UNFINISHED BUSINESS: CANADA’S CONTRIBUTION TO PROMOTING COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW THROUGH THE PROTECTION OF CIVILIANS IN ARMED CONFLICT AGENDA OF THE UNITED NATIONS SECURITY COUNCIL

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During its 1999-2000 term on the United Nations Security Council, Canada helped launch the Council’s “Protection of Civilians in Armed Conflict” agenda. This aimed to reduce civilian war casualties through better respect for international humanitarian law [IHL]. This article reviews the agenda’s origins and evolution ten years on. The authors focus on Canada’s contributions in increasing the Council’s efforts to protect civilians, with three main assertions. First, Canada had a key role in creating and promoting the agenda, an important IHL initiative. Second, the agenda is well established in the Council’s work, but needs further effort to ensure greater impact in specific situations. Third, Canada could develop the agenda and improve respect for IHL if it joins the Security Council for the 2011-2012 term, picking up its “unfinished business” from its last Council term.


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I. INTRODUCTION

In 1999 and 2000, Canada played a key role in launching the thematic agenda of the United Nations Security Council on “protection of civilians in armed conflict.” This aimed to reduce the civilian casualties of war through better respect for international humanitarian law.

On the 10th anniversary of the landmark Security Council Resolution 1265, this article reviews the origins and evolution of the protection of civilians in armed conflict agenda (the Agenda).¹ Our focus is on Canada’s role in increasing the Council’s attention to international humanitarian law (IHL) to protect civilians affected by armed conflict.

Our main thesis is simple: that Canada helped launch an important initiative in IHL and continued to promote it. Canada will have an opportunity to develop this further if it joins the Security Council for the 2011-2012 term, by picking up its “unfinished business” on the Agenda from its previous Council term.

A secondary thesis relates to timing and converging interests. Canada’s willingness in 1999-2000 to promote IHL through what we today call the Agenda coincided with the Council’s need and readiness to do more on the protection of civilians. Canada and the Council were deeply affected by the searing humanitarian crises of the early 1990s, in Somalia, Rwanda and the former Yugoslavia. By the end of the 1990s, Canada began to articulate approaches on responding to chronic IHL violations against civilians at the same time the Council was recognising that such violations were linked to its mandate to maintain international peace and security.

Today, the Council is lauded for its work on the Agenda but also criticized that it is not adequately preventing serious violations of IHL against civilians in specific situations. And today in Canada, controversy continues over Canada’s military engagement in Afghanistan and its impact on civilians there, Canada’s transfer of detainees, and even Canada’s public references to IHL. Set against this backdrop, Canada’s campaign to join the Council could allow for another convergence, with Canada and the Council sharing an interest in demonstrating their commitment to IHL not just in principle but also in practice. The Council is under some pressure to close the gap between its Agenda and the specific situations it considers, some of which are considered in the paper.

We review the Agenda’s origins through discussion of the key world events that led to Resolution 1265, including the responses of the international community and Canada. We then focus on the Agenda’s early development during the intensely productive period of 1999 and 2000. We examine Canada’s role especially for the two months it held the Council Presidency, February 1999 and April 2000.

We next explore the Council’s efforts from 2001-2008 to translate their shared

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¹ For the purposes of this article, we consider the Agenda to be comprised of the series of Council resolutions, presidential statements, and debates as well as Secretary-General Reports and related developments, including Council action in specific geographic situations, all concerned with IHL as it relates to civilians.
concerns into more focused action. Canada’s contribution during this period was of course limited as a non-Member of the Council, but Canada remained engaged. We consider how the Council has addressed recurring IHL themes, such as humanitarian access and impunity. We then discuss the most recent Agenda developments up to the Council’s open debate and resolution of November 2009. We offer an assessment of the Council’s efforts, including progress achieved and gaps remaining, after ten years.

Finally, we conclude with a view to the Agenda’s future. Ten years on, the Agenda is clearly established as part of the Security Council’s work. However, the challenge remains of translating the Council’s repeated commitments into action with a tangible impact on the ground.

Canada has declared its intention to seek a Council seat for 2011 and 2012. If it succeeds, Canada will have a critical opportunity to further the Security Council’s engagement in the protection of civilians in armed conflict. It will also take up again the responsibility to make real the Council’s promises, to countless civilians around the globe affected by war, to better protect them through IHL.

This paper does not aim to critically assess Canada’s contribution and engagement on the Agenda in relation to Canada’s overall foreign policy positions and action during this period, including its responses to specific conflicts or situations. It is of necessity more modest, documenting Canada’s early contributions to the Agenda’s launch and its public positions on the evolving Agenda, and identifying how Canada might help advance this Agenda in future to ensure better protection of civilians in armed conflict through better respect for IHL.

II. ORIGINS: 1990s TO RESOLUTION 1265

A. Cataclysmic World Events

The second half of the 20th century, particularly the early 1990s, saw the outbreak of armed conflicts with unbelievably high numbers of civilian casualties. Civilian deaths caused by armed conflict since the Second World War run into the millions, estimated as high as 18,484,000. Of particular concern in these staggering figures is the knowledge that civilians were specifically targeted in systemic campaigns aimed at terrorizing and killing civilians, sometimes seen as “enemy” civilians. Somalia, Srebrenica, Rwanda


and Kosovo head a long list of “successive humanitarian disasters” not only for the scale of the killing and torture neighbours visited upon one another, but also for the international’s community limited action and its failure to stem the flow of blood.6

Canada added its voice to the chorus of nations that publicly expressed outrage at these modern day killing fields. In a 1994 statement to the Security Council, Canada articulated its position:

The crimes committed in Gorazde and elsewhere in Bosnia must not go unpunished. Those responsible for deliberate attacks on civilian populations, hospitals and refugee centres, in violation of all the norms of international law, must be made to answer for their actions before the International Tribunal created for the purpose.7

Certain themes emerged to reveal the nature of these 20th century, post-Cold War armed conflicts and the character of international reactions to them. These armed conflicts are primarily non-international, yet affect the broader region with refugees or illegal trafficking and involve non-state combatants. The international community and the Council in particular have responded inconsistently and remained divided on squaring state sovereignty with permissible international intervention.

The events of the 1990s were wrenching and disorienting for the UN and for Canada. For the UN, its failure to act effectively to prevent or respond to the devastating events in Somalia, former Yugoslavia, or Rwanda was a failure to fulfill its *raison d’être*, “…to save succeeding generations from the scourge of war….”

Canada’s direct involvement in all three of these crises brought them indelibly closer to home. Canadians were seared by the images of Shidane Arone in Somalia, of the Canadian soldier chained as a human shield in former Yugoslavia, and the protracted anguish of General Romeo D’Allaire after the failed UN engagement in Rwanda.

Adding to Canada’s bewilderment was the humanitarian crisis in Zaire in November 1996. Civil war pushed more than a million Rwandan refugees and


6 The UN’s ineffectiveness in responding in a timely or appropriate fashion has been well documented and is outside the scope of discussion of this paper. For further reading, see, *inter alia* The International Response to Conflict and Genocide: Lessons from the Rwanda Experience, Joint Evaluation of Emergency Assistance to Rwanda, 5 volumes (Copenhagen: Government of Denmark, March 1996); online: Srebrenica – Reconstruction, Background, Consequences and Analyses of the Fall of a Safe Area <http://srebrenica.brightside.nl/srebrenica/> (date accessed 12 August 2009).

Zairian civilians into flight. The Council authorized a military force to create “safe corridors” for the delivery of humanitarian aid. Canada was prepared to deploy the major military force for the Zaire operation. The mission was later abandoned as events on the ground had changed.8

Internationally, Canada long enjoyed a reputation as a multilateralist, an effective mediator, a diplomat and a pragmatist with particular expertise in peacekeeping, international criminal justice and human rights. As such, it had garnered respect greater than its middle power status might otherwise suggest. Former Canadian Prime Minister Lester B. Pearson is widely considered the father of peacekeeping, a great supporter of the United Nations and gifted in international diplomacy. Canada’s continued reputation as a conciliatory, multilateralist and peace-minded nation is no doubt in part due to Pearson’s contributions.9 Canada’s pro-UN and peacemaking tendencies are widely known and certainly extend beyond Pearson’s work.

We posit that Canada strove to maintain some of these traditions – albeit imperfectly - whilst adapting policies as the world and Canada changed in the 1990s, a particularly brutal decade. In response, Canada’s policy evolved. Its historic involvement in peacekeeping, for example, was transformed in part into the larger spheres of the “responsibility to protect” and “human security” policies. We argue below that this transformation set the stage for Canada’s subsequent lead on the Protection of Civilians in Armed Conflict agenda at the Council.

B. Evolution of Canadian Policies

Canada pursued many avenues to remedy the perceived weaknesses in the international legal system that calamities such as Rwanda and Srebrenica revealed. One important pursuit was its effort to enhance the Council’s capacity and commitment to protect civilians in armed conflict. In parallel, Canada sponsored the International Commission on Intervention and State Sovereignty in order to reconcile the “obligations of sovereignty” with the “humanitarian imperatives” of modern day warfare.10 The resulting report, The Responsibility to Protect, introduced a new way to characterize the longstanding desire to minimize the impact of conflict on civilians. In addition to these two tracks, Canada promoted a “human security” agenda, participated actively in discussions on reforming the Security Council and campaigned vigorously for the establishment

8 Canada was lauded for its readiness to commit to the planned UN mission in Zaire, but the events also left in their wake questions about Canada’s policy aims and capacities for complex peace operations. Louis A. Delvoie, “Canada and International Security Operations: The Search for Policy Rationales” (2000) Canadian Military Journal, 13 online: <www.journal.forces.gc.ca/vol/no2/index-eng.asp> (date accessed 7 May 2010) at 21-22.
9 Canada is no longer considered to be a major peacekeeping country in terms of military contributions. According to the September 2009 UN Department of Peacekeeping figures, Canada is ranked 56th (out of 116 countries) in military and police contributions with 178 members in peacekeeping missions. Pakistan is the largest contributor with 10,580 members. United Nations Peacekeeping – Monthly Summary of Contributors of Military and Civilian Police Personnel, online: United Nations Documents <http://www.un.org/Depts/dpko/dpko/contributors/index.shtml> (date accessed 15 November 2009).
of a viable and effective International Criminal Court. By the late 1990s, much of the emphasis in Canada’s foreign policy was on human rights as the basis for peace and stability. Related developments were taking place at the Security Council.

1. Responsibility to Protect – (R2P)

The R2P concept was developed in direct response to the international community’s painful failings to prevent “the genocide in Rwanda and the deliberate targeting of civilians in Kosovo and Srebrenica.” It represented an attempt to reconcile a state’s sovereignty with “the moral imperative to act – with force if necessary – in the face of genocide and crimes against humanity.” Historically, these two notions were widely seen as diametrically opposed. Building on the work of others (including the French concept of the “droit d’ingerence”), Canada proposed a way to approach the debates differently by sponsoring an independent commission, the International Commission on Intervention and State Sovereignty (ICISS). Its 2001 report, The Responsibility to Protect was adopted as a UN document.

While R2P’s lasting impact is an open question, Canada has steadfastly supported the concept as an effective method of engaging states, the Council and the international community in reducing human suffering caused by armed conflict.

The ICISS R2P Report brought three important changes. First, it shifted the discourse from the “right to intervene” to the “responsibility to protect.” This represented an important assertion, made with the hopes of preventing inaction (such as Rwanda) and better guiding interventions (such as Kosovo, and Bosnia and Herzegovina). Second, the R2P Report redefined “sovereignty” in light of a state’s duties, not only its prerogatives, with an emphasis on the duty to protect its civilian population. Third, the R2P Report described the three

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12 Ibid.
17 ICSS R2P Report, supra note 14 at XI.
18 Legal Bureau, supra note 16 at 598.
duties that constituted the international community’s responsibility to protect civilians: prevention, reaction and rebuilding. This has conceptual and policy links with human security.

2. Human Security

“Human security” is a United Nations Development Programme concept that gained some traction in development and policy circles and included elements of “freedom from fear” and “freedom from want.”\(^{19}\) Canada began to promote the first, encompassing questions such as “the prevention and resolution of conflicts, the protection of civilians, the combat against transnational crime, the promotion of human rights and the rule of law.”\(^{20}\)

By the mid 1990s, Canada was promoting its own version of a “human security” agenda, championed by then Minister of Foreign Affairs, Lloyd Axworthy. Freedom from fear was consistent with contemporary Canadian foreign policy and international obligations. It offered an opportunity to re-characterize what it meant to be a peacekeeping nation.\(^{21}\) Indeed, some writers have suggested that Canada’s human security discourse served to legitimize pre-existing policies such as peacekeeping.\(^{22}\)

Canada’s promotion of human security appears to have converged with the Agenda’s focus on IHL and human rights to minimize civilian casualties and strengthen international cooperation and security:

The human security approach is a natural fit with an activist role for Canada in the UN system. While it was true that to achieve a treaty banning land mines we had to short-circuit the UN Conference on Disarmament in Geneva […], the broad sweep of the land-mine campaign fully engaged many other agencies and people in the UN network, including two secretaries-general. More important, it provided the tools and techniques to create the International Criminal Court.\(^{23}\)

3. International Criminal Court

Canada played a leading role in establishing the International Criminal Court (ICC), with the adoption of the Rome Statute in 1998. The Rome Statute entered into force in July 2002, bringing into existence a permanent international court that addresses the most serious international crimes – genocide, crimes against humanity and serious violations of IHL.

Canada confirmed its commitment to the ICC by adopting comprehensive national legislation to integrate this into national law, the first State to do so. The

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21 Ibid. at 563.
22 Ibid. at 575.
23 Axworthy, supra note 10 at 237.
Crimes Against Humanity and War Crimes Act\textsuperscript{24} made war crimes under Article 8 of the Rome Statute part of Canadian criminal law.\textsuperscript{25}

Canada’s engagement on human security and support for the ICC fore-shadowed its later action on the Protection of Civilians in Armed Conflict Agenda at the Council. Canada’s concern about Security Council reform sheds light on how it approached the Agenda.

4. Council Reform

Canada has said that discussions on new norms like those embodied in R2P “must be placed in context of the larger debate on UN reform, specifically, Security Council reform.”\textsuperscript{26} Indeed, Canada has been a vocal and longstanding supporter of Council reform as a way of increasing the Council’s credibility. In so doing, Canada has committed itself not to finding alternatives to the Council but in making it work better.\textsuperscript{27}

Canada has opposed enlargement of the number of permanent member seats, but with restrictions on the use of the veto for the permanent five members (P5), notably, in deliberations on genocide, crimes against humanity or war crimes.\textsuperscript{28} In effect, Canada has given human rights priority over the political, national or other interests a P5 member may have in using its veto. In this way, Canada has also understood that Council’s credibility depends not only on composition, but also on the way it carries out its functions.\textsuperscript{29}

Since the birth of the UN, Canada has remained constant in its support of the UN system whilst remaining equally engaged in improving how the organization operates. In this respect, the Agenda is a quintessentially Canadian initiative aimed at improving the Council (its credibility, its responsiveness, its ability to impact positively on its purported beneficiaries) by giving it tools and a new forum for discussion, all on the longer road to broader Council reform.\textsuperscript{30}

C. Evolution at the United Nations

1. Genocide

In Kofi Annan’s words: “Genocide shaped the founding of the United Nations. Ensuring that genocide could never be repeated became, in many people’s

\textsuperscript{24} S.C. 2000, c. 24 [War Crimes Act].

\textsuperscript{25} Ibid. at s.4.

\textsuperscript{26} Legal Bureau, supra note 16 at 598.


\textsuperscript{29} Legal Bureau, supra note 16 at 598.

\textsuperscript{30} We identify elsewhere a convergence in 1999-2000 between the needs of Canada and of the Council to show action in response to violations of IHL. Here we might also suggest a convergence between the interests of the Council and of Canada on the sensitive issue of Council reform.
eyes, the new world Organization’s most important mission.” 31 The UN’s creation was inextricably linked to the events of the Second World War and to the international community’s desire to avoid repeating those horrors. 32

The two 1999 genocide reports on Srebrenica and Rwanda were unequivocally harsh on the UN’s failure to live up to its founding purpose of preventing genocide. The Srebrenica Report 33 concluded that the Council should have authorized “more decisive and forceful action to prevent” the genocide in Bosnia and that safe areas should only have been created if they were to have had real defence. The Carlsson Report 34 found that the UN had ignored credible and clear evidence that genocide was being planned in Rwanda and then refused to act once it had begun; incredibly, the Council went as far as to reduce the peacekeeping operation, UNAMIR, after the start of the genocide. Canada held the Council presidency when the Carlsson Report was presented and sought to draw strength from the mistakes:

The Council must share in the responsibility for this tragedy.
The best way to honour the victims now is through a firm commitment never to turn away from civilians victimized by armed conflict, but instead to focus energy and attention to protect them, in both word and deed. 35

The Agenda emerged, to some degree, to address situations short of genocide and to, once again, ensure that “never again” would there be such suffering; indeed, the Agenda moved the UN apparatus farther along the spectrum of preventive action, of when the international community should and ought to intervene.

2. Reports & Briefings

Two Secretary-General reports mark the moment when the UN began characterizing the protection of civilians in armed conflict as a discrete theme.

(a) The Africa Report

The Africa Report 36 described Somalia’s “seminal impact” on the international community. Somalia itself was a trauma that in turn paralyzed the international community into inaction when faced with Rwanda in 1994. The UN’s conduct in Somalia and Rwanda seriously damaged its credibility in Africa and it was


33 Report of the Secretary-General pursuant to General Assembly Resolution 53/55: The Fall of Srebrenica, UN Doc. A/54/549 (1999) [Srebrenica Report].


deemed lacking in the political will needed to act in the face of catastrophe. Many African countries consequently marginalized the UN from political involvement in the region’s affairs – a particularly unfortunate consequence, in light of the Africa Report’s conclusions about the importance of UN diplomatic intervention in the early stages of conflict.

The Africa Report was forward-looking in identifying the type of Council action that later protection debates would underscore as key in protecting civilians in armed conflict. It acknowledged that early warning systems of impending crises generally functioned well; the concern lay primarily in the ability to follow up quickly and effectively. The report suggested that the UN undertake simple and cost effective diplomatic efforts – such as negotiation, mediation, good offices, fact-finding missions and judicial resolutions – more frequently with a view to facilitating dialogue, promoting reconciliation, advancing respect for human rights and “institutionalizing peace.”

(b) The Refugees Report

With respect to the Agenda, this 1998 report made two important contributions. Firstly, it affirmed the core value of humanitarian access for civilian protection and its role in giving meaning and effect to protection. Secondly, it assumed the causal and reciprocal link between humanitarian crises (particularly large-scale refugee crises) and peace and security. As such, these contributions supported the conclusion that the Council had a mandated and robust role to play in emerging conflicts and in humanitarian response to these.

III. GROUND-BREAKING YEARS 1999 TO 2000

Protecting civilians in armed conflict featured prominently on the Council’s agenda in 1999, the first year of Canada’s two-year term on the Council. As will be discussed further below, beginning in January, the Council met with the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator (the USG) to discuss humanitarian activities relevant to the Council. In February, it received further briefings from the President of the International Committee of the Red Cross (ICRC), from the Executive Director of UNICEF and from the Special Representative of the Secretary-General for Children and Armed Conflict. In closing, the Council asked the Secretary-General to prepare a report with concrete recommendations on ways the Council “could improve the physical and legal protection of civilians in situations of armed conflict.”

Ten days later, the Council hosted an open debate. In September, the Secretary-General submitted his report, two days of debates followed and the Council passed its historic thematic resolution on the protection of civilians in armed conflict, resolution 1265. November saw another series of open debates and a

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37 Ibid. at 5.
38 Ibid.
presidential statement on the Council’s role in the prevention of armed conflicts. By April 2000, the Secretary-General had produced yet another report and the Council had passed another thematic resolution.

**A. The January 1999 Briefing**

Under Brazil’s presidency, the Council invited the late USG Sergio Vieira de Mello to brief it on humanitarian activities relevant to the Council’s mandate in promoting peace and security. Brazil also invited Council non-members to observe.

Canada, in its first month of Council membership, made a statement that reflected the positions it would hold for the next decade. It expressed its commitment both to the theme of civilian protection and to the process of open discussion at the Council. It underlined its support of the existing legal framework for the protection of civilians in armed conflict but called for this framework to be better applied and enforced. It urged the Council to consider how peacekeeping forces could be better used to protect civilians, including humanitarian workers. It went on to commend the Council’s initiative in discussing protection issues such as insecurity in refugee camps but argued that the Council should address protection comprehensively by tackling the underlying issue of how to protect civilians in armed conflict. Canada suggested the Council give priority to conducting a thorough study of its role in ensuring the protection of civilians in armed conflict.

**B. The February 1999 Meetings**

Any UN Member State can have a non-permanent seat on the Council for two calendar years, won through General Assembly election. They are highly prized and usually the culmination of many years of campaigning. Canada first held a Council seat from 1948 to 1949 and, until its last tenure, had served in every succeeding decade: 1958-59, 1967-68, 1977-78, 1989-90 and 1999-2000. For its 1999 to 2000 term, one of Canada’s stated goals was to work on Council reform for a more effective, transparent and responsive organ. It also sought to highlight the broader concept of human security; indeed, one of the more important items of the Canadian Security Council Agenda was “the promotion of the protection of civilians in armed conflict.”

Canada held the Council presidency in February – its second month on the Council – and presided over two important civilian protection meetings that month. At the February 12th meeting, Canada made the unprecedented move of inviting representatives from the ICRC, UNICEF and the Special Representative of the Secretary-General for Children and Armed conflict to brief the

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**References**

44 *Charter of the United Nations*, art. 23 [Charter].
Council on the protection of civilians.\textsuperscript{46} At the February 22\textsuperscript{nd} Council meeting, Canada invited Council members and non-members alike to respond to the January and February briefings – again an innovation in opening up the Council to a larger audience – and to provide guidance to the Secretary-General on his forthcoming protection report. Participation from over twenty non-member countries\textsuperscript{47} illustrated not only the importance of the theme, but also Canada’s efforts to open the debate to a wider audience.

For its part, Canada stressed the Council’s role in protecting civilians and introduced an unconventional view of state sovereignty in civilian protection:

It is the prerogative and the obligation of States to ensure the protection of all citizens, especially in times of armed conflict. […] But oftentimes Governments do not or cannot provide it. […] In these cases, Council action to defend civilians in armed conflict will also diminish the threat to the States themselves. The reluctance to involve the Council, justified by some by the need to uphold State sovereignty, only serves, ironically, to undermine this very principle itself. The responsibility of the Council to protect civilians is therefore compelling from a human security perspective, in terms of fulfilling the Council’s own mandate and in the interest of enhancing State sovereignty.\textsuperscript{48}

Further, Canada proposed four areas of concentration for the Council on this theme: (a) conflict prevention; (b) ensuring respect for IHL and human rights law; (c) supporting anti-impunity measures; and (d) targeting purveyors and instruments of war.\textsuperscript{49}

C. The First Protection Report\textsuperscript{50}

The First Secretary-General Report approached protection from a prevention standpoint by first listing the common threats against and circumstances conducive to violence against civilians in armed conflict.\textsuperscript{51} This report reflected

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\textsuperscript{46} Axworthy, supra note 10 at 243.
\textsuperscript{47} Present were representatives from Australia, Azerbaijan, Bangladesh, Burkina Faso, Costa Rica, the Dominican Republic, Egypt, El Salvador, Germany, Guatemala, Haiti, India, Indonesia, Jamaica, Japan, New Zealand, Norway, Pakistan, the Republic of Korea, Togo, Ukraine, Uruguay and Zambia in addition to Switzerland and the Permanent Observer of Palestine.
\textsuperscript{48} SC, 1999, 3980\textsuperscript{th} Mtg., “Protection of civilians in armed conflict”, UN Doc. S/PV.3980 (Resumption 1) at 31.
\textsuperscript{49} Ibid. at 32.
\textsuperscript{51} These included: attacks against civilians (deliberate targeting, blurring the distinction between civilian and combatant), forced displacement of refugees and internally displaced persons (often to gain control over natural resources), presence of combatants in IDP and refugee camps, the particular impact of armed conflict on women and children, denial of humanitarian assistance and access, targeting humanitarian and peacekeeping personnel, widespread availability of small arms, continued use of anti-personnel landmines, humanitarian impact of sanctions. Ibid. paras. 6 to 26.
many Canadian interests often articulated at that time under the rubric of “human security.” It also found that if combatants respected IHL and human rights laws, civilians would be largely protected from the common acts of violence; thus, many of its forty recommendations sought to guide the Council in how to promote compliance by state and non-state actors with existing laws more effectively and how to better address breaches of these same laws.52 Key recommendations included making greater use of targeted sanctions and monitoring their impact on civilians; considering deployment of a preventive peacekeeping operation; and, in the face of massive and ongoing abuses, considering the imposition of appropriate enforcement action.53

That first report does not today seem groundbreaking. Nevertheless, it represented a significant step forward in the approach of the Council to the phenomenon of civilians affected by armed conflict. This first report effectively foreshadowed much of the scope of the Agenda as it has developed, ten years later.

D. Resolutions Nos. 1265 and 1296

There is a lot to be said for being in the right place at the right time. Such was the case for Canada. It was promoting an approach to international security centred on respect for IHL and human rights law at the Council. At the same time, the Council itself was ready to review how it could better prevent armed conflicts and better protect civilians further to their mandate to maintain international peace and security in accordance with the principles and purposes of the UN.54 From the Council’s deliberations on refugees, small arms, and the safety of humanitarian workers following the failures of the 1990s, two strong threads appeared: the link between systemic IHL breaches and threats to international peace and security; and, the recognition of the distinct needs of civilians during armed conflict.55 These would later converge with Canada’s developing thinking on protection.

The Council took up many of the First Protection Report recommendations in two resolutions: 1265 (1999) and 1296 (2000). While clearly articulating its commitment to protecting civilians in armed conflict,56 the Council seemed to be signalling that its embrace of this theme did not mean it would abandon its case-by-case approach to considering and responding to each situation as it arose.57 These two key resolutions stressed the need to:

• ensure better IHL, human rights and refugee law compliance
• address impunity, including through *ad hoc* tribunals (and potentially the International Criminal Court)
• improve access for and safety of humanitarian personnel

52 Ibid. at para. 35.
54 Charter, supra note 44, subsections 24(1) and (2).
57 Res. 1296, *ibid.* at para. 1.
• improve the effectiveness of peace-keeping missions in protecting civilians (mandates, resources, training)
• address the impact of certain conventional armaments

IV. DEVELOPMENT YEARS FROM 2000 TO 2008

At heart, the Agenda is about mainstreaming the protection of civilians so that it becomes a routine element of Council discourse and action. Through it, the Council has a more active role in enhancing compliance with the existing international framework comprised primarily of IHL, human rights and refugee laws.

A. Rhythm, Tools and Activities

From 1999 to 2008, the Council passed three resolutions, held eighteen open debates and briefings (most of which lasted a full day), issued six presidential statements and considered six reports by the Secretary-General, all on the question of how to better protect civilians in situations of armed conflict. These

activities do not include the Council’s consideration of other ancillary and related themes such as women, peace and security, children in armed conflict or the protection of humanitarian personnel. Nor do they reflect the innumerable informal discussions held outside of the Council meeting room (debating resolution language or the scope of peacekeeping mission mandates, for example) or the discussions on protection language included in resolutions and missions intended to address specific circumstances in named conflicts. Unequivocally, protecting civilians has become a staple in the Council’s diet.

The many hours of formal and informal discussion about protection also prompted the Council to realize it could better mine its existing tools – beyond resolutions and peacekeeping mandates – to better protect civilians. For example, field missions allow Council members to see first-hand the impact of armed conflict on vulnerable communities; the Council’s “good offices” are a diplomatic tool that could be of great assistance in promoting peace accords or cease-fires.

To put this frenzy of activity into context, from the end of the Second World War until the late 1990s, the overwhelming majority of Council resolutions were country- or situation-specific. The few purely thematic resolutions (there were 13 thematic Council resolutions passed between 1946 and 1999) dealt primarily with terrorism or disarmament/nuclear proliferation, likely reflecting a world dominated by Cold War tensions. Some resolutions in this period dealt with the protection of civilians theme explicitly or implicitly. For example, Resolution 1208 on the situation in Africa, refugee camps, stated that maintaining the civilian and humanitarian character of refugee camps was urgent and important to the question of security.

This changed in August 1999 when the Council passed Resolution 1261 on children and armed conflict. Resolution 1265 and 1296, both on the protection of civilians in armed conflict, quickly followed suit in September 1999 and April 2000. From 1999 until 2007, the Council passed an astounding 41 thematic resolutions – eight in 1999 to 2000 alone – seventeen of which addressed “human security” concerns such as the protection of civilians, women or children in armed conflicts, the protection of other specific groups (UN and humanitarian personnel, journalists), the Council’s role in preventing armed conflicts and peace-building. Certainly, these post Cold War thematic resolutions reflect a

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62 True-Frost, supra note 60 at 197. For a wonderful discussion on the UN’s thematic resolutions, see True-Frost generally. She calls these thematic resolutions “thematic issues of peace and security” (TIPS) resolutions which she defines as: “(1) non-geographic and non-situation-specific (2) Security Council resolutions that (3) address broad themes or issues and (4) often
changed worldview more attuned to the value of human lives and less fixated solely on nation state interests and prerogatives. Referring to draft resolution 1265, Canada stated:

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[...]
\text{people - not just States - are subjects of global relations, and the security and basic rights of people - not merely the absence of military conflict between States - are fundamental to world stability and peace. Coming from the Security Council, this is a powerful message of change for the United Nations and the international community.}^{63}
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If the first three protection civilian resolutions have acted as a handbook for Council action, then the seven Secretary-General Reports have been the blueprints.\(^64\) In requesting reports from the Secretary-General, not only did the Council seek guidance in helping to implement existing IHL and in identifying any gaps in the existing legal framework, but also affirmed that it considered protecting civilians to be within its mandate.\(^65\) It was not always clear that the Council – a deeply political repository of UN power – should wade into the murky waters of general pronouncements on a theme unconnected to a conflict specifically listed on the Council’s agenda. Ten years on, the Agenda is an accepted feature of the Council’s portfolio.

Each successive report sought to develop the Council’s engagement in civilian protection. While the first reports were descriptive of the problems and history of armed conflict, subsequent reports provided updates on Council and UN protection activities and the state of conflicts globally, identifying emerging trends and recommendations for Council action. By the Third Protection Report,\(^66\) the focus was on implementation approaches: develop a road map to implement Report recommendations; establish advocacy programmes on relevant principles and responsibilities; and establish a stronger common base of analysis, assessment and response within the UN system.

During these first 16 months, the Council established a basic rhythm of open debates and briefings every six months and Secretary-General Reports about every 18 months. The semi-annual briefings provided the Council with updates on progress and changes in the protection environment. Early on, the Council decided to develop certain tools, the most enduring of which have been the aide-mémoire, the roadmap and the matrix. The aide-mémoire, first adopted by the Council in March 2002, was intended as a checklist to ensure that the protection of civilians would be taken into consideration systematically in establishing, changing or ending peacekeeping mandates.\(^67\) It lists Council resolutions and presidential statements related to each objective. For the Secretariat, it would include consideration of entities or individuals outside the UN’s state-based system, including, for example, ‘parties to armed conflict’ or ‘negotiators of peace agreements.’ at 138.

\(^{63}\) Council meeting 19 April 2000, supra note 59 at 27.
\(^{64}\) Ibid. at 26.
\(^{65}\) Presidential Statement 12 February 1999, supra note 59.
\(^{66}\) Supra note 59.
\(^{67}\) As articulated by USG, Mr. Kenzo Oshima, during his 21 November 2001 briefing to the Council, supra note 59 at 3.
serve as a checklist in its protection reports. Further, it provides a larger framework through which the interrelated, complementary themes of the protection of civilians in armed conflict, women, peace and security, children in armed conflict and conflict prevention might be considered.68

The roadmap sought to put into practice previous reports’ recommendations by reorganising them into different themes, identifying responsible institutions for implementation – including states, UN organs and agencies and concerned international organisations – and defining the necessary steps and activities.69 Another document, the “matrix,” developed by the UN’s Office for the Coordination of Humanitarian Affairs (OCHA), would track the Council’s protection activities.70

Since the Agenda’s inception, Canada has spoken at every debate and has been consistent in its statements on supporting the existing legal structure, rethinking state sovereignty, and holding up the number of deaths lost or prevented on the ground as the benchmark for Council success.

B. Emerging themes and philosophies

In its first ten years of open debates, the Council has developed a deeper understanding of who needs protection, what constitutes protection for these various groups, how the Council might furnish it or better broker its provision by other key actors and indeed who those key actors might be. The Council often grappled with the same issues – humanitarian access, impunity, targeted sanctions to name a few. What emerged from these debates was the perception that IHL was central in understanding and solving the most intractable problems and that IHL was all too frequently neither respected nor enforced. Canada remained a vital part of these discussions.

1. Themes

Access is at the heart of humanitarian action71 and so it has remained at each Council open debate and protection report throughout the last ten years.72 Humanitarian access commonly meant the ability to deliver life-saving goods and services to a vulnerable population and the safety of humanitarian personnel. More recently, it has included visa requirements and travel permits for humanitarian workers, moratorium on customs duties and import restrictions on humanitarian goods and equipment.73

Access is also linked to dialogue with non-state parties and, in this respect, has served as a way around the assertion that a state ‘legitimizes’ an armed group by speaking with them. Additionally, access has been a catalyst in developing bet-

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68 USG, Mr. Kenzo Oshima, during his 15 March 2002 briefing to the Council supra note 59 at 4.
69 Ibid. at 2.
70 Council meeting 21 November 2001, supra note 59 at 3.
71 USG Jan Egeland during the 4 December 2006 Council meeting, supra note 59 at 2.
72 It is listed as a key issue in the Second Protection Report, supra note 59, the Third Protection Report supra note 59 and the Sixth Protection Report, supra note 59; it is a main concern listed by the USG three times in: the 21 June 2005 Council briefing, supra note 59; SC, 2006, 5476th Mtg., “Protection of civilians in armed conflict,” UN Doc. S/PV.5476.
73 Sixth Protection Report, supra note 59.
ter information relaying systems to the Council: OCHA has been developing a reporting and analysis mechanism on access constraints in conflicts to provide a better understanding of how access constraints influence different humanitarian actors with a view to identifying programmes parties to a conflict consider more acceptable.74 Further, the Sixth Protection Report75 encouraged Council and states to recognize the criminal dimension of wilfully denying humanitarian access as set out in the Rome Statute.76 In this way, access demands participation of all parties to a conflict – state and non-state alike. Perhaps for this reason, it remains an unsatisfactorily addressed problem.

The Council has included impunity as a part of its strategy in protecting civilians. Though the Council may refer particular cases to the ICC,77 tackling impunity requires the active participation of states; therefore, the Council has promoted the ICC and various ad hoc tribunals, urging states to ratify the Rome Statute and to prosecute nationally.78 Perhaps because the conduct and inadequacy of peacekeepers featured very prominently in the spectacular failings of the 1990s – their deployment, staffing, funding and mandates – peacekeeping missions became central in most Agenda deliberations. Certainly improved peacekeeping operations were seen as a joint Council, UN Department of Peacekeeping Affairs and contributing Member State responsibility. After the First Protection Report, the Council referred those recommendations related to peacekeeping to the Special Committee on Peacekeeping for study and follow up.79 Early discussions focused on early deployment (‘preventive’ action in emerging conflicts)80 and scope of action (the ability to physically protect civilians in harm’s way) and have come to include the details of financing, training and staffing.81 Protection mandates in peacekeeping missions remain a preferred means for the Council to protect civilians, perhaps to the exclusion of both softer diplomatic tools and more assertive measures.

From the outset, women and children were identified as among the most vulnerable of civilians during times of armed conflict; indeed, these two groups are examined more carefully in their own set of thematic Council debates, resolutions

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74 USG Holmes during the 27 May 2008 Council meeting, supra note 59 at 5.
75 Supra note 59.
76 Rome Statute of the International Criminal Court, arts. 8(2)(b)(iii), 8(2)(b)(xxv) and 8(2)(e) (iii) – defining ‘war crimes’ in both international and non-international armed conflicts. [Rome Statute]. See also Refugee Report, supra note 39 at 8: “The principle of individual criminal responsibility is of particular importance for ensuring accountability of non-State actors under international law. [...] The jurisdiction of the [ICC] over individuals will also help to promote greater accountability with respect to non-State actors.”
77 Rome Statute, ibid. at para. 13(b).
78 Res. 1265, supra note 56 para. 6; Res. 1296, supra note 56 para. 17; Res. 1674, supra note 59 paras. 7, 8 and 9.
80 See generally First Protection Report, supra note 50 and April 2000 briefing, supra note 62.
81 4 December 2006 Council meeting, supra note 59 at 7, where USG lists comprehensive, predictable funding as a suggested future Council priority.
and actions:82 the children and armed conflict agenda and the women, peace and security agenda. In addition, they were consistently included in Agenda discussions on gender-based violence and sexual exploitation, refugee and Internally Displaced Persons (IDP) camps, peace building, prevention and response activities by humanitarian actors and the use of targeted sanctions. Over time, the elderly, the disabled and journalists were recognized as other categories of civilians at higher risk, reflecting a more evolved understanding of who is harmed in armed conflicts and how they might need protection and assistance.83

It remains to be seen whether it has been more useful to consider the needs of groups of civilians separately or within the context of the general protection debate. A discussion devoted entirely to women, for example, yields a more meaningful reflection, but this must be balanced against the risk of marginalizing the issue especially in implementing it.

Refugees and internally displaced persons – the subject of their own vast literature and history within the UN and public international law – were another recurring Agenda theme. Discussions on security in refugee and IDP camps have intersected with other difficult themes including the separation of civilians and ‘armed elements,’ the provision of aid, border security, Council cooperation with regional authorities, and displacement as a deliberate military strategy.84 These remain separate concerns but they are increasingly addressed in an integrated manner.

Other themes the Council addressed during debates on protecting civilians have included disarmament, demobilization, reintegration and rehabilitation, demobilisation and reintegration; terrorism; and housing, land and property rights.85

2. Tensions & Convergences

(a) Convergence between IHL and Implementing Policies

The Council embarked on the Agenda, in part, when its earlier discussions on refugees, small arms, and humanitarian access revealed a link between systemic IHL breaches and threats to international peace and security. Not surprisingly, from the beginning days of the Agenda, the Council has repeatedly recognized the fundamental importance of implementing the existing legal framework, and

82 See Third Protection Report on global trends, supra note 59; USG’s 21 June 2005 briefing to Council, supra note 59; the 4 December 2006 open debate, supra note 59, the Sixth Protection Report, supra note 59; and USG’s briefing to Council 27 May 2008, supra note 59.
83 Sixth Protection Report, supra note 59; the Second Protection Report, supra note 59 listed protection of media as a key concern. Also, SC Res. No. 1738 (2006), UN Doc. S/RES/1738 addressed this theme squarely.
84 IDP and refugee camps were discussed in the Council 19 April 2000 open debate, supra note 59; the Second Protection Report, supra note 59; the Third Protection Report, supra note 59; 21 June 2005 open debate, supra note 59; 4 December 2006 open debate, supra note 59.
85 USG briefing to Council 4 December 2006, supra note 59; Sixth Protection Report, supra note 59. With respect to terrorism, the Sixth Protection Report at para. 25 discusses States’ use of counter-terrorism operations to prevent and respond to acts of violence by transnational armed groups and the contracting out of traditional State security/military functions to private military and security companies.
of IHL in particular, in protecting civilians. This is captured in a clear statement in the First Protection Report, endorsed by Council:

The protection of civilians in armed conflict would be largely assured if combatants respected the provisions of international humanitarian and human rights law. The recommendations in this section are therefore aimed at identifying ways in which the Security Council can promote full respect for international humanitarian, human rights and refugee law, by States and non-state actors, and particularly by parties to conflicts.86

Woven alongside the thread of IHL in Council deliberations and output87 is the thread of how to better apply and enforce these laws to all combatants in all forms of armed conflict. This second thread has manifested itself in many colours, most notably in the terms “human security” and the “Responsibility to Protect,” in the High-level Report and more recently, in debates about cluster munitions.

Canada, at that time an active promoter of human security, stated during the April 2000 open debate: “[…] human security does not weaken sovereignty, but strengthens it by reinforcing democratic, tolerant, open institutions and behaviour that do protect people. For another thing, the State remains the most powerful instrument for pursuing collective action.”88 The “Responsibility to Protect” was first articulated in ICISS’ December 2001 Report and then absorbed into the mainstream protection lexicon in the 2005 World Summit Outcome Document and subsequently Council Res. No. 1674.89 The Human Security Network (representing thirteen Countries including Canada90) affirmed its commitment to R2P and encouraged Council to concretize its commitment to this concept.91

This commitment to respect for IHL exists alongside statements, like the one made in the Second Protection Report, which recognise that the core rules of IHL arose from international armed conflicts, while a growing number of conflicts were internal:

The instruments, political and legal, now available for the protection of civilians in armed conflict, are in urgent need of

86 First Protection Report, supra note 50 at para. 35.
87 For example, see how IHL is invoked in the three key Agenda resolutions: Res. 1265 at paras. 4, 5 and Res. 1296 at paras. 5 8, 19, supra note 56; and Res. 1674 supra note 59 at paras. 3, 6, 9, 26.
88 19 April 2000, supra note 59 at 26.
89 Res. 1674, supra note 59 at para. 4. See also generally the Council open debate of 14 December 2004, supra note 59, during which countries reference and accept in some measure the High-level Report, which had endorsed R2P.
updating. They were developed in a world where State actors were overwhelmingly dominant, and they reflect that fact.\textsuperscript{92}

The Sixth Protection Report and the open debates in 2007 and 2008 saw a return to classic IHL terminology and analysis in the discussions on cluster munitions, proportionality and distinction. The report listed the conduct of hostilities of one of two key issues of concern, referencing an erosion of the principles of distinction and proportionality as seen in the rise in deliberate targeting and suicide bombings and huge human losses through air strikes and heavy ground operations:

\begin{quote}
[\ldots]\text{in applying the principle of proportionality, belligerents are adopting an overly broad interpretation of what constitutes a concrete and direct military advantage and, consequently, of what may be considered permissible levels of incidental civilian casualties, particularly in the context of aerial warfare. Instead of taking into account, as envisaged by international humanitarian law, only military advantages that are substantial and a fairly immediate consequence of a specific attack, there has been a tendency to balance civilian casualties against military advantages that are hardly perceptible or may arise only in the longer term or as a result of the overall military campaign.}\textsuperscript{93}
\end{quote}

USG Holmes focused his comments during the 27 May 2008 Council briefing on the conduct of hostilities, stating, “any military response must itself comply with international humanitarian law and demonstrate respect for the dignity of those already exposed to insurgent attacks.”\textsuperscript{94}

We believe that the recent articulation of protection needs in both protection reports and Council debates suggests that policies and concepts such as R2P are rightly considered as interpretive aides for IHL and not as a means of supplanting the \textit{Geneva Conventions}.

(i) Tension between protection and military roles

In taking on directly the protection of civilians, the Council has had to revisit the fundamental principles set out in its mandate, inspiring it to reconsider \textit{inter alia} how it carries out and reconciles political protection and military activities. In a discussion on adequate funding and resources for peacekeeping operations, the USG concluded, “humanitarian action alone cannot resolve protection challenges. What is needed is a holistic response that brings the political, security and humanitarian agendas together. We must ensure that one aspect of support

\textsuperscript{92} Second Protection Report, \textit{supra} note 59 at para. 64. See also the 9 December Council meeting, \textit{supra} note 59, at 6 where the USG stresses the need to “update the current framework to reflect the current environment of conflict and the latest developments and best practice in providing protection.”

\textsuperscript{93} Sixth Protection Report, \textit{supra} note 59 at para. 26.

\textsuperscript{94} \textit{Supra} note 59 at 4.
is not implemented at the expense of another." 95 This statement is consistent with resolutions 1296 and 1674 wherein the Council underscores the importance for all to uphold the principles of neutrality, impartiality and humanity in humanitarian activities. 96

While the USG’s logic in promoting a holistic approach is understandable and even appealing, we fear that to have one single entity engaged simultaneously in political, military and humanitarian activities is potentially dangerous as it runs the risk of confusing both civilians and combatants. The UN’s inherently and necessarily controversial political work, for example, might be perceived as undermining the ability of its humanitarian work to be carried out in accordance with the principles of neutrality and impartiality, thus putting humanitarian workers and their beneficiaries even more at risk. The ICRC voiced this concern in one of its statements to the Council as it discussed the now standard inclusion of a protection mandate in peacekeeping mandates:

[... ] it should be kept in mind that protection of civilians by United Nations peacekeepers implies a military and security dimension, which must be clearly distinguished from protection activities carried out by humanitarian actors. 97

Today, humanitarian workers continue to be targeted as they try to discharge their duties. While the Council’s commitment to protecting civilians is very important, we suggest that deeper reflection is needed on whether and how to segregate the various UN roles – both externally and internally; indeed, deeper reflection on to what extent the UN should facilitate rather than carry out humanitarian activities in certain areas might also greatly benefit humanitarian workers and their beneficiaries.

(ii) The Council’s Use of its Powers vs. the Information Deficit

As discussed below, there are still many gaps between Council talk and action. The prevailing stated view is that the Council lacks detailed, credible and timely information sufficient to act appropriately and quickly. Indeed, over the years, much effort has been put into creating reporting and analysis mechanisms to remedy this problem, from establishing the twice-yearly protection briefings to the Council to creating UN internal reporting systems to work on an ongoing basis. For example, in June 2005, the USG spoke about the need to develop more systematic reporting to the Council and thus the initiative to generate “overviews and trend analysis” reporting on key protection issues such as the ones listed above. 98 The Fifth Protection Report submitted later that year calls

95 Council meeting of 21 June 2005, supra note 59 at 5.
96 Res. 1296, supra note 56 at para. 11; Res. 1674, supra note 59 at para. 21.
97 20 November 2007 Council meeting, supra note 59 at 28.
98 21 June 2005 Council meeting, supra note 59 at 6. See also 28 June 2006 Council meeting, supra note 59 at 5 where the USG refers to dovetailing a general protection reporting mechanism with the existing one on children and armed conflict established per Res. 1612 (2005); also, USG’s comments the 20 November 2007 meeting, supra note 59 at 6 emphasizing the importance of communication and information and the consequent establishment of a working group on the protection of civilians.
for “the collation of empirical data for both situation-specific and global trend analysis to facilitate the Council’s deliberations and decision-making.”

Of course it would be naïve to assume that it is only lack of information that sometimes keeps the Council from acting. Council Members’ assessments of their national interests, including concerns about finances, of course have an influence on Council activity.

V. THE AGENDA TODAY

The Council was extremely active on the Agenda in 2009, perhaps because of the tenth anniversary of resolution 1265, perhaps because large numbers of civilians continue to die, are injured or displaced in times of armed conflict. In 2009, the Council held three open debates, updated the aide-mémoire and adopted a resolution. Further, the Council held a special session on IHL.

Outside the Council, a number of significant related developments took place. The Swiss Permanent Mission to the UN funded a consultants’ study to compare developments in the Council’s three thematic agendas on protection for civilians, children and women. The study mapped the progress of each agenda and the links between these, finding that the Agenda lagged behind the children’s agenda, which had more substantial machinery and more accomplishments. It underlined the importance of ensuring better respect on the ground for all three themes – this would come through better respect for IHL. It also recommended that synergies among the three should be better exploited.

The Canadian government funded a separate study that cut across the three thematic protection agendas, while focused on the children and armed conflict agenda. The Canadian study reflected the growing calls for Council action in cases of chronic non-respect for human rights during armed conflict. This thoughtful and incisive report concluded that there was an “accountability gap” in the Council’s responses to grave violations against children. This arises in part because the Council has not often imposed targeted sanctions or other strong actions, despite repeated promises to do so. In a number of contexts, the Council could already act using existing tools and mechanisms, including in cases where a UN mission already exists. This study concludes that the accountability gap must be closed soon, lest the Council risk losing credibility.

Canada continues to provide financial support to all three Council protection agendas. This support was especially timely in 2009 when IHL – the legal roots

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99 Fifth Protection Report, supra note 59 at para. 54
101 Ibid. at 21.
103 Ibid. at 35.
of these agendas – was receiving renewed attention because of the 60th anniversary of the *Geneva Conventions* of 1949.

Another deceptively small but significant development in 2009 took place at the General Assembly’s Special Committee on Peacekeeping (the “C-34”) under the Fourth Committee. The 2009 C-34’s report included an historic first reference to peacekeepers’ protection of civilian activities. 104 This represented a collective recognition by all the UN’s Member States of the Council’s growing practice of including protection mandates in peacekeeping missions.

A further development related to peacekeeping was the “non-paper” produced in July 2009 by the Department of Peacekeeping Operations (DPKO) and the Department of Field Support (DFS), *A New Partnership Agenda – Charting a New Horizon for UN Peacekeeping.* 105 The important non-paper articulates in simple terms the dilemma of civilian protection for peacekeepers:

The presence of a peacekeeping mission generates high expectations among host populations and international opinion to protect individuals and communities in conflict. Yet, the ability of small numbers of under-equipped peacekeepers to protect civilian populations, often numbering several millions over vast distances, is finite. UN missions are regularly assigned a broad range of tasks that go well beyond providing physical security, including support for the voluntary return of refugees and displaced persons, and protection of civilians from sexual violence. […] The mismatch between expectations and capacity to provide comprehensive protection creates a significant credibility challenge for UN peacekeeping. 106

We suggest that it equally poses a credibility challenge for the Council. This was perhaps implicit in the launching in 2009 of the UK-French initiative aimed at making the Council’s work on peacekeeping mandates more realistic and effective with respect to protection. 107 This initiative emphasized better dialogue with the Secretariat and with troop and police-contributing countries and referred explicitly to the challenges of protection, noting it warrants further consideration at the C-34. 108

In a related development, DPKO and the OCHA commissioned a study on the implementation of protection mandates by peacekeeping missions. 109 The

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106 Ibid.
108 Ibid. at 2-3.
study generated considerable expectations, was delayed several times, and finally circulated just days before the November 11 open debate. Though the study was not mentioned explicitly in Council Resolution 1894 (adopted November 11), many of its elements informed the resolution.\footnote{110} It has since been publicly released.

**A. The January Open Debate**

The Council began 2009 with an open debate on January 14, under the Presidency of France.\footnote{111} USG Holmes provided a hard-hitting briefing, starting with remarks on the ongoing conflict in Gaza, after announcing: “...the main focus today must be the conduct of hostilities and the need for strict compliance with international humanitarian law.”\footnote{112}

The USG went through in some detail the humanitarian impact of the hostilities in the Gaza conflict, providing the number of dead and wounded, including details on the number of women and children. He pronounced on the application of IHL and called for its respect. Then he quite directly challenged the parties for their lack of respect for IHL:

Can we look at what has been happening in Gaza in the past three weeks and say that either Israel or Hamas has come close to respecting fully these rules? I think not. I repeat that violations of international humanitarian law by one party to a conflict offer no justification for non-compliance by other parties.

He stated (presciently), in relation to the Gaza conflict, “Allegations of violations [of IHL] must be fully investigated and those responsible held to account.”\footnote{113}

The USG also discussed the situations in Goma, attacks by the LRA in DRC and Sudan, as well as Somalia, where he criticized the lack of respect for IHL. He also spoke of Afghanistan, where some 2000 civilians had been killed in 2008.\footnote{114} A staggering 122 humanitarian workers were kidnapped in 2009 - five were killed by their kidnappers.\footnote{115} He spoke also of the ongoing conflict in Sri Lanka, raising concerns about humanitarian access in that context and others.

The USG went on to advocate for dialogue with non-state armed groups. He also announced that the Council’s informal working group on protection of civilians, recommended since 2007, would meet for the first time that week. He

\footnotesize{\textsuperscript{110} The Secretary-General, the USG, and Member States mentioned the study repeatedly in the open debate. See: SC, 2009, 6216\textsuperscript{a} Mtg., “Protection of civilians in armed conflict: Letter Dated 2 November 2009 from the Permanent Representative of Austria to the United Nations addressed to the Secretary-General (S/2009/567),” UN Doc. S/PV.6216 at 5 and 6 and UN. Doc S/PV.6216 (Resumption 1) at 13.\textsuperscript{111} SC, 2009, 6006\textsuperscript{b} Mtg., “Protection of civilians in armed conflict”, UN Doc. S/PV.6066 & S/ PV.6066 (Resumption 1).\textsuperscript{112} Ibid. at. 2.\textsuperscript{113} Ibid.\textsuperscript{114} Ibid. at. 4.\textsuperscript{115} Ibid.\textsuperscript{116} Ibid.}
also introduced the newly updated version of the aide-mémoire. He concluded by calling for “… a sustained effort to approach the issues in a comprehensive and consistent manner…”\(^\text{116}\)

Following this sobering briefing, Council members, followed by some 34 Member States, delivered Statements. This included Canada, represented by its Permanent Representative, whose Statement covered a number of topics from previous debates. He stated near the start, reiterating Canada’s concern with field impact, “…critical gaps remain between key principles and the daily actions taken to respond to protection challenges and gaps keenly felt by civilians in conflict situations around the world.”\(^\text{117}\)

Canada’s representative also called for better monitoring and reporting mechanisms to strengthen timely and efficient responses by the Council when humanitarian access is not respected, and called for greater respect for humanitarian workers.\(^\text{118}\)

The meeting led to the adoption of a brief Presidential Statement,\(^\text{119}\) which served mostly as a cover note for the revised aide-mémoire, included in the Presidential Statement as an annex.

B. The Informal Expert Group

As mentioned, the first meeting of the informal expert group took place that same week in January. For its first meeting, the group was briefed by OCHA on the situation of civilians in Côte d’Ivoire, prior to the mandate renewal. The group has met at least four times since, each time to consider a particular mandate. We understand that not all Council members take part in the group of experts.

C. The Seventh Protection Report

The latest Secretary-General report was issued on 29 May 2009.\(^\text{120}\) It began by noting the tenth anniversary of the Council’s consideration of the protection of civilians in armed conflict as a thematic issue and went on to address five main challenges:

1. enhancing compliance by parties to conflict with international law, in particular in the conduct of hostilities;
2. enhancing compliance with the law by non-State armed groups;
3. enhancing protection through more effective and better resourced peacekeeping and other relevant missions;
4. enhancing humanitarian access; and
5. enhancing accountability for violations of the law.

The report also made specific references to Gaza and Sri Lanka and Afghanistan.

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\(^\text{116}\) Ibid. at. 6
\(^\text{117}\) Ibid. at. 28.
\(^\text{118}\) Ibid.
D. The June Open Debate

The second open debate of the year was held June 26, under the Turkish Presidency. Its main purpose was to receive the Secretary-General’s report. USG Holmes briefed the Council. His briefing mainly summarized the report. He spoke of “the fundamental failure of parties to conflict, deliberately or otherwise, to respect and to ensure respect for their obligations to protect civilians.” He elaborated on the five main challenges identified in the report, citing a number of current contexts.

The USG discussed humanitarian access at some length, as well as the role of peacekeepers in the protection of civilians. He mentioned several contexts, including the DRC, Afghanistan, Somalia, and Sri Lanka. He highlighted the work of the protection of civilians informal working group. He also emphasized the need for action against those responsible for disrupting humanitarian access, including, by referral of situations to the ICC.

Twenty-eight States from outside the Council took part. Canada noted “critical gaps remain between words and deeds,” citing the Sudan, Sri Lanka and Afghanistan as examples of this. It welcomed the Report, and highlighted three topics: the need for practical efforts, access, and accountability.

Canada emphasized the important roles of peacekeeping missions in the protection of civilians and the need for good cooperation between peacekeepers and civilian actors. On access, Canada insisted on careful monitoring and follow-up action in case of problems. On accountability, it called for national authorities to take action on crimes against civilians and humanitarian workers, with the Council and other States to act when needed.

E. The November Open Debate

The open session of November 11 was designed by Austria, as President of the Council, to in part, “… reinvigorate the Council’s commitment to the protection of civilians.” Further, it was intended to be “an occasion to identify and agree on concrete measures to improve compliance by parties to conflict with the existing normative framework for protection and the implementation of the Council’s decisions.”

The Austrian Presidency had issued a concept paper in advance of the debate, which contained three main themes they developed in advance, namely:

- Strengthening the rule of law, enhancing compliance and ensuring accountability
- Improving the implementation of protection mandates by peacekeeping missions
- Enhancing the provision of information and reporting to the Council on issues pertaining to the protection of civilians.

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122 Ibid., (Resumption 1) at 9.
123 11 November 2009 Council meeting, supra note 110 at 2.
This approach was later reflected in the resolution adopted.\textsuperscript{124}

The much-anticipated open debate took place on November 11, 2009, chaired by the Austrian Foreign Minister. The Secretary-General as well as the USG addressed the Council, along with the Deputy High Commissioner for Human Rights.\textsuperscript{125} More than sixty States took the floor in a debate that continued until after 8 p.m.\textsuperscript{126}

During the debate, Canada affirmed its commitment to the Agenda, referring to its 10\textsuperscript{th} anniversary and Canada’s Council membership at the time of its launch. While acknowledging progress made, Canada was direct in pointing out the shortfalls in the Agenda’s application:

\begin{quote}
Council responses were too often ad hoc, seldom timely and rarely pro-active, particularly with respect to preventive diplomacy. \[*\ldots*\] Implementation, capacity, and the political will needed to deliver on this agenda are uneven. Peacekeeping operations whose mandates include protection of civilians’ responsibilities have lacked the means and capabilities to fulfill the range of tasks assigned. Mission planning and training have been weak, and civilian-military cooperation has fallen short. \textsuperscript{127}
\end{quote}

Canada urged consideration of the joint OCHA - DPKO study on the implementation of protection of civilians mandates by peacekeeping forces, which it had helped fund. Canada had long been a proponent of reflecting on lessons learned and best practices.

Canada emphasized the need for better planning and resourcing for peacekeeping mandates, and improved training for civilian and military components of peacekeeping missions – including training on IHL and human rights law.\textsuperscript{128}

Canada also called for strengthened links between the Agenda and the related agendas on children and armed conflict and on women, peace and security. Canada reiterated its concerns about humanitarian access. Finally, Canada concluded by insisting that the Council “remain steadfast in its commitment to facilitating effective results in the field.”\textsuperscript{129}

\textsuperscript{124} Ibid.
\textsuperscript{125} The latter’s participation was negotiated by Council members in response to the adoption by the General Assembly of a resolution on the report of United Nations Fact Finding Mission on the Gaza Conflict (the Goldstone Report) which, \textit{inter alia}, called for the Secretary-General to send the Report to the Security Council. A/RES/64/10 Follow-up to the report of the United Nations Fact Finding Mission on the Gaza Conflict.
\textsuperscript{126} 11 November 2009 Council meeting, \textit{supra} note 110.
\textsuperscript{128} Ibid.
\textsuperscript{129} Ibid. at 28.
F. Resolution 1894

At the start of the open debate of November 11, the Council adopted a new resolution, 1894.130 This new resolution affirms much of the content of previous Council resolutions on the protection of civilians. It considered the May 29 2009 report of the Secretary-General and its separate annex on constraints on humanitarian access. It endorsed the formula, from the May 29 report, of the five main challenges which the Council must face in its efforts to protect civilians better, discussed above. The resolution included several references to IHL, including mention of the Geneva Conventions of 1949 (and their Additional Protocols), as the basis for the legal framework for the protection of civilians in armed conflict.131

This new resolution, besides the annex on humanitarian access, is noteworthy because of its particular focus on peacekeeping. For example, it calls for the development of guidance, and training materials, to assist the implementation of protection tasks by peacekeepers. It can be expected to serve as the basis for considerable follow-up work related especially to the protection of civilians mandate now commonly included in a peacekeeping mission’s tasks.132

VI. ASSESSING THE AGENDA

A. Progress

The Council has achieved a lot over the last decade. The most concrete output has been the development of tools – the aide-mémoire, the roadmap and the four thematic resolutions – a compilation of agreed protection concepts, language and strategy designed to assist the Council in addressing specific situations.

The weeks of protection debates (formal and informal), Secretariat reports, and Council presidential statements over the course of ten years have also left their mark: the protection of civilians, once a discrete theme, has been “mainstreamed” into Council work and into UN work as a whole. This mainstreaming is most clear in the set up of peacekeeping operations since the Agenda’s inception. For example, Council Resolution 1296 (1999) allowed peacekeeping troops to physically protect civilians under imminent threat of violence.133 Indeed, of the 14 UN peacekeeping missions established from 1999 to 2008, 13 had a protection-related element in its mandate.134 Peacekeeping mandates now

130 UN Doc. S/RES/1894.
131 Ibid. at preamble para.4.
132 “The inclusion of protection activities in the mandates of peacekeeping missions, beginning with the United Nations Mission in Sierra Leone in 1999, is among the most significant of Security Council actions to this end.” Seventh Protection Report, supra note 120 at para. 14.
133 Res. 1296, supra note 56 at para. 13.
often include disarmament, demobilization, reintegration and rehabilitation programmes.\textsuperscript{135} Since 2000, there have been more rapid deployments.\textsuperscript{136}

The Council has also sometimes made use of targeted sanctions. Three recent examples – Côte d’Ivoire, Darfur and the Democratic Republic of Congo – contain provisions for targeted measures linked with violations of human rights or IHL. Targeted sanctions, especially those with Council monitoring and enforcement, aim at sheltering civilians from punishments intended for certain individuals only.

There have also been advances in the normative framework – some acceptance of R2P, resolutions 1674 and 1738 – and important progress made on battling impunity. The establishment of the ICC, and the jurisprudence of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, as well as the Special Court for Sierra Leone, have provided a growing basis from which to attribute accountability. Recent ICC arrest warrants and arrests\textsuperscript{137} demonstrate that these international fora are not simply window dressing but serious efforts in combating impunity.

\textbf{B. Gaps}

Despite these commendable achievements, the Agenda is far from successfully realised. Most importantly, significant gaps remain between the Council's agreements in principle on how it will act, and how it acts when faced with specific contexts. These gaps were a constant in these early years. Interestingly, Canada's reading of some of these discrepancies from 2004 remains relevant today, with similar concerns persisting:

\begin{itemize}
  \item \textit{Humanitarian access}: While consistently recognizing the importance of this issue, the Council does not make use of its powers to assist when it can. For example, the Council can declare a situation to be “exceptional risk” to provide UN and associated staff with enhanced legal protections.\textsuperscript{138} However, it did not do so after five \textit{Médecins sans Frontières} (MSF) aid staff were murdered in 2004.
  \item \textit{Assistance on the ground}: The Council has a poor record of monitoring and enforcing embargoes and other targeted sanctions. Again, there is little evidence to suggest the Council is addressing this inadequacy, though its sanctions are regularly flouted.
  \item \textit{Gender-based violence}: The Council's failure to systematically condemn wide-\
\end{itemize}

\textsuperscript{135} Afghanistan (UNAMSIL, SC Res. 1401 (2002) UN Doc. S/RES/1401), MONUC, UNMIL, UNOCI and ONUB and of measures to protect refugees and returnees (UNOCI and ONUB).

\textsuperscript{136} European Union forces, authorized by the Council, to Ituri, Democratic of the Congo in May 2003; Economic Community of West African States (ECOWAS) rapidly deployed to Liberia (ECOMIL) in August 2003.

\textsuperscript{137} Arrest warrants issued July 2005 for four Lord's Resistance Army members; arrest in March 2006 for child soldier recruitment in Democratic Republic of Congo; arrest October 2007 in Democratic Republic of Congo; two arrest warrants issued in April 2007 with respect to Darfur.

spread instances of these crimes in specific conflicts has meant “any actions to address the violence, including monitoring and reporting and physical protection remain unsupported.”

• Consistency: The Council’s failure to respond to conflicts not formally on its agenda, despite documented evidence of grave violations of human rights and of humanitarian law. This sends a contrary message to its work on impunity. Darfur, the Sudan, was a particularly egregious example. 139

C. Canada’s Role

Canada’s sustained interest in the Agenda is evident in its record. Of course, it is clearly many Council members, Permanent and a parade of non-Permanent members, which have carried the Agenda – we would not want to overstate Canada’s absolute or relative contribution. Still, Canada has been consistent and clear in its statements to Council, and in its continued support for the Agenda, at least in principle.

Some key elements in Canada’s approach over the years can be identified – though a comprehensive critical review, which merits attention, is beyond the scope of this paper.

Canada’s main contributions include, firstly, introducing the Agenda. Protecting civilians in armed conflicts is today part of the Council’s daily bread, largely because Canada brought it to the table in 1999. Further, outside the Council chambers, Canada has funded a number of events that feed into the Council deliberations on the same theme, such as the series organized by OCHA in May 2006 in Côte d’Ivoire to review the implementation of protection mandates with a view to identifying best practices and creating a guide for future operations. 140 This particular activity was in keeping with Canada’s focus on refining the Council’s ability to design effective protection mandates for peacekeepers. 141

Secondly, Canada has supported better implementation of IHL and the existing legal framework as seen through its promotion of human security and, to a greater degree, R2P policies. While the Canadian government has seemingly reduced its focus on human security (and faced criticism for this), 142 it has con-

139 See Council meeting 14 June 2004 (Resumption 1) supra note 59 at 14 where Canada speaks on behalf of Canada, Australia and New Zealand.


tinued to fund projects to improve Council action for better implementation of IHL, such as the study discussed above, *Strengthening Protection of Children Through Accountability*.

Thirdly, Canada’s work on the Agenda has challenged the way in which the Council operates with a view to making it more accessible and transparent. Beyond being open in the conduct of the meetings under its presidency (organizing open debates, inviting speakers or allowing observers), Canada has regularly urged the Council to be more consistent, more transparent and less political in its activities. This includes not only deciding to intervene but also when and how it chooses to do so: “While the milestone resolutions contemplate early, systematic and bold action, the Council’s resolutions are too often *ad hoc*, seldom timely and rarely proactive. Of course, all the tools and instruments at the Council’s disposal are of no value unless the Council can summon the political will to employ them.”143 (Such statements are, of course, most easily made when a State is not a member of the Council…)

Fourthly, Canada has been fairly pragmatic in its focus. It has repeatedly reminded Council of the obvious - that the true barometer of the Agenda’s success is *how civilians fare in the field*. It has encouraged Council to use its full array of tools to intervene and influence at all points of the conflict continuum. As the Swiss-funded study of the three protection themes found:

   It is always very difficult to demonstrate ultimate ground impact, and this promotes a tendency to judge our effectiveness by the processes we set in motion rather than their results. In reality, analysis of [Council] processes cannot be considered in isolation but always in the context of their connections with the field.144

Over the past ten years, Canada has echoed these sentiments in its public statements. Even in 2009, with Canada noticeably less vocal on human security, its foreign policy positions (at least publicly) sustain this approach. Thus for example, the foreign ministry today argues: “… state and non-state actors [must] fulfill their responsibilities toward affected populations, and [develop] the tools and strategies needed to help guide international responses.”145 Whether this translates into positions on specific situations on the Council’s agenda is of course a related but separate question.

Canada has been a loyal supporter of the Agenda’s aide-mémoire, the roadmap and improved reporting mechanisms. It has championed the virtues of lessons learned and best practices activities, of improving the technical aspects of Council cooperation with regional organisations, of carefully crafting and then monitoring and enforcing targeted sanctions.146 Canada has tried to focus the Council’s attention on political will, systematic assessment by the Council, clear mission mandates with properly trained staff, consistent engagement and

143 Council meeting of 14 December 2004 (Resumption 1), supra note 59 at 4.
144 Supra note 100 at 9.
145 Rights and Protection of Civilians, supra note 141.
146 Council open debate 9 December 2005, supra note 59 at 15.
follow-up by Council (in which countries it engages, where to deploy troops and whether they are adequately equipped and resourced).

Finally, inside and outside Council activities, Canada has underscored action on accountability and against *impunity* as a necessary corollary to a strong normative framework. This has meant sustained support for the ICC and the various *ad hoc* tribunals. This can be seen as reflecting Canada’s interest in the Agenda’s concern with accountability.

In short, Canada’s public positions have been consistent in supporting several key aspects of the Council’s work on the Agenda.

**D. Improving Protection in Specific Situations**

Has the Council’s sustained work on the Agenda had any impact on its consideration of specific geographic contexts? These geographic situations, after all, constitute the bulk of its workload. The short answer is mixed: yes, sometimes, but neither regularly nor consistently. While an in-depth analysis lies beyond the scope of this paper, a few points merit mention.

First, there has been growing consideration of protection concerns when preparing and reviewing peacekeeping mission mandates. As of October 2009, there were seven peacekeeping missions with explicit protection of civilian mandates. Further, protection issues are increasingly addressed in Secretary-General Reports on specific situations, though again not necessarily consistently.

The Council’s practice to date is increasingly assessed by experts, thus it will benefit from outside scrutiny of its efforts to enhance protection in particular contexts. The Security Council Report’s latest crosscutting report on the protection of civilians included an analysis of three cases studies: Democratic Republic of Congo (DRC), Sri Lanka, and Gaza. A similar study was undertaken in 2009 in relation to the Women, Peace and Security agenda. The Conflict Dynamics study discussed above, funded by Canada, includes detailed analysis of the Council’s action (or lack thereof) in cases of chronic violations of the rights of children in armed conflict.

**VII. LOOKING AHEAD**

**A. 2010 and Beyond**

It is clear today that the Agenda is solidly established, and has developed an important momentum, strengthened by the Council’s renewed attention to the


148 Ibid. at 9 and 10.

149 Ibid. at 9 to 18.


151 McHugh, *supra* note 102 at 10-21.
Agenda in 2009. The question now is how the Agenda might develop in future. We have four predictions.

First, accountability might be the single most important part of the Council’s future work. This has been a central theme from the start of the Agenda in 1999. While it never disappeared, it gained renewed force in 2009. In our view, its prominence will grow.

The need for the Council to ensure greater accountability for serious violations of the rights of civilians in armed conflict is widely acknowledged on all sides. The question of accountability was listed in the Secretary-General’s latest report as one of the five key challenges for the Agenda. Nevertheless, it must also be seen as important in part because of the fast-moving developments on accountability in different fora in recent months.

The Council itself can expect to be under more sustained pressure to advance the Agenda in a consistent manner. Thus, the Council may become more systematic in its responses to alleged violations of IHL. This would help counter concerns about the Council’s lack of consistency in its response to crises. It would in turn contribute to the perception of those responsible for parties to armed conflict that they are under scrutiny and may have to account for their conduct.

The possibilities for influencing abusive actors can easily be underestimated. Rarely does any actor want to be monitored, named, listed in an annex, or prosecuted as an abuser either under international law or via one of the existing mechanisms of international justice. Even when they profess indifference, most armed actors (whether state or non-state) are consciously aware of these risks and attempt to ameliorate them. They take into account the expected level of impunity or accountability, and consider whether risks of stigmatisation, sanctions or prosecution will hurt them. They calculate as best they can the impact of their actions on their own personal or institutional reputations and ambitions.152 (Our emphasis)

The calculations of such actors will reflect how often the Council moves beyond calls for respect for IHL and denunciation of violations, to more specific action.

Second, we expect that the Council will begin to use targeted sanctions and action against individuals more over the next few three to five years. One obvious tool is the 2009 version of the aide-mémoire. Similarly, the reports by consultants such as Fieldview and Conflict Dynamics and the well respected non governmental organisation Security Council Report propose specific actions such as targeted sanctions (economic, arms export, etc.) and diplomatic pressure

152 Supra note 100 at 7.
on those responsible (e.g., naming them in annexes of SG reports). We foresee more Council action here.

Third, we expect continued Council attention to the protection mandates entrusted to peacekeeping missions. This is likely to include more attention to the formulation of such mandates, some increase in resources to implement these, better doctrinal and policy guidance, more systematic reporting by the Secretariat, and better monitoring and follow-up by the Council.

That said, we are somewhat cautious as to the real impact in the field of this greater attention to protection mandates by peacekeepers, for several reasons. First, the challenges will remain of securing financial and qualified military and police contributions for operations with a strong protection of civilians focus. Second, guidance will take some time to develop, and longer to implement and adapt to field requirements. Third, reporting from the mission through the Secretariat to the Council will not be transformed overnight. Finally, peacekeepers with strong protection of civilians mandates will not be deployed to all contexts, so the Council must continue to avail itself of other tools.

Our fourth prediction is that humanitarian access is likely to be a growing concern for the Council. This risks becoming more complex. Even if the Council seeks to be more consistent, security concerns, rejection of the impartiality and neutrality of UN or other humanitarian actors, polarised positions on humanitarian action, and Council reticence in situations of non-international conflict, are all apt to complicate Council responses on humanitarian access.

In short, the Council’s work on the Agenda is certain to remain challenging. What will Canada’s roles be in the Agenda’s future?

This depends first, on whether Canada is elected as a Council member for 2011-2012. Our view is that Canada will be active in promoting the Agenda whether or not it is elected. Obviously it would have more influence as a Council member, and could thus be expected to contribute more.

But what are Canada’s objectives? According to its website, the government of Canada “…will continue to work to strengthen norms, increase international capacity and build political will to protect civilians at risk.” This is encouraging, but some observers have questioned Canada’s commitment to some of its ambitions that touch on the Agenda. In 2009 the government was embarrassed by a leaked document that seemed to restrict use by public officials of terms such as “human security” and “international humanitarian law.” In Canada, debate continues on whether these changes are superficial, akin to “re-branding,” or reflect real changes in policy. Still, Canada has remained committed, publicly at least, to a number of initiatives relevant to the Agenda. For example, Canada remains publicly committed
to the ICC. A week after the Council’s latest open debate on the Agenda, the government of Canada strongly reiterated its commitment to the ICC at the eighth Assembly of States Parties to the ICC in The Hague. A noteworthy development was the presence at that meeting, for the first time in years, of senior US officials (in the capacity of observers, as they have not joined the ICC) signaling a greater tolerance for the ICC by the US. Canada is likely to remain a strong supporter of the ICC.

Finally, Canada can be expected to be actively engaged in the four topics just discussed, namely accountability, targeted action, protection of civilians and peacekeeping, and humanitarian access, given its demonstrated interest in all of these. These constitute, in effect, “unfinished business” from Canada’s previous work on the Agenda.

B. Further Inquiry

A paper of this scope inevitably raises more questions that it can answer. We suggest here a few that in our view merit further consideration.

First, how can the real impact of the Agenda be evaluated? Is ten years too soon to assess this “real-world” impact? Could any future assessment, focused on better compliance with core rules of IHL that protect civilians, provide any quantitative data on such improved protection? Could any such assessment separate the impact of the Agenda from that of other diverse, complementary efforts to secure compliance with IHL?

Second, are Canada’s motivations – political, legal, historical, and other – for choosing the Agenda as a foreign policy priority in the late 1990s still present today? Does Canada’s engagement is specific contexts, such as Afghanistan and Haiti, suggest it might seek to encourage the Council to better translate the Agenda’s ideals into situations on the Council’s agenda?

Third, in the UN realpolitik, would it be advantageous to promote further attention and ownership for this topic outside the Council? Should the General Assembly be more involved, formally or otherwise, in the Agenda? Recent developments on R2P and the ICC suggest that the Agenda might benefit from a larger level of engagement by a wider group of Member States, particularly those most affected by armed conflict. What could Canada’s role(s) be in this?

Another set of questions concerns the Council’s newly established informal expert group on the protection of civilians. The efforts by some Council members to include a reference to this in resolution 1894 did not succeed. Despite this, will the working group gain momentum and acceptance? If so, will it develop effective working methods and practice in crafting and assessing protection of civilians mandates? Would such Council action be perceived as being more consistent and principled than it is today? How might Canada participate in the expert group if elected?

This leads to a final related question: what will be the future interplay and division of labour on the Agenda between the various players, specifically the

Council, its expert group, OCHA, and humanitarian actors within and outside the UN system?

**VIII. CONCLUSION**

In 1999 and 2000, Canada played a key role in launching the thematic agenda of the United Nations Security Council on the protection of civilians in armed conflict. This initiative aimed to reduce the civilian casualties of war through better respect for IHL.

Ten years on, the Council’s Agenda is well established. That said, it is far from complete, and remains imperfectly translated into the Council’s action in particular geographic situations. Put plainly, the Council remains unable to ensure adequate protection for countless civilians affected by armed conflict. Sadly, this is the case in a number of conflicts around the globe, even in situations currently on the Council’s agenda where it has specifically taken action. This is sobering. It indicates that the Council must do more if it wishes to ensure real protection for the millions of civilians affected by conflict worldwide.

If Canada becomes a Security Council member for 2011-2012, it will have an important opportunity and special responsibility. Canada’s “unfinished business” would be to help ensure that the Council translates its oft-stated commitments to protect civilians in armed conflict into sustained action that ensures better respect for IHL in specific situations.