance. The Convention defines special protections to a certain category of civilians: refugees. They are defined as "*someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.*" Principles of non-refoulement enshrined in article 33, non-discrimination and non-penalisation are associated with the status and its subsequent legal instrument. Entitlements and rights recognised to those fitting the criteria for a refugee status include access to court, education, to work and very importantly, to a refugee travel document in passport form, following the previously existing tradition of the 'Nansen Passport' established in 1922.

Similar to the fourth Geneva Convention of 1949, the Refugee Convention of 1951 also reflects historically grounded realities, as it clearly states in its Preamble that "*it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and protection accorded by such instruments by means of a new agreement*" (UNHCR, 1951). It also points out to the humanitarian aspect of the refugee condition while interestingly recognising States should prevent refugee issues from becoming a cause of tensions between States. Both IHL and IRL consider the highly political dimensions of the human lives they strive to protect. Besides UNHCR's recognised role to support refugees, the Convention articulates States' obligations towards this specific group of civilians. The 1967 Addition Protocol, in addition to widening the scope of the 1951 Convention, further regulates cooperation on information sharing between contracting

parties and the UNHCR as it relates to the condition of refugees not under UNHCR's responsibility and has 146 signatories (UNHCR, 1967).

Three years after the signing of the 1951 Refugee Convention, another treaty, the Convention relating to the Status of Stateless Persons of 1954, intends to regulate and improve the status of stateless persons, recognising that many people who are not refugees cannot be entitled to rights under IRL (UNHCR, 1954). UNHCR has a role of guidance and technical guidance to Governments to establish procedures to recognise stateless people and provide them with a legal status and human rights. During and after conflict, civilian populations that moved within the border of a country or territory can become Stateless, especially if discriminatory practices are carried out by authorities against certain groups (administrative proof of lineage required to renew identity documents, change of legislation de facto excluding certain groups from enjoying full citizenship and subsequent rights).

- *International Human Rights Law (IHRL)*

While our subject-matter specifically concerns civilian protection in conflict, and therefore is regulated in depth through IHL, it is also necessary to mention key elements of IHRL, a branch of international law applying at all times – whether in peace or in war. One of the IHRL leading reference in international law is the 1948 Universal Declaration of Human Rights (UDHR), which recognises the '*inherent dignity and of the equal and inalienable rights of all members of the human family*' as well as the '*dignity and worth of the human person*' and presents *Member States*' pledges to the promotion of universal respect for and observance of human rights in its preamble (United Nations, 1948). The first article of the UDHR also put forward the idea of equal worth between individuals by stating that 'all human beings are born free and equal in dignity and rights', thus theoretically precluding potential discriminations between different peoples. Article 3 asserts the 'right to life' and 'right to security of person' while article 5 recognises no person should be subject to torture or cruel, inhuman or degrading treatment or punishment, which largely resonates with the fourth Geneva Convention. Other important rights are included in the UDHR, such as the right to freedom, the right to health, the right to legal personality and due process of the law. Although the Declaration itself is not legally binding, different topics it covers have been integrated in various international treaties, national legislations and legal codes. There is a debate among

legal scholars on whether the UDHR has acquired a status of customary international law, which would make it *de facto* legally binding. The influence of the declaration transpired in at least nine<sup>43</sup> binding treaties. In addition to the milestone UDHR, core treaties are to be mentioned for their relevance to situations of conflict: the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (CAT) and its Optional Protocol (OPCAT) of 2002 (United Nations, 1984, 2002). The CAT, which entered into force in 1987, clearly defines the word ‘torture’ in article 1, featuring intentionally inflicted pain and suffering. States are responsible to prevent torture in any circumstance while no exceptional circumstance can be invoked for justification of torture. Those responsible for such offense are subject to criminal proceedings further described in the CAT and a committee of experts is formed to review ‘reliable information’ received following official inquiry. At the time of writing, some 173 signatories are party to the CAT. Interestingly, the OPCAT openly reaffirmed the prohibition of ‘torture and other cruel, inhuman or degrading treatment or punishment’ especially focusing on people deprived of freedom while Member States also expressed they were “convinced” that further measures are necessary to achieve the purposes of the - original - CAT and to strengthen certain protections (United Nations, 2002). It further establishes an international inspection system of places of detention, aimed to reinforced compliance. In 2020, some 90 countries ratified the OPCAT.

Lastly, interestingly resonating with IHL special provisions for the protection of certain segments of civilian populations – women and children, IHRL also focused on these categories of persons, with more in-depth coverage in the 1981 Convention on the Elimination of All

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<sup>43</sup>The nine binding treaties influence by the UDHR are: The International Covenant on Economic, Social and Cultural Rights and its Optional Protocol; The International Covenant on Civil and Political Rights and its two Optional Protocols; The International Convention on the Elimination of All Forms of Racial Discrimination; The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; The Convention on the Rights of the Child and its two Optional Protocols; The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; The International Convention for the Protection of All Persons from Enforced Disappearance; and The Convention on the Rights of Persons with Disabilities and its Optional Protocol.

Forms of Discrimination against Women (CEDAW) of 1981 and its 2000 Optional Protocol; and the 1989 Convention on the Rights of the Child and its two Optional Protocols of 2000.

- *The importance of Soft law*

Soft law standards do not give rise to enforceable rights by themselves, as they are not legally-binding, but can be incorporated in domestic law. Since the 1990s, following changing inter-state relations and a less-conducive international environment for the signing of new conventions, a plethora of legal scholarly articles further reflected on the definition of soft law, its role and interactions with other legal elements. Mostly defined as ‘rules’ with a normative effect but more limited obligatory aspects, interpreted as a decrease in “legal pressure”, the role of soft law nonetheless bears importance (Cazala, 2011). Soft law is often referred to as a moving category at the frontiers between law and the lack of law. As we further grasp the structuring of the International Protection Regime, this notion of frontier, or edge, will be crucial when exploring the IPR alterations. Several elements of soft law were developed since the turn of the 1990s, including the Guiding Principles on displacement (OCHA, 1998), the Global Compact (GC) on refugees (UNHCR, 2018a), together with the Global Compact for Migration (IOM, 2018) and the New York Declaration in Refugees and Migrants (United Nations, 2016). Reflecting on the impact of the multiplication of international declarations on the international stage, it is important to contemplate linkages between soft and hard law: the former being a source of inspiration for the latter and possibly contribute to preparing the grounds through a normative concentration for further development of hard law. In this sense, and as we consider the UN General Assembly’s non-binding recommendations, it is at the same time possible to recognise their role in normative creation, as well as in the formation of customary law as expressions of *opinio juris* through a social circuit of legal legitimisation (Beham, 2018; Frozel Barros & Bodeau-Livinec, 2020; Vercin, 2020). In 2006, the former Human Rights Commission was replaced with the UN Human Rights Council (UNHRC)<sup>44</sup> with a broad mandate to protect and promote human rights by addressing specifically ‘situations of violations of human rights, including gross systematic

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<sup>44</sup> The Human Rights Council was established by the UN General Assembly on 15 March 2006 through resolution 60/1 and 60/251 to replace the former Commission on Human Rights as part of the process to reform the UN that had begun in the early 2000s when Kofi Annan was the Secretary General of the UN.

violations' (Subedi, 2017). The new body was given the mandate to provide 'recommendations' to the UN General Assembly on further development of international law and undertaking the Universal Periodic Review (UPR) of Member States' fulfilment of human rights obligations. As an inter-governmental body, it is important to acknowledge the politicisation of discussions held in this forum, often contingent to other (non-human rights issues) that regulate State relations. Despite the criticism it regularly faces, it yet offers a forum of discussion, promote some degree of cooperation and expression for States as well as for advocacy from I/NGOs on ground violent situations, including conflict, and contribute to normative development and collective understanding of complex protection violations affecting civilians.

According to Kessing, soft law has not played a major role in regulating armed conflicts, these situations being traditionally regulated by hard law instruments. However, the author considered it changed at the turn of the XXI century, with the rise of new standards targeting situations of armed conflict being elaborated in soft law instruments (Kessing, 2016). Recognising the need to regulate current armed conflicts, particularly Non-International Armed Conflicts (NIAC), as mentioned above, Governments have been cautious in adopting new legally-binding rules. Instead, other legal sources and norms have played an increasingly important role of regulating rules in armed conflict, including for the protection of civilian populations. It will be important to consider this recent shift away from tradition IHL hard law to more diffused legal references when contemplating the IPR adaptations and alterations. The diffusion of legal references that can be used in protection advocacy both enable to appeal to wider possible arguments while at the same time possibly weakening actors' roles in defending those norms, rules and principles. As hard law IHL expresses a delicate balance between military necessity and humanity, the military necessity is not reflected in IHRL norms, which are thus more restrictive in allowing armed actors to use force, featuring stronger legal protections, especially in relation to the right to life, right to liberty and right to freedom from torture. This led to operational challenges for the military at large and the ordinary soldiers (Kessing, 2016).

In the last 30 years, States have been increasingly reluctant to sign new binding documents through conventions (hard law). Yet, soft law is also a form of – *possibly more interpretative* - political engagement and commitment on a subject-matter. Albeit not legal obligations,



Cazala considers soft law has a 'legal effect' while States use 'resolutions', 'declarations' and 'recommendations' (Cazala, 2011).

## 2. Values at the core of the concept of Protection

As previously developed in *Chapter 1*, Protection is at the core of the humanitarian commitment: it is the effort to protect the fundamental well-being of individuals caught up in conflicts or "man-made" emergencies. It appeals to the fundamental principle of humanity and relates to the notions of dignity and integrity, explaining why the humanitarian endeavour goes beyond physical assistance to protection of human beings in their fullness. Although a recognised concept, it is yet important to acknowledge that human dignity remains vague and no consensus was reached on a common definition (Lin, 2015). This means a concern for a person's safety, dignity and integrity as a human being, addressed by relevant bodies of law, but goes beyond as it relates to the intrinsic value of human life. In practice, protection includes any activity to prevent or put a stop to actual or potential violations of and threats to civilians and protected persons (ICRC, 2010). Different humanitarian actors, i.e. the ICRC, UNHCR, the Norwegian Refugee Council (NRC), the Danish Refugee Council (DRC), and human rights advocates observe their own specific and at times narrower definitions of protection.

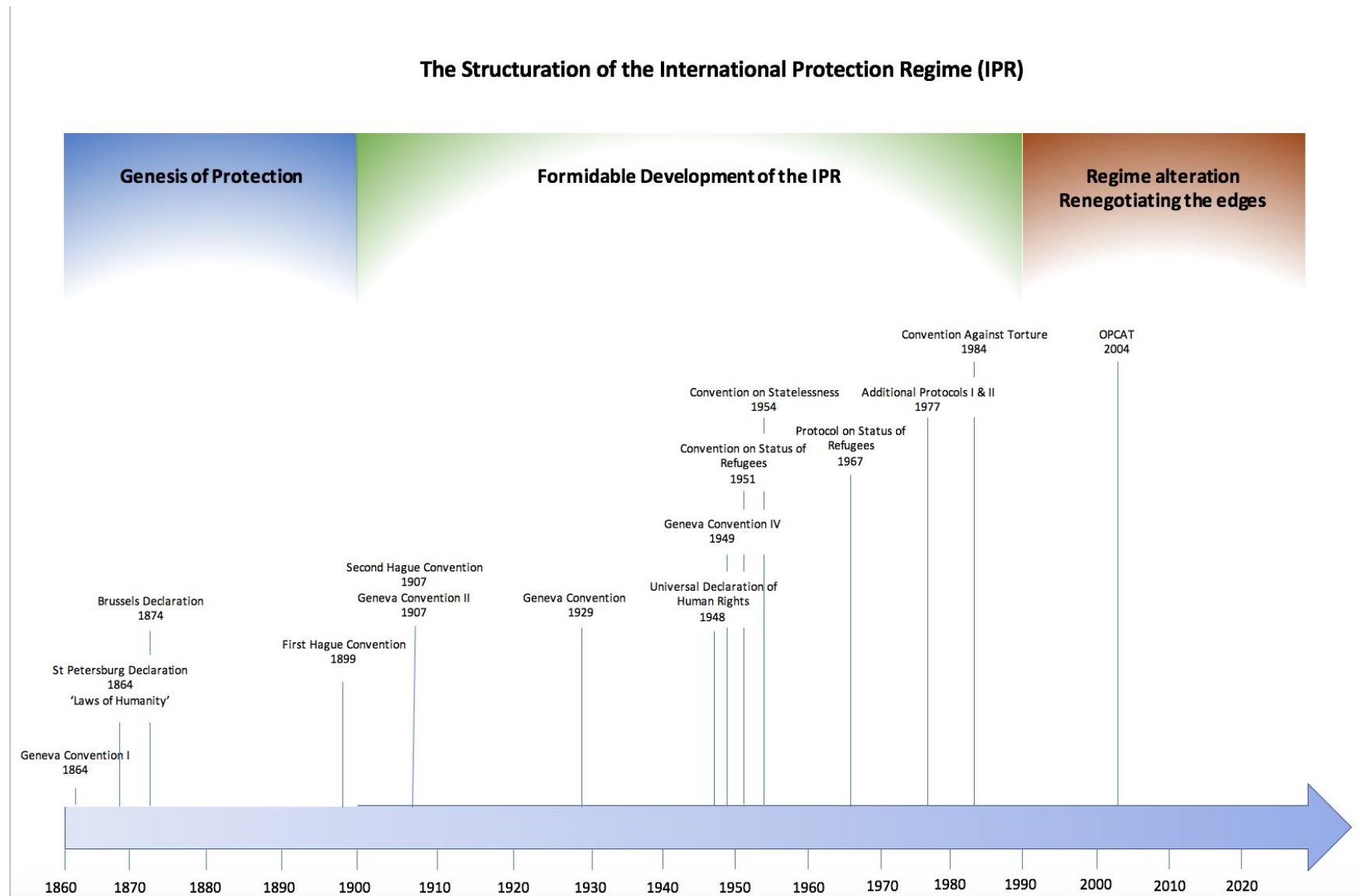
Inherent to the rather open definition of protection are some different levels of understanding by the various actors concerned: civilians affected by conflict, States, NSAGs, humanitarian actors. For instance, the notion of 'dignity' – an intangible notion – can be interpreted differently through the prism of cultures and social norms that define what is considered acceptable, respectful or offensive, but also security imperatives and personal experiences. Although solely focusing on refugee protection, Stevens reflects and interestingly points out to the absence of a clear, over-arching appreciation of the "meaning of protection," while the turn of the XXI century witnessed the development of a plethora of sub-terms – i.e., *complementary protection*, *protection space* (Stevens, 2013). The uncertainty of a common basis around the concept of protection may contribute to further elusiveness around the development of protection narratives. From a constructivist perspective, different challenges and experiences faced by protection-mandated humanitarian actors shape the social construction of the protection concept through attempting to address protection needs

via policy developments, programme implementations, humanitarian diplomacy and advocacy efforts. The more tangible dimensions of the IPR - through a set of written and agreed upon conventions - often cover sub-categories (refugees, victims of war protected under IHL), contributing to widening the complexity of a multi-layered IPR.

According to Captier, it is yet important not to mistake responsibilities to uphold protection. Humanitarians' responsibilities is to compel others (States authorities, non-state armed groups) to assure their responsibility to protect, in other words 'protection, not humanitarian protection, is required' (Captier, 2003). Grasping the concept of protection also requires understanding the multiple legal basis it relies on:

*"The concept of (humanitarian) protection encompasses: 'all activities aimed at ensuring full respect for the rights of the individuals in accordance with the letter and the spirit of the relevant bodies of law. Human rights and humanitarian organisations must conduct these activities in an impartial manner'" (ICRC, 2018).*

Figure 2: The structuration of the IPR through the development of international rules and norm



### III. System of actors around the IPR

Different actors form and are featured in the IPR:

#### 1. States

First and foremost, States, especially those who signed international conventions protecting civilians during and after conflict, have the main responsibility to uphold respect for civilians' safety and dignity. They have both an obligation to abstain from committing violations, and to collectively mobilise to make another State's violations cease. In the field of International Relations (IR), realist theorists put states at the centre of the "inter-state" system and they remain the principal unit of protection and collective action in the contemporary world (Keohane, 2003a; Roche, 2005). However, limited multilateral fora are in place to ensure compliance mechanisms. The UN Human Rights Council (UNHRC) partly covers violations under IHL, but the universal periodic review mechanism – UPR - is based on each State willingness to accept the report of findings and recommendations of the Office of the High Commissioner for Human Rights (OHCHR). If the 'public review' of each State's practices can contribute to exerting peer pressure and offering opportunities for human rights advocates to be heard, States' decisions to accept or reject recommendations are not contested.

Beside multilateral fora, bilateral diplomatic relations and geopolitical interests contribute to regulating a State decision to exercise of – hard or soft - power on another State, if the added value is considered higher than the cost. Beyond direct political gain, some decisions may also resort to claimed higher universal values such as humanity.

#### 2. Non-State Armed Groups (NSAGs)

NSAGs took a more prominent stage as conflicts evolved towards more asymmetric oppositions. This category brings together highly varied organisations: including through size, levels of organisation, hierarchy and approaches to armed conflicts. Since the turn of the XXI century, different studies have explored the roots of behaviour in war, including through organisational socialisation and hierarchy, leading to different levels of "restraint" and respect of IHL (ICRC, 2018a; Munos-Rojas & Frésard, 2004). A more recent study interestingly pointed out that, similar to other social entities, practices may evolve over time with changes

of policies, more targeted training or even experience. Although NSAGs are not signatories of international conventions, they are yet expected to abide by certain rules in the conduct of hostilities. Levels of knowledge of IHL and international law and varied internal mechanisms to correct misbehaviour characterise the conduct of hostilities making it impossible to establish an overarching tendency. Civilians often stay stranded in theatres of conflict between states and NSAGs. Considering the presence of NSAGs as part to the conflict in all regions of the world, it is important to acknowledge and weigh other means of interventions (prevention, negotiations) than references to international legal instruments. Accompanying this change, Geneva Call<sup>45</sup> was created in 2000 and is a specialised NGO whose mission is to engage with NSAGs on laws of war with a view to improving the protection of the civilian populations. An interesting initiative of the organisation is to propose a Deed of Commitment to willing NSAGs, declaring unilaterally and publicly their commitment to respect international rule of war, including positive or negative obligations. Even though the Deed is non-binding, the move towards “political declarations” from NSAGs is also echoed by more recent States practices in the international arena.

### 3. The Guardians of the IPR

- *Humanitarian organisations*

The main protection-mandated International Organisations (IOs) defending the core international conventions are the International Committee of the Red Cross (ICRC) and the UNHCR. Both have received a mission from States to be the guardians of different international conventions: the four Geneva Conventions of 1949 and their two Additional Protocols of 1977 regulating IHL for the ICRC, and the Refugee and Stateless Conventions for the UNHCR (1951 and 1954 respectively). More than a guardian and implementer of protection, the ICRC is analysed to have had an impact on the development of IHL or *jus in bello*<sup>46</sup>, touching upon fundamental State security interest and core sovereignty (Geiß et al., 2017). This role provides them with an important voice in the international arena, which is

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<sup>45</sup> Geneva Call was created in Geneva in 2000 and has worked in 25 countries to engage with Non-State Armed Groups (NSAGs), providing training sessions on IHL, technical support and working on “prevention” with an objective to encourage them to abide by the rules of war.

<sup>46</sup> Jus in bello is the Latin expression that represents the law in which warfare is conducted. Jus in bello is not concerned with incentives leading to war but rather focuses on limiting suffering and regulating the conduct of hostilities.

also reinforced by the development of their field presence in several theatres of conflict and subsequent protection expertise, as well as their diplomatic presence advocacy role. Functional analyses emphasise the specific functional autonomy offered by organisations' mandates, allowing both to take distance vis-à-vis States and to exert pressure on them in view of behaviour's change – generally towards improved respect of international conventions, and subsequent duties and obligations. Although compliance mechanisms remain extremely limited, control mechanisms ensure verification and heighten the cost-benefit trade-off for State's decisions towards their publicly and internationally committed engagement.

Besides IOs, specialised International Non-Governmental Organisations (INGOs), notably the Norwegian Refugee Council (NRC) and the Danish Refugee Council (DRC), also play an important part for the more flexible and innovative stances they take. Although there are more humanitarian actors working on protection at different levels and through different angles, our research on the role of 'protection guardians' will specifically focus on the four organisations mentioned above, as they bridge field presence, expertise and humanitarian diplomacy elements. In defending protections for the civilians who are victims of conflicts, they often work 'behind the scenes' engaging directly with authorities, NSAGs and other relevant actors at community, national and regional levels. Since the turn of the XXI century, the growing importance of the digital space and public exposure of suffering led humanitarian organisations to further occupy the public space and more regularly take – politically acceptable – public stances; it is yet important to keep in mind that such positioning is conditioned to potential negative consequences on their needed field presence. A careful balance is thus systematically reflected upon when addressing sensitive protection issues publicly. Indeed, it is their field-base experience and activities to support those affected by conflicts that gives them both a position of experts on protection, and thus legitimacy as guardians and pro-active voice to update and adapt protective measures in the various bodies of international laws developed in section II.

- *Human Rights organisations*

Human Rights NGOs are also cornerstone in being outspoken watchdogs denouncing violations during and after conflicts. Human Rights Watch (HRW) and Amnesty International

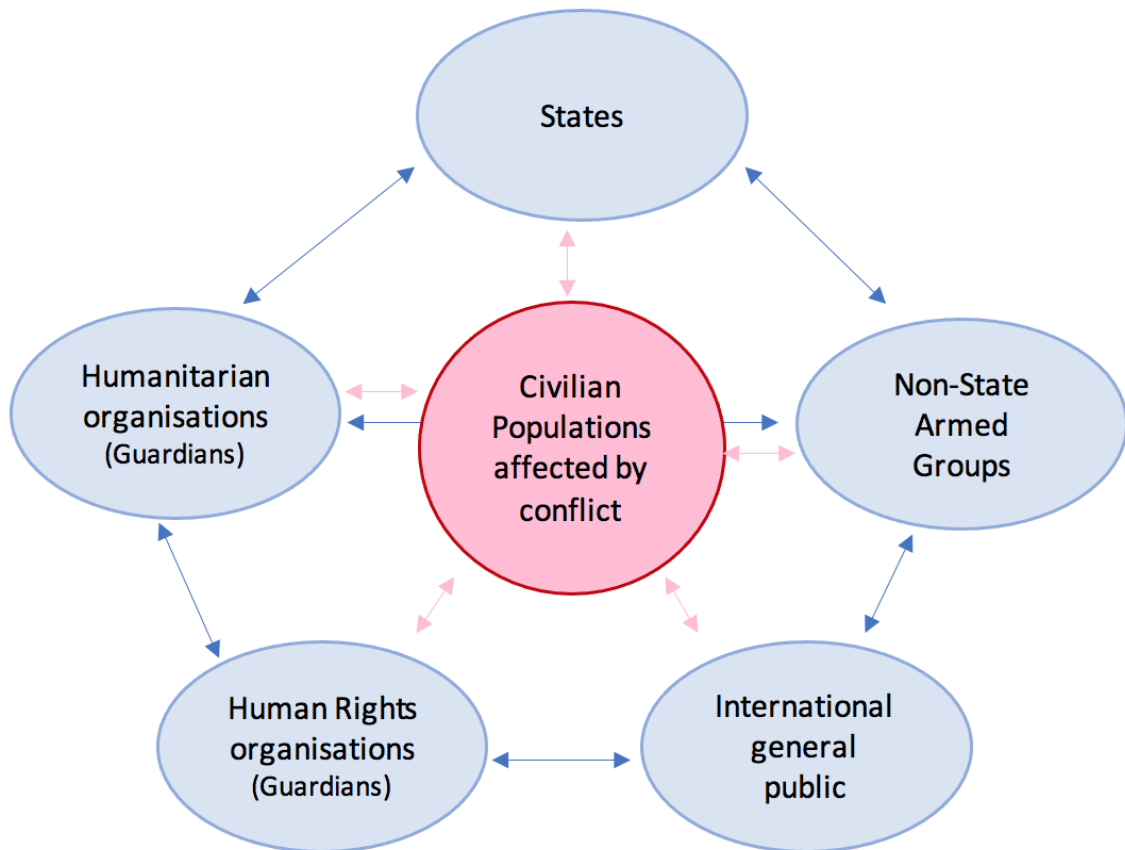
(AI) notably bear weight in maintaining an ‘forthright’ public voice. Their role is thus closely intertwined with the ‘presence’ and use of the public opinion: to raise awareness and public concerns, pressure political decision-makers, demand a change of behaviour or reparation. Both humanitarians and human rights defenders lead advocacy activities to call on the plight of “distant strangers.” Using historical and social science perspectives, Stamatov reviews the institutionalisation of those activities which he calls ‘long-distance advocacy’ in favour of distant strangers, forming the backbone of ‘Global Humanitarianism’ and the current humanitarian engagement (Stamatov, 2013). Moral and solidarity engagement across distance invites for reflections on politically and socially anchored reactions based on shared information different issues affecting *humane* treatments of distant populations.

- *The international general public*

The general public, to a certain extent, also plays an important role in the IPR. Since the 1980s when photos of famine reached western democracies and triggered waves of empathy and donations, communication strategies from humanitarian organisations served both to raise funds and to mobilise support behind the idea of a common humanity. Since then, and supported by NTIs’ development, the plight of civilians affected by war has not only been regularly exposed but also became part of daily life. Images and individual ‘stories’ calling for individual action or political reaction became increasingly normalised insofar as handling international precarity not only focused on individuals’ personal commitment but was also integrated into States’ policies (Chouliaraki, 2006, 2012; Fassin, 2010). More recently, civilian ‘digital witnessing’ of death in conflict zones breaks with traditionally reported events by journalists, enhancing direct mediated death to a general public that triggers scepticism on the moral invitation to react (Chouliaraki, 2015). Blurring previously established lines, especially in the post-Arab spring conflicts zones since the 2010s, amateur footage offers intimate views of the conduct of hostilities, showing no guarantee of truth that traditional journalism seeks, but openly appealing for global mobilisation on the civilians’ plight. Chouliaraki argues that the remediation of digital witnessing contributes to differentiated memorialisation of deaths and complicating the politics of affect, in turn contributing to a

geopolitical thanatology<sup>47</sup> - or thanatopolitics - featuring hierarchies of human life. She specifically draws three main categories: beheaded westerner seen as a ‘hero’ or considered a ‘hyper-humanisation’, civilian victims or suspended humanisation, public killing of leader such as M. Gaddafi or S. Hussein as de-humanisation.

Figure 3: System of actors of the IPR



System of Actors and interdependent relations forming the International Protection Regime (IPR)

The international regime complexity refers to the presence of nested, partially overlapping and correspondent regimes which are not hierarchically ordered and features various configurations of systems of actors (Alter & Meunier, 2009a). A complex system is a system with a web of elements to be considered: some represent blocks while others are “enabling

<sup>47</sup> Chouliakari also develop the concept of thanato-politics; which reflects on the ‘taste and decency’ specific to western journalism. According to the author, ‘diffused’ visual (and military) economy of recent conflict zones complicates the taking of sides and throws into relief the politics of affect, which now replace straightforward ‘our victors’/‘their dead’ propaganda with the complex and fragile mechanism of affective attunement.



agents” for cooperation. Hard to seize in its fullest expression, highly complex regimes require to consider *overlapping regimes*: for instance, our definition of the IPR partly overlaps with the International Refugee Regime. The latter being more restricted in terms of scope and previously more studied, we will build on previous reflections and knowledge while reflecting on the former (Betts, 2009).

The above-mentioned actors, whose interests may diverge on certain issues, locations and time, either bilaterally or in multilateral fora such as the UN (Security Council, UN Human Rights Council or UNHRC, General Assembly), contribute to mobilising, at times disrespecting, at times defending, constantly renegotiating the edges of the IPR through humanitarian diplomacy efforts. Since the beginning of the XXI century, the concept of humanitarian diplomacy started to appear, reaching academic circles from 2010s (Régnier, 2012). We define the concept of humanitarian diplomacy as negotiations to defend the “humanity imperative” of protecting both lives and dignity. The universality of the notion of humanity defended by the United Nations has been challenged, negatively impacting field access for humanitarians as disagreements on norms translate into more unstable environments to operate and access vulnerable populations (Brauderlein & Gassmann, 2006b). Mediatisation of war, made possible through the use of NTIs, and global exposition of public suffering may also put under pressure norms of ethics – here related to humanity – that dominate public life (Chouliaraki, 2006).

Protection-mandated humanitarian actors regularly carry out negotiation activities at different levels with Governments, military or NSAGs, as well as other influencers, on behalf of those at risk. In doing so, “guardian” organisations are not only full-fledged parts of the system of actors composing the IPR, but also stand as references through their expertise and experience. Delivering on their mandate yet require manoeuvring regular political and funding pressure from donor-States, especially when these are also belligerents in a conflict theatre. Protection-mandated organisations evolve in a highly political and sensitive international arena. Although humanitarian action is by principle aimed to be neutral and apolitical, humanitarian diplomacy efforts through humanitarian actors’ negotiations and advocacy lead them to enter a politicised arena. In other words, protection-mandated humanitarian actors – the Guardians - have a political role in defending an apolitical mandate. Often, the ‘political activities’ of IOs is downplayed and mostly seen as technical, while their capacity to develop an issue, to mobilise collective attention, public debate, polarisation, at

times controversy and potential conflict is a form of politicisation (Petiteville, 2018). Under the apolitical umbrella of their mandate and expert position, humanitarian organisations can carry forward activities, produce reference reports and public stances, or ‘public policies without politics’ in a less controversial manner<sup>48</sup>. Alexander Betts, using the example of refugees with UNHCR, reflects on the organisation’s role in influencing the narrative and discourse to mobilise support (Betts, 2009). The tools, increasingly resorting to New Technologies of Information (NTIs); as well as to processes for information collection, consolidation, analysis and knowledge production are incremental in weighing how humanitarians bear a role in the IPR’s regime alteration.

#### IV. Transitioning worlds: challenged Humanitarianism

##### 1. *New wars, new protection issues*

The post-Cold War period proved tumultuous for those involved in humanitarian action: “new wars” in different regions of the world featured similar characteristics, including attacks on civilians and breakdowns of state public authority or state legitimacy. The 1980s represent both a culminating point and a threshold of change. Indeed, IPR had taken a clear shape while a double paradigm shift started to emerge: on the one hand, international relations between States became less conducive to new pieces of hard law to reach global levels and commitment, while on the other hand, the integration of new technologies in both warfare and more professionalised humanitarian action exponentially developed. In the 1980s, the use of computers, the internet, mobile telephony, interactive broadbands, software platforms, social media and automated applications into different aspects of personal, social, national and international life also steadily entered the humanitarian sphere.

Humanitarian actors stumbled to respond to crises in Iraq, Somalia, former Yugoslavia and Rwanda; these situations were more systematically referred to as ‘complex emergencies’ of political nature since the mid- 1980s and considered to be a result of multiple causes involving several actors (state and non-state). The means to wage war rapidly evolved and have increasingly used new technologically advanced warfare techniques, raising new concerns

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<sup>48</sup> The use of ‘less controversial’ is preferred over ‘non-controversial’ here as there has been State denunciations or rebuke from UN findings or public statements (Sri Lanka, China, Syria).

that are yet limitedly addressed in the current IHL protecting civilians (Rowe, 2018). The inability to provide meaningful protection for civilians who died as well as those who were able to flee (including safety, dignity and humanitarian relief) triggered significant questioning and self-inquiry for humanitarians. In the 1990s, several analyses pointed out to experiences of humanitarians becoming entangled in complex conflict dynamics, at times carrying harmful practices that may even result in fuelling conflict and violence (Jacobsen, 2015; Slim, 1997; Terry, 2002). Following identified failures and unintended consequences of their actions, the main actors of the humanitarian system (humanitarian organisations, including I/NGOs, the Red Cross Movement, the UN, donor-States, and national/international public opinion through the media) attempted to respond by developing minimum standards to improve humanitarian action. This shift towards professionalisation of humanitarian action was accompanied by efforts towards more transparency, codifications of professional humanitarian practices, and systematic project cycle management<sup>49</sup> for activities. The creation of the UN Department for Humanitarian Affairs (known today as the Office for the Coordination of Humanitarian Affairs – OCHA) in 1992 and the establishment of the humanitarian department under the European Commission (ECHO) in 1993 aimed at improving coordination (United Nations, 1991). In Fassin’s view, humanitarian work entered state politics and policies in the management and administration of ‘precarious lives’ (Fassin, 2007). Initiatives such as the Code of Conduct produced by the International Red Cross and Red Crescent Movement in 1993, and the Sphere Project launched in 1997 to develop minimum standards in various areas of humanitarian action – including protection work - also reinforced a felt need for increased regulations and bring transparency to the framework and rules of a humanitarian engagement (Sphere Association, 2018). In 1996, the ICRC held the first of a series of workshops on how best to protect civilian victims in conflict. For four years in a row, humanitarian and human rights representatives met to discuss the meaning of the term “protection”, the principles on which protection work is based; the consequences of their operational choices and how to optimise between the different organisations (ICRC, 2001).

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<sup>49</sup> Project cycle management presents the necessary steps to carry out humanitarian response, and include needs assessments, project design based on identified needs, implementation, monitoring and evaluation, and reporting.

## 2. Semi-distant humanitarianism: field & digital dimensions

The development of more distancing between humanitarians and those in need, also called ‘bunkerisation’ affects the way humanitarian action and its sensitive protection component are articulated in practice (Duffield, 2014). The ‘bunkerisation’ is often explained as a result of working in insecure environment and security risks assessments that led to some humanitarian organisations to decide to the retrieval of their staff further for ‘staff security’. Attacks on humanitarians are regularly publicly condemned, specific campaign have been developed denouncing attacks on the -protected- medical mission and healthcare facilities, while M. Bradley interestingly considers *“the absence of campaigns of a comparable scale concerned with attacks on other civilians is notable”* (Bradley, 2019: 16). This calls for an in-depth review on the impact of the retrieval from physical humanitarian presence towards digitally supported practices on the strategies to pursue protection outcomes. According to Duffield, a “New Humanitarianism” emerged and a shift in humanitarian policy occurred towards analysing consequences and supporting social processes. Any action (or inaction) would be based on the assumed good or bad consequences of a given intervention. Through a thickening of the relations between donors and aid agencies, new forms of surveillance and aid impact, appraisal and monitoring of desired outcomes became the norm (Duffield, 2014). Duffield’s initial concept then evolved to “Post-Humanitarianism”, capturing the parallel relation between the decrease of field familiarity and loss of physical presence and the increased reliance on data and machine-thinking (Duffield, 2018; Kalkman, 2018; Sandvik, 2017). The role of NTIs, also called the ‘computational turn,’ began to bear a more prominent place in the inner workings of the humanitarian system. As part of the generally accepted optimistic narrative of innovation, the use of NTIs is framed as part of a theory of change that will contribute to “fix” previously identified failures of the humanitarian system, calling for cautious ethical considerations (Sandvik, 2017). Interestingly, a similar distancing tendency was observed with some States’ armies, using technologies for autonomous weapons systems (AWS) such as drones to carry warfare. According to Leveringhaus, the concept of distance can be declined through four elements: geographical distance, psychological distance, causal distance – *which features the different decisions in a chain of command*, and temporal distance – *such as landmines that may explode years after a conflict ends*.

Importantly, the distance that emerged as a result of the evolutions of means of war does not undermine obligations for the respect for and compliance with IHL. New, distance-enhancing combat technologies can increase the complexity of chains of command or causal distance, coupled with both geographical and psychological remoteness. This distancing contributes to create difficulties to establish responsibilities when IHL is disrespected (Leveringhaus, 2017). Cyber warfare represents an example as it uses digital computer system to attack other digital computer systems in the digital space (Slim, 2022). Cyber-attacks have now become a normalised part of the warfare portfolio for regular armies and to a certain extent for Non-State Armed Groups (NSAGs) too. The challenge lies with the difficulty to establish *how* cyber-attacks can have kinetic consequences – for example, if a hospital (protected under IHL) becomes unable to operate following a cyber-attack - and how they affect civilians, as well as attributing alleged responsibility. Traditionally handled by troops, this human experience of war and vulnerability led to the creation of informal violence restricting norms,<sup>50</sup> such as not killing naked soldiers (Walzer, 1992). Threats that new technologically advanced weapons pose to human dignity are largely debated, presented as an affront to human dignity by some while others reflect on the intrinsic value of human life being targeted by people, with or without the ‘meaningful human control’ and support of new technologies (Heyns, 2016; Pop, 2018). In addition to creating new challenges for protection-mandated humanitarian organisations in their engagement with parties to a conflict and civilian victims of violations, the use of NTIs - as a system-wide adjustment - legitimately calls for reflections on its impact on ethics of warfare.

A general shift has been observed from human circulation and field presence to further reliance on remote “connectivity”. As a result, processes of knowledge generation have also been affected, permuting from deductive methods based on experience, presence and causal explanation to heightened reliance on inductive mathematical data driven methods for sense-making. In the new paradigm of post-humanitarianism, it is yet more acknowledged that, beside natural disasters, humanitarian needs result from processes of violence being put

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<sup>50</sup> Leveringhaus refers to Michael Walzer’s ‘Just or Unjust wars: A moral argument with historical illustrations’, reflecting on self-restricting norms such as ‘not killing naked soldiers’, considered to be a result of direct human experience of vulnerability.

forward as reasons for a general movement of humanitarians' withdrawal in protected areas, bunkers or green zones. Previously relying on human agency and ground presence, most humanitarians now operate from a distance of victims of conflict, while at the same time donors moved closer to field operations: both present and operating from "green zones" and "bunkers": an in-between space. With an emphasis on the necessity to "analyse" violations of IHL or fundamental rights, and the failure of national or international mechanisms regulating violence, the post-humanitarianism described above builds on the permanent tension and dialectic between assistance and protection by focusing on the constraints and violations victims face (Captier, 2003).

Since the turn of the XXI century, the international environment has not been conducive for States to reach agreements on new sets of rights, thus existing bodies of law have been reaffirmed as legal benchmarks of protection (Slim & Bonwick, 2005). Instead, the focus shifted to re-affirming already existing bodies of law while trying to reach new non-binding agreements (soft law) aiming to respond to new challenges. i.e., the Global Compact for Migration mentioned under *Section II.1* above.

At a practical level, it is important to be aware to which international conventions a given State is part of (or not) as it will form the legal basis for potential protection interventions carried out by humanitarian actors in a given country. In addition, it may be useful to undertake a thorough legal analysis of national laws in place to put forward legal arguments on responsibilities of alleged perpetrators. National laws may be in line, contradict the above international conventions or even be absent (legal gap), allowing for different leverages in different countries. Yet beyond the UN Human Rights' Council and specific commissions of inquiry, limited mechanisms to ensure States' or NSAGs' compliance with legal instruments of the IPR exist.

Discussing regime change and although using the refugee protection regime as a starting point, Betts uses the concept of regime stretching to substantiate the need to further develop the current international refugee protection framework using examples of government and humanitarian response in different countries<sup>51</sup> (Betts, 2013). While acknowledging some of

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<sup>51</sup> The book provides a thorough comparative analysis of both Governments and IOs' responses to what is conceptualized as "survival migration" in Kenya, Angola, Yemen, Botswana, Tanzania, and South Africa.

the regional instruments created to provide “complementary protection” (Organisation of the African Union - OUA convention of 1969,<sup>52</sup> Cartagena Declaration of 1984,<sup>53</sup> European council asylum qualification directive from 2004), the author argues for the need to reform the international refugee protection regime and clear institutional mechanisms to respond to what he calls “non-refugee survival migration” (Betts, 2013). Such analysis builds on our reflection pertaining to the currently ongoing alteration of the IPR, reinforced by further distancing NTIs. In *Theories of International Regimes*, regimes are considered to change over time and can vary in at least four ways: strength, form, scope and allocation mode (Betts, 2013). The principle itself of any international order or cooperation regime reflects a specific group of states’ collective views of justice, stability and interest. Those considerations are not universal values, but only the dominant prevailing ones in a given time (Haggard, Stephan & Simmons, Beth A., 1987). Inquiring changing priorities for key actors involved in the IPR, we will explore how evolving interests affect the course of unremitting negotiations and thus impact several and multiple attempts to re-order preferences in agreements on rules and measures for the protection of civilians. However, beyond already existing rules and norms constituting the IPR, the increase and prevalence of asymmetric conflicts and subsequent new humanitarianism have continuously challenged and required adjustments of the humanitarian system and its core protection component. The role, use and impact of NTIs in facilitating, enabling, and shaping humanitarian adaptations has, thus far, been largely overlooked in academic research.

Apprehending complex international relations linked to ground conflict dynamics and how it affects civilian populations, Mayer, Hasenclever, and Rittberger interestingly argue for a possible “inter-paradigmatic synthesis,” taking different IR theories’ views toward a more in-depth reflection (Mayer et al., 1997; Meerts, 2008). Going further, Pouliot argues for a theory of practice, or a logic of practicality, which sees experience as adaptive and leading to actors’ adjustments (Pouliot, 2008). In the second part of our research, we will build on this theory of practice to bridge parallel practical – which include physically grounded and digital experiences from humanitarian professionals seen as ‘near experience’– and theoretical relations seen as ‘distant experience’ to the world. Combining these complementing

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<sup>52</sup> The OAU convention entered into force on 20 June 1974, in line with article XI upon having one-third of States parties to the OAU ratified the convention.

<sup>53</sup> The Cartagena Declaration of 1984 is a non-binding regional instrument for the protection of refugees. As of 2019, the Declaration was integrated in 14 countries of the region.

dimensions, which Pouliot theorises in the concept of “subjectivity” (a contraction of the two words ‘subjectivity’ and ‘objectivity’), which will contribute to connect those different fields and seek a deeper understanding of the IPR alterations at play, including what it means for civilian populations and humanitarians who defend their protection (Pouliot, 2008).

This first part of our research has put together the various elements, using different academic expertise and a few ground experiences that are necessary to reflect the complexity of our subject-matter: the IPR. Reviewing core concepts, reflecting on the inception and then formidable development of international law and actors involved allows to better grasp the ‘what’ of the subject-matter we research, while recognising the centrality of information when working, i.e., researching and reflecting on the protection of civilians – women, men, boys and girls – that are caught up in conflict zones. This is the necessary basis in order to further explore ‘how’ the use of NTIs in protection amounts to negotiating yet unexplored territories, which we tackle in the second part of this research.



## **PART II: the use of New Technologies of Information (NTIs) in protection - negotiating unexplored territories**

In the second part of the research, in line with Pouliot's approach, we intend to bridge theoretical reflections to practical experiences (Pouliot, 2008). We further explore and reflect on humanitarian professionals' exposure, observations and acquaintance with New Technologies of Information (NTIs) as it has become an increasingly important aspect of their work, especially as it relates to the protection endeavour. Our field research, based on semi-structured interviews with humanitarian professionals, allowed to gather insights from some 32 humanitarian professionals with specific profiles and working for five humanitarian organisations with a strong protection mandate or activities: the ICRC, UNHCR, UN OCHA, NRC and DRC. Professionals in three different categories of operational roles were specifically targeted across the five organisations: (1) Protection, (2) Information Management/Information Technology, and (3) Senior Managers/Policy and Innovation staff. A balance of field and headquarter staff was also sought in order to enrich the analysis. Semi-structured interviews provide various viewpoints from humanitarian organisations' practitioners at different levels and allow for humanitarian professionals to share their thoughts, views, at times frustrations on four main broad topics:

1. The evolution of the use of NTIs in the humanitarian sector,
2. The evolution of the use of NTIs in protection work,
3. NTIs and quantitative methods,
4. The impact of the use of NTIs on knowledge-generation processes.

All 32 interviews were recorded as transmissible, non-nominally. A cross-analysis from several interviews intends to reach beyond individual experiences and support the identification of broader tendencies, as it relates to 'how' the humanitarian sector and its fundamental protection mission has been and continues to evolve through adopting and absorbing NTIs within its functioning. The substance drawn from the field work carried out through interviews will support our research through *Chapter 3* and *Chapter 4* and will attempt to contribute to a topic that has, thus far, limitedly been addressed in academic research.

Figure 4: Field research – Humanitarian staff interviewed by location of work

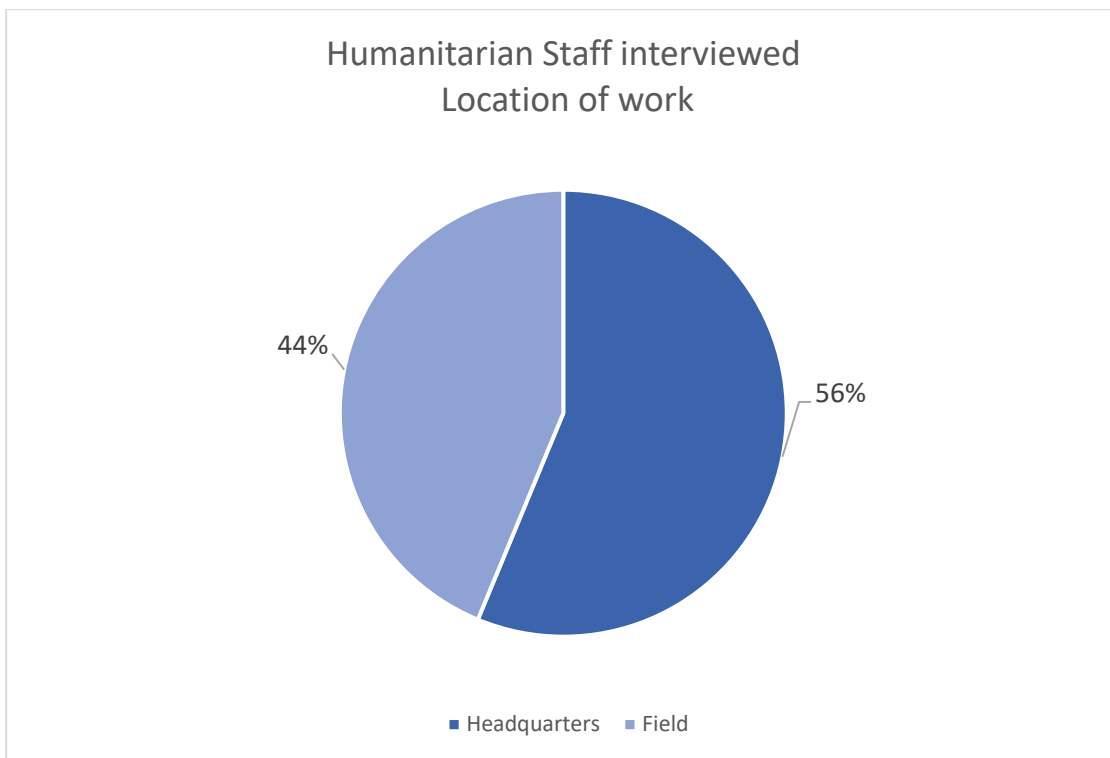
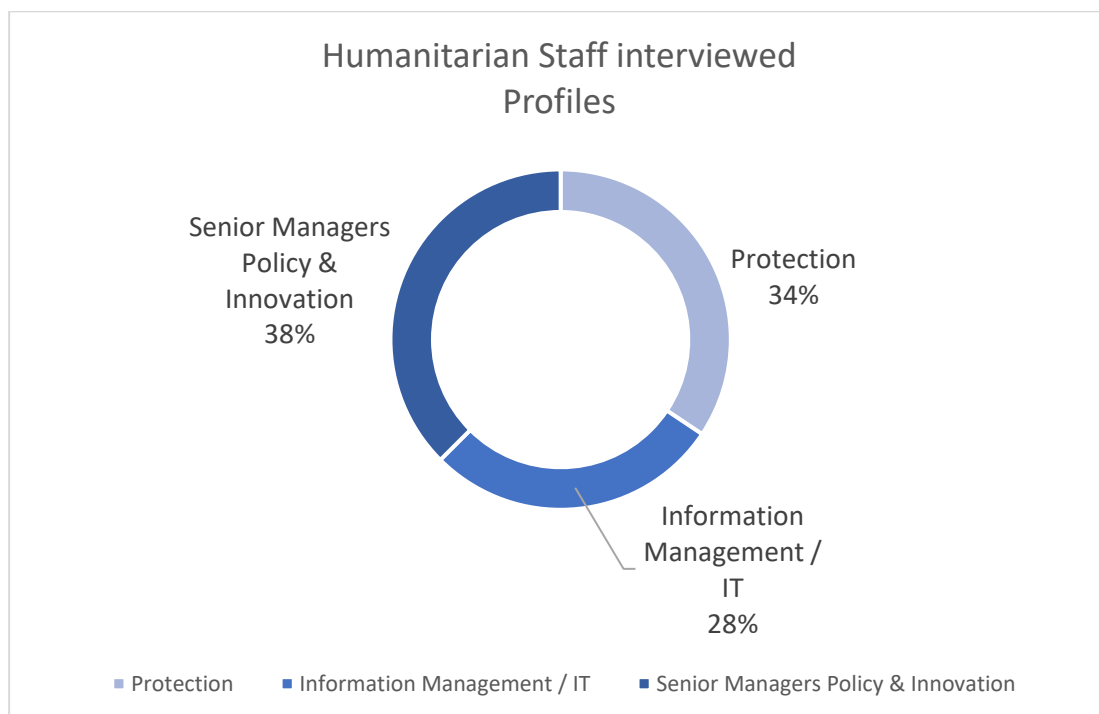


Figure 5: Field research – Humanitarian staff interviewed by profiles



NTIs are part of a changing world: as their civil use becomes increasingly available in various societies, NTIs' infiltration is mirrored and has become more integrated in the humanitarian sector. For instance, since the 1990s, the use of phones and heightened connectivity allowing exchanges of information through emails has gradually taken hold in how humanitarian professionals worked. The word 'new' is consciously used as a temporal concept – the use of phones and emails is not considered 'new' anymore as it reached a certain threshold of integration within societies, mirrored in the humanitarian sector and protection work. Yet, the humanitarian sector is generally considered to be 'late' in its exogenous absorption of NTIs, not originally core to its work. Interestingly, as technologies have become increasingly available for common use and various actors of the humanitarian sector proactively have sought enhanced transparency and efficiency, NTIs have swiftly become central to humanitarian and, more specifically, to protection work. In the *Chapter 3*, we will explore the mostly pragmatic approaches that have been adopted in the search for new mechanisms to clarify a yet ill-defined role for NTIs. In *Chapter 4*, we will delve into the in-depth questions the use of NTIs raise in sensitive protection work, specifically focusing on humanitarian politics and ethics. Worth noting and revealing, most protection staff relayed a certain discomfort with the use of NTIs, even expressing doubts about feeling qualified to speak about a topic which is not fully comprehended by many. The following two chapters will specifically focus on divides and gaps which are characteristic of evolving practices in international organisations and suggest the depth of the alteration of the international protection regime (IPR).

## Chapter 3: New Technologies of Information in Protection - an ill-defined role

As presented in *Chapter 2*, the humanitarian protection endeavour relates to core values that may be difficult to grasp because of their partly intangible nature. In this chapter, we will first unpack what protection entails in practice, recognising the centrality of capturing information on complex and challenging environments that conflict settings represent; secondly, we will explore *how* humanitarians have resorted to NTIs in advancing through un-explored territories. Finally, we will reflect on uneven mushrooming practices: creating opportunities, making new risks more visible while new domains yet stay un-governed, consciously taking stock of current system gaps inherent to the international protection regime change.

### I. Protection, information & practicality

#### 1. Protection in action – information collection, handling, and use is core to protection work

To address visible marks on a civilian body, or more intangible pain such as violations of a person's dignity, protection guardians – both humanitarians and human rights advocates – can resort to a wide array of activities. The following will specifically focus on humanitarians' practices in advancing protection outcomes. As the complexity of conflict situations call for non-restrictive definitions so as to accommodate creative responses, protection work is defined as "*any activity which aims at putting a stop to or reduce exposure to violations and threats against civilians*" to preserve people's safety and dignity (Slim & Bonwick, 2005).

The first activity in protection work is to ascertain the "need for protection" through identifying: *who is doing what to whom where? How and why?* (ICRC, 2018b; UNHCR, 2017, 2019b). This element of context understanding is crucial to the protection mission. Identifying violations or threats, patterns of violence, alleged perpetrators, defining humanitarian consequences on civilians, eventual negative or positive coping mechanisms are prerequisites to define a suitable protection activity, also called a protection response.

In pursuing a sound protection response, humanitarian actors seek to gather information from various sources to grasp highly complex local realities: the access, collection, analysis and use of information is fundamental in tackling protection issues.

- *Sources of information*

Primary sources of information are direct or first-hand information about an event, object or person.

First and foremost, this concerns civilians affected by conflict themselves, as they are the ones who know most about their predicaments and have the greatest insights into threats against them. In particular, information on the nature of threats or violations, the timing of occurrence, the identity and mindset of perpetrators, history of previous threats/violations are pivotal to identify. In complement, understanding civilian populations' coping mechanisms and practical possibilities for resisting threats or violations allow humanitarian protection actors to identify potential suited humanitarian action to protect, alleviate suffering or put a stop to threats and violations. Humanitarian standards consider it is instrumental to harness civilian populations' knowledge, their capacity and expertise. In addition, it also sheds lights on other aspects, subtler, which might be overseen otherwise, such as cultural norms or as tribal mechanisms for example – that are important to establish suited protection responses.

Those face-to-face exchanges, specifically between humanitarians and civilian populations, are important to comprehend both individual experiences as well as larger trends and violations' practices. Upon identifying a violation, humanitarians ought to ask for transmissibility of sensitive information and informed consent from the victims to act on their behalf and use information shared (nominally or non-nominally), or to the contrary, receive non-transmissible information and respect one's wishes.<sup>54</sup>

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<sup>54</sup> Non-transmissible information is often linked to a fear of reprisal, but also relates, from a humanitarian perspective, to the « do no harm » principle. The importance to discuss transmissibility with persons at risk is instrumental as they only have the insights on possible reprisals they might face if a humanitarian organisation intervenes. Their choice is always to be respected.

In Professional Standards for Protection Work, the notion of informed consent is defined as *“voluntarily and freely given based upon a clear appreciation and understanding of the facts, risks, implications and future consequences of an action”* (ICRC, 2018b; Slim & Bonwick, 2005). It is further added that the way protection actors seek informed consent needs to be culturally appropriate. To be ‘informed,’ the person (also referred to as data subject) must be able to appreciate the risks and benefits they are consenting to, such as the collection and analysis of their personal information and sensitive elements they may provide.

Humanitarian protection staff’s work is to triangulate information on a same event or violation with different sources, including weapon bearers themselves: security authorities and non-state armed groups (NSAGs). Other sources include civil authorities (including health services), local NGOs and community organisations, and other humanitarian organisations present in the field and which are also part of the system of actors characterising the International Protection Regime – IPR (presented in *Chapter 2*). Some sources of information, directly or indirectly affected in conflict, might be exposed to risks such as being forcibly displaced, targeted for their role within a given community, for their religion, or tribal affiliation for example. Multiplying sources and triangulating information allow to understand asymmetric power relations, specific interests and assess potential protection responses that would best support women, men, boys and girls affected by conflicts.

Although reliability of the source of information ought to be assessed, first-hand information provided by an individual during a face-to-face interview is generally considered more reliable than that obtained from second or third hand sources. This resonates with comments most protection staff interviewed made on the importance of the human exchange beyond words: *“protection can be seen as the dinosaurs, as we still believe face-to-face meeting allowing first-hand information is still the preferred and should be sought every time first.”*<sup>55</sup> Considerations such as non-verbal communications (i.e., body language), establishing trust during an interview or an exchange is considered paramount. A human face, what an interviewee called *“physical technology: us protection staff, with our body, our voice and our eyes is the main tool to listen and understand what a person has been through.”*<sup>56</sup>

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<sup>55</sup> Interview carried out on 02/12/2020, ICRC staff, Senior Manager and Innovation category.

<sup>56</sup> Ibid.

However, since the turn of the XXI century, increased remoteness by humanitarians led to minimised time spent in the field and development of other techniques such as remote management, subcontracting information-collection to local NGOs or even private companies (Duffield, 2018). As information collection practices evolve, human experiences are taken on screens, some argue with more distance, at times compared with a shield, and subsequent uncertainty of who or what is behind that screen. In addition, reinforcing this already present humanitarians' distancing from populations, the COVID-19 global pandemic has been widely seen as an accelerator to shifting the balance further towards more use of NTIs. Duffield presents an increased closure to ground realities while connectivity through the use of NTIs was significantly enhanced, consequently raising the reliance on secondary sources of information.

Secondary sources are 'second-hand' information gathered (indirect): they are shared by a person or an authority/structure which did not participate or was not present during the event reported on. Secondary sources of information include published operational reports, updates on security incidents' updates, Governments' statements, NSAGs' public communications, media articles, social media publications, and academic research.

Such sources can be used for triangulation but the further the distance between an event and the information source is, the less reliable the latter is considered (bias). It is important to note that in social sciences, the concept of 'bias' has been largely debated and is considered ambiguous and depends on other concepts such as 'truth' or 'objectivity': we will continue to explore both notions through our research (Hammersley & Gomm, 1997). It has been presented as the adoption of a particular perspective, at times as a systematic error, or, in Becker's terms, sociological analysis relates from *someone's* point of view and is therefore partisan (Becker, 1967). Gitlin interestingly reflected beyond the concept of bias, asking which interests are served by biased data and questioning the relationship between method and power (A. Gitlin, 1994; A. D. Gitlin et al., 1989). This reflection is at the core of our research on the impact of NTIs in the knowledge generation of protection issues as methodological terrains are shifting along with new technology developments and are altering humanitarian field access to civilian populations. This notion of interest is of specific importance to our research: humanitarians are engaged in a form of social work and pursue the respect of certain values of humanity and dignity and advocate for respect of international laws

protecting civilians in conflict. Their claimed a-political agenda is nevertheless an ‘agenda’ and their objective is not research but ground improvements of human lives. This reading grid thus forges the analytical construction of protection issues, as it is perceived based on triangulated – and biased – viewpoints on a same event. Professional methodological guidance for protection staff derived from Social Sciences and its conceptualisation of the notion of bias. In the ICRC Professional Standards for Protection Work, it notably mentions: “*Protection actors must gather and subsequently process protection data and information in an objective, impartial and transparent manner, to avoid or minimise the risk of bias and discrimination,*” while the UNHCR frames the core of the notion in terms of credibility assessment as it considers refugees’ status determination (ICRC, 2018b; UNHCR, 2013). Lastly, not all events or violations can necessarily be triangulated – yet protection needs can be acknowledged. At times, lack of information can lead to *de facto* assumption on potential violations.<sup>57</sup>

Information collected through various sources forms the basis of the understanding of a protection issue. Methodologies used to then capture information can resort to quantitative approaches – i.e., aggregation of similar events, comparative analysis expressed through numbers and figures, more often visualising information through graphics; or qualitative approaches – i.e., explaining content with words rather than figures, often through written reports.

- *Protection responses*

Based on the analysis above and on needs assessments of affected populations, humanitarians then intend to carry out activities to address protection needs, two main complementary approaches can be drawn – traditional protection and relief protection (Forsythe, 2001).

For its part, traditional protection includes activities aiming at changing alleged perpetrators’ behaviour. It is largely considered the most difficult and the less tangible approach as it leads humanitarians to try to bring responsible authorities to comply with international law and

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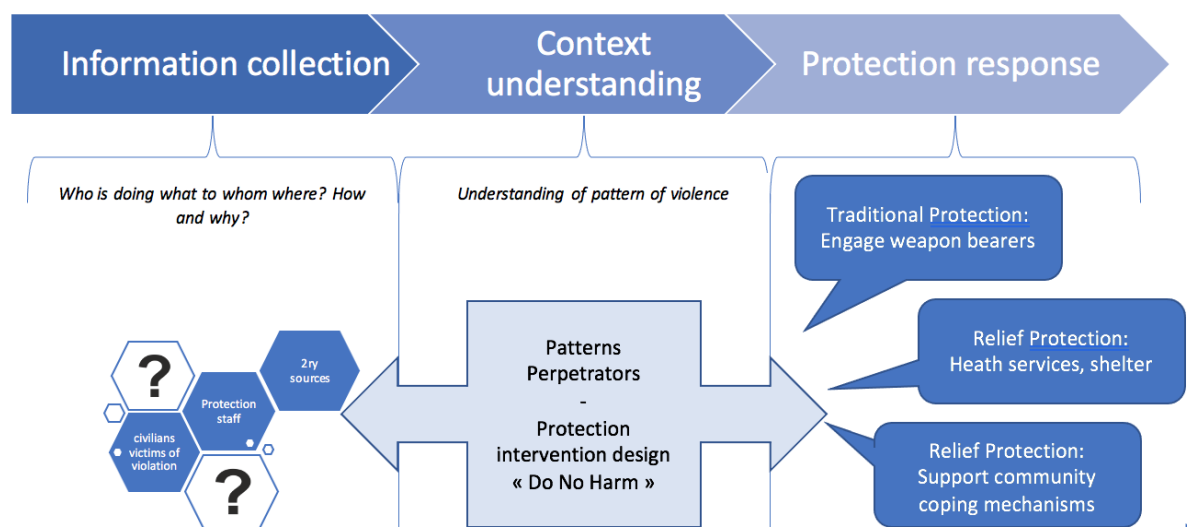
<sup>57</sup> Gender-Based Violence might not need to be documented directly so to abide by the principle of « Do No Harm » and avoid any targeting or reprisals of survivors. It is commonly agreed among humanitarian practitioners to address potential risks/violations without documented cases and is called the “reverse burden of proof” or reverse onus.



humanitarian fundamental principles; it usually consists in taking preventive measures to avoid any threat or violation against civilians or calling for restraints in security forces and armed groups' behaviours with protected persons (ICRC, 2018a; Munos-Rojas & Frésard, 2004). Humanitarians involved in such activities develop a negotiation expertise and experience that relate to diplomats' work. Through negotiations, humanitarians aim to defend the principle of humanity while remaining neutral yet entering a highly political arena<sup>58</sup> (E. Rousseau & Sommo, 2018). The practice of traditional protection – *through the use of NTIs* - will crystallise our object of study and has yet to be further explored and questioned.

Relief protection represents activities that aim at alleviating suffering, reducing vulnerabilities and/or exposure to risks. This approach can entail distribution of relief items, food and water, ensure safe access to health services including psychological support, programmes aiming at supporting authorities to recreate income generating opportunities or Cash-Based Interventions (CBI). Such an approach is more tangible and generally less sensitive.

Figure 6: Protection in Action & the centrality of information



## 2. A difficult operationalisation of concept

Beyond the concepts, the principles, legal basis, and protection standards mentioned above, operational hurdles continue to challenge the “ideal” of protection. The main protection

<sup>58</sup> According to Rousseau and Sommo, Manuel de la Diplomatie, Chapitre 17, “La diplomatie humanitaire”; “*quand l’humanitaire prend l’habit du diplomate, il entre par défaut dans l’action politique*”, translated in English as “*when the humanitarian takes on a diplomat role, it enters in a political action.*”

challenges are generally highly practical ones. Access to sources of information and those affected by conflict in the field is often characterised by constraints in insecure and fast-changing environments (Duffield, 2014). For instance, international legal instruments are generally considered adequate, since they allow to define protection through civilians' entitlement to certain rights and draw on authorities' responsibilities (security authorities, armed carriers, but also civil authorities); yet, their operationalisation often faces practical challenges. In the field, international norms, laws and rules of engagement often remain unknown by weapon carriers responsible to act within the limits defined by IPR. In addition to potential lack of knowledge, capacities and willingness to implement activities ensuring one's dignity can also be insufficient. Holding perpetrators responsible for violation accountable, advocating for reparation for the victims and preventing new violations constitute the core of protection work. It requires strong connection with both civilian populations, victims of violations and alleged perpetrators, as well as parties to the conflict. Engaging in behind-close-doors advocacy with the objective of positive behavioural change towards more respect of civilian populations' rights in conflict requires established relations, trust, and continued engagement (ICRC, 2018a; Munos-Rojas & Frésard, 2004).

In challenging conflict environments, the lack or loss of humanitarian field access negatively affects the cornerstone access to information required for humanitarians to carry out their protection mission. Since the turn of the XXI century, various experiences challenged protection humanitarian staff: the 2009 Sri Lanka experience particularly stands out. As a conflict raged in the Vanni area of Sri Lanka, most humanitarian organisations<sup>59</sup> decided to evacuate the area (Niland et al., 2014). In an insightful and critical reflection on *"Humanitarian Protection in the Midst of Civil War: Lessons from Sri Lanka,"* Norah Niland criticised an over-investment of protection actors in addressing material needs (or what we define as relief protection above) compared to traditional protection, considered that it could have jeopardised access to a sensitive area. After the evacuation of most of the humanitarian staff from the conflicted area, Niland questioned a general reluctance from humanitarian actors to assertively advocate for the protected status of civilians under IHL which was reportedly not perceived as "practical" nor "tangible." After losing access, most humanitarian actors (UN-system affiliated, including NGO 'implementing partners') were said to be reduced

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<sup>59</sup> Most humanitarian organisations evacuated, at the exception of the ICRC.

to “monitor events with civilian casualties.” Niland’s strong stance triggered dissatisfaction among the humanitarian community: Sir John Holmes, former UN Under Secretary General and Emergency Relief Coordinator, Head of UN OCHA notably provided a written comment, arguing *“While her [Niland] paper makes many good points, I believe that overall it is in danger of contributing to a mythology surrounding the 2009 events in Sri Lanka. This does not only scant justice to the efforts of many humanitarian actors at the time, but more importantly it risks distorting future action by giving undue primacy to advocacy and a particular interpretation of human rights and protection principles above all other concerns”* (Niland et al., 2014). We deem it important to emphasise the strong public disagreement on the protection approach in Sri Lanka for two reasons: firstly, it contrasts with usual operational practices not to expose disagreements among humanitarian practitioners publicly, and secondly, Holmes’ stance portrays the constant tension between less-sensitive humanitarian assistance and more sensitive and intangible humanitarian protection, a pivotal tension in continued evolutions of humanitarian approaches. Beside the unusual public debates among humanitarian peers, the connection between humanitarian professionals’ thinking and the academic world is particularly interesting: Bradley, an academic researcher on humanitarian protection was invited to contribute to this ‘open debate’ reflecting on the experience and challenges of the protection endeavour in Sri Lanka (Bradley, 2016; Niland et al., 2014). The core reflections on humanitarians’ approaches to protection had the merit to open a difficult and yet pivotal debate on how protection-mandated humanitarian organisations adjust their protection approaches considering their protection staff are often physically further away from civilian populations they strive to support. Resonating both in operational and academic fora, an ‘Independent whole of system review of protection in humanitarian action’ was commissioned in 2015 by the NRC on behalf of the Inter-Agency Standing Committee (IASC) (Niland et al., 2015). The research found a lack of strategic vision and contextual intelligence around protection matters along with a frequent absence of substantive discussion and decision-making on protection issues, or the deliberate de-prioritisation of such issues at the level of UN Humanitarian Country Teams. Weaknesses in the protection architecture are also pointed out with related ‘conflicts of interests’ among different humanitarian organisations involved in protection activities. Co-authors of the whole of system protection self-inquiry, Niland and Polastro’s analysis resonates with other humanitarian policy thinkers on protection in the XXI century as they identify two opposing trends: on the one hand,

humanitarian protection has become more prominent “*in the rhetoric of international politics and in the agendas of many humanitarian organisations;*” on the other hand, the IPR is considered to be under challenge, notably because national governments or other local authorities are often the primary source of threat while international will or capacity to respond is generally weak (Collinson et al., 2009; Niland et al., 2015). Navigating complex international politics, ground realities and asymmetrical wars, the use of NTIs has become integrated into the innerworkings of the humanitarian system and protection work, and they present both risks and opportunities for humanitarian action. Yet, often qualified by humanitarian practitioners with optimism and a solution to facilitate the handling of information, NTIs are considered with more nuances by the few researchers that touched upon the topic: notably Jacobsen and Sandvik. NTIs allow to shed light various practices of information collection: they notably reinforce the use of quantitative information and subsequently opens new domains or dimensions that relate to experiences of protection violations. The use of population statistics, for example, has been reinforced as a field that is often politically used considering parties to a conflict intend to influence ‘narratives’ around ground realities. For instance, the famous and highly controversial statistics that some 90% of victims of modern wars would be civilians has been challenged (Roberts, 2010). Counting civilian casualties is a case in point: during hostilities, it is both difficult and a highly contentious undertaking. Various authors consider the political dimensions associated with such sensitive use of population statistics: Roberts concludes that civilian casualty counts are used as a political statement intended to alert the world on the importance of protecting civilians, although recognising civilians constitute the most affected group (Roberts, 2010). According to J. Aronson and co-authors, there is no scientific consensus on the validity and reliability of methods and techniques used to record and estimate casualties and the political dimension of such statistics ought to be comprehended (Aronson et al., 2013). Finally, others argue the responsibility to record civilian casualties in armed conflict should be integrated into the Responsibility To Protect (or R2P) and a constitutive part of mechanisms possibly triggering an intervention of the international community (Breau & Joyce, 2013). Looking at various publicly available datasets,<sup>60</sup> tendencies towards smaller numbers of civilian casualties in war are observed in different sources. However, it is important to consider that

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<sup>60</sup> The public source Our World in Data interestingly compares findings of 5 datasets that bring about similarities in their findings in terms of global trends.

the aggregate figures identified are dependent on sources of information used and with their potential respective biases and the taxonomy which is imposed: government sources, death registers, NGO reports, conflict databases (Our World in Data, 2017).

The increased use, at times reliance, of NTIs by humanitarian practitioners is to be understood within the larger frame of changing ground realities and a distancing tendency from humanitarians, including protection staff, from field presence and direct interactions with civilian populations affected by conflicts. Searching for new grounds to accommodate this changing frame, the use of NTIs may offer attractive possibilities to ‘stay connected’ to populations, albeit through other means than physical presence. However, in many aspects, technologies may also be the source of further transitional divides: by areas or populations they cover or omit, as well as by the taxonomy imposed on the different signals they detect and present. The relation between NTIs and humanitarian action, including the cornerstone protection component, is generally considered as a “*fast moving and immature field*” within the academic community (Sandvik et al., 2014).

### 3. *Fast-forward: the contemporary ‘new’ technologies of information in humanitarian work*

Since the early 2000s, the use of NTIs by humanitarian actors has become more widespread and has been mostly linked to the proliferation of mobile communication technologies and the rise of social and digital media (Meier, 2015). According to Meier, the rise of ‘Digital Humanitarians’ can be seen as an adaptation to the advent of Big Data, to better grasp vast quantities of data generated and in turn transforming the ways humanitarians and societies prepare for, respond to, and cope with humanitarian challenges. For instance, UN OCHA Humanitarian Information Centres (HIC) were set up to respond to an identified need for better consolidation of available information and improve humanitarian coordination – including for protection. Closer presence and regular interactions with donors – which expect efficiency and high levels of achievements - may also foster competitive behaviours between humanitarian actors called to align in the use of NTIs, if not to secure survival (Kalkman, 2018). Methodologies to collect information can vary from informal to semi-structured interviews, Focus Group Discussions (FGDs) to surveys or systematic surveys from which quantitative

information can be extracted. Tools will be derived from chosen methodologies, while an increased number of humanitarian actors use new technologies to collect information in the field, such as Kobo Toolbox<sup>61</sup> which can be used offline and favour quantitative information-generation. The format, processing and visualisation of both first-hand and second-hand information through new tools contributes - *positively or negatively* - to the inner-working of the humanitarian system (Meier, 2011, 2015). The use of technology facilitates a faster consolidation, analysis and visualisation of information, but its limits ought to be considered. For example, crowdsourcing may provide instant communication and may reduce bias associated with unequal field presence; however, it only channels information from those possessing mobile phones and internet connections, which, beyond being discriminatory, also provide a distorted picture of ground realities.<sup>62</sup> This constitutes a digital divide between those having a mobile phone – whose presence and information can be detected – and those without, whose presence could potentially remain unseen. Even if it does not always lead to discrimination, bias affects and hampers an accurate understanding of the situation and potentially distorts decision-making and a protection response (Professional Standards for Protection Work, 2018). However, considering the limitations of the use of NTIs is to be understood in the larger frame of limitations inherent to humanitarian theatres: in doing so, Meier points out the use of Big Data does not prove more biased or discriminatory than other humanitarian information collection methods, such as the UN Multi-cluster Initial Rapid Assessment (MIRA) (Meier, 2015). Rather, NTIs are considered to offer an additional layer of information to be cross-referenced and augment situational awareness. For example, considering satellite imagery, recouping of pictures before and after an alleged violation of a fully burnt civilian village would provide a visual expression of the ground reality in a swift manner while objectivising the incident. NTIs allow to pursue a different type of argumentation – based on scientifically captured evidence – which may not rely on direct ground sources but can address the same objective with alleged perpetrators. In this sense, NTIs can create new angles and possibilities through what is portrayed with further objectivity in shedding light to conflict situations. A combination of methods and sources of information

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<sup>61</sup> Kobo Toolbox is one of the most used tools for data collection and is featured as a “data collection tool for challenging environment”. More information can be found [here](#).

<sup>62</sup> Discrimination related to unequal access to new technologies is often referred to as the “digital divide”. In addition, it is worth considering data literacy significantly differs within segments of a populations (ie. different between the elderly and the youth). Lastly, the digital divide also includes areas covered by network and areas beyond networks, calling for careful consideration about where are areas with a full information gap.

contribute to triangulating information and thus would increase accuracy of the analysis. More than the technologies itself, their human use and (over)reliance on those new tools may be the heart of the actual renegotiation of the IPR's edge.

A shift towards more visualisation of information was increasingly observed as new digital tools were adopted by humanitarian actors, integrated new technologies in the core functioning of the humanitarian system. NTIs offer to comprehend and visualise some pieces of information, including trends, population movements, funding requirements and implementation, with the aim to improve humanitarians' effectiveness. Examples include Geographical Information Service (GIS) data, satellite imagery, open sources live data,<sup>63</sup> or Displacement Tracking Matrices (DTM).

In 2005, a Humanitarian Reform Agenda was introduced by UN OCHA and the Inter-Agency Standing Committee (IASC) to enhance humanitarian coordination and improve response efficiency, accountability and partnership. As part of the reform, the cluster approach<sup>64</sup> was organised. Protection is one of the nine existing clusters and is divided by sub-groups (Gender-Based Violence or GBV, Child Protection or CP, general protection). As the cluster approach became the norm in non-refugee humanitarian response, the expected level of information – *mostly quantitative* – became more institutionalised. Also responding to donors' increased demand for transparency, different humanitarian organisations hired more specific profiles such as Information Management Officers and Data Analysts. Humanitarian Protection staff, which an interviewee casually qualified as "*the grand-father in the house (of humanitarian work)*"<sup>65</sup> to signify a certain conservativeness when it comes to enhanced use of NTIs, often showed reluctance in changing tools and mechanisms. Protection databases<sup>66</sup> are a central tool to gather all individual information collected from the civilian population and allows for both individual case management and identification of larger trends in protection violation; in the course of their development, they have faced several adjustments. Interestingly, over

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<sup>63</sup> Known examples are « liveuamap » featuring security and conflict report based on open sources feeds (photos, GPS locations, videos), for example for Iraq: <https://iraq.liveuamap.com>. Another example relates to the Harvard Humanitarian Initiative (HHI) co-founded by Patrick Meier and Dr. Jennifer Leaning on « crisis mapping and early warning », mostly focusing on natural disasters.

<sup>64</sup> Clusters are groups of humanitarian organisations, both UN and non-UN, in each of the main sectors of humanitarian action. There are currently nine clusters, including a protection cluster (led by UNHCR), which is then divided in sub-groups (Gender-Based Violence, Child Protection, protection).

<sup>65</sup> Interview carried out on 02/12/2020, ICRC staff, Senior Manager and Innovation category.

<sup>66</sup> Protection databases are a central element of protection work: in UNHCR, the protection database is called proGres, in ICRC the protection database is called Prot6 (version 6).

the last 10 years, institutional changes or upgrading in protection databases was described as a “*painful institutional process*” by protection staff interviewed across different organisations, requiring both teams’ training and acceptance: a process that was said to take time. To manage those upgraded digital tools, more specialised profiles, in complement or what some view at the opposite of the ‘*front-liners,*’ can be interpreted as constitutive of a distancing tendency observed as part of the humanitarian system evolutions over the last two decades. Observing how NTIs have been increasingly used in the humanitarian system and in protection work, a protection staff specifically mentioned: “*we are at the point of shifting how we traditionally work, we are moving quickly on the field of new technologies of information.*”<sup>67</sup> This notion of time is a central element we will further delve into as we explore humanitarian protection paradigm shifts at play in the next sections.

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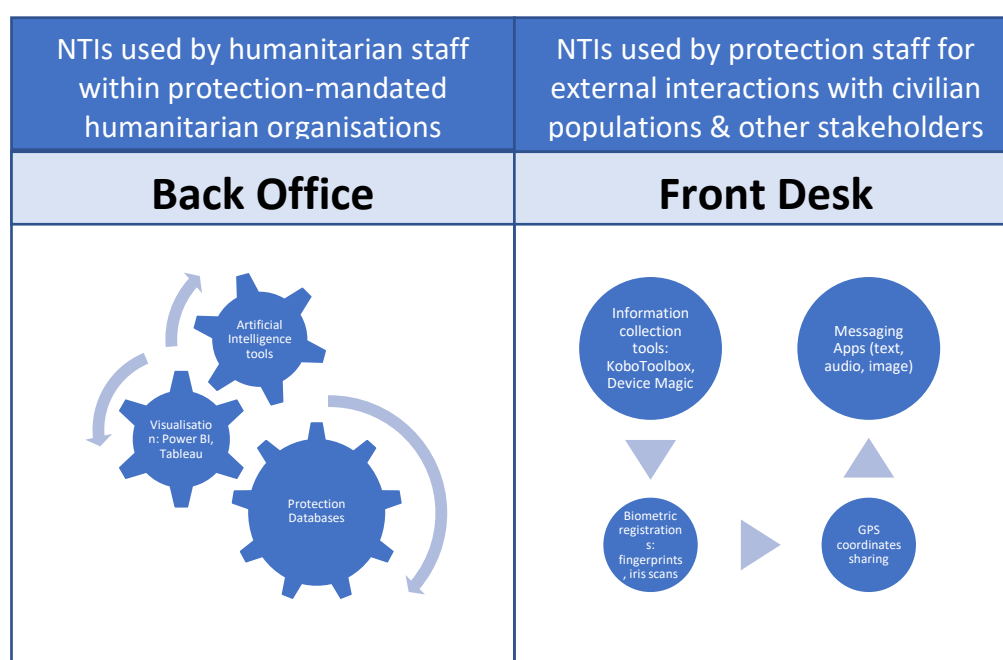
<sup>67</sup> Interview carried out on 04/12/2020, ICRC staff, Information Management/IT staff.



## II. Negotiating unexplored territories

Highly constrained environments that conflict settings represent call for creative adjustments in order to continue delivering on the protection humanitarian mission while ensuring security measures are taken for the safety of humanitarian. Various NTIs offer new means and tools to advance humanitarian objectives. Most protection-mandated agencies and organisations, which are also involved in assistance activities, initially embraced what is referred to as a “data revolution” with enthusiasm, recognising and investing in data-driven systems. Information and data collected and analysed offers new and at times different knowledge-generation processes that provide insights for humanitarian action. It is also important to consider the use of NTIs is in line with a Western donors’ push for humanitarians to become more “client-oriented.” As for this aspect, it is worth considering the ‘absorption’ of NTIs at two levels: firstly, tools and systems are used internally by humanitarian staff, which we would call the back office (i.e., protection databases mentioned above, visualisation with maps or internal dashboards); secondly, NTIs are also used directly in interactions between protection staff and civilian populations (or beneficiaries), which we would call the front desk (i.e., tablets or smartphone using data collection software such as KobotToolbox, biometrics, phones with messaging apps). The visual below provides an example of different digital tools being used by protection-mandated humanitarian organisations.

Figure 7: NTIs’ depth of infiltration in the inner-workings of humanitarian protection practices



As mentioned above in the first section, the development and increased accessibility of NTIs for civilian use in many societies cannot be ignored: nowadays, digital users are regular armies, NSAGs, authorities and governments, including their intelligence components; the private sector is often at the forefront of breakthrough technological innovations; individual civilians and humanitarian actors have gradually joined the group. Civilians' digital identities and presence therefore mean they can more easily be tracked, watched or targeted by warring parties (Slim, 2022). In conflict settings, technologies are ubiquitous and have become an integral part of warfare apparatuses: they even play a key role on dynamics on the ground (Chamayou, 2015; Sandvik et al., 2017). While it is important to consider technologies as part of one and the same complex ground reality, it is crucial to consider bias inherent to information they capture and to digital gaps. Over the last twenty years and the turn of the XXI century, the exponential integration of NTIs in the inner workings of the humanitarian system and its protection components, spearheaded by an important role of private sector tools, both affects traditional mechanisms and extends to new, yet limitedly explored domains of protection action.

In addition to changing societies at various paces, depending on their level of economic development, there are other drivers of change for humanitarian protection actors to further explore the use of new digital tools. Notably, the organisational structure and culture of protection-mandated humanitarian organisations – *either more top-down or horizontal* - impetus for change might be ignited at different levels. For instance, field research suggests change impulses have been mostly top-down in large structures with long-established vertical decision-making mechanisms, such as the ICRC, UN OCHA and UNHCR; while bottom-up impulses have been preponderant in traditionally more horizontal structures of Scandinavian culture, such as the Danish Refugee Council (DRC) and the Norwegian Refugee Council (NRC). Leadership was notably identified as one of the sources of change by Kapur, along with crises, structural changes and competition (Kapur, 2000). An important element to highlight is also at what the level pressure from donors is exerted: if funding is discussed at country level or to the contrary at headquarter level would also influence impulses for change. While initiatives for testing new “tech projects” along the lines of ‘use cases’ have been numerous, a policy adviser nonetheless interestingly noted that there are inherent limits to such small-

scale country-level approach, also referred as “*the wild west*,” such an approach limits the possibilities for wider risk analyses in the use of new digital tools and systems. Already in 2000, Kapur had identified what he then called ‘informatics revolution’ – *and which we call NTIs* – as an element which weakened the role of IOs as informational intermediaries that were seen to reduce the transaction costs of cross-national interactions. We note that two decades after, well into the 2020s, NTIs were bringing societal and incremental changes, accelerated by shocks like the COVID-19 pandemic that act as force-multiplier of change. We see NTIs as a variable which does not fit an exogenous-endogenous theoretical dichotomy often used by IR theorists. In our view, NTIs are a driving factor of change that leads IPR actors to search for new common grounds into matching historical mandates, international law and protection principles with practical NTIs’ uses at various levels which impacts the very core of protection knowledge.

Humanitarian protection actors do not simply fall under traditional theoretical categories of IOs: in the five organisations we specifically targeted for our empirical research, two are part of the UN system (UN OCHA and UNHCR) and thus are inter-governmental organisations; two are non-governmental organisations (NRC and DRC) albeit they are traditionally largely funded by their Governments, and one is an association under Swiss law while having been entrusted with an international mandate by States, subsequently enjoying a status equivalent to that of an international organisation (ICRC) – although it is not inter-governmental.<sup>68</sup> We nonetheless draw into academic debates on IOs’ changes as well as on norms as we consider it crucial in our research on the international regime alterations, which de facto features various types of actors with different capabilities and interests.

Academic research on drivers of change in IOs has seen various schools opposing, and at times complementing views: they provide useful theoretical background to support our reflection on the use of NTIs in how humanitarian protection actors pursue protection objectives. Looking at the experience of the International Labour Organisation (ILO), Helfer reflected on ‘theories of change’ as it relates to IOs, using three different theoretical frameworks: (1) rational choice, (2) neofunctionalism, and (3) historical institutionalism (Helfer, 2006). Considering rational choice theories, States use institutions or IOs that they created to infer

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<sup>68</sup> The ICRC is an association governed by Article 60 and following of the Swiss Civil Code. In order to fulfil its humanitarian mandate and mission, the ICRC enjoys a status equivalent to that of an international organisation and has international legal personality in carrying out its work.

current state preferences: this is nonetheless based on the assumption that states have a rather close control on IOs' activities and that states and IOs' preferences would be static. Other rational choice theories consider change as an exogenous element impacting IOs' environment, under the form of shock, crisis or that challenge settled habits. Finnemore and Barnett consider IOs must be seen as autonomous actors in some ways and see them as actors of their own change, including to fulfil the tasks they were initially assigned in their mandates (Barnett & Finnemore, 2004). Neo-functionalists such as E. Haas recognise change as a response and adjustment to changing environments, but they also see it as a result of incremental, continuous short-scale adaptations that cumulate to the point of transformative change altering levels of cooperation on selected tasks which are identified as having strategic importance. Lastly, historical institutionalists portray a gap between goals and institutional structures of IOs with reflections of models of changing interests: anticipating change would (necessarily) occur but remaining cautious about its possible direction, pace and scope (Helfer, 2006). Changes in IOs also relate to the rise and diffusion of international norms, from norms emergence to 'norm cascade', resonating with the IPR development into a full-fledged *international regime* relying on norms (Finnemore & Sikkink, 1998). Yet, established norms are challenged and their robustness is tested by contestations: examining norms' robustness can be approached through inquiring both practices (compliance with established laws and rules) and discourses (dominant discursive references being used) (Deitelhoff & Zimmermann, 2019). In challenges and dynamics affecting norms robustness, Zimmerman, Deitelhoff and Kapur consider it pivotal to grasp the 'critical juncture' or point at which fundamental changes and reinterpretations of a norm signals norm's replacement (Deitelhoff & Zimmermann, 2019; Kapur, 2000). This reflective stance echoes with our research on international regime change, with the example of NTIs and the IPR. Beside adaptations to change for IOs to 'survive', Eilstrup-Sangiovanni more recently brought interesting insights on theoretical thinking of IOs' termination (or death), which we could consider as a result of limited endurance to change (Eilstrup-Sangiovanni, 2020). Using a mixed method of quantitative analysis with a dataset covering 1815-2016 and qualitative in-depth examples, the author identified five broad processes to qualify an IO's termination: when their founding treaties expire, when being explicitly dissolved by state parties, when formally replaced by, or merge with other organisations, and when they fall into 'disuse' from a prolonged period (Eilstrup-Sangiovanni, 2020). Specifically resonating with our analysis of the IPR and

protection-mandated humanitarian organisations that defend their core principles, Eilstrup-Sangiovanni argues that ‘technical IOs’ have an overall lower ‘mortality rate’ and are less acutely vulnerable to geopolitical shocks<sup>69</sup> than ‘non-technical organisations’, such as those working on high politics subject-matters such as security or judicial matters (Eilstrup-Sangiovanni, 2020). This argument is specifically relevant in our research as we consider humanitarian actors pursue an a-political mandate within highly political and sensitive arenas, heightening pressure to adapt to both exogenous and endogenous, incremental change of shocks driving adaptations at play.

### 1. Practical integration of NTIs

- *New digital tools*

Since the turn of the XXI century, new technologies of information, anchored in digital tools and platforms have further spread across societies for civilian uses. We recognise that this integration of NTIs across societies of the world has been unequal and continues to spread at different paces. A move towards further connectivity has been observed more rapidly in more economically advanced countries than less-advanced ones, but the human landscape is also important to consider across the world board: for instance, urban centres are usually better equipped (communication towers, network reach) than rural areas. Access to internet and mobile phones may represent the most in-depth infiltration of NTIs within societies. For more specific uses, e.g., for commercial objectives as well potential humanitarian purposes, aerial and satellite imagery also became available beyond its traditional military use. The development of smart phones reinforced the use of photographs and other visuals for individual personal, professional or commercial purposes. The advent of social media and big data offered platforms for individual and official posts that have challenged traditional human to human communications by making physical presence partly redundant to maintain ‘connection’ between people. System networks, responding to a multiplication of devices, took an increasingly important role as they have become more sophisticated and increasingly included advanced safeguards. More recently, Artificial Intelligence<sup>70</sup> (AI) and prospective

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<sup>69</sup> Eilstrup-Giovanni notably argues ‘By isolating periods of high volatility in global power distributions, the analysis in this section confirms that rapid geopolitical change is strongly correlated with IGO death’ page 296.

<sup>70</sup> Artificial Intelligence is often defined as a collection of technologies that combine data, algorithms and computing power, or the capacity to perceive, synthesise and infer information (intelligence) performed by machines.

analysis have gained traction among civilian users, including within the humanitarian sector. Both AI and prospective analysis can be considered at an early stage of development, but are yet expected to continue gain momentum, attention and attract resources in the years to come to support the humanitarian sector endeavour and its protection mission (Jaakkola et al., 2019). The discussion around the use of AI by various institutions (such as EU) and organisations, and how to harness its potential, has recently started to develop (Rouvroy, 2020). When it comes to humanitarian support, opportunities to reinforce humanitarian preparedness through using AI start being explored. Two examples are worth noting: first, the UNHCR-led project Jetson intends to better apprehend potential forced displacement and subsequent risks for populations; second, the forecast of floods in Bangladesh and subsequent release of emergency funds from UN OCHA's Central Emergency Response Fund (CERF) was a first (Beduschi, 2022; Chen, 2021). Interestingly, most recent academic discussions on the (mis)use of NTIs in the humanitarian system more regularly present an 'opportunity-risk' perspective, which Chen calls "healthy scepticism" (Chen, 2021). For AI, often mentioned risks relate to data quality, algorithmic bias that can lead to further marginalisation based on gender or ethnic group specificities, and fundamental data privacy.

- *Expanding humanitarian professions*

We previously used IR theories on IOs and norms' change to reflect on sources and impetus for adaptations. As we dive into the practical administrations or humanitarian protection actors' activities, we switch our level of inquiry to focus on humanitarian professions and more specifically protection staff to enrich our research. In doing so, we use sociology to guide our conceptual frame of under-current adaptations.

The use of new technologies lies on different components: the hardware, or physical device (computer, smartphone), the software (series of codes) and the human user of various programmes. Different skillsets and competences are required to develop hardware, which are mostly bought by humanitarian organisations from the private sector. Software programmes can be either bought from the private sector or internally developed, should a humanitarian organisation have the right skillsets, competencies and resources. Finally, professionals in Information Technology (IT), and more recently in Information Management (IM) as well as more traditional generalists' profiles all use various NTIs, including hardware

and software. Mirroring evolutions in the use of NTIs in the humanitarian system and protection work, more specialised humanitarian profiles have made a breakthrough since the 2010s. Worth noting, in 2017, the Core Humanitarian Standard (CHS) offered a useful reference for a generic competency framework in the humanitarian sector: it solely mentioned NTIs when noting that humanitarian professionals should promote a “*responsible use of technology to achieve results*” (CHS Alliance, 2017). Three years later, at the end of 2020, the Bioforce Institute published an enlightening report on “The State of humanitarian professions.” It noted that 55% of humanitarian professional respondents identified that changes in the humanitarian sector are specifically affecting their assignment, among which humanitarian professionals are now required to have greater skills in new technologies (Bioforce Institute, 2020). Among 27 humanitarian professions the report identified, Information and Communications Technology (ICT) was seen as continuously growing as digital tools are further spread within humanitarian organisations yet this profession has long been part of the humanitarian system, albeit mostly under logistics departments. Information Management (IM) is, to the contrary, considered to be the newest and most rapidly growing area of humanitarian work that some still struggle to consider as a stand-alone profession. Interestingly, the Bioforce report echoes debates on the definition of core Terms of Reference (ToRs) within different UN agencies as well as other humanitarian organisations: some arguing that looking at processes requires specific expertise while others defend a need to keep a generalist approach to plug different systems to meanings. Reported frictions with senior management relate to a certain reluctance to recruit “too-expert” profiles for what it would mean in terms of need for new positions and subsequent funding while humanitarian funding has become extremely competitive. Reflecting on the fast-changing skillsets of IM Officers as well as available technologies, a ToRs from 2010 mostly related to skills to build a map and was commented on by professionals saying: “*ten years ago (2010), if you had a map, it was everything, you were king,*”<sup>71</sup> a skill now required from any generalist staff. Bioforce notes the gap in supply of skilled staff who speak relevant languages and with humanitarian experience. We will argue that those debates are indicative of a profession which is currently in the building and can expect to be further shaped in the years to come and by 2030. Digital transformation has been the subject matter of several organisations’ recent recognition of

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<sup>71</sup> Interview carried out on 06/04/2021, UN OCHA staff, Information management/IT category.

institutional adjustments: for example, it is listed as one of 7 key transformations targeted in the International Federation of the Red Cross and Red Crescent Societies (IFRC) 2030 strategy, in the UNHCR 2020-2025 Data Strategy supporting protection and solutions as well as an ICRC publication titled 'Embracing Digital Transformation' (ICRC, 2019a; IFRC, 2019; UNHCR, 2019a). As protection-mandated organisations embrace technological changes, so do their needs for more specialist technical professionals along with more institutionalised development initiatives. Digital literacy is defined as *"the ability to use information and communication technologies (ICT) to find, evaluate, create, and communicate information, requiring both cognitive and technical skills."*<sup>72</sup> Digital literacy would now become a baseline requirement for recruitment of future humanitarian professionals as well.

Looking at the purely protection profession, difficulties for recruiting adequately skilled staff was generally recognised: core competencies include a high level of empathy, ability to work in insecure environments and under high pressure, to be adaptable and flexible, to have strong communication, diplomacy and negotiation skills (Bioforce Institute, 2020). In addition, protection staff are also expected to have specific knowledge that relate to international law, the spinal element defining the international protection regime. Diving into changes within the protection profession, enhanced requirements for staff understanding of new technologies being used in the humanitarian sector, including social media and data protection were specifically highlighted in the Bioforce report.

Bridging protection work to NTIs, our empirical research pointed out to various protection professionals' reactions. We will borrow concepts from long-standing social science traditions anchored in Max Weber's development of the methodology and use of ideal-types (Coenen-Huther, 2003). Our research starting point was a field humanitarian protection questioning that found no answer and triggered the need to study and contribute to developing knowledge based on operational academic research and reducing an identified gap through binding NTIs to the practice and politics of the IPR. The use in the research of methods and tools allowing to pursue axiological neutrality aim at analysing not with 'value judgement' but rather a reflection or 'link to values,' utilising Weber's words (Weber, 1949). Based on our empirical research, identifying ideal-type profiles of humanitarian protection staff intends to

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<sup>72</sup> In practical terms, digital Literacy represent the skillsets necessary to live, learn and work in a society where information increasingly becomes available through new technologies and digital tools: internet platforms, mobile devices and applications for example.



support the conceptualisation and emphasis on characteristics identified through ground observations; it also offers a useful reading grid between our initial assumptions in the IPR alteration and what the research attempts to shed light on and unveil, i.e., intricate tendencies within multi-cultural IOs operating in various conflict environments.

*Figure 8: Ideal type profiles of protection staff in their relations to NTIs*

Ideal Type profiles of protection staff in their relations to NTIs		
<b>The enthusiastic</b> <i>(few protection staff)</i>	<b>The cautiously pragmatic</b> <i>(most protection staff)</i>	<b>The cautiously sceptical</b> <i>(few protection staff)</i>
Theoretical views		
Protection staff is <i>enthusiastic</i> about NTIs. It sees the added value of NTIs to enhance efficiency and process information faster.	Protection staff sees a <i>certain added value</i> in the use of NTIs.	Protection staff sees the advent of NTIs in the inner working of humanitarian work, especially protection, as <i>a threat</i> .
Practical behaviours		
Protection staff notably welcomes the use of NTIs to identify and include protection violations' trends as a complement to individual accounts of violations and sees positive changes in protection case management overall monitoring and follow-ups.	Protection staff looks at practical limits with more questions than actual answers given by senior management and institutional guidance set in various protection-mandated organisations. It usually considers and recognises civilian populations and counterparts (authorities, weapon bearers) as digital users and recognise the need for humanitarians to adapt, albeit with caution on potential risks.	Protection staff fears ungoverned trials might result in negative consequences for civilian populations it strives to serve, it also questions the rapidity of NTIs' infiltration and calls out a dehumanising dimension in the use of certain tools. Lastly, it shows a certain unease and unwillingness to learn to use new tools, that are considered being imposed by senior management rather than needed. A certain loss of compass is relayed as the core of protection work is viewed as being hampered.

Additionally, a generational gap was mentioned in several interviews as, although not systematic, a contributing factor to more senior protection staff reluctance to change operating procedures and systems. In contrast, younger generations of humanitarians, already technology savvy in their private lives, were more open and faster to absorb the use of new NTIs in protection work. Altogether, protection staff share a common un-ease with what NTIs entail: expressing fear of inadvertent consequences the use of NTIs might trigger, especially for civilian populations' security. The core concept of "Do No Harm" was often mentioned and questioned for its applications to NTIs. Several professionals reported to feel they fall short of understanding the meaning behind notions such as 'encrypted and safe information' or 'information storage' for example. All protection staff recognise the need but also the lack of training that could support the further development of competencies and enhance digital literacy. A practice of rolling out training in the use of new digital tools – such as KoboToolbox – days before it is set to be rolled out in the field was specifically mentioned as a source of frustration; such practice would limit the time to absorb new processes and the use of new tools but also preventing joint discussions at the design phase. An interesting aspect, mostly shared by more senior technology and policy advisers,<sup>73</sup> is a reflection around the need to 'cross-breed' teams and competencies: technical experts would benefit from learning on protection core principles and basics of international law while protection staff ought to better understand what NTIs entail so to more easily integrate them in their work. While a maturation process is certainly underway, a worth noting initiative is the 'Protection Information Management Project' (PIM) jointly launched by the DRC and UNHCR in 2015. The PIM initiative is defined as *"a principled, systematised, and collaborative processes to collect, process, analyse, store, share, and use data and information to enable evidence-informed action for quality protection outcomes"* (UNHCR & DRC, 2015). The project seeks to address the need for common processes, building on the ICRC-led revision of Professional standards for Protection work (ICRC, 2018b). Considering practical examples, interviews with people victims of conflict require to clearly state the objective sought and explain how the information shared will be stored, protected and used. Protection staff would need to have a clear understanding of what digital tools entail in order to explain it to civilian populations and seek for an informed consent.

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<sup>73</sup> Interviews carried out on 01/04/2021 and 24/04/2021, UNHCR Staff, Senior Management Policy and Innovation category.

The use, multiplication of NTIs and the diversification of digital sources yet brings about an additional layer of complexity in already unstable environments that humanitarian emergencies feature (Jacobsen, 2015).

## 2. *The advent of a 'datafication' culture – overshadowing qualitative methods?*

Quantitative methods and the use of statistics has been traced back by historians as early as in antiquity, and their use supported the exercise of power and the need for control by prevailing authorities (Ward, 2004). Looking at international actors, and more specifically IOs, the use of statistics serves both as political instrument and for production of expert knowledge and 'de-politicised' arguments – including through the establishment of benchmarking (Cusso, 2012; Cusso & Gobin, 2008; Martin, 2017). Providing an insightful reflection in *Humanitarianism and the quantification of humanitarian needs – Minimal Humanity*, Glasman points out that humanitarian quantification is not new, but quantification currently plays a key role in the legitimisation of humanitarian aid, “*to the point that numbers are believed to be the most efficient guardians of humanitarian impartiality*” (Glasman, 2020: 4).

Desrosières considered traditional statistics are the product of social conventions, or conventions of equivalence, that intend to facilitate the comparison of what would be incomparable in their absence: statistics are not presented to be objective in presenting reality but rather tentatively represent with the aim of being neutral (Desrosières, 2014; Rouvroy, 2016). Reflecting on the taxonomy on human beings, Desrosières uses Foucault's piece *The order of things* ('Les mots et les choses') to reflect on the use of statistics and quantitative methods in 'ordering' the world (Desrosières, 2010). The choice of coding through establishing 'pertinent variables' results in abandoning issues which may be perceived as inessential. The author considers there are three main uses of quantitative information: firstly, it can be used as a tool of governance; secondly, as a 'tool of proof', and thirdly, statistics would allow to make an issue exist (Desrosières, 2013, 2014; Macias, 2019; Martin, 2017).

Ward provides useful insights in explaining:

*“To many, an untrained eye, figures convey a form of truth that is incontestable and incontrovertible. People regard data as facts and assume that statistics represent*

*reality. They view statistics as a neutral, sanitised, and objective expression of an unseen truth” (Ward, 2004: 24-25).*

Reconciling the historical use of quantitative methods, including through statistics, to capture and present world trends allows for a language generation on recognised issues and reflect how the world is perceived and humanly captured at a given time. The variable that NTIs brings about represent a force-multiplier in the development of pre-existing information collection methodologies while at the same time triggering practical and ethical debates around knowledge generation. According to Glasman, the humanitarian categorisation called ‘people in need’ is the result of a fusion between the idea of humanity which is universally proclaimed and the commensurability of all human suffering expressed through indicators and standard definitions (Glasman, 2020).

According to Jacobsen and Sandvik, a rapid ‘datafication’ and digitalisation of humanitarian action is underway (Sandvik et al., 2017). “Datafication” is conceptualised as the conversion and articulation of information, concepts, processes or systems in mathematical and machine-readable formats. Datafication is considered to happen at multiple levels and to include elements ranging from basic objects such as proxy indicators all the way through to complex systems such as artificial intelligence (AI). The term ‘datafication’, however, specifically points to the practice of trying to express all factors relevant to a subject of data, privileging quantitative methods. Datafication, or also called ‘digitalisation’, is increasingly seen as both a means and an end to the humanitarian endeavour, from programming to policy development.

Since the renewed use of statistics for governance, Ward reflected on the further development of reflections for developing statistics, gathering the UN, the Red Cross, NGOs and Governments on ‘human rights, security and individual welfare’: he notably highlighted the difficulties in identifying “*areas where human progress could be assessed in a fairly acceptable and unambiguous (reasonably uncontroversial) manner. The minimum welfare/basic needs fulfilment approach was offered as a first step in the direction of establishing what the fundamental material needs for survival are*” (Ward, 2004: 253). Two elements are specifically important: the notion of measurement and the qualifier of ‘unambiguous.’ The risk lies less on (tangible) issues already captured under collectively agreed measurements than on the part of complex realities that stay uncovered as a result: the ambiguous, the intangible and to this stage un-measurable notions that define

international protection (dignity, humanity). Considering the renewed importance of ‘tangible’ proof, Fassin reflected on the evolving practices related to asylum seekers’ requests in France in the 1990s: initially mostly relying on the “story” of asylum seekers in order to carry out refugee status determination, to assess whether a request would qualify for refugee status; the practice then evolved to give prevalence to the ‘physical proof’ that bodies could – tangibly – demonstrate (Fassin & Halluin, 2005). This new angle, leaning on scientific medical expertise through doctors’ medical certificates assessment put the physical body as a ‘space’ for truth generation. This exigence of physical truth can be considered as a step away from the letter and spirit of the 1951 Refugee Convention as *fear of persecution* could hardly be fully captured by “physical proof.” This example hints to undercurrent alteration of the IPR, prioritising tangible elements rather than more subjective ones to establish knowledge generation processes. We may consider that the use of NTIs, specifically emphasising quantitative elements, provides tools that reinforce the international regime change underway. Evidence-based information, often expressed through consolidated figures and hard numbers, yet may represent a ‘distraction’ from more complex realities which humanitarians are to analyse to establish an appropriate protection response. Furthermore, the datafication phenomenon may result in over-shadowing elements which are ‘hard to capture’ (i.e., tribal mechanisms, cultural practices) but yet bear a heavy weight in the daily struggles of those affected by conflict.

According to Rouvroy, the widespread assumption that “governing by data” would mean “governing objectively” lies with the perception that NTIs would result from an automatic unveiling of the reality without its social, political and cultural possible bias and would explain the general public’s acceptance or tolerance of the digitalisation of the world (Rouvroy, 2016). Similarly, the contrast between a sought objectivity and what data-driven methods offer was interestingly also resonated in empirical research, where NTIs were at times compared to “*a shield between you (humanitarian) and the person.*”<sup>74</sup> Often recognising the added value of certain tools in order to consolidate data in record times, such as with KoboToolbox, several humanitarian professionals pointed out to a certain rigidity of questionnaires in protection interviews, which was considered a concern during face-to-face interviews. While such

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<sup>74</sup> Interview carried out on 24.04.2021, DRC staff, Protection category.

questionnaires can capture both quantitative and qualitative information, practical implementation bear an important weight in the content of information that could be collected: multiple choices to questions are ‘pre-thought’ and while options for “other” accompanied by qualitative descriptions is present but is considered less user friendly and more time-consuming. Additionally, empirical research pointed out that if both quantitative-oriented and qualitative options were offered in digital questionnaires and surveys, the few solely qualitative options given are usually not filled nor analysed when consolidated internally within humanitarian protection organisations (back offices). A worth-sharing comment from a humanitarian professional featured the following:

*“I feel if you follow a questionnaire you may not react to a topic that may come up which you might miss or not react to just because it does not fit your questionnaire, and that is not how protection interviews should be done.”<sup>75</sup>*

Beyond the digital tools themselves, that represent means to pursue the protection mission, the staff ‘know-how’ and capacity to manoeuvre the use of new digital tools to fit complex ground realities and sensitive human exchanges in a dignified manner may show a level of discrepancy that is important to comprehend. NTIs represent enablers, or ‘means’ to capture movement populations, trends, hard figures on specific aspects of a humanitarian crisis and thus partly demonstrate ‘what’ a situation is. Yet, the reasons – or the ‘why’ - behind such facts is often considered more difficult to capture and less tangible. For example, if communities do not return in an area which offers basic services and has been opened for civilian return by authorities, it may be because of a fear of reprisal, or perceived security risks. Reasons would be difficult to capture in hard figures solely representing numbers of returns but could complement an analysis featuring the overall number of families sharing concerns over returns. Providing a sound protection analysis often bridges both quantitative and qualitative elements of information.

‘New’ technologies evolve at a fast pace and recently dedicated resources put into innovation teams are tasked to keep organisations abreast with such developments. Competition among humanitarian actors to secure funding and to appear on ‘the cutting-edge’ of new and

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<sup>75</sup> Interview carried out on 24.04.2021, DRC staff, Protection category.

innovative humanitarian practices represents strong incentives. Those go beyond identified opportunities to facilitate humanitarians' work but relate to an organisation's survival in a highly competitive humanitarian sector with limited resources. Nonetheless, the race to be at the forefront of NTIs led to three main divides in an adjusting frame:

Firstly, a digital divide between people that have been exposed to the use of NTIs and those who are not: among humanitarian professionals but also among civilian populations and other stakeholders in the humanitarian system. This is also reverberated among differentiated paces in NTIs' infiltration among various societies, and subsequently among various humanitarian theatres.

Secondly, as complex ground realities include a digital component, one does not equal the other: we will bring forward the notion of 'data desert,' that concern geographical areas that are not covered by connectivity network and are, in addition, difficult to reach physically.

Thirdly, a divide between humanitarian organisations' practices and policies. As a humanitarian professional underlined: "*NTIs are overpassing the way we work as humanitarians and the way we usually produce policies,*"<sup>76</sup> which usually takes time for consultation and various levels of reflections and validation before institutional adoption. As a result, ungoverned territories, testing practices in carrying out the humanitarian mission and more specifically protection have been further extended.

Efforts for recalibration towards organisational-level assessments are currently being held and developed across protection-mandated humanitarian organisations.

Summing up the above, a policy humanitarian professional shared the following: "*Over the past few years, new technologies have moved from the edges to the core but there has not been a comprehensive analysis.*"<sup>77</sup>

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<sup>76</sup> Interview carried out on 23.04.2021, UNHCR staff, Senior Management Policy and Innovation category.

<sup>77</sup> Interview carried out on 01.04.2021, NRC Staff, Senior Management Policy and Innovation category.

### III. Leveraging a new paradigm: opportunities, risks, time and system gaps

#### 1. The bright side and the unknown

Leveraging a new paradigm invites for an in-depth review of *how* the humanitarian sector and more specifically its protection component, has been absorbing the use of various NTIs with different approach and reflections. However, as NTIs have infiltrated various societies at different paces, it is important to consider how other actors of the IPR are also increasingly using NTIs to pursue their own goals. NTIs have increasingly offered means to identify human features and behavioural data that the military, private sector, human rights and humanitarian organisations are now customers within the same arena. At the end of the 1990s, partnerships with public-private space consortia such as the United Nations Satellite Centre (UNOSAT)<sup>78</sup> and RESPOND,<sup>79</sup> or state-supported research networks such as the EU's Joint Research Centre (JRC) emerged. In the mid-2000s, beside UN OCHA's activity maps, RESPOND also supplied a range of cartographic and logistics products to donors, UN Agencies and NGOs. The development of the use of various technologies has been coterminous with the decreasing reliance on ground truths, traditionally the result of direct exchange between populations and humanitarians. More specifically looking at parties to a conflict, some regular armies have been at the forefront in developing new technologies, such as the portable radio (*Chapters 1-2*). Since the end of the WWII, some argue that technology was pursued in militaries' research and development (R&D) and represented a vital agent of change in war, creating opportunities for the ripples of this change to eventual spread throughout society (Chin, 2019). Examples of the US military's role in developing technologies extensively used for civilian and individual private purposes are the internet and the Global Positioning System (GPS). The fourth industrial revolution, made of exponential advances in the digital and biological domains, are considered different from previous epochs as the new variables were accompanied by a significant pace of change: the internet permeated the globe in less than a

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<sup>78</sup> UNOSAT was created in 2001 as an operational, technology-intensive programme under the United Nations Institute for Training and Research (UNITAR). UNOSAT provides satellite imagery capacity and training development to the UN System and its partners. Its objective is to provide evidence-base decision making to support, peace, security and resilience.

<sup>79</sup> The consortium RESPOND uses NTIs and satellite imagery and information to provide maps based on demand: for private costumers as well as humanitarian organisations. Link [here](#).



decade. Securing technology advances allow to preserve a certain monopoly on the use of force while at the same time wars represent testing grounds for new digital tools and transform the post-modern battlefield. Prolific literature from security and defence studies focus on research of new technological warfare implications; nonetheless, its corollary impact on the civilian populations remains limitedly addressed (Chamayou, 2015; Gow et al., 2019). Non-State Armed Groups are less of inventors and more of NTIs users. Applied to warfare strategy, NTIs allowing for information and intelligence gathering as well as technologically more sophisticated tools (i.e., killer drones) are observed in current conflicts but would benefit from more in-depth research. Lastly, it is important to consider battles are now waged on two dimensions: traditional ground warfare and digital warfare. New digital domains are explored, tested and represent peripheral territories that are less or completely un-governed. They offer flexible possibilities for testing tools and trials: both for parties to the conflict and protection guardians – both for humanitarians and human rights advocates.

- *Balancing opportunities and risks*

Exploring opportunities and risks in an imperfect equation related to the use of NTIs in humanitarian protection calls on a two-level review: firstly, opportunities and risks will be reflected upon field use by humanitarians, but also civilian populations affected by conflicts themselves; secondly, evolutions at organisational level, also echoed in systemic humanitarian practices evolutions will be considered.

- *Operational use of NTIs for Protection*

Similar to civilian uses in societies that have been able to advance the use of NTIs for varied purposes, significant advantages were put forward upfront: for example, allowing real-time connectivity significantly affected work modalities as well as private lives.

Crowdsourcing and crisis-mapping platform are participative approaches allowing for organisations to call upon volunteers to contribute to the collection or analysis and processing of data and information, without direct face-to-face interactions. Since 2008, crowdsourcing has been increasingly used to monitor trends of incidents and abuses, tapping in flexible extra-resources. Its particular challenge relates to the fact that its volunteers are not

necessarily aware of challenges in the field and possible risks for the population (*Professional Standards for Protection Work*, 2018).

In humanitarian relief protection practices, the UNHCR's services for Syrian refugees in Jordan are often portrayed as an advancement for more dignified humanitarian services: self-service booth set up in camps allow for refugees to access and manage their own data, including change in civil status. Without doubting of the added value of avoiding hours-long queues for humanitarian listing changes of a family's status, this development is to be considered in the wider frame of more institutionalised but yet emergency responses that are supposed to be temporary, such as tents where victims of conflict are hosted in, until they can return (Ledwith & Smith, 2014).

The concept of Big Data and Analytics emerged in the mid-2000s, using geolocation and information from mobile devices to study behavioural dynamics was still experimental (at the same time as the development of Google Earth). According to the World Bank Group, mobile telephony has been considered the largest distribution platform in the world since the mid-2010s (World Bank Group, 2015). The use of phones and more specifically of smart phones that allow to take and share pictures and videos, by both humanitarians and civilian individuals, encompass risks that information be intercepted legally or otherwise being hacked: this risk exists both with individual device holder but also on service providers of communication networks. When taken by humanitarian protection actors, it needs to be for a clearly stated purpose and with informed consent on its potential use. From the very outset, it was realised that mobile telephony both allows to study individuals and organisations: although the content of messages or calls was not captured, it is the structure of behavioural patterns that emerge from routine that reveals new layers of analysis. In addition, beside hacking content, the capture of data and metadata embedded within images gives insights on time and location of calls, images and videos which can potentially be retrieved or hacked by third parties, and potentially used for inadvertent purposes, and thus constituting a clear risk. The development of messaging applications (or messaging Apps) has exponentially infiltrated societies and specifically allows convenience for humanitarian professionals that continue to interact with counterparts in various countries. Applications such as WhatsApp, Telegram or Signal have at times been used by protection team members to communicate with each other, but also to keep the contact with sources of information, members of a community, civil and security authorities, and NSAGs. The opportunity to stay connected yet

comes at a cost considering a lot can be learned on ‘who communicates with who’ solely with the capture of metadata, a clear risk that is to be comprehended and balanced with other risks inherent to working in unstable conflict environments.

Created in 2009 under the umbrella concept of ‘innovation’, the UN Global Pulse<sup>80</sup> took the lead in bringing together the UN and private sector to accelerate the discovery, development and scaled adoption of big data innovation for sustainable development and humanitarian action. According to Rouvroy, an implicit belief accompanying the growth of ‘big data’ is that it allows to anticipate most phenomena (including human behaviour) of the physical and the digital worlds (Rouvroy, 2012). In societies where new conflicts erupt or long-lasting unsolved ones are reignited (Armenia-Azerbaijan in 2020, Israel-Palestinian Territories in 2021) and where new technologies are well-anchored, civilian populations, private individuals who are digital users, share live information about their plight during conflicts in the public sphere or bilaterally with humanitarian organisations. This can take the form of videos or photos, GPS location and audio recordings: a more direct voice from the victims themselves impacts how the battle of narratives can be leveraged and protection advocacy put forward. Enhanced role of the public opinion and direct, unfiltered information from civilian populations that are digital users themselves expose human suffering and weigh into the reconfiguration of humanitarian protection guardians with alleged perpetrators. NTIs’ accessibility has changed communication around humanitarian issues, exposing a public that increasingly became a ‘spectator’ over the last four decades, baring political and ethical dimensions mobilising or *de*-mobilising distant solidarity (Chouliaraki, 2012).

At the crossroad between protection staff use and protection-mandated organisation institutional use of NTIs, analysis of social media and big data has generated great interest in social media intelligence, explored depending on available resources. The use of such large amounts of data, assuming it would fairly represents a targeted audience, would allow to accurately predict people’s behaviour, preferences and other personal details (i.e. ethnicity, political or religious affiliations) (ICRC & Privacy International, 2018a). However, if the initial dataset is biased, it can also lead to erroneous inferences. In addition, users’ metadata can reportedly be saved in shadow profiles that can be accessed, sold and used by third parties.

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<sup>80</sup> The UN Global Pulse initiative was established based on a recognition that digital data offers the opportunity to gain a better understanding of changes in human well-being, and to get real-time feedback on how well policy responses are working. Website: <https://www.unglobalpulse.org/about-new>

These profiles can be exploited for surveillance purposes and to attempt to influence users' behaviours. This specific NTIs-area, considered as reflecting a digital dimension complementing complex ground realities, continues to be explored notably through the development of AI algorithm for potential more direct use by humanitarians, including for protection purposes.

- *Institutional use of NTIs in Protection*

At a more institutional level, since the early 2000s, the Humanitarian Policy Group (HPG) reflected on increased pressure for analysis of impact of humanitarian services and an enhanced focus on results-based management techniques in the public sectors of "Western Governments," mirrored in their funding requirements (Hofmann, 2004). Already then, this new emphasis on results and 'measurements' raised both recognised positive potentials for improved analysis of humanitarian work and concerns that it could lead to the neglect of issues such as protection and dignity – which are portrayed as 'difficult to measure.' The challenge that this research points out lies with the risk that humanitarian aid be reduced to its technical delivery (the how) rather than its principled approach (the why). This uneasy interval between tangible and measurable less sensitive humanitarian assistance and the hard-to-grasp protection endeavour is also reflected in various publications on evaluation methods for humanitarian organisations' programmes. For instance, in 2006 the Overseas Development Initiative (ODI) interestingly noted that "*humanitarian protection has emerged as a key issue in humanitarian response over the last few years,*" while at the same time recognising it as a cross-cutting theme (and not a stand-alone activity and profession) that needs to be included within coherent humanitarian policy approaches (ODI, 2006). ODI further adds that "*evaluators should ask whether those who needed protection have received it*": The recognition of the importance of protection indicates that it regained traction despite having been continuously challenged by parties to the conflict since the 1990s. ODI however falls short of elaborating on the meaning behind what alleviating suffering and supporting dignified living conditions and treatment of civilian people mean (ODI, 2006). As the humanitarian system further developed its capacity to measure its endeavour, including through more advanced technological tools, policy guidance continued to develop its methods while acknowledging challenges to evaluate protection, mentioning challenges as "*lack of clarity about what protection is, and measuring the non-quantifiable – in particular,*

*what did not happen?*” or the prevention dimension of humanitarian protection interventions (Buchanan-Smith et al., 2016). In recent publications, beside figures, logical frameworks and indicators, there are further reflections on the ‘appropriateness’ of humanitarian assistance while the definition of an ‘appropriate’ response is linked to the extent that it is designed to “*save lives, alleviate suffering and maintain human dignity*” (Abdelmagid et al., 2019). The useful reflections on the multiple methods currently used by humanitarian actors, which are identified to rely on ‘narrative formats’ to measure ‘appropriateness’ of humanitarian interventions, however, mostly focuses on tangible humanitarian assistance: a gap of research on humanitarian protection evolution of practices and norms pertains to the humanitarian sector.

Humanitarian organisations have seen opportunities in using aerial and satellite imagery tools to advance humanitarian objectives. Originally created by the US military in 1993, the satellite-based Global Positioning System (GPS) was progressively opened to civilian use while the declassification of military imagery sensors was followed by the authorisation of the commercial operation of high-resolution satellites (Duffield, 2018). The military however retains slight advance and possibility of ‘shuttering control’ through funding and licensing agreements. Since the 2010s, increased access to unmanned aerial vehicles (UAVs) including drones, for other purposes than military ones opened for further reflections and testing of civilian drones for humanitarian purposes. A humanitarian UAV network<sup>81</sup> to coordinate UAV initiatives in humanitarian crises and promote a safer use of such tools developed specific guidelines, including for operating in conflicts<sup>82</sup>, and a code of conduct that all humanitarian members shall abide to. Using a natural disaster event, UAVs were used during Typhoon Yolanda in the Philippines in 2013: Humanitarian Openstreet Map team used drones to fly over most affected areas and identify levels of destructions and roads that could support access. Extending the use in conflict zone, UAVs can participate in complementing witnesses’ accounts of violations and provide indications on protection needs, in addition to reducing staff exposure to field security incidents, but risks and civilian perceptions would require to be carefully weighed. Another use of UAVs through ‘logistic drones’ to transport medical

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<sup>81</sup> The initiative is also referred to as UAViators and brings together 3,500 volunteers from 120 countries and territories that could participate to support in crisis.

<sup>82</sup> The Guideline specifically refers to potential issues of misuse of information created, perceptions, risks related to handling sensitive information and connects to more specific guidelines and codes of conduct developed by the ICRC, OCHA and UNHCR.

samples raised both opportunities to save time to access hard-to-reach areas along with concerns related to risks associated with safety of 'bodily data' (Sandvik et al., 2017). In addition, legitimate questions could arise when sensitive information is collected through the use of military borne NTIs with a purpose to address protection concerns with parties to a conflict, which may be the very same source of such technologies. According to Chamayou, this process of civilianisation of NTIs has been coterminous with a change of military sensing priorities: from hunting buildings and objects to hunting people (Chamayou, 2015). Risks that sensitive data collected by humanitarians on civilian individuals as well as pinpointing certain areas or groups, may further expose civilians to threats and violations and may be duly considered. The use of satellite and aerial imagery tools has mobilised attention and reflections in humanitarian organisations.

As humanitarian protection staff use computers, a humanitarian organisation's computer network system can be exposed to cyber-attacks and could consequently result in sensitive data breach: implications for individual information from civilian populations that could be leaked and the impact on trust from communities and donors may have far reaching consequences for humanitarian organisations. Trade-offs in risk management ought to be done between levels of digital security to invest in (requiring time and expertise) in and limited financial resources and pressure to act fast represent a sensitive balance senior humanitarian leadership has to decide on. Considering humanitarians are 'late-comers' into a dynamic digital arena, heightened pressure aims at remaining at the "*top of the class*," or at least ahead of others. Digital attacks, in practical terms, can result in malfunctioning of essential civilian services such as healthcare (O'Donnell & Kraska, 2003). The COVID-19 pandemic further unveiled the extent of cyberattacks, especially targeting healthcare infrastructures, which contributed to extend the frontiers of warfare beyond traditional battlefields to digital arenas with ground consequences for patients and victims of war (He et al., 2021). Other domains of technology find resonance with both defence/military and humanitarian uses: biometrics, which literally means the measurement of human biological signatures (iris, fingerprints, voice, facial recognition, etc) intends to provide unique identifiers with automated checks and increased speed, a clear advantage during warfare (Gow & Gassauer, 2019). On the humanitarian side, accessibility of biometrics technologies is of specific relevance for protection-mandated humanitarian organisations: they allow for a

unique personal identifier based on biometrics, which means the measurement and calculations based on identified human characteristics. The UNHCR started using biometrics in Afghanistan in 2002 for the first time. In 2010, UNHCR announced a new institutional policy on biometric registrations and presented its benefits in reducing frauds and allowing to reduce duplicate identities and save time for identity verification and case management of refugee and asylum seekers. The Syrian crisis and refugee registration in Jordan was the first attempt to gather biometric data on refugees across the whole country, while the 2016 EU-Turkey agreement involved mutual processing of data based on a new technology developed by Crossmatch Biometrics Tech, also used by the US military in Iraq (Ajana, 2020; Gow & Gassauer, 2019). This raises questions of collision between military, private and humanitarian spheres that imply ethical questions to be considered, especially when protection actors operate in conflict situation which are sensitive by nature. This more advanced technology however presents challenges at implementation level, notably when this is to be explained to populations that may not be digitally literate, and thus questioning the essence of ‘informed consent’ required before taking a civilian individual personal information. Taking bodily identifiers through biometric technologies, similar to any other technology allowing to secure personal information on persons, is required to be kept safe by the humanitarian organisation that takes the responsibility for information collection. Another risk of a technical order includes “function creep” and synchronisation of databases between field, country and headquarters’ local servers depending on each organisation’s approach. Contemplating the intricacies between NTIs, specifically biometric technologies, and humanitarian protection, Jacobsen and Sandvik have triggered a yet unaddressed debate in academia to explore the politics behind the use of technologies in humanitarian action. They notably consider NTIs’ experimentation create further sources of harm, possibly exposing already vulnerable populations (Jacobsen, 2015). More recently, the reflection was taken a step further to consider not only the technologies of information themselves (i.e., biometrics) but also potential unintended consequences in data flows or data-sharing agreements. For instance, Jacobsen questions the data-sharing agreement between the UNHCR and the US Department of Homeland Security for refugee resettlement cases, which may result in having personal information and data of an unclear number of refugees from different countries outside the US and be used for other purposes than humanitarian ones – such as intelligence and counter-terrorism efforts (Jacobsen, 2021). Specifically looking at the cases of Afghanistan and

Somalia, Jacobsen also raises the important question of the lack of frame for the length of time data collected from civilian populations, including IDPs, refugees or asylum seekers would be preserved by humanitarian organisations (Jacobsen, 2021). Ajana raised a similar question while inquiring about implications of a ‘pre-emption philosophy’ reflecting on how Big Data mechanisms may create ‘false hits’ in databases supporting the management of lives that could translate into detention or deportation of people (Ajana, 2015). The highly relevant questions yet remain to be further explored by both academia and humanitarian practitioners.

Considering conflict situations, a protection database could be of interest to parties to the conflict that may have the capacity to illegally try to secure individuals’ information for intelligence purposes, which is called a “subversive use.”<sup>83</sup> Taking theoretical perspective in *Homo Sacer*, G. Agamben reflects on Foucault’s work on biopolitics and considers the increasingly intertwined entanglements of what he calls ‘bare life’ and politics. The so-called separation between humanitarianism and politics is considered to be the extreme phase of separation between the rights of man and the rights of the citizen (Agamben, 1998). Taking the conjuncture of humanitarian and political spheres, Agamben humanitarian discourse relies upon and partakes in the production of the notion of valuable life that corresponds to that of sovereign imagination (Agamben, 1998, 2004). This can be considered as a paradigm shift between sought humanitarian policies and possible enhanced control through technologies on ‘bare’ civilian lives.

AI briefly mentioned above in the previous sections of this Chapter can be considered as one of the newest NTIs, which has not been harnessed effectively yet. We can expect important developments to unfold in the next decade as it becomes more integrated into the humanitarian sector and enhances better trained, and consequently sharper algorithms in providing elements for analysis. Protection-mandated organisations consider the potential AI can leverage for humanitarian and protection purposes. Still in an infancy stage, the development of AI to support humanitarian and protection purposes is mostly explored in large organisations (UN agencies, ICRC) rather than NGOs. Investing in AI capacities requires to secure the financial resources and expertise linked to the development of such projects, a

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<sup>83</sup> According to ISO SC37 Harmonized Biometric Vocabulary, the term “subversive use” relates to the expansion of a process of system where data is used beyond its initial objective for un-authorized purpose.



move that is interestingly developed with time, calibration and in-depth forethought. This clearly contrasts with some other NTIs that have been adopted for specific pilots and projects directly for field roll-out. Two AI initiatives particularly stand out: first, a multi-agency project launched in 2016 called the Data Entry and Exploration Platform (DEEP); and second, an internal AI initiative looking at possibilities to explore “*querying without sharing*”<sup>84</sup> to find matches amidst millions of identities within Protection databases.

The DEEP project<sup>85</sup> was initially launched in 2016 by UN OCHA and intended to harvest both quantitative and qualitative data in a more structured manner. The sheer amount of data, especially qualitative data that is reviewed by the tool through Natural Language Processing (NLP)<sup>86</sup>, requires for humanitarian professionals (human users) to support the taxonomy of information relayed. Initially done manually, the AI algorithm is ‘trained’ by confronting its assessment of a piece of information to the human verification that would either validate or contradict, allowing the algorithm to ‘learn’ (or machine learning) and adapt to this review process to acquire thinner identification. The project has expanded into a multi-agency project that include the UNHCR, IOM, UNICEF, UN OHCHR, IMMAP, IDMC, the Joint IDP Profiling Service (JIPS), the IFRC and Okular Analytics. Its Natural Language Processes (NLP) has thus far been focused on English, French and Spanish languages while English is the most advanced. Other languages would be looked at onwards, specifically the Arabic language. The development of tools, harvesting both public media and social media and internal data from protection-mandated humanitarian organisations, that would overly focus on certain languages also calls for reflection for the mid-term. Although English is the reference language used in international humanitarian work, along with national languages in countries where there are humanitarian operations, and it is important to recognise not all tools can be simultaneously developed in several languages relevant to conflict humanitarian settings, the role and weight those new tools may have raise potential concerns. Indeed, NTIs that allow enhanced analysis on contexts operating in certain languages, and not in others, may influence how certain contexts may be represented due to more in-depth analysis and the

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<sup>84</sup> Interview carried out on 08.12.2020, ICRC staff, Senior Management Policy and Innovation category.

<sup>85</sup> The DEEP project has been designed to offer humanitarian organisations the possibility to use a webpage intelligent platform, with encryption, to support enhanced analysis of both qualitative and quantitative information. More information can be found on their [website](#).

<sup>86</sup> Natural language processing is a subfield of linguistics, computer science, and artificial intelligence concerned with the interactions between computers and human language, in particular how to program computers to process and analyse large amounts of natural language data.

framing of protection problematics. In a humanitarian system with limited funding and high competition to secure resources for humanitarian response, including for protection, NTIs may then contribute to making certain contexts look more attractive than others to donors. On the positive side of the coin, this thinner layer of analysis that such tools could provide pay support sharper argumentation with Member States and within multilateral arenas, for example for discussions at the UN Security Council where some humanitarian organisations are often asked to speak: offering an opportunity to influence debates and narratives. Interestingly, the UN's main donors are USAID, the German Red Cross and the German Government. The humanitarian secondary data review and analysis platform offers flexibility in for humanitarian organisation to upload their information collection (from KoboToolbox for example) and use the intelligent tool to support analysis: including for protection monitoring and risk analysis, both highly relevant to the protection mission. For protection monitoring programmes, it states to be *“designed to identify violations of rights and protection risks for populations of concern,”* while risk analysis relies on both public and organisations' information to detect situations' changes and early warnings. The machine learning dimension of the DEEP project, still highly supported by 5 human users – humanitarian professionals - providing feedback to support the algorithm development, is currently developing categorisation of subtler concepts, such as a *‘coping mechanism.’* Interestingly, a comment from our empirical research pinpoints challenges related to humanitarian professionals - and notably technology specialists - involved in the algorithm training to grasp traditional protection work that includes the comprehension and basis of international law that support the IPR, as well as more intangible concept such as the *‘Do No Harm,’* dignity or coping mechanisms. Beyond the training and learning of the algorithm itself, it may be the exchange between different fields of professional expertise that could form the basis of adjusted approaches to protection work, with a stronger and more integrated NTI component. This advancing development may contribute to a trend towards the return to context analysis of complex conflict environments and subsequently of humanitarian theatres created to support civilian populations.

A second example is an internal AI prototype (back office) based on the development of an algorithm that would facilitate the search and identification of missing people among country-level protection databases of the same protection-mandated humanitarian organisation to

search for potential matches based on selected criteria. Tailored to navigate the highly sensitive nature of individual information and data protection, the concept followed a ‘data protection by design’ approach before being submitted to an internal Data Protection Office (DPO) for approval. The prototype project intends to operationalise the core protection concept of ‘Do No Harm’ in applying it to the digital tool and machine learning: in doing so, it explores a “*querying without sharing*”<sup>87</sup> approach. In other words, the selection of criteria would build a query that would narrow the search and identify potential matches without requesting to share individual data of persons; solely potential matches would be flagged to the protection staff working on the database. The tool, developed to support humanitarian protection professionals’ work, may well have lasting impacts on protection teams’ work, both saving significant time for long manual searches and tedious internal coordination but also, ideally, orienting human efforts towards fewer leads to find information on family members who went missing amidst chaos and conflict. The prototype still remains to be approved and rolled out in order to confirm the support to protection teams it conceptually promises to deliver on. An external review of the prototype was made in order to support the decision of an internal Tech and Data board that have been involved in different phases of the project with questions and requests for design and implementation specifications. This careful approach reflects how some organisations have recently developed institutionalised systems to ensure wide reflections on the opportunities and risks imperfect balance implied by the use of NTIs in humanitarian protection.

It is worth noting that both AI initiatives presented above include a strong human factor and are foreseen to be continuously depending on this human to technology exchange to be further developed and become suited, suitable and efficient.

- *Ungoverned fields: trials on error*

As protection-mandated humanitarian organisations explore the use of NTIs in their work, digital tools are confronted to ground realities and unveil hands-on review. Several protection staff mentioned the use of NTIs in the field was often perceived to be ‘fast’ and headquarter-imposed; it also created some frustration if and when little to no consultations were held at

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<sup>87</sup> Interview carried out on 08.12.2020, ICRC staff, Senior Management Policy and Innovation category.

the design phase. More horizontal structures provide further leeway or flexibility for protection staff to experiment data projects in the field, and interestingly, frustration was also expressed at headquarters for a reported lack of global oversight and institutional risk mitigation review. Reflections based on field -failed or tempered- implementation of new tools have called for adjustments in the use of NTIs. While sharing on experiences regarding the use of KoboToolbox, a protection staff reported “a big failure” in trying to launch the information collection tool in South Sudan because of the lack of strong-enough connectivity.<sup>88</sup> As a consequence, collected information could not be connected to the server and thus could not be consolidated nor analysed. As a result, protection teams reportedly decided to return to a “paper and pen” traditional approach as the tool could not be accommodated to humanitarian work in areas that are limitedly covered by internet network – such as South Sudan. Also resonating on the use of digital information tools such as KoboToolbox or Device Magic, other protection professionals pointed out to the digitally enhanced opportunities to collect information through individual or household surveys. Specific concerns were raised as the number of questions being asked to civilian family members interviewed reportedly increased: some protection personnel question the need to collect information based on 100 questions while solely 20 were said to be used. The flow of pre-set questions, while allowing to ensure a certain consistency in data collection and offering a basis for trend identification and comparison, is also negatively perceived by several protection professionals who consider it does not allow to give space for people to express their fears and their concerns. In horizontal humanitarian organisations, parallel information collection systems were reported to be use during a same interview to fit different purposes, and notably protection information to support the protection response at individual level, with subsequent case management of the person, and donor reporting. This ‘double information collection system’ show a clear gap in the mechanisms of integration of various NTIs to the sensitive characteristics of humanitarian protection work. In addition, the use of “double systems” goes beyond digital information collection tools and also encompass communication tools. For instance, the use of WhatsApp for professional purposes has, until 2020-2021, mostly been unregulated by humanitarian organisations. Various considerations are to be evaluated, from data protection to cultural habits in communication tools anchored

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<sup>88</sup> Interview carried out on 24.04.2021, DRC staff, Protection category.

individual and authorities' preferences for exchanges in a given country, as well as national law for data protection and data privacy. The limited clear guidance on the use of WhatsApp shows a certain dilemma: over-precaution could theoretically and practically jeopardise precious contacts and information sharing that are at the core of protection while remaining in an un-governed field may open for risky practices, especially if no institutional tools are offered as alternative and professional staff resort to personal devices and software to exchange sensitive information.

In one of the protection-mandated organisations covered in the empirical research, an institutional tool was provided to protection teams to use, following an assessment and evaluation; the tool was described as the most secure option to exchange sensitive protection information. Yet, cultural practices have reportedly led to the continued use of WhatsApp in parallel to the newly offered institutional system: a reluctance perceived to be linked to reluctance to change 'working habits' for 'less user-friendly' digital tools. This practice was identified as a clear concern by mid-managers that wish to protect their teams while observing a certain need to 'absorb' new ways and mechanisms that institutionally imposed. Our empirical research suggests multi-layered and multi-dimensional adjustments are occurring to pursue protection objectives with attempting to reconcile complex environments while NTIs' intricacies and unequally trained staff. Beside this theoretical and practical exploration of opportunities and risks, a clear trend is emerging towards enhanced digital literacy, institutional trainings and more commonly accepted use of new digital tools. The element of time, towards a fast-forward in adapting new tools, is then being absorbed with varied degrees of reluctance or acceptance in different organisations and more specifically for protection professional staff. In this transition phase at play, the remark of a humanitarian professional reflecting on the use of NTIs in protection work is worth sharing: *"what I do not know is how far we have really thought this through with more reprisal authorities. I do not know how robust our systems are for individual information to be well-protected."*<sup>89</sup>

This logic of experimentation or field-testing in humanitarian theatres and more generally in economically less-developed countries, often less well-administered, has been conceptualised as being on the 'periphery': it represents areas that are less well administered

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<sup>89</sup> Interview carried out on 19.03.2021, NRC Staff, Senior Management Policy and Innovation category.

and contrast with ‘centres’ that concentrate political power (Desrosières, 2013; Jacobsen, 2015; Sandvik et al., 2017).

- *Inherent risks in Protection work, specific risks in using NTIs for Protection*

Managing risks is a core component of the humanitarian endeavour, however, the use of NTIs in handling sensitive protection information may result in introducing new risks and further expose victims of conflicts to harm (Sandvik et al., 2017). The sensitivity of information is established in relation to a particular context, which features the dynamics of violence and patterns of abuse. Sensitivity of certain types of information may evolve over time and together with the development of the situation, for instance following armed carriers’ change of presence or level of involvement or communities’ perception and potential stigmatization of certain groups or segments of a population. Sensitive information gathering also entails risks related to its potential consideration as intelligence, especially considering that protection databases - registries of information on individual and households, encompass individual information. The necessity to ensure data protection and protect sources of information also generates new challenges: balancing technical improvements with possibilities for data leaks or breach require informed risk management. An experienced humanitarian professional in a policy role mentioned that, although not wished, *“if there would be a major data breach it would motivate discussions on data protection”*<sup>90</sup>. The comment hints to various drivers of change: while opportunistic and competitor drivers were previously mentioned, it is thought that actual experiences of data leaks – that would be made public – may create an impetus for other organisations to act or further react for enhanced data protection mechanisms in their NTIs tools and systems. Echoing the same consideration on this risk for sensitive protection information to be hacked, a technical expert considered *“it is not a matter of if but of when, everything is hackable,”*<sup>91</sup> again bringing forward the notion of time in the adjustment period the humanitarian system and its protection component have been facing since the turn of the XXI century and with exponential acceleration since the 2010s. According to a study led by Privacy International and the ICRC, the humanitarian sector itself is considered to be a surveillance target (ICRC & Privacy International, 2018b; Jacobsen, 2021). Humanitarians are part of a system of actors operating

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<sup>90</sup> Ibid.

<sup>91</sup> Interview carried out on 04.12.2020, ICRC Staff, Information Management/IT category.

in unstable environments that can be construed as threats to national security, raising potential interest from intelligence agencies. For example, national legislation is crucial to be analysed to avoid having humanitarians being asked to share data in the framework of investigations into serious crimes or international obligations related to terrorism.

Handling sensitive information comes with responsibility to keep it safe to protect individual civilians and families that shared insights on their profiles as well as their plight: that is a pivotal aspect in the international protection regime alteration. In addition, gaps of information from specific geographical areas – which we call *data deserts* – are also to be considered as a corollary to warring parties pursuing warfare strategies. Some Governments can use connectivity or to the contrary purposeful disconnection<sup>92</sup> as a way to further preclude communities to communicate with the rest of the world, as in certain areas of Ethiopia in 2021 or in Bangladesh hosted Rohingya refugee camps in Bangladesh since 2019. Likewise, NSAGs find strategic advantage in destroying communication towers, often seen to allow for respite and easier hideouts (e.g., al-Shabaab at the border between Somalia and Kenya, the Islamic State group in Syria and Iraq). Protection-mandated humanitarian organisations are to consider elements of digital information they can secure and are also to identify the gaps of information, potentially politically motivated in conflict situation. The risk would be for Protection professionals to solely focus on certain areas, de facto de-prioritising others before full assessments can be done. However, as practical implementation often challenges humanitarian principles and organisations' capacity, it is important to acknowledge constant pressure protection-mandated organisation face to share sensitive information, like in Yemen, or to operate in certain areas more than in others, as in many conflict situations, while managing coordinated protection responses with operational limits and a certain retrieval from field presence. Safeguards, including through training of staff and general increase in data literacy would contribute to weighed implementation and might reduce risks of reprisal on civilian individuals as well as a negative impact on an organisation's capacity to carry out activities in an area (Professional Standards for Protection Work, 2018). According to P. Vinck from the Harvard Humanitarian Initiative (HHI) *"on-the-ground reality*

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<sup>92</sup> This entails cutting mobile network coverage in certain geographical areas or purposely not installing network systems in certain areas hosting certain populations.

*is more often than not one of information poverty, limited mobile coverage and little or no access to internet for both humanitarians and communities at risks” (Sandvik et al., 2014).*

Additionally, the use of AI algorithm could potentially lead to a ‘weaponisation’ of such tool, reflections on digital ethics have emphasised: *“It is because AI is potentially so powerful that its misuse in a complex and high-impact environment, such as warfare, could pose an Xrisk”* (Vold & Harris, 2021). The risk lies with potential loss of human control in AI’s development.

Our empirical research points out to an increasing use of NTIs is not easily legible for many, encrypted meaning and functioning behind digital tools is still being unveiled for various humanitarian profiles to enhance their understanding, also called digital literacy. Jacobsen and Sandvik explore how initiatives to enhance legibility and quantification practices affect refugee protection in UNHCR (Jacobsen & Sandvik, 2018). More specifically, technical accountability is seen to be developed through the intertwining of technological, managerial and normative approaches, resulting in co-constituting the framing of ‘protection problems’. The authors yet warn that legibility becomes a ‘measure of success’ rather than a means towards a higher objective, risking overlooking personal realities behind represented figures: *Chapter 5* will address in-depth such element of knowledge generation, considered of fundamental importance.

## 2. Limits, time and gaps in the system

- *Contemplating some limits: theoretical, practical and alleged*

### - The competitiveness variable

In the race for funding and keeping a protection-mandated organisation at the forefront of humanitarian innovation, acknowledging practical failures may not serve funding and reputational objectives. Through our empirical research, several humanitarian professionals pointed out that there is a need for protection-mandated humanitarian organisations to be transparent about failures in using digital tools and avoid repeating mistakes. It was nonetheless considered “something difficult in the humanitarian system.” A contradiction can be drawn from this situation: on the one hand, humanitarian actors evolve in a competitive system leading to present well to donors so as to secure funding for ground protection activities; on the other hand, adopting NTIs often allows to project enhanced efficiency and



transparency, despite trials on error and lessons learned that can be inferred from it. As mentioned above, competition is one of the drivers of change leading IOs to adapt and 'survive' (Eilstrup-Sangiovanni, 2020; Kapur, 2000). Keeping failures and shortcomings in implementation may serve short-term financial objectives but, in the mid-term, may lead to a longer period of NTIs' absorption by reducing possibilities for internal lessons learned and hinder the search for mitigating risks. Yet, at this stage, there is little evidence on risks arising from the use of NTIs in protection work: for example, phones can be tapped, a well-known risk mentioned in several interviews, albeit no public documentation on protection-mandated organisations' experiences can be found. A paradox lies with the use of NTIs: as one interviewee noted "*if you want to be 100% bullet-proof, then you won't use technology,*"<sup>93</sup> while humanitarians now resort to NTIs to communicate between themselves and with others: every instance of information might be hacked, possibly then leaked. Some humanitarian organisations have already been hacked, although limited information on such events is publicly shared. The question is not considered to be if but rather when a breach would occur, bearing considerable risks for reputation and trust with both beneficiaries and donors.

The publishing of thousands of Wikileaks cables since 2006 have included internal information-sharing within protection-mandated humanitarian organisations that can be considered sensitive. Some may concern individual, such as high-profile detainees, while others may relate to context analysis that is de facto sensitive when it concerns conflict situations as parties to the conflict or even internal audits in various contexts. In its Annual Report of 2011, the ICRC mentioned it "*assessed the impact of the Wikileaks phenomenon on its information-management practices and its operations, and provided related guidance to ICRC delegations and staff,*" without further details (ICRC, 2011). As for the UNHCR, no public document was found on internal reflections of the Wikileaks cables that concerned its operations. However, the protection-mandated UN Agency interestingly used Wikileaks information shared on the plight of civilians in Afghanistan in a legal interpretation analysis in 2011 that relate to protection advocacy, titled "Safe at last? Law and practice in selected EU

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<sup>93</sup> Interview carried out on 04.12.2020, ICRC Staff, Information Management/IT category.

Member States with respect to asylum-seekers fleeing indiscriminate violence” (UNHCR, 2011).

Indeed, NTIs are not empty vessels, technologies are bought from private companies and national armies R&D which are not neutral nor impartial (Rouvroy, 2012). National legislations are also to be analysed and included in the use of certain tools that intend to facilitate the process of humanitarian protection support to civilians in conflicts: risks of authorities ceasing organisations’ information is to be considered. Digital transformation undertaken by most humanitarian organisations raise the questions of safeguards and mitigating measures, but also of budget and resources allocated to those efforts.

- Unequal connectivity

The penetration of NTIs in various societies, at different paces, paves the way to transformed humanitarian needs: civilian populations can also be digital users. For example, maintaining family links or keeping abreast with one’s community has been a traditional need for civilians that are victims of conflict. Two aspects need to be considered in this regard: firstly, it depends on societies and the level of digital literacy from civilian individuals and trust they may place in humanitarians offering digital services; secondly, it practically depends on levels of connectivity in the theatre of humanitarian operations. The latter would make it possible to envisage the use of NTIs to support civilians’ needs or to the contrary require more traditional humanitarian responses, such as Red Cross Messages between family members, on paper. Often, humanitarian theatres are connectivity deprived and data deserts, thus while some advances were made in certain countries, such as Jordan in the Zaatari camp hosting Syrian refugees, this example remain an exception rather than the norm in humanitarian operations (Macias, 2019).

- Fearing the loss of human touch

The fast absorption of NTIs in protection work has implications on the *modus operandi* of protection teams. Two elements arising from empirical research are revealing larger alterations currently at play. Firstly, several protection professionals note that digital tools may lead to a certain loss in the ‘human touch,’ the central element in protection work. A

professional notably mentioned *“the risk is to have a ‘too technological’ way of working”*<sup>94</sup>. While advantages linked to a more systematised organisation of protection information, both individual and contextual, concerns that protection work may become more about ‘feeding the machine or the beast’ – this being the protection database or about ‘entering cases’ rather than field work and follow-ups on cases. This fear resonates with both wider changes of the humanitarian system, which Duffield analyses as newly instilled remoteness since the turn of 2010 and with the concept of constituted and constitutive NTIs in the politics of humanitarian action affecting social relations described by K. Jacobsen (Duffield, 2018; Jacobsen, 2015). Through empirical research, a potential negative consequence of this further distancing between protection professionals and civilian populations was seen as protection staff becoming *“comfortable sitting in an office with an air-conditioned and have people come to them as they sit behind a screen,”*<sup>95</sup> the need for field presence was presented as necessary to understand the full complexity of various situations. Comforting this identified concern, Duffield considered that *“by 2008, the interactions between aid workers and beneficiaries had lost all spontaneity”* while techniques of remote management supported by enhanced connectivity tools were further developed (Duffield, 2018). As humanitarian theatres have grown in being perceived as more insecure, reflections on security management and subsequent access to populations, or lack thereof, have taken different paths. Brauderlein and Gassman identified two main schools of thoughts in humanitarian organisations’ approaches in conflict situation: a ‘system-based security approach’ and a ‘community-based security approach’ (Brauderlein & Gassmann, 2006a). The system-based security strategy relates to a certain alignment among humanitarian actors that are present in a given conflict. This raises questions on divergent interests and objectives of various humanitarian organisations: some to address protection issues while others focus on less sensitive endeavour and might be less willing to expose their staff to risks in getting closer to communities. The development of generic standards, such as the Minimum Operational Security Standards (MOSS) developed for the UN system, paradoxically ensured professionalisation of security risk analysis while often resulting in limiting interactions with populations. The ‘community-based security approach’ considers security depends on the quality of the relationships between humanitarians and civilian populations, as well as with

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<sup>94</sup> Interview carried out on 28.11.2020, ICRC staff, Protection category.

<sup>95</sup> Interview carried out on 04.12.2020, UNHCR staff, Protection category.

parties to the conflict. This approach is privileged in the ICRC and some NGOs working in conflict zones, such as MSF. It is worth noting that for NGOs operating as implementing partners for the UN, approaches to engagement with populations may be influenced as project implementation may be subjected to UN frameworks and regulations. Beside practical views on security management regulating humanitarian personnel's ability to get closer to civilian populations, the concerns for a certain loss of the human touch identified through our empirical research can be understood within the frame of the wider challenges posed to the universality of values core to the IPR, such as *humanity*.

Additionally, a certain loss of compass in the adaptation of the inner working of the protection endeavour relates to a still limited, understanding of digital tools by humanitarian and more specifically protection staff. It is important here to distinguish between the use of a tool and the deeper comprehension of the implications – factual or potential – of a digital tool. An example lies with the notion of processing personal data, a concept that goes beyond digital tools themselves. A protection professional interestingly mentioned “*there is a bit of a cultural change we are experiencing*”<sup>96</sup> as teams look for defining new or adapted contours in protection work. While several humanitarian staff expressed a certain unease with the use and implications of NTIs they are now asked by their management to integrate in their daily work, another aspect that only starts to emerge is the connection between a tool and the wider system in which it operates. Empirical research pointed out a consensus on the need to enhance digital literacy among protection professionals as well as humanitarians in general; this is confirmed by the fact that all 5 protection-mandated organisations targeted in interviews - ICRC, UNHCR, UN OCHA, DRC and NRC – have taken mid-term objectives to reinforce and build such capacity across the organisations and across functions.

- *System gaps*

### *The pilot syndrome*

As we previously developed, humanitarian actors have adopted NTIs with a certain optimism and the lens of improving efficiency and transparency: both notions that have been largely pushed by main donors and are tainted with initial optimistic claims. Drawing up concepts

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<sup>96</sup> Interview carried out on 26.03.2021, DRC staff, Protection category.

from the private sector, Sandvik notably analyses the move towards preponderant humanitarian innovation as part of a larger frame of institutional reform thinking (Sandvik, 2017). Humanitarian innovation is considered as a driver of change while humanitarian organisations remain engaged in continuous competition to secure financing, and operational changes mostly start with incremental adaptations: testing a new tool as part of a “pilot project” for example.

The practice to fund small scale projects (or pilots) was observed to have mushroomed in the humanitarian sector and including for protection programmes: we call this repetition of trials the ‘pilot syndrome’<sup>97</sup>. Small scale pilots would theoretically have the benefits of limiting unintended consequences in terms of coverage, upon identifying shortcomings and ‘trying’ new approaches. However, taking a systemic perspective, the repetition of myriads of pilots with various digital tools has wider consequences: it limits possibilities for humanitarian organisations to internally reflect on lessons learnt, potential adjustments needed and measure possibilities for thought-through adoptions of new tools; it also de facto restrains possibilities for humanitarian organisations to compare notes and collectively tame adoptions of various NTIs. In addition, short-term project funded by specific donors may not allow humanitarian organisations to strategically reflect on their human resources’ distribution and face shortfall in recruiting and ensuring specific expertise needed in implementing pilots with new digital tools. A professional interestingly mentioned: *“humanitarian action is often short-sighted and funding uncertainty comes every 6 months, but that being said, we tend not to use information we have stored nor to share it, there is a question of competition and resources.”*<sup>98</sup>

From a small-scale pilot syndrome perceived as opportunities or what we could call ‘pragmatic thinking’ arises a systemic issue on the mid-term, a problem of ‘in-depth thinking.’ Otherwise argued to be considered as ‘vile bodies’ or ‘data subjects’ through the implementation of technological tools which may further create and produce a space for ‘harm’ – the very opposite objective to what humanitarian protection actors stand for and defend (Jacobsen & Fast, 2019). Nonetheless, the contradiction is not new to the

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<sup>97</sup> Interview carried out on 29.03.2021, NRC staff, Senior management Policy and Innovation category. An interesting comparison with a disease called *‘the severe Pilotitis syndrome’* that the humanitarian body suffers from. He notably argued that we keep trying – on error – the same small-scale pilots without allowing for further reflections on expertise needed nor ensuring longer-term appropriate resources are set to lead short-term pilots in the best possible circumstances.

<sup>98</sup> Interview carried out on 16.04.2021, DRC staff, Protection category.

humanitarian sector: since the development of its professionalisation in the 1980s, there has been a constant paradox between the need to respond -fast- and pragmatically in emergencies and the equally important need to reflect on principled and systemic approaches. Relying on our empirical research, adverse consequences of opportunistic objectives in a fast-changing technological landscape leads to humanitarian staff concerns, as it was well-illustrated in an interview with a UNHCR personnel: *“the humanitarian system is in a transition period of 20-30-40 new tools, but my concern is that technology keeps evolving and we may miss creating linkages between those tools.”*<sup>99</sup>

### Interoperability between existing tools and systems

The pilot syndrome had led to several useful experiences, and for NTIs that have been retained to continue supporting protection work, an important systemic reflection turns to the question of inter-operability between tools and within humanitarian systems. Interoperability is important for efficiency, a goal pursued by all humanitarian organisations to secure donors’ funding; however, the efficiency a tool can provide does not necessarily equal an organisation’s system efficiency. For instance, we previously discussed the development and adjustments in various protection databases used to collect information about individuals’ experiences and to identify trends and analyse patterns of violence. Some protection databases can collect both quantitative and qualitative information, possibly linking events to geolocations: a clear advancement for potential visualisation of context-specific protection analysis. However, some digital tools do not allow to integrate images or videos that relate to protection events: different tools and systems are thus imagined and used, at times leading to have parallel systems that support the same programme and same protection objectives. Incentives for cooperation among protection actors is important: an example of inadvertent consequence in donors’ requirement for efficiency relate to the fact that it is at times considered ‘more efficient’ for protection teams to roll out a survey through KoboToolbox and Power BI tools than to coordinate and collaborate with other protection actors on the ground, which would require the development of a Memorandum of Understanding (MoU) on information-sharing protocols.

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<sup>99</sup> Interview carried out on 12.03.2021, UNHCR staff, Protection category.

From a fast expansion in the adoption of new tools, a certain self-realisation of the lack of a systemic, consistent approach was shared in various interviews: it subsequently questions the sought efficiency through pilots in a complex humanitarian system characterised by high competitiveness among its protection actors. The increasingly clearly identified need to harmonise approaches and methodologies was reinforced: cooperation among humanitarian actors representing one of the key elements. A useful example is the DEEP project previously mentioned, which brings different actors together to collectively tackle a sheer amount of qualitative data for which 5 dedicated staff manually ‘train’ an algorithm by reviewing, defining and qualifying information with ‘tags.’ Beyond the tool itself, it is the collaboration between different organisations that at the same time collaboratively define concepts to interpret complex realities that is relevant. Interestingly, after 5 years of development, a notable long period in comparison with field-implemented short-term and short scale pilots, the DEEP was planned to be ‘tested’ at the end of 2021 in 3 different UN OCHA offices: small, medium and large structures to identified best suited uses of the digital tool. Reflecting on the above, one of the humanitarian professionals interviewed mentioned *“it is not only about technology, it is about linking, thinking processes with technology. If you do not have the processes in place, it will not be helpful.”*<sup>100</sup> Altering frames of reflections from small-scale to systemic-scale and from short-term to mid-term objectives, efforts are now engaged to expand small pockets of collaboration towards enhanced coordination between the various existing digital tools (Inter-Agency Standing Committee, 2021). In doing so, a transition of responsibilities from project management towards organisations’ leadership has been undertaken.

#### Top-down imbalance & ungoverned field

Empirical research pointed out practices that challenge the understandably sought efficiency in humanitarian protection projects. In a given country, protection professionals were said to manoeuvre different parallel systems that were required for different objectives: donor reporting and protection case management. A protection staff questioned the objective of technology, saying it is great when it serves the purpose of supporting a civilian individual

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<sup>100</sup> Interview carried out on 06.04.2021, UN OCHA staff, Information Management/IT category.

with protection needs, but not solely for reporting to donors, saying *“technology is used a lot to serve the purpose of reporting, but not so much for the activity, and this is where there is a disconnect I see a lot in the field.”*<sup>101</sup>

This concern was echoed by several others that reflected on the divergence of their time away from face-to-face contacts to favour polished reporting digital tools. Ground examples and insights from some humanitarian professionals allow to peruse wider alterations and a clearly identified gap of governance regulating the use of NTIs in the humanitarian system, and more specifically for the protection endeavour. This system gap and governing new fields and domains NTIs opened can be considered at two levels: firstly, in regulating the use of NTIs within and across protection actors in a principled manner; and secondly, through adjusting to societies’ evolutions in using digital tools to lead in-depth assessments of opportunities and risks they may offer. Many instances of humanitarian staff using unregulated tools and personal accounts, software and devices represent a dangerous un-governed field with heightened risks.

Finally, building on the previously mentioned exponential development in the use and adoption of NTIs, two types of digital tools are in inception phases but can be expected to trigger further reflections in the future: AI and predictive or anticipatory analysis. Artificial Intelligence, as the examples of the DEEP project or the ‘querying without sharing’ approach referred to earlier show, calls for weighed reflections and training to be put to use for actual support to programme implementation. If protection-mandated organisations thoughtfully reflect and prepare for potential implementation, ethical considerations related to the place of decision-making, in human hands or through human-guided machine learning can be further expected. For its part, predictive or anticipatory analysis requires at least 5-10 years of -structured- historical data. With the advent of the datafication culture which has significantly developed since 2010s, the humanitarian sector is maturing towards the future possibility of drawing on this currently acquired data on population, displacement tracking matrices and thematic-specific humanitarian data to develop predictive models. Although the development of this NTI can be expected to mature further in the mid-term, various humanitarian organisations see its potential added value and have started to launch reflections along with academia participation (UN OCHA et al., 2020).

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<sup>101</sup> Interview carried out on 16.04.2021, DRC Staff, Protection category.



- *The “time-in-between”*

Through our empirical research, the lexical field of time was staggering to describe the uses and implications of NTIs in protection work. A switch away from the pen and paper towards exponential integration of NTIs changes ‘how’ humanitarian professionals work is carried out. Information on civilian populations’ plight is collected, consolidated and analysed in a faster way, and real-time information is often sought to support decision-making in a faster way. Supporting efficiency objectives, NTIs are overarchingly referred to as a mean to “*prove to donors they are the best in class,*” thus racing into adopting new technologies to stay competitive and securing funding. According to a humanitarian professional, what is fundamentally different today from the 1990s ‘*radio des milles collines*’ in Rwanda is the speed, scale and depth of how information circulates, as well as the actors and protagonists that can take part in either creating information/content or in consuming and sharing information. Similar to the time needed for humanitarians to fully absorb NTIs (individual professionals, organisations and systems), this time in transition is paralleled with the time it takes for Governments to regulate NTIs: requiring to be understood first, then positive and negative consequences to be identified, and finally, new legislations to be developed, adopted and enforced. At supra-national level, possible discussions and eventual agreements between Governments on an issue require conducive geopolitical settings and convergence of interest at a given time. Looking at how NTIs are used by Governments to pursue hard power advantages – military and intelligence – makes future convergence of Governments’ view towards an agreement regulating NTIs’ governance at international level difficult to predict. The time-in-between remains mostly ungoverned.

In conclusion, inevitable trade-offs between the services made possible by NTIs and the potential privacy and security risks for the parties involved raised ethical considerations and are to be further explored. Beyond the necessary contemplation of the practical uses of NTIs in protection work, a pivotal issue that remains to be largely addressed is the reflection about considering NTIs in protection as “*principled means to an end*”<sup>102</sup> - which is to limit or prevent civilian populations’ exposure to risks and violations in conflict. According to Forsythe, Betts and others, the concept of humanitarian protection has moved from the periphery of world

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<sup>102</sup> Interview carried out on 04.12.2021, UNHCR staff, Protection category.

affairs to the centre stage over the past decades: concerning refugees, IDPs, mixed migration, the calls for reflections of non-working systems and the need for adaptations of the “IPR” have been several (Betts, 2013; Betts & Collier, 2017; Forsythe, 2001a). In the next chapter, we will further explore the ethics and humanitarian politics that relate to NTIs and especially as delve more in-depth into our research on the IPR alterations.

## Chapter 4: NTIs, ethics and humanitarian politics

The exponential development of various New Technologies of Information (NTIs) in a digitally connected network age is being integrated at various paces in societies globally. The humanitarian sector has been part of the trend towards an increasing dependence to digital tools, which has significantly accelerated since the last decade (2010). This has affected humanitarian work at different levels. In *Chapter 3*, we have previously investigated technical aspects of this ongoing development and some of its consequences in terms of internal functioning and more specifically in protection work. Practical experiences in using NTIs, by armed actors as well as humanitarians,<sup>103</sup> represent a launching pad allowing to nourish and substantiate our research towards normative and theoretical levels. Bridging theory to practice form an integral part our research on the adjustment of power relationships among various stakeholders that are part of the International Protection Regime (IPR).

In this chapter, we will further inquire, reflect and question the ethical and political implications of the use of NTIs on the meanings and values of humanity and dignity that humanitarian protection actors strive to defend. As NTIs are developed (mostly by the military and the private sector), new moral consciousness and reflections are triggered around considerations of the ‘acceptable’ *versus* what is considered ‘unacceptable.’ In doing so, we will explore beyond the ‘tools’ to focus on the *meanings* and nascent *ethical standards* that are being re-articulated by the users (military, humanitarians, governments) themselves. The evolution calls for a re-thinking of the narrative framework through which the relationship between a person’s identity, data and body is understood and conceptualised, at times in tension with defended universal values of *humanity* and *dignity* (ref. *Chapter 1*).

In this chapter, we contemplate that the means of warfare have significantly transformed with the development of NTIs, consequently triggering rich ethical debates along with discussions on their practical use in conflict. As our research focuses on humanitarian protection in conflicted areas, we will draw a parallel reflection on ethical considerations in relation to both subject-matters of (1) warfare and (2) humanitarian ethics – considering they are tied together in their evolution. We will then focus on challenging attempts to

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<sup>103</sup> This encompasses our field research through interviews with humanitarian professionals.

operationalise an ethical humanitarian endeavour following a rising consciousness on opportunities and risks the use of NTIs leverages, putting stress on humanitarian organisations and, more broadly, on the humanitarian system. Thirdly, as a response to this external stress which triggers adaptations and alterations, we will draw on what we identify being an emerging governance aiming at harnessing humanitarians' use of NTIs in an ethical – or some may call *responsible* – manner. Lastly, we will focus on the relationship between civilians and humanitarians and the questioning of the compass guiding the protection endeavour.

## I. Why do NTIs trigger questions about ethics?

The element of NTIs is to be comprehended in the larger frame of evolving international relations, including the longer-term power adjustments and subsequent narrative developments that are used to justify waging war (*jus ad bellum*), warfare (*jus in bello*) and humanitarian action in conflict theatres. Since the turn of the XXI century, the highly prepared and coordinated attack from Al-Qaida on the US on 11<sup>th</sup> September 2001,<sup>104</sup> commonly referred to as 9/11, resulted in around 2,996 casualties and triggered a “paradigm shift” in international relations (Cox, 2002). The development of a new narrative called ‘*Global War on Terror*’ (GWOT) has had far beyond ripple-effects, not the least a collision of previously cooperating but separated security and humanitarian spaces. We rely on various academic fields to support our research, among which political scientists bring a central view, reinforced by jurists, sociologist and political philosophers. To start with, Finnemore brings useful insights into reflections around ‘interventions’ as a particular use of force. She draws on examples of interventions, including the ‘humanitarian military intervention’ as “*a window onto the changing character of international society, the purpose to which its members use force, the ends they value*” (Finnemore, 2003). Noting humanitarian military interventions have been existing for at least two centuries, she defends it is not the act of intervening that

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<sup>104</sup> A high scale coordinated attack against civilians on the US soil, 9/11 not only made a large number of victims (approximately 3,000) but has also “shocked” thousands of people in the US and worldwide. The US, often considered as a ‘superpower’ or hegemon, has been challenged by a Non-State Armed Group – al-Qaida in an unprecedented attack. The US response has impacted some foundational elements the international system was built on.

has changed but its form and meaning: authorisation from an international organisation (the UN) for multilateral intervention under humanitarian narratives constitute this new form. Holzgrefe defines such intervention as *“the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied”* (Keohane & Holzgrefe, 2005). According to Ticktin, seeds that developed in the 1970s and 1980s around the notion of ‘right to intervene’ prepared the ground for the above-mentioned paradigm shift after 9/11. Humanitarian interventions became more frequent in the 1990s in what has been described as *“waves of emergencies”* - the use of the word emergency was integrated in humanitarian actors’ reports with for example, several references to ‘complex emergencies’ which referred diplomatically refer to asymmetric conflict involving multiple armed actors (Calhoun, 2004). Pandolfi and P. Rousseau argue that:

*“Between 2001 and 2005, the ‘confusion’ between militarisation and humanitarian intervention was only to worsen. The doctrine of the responsibility to protect saw power and humanitarian management being in fact, firmly integrated into the realpolitik of state strategies, albeit under the control of the Security Council of the United Nations”* (Pandolfi & Rousseau, 2016).

While the topic of the Responsibility to Protect (R2P) is not the subject of our research, we nonetheless cannot ignore the consequences of its development blurring the lines of the humanitarian sphere with security components. Although *“humanitarian war”* would seem to be an oxymoron, the contradictory pairing of those notions has been used to put state sovereignty aside *“in the name of moral principles and saving lives”* – providing a new version of the Just War theory (Ticktin, 2014). Here it is worth noting the evolving use of terms: war and military interventions. A military intervention may be understood as a new party to the conflict (or international coalition composed of several member states) joining an already existing conflict or triggering a new one and thus waging war. However, as Finnemore notes, the term ‘intervention’ is often used for compromises of sovereignty by others that are defended on exceptional grounds, while the notion of exception has varied over time and following interests (Finnemore, 2003).

In a state of exception<sup>105</sup> - as defined by Agamben - and that has gained traction to become a new norm, contemporary interventionism has been legitimised using terms of *moral obligation* or otherwise called '*humanitarian morality*' to defend military interventions (Agamben, 2005; Fassin & Pandolfi, 2010). Interventions like the one in Kosovo (1999) - strongly using a humanitarian narrative - and the one in Iraq (2003) - where the humanitarian argument was one justification amidst a security-dominated narrative – were both conducted without the UN Security Council backing. This type of interventions suggests a shift from legality and international law towards legitimacy through the invocation of the humanitarian argument – albeit a different degrees (Fassin & Pandolfi, 2010).

Although both military and humanitarian actors place themselves under the same state of exception, which mobilises technology to intervene, they pursue different logics: military interventions defend a logic of security while humanitarians defend a logic of protection of the civilian populations (Fassin & Pandolfi, 2010). Nonetheless, the clearly distinctive objectives and approaches defended by several humanitarian actors to maintain what is often called the 'humanitarian space' can be construed, and frontiers are blurred between the different logics, at least in some views. Besides major shifts in IR, negotiating for the humanitarian space is a traditional debate. Brauman notably discusses "*where to draw the line*" in relationships between humanitarian agencies and the military as principles of neutrality, impartiality and independence are tentatively operationalised (Brauman, 2012). Walzer, one of the most prominent theorists on the 'Just war' largely reflects on what he calls "*thin and thick moral*" in the US and abroad. In his reflection, he notably considers the contemporary argument about *relativism* and *universalism* that may be understood as an expression of the extent of legitimacy about morality resonances (Walzer, 1994). Thin morality, in its minimalist expression, is often used to describe the *-thin-* set of claimed universal principles that have been *-thickly-* applied to historical circumstances. Describing how minimalism, or a 'moral minimum' can be seen in social practices, the author notes "*the practice of war brings with it ideas about combat between combatants, the exclusion of non-combatants, civilian immunity*" while recognising those 'ideas' are challenged (Walzer, 1994). As we extend Walzer's views to the challenged IPR since the turn of the XXI century, we consider the core values of - *humanity* and *dignity* - claimed to be universal, represent the

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<sup>105</sup> Giorgio Agamben presents the notion of 'state of exception' as a new paradigm of government that is highly ambiguous. The state of exception is situated between 'public law and political fact.'

minimalist moral expression<sup>106</sup> of the value of each and every person's life. In the post-WWII era, the western-dominated international relations provided the opportunity for a thickening of the moral values of the civilian life and were enriched by new bodies of law reinforcing the formation of the IPR. Since the turn of the XXI century, the changing international landscape and the exponential development and use of NTIs are important elements to grasp while researching alterations the IPR is currently being exposed to and seeking to readapt to.

Building on the use of NTIs in conflict, different actors have been developing and using NTIs for various purposes: notably as means of warfare. The use of drones, of unmanned technology to support remotely guided missiles and increased reliance on biometrics identification tools are examples of practices that have triggered significant academic debates among experts in international law, ethics and philosophy, and political science among others. Using moral philosophy would shed light on human practices by explaining relationships between technology and other goals, thus situating NTIs within the human, the social and the political (Bietti, 2021). Facial recognition applies to two variations of biometric systems that are unique to a person: verification and identification. Ethical discussions on risks point out to three important elements: firstly, potential harms based on facial recognition biases – potentially specifically affected segments of the population based on their bodily features, which may include delays, inconvenience, embarrassment, harassment, false accusation up to imprisonment (Selinger & Leong, 2022). Secondly, an erosion of trust in the technological tools being used but also authorities or actors using them. Lastly, philosopher P. Brey considered that externalising a body part by turning it into an informational equivalent can have profound implications for how power is deployed (Brey, 2004). He further explains that *“the process separates an aspect of the self from its owner, others can seize control of it,”* while a person's face is not exclusively ‘theirs’ and can be disposed (Brey, 2004). We can easily capture concerns that could put already vulnerable civilians at risk during conflict: new digital risks.

Similar reflections, albeit at a less advanced stage, are also being held on ethical questions created by the use of NTIs in the humanitarian sector. The use of NTIs has refined the nature

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<sup>106</sup> Walzer notes minimalism is the product of mutual recognition among the protagonists of different fully developed moral cultures. According to him, it consists in principles and rules that are reiterated in different time and places, and that are seen to be similar even though they are expressed in different idioms and reflect different histories and versions of the world.

of how conflict emergencies unfold, including the role of humanitarians in this evolving and sensitive information ecosystem (Campo et al., 2018). In this moving and immature field, the *various* uses of NTIs, including to kill with a logic of security, and to protect in the name of humanity and dignity in conflict have contributed to blurring the lines on fundamental principles and values. We will build on a paralleled reflection between ethical discussions on warfare methods and in the humanitarian sector to support an enhanced understanding of its impacts on the IPR.

### 1. *Advanced ethical debates on the evolution of technological warfare: a logic of security*

NTIs, especially developed by the military, saw the rise of different new warfare means – weapons but also other tools that support warfare efforts without necessarily being in charge of firing. Several authors have analysed increasingly asymmetric wars between, at least, a regular army and a non-state armed group (NSAG) or more. It seems appropriate and important to analyse this asymmetry through the lens of NTIs that are used in warfare to reflect on what might be altered in terms of meaning, moral and ethics. Some argue that digital “*artefacts have political choices embedded in their design and entrenched these politics in their applications*” (Sparrow, 2021). Sparrow views technologies beyond the sole materiality they represent for some, or immateriality for others, as a product of the circumstances in which they are developed, acknowledging they are often developed to advance political agendas – including for warfare (Sparrow, 2021).

- *Technology-supported asymmetry and moral shifts*

Kahn, in *The Paradox of riskless war*, defends that a paradox arises when the pursuit of asymmetry undermines reciprocity in the capacity to kill the enemy (Kahn, 2002). He considers the morality of the battlefield as a variation of the morality of individual self-defence, which is then lost along with the possibility of chivalry (*Chapter 1*). The element of NTIs can be considered as a force-multiplier for a moral shift, Kahn notably argues that:

*“A regime capable of targeting and destroying others with the push of a button, with no human intervention but only operation of the ultimate high tech weapon, propels us well beyond the ethics of warfare”* (Kahn, 2002).



Useful reflections on the use of drones – which Sparrow sees under the category of ‘robots’ – point out to the combination of both the complexity of computers with the materiality of tools. Discussions on the US’s Predator and Reaper drones allow for ‘unprecedented’ power facilitating ‘risk-free killing’, meaning the affordances of the technology arguably determines its use and thus its political significance (Sparrow, 2021). The use of such new technologies of information for warfare raises the important and thus far unresolved question of responsibility – both in legal and moral terms. Whether the responsibility for harming civilians, potentially killing civilians, lies with the designer, the operator, or the member who has had some level of decision-making on an attack importantly remains a grey-zone.

Building on this reflection, G. Chamayou argues that there is a crisis of legibility with contradictions in the practice of war (Chamayou, 2015). According to this author, the very sense of war has been altered by the use of drones, which has challenged the traditional notion of combat by eliminating the element of reciprocity. Drones, a NTI advanced tool, is considered to have turned asymmetrical war to a “*one way unilateral war*” (Chamayou, 2015: 24). Investigating practices to draw on political knowledge; he notably reviewed profiling activities through tracking of phones in the early 2010s to identify ‘targets’ through ‘signature strikes’ – which would focus on unknown individuals based on identification of a behaviour considered to be in line with patterns of a terrorist group. Chamayou raises the question of the gaps between ground and digital realities, notably asking *how to know that images collected represent ground reality*. The distinction between combatants and civilians, and more importantly the impossibility of distinguishing, is politically problematic. Zehfuss takes the reflection one step further when she argues that the principle of ‘non-combatant immunity’ is a central part of the argument that produces civilian deaths as acceptable *if* they are not intended (Zehfuss, 2012).

Contemplating how asymmetry in several conflicts relates to the principle of distinction between combatants and non-combatants (or civilians), a certain loss of value for the moral obligation to distinguish between the two is observed and even challenged by adjusted narratives in an epistemological battle for *shifting moral*. Yadlin, Major General for Israel and A. Kasher, Professor of Ethics and Philosophy at the Tel Aviv university, provide examples that question international ‘universal’ law of IHL and IHRL and their prioritisation of civilians’ rights in war time and, instead, put precedence to state’s right to favour its own citizens while leaving civilians of other countries outside this category (Kasher & Yadlin, 2005b, 2005a). They

argue that the traditional paradigm of warfare rests on assumptions that do not hold for a state facing terror: characteristics of 'activities of terror' are considered to be of a different nature as persons who allegedly play a major role are not in military uniform (Kasher & Yadlin, 2005b). In doing so, they defend that ethical principles do not sanction a strategy of assassination but do allow its use as a morally justified tactic under certain conditions (Kasher & Yadlin, 2005a). Although this debate is not new in international relations, strong reactions were opposed to this view, notably from Walzer and Margalit, who responded in 2009 that Kasher and Yadlin's claim results in considering a war when the safety of "our" soldiers takes precedence over the safety of "their" civilians. A claim that Walzer and Margalit call "wrong and dangerous" as it erodes the distinction between combatants and civilians, a critical element of the theory of justice in the conduct of war – or *jus in bello* (Walzer & Margalit, 2009). If the principle of non-combatant protection is widely endorsed and even considered obvious, it represents a system of thoughts that is being challenged (Zehfuss, 2012). Bellamy recognises certain 'grey-area' questions or what represents the blurred lines, challenging distinctions between combatant and non-combatants or civilians (Bellamy, 2006). This 'grey area' relates to the politics behind distinction and the assertive narrative of the "war on terror" for which the deletion of the notion of non-combatant would ease justifications for certain engagements.

Although not mentioned in an explicit manner, Yadlin and Kasher's stance refutes claims of universal worth of each human life to instead defend a pyramid-like hierarchy where the lives of soldiers of a party to a conflict would be considered of higher value than the lives of civilians (non-combatants) of the opposing side. This notion of relative humanity was also observed and analysed by Moyn in what is called the 'agenda of humane war,' driven both by the availability of precision weaponry supported by enhanced NTIs but also a need to protect image in the post 9/11 era (Moyn, 2021).

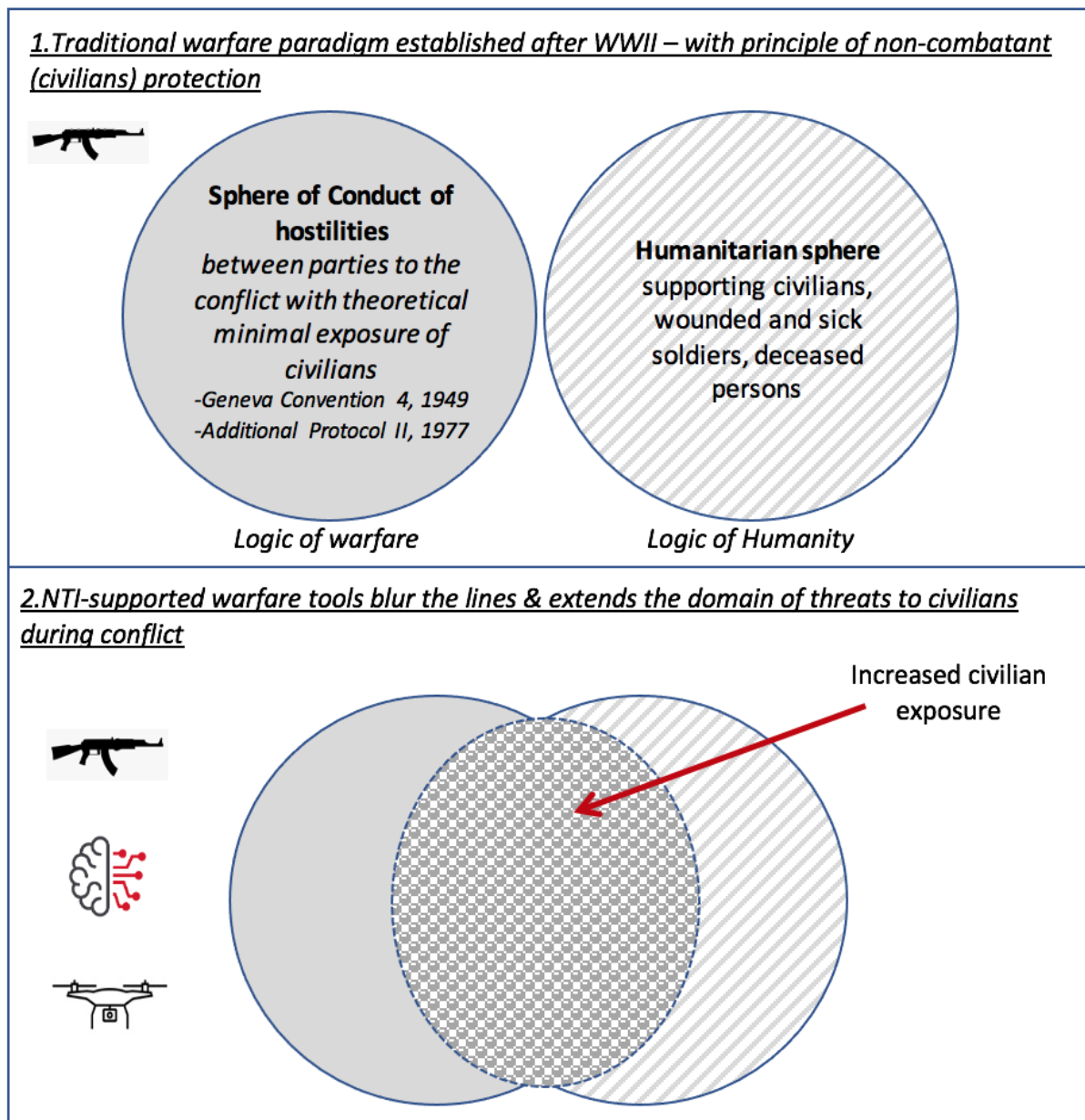
A consequence is that distinction, or the sharp line between combatants and the civilian population theoretically intends to delineate and compound the domain of threat. Blurring lines means a whole population is exposed to threats:

*"As the asymmetry increases, so does our need to find the grounds for a common belief in the legitimacy of the deployment (of force)" (Kahn, 2002).*

This narrative of exception along with new *-technologically advanced-* military engagement goes beyond the internationally recognised traditional warfare paradigm that was established in the XX century and significantly developed following the end of WWII (see *Chapter 3*). We acknowledge that although the traditional warfare paradigm offers a frame protecting civilians during conflict, the practice of warfare has regularly challenged established rules and affected civilians in several legal and illegal ways: from forced displacement to being wounded or killed. Bridging theory and international law to civilians' ground losses, the IPR established in the traditional warfare paradigm creates the possibility for dialogue on identified protection violations and subsequently a certain accountability of belligerents' behaviours. As argued above, the NTIs' variable as it relates to methods of warfare creates the possibility of firing beyond traditional battlegrounds. As a result, the lines that the traditional warfare paradigm sought to delineate have been blurred and a wider exposure of civilians during conflict ensues far beyond conventional battlegrounds. We therefore question how the logic of warfare, revisited with a narrative of exception and armed with technology-advanced tools; challenges established frameworks that intend to protect civilians in conflict and may create new kinds of protection violations.

The figure below illustrates our theoretical reflection around this ongoing transition that has been reflected in recent asymmetrical wars.

Figure 9: Blurred lines, technology-supported warfare methods and increased civilians' exposure



- *Shivering foundations: a humanity of political convenience?*

Considering the use of Precision-Guided Munition (PGM), Zehfuss reflects on the advanced technological tool which is presented as “*more acceptable in an ethical sense.*” In ‘*Targeting: precision and the production of ethics,*’ she questions what is meant by precision of “high technology weaponry” and tackles with elegance the most delicate issue, meaning *how* this precision actually entails protection of non-combatants or civilians (Zehfuss, 2011). The author argues the advancement of technologies may lead to an increasing or at least a

different exposure of civilians, as did the possibility of aerial warfare when it became practicable in warfare. Zehfuss questions the assertion that increases in precision have in some way improved ethicality or humaneness of warfare and considers it problematic to tie enhanced precision with the underlying assumption it can -only- be a “good thing” (Zehfuss, 2011). Nonetheless, there is a certain recognition of an under-examination of practicalities, evidence and implications (Jevglevskaja & Liivoja, 2021; Zehfuss, 2011). International protection vocal guardians, notably Human Rights Watch (HRW) have been contributing to ongoing debates about robotic weapons and implications of their use for civilians. In ‘Losing humanity,’ reflections on the *un-man-ned* (unmanned) weapons notably include three categories with varying levels of autonomy<sup>107</sup> (Human Rights Watch, 2012). The development of ‘killer robots’ is significant of a retrieval of humans/soldiers from the direct battlefield and contribute to pursuing war as a distant reality. According to HRW, “*even with such compliance mechanisms, fully autonomous weapons would lack the human qualities necessary to meet the rules of international humanitarian law*” (Human Rights Watch, 2012). This claim was vehemently contradicted by International Law Professor Schmitt, who argues in the Harvard National Security Journal that autonomous weapon systems are not unlawful *per se* (Schmitt, 2013a). Beside the new technological military capability, it is the circumstances of their use that would define their legality: for instance, Schmitt argues that even an autonomous weapon system that is completely incapable of distinguishing a civilian from a combatant or a military objective from a civilian object can be lawful *per se* – if used in situations where there are no civilians (Schmitt, 2013a). According to Mauri who explore and reflects on the use of AWS and the protection of the human person, “*the salient feature of AWS is grasped by existing rules and principles only to a limited extent*” (Mauri, 2022: 175). In Mauri’s view, the current legal ‘accountability gap’ for potential AWS wrongdoing, addressing the difficult question of ‘who’ (or what, some may argue) to blame in case of AWS ‘wrongdoing’ (protection violation) would require expanding the current international legal framework towards a “model of absolute liability” – through an *ad hoc* treaty instrument building on already existing IHL provisions (Mauri, 2022).

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<sup>107</sup> HRW notably presents 3 categories: human-in-the-loop weapons that can deliver force only on human command, human-on-the-loop weapons that can select targets and deliver force under the oversight of a human operator who can override robots’ actions, and human-out-of-the-loop weapons that are capable of selecting targets and delivering force without human input nor interaction.

Psychologist and formerly member of the US Military, Dave Grossman advanced a theory of “*resistance to kill*” – according to him, the closer to the people - *physically*, the more resistance there is to kill (Grossman, 1996; Grossman & Paulsen, 2016).

Building on a machine-human spectrum, HRW further develops its argument openly stipulating that “*as inanimate machines, fully autonomous weapons could truly comprehend neither the value of individual life nor the significance of its loss*” and concludes that allowing such NTIs designed to kill to take life away comes in contradiction with the principle of dignity (Human Rights Watch & International Human Rights clinic, 2014).

Eliminating the human involvement in the decision to use lethal force in armed conflict is considered to undermine both the application of international law protecting civilians and other non-legal protections for civilians – such as fundamental principles of *humanity* and *dignity*.

Providing an engineering perspective, T. Gillespie argues for a need to differentiate between *automation*, *autonomy* and *control* as there are not current definitions. He further defends the need to discuss the level of autonomy of a subsystem which allows to identify which decisions are under human control within a weapon system (Gillespie, 2019).

- *Distorting concepts to fit a new narrative - to kill so to protect or distorting narrative to defend a humanitarian argument*

Defenders of the use of drones have engaged in a discursive argument claiming that drones are the “most ethical arm” that has been created, at times calling in a “*humanitarian arm by excellence*” (Chamayou, 2015: 30). Grégoire Chamayou reflects on the reverse sense of the words as ‘humanitarian’ - meaning to take care of lives in distress – is considered inappropriate to describe killer drones (Chamayou, 2015). It is nonetheless used through a humanitarian narrative claiming that it reportedly protects the lives of the State engaged in the conflict through the use of drones: the frame of humanitarian work in conflict is thus taken out of its geographically grounded space in the theatre of conflict to be entrenched in global politics. The ambiguous term of humanitarianism is thus used by a diverse range of actors who claim to operate under the same banner and is also utilised to justify various interventions – military and humanitarian proper (Donini, 2010). Beyond, the use of robotics is not only concerned with ‘killer robots’ but should encompass a wider analysis that capture

a reflection of systems, networks and swarms. Military technology is not employed in a political vacuum but rather 'embody' specific political and military objectives (Coeckelbergh, 2011).

As we have seen above, the use of NTIs in warfare has triggered significant debates among legal, political science and theorists of ethics and philosophy as it relates to the practice of warfare. The useful consideration of practices sheds light on the inner-workings and mechanisms of new technologies of information tools; yet it is necessary to go beyond such consideration to grasp the links between tools – or the *means* – and their objectives, which are *political ends* when it comes to warfare. Coeckelbergh provocatively argues whether ethics of robotics are about robots, we tend to agree that the NTIs variable raises practical questions, but most importantly triggers fundamental questions on ethics and moral of humanity that are constitutive elements of the IPR for civilians in conflicts. More precisely, Coeckelbergh, resonating with Jacobsen's views on the politics of humanitarian technology, argues that robots are not mere means to ends but rather 'shapes and changes these ends' (Coeckelbergh, 2011; Jacobsen, 2015).

Pondering the human role in autonomous weapon designs, Cummings argues that computers cannot yet achieve knowledge-based reasoning, especially for the task of target detection and identification where uncertainty is very high (Cummings, 2021). According to him, the 'brittleness problem' in the programming of computer algorithm and the inability to replicate the intangible concepts of intuition, knowledge-based reasoning and 'true expertise' are for now outside the realm of computers - and thus lie with human expertise (Cummings, 2021).

While most reflections have drawn attention to potential risks NTIs encompass as well as loss of human control, most recent thinking contribute to reversing initial cautious approach to advocate for a more 'balanced' consideration of NTIs as they are used in warfare. In doing so, and as illustrated above, the argument of 'humanity' and potential risks were put forward in opposition with the use of NTIs in battle. Looking at autonomous weapon systems (AWS), authors argue that there are lasting uncertainties around the object of potential regulation, while years of discussions on the technology part led to a shift in focus towards considering the degree of 'human involvement' or 'meaningful human control' (Jevglevskaja & Liivoja, 2021). Amidst lasting difficulties to clearly define and capture the political and ethical

inference that characterise NTIs, a possibility for testing potential “humanitarian benefits” of AWS is also called upon (Jevglevskaja & Liivoja, 2021). Providing an in-depth legal interpretation of the HRW’s call to ban autonomous weapons, Schmitt rather points out that a ban on AWS before their potential is understood may have the effect of denying commanders a tool for minimising the risks to civilians in certain scenarios (Schmitt, 2013a). Taking this stance a step further; Galliot and Scholz even use a stronger language as they argue for a ‘humanitarian imperative’ to develop an NTI tool called *MinAI* (minimum Artificial Intelligence) to take ‘life-saving decisions’ (Scholz & Galliot, 2021). In their original view, authors assert that while AWS are likely to be incapable of action leading to attribution of moral responsibility, at least in the near term, they might however autonomously execute “*value-laden decisions embedded in their design and in code, so they can perform actions to meet enhanced ethical and legal standards*” (Scholz & Galliot, 2021). Favouring a *MinAI* ‘ethical robot’ instead of what they call a maximally-just ethical machine (MaxAI) that would require significant ethical engineering; *MinAI* would be hard-coded, meaning that far less interpretation would be required. In this theoretical tool of *MinAI*, authors assert specific conditions such as distinction between the ethically permissible and impermissible – including the application of force against protected persons and objects, or those who are “*clearly non-combatants*” with a view to achieving a reduction of ‘accidental strikes’ (Scholz & Galliot, 2021). If authors recognise *MinAI* would not replace target analysis, we consider the innovative intellectual reflection worth-noting while we also find its potential operationalisation difficult. As details are essential in chaotic settings conflict theatres represent, the ‘clearly non-combatants’ might not be so evident to identify beyond the theory, especially as parties to the conflict pursue pressured political and military objectives.

- *Discussions on normative frameworks regulating NTIs in warfare*

Unexplored territories do not solely concern humanitarian actors using NTIs, there are also core to military interventions through their development, testing and use of NTIs to support military objectives. A combination of inevitable and incremental development of automated systems to the point of genuine autonomy raises not only operational questions but also profound legal and ethical ones (Anderson & Waxman, 2013). Looking at AWS, Anderson and Waxman bring forward an interesting element of analysis: *time*. According to them, calls for



forbidding autonomous weapons are misguided and they see their development as incremental and inevitable (Anderson et al., 2014; Anderson & Waxman, 2013). Instead, they consider that beyond Research and Development (R&D) phases of AWS, it is the time to set regulation for their use, before such tools become hardened and entrenched in their architecture, making subsequent adjustments more difficult. This need for formal assessments of the impact and evaluations is also echoed by protection outspoken guardians such as HRW, which suggests the importance of the time element as it considers different armies would acquire or develop even more advanced technological capabilities by 2025-2030 (Human Rights Watch, 2012).

Advocating for a recognition of a need for a framework regulating the use of AWS, Anderson believes the *“law and ethics ought to inform and govern autonomous weapon systems”*- notably through law, codes and rules (Anderson et al., 2014; Anderson & Waxman, 2013). Anderson and Waxman notably defend that machine programming would never reach the point of satisfying the fundamental and legal principles required. Elements of human emotions, compassion, empathy are considered irreplicable in making lethal decisions on a battlefield (Anderson & Waxman, 2013). The need to keep the human element inside the firing loop is considered instrumental, especially as it would otherwise contribute to undermining the possibility of holding perpetrators accountable for potential protection violations (Anderson & Waxman, 2013). This last element is pivotal for understanding how the evolutions of humanitarian protection is inscribed in wider societal transitions towards integrating various uses of NTIs and how it may contribute to the perpetration of violations of civilians’ protection in conflict. A re-thinking of the normative framework is also what B. Ajana also defends as she considers how the use of big data in ‘augmented borders’ creates fundamental questions on what it means to be ‘human’ nowadays and calls it an urgent ethical task to better grasp how the use of big data translates into the lives of people (Ajana, 2015). According to her, far from being a *“universalistic and all-inclusive category”* – *humanity* has systematically been categorised through logics of inclusion (ie. citizens) and exclusion (i.e., refugees, asylum seekers) – for those perceived as ‘others’ and who face an imposed embodied digital identity, there is a danger of being left unrecognised and unacknowledged (Ajana, 2015, 2020). This concern was also resonated by De Lauri who mentions a *“a feeling of having been ‘neutralised’ and ‘homogenised’ by humanitarian categories”* being common in contexts such as contemporary Afghanistan (De Lauri, 2016).

In-depth discussions have been and continue to be held among jurists, military commanders, and humanitarians – including those among them that are considered the guardians of the Geneva Conventions, i.e., the ICRC. Two elements of international law are often referred to in those discussions: the Martens clause from The Hague Convention of 1899, which we previously presented in Chapter 1, and the Article 36 of the Additional Protocol I of 1977 in Chapter 2, which openly stipulates the following:

*“In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party” (ICRC, 1977a).*

Considering the relevance of the Martens clause for the review of new technological weapons, and notably AWS, Schmitt considers that *“by the turn of the 21<sup>st</sup> century, the likelihood that future weapon systems, including those that might be autonomous, would not violate applicable treaty and customary law, but be unlawful based on the Martens clause, had become exceptionally low”* (Schmitt, 2013a). While other bodies of international law have contributed to restricting new technological warfare means, article 36 of Additional Protocol I, as mentioned above, is mostly commonly used by jurists as the basis for legal reflections around the use of new technological tools in warfare.

Turning to cyber operations and the application of IHL in conflict, it is important to recognise that such operations have significantly developed over the turn of the XXI century, thus on the last two decades, and have subsequently crystallised intense discussions. Pursuing a logic of security, there is a risk of potential significant disruption and harms to humans, including civilians in conflict. Nonetheless, ICRC jurists have taken a cautious approach stating that while cogent legal reasons and increasing international support exist for the conclusion that IHL applies to cyber operations during armed conflict, the issue does not enjoy universal agreement – yet (Gisel et al., 2020). Important headways have however been advanced, such as the Tallinn Manuals on the International Law applicable to cyber operations of 2013 and then in 2017, which are the result of the reflections of an international group of experts at the invitation of the NATO cooperative cyber defence centre of excellence. These

advancements draw in-depth into how cyber-attacks can be comprehended within the IHL framework and represent the most striking example (Gillespie, 2019; Schmitt, 2013b, 2017). In the adaptation and reinterpretation of international law to cyber operations that could affect civilians in conflict, positive advancements led to the translation of existing IHL rules into various shapes for cyber operations; however, and relying on a digital metaphor of an image with poor definition (or pixelated), certain elements remain blurry. In this regard, the clear definition of what a cyberattack is, how a cyberattack may have the potential to cross the threshold of an international armed conflict, and the crucial issue of attribution are examples of how NTIs contribute to blur the lines and rules in conflicts (Gisel et al., 2020). The element of attribution may well constitute the most significant element to consider for the impact of NTIs in warfare and how it affects the IPR and actual protection of civilians: if attribution of responsibilities for a (cyber)attack becomes even more difficult to clarify, the humanitarian protection actors' mission can become even more difficult to uphold. If technical, digital expertise would be needed for protection guardians to continue adapt the way to carry out their protection mission, ongoing exchanges between Governments, military forces and humanitarian jurists involved in defending the protection of civilians contributes to avoiding that new digital warfare practices to happen in a legal void.

Considering Artificial Intelligence (AI), Galliot builds on the example of the US Department of State joined project with Google, called project Maven. Project Maven, also referred to as algorithmic warfare cross-function team, was launched in 2017 and uses machine learning to process the sheer volume of video data that the US collects every day – through drones and other tools - to support counterinsurgency and counter-terrorism operations. The project triggered a significant public controversy with some discontent among Google employees, leading the private company to create 'guiding principles' that would act as a filter when considering future involvement in AI development and research (Galliot, 2021). Galliot points out an existing lacuna in the field of "Artificial Intelligence ethics" and for applied ethics which is principally concerned with the development of normative frameworks and guidelines (Galliot, 2021). The absence of formal movement to regulate AI's use for military purposes only suggests what is yet to be reflected upon for warfare uses and in terms of potential impact on the protection of civilians.

Both for security and humanitarian goals, discussions around ethics and politics involved in the use of NTIs in conflict mostly relate to ‘potential’ risks and potential benefits. This potential characteristic rather than traditional more tangible evidence of experiences may be seen as a contributing factor to maintaining a certain fog to the various NTIs’ uses and ethical debates and interpretations that are happening. Indeed, there is a lack of documented evidence of the risks and harms, notably “*due to poor tracking and sharing of these occurrences*” along with a general attitude not to report such incident (Pizzi et al., 2020).

## 2. Recent intra-humanitarian debates on humanitarian ethics: a logic of protection

- *Changing IR landscape, use of NTIs and implications for humanitarian actors’ relation to politics*

Ambiguities is what characterises humanitarianism to start with Donini’s words, as it connotes three overlapping realities: an ideology, a movement and a profession (Donini, 2010). Other authors would complement describing humanitarianism as “*an ethos, a cluster of sentiments, a set of laws, a moral imperative to intervene, and a form of Government*” (Tickin, 2014). Slim further develops the general thinking on humanitarianism’s ethics arguing that its characteristic ‘boundary problem’ creates a recurring pattern of moral quandary around humanitarian legitimacy and specifically as it looks at its limits (Slim, 1997, 2015). What unites this multi-faceted endeavour is nonetheless a common broad commitment to alleviate suffering and protect the lives of civilians in conflict and other crises.

In Duffield’s view, an important element to consider is how humanitarian work has been increasingly seen as ‘a substitute’ for the concerted political action that was the real requirement – according to the author, a new humanitarianism saw the rise of ‘consequential ethics’ where humanitarian ethics is principled but also political, and thus its neutral claims are partly being abandoned (Duffield, 2014). We consider the question as a valid one: it is important to grasp the concomitant changes at play, both in terms of a changing international landscape towards hyper-politicised conflicts and in terms of adding the variable of the exponential integration of NTIs by humanitarian actors since the turn of the XXI century, and even more so since 2010. Contrasting with most IR views, McCarthy argues that critical theory

of IR has tended “*not to pay sustained attention to the place of technology and the non-human in global politics*” (McCarthy, 2017b). The author further argues for the importance to consider what he calls ‘materiality matters’ or NTIs and how it is designed, developed and disseminated globally within structures of social power and domination (McCarthy, 2017b).

According to Campo, the ‘network age’ has brought operational, technical, legal and ethical questions that exceed the scope of existing humanitarian principles and ethical, moral and legal frameworks, and as a result, humanitarian actors are now doing their work without sufficient and agreed ethical guidance specific to the current and potential future use of NTIs (Campo et al., 2018). Other researchers pointed out the critical agenda that ‘humanitarian technology’ represents and the need to harness its capabilities in a responsible manner (Duffield, 2014, 2013; Sandvik et al., 2014). It is worth noting that academic calls for a more in-depth investigation of the role of NTIs resonates with some concerns identified in our field work where different humanitarian professionals raised the question of “why” there is a conceived need to automatise systems. Humanitarian professionals involved in policy development around the use of new technologies notably commented on the humanitarian system: “*I find we did not take the time to ask ourselves what would be worth to automatise, where would it be an advantage? What would be the consequences and trade-offs?*”<sup>108</sup> Another humanitarian professional brought nuance to the overwhelming majority of pragmatic solution-oriented approaches; explaining “*we are against using technology without understanding it, usually it would be inappropriate.*”<sup>109</sup>

This illustrates a higher level of questioning: beyond the mechanisms and the ‘how,’ the sense and meaning behind the use of digital tools was identified as both a source of concern and a subject-matter that needs better reconciliation with practicalities, values and principles.

Transitioning from what Duffield theorises as ‘new humanitarianism’ towards ‘digital or post-humanitarianism,’ a shift of the centre of gravity of policy was observed from saving lives to analysing consequences and supporting social processes in which NTIs have become central to collect information, monitor and evaluate outcomes of humanitarian work (Duffield, 2014). Adding to this critical research inquiry, McCarthy further reflects on the relation between

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<sup>108</sup> Interview carried out on 29.03.2021, NRC staff, Senior Manager, Policy and Innovation category.

<sup>109</sup> Interview conduct on 23.04.2021, UNHCR staff, Senior Manager, Policy and Innovation category.

ideas and materiality, considering the role of technology as the product of particular cultural values that thus express ideational values embedded in their physical nature (McCarthy, 2011). The back-and-forth approach between lived practices and theory which provides crucial insights into the politics of technology allows for a stronger analysis of the changes or endurance of established social structures (McCarthy, 2011; Pouliot, 2008).

The far-extending implications of the use of NTIs and politics behind can hamper the capacity of humanitarian protection-focused organisations to mobilise and to influence. Reversely, a humanitarian professional coherently pointed out<sup>110</sup> to a need for humanitarians to be able to influence technologies – and thus not only being users from tools deriving from the private sector, or that were initially developed by the military. Focusing on the UNHCR and refugees, Betts and Collier reflect on what they see as a need for the organisation to “*rethink its relationship to politics*” while arguing that the non-political character of humanitarian organisations has been misconstrued as implying they should not be politically engaged (Betts & Collier, 2017). Betts and Collier notably provide a strongly worded argument for a facilitator agency to be able to make trade-offs, advance political facilitation and provide expert authority instead of being reactive to the inclinations of the ‘lowest common denominator’ states, or what they call an ‘*inert guardian on an anachronistic regime*’ (Betts & Collier, 2017).

- *A closer sight on biometrics and ethical questions*

Over the last two decades, the use of biometrics by different humanitarian protection organisations has raised questions and subsequent concerns. Initially implemented by the UN in Afghanistan in 2002 with an objective to reduce fraud in the distribution of aid, its use enlarged to the point of becoming a major development in the management of humanitarian crises, especially when it concerns the registration of large populations. As part of its support for the regional crisis, the UNHCR has systematised the collection of biometric data in Jordan with the use of the IrisGuard IG-AD100 system (Gow & Gassauer, 2019). While the legal basis for biometric data collection reportedly was the matter of an operating agreement in Jordan,

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<sup>110</sup> Interview carried out on 29.03.2021, NRC staff, Senior Manager, Policy and Innovation category.

some uncertainties prevails: first, on the length of time for which data is kept; second, on the location of data (in country, or transferred to the organisation's headquarters); third, for the risks of other organisations, state and non-state actors accessing such information. Two recent examples suggest the issue of ethics in using NTIs, including for protection purposes, has moved from experts' discussion to a wider *-public-* recognition, while problematics of safety and dignity of civilians arise in the way humanitarian protection actors' dealing with sensitive information collected through digital tools. First, a 2021 report from HRW analysed and interpreted the UNHCR's collection and handling of Rohingya people's information in violation of the organisation's own internal policies and conducive to the exposure of refugees to further risks (Human Rights Watch, 2021). The report states that data collected (including iris scans) in a joint registration exercise by the UNHCR and the government of Bangladesh started in 2018 did not result in explaining how data could be used for eligibility assessment for repatriation (thus information shared with Myanmar); this exercise also did not inform refugees of their choice to agree or to refuse without any impact on their access to protection and services (Human Rights Watch, 2021; UNHCR, 2015). One of the recommendations HRW put forward to the protection agency relates to systematically *"engage in consent discussion with every person considered (...) which should include ensuring that refugees understand any risks of having their data shared and that they have the ability to opt-out without prejudice"* (Human Rights Watch, 2021). Biometrics data, representing digital body prints (fingers' print, iris scans, facial recognition tools), has been increasingly used and accepted as a new norm. However, two elements arising from our field work are worth highlighting: first, the unclarity on whether giving one's biometric data is conditional to receiving protection services and assistance, and second, the top-down push from different organisations' headquarters to impose such a system, questioning the traditional needs-based approach to favour instead a showcase of innovation and offer donors argumentation of efficiency and efficacy. Starting from a personal perspective, a humanitarian professional interestingly commented on a binocular tool that is often not known nor understood: *"even myself, if you would not explain to me why you are taking my iris scan it may create confusion."*<sup>111</sup> Besides the crucial issue of informed consent, this also raises the question of how dignifying those types of practices are while the dignity of the person is what

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<sup>111</sup> Interview carried out on 12.03.2021, UNHCR staff, protection staff category.

humanitarian protection actor stand for. Beyond individual explanations from protection actors that would support informed choices from civilian individuals, the very notion of dignity can be questioned when it comes to dealing with persons and communities that have not been exposed to such technology at all. According to J. Gow and G. Gassauer, there is a *“blurred panorama of ethical and legal challenges surrounding the gathering, processing, storing and use of biometric data”* (Gow & Gassauer, 2019).

In August 2021, the Taliban took over Afghanistan and amidst emergency evacuation of most international staff and fears from resident staff to go to offices, the Taliban were said to have gained access to UNHCR biometric data on civilians who are beneficiaries of the protection actor. This example is one of the latest experiences that enhanced awareness and public questioning of the issue of potential digital harm and humanitarian organisations’ responsibility in handling sensitive data, here focusing on biometric data of Afghan and non-Afghan individuals (i.e., internally displaced people, returnees and refugees). Illustrating the current conversation that has recently gained more traction among academics and humanitarian professionals, open discussions support an enriching exchange. An article from *The New Humanitarian*<sup>112</sup> featured an interview of K. Jacobsen, one of the few researchers who studies the use of technology and humanitarian politics, including through the lens of protection, along with a former UNHCR biometric adviser now advising humanitarian agencies on the use of NTIs. K. Jacobsen’s comments reiterated that the issue of biometrics is not new, and more specifically focused on the length of keeping data: *“It puts into contrast some of the choices UNHCR has made about maintaining data forever, really. I think decisions like those have to be revised as well, given the sensitivity and the question of whether we can really make sure that this data, which is kept forever in enormous databases, is always in safe hands”* (Loy, 2021). As data servers switched from UNHCR’s hands to the Taliban ones, further ethical concerns can be drawn, notably on the right to data agency from each person on the collection, use and disclosure of their personally identifiable information (PII), as well as the

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<sup>112</sup> The New Humanitarian is a specialised public source that focuses on humanitarian issues, it was initially created under the name of IRIN News in 1995 by the UN. In 2019, it changed name to signify its move from a UN project to an independent source addressing and reflecting on changes in the humanitarian sector.



right to rectification and redress that focus on rectifying false, inaccurate, incomplete data that relate to a ‘person of concern’<sup>113</sup> (Campo et al., 2018).

- *A matter of (ir)responsibility*

The increasingly prominent and commonplace reliance on partnerships with private sector actors, the establishment of data-sharing agreements with Governments, and engagement in research and development activities with a wide range of non-humanitarian actors are considered to be affecting the long-standing definitions of humanitarian independence and humanitarian space (Campo et al., 2018). Recent examples require further considerations on how the identification of persons would be carried out. For instance, the 2016 EU-Turkey agreement on ‘stopping the flow or irregular migration’ suggested the respect of legitimate claims for international protection for victims of conflicts and those fearing persecution, although EU Governments specified that Turkey would “*accept the rapid return of all migrants not in need of international protection.*”<sup>114</sup> The agreement included a part of mutual processing of data about individuals who crossed from Turkey to the EU (most often to Greece). FRONTEX, the EU border agency, has used tools developed by Crossmatch Biometrics Technology, the same that was used by the military in Iraq (Gow & Gassauer, 2019). Issues of misuse, leaks or hacking of such sensitive information about thousands of individuals are worth considering as the fine line between logics of security and logic of protection seem to be interlaced in different field operations. Another sensitive example lies with the 45 million dollars agreement the UN World Food Programme (WFP) signed in February 2019 with Palantir Technologies, a US software known for its association with the US Central Intelligence Agency (CIA) (Madianou, 2019). The move triggered significant outcry in the public sphere pointing at potential protection concerns that arise from this collaboration with a platform that is used by the US military (Parker, 2019). The five-year partnership brought attention to risks for sensitive data collected by humanitarian actors to be accessed by non-humanitarian actors through uncontrolled data flows – and specifically for security purposes (Sandvik et al.,

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<sup>113</sup> The notion of ‘person of concern’ relates to person that may fall under categories of persons that the UNHCR strives to support as part of its mandate. It includes asylum seekers, Refugees, Stateless persons and to a lesser extent, IDPs in some humanitarian operations.

<sup>114</sup> EU-Turkey 2016 agreement and subsequent action plan – link [here](#).

2022). Some 65 civil society organisations and individuals co-signed an open letter urging the WFP to reconsider its partnership with Palantir, arguing compounding risks about de-anonymisation of Personal Identifiable Information (PII) with sharing metadata, bias, lack of transparency and potential undermining of the rights of the 92 million people WFP has information on and intends to serve (Responsible Data, 2019). The INGO Privacy International brought a useful depth to the debate, highlighting that danger and risks for people relates to PII but also goes beyond as the analysis from large datasets provides information on *“how a population is moving about a country (...) potentially devastating in the wrong hands”* (Privacy International, 2019). It further brings forward the concept of ‘Do No Harm’ that transcends all humanitarian endeavour, to be refined and adapted to a ‘Do No *Digital* Harm’ that requires new protections and safeguards to be established. Specialised humanitarian sources pointed out to a need for humanitarian leaders to *“embrace the fact that being fit for purpose in a digital world requires being open to partnerships and rigorously ethical”* (Raymond et al., 2019).

We argue that the WFP-Palantir agreement contributed to an increased general awareness of the significant reliance on NTIs digital tools, notably through partnerships, while shedding light on the lack of an existing ecosystem of governance mechanism to tackle such moves responsibly, or in other words, ethically. A need for a refined frame that would include policies, procedures and capacities to ensure core humanitarian principles and values are upheld has taken operational shape in the reality of the humanitarian endeavour.

When looking at the responsibility that humanitarian protection actors take in collecting sensitive data, either on individual personal information or on specific information in conflict that can expose civilians to harm, it is worth recognising that, to this day, there is no disposition about compensation on misuse of data or information-sharing of data that may cause or have caused harm to civilians. This claim was echoed by authors that reflect on the use of AI as it is considered that it will *“increasingly shape the global response to the world’s toughest problems, especially as it relates to the humanitarian sector”* while acknowledging its potential can either serve or undermine human interests (Pizzi et al., 2020). If there has been a development of codes of ethics in different humanitarian organisations, those steps are considered important and welcomed, but yet limited: the lack of universally agreed framework -*legally binding and non-binding*- also means there is no accountability framework to ensure human interests are and remain at the centre of the use of NTIs, including current

exponential development in the field of AI. Authors notably comment that “*most codes of ethics provide no answer for who bears the cost of an ‘unethical’ use of technology, what the cost should be, or how violations would be monitored and enforced*” (Pizzi et al., 2020). We argue that despite nascent moves towards the rise of a new governance system, further articulation would be needed among different actors -*notably humanitarian protection actors and member states*- to ensure the establishment and clarification of a framework that would ensure and frame an ethical use of NTIs in humanitarian work.

- *Connecting data, disconnecting from people’s experiences?*

The fragmentation of information about each person has been taken to the details of one’s iris scan and has enabled the management of information about thousands of civilians from conflict situations. Since benefits but also risks of NTIs for allowing in-depth information-taking on individuals have been presented at length in *Chapter 3*, we will here focus on the systemic impact of humanitarians’ information gathering on their wider understanding of complex conflict situation and more specifically of protection violations. A protection humanitarian professional interestingly noted that “*the problem with too much systematisation is that it may take things too far. There has been a switch towards better responding to donors, rather than people.*”<sup>115</sup> C. Calhoun also noted a ‘tendency for counting deaths and conversely lives saved to become the metric of action in humanitarian emergencies, reflecting the calculus of bare life, the minimum of human existence,’ which we consider a rather peculiar calculus when defending each human life’s worth (Calhoun, 2004). This systematisation of information collection and gathering also led to reinforce the pre-existing taxonomy around labelling civilian individuals as ‘beneficiary’, ‘IDP’, or ‘refugee;’ we argue the risk lies with managing caseloads and figures rather than persons who are in precarious situations. Moving from one humanitarian setting to another, potential generalisation in the management of humanitarian needs and the hyper-fragmentation of information may come in tension with humanitarian protection actors’ understanding of peculiar and complex conflict situations and dynamics. Information gathered through digital tools NTIs allow to collect can possibly result in disconnecting data from the context and bring

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<sup>115</sup> Interview carried out on 24.09.2021, ICRC, Protection staff category.

further difficulties in ‘connecting the dots’ of complex protection violations that require in-depth understanding of complex, often local, patterns of violence affecting civilians.

Specifically looking at the protection endeavour, a humanitarian professional revealingly shared “*Protection takes time, while pressure for speed and efficiency cannot compress protection work at a minimal level. A human eye on people’s plight is eventually what is needed.*”<sup>116</sup> Linking field experiences and questioning to theoretical reflections, Slim identified three moral risks, two of which we consider of high relevance. Firstly, Slim explains that ‘labelling is lumping’ and brings generalisation; secondly, he views categorisation of people contributes to dehumanising them “*as they are not people anymore, the more personal we are when we talk, the more humane we are likely to be*” (Slim, 2015). Lastly, Slim points out that labelling people in the humanitarian discourse as ‘beneficiary’ assumes people are benefiting and only benefiting, which undermines their active participation about managing their own lives (Slim, 2015). The author considers constant ethical developments means that new behaviour and attitudes would become morally significant, creating new duties and new rights (Slim, 1997, 2015). We argue that the variable of NTIs create a paradigm shifts where new spheres concerning civilians (including their digital body) have been explored but not yet regulated, which ultimately leaves civilians most exposed to new risks and creates new duties and responsibilities for humanitarian protection actors that take information about civilians in conflict. Current shifts show actors of the IPR, and more specifically humanitarian protection organisation, attempt to find new grounds between the permanence of fundamental principles - claimed to be universal and representing the backbone of the IPR - and core ethical considerations amidst changing landscapes where ground and digital realities are intertwined but not yet governed nor fully consciously administered.

- *Mutatis mutantis (with things changed that should be changed)*

McCarthy and Madianou both present the use of NTIs by ‘powerful actors’ as the extension of their ability to embed their values within technology, which reproduces a wider manifestation of dominant cultural values (Madianou, 2019; McCarthy, 2011, 2017a).

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<sup>116</sup> Interview carried out on 24.09.2021, ICRC, Protection staff category.

Agreeing but nuancing this view, we argue that there is more than one type of humanitarianism, and although the prominent humanitarian system can be considered as embedded within predominantly western values, various traditions exist, such as ‘Dunantists’<sup>117</sup> or ‘Wilsonians,’<sup>118</sup> or even faith-based (Christian, Islamic, Buddhist) as we previously explored. While the subject-matter of this study is not the various types of humanitarianism that exist, it is nonetheless crucial to consider solidarity practices in conflict beyond the single frame in which the IPR was significantly developed.

M. Madianou defends that there is a constitutive role of data and digital innovation in entrenching power asymmetries between refugees and aid agencies in the global context (Madianou, 2019). According to her, this process occurs through extracting value from refugee data and innovation practices that benefits various stakeholders (Madianou, 2019). This is to be understood within the larger frame of risks that the intertwining of digital tools pose for both protection and security logics, where large databases of information about civilian individuals become specifically of interest for security objectives – might it be shared through official MoU for information-sharing or through illegal means such as hacking. M. Madianou inscribes her concept of ‘technocolonialism’ in a tradition of research that questions the role of humanitarians and unintended consequences of their action, notably building on the work of F. Terry in her 2002 book *“Condemned to repeat: the paradox of humanitarian action”* (Brauman, 1996; De Waal, 1997; Madianou, 2019; Terry, 2002).

Ethics in humanitarian practices, especially considering the NTIs variable, calls upon questioning global approaches. Dette puts forward the argument of a ‘double-standard and hypocrisy’ that compromise humanitarian principles (Dette, 2018). Exemplifying this double-standard, the author notably points out to public backlash in Europe that led policy makers to halt the integration of advanced biometrics in citizen registrations while, in contrast, it was praised for refugee registrations (Dette, 2018). This interesting thought resonates with previous mentions we made about the centre (global power, peace situations) and the periphery (conflict areas) where the latter is used for ‘testing’ as it is considered ‘acceptable’ to use new tools for ‘trials’ or innovation (Jacobsen, 2015). If research on experimentation of

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<sup>117</sup> ‘Dunantists’ are said to recognise themselves along the principles of the Red Cross, including fundamental principles of neutrality, impartiality and independence.

<sup>118</sup> ‘Wilsonians’ have a different approach than Dunantists in the sense that they consider their role in line with their country’s foreign policy, this brings a political shade to their approach that contradicts the Dunantists’ claim for neutrality, especially if the said country is involved in a conflict.

those power over those in precarious situations is not new, as G. Chamayou had explored in *'Medecine of vile bodies'* in the 18 and 19<sup>th</sup> centuries, the move from solely physical to digital bodies is the main characteristic the novelty of NTIs brings about in this reflection of changing power relations in the IPR (Agamben, 1998; Chamayou, 2008).

## II. Stressing the IPR: operationalising ethics

Following our review and reflections around the impacts of the NTIs' variable on parallel discussions within the military/security sector as well as within the humanitarian sphere, we will now focus on how humanitarian professionals are to practice humanitarian ethics in their daily work.

Slim in *'Humanitarian ethics, a Guide to the morality of aid in war and disaster,'* reflects on ethical dilemmas at three different levels (Slim, 2015):

- *Intimate ethics*: individual personal level of interaction between humanitarians and victims of conflict and disasters. In our research, we acknowledge the importance of this level of human exchange which we theorise as 'interpersonal level.'
- *Operational ethics*: programme managers make decisions on the basis of operational needs and humanitarian teams' capacity. This also relates to the assessment of security for the professional staff. Slim notably mentions that "*politics is the arena of humanitarian action, and humanitarian ethics are soon swept up into political processes and not so easily applied according to principles*" (Slim, 2015).
- *Strategic ethics*: Senior staff and leaders of humanitarian organisations orient discourse and narrative in sphere with strong political influence.

Building on our previous argument that defends the humanitarian role, such role often claims to represent an apolitical agenda - here civilians' protection – but operates in highly politicised arenas that call on humanitarians to use diplomatic and negotiation skills to defend both their humanitarian objective and their organisations' survival in a highly competitive environment. To be *apolitical* suggests being outside of a political realm: this can be considered as contradictory as humanitarian protection actors operating in the field, within conflict situations, are physically present in the chaotic ecosystems conflicts represents. In the *new humanitarianism* described by Duffield, that emerged from the 1990s' intractable conflicts,

claims of neutral humanitarian action that would stand above politics became increasingly strained (Duffield, 2014). Thus, IOs' legitimacy on the register of depoliticisation is ambivalent. On the one hand, IOs ought to show a permanent commitment for "the common good" but, on the other hand, IOs continue to be permeable to various forms of politicisation of their activities (Petiteville, 2021). According to Slim, humanitarian action has developed a system of 'principle-based ethics' where "*humanitarian action is a teleology of person, not politics*" (Slim, 2015). The person, the victim or the civilian in conflict is thus used for explaining the actions humanitarian organisations undertake. The role of humanitarian organisations in capturing human plights in conflict and protection violations and in developing a common understanding of human experiences that transcend borders, cultures and religion contributes to stating a 'bound' in the name of humanity and dignity.

In manoeuvring humanitarian ethics in complex conflict setting, "*most humanitarian workers have to operate as politicians and technical professionals: negotiating political space and deciding how best to meet people's survival needs*" (Slim, 1997, 2015). Ethics in humanitarian work are in constant tension with humanitarian principles – including humanity – and highly politicised conflict reality, which relates to Walzer 's early works and reflections on the 'dilemma of dirty hands' focusing on politicians' exercise of power, and notably claiming 'to act for others but also serve themselves' (Walzer, 1973).

The intrinsic paradox of the humanitarian role is also called a 'professional depoliticised militancy,' which De Lauri theorises under a phenomena of "*ritualised declarations of presumed neutrality on the part of humanitarian organisations*" (De Lauri, 2016; Pandolfi & Rousseau, 2016). Taking this point further, using a technical narrative rather than a *political* one, it is worth noting that protection professionals have theorised their influence -or in other words, their *power-* to change situations towards a better protection of civilians through *Protection by proactive presence* and thus recognising their influence in conflict ecosystems (Mahony, 2006). Similar to the ambiguities linked to the concept of humanitarianism, Petiteville reflects on the inherent ambiguity that lies with technocratic depoliticisation strategies and politics that and surround IOs – in our research, the UNHCR, UN OCHA and the ICRC (Petiteville, 2018). Yet, recognising humanitarian protection actors have a political influence, especially those that fall under the category of international organisations (IOs) may not serve the purpose of their mandates: to alleviate suffering – which means to *influence combatants' behaviours* towards an enhanced respect of the protection of civilian

populations. Presenting their endeavour through the lens of expertise may be a strategy to avoid 'falling' into the high politicisation of conflicts and its necessary arbitration, which would temper with the humanitarian principle of neutrality. Existing research in the field of IR that specifically focuses on international organisations (IOs) provides theoretical depth to our present research. Constructivists' approaches such as Barnett and Finnemore's *Rules for the World* offers insights on the 'black box' IOs often represent as organisational cultures, procedural routines contributes to framing the problems and constructing reality (Barnett & Finnemore, 2004). As IOs construct a social world to maintain their authority -*influence, or power-* relying on digital tools that have become incremental in forming *knowledge*, it would be important to inquire the depth of changes that are the result of strategies to maintain their status of 'legitimate experts' through an apolitical colour. Working to deconstruct what *depoliticisation* means in practice, Louis and Maertens consider political activities are not solely performed by political elites but rather that depoliticisation is enacted at different levels including intermediate-level management (Louis & Maertens, 2021). Extending their views to humanitarian protection professionals that defend civilians from a ground-level checkpoint in the field up to oral briefings to the UN Security Council – we consider depoliticisation arguments using expertise and neutrality as a key to pave the way for further sensitive protection exchanges happen at *all levels*. We also consider this approach is mutually reinforcing as usefully negotiated ground access and knowledge brings unique value proposition for humanitarian actors to position themselves as a legitimate voice advocating for civilians. To the contrary, the lack of ground access to conflict situations (as it is currently the fact for a significant part of Yemen under Houthi territories) constraints humanitarian actors to Government-held areas, subsequently truncating their influential weight in bringing a nuanced (if not apolitical or a-colour) views on conflict situations and how these affects civilian populations.

Sociology elements also reinforce our reflections: in *The idea of emergency: humanitarian action and global (dis)order*, Calhoun strives to show the difficulties to keep immediate ethical response sharply separated from entanglements in politics (Calhoun, 2010). Humanitarian emergencies bound together contradictory notions which simultaneously display an altruistic response while showing the utter failure of global institutions (Calhoun, 2010). The humanitarian response pursues goals of common humanity while actual emergencies reveal a world divided by deep material inequality and violent conflicts. This uncomfortable position



humanitarians hold, which might be viewed as an aporia, led them to use various approaches to maintain their operational space and subsequent political relevance: technical expertise is often used to bring about sensitive issues in a depoliticised manner. The technicity approach, that helps humanitarian organisation to show themselves as ‘experts’ in their professionalised field, has also been criticised to for ‘depoliticising’ conflict, result of unsolved oppositions (Barnett & Weiss, 2008a; Ticktin, 2014). Critical views also note that *“humanitarian interventions reflect the refusal to treat ‘disasters’ as merely matters of fate, approaching them instead as emergencies that demand action. But relying on humanitarian approaches alone is in tension with analysis of the factors that make emergencies recurrent and with effective action to change them”* (Calhoun, 2004). This raises the important question of the limits of the humanitarian role and of emergency relief and its core protection goal in often long-lasting man-made conflicts. We argue that humanitarian responses to *-unsolved and difficult to resolve-* political problems that materialise in war contributes to weaken the humanitarian mission as solely political agreement can bring lasting solutions while humanitarian operations that have been lasting for 20 years or more constitute unfit bandages. Emergencies may be increasingly considered ‘normal’ as their numerous and overlapping occurrences resulted in a further professionalised humanitarian system: if the core protection humanitarian mission remains relevant, issues it tries to solve (human suffering) are the symptoms of deeper unresolved political oppositions. The supposedly short-term humanitarian response would be concomitant to other (political) initiatives to bring back peace in people’s lives, at least in theory. Nonetheless, long lasting conflicts are themselves the expression of a challenged multilateral system that is not able to provide, negotiate (or impose) political solutions that hold. Our research, that focuses on an embedded web of international power and mechanisms, the IPR and technology – at the centre of this research – have been ‘cornered’ in a paralysed UN Security Council that mirrors the changing international landscape; and this has occurred despite the availability of improved and real time information about civilians’ plight in conflict. Ticktin considers humanitarianism has expanded ‘beyond its initial sphere of emergency relief,’ pushed by beliefs that humanitarianism could better respond to injustice and suffering than can politicians, but has *“bumped up against the limits of its technical abilities and political and ethical goals”* (Ticktin, 2014).

The constant adaptations humanitarian protection actors seek have for objective to respond to both the changing conduct of warfare (*jus in bello*) with enhanced technology, and to the pressures on humanitarian space (operational and political) call for agile adjustments.

Through our research, we intend to investigate how NTIs contribute to a thickening of virtual processes that have tangible and intangible implications in doing protection of civilian populations – resulting in both a rise of a new digital body and questioning the cornerstone issue of trust.

Another factor leading to increased fragility is considered to be technological (Betts & Collier, 2017). Indeed, the advent of mobile telephony and social media, adopted asymmetrically among states, societies, geographical areas and generations contribute to dividing those exposed to and having access to connectivity and digital tools and those who do not: during conflict and conflict-related displacement, this bears importance for various individuals who come to interact with humanitarian professionals that unequivocally use NTIs in various degrees and ways.

### 1. *Do No Digital Harm – physical and digital bodies*

A senior protection officer mentioned *“If you are going ahead using these tools, we should know the limitations, if not, we are not only failing but we are potentially putting people in danger and that is beyond failing”*<sup>119</sup> the humanitarian mission. The ‘Do No Harm’ requires a constant analysis of complex situations and the digital element NTIs bring about yet represent a dimension that has not been fully explored and calls upon in-depth research.

Concurring with Dette’s view, we understand there has been a limited but nonetheless humbly growing body of literature that addresses issues and shortcomings linked to technologies being brought to humanitarian and conflict contexts (Dette, 2018). Beyond the digital tools themselves, challenges often and mostly lie with non-technical issues, especially when they have been adopted in a hasty manner (Jacobsen, 2015; Sandvik et al., 2014). Sandvik interestingly explored the concept of ‘digital bodies,’ which encompasses images, information, biometrics and other data stored in a digital space and that represent a re-conceptualisation of individuals’ bodies (Sandvik & Lohne, 2020). Specifically researching conflict-related sexual violence, authors observed the toll of NTIs in the different phases of a

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<sup>119</sup> Interview carried out on 20.11.2020, UNHCR, Protection category.

cycle: from prevention to response, documentation and accountability. Drawing from this assessment, the issue of ‘data governance’ becomes key as NTIs operate and interact in insecure and unstable conflict environments and are considered to be often used as a “*precondition for receiving services*” – this point presenting obvious concerns (Sandvik & Lohne, 2020). Information on civilians in conflict, taken through NTIs that subsequently contributed to the development and existence of their *digital bodies*, can be of interest for different purposes, such as in light of IHL, human rights law, and international criminal law, but also from the perspective of security actors engaged in a given conflict as global connectivity extends the reach of offenders. In addition to supporting physical bodies, acting with respect to individuals’ humanity and dignity crystallises attention as it is manoeuvred through the digital sphere – subject to conversation about power and responsibility (Sandvik & Lohne, 2020).

Information shared through digital tools in conflict is highly sensitive, and it can concern PII or non-individual but no less sensitive elements of information at a given point and time (presence of populations in a location, movements from point A to point B for example). Humanitarian actors collecting data and information in complex conflict settings have to face pressure from stakeholders, including the host Government, donors that might also be party to the conflict, and others. A humanitarian professional explained what this pressure means in practice, and what recent actions have been taken to respond to it:

*“For example, in Yemen, the data is collected through key informants in different areas where there are different conflict stakeholders. Now they, the stakeholders, are also saying that data collected should also be shared back with them, which we obviously do not want.”*<sup>120</sup> Responding to pressures, the organisation decided to anonymise information to show only aggregate information under each sector of response. The professional further added *“that change is happening, but I think the idea to operationalise data responsibility in very operational complex emergencies, it needs to be very practical.”*<sup>121</sup>

Various humanitarian professionals with duties in active conflict settings shared experiences of pressure from ‘intelligence agencies’ asking the identities, contact details of all staff in

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<sup>120</sup> Interview carried out on 06.04.2021, IM/IT category.

<sup>121</sup> Ibid.

some areas along with security information – notably in Yemen and in Syria. This has been largely echoed by significant debates among academics and humanitarian professionals on whether there is a humanitarian space,<sup>122</sup> whether that humanitarian space would be shrinking and if so, how it can be understood. Duffield theorises a bunkerisation of humanitarian work as remote connectivity conversely extends while others considers there is no evidence that the humanitarian space has been declining over time (Brassard-Boudreau & Hubert, 2010; Brauman, 1996; Duffield, 2014, 2018). When considering NTIs, the Head of the Data Protection team for the ICRC said *“it is not just about data, it is about how the data are used, or possibly misused”* (Marelli, 2020). Discussing the same idea, a UNHCR professional notably shared that *“being a protection agency does not only mean doing and delivering protection it also means doing data with a protection lens. Bringing this humanitarian ethics into this data work, principled approaches are part and parcel of data work.”*<sup>123</sup>

The Do No Digital Harm requires a certain recognition from humanitarian protection agencies that a failure to adequately protect both PII and non-individual sensitive information may be harmful to the people, as well as the reputation of a concerned organisation and potentially the trust that civilians who are victims of conflict may place in them. M. Marelli further articulates that the Do No Harm in a digital environment requires certain competencies linked to the capacity to analyse data flows generated by the use of technologies and to understand possible new involvements from stakeholders, risks generated and subsequently needed mitigation measures (Marelli, 2020). The need to recognise, tackle and respond to those ethical dilemmas were also shared by humanitarian professionals from different protection organisations and with different areas of expertise, which, in itself, hints at the stronger acknowledgment of the issue as being an important one. Result of a multi-year and a multi-dimensional reflection based on both practitioner and academic researchers’ inputs, the 2022 ALNAP’s edition of The State of the Humanitarian System noted that the ‘Do no digital harm’ has emerged as an important humanitarian imperative while *“attendant risks and new forms of harms are emerging from how data is stored, accessed and shared”* (ALNAP, 2022: 196; Sandvik et al., 2022).

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<sup>122</sup> Rony Brauman, in his 1996 book *“Humanitaire le dilemme”* defines the ‘humanitarian space’ as a ‘symbolic space’ that includes freedom of dialogue, the possibility to freely speak with people humanitarians strive to support, and without being subjected to the systematic presence of anyone.

<sup>123</sup> Interview carried out on 01.04.2021, UNHCR, Senior Manager, Policy and Innovation category.

One comment from our field research is notably worth sharing: *“We are trying to do our work in an ethical way, and protect the beneficiaries and their data, but it costs a lot.”*<sup>124</sup> The dilemmas triggered by the use of NTIs require certain trade-offs as financial resources of humanitarian organisations remain limited, competition to maintain and secure funding is harsh (*Chapter 3*), organisational reputation is key and the element of trust between civilians and humanitarian professionals is also key. A remark that was shared during our field work pointed at a certain *‘fatigue with technology,’*<sup>125</sup> or a realisation that it does not solve humanitarians’ problems. Beyond the often reported and criticised assumed good or apolitical use of NTIs, some headway has been observed in both individual professional reactions and organisations’ leadership moves towards tackling those difficult dilemmas amidst ‘politics of data ownership’ adding a layer of complexity (Hayes, 2017).

The multiple stress points inflicted on the humanitarian system such as changing warfare means, narratives defending a global war on terrorism, competitive use of NTIs initially taken with optimism but bearing multi-fold and multilevel implications for protection are important to consider. In this humanitarian system in transition, a professional from the sector noted: *“we are at the point of shifting how we traditionally work: from operational focused to a ‘client-based’ focused.”*<sup>126</sup> Previously mentioned heated discussions (*Chapter 3*) on the importance of ‘informed consent’ are one example that resonates with operational challenges (Slim, 2015). Based on our field work, several professionals expressed systematic lack of training to be better equipped for explaining where the information collected would be shared and to foster a conducive environment for civilian individuals to make *informed* choices on their personal information, others pointed out to challenges related to time and need to cover groups of populations that do not allow for individual discussions. One view specifically questioned the notion of ‘informed consent’ calling it a ‘flawed concept’ and argued that the imbalance of power between humanitarian professionals and civilian populations made it impossible. While we would argue that circumstances of protection discussions need not to be subjected or assimilated with any other humanitarian service or assistance, the diversity of views is a positive sign of a living debate. Beside practical challenges, the topic was seized with more recent attention by researchers that focus on the

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<sup>124</sup> Interview carried out on 04.12.2020, ICRC, IT/IM category.

<sup>125</sup> Interview carried out on 09.04.2021, UNHCR, Senior Managers, Policy and Innovation category.

<sup>126</sup> Interview carried out on 04.12.2020, ICRC, IT/IM category.

humanitarian field. More specifically, a study titled ‘Signal Code,’ featured by the Harvard Humanitarian Initiative, considers that “*humanitarians promote the dignity of individuals by ensuring free and meaningful consent*” (Campo et al., 2018; Faine Greenwood et al., 2017). The study argues for a distinction between operational and experimental uses of data and technology while reinforcing a humanitarian responsibility – articulated as *duty of care* – towards affected populations when collecting, sharing, processing, aggregating, using and disposing of people’s individual data. It is worth noting the references to the *Nuremberg Code*,<sup>127</sup> the *Belmont report*<sup>128</sup> and the *Helsinki Declaration*,<sup>129</sup> three key documents providing guidelines for the protection of ‘human subjects’ in medical research. The necessity for ‘*sufficient knowledge and comprehension*’ argued for consent to be informed in the first principle of the Nuremberg code, albeit essentially subjective in nature, can be transposed from the physical body to a yet ungoverned digital one. The co-development of concepts and epistemic communities suggest the permeability between various experimentation practices and overlapping spheres of influence (medical, humanitarian, political). The Signal Code concludes that it is increasingly difficult to implement consent “*in a fashion that can be ethically considered informed*” (Campo et al., 2018).

The pre-existing ethical framework for medical research on human subjects is now used to transfer similar reflections from the physical body of individuals to the digital prints and information collected on individual civilians. In implementing this obligation of creating the circumstances to foster ‘informed consent’ of individuals to take their personal information, potential harms are considered to be mitigated, and notably encompass the loss of agency, dignity and privacy; loss of redress and rectification for harms, potential for irrevocable harm in the form of violence and exploitation, violation of possibly existing national laws and international laws, rules and regulations, and loss of trust between humanitarians and civilians (Campo et al., 2018; Faine Greenwood et al., 2017). The idea of ‘experimentation,’ from historically grounded medical practices to their international political and now digital

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<sup>127</sup> The Nuremberg Military Tribunal’s decision in the case of the United States vs. Karl Brandt et al. includes what is now called the Nuremberg Code, a ten-point statement delimiting permissible medical experimentation on human subjects.

<sup>128</sup> A US Department of health, education and welfare report that set guidelines for ethical principles and guidelines for the protection of human subjects of research. The report was first issued in 1978.

<sup>129</sup> The world medical association adopted a new set of ethical rules and regulations regarding human experimentation in 1964. It was upgraded in 2013 and termed as a cornerstone document related to human research ethics.

version, remains cornerstone to our research on how humanity and dignity can be upheld with and through the use of NTIs by humanitarian protection actors and other stakeholders. While the overarching tendency suggests a certain unease among professional protection staff, who may not have the technical expertise IT and IM professionals have, the need to better grasp and understand implications was shared by all interviewees among the five protection-mandated humanitarian organisations and three categories.<sup>130</sup>

The lack of sufficient ethical guidance, adapted to the new complex conflict dynamics in which the humanitarian mission is carried out in - expressed through both physical and digital spaces, results in challenging the relevance of core humanitarian principles - including the cornerstone notion of humanity. The way the humanitarian sector may navigate a transition to the network and information age and address this gap will impact the future of humanitarianism itself (Campo et al., 2018). Nonetheless, NTIs move fast and the pressure to keep the pace in a competitive world contributes to a certain stress induced on the humanitarian sector. Partnerships and collaborations with the private sector, which is often at the forefront of developing new tools, would require to harness opportunities that are in the best interests of crisis-affected people and further define what the 'Do No Digital Harm' entails in practice (Burton, 2020). At an ICRC Symposium in 2018 focusing on digital risks in armed conflict, Professor Raymond, who specialised in the investigation of war crimes (including mass killings and torture) notably commented "*we are undermining the 'values of Geneva' through a relatively blind embrace of the potential 'promises' of the Silicon Valley*" (ICRC, 2019d).

## 2. The issue of trust

It is worth noting that back in 1996, before the turn of the XXI century and the advent of numerous NTIs exponentially absorbed by various societies, their militaries but also humanitarian actors, Brauman mentioned that "*talkies-walkies, satellite phones, computers create an artificial environment with the perverse consequence to place teams in an almost*

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<sup>130</sup> As presented in the second part of the PhD, the field work was based on over 30 interviews with humanitarian professionals that were grouped in 3 categories: protection professionals, IT/IM experts, and Senior managers, Policy and Innovation. All interviews were carried out between November 2020 and September 2021 and are non-nominally transmissible.

*virtual world where time and space are measured in different units from the country where they are. Humanitarian teams are then, without realising it, in a bubble, a 'nowhere,' a humanitarian mission that could be everywhere and nowhere. Without neglecting the fact that the management of such logistic apparatus is very absorbing, it may risk to occupy more than the action itself"* (Brauman, 1996). As NTIs have been increasingly adopted by humanitarian actors at a large scale, it has led to an increase of the private sector participation in humanitarian efforts (tools from the private sector, new partnerships), and has transformed the relationships of states (donors and host states) and non-state actors: *"these relationships have led to some challenges around the credibility and trust of humanitarian action"* (Wilton Park Conference, 2019).

By taking information from individuals' experiences in conflict, humanitarian protection actors handle sensitive personal and non-personal data and information. Keeping this information safe constitutes an important part of developing and maintaining a relation of trust with civilians they strive to serve and protect. In 2017, a database with 8,000 beneficiaries' data from the NGO Catholic Relief Service (CRS) was breached by a software called Red Rose. Data breaches can have life-threatening consequences for refugees and their families back home, some practitioners and researchers argue (Gazi, 2020; Hayes, 2017). This example, among others that are often kept low profile by humanitarian actors for negative consequences on their field presence, their reputation, implications with civilians or beneficiaries, but also with donors and the larger public, yet highlights the grave risks data incident and data incident management pose (Hayes, 2017; Wilton Park Conference, 2019). Based on our field research with humanitarian professionals, it was commonly acknowledged that incidents about data (mis)management are not publicised. Using the example of WFP in Yemen, S. McDonald pointed out to a standoff between the UN Agency which pushed for the use of biometric systems to deliver humanitarian aid and the Houthi Government, who denounced and accused the approach as 'surveillance' (McDonald, 2019). When humanitarian organisations often consider trust as a license to operate, their digital operations and data flows with private companies or other entities with potentially diverse interests creates new challenges and a need for framing a new governance around the use of NTIs in humanitarian action. The continuum between using NTIs, digital risks and trust was underlined as an issue on the rise as part of currently reinforced risk management strategies. For example, an IT/IM expert explained: *"Even if we ask consent and even if people agree and*



*understand the risks, they can get breached and that would constitute a reputational impact. The next day we might have an article in the news about a leak (...) and that will have an impact on our reputation, we won't be trusted anymore.*"<sup>131</sup> Interestingly, the same conception was relayed by a Policy professional who elaborated *"data leakages and data mismanagement that could undermine trust of population is obviously a big one."*<sup>132</sup> While the recognition of this risk is shared by all professionals interviewed in the five protection organisations we focused on (UNHCR, ICRC, UN OCHA, DRC and NRC), it is important to contemplate the current limits of solely organisational approaches for a more systemic evolution of humanitarian practices. A professional shared this perspective, saying *"we also need to be transparent about our failures, so we do not repeat the mistakes, but that is something that is difficult to do in the humanitarian system."*<sup>133</sup> The Head of ICRC Data Protection Office reiterated in a 2020 article that *"we need to maintain trust of affected populations and parties to the conflict,"* signalling how the technology variable is being increasingly recognised as an important element for manoeuvring changing conflict landscapes where physical and digital realities are intertwined (Marelli, 2020). Another humanitarian professional noted the 'double obligation' humanitarians have to inquire both about the relevance of digital solutions and find the 'right type of ethical engagement with the tech industry' (Van Solinge & Marelli, 2020). Interestingly, albeit at a different level (organisational for humanitarian professionals, systemic for researchers), reflections point to the same concerns that are increasingly recognised as full-fledge 'issues' that need to be tackled. According to Sandvik, one of the few researchers that has thus far reflected on the articulation between technologies and human dignity in humanitarian work responding to conflict situations, the way risk and harm are evolving (along with NTIs) are insufficiently understood and the global community ought to pay further attention to the serious ethical and legal issues emerging from technological innovation within the aid sector (Sandvik et al., 2014; Sandvik & Lohne, 2020).

In addition to potentially shaking the core relation between humanitarians and civilians who are victim of conflict, our field work suggests an undercurrent is developing towards a common recognition of humanitarian organisations' responsibility with multi-fold

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<sup>131</sup> Interview carried out on 04.12.2020, ICRC, IT/IM category.

<sup>132</sup> Interview carried out on 15.02.2021, UN OCHA, Protection expert category.

<sup>133</sup> Interview carried out on 23.04.2021, UNHCR, Senior Manager, Policy and Innovation category.

components: first and foremost, in order to maintain civilians' best interest and not expose them to further harm; and second, to maintain humanitarian protection organisations' interests in displaying high standards of work when seeking funds and maintaining a positive public reputation. We argue that there has been a recent realisation of the need to comprehend digital risks and integrate them within organisational frameworks, suggesting the inception of a new governance.

Over the course of 2019 and 2020, the UN OCHA issued a series of guidance notes on data responsibility. One Guidance Note specifically focused on 'data incident management' and aims at bringing an element on commonality among humanitarian professionals on how to define a data incident and providing (non-binding) guidance for humanitarian actors to navigate such incidents (UN OCHA, 2019a). It is also worth pointing at the partnership of UN OCHA with the academic sphere<sup>134</sup> in order to support the development of such guidance. Another crucial aspect, which is often shadowed by the high attention on NTIs, is the consideration of 'non-digitally connected' communities or those living in what we call the data deserts". Non-connected communities and civilian individuals are to be taken into account by humanitarian protection actors in their work and more specifically when it comes to face-to-face interactions.

### III. The incipience of a new governance

Beyond the use of various NTIs by humanitarian protection organisations, a possibility for digital harm to occur is also considered to be linked to the lack of 'humanitarian agreement' on the handling of data and information and subsequent vacuum (Campo et al., 2018). This part investigates the emergence of a new governance in the use of NTIs, which we interpret as a sign of the International Protection Regime (IPR) shifts.

#### 1. International Relations (IR)' conceptualisations of changing norms and governance

The concept of international regime allows to reflect on international cooperation around a subject area while there have been difficulties to qualify *"the world of international*

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<sup>134</sup> In this case, UN OCHA collaborated with the Yale University, more precisely with the Jackson Institute for Global Affairs.

*organisations*” in contributing to explaining the emergence of inter-related concepts (Petiteville, 2021).

Discussing regime shifting, Morse and Keohane review various types of regime changes amidst contested multilateralism that challenge a *status quo*. Challenges, which can be understood as changing political distribution of power and changing environments, often “*create or expand a regime complex effectively in a way that leads to fundamental changes in institutional practices or changes the distribution of power between institutions*” (Keohane & Morse, 2014). Actual change on institutional practices can however happen over the long term, altering actors’ “*preferences, ideas, and values forcing concomitant change or institutional exit*” (Keohane & Morse, 2014). Two different types of change can be noted, regime shifting and competitive regime creation. First, borrowing the concept of *regime shifting* from Helfer (see *Chapter 3*), the actual shift lies with changes in the set of rules and practices and with “*broadening the policy spaces within which decisions are made and rules adopted*” (Helfer, 2009). Considering the IPR alterations on the basis of this theoretical premises, it is important to inquire *how* humanitarian protection actors have started to broaden their policy scope to include a digital space. Previously ungoverned digital territories, new frameworks for decision-making to support civilians who have been victims of conflicts have recently emerged. While Helfer specifically focuses on ‘State-led’ regime shifting, our approach rather focuses on a humanitarian protection actor’ perspectives (Helfer & Austin, 2011). States, as part of the IPR and as the primary responsible authority for civilians (some being their citizens) safety and security, are cornerstone in enabling changes: by funding humanitarian protection actors, by re-discussing already existing rules that are challenged, and thus by influencing the redefinition of the ethically acceptable and its limits.

A second form of regime change was identified as ‘competitive regime creation’ which has been theorised as a result of dissatisfied actors that create a new institution or establish a new informal form of multilateral cooperation to challenge the existing status quo. A new multilateral institution might be created to represent the new interests. While we consider this second conceptualisation of regime change important, this seems less suited for our research on the IPR alterations and would rather focus on the expansion of the Helfer’s concept of regime shifting to review institution-led changes from humanitarian protection actors. Our approach is in line with IR’s rather recent research that investigates and questions

the role of International Organisations (IOs) and their ‘institutional life’ in regime shifting on a subject area (Petiteville, 2021).

The pivotal change that the advent of NTIs brings about tempers with humanitarian protection actors’ legitimacy – by impacting the re-ordination of warfare practices, subsequent humanitarian approaches and narratives various actors use in highly sensitive and politicised conflict arenas. According to Keohane, *normatively*, an institution is legitimate when its practices meet a set of standards that have been stated and defended, and is *sociologically* legitimate when it is, by facts, accepted as ‘appropriate’ (Keohane, 2006). However, both standards and institutions are subject to change as a result of further reflections and subsequent actions (Keohane & Buchanan, 2006). Navigating change implies a risk for institutional integrity, and thus the legitimacy of concerned organisations, if patterns exhibit disparity between actions (or performance in carrying out activities) and major goals (organisational mandates). Keohane notes the following:

*“An institution is epistemically legitimate insofar as it has the capacity to generate and properly use new information that can generate new policy responses, reduce bias in standards and implementation, and reduce the risk of opportunistic interventions”* (Keohane, 2006).

Elements of pressure and competition for humanitarian protection actors to ‘stay relevant’ and ‘appropriate’ constitute strong incentives for adapting organisational policies and rules, which eventually results in altering the system holistically and the IPR. However, humanitarian protection actors attempt to display the highest possible recognition of their ‘raison d’être’ and often resort to *legitimacy through expertise* to justify their -suited-existence (Petiteville, 2021). Information, leveraged by the use of NTIs, becomes strategic as it is used to shape narratives that are often declined through figures and quantification methods. The intent is to legitimise a specific knowledge-expertise which only humanitarian protection actors operating in the field provide. As previously mentioned, both competitive and legitimacy aspects lead to informational asymmetries about *how* international protection actors lead protection activities and reflect on adjusting their policies. Often, new organisational policies are made public but the process leading to that final result mostly remains internal. Our field research attempts to substantiate this otherwise opaque

dimension of IOs' dynamic lives. The *perception* of global governance institutions as being legitimate matters if they are to thrive in continuously delivering on their objectives (Keohane & Buchanan, 2006). Practice and discourse are often considered in opposition, we would instead consider them as complementary. Deitelhoff and Zimmerman offer worth considering insights as they reflect on 'norms under challenge' (Deitelhoff & Zimmermann, 2019). They ask a relevant question: "*how do we judge a norm that is discursively strong but regularly violated (such as the prohibition of torture)?*" (Deitelhoff & Zimmermann, 2019). We extend this question on the norms, rules and behaviour that form the International Protection Regime (IPR) and recognise that international laws protecting civilians in conflict are regularly violated. Does it make the IPR norms less legitimate? We would argue that regular practical violations do not result in weakening the IPR but rather reinforce the discourse and narrative dimension that fosters the so-called apolitical arguments humanitarian protection actors adopt defending civilians in conflict zones. Nevertheless, the inception of a new governance that may alter the IPR in extending its frame to include the digital dimension to complement the already existing ground reality is worth considering. According to Deitelhoff and Zimmerman, "*norm change and norm robustness are clearly interrelated, it is important to consider the point at which fundamental changes and reinterpretations of a norm signal norm replacement*" (Deitelhoff & Zimmermann, 2019). Witnessing and researching the current readaptations of international protection norms towards an integration of a new digital component raises the question of whether adjustment in the content of a norm – defending human dignity for civilians in conflict – may be considered as a different norm. We argue that there has not been a norm replacement as the core content of the IPR, that focuses on humanity and dignity, remains the same – rather it is the contours of the norms' application that are in the process of being renegotiated and adjusted to fit different conflict realities.

## 2. Framing humanitarians' digital responsibility

Marking an exponential acceleration since the turn of 2010, the use of NTIs by humanitarian protection actors led to a rise of attempts to put new frameworks in place. They primarily focused on individual data protection, and to a lesser extent, to non-individual but yet sensitive information humanitarian actors collect and that may result in causing harm to civilians, should confidentiality be disrespected. A humanitarian professional noted "*I think*

*digital information and communication systems can have positive effects if we regulate them properly. For example, data protection laws ensure that digital technologies can be used in ways that bring ‘digital dignity’ or ‘data dignity,’ by giving the data subject the information, control and rights that they need to exercise control over how information is used about them”* (Van Solinge & Marelli, 2020). The use of UNHCR booths in Zaatari camps in Jordan, or ‘use the booth’ programmes in various countries where beneficiaries have access to their data and able to adapt it to reflect their lives’ changes is an interesting parallel between ideas and tested practices.<sup>135</sup>

The recognition of humanitarian actors’ responsibility in using NTIs is important to note: some UN organisations endorsed principles for digital development, based on the acknowledgment that *“some digitally-enabled programs failed – and quite often that failure was for reasons that were both predictable and preventable.”*<sup>136</sup> The nine digital principles discussed among UN development and humanitarian actors recommend to (1) design digital tools with the user, (2) understand the ecosystem, meaning to consider the particular structures and needs that exist in each country, region and community, (3) to design for scale (not just pilots), (4) to build digital tools and platform for sustainability, (5) to be data-driven, that is explained as bringing timely quality information, (6) to use open-source information, (7) to reuse and improve tools, (8) to address privacy and security issues, and lastly, (9) to be collaborative in sharing information, insights and resources across organisations and sectors. Another worth-noting initiative, that bridge operational actors to academic thinkers, was launched in 2014 and is called the ‘Responsible Data’<sup>137</sup> community which notably convenes human rights protection actors such as Amnesty International along with academic circles, such as the university of Leiden. The stated objective is to lead the way *“from best intentions to best practices”* – it calls for the recognition of a collective duty to account for unintended consequences in the use of data in prioritising people’s rights to consent, privacy, security and ownership when using data, and implementing values and practices of transparency and openness. This last aspect of transparency and openness may come in contradiction with other organisational objectives of competitiveness and reputational risks.

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<sup>135</sup> Interviews carried out on 12.03.2021, UNHCR, Protection staff category and 09.04.2021, UN OCHA, IM/IT expert category.

<sup>136</sup> In 2015, following the creation of a working group in 2014 and increased mobilization on digital principles, the endorsement campaign for the Principles launches, led by USAID, convened the endorsement of 54 international organisations the same year. The principles can be found [here](#).

<sup>137</sup> The Responsible Data community was launched in 2014 and advocates for practical approaches to develop addressing the ethical, legal, social and privacy-related challenges community members face. More information can be found [here](#).

- *A rising recognition of responsibility*

We consider the framing of the recognition of responsibility ought to be understood at three different levels: individual, organisational and systemic.

The analysis below provides an overview of the state of affairs for each level while acknowledging they are intertwined. At the individual level, a protection professional interestingly inquired where does the protection staff “*responsibility actually begins and ends?*”<sup>138</sup>. This very question, lived and experienced but unanswered while defending protection for civilians in conflict in the field, was the main trigger to this research. Since the last decade and the 2010s turn, there has been significant changes in what is expected *from* humanitarian professionals. Our field research pointed at two important developments, first, many humanitarian professionals are faced with responsibilities in regard to handling digital tools they do not feel to be adequately equipped to appropriately handle; second, humanitarian work is transitioning from unregulated practices to new rules being decided upon but that are nonetheless not yet ‘absorbed’ by humanitarian protection professionals (*Chapter 3*). Significant frustrations have been shared by humanitarian professionals through our field research, which we analyse as subtle signals of IPR alterations, led by the uncomfortable questions arising from situations that are the closest to civilians in conflict. We argue the connection of these several individual-level reflections contribute to prepare a conducive environment for organisational changes among protection actors.

At an organisational level, and as various humanitarian – including protection – actors have increasingly recognised the use of NTIs as a full-fledged subject-matter and started to tackle its implications, a mushrooming in the production of policies and guidance notes by humanitarian organisations was observed. The considerations below exemplify this nascent framing of NTIs’ uses through new rules and regulations imposed to staff, especially since 2015. In her 2012 essay on the chaos of humanitarian aid and her concept of ‘adhocracy,’ E. Cullen Dunn somewhat reduces the extent of possibilities of humanitarianism qualifying of “dramatic overstatement” the degree to which bureaucratic practices of humanitarian organisations can create order (Cullen Dunn, 2012). We question the extent to which different

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<sup>138</sup> Interview carried out on 20.11.2020, ICRC, Protection category.

organisational initiatives tackling the same issues NTIs create could reach beyond adhococracy to form new norms, a new governance and result in altering the IPR.



Figure 10: Table with key developments among humanitarian protection actors – an incipient governance

<b>Year</b>	<b>Organisation</b>	<b>New initiative or document on framing the use of NTIs</b>
2014	Responsible Data community	Human rights and academia convene and advocate for practical approaches to develop addressing the ethical, legal, social and privacy-related challenges
2014	Norwegian Refugee Council (NRC)	NRC Protection Policy (Norwegian Refugee Council, 2014). The document specifies that “all information collected and published by NRC, including for media purposes, is managed in a way that does not jeopardise the security, confidentiality or dignity of informants (including beneficiaries) or others who might be identifiable from the information.”
2015	UNHCR	Policy on the Protection of Personal Data of Persons of Concern to UNHCR (UNHCR, 2015).
2015	ICRC	ICRC Rules on personal data protection (ICRC, 2015).
2015	Consortium of development, humanitarian and Government actors	Principles for Digital Development
2015	Danish Refugee Council (DRC) & UNHCR	Protection-Information Management (PIM) initiative (see Chapter 3 for more information) is a collaborative project between the UN and NGOs that intends to develop, consolidate, and disseminate a conceptual framework for protection information management, to be used to achieve better protection outcomes for affected people in displacement situations.
2016	Inter-Agency Standing Committee (IASC)	IASC Policy on Protection in Humanitarian action, which includes guidance on data and information-sharing, collection and management (IASC, 2016).
2016	EU General Data Protection Regulation (GDPR) is announced but not yet implemented	Regulation (EU) 2016/679 of the European Parliament and the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (European Parliament and Council of the European Union, 2016b).
2017	ICRC-Brussels Privacy Hub	Handbook on data protection in humanitarian action (ICRC & Brussels Privacy Hub, 2017).
2017	DRC & UNHCR	Principles of Protection Information Management (UNHCR & DRC, 2017). The document bridges protection core concepts such as the ‘Do No Harm’ to practical implementation in programme implementations.
2018	UNHCR	Guidance on the Protection of Personal Data of Persons of Concern to UNHCR (UNHCR, 2018b).
2018	ICRC	Professional standards for protection work, to which was added chapter 6 on data protection (ICRC, 2018b).
2018	EU GDPR legislation starts being implemented	

2018	UN Secretary General	UN Secretary General Strategy on New Technologies, which intends to define how the United Nations system will support the use of these technologies and to facilitate their alignment with the values enshrined in the UN Charter, the Universal Declaration of Human Rights, and the norms and standards of international law. It also recognises a need to work closely with new and current partners to overcome challenges and reconcile interests, especially in the areas of privacy and human rights, ethics, equality and equity, sovereignty and responsibility, and transparency and accountability (UN Secretary General, 2018).
2019	ICRC	Policy on the Processing of Biometric Data by the ICRC (ICRC, 2019c). The document stated aim is to respond to growing internal interest in the potential that biometrics could bring to the ICRC’s operations, and strike a careful balance between facilitating their responsible use and addressing the inherent data protection risks.
2019	Wilton Park Conference and report at the initiative of the ICRC, Swiss Federal Department of Foreign Affairs and the Norwegian Ministry of Foreign Affairs	The Wilton Park conference was convened to reflect on ‘digital dignity’ and resulted in a report on Digital Dignity in armed conflict: a roadmap for principled humanitarian action in the age of digital transformation (Wilton Park Conference, 2019).
2019	UN OCHA	The Centre for Humanitarian Data Guidance Note Series, Data Responsibility in Humanitarian Action - Note #2: Data Incident Management, which notes that humanitarians have not had a common understanding of what comprises a data incident, nor is there a minimum technical standard for how these incidents should be prevented and managed. Without a shared language and clear approach to data incident management, humanitarian organisations risk exacerbating existing vulnerabilities as well as creating new ones, which can lead to adverse effects for affected people and aid workers (UN OCHA, 2019a).
2019	UN OCHA	UN OCHA Data Responsibility Guidelines – Working Draft (UN OCHA, 2019b). Although the core audience for the Guidelines is OCHA staff involved in managing humanitarian data across OCHA’s core functions of coordination, advocacy, policy, humanitarian financing and information management, with a primary focus on the field; it is worth noting that it is unusual for humanitarian organisation to publish working draft policies with the larger public. It may be interpreted as a strategy of the organisation to publicly position itself at the forefront of this reflection.
2020	DRC & UNHCR	Protection Information Management Strategic Framework 2020-2021 (UNHCR & DRC, 2020). The document notably mentions its strategic priority to reinforce guidance and application of the PIM standards, more specifically focusing on Protection coordinators support.
2020	ICRC-Brussels Privacy Hub	Although still led by the Brussels Privacy Hub and the ICRC, a second edition was prepared following the assessment of the need to include new chapter that would cover “constant changes in the

		technologies that are coming together to form humanitarian program". To widen the cooperation between different stakeholders, the advisory board and working group for the second edition has been expanded to include more representatives of humanitarian organisations, data protection authorities, academics, NGOs, and experts on relevant topics (Marelli & Kuner, 2020).
2020	UN OCHA	The Centre for Humanitarian Data Guidance Note Series, Data Responsibility in Humanitarian Action - Note #8: Responsible Approaches to Data Sharing, which notably provides support for decision-making around the sharing of non-personal data in humanitarian settings. It explains data sensitivity, provides common examples of sensitive non-personal data, and explains an approach to information and data sensitivity classification in humanitarian settings. It also offers a framework that organisations can use to weigh four factors that help determine whether data can be shared and explains common approaches for doing so responsibly (UN OCHA, 2020).
2021	Inter-Agency Standing Committee (IASC)	IASC Operational Guidance on Data Responsibility in Humanitarian Action. The document is, to this stage, the most advanced piece that bridge a collective responsibility of humanitarian actors beyond each organisation's policies and guidances. It is also more advanced as it includes both individual data protection and non-individual information that can nonetheless be sensitive. It also brings back the concept of 'Do No Harm' to the forefront and in the frame of data responsibility (Inter-Agency Standing Committee, 2021).
2021	Danish Refugee Council (DRC)	Information Management System (IMS) - challenges and opportunities learning report (DRC, 2021). It is worth noting the document features both data responsibility and data protection providing a recognition of both opportunities and challenges related to practical implementation. It specifically mentions that "Data management activities are aligned with the established frameworks and standards for humanitarian ethics and data ethics."

According to the Signal Code study, the next logical step of the ‘arc of professionalisation of humanitarian action’ – beyond the testing phase of NTIs – would likely require collaborative, multi-stakeholder effort to develop minimal technical standards (Campo et al., 2018). We would argue that this new phase has started, and this is recognisable by its transition from solely organisational level decision-making to systemic (and inter-agency) collective thinking in developing new norms regulating the use of NTIs in humanitarian action and more specifically in aligning practices with core protection values and ethical principles. Beside specific initiatives from humanitarian actors, especially encouraged by western donors, external ‘push’ factors have also led humanitarian organisations to further invest resources in data protection. The development of the EU General Data Protection Regulation (GDPR) or EU2016/679 in 2016, and which entered into force in 2018, constitutes a strong impetus for European-based humanitarian organisations to reflect on what it means in practical terms for their handling of individual information. The new EU law, considered to be the most stringent legislation that exists, lays down rules relating to the protection of ‘natural persons’ (physical persons) with regard to the processing of personal data and rules related to the free movement of personal data. Its objective is to “*protect fundamental rights and freedoms of natural persons and in particular their right to protection of personal data*”<sup>139</sup>.

The GDPR clearly defines ‘consent’ of data subjects as a ‘*freely given, specific, informed and unambiguous indication of the data subject’s wishes*’ (European Parliament and Council of the European Union, 2016b). The GDPR also formulates new ‘data rights’, among which are the right to be informed (articles 13 and 14), the right to access (article 15), the right to rectification and erasure (articles 16 and 17), the right to restrict processing and object (articles 18 and 21), and the right to data portability (article 20). In addition ‘data subjects’ must be informed ‘without undue delay’ about data breaches (Gazi, 2020). This last point is especially sensitive as our field research pointed at conservative practices, at times concealment of information when it comes to data breaches that humanitarian organisations might face.

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<sup>139</sup> The EU2016/679 or EU GDPR can be found [here](#).

Nonetheless, the Regulation also explains there are some exceptions in various situations, and specifically data processing on individuals and humanitarian organisations' work is specifically mentioned in two articles:

#### Article 46

*“Some types of processing may serve both important grounds of public interest and the vital interests of the data subject as for instance when processing is necessary for humanitarian purposes, including for monitoring epidemics and their spread or in situations of humanitarian emergencies, in particular in situations of natural and man-made disasters”* (European Parliament and Council of the European Union, 2016b).

#### Article 112

*“Any transfer to an international humanitarian organisation of personal data of a data subject who is physically or legally incapable of giving consent, with a view to accomplishing a task incumbent under the Geneva Conventions or to complying with international humanitarian law applicable in armed conflicts, could be considered to be necessary for an important reason of public interest or because it is in the vital interest of the data subject”* (European Parliament and Council of the European Union, 2016a). Interpretations on this article predominantly relate to exchange of information on children (below 18 years old).

The interpretation of the two articles above has been the subject of various debates and questions of practical implementations for humanitarian actors. Although the GDPR is part of EU law, organisations that manage information about data subjects within and beyond Europe but that have a base in the EU have been required to perform legal analyses to interpret what the GDPR means in practice and adapt. B. Hayes notes the EU law is widely regarded as ‘the golden standard’ and that makes reference to humanitarian activities, albeit not with details (Hayes, 2017). Through our field work and various interviews with humanitarian professionals, the ripple effects of the GDPR became clear. For instance, although the Norway-based NGO NRC is not based in the EU, one of its professional staff explained the organisation considers itself ‘bond to certain rules,’ adding that *“data protection are sensible rules and GDPR or not, we want to be compliant with those*

*principles*<sup>140</sup>. This comment was resonated by a field-based protection professional that added *“I feel some European NGOs take it more seriously with the GDPR and try to develop a framework in the way to use new technologies with more structure and more safety.”*<sup>141</sup>

Humanitarian organisations that are based in the EU and beyond, including the Danish NGO DRC, have invested in specific resources on data protection or even created Data Protection Offices (DPO), that often includes an element of clarifying how the GDPR applies to the organisations and their operations worldwide.<sup>142</sup> In practice, some organisations have established GDPR focal points in each country while the legal analysis made by each organisation provides pointers about its choices of implementation. We noted divergences on legal interpretations of the GDPR across different organisations: one view notably considered a humanitarian organisation is one legal entity and exchange of data between countries remains under the same entity; this means that such organisation would not be subject to the GDPR, while another organisation is considered to be subjected to the GDPR for cross-border data exchanges between its offices as long as this one is located in the EU.<sup>143</sup> The question of a humanitarian organisation status impacts the analysis of different humanitarian organisations and how the GDPR may or may not affect them. While NGOs that are either present in the EU or deal with EU ‘data subjects’ (citizens and residents) would be subjected to the EU Directive, at least in their offices on the EU soil, the case of international organisations (IOs) that operate under public international public law gave rise to unexpected questions and needs for clarifications (Gazi, 2020; Kuner, 2020). According to Kuner, the lack of clarity on IOs has created tensions: *“The European Commission has also stated informally that the GDPR does not apply to IOs directly since they generally enjoy privileges and immunities under international law, though the Commission also maintains that the GDPR’s rules on international data transfers do apply to transfers from the EU to IOs”* (Kuner, 2020). A contrary view is that application of the GDPR to IOs may be determined under its material and territorial scope, contributing to a “murky legal situation” and considerable uncertainty.

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<sup>140</sup> Interview carried out on 19.03.2021, NRC, Policy category.

<sup>141</sup> Interview carried out on 28/03/2021, Protection staff.

<sup>142</sup> Interview carried out on 26.03.2021, DRC, Policy category.

<sup>143</sup> Several interviews with humanitarian professionals pointed out to various interpretations of the GDPR, no further specific details on specific organisations’ interpretations are provided for the respect of confidentiality – the important aspect being more in the divergence of views rather than a specific single legal interpretation.

This question of territorial scope of application of the GDPR on humanitarian organisation with different legal status and offices in several countries is the main bottleneck that is to be tackled. Organisational choices happen at different levels: for organisations whose legal interpretations lean towards the need to implement the GDPR, the debate evolves around implementing it in some operations or in all operations, such as in South Sudan or in Yemen. At a more technical level, the choice of digital tools organisations purchase from the private market is impacted by the GDPR as it imposes to review standards for higher protection of individual information on ‘data subjects.’ A third aspect, which tends to call for a longer timeframe of implementation, is the training of humanitarian staff to be more aware of and conscious about new data responsibilities that have been ‘pushed’ by the implementation of the GDPR since 2018.

As it was explained by a humanitarian professional from the NGO DRC, there are also associated risks that are considered in relation to the GDPR: *“there are organisational risks for the whole organisation, such as the GDPR, and then we have country-specific GDPR and data protection risks.”*<sup>144</sup> Looking at organisational risks, some professionals mentioned uncertainties around funding as some requirements from donors’ funds may be in direct breach of the GDPR (quest for more transparency and more information being shared back to donors), leaving humanitarian organisations in an uncomfortable space of contradictions. Lastly, the GDPR represents one ‘push factor’ in the sense that it has contributed to fostering initiatives on individual data protection that may become a new norm; however, other countries beyond the EU may also have advanced legislations on data protection that humanitarians may need to abide by – at the exception of specifically negotiated exemptions. For instance, a policy professional noted that both Turkey and Kenya have *“quite advanced data protection legislations”*<sup>145</sup> that are to be considered. Building on the ripple effect we identified from our field research, besides uncertainty and diverging interpretations around IOs’ responsibilities under the GDPR, a number of IOs have already adopted their own organisational procedures and mechanisms on data protection rules – among which the

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<sup>144</sup> Interview carried out on 26.03.2021, DRC, Policy category.

<sup>145</sup> Interview carried out on 26.03.2021, DRC, Policy category.

UNHCR and the ICRC are at the forefront (ICRC, 2015; ICRC & Brussels Privacy Hub, 2017; UNHCR, 2015, 2018b).

Beside data protection and GDPR-like new legislative frameworks that have been developed since the turn of 2010, a technology adviser noted that it is “*difficult with ‘emerging technologies’ to project not only on a new technology or tool but also in terms of technology ecosystem*”<sup>146</sup> – suggesting the extent of the NTI variable across the inner-workings of the humanitarian system to pursue global humanity.

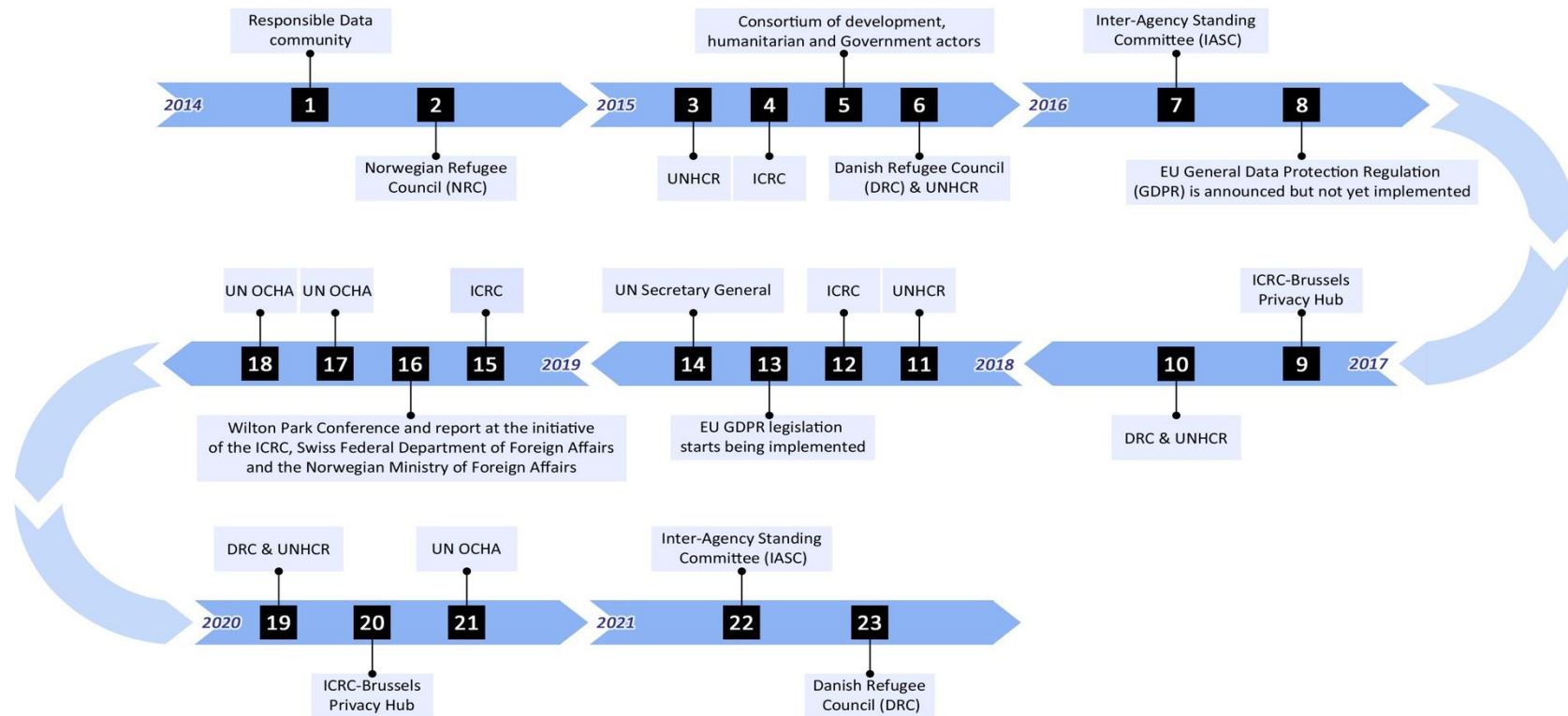
The Wilton Park Conference in 2019, that brought together the ICRC, the Swiss Federal Department of Foreign Affairs and the Norwegian Ministry of Foreign Affairs is a recent example of crossbreeding of ideas among various actors: within the humanitarian system but also with Governments (that are also donors). Following the three-day conference, a report titled ‘Digital Dignity in armed conflict: a roadmap for principled humanitarian action in the age of digital transformation’ concluded that “*humanitarian protection work needs to adapt to the threats posed in the digital context, needs to explore unified protocols for addressing data security and protection as a means to achieving digital dignity*” (Wilton Park Conference, 2019). There is a growing acknowledgment, agreement and proactive actions undertaken to expand the scope of the International Protection Regime (IPR), whose roots are entrenched in the XX century and that needs to find new grounds in the XXI digital century to stay relevant and legitimate.

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<sup>146</sup> Interview carried out on 29.03.2021, NRC, Policy category.



Figure 11: visualisation of a nascent framing of humanitarian' digital responsibility



The respect of an individual's dignity in a digital context and the primacy of any person affected by conflict being respected as a "data agent" and not solely a "data subject" would be expected to continue gain momentum (Wilton Park Conference, 2019). According to Jacobsen and Fast: "*humanitarian technology governance is a form of power that blurs control and care, emancipation, and domination*" (Jacobsen & Fast, 2019: 3). The often-underappreciated element of power links the safety of civilian populations whose information has been shared and digitalised to larger governance decisions by humanitarian protection actors. The authors argue that NTIs have the ability through 'sociotechnical formations', to 'loop back' and influence how we see the humanitarian situations based on technologically-supported knowledge development and to apprehend complex realities – a notion that calls for systematic assessment of risks and limits NTIs have in terms of data quality, biases arising from both technical and technical-human interactions, data privacy among others. Beyond the fast absorption of NTIs by humanitarian actors, including those with sensitive protection activities, the issue at stake is often considered in economic terms: preventing access to digital bodies of vulnerable populations is largely recognised as needed, while at the same time implications of mismanagement, misuses and breaches are difficult to grasp.

We recognise the rise of a new governance is -still- at an incipient phase; we nonetheless observe that the development of enhanced data protection laws and the subsequent work undertaken by humanitarian actors to adapt as indicative of a larger systemic change. Lastly, after a first edition of the Handbook on Data Protection initially developed by the academic research centre Brussel Privacy Hub and the ICRC published in 2017, a second edition was developed and published in 2020 (ICRC & Brussels Privacy Hub, 2017; Marelli & Kuner, 2020). In the short timeframe between the two iterations, a review board was extended to more stakeholders from the humanitarian sector, Government expert representatives and academia, which reinforces our interpretation of the nascent systemic adjustments at play to absorb the use of NTIs in a responsible manner. In addition, a wider scope of the use of NTIs are covered and include: blockchain, digital identity, connectivity as aid, social media and AI. However, the further development of a new governance will likely take time to find common agreements and possible new contours.

Looking ahead, some important fields have not yet been the subject matter of in-depth discussions: for instance, the possibility for civilians that are data subjects to seek recourse and reparation following humanitarian organisations' mishandling has been largely overlooked. Internal mechanisms for oversight and critical incident management remain specific to each organisation's decision, capacity and technical expertise. Dette calls it 'irresponsible digital data' while focusing on what is considered to be alarming cyber threats to humanitarian actors (Dette, 2018). There is also further need to understand the legal framework regarding data security in countries where humanitarian actors operate (Wilton Park Conference, 2019). Lastly, and although a useful debate has been opened, there is a need to further refine the operational applicability of both IHL and IHRL in the digital realm so that legal obligations and responsibilities can be addressed in the event of protection violations (Marelli, 2020; Wilton Park Conference, 2019). In doing so, some advocate for a dialogue with states, state-sponsored and NSAGs on cybersecurity applications to humanitarians and for developing acceptance of a 'protected digital humanitarian space' (Marelli, n.d.).

In post-humanitarianism, the rapid flux of events in conflicts along with a distancing tendency from the field and from civilians themselves is seen to disrupt normal cognition – this is a cornerstone aspect that hint towards tremendously deep implications in the use of NTIs for protection purposes (Duffield, 2018). McCarthy comes to a similar conclusion arguing that the cognitive understanding actors have of the world are not independent from material relations with NTIs but rather arise from them (McCarthy, 2011).

In this second part, we have further explored 'how' (*Chapter 3*) and 'why' (*Chapter 4*) the NTI variable bears significant impact in both the practices, politics and ethics of civilian protection. As new opportunities and new risks arise, efforts to better grasp the exponential developments of the XXI century, spearheaded by the private sector and by some defence forces, and more recently being absorbed by humanitarian protection actors, continue. The 'time-in-between' when ungoverned and ill-explored technology and dignity bounded issues, especially affecting civilians in conflict, brings about questions of responsibility, legality and ethics. Most importantly, it affects and disturbs previous traditional practices of humanitarian protection. Yet, especially in the last decade, humanitarian actors have stepped up to create new mechanisms which intend to pursue a principled use of technology in humanitarian work,

including for protection. As the inception of a new governance was identified and may be expected to further develop (although its future shape remains uncertain), the next legitimate question relates to knowledge generation. The issue of knowledge (re)generation will be tackled in the third and last part of our research, specifically exploring transformation in knowledge-generation processes (*Chapter 5*) through both understanding and narratives, and the search for new common grounds in the IPR alteration.

## PART III: Tempora Mutantur<sup>147</sup> - Protection knowledge (re)generation

As we approach the third part of our research, we continue a reflection that calls upon an enriching back and forth between practice and theory, albeit letting further space for a theoretical elevation of our reflection. The exponential development of New Technologies of Information (NTIs) has triggered, initiated and created a new frame that protection guardians have started to integrate through the inception of a new governance (*Chapter 4*) so to adapt the mission to protect civilians who are victims of conflict to the XXI century realities. Information captured on families' plight, supported, enhanced and nuanced by NTIs offers possibilities of interpreting, formulating and presenting a different knowledge in defending protection objectives with alleged perpetrators (parties to the conflict) and those possibly exerting influence (member states, other organisations – IOs, NGOs, the public opinion) over alleged perpetrators. As we tackle the third part of our research, *Chapter 5* delves into new processes of knowledge generation on protection issues and the subsequent meanings for actors of the International Protection Regime (IPR). Referring to Kratochwil's recent stance, claiming "*there is no question that the exponential increase in our ability to collect and analyse data will have transformative implications for how we will create knowledge*" – we intend to unpack, reflect and enhance our understanding of the implied meaning for protection and the individuals that are behind the concept (Kratochwil, 2022, 151). Then, in *Chapter 6*, we will link knowledge transformation to the IPR alterations and its search for new common grounds. In doing so, remarks from E. Haas in his 1991 book *When Knowledge is power: Three Models of Change in International Organisations* - specifically resonate with reflections that are most relevant at the turn of the 2020s:

*"Today's international organisations are said to be mired in the 'crisis of multilateralism,' a disease that has spread to them from its original source in the foreign policies of some of the more important member states. Exhortations for overcoming this crisis abound. Since the symptom of the disease include shortcomings of organisations, the remedy calls for new and improved organisational designs. But*

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<sup>147</sup> *Tempora Mutantur* is a Latin saying meaning that 'times are changed' and implicitly implying 'we are changed with them' (or *nos et mutamur in illis*).

*remember, the interplay of knowledge and interest in international organisations is merely a reflection of knowledge and interests that are really located within states” (E. B. Haas, 1992: 177).*

Political science and more specifically International Relations (IR) researchers have reflected upon the notion of multilateralism, some, as mentioned above, even calling it a ‘crisis of multilateralism’, a concept stemming from an absence of political consensus and a consideration that continues to bear weight in today’s international landscape and adjusted configurations. Badie, who has reflected on the topic over the years and even dedicated a book to the subject-matter of multilateralism in 2007, more recently called the UN Multilateralism a “*prisoner of the past and hostage of its future*” (Badie, 2022; Devin & Badie, 2007). Focusing on the UN General Assembly, Petiteville, Devin and Tordjman concluded that its role, albeit criticised, represents a “*barometer of multilateralism and of the global political balance*” (Petiteville et al., 2020). Some argue for a renewed multilateralism to respond to today’s compounded crises, others, such as Realist Mearsheimer, argue the liberal order has gone ‘downhill’ from 2005 to 2019 and foresee a return to great power competition through the establishment of three *potential* realist orders<sup>148</sup> (Mearsheimer, 2019). Recognising a fall in the number of new international accords being committed to by States in the XXI century, which we also noted in *Chapter 4* of this research, Fernandez and Holeindre skillfully orchestrate reflections around the concept of multilateralism, notably questioning how the “*problems without passport*” – such as digital technology – can be dealt with in adapted IR configurations (Fernandez & Holeindre, 2022).

Already in the 1980s, Kratochwil and Ruggie have reflected on international regimes considering neither processes whereby knowledge becomes more extensive nor the means whereby reflection on knowledge deepens are passive or automatic: they are seen as “intensely political” (Kratochwil & Ruggie, 1986).

In the next two chapters, we will explore knowledge generation processes through evolutions that have occurred and continue to do so at different levels. More specifically, we argue there is a double transition at play: first, a certain destabilisation that originates from the

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<sup>148</sup> J. Mearsheimer notably describes the development of three different realist orders in the foreseeable future: a thin international order and two thick bounded orders—one led by China, the other by the United States.

reordination of knowledge processes that support the formulation of protection narratives and arguments – through and with the NTI variable. Second, it is important to consider meta-transformations in the world order since the creation and development of the IPR in the post-WW II era when it was largely recognised and considered legitimate by most having power. This relates to some discussions on the crisis of multilateralism mentioned above. We argue the IR landscape has changed, and if the IPR continues to exist, it now tries to survive despite recurrent violations, including by the member states that have committed to its principles and finance protection actors. Continuing to meaningfully defend protection principles and objectives for civilian women, children and men affected by conflict requires to significantly adapt to a less conducive configuration of IR for dialogue and adaptations to new realities. Leveraging NTI-supported knowledge about complex protection issues to key stakeholders, alleged responsible and those possibly exerting influence then becomes instrumental in the IPR alteration and adaptations' attempts. Beyond the core protection mission of humanity and dignity for every individual, it is the currently dominant humanitarian identity – *nonetheless acknowledging different types of humanitarianisms exist* – that is at stake in a hyper-politicised world. Barnett and Weiss interestingly note that “*the debate over humanitarian identity reflects a search to recapture the unity and purity that is tied to its presumed universality,*” and add that “*the search for unity represents nothing less than an attempt to fix a meaning to humanitarianism and repair breaches in its increasingly porous boundaries*” – an idea we will further explore (Barnett & Weiss, 2008a: 5-6).

## Chapter 5: Transforming knowledge generation - towards Protection 2.0

According to Ward in his book *Quantifying the world*:

*“The pursuit of knowledge demands an appropriate congruence of concept and information driven by ideas and different, but generally contemporary currents of thoughts. Concepts framed by a combination of theory, philosophy, and understanding gained from observation and experience. Information assumes its rightful usefulness only when it is accompanied by a proper understanding of how the world works”* (Ward, 2004: 32-33).

Building on our field research through several interviews with humanitarian professionals, we explore the connection between the hundred thousand pieces of information that are captured with the support of NTIs on conflict situations and civilians’ plights, and what it *means*, especially for protection actors to defend their humanitarian objectives. Interestingly, most interviews pointed at a lexical field around the concept of “understanding” – considered to be the next challenge humanitarian actors contemplate at the turn of the 2020s, using wording such as ‘*make sense,*’ ‘*analysis,*’ ‘*understanding the context,*’ ‘*bring meaning,*’ ‘*evidence-based analysis not just numbers,*’ and a sense of ‘*urgency for more analysis combining quantitative and qualitative information,*’ so to ‘*connect the dots.*’ According to a humanitarian professional specialised on NTIs:

*“What is important, and fundamentally different today from the times in Rwanda and ‘radio des milles collines’ in 1990s is the speed, scale and depth of how information circulates, as well as the actors or protagonists that can take part either for creating information/content or in consuming and sharing information.”*<sup>149</sup>

Adding depth to the above statement we agree with, another interviewee importantly noted that the “gaps of information”<sup>150</sup> are equally important to consider when seeking to understand the realities of conflict situations. Humanitarian protection actors may have access to information on one geographical area of a conflict but not another: any interpretation would thus need not to solely focus on available information but also to point

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<sup>149</sup> Interview carried out on 02.12.2020, ICRC staff, Senior Management Policy and Innovation category.

<sup>150</sup> Interview carried out on 30.04.2021, NRC staff, IM/IT category.



at the lack of access and lack of information and knowledge on another area – a notion we earlier called *'data deserts.'*

While we previously addressed the technical mechanisms – or the 'how' - in the second part of our research (*Chapters 3 and 4*), we now naturally turn to the 'why' and the 'who': and notably, 'why' the creation of protection knowledge on protection issues is instrumental and 'who' develops narratives and use created knowledge to pursue various objectives and interests. Interpretations of protection sensitive information support the development of knowledge and narratives different actors can use in their attempt to exercise influence and power. Kratochwil recognised that there is no question that the exponential increase in our ability to collect and analyse information will have transformative implications for how knowledge will be generated, but a "clearer picture" can only be gained if some conceptual issues are addressed (Kratochwil, 2022). Barnett and Weiss defend that the *"intimate relationship between authority, knowledge, and power can negatively affect the practices of humanitarian organisations. (...) we noted that there are various kinds of authority and that humanitarian agencies tend to traffic primarily in moral and expert authority. Transforming information into knowledge by giving it meaning, value, and purpose is one of the major functions and objectives of authorities in social life; the process has for consequence of shaping action and social reality; which, of course, is a fundamental dimension of power"* (Barnett & Weiss, 2008a: 255).

According to these authors, this is why Max Weber has argued that bureaucratic power is controlled based on knowledge. The power humanitarian organisations can hold is premised on both their material resources (including NTIs), and more fundamentally, on their ability to use their authority to transform information into knowledge and pursue practical outcomes. Those represent the two aspects we will explore through this chapter on the NTI-supported creation of knowledge and its uses. Zürn interestingly reflected on what he presents as the politicisation of international institutions, considered to be a consequence of the increasing authority of those international institutions, including humanitarian organisations (Zürn et al., 2012). The process of politicisation of international institution is defined both as a growing public awareness of their role but also with an increased public mobilisation of competing political preference regarding international institutions' policies and procedures. International institutions are therefore further scrutinised and criticised, this public attention is core to the concept of politicisation which requires a space for interaction, debate and

contestation. Zürn explains that a dramatic change of cognitive, cultural and technological conditions has led international institutions to encounter a change cognitive capacity and normative sensitivity for defining various facets of an issue, which is considered part of the explanation for politicisation and will be captured in our reflections (Zürn et al., 2012).

## I. Finding a new compass for protection knowledge

### 1. Compressed time, enhanced protection analysis

E. Haas considers *“a theory of change in organisational behaviour must take as its units of analysis events sometime after the creation of the organisation. Adaptation and learning refer to events after the organisation has been exposed to the winds of change”* (E. B. Haas, 1992, 54). Change is indeed not to be proven anymore, but rather researched to grasp its modalities for humanitarian professionals and what it means for the protection endeavour. As mentioned in an interview, a humanitarian professional explained the *“economy of attention”* characterising humanitarian actors’ engagement with member states: a frame in which *“getting someone’s attention in 30 seconds that is an achievement.”*<sup>151</sup> Similar comments were made by a senior protection adviser who explained the battle to ensure a *“sharp pitch”* is made in 10 to 20 seconds for a member state to say, *“I want to know more”* while various actors are *“competing for space, competing for money and for attention at the UN Security Council.”*<sup>152</sup>

Our field research somewhat echoes Pouliot’s works on practices of multilateral diplomacy, where he defends that non-official interactions of the ‘diplomatic community’– *to which senior humanitarian representatives belong too* – outside meeting and conference rooms allow for key-information sharing to prepare and strategise for official negotiations (Pouliot, 2017). To keep abreast of latest information is an important ability for a diplomat: for which the leveraging of NTIs and NTI-supported knowledge becomes cornerstone. In the reordination of knowledge processes that concern both the cornerstone protection, but also any other issue discussed bilaterally and multilaterally, the *exercise* and *practice* of diplomacy has traditionally been anchored in hall-way discussions (Devin, 2013). Debates on the

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<sup>151</sup> Interview carried out on 02.12.2020, ICRC staff, Senior Management Policy and Innovation category.

<sup>152</sup> Interview carried out on 04.12.2020, UNHCR, Protection category.

international humanitarian order and on the importance of inquiring how diplomats and humanitarians engage one another on different issues that are high on the international agenda, including the ‘protection of civilians’ have been the object of various studies (Barnett, 2009; Sending, 2015a). Sending notably explained:

*“It is not really possible to understand the character of humanitarian action – and the ideology of humanitarianism – without analysing how diplomacy defines the conditions of possibility for its particular form and its modes of operation”* (Sending, 2015a: 257).

Considering this informal networking crucial, Pouliot discussed the social depth of interpersonal ties involved in the diplomatic community, from coffee break exchanges to informal discussions in the corridors forming a ‘multiplexity’ around peculiar relational structures (Pouliot et al., 2015).

As an accelerator of change, the 2020 COVID-19 crisis has abruptly adjusted the practice of diplomacy through a switch to online discussions (Ivanchenko, 2020; Labott, 2020). While diplomatic practices in 2023 find new hybrid forms mixing face-to-face with digital engagement, an interesting echo can be made with field humanitarian protection practices themselves manoeuvring with caution with similar hybrid shapes.

Interestingly, humanitarian professionals in the 2020s explain in their own words what Nye theorised twenty years before at the turn of the XXI century, and described as a “paradox of plenty” – a situation resulting from an explosion of information that actually leads to a scarcity of attention (Nye, 2004b). In the ‘paradox of plenty,’ people are overwhelmed with the volume of information confronting them and have difficulties discerning what to focus their attention on: attention rather than information becomes the scarce resource. According to Nye, those able to “*distinguish valuable information from background clutter gain power*” (Nye, 2004b: 106).

While information overflows but often falls short of interpretations, the ways humanitarian professionals use information to interpret and create knowledge, forming the basis of protection narratives is what is currently being re-explored. Kratochwil cynically considers another paradox, arguing that “*more knowledge creates also (paradoxically) more ignorance*” (Kratochwil, 2022: 72).

E. Haas defines knowledge as “*all decisions in organisations use information in the effort to reduce uncertainty, despite all our caveats about unmotivated and motivated error. What*

*matters for our purposes is whether this information is 'raw' or structured, generally agreed to be true and reliable, or subject to controversy. We are most concerned with the kind of structured information that is offered by epistemic communities as a guide for action. The term knowledge is more appropriate than information because it implies the structuring of information about whatever topic engages the organisation in conformity with some theoretical principle"* (E. B. Haas, 1992: 73).

Most humanitarian professionals interviewed recognise both quantitative and qualitative information are needed to advance protection work: *"it is not about numbers or words, it is about both"*.<sup>153</sup> Yet, nuances are worth highlighting in the shrunk space for protection dialogue among actors of the IPR, as exemplified in the following remark:

*"I have to be bluntly honest and say I think people are much more impressed by a lot of graphs, figures, colours and pictures than a 30-pages report, it is a fact"*.<sup>154</sup>

If qualitative approaches are widely considered important to mobilise attention among protection professionals, it is the skilful way to combine figures with qualitative elements that is considered paramount. Donor requirements for 'evidence' have reinforced pressure to combine approaches to develop a meaningful stance. Humanitarian efforts recently turned towards interpretation and tentative explanations of often intangible and precarious situations. The extent of available data - some refer to "amazing data"<sup>155</sup> on demographics and protection incidents - needs to be further analysed, and there is a need to bring cohesion into datasets to 'make sense,' while the various existing initiatives are considered to be largely disconnected. Reflections on the gap between policy and practices of protection also point out to a "disjointed analysis," somewhat leading to limited development of outcome-oriented focus in protection activities (Svoboda & Pantuliano, 2016). The humanitarian competitive environment and unequal investment in protection professionals' training for analysis was also pointed at as a shortfall hampering capacities to deliver protection services: *"past and current research points to the need for context analysis and yet, more often than not, many organisations are ill-prepared to respond to a particular crisis because they do not invest in thorough analysis, lack of skilled staff, and fail to take into account the affected populations' assessments of their own needs"* (Svoboda & Pantuliano, 2016: 378). Other critical

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<sup>153</sup> Interview carried out on 01.04.2021, UNHCR, Senior Management and Innovation category.

<sup>154</sup> Interview carried out on 02.12.2020, ICRC staff, Senior Management Policy and Innovation category.

<sup>155</sup> Interview carried out on 04.12.2020, UNHCR, Protection category.

considerations on challenges of protection analysis point out that *“while a phenomenal amount of data has been collected, the emphasis of humanitarian actors has been on collating incident reports, rather than on political, social and livelihoods analysis”* (Pantuliano & O’Callaghan, 2006: 15).

A humanitarian professional explained not seeing any tension between quantitative and qualitative elements, asserting there is often a confusion between the quantitative/qualitative dichotomy and the objective/subjective one – while subjective elements can be quantified, with for example, *“XX% of women do not feel safe.”*<sup>156</sup> For humanitarians to combine both is considered as urgent. While we agree with this stance, it is nonetheless important to contemplate at which level humanitarian professionals’ skills and the system of information collection and subsequent knowledge creation have evolved: more situations similar to the example above can be expected to be developed in the years to come as it is rather an exception than the norm. From data and information displayed on NTIs’ tools and visual dashboard towards interpretation may represent the next step: to analyse and further create knowledge. If the general trend is to move towards a more evidence-based approach, for which NTIs constitute an enabler, more headway is expected by humanitarian professionals: *“technology is helping us to move towards a more evidence-based approach but I do not think we are there.”*<sup>157</sup>

In line with humanitarian professionals’ words, *“analysis is done by people, not tools”*.<sup>158</sup> The shift at play in the inner workings of the humanitarian system, including for its core protection component, was well summarised by a UNHCR senior staff who explained:

*“It is a question of the pendulum, we were so far on the narrative, not digital side, and then the pendulum has swung into new technologies, Power BI and Kobo,<sup>159</sup> and now it is about finding an equilibrium so that tools are seen as tools and enablers and that the human component is also brought in recognising the contributions of each and how they can work together”*.<sup>160</sup>

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<sup>156</sup> Interview carried out on 01.04.2021, UNHCR, Senior Management and Innovation category.

<sup>157</sup> Interview carried out on 04.12.2020, UNHCR, Protection category.

<sup>158</sup> Interview carried out on 01.04.2021, UNHCR, Senior Management and Innovation category.

<sup>159</sup> KoboToolbox and Power BI are both software which allow to capture data in a structured manner and provide instant handling and visualization of information. Both software have grown to become widely used in the humanitarian sector, most specifically in the UN ecosystem, including both UN Agencies and NGOs’ implementing partners.

<sup>160</sup> Op.Cit.

Connecting those complementary elements and approaches, for which the quantitative methodologies have been pushed to the forefront with the advent of the datafication culture and NTIs (cf. *Chapter 3*), would thus *-theoretically-* allow to leverage protection information into better munitions for protection advocacy, protection interventions and mobilisation to impact alleged perpetrators' behaviours or those having influence over them. Protection narratives are also adapted depending on the audience to which it is addressed.

This second element is at times what is also pointed out as the missing step: *"to have interviewed X number persons, it looks nice in your report for donors, but the question is what is done with this information, how to respect the person and his/her family's wellbeing. What we lack a lot today in the humanitarian sector is what happens after."*<sup>161</sup>

Additionally, it is also considered to ensure balance in potentially *"blind quantitative analysis"*<sup>162</sup> that may not reflect complexities of conflicts and thus have a certain bias, reason why qualitative analysis is used to complement figures. To sum up the above remarks from humanitarian professionals from different fields of expertise, a senior staff specialised on IM/IT shared: *"It is not about the data per se but also the context of the data as well, we need to have an understanding of the political context you operate in."*<sup>163</sup> The knowledge of context and the need for a systematically anchored analytical framework are still seen as resting on human knowledge.<sup>164</sup> Taking a step back to look at the situation globally, another humanitarian professional noted the will to *"understand the world better with the use of new technologies of information"*<sup>165</sup> and *"leverage the use of various fields of data so to put it together"*<sup>166</sup> and incorporate it into protection analysis.

It is important here to differentiate between two types of operational settings: protracted conflict and emergency situations. Those distinct settings do not allow for the same possibilities in capturing information and consequently open for different knowledge generation. First, in protracted conflict situations, for some that have lasted over a decade, information collected early on may allow to establish trends and patterns of protection violations. In some contexts, a minimum of stability with data from the last 5 to 7 years would even allow for statistical forecast, also called predictive or anticipatory analysis, a

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<sup>161</sup> Interview carried out on 16.04.2021, DRC, Protection staff category.

<sup>162</sup> Interview carried out on 30.04.2021, NRC staff, IM/IT category.

<sup>163</sup> Interview carried out on 09.12.2020, ICRC staff, IM/IT category.

<sup>164</sup> Interview carried out on 29.03.2021, NRC staff, Senior Management and Innovation category.

<sup>165</sup> Interview carried out on 04.12.2020, UNHCR, Protection category.

<sup>166</sup> Interestingly, this was considered to be a move where the World Bank Group is at the forefront.

humanitarian professional noted.<sup>167</sup> As many conflict situations find no political solution, resulting in long-lasting humanitarian consequences, the humanitarian sector got to a point where such ‘historical data’ (10 years) starts being accumulated – meaning the tools that have been used to collect information more systematically since 2010 now allow to bring about interpretations with a longer time span. We may argue that this represents a new kind of knowledge that NTIs supported and which was not available before. To the contrary, fast-changing conflict situations are about political and social upheavals, which create challenges for protection actors to integrate systematised data into their work.<sup>168</sup> The element of time yet again brings us to question the change of analytical frame, as humanitarian professionals overwhelmingly emphasise that analysis takes time, in contradiction with “*what we need to do for donor reporting.*”<sup>169</sup>

The above mostly relates to establishing the ‘facts’ of a protection violation and patterns of violence, and how it is or could be better linked to international norms and laws the IPR rests on. According to Kratochwil, the knowledge necessary for deciding practical questions operates with a major (universal) premise and a minor (factual) premise which – theoretically – would ensure the validity of the conclusion of an argument. Nonetheless, it is considered that more happens on the practical reasoning to determine the ‘facts’ of an event. Both minor and major premises are considered important as the author explains they should connect the facts to the norms and require hermeneutic understanding (Kratochwil, 2022).

## 2. A window to potential knowledge sharing development evolution

A yet little-explored source of information on protection violations are images and videos circulating in Open-Source Information (OSI). OSI was mentioned by several humanitarian professionals as an untapped potential<sup>170</sup> that could be used to complement primary sources of information and traditional face-to-face interviews, where humanitarian access is allowed. If OSI information, through images (e.g., dead bodies) or videos (e.g., summary executions), is largely seen as increasingly circulating in the public sphere in recent conflicts, (the 2020

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<sup>167</sup> Interview carried out on 06.04.2021, UN OCHA, IM/IT category.

<sup>168</sup> Interview carried out on 04.12.2020, ICRC staff, IM/IT category.

<sup>169</sup> Interview carried out on 16.04.2021, DRC staff, protection category.

<sup>170</sup> Interview carried out on 18.12.2020, ICRC staff, Senior Management and Innovation category.

conflict over contested Nagorno Karabakh, the one in Ethiopia in 2021, or the 2022 war in Ukraine), there is yet no systematic processing among humanitarian protection actors, and no verification of such sources of information to complement other protection information collection and approaches. Specialised actors, such as Bellingcat, an investigative journalism group specialised on open-source intelligence (OSINT), has published in-depth analysis about protection violations: in Nagorno-Karabakh, a summary execution<sup>171</sup> in Hadrut was technically verified and shared to the public; in Ukraine, a mapping of hospitals bombed<sup>172</sup> – which is a violation of IHL (part of what in this research is referred to as “protection violations”) – was also published. It is important here to note the difference between OSI and OSINT – the latter being an interpretation, a meaning attributed to an event or situation at stake based on the information collection – bringing information to become ‘intelligence.’ Such developing field of open-source intelligence and verification, depending on its angles, can contribute to furthering a conducive environment for protection issues to be raised and discussed with key actors – alleged perpetrators or those potentially having influence over them. Commenting on the circulation of images and videos in the public sphere that specifically relate to protection violation, a humanitarian professional finely notes that *“it takes us away from people, but it also reflects how technologies and warfare changes and how the humanitarian response adapts. It is a very different thing if you are a humanitarian in WWII trenches or in XXI century in a war where information warfare, videos and pictures are part of it.”*<sup>173</sup> This is what Hoskins calls new architectures of participation where connected devices enable a wide range actors – military, state, journalists, humanitarians, citizens, victims – to have their say (Hoskins, 2020).

As a potential way forward, the use of such OSI, when content is verified and considered reliable, can provide pointers for further triangulation and fact checking to advance protection objectives. In line with the concern related to information warfare, an anonymously signed article in The New Humanitarian commented on the 2022 conflict in Ukraine tellingly shared:

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<sup>171</sup> The investigation about the summary execution, published on 15<sup>th</sup> October 2020, can be found on Bellingcat website [here](#).

<sup>172</sup> The investigation about the hospitals bombed, published on 17 March 2022, can be found [here](#). Please note that we purposely focus here on hospital bombed as they are protected objects under IHL, civilian dwellings destroyed, also mentioned in the investigation, may be lawfully damaged during hostilities and thus may not represent a violation.

<sup>173</sup> Interview carried out on 09.12.2020, ICRC staff, IM/IT category.



*“parties to the conflict in Ukraine will continue to deploy a range of hybrid warfare tactics. The time for aid agencies to improve technological integration across the industry and upgrade their digital literacy is now. If aid workers can’t keep pace, they are likely to find it increasingly difficult to support and protect the civilians they are meant to serve”* (Anonymous writer, 2022).

The very fact that the comment was made anonymously is illustrative of the importance of the stake at play in a weakened system – the humanitarian identity we previously mentioned. However, the claim is nothing new: already in 1975, political scientist Ruggie<sup>174</sup> shared global views on how technological and political environments (amongst others) were seen as becoming globally enmeshed; he also shared that changes taking place in one segment of the ‘international society’ will have consequential repercussions on all others (Ruggie, 1975). Ruggie had already identified the core element of time and potential discrepancy between those environments, and he notably explained the observation that *“the scope and complexity of new scientific and technological developments are outpacing the capacities of our systems of international organisations to manage them”* (Ruggie, 1975).

Looking at organisational change based on E. Haas’ conceptualisation, the means of humanitarian organisations are questioned as they try to adapt while pondering potential inefficacy in attempting to achieve protection ends, without creating internal questioning on the need to revalue ends (protection mandates and objectives) that would be associated to learning (E. B. Haas, 1992).

Besides being sources of information, a protection professional shared views on a need to be more *“creative”* in protection advocacy and formats of knowledge sharing: for instance, illustrating a field experience by switching from a *“traditional”* 30-page report to *“10-page approach, still strong on substance, but also using graphs, pictures and changing the addressee;”*<sup>175</sup> by titling the piece a *“call for action”* – a move that was said to have triggered reaction and interest from authorities, contrasting with the 10 previous years, to create new possibilities for cooperation and ultimately improve people’s lives. These examples reinforce the ‘economy of attention’ mentioned above, but also interestingly shows the connection

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<sup>174</sup> John Gerard Ruggie has closely worked and is considered a disciple of Ernst Haas.

<sup>175</sup> Interview carried out on 02.12.2020, ICRC staff, Senior Management Policy and Innovation category.

between the knowledge-sharing approach and the way to engage relevant stakeholders to incite for meaningful ground changes.

Another possibility put forward lies with the sharing of a three-minute video instead of a written report, an idea yet largely unexplored by protection actors; acknowledging that it depends on the audience: *“the more we understand the audience needs, position and interest, the better we can tailor our arguments or the way we will do our intervention.”*<sup>176</sup>

Reflecting on the current alterations at play, a professional noted the central question *“there is also a side of ‘who we are’ and another aspect is ‘who we want to become’ in 5 or 15 years. To return to protection, those technologies can be used in different forms in the way we do protection, but do protection-mandated organisations want to?”*<sup>177</sup>

The last point is a relevant comment as NTIs, albeit not immune to bias nor risks – constitute means to achieve protection objectives; and the apprehension of conflict realities of the XXI century by humanitarian protection actors is not solely a question of means, but also about how protection knowledge is used to exert influence and change ground realities. Building on humanitarian protection actors, knowledge generation supported and refined by NTIs, which we examined above, the next step is the discussion around what E. Haas calls consensual knowledge. Consensual knowledge is defined as *“the sum both of technical information and of theories about it that command sufficient agreement among interested actors at a given time to service as a guide for public policy. If the epistemic community involved in the decision encounters no opposition, its knowledge is in effect consensual for all”* (E. B. Haas, 1992: 73). A claimed knowledge may be consensual or not or opposing knowledge claim can seek to secure most support. When we consider the protection mission, humanitarian actors ultimately seek to have protection violations acknowledged, recognised and acted upon for victims’ support and for action to prevent further suffering: nonetheless, belligerents often refute responsibility for protection violations. The specificity of the IPR that tackles both tangible and intangible characteristics of its core principles of humanity and dignity makes it a normal activity to constantly negotiate, claim or counter-claim knowledge versions of ground realities of conflicts and their humanitarian consequences on civilians. The conceptualisation of knowledge and consensual knowledge are nonetheless considered

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<sup>176</sup> Op. Cit.

<sup>177</sup> Interview carried out on 29.02.2021, NRC Staff, Senior Management and Innovation category.

useful as they will inform various humanitarian protection actors' strategies to seek the most consensual knowledge possible in adjusting arguments for protection objectives.

A humanitarian professional noted "*the bigger the organisation, the slower the change*".<sup>178</sup> Nye similarly noted that "*social institutions change more slowly than technology*" reflecting the gap between organisational change and technological exponential development (Nye, 2004a: 81).

While this claim may be nuanced by different financial resources and availability of expertise required for any organisation to change and adapt its systems, approaches and strategy, adaptation and learning can occur in different ways.

## II. Information overload: counterintuitive consequences?

The fact of making available to a larger public information about protection violations to which civilians may be exposed during conflict and civilians' humanitarian plight has contributed to building a public opinion, which has become an actor in the IPR (see *Chapter 3*). Largely supported by the development of NTIs, the role of the public opinion is not new (see *Chapter 2*); nonetheless, due to the fast pace of information being publicly shared, the instruments through which images, videos and other pieces of information circulate impacts the mechanisms behind mobilisation – or their lack of. At the same time, reduced costs of communication have increased the number of participating actors and increased the relevance of "complex interdependence" where both message velocity and institutional velocity have significantly developed along with the information revolution as argued by Nye and Keohane argued in 2000 (Nye, 2004a). The exponential rise of digital information, also called big data or the 'information revolution,' can be described as high-volume, velocity and variety data that circulate in a global frame (Meier, 2015).

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<sup>178</sup> Interview carried out on 18.12.2020, ICRC Staff, Senior Management and Innovation category.

## 1. The public actor role: debates

According to Barnett and Weiss, “*these acts of violence, though, would probably not lead to international action were it not for their visibility. Media imagery, beginning with the emergence of war reporting in the mid-nineteenth century and continuing with today’s satellite, telecommunications, and web-based technologies, has increased public awareness, which, in turn, has created a demand that something be done in the face of conscience-shocking suffering*” (Barnett & Weiss, 2008a: 15). The way humanitarian actors engage with universal ethical claims, such as humanity, intends to mobilise attention for financing of political support for the ‘vulnerable others.’ The prevailing assumption related to a claim that the aesthetics of suffering (videos, images) has been catalytic in moving the spectator (or the public) to action. Tainted with post-colonialism tones, Chouliaraki argues that ‘victim-oriented’ campaigns have focused on developing a “*social relationship of distance,*” reinforced by the contrast between the bare life of sufferers and the “*civility of healthy bodies in the West*” – associated with a regime of guilt, shame and indignation (Chouliaraki, 2010). Other strategies resorting to positive images, such as images of smiling children that intend to infuse a feeling of ‘people like us,’ share the same reliance on calling on empathy, compassion and grand emotion but also calling on a mirror structure. Besides images and videos, official communications and declarations from humanitarian actors also bear weight. The president of the international council of MSF, Dr. Orbinski, representing an outspoken ground humanitarian NGO, declared the following in 1999 while receiving a Nobel Prize: “*We are not sure that words can always save lives, but we know that silence certainly kills. (...) Let me say this clearly: the humanitarian act is the most apolitical of all acts, but if its actions and its morality are taken seriously, it has the most profound political implications. And the fight against impunity is one of these implications.*”<sup>179</sup> It is important here to recall two different traditions in the humanitarian endeavour: the Dunantists (ICRC tradition) privilege bilateral and confidential dialogue with parties to the conflict, while MSF has rather chosen regular public denunciation since its creation, born from a disagreement with the ICRC’s approach during the Biafra war (see *Chapter 2*). Yet, communicating on humanitarian action is different from communicating on sensitive protection issues and alleged protection violations families

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<sup>179</sup> Dr. James Orbinski speech upon receiving a Nobel Prize for MSF’s endeavour in more than 80 countries can be found [here](#).

affected by conflict face. On the one hand, exposing bare bodies can be considered as showing proof of deliberate ill-treatment and mobilise attention and collective action; on the other, whether exposing physical suffering is dignified for the publicly exposed person is to be questioned. Research on ground humanitarian action has pointed out that respondents (civilians, beneficiaries of humanitarian support) were frequently less willing to discuss sensitive issues over digital media (Dette, 2018). Similar experiences were shared during our field research, pointing at the limitation of what can be captured through NTIs, digital tools, while sensitive discussions about traumatic events and experiences may not be captured by words.<sup>180</sup> For instance, non-verbal communication such as body language signals, which is especially important in protection, is hardly captured through digital tools. In our field research, the contrast of NTIs being partly presented as a source of progress and efficiency to relay protection issues in different ways is starkly antagonistic with the – traditional – face-to-face human exchange for which a humanitarian professional called the physical technology “*our body, voice and eyes.*”<sup>181</sup> The mediation that the humanitarian professional undertakes through protection work – to understand, to formulate protection issues, to address them publicly or confidentially in support of and on behalf of civilians – somewhat contradicts the over-exposure of people’s plight. Along with the development of NTIs and real time global news coverage, authors have called the ‘BBC effect’ the growing public awareness made possible by real-time media coverage of humanitarian emergencies, which, in turn, helps feed the desire to act (Barnett & Weiss, 2008a). Since media coverage has been an important element of mobilising public attention and international action, humanitarian organisations which contemplate the ‘power of image’ have used media and cultivate contacts with journalists so to pass thought-through messages to the general public, with expectations to mobilise individual and Governments’ attention. In *The Ironic Spectator*, Chouliaraki reviews a 40-year period from 1970 to 2010, looking at Western public opinion becoming a full-fledged actor in the system. In the period, the digitalisation of communications is featured as one of three seemingly unconnected but yet intersecting transformation that have impacted ‘logics of solidarity,’ the two others being presented as an instrumentalisation of aid, and a retreat of ‘grand narratives’ of solidarity that call on emotions (Chouliaraki, 2012). The author argues there has been an epistemic shift that has challenged the (traditional) culture of

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<sup>180</sup> Interview carried out on 24.04.2021, DRC Staff, Protection category.

<sup>181</sup> Interview carried out on 02.12.2020, ICRC, Senior Management Policy and Innovation category.

sympathy, the development of a bystander effect has led to a transition from ‘solidarity as pity’ to ‘solidarity as irony’ (Chouliaraki, 2012). Changes in the aesthetics of humanitarian communication are viewed to also reflect changes in the ethics of solidarity.

An important difference is to be observed in the global settings of the late XX and early XXI centuries, if the XX century featured images of the suffering and scale of war, in the XXI century the same suffering is now matched with a new incomprehensibility of the scale and connectivity of information, images and commentary of war. Chouliaraki argues for a trajectory of humanitarian communication towards “post-humanitarian styles of appealing” that breaks with the XX century ‘traditional’ emotional repertoire of pity (Chouliaraki, 2010). NTIs have increasingly supported simplified ways of mobilisation using internet as a primary tool of communications – i.e., ‘clicking’ to sign a petition or to make an online donation.

For his part, Boltanski developed the concept of a ‘*crisis of pity.*’ According to him, there has been a certain delegitimisation since the 1990s, which can be understood in the frame of an evolving relationship between humanitarianism and politics, following the use of humanitarian ‘arguments’ in the service of political interests (Boltanski, 1999, 2000). Instead, a general suspicion and apathy have been observed among media publics, and both represent a paradox: the staging of human suffering, rather than bridging moral bounds, has intensified the distance between the spectator and the suffering distant other (Chouliaraki, 2012). At the turn of the XXI century, the sociologist argues there has been a “re-legitimation of humanitarian action” and a representation of this action through a process of re-politicisation, explained as a movement that would give back to citizens some kind of grasp of political events, a reconstitution of mediations interposed between isolated persons and states – a claim also echoed in Chouliaraki’s research (Boltanski, 1999; Chouliaraki, 2012).

Hoskins mentions what is called a ‘saturation’ of media coverage about various conflicts and subsequent humanitarian crises (Hoskins, 2020).

## 2. Counterintuitive consequences?

However, recent research suggests a “*loosening of an often presumed relationship between media representation, knowledge and response under the condition of digital war*” (Hoskins, 2020). A new era of compassion fatigue, for which a ‘bystander effect’ was born of the digital warfare and continued sharing of images and videos from conflict would have construed the

potential mobilisation of the public, instead of previously observed strong reactions – such as in the 1980s (see *Chapter 3*) (Moeller, 1999). The belief in a relationship between representation, knowledge, and response saw a gap between what is believed and reality that has significantly widened in the transformation of the nature of the relationship between war and media. According to Hoskins, “*digital war, then, is information war that weakens the distinction between combatants and civilians*” (Hoskins, 2020). This contributes to a loss of compass about how to define, delineate and react to blunt images of seemingly protection violations that have become part of daily news. The paradigm shift in the previously theorised continuum of media/social-media, knowledge and action raises the question of reactions to suffering. The digital overload has impacted sensitivity of the viewers, also called compassion or reaction to suffering. Drawing on the example of (non)mobilisation for Syria’s civilians over the last decade and what he calls an ‘image-expectation-inaction cycle’, Hoskins rather cynically concludes that the transition from a ‘spectator’ public to an ‘information-doer’ (as a participant) in a digital multitude has occurred at the expense of collective influence (Hoskins, 2020). Chouliaraki has largely discussed the emergence of new tactics by humanitarian actors, somewhat abandoning the appeal to suffering as a universal moral cause in favour of a sought ‘effective activism’ (Chouliaraki, 2010). A post-humanitarian sensibility would be characterised by low-intensity emotional regimes and a technological imagination of instant gratification, relying on individual judgement in a context where suffering is dis-embedded from the moral of common humanity (Chouliaraki, 2010, 2012). In what Hoskins called new architectures of participation, Chouliaraki’s analysis of the construal of a post-humanitarian public includes shift from factual to participatory news narratives that reflect a continued and less or un-mediated sharing of personal experiences from war to become an ‘ordinary witnessing’ – therefore switching from objectivity to testimony. When considering sexual violence, the sharing of testimonies or ‘evidence of events’ in formats familiar to “those in power” can also leverage several risks, including of misinformation in an increasingly complicated landscape (Sandvik & Lohne, 2020). The same notion of post-humanitarianism was used by Duffield as he considers ‘grounded ontologies’ have been supplanted by connectivity and data, bound with the computational turn (Duffield, 2018).

With an exponentially fast evolving development and use of NTIs that become increasingly global, the humanitarian imagery now reaches all connected publics<sup>182</sup> (not only so-called ‘Western’ public) in ways that constantly renegotiate a humanitarian imagery – pictorial but also ideational - reflecting the renegotiating of market-enshrined humanitarian strategies along with technology and politics (Chouliaraki, 2013).

### 3. Debated validity and truth, a matter of trust

According to Nye, the information revolution along with the globalisation of non-state actors on transnational issues has created a frame where “*the ability to share information – and to be believed – becomes an important source of attraction and power*” (Nye, 2004b, 2004a: 31). In engaging in - humanitarian - diplomatic efforts, humanitarian actors “*draw their authority as participants in global governance in large part by their ability to access and convey information and knowledge from their presence and intimate knowledge of what is going on in conflict zones*” (Sending, 2015a). Humanitarian practitioners interviewed as part of our field research, as well as others who have reflected more largely on humanitarianism practices have focused on ground presence. Field engagement and ‘*bearing witness*’ may be the most significant protection for an organisation (in addition to attempting to respond to needs of populations), as it provides field-anchored knowledge and subsequent “legitimate” advocacy,<sup>183</sup> confronting political actors, alleged perpetrators with their responsibility, and mobilising those possibly exerting influence on the latter (DuBois, 2007). As Zürn noted, ‘Western publics’ are said to recognise some UN Agencies, such as the UNHCR or the WFP, as among the ‘*most credible sources of information on humanitarian crises,*’ while at the same time those international institutions are repeatedly criticised for alerting on some crises but failing to do so on others (Zürn et al., 2012, 92).

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<sup>182</sup> The idea of ‘connected publics’ is also presented in Lilie Chouliaraki’s research as the ‘cosmopolitisation of the public sphere’. In our view, the concept of ‘connected publics’ better reflects the globalization of access to online, ongoing and partly un-mediated information from various publics in different countries, with different cultures, views, reactions and expectations. The plural expression of ‘publics’ thus seems to be more appropriate to represent the diversity of individuals and populations encompassed under this term.

<sup>183</sup> Marc DuBois considers public advocacy must be based on accuracy of what is being said, but also needs to ensure respect for local sensitivities. The author, based with MSF, considers those claims – with which we agree – based on MSF’s approach of public denunciation, other potential advocacy that can be exerting bilaterally, or, as some would argue, through ‘quiet diplomacy.’



This also means the battle for gaining a certain pre-eminence on believed information (or a truth) has increasingly become a stake of power, of authority, of influence and of legitimacy. Drawing a parallel with previous reflections on the domain of sustainable development, constructivist authors have found the development of scientific 'truth' has been mediated and politicised to suit political goals, but 'usable knowledge'<sup>184</sup> and specific expertise can nonetheless exert influence (P. Haas, 2004).

Since the advent of an inflammatory information age at the turn of the 2010s, the exertion of power -including softer power- may have found difficulties to be defined as it relates to the international system regulating international regimes, including the IPR.

At the turn of the XXI century, over two decades ago, Boltanski had already inquired about reasons behind observed difficulties to 'become indignant' and to 'make accusations' – in other words, to become emotional, to feel empathy without falling into uncertainty about the validity of one's own indignation (Boltanski, 2000). According to him, ambiguity in the selection of the victims and the selection of the 'true' perpetrators may therefore pre-empt the identification of authentic benefactor of the reaction – which he calls the topic of sentiment. A second uncertainty is linked to denunciation, again because of the difficulties to identify the victim and the perpetrator. Lastly, Boltanski also puts forward uncertainty linked to potential action – or *political impotence*. The uncertainty of reaction may turn media from spectators of suffering failing to communicate real emotions into a voyeur (Boltanski, 2000). According to Chouliaraki, the use of celebrities as ambassadors for humanitarian causes have produced post-humanitarian publics too: transformations include a decline of public trust in democratic governance institutions, but also an expansion of the fields of showbusiness into politics, and a shift in policy priorities in humanitarian organisation towards corporate (private sector) models of communication (Chouliaraki, 2012).

According to Duffield, "*not only is the existence of a common humanity in doubt, so are all the claims to truth*" (Duffield, 2018: 174-175). In a post-truth world, evidence-based support for the immediate effect of self-acting humanitarian object is important. Digital information triggers the following question: 'can we really trust social media? What if the information is false?'. Digital transformation also raises uncertainty around which sources of information –

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<sup>184</sup> According to the author, usable knowledge is accurate information that is of use to politicians and policymakers. Four criteria are usually associated to it: adequacy, value, legitimacy and effectiveness.

supported by NTIs - can be used for knowledge creation, and potential decision-making and allocation of resources that can actually affect people's lives (Meier, 2015). The weaponisation of social media platforms and communication networks has been used by both states and non-state actors during warfare to encourage violence, or to foster social exclusion of certain populations (Campo et al., 2018). In *The New Humanitarian*, the issue of misinformation-disinformation is considered to be a "technological minefield" for humanitarian organisations as trust is called the bedrock for all humanitarian action (Anonymous writer, 2022). Recommendations are put forward to avoid reputational issues and a potential loss of trust by beneficiaries, donors and the general public; these relate to a focus (or return to) on ground 'trusted' sources, but also on the adoption of organisation-specific social media guidelines that encompass staff engagement with such platform as well as training of staff on how to identify and report misinformation and disinformation. The stark opposition of narratives, especially in conflicts, crystallises political legitimacy to act and to react: "politics then becomes a contest of competitive credibility," argues Nye (Nye, 2004a). He adds that Governments compete with each other and with organisations to enhance their own credibility and weaken opponents – using the example of Serbia and NATO to frame interpretation of events in Kosovo in 1999. If reputation has always mattered for Governments and for international organisations, the role of credibility is catapulted to an enhance power resources because of the exponential flow of information in an information age we qualify as 'inflammatory.' Resonating with this claim, Kratochwil reflects on 'facticity' of facts, the question of semantic fields and of 'narratives'<sup>185</sup> as he commented in his 2022 book *After Theory, before Big Data, Thinking about praxis, politics and international affairs*, that:

*"Even the experts of old who relied on mobilising knowledge as a useable form of power have come to see that there is inevitably a gap between their solutions and the world of praxis. Precisely because their proposed options cut across different values and interests, and several strategies favouring different trade-offs and sequences,*

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<sup>185</sup> Page 49, F. Kratochwil considers the absence of "ultimate yardstick" and the prevalence of multiple ways of asking and answering questions, we nevertheless can come to an agreement of what the case is or what should be done.

*which are the norm rather than exception, legitimisation problems abound”*  
(Kratochwil, 2022: 43).

We would argue that the fact such suggestion reached media specialised on humanitarian affairs in 2022 and based on the conflict in Ukraine is indicative of a wider adjustment towards absorbing and mitigating the risks the use of NTIs can potentially entail. In the frame of the conflict in Ukraine in 2022 and amidst strong criticism and false accusations, the ICRC has denounced what it called a “*widespread and systematic campaign of misinformation*” about its work in the country.<sup>186</sup> The maintenance of trust, for the ICRC as well as other humanitarian organisations involved in protection activities, and amidst hardly controlled social media platforms – will continue to strongly matter for ground activities in or close to various conflict theatres worldwide. The same risk of exploitation of the information environment was identified for human rights, notably with regards to disinformation but also mass surveillance (RAND, 2021).

### III. A sense of “protection community:” episteme and practices

As we reflect on the various aspects of the analytical construct of the IPR, humanitarian actors – including international organisations – can contribute to shaping (more or less effectively depending on interest configurations of the different actors involved) of informal ordering by their ability to enhance (or diminish) intersubjective expectations and normatively stabilised meanings, considered to be the basis of an international regime (Kratochwil & Ruggie, 1986). In this section, we will further explore the role of expertise (linked to practice) and cognitive evolution, an important element that relates to the meaning of protection – for which the use of NTIs has become an integral part. When looking at practices in the IR, the link between expertise and the power of IOs (among these some are protection guardians) allows to enhance our understanding based on concrete practices through which expertise is organised and used (Sending & Neumann, 2012). This is also in line with our research approach that intends to favour mutual resonance between the world of professional humanitarians and the world of academia, more specifically in the field of IR, in Political Science.

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<sup>186</sup> Article in BBC featuring elements of an interview with the ICRC Director General Robert Mardini – published on 31<sup>st</sup> March 2022. The link can be found [here](#).

According to E. Haas, “*scientific knowledge becomes common knowledge and as technological innovations is linked to institutional tinkering, the very mode of scientific inquiry infects the way political actors think*” (E. B. Haas, 1992: 11). The claim relates to our previous assertion that NTIs are not empty vessels deprived of bias, but also contain values that affect political views and thus require to be considered as such. IOs are considered important as innovators in Haas’ theory; they select a “core technology” to pursue their mandates, while the character of that technology interacts with institutional structure and the task environment. Nonetheless, the author considers it “*possible, however, that technology is not optimal for good performance, or not well integrated with the task environment of the structure*” (E. B. Haas, 1992: 15). While we would refrain from characterising it as ‘good’ or else, the issue of technology integration and its impact on knowledge creation and protection understanding represents the core of our research, notably when we question the IPR adjustments and alterations.

### 1. *Communities of practice: defending a Protection episteme*

Organisations of specialists are often referred to by IR constructivist theorists as “epistemic communities,” who delimit a certain construction of social reality and are considered by E. Haas as the “*most significant agents of institutional innovation*” (E. B. Haas, 1992). In his earlier thought, in 1964, Haas explained he considered experts do not ‘displace politics’ but rather facilitate the convergence of interests necessary for lasting cooperation by shaping the “give-and-take” of political contestation (E. B. Haas, 1964). At the end of the 1970s, Nelkin called the development of a policy role of the knowledge elite (Nelkin, 1979). P. Haas, for his part, argues that in order to be influential, expertise needs to be organised and self-organised in terms of epistemic communities (P. Haas, 2014). He notably differentiates between experts who operate within an epistemic community and those who operate as norms’ entrepreneurs.

He shares views on three domains based on the nature of facts: (1) *brute facts* are those ultimately consensual based on observations supported by verifications; (2) *hybrid facts* are those that stretch the reach of the expert community. It refers to the domain of knowledge where the implications of the beliefs exceed the technical groundwork on which the facts are built. Third (3), *social facts* constitute the domain of knowledge that derive largely from the

thoughts of observers of political processes, relying on descriptions and interpretations of political events and behaviour, yet remaining controversial in their policy arena (P. Haas, 2014). As we reflect on this proposed theoretical taxonomy, we find the IPR would hardly accommodate this system of thought: sitting somewhere between hybrid and social facts, its partly intangible character, and at the same time its core political dimension; would not fit into one single category. Nonetheless, we relate to the epistemic community role as “authoritative expertise,” inducing change in governance and behaviour through persuasion. Advice promulgated by the epistemic community is integrated as other actors become subject through direct means of persuasion or indirect means by being subjects of institutions created (i.e., civilian families who are victims of conflict, refugees). Sending explains that ‘epistemic community-like groups’ share substantive knowledge and policy agenda in a fragmented governance where such non-state actors can have a higher premium or in-depth technical knowledge that support their efforts to influence debates and decisions (Sending, 2015a). Epistemic communities are considered to be the agents of constructivism through sharing knowledge about the causation of social or physical phenomena (or both) on which they bring expertise (Sending, 2015b). Social facts are the domain of advocates and social entrepreneurs: those advocacy networks are viewed to lack the internal socialised disciplinary belief that characterise epistemic communities. Nonetheless, norms’ entrepreneurs and advocacy networks constitute useful elements in our research reading grid. As for epistemic communities, it is the ‘internal consensus,’ according to intra-community standards, which provides the “*glue for collective action amongst the individuals of the community*” (P. Haas, 2014). Nonetheless, meanings of practices may change,<sup>187</sup> and technology facilitates the rapid spread of new approaches that may be absorbed or rejected by communities of practices. As for protection experts, this translates into a challenge to define the terms of integration of a digital dimension of protection core concepts. Some practices were previously conceptualised as ‘anchoring practices’ for their role in supporting the development of other practices by providing tools and resources that actors can use to engage in more specific practices, thus generating social order’s evolutions (Adler, 2019; Barnett, 2018; Sending et al., 2011).

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<sup>187</sup> According to E. Adler (2019), communities of practice are continually caught between background knowledge and practitioners’ faculty to reflexively innovate and change their minds, reinterpret their knowledge, negotiate with other practitioners over the meaning and nature of the practices that link them together, and change meanings of what amount to competent performances – extract page 193.

Epistemic communities are a principal channel through which consensual knowledge about causal understandings is applied to international policy coordination and by which states, as a central actor in the IPR, may react and adapt its behaviour through processes of international cooperation or through individual adjustments. E. Haas previously reflected on the idea of “evolutionary epistemology” wherein the fabric leading to consensual knowledge is seen to be one of the forces behind the rise and decline of international regimes (E. B. Haas, 1982).

Resonating with humanitarian professionals’ strategies to discuss and negotiate on sensitive protection issues previously developed, E. Haas also recognises that in some cases, experts and scientists may contribute to overcoming conflict by ‘transforming’ political issues into ‘technical’ ones (E. B. Haas, 1964). On the political impact of technical expertise, Nelkin featured in the mid-1970s that experts’ technical knowledge was widely regarded as a source of power (Nelkin, 1975). Their ‘authority of expertise’ may open more comfortable ways to define decision as technical rather than political ones.

As complexity of inter-linked issues tests the limits of human understanding and thus make it difficult to define an actor’s interest; a turn towards the study of epistemic communities is useful as they are considered providers of knowledge, advice, and at times infusing ‘shocks’ triggering and fostering policy (re)action that they often contribute to formulating or adjusting (P. Haas, 1992).

In 1992, Peter Haas examined the role that networks of knowledge-based experts – epistemic communities – play in articulating the cause and effect relationships of complex problems (P. Haas, 1992)<sup>188</sup>. We find that the definition of the epistemic community developed by the author is particularly suited to our research, where it is considered to be formed by “*a network of professionals with recognised expertise and competence in a particular domain an authoritative claim to policy-relevant knowledge within that domain or issue-area*” (P. Haas, 1992). The increase of complexity in the international landscape is viewed to contribute to

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<sup>188</sup> Peter Haas further defines four key elements that bound members of an epistemic community that may consist of a variety of disciplines and background: firstly, they have a shared set of normative and principled beliefs, which provide a value-based rationale for social action of community members; secondly, the share ‘causal beliefs’ derived from their analysis of practices which contributes to setting problems in a certain domain and which is used to elucidate multiple linkages between potential policy actions and desired objectives. Thirdly, members need to share notions of validity, serving to validate knowledge in the domain of specific expertise. Fourth and last, members pursue a common policy enterprise, a set of common practices associated with a set of problems to which their professional competence is directed.

heightening the role of ‘experts’ (Alter & Meunier, 2009b; Alter & Raustiala, 2018). Such knowledge is considered to be bound with practices, that are socially meaningful patterned actions that embody and potentially reify both background knowledge and discourse in and on the material world - maintained by mutual engagement in communities of practice (Adler, 2019; Adler & Pouliot, 2011).

Communities of practice have expanded across geographical and institutional boundaries, making intersubjective background knowledge embedded in practices grow, and therefore, more difficult to contest. According to Adler, the more a practice is shared, the further reinforced a shared background knowledge is – subsequently maintaining the expertise from a given community of practice as preferentially selected compared to others that would be less practiced (Adler, 2019).

Looking at protection, lawyers of international law (IHL, IRL and IHRL) constitute the core professional expertise which forms the skeleton of the IPR: indeed, it defines and delineates parties to a conflict’s responsibilities and expected action to preserve civilians’ lives and dignity. Nonetheless, as humanitarian experiences deepened and professionalisation of other generalist personnel in the field of humanitarian activities developed, other ‘experts’ have taken part in forming a community of practice and of knowledge around the protection episteme. The last but certainly not least important newcomers among humanitarian professionals are the more technical experts (IM, IT) supporting the NTIs’ integration into the core fabric of understandings, knowledge and meaning of protection issues. Interestingly, Davis Cross similarly noted that those new emerging professions that deal with the advances of technology, uncertainties of the virtual world, threats to security and the rapidity of global processes changes would reinforce the emergence of epistemic communities (Davis Cross, 2013). As regards to the protection episteme, those new technical experts contribute to deepening a new dimension under the protection expertise. Practices are both material and meaningful, which Adler considers being between ‘agents and structures’ relying on the efficacy of background knowledge. Background knowledge is presented by Adler as being bound with the actual execution of practices, distributed in practitioners’ acts as individuals and groups within a dominant interpretative backdrop that “*sets the term of interaction, defines a horizon of possibility, and provides the background knowledge of expectations, dispositions, skills, techniques and rituals that are the basis for the constitution of practices and their boundaries*” (Adler, 2019, 111).

Albeit the areas of expertise shared among the members of the protection community of practice can seem wide, they share the common enterprise to make protection issues exist and defend its principles.<sup>189</sup>

Ruggie also presented a definition of epistemic communities as a cognitive level of international institutionalisation (Ruggie, 1998). The cognitive aspect is one of the recognised functions of epistemic communities; a second one, no less important, relates to practical application on policy processes (Antoniades, 2003).

Based on the consensus developed within the domain of protection expertise, consensual knowledge among the community of practice is diffused more largely and intends to exert influence on other actors, including those directly involved as alleged perpetrators of protection violations or those having influence on them. As we have previously seen, protection experts continue defending protection objectives while being involved in a process of integrating the use of NTIs and collectively recognising the need to embed it within its core. This action has been referred as the “*political infiltration*” of an epistemic community into governing institutions, consequently laying the groundwork for broader acceptance of an epistemic community’s beliefs and ideas. In 2013, two decades after the fulgurant rise of conceptualisation on epistemic communities, Davis Cross reflected on the advancement, or rather *stagnation*, of the academic world. She argues that most research has been narrowly focused on case studies closely following Haas’s definition in academic publications and focusing on scientist experts. The author argues for a continued academic exploration of the concept along with research clues to focus on internal dynamics within an epistemic community so to understand its strength and weakness and therefore establish their varying degrees of influence, and define the importance of professionalism – not only of scientists but also other categories such as diplomats<sup>190</sup> or defense experts (Davis Cross, 2013).

The notion of episteme, presented by Foucault and borrowed by Ruggie, refers to a dominant way of looking at social reality, or a set of shared symbols and references, mutual expectations and a mutual predictability of intention (Foucault, 1970; Ruggie, 1975). It describes the overarching perspective through which political relationships are visualised and understood and which Ruggie also presented as ‘social episteme’ in transformation of ideas and interests (P. Haas, 2014; Ruggie, 1993). Changes in information processing are considered likely

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<sup>189</sup> This corresponds to P. Haas’ fourth point in his definition of the ‘community of practice.’

<sup>190</sup> Davis Cross considers diplomats are considered as experts in the art of negotiation, persuasion and compromise.



following shocks or crises: representing specific times where decision-makers or those having influence may decide to adjust policy patterns. Epistemic communities are commonly defined as one of the major channels through which overarching principles, norms and rules are articulated for the international community.

Commenting on the UNHCR, Betts considers the organisation – and its experts – can and need to play an “*active epistemic role*” in the creation and dissemination of knowledge alongside with the academic community, NGOs, to influence the debate (Betts, 2009).

Nonetheless, the extent to which principles and norms are shared and actually embedded internationally depends on the political influence of epistemic community members, on their ability to persuade others and to consolidate organisational influence in international fora (P. Haas, 2014). This capacity to retain influence must be observed over time. Over the last three decades (since 1990s), scholars’ works have refined and adjusted views on the role of epistemic communities in international changes; and IOs are considered to play a role in popularising and disseminating ideas of expert communities, using various modes of ‘knowledge mobilisation’ to (1) inform and guide policy, (2) to legitimise choices and action, (3) to depoliticise action, (4) to substantiate policy position, and (5) to minimise institutional insecurity (Littoz-Monnet, 2017). While various processes of knowledge production are debated - *among which expert-shaped policy, policy-shaped expertise and production of expert knowledge as an iterative process*; this last point being based on continuous back-and-forth exchanges between external experts, members of humanitarian organisations (IOs and NGOs), and authorities at various levels, is believed to be most reflective of the community of practice around the protection episteme. Academic research has recognised the implication of epistemic communities in the formation and persistence of international regimes, which partly informs our interest in the theoretical view it offers.

Other scholars have argued that epistemic communities are “*an integral part of the knowledge/power equation, and by having an authoritative claim on knowledge, exercise decisive power in the “interaction game” of the construction of (world) politics*” (Antoniades, 2003: 21).

E. Haas jointly discusses political purposes and technological developments to point at how a given concern can be characterised by different kinds of interdependencies. The notion of “interdependence” is considered to emerge as a multidimensional and dynamic device for

identifying the wholes (E. B. Haas, 1975). E. Haas' concept of "technology-task-environments," seen as a concentration of technologies and purposes, allows various experts and political stakeholders to manage interdependent issues triggered by changing technologies until the evolving knowledge leads to the construction of an adjusted whole: *"the very ephemeral and temporary quality of these wholes, and of the fluctuating organisations to which such conceptions must give rise, depends heavily on the changing character of knowledge"* (E. B. Haas, 1975). Similarly, Pouliot, Kornprobst and Ish-Shamon consider knowledge moves around and morphs via the joint participation in practices (Pouliot et al., 2021).

Borrowing to sociology and theory of learning that also uses psychology, Wenger developed the concept of 'community of practice', explained to be a configuration of a domain of knowledge that constitutes like-mindedness, forming a community of people that create "social fabric of learning" or a social learning system, leading to a shared practice that is developed and maintained (Wenger, 1998). In developing the notion, Wenger insightfully puts forward dual aspects of meaning making: on the one hand, direct participation in social activities (conversations, reflections); and on the other hand, the reification that reflects shared experience around which participation is organised; the latter includes both physical and conceptual artifacts such as tools, words, documents, methods. Wenger also argues that the *"meaningful learning in social contexts requires both participation and reification to be in interplay"* – an argument we consider highly relevant as we explore how material elements matter for their use and the impact on protection knowledge generation, and thus into the substance of sense-making (Wenger, 1998).

For Adler, who reuses the notion of "community of practice" – the social is manifested in practices, defined as *"knowledge-constituted, meaningful patterns of socially recognised activity embedded in communities, routines and organisations that structure experience"* (Adler, 2008). As such, the author considers their role to be primarily constitutive (and not causal), by establishing a common platform where background knowledge work on 'enabling' linguistic and perceptual interpretations, by structuring consciousness (Adler, 2008). For Adler, communities of practice are the agents of change, they play a crucial role in "meaning investment" which can be transformative, learning and power come together through the negotiation happening both *within* and *between* communities of practices (Adler, 2019; Pouliot et al., 2021). Practices' power, according to Adler, rests on practitioners' propensity

to change and change identities. This attachment to meaning relates to both a deontic power that contribute to the community of practice together and the performative power, which rests on the credible enactment of practice (or activities). Power enters practitioners' competence and performance capacity to endogenously transform the community of practice and adjust its boundaries. In his recent works, Adler also contemplates how *power* is associated with communities of practices' material and institutional resources, including technology – and how it belongs to the physical world (Adler, 2019).

## 2. Knowledge: from subject to object

In the field of IR, interest on the role of scientific knowledge and expertise is not new as it has played an important role in various theories, argues Allan (Allan, 2017). While realists have mostly considered knowledge as a particular ideology, expert knowledge is seen as an unstable foundation for international cooperation; in contrast, E. Haas argued that consensual knowledge can favour a convergence of interests, grounding stable world orders (Allan, 2017). Reflections around an episteme (discussed in section III. 1. of this Chapter) go beyond interests to include basic representations of reality. With a longer-term perspective, Allan defends there has been a resurgence over the last decade in the study of knowledge and expertise, drawing on works of Bourdieu, Foucault, Latour, but also new materialism and science and technology studies. In what the author calls a “turn to objects,” objects are defined as concentrations of knowledges, artifacts, physical phenomena and practices “*yoked together and constituted as an entity distinct from other objects, events, and actors*” (Allan, 2017). Foucault defined objects as a set of relations “*established between institutions, economic and social processes, behavioural patterns, systems of norms, techniques, types of classification, modes of characterisation*” (Foucault, 1972).

The turn to objects, inspired from Foucault's *Archaeology of knowledge* has recently been further elaborated by a new methodology proposed by Corry in his 2013 book *Constructing a global polity: theory, discourse, governance*, where a ‘polity model’ of political structures is developed with the creation of new objects that constitute a landscape of subject positions, knowledges and practices for governance (Allan, 2017; Corry, 2013; Foucault, 1972). Examples of those “non-territorial governance-objects” include global poverty, the climate or even human rights (Corry, 2013). This proposed approach around *objects*, rather than

*subjects*, focuses on the *how* of power negotiations and governability rather than the *who* of actors playing a role in it.

While this rather innovative turn to objects is useful to continuously question dominant approaches in IR, focusing on actors or subjects rather than object, our theoretical framework using the theory of international regimes to reflect on the IPR stays in point. Nonetheless, it is the aspect, or variable, of what NTIs represent and how they do so, that can relate to the creation of a *-still in its inception phase-* developing global governance. As for our research, Protection of civilian populations continues to exist because of ground practices as well as expert knowledge from jurists, IT/IM, and generalist humanitarian professionals who contribute to evolutive knowledge around this issue-area. The NTIs variable may well be becoming an 'object' which opens new domains of knowledge. Yet, the disturbing digital dimension is cornerstone in the practice and politics of the IPR, but similarly bears weight in a wealth of other international issues and mechanisms regulating relations, dependence and interdependence which characterise the complex international landscape of the XXI century.

### 3. Cognitive evolution views

IR scholars, more specifically anchored in the constructivist current of thoughts, have reflected on what the concept of cognitive evolution entails. Cognitive evolution means that nothing is fixed: a problem set is constantly decomposed and re-composed with consensual knowledge that the newly adapted problem set<sup>191</sup> is better than the previous one. For his part, Adler described cognitive evolution as an evolutionary collective-learning process that explains how communities of practice establish themselves, how their background knowledge diffuses and becomes institutionalised, how their members' expectations and dispositions become preferentially selected, and how social structure spreads (Adler, 2008). In a recent publication, Adler further explored theoretical reflections around the concept, explaining that "*cognitive evolution mechanisms, which are associated with practices and communities of practice (...) and complexity mechanisms and processes such as emergence, complement each other at the epistemology level*" (Adler, 2019: 103). Cognitive evolution is commonly

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<sup>191</sup> E. Haas uses the expression of a newly adapted problem-set to become a '*nearly non-decomposable system of coupled parts*' – page 198.

presented as a collective learning process according to which social structures, processes and orders evolve along with a change in intersubjective and subjective knowledge and practices. Foucault invited students and readers to bridge the connection between power and knowledge – looking at the margins, but also self-understandings, and struggles of those in power who have cast off “the other.” In doing so, the analysis of the view point and position from which individuals – embedded in organisations and institutions – speak allows to see how power operates in “things said” while also considering the “unsaid” (Foucault, 1972).

In E. Haas’ *Knowledge and Power*, the author explores how the change in the definition of ‘the problem to be solved by a given organisation’ occurs (E. B. Haas, 1992). The in-depth theoretical model proposal is useful for our research as it looks more specifically at IOs’ approach to change. We consider it highly relevant as the double-transition at play: in the international landscape and a transition of meaning among humanitarian protection actors contribute to a loss of compass amidst multi-levelled changing paradigms. Delving in the UN Agency responsible for refugees’ evolution, Betts, Milner and Loescher in *UNHCR: The Politics and Practice of Refugee Protection*, noted a change in understanding of international security and UNHCR’s response (Betts et al., 2012). Indeed, the post-cold war era was seen to witness a shift in understanding of the sources of threats to national and international security amidst a range of new security issues identified by states. Refugees were viewed as a possible source of threat, and as a ‘burden’ by some states. Some Government policies prioritised preventing refugee flows and facilitating speedy repatriations, and also focused on assisting Internally Displaced People (IDPs) within their national border in order to prevent further population movements seeking asylum abroad. At the same time, the rise of media coverage and subsequent public attention resulted in putting pressure on Governments to act: UNHCR and other humanitarian organisations have been funded to provide further emergency relief to populations victims of conflict and violence in their own country, or in their region of origin (Betts et al., 2012). This IO is considered to have played an increasingly important effort in placing refugees on the international agenda. Authors note that the provision of humanitarian assistance was considered financially and politically ‘preferable’ to political and military interventions as it satisfied some kind of public demand for action while at the same time avoided to take more decisive and risky forms of intervention. Agreeing with those important remarks, we consider this reading raises the question of the nature of politicisation of humanitarian action, especially when it concerns the most sensitive nature of its endeavour:

*human dignity*. As suggested above in *Section I*, the macro-perspective allows to realise how humanitarian funding of some humanitarian crises or emergencies (rather than others) contribute to going beyond addressing humanitarian suffering to fit into Governments' specific interests, but even more importantly to diminishing so-called universal values enshrined in the various international treaties many Governments ratified and committed to respect. It is not that all or none is political in how humanitarian protection affairs are carried out by the various actors forming the IPR, we now look at the *nuances* that work to maintain, justify, challenge and adjust its very existence.

In line with what we previously presented in our concept of 'data deserts', Haas similarly noted that the awareness of the limits of one's knowledge also influences one's choices. According to Adler, building on the example of citizens in developing countries increasingly becoming connected to the Internet of Things – possibly with some users not fully aware of threats to it, "*new fields of practices and background knowledge usually start with the discovery of new problems*" (Adler, 2019).

If the cognitive evolution leads actors – lived experiences by individuals, organisations – to adapt their understanding, their representations, expectations and knowledge about a problem set, E. Haas argues that the problem is redefined through two processes – *adaptation and learning* – explored through three ideal-type models which reflect his argument actors carry that the knowledge in their heads and projects in their international encounters, and such knowledge significantly shapes their behaviour and expectations (E. B. Haas, 1992).

First, he views adaptation as change that seeks to perfect the matching of ends and means without questioning the theory of causation defining the organisation's task. This is specifically worth noting as our research interrogates how NTIs, which represent means, impact achievements of protection objectives – adequately or not, or to some extent. According to him, adaptive behaviours are common whereas true learning is rare. Learning is associated with a re-examination of purposes brought about by knowledge-mediated decision-making dynamics.

As we contemplate adaptation - the first ideal-type called 'incremental growth', Haas explained that knowledge available to policy makers does not become consensual and no single epistemic community dominates the flow of knowledge. The dominant coalition of power maintains rather static and narrowly focused goals, while others outside the dominant coalition are pursuing expanding goals. Decision-making styles oppose eclectics to sceptics.

This model can only thrive if there is a certain stability in the pace of demands and expectations. Haas had already identified in the early 1990s that the volatility of technology and science, *“the rapid technological change triggers new demands that wish to make use of (or to restrict) the implications of the technology for human welfare”* (E. B. Haas, 1992: 106). NTIs are thus considered as a troubling variable in the ideal-type of measuredly paced work of IOs.

The second ideal-type explored is ‘turbulent non-growth’, a model where knowledge, among coalitions, is not becoming more consensual; however, within coalitions, knowledge applicable to the organisation’s mandate does command more and more agreement. Some defend static and specific objectives while others advocate dynamic and interconnected ones: the two approaches confront each other over control of the dominant coalition. Decision-making style is said to oppose sceptics to pragmatists. In this model, a questioning of norms and values accelerates, and the problem-solving machinery previously used does not seem to be adequate anymore. Complexity yet does not mean there is no knowledge, but rather than strong knowledge claim on part of a problem set (or issue area) contributes to exacerbating turbulence as it provides certainty on some parts of the issue, while confusing the understanding of the whole. The author notes turbulence results from the interaction between three types of events: firstly, a more complex task environment created by the multiplication of new relevant actors. Secondly, a more confused task domain caused by unordered preferences of the actors informed, frightened, and tempted by rapid changes in scientific and technological knowledge. Revealingly, E. Haas had noted that *“the rapid development and diffusion of new technologies suggest the possibility that control mechanisms can be placed over certain social and economic processes while they simultaneously create new problems because the unwanted side-effects of the same technologies also have to be controlled”* (E. B. Haas, 1992: 110). Thirdly, the appreciation of the significance of social time. In turbulence, no clear coalition is in control, neither authority nor legitimacy can flourish while an organisation would paradoxically survive, adapting.

Second, we turn to what Haas presents as learning – a deeper level of self-inquiry and change – the ‘managed interdependence’ ideal-type model features the redefinition of an organisation’s mandate, providing non-decomposable or nearly non-decomposable sets. In this model, learning means attempting to ‘manage interdependence’ as those who lead

organisations are not passive but rather adopt an active stance. Interdependence results in the cognitively more ambitious attempt to redefine nested problems – it means nothing remains cognitively fixed, therefore requiring significant implication of IOs personnel involved in the recalibration of both the problem and the mission. In this ideal-type model, *authority* of the organisation is considered likely to increase, although this does not mean it would necessarily be considered *legitimate* (Zürn et al., 2012). Legitimacy can increase if the organisation delivers on the new expected outcomes or suffer if outcomes are considered disappointments.

Ernst Haas – Three Ideal-Type Models of organisational change, review of relevance for humanitarian protection-mandated IOs*			
The symbol * is put when the situation is considered relevant for humanitarian protection actors			
	Adaptation		Learning
Ideal-Type model	Incremental growth	Turbulent non-growth	Managed interdependence
Knowledge	*Not more consensual	*Not more consensual among coalitions, more consensual within them	More consensual
Political goals	Specific-static; dynamic for outsider states	*Specific-static vs. interconnected dynamic	Interconnected-expanding
Problem definition	*decomposable	*decomposable	Nearly non-decomposable
Authority, legitimacy	Both increase	*No increase, probably both decline	Increase in authority, legitimacy uncertain

The above ideal-type models provide a useful reading grid for change occurring at the organisational level. Humanitarian protection actors have been challenged in pursuing their protection endeavour, by both a changing international landscape resulting in adjusted warfare configurations and a certain loss of compass in delivering protection services – which we previously explored in the preceding *Chapters 3 and 4*. Using knowledge as our starting point, we consider the use of NTIs – *a troubling variable* – has impacted the very creation of information, which is the base for interpretation and thus knowledge generation. The fast-changing pace of technologies and their only partly absorbed use in the inner-workings of



humanitarian protection organisations, as well as their parallel use by some victims of conflict, have contributed to shaking the traditional protection paradigm – which, as mentioned in *Chapter 3 section III.*, is said to ‘take time’ and was initially mostly relying on jurists of international law (IRL, IHL, IHRL). New knowledge created by various experts – not only jurists but also generalist professionals and technical experts (IT/Information Management) contributes to confusing the understanding of the ‘whole’ as coherence gets lost in the midst of a common good will to pursue protection and defend the protection of civilians who are victims of conflict. This is consistent with the ideal-type model of ‘turbulent non-growth’ presented by E. Haas. The various knowledges that are generated inside organisations seek to be merged to reinforce a stronger protection narrative – a work we contemplate being still developing. Beyond humanitarian protection organisations, the knowledge they present and defend is being contested by parties to the conflict, often even by signatories to the international treaties detailing the commitments to respect civilians. We would argue that knowledge is more consensual within sub-coalitions of various experts (jurists, generalist humanitarian professionals, technical experts), resulting in knowledge being confused inside organisations, while it is also contested outside protection guardians by other actors of the IPR. In terms of political goals, humanitarian protection organisations’ mandates have *-thus far-* remained static and have stuck to the letters and spirit of international law they rest on. Nonetheless, new voices – including intra-organisation but also member states (e.g., Switzerland, the US) are already involved in multilateral fora of discussions, such as the Group of Governmental Expert (GGE) that reflects and suggests voluntary norms around digital technologies and security (Gill, 2020; Rejali & Heiniger, 2020). According to A. Gill, the speed and spread of development of digital technologies overwhelm the ability of policy forums to keep pace with the social, economic and political consequences of technological change (Gill, 2020).

UNHCR’s policy reflections on what a “digital convention”<sup>192</sup> may imply, or the ICRC’s report on IHL and the challenges of ‘contemporary armed conflict,’ reflecting upon new technologies, represent cases in point (ICRC, 2019b).

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<sup>192</sup> The UNHCR Policy Lab notably discusses what the idea of a “Digital Convention” would mean for private sector actors that are already embedded within processes of humanitarian action but also for the re-tooling of humanitarian organisations. The link can be found [here](#).

Turning to the problem definition, protection - a malleable concept with various meanings and sub-categories as underlined by Stevens, is to be comprehended along with the advent and development of NTIs (Stevens, 2013). Examples of new terms, some deemed 'curious', include 'effective protection,' 'complementary protection' or 'sufficiency of protection' contribute to confusing the core concept (Stevens, 2013). The meaning that actors, and more specifically humanitarians, attribute to or draw from particular practices they engage in is what constitutes attempts to uphold and adjust humanitarian narratives and core principles (Sending, 2015a). Indeed, if the core protection concept remains relevant and is not questioned, the new *-digital-* domain that can be attached to a person is ill-covered by the current international legal framework, as we discussed in *Chapter 4*. While it opens operational opportunities for swift efficiency in service delivery, it also opens new security and safety risks for the persons concerned. In January 2022, the ICRC publicly shared<sup>193</sup> that a sophisticated cyber security attack against computer servers hosting information held by the ICRC on people the organisation strives to serve resulted in having the data of 515,000 vulnerable people being compromised – and thus possibly exposing them to further risks. The highly publicly discussed event has reinforced discussions on a need for an internationally recognised framework to protect not only civilians' physical bodies and intangible dignity, but their digital data too. The protection problem-set has thus been increasingly decomposed, while organisations responding try to adapt, their *legitimacy* is regularly challenged – as for the example of the cybersecurity attack against ICRC's data on vulnerable people: accountability and justifications on resources' use and approaches are largely expected by donors, the public as well as by beneficiaries of the humanitarian services too. The traditional authority of humanitarian protection organisations' validity is generally not considered obsolete, but contemporary challenges call into question yet unexplored areas of legal, operational and theoretical administration – the digital domain may well represent the soundest troubling variable of the XXI century. As such, previously developed concepts of communities of practice and background knowledge form building block of Adler's cognitive evolution theory anchored in practicality, leading to adaptations of social orders (Adler, 2019). The author's theory is presented as interactional and seeks to explain both the change and a 'metastability of social orders,' including international socio-political orders.

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<sup>193</sup> ICRC Statement publicly released on 19<sup>th</sup> January 2022 on a cyber security attack and consequences on the data of 515,000 vulnerable people in different parts of the world. The link can be found [here](#).

Humanitarian protection actors' legitimacy will be contingent to their capacity to adapt and stay relevant, reinventing themselves with absorbing the new domain into the core existing traditional protection one. As our research reflects on the IPR, for which humanitarian protection actors constitute the guardians and one of the main actors, exploring individual evolutions of humanitarian professional (field research) as well as organisational evolving strategies provides important multi-layered insights to inform our reflection around the impact of the use of NTIs on both the politics and practices of the IPR.

#### IV. Protection actors: using knowledge to influence

In 2008, Antonio Guterres, then at the helm of the UNHCR, said during a field mission in Iraq that *"there is never a humanitarian solution to a humanitarian problem – the solution is always political"*<sup>194</sup>. Since the turn of the XXI century, a widening of diplomatic practices beyond the traditional state-centred approach (both as an actor and focusing on sovereign power matters) has been observed, notably supported by the development of the 'information revolution.' A higher number of non-state actors has become involved in diplomatic practices and now focus on a densified set of issues, and humanitarians can be considered part of this trend towards a broadening of diplomacy (Balzacq et al., 2018).

While the strictly humanitarian character of their mission is theoretically supposed to facilitate humanitarian organisations' work, protection of the civilian populations who are victims of conflict is pursued in highly political and politicised contexts. International protection rests on the continued commitment and willingness of states to ensure victims of conflict have access to certain rights and services (Betts, 2009). The role of epistemic communities, to which some expert personnel of humanitarian protection organisations are part of, contributes to influencing state interest by directly identifying issues or by 'illuminating salient dimensions of an issue' from which decision-makers may deduce their interests (P. Haas, 1992). When cooperation with Governments possibly entails various levels: donor-receiver of funding, partner for political mobilisation of others, and entity that humanitarian protection actors may need to persuade to adjust behaviours – the choice of words, the discourse as well as the actions ought to be carefully chosen. As such, protection

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<sup>194</sup> The link to A. Guterres, then High Commissioner for the UNHCR can be found [here](#).

humanitarian actors that are continuously present and engaged in multilateral for a and bilateral discussions have learnt to be a full part of the ‘diplomatic community’ discussed by Pouliot, some of these actors have been recognising within their own organisations a role to what is called “humanitarian diplomacy,”<sup>195</sup> which goes beyond the traditional state-focused diplomacy (Guilbaud, 2018; Pouliot, 2017; Pouliot et al., 2015). Over the last years, the somewhat controversial concept, at times refuted or ignored by its own practitioners, has nonetheless been further explored in academia. For instance, Régnier reflected on the emerging concept of humanitarian diplomacy as he also recognises a historically-rooted humanitarian practice at local, national, regional and global levels (Régnier, 2012). For their part, E. Rousseau and Sommo Pende interestingly qualify humanitarians’ competences as a ‘special kind of expertise’ that relate to diplomatic skills while being guided by two main objectives: *first*, to enhance the humanitarian actor’s acceptability so that it can operate in the field, and *second*, promoting the respect of IHL with both states and NSAGs that are parties to the conflict (E. Rousseau & Sommo Pende, 2020). Sending specifically noted that the ICRC engages heavily in and adopts the same type of rules for confidentiality as diplomats do, a claim echoed by Rousseau and Sommo Pende (E. Rousseau & Sommo Pende, 2020; Sending, 2015a). As one of the main protection guardians at the centre of our research, we would nonetheless also consider the UNHCR -*as the other main protection guardian*- and although it is part of the UN, we would also add it exercises humanitarian diplomacy activities in its advocacy to member states to defend protection outcomes. To a lesser extent on protection but with wide practice and experience on humanitarian issues overall, the UN OCHA senior staff in Geneva and New York are also regularly engaged in what can be construed as humanitarian diplomacy activities. INGOs that work on expert-segments of protection, such as the NRC and DRC which we also included as protection actors, focus their advocacy work on public awareness, field narratives and privileged relations and discussions -*allowing to pass key messages*- to Governments that emanate from the Scandinavian culture, rather than public denunciation, often pursued by MSF.

Minear and Smith in their book on *Humanitarian Diplomacy: Practitioners and their craft*, offer a wide-scoped definition of the concept, encompassing “*activities carried out by*

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<sup>195</sup> Interview carried out on 29.09.2021, UN OCHA Staff, Senior Manager, Policy and Innovation category.

*humanitarian organisations to obtain the space from political and military authorities within which to function with integrity*” – including arranging the presence of staff in a given country, negotiating access to civilian populations in needs, promoting respect for international law and norms (Minear & Smith, 2007). We would nonetheless draw a distinction between what we consider humanitarian negotiations that entail negotiating field access, raising awareness on IHL; and humanitarian diplomacy activities that we consider closer to international fora of power negotiations and require a more specific skillset from humanitarian practitioners. Minear and Smith note a certain discomfort from most humanitarians to be labelled as diplomats – that relates to the previously explored and continuously recurring discussion on the fact that diplomats defend national goals and are politicised while the dominant view of humanitarianism defends a non-political or a-political objective based on humanity. Rather than being diplomats, explaining how some humanitarian activities relate to *humanitarian diplomacy* – acting to defend a claimed apolitical agenda in highly political and politicised fora may provide a useful way forward. Sending argues humanitarian actors operate within the parameters set by diplomacy as “*a way of organising politics between polities*” (Sending, 2015a). Polities represent nationally territorial-bounded interest that diplomats speak for while humanitarians defend a - *non-territorial-bounded* – principle of universally shared humanity, from which national responsibilities for protecting civilians, as well as distant strangers or others derive. In constantly re-negotiating this fundamental difference amidst nested and changing interest, humanitarians are using diplomatic processes.

In the protection knowledge brought forward by ‘humanitarian diplomats’ who develop sensitive narratives, the impact of NTIs and the ‘physical world’ has thus far been limitedly explored by political science scholars, a gap of research we attempt to partly bridge through our research. While Régnier recognised how NTIs represent challenges and opportunities in the practices of both traditional and humanitarian diplomacy, adding the more systematic use of ‘opinion leaders’ for exerting influence and potential -*undesired*- release of confidential information publicly, the matter would require further research (Régnier, 2012). Wendt argued material conditions can impact ideas at two levels: by defining physical limits of possibility and by defining the cost-benefit equation of alternative actions while he defended it is the intersection between material and ideational forces that it is important to explore (Wendt, 2000). Ruggie explained with clarity the interconnection between the materiality of

NTIs and political dimensions we focus on in our research: *“Physical and technological parameters are important determinants of international responses to technology when those responses concern research, scanning and monitoring, and problem recognition in general - when, in a word, the issue is to discover or understand some process or situation. When, however, the issue is to manage some process or situation, the weight of political purposes becomes preponderant”* (Ruggie, 1975, 558). What we intend to further explore and unveil is the intertwining of the troubling NTIs’ variable, the knowledge and discourse created around protection issue areas or problems, carried and embodied in humanitarian diplomats’ practices amidst bilateral and multilateral political entanglements (Pouliot, 2017). As Barnett and Weiss explain, *“humanitarianism is precariously situated between the politics of solidarity and the politics of governance”* (Barnett & Weiss, 2008a, 38). Agreeing with this claim, and in line with Pouliot’s approach using practices as a starting point of academic research, humanitarian diplomatic practices that contribute to defending, potentially altering and certainly redefining protection issues affecting millions represent the intersect between technologically created new protection knowledge and their embodiment in various political spheres.

Gross Stein raised important questions when she said *“the language of humanitarians, although not necessarily of humanitarianism, has changed”* (Gross Stein, 2012). She considers the debate about accountability among humanitarian organisations reveals deep divisions about principles and practices that are viewed as entangled with shifting currents of ethics, power and politics. More specifically, the language of the fundamental ‘*Do No Harm*’ is said to have shifted terrain towards an accountability of outcomes: to identify harm, the identification of humanitarian consequences stemming from harm has become needed. Duffield noted a similar shift when he emphasised the increased requirement from donor states to provide information about programmes and to enhance accountability for financing (Duffield, 2014, 2018). Gross Stein defends there is a *principal-agent relationship* inside the humanitarian space, the principal representing donor states and the agent representing humanitarian organisations. Inherent tensions characterise such model of relation, as agents always seek to maximise their autonomy, according to what they define as their best interests. The agents’ interest may not be in line with the principal’s interest, which is the source of tension. Reflecting on relationships between humanitarian organisations overall

and refugees more specifically, Harrell-Bond raises the difficult question of asymmetrical power relations between humanitarian organisations' personnel and populations they strive to serve, including through a lack of accountability related to staff behaviour (Harrell-Bond, 2002). Practically, the shift towards accountability to donors has been supported by NTIs in requiring humanitarian organisations to use systems or provide in-depth information, as well as monitoring of pre-set indicators for example. During our field research, a humanitarian protection professional explained a situation where three different case management systems were used, recognising limitations for protection field staff having to manoeuvre between three systems for following the same beneficiaries. The protection professional further added: *"What is interesting is what we have works very well for reporting, but not for case management, so the tool works well for reporting and accountability to donors. Technology is great when it serves the purpose of supporting beneficiary, not only for reporting to donors."*<sup>196</sup> The steering by donor states raises the important question of their power over humanitarian organisations' conduct of activities – in line or in contradiction with fundamental humanitarian principles, especially *independence*.<sup>197</sup> Humanitarian actors have developed a narrative recognising multiple accountabilities, to the donors but foremost to the people they seek to support, a move seen as an attempt to shift the terrain of contestation away from accountability constructed as outcome to an accountability construed by process (Gross Stein, 2012). We see the readjustment of various actors' forces and influence as a sign of the reordination attempts within the humanitarian system, and for which the NTI-supported knowledge and subsequent narratives and discourses form the contours. Barnett and Weiss consider humanitarian organisations are both constituted by discourse and are also actively involved and have a capacity to shape reality; both mechanisms will be addressed in our analysis in the next sections (Barnett & Weiss, 2008a).

### 1. Issue-linkages' strategies

The concept of issue-linkages is not new and has initially been defined in the frame of inter-state negotiations. In 1976, Wallace defined the concept as *"linkage between unrelated or loosely-related issues in order to gain increased leverage in negotiation is an ancient and accepted aspect of diplomacy"* (Wallace, 1976). The last part of the proposed definition

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<sup>196</sup> Interview carried out on 16.04.2022, DRC, Protection staff category.

<sup>197</sup> Fundamental humanitarian principles include humanity, neutrality, independence, impartiality.

related to the diplomats' traditional portfolio is specifically of interest to our research and resonates with previous comments we made about the importance of humanitarian protection staff's skills for negotiations and persuasion. Although the concept of issue-linkage was initially developed for inter-state negotiations, IR theorists such as Keohane and E. Haas have recognised issue-linkage as a core function of international regimes (E. B. Haas, 1980; Keohane, 1984). As part of regular diplomatic activities, the interplay of changing knowledge and changing objectives contributes to the redefinition of 'issues' and the practice of 'issue-linkage,' suggesting such dynamics are indicative of international regimes becoming more complex as incorporating wider 'issue areas.'<sup>198</sup>

Looking at international organisations' proactive and reactive response to change, E. Haas sought to understand *how* issues are linked together in the frame of multilateral negotiations in international organisations. Issue-linkage has also been defined as a means of facilitating cooperation by including enough issues in the negotiations that all the actors can derive payoffs from the cooperation. The exploration of *how* issues are grouped together into packages then called 'issue areas' allows to define the boundaries of a give issue area under negotiation – with the same objective being for protection actors to influence alleged perpetrators of violations (states and NSAGs) as well as others potentially having influence over them.

Three types of linkages are identified:

Tactical linkage: an action that consists in introducing new issues into the agenda although those issues are not substantively connected but made conditional to negotiations. This approach is said to be commonly used by 'weaker parties' to the negotiation and has also been referred to as 'horse trading' and conditionality (Betts, 2009). It was also referred to as the '*instrumental creation of a relationship between issues within a bargaining process*' (Betts, 2006). In practical terms, tactical linkage relates to exchanges aiming to add another topic/issue into the mix of issues being discussed and trying to convince other actors (states and non-state actors involved) to align with the view – also called side-payment: UNHCR and NGOs have frequently called on the notion of 'burden sharing' in bargaining, calling on

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<sup>198</sup> Cross-issue linkages is often referred to concerning activities that involve bargaining on more than one issue.



Northern states to provide further development assistance to Southern states that host most refugees.

Substantive linkage: arising from consensual knowledge, or causal understanding, substantive linkage happens when there is a configuration supportive of an overarching social goal. The substantive relationship between issues can be material, ideational or institutional. Betts uses the practical examples of negotiations around CIREFCA<sup>199</sup> (1989) where the objectives defended by the UNHCR in gathering concerned regional states were to provide long-term solutions for refugees displaced by civil conflict in Central America and to improve protection standards throughout the region. The author reflects on an approach that, rather than addressing refugee protection in isolation (as ICARA<sup>200</sup> had done, and failed), CIREFCA was explicitly part of both the wider UN-led peace process and the post-conflict reconstruction process (Betts, 2009, 49). This is the pattern of greatest interest to the construction of international regimes (E. B. Haas, 1980). With substantive linkage, an issue which may have been considered as an end becomes a means to a 'more complicated end', argues E. Haas. Nonetheless, the linking of issues needs to occur along the legitimation and the acceptance of a new understanding, at least on the part of key actors, contributing to the redefinition of interests. E. Haas considers it 'typical' of decision-making based on experts providing conducive grounds for consensual knowledge but also by politicians who pursue interconnected and expanding goals informed by this consensual knowledge. Substantive linkage has been the subject of most academic research, notably with Betts' research on the UNHCR in *Protection by Persuasion* (2009), that considered it as an actor which 'created' change, or simply recognised and effectively communicated substantive linkages to persuade other actors to change behaviour.

Fragmented issue-linkage: a situation where most political aspirations are issue-specific but where strong strands of causal understandings among issues also exist. The bargaining

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<sup>199</sup> CIREFCA is the Spanish acronym, which is widely used in English academic works, for International Conference on Central American Refugees that was held for 5 years after 1989 and the inception of its process.

<sup>200</sup> International Conference on Assistance to Refugees in Africa (ICARA) relates to two specific conferences held in 1981 and 1984 respectively. According to Betts, the two conferences were ultimately a failure as, according to him, UNHCR failed to persuade states that there was a relationship between refugee protection and development.

situation requires negotiators to maintain cohesive coalitions despite a certain mismatch between knowledge and interest.

Betts noted that the literature on issue-linkages remains particularly underdeveloped (Betts, 2009). The existing literature yet tackles two main questions: first, the process by which issues are combined together in formal negotiations (linkages are considered as a dependent variable) – the role of knowledge and the role of power are here considered instrumental; and second, the impact of the packaging of issues into issue areas on international cooperation (linkages as independent variable) (Betts, 2009). Back in the 1990s Martin suggested back in the 1990s that intergovernmental organisations may have a role to use issue-linkage to enhance possibilities for international cooperation by increasing the scope of side payment across an issue area (Martin, 1994). When international organisations are overseeing an international regime - especially when defending an international ‘public good,’ connecting the said international public good (i.e., protection, human rights) to other issues that are of interest to some states may serve the purpose of avoiding collective action failure. While not all humanitarian protection actors are IOs, this is a useful consideration in the exercise of influence, and power as it relates to actors involved in protection violations. Researching specifically on the UNHCR and the part of the IPR that focuses on refugees, Betts considers the organisation has been most efficient when it recognised and appealed to states’ interests beyond the boundaries of what he calls the ‘refugee regime’ (Betts, 2009). Betts explains what he calls a ‘North-South impasse’ when it comes to how various states have approached the plight of refugees in different configurations. According to him, there has been an absence of clear norm on burden-sharing. The implementation of the IPR then becomes an *ad hoc* bargaining process that therefore depends on power relations, for which information and knowledge of complex and sensitive situations is key, rather than the active pursuance of previously stated goals of humanity and human’s worth. Nonetheless, with ‘issue-linkages,’ in certain cases, Betts argues that the North-South impasse has been overcome and contributions from reluctant Northern States have been based less on altruism or concern for refugees due to a perception that refugee protection is related to other wider interests in other ‘issue areas,’ such as security, migration or trade (Betts, 2009). The author considers that the role of substantive linkages in world politics has been a neglected source of power while structural interconnections between issue areas represent a resource of

power, or a means of influencing the behaviour of other actors. Such influence resorts to persuading another actor to see his own interest differently. This contrasts with realist-anchored views of hard power, which mostly rest on threat of force and coercion.

More recently, IR academic research led Duvall and Barnett to define what could be called the mechanisms of power in the following terms:

*“power is the production, in and through social relations, of effects that shape the capacities of actors to determine their circumstances and fate”* (Barnett & Duvall, 2005).

Considering IR scholars have often relied on one form of power (hard power) overly associated with the realism, the authors provided an interesting taxonomy of power looking at the kinds<sup>201</sup> of social relations through which power works, and the specificity<sup>202</sup> of social relations through which effects are produced. In their views, constructivists have focused their attention on how underlying normative structures constitute actors’ identities and interests, which we developed in *Chapter 2*, but have limitedly treated how constitutive effects are expressions of power. This reflection around dynamics of mechanisms of power led them to propose a taxonomy with four concepts of power: compulsory (direct control of actor A on actor B), institutional (control exercised indirectly over others through diffuse relations of interactions), structural (constitution of actor’s capacity in direct relation to one another) and productive (socially diffuse production of subjectivity in systems of meaning and signification). The proposed different types of power are not considered to be competitive concepts but rather to be viewed as connected to each other in various situations. More specifically of interest to our research are two of the proposed concepts of power, i.e., institutional power and productive power. Regarding the former, this is defined as *“the formal and informal institutions that mediate between A and B, as A, working through the rules and procedures that define those institutions, guides, steers, and constrains the actions ~ or nonactions - and conditions of existence of others”* (Barnett & Duvall, 2005, 51). The above definition practically relates to mechanisms through which the agenda is set in multilateral discussions, as well as how issue or ‘issue-linkage’ is being formulated, and how enduring systems of exchange and interdependence can be medium of power (Nye & Keohane, 1977).

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<sup>201</sup> This first dimension refers to the polar positions of social relations of interaction and social relations of constitution.

<sup>202</sup> This second dimension refers to the degree to which the social relations through which power works are direct or socially specific or indirect and socially diffuse.

As for the concept of 'productive power,' this entails the production of subjects with various social power through systems of knowledge and discursive practices, which provide meaning to social identities (Barnett & Duvall, 2005). The notion of productive power brings theoretical elements to our reflections around how NTIs contribute to creating information and subsequent knowledge that result in changing interpretations of protection issues; understandings, meanings and norms are historically contingent.

Barnett and Duvall consider persuasion as a social causation that falls outside their concept of power (Barnett & Duvall, 2005).

## 2. Persuasion: cross-issue & ground tactics

In an attempt to conduct research on issue-linkage, and more specifically on substantive issue-linkages, Betts developed the useful concept of "cross-issue persuasion" (Betts, 2009). Cross-issue persuasion is defined as "*the condition under which an actor Q can persuade an actor B that issue area X and issue area Y are linked as a means of inducing actor B to act in issue area X on the basis of its interest in issue area Y*" (Betts, 2009, 4). Cross issue persuasion is said *not* to require hard power, but it may be achieved through the provision of information – or knowledge – which plays an epistemic role in the development of argumentations or institutional design. Using cross-issue persuasion is not considered to be an economic or military resource, but rather relying on the capacity to influence the perception of the target actor about a causal relationship between issue areas – beside the intellectual manoeuvre, it is a diplomatic skill many government representatives, but also humanitarian professional personnel have and use at various levels, from ground negotiations up to its higher political spheres, as had recognised by Forsythe's exploration of the ICRC's role in upholding a protection mission (Forsythe, 2001a). Loescher, Milner and Betts have interestingly recommended that UNHCR should ensure to have the political and analytical capacity to be aware of how the politics of other policy fields *is* the politics of refugee protection (Betts et al., 2012).

The act of persuasion has been defined as influence designed to change beliefs, and it can be distinguished from other types of social influence, such as coercion, which involves the use of threat of force; bargaining, which involves offering of rewards or threats of punishment; and emulation, which involves imitation of behaviour (Keohane, 2003b). Sending referred to

recent research in IR that pointed to the importance of operating environment in shaping governance strategies, either in the form of ‘orchestration’ or by developing and advancing ‘soft law’ as a mean to govern with insufficient or without inter-state agreement (Sending, 2020). Focusing on ‘arguing’ and argumentation, Risse considers the “*trustworthiness of the communicator as unbiased increases the persuasiveness of an argument during communication*” (Risse, 2000: 13). Thus, beside the individual skills and competences of professional protection guardians, his or her perception as being unbiased as individual and representing a specific organisation heightens the weight of the presented arguments. Using as example the ‘argumentative rationality’ some INGOs can develop, Risse argues that a process of persuasion can be observed if actors change their mind in a communicative process, even though their instrumental interest would suggest otherwise (Risse, 2000). Using the example of the creation of the International Criminal Court creation, Deitelhoff analysed negotiations and suggested the creation of the Court could be attributed to persuasion, that led to a shift in states’ interests (Deitelhoff, 2009). In doing so, she reflects on how weaker actors – of specific interest for our research on humanitarian protection actors – can potentially alter both normative but also institutional settings of negotiation fora, therein using those approaches to further their chances of successful persuasion.

Although, for humanitarian actors, it is mostly considered that persuasion occurs on the basis of argumentation, it includes a design to change another actor’s beliefs, and subsequent actions’ rectifications of previously committed protection violations and adjustments to avoid future violations to occur. Yet, for a protection humanitarian organisation to convince and effectively influence another actor, there must be a basis for the linkage claim between different issues. According to Betts as he closely reviews UNHCR’s attempts to use substantive issue-linkages and carry out cross-issue persuasion, structural connections are necessary but do not represent a sufficient condition for UNHCR to appeal to the interests of actors in other issue areas. In his view, successful cross-issue persuasion influencing a state behaviour occurred when (1) there was a clear underlying structural relationship between issue areas, and (2) when the UNHCR had to assume agency to change structural interconnections or to “*recognise and effectively communicate their existence to state*” (Betts, 2009). Recently, the large influx of refugees fleeing from the conflict ignited in 2022 between Russia and Ukraine led some to argue for the positive economic impact of hosting refugees – in Ukraine’s

neighbouring countries but also in other regions of the world (Bahar, 2022). Over the last decade, other conceptual frameworks were proposed when it comes to argumentation and persuasion: Grobe, for example, proposed a “functional persuasion theory,” where argument-based changes in bargaining positions are entirely belief-driven and are not due to a reformulation of agents’ preferences (Grobe, 2010). Although we find the proposal innovative, we hardly see the match when applied to the politics and practice of the IPR – constructivist views seem to provide a more suited framework of reflections that accommodates the various configurations of ground and political interdependences among IPR actors.

Similar reflections have been tackled by the ICRC, albeit with a more operational focus that concentrate on weapon bearers – be it governments’ militaries NSAGs. For instance, the organisation has delved into in-depth reflections in its 2004 study *Roots of Behaviour in War*, and has sought to identify the factors which are crucial in conditioning the behaviour of combatants in armed conflict, with a conscious view to determine whether ICRC’s policies to prevent IHL violations were suited (Munos-Rojas & Frésard, 2004). Borrowing from both psychology and sociology, the report emphasises the role of *norms*, or *normative references*, that people adhere to in different cultures, when in line with IHL principles, can reinforce prevention of IHL violations. Inquiring the inner-workings of various weapon bearers’ behaviour in Colombia, the Democratic Republic of Congo, Bosnia-Herzegovina and Georgia, the question of authority of decision-making that relate to an act that constitute a violation of IHL, or to the contrary the authority that imposes a frame that would prevent violations, the authors of the report note the important difference<sup>203</sup> between the status of the combatant and that of a person “*constrained to obey under a yoke of oppression*” (Munos-Rojas & Frésard, 2004: 7). The field work done in preparation of the report led the organisation to recognise a ‘gulf’ between knowledge combatants may have about humanitarian norms and their limited inclination to respect them during the conduct of hostilities; it also led to recognise that *knowledge* is not considered to suffice to induce a favourable behaviour towards respect of IHL norms, including for those defending the

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<sup>203</sup> Authors reflect on the *authority-subject pairing*: a relationship that, according to them, must not be seen as a relationship in which a superior imposes a line of conduct on a reluctant subordinate by force. The person’s inclination to accept the definition of the action supplied by the legitimate authority would therefore impact the person’s responsibility in the action. It is the ideological abdication which constitutes the essential cognitive vias of obedience.

protection of civilians. An important recognition lies with the indirect impact of the ICRC on behaviour's restraint:

*“While ICRC activities contribute to a wider acknowledgement of humanitarian norms, they do not have any direct impact on their application. Nevertheless, they do have an indirect effect”* (Munos-Rojas & Frésard, 2004: 11).

Reflecting in terms of influence, it is interesting to note the study identified that combatants who have developed a relationship of trust with the ICRC on an individual basis are more favourable to the application of IHL. This raises two important points: first, the element of trust that NTIs can temper with within complex conflict settings represents a point of contraction to the core of the IPR's alteration; second, the interpersonal level of relationship to exert influence towards an enhanced respect of IHL, indirectly to the least, aiming to protect civilian populations resonate with the individual roles of protection guardians defending the protection core in international bilateral and multilateral fora. The individual roles of jurists, skills negotiators and protection experts at the UN Security Council while meeting a NSAGs in a remote conflicted area is essential to use sounding arguments that widely vary depending on situations, but under the same emblem of their respective organisations and with the same vocation of 'protectors'. If the purpose remains to influence behaviour of weapons bearers, the ICRC considers the objectives would not be about narrowly 'persuading' combatants that they must behave in a different way, but rather to more widely influence people who have an ascendancy over them – meaning structures that encompass more or less hierarchically organised groups to respect these norms. One of the study's main lesson considers an identified need to have efforts to disseminate IHL focused on *“legal and political matter rather than a moral one, and focus more on norms than on their underlying values”* (Munos-Rojas & Frésard, 2004). In the difficult mission to defend protection objective, it was already noted in 2004 that the civilian/combatant distinction, which forms the basis of defining who a civilian is (*Chapters 1 and 2*), was challenged by several interlocutors during the field research – a concern we will further explore in the next chapter. A more recent ICRC study titled *The roots of restraints in war*, sought to be an update to the 2004 one on roots of behaviour outlined above, in this new study the role of norms is again highlighted as a key component while one of the major findings relates to the

importance of linking *“the law to local norms and values”* as a strategy to gain *“greater traction”* with weapon bearers (ICRC, 2018a). The operational research study recalls that ICRC’s role is to persuade armed forces to make respect for IHL a clear command, and has inspired other studies such as a comparison on ‘norms of restraint’ through rank and socialisation between the Philippine and Australian armies (Terry & Bell, 2021). Such reflections on the evolution of conflict characteristics as well as warfare methods bears importance; according to ICRC’s legal classification, *“the number of non-international armed conflict has more than doubled between 2001 and 2016, from fewer than 30 to more than 70”* (ICRC, 2018a: 13). In addition, the number of parties to a conflict is also considered to have grown exponentially with various configurations of NSAGs coalitions, at times with various degrees of support of external governments (from financial support to arms’ sharing, to training or joint ground operations). Looking at methods of warfare, the report specifically notes that:

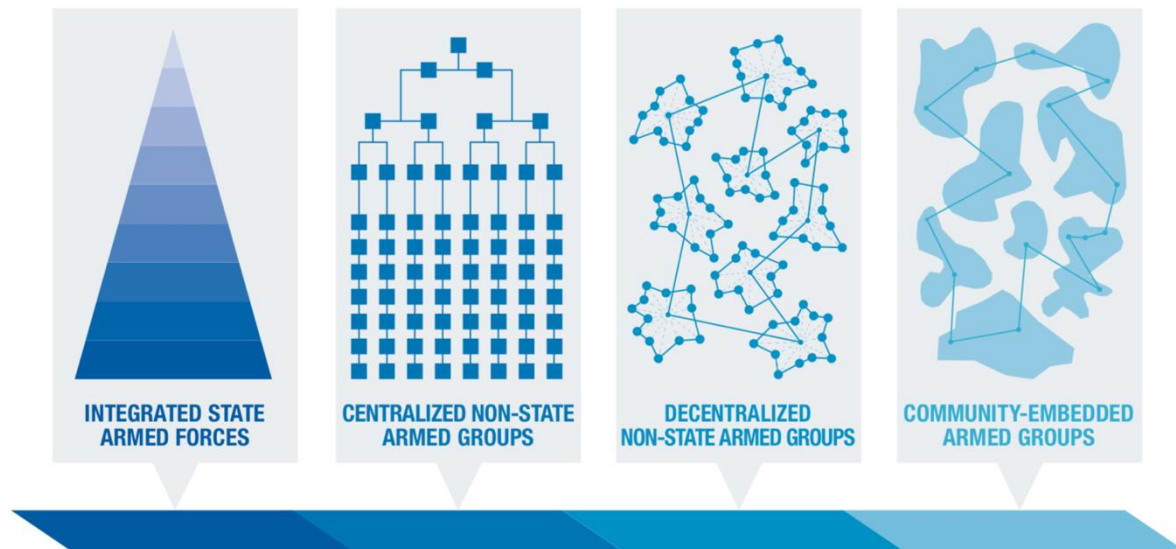
*“The increasing use of cyber warfare, remote technologies such as surveillance and combat drones, and the development of autonomous weapon systems creates further distance. Taken together, both human and technological ‘outsourcing’ can be seen as an attempt to dilute responsibility for battlefield conduct”* (ICRC, 2018a: 14).

This core concern related to the use of NTIs in warfare, which we previously explored with Leveringhaus’ reflection on distance and weapons technology (*Chapters 2 and 3*), now leads us to the political reflection around the exercise of authority, influence, and power in the complex IPR. The study concluded with the recognition that the need to understand the inner working of armed groups is a prerequisite to identifying the sources of authority, beliefs and traditions that contribute to steering behaviour; it also found that *“the number of competing influences over armed groups increases with the extent of decentralisation and community-embeddedness of a group”* while sources of influence also change over time and in response to events (ICRC, 2018a, 64).



The ICRC's study visual is an important resource we borrow for a useful presentation of various weapon bearers' configurations:

Figure 12 – ICRC's "The Spectrum of armed-group organisation" in *The Roots of Restraint in war*



Four criteria were used to determine a group's position on the spectrum: the locus and type of authority; the nature of the hierarchy; the nature of discipline; and the degree of social isolation. Observable indicators were used to determine comparable values for each criterion (see Table 1).

In other words, as the number of belligerents has increased and features highly complex evolving configurations of weapon bearers, and as warfare has become partly semi-distant with the use of advanced technological weaponry, the groundwork of humanitarian protectors is even more difficult. The other crucial evolution, which we previously developed (*Chapters 2 and 3*), relates to the further distance humanitarians are from the ground and from the people: at times chosen, at times imposed and regularly renegotiated to regain access. The study's findings, based on practical experiments on exerting influence in infusing enhanced respect of IHL and on protecting civilians, highlight that an "integration approach" to instil norms of restraints in vertically structured state armed forms and NSAGs is considered pertinent. As for decentralised and community-embedded groups, clear sources of influence are to be identified, and the more decentralised the group, the more these sources are external to the group (ICRC, 2018a). Lastly, the conclusion that an exclusive focus on the law is not as effective at influencing behaviour as a combination of the law and the values underpinning it allows us to draw a parallel with the cross-issue persuasion concept developed by Betts (Betts, 2009; ICRC, 2018a). Associating IHL rules with wider norms, that

are contingent to local or cultural settings enables to bring different arguments and to link them with what often appears as too-juristic laws, harder to understand for various profiles of combatants. In exploring those persuasion strategies, the ICRC has for example researched links between IHL and Islam (see also *Chapter 1*), and traditional Somali behaviour in warfare (Al-Dawoody, 2017; ICRC Somalia Delegation, 1998).

To conclude, we contend the next legitimate question lies with the challenge of humanitarian protectors at large to stay relevant in XXI century conflicts. Their struggle to ‘stay relevant’, from the ground up to the highest political fora, contributes to defending, arguing, counter-arguing, and renegotiating the XX century enshrined core and contours of the IPR. Betts argues that shedding light on the international politics of refugee protection and what he calls the refugee regime, has wider implications for understanding world politics. According to Sending, the boundary drawn between diplomacy and humanitarian relief is part and parcel of the continual reproduction of the state as capable of governing yet not politically responsible for suffering outside its borders – through the infrastructure of diplomacy the author details (Sending, 2015a). Looking at intricacies of norms contestation, Deitelhoff considers technological developments can make certain norms superfluous or require specific changes in the normative frame while at the same time noting that it is not only the discursive struggles about the meaning but also the ‘rightness of norms’ that give rise to normative change (Deitelhoff, 2020). In her view, norms’ contestation is not necessarily negative and can contribute to reinforcing existing norms. Those are elements we will further explore in the last Chapter of this research. We will delve into the ramifications of the use of NTIs in the politics and practices of the IPR, encompassing both wider implications on the humanitarian system but also into how NTIs now shape world politics to a different degree than they previously did.

## Chapter 6: International Protection Regime alteration – Searching for new common grounds

In previous chapters, we have introduced the notion of humanitarian protection, deeply rooted with principles of dignity and humanity that underpin its core and the centrality of information (*Chapter 1*). We then explored the construction of the International Protection Regime (IPR), historically anchored in the XX century war realities and needs (*Chapter 2*), we have in turn investigated how the use of NTIs has raised both operational opportunities and risks in humanitarian protection work (*Chapter 3*) while also triggering reflections around humanitarian politics and ethics (*Chapter 4*). In our *Chapter 5*, we reflected on the impacts of NTIs on the protection knowledge (re)generation processes and subsequent meanings. In this *sixth Chapter*, we explore, question and conceptualise the *extent* of the IPR alteration. In line with our approach throughout the research, we will use both various theoretical academic works of political science, and more specifically in the field of International Relations (IR) to support our inquiry into international regime changes, transformations and alterations while also integrating our field research through humanitarian professionals' perspectives. This approach resonates with Kratochwil and Ruggie's reflections on the research programme on international regimes to contribute to better reflecting on complex and sometimes ambiguous policy realm, for which they argue it is necessary *"to link up regimes in some fashion with the formal mechanisms through which real-world actors operate"* (Kratochwil & Ruggie, 1986: 772). As Clausewitz argued that war is a continuation of politics through other means, and he also discussed 'frictions' during war – a concept explained by the difference between 'war on paper' and 'real war'. *"One must have campaigned to understand what the difficulties are, which are constantly discussed in war,"*<sup>204</sup> Clausewitz defends in order to enhance the field experience belligerents go through during warfare (Desfachelles, 2015; Von Clausewitz, 1832). We similarly consider that the experience – *both professional and humane*

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<sup>204</sup> Clausewitz quote in French states as « *il faut savoir faire campagne pour comprendre en quoi consistent les difficultés dont il est sans cesse question à la guerre* » - page 93, *De la guerre*.

– humanitarian professionals acquire working in conflict zones protecting civilians, contributes to reinforcing and nurturing our research.

As we argued in the introduction of our third part, we consider there is a double transition at play which needs to be comprehended in our research: first, the destabilisation triggered by the exponential rise and asymmetrical penetration and ordination of New Technologies of Information (NTIs) at different paces in various humanitarian theatres and societies, and second, the meta-transformations that have occurred since the creation of the IPR in the post-WWII era. On this second aspect of IR meta-transformations, Holeindre et Fernandez consider that multilateralism has been losing intensity and fragmenting, therefore creating frictions: *“the difficulty is not so much that of overcoming the multilateral frameworks of the world of yesterday as that of the inability to adjust them, if not to reform them”*<sup>205</sup> (Fernandez & Holeindre, 2022: 17). More specifically reflecting on international regimes in an IR configuration that they call ‘disunited nations,’ the authors observe existing regimes regularly face multiple and repeated attacks by powers (states) that seem to progressively detach themselves from fora they previously supported (Fernandez & Holeindre, 2022). This ‘disengagement’ of key actors, specifically influential states, will be further explored.

In this chapter, we also ask the complex question of the *depth* to which the IPR struggles between opposite forces: on the one hand, attempting to maintain continuity with minimal adaptations – potentially at the risk of becoming isolated and growing in irrelevance; and on the other hand, reaching towards including the digital dimensions of civilian persons’ protection – potentially weakening its already contested core. This chapter therefore investigates this ‘dilemma for survival,’ handling high-waves’ fluctuations into a difficult XXI century IR’s landscape. If a certain level of fluctuations and frictions can be considered ‘normal,’ which led E. Adler to think that orders are in a state of nonequilibrium, it is the extent of their impact on the IPR which we will address. A humanitarian professional provided an interesting summary of what this chapter will attempt to achieve:

*“it is a question of pendulum, we (protection staff) were so far on the narrative non-digital side and the pendulum has swung into new technologies and now it is about*

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<sup>205</sup> The original quote in French is « *la difficulté n’est pas tant celle du dépassement des cadres multilatéraux du monde d’hier que celle de l’incapacité de les ajuster sinon de les réformer* », the English translation of the quote is done by the author of this research.

*finding an equilibrium so that tools are seen as tools and enablers and that the human component is also brought in recognising the contributions of each and how they work together.”<sup>206</sup>*

Adler further argues that “*fluctuations in the form of new knowledge and learning processes help channel change into new practices and forms of organisation that help keep a social order metastable*” (Adler, 2019: 192). Mayer, Hasenclever and Rittberger consider in *Theories of International Regimes* that it is not unusual for agreed upon rules to become obsolete sometime, adding that “*new technologies and material opportunities may undermine existing institutions, leading to new social practices*” (Mayer et al., 1997: 20). In seeking new common grounds, the IPR, spearheaded by the protection ‘guardians’,<sup>207</sup> attempts to find this new common ground or stability – the pivotal question thus lies with the capacity to adapt to ongoing changes while still maintaining a certain level of cohesiveness in identity, values, rules and practices.

## I. Exploring the depths of international regime change

### 1. Theorising regime change. S. Krasner and O. Young

Krasner’s definition of international regimes, which we previously presented and adopted in our research (see *Chapter 2*): “*implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations*” (Krasner, 1982).

The concept itself has, from the start, been challenged: Strange is often referred to as the most vehement critic of the study of international regimes in the 1980s, finding fault with their “woolliness” and “imprecision” and expressing doubt on whether further work on the concept should be encouraged, while Mearsheimer argued for a ‘false promise of international institutions’ (Mearsheimer, 1994; Strange, 1982). Strange’s five-point

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<sup>206</sup> Interview carried out on 01.04.2021, UNHCR staff, Senior Management Policy and Innovation category.

<sup>207</sup> We understand protection guardians as including both protection humanitarian actors (ICRC, UNHCR, NRC, DRC, UN OCHA amongst others) and human rights advocates (Human Rights Watch, Amnesty International amongst others).

argumentation<sup>208</sup> against the study of international regimes includes one argument that defends that regimes provide “too static a view,” notably using the example of technology development, seen as dynamic, through a process of economic concentration which eventually has distributive consequences in world society. S. Strange explains and concludes that:

*“the chain of cause and effect so often originates in technology and markets, passing through national policy decisions to emerge as negotiating postures in multilateral discussions, it follows that attention to the end result – an international arrangement of some sort – is apt to overlook most of the determining factors on which agreement may, in brief, rest. The search for common factors and for general rules (or even axioms), which is the essence of regime analysis, is therefore bound to be long, exhausting, and probably disappointing”* (Strange, 1982: 488-490).

Young, who has carried out significant research on international regimes, shares considerations that in our view nuance the resonating criticism of regime’s “wooliness.” While using examples of the national resources and environment, Young noted that even where a formal agreement has been concluded to deal with the issues in question - which could be interpreted as clearer or less “wooly” - *“it is often misleading to simply equate the concept of the regime with the terms of the agreement”* (Young, 1989). Also reusing the previously developed notion of veil of uncertainty<sup>209</sup> as a contributing factor for state to negotiate in order to reach agreement on substantive provisions of an international regime, the author notes that negotiating their terms *“ordinarily lack information about their own role in society”* (Young, 1989: 361-362). Regimes are formed as a result of institutional bargaining under certain conditions, such as for arrangements on transboundary radioactive fallout, stratospheric ozone or even Antarctic minerals. Those favourable conditions, in Young’s view, relate to different factors, including a situation where actors being engaged in institutional bargaining would approach it as a ‘problem-solving exercise’ aimed at reaching an agreement on the terms of a social contract. Another condition he identified for regime formation lies with arrangements that can be accepted as ‘equitable’ by actors concerned. Additionally, the

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<sup>208</sup> The five points Susan Strange defends in her critic against the study of international regimes relates to: the study of international regime being a “passing fad,” imprecision, value bias, a view that is considered too static, and state-centeredness.

<sup>209</sup> The notion of veil of uncertainty was previously developed by James Buchanan.

existence of 'salient solutions' presented in simple terms, rather than formulas that are so complex and obscure that interest groups face issues comprehending what is being put being a vote, is said to be a key factor in the success of negotiations. Moreover, Young considers the probability of success in institutional bargaining rises when clear-cut and effective compliance mechanisms are available, favouring an 'easy to verify' *modus operandi*. Lastly, exogenous shocks or crises are considered to increase the probability of success in efforts to negotiate the terms of international regimes. In our view, this was the case during the post-WWII era which contributed to creating a conducive environment for the IPR to be significantly developed with various conventions of international laws.

Despite its critical 'wooly' qualifier, different schools of thought in the academic domain have largely debated power-based (realists), interest-based (neo-liberal) and knowledge-based (cognitivist) theories of regimes around various degrees of institutionalism (Mayer et al., 1997). Two notions have been largely explored and discussed among researchers: effectiveness and robustness (or resilience) (Deitelhoff & Zimmermann, 2019; Mayer et al., 1997; Tarzi, 2003). A regime is generally considered effective when its members abide by its norms, or through the extent that it fulfils its purpose – or *raison d'être* – or relatively delivers on its objectives. Since the turn of the XXI century, the continuous research on international regimes has shifted towards regime effectiveness assisted by new technologies through enhancing quantitative methods of research: this was notably the case in different projects and research focusing on international environment regimes such as the International Regimes Database Project and the Oslo-Seattle project. In addition, mixed methodologies attempting to bridge quantitative evidence to qualitative comparative analysis that are more traditional to the field of IR have been developed to inquire on the international environment regimes' effectiveness (Young et al., 2011). While we find this development a watershed moment, we also recognise this possibility is contingent to the issue-area being studied and may not be applicable for all international regimes. For instance, using quantitative analysis to develop measures of association among variables would require to clearly define and agree on a certain measurement scale from the start: we see it as hardly possible when it comes to the IPR as it relies on malleable concepts and contested principles (see *Chapters 1 and 2*). Effectiveness can nonetheless be explored through the lens of actors' behaviour – in accordance or in contradiction with the regime's prescribed behaviour. Some consider that

when regimes operate effectively: *“they make use of endogenous facts (rules, procedures, programmes) to alter exogenous facts (patterns of influence and interest, behaviour of actors)”* (Zürn et al., 1994: 30). Understanding a regime effectiveness would thus require analysing both levels.

Differently, robustness relates to the capacity of an international regime to keep a certain level of power and thus continuing to exercise influence, despite exogenous challenges and adapting to influential actors’ positions and changing interests. In theory, in the event of a regime lacking robustness (or resilience), exogenous factors such as a shifting interest of the most powerful members of the regime towards a disengagement for the regime objective may lead to a fundamental regime brittleness. In addition, the normative content or the regime’s prescriptions on norms of behaviour – becoming contested – can be further weakened.

Based on the above definition of the concept of international regime, Krasner has identified two types of regime change. The first type of change relates to very specific situations, when *“only if principles or norms are altered does a change in regime itself take place;”* the second type of identified change lies with a wider pool called *“changes within a regime”* (Krasner, 1982). Although the dichotomy presented by the author is useful, the highly complex situation of the IPR and alterations linked to the uses and misuses of NTIs would not easily fit into those two categories. Rather, we recognise some changes have been occurring within the regime (*Chapters 3, 4 and 5*), which correspond to the second category Krasner initially identified, while external forces such as the meta-transformation of the IR’s landscape, for which the use of NTIs is also concerned, would need to be integrated into regime change reflections. Another worth highlighting theoretical perspective on regime change was presented by Young, who considers international regimes do not become static constructs, even after they are fully articulated. Instead, the author interprets the notion of international regimes as a social institution which typically undergoes continuous transformation, both responding to their inner dynamics and to changes in their political, economic, and social environments (Young, 1982). The object of our reflections lies less with those continuous slight changes than with in-depth alteration of the IPR. Reflecting on possible conceptualisation of international regimes’ in-depth alterations, Young presented three major types of pressure that may lead to regime change: firstly, shifts in underlying power structures; secondly, internal



contradictions, and thirdly, exogenous forces. Specifically delving into regime transformation arising from exogenous forces, Young notably considered societal developments that are – initially – external to an international regime may lead to alterations in human behaviour. These alterations are seen to potentially undermine the essential element of the regime, already viewing the “most dramatic examples” of this process through changes in the nature and distribution of technology (Young, 1982: 294). At the turn of the 2010s, Young still considered technology as one of the drivers that can clearly influence the character of the social institutions (including international regimes) – a perspective we agree on and seek to further understand (Young, 2012).

Similar to Zürn and Levy, Young also considers international regimes change over time, “*sometimes gradually rather than abruptly,*” and more specifically in the wake of shifts in the distribution of structural power in international society (Young, 1982; Zürn et al., 1994).

## 2. Theorising the challenge of adaptation

Zürn, Young and Levy made a distinction between what they called ‘evolutionary regimes,’ whose characteristic is having decision-making procedures already established in view of future adaptations, and ‘reliant or static regimes,’ whose decision-making procedure are not sufficiently developed to react to external changes and would face more difficulties to change (Zürn et al., 1994). The IPR could be qualified as a static regime if we mostly rely on pieces of international hard law, as no mechanism to tackle future developments and exogenous changes were set – at the exception of the Martens’ clause. However, we argue that incremental adjustment, the development of soft law, norms and rules’ adaptations can contribute to supporting international regime change despite its original static or reliant nature. It is the depth of alteration, or change, that is particularly of interest in our research. It is worth exploring the notion of robustness presented above; this constitutes an important element in regime studies, looking at specific attributes that may make regimes more persistent than others. Besides, the notion of flexibility or adaptability is also important to consider as new technologies of information call upon both endogenous and exogenous practical, policy and ethical adjustments. According to Keohane, a regime may be described as strong when its rules are dense, specific, and cover a broad range of activities – with its detailed sets of international law, the IPR could be considered as a strong regime (Keohane

et al., 1993). However, a strong regime could encounter compliance issues, at least in the short term, since the number of “inconvenient commitments” increases with the number and breadth of rules (Zürn et al., 1994). If the regime overcomes compliance issues, it can then be expected to be resilient as rules (albeit disrespected); it can also have a stabilising effect on its members, at least until a significant change of environment or of interest-reconfiguration occurs. Compliance mechanisms of an international regime are also considered as a key element of regime effectiveness: strong compliance – which encompasses monitoring, sanctioning or dispute-resolution rules – are expected to affect State behaviour considerably, while weak compliance mechanisms would only alter behaviour moderately (Zürn et al., 1994). Exploring the notion of “regime decay” and attempting to apply it to the highly complex international regime of conflict management, E. Haas focused on an analysis of the UN Charter covering four decades, and relied on both the UN as an international organisation (IO) but also on regional IOs, such as the Organisation of American States, the Arab League, and the African Union (E. B. Haas, 1983). The author considers that, in the case of international conflict management, the norm to abstain from the use of force can be expected to be violated – the issue here does not lie with this non-compliance but rather with the potential failure of the rules and procedures to limit or to punish violations. In that sense, the last period studied, which he qualified as showing “no pattern” is said to have observed a “regime decay” in which a growing tolerance of unresolved conflicts that remain unaddressed is indicative of a less coherent articulation of principles, norms, rules and procedures amidst “*unstable alignments, shattered consensus*” (E. B. Haas, 1983: 232).

According to E. Haas, the notion of decay implies a gradual disintegration of a previously routinised pattern of conduct, which also relates to a practical situation where both effectiveness and coherence in the articulation of principles, norms, rules and procedures decline, potentially with asymmetrical geometries (E. B. Haas, 1983).

According to Chayes and Chayes, the treaty regime should not be held to a standard of strict compliance but to a level of overall compliance that is “acceptable”<sup>210</sup> – a notion that needs to be determined and adapted while remaining inherently subjective - in the light of the interests and concerns the treaty is designed to safeguard (Chayes & Chayes, 1993). An ‘acceptable level of compliance’ is also understood to vary with the significance and the cost

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<sup>210</sup> It is important to note here that ‘acceptable’ levels of compliance are not considered as an invariant standard but rather to shift according to the type of agreement, the context, the behaviours concerned, and they may change over time.

of reliance that parties place on others' performance. While we see the added value of this perspective in ensuring an 'overall' rather than 'strict' compliance, it would be difficult to accommodate for international regimes protecting human beings – such as the human rights regimes or the IPR we research, which both argue each and every person (and life) has the same worth and should be protected. In the case of the IPR, which has no compliance mechanism for the respect of IHL or International Refugee Law, we argue that the influence the IPR exerts on its member lies less with 'sanctions' but rather with the threat of being known by others as non-reliable, the reputational cost may thus be considered as a different kind of sanction. As such, we are wary of the distinction between treaty compliance and regime effectiveness, which are not automatically linked (Young, 1992). Protection actors are conscious of reflections around compliance: an example of a recent attempt that sought to develop an IHL compliance system fell short of materialising was during the 32<sup>nd</sup> International Conference of the Red Cross and Red Crescent (32<sup>nd</sup> International Conference hereafter). The process was initiated following the agreement on Resolution 1 at the 31<sup>st</sup> International Conference in 2011, which was titled "Strengthening legal protections for victims of armed conflicts," and for which the importance of "exploring ways of enhancing and ensuring the effectiveness of mechanisms of compliance with international humanitarian law" were sought (32<sup>nd</sup> International Conference of the Red Cross and Red Crescent, 2015a). The ICRC and the Swiss government engaged in a series of consultations with states in order to identify and propose potential means of achieving this goal. Some 140 States participated in nine meetings between 2012 and 2015, in order to prepare discussions for the 32<sup>nd</sup> International Conference of the Red Cross and Red Crescent. The main elements of a possible new IHL compliance system emerged in discussions and were extensively debated. Yet, during the discussions at the 32<sup>nd</sup> International Conference, the resolution – solely a one-pager note – fell short of any substantive agreement (32<sup>nd</sup> International Conference of the Red Cross and Red Crescent, 2015b). Instead, the resolution emphasised the continued relevance of IHL and recognised the need to improve compliance with IHL as a challenge. A short paragraph simply recommends the continuation of an inclusive state-driven intergovernmental process to find (future) agreement on features and function of a potential forum of States in view of the 33<sup>rd</sup> International Conference in 2019. An ICRC humanitarian professional closely involved in those negotiations interestingly shared that:

*“In December 2015, when we had to recognise the failure of the intergovernmental mechanisms for implementation of IHL, for me it was a sea-change movement, showing the methodology we used before was dead,”* before adding *“I think the 2015 conference – when we failed on an agreement for implementation of IHL, this was also the recognition of this traditional model of trying to have intergovernmental model led and fed by ICRC was over.”*<sup>211</sup>

Even though preparations had been extensive and the issues of IHL non-compliance in armed conflicts, which affect civilian populations, were openly recognised (albeit not contextualised), the configuration of the various interests of states – including traditional supporters of IHL – was not conducive to the development of an official agreement that intended to reinforce compliance – or in other words, to heighten the costs of states’ non-compliance with the agreed upon behaviour that forms the IPR. This resonates with our argument that the IR meta-transformations in the XXI century realities have resulted in having XX century processes not suited anymore to find common grounds on international matters – and even more so as these relate to hard international law. Norms contestation has overarchingly been seen as problematic and as a political backlash in the field of norms research, and as Deitelhoff notes that *“norm change is largely based on contestation”* (Deitelhoff, 2020). In researching the IPR alteration, we understand cooperation to be in a dialectical relationship with discord, or contestation, the articulation of the two – and subjacent conditions allowing one and the other, being paramount to grasp the extent of a regime alteration (Keohane, 1988). During the 33<sup>rd</sup> International Conference of the Red Cross and Red Crescent, it is interesting to note that the word ‘compliance’ disappeared from the resolution and its explanation, favouring instead the importance of ‘IHL implementation’ (33<sup>rd</sup> International conference of the Red Cross and Red Crescent, 2020). The outcome led to a recognition of the continuation of engaging at national level and with weapon bearers: the four-year-long process of extensive consultations, with an additional four years of collapsed momentum came to an end.

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<sup>211</sup> Interview carried out on 11.08.2022, ICRC staff, Senior Management Policy and Innovation category.

The notion of regime complexity has been developed as it relates to reflections on two main elements that have gained importance since the turn of the XXI century: first, the complexification of the international relations' landscape, for which Alter and Raustiala recognise that "the global playing field has become far more crowded," which secondly, in turn impacts International Regimes' change towards regime complexes and higher regime complexity (Alter & Raustiala, 2018). A regime complex is usually considered as an array of partially overlapping and non-hierarchical institutions that includes more than one international agreement or authority (Alter & Meunier, 2009b; Alter & Raustiala, 2018). Close to our research topic, the human rights international regime is often explored as being linked to a narrower refugee regime as discussed by Betts, and we would argue, to the IPR (Betts, 2009). According to Alter and Raustiala, different factors can explain the rationale behind governance via unavoidable regime complexity, among which preferences' changes may lead to states favouring other or new venues - regime shift – where they can more easily impose their views on others; and 'modernity' is thought to create 'new' international political issues – for example, cybersecurity – which features new cooperative challenges and call for new governance mechanisms. Recently, Nye also reflected on the 'cybersecurity regime complex,' recognising that a good deal of (international) fragmentation exists now and is likely to persist (Nye, 2014). This led him to argue that *"it is unlikely that there will be a single overarching regime for cyberspace anytime soon"* as the evolution of the regime complex, considered to lie halfway between a complete fragmentation of normative structures and single coherent legal structure is likely to see the development of different sub-issues (Nye, 2014). In line with our previous comments in *Chapters 5 and 6*, we tend to agree that the level of international frictions leading to the current IR landscape configuration is not conducive to the creation or the consolidation of strong international agreement (in international law or other form) on different issues, cybersecurity being also linked to matters of international protection. Discussing the possibility of eventual future international agreements to accommodate digital dimensions that pertain to international protection work, a humanitarian professional shared a view that may be in line with realists' perspectives:

*"Because at the end of the day, the actors do not see the digital transformation as a common challenge but as a competitive advantage against the other and thus it has an element of power politics. That is where we are, that is why all the negotiations on cyberwarfare, cybersecurity and artificial intelligence, the autonomous weapons*

*systems, battlefields, actors, spaces in which IHL is applicable are so deeply controversial.”<sup>212</sup>*

Delving into the subject of the refugee regime, opportunities and constraints have been identified with regime complexity. For instance, an opportunity lies with the possibility of leveraging “complementary overlaps” on a wider responsibility for refugee protection and durable solutions (Betts et al., 2012). Nonetheless, subsequent constraints ought to be considered too: regime complexity may lead to shifting politics in an even more competitive environment. The UNHCR’s experience provides useful insights as the organisation proposed and prepared a “global consultation on international protection” with states and experts in international law in the late 2000s, following a certain disillusionment from member states and a financing crisis. Providing ‘unsatisfying outcomes’ has been identified as a challenge to the persistence of international regimes, this difficult moment for the UNHCR and the refugee regime, as well as others such as the Baltic sea regime or the ozone regime have all sought institutional responses to solve their respective issues, notably through progressive adaptations of regime rules based on new knowledge and the nature of problems (Zürn et al., 1994). According to Zürn, Levy and Young, regimes have not faded in the face of evidence of poor performance, but rather, “*regimes became increasingly effective and robust through a process of internally generated reforms*” (Zürn et al., 1994: 19). This claim was also echoed by Deitelhof, who reflected on norms and argued that not all norms are “worth preserving” and not all contestation lead to a weakening on norms (Deitelhoff, 2020).

Other authors, such as Keohane, Kratochwil and Ruggie have nuanced the sense of vital emergency at times relayed in some research: for instance, according to Keohane, regimes can persist despite the declining satisfaction of their members because of the high costliness of creating them in the first place. Therefore, the expected utility of maintaining a sub-optimal but still beneficial regime may be considered a better option than letting a regime ‘die’ and return to self-help behaviour or recreate a new regime at a later stage (Keohane, 1984). Kratochwil and Ruggie advance that regimes continue, in some measure, to constrain and condition the behaviour of States towards one another, despite systemic change, frictions, and institutional erosion (Kratochwil & Ruggie, 1986). However, not all international regimes successfully adapt, the example of disappearance of key member could be a significant

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<sup>212</sup> Interview carried out on 11.08.2022, ICRC staff, Senior Management Policy and Innovation category.

decline to regime decline or decay – a phenomenon that has yet been less studied despite its possible insights on regime persistence (or robustness) (E. B. Haas, 1982, 1983; Zürn et al., 1994).

The UNHCR initiative to launch a “global consultation on international protection” sought to seek convergence between refugees’ needs and member states’ interests at a time when the UNHCR was seen to lack influence. After its consolidation in the mid-50s, *“the global refugee regime was relatively isolated among international institutions. There was limited institutionalised cooperation among states in other areas related to migration and human mobility”* (Betts et al., 2012: 125). Yet, this changed with the development of new forms of international cooperation at bilateral, regional and multilateral levels addressing topics that have a link and an impact on refugee situations, such as security, migration, human rights. Recognising and understanding this new complexity is important as it has implications for the UNHCR and the Refugee system globally. Some of the most relevant politics for the global refugee regime are pushed in other regimes because of regime complexity: authors give the tangible example of decisions regarding the viability of durable solutions which may be discussed in the security regime. Consequently, the UNHCR would need to further invest in ‘refugee politics’ to upscale and widen its diplomatic engagement in various fora. Humanitarian rivalries for resources among actors that defend and present their protection endeavour also continuously maintain a competitive environment, at times (cynically) called “the humanitarian marketplace.”

In 2001, 50 years after the 1951 Refugee Convention was initially signed, a hundred States Parties signed a declaration reaffirming the international convention’s importance. It is worth noting how the declaration reemphasised the regime’s relevance and resilience (robustness):

*“acknowledging the continuing relevance and resilience of this international regime of rights and principles, including at its core the principle of non-refoulement, whose applicability is embedded in customary international law”* (UNHCR, 2001).

Similar to other international negotiations’ processes, it is what is ‘between the lines’ that is most important to capture: two elements of specific interest transpire. First, States Parties take note of the “evolving environment in which international protection has to be provided, including the nature of conflict,” thus recognising that while only States Parties are part of negotiations and discussions, other belligerents that take part in conflicts are not: specifically, Non-State Armed Groups (NSAGs). The nature of conflicts has significantly changed, taking

various configurations that embed from one to dozens of NSAGs being involved against each other and against one or more regular armies. Yet, the principle of refugee protection, first and foremost lies with state responsibility to protect its citizens and third country nationals who are within a state territory; and diplomatic discussions continue to reflect this frame. When we look at humanitarian problematics and needs, protection violations and risks women, men, girls and boys are exposed to when forced to flee their country, an important part of the actors' involved in today's conflict is rarely part of those discussions. It therefore creates a disconnection between a XX century approach that mostly corresponded to realities of the time (traditional state against state wars) and a XXI century characterised by multi-belligerent conflicts that imply a ground complexity that has, thus far, not been reflected in such diplomatic discussions. Protecting refugees, and as we enlarge to our topic of research focusing on civilians who are victims of conflict, is more than about states: it requires a multi-stakeholder approach. Second, the declaration reaffirms the 1951 Refugee Convention and its 1967 Additional Protocol as having a "*central place in the international refugee protection regime*" while also recognising that "*this regime should be developed further, as appropriate, in a way that complements and strengthens the 1951 Convention and its Protocol*" (UNHCR, 2001). According to Betts, Loescher and Milner, the agenda of the conference was not set for a binding agreement, and consequently suffered from the same limitations as other international declarations (Betts et al., 2012). From the political declaration, we can understand that the core of the UNHCR refugee regime is still considered relevant but would require to be further developed or adjusted in order to respond to contemporary challenges. Nonetheless, the IR meta-transformations did not enable to prepare for a substantial discussion and readiness to discuss new States Parties' commitment for a new form of legally-binding instrument: thus, it both recognises that what exists is still relevant but not in its entirety, and that the IR configuration are not conducive to further develop international hard-law that would be needed. Yet, if international agreements of hard law, such as conventions and additional protocols, are considered as the strongest elements of international regimes – to which some states are signatories and willingly committed to respect in front of other members of international society; there are other mechanisms for regime adaptations.



Discussing such complexities, Betts, Loescher and Milner questioned whether it still makes sense to speak of a refugee regime, preferring the notion of “refugee regime complex” (Betts et al., 2012). More recently, Betts and Collier called for a transformation of a “*broken refugee system*” (Betts & Collier, 2017). According to the authors, current institutions are failing because they are mismatched to the contemporary reality (Betts & Collier, 2017). While incremental adaptations are recognised, it is a systemic in-depth review that is considered necessary. The strong call argues to “rethink governance” on refugees, with an objective to create predictable patterns of collective action among states even when they have divergent preferences and interest – in other words, a regime adjustment. Authors view that “*UNHCR – in theory the guardian of refugee governance – have become reactive rather than proactive, defending the waning standards of the past rather than offering a bold vision of the future*” (Betts & Collier, 2017: 203). In their view, the refugee regime overstayed static and has relied on past advancements rather than tackling today’s challenge – in relation to which we consider NTIs are part of XXI century-specific challenges. Not only critical but also offering proposals for ways forward, Betts and Collier suggested the two principles of rescue and autonomy to guide future discussions and reflections while they also recommend pursuing developments of soft law (rather than hard law). In the initial research on international regimes, IOs were seen to have close relationships with norms of the regime they oversee, such as the UNHCR and the ICRC are the guardians of their respective Refugee and Geneva conventions. The emergence and development of regime complexity is seen to challenge this assumption as it widens the number of fora where issues that are close and core to international protection are being discussed: humanitarian actors thus are to decide whether to engage ‘beyond the boundaries of their regime’ to be part of discussion and exert influence; or take the risk not to engage which may result in being side-lined. This concern is also conceptualised as ‘regime shifting’ to describe an attempt by some actors of the regime to alter the status quo and move some negotiations, law-making initiatives or standard-setting activities from one forum to another. The well-studied example of the Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreement shows new dynamics could result in significantly altering an international regime through attempting to recalibrate, revise or supplement the international regime’s protections (Alter & Raustiala, 2018; Helfer, 2004). We argue that rather than engaging or not, the most important question may be *how* to define the terms of such engagement with a clear organisational positioning, key messaging

and policy orientations. In doing so, recent reflections around indirect governance are worth considering: researchers have explored the two different logics of indirect governance through the well-known 'principal-agent' theory (P-A), in parallel with an 'orchestration-intermediary' (O-I) one (Abbott et al., 2015b, 2015a). While the P-A approach calls on the Principal to delegate a task to the Agent, exerting strong control; the O-I rather focuses on finding an intermediary willing to tackle a task, despite not necessarily being trained and equipped to realise it. While both approaches are considered to happen simultaneously and complementarily depending on the objectives sought and the interests, the latter is said to require the orchestrator to mobilise material or ideational support to the intermediary. This more horizontal relationship (opposed to a more vertical P-A model) also results in legitimising the intermediary that receives a political legitimisation in the process. (Abbott et al., 2015b). When it comes to complex and sensitive issue-areas, the O-I model may be a practical way forward to avoid the cost of public failure. For instance, sensitive discussions on protection may not only come from the orchestrator, as this may mobilise others – or intermediaries – with a common goal to also explore, relay and work on protection issues, at sub-national, national and international levels. Mobilisation, understood as an active move to mobilise third parties on specific issues, is also recognised in the humanitarian jargon as one of the modes of action in the humanitarian professional's portfolio. The next legitimate question lies with the political credit associated with one action or the other: in the P-A model the principal is openly receiving credits (or discredit if the outcome is not the sought development), while the O-I model calls for a low-profile orchestration, or mobilisation, on a specific issue area. If discussions are fruitful, the orchestrator may collect only limited benefits for its involvement, largely attributed to its low profile. To the contrary, if discussions create tensions or even political backlash, the orchestrator will be – politically – more protected from the subsequent damage. With no single way forward in sight, as we consider it is both issue and interest-contingent configuration, actors then are called to resort to various political strategies to adjust and 'stay relevant' despite lack of consensus and ongoing frictions. In the 'dilemma for survival' we presented earlier in *Chapter 6*, it is this imperfect balance between an international regime being reliant on its existing core while at the same time avoiding being 'too static,' and the necessity to explore how XXI century challenges - including NTIs - can be accommodated with a suitable approach to nowadays' IR's configurations.

### 3. Opportunities and perils of regime expansion

Through this research, we have defined and explored how NTIs affect important dimensions of lives, of societies' organisations, including while carrying international humanitarian protection work to protect civilians who are victims of the XXI century conflicts. Change has not only impacted information-sharing and communication mechanisms, but it has also concerned itself with adapted state interests – which we call the IR meta-transformations of this century. The IPR, established in the XX century, has to adapt: the challenges, extent and depth of this alteration, accompanied with opportunities and perils, are at the centre of the main question of our research. According to E. Haas, *“regimes can function without international organisations, but international organisations are always constituents of an overarching regime”* (E. B. Haas, 1992). It is therefore useful to inquire about opportunities and perils of regime expansion at the level of IOs who are the ‘protection guardians’ of the IPR, as functions of regime change. More specifically working on the UNHCR, academic researchers have largely studied the UN agency attempts to change. Higher complexity of the international landscape, partly due to the multiplication of its actors in numbers and kind, nonetheless makes mono-causal attribution problematic (Betts et al., 2012). Research has pointed out to some of the UNHCR's key adaptation of its mandate, which we understand as attempts of regime expansion, including with its expansion beyond European borders in the 1950s, followed by an heightened investment in assistance programmes in the 1980s, more focus on emergency response up to the support to the Internally Displaced Persons (IDPs) in the 1990s (Betts et al., 2012). Interestingly, those subtle ‘expansions’ do not take the form of negotiations for revised or new international conventions. As a senior humanitarian professional with experience and expertise on humanitarian diplomacy noted:

*“I think there are things that have changed the world that we live in, but the fundamentals of protection have always been the same and we always need to respect those fundamentals, because if we were to rewrite international human rights and refugee law today, we would not even get half of the protections we got in the 1950s following the end of the second world war. And it brings us to a different world today,*

*a world that is more divided, interconnected, a world that is working on strong-hand politics.*<sup>213</sup>

This resonates with researchers' view, specifically on the 'refugee regime', that it is *"one which states would almost certainly not have agreed to at any subsequent juncture"* (Betts et al., 2012: 159). As a consequence, or a peril, the UNHCR has had to deal with tensions arising from the difficult equation of changing State interests on refugee matters and a static mandate – at the very least in the letters of international law. Yet, despite tensions, disagreements and failed attempts, researchers conclude that:

*"UNHCR history is a history of adaptation. While seeking to maintain its normative agenda, the Office has adapted its interpretation of its mandate and sometimes compromised the norms underpinning the regime in order to ensure the regime and the office's work retain their relevance to states"* (Betts et al., 2012: 165).

Using moral authority, normative persuasion and regime expansion, the view of these authors, with whom we concur, recognise that despite limited power, the protection guardian has successfully maintained a certain degree of autonomy and the ability to somewhat influence states over time. The UNHCR is not the only humanitarian protection organisation that has been studied for tentative mandate expansion; for instance, the ICRC has also been investigated for its development of activities focused on 'urban violence,' a move seen to correspond to an attempt to 'stay relevant' in a competitive humanitarian marketplace while also raising concerns related to its potential politicisations (acting outside of IHL frameworks), the potential erosion of its core mandate, and a potential relaxation of its commitment to neutrality (Bradley, 2020). Based on IO theory, Bradley goes further in her analysis of such compromises to include longer term potential negative consequences on the ICRC's moral authority (based on its ground knowledge and expertise) and eroding the classic distinction between jus ad bellum and jus in bello in international law (Bradley, 2020).

The XXI century, as we have explored through NTIs' opportunities and risks, triggers new questions about *how* to continue protecting civilians, especially as the physical body has earned a new digital component. This new digital component relates to two important aspects: firstly, as civilian individuals who have the misfortune to become victims of conflicts may already have a well-established digital identity and footprint – which in the

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<sup>213</sup> Interview carried out on 04.12.2020, UNHCR staff, Senior Management Policy and Innovation category.

circumstances of war, heightened their vulnerability and opens a whole new area of risks that are yet not regulated by international law. Second, although in some cases civilians may have little to no digital identity (as we have previously demonstrated that the level of penetration of NTIs in various societies has been unequal and disparate); humanitarian actors have, by their own use of NTIs, *de facto* contributed to creating this digital existence by their collection of fingerprints, eye scans and biodata.

## II. Of constraint: recomposing the IPR

In Zürn, Levy and Young's perspective, one of the models of international regimes feature them as 'learning facilitators' (Zürn et al., 1994). Regimes are seen to achieve having effects by initiating processes that give rise to individual and social learning: it can notably take the form of new perspectives on the nature of a problem to be solved, bring new ideas about possible actions that could tackle or respond to the issue, or provide new insights into processes of implementation of possible actions. Viewing regimes as learning facilitators, the emphasis is on the role of regimes in "*changing information and values, and in the process, altering the incentives and interests that shape the behaviour of individuals and collective entities active in the issue area covered by the regime*" (Zürn et al., 1994). In exploring the IPR changes, we question whether the extent of the IPR alteration currently at play reaches a depth-level that would change its core values and principles – dignity and humanity – or if the core is maintained while some of the regime's content and contours adapt.

### 1. (Re)interpretation for survival

According to Kratochwil, the critical question of "*what happens to an examination of politics in which universal doubt is not the foundation, but also no longer reined in by some shared beliefs concerning our life-world which enables us to reorient ourselves,*" is worth exploring (Kratochwil, 2022: 7). P. Haas considered in the mid-2010s that IR have "*dramatically changed over the last 40 years,*" leaving an international system now both more globalised and more complex (P. Haas, 2014). The newly reconfigured system of actors of the IPR, along other issue-areas of international concern has witnessed a growth in the number but also in the types of actors involved (e.g., private sector actors) interacting interdependently, subsequently creating increased uncertainty for decision-making and policy development and

orientations. Constructivists' analysis takes into account the ideas that shape individual and collective understanding of this new political landscape (P. Haas, 2014). In developing and shaping 'ideas,' the importance of substantive<sup>214</sup> international regimes and policy communities contribute to adjusting the distribution of power and understanding in various ways, depending on the issue concerned. This is specifically important as we consider the approach of protection actors to partly re-interpreting protection concerns while rearticulating them along digital dimensions.

- *The exception of the Martens clause*

The Martens' clause,<sup>215</sup> which we presented in *Chapter 1* and more thoroughly discussed in *Chapter 3*, can be considered as an exception vis-à-vis the rest of international law that had focused on dealing with the issues arising in the post-WWII period, and that resulted in the development of the IPR. Certainly, the Martens clause is the only element that encompasses clearly stipulated and forward-oriented considerations while considering future developments of weapons (with technologies). This opens, at least, one channel for reinterpreting the rules and spirit of the IPR when it comes to means of war of weapon bearers. This has allowed for a wealth of literature on reflections about the implications of new weapons' implications under IHL (Anderson et al., 2014; Anderson & Waxman, 2013; Cummings, 2021; Galliot, 2021; Galliot et al., 2021; Heyns, 2016; Jevglevskaia & Liivoja, 2021). Wide semantics have the advantage to allow for the substance of an idea to be reinterpreted and accommodate different eras; nonetheless, too much blurriness may also leave actors part of a regime to be unsure of the actual behaviour predicament and contribute to a general loss of sense on the issue area of concern. According to Rittberger, Hasenclever and Mayer, relying on previous works of E. Haas, Goldstein and Keohane (P. Haas, 1992; P. Haas & Adler, 1992; Keohane & Goldstein, 1993):

*"Under the conditions of complex interdependence and because of the increasingly technical nature of international issues decisionmakers experience enduring*

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<sup>214</sup> Here, by the word "substantive," we understand the meaning behind the concept and principle. Although the substance can be understood differently by various actors involved, the very issues of humanity and dignity form the core of the IPR, or in other words, its most substantive part.

<sup>215</sup> As a reminder, the Martens clause is part of the Hague Convention in 1899 and states that *"In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party."*

*uncertainties about their interests and how to realise them. Technological innovations devalue traditional strategies, and social change redefines the parameters of international relations” (Mayer et al., 1997: 140).*

Undeniably, the NTIs’ variable is essential to consider in the current IPR alterations. We reuse the words of Adler and P. Haas, who at the beginning of the 1990s, at a time when NTIs were only at the very inception of their impact on societies’ functioning, stated that *“between international structures and human volition lies interpretations. Before choices involving cooperation can be made, circumstances must be assessed and interests identified”* (P. Haas & Adler, 1992). Not only do re-interpretations serve the purpose of accommodating exogenous changes and new realities, but they also shape expectations. Expectations are important in international politics, especially when it comes to the study of international regimes that regulate and prescribe behaviour – and therefore, theoretically, intend to reduce uncertainty of others’ behaviours. In Keohane’s perspective, states have been seen not only as pursuers of power and wealth, but also as ‘uncertainty reducers’ (Keohane, 1982). We argue – that this is also the case for other types of actors in international regimes. Looking at the IPR, traditional protection continues to be important in each conflict of the XXI century as it physically and psychologically affects millions of civilians in the world; the expectation set in the XX century and which guides what can be ‘legitimately’ expected from different actors – States parties to a conflict, humanitarian protection actors – remains the same. However, in parallel, there are new problematics, such as the pivotal NTI variable we research, that contributes to defining new problematics (i.e., digital risk, data breach leaving identities of civilians who are victims of conflict in public), that calls on new interpretations to define new possible expectations on the digital dimension of the core protection issue area. This second aspect, we argue, is currently being reinterpreted in the IPR, in a move spearheaded by protection actors who are the ones with most at stake to maintain the legitimacy of their role in the international regime.

Worth noting, a body of work jointly made by academics and humanitarian practitioners led authors to identify that:

*“There is a widespread feeling within the INGO community that this is a period of transition, when INGOs need urgently to find new ways of working in the face of rapid changes. A time to reassess their roles, with questions being raised about their legitimacy, their core identities, the income streams, their relationships with donors*

*and the people they help: in short, their relevance in a fast-changing world” (Leedham et al., 2022).*

If the role of NTIs and digitalisation is not new, it is said to be a ‘key disruptor’ as it continuously challenges the role of INGOs as intermediaries. While the need to embrace technologies is recognised as important, it is coupled with the need to ensure those who interact with technologies fully understand their effects (Leedham et al., 2022). Reinterpretation is thus core to international regime change: Neufeld interestingly saw international regimes are part of a “web of meaning” which contributes to making sense for state (and other actors’) conduct in specific issue-areas and establishes linkages that are understandable between otherwise unconnected sequences of action (Neufeld, 1993). We find the concept of a ‘web of meaning’ particularly suited when we apply it to the current IR landscape and in the age of international regime complexes, where current discussions led by actors of the IPR do not only happen vertically, but also horizontally.

- *Cautious reinterpretations to suit the XXI century protection needs*

In Kratochwil’s perspective, both factual premise and universal premise (which he calls the major one) are important, but it is connecting the facts and norms that requires ‘hermeneutic’ understanding rather than a strict inferential logic (Kratochwil, 2022).

Through our research – more specifically in *Chapters 3, 4 and 5* – we have demonstrated and explored the new ungoverned fields that NTIs have opened in international protection work, attempts to lessen the ill-defined and the lack of understanding, more specifically of risks, have increasingly mobilised attention, resources and now more strategic recognition of the need to tackle the issue consciously and professionally. We read it as an attempt to overcome the ignorance that all members of the IPR have faced, and which has been translated by a certain loss of compass of protection actors, as we saw in *Chapter 5*. The redefinition attempts of both parameter and perimeter, contributing to altering the IPR, are our core concern in this research. In a critical history of the distinction between combatant and civilian, Kinsella insightfully discussed the continuing challenges of interpreting and implementing the principle of distinction between those bearing arms and those who do not: civilians. She argues that both critics and advocates of IHL note that compliance with rules regulating the



waging of war are circumscribed by evaluations of military necessity and calculations of proportionality (Kinsella, 2011). The evolution of technologies, which she mentions as a ‘the logic of technologies in war’, may mar compliance and implementation by rendering the distinction ambiguous in practice (Kinsella, 2011). An opposition is identified between the increased sophistication of both international laws and weapon systems’ capabilities, while the decision about who to target or not has rudimentarily not changed. We agree with this point, which specifically resonates with our research and intends to shed lights on the impacts of NTIs in altering and blurring the lines of the IPR: if the core of the IPR remains unchanged, its parameters and perimeter have been and are contested and are being renegotiated. The “zone of ambiguity” may become a “zone of permissibility” which might eventually facilitate greater compliance or the reverse, argue Chayes and Chayes (Chayes & Chayes, 1993). Certainly, imprecision can be considered to have ‘functional uses,’ although it is revealing and reflects the hierarchies among different actors on legitimising violence, while signalling “*historical contestations over the meaning and application of IHL fundamental precepts*” (Kinsella & Mantilla, 2020). Practical contemporary debates, such as the use of ‘human shielding’ in Mosul in 2017 or the targeting of persons labelled as ‘terrorists’ in Syria are tangible examples that relate to this renegotiation of the ‘legitimate use of violence’ in warfare following attempts to reinterpret rules of engagement based on each belligerent’s interest in a conflict theatre. Exploring the ground example of West Mosul in March 2017 is a useful case in point: in a statement from the UN Office of the High Commissioner for Human Rights (OHCHR) in March 2017, the Islamic State group (also called ISIS) is identified to resort to tactics that use civilians as ‘human shields’ in West Mosul, calling it a breach to “*the most basic standards of human dignity and morality*” as well as an IHL violation (Al Hussein, 2017). This is a striking example of the XXI century conflicts opposing an NSAG, against a government and with the support of a complex international coalition – a multi-belligerent intricate conflict. Since not all these actors are signatories to the relevant bodies of international law, the UN OHCHR denounces the Islamic State group’s (non-signatory to any convention) reported actions of using civilians as human shields while also calling on the government – in this example the Iraqi Security Forces – and the international coalition led by the US to investigate strikes that resulted in killing at least 307 people and wounding 273 between 17<sup>th</sup> and 22<sup>nd</sup> March 2017. Understanding what has happened during an attack will determine whether the attack can be deemed legitimate and allow to calculate the proportionality of

the military response. In doing so, technology becomes instrumental as it secures key information – often called military intelligence – which, in theory, informs decision-making on launching an attack based on information available at a certain point in time. The implementation of rules of war is not a straightforward factual assessment but rather a posturing of opposite viewpoints in an environment of imperfect information and unclear military technology tools and subsequent field intelligence. In the tangible example described above, one of the belligerent’s perspective has not been portrayed – the one of the Islamic State group. The second perspective, bringing together the Iraqi Security Forces and international coalition led by the US, has reacted by opening an official investigation into the attack leading to the death of over 300 civilians and 270 civilians wounded. On 25<sup>th</sup> March 2017, seven days after the incident in West Mosul, the US publicly shared the findings of the international coalition and Iraqi Security Forces, recognising the deaths of 101 civilians on the ground floor of the structure which was hit by the airstrike and four others in a connected building – some 36 civilians remaining unaccounted for – meaning they have potentially been killed but their bodies have not been recovered (US Department of Defense, 2017). The ‘investigation’ publicly explained it resorted to three different analytical techniques and used the verification of several sources, including counter-terrorism services on the ground, intelligence, surveillance and reconnaissance, eye-witnesses, “NGOs” whose names were not publicly cited, “weaponeering” (a contraction of the words ‘weapons’ and ‘engineering’), post-blast analysis with chemical testing, structural analysis of the building, and ‘weaponeering’ analysis. The investigation concluded the US takes responsibility for the attack and confirms that *“this engagement was conducted using all available intelligence, entirely according to stringent coalition rules of engagement and in accordance with the law of armed conflict”* while also adding *“the investigation determined that ISIS deliberately staged explosives and snipers to harm civilians. ISIS knew of the large number of civilians sheltered in the structure; had interacted with the civilians”* (US Department of Defense, 2017). Human Rights Watch publicly shared concerns about “airstrike vetting changes” following the incident (Human Rights Watch, 2017a). Two months later, in June 2017, Human Rights Watch published a second piece sharing concerns about mounting civilian deaths as the war continued to rage in West Mosul, arguing that Iraqi Security Forces and the International Coalition take “inadequate” precautionary measures (Human Rights Watch, 2017b). Aided by satellite imagery analysis, the protection outspoken watchdog investigated

warfare tactics in West Mosul through reviewing several attacks – including the one specifically elaborated on above. HRW compared the international coalition’s “Operation Inherent Resolve” monthly casualty report of June 2017, which indicates that 484 civilians have been unintentionally killed by coalition strikes since the start of the operation, while Airwars, a UK-based NGO that monitors airstrikes, estimated the minimum number of civilian casualties from the international coalition strikes was over 3,800 – eight times more than officially reported (CJTFOIR, 2017; Human Rights Watch, 2017b). It further asked for a practical change in the procedures leading to the decision to launch an airstrike attack to reinstate the requirement of a “strike cell” review, or equivalent, before engagement.

This example, one of the few that has been publicly discussed and covered, allows to illustrate our research and the complexity of the use of technological tools for intelligence and weaponry in the XXI century conflicts: blurring the parameters of which piece of information was available when a decision for an attack was taken; calling upon possibly (re)interpreting responsibility and whether a violation would have been committed, by whom, in different conflicts and by various belligerents. In the important public debates and discussions around the protection of civilians, we also note a certain ‘battle of figures’ when it comes to the number of civilian casualties. If this certainly contributes to raising public attention on the extent of civilian losses in conflict, it somewhat also contradicts the core predicament of the IPR – defending that each civilian life should be protected and preserved in line with the humanity and dignity principle – by making a ‘battle of figures’ on civilians’ death inadvertently part of normalised conflict and protection discussions. Figures, and civilian women, men, boys and girls behind them, become a matter of claimed and reclaimed arguments in antagonised narratives. In the same vein, Neufeld considered international regimes are never an objective set of principles, norms and rules but rather “*the product of an ongoing process of community self-interpretation and self-definition in a changing context*” (Neufeld, 1993). For his part, Kratochwil worked on the role of norms in international life and thought that in IR, “*parties themselves must reinterpret each other’s moves and constantly renegotiate the reality in which they operate,*” a stance that mostly went in contradiction with the dominant research on international regimes seeing them mostly stable and rather static at the time (Kratochwil, 1989). Some authors argue that the more explicit and the more clearly formulated international rules and norms of conduct are, the easier an intersubjectively shared specification of behaviour is (Mayer et al., 1997). Nonetheless, Kinsella and Mantilla

defend that a *“careful history of IHL establishes that political contestation and ambiguities consistently characterise the development of its essential legal categories, making a straightforward compliance focus problematic and overtly narrow”* (Kinsella & Mantilla, 2020). According to them, IHL has always been composed of tense, plastic, and contested layers of ‘agreement’ about how to balance humanitarianism and military necessity: *“to speak of the ‘fraying’ of IHL, the ‘eroding of the normative basis on which to critique violations of IHL is overwrought, and reifies a fundamentally thin historical view of IHL and its purposes, potentially obscuring the multifarious ends facilitated by the very claim to normative agreement”* (Kinsella & Mantilla, 2020).

Others argue that clarity can contribute to enhancing compliance as it reduces ambiguities linked to the use of wide semantics that can somewhat hide behaviour in contradiction with an international regime to which an actor is part. While we agree with this view theoretically, we also consider the problem of ‘costs’ related to having over-specification of terms in potentially losing stakeholders or to becoming entrenched in too-long negotiations with no actor fully pleased in the end. A certain level of ambiguity and its subsequent political flexibility may also be preferred by states (Alter & Raustiala, 2018). The notion of “constructive ambiguity” is often defined as the deliberate use of ambiguous language in a sensitive issue in order to advance some political purpose – in this sense, actors somewhat agree to not totally agree on details of a term, leaving more leverage for interpretation (Berridge & James, 2012). Worth noting, Chayes and Chayes argue that overregulation may jeopardise smooth rule management (Chayes & Chayes, 1993). As such, they consider that the shape of a substantive bargaining will be affected by the parties’ estimates of the costs and risks of their own compliance and expectations about the compliance of others (Chayes & Chayes, 1993). Young similarly ponders that one of the major features of international regimes, as a social institution, is that it can be expected to have a life of its own in the form of social conventions, which also does not mean that actors, even those who acknowledge the authoritative nature of social conventions, will always comply with the terms of these conventions (Young, 1982: 278). As a result, some actors negotiating new or renewed agreements may not be willing to impose stringent regulations if prospects of compliance are doubtful: not only the goal of reducing uncertainty would be lessened but the leaders of such negotiations may lose legitimacy if the agreement did not lead to, at minima, some basic elements of regulations of behaviour. Applying this theoretical reflection to the current

discussions on the IPR alterations and to the inception of a new governance around the sub-issue-area of digital protections for civilians who are victims of conflict, prospects for new potential regulations therefore remains somewhat blurry. Considering the process would take more time, discussions and groundwork to identify ‘common aspects of interest’ among international actors, a humanitarian professional noted that “*on the positive side, I would say we have a much more granular understanding that this (NTIs) is a more fundamental shift.*”<sup>216</sup> While Chayes and Chayes consider that “*treaties that last must be able to adapt to inevitable changes in the economic, technological, social and political setting,*” they also recognise there are a number of ways to handle the problem of adaptation without seeking formal agreement, the simplest being with the power to ‘interpret’ the agreement (Chayes & Chayes, 1993). It has thus far been the approach of the ICRC’s legal perspective on Autonomous Weapon System - AWS (*Chapter 3 and 4*). Considering the extent and severity of conflicts of interests in the international sphere, which has been largely viewed as being further antagonised since the turn of the 2020s, we agree with Young’s view from the 1980s, which ‘assumes’ that the (re)convergence of expectations around new institutional arrangements will often be “slow in coming” – taking the form of a modified regime (Young, 1982). Ambiguity is inherent to any reinterpretation work on a set of norms and rules, and it challenges the frontier between what can be seen as permitted or as forbidden, which has been mostly seen negatively by researchers in the field of IR.

## 2. Norm alteration: The International Protection Regime new bargain

International regimes are composed of four elements: *principles, norms, rules and procedures*. Norms are initially defined as ‘standards of behaviour’ including in terms of rights and obligations; while change in the normative structure of regimes has customary been understood as producing change of regimes (instead of within regimes) (Krasner, 1982; Kratochwil & Ruggie, 1986). Specifically reflecting on norms and rules relating to IHL, Kinsella and Mantilla consider the identification and production of perceived ‘crises’ for IHL are themselves historically generative – allowing an exploitation either to prevent violence or to facilitate it, resulting in transforming understandings of violence (Kinsella & Mantilla, 2020).

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<sup>216</sup> Interview carried out on 11.08.2022, ICRC staff, Senior Management Policy and Innovation category.

According to E. Haas, “*international organisations are the agents that make rules and provide procedures for resolving conflict over them. The principles and norms that inspire a regime, however, are beyond the organisation’s grasp*” – they are understood to lie in the international political arena (E. B. Haas, 1992). Reflecting on the IPR and the inception of a governance around ‘data responsibility’ of humanitarian actors amongst others (see *Chapters 4 and 5*), we consider that protection guardians, despite the characteristics of the competitive environment they work in, have incrementally mobilised and invested resources to understand NTIs’ implications and to create new rules and procedures for their staff with a view to framing digital components of humanitarian work. Zürn’s work on the politicisation of international political authority is a useful addition in our reflection around norms’ alteration and the renegotiation of the IPR parameter and perimeter. For instance, he considers international institutions have authority when the addressees of their policies recognise that these institutions make competent judgements, or in other words, are legitimate. The ‘politicisation’ of international institutions is considered to be the result of transporting an issue – here as it relates to the impact on NTIs in protecting civilians – into the field of politics, rendering previously unpolitical matter political (Zürn et al., 2012). Ruggie previously defined authority as the “*fusion of power with legitimate social purpose*” (Ruggie, 1982). International institution’s authority, often considered as closely linked with legitimacy, can also encounter uncomfortable situations where the conduct of an authority is seen as legitimate by some but rejected by others at the same time and at varying degrees (Zürn et al., 2012). Different types of authority are said to require different types of legitimation, two of which are of specific interest in the research on the IPR transformations: first, authority based on monitoring and verification for which the UNHCR and the World Food Programme (WFP) are considered to be ‘most credible sources of information on humanitarian crises’ among western publics, while being criticised for not alerting the public enough on certain crises (Rwanda, Myanmar); and secondly, authority based on implementation and field presence (Zürn et al., 2012). Other types of authority, such as rule interpretation, rule enforcement vis-à-vis States is inherently more sensitive when it comes to discuss new problematics arising from the uses and misuses of digital tools hampering civilians’ protection in conflict.

Narrowing the topic down to our core protection concern and increased recognition of the issue, timid attempts to frame the complex reflections on NTIs have constituted a first step,

for which future steps may constitute additional efforts to create the necessary evidence, develop the expertise and reinforce the momentum for further norms' development. Yet, the unknown next logical move could be expected to lie with holding a 'state conversation,' together with other relevant actors, e.g., humanitarian, human rights as protection guardians, but also the private sector and academia, which would form the basis of a still largely absent – and needed – digital component of the IPR. Some refer to current discussions, notably on IHL and IRL as we have previously explored in *Chapter 4*, as a new 'social bargain'. This is in line with previous change of power dynamics and priorities of humanitarian protection over the course of the last decades, which has resulted in a series of contested and ambiguous rules – concealing deep disagreements and indeterminacies. Nonetheless, in a highly complex environment, Young noted that *"deliberate efforts to modify or reform international regimes can easily produce disruptive consequence neither foreseen nor intended by those promoting specific changes, so that there is always some risk that ventures in social engineering will ultimately do more harm than good"* (Young, 1982: 281). This claim resonates with the compounded issues that are closely linked or *de facto* intertwined with the IPR.

Keohane defines institutions, which regimes are part of, as *"persistent and connected sets of rules (formal or informal) that prescribe behavioural roles, constrain activity, and shape expectations"* (Keohane, 1988). For his part, E. Haas envisages the transformative role of institutions in a five-step sequence, which arguably includes situations when (E. B. Haas, 1992):

A first step relates to actors' cooperating within an organisation realising gains are not obtained because tasks are improperly contextualised, and knowledge is improperly used. A second step relates to disappointment with performance being communicated by these actors to their colleagues and constituencies – as we have seen for the case of the UNHCR in the early 2000s. A third step is concerned with political coalitions of epistemic communities form among ideologically allied countries and groups to suggest new norms and principles to govern the issue area of concerns – as we previously argued and demonstrated in *Chapter 5*: it is currently the case for issues linked to the digital dimensions of international protection. A fourth step relates to the moment when a new regime is negotiated and expresses the alternative principles and norms – we rather argue for an addition to the existing regime to allow complementary protection that is yet not covered. Lastly, a fifth step relates to the set of a new organisation (or several) to flesh out the regime with appropriate rules and decision-

making procedures. Although the IR meta-transformations do not seem to allow for significant trust in the establishment of a firm convention and dedicated new IO that would be in charge of dealing with NTIs' implications for vulnerable persons (in the frame of humanitarian settings but also beyond), we consider that, in theory, a possibility. NTIs being global in nature and multi-dimensional, any potential IO that would theoretically be charged and mandated to deal with its multi-layered aspects - would likely not focus solely on its humanitarian implications. Therefore, we can rather safely consider protection guardians' investments in 'regime complexes' to stay relevant. These investments could be expected to remain suited in the decades to come and in a largely interconnected and even more interdependent international society.

Although we would argue for a less sequence-oriented vision of the transformative role of regimes (as part of the larger category of institutions), new discoveries open for new dynamics, potentially impact actors' interest as well as, and the understanding of actors themselves of their own (potentially reshaped) identities and own goals. According to E. Haas, *"if organisational change depends on regime change and if regime change is a function of the overall malleability of human institutions, then the learning mode can never be expected to win a final victory over the adaptive mode. The two will continue to coexist within the same organisation. Some parts of the organisation will not need to adapt at all; others will continue to be victimised by turbulence"* (E. B. Haas, 1992: 174). Revealingly, most humanitarian protection professionals similarly expressed to be "shaken" by the use and implications of NTIs and the subsequent reordination of interactions with victims of conflict – while also reconfirming the core of what protection is remains the same (protecting dignity and humanity – see *Chapter 1*). As a humanitarian professional explained: *"the element, that human-to-human contact will remain central in my book, nothing can get in the way"* before adding *"I do not think Protection has changed."*<sup>217</sup>

Putting words on how the IPR is currently in the process of finding new grounds, another professional insightfully shared his perspective, saying *"being a protection agency does not only mean doing and delivering protection it also means doing data with a protection lens."*<sup>218</sup>

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<sup>217</sup> Interview carried out on 04.12.2020, UNHCR staff, Senior Management Policy and Innovation category.

<sup>218</sup> Interview carried out on 01.04.2021, UNHCR staff, Senior Management Policy and Innovation category.



According to Chayes and Chayes, *“if a regime is to persist over time, adaptation to changing conditions and underlying circumstances will require a shifting mix of regulatory instruments to which state and individual behaviour cannot instantaneously respond”* (Chayes & Chayes, 1993). It is important here not to consider domestic developments as disconnected from international ones: several national initiatives have translated to more advanced national law in protected data privacy of individuals for instance, for some already reaching supra-national levels, such as the GDPR example we previously studied in *Chapter 4*.

- *Norms: challenged and tentatively changed*

Reflections around norms usually evolve around the definition of a norm as *“a standard of appropriate behaviour for actors with a given identity”* (Finnemore & Sikkink, 1998). Norms’ enactment led researchers to consider the articulation of norms in a theoretical sense to ‘commonplace meanings’ (or practical implementation) visible in the study of politics (Wiener, 2009). In doing so, the understanding of a norm is seen as mediated and linked to interpretations against the backdrop of individual experience, which is in line with our approach throughout the research (Wiener, 2009). Therefore, actors’ experience and exposure on a subject-matter would impact the enactment of their expectations about the norm and allow for comparing interpretations in different international settings. According to Sandholtz, multiple interpretations are possible because of two features in the normative structure: incompleteness and internal contradictions (Sandholtz, 2008). Viewing norms as dynamic, we previously discussed the concept of ‘norm entrepreneur’ presented and explored by Finnemore and Sikkink – see *Chapter 3* (Finnemore & Sikkink, 1998). They explored how norm entrepreneurs create an issue, mobilise attention to ultimately alter prevailing normative order according to certain ideas or norms that are then deemed more suitable. For his part, Hoffman argued that norms have been treated as relatively static independent variable, while he proposes to reflect on contestations within ‘communities of norm acceptors’ (Hoffman, 2010). According to him, it is when general standards – such as those regulating warfare and providing various protections to civilians during conflict – are operationalised that divergent interpretations surface leading to debate, conflict, and possibly a norm change. A. Wiener, for her part, has previously analysed that *“as the rule lies in practice, any work on norms will proceed from the premise that norms – and their meanings*

– *evolve through interaction in context*” and that *“norms are therefore contested by default”* (Wiener, 2007). We previously touched upon discussions on norms under challenge in *Chapter 3* while considering the negotiation of unexplored – digital – territories around protection of civilians (Deitelhoff & Zimmermann, 2019). Other authors, such as Sandholtz and Stiles have reflected on norm change occurring via a continual “dynamic cycle” and a result of the constant interplay among rules, behaviour, and disputes making them possible stable, or wider, narrower, weaker or stronger through micro patterns of challenge and reinforcement – such as superposed pictures that would therefore be seen as slightly moving (Sandholtz, 2008; Stiles & Sandholtz, 2009).

At a theoretical level, Bernstein explained that *“one way to think about contestation is ‘the gap between general rules and specific situations’”* (Bernstein, 2013). Amidst possible factors enhancing norm contestation and challenges to norms’ previously established meanings; historical contingency, crises and a change of governance processes have been mentioned. Historical contingency of normative meaning, which is in line with our previous analysis of the XX century anchored establishment of norms of the IPR (*Chapter 2*), suggests normative meanings change over time and across local contexts with constitutive social practice (Wiener, 2007; Zimmermann, 2017). The difference between theory and practice is essential in this reflection, especially as it relates to international issues for which the example of human rights has often been used: agreement on the importance of human rights does not equal for a clear conclusion about the meaning of the norm; the meaning would be contingent to norm-use or the contextually anchored practice of the norm that generate meaning, as well as the interpretation that serves political uses (Kratochwil, 1989; Kratochwil & Ruggie, 1986). Building on the experience of the strong debates and different interpretations of the normative context of a community of compliance with international law around the 2002-2003 UN debates over Iraq, Hoffman further explains:

*“A key lesson from the constructivist literature on contestation is that even when states ‘know’ what is appropriate and share the general contours of that knowledge, the implementation of what they all know varies”* (Hoffman, 2010).

Comparing debates between the first Gulf war and 2002-2003, the author identified two reasons behind the divergent interpretations: first, during the first Gulf war, the gap between general rules and specific situation was far narrower and created little space for tensions between and within the normative framework to arise; while in the 2002-2003 period, the

normative context was more ambiguous (especially concerning the resolution 1441<sup>219</sup>) and the gaps between general rule and specific situation referred to above widened. Secondly, the domestic situation in the US in the aftermath of 9/11 was considered as having significantly altered the perception of threat in a fundamental way. The US taking action at the UN to express and gather support on its preferences also created the space for open disagreement, notably with France and Germany (Hoffman, 2010).

Resistance to efforts to change global norms has been considered understudied since the 2000s, with limited attention to norm entrepreneurs' opponent, that Bloomfield calls 'norm antipreneurs' or those who defend the entrenched normative *status quo* against challengers (Bloomfield, 2015; Wiener, 2007). In doing so, Bloomfield interestingly considers the 'temporal context' matters and explains that exogenous events or contingencies such as shifts in the global distribution of power – which we previously presented as the IR meta-transformations – affects the role actors play and how they implement activities (Bloomfield, 2015). Kratochwil recently argued that the notion of the compelling force of norms has *"something to do with their clarity (...) by nobly ignoring the inherent contestability of norms and by passing over the historical experience that right-claims and, in particular, claims made in the name of humanity – and not only for protecting particular interests – are often powerful escalators and catalysts"* (Kratochwil, 2022). Other authors have reflected on resistance to norms' change, notably researching aspects of 'contested compliance' – building on empirical examples that consider normative structures as 'structure of meaning-in-use' (Wiener, 2004, 2008). According to Wiener in *A Theory of Contestation*, any contestation about the normative structure of meaning-in-use which guides actors of international relations remains 'bracketed' (Wiener, 2014). A. Wiener frames her reflections along the line of a 'late-modern international society' – which includes global governance institutions accompanied by transnational legal regimes – and now also involves persistent regional and cultural diversity requiring access to regular contestation from a multiplicity of stakeholder (Wiener, 2014). Contestation is a political practice that indicates and generates legitimacy in the international arena. This is a useful reflection which resonates with our previous research on the malleable concept of protection, which accommodates both a common core – humanity and dignity –

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<sup>219</sup> [UNSC 1441](#) in 2002 shares strongly worded statements such as *"decides that false statements or omissions in the declarations submitted by Iraq"* or *"recalls, in that context, that the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligation"*.

while allowing for subjective practical appropriation and interpretation of the meanings behind it – see *Chapter 1*. According to Wiener, the practice of contestation specifically matters with regards to the agreement and implementation of ‘fundamental norms, principles and procedures that are constitutive for the global normative order’ which we would argue is the case for norms defining the IPR (Wiener, 2014: 49).

Wiener identifies four modes of contestation which can be pursued either implicitly or explicitly – arbitration, deliberation, contention and justification. *Arbitration* is the legal mode of contestation, where the constitutive role of discursive interventions by international lawyer is considered important (Keohane, 1997). *Deliberation* is the political mode of contestation involving addressing rules and regulations with regard to transnational regimes according semi-formal soft institutional codes, while *contention* represents social practice of contestation which critically questions societal rules, regulations or procedures by engaging multiple codes in non-formal environments. Finally, *justification* is the moral mode of contestation involving questioning principles of justice.

Critically approaching the different roles of actors of the IPR, we consider that “protection guardians” – which include both outspoken human rights watchdogs and ‘quieter’ humanitarian ground actors have adopted an interesting two-tiered stance, articulated around both (1) confirming the continued relevance the current IPR while also (2) carefully deliberating on the need to extend the IPR reach towards yet ill-defined and uncovered digital spheres. A recent example lies with a collaborative report spearheaded by the ICRC, in collaboration with the Australian Red Cross and three different Universities (ETH Zürich, John Hopkins Applied Physics Laboratory, and Bonn University), titled *Digitalizing the Red Cross, Red Crescent and Red Crystal emblems: Benefits, Risks and possible solutions* (ICRC, 2022). The report intends to “investigate the idea of developing a new signal, digital marker, or other means of identification for the digital assets of especially protected entities, i.e., a ‘digital emblem’” stressing that the IHL obligations of all belligerents to respect and protect the humanitarian mission equally applies online and offline. The presented ‘opportunity versus risk equation’<sup>220</sup> results in defending that benefits tend to outweigh identified risks. The

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<sup>220</sup> Among identified benefits of a digital emblem are a potential strengthening of protection, to facilitate for cyber operators to avoid harming protected infrastructures, and to signal IHL protections, while potential risks identified relate to increased exposure of medical and humanitarian assets, services and data, misuse of such ‘digital emblem’ for perfidious purposes, and the creation of a false sense of safety and protection.

narrative reinforces the need to signal the presence of a digital entity that benefits from specific protection under IHL (Rodenhäuser & Vignati, 2023). In between the lines, the interest of such proposal lies with advancing the development of ideas and a narrative for the reinterpretation of the existing IHL frame (mostly offline) towards seeking support for a recognition that it could be transposed to the digital environment – online. As such, the proposal could contribute to multilateral debates, exchanges that may contribute to finding new common grounds for one of the aspects of the IPR.

Revealingly, Wiener considers how deliberations may contribute to filling the legitimacy gap that emerges between fundamental norms of substantially moral quality, and a relatively broad scope of generalisation on the one hand, and standardised procedures of technical quality and high degree of specification on the other hand (Wiener, 2014). This is a perspective shared by Dietelhoff who considers institutions can limit the range of acceptable arguments by developing normative understandings and proposing ‘organisational scripts’ (Deitelhoff, 2009). Nonetheless, contestation through deliberations enables a certain control of potential misunderstandings which facilitates a process of persuasion where one meaning (or interpretation) would become dominant and trump others in a timebound frame (Wiener & Puetter, 2009). While we agree with this stance in theory, it also raises concerns as it tangibly relates to situations where deliberations around various meanings of a norm may become permanent as no actor is able to impose, convince, or persuade others on a prominent interpretation, an inconvenient case which has seemingly not been studied in academia. We argue that permanent contestations of a norm in the form of deliberations – an attempt to somewhat control the level of contestation – may result in eroding the core of contested norm to the point that it may become obsolete as continuously renegotiated meanings would empty the norm of its substance, especially if a norm is interpreted to the opposite extent possible without a prevailing dominant interpretation. Sandholtz is among those who have reflected on the impacts of norm contestations, arguing norms do not die – but may be replaced by a complex process involving either obsolescence (as we similarly considered), replacement, and modification (Sandholtz, 2016; Sandholtz & Percy, 2022). Others have argued, albeit with caution and considering it rare, that some norms have indeed died, providing the examples of “*the norm against unrestricted submarine warfare, the norm of colonisation, the permission of slavery and the norm*” – on all those instances, the ‘death’ of a norm is identified when violations of such norms are not on the margins but become the

(new) rule, while actors no longer make an effort to use the old norm as reference (Panke & Petersohn, 2016).

Humanitarian protection actors have been trying to carefully position themselves as legitimate: both to maintain their official authority on the IPR frame and potential further position themselves with expertise and authority on this yet ill-defined role of interpreting what protecting civilians in conflicts through a digital lens means in practice. Establishing where the 'space' for contestation remains important; in our research, we have identified two different elements that pertain to the IPR. First, its principles and norms have been contested by some (even marginally) since its creation – contestation occurs within an already established frame guided by fundamental principles and bodies of international law; secondly, the focus of our research tackles contestation and renegotiation on the uses and misuses of NTIs in protecting civilians in conflict – a responsibility that weapon bearers primarily have a role that protection guardians uphold – this, for now, occurs in a 'blurry space' whose frame is currently being explored and re-negotiated. It is the second element that represents the most significant challenge as protection guardians seek a social recognition and follow a logic of appropriation – while potentially also negatively affecting the first element – for altogether compounded contestation around the rejection of the core concept of humanity for example. In the absence of social recognition and normative practice, norms are likely to be further misinterpreted or simply disregarded (Wiener & Puetter, 2009).

In *International Norms and Cycles of Change*, Standholtz and Stiles usefully widen the scope of reflections by arguing international norms have been shaped by two main currents: sovereignty rules and liberal rules (Stiles & Sandholtz, 2009). Interestingly, this resonates with our considerations of IR meta-transformations – on Protection, as discussed earlier, States and IOs are not the only 'player' and norms' challengers: NSAGs and private sector constitute important stakeholders that have entered the space of discussions, including for contestation; a consideration similarly echoed by A. Wiener as she reflects on contested meanings of norms in a world of 'increasing international encounters' (Wiener, 2008). According to Panke and Petersohn, the normative environment can be subject to significant instability if 'extreme developments', such as technological ones we tackle in our research, result in a paradigm shift, which - we argue - is the case. Extreme developments can lead to the emergence of either new norms in a short period of time or of frequent violations in a short period of time

(Panke & Petersohn, 2016). Considering the IPR, the exponential identification and creation of a connected issue to the original protection one, i.e., the digital sphere of protections to civilian populations in conflict, have occurred in a short period of time (i.e., since the turn of the 2010s) but has not yet witnessed the emergence of clear norms: the state of affairs instead is still at the inception stage of a new governance around the issue (see *Chapters 4 and 5*). The period ‘in-between’ when norms are both reconfirmed and contested is a strategic and important one, as it is not only the perimeter and parameter of the norm that may be challenged, but also its core.

- ***The rise of Global Compacts: towards a new chapter in norm-development?***

Recent international discussions and developments specifically related to refugees are worth considering in our reflections around international norm changes. In 2016, the UN has convened a high-level meeting on refugees and migrants on the margins of the UN General Assembly. Discussions led to the adoption of a 24-pages UN General Assembly resolution called the ‘New York Declaration for Refugees and Migrants’ (UN, 2016). Resonating with our previous argument related to the XXI century IR configuration not being conducive to the elaboration of new international treaties (hard law), , at the end of 2016, Volker Türk, the Assistant High Commissioner for Refugees, called the discussion and agreed-upon way forward for a new Global Compact on Refugees no less than “a minor miracle;” he explained current times are of *“stark contrasts where, in the face of heightened crisis and change, a curious tension has emerged between indifference, inwardness, and isolationism on the one hand, and empathy, responsibility, and generosity on the other”* (Türk, 2016).

Although refugees and migrants are governed by different bodies of international law (consolidated for Refugees, disparate for migrants), the declaration affirmed the two have the same universal human rights and fundamental freedoms. Along with the centrality of the protection regime, some 193 states reaffirmed in paragraph 66 that:

*“International refugee law, international human rights law and international humanitarian law provide the legal framework to strengthen the protection of refugees. We will ensure, in this context, protection for all who need it”* (UN, 2016).

Following the discussions, a commitment to work over a two-year period on two global compacts was set *“to supplement the refugee system: one on refugees and another one on safe, orderly and regular migration”* (Betts & Collier, 2017). At the end of 2018, the Global Compact on Refugees (GCR) spearheaded by the UNHCR and the Global Compact for Safe, Orderly and Regular Migration (GCM) led by IOM were adopted following broad international consultation processes (IOM, 2018; UNHCR, 2018a).

A legal perspective recognises that *“while being humbly characterised as ‘non-binding’ and ‘political’, [the two Compacts] are replete with commitments, procedural provisions designed to further clarify and concretise the concepts here at issue and, with clear working programmes, no State having adhered to these documents can stay outside in the future”* (Hilpold, 2020: 231). In this sense, it is less in the text itself that the potential strength of new soft law developments in the shape of those two Global Compacts may take in the process it seeks to engender and the fora for regular discussions and exchanges they propose: implementation and time will allow to take perspective on whether this potential would come to fruition. The design of the two Global Compacts intends to achieve over time, the same result as hard norms.

As for the Global Compact on Refugees, warnings related to the inclusion of legally binding principles and norms in a non-binding declarations could contribute to a diminution of their mandatory character or a regression of ‘normative effect’ – a consideration both several humanitarian professionals shared and legal experts on IRL and IHL regularly share (Gavouneli, 2019). According to Hilpold, the *“whole discussion leads to the question about the meaning and the status of soft law in international law”* (Hilpold, 2020). Hopes were largely discussed for the Compact on Refugee to address a range of normative issues by either providing substantive new commitment or *“pushing the interpretation of existing obligations under international refugee law and human rights law”* – as we previously explored (Gammeltoft-Hansen, 2019).

Both Global Compacts are worth considering for what they are - non-legally binding instruments - but also beyond when we consider the notion of “constructive ambiguity” often attributed to Kissinger (Byers, 2021). The traditional form of negotiations around a commonly developed and signed legally-binding treaty has now left space for new kinds of discussions



and political agreements that attempt to accommodate the IR meta-transformation previously discussed. Similarly, Raphael Gorgeu, Deputy Director of Operations and Head of Operational Analysis, Positioning and Advocacy at MSF explained that *“the non-binding nature of such instruments, along with the challenges of today’s multilateralism and geopolitical realities, make the implementation of commitments particularly difficult”* (Gorgeu, 2021). The issue of the actual legal force of the different provisions have also been debated, triggering further reflections on the meaning and status of soft law in the contemporary IR’s landscape. The question of legal bindingness usually requires a clear relationship between the legal prescription and its expected implementation, at the international level, global governance approaches integrate multi-level and multi-stakeholder configurations that create fora for discussions and subsequent action which may relate to situations of public authority where networks play an important role. The important point here may lie less in the legal bindingness of the law than in the power to make an issue-area on protection relevant, legitimate and become the “norm” to follow. The UN General Assembly forum would provide a norm-deliberating body, while the format allows for dialogue among different actors (member states, humanitarian actors, private sector, civil society) and to integrate new issues that need to be tackled while results are precise enough to influence the behaviour of relevant actors, similar to other forms of ‘Compacts’<sup>221</sup> or ‘Guiding Principles’ (Hilpold, 2020). According to Gammeltoft-Hansen, a ‘compact’ may be conceived as a bundling of different deals and agreements across actors and issues: with a focus on multi-stakeholder participation and issue-linkage ensuring cooperation (Gammeltoft-Hansen, 2019). Widening the reflection, Holeindre and Fernandez questioned the number of international accords of hard law that have been concluded in the XXI century, arguing it is significantly less than in the past and with limited normative stances, particularly when it comes to issues that have a ‘universal’ stance (Fernandez & Holeindre, 2022).

Türk, the Assistant High Commissioner for Refugees, explained in 2018 that:

*“Developments and trends in the world of refugee protection over the past year reflect in many ways how paradoxical our world has become. On the one hand, we saw how all 193 United Nations Member States came together to develop the global compact*

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<sup>221</sup> Another previous example of the use of the word ‘compact’ was in 2000 with the ‘UN Global Compact’.

*on refugees [GCR] – an unprecedented success of multilateralism at a time when the debate about refugees at times has become heavily politicised and contentious. It represented what can be achieved when we choose to rise above short-term interests to find a common and constructive way forward. (...) On the other hand, we also witnessed the consequences of populist pressures and the shrinking of responsibilities”* (Türk, 2018).

The Assistant High Commissioner mentions there are ‘two sets of values’ in two distinct modes of discourse, speaking of what is at the ‘heart’ of protection work: respecting human dignity (Türk, 2018). Other obstacles identified lie with the lack of credibility and willingness of some influential and critical states with regards to their own approach to displacement, negatively impacting the legitimacy and therefore limits the traction sought by the UNHCR to trigger collective behavioural change; and the struggle to counter Member States’ respective security and political agendas (Gorgeu, 2021). Conservative views who usually privilege international discussions leading to a new treaty of hard law consider the Global Compact on Refugees is *“first and foremost a reflection of States’ lack of political will to make further binding commitments with respect to refugee protection, but also a conscious choice by UNHCR to avoid discussion on the existing international legal framework at a time of repeated challenges to refugee rights in many parts of the world”* (Gammeltoft-Hansen, 2019). According to more ‘open’ views on soft law norm development, for Gorgeu, the emergence of a new norm on managing refugee situations can be recognised, but has not yet reached the norm cascade through a socialisation process, nor the internalisation and appropriation process for each actor to translate it into its own practice (and with its own interpretation), in line with previously mentioned ‘norm cycle’ (Gorgeu, 2021). Others consider the implementation of the Global Compact on Refugee may develop serving as either ‘norm-filling’ pursuing the development of understandings and interpretations of existing rules of international law, or ‘norm-creation’ if it turns out to foster the formulation of new principles or rules that may pay the way for future binding international law, as Türk and Garlick carefully envisioned (Gammeltoft-Hansen, 2019; Türk & Garlick, 2016).

Although not legally binding, both Compacts contain concrete frameworks for action to which states can politically be held to account through new formal review mechanisms. As part of

the Global Compact on Refugees, a Global Refugee Forum is planned every four years from 2019 at ministerial level (McAdam, 2018). The intent would both focus on concrete pledges and contributions while discussing opportunities for responsibility sharing (worth noting the word ‘burden sharing’ was not used in this specific instance). Looking more specifically at Kenya, one of the 15 pilot countries for implementation of the Comprehensive Refugee Response Framework (CRRF), first reflections based on local implementations in two counties hosting refugees point to a relatively successful implementation of the CRRF, attributed to a large part to local development and political priorities, as well as attraction from international donors in the region (Dick & Rudolf, 2019). Even if this example provides a view with an early-stage perspective, it is worth considering that ‘factors’ of success are identified to be less with the values behind the norm defended and presented but rather relate to two important elements, i.e., a political emphasis to make an issue-area a ‘priority’ and ensuring the (financial) means to establish and tangibly implement policies. Based on our previous reflections on issue-linkage and cross-issue persuasion (*Chapter 5*), a dilemma faced by the UNHCR, which we see as commonly shared with other humanitarian protection actors, lies with the question of *“to what extent should it stay within its ‘box’ of the refugee regime? Or to what extent does it need to engage beyond the boundaries of the refugee regime?”* (Betts et al., 2012).

It is worth noting that within the Global Compact on Refugees, the word ‘technology’ was mentioned only seven times relating to effective use of resources, to tools for registration and documentation (such as biometrics) and civil registry, or to support host-countries to close the ‘technology gap’. For its part, the word ‘digital’ was mentioned twice for enhancing means for civil registry through ‘digital technology’ and stating the UNHCR would establish a digital platform to share ‘good practices’ (UNHCR, 2018a). Similarly, in the GCM, references to technology solely focus on using NTIs as “solutions” for identity document and civil registries, to coordinate border management, to evaluate migrants’ skills, or to ‘simplify’ application procedures for migrants (IOM, 2018). In both Compacts, NTIs through digital tools are only referred as *de facto* positive means to support financial resource efficiency, information-gathering and sharing on refugees and migrants. Analysing the choice and occurrences of words might provide an insight into more in-depth diplomatic discussions and tensions, which nonetheless are important elements that fall short of making it to the official

text, as it is the case for some reflections which are equally important to weigh. In our view, the Global Compact on Refugees was able to gather a significant amount and variety of actors around the framing of a common 'issue' when dealing with refugees – it intended to create momentum and traction on a shared responsibility of what already exists, tentatively and subtly starting to connect it to other elements (cross issue-area) around the root causes of forced displacement. It did not tackle recently developed additional protection problematics that have arisen and continue to develop following the exponential expansion of new digital tools: an area that remains largely ungoverned, while potentially affecting millions. For the year of 2021, the ACLED Armed Conflict Location and Event Data Project (ACLED) recorded 93,384 events of political violence, which it defines as 'battles, explosions/remote violence, and violence against civilians,' less than 2% different from 2020 findings which had identified 94,833 incidents under the same category (ACLED, 2022). Worth considering, despite the rather stable stark figure of incidents, the number of fatalities associated to it increased by 12% between 2020 and 2021 – political violence was reported to become even deadlier and attacks targeted civilians even more (ACLED, 2022). It is extremely difficult to secure global figures on risks, attacks and violations civilian populations are exposed to in various conflicts of the different regions of the world, and specifically capturing risks and violations associated with the uses and misuses of digital tools are even harder to grasp. Therefore, it is important to continue being conscious of a certain gap of information that exists and shortfall in our own understanding of the extent of the issue.

To conclude this part, we consider that the IPR rests on malleable concepts – humanity, dignity – often perceived with a certain unease when it comes to researching and qualifying it: we argue it may be a force. Indeed, humanity and dignity are regularly challenged during conflict, as well as defended by protection guardians. If the different practical enactment of the norm can take different forms based on different interpretations – and conflict contexts are different and technology exposure has faced different levels of penetration in different societies: the opposition of universal values of humanity and dignity can be expected to continue facing local contestations (notably through justification and contention modes by belligerents) in different conflict settings. In this case, the specific IPR attributes of malleability and adaptability can be understood as an advantage that will enable to accommodate the

current understandable alteration at play rather than a constraint. *“Hence, the ontology of regimes rests upon a strong element of intersubjectivity”* (Kratochwil & Ruggie, 1986).

However, the risks for the IPR to be challenged not only in its parameters and perimeter but also in its core lies with the inability to grasp the partly old and partly new substance of what protecting civilians in conflict has now become: including physical, psychological and digital dimensions of a person that can be attacked or threatened.

### III. IPR and troubled humanitarianism: parameter and perimeter

Academic discussions on the evolutions and challenges to the currently dominant humanitarianism have been varied and mostly emanate from the fields of political science and IR, international law, and social sciences. Regardless of these complementary sets of expertise, all point out to a ‘troubled humanitarianism’ since the end of the Cold War, and even more so at the turn of the 2020s. The ALNAP’s State of the Humanitarian System in 2022, noted *“an erosion of global consensus on the importance of international humanitarian law in setting limits to war,”* challenged both parameter and perimeter of the current humanitarian system (ALNAP, 2022: 272).

Barnett and Weiss previously called it ‘humanitarianism contested’ identifying “turbulences” based on political and ethical entanglements (Barnett & Weiss, 2011). Slim recently considered that *“in 2021, the world stands at another ‘Solferino moment’ as the aged of industrialised warfare passes into the new era of computerised warfare, and expands beyond land, sea and air into space, cyber space and information space”* (Slim, 2022). Discussions on the sacredness of humanitarianism, being based on religious faith or on a more secular ‘faith in humanity’ provide interesting leads of reflections on various forms of humanitarianism. If the dominant humanitarianism remains a secular one, other forms and practices of solidarity, along religious lines are considered more ‘complicated’ and also ought to be considered in our wider reflections of the contemporary troubled humanitarianism (Barnett & Gross Stein, 2012; Ferris, 2011). For instance, where institutionalised humanitarianism rely on principles of neutrality, impartiality and independence, local faith communities *“may be considered far from neutral in their understandings, often politically associated and not infrequently actors themselves within the humanitarian situation in question,”* argue Fiddian-Qasmiyeh, Ager and Ager (Fiddian-Qasmiyeh et al., 2015). Despite tensions in the articulation of humanitarian

principles in potential collaboration between secular and faith-based organisations, cautious moves have been undertaken – notably with the 2012 UNHCR Dialogue on Faith and Protection (Ager, 2014). Claimed universal principles certainly play a role in promoting coherence and coordination in a *“crowded and diverse world of humanitarian action”* and leading discussions on whether alternative principles and parallel humanitarian systems may be in the making (Sezgin & Dijkzeul, 2015).

Kratochwil’s recent piece titled *After Theory, Before Big Data* offers an insightful reflection as he argues the issue is *“not that power technologies are now available to us to tackle some of the problems that seemed to exceed our former possibilities, but rather to gather from this observation that the inference from having overcome some limitations, no further limits exist, or will be overcome by technology or ‘big data’ is unwarranted”* (Kratochwil, 2022: 72). The important question lies with the limit concerned. Discussing the extent of the IPR alteration, we are concerned with two dimensions of such change: first the perimeter (contours), and second, the parameter (substance of protection being covered). In this sense, Calhoun’s consideration that *“humanitarian action is thus grounded simultaneously in an individual ethical imperative to save life or alleviate suffering and a social organisation designed to improve collective conditions of life”* is useful (Calhoun, 2008: 90). He further considers that the specificity of the “field” of humanitarian action – its internal hierarchies and struggles as well as its always contested external boundaries – derives from the interface of these two intertwined dimensions and not from one alone. Echoing this claim, DuBois from MSF stated *“in the humanitarian arena, there is a gulf between the promise of protection and its realisation – a gulf downplayed by humanitarians due to our own self-interest or self-delusion”* (DuBois, 2007).

Those internal tensions within the humanitarian sector have also been identified based on our field research, the loss of compass (see *Chapter 5*) among protection experts who are part of continuously growing humanitarian organisations clearly contributes to questioning humanitarianism itself: both in substance and through its boundaries. Barnett uses *“the debates on humanitarianism transformation to probe a multi-layered, knotty and unstable relationship between humanitarianism and politics, ethics and power”* (Barnett & Weiss, 2008b: 235). Sending elaborated on the interlinks between diplomacy and humanitarianism by stating that *“the social form of diplomacy is reproduced so that it enables the drawing and redrawing of boundaries between what is political and what is not political. In the case of*

*humanitarian action, these boundaries are drawn in such a way that the image of a crisis mobilises a particular response – humanitarian relief – and generates a political response of a particular type that bypasses the state without undermining the image of the state as responsible and sovereign”* (Sending, 2015a). Therefore, according to him, humanitarianism and diplomacy are not on a par because the former establishes a frame of reference within which humanitarian ideas and principles shape and orient diplomatic engagement over how to define and act on violent conflict (Sending, 2015a). The latest ALNAP findings pointed out a gradual diminution of the international humanitarian voice over the last 10 years in what it called ‘the age of silence,’ similarly called by some others as ‘the age of caution’ which limits protection advocacy (ALNAP, 2022; Bowden & Metcalfe-Hough, 2020). Barnett interestingly questioned the changing boundaries between humanitarianism and human rights, as these recognise inherent specificities of humanitarian practices, which often have to balance ‘advocacy’ with ‘access’ and different approaches to defend suffering. He notably recognises that any community of practice is part of a larger ecosystems – for the cases of humanitarian (protection) actors and human rights advocates, their differences in approach but shared goal to defend humanity has contributed to respective self-inquiries and a considerable heterogeneity of views that contributes to challenge – classic – humanitarianism (Barnett, 2018).

Recently, the UN Under-Secretary General Martin Griffiths explained that he considered the UN OCHA and his position had to *“engage with the political”* while noting that albeit he considers it a privilege, it also requires *“to do it from the basis of a good humanitarian foundation and attention to the sort of humanitarian ambitions and principles of its members”* (Griffiths, 2022). In *Five shades of grey: variants of ‘political’ humanitarianism*, Bradley similarly contends that the boundaries (or perimeter) of classic humanitarianism defined by the principles of humanity, impartiality, neutrality, and independence, have been contested – especially in the 1990s; she also contends that, at the same time, ground frustrations have reinforced debates on different forms and degrees of ‘political humanitarisms’ including through unintended political consequences, the inclusion of transformative agendas, human rights abuses being further spoken out or compromising state sovereignty via cross-border operations along with the constantly challenged classic humanitarianism (Bradley, 2021). According to the author, both ‘classic’ and ‘new’ humanitarians agree that humanitarian problems invariably demand political solutions, but differ on who should contribute to those

political solutions: the former arguing for a separate humanitarian sphere while the latter consider they *“can and should contribute to political solutions”* (Bradley, 2021: 1035).

In addition, modern humanitarian roots are also considered to be located in western values – which some cynically call *“the Western Club”*<sup>222</sup> and although claimed values have a universal reach, the history of humanitarianism is said to also reflect some tensions that exist between the *“West”* and non-western cultures. Recent and growing intra-humanitarian system discussions have turned to reflections on potential further ‘localisation’ of aid, entrenched in the 2016 discussions at the World Humanitarian Summit (Bonis-Charancle & Vielajus, 2019; PLAN International, 2021; Robillard et al., 2021; UNHCR, 2021). The very definition of the ‘localisation’ concept remains a matter of debates, and the more tangible shapes it could take yet remain rather blurry but can be expected to further develop in the decade to come. Beside the ‘local’ qualifier of some types of humanitarian aid, exploring faith-based humanitarianism through the lens of South-South humanitarianism also requires considering *“biases inherent to much humanitarian studies theory”* that primarily focus on the dominant system (Fiddian-Qasmiyeh & Pacitto, 2015). Debates on ideology and politics relate not only to humanitarian practice but also to the humanitarian ‘epithet’ in the politics of defining the ‘other,’ the ‘beneficiary,’ the ‘victim,’ the ‘civilian’. If Egeland considers humanitarianism as a universal imperative and shared intercultural system of principles, the disproportionate part and influence of the *“North”* (that others may call the *“West”* to avoid any confusion of the imperfectly-worded notion) for financing and staffing humanitarian organisations with professional experts and structure is threatened with enduring oppositions in many *“Southern contexts”* (Egeland, 2011). However, the humanitarian system having developed in a highly complex web of asymmetric geometry collaborations and diverse interests, initiatives labelled as *“South-South humanitarian initiatives”* have strong links with the formalised humanitarian regime (Davey, 2012). Rather than opting for the most practical option, which is to focus on only one narrative on humanitarianism in order to continue ‘fire-fighting’ operations worldwide, Davey argues that learning from the past requires investment of time and resources – which is not prevented by working on crises, but rather complements it (Davey, 2014). Agreeing with this stance, we even take it to the continuous study and

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<sup>222</sup> Slim calls ‘big aid’ – comprised of the UN, the Red Cross and the Red Crescent movement as well as some International NGOs as a *“Western Club”* – page 214 of his book *Solferino 21, warfare, civilians and humanitarians in the Twenty-first century*.



perspective on the present and how it may unfold in the near future: our study on the use of NTIs in the politics and practice of the protection regime points out to an ongoing need, if not requirement, for conscious and measured humanitarian practices and policies – including in its embedded digital forms. Humanitarian protection actors, including the ICRC, UNHCR, UN OCHA, NRC and DRC which we focused on specifically in our field research are in the process of reconciling ‘traditional’ professional roles, such as jurists, with ‘nascent’ expert ones, such as cyber security experts. The reconciliation and tandem work of the two - the old and the new – would enable to grasp a fuller understanding of digital risks for civilians and associated digital protections that need to be developed in the future. As Slim put it, “*we must expect civilians to be recognised and helped much more as digital bodies in the twenty-first century*” (Slim, 2022).

In doing so, a rather simple consideration may be: how to define if a protection violation has occurred when protection guardians are not able to capture what has happened (in the digital sphere) nor document humanitarian impacts? When contemporary conflicts display a full portfolio of embedded kinetic and digital attacks on a daily basis, no less than relevance is at stake for humanitarian protection actors on the ground and in offices of various conflict settings.

### 1. *Same core, differently knitted substance and contours*

Contemplating the contemporary humanitarianism on which international protection is based through the lens of technology, we ponder the role of technology in social and political change. Already in the 1960s, decades before the exponential turn of NTIs was taken, researchers inspired by Karl Marx’s earlier works, asked themselves whether there is a fixed sequence to technology development (Heilbroner, 1967). Some view technology determinism through norm-based accounts considering cultural phenomena, others consider unintended consequence accounts when technology creates unexpected social outcomes; and yet other views defend a logical sequence account based on an ontological claim that technology determinism would be linked to universal laws of nature (Bimber, 1990). As debates of the XX century questioned whether we could attribute a certain determinism to technology and if so, how to qualify it, it is worth noting that already then some authors had shared to expect “*undiminished and very likely accelerated pace of technical change*” (Heilbroner, 1967).

At the end of the 1980s, Ruggie and Kratochwil considered that the field of IOs in IR lacked any systematic conception of its traditional analytical core on a certain issue-area: international governance. The introduction of the concept of regimes reflected an attempt to fill this void and intended to reflect on both its parameters and perimeters (Kratochwil & Ruggie, 1986). International regimes, as we have seen in *Chapters 2 to 6*, such as the IPR we research, comprise a normative element, state practice, and organisational roles (Kratochwil & Ruggie, 1986).

The management of regime complexes features overlapping regimes, organisations with possibly contradicting mandates, and dense tissues of rules and procedures, therefore calling for an adapted concept linked to its 'management' (Alter & Raustiala, 2018). Besides traditional modes of governance (making, monitoring and adjudicating international law), IOs respond to dilemmas they face to pursue their goals by experimenting through alternative modes of governance (Abbott et al., 2015a). The concept of 'orchestration' rather than more direct 'managerial' practices, coined by Abbott and others, relates to a mode of governance widely used by IOs through enlisting intermediary actors (on a voluntary basis) by providing them material and ideational support to mobilise other 'target' actors on a governance issue (Abbott et al., 2015a). Persuasion, delegation, training, and other incentives compose its main governance approaches. This view offers a middle ground perspective on classic IR theory, which usually views IOs as highly constrained by state oversight or by international interdependence (Keohane); others consider IOs' independence related to their functional role (Mitrany) or to foster human progress (Kegley & Blanton, 2011). Through the 'orchestration' mode using other intermediaries – a soft approach, IOs are seen to regain some independence and partial influence on state while potentially reaching target populations or audiences without the state intermediation (Abbott et al., 2015a). If the tentative exertion of influence on those having the primary responsibility remains the same, in the XXI century the approach has thus diffused and been adapted to fit more subtle and indirect approaches, rather than hierarchical and direct ones (Abbott et al., 2015b). One of the added values of indirect orchestration as a governance method allows for the orchestrator to set the agenda, resort to more specialised expertise, monitor, potentially gain legitimacy if partners are accepted by beneficiaries, and control decision-making and ensure

consistency over goals' pursuit. In doing so, programmatic and organisational challenges will be important to consider in carrying out protection activities as "*in most conflict situations, protection actors do not work together to establish a common understanding of protection threats and ways to mitigate or prevent them*" – page 384 (Svoboda & Pantuliano, 2016: 384). This is especially relevant for better integrating digital threats, risks and violation identifications into already existing protection activities.

## 2. Unpacking potentials: people, materiality and principles in action

Interestingly, the argument put forward by Ruggie and Kratochwil in the 1980s seems to be relevant: despite the systemic and significant change the NTIs variable represent in the theory, practice, ethics and politics associated with the protection of civilians in conflict, the IPR has continued, in some measure, to constrain and condition the behaviour of states towards one another (Kratochwil & Ruggie, 1986). This certain level of autonomy nonetheless comes with certain legitimate questions on boundaries: where is the threshold between regime and non-regime? Or a meta or nested regime? With the strategic diplomatic practice of issue-linkage, including cross-issue persuasion – lines, borders and shapes of intellectual concepts can be seen as blurred. The study of international regimes requires to consider (1) the convergence of expectations as a constitutive basis of a regime, which is *de facto* intersubjective as expectations can vary from actor to actor, (2) an objective review of actors' social interaction and influence, and (3) interpretative meanings based on regime experimentations and practices, which may give rise to consensual knowledge (see Chapter 5).

Nonetheless, the IPR and the dominant humanitarianism it relates to are impacted by difficulties of multilateralism in the XXI century, and even more so in tackling new technologies and digital issues (Norodom, 2022). Reflecting on the three points above with the lens of NTIs for the IPR:

### - *Convergence of intersubjective expectations:*

Conflict belligerents (states, NSAGs) and humanitarian protection actors may have conflicted expectations on the use of NTIs in the way war is waged and, therefore, how it (may) affect/s civilians. Private actors – rather recent preponderant actors in the discussion – often use humanitarian settings, considered to be 'on the periphery' and less regulated as testing

grounds, oftentimes in partnership either with conflict belligerent or humanitarian actors themselves. There has been a common initial consideration of NTIs at the beginning of their exponential turn in the early 2010s: general enthusiasm and opportunity and efficient-focus considerations (*Chapter 3*). A recalibration towards balancing both opportunities and risks was carried out by the various actors thereafter. Both stakeholder and their expectations are multi-fold: to take advantage in war, to protect civilians, to explore new tools for further development.

- *An objective review of actors' social interaction and influence:*

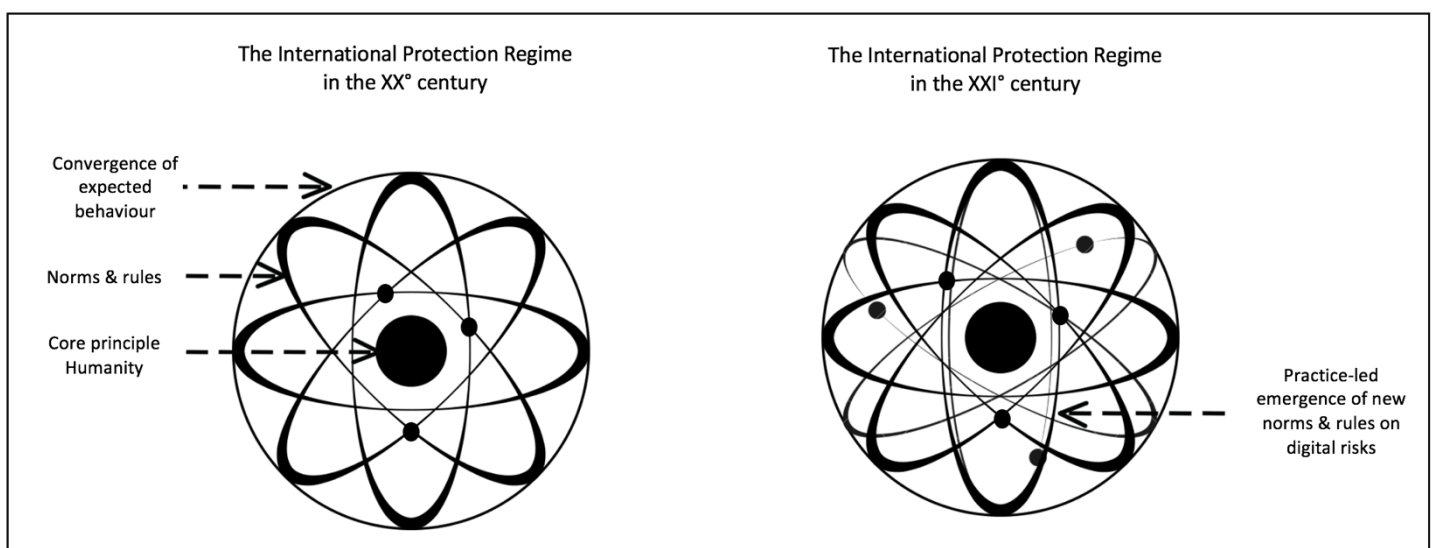
Because of the existing asymmetry in the penetration of NTIs in various societies and by the different actors of the IPR, it is extremely difficult to clearly establish the exact use of NTIs by different actors and the extent of overall influence it helps them exert on others. On conflict belligerents' ends, the use of NTIs relates either to sensitive information collection and analysis used for intelligence, or for engagement in identifying targets and carrying out attacks. For human rights and humanitarian protection actors, as we have previously tackled in *Chapters 3 and 4*, NTIs' absorption in internal mechanisms, policies and training as well as for external interactions with civilians have significantly challenged professionals working to advance protection objectives. Since the turn of the 2020, we argue that a threshold has been reached as protection guardians have realised both opportunities, at the same time, have better comprehended risks around the use of NTIs in carrying out protection work. Policies, guidance, trainings have been developed for the staff and external mobilisation and cross-agency collaboration have suggested the inception of a new governance on responsibly managing the use of NTIs (and avoid misuse) and respect the 'Do No Harm' principle, that some have recently reworded as the 'Do No Digital Harm'. Considering the exponential speed, depth and reach that NTIs development has had since the 2010s, both understanding and distance are not sufficient to grapple with the arduous issue of NTIs. More reflections by both academia and operational practitioners will be needed to review this stance in the future.

- *Interpretative meanings based on regime experimentations and practices – possibly giving rise to consensual knowledge:*

Considering the multilateralism challenges and traditional (from the XX century) political negotiation process leading to conventions being in a deadlock, experimentations and practices pave the way for the IPR alterations. This is one of the reasons behind ensuring a reverberated discussion between operational experts and academic ones through our

research. The exponential characteristic of NTIs has tangibly meant various actors have used, at times misused NTIs purposely or not, before reflections, research and in-depth understandings could be sought. However, we have identified two main developments in interpretative meanings. Firstly, a general recognition of the importance to protect individual data beyond humanitarian settings. This has led some countries to adopt national legislations to ensure this implementation (e.g., GDPR in the EU), although at national level, intricacies of IOs will probably lead to further diffusion of such legislation and reinforcement of this growing norm towards the establishment of a “new normal” in ensuring individuals’ data privacy. Secondly, following an initial ‘trial period’ with member states about potential new hard law, human rights and humanitarian actors have then resorted to a reinterpretation of existing international law towards an inclusion of existing international protections of civilians in conflict to the digital sphere. It is nonetheless important to note that knowledge of the actual implications that NTIs’ uses have for civilians and in the IPR are still in ‘infancy stage’ – more understanding and a further development of knowledge is expected in the years to come. These interpretative meanings may, in turn, lead to the development of consensual knowledge among protection guardians in the future. The figure 13 below visually represents the inception of a new governance within the IPR, around the digital rules, which is essentially led by practice-driven development of new norms and rules at the level of humanitarian organisations.

Figure 13: The IPR in the XXI century – emergence of new norms encompassing digital risks and protection



Unpacking potentials, parameter and perimeters' adjustments of the IPR, Norodom's reflections on multilateralism and digital issues interestingly point out to a more pragmatic approach (Norodom, 2022). The author points out to the current lack of global coordination on digital issues and the existence of various non-binding instruments that are mostly sector specific. The reach and depth of NTIs nonetheless calls on considering that the traditional state-centric approach of IR is not suited for this issue, while a multi-stakeholder approach is considered most appropriate – which is in line with our previous reflections through *Chapters 3 to 6* (Norodom, 2022). Additionally, the issue of law is important to consider states are traditionally in charge of managing and control law application on territories under their jurisdiction. The dichotomy between the kinetic and digital dimensions of the world are of crucial importance: digital “borders” are hardly maintained in a traditional sense, posing challenges of NTIs' uses out of – traditional - authorities' control. Lastly, as we have previously seen for international law on the protection of civilians in conflict, existing bodies of law could apply to digital dimensions, but two issues are worth contemplating: (1) they have not been designed for that purpose and thus the already existing language may not be optimal or clear enough to ensure a common base of understanding, and (2) actors have not clearly defined and agreed upon existing laws to systematically cover digital dimensions.

As a result, there are two main elements to consider in the IPR's alterations and unpacking potentials: firstly, recent reconfirmations of the protection core - dignity, humanity and existing bodies of law – contribute to maintaining the relevance of a challenged international regime. Secondly, digital uses and misuses by the various IPR's actors, operationally guided by a logic of experimentation, has led Protection guardians to start embedding digital dimensions into their work (internally and externally) and showed early coordination with view to developing a new governance on the crucial issue. Other actors follow different logics: conflict belligerent use NTIs as military advantages and the exact usage remains mostly confidential, while private sector actors 'explore' possibilities in areas of chaos. The 2020s is a decade characterised by the negotiation of those new – ill-defined and limitedly governed – digital territories as well as their linking with the already well-established kinetic world and rules. A common denominator may be the key to future discussions: the human being. In our research, we have explored the genesis of protection, the structuration of the IPR, the use of

NTIs in unexplored digital territories articulated with ground realities, and subsequent discussions on humanitarian ethics and politics. In concluding on the IPR alterations through the use of NTIs, the materiality of the tools we discussed mirrors back to the human beings who design, produce, use and reflect on implications of actual uses beyond their materiality. While no international value or norm goes unchallenged, the claimed universal value of humanity and dignity continues to resonate as a strong basis for international structures: in the form of regimes, specific norms and IOs' mandates, and innovative adjustments to changing operating environments with 'orchestration' or resorting to 'soft law' (Sending, 2020). While the IPR alterations will continue to develop towards absorbing and adopting 'consensual knowledge' and new norms on 'legitimate practices' in protecting civilians, in our view, the way forward will most likely leave "high contracting parties" to open for softer – not to say subtle – agreements based on multi-stakeholder participations. Following international debates and the need to act in conflict settings, an important tension we expect to continue relates to the "humanitarian route" potentially being the "only one politically available" (Sending, 2015a). Therefore, humanitarianism (including through its now digital dimension) is under the constant risk of being instrumentalised to respond to emergency situations which eventually continue for long timeframes (e.g., DRC, Syria, Yemen amongst others) and because of the lack of 'powerful-enough' or 'willing-enough' actors to impose war ends on other actors in conflict settings. In doing so, humanitarians' apolitical claims, albeit understood differently amongst themselves, remain of pivotal importance while the 'Empire of Humanity' exercises power over the very individuals they strive to assist and protect (Barnett, 2011). We consider previous reflections from Barnett on international agents of the 'humanitarian order' delivering progress or disappointment will continue to be specifically relevant when it comes to the uses of NTIs in carrying out protection objectives, including through sensitive and intertwined aspects of politics and ethics (Barnett, 2009).

## Conclusion

Our research demonstrated that there is little doubt as to the alterations currently at play within the IPR. However, rather than a traditional vertical approach from States agreeing on new norms and rules, the NTIs' impetus for the IPR change in the XXI century has, thus far, been mostly horizontally developed – by protection guardians themselves in their practice

and facing inherent politics of the humanitarian endeavour and its sensitive protection component. Nonetheless, an important element in the research is the ability of research programmes to conceptually recognise the need to adapt theoretical frames to tangibly altered ground realities.

Developed in the 1980s, the initial International Regime analysis has been challenged by the characteristics the XXI century seems to display. Nonetheless, international regime analysis has “much to offer,” argued Young at the turn of the 2010s (Young, 2012). The author contends that international regime analysis may be a useful tool to address two major developments in international society: first, the increasing complexity of international society as it shifts to a broader range of actors in their own right, which we have largely covered in our research, among others, civil societies and private sector actors; second, the rise of what is called the Anthropocene,<sup>223</sup> characterised by rising levels of turbulence and non-linear, sometimes abrupt, and often irreversible patterns of change – which we also addressed through a specific humanitarian protection lens (Young, 2012). The challenge remains in the identified important gap between the continuing importance of social institutions, including international regimes, which are nonetheless less “equipped” (in terms of legal tools, expertise, and ability to deliver) to address the problems of the XXI century.

According to Amandeep Gill, “*power asymmetry sits uneasily with the digital technology reality*” (Gill, 2020). Protection issues are linked to security ones, which are increasingly intertwined with digital technologies, in what the UN Secretary General’s High level Panel on Digital Cooperation called “the age of digital interdependence” (UN Secretary-General High-level panel on Digital Cooperation, 2019). The mismatch between fast changing technologies and mechanisms for cooperation and governance that have failed to keep pace maintains a digital domain that face competing developments of rules and standards and potentially negatively affects trust, both at individual level and for cooperation among various actors on the issue. Therefore, it is important to consider elements brought forward in our research, specifically as it relates to the changing role of multilateralism, which some would call a ‘crisis’ in finding new approaches for cooperation, norm creation and adjustment – including for digital uses in armed conflicts of the XXI century.

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<sup>223</sup> The Anthropocene is an official term used to designate the commencement of significant human impact on Earth geology and ecosystem.



Beside the need to technically understand mechanisms, the issue of NTIs actually relates more to the human side it interacts with than the hard physical material it is made of. This can be seen at different levels: first, NTI builders and engineers, infuse (human) values and concepts into different digital tools, such as Artificial Intelligence; second, human individual and collective entities of technologies, including states and IOs, use NTIs to their specific (and often contradicting) interests; third and lastly, data and information sources that individuals represent, including civilians in conflict, willingly or not with full knowledge and understanding of implications, contribute to feeding a wide sentiment of loss. Loss of control of an exponential development that is hard to keep up with, loss of compass about what was previously understood and known and a potentially different “now,” and a certain loss of trust about the other, be it in the form of the humanitarian agency, the state, authorities. Historian Hosking diagnosed a ‘crisis of trust’ explaining it contributes to some of the glaring fissures of the social order: the lack of “trust” among members of a public, or the loss of legitimacy of how knowledge and power are mediated are important to consider (Hosking, 2014). In both war and peacetime, *“no one had imaged that disinformation and distortion of ideas and institutions through digital technology could reach such scale,”* acknowledges Gill while linking it to other ‘shaken uncertainties’ during conflicts, such as the distinction between combatants and non-combatants (civilians) (Gill, 2020: 265). Kratochwil also notes that *“even the experts of old who relied on mobilising knowledge as a useable form of power have come to see that there is inevitably a gap between their solutions and the world of praxies”* (Kratochwil, 2022: 43).

The reflections proposed in this research, focused on the articulation of NTIs in the politics and practice of the IPR are not circumscribed to the sole humanitarian system. The loss of compass, unease, and ungoverned digital dimensions reach far beyond in the organisation of world societies at large. For instance, the UN Secretary-General’s High level Panel on Digital Cooperation recommended the development of a Global Commitment on Digital Trust and Security, acknowledging the need for “purposeful digital cooperation arrangements” (UN Secretary-General High-level panel on Digital Cooperation, 2019: 5). The proposal already noted it would envision participations from multi-stakeholders: not only states and IOs, but also the private sector and civil society. Under the transversal scope of digital technologies, issues identified for further discussions, cooperation and agreement include the protection of human rights in the digital age – reaffirming it applies equally online and offline, the

conscious respect for human dignity, agency and choice (alleging AI biases into enforcing or reinforcing discriminations), and the right to privacy which we discussed at length in our research.

## General Conclusion

### I. Connecting expertise to make sense of the International Protection Regime (IPR) alteration

Through this research, we have intended to connect complementary theoretical and practical expertise; understand the often-disruptive materiality of New Technologies of Information (NTIs) on both tangible and intangible impacts on humanitarian protection; and interpret alterations of the International Protection Regime (IPR) for civilians suffering from conflict. These steps have been pivotal to respond to them research question, and notably:

*To which extent the disturbing role of NTIs affects both the politics and practices of the International Protection Regime (IPR) supporting civilians in conflict?*

We sought to “bring intelligibility to the reconfiguration of the policies of precarious lives” (Fassin, 2010). Research in political science and more specifically in International Relations (IR) often mobilises expertise from other fields, instrumentally contributing to nourish reflections and making sense of global complex interactions and interdependencies among States and other actors on the international scene. This research is no exception, and purposely mobilised both academic expertise from various fields, while incorporating operational experiences, knowledge and policy reflections alike. Political science and more specifically IR provided a coherent thread across the research: a constant questioning around the politics and practices in the uses and misuses of NTIs within the IPR. The research grasped views from over 30 humanitarian professionals from 20 different nationalities working in 5 different humanitarian organisations – UNHCR, UN OCHA, ICRC, NRC and DRC – with three different types of expertise – technical expertise affiliated with IT and IM, protection expertise, and policy/strategy/leadership. Viewpoints shared by professionals of computer systems as much as those of international law or policy development fostered a valuable horizontal cross-expertise on the highly complex issue of NTIs’ implications for the protection of civilians in conflicts.

The research was segmented around three tiers: while the first ensured to set a strong conceptual frame on protection and on the importance of information, the two following tiers conscientiously delved into the ill-defined role of NTIs in humanitarian protection work, its practical as well as ethical implications and initial developments towards new norms that intend to extend protections to the digital dimension.

In the first part of this thesis, we considered the IPR and the centrality of information. In the *Chapter 1*, we focused on an inquiry of the genesis of civilian protection. Academic works from different disciplines including anthropology, history and philosophy proved useful in order to identify the roots of the core concepts of humanity and dignity, while the categorisation of the ‘civilians’ was elaborated by men who developed the first rules of behaviour in waging war. The diversity that various academic fields bring forward was mirrored by the need to explore academic reflections arising from various parts of the world and cultures – therefore echoing discussions around the claimed universality of humanity for all human beings. The core of the IPR – humanity, has been universally proclaimed but pragmatically bounded and is understood within political, ethical and social entanglements. The malleability of the concept has been interpreted both as a political force and as a weakness, and as our research attempts to shed light on, it remains to be addressed when it comes to reconciling the digital realm with the physical world. In *Chapter 2*, we use the IR’s concept of International Regime, commonly defined by Krasner as “*implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations*” to present the different elements which compose the IPR (Krasner, 1982). We explored how the experiences of the two world wars have constituted triggers for a post-WWII formidable development of international law protecting civilians. Legal developments are specifically relevant as, even today, achievements which were secured in the WWII era for the protection of civilians facing the hardship of conflict and beyond, continue to provide the strongest common denominator shaping expectations on state behaviours during warfare. We also offered a view of the current system of actors constituting the IPR, including states themselves – legally responsible to abide by different bodies of international law they committed to, at times being either alleged perpetrators or advocates for the protection of civilians; NSAGs which are belligerents in dozens of conflicts; protection guardians of the IPR, which include both humanitarian

protection actors,<sup>224</sup> but also human rights advocates such as Human Rights Watch or Amnesty International; lastly and to a certain extent, the general public. We reviewed how the 1980s constituted a threshold of change: the use of NTIs started to be incorporated and would lastly affect societies' functioning, while humanitarian work started to become 'semi-distant', facing the intricacies of new asymmetric wars, tied with new protection issues and a significant self-inquiry within the humanitarian system.

In a second part of our research, we have explored *how* practices in the use of NTIs lead to negotiating yet unexplored digital territories. The tangible and the intangible aspects of *how* NTIs impact both practices and politics of the IPR are specifically investigated and allow us to probe the first of the three hypotheses we made in the introduction of this research.

First hypothesis: In a global information age governed by over-information and information gaps, new technologies and digital tools enabling and facilitating access, consolidation and analysis of information are not yet "absorbed" or "suited" to allow for optimal traditional protection work. The increased use of data put quantitative elements at the forefront, often overlooking qualitative aspects of protection analysis. We contend it subsequently creates a discrepancy in how protection issues and risks are captured, at the expense of its intangible components (i.e., fear, dignity).

In *Chapter 3*, we review how the protection endeavour is built with information, both from primary and secondary sources, triangulation and verifications, thorough analysis to identify most suited responses to protect or in other words to put civilians' out of harms' way, to avoid risks and to build an environment that would be less conducive to violations to occurrence. The direct engagement humanitarian protection staff have and seek to maintain with populations features an essential aspect. An understanding of civilians' experiences and their plight is needed to support and protect with suited responses, which are often dependent on situations, countries, cultures and ground realities. "Doing" protection and "Doing No Harm" can be tangible, but often is not. The operationalisation of the concept is therefore difficult to capture as when protection 'succeeds' the worst has been prevented. In

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<sup>224</sup> This notably includes the UNHCR, UN OCHA, ICRC, NRC and DRC we focused on in our research.

other cases, civilians who have survived different types of violations are provided with means to rebuild themselves – either by humanitarians with a shorter timeframe, but also through conflict resolution, justice and post-conflict healing – which is outside of the scope of our research. The integration of NTIs in protection work has been qualified as a “*fast moving and immature field*” within the academic community and, as our research findings suggest, this has also been the case within the humanitarian operational sector too (Sandvik et al., 2014). The materiality of NTIs and measurable outputs in the physical realm has first been accompanied by limited intelligibility on its intangible dimensions. Our findings intend to contribute to filling the current gap in research on the use of NTIs in humanitarian work and on what it means for the protection of the very people humanitarians strive to protect and assist. From a general enthusiasm and optimistic view welcoming new digital tools as providing ‘solutions,’ complex dashboards and time-efficiency in crunching figures and aggregates, humanitarian professionals have resorted to ‘pilots’ trials to the point that it nearly became the norm. Attempts to leverage a new paradigm led both ground practitioners and academic thinkers to signal the need to balance opportunities with systematic assessments of risks – including new digitally-induced risks for civilians. Humanitarian protection experts were not immune to digital changes – albeit often recognised to be among the most reluctant to adopt new tools. The intertwining of technological, managerial, and normative approaches allows to develop an understanding of a ‘protection issue’ – a certain blurriness of the ‘potential’ negative consequences and risks behind or embedded within digital tools revealed a clear matter of concern. Among limits and gaps we identified are the competitiveness between humanitarian actors which results in limited sharing of issues; the unequal connectivity across humanitarian theatres which requires response systems to be tailor-made, while some fear the loss of the ‘human touch’ in interacting with civilian populations. In parallel, system gaps only started to emerge, such as the lack of interoperability between existing tools and systems. The period of transition, which we called the ‘time-in-between’ the emergence of new issues and the development of principles, rules, norms and procedures to regulate them remains mostly ungoverned as calls for the development of ‘principled means’ (or principled digital tools) to reach protection objectives have become increasingly heard by humanitarian organisations’ leadership.

In *Chapter 4*, we researched how the exponential acceleration in NTIs' development from the 2010s has reinforced an existing drift – both in conflict and humanitarian practices. A drift where digital tools have metamorphosed faster than human humanitarian professionals' ability (or at times willingness) to use them, while increasingly recognising the need to remain aligned with fundamental humanitarian principles, including humanity. Fassin has recently argued there are *“inequalities among lives”* as he specifically focuses on the 70 million forcibly displaced people who are 'on the margins' in different geographical locations, while he contends how governments handle such cases reveals values they defend (Fassin, 2020). Besides governments' responsibilities and varied strategies to manage those at risk close or far from their national borders, humanitarians' responsibilities and digital means to achieve their goals are also to be considered. The intangible – or the difficult – questions related to ethical and political implications arising from the use of NTIs started within regular armies first – at times shivering the IPR foundations to serve a war narrative with a logic of security, opposing to recent humanitarian debates driven by a logic of protection tackled in academia (Duffield, 2016, 2018; Jacobsen, 2015; Rouvroy, 2016; Sandvik, 2017). The hard questions on ethics and political implications have moved from the margins to the centre and taken roots within larger reflections around a better consideration of risks that NTIs may leverage; these questions were also slowly integrated into humanitarian protection organisations' reflections, practices and policy making. A common recognition that 'relevant' questions were asked – notably around risks and protection guardians' own responsibility in using technologies of information in their work - was identified through our field research. Humanitarian principles therefore started to be reviewed with a digital lens: the tradition 'Do No Harm' was revisited with 'Do No Digital Harm' and focused on the extension of the consideration of a person from their physical and psychological being to welcome a new addition: the digital body (Burton, 2020; Dette, 2018; Marelli, 2020). Recent research on technology and humanitarianism recently pointed that *“the continued development, uptake and regulatory challenges of new technologies such as artificial intelligence require an emphasis on digital literacy in the sector, as well as ethical reflection about the costs and benefits of digital services in relations to humanitarian principles, and legal and regulatory frameworks”* (Sandvik et al., 2022: 198).

The important issue of trust became more clearly apparent as humanitarian protection organisations increasingly recognised the need for responsible collection, storage, sharing

and use of sensitive data and information collected from conflict areas and concerning civilian populations directly or indirectly. As humanitarians started to seize the issue through integrating digital aspects into their codes of conduct, policies and dedicated more resources and expertise as a priority – a nascent governance, essentially pushed forward by the authority of humanitarian actors through their practice and expertise, has emerged. In our inquiry of the IPR alteration, the changes are most directed at the level of procedures and rules for humanitarian professionals. Our findings allowed to confirm NTIs are not yet ‘absorbed’ by humanitarian protection organisations nor by other actors of the IPR. We identified that the over-reliance on quantitative digital-oriented tools challenges humanitarian protection actors’ traditional approach of protection and lead them to adapt their analysis towards balancing quantitative and qualitative methodologies to develop sound protection narratives: if a new balance has not yet been found, it is nonetheless being sought.

In the third and final part, we researched how protection knowledge (re)generates through the incorporation of the use of NTIs within protection work. The research demonstrated that NTIs are more than a sole ‘variable,’ looking at the implication of their uses, at times (intentional or non-intentional) misuses by actors of the IPRs – states, NSAGs, and protection guardians. Albeit asymmetrical in their penetration within different societies and organisations’ functioning, humanitarian protection actors now use NTIs on a daily basis – including for protection work. This allowed us to probe both our second and third hypotheses through *Chapters 5 and 6* respectively.

Second hypothesis: protection guardians contribute to shaping the debate through (1) their expertise and field-based knowledge (including both quantitative and qualitative elements of protection information) and (2) their role in ‘humanitarian diplomacy’ – therefore re-negotiating the terms of the IPR.

In *Chapter 5*, we have explored how the (mis)uses of NTIs impact new knowledge generation processes. The congruence of concept with information and ideas contributes to creating knowledge required to pursue the protection mission; it is nonetheless a certain loss of compass that was identified at two levels. First, an un-ease for having to ‘keep pace’ with NTIs’ absorption in humanitarian protectors’ practice in a way that is considered aligned with



protection principles and objectives – including in direct interactions between humanitarians and civilians themselves. From individual skills development to organisational change, the need for investment in enhanced protection analysis and delivery of protection messages in order to influence alleged perpetrators or those exerting influence on them was identified as a strategic necessity. In addition, amidst information overload on the one hand with the public sharing pictures and photos of their plight almost – ‘as it happens’ on the one hand and what we called ‘data deserts’ on the other, places with no access to NTIs for information sharing, or places purposely cut off from outward communications by belligerents for political purpose, there is a need to better understand digital tools, their limits and biases, in order to use them as suited means to support protection ends. In contrast with state-centred research in IR, we explore the communities of practices which mobilise to defend the protection episteme and find a new balance. Cognitive evolution views led us to use existing theoretical frameworks developed by E. Haas on learning and adaptations to apply them to the IPR alterations and to find consistency with the ‘turbulent non-growth’ model as humanitarian actors seek to adapt. In using often digitally supported knowledge, various strategies are explored to influence, e.g., issue-linkage strategies or cross-issue persuasion among others. Through the research developed in this Chapter, our findings confirmed that both field-base expertise and humanitarian diplomatic skills and continuous engagement results in having protection guardians play an active ‘shaping’ role in both consciously and cautiously renegotiating the terms of the IPR.

In *Chapter 6*, we delved into the search for common grounds of the IPR. We specifically mobilised IR theoretical works on international regime change, notably using works of Krasner and Young, theorising the challenge of adaptation and reviewing the opportunities along with related perils. This allowed us to probe our third hypothesis.

<p><u>Third hypothesis:</u> The IPR’s foundations are challenged by the paradigm shift the (mis)uses of NTIs among various actors of the system implies: regime alterations lead to a lessening of the protective capacity of the IPR.</p>
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Effectiveness and robustness of international regimes were notably discussed as to whether the IPR – often disrespected, even by its own signatories, could still exert influence over its actors and shape expectations of behaviour. As regime complexity, including for the IPR, called upon humanitarian protection actors to diversify their advocacy work and humanitarian diplomacy strategies, the ‘orchestration-intermediary’ model offered a useful frame to support multiple linkages and subsequent interdependencies between both actors and issues (Abbott et al., 2015b, 2015a). Opportunities lie with humanitarian actors’ expertise, from which they derive a certain authority in international fora – bilateral or multilateral – while risks challenging the XX century-anchored IPR common base remain present. As change speaks not of a choice but of a necessity to adapt, opportunities for expansion seem tempting while inspiring caution. A constraint in recomposing the IPR lies with re-interpreting the core IPR for survival, using for example the Martens’ clause to advance narratives that would suit contemporary realities of conflict. Beside humanitarian protection organisations’ expertise, views and advanced narrative, the issue of norm alteration was identified to grow in significance. Our findings point out that norms are at the same time challenged and tentatively changed – a delicate situation where the malleability of the concepts of humanity and dignity might be helpful as long as ‘common grounds’ among actors still allow to draw a line on ‘expected behaviour.’ Lastly, we recognised the current turbulences within the humanitarian system to be linked to the challenges of its core and redefinition of its contours: a matter of parameter as well as perimeter. We argued the emergence of new norms encompassing digital risks and protections has started and is yet to be further negotiated upon by actors composing the IPR – the decade of the 2020s will certainly give more prominence to ‘issues without borders’ at the international level. Therefore, the first part of our third hypothesis has been verified: the IPR’s foundations are being challenged by the paradigm shift implied by the (mis)uses of NTIs. However, the second part of this last hypothesis could not be fully explored as the lessened or increased capacity of the IPR will mostly depend on the outcomes of the current renegotiations and emerging new norms: if a common agreement (most likely not legally binding) is found around principles governing digital dimensions that concern civilians in conflicts, then a reinforcement is possible. To the contrary, if no such subtle agreement is found, humanitarian protection guardians will need to be innovative and pursue other paths to reconcile physical, psychological and digital dimensions of civilian bodies they intend to protect. Continued

academic attention and research will therefore be needed to reflect and interpret future international developments towards the emergence of a new digital component of protection governance.

Drawing the research to a close, our findings pointed at significant disruptions and discomfort implied by the difficult and uncomfortable NTIs' absorption by actors of the IPR, and more specifically protection guardians. Yet, humanitarian protection actors have tried, at times failed, but continue to raise important ethical considerations that allow to reflect and manoeuvre among old and new paradoxes transpiring from complex ground realities. As humanity is and remains a malleable concept, the extrapolation of existing protective principles, norms, rules and procedures from the physical and psychological towards the digital dimension of the civilian body is underway. While contours and substance are being refined and renegotiated, no global governance has yet been substantially designed, discussed and agreed upon on the subject-matter. Current and future norm developments will likely further take shape through softer agreements (not to say subtle) based on multi-stakeholder participations. Possible entanglements are nonetheless several: humanitarian protection practices and subsequent inherent politics (recognised or claimed otherwise) implied by the (mis)use of digital tools will continue to require sustained policy reflections and academic research to shed light on the digital dimension complexities in already convoluted conflict realities. While our research focused on identifying and understanding how the use of digital tools impacts the IPR alterations supporting civilians in conflicts, the disturbing NTI variable nonetheless has a global and holistic reach beyond conflicts, borders and asymmetrically across societies.

## II. A critical research agenda: towards a global digital governance?

The notion of 'time-in-between' along with fast, at times exponential, development of digital tools and slow absorptions by users and organisations of various kinds was echoed both in our research and beyond as authors recently argued that *"digital governance has been changing much slower than digital technologies"* (Kurbalija, 2023). Similarly, in his opening remarks at the 14<sup>th</sup> Internet Governance Forum (IGF) in 2019, A. Guterres, the UN Secretary

General shared that *“there’s an absence of technical expertise among policymakers even in the most developed countries, invention is outpacing policy setting, and measured difference in culture and mindset are created further challenges...while industry has been forging ahead and at times breaking things, policymakers have been watching from the sidelines”* (Guterres, 2019). A global paradigm shift accompanied by the shaking pre-established international frameworks currently leads diplomats, technical experts, UN civil servants, private companies’ members and other stakeholders to mobilise around the multifaceted and multi-dimensional issue of global international governance.

- **Fragmented developments of national laws and policies: preparing for contestations**

Contrasting with the early 2010s, governments have recently been less cautious and more ‘daring’ in creating new laws and policies around digital uses for multiple purposes. Similar to our research on the impact of NTIs on the IPR, actors’ decisions and proactive steps to create, generalise or impose new practices spearhead upcoming planned global discussions on a global digital governance. National regulations and subsequent recent practices intend to provide examples as well as arguments in upcoming international discussions and negotiations, among which are regular discussions within the International Telecommunications Union (ITU), groups of experts and open-ended working groups, and the Summit for the Future when a Digital Global Compact will be discussed in September 2024.

Various states have been increasingly and proactively engaged on data governance at various levels over the last years. China’s increasingly assertive efforts to influence international data governance, especially cross-border data flows, and to promote the concepts of ‘cyber sovereignty’ have been recognised (Cory, 2022). China has enacted *“dozens of laws and regulations making data transfers illegal or prohibitively complicated and costly”* – making it the most data-restrictive country, followed by Indonesia, Russia and South Africa (Cory & Dascoli, 2021). Nonetheless, according to the authors, the growing trends towards the development of data-localisation measures around the world has been observed with a sharp increase over the last four years: in 2017, 35 countries had implemented 67 of such measures while in 2021, some 62 countries had imposed 144 restrictions and in others such measures were under consideration (Cory & Dascoli, 2021). National data restrictions represent an

important element in the further development of a potential global data governance. Concerns over data flow transfers can notably relate to economic exchanges, but also data privacy of data subjects and data consumers: finding a common base on transfers that would be 'agreeable' among member states of the UN would notably requires reconciling significantly diverse views.

The EU's approach notably features in the General Data Protection Regulations (GDPR) - adopted in 2014 and which came into effect in May 2018 – which seeks to protect the privacy and rights of internet users (European Parliament and Council of the European Union, 2016a). It has often been considered a 'turning point' in internet governance through giving back 'control' to consumers over their own data, while critics have argued it may not easily accommodate innovation from the private sector. More recently, in line with the European Strategy for Data, the Data Governance Act aims at increasing trust in data sharing, strengthening mechanisms to increase data availability and overcoming technical obstacle to the reuse of data (European Parliament and Council of the European Union, 2022). The Act officially entered into force on last June 2022 and will be applicable from next September 2023. Its claimed objective is to boost the development of trustworthy data-sharing systems through four broad sets of measures both framing and facilitating data sharing among EU members: i.e., mechanisms to facilitate the reuse of certain public sector data that cannot be made available as open data; measures to facilitate that data intermediaries will function as trustworthy organisers of data sharing or pooling within the "*common European data spaces*"; measures to make it easier for citizens and businesses to make their data available "*for the benefit of society*"; and measures to facilitate data sharing to make it possible for data to be used across sectors and borders, and "*to enable the right data to be found for the right purpose*" (European Parliament and Council of the European Union, 2022).

For its part, China's Global Initiative on Data Security (GIDS) from 2020 defends the view that "*States have the responsibility and right to ensure the security of important data and personal information bearing on their national security, public security, economic security and social stability*" (Ministry of Foreign Affairs of the People's Republic of China, 2020). The document is often referred to as China's conceptualisation of data sovereignty (also called digital sovereignty). China is viewed to emerge as a standard-bearer for this model, which would seek to reinvent to readjust the initially free and open-access model of the internet. The

country has notably invested on multilateral processes and institutions such as the ITU, where technical-level exchanges are held.

The concept of digital sovereignty is at the crossroads of the traditional statecraft that sovereignty represents and the digital dimension that is a challenge for its often cross-border nature and has mobilised attention and resources from states over the last years. This is understandable considering that the stakes of a global digital governance have now been recognised and will be further defined in the years to come with an already packed schedule of established international multilateral fora – and as we expect, much beyond. Attempts of definitions of digital sovereignty encompass the ability by states to exercise control in the digital sphere, or ability to act independently in the digital world, to govern and regulate the use of digital tools within a country's border (classic transposition of traditional statecraft in the digital realm), ability to shape the global digital environment to align with national values and interest, and the ability to ensure an appropriate level of digital literacy among citizens. No globally agreed definition has yet been adopted on the subject matter.

If technical arrangements of the internet mechanisms function through well-established rules, international policy developments around the development of new digital tools yet remain to be further developed, designed, agreed upon and implemented. This 'time-in-between' is used opportunistically by actors who want to change the current frame to reflect their views and values, while others want to preserve and extend the existing international one. To this day, there are limited international norms, binding rules, or agreements on how organisations collect, use, protect, store and share data, and there is no single forum on how to manage global digital governance overall. Instead, the complex and multi-dimensional issues of data governance have been spread across disparate fora – both at technical and policy-oriented levels - and through national, subregional or international levels. Fragmentations around global issues of data governance are already a fact on the international stage.

The continued development and proliferation of localised agreements means additional elements of governance, but not 'global' governance on digital spaces. What is at stake in upcoming processes to develop a global agreement is the opportunity to agree on core principles and reconfirm already existing technical standards that would provide a base for a

global governance of digital spaces. The failure to reach a global agreement would result in further fragmentation. The current global technical mechanisms may crumble as territorially-bound new – and likely diverging – rules and tools may emerge. Some already argue a ‘splinternet’ is already under way. The contraction of the words ‘splintering’ and ‘internet’ refers to the splintering of the internet into several fragmented pieces – each being governed by different rules and regulations, *de facto* leading to the development of multiple parallel internets (or splinternets) that are not connected to one another, possibly non-interoperable. The internet then may become a ‘walled-off’ infrastructure that separates into geopolitical areas at national, sub-regional or regional levels. Renewed debates around the growing fragmentation of the internet have raised the issue of “*an increasing divergence of internet standards and protocols*” (Perarnaud et al., 2022). Already identified threats to the development of a unified internet notably encompass: “*technical factors fuelling forms of technical splintering, a reduction in the flexibility of networks (or internet ossification), growing organisational concentration in internet governance, consolidation of the internet architecture and digital economy, and the process of alignment of the internet with territorial borders*” (Perarnaud et al., 2022: 1). Observations of a territorialisation of the digital sphere have already been multiple over the past years: both with technical changes and restrictions and new national regulations (Drake et al., 2016; Lambach, 2020). Lambach sees territorialisation as more than “*just fixing boundaries*” but rather as a process of defining, delimiting, and inscribing space which is changing and is being contested and for which cyber space is a new territoriality that has emerged (Lambach, 2020). The digital space (or territory) is currently being renegotiated by the various actors and stakeholders – states but also the private sector and specialised IOs – with diverging interests and subsequently competing claims. In doing so, actors dematerialise their own ability in order to invest in the digital sphere they intend to exert control on – by drawing new boundaries around digital dimensions as they attempt to connect digital dimensions to physical geographical locations – in the search of a new adequation between offline (physical) and online (digital) realms into one and the same.

- **Fierce positioning in a packed multilateral negotiations’ agenda: towards 2025 and beyond**

In 2000, Kurbalija and Baldi published a pioneer book titled *Internet Guide for Diplomats* which already articulated how the use of digital tools or IT could enhance key aspects of diplomatic work: interaction and information (Kurbalija & Baldi, 2000). Twenty years later, Baldi notably consider that if the tools have evolved and been incorporated into daily lives of diplomats, foreign ministries and IOs, and asymmetrically within societies; issues of data management and governance nonetheless remain very similar (Baldi, 2020). According to Baldi, internet governance is a subject matter that the international community has been heavily discussing without being able to find sufficient common ground, and he concludes that *“ahead of us, the pendulum between continuity and change will keep its rhythmic swing”* as it applies to diplomats that work on digital governance (Baldi, 2020). Growing advocacy efforts around data governance is however not happening in a vacuum: EU countries, Japan, China, Russia, the US and others are similarly advocating for their own views of how the global digital governance of the future should be shaped (Dunn Cavelty, 2015; Runde & Ramanujam, 2021). Current international debates point to multiple contestations of the current international structure – both through technical and internal regulations - currently governing digital governance. *“The renegotiation of spaces and the deployment of cyber capabilities can have a significant impact on global politics,”* argues Lambach (Lambach, 2020). Worth noting, China along with Russia, have been observed to significantly increase their diplomatic attention and dedicated resources to the UN for its central role in digital governance, advancing arguments favouring the recognition of a national digital sovereignty – including as it relates to discussions on a potential treaty on cybercrime (Cory, 2022). The Open-Ended Working Group (OEWG) on Information and Technology provides an open forum where states can discuss, exchange views, think collectively while also advancing their views. Besides this development, a first UN Group of Governmental Experts (UN GGE) was convened in 2004 to examine the impact of developments in ICT on national security and military affairs. Since then, consultations and discussions have been regular as part of the UN Groups of Governmental Experts (UN GGE) rounds<sup>225</sup> discussing cyber under the umbrella of the UN

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<sup>225</sup> Six UN GGEs have been convened over the years: in 2004/2005, 2009/2010, 2012/2013, 2014/2015, 2016/2017, and 2019/2021.



Office for Disarmament (UNODA). The group, later renamed as “UN GGE on advancing responsible state behaviour in cyberspace in the context of international security” – has been credited for two major advancements in non-binding agreements: first, for its contribution in outlining a global agenda on the issue; and second, for introducing the principle that international law applies to the digital space. The latter has notably been advocated for by some states and within UN discussions ahead of upcoming international multilateral discussions related to a global digital governance. The OEWG and UN GGE have witnessed an enhanced investment by states over the last years: for example, Brazil and Mexico have for example been active in both. In 2021, a milestone – unexpected - consensus report was agreed upon and reached by the OEWG members, titled *Open-ended working group on developments in the field of information and telecommunications in the context of international security* (UN General Assembly, 2021). The consensus report is important as it was shared and adopted among 193 Member States part of the UN General Assembly. Although non-legally binding, it nonetheless recognises the importance to define and agree on the nature of ‘threats’, recalling previous GGE’s notes for military purposes; it also agrees on the character of new threats on health, integrity, availability of the internet, election interferences, while recognising the potentially devastating security, social, economic and humanitarian consequences cyberattacks can create:

*“States concluded that there are potentially devastating security, economic, social and humanitarian consequences of malicious ICT activities on critical infrastructure (CI) and critical information infrastructure (CII) supporting essential services to the public”* (UN General Assembly, 2021: 4).

The report discusses the importance of ‘norms’ in a section titled ‘rules, norms and principles for responsible state behaviour’ which insightfully reflects and skilfully accommodates different nuances: while the paragraph 24 states that voluntary, non-binding norms of responsible state behaviour can reduce risks to international peace, security and stability, paragraph 25 recalls that states reaffirm that norms do not replace or alter states’ obligations or rights under international law, which are binding, but rather provide *“additional specific guidance on what constitutes responsible State behaviour in the use of ICTs”* (UN General Assembly, 2021: 5). The current OEWG on security of and in the use of ICT (2021-2025)

currently holds a series of ‘substantive discussions’ (December 2021 to July 2023), while the start of the war between Russia and Ukraine from the 24<sup>th</sup> February 2022 has further crystallised oppositions between Russian and so-called ‘Western’ countries – the implications of the war for such multilateral discussions yet remain unclear. Nonetheless, the recent more active participation in standard-setting organisations and working groups that can shape orientations of standards (including at a technical level) by member states may signal further investment in norm-setting practices. Meanwhile, UN-facilitated discussions have also gained traction and contribute to generating a larger recognition and understanding of the multifaceted digital issues that require discussions among states and other stakeholders with a view to developing the basis of a global governance. In 2018, the UN Secretary General convened a High Panel on Digital Cooperation, co-chaired by Melinda Gates and Jack Ma (Kimball & Kornbluth, 2019). The Panel discussion and report notably highlighted the need and importance to foster a greater inclusivity and trust online, along with the need to protect human rights and human agency – notion to which human dignity is associated (UN Secretary-General High-level panel on Digital Cooperation, 2019). The following year, the UN General Assembly adopted a resolution on 21 September 2020, as part of a declaration on the commemoration of the seventy-fifth anniversary of the UN, which notably mentions the will “to improve digital cooperation” including addressing ‘digital trust’ in paragraph 13 page 4 (UNGA, 2020). A year later, the UN Secretary-General report of 2021 was titled *Our Global Agenda*, and featured proposals for 12 commitments on various global issues, including commitment 7 on improving digital cooperation (United Nations, 2021). This commitment is linked to discussions on the potential development of a ‘Global Digital Compact’ that would notably aim to avoid the internet fragmentation discussed above, to protect data, to apply human rights online, to introduce accountability criteria for discrimination and misleading content, and to promote regulation of AI, and digital commons as a “global public good”. The report notably argues that “it is time to protect the online space and strengthen its governance” (United Nations, 2021: 63).

Although nothing has been decided thus far and most of the issues are under discussion, the important difference is that in early 2010s, digital or cyber issues were considered as “sectoral issues,” while in the early 2020s they were considered as “geostrategic” ones; therefore they would benefit from further academic research, especially from political science and

International Relations (Kleinächter, 2022). Looking ahead, the Global Digital Compact is expected to *“outline shared principles for an open, free and secure digital future for all”*. In a UN background note on the Global Digital Compact, the worldwide digital transformation (also referred to as the fourth industrial revolution) is mentioned by the UN Secretary-General A. Guterres as one of the two seismic shifts of the XXI century – the other one being the ‘climate crisis’ (United Nations, 2022). In terms of expectations, Amandeep Singh Gil, the UN Secretary-General’s Envoy on Technology, explained *“we hope for the Global Digital Compact to be the highest-level-capturing of political will so far, in terms of a comprehensive view of the digital world. It would ideally touch upon the challenges and the risks that digital technologies may pose to human rights, fundamental freedoms, and human agency”* (UN ITU, 2022). The current multi-level and multi-stakeholder discussions and preparations ahead of the Summit of the Future in 2024, the World Summit of Information Society in 2025 (including the IGF), and UN cybersecurity discussions will evolve towards a Plan of Action; this achievement would certainly benefit from further academic research, focusing notably on norms’ development and their role in constraining state - and other actors’ – behaviours.

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