Humanitarian Action and Urban Violence

A Study of the practical, conceptual and legal considerations of addressing urban violence from a humanitarian perspective

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Acknowledgements

I have been told that good researchers are supposed to begin a project with only a question. I confess that I began writing this paper with certain convictions about the need for humanitarians to do more to aid communities affected by urban violence; however, through the research my convictions quickly fell away to be replaced by difficult questions that I found I could not answer. Through my research I developed a better understanding of the complexities behind those questions, and though I still do not have any clear answers, I feel lucky to have engaged so deeply with a topic that I believe is important for millions of lives. I still believe that more needs to be done to support people whose right to live with dignity is violated each day by the devastating consequences of urban violence; I only hope that this paper might help to bring to light some of the issues that will need to be addressed in order for that to happen in the most effective and responsible way.

This work would not have been possible without the support of many people; but special thanks must go to Tina Lopes for her unfailing capacity to lift my spirits and restore my faith.
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Introduction

"That 'fragile cities' can exist even in relatively stable states indicates the importance of understanding violent threats in unconventional terms - not just in countries that are at war."

Context

Since 2009, more than half of the world’s population lives in cities and over the coming decades even more people will be moving to urban centers. There are already 23 megacities worldwide with populations over 10 million and by 2050, almost 70 percent of people are expected to be living in cities. As noted in one recent publication “[c]onceptions of local and global governance are changing in an age when the mayor of a mega-city such as Mexico City now governs more people than the leaders of 75 percent of the world’s states.” Where there are high levels of poverty, inequality or conflict, people often move to cities after being forcibly displaced or when seeking refuge from violence and insecurity in other parts of the country. Yet in many cities around the world such as Rio de Janeiro, Johannesburg, or Ciudad Juarez, violence has become an increasingly serious problem – sometimes a national security problem – with a devastating impact on people’s lives. The humanitarian needs in these cities can be comparable to those seen in traditional armed conflicts, in terms of the number of wounded or killed per year, incidence of sexual violence, levels of fear and insecurity, and mental health effects despite that the countries in question are officially considered to be at peace.

Understanding urban violence as a humanitarian concern: Relevance of the study

Despite these needs, humanitarian action in cities ‘at peace’ has traditionally been very limited, reflecting what might be labeled a “rural bias”; however, more and more NGOs are

1 Human security for an urban century, p 39
3 Human security for an urban century, p 9
becoming involved in humanitarian action in urban contexts, or at the least are trying to improve their institutional understanding of these contexts, as they recognize that the future of humanitarian action rests in the cities. As cities and slums continue to grow, levels of violence will rise as well in some of these areas, for reasons such as inequality and struggles for territory and drug-trading routes.

That said, not all contexts of urban violence are of concern to humanitarian actors. The favelas in Rio are very different from Cité Soleil or the gang-held neighbourhoods in downtown Detroit. An important consideration for humanitarian actors in the future, therefore, will be how to accurately assess the humanitarian impact of urban violence in a given location. Humanitarian actors would (arguably) always recognize the humanitarian emergency in urban areas affected by a recognized war, despite the fact that these actors may still face difficulties in the assessment and implementation phases of operations in urban contexts. Yet those contexts of urban violence in countries not experiencing armed conflict are rarely considered. An important observation made by Elena Lucchi is that the fundamental concern really is how actors can ensure that vulnerable urban populations with serious humanitarian needs are not neglected due to a poor understanding of the humanitarian impact of urban violence or the assumption that violent threats in countries officially ‘at peace’ should only be considered within the realm of development. The identification of humanitarian needs in cities is also of critical concern given the demographic changes currently taking place around the world – more people in cities, especially rapid growth of cities in countries that are not able to cope well with such growth, means more populations at risk in potentially dangerous urban areas. Following from this, humanitarian actors will need to develop a much better understanding of the risks of urban violence in order to ensure that these potentially vulnerable groups are not neglected, as well as to remain relevant in the world of new humanitarian risks.


6 Institutions such as ALNAP and IASC have identified the complexities of operating in urban environments and focus new research initiatives on developing solutions to these complexities. See Chapter 1 for a further discussion of these publications and initiatives.

While learning to work in urban areas has been a topic of study and debate in the humanitarian sector for the past few years, it remains a relatively new and poorly understood area. Moreover, what advances have been made and the initiatives to better understand this context are focused on a) responding to natural disasters in urban areas and b) understanding cities made vulnerable by war or experiencing armed conflict (a topic that will be explored further in the section on literature review). This indicates that the humanitarian sector as a whole continues to consider potential contexts for intervention from a traditional understanding of humanitarian needs – most typically based on the occurrence of a ‘trigger’ event or ‘rapid-onset’ emergency. What very few actors and academics in the sector have done is consider the potential humanitarian impact of a chronic situation such as urban violence; much less so in a country ‘at peace’ since these countries do not often figure on the radar of humanitarian operations teams that respond to man-made disasters like conflict.

There are many reasons for this: first, humanitarian actors understandably await these trigger events because an integral part of humanitarian action is the aspect of ‘emergency’: there must be a pressing reason to intervene to mitigate the risk of death or suffering, a situation that is most clear in the case of natural disaster and war. It is much more complex for the international humanitarian sector to consider chronic, and therefore long-term, situations and operations. Second, and less obvious, because of this primary raison d’être (emergency), the very tools that humanitarians use to evaluate needs are geared towards implementation in emergency situations. Humanitarian needs-assessments vary by sector – for example, medical humanitarian organizations more often use mortality, morbidity and malnutrition rates to evaluate a situation. These indicators may indeed highlight a situation that calls for an immediate humanitarian response, and they allow for a justification of activities and use of funds to donors; however, they may also mask much more complex situations. Because these tools are designed for use in

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emergency, a) they are ill-adapted to evaluate the humanitarian consequences of chronic situations, and b) they are often implemented only when humanitarian actors have already decided to intervene, meaning a needs-assessment is required to determine what action should be taken rather than if action should be taken, or to request funds for such operations.

"The way in which needs are defined and prioritised has real-world implications for millions of people. Improving humanitarian needs assessment demands greater consistency in the way problems are framed, in terms of observable symptoms, proximate causes and acute risk factors. It also demands that assessment be given greater priority in practice. Improving assessment practice cannot of itself address the issue of inequitable resource allocation; but it is a necessary condition for effective prioritisation and appropriate response."\(^9\)  

The emphasis on quantifiable indicators is understandable in that humanitarian action needs to be justified both inside an organization and externally, and the most effective and objective way to justify the existence of humanitarian action is through these indicators.

Nevertheless, too heavy a reliance on quantifiable indicators will make it difficult for humanitarians to respond to situations that constitute the more unquantifiable threats to well-being, threats to life with dignity and that give rise to the need for protection. How is it possible to measure the humanitarian impact on a community of living in fear? Of course, the outcome of that fear can be measured – if it prevents individuals from accessing health or education services, if it causes underreporting of sexual violence or restricts movement within and between communities – but the very fact that a community lives in fear on a daily basis is an assault on their right to live with dignity, and that is itself for many a humanitarian concern.

Given their dependence on these indicators, the tendency to overlook violence not officially considered armed conflict, and the lack of attention to urban violence even where

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humanitarians are looking to urban crises, international actors appear to remain blind to urban violence and the humanitarian consequences that it has for communities around the world. Certainly, not all humanitarian organizations will have the mandate and capacity to respond to such violence, but what is needed is a real understanding of urban violence and the extent to which it coincides with a humanitarian mandate, in order to allow those actors to justify to themselves and to their stakeholders their decision to intervene, or not. The thesis encourages humanitarian actors to analyze the humanitarian consequences of urban violence – specifically, whether cities have identifiable humanitarian needs stemming from violence that call for humanitarian action in countries “at peace”.

Framework of the Paper

Research Questions and Hypothesis

This paper aims to answer the question: To what extent can and should urban violence be considered a humanitarian concern? In order to answer this primary research question, the following sub-research questions will be considered in turn:

- What is the nature of urban violence?
- What is the nature and purpose of humanitarian action?
- How does urban violence fit into the concept of humanitarian crisis and humanitarian action more broadly?
- What are the legal issues that must be considered if humanitarians are to engage in projects responding to urban violence?

The hypothesis of the thesis is that urban violence does create legitimate humanitarian needs; however, to respond to such violence requires humanitarian actors to look beyond the traditional fields of operation and to perhaps even to expand the definition of humanitarian action itself. It is likely that the very nature of urban violence (especially distinctive issues such as life with dignity, mental health, and free of fear) creates humanitarian needs, though in an environment that is not normally addressed by international aid actors, and that to argue for them to respond in these contexts would constitute a challenge to a traditional understanding of humanitarian action.
Objectives:
The objectives of the research are:
1. To better understand the human impact of urban violence;
2. To identify the arguments for and against a response to such violence by humanitarian actors.

It is hoped that the research will provide a starting point from which humanitarian actors will better understand the nature and potential humanitarian impact of situations of urban violence in order to then be better equipped to make truly objective and transparent decisions on whether, and then when and where to operate in violent urban settings.

Terms and Definitions
In order to assess whether and why humanitarian actors should respond to urban violence, it is important first to provide definitions and concepts that the essay will be working with.

Urban
There is no clear or universally accepted definition of the term ‘urban’, nor is there a set of criteria to be met in order to define what is considered a “city”. Still, in a study called “Meeting the Urban Challenge”, ALNAP does identify 3 characteristics that set apart urban from rural areas – diversity, density and dynamics. These factors highlight the fact that cities are: diverse, in that populations and actors are heterogeneous and communities may not be grouped together geographically; density, because a high number of people living together in a limited space is a defining characteristic of a city; and dynamics refers to the complexity of operating in an environment with a multitude of actors, interests and influences. It is more appropriate, therefore, to consider a kind of spectrum that has rural areas on one end and urban areas at the other, with increasing density, diversity and dynamics as the spectrum continues.

Violence
There are many definitions of violence in academic literature and these vary by discipline. This essay considers primarily physical violence (homicide, injury, sexual and domestic violence, etc)

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and as a related secondary issue, non-physical manifestations of violence, such as threats, coercion and intimidation. These secondary forms of violence are important to consider in the context of urban violence because they are directly related to the physical forms of violence, they may have physical manifestations and they are an integral part of the humanitarian consideration of ensuring life with dignity. Other forms of violence, such as structural or economic violence, are not considered by the paper due to limitations of space, time, expertise and the prioritization by relevance.

“At Peace”
This paper is limited to considering urban violence in countries “at peace”, as considered by international law. Urban violence in this work, therefore, does not included official armed conflict or warfare undertaken in urban areas. This means that the countries assessed are not experiencing international or non-international armed conflict, with the exception of Colombia. Colombia was examined in the paper, despite that it is considered to be experiencing internal conflict at the time of writing. The reason for this is that the nature of the conflict is such that the majority of violence associated with the conflict still occurs in rural areas, while in the cities reviewed (Bogota and Medellin), urban violence demonstrates distinct dynamics that allow for it to be considered separately. While there are links between this urban violence and the armed actors involved in the conflict in rural areas, the dynamics of violence in the city make Medellin and Bogota comparable to countries like Mexico, Honduras or El Salvador.\footnote{For example, Medellin is a city that has experienced high levels of violence for many years. While the dynamics and the actors are related to the internal conflict in Colombia, the city itself is not considered by the State to be experiencing conflict; still the level of violence has been evaluated by the ICRC to warrant humanitarian operations.}

Methodology

Literature Review
The literature review will include the most significant publications on urban violence, the purpose of humanitarian action and those publications from the humanitarian sector that address urban settings. The characteristics of urban violence drawn from the literature will be evaluated against the theories of the nature and purpose of humanitarian action itself, in order to determine the extent to which the former may appropriately considered a humanitarian concern. This analysis will be supported by a review of additional legal literature that addresses the legal
concerns surrounding possible international humanitarian operations in foreign, sovereign territories, as well as the most effective legal frameworks for providing civilian protection in situations of urban violence.

Restraint: It was difficult to find sources immediately related to this field of research. In part this is because urban violence from a humanitarian perspective is a relatively new topic of research and publications in the area are anecdotal or quite generalized.

Interviews
To complement the research, semi-structured interviews with humanitarian actors that operate in urban settings were conducted both in person and by phone in order to further understand the dynamic of violence in cities and what humanitarian needs may arise from this context. It was not feasible to speak to populations living in violent areas given the sensitivity of the security situation and time and resource constraints; however, since the perspective of the paper is the understanding of humanitarian concerns in violent urban settings by humanitarian actors, it is not critical to include the beneficiary perspective.
Chapter 1
Urbanization, Humanitarianism and the Nature of Urban Violence

The trends of urbanization

In 2007, the world marked a milestone in which the balance of the global population tipped in favour of cities – and the scale continues to dip sharply though the growth is not occurring evenly. More than 90 percent of global urban growth is occurring in the developing world, and with the world’s rural population expected to decline after 2015, this will make up almost all population growth in the next 25 years.\textsuperscript{12} The urban population in less developed countries is set to grow from 2.7 billion to 5.1 billion between 2011 and 2050 and although there are over 20 megacities in the world today, with populations over 10 million, over half the urban population will continue to live in small and medium-sized cities (see Figure 1).\textsuperscript{13} Much of this growth is occurring in a context of high economic inequality. Between one third and one half of the urban population of low- and middle-income countries already live in slums, currently representing at least one billion people, and that figure is expected to double. This does not take into account those populations that are unregistered and who are even more vulnerable as they may be excluded from city planning and emergency response.\textsuperscript{14}

Given these demographic trends, it is clear that the future for humanitarian actors lies in the cities. While there will surely remain a need for rural projects, the majority of populations will live in cities and the future is predicted to bring rapid and unequal growth of slums, as mentioned above, with poor access to basic services and high levels of inequality that foment exclusion and violence. Moreover, those living in places of extremely high population density and poor infrastructure will be exposed to higher levels of vulnerability in case of natural disasters. Many humanitarian actors have recognized this trend and begun planning for the urban scenario, an area with which these actors have, on the whole, little experience.\textsuperscript{15} Still, much of

\begin{itemize}
  \item \textsuperscript{12} Humansecurity-cities.org, \textit{Human Security for an Urban Century: Local Challenges, Global Perspectives}, Foreign Affairs and International Trade Canada (DFAIT) and Canadian Consortium on Human Security (CCHS), (hereinafter “Human security for an Urban Century”) 1 January 2007, p. 9.
  \item \textsuperscript{14} ALNAP, “Meeting the Urban Challenge,” p. 6-7.
  \item \textsuperscript{15} Many humanitarian networks have recently launched debates, conferences and web platforms to analyze and promote discussion of urban humanitarianism. For example, in January 2012, the International Committee of the
\end{itemize}
the current discussion has so far tended to neglect the analysis of urban violence as a humanitarian concern.

**Figure 1: World Urban and Rural Population Trends, 1950-2050.**


![Graph showing urban and rural population trends](image)

How humanitarian actors engage with urbanization

It is now almost common wisdom that traditional inter-state conflicts have all but been replaced completely by internal ones. Moreover, it is clear that high population density combined with poor quality housing and lack of infrastructure will leave urban communities vulnerable to future natural disasters. For these reasons, the international humanitarian system has seen a

proliferation of materials addressing the “urban challenge” since at least 2007, when the global population officially became more urban than rural. There has been an incredible boom in research, debate and publishing on the topic of urban humanitarianism.

In the past, however, the humanitarian sector has exhibited what has been labeled by Muggah and Savage a “rural bias”. Humanitarians previously worked from the assumption that rural communities by nature experience higher vulnerability and marginalization in the face of conflict or disaster. It was likewise assumed that cities are more effective at providing for the needs of their populations than rural communities, especially given the better infrastructure, stronger government presence and greater proximity of people in the city; however, these assumptions are now being challenged.

Developments within two of the largest international humanitarian networks illustrate the trend. The Inter-Agency Standing Committee (IASC) released a report in 2010 called “Meeting Humanitarian Challenges in Urban Areas”, a strategy document that seeks to explore the city as a working environment for humanitarian actors. The IASC has also created a Reference Group on Meeting Humanitarian Challenges in Urban Areas which is has been tasked with assessing key strategic and practical challenges, as well as institutional gaps in administering humanitarian aid in urban settings. Likewise, it will work towards making practical recommendations on how to overcome the identified issues and facilitate a better urban humanitarian response in the future. The ISAC Report has as its fourth strategic objective to “Promote Protection of Vulnerable Urban Populations against Violence and Exploitation”, which speaks to the potential role of humanitarian actors in ensuring the protection of vulnerable groups, especially through coordination with local and national authorities and the implementation of appropriate tools in the Protection Cluster. The document suggests that urban violence should be taken into account during emergency operations and in the early recovery phase of, what one can only assume will be, traditional humanitarian operations. In other words, IASC does not envision an evaluation of urban violence and its consequences without the existence of a traditional ‘trigger’ event such as a natural disaster.

16 “Engaging the Fragile City,” 2012.
Another major humanitarian network, the Active Learning Network for Accountability and Performance (ALNAP) also released a report in July 2012 called “Meeting the Urban Challenge: Adapting Humanitarian Efforts to an Urban World.” As the title suggests, however, this document also focuses primarily on adapting existing humanitarian tools to urban settings, meaning that it is focused on disaster risk reduction, preparedness and response to natural disasters. Other common themes that arise are those of water, sanitation and hygiene, and how to design operations in the context of high population density and multiplicity of actors. There is again a note on urban violence as an emergent category of disaster, although there is little discussion of the humanitarian needs that may emerge as a result of such violence.\textsuperscript{19} ALNAP has also launched an online resource center that offers an extensive list of publications on urban humanitarian challenges, and also invites actors to upload their own documents in the spirit of sharing information and lessons learned. Browsing through these documents, one finds a focus on issues such as food security, poverty reduction, slum upgrading, coordination, (natural) disaster preparedness and response and IDP identification tools; however, there remains a distinct lack of literature on urban violence and where it is mentioned, it is often considered as part of the contextual analysis in the case that operations would be considered for other reasons – as is the case with reports by ALNAP, ISAC, and even UN-HABITAT.\textsuperscript{20}

Therefore, despite the attention to the new urban context, still few actors are considering urban violence as a potential humanitarian situation that warrants attention in its own right rather than as a more peripheral operational concern. The following section will describe in more detail what may be seen in a modern situation of urban violence in order to evaluate whether humanitarian actors should be looking at such scenarios more often, drawing on interviews from Medellin, Bogota, Port-au-Prince and San Salvador as well as literature on the global trends in urban violence that looks at other cities around the world.

\textsuperscript{19} ALNAP, “Meeting the Urban Challenge,” p. 5-6, 8.
The Nature of Urban Violence

People migrate to cities most often to seek opportunities for a better quality of life – opportunities for work, housing, access to services and protection.\textsuperscript{21} In Colombia, for example, internally displaced people have also tended to move to cities in order to seek protection in the anonymity of densely populated urban areas. However, as Lucchi and McPhun of the international medical NGO Medecins Sans Frontieres/Doctors Without Borders point out, “[u]rban settings in particular are fast becoming less a safe haven to escape to and more a new territory of opportunity for those with power to extort.”\textsuperscript{22} The city presents its own set of threats and hazards to vulnerable groups, and these in turn reinforce vulnerability, sometimes resulting in the emergence of humanitarian needs.

It is difficult and perhaps academically unwise to attempt to draw a general picture of what urban violence looks like; of course, every situation is different and the dynamics of violence change not only from city to city, but also within a city over time. Still, based on interviews and an extensive literature review, this section attempts to draw out common characteristics in order to help the reader to understand what kind of situation the paper refers to in the discussion of how urban violence could and should be considered through a humanitarian lens.

Urbanization, Poverty and Violence

The relationship between urbanization and violence is not clear or linear. While it is not always true that cities are by nature more prone to violence than rural areas, the most recent UNODC report states that living in an urbanized environment increases the risk of homicide and other violent crime.\textsuperscript{23} On the other hand, a 2008 article by MSF workers on urban crises was careful not to make the generalized statement that social violence is more prevalent in urban areas, but argues that there are factors in cities that are linked to fomenting violence.\textsuperscript{24} Some of the factors characteristic of city life that are believed to exacerbate urban violence include

\textsuperscript{22} McPhun and Lucchi, “Challenges in understanding and responding to crisis in urban contexts,” p. 1.
\textsuperscript{23} Global Study on Homicide, p. 77
\textsuperscript{24} McPhun and Lucchi, “Challenges in understanding and responding to crisis in urban contexts,” p. 4.
poverty and inequality, though unemployment, lack of access to basic services and the availability of arms and drugs are also believed to have an impact.25

While the world’s cities are growing rapidly, as was explained above, the growth is not homogenous and it is not necessarily true that bigger cities are more dangerous. Megacities like Algiers, Cairo26 and Tokyo are among the world’s safest cities, while other major cities that are dangerous, like Sao Paolo and Bogota, have been able to dramatically reduce the incidence of violent crime as their populations continue to grow. Studies have shown that a city’s rate of growth has a much stronger link to the level of violence than size alone.27

Likewise, it is not true that poverty itself leads to violence; rather, inequality has a much stronger correlation to high levels of violent crime.28 The highest rates of homicide are found in regions where income inequality in highest – Africa and Latin America29; those countries with low levels of human development and high inequality may suffer homicide rates up to *four times* those seen in more equal societies.30 As noted by Ailsa Winton of the University of London, it has been argued that "in situations of widespread and severe inequality, the urban poor are undervalued and marginalized, and their daily living conditions heighten the potential for the emergence of conflict, crime or violence."31 Therefore, a high rate of growth combined with high inequality may increase the probability of the emergence of or maintenance of significant levels of urban violence.

Finally, urban violence is often related strongly to failed public security.32 Where the state is unable or unwilling to provide public security, this gap has been increasingly filled by a range of public groups, including paramilitaries, gangs, and vigilantes and hired off-duty police officers. Some areas, for example the slums outside of Medellin or Sao Paolo are physically

25 Muggah and Savage, “Engaging the Fragile City,” footnote xli
27 World Bank, “Violence in the City,” p. 15-17.
29 Human Security for an Urban Century, p. 37
30 UNODC, *Global Study on Homicide*, p. 10
extremely difficult for police to access regularly due to narrow, steep and winding streets. These
neighbourhoods become effectively controlled by urban groups that control entry and exit of the
territory, and may not allow police to enter. The perception and reality of insecurity in these
areas leads to social and geographical divisions by which richer communities become gated
communities and poor communities rely on criminal groups for security and even service
provision.\textsuperscript{33}

It seems then that the countries where humanitarians may already have experience working
in other sectors (such as disaster risk reduction or water sanitation) will be those facing issues of
urban violence – developing and less-developed countries with high levels of inequality and
rapid growth rates are most at risk. Next it is important to illustrate the kind of violence seen in
urban areas.

\textbf{Typology of Violence}

Studies on violence often differentiate between types of violence, the most common of
which and those that will be included in this study being: economic, social and political
violence.\textsuperscript{34} These categories of violence are better described in other publications though they
will be briefly defined here for the purposes of the paper, drawing on classifications made by the
Crisis States Research Center at the University of London.\textsuperscript{35}

\textit{Economic violence} refers to violence driven by financial or material gain and includes
examples such as drug-related crime and kidnapping. Street gangs or other armed groups like
those associated with mafia and organized crime may also be involved in economic violence like
robbery or extortion. This kind of violence may be most common where there are high levels of
inequality, exclusion and marginalization.

\textit{Social violence} refers to inter-personal violence committed with the aim of achieving or
maintaining social control between individuals or communities. Gangs are a common

\begin{footnotesize}
\textsuperscript{33} Human Security for an Urban Century, p. 25-31, 33.
\textsuperscript{34} Other studies have categorized even more forms of violence, including institutional, structural and emotional
violence. See for example Caroline O. N. Moser, “Urban Violence and Insecurity: An Introductory Roadmap,”
\textit{Environment & Urbanisation}, vol. 16, no. 2, October 2004
the literature.”
\textsuperscript{35} Published in the IFRC, World Disasters Report 2010, p. 74.
\end{footnotesize}
manifestation, as young people often join one for status or a sense of belonging. Extrajudicial killings, social cleansing and the geo-spatial segregation of urban space (into gated communities and slums, for example) are also considered examples of social violence.

Finally, political violence is defined as violence that is motivated by the pursuit of political power. Its most common manifestation is the control of entire territories by gangs or organized criminal groups that impose their own rules for social control. These groups may impose curfews, taxes, check points or other methods to maintain that control, as well as providing services that populations may otherwise not be able to access, such as paying for healthcare, funeral services and even community clean-up projects.

Other analyses of violence look beyond the intentionality (political or economic motivation) to distinguish or describe urban violence by other characteristics. These analysts may distinguish by: intensity and duration – whether violence is acute, chronic, common or everyday; its impact – direct or indirect; spatial features – whether self-directed, relational, structural; or based on its context – armed conflict, terrorism, or elections. Of course, urban violence in reality defies such neat classification by academics and policy-makers as much of it overlaps various categories and because the intentions behind such violence are impossible to prove. Robert Muggah appropriately suggests that urban violence features “interconnected forms of insecurity” that require multi-dimensional frameworks to understand.36 Organized crime related to drug trafficking, for example, a problem in many countries in Latin America, overlaps political, economic and social violence.

Violence in People’s Lives

Humanitarians are not overly concerned, however, with the theoretical categorization of forms of violence, but rather with their daily consequences in people’s lives. What does this typology of violence look like in terms of the threat to life, health, and well-being? Some of the most common forms of violence that appeared in both the literature and the interviews conducted include, but certainly are not limited to, the following: unlawful killings, exploitation, rape and other forms of sexual violence, high rates of gang, police and civilian casualties, recruitment of

“urban child soldiers” into armed gangs, social cleansing, extortion, death threats, forced displacement, forced disappearances and, of course, homicide. Some of these forms of violence will be described in more detail in the next section in order to bring the discussion from the macro-level to the individual-level, the human level.

**Homicide**

Homicide is one of the most visible forms of urban violence and is also one of the easiest to articulate numerically since it is a crime that is usually recorded by various national and international sources. In the city, homicide is also one of the most shocking and devastating forms of violence as it takes human life and creates fear and trauma in those who witness it or suffer the loss.

As with urbanization, countries are affected very differently by homicide. A 2011 UNODC Study calculates a global average homicide rate of just 6.9/100,000. While some 80 countries have homicide rates of less than 3 per 100,000 (primarily in Europe and Northern America), other countries reach homicide rates above 60 and even 80 per 100,000. By region, Africa and the Americas each represent just 15% of the global population, but over one third of global homicides each, 36% and 31% respectively – together making up just 29% of the global population and 67% of homicides.

Since 2007, Central America has seen a sharp increase from an already high 60 per 100,000 regional homicide rate to 110 per 100,000 in 2010, just three years later. The use of firearms in committing homicides is also a key characteristic of Central America, highlighting the link between violent crime and organized crime, particularly gang violence and drug trafficking. Latin America is home to some of the most violent cities in the world today, cities that show homicide rates much beyond the national averages.

There are also important differences between a national homicide rate and a city rate, or when differentiated by neighbourhood or age bracket. One report notes the major discrepancies between the homicide rate in different districts of Rio de Janeiro, at only 38 per 100,000 in tourist areas and 59 in the middle-class neighbourhoods while it rises to a shocking 177 in the

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38 UNODC, *Global Study on Homicide*, p. 25.
low-income districts.\textsuperscript{40} If one takes into account the most at risks groups, including youth between 15 and 24, especially male youth, the rates are similarly high across the country. See Annex for a selected list comparing national homicide rates to the rates in each country’s most populous city.

Such differentiated homicide rates are just one indication that there are particular groups more at risk than others in any given context. Ronak Patel, Director of Harvard’s Urbanization and Humanitarian Emergencies Program, noted in an online seminar that young men are often the casualties of urban violence, while women are often the victims.\textsuperscript{41} He was referring to the fact that often in gang violence, organized crime and social cleansing, men are more likely to be killed while women tend more often to be victims of sexual and domestic violence, as well as bearing the brunt of the dissolution of social fabric in the wake of violence by, for example, by heading (broken) households and caring for the wounded and children.

Nevertheless, homicide is just one part of what makes up urban violence. Although in Colombia homicide rates have dropped from a shocking 72 to 33 per 100,000,\textsuperscript{42} it is still one of the world’s highest rates and one of the world’s most dangerous countries for unionists, human rights activists and others. It begs the question, does a drop in the homicide rate mean an improvement in the humanitarian situation of the population?

\textit{Invisible Borders: Control of Armed Groups}

Not necessarily. In Medellin, Colombia, the homicide rate tends to drop in violence-prone areas when one combo, or gang, secures control of a given territory. For example, the significant reduction in homicides in Medellin between 2002 and 2007 can be attributed to the uncontested control of the city by the drug lord Don Bernal.\textsuperscript{43} The reverse is also true – when another combo becomes strong enough to challenge the dominant group and fight for control of that territory, homicide rates rise. While one group maintains control, and homicide rates are reduced, violence does not cease. The armed group in question will often exercise harsh social control, imposing strict rules such as the charging of “taxes” on the community (extortion), as well as threatening

\textsuperscript{40} Winton, “Urban Violence: a guide to the literature,” p. 166.
\textsuperscript{42} UNODC, \textit{Global Study on Homicide}, p. 25.
or killing those who are unable or unwilling to pay and even participating in social cleansing of “undesirables” or those who do not follow the rules.\textsuperscript{44}

When multiple armed groups compete for a limited amount of urban territory, each one exercises this kind of strict control\textsuperscript{45} in part to ensure that rival groups are not able to infringe on the territory that has been won (or taken). The lines between the areas of control of rival groups are clearly demarcated for citizens by urban ‘front lines’\textsuperscript{46} that some are unable to cross. This is especially the case for young men who are assumed to be members of the gangs that operate where they live. It is a common issue that citizens are unable to access their local health centers, schools and other services when these fall in the territory of a rival group. Such front lines have to be crossed by local relief workers or civilians themselves to get the wounded away from fighting, something that may put these individuals in danger themselves.\textsuperscript{47} This phenomenon of restricted access due to the unseen frontlines is also known as “invisible borders” by the ICRC, and is a major obstacle to protection and welfare in Medellin.\textsuperscript{48}

\textit{State and Reactive Violence}

Where violence is endemic and the state is unable or unwilling to provide public security, the gap is commonly filled by private security actors that range from off-duty police to paramilitary groups, gangs and vigilantes. These actors often attempt to provide security by using violent means themselves, including harsh social control and “street justice.” Many also become involved in social cleansing, which is defined as the violent targeting of individuals


\textsuperscript{45} Armed groups do not only exercise control through violence. They may also provide services that the State does not, services that people view positively, in order to win loyalty and support what is often their home community. For example, they may pay for funeral services and medications. Katherine Zapa Cardenas. Comité Internacional de la Cruz Roja (CICR, ICRC). Interviewed by author. Medellin, 30 August 2012; Faruk Samam Gonzales. Comité Internacional de la Cruz Roja (CICR, ICRC). Interviewed by author. Medellin, 29 August 2012; Daniel Acosta. Misión de Apoyo al Proceso de Paz – Organización de los Estados Americanos (MAPP-OEA) Interviewed by author. Medellin, 29 August 2012; Ailsa Winton, “Urban Violence: a guide to the literature,” \textit{Environment & Urbanization}, vol. 16, no. 2, October 2004 \url{http://eau.sagepub.com/content/16/2/165.full.pdf+html} (accessed 28 September 2012), p. 171.

\textsuperscript{46} Harroff-Tavel, “Armed violence and humanitarian action in urban areas”

\textsuperscript{47} Katherine Zapa Cardenas. Comité Internacional de la Cruz Roja (CICR, ICRC). Interviewed by author. Medellin, 30 August 2012.

considered undesirable in the community. These may be homeless people, drug-addicts, gang members, homosexuals, alleged criminals or members of ethnic or religious groups.\textsuperscript{49}

In Brazil, institutional violence (here referring to the high number of homicides perpetrated by police officers) has been widely criticized externally. While reporting on this, however, Winton notes how communities come to accept high levels of violence in the fight on insecurity although such police violence in fact \textit{reduces} human security:

“…There is an interesting paradox, not unique to Brazil, in which the “public” mistrusts and/or fears the police, but also approves of police ignoring the human rights of suspects in the fight against crime. … Moreover, links between state and private security (with police officers often “moonlighting” as rent-a-cops after hours) create a curious situation in which the police are profiting from the lack of security, while being formally employed to uphold it. Social control becomes particularistic rather than democratic, and the state arguably creates more insecurity than it reduces.”\textsuperscript{50}

The State has also been attributed responsibility for repression and neglect of violent areas. There are cases of harsh state activity and state violence in slums resulting in massive displacement, sometimes used as a deliberate form of punishment or targeting of migrant or other populations.\textsuperscript{51} People from districts known for violence are often stigmatized so authorities do not prioritize development of health or education services in those areas. Likewise, the judicial system does not function properly or fully, a climate that favours impunity.\textsuperscript{52} In explorations of gang violence, it has been argued that youth gangs can actually be seen in part as a product of structural violence within the State, referring to psychological hurt, alienation, repression and deprivation.\textsuperscript{53}

\textsuperscript{49} Human Security for an Urban Century, p. 34.
\textsuperscript{50} “Urban Violence: a guide to the literature,” p. 174
\textsuperscript{51} Human Security for an Urban Century, pp. 37-39
\textsuperscript{52} Harroff-Tavel, “Armed violence and humanitarian action in urban areas”
Violence by and against Children

Another defining characteristic of urban violence is the effect it has on children. Violent cities often demonstrate a high rate of child recruitment into armed groups such as gangs or organized crime. Children may be used to transport goods, pass information or even to participate in battles over territory, effectively turning them into child soldiers. McPhun and Lucchi believe that there are currently more child soldiers in urban gangs than there are in insurgent groups and militias worldwide.54

A 2003 study on children in the drug trade in Rio de Janeiro also likens children caught in the drug trade to child soldiers, suggesting that they might be even more vulnerable than children involved in political conflict. It argues that children linked to urban gangs and the drug trade are often less ‘visible’ and harder to both define and advocate for, while the fatality rate among such children may be higher than in traditional armed conflict situations.55

Another major concern is the impact of urban violence on young girls. In addition to the threats of child recruitment into armed groups, chronic violence often creates a social structure that leaves young girls especially vulnerable to sexual abuse and exploitation. They may be victims of sexual violence as a reprisal against another individual or simply as a consequence of the normalization of violence and mental stress felt in the whole community. In Medellin, the ICRC is responding to a situation in which girls are being sold by family members to young men in the local gangs, taught that their sexuality should be traded for financial or material gain.56 In El Salvador, adolescent pregnancies among girls 10 to 19 years old make up one third of pregnancies, some girls having their first child as young as 11 or 12 years old. These girls account for 11% of maternal deaths, and 57% of those are due to suicide.57

54 “Challenges in understanding and responding to crisis in urban contexts,” p. 1.
56 The nature of these exchanges is unclear, as well as the degree of choice available to mothers in a situation in which a local gang member wants to have a girl as his girlfriend and could threaten violence to both in the case he is denied; however, there are cases that the ICRC mentions of girls saying that they have been told to use their sexuality to gain money and status, as well as mothers that “sell” daughters to gang members. Most often, men and boys do not use condoms and often leave girls pregnant. Katherine Zapa Cardenas, Comité Internacional de la Cruz Roja (CICR), interviewed by author, Medellin, 30 August 2012.
57 Juventudes UNFPA El Salvador. See for example DiarioCoLatino.com, “Naciones Unidas altera sobre altos índices de abusos contra la mujer en el país,” 13 March 2012 http://www.diariocolatino.com/es/20120313/nacionales/101356/Naciones-Unidas-alerta-sobre-altos-%C3%ADndices-de-abusos-contra-la-mujer-en-el-pa%C3%ADsNaciones-Unidas-alerta-sobre-altos-%C3%ADndices-de-abusos-contra-la-mujer-en-el-pa%C3%ADsambaapa@nacionales/101356/Naciones-Unidas-alerta-sobre-altos-%C3%ADndices-de-abusos-contra-la-mujer-en-el-pa%C3%ADs.htm (accessed 27 November 2012).
This is not an exhaustive list of the kinds of violence affecting the lives of urban communities, but it does give an indication of the kinds of threats they face. Nothing has been mentioned about intra-urban displacement, families being forced to move from one area to another due to threats to their lives or well-being, or forced disappearance which implies people being taken away and presumably killed, though their bodies may never be found. And of course, one of the most important effects of such violence and living with the fear and the acute stress it creates is the impact on individuals’ and communities’ mental health. In fact, one of the most important and dangerous effects of high levels of chronic violence is the normalization of violence.

Normalization of Violence

Another one of the characteristics of urban violence, and one that greatly complicates consideration of the context by humanitarian actors, is that it is chronic violence. The intensity and type of violence may change, as well as the actors involved, but it is often an issue for years and it is difficult or impossible to identify a ‘beginning’ or a change in the violence that is sufficient enough to call the attention of emergency actors. As Moser notes, “[t]he sheer scale of violence in the poor areas or slums means that, in many contexts, it has become ‘routinized’ or ‘normalized’ into the functional reality of daily life.”58 This may create societies in which it becomes normal to solve daily personal issues through violence. In some cases, a ‘normalized’ state of violence is the only state a new generation knows; those who were recruited to armed groups as children may not see opportunities or develop skills other than those of criminal activity. The now transnational gangs that were created in the 1980s in Los Angeles and later brought back via deportations to El Salvador have been terrorizing Central American countries, among others, for decades. In fact, there were more violent deaths in El Salvador after the civil war than during it,59 leaving residents feeling like the war never actually ended. Likewise, household surveys in Brazil demonstrate that residents, especially poorer residents of favelas, have been affected by armed violence for generations.60

Despite the chronic nature of urban violence, and the fact that residents may become numb to it, humanitarian actors and others who have analysed or responded to urban violence

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59 Human Security for an Urban Century, p. 17.
compare its effects to armed conflict, and cities experiencing such violence are “among the most dangerous places in the world to live.”61 Urban violence does in some cases reach levels such that it and its impact may be considered a “chronic urban emergency.”62 McPhun and Lucchi have also described the level of deprivation and scale of need as a humanitarian crisis.63 Still, the term humanitarian crisis is used often, perhaps more often than it should be, to describe a wide range of situations. It is often used politically to motivate action where there is little international attention and likewise to characterize a situation deemed morally unacceptable. The next chapter will examine the concepts of humanitarian crisis and humanitarian action in order to facilitate a well-founded analysis of the extent to which urban violence may fit into either or both.

Conclusions

It has been demonstrated that homicide rates related strongly to economic and human development as well as the effective rule of law64, issues which are most identified as development concerns; however, while it may be within the realm of development actors to decrease homicide rates in the long-term, it could very well be an humanitarian concern to address the impacts of this violence in the short-term – especially given that some people point to failed development models as causing much of the inequality of human insecurity that fuels it.65

As the world’s demographic trends shift in favour of rapidly growing urban environments, so also do levels of vulnerability increase. In response, many humanitarian actors have begun studying urban environments in order to assess how humanitarian action can and should be adapted to the urban context; however, few of these actors have undertaken a critical analysis of urban violence as a field of interest in urban humanitarianism. Despite the lack of attention, urban violence affects people in all spheres of life, from their mobility, ability to access public services, mental health, sexual health, opportunities and life expectancy. In some places, violence has reached a level of intensity so high it calls for comparison to internal armed conflicts. Given the clear humanitarian impact of violence, these situations need to be assessed in an impartial way to determine whether and how humanitarian should respond to humanitarian needs arising from violence in cities.

62 ALNAP, “Meeting the Urban Challenge,” p. 5-6.
63 McPhun and Lucchi, “Challenges in understanding and responding to crisis in urban contexts,” p. 5.
64 UNODC, Global Study on Homicide, p. 33-34.
65 See McPhun and Lucchi, “Challenges in understanding and responding to crisis in urban contexts,” p. 2.
Chapter 2
The Humanitarian Imperative:
What is Humanitarian Action and When is it Justified?

Although urban challenges in humanitarian action appear to be one of the most discussed topics in the field at present, still the humanitarian sector on the whole has failed to consider in a consistent and academic way how operating in contexts of urban violence fits into the nature and purpose of humanitarian action.\textsuperscript{66} There appears to be a gut reaction on the part of humanitarian actors to intervene where violence crosses a given threshold of intensity that makes it comparable to armed conflict\textsuperscript{67}; however, urban violence is not armed conflict – it can fluctuate greatly in intensity over time and can be hidden in nature, so it should not only be evaluated by humanitarian organizations when such a comparison can be made. In order to make objective and responsible decisions about when and how to respond to situations of urban violence in the future, humanitarian actors need to engage in a discussion of the extent to which it can and should be addressed within the theoretical framework of the humanitarian imperative, the justification and purpose of humanitarian action itself. This chapter will address those questions before turning to the legal framework and legal debates that humanitarians will need to engage with in Chapter 3.

In order to understand how and when urban violence may fit into the scope of humanitarian action, it is important to first separate the concepts that form part of what is

\textsuperscript{66} Based on a review of literature and activity in the humanitarian, noted in Chapter 1

\textsuperscript{67} Armed conflict is discussed in this paper in the legal sense of the term. There are two forms of armed conflict considered by international humanitarian law: international armed conflict (IAC) and armed conflict not of an international character (non-international armed conflict, NIAC). Additional Protocol II of the Geneva Conventions defines NIAC as conflict “[…]in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.” See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, article 1(1). While IAC must include at least two States participating on opposing sides of the conflict, a non-international armed conflict may be undertaken between a State and a non-State group or between such groups. That non-international armed conflict may exist without the participation of a State appeared in jurisprudence of the International Tribunal for the Former Yugoslavia, in the Tadić decision of 1995. In this decision it was determined that there exists “armed conflict whenever there is a resort to armed forces between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.” ICTY, \textit{Prosecutor v. Tadic}, Case No. IT-94-I-AR 72, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 70. See further ICRC, “How is the Term ‘Armed Conflict’ Defined in International Humanitarian Law?” Opinion Paper, March 2008 \url{http://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf} (last accessed 28 November 2012). This is further discussed in Chapter 3.
understood by such a broad term. Since the focus of this section is on the potential for considering humanitarian operations, humanitarian action will be explored in this chapter in two ways: first, the paper looks to the idea of the humanitarian crisis, or emergency, as the ‘trigger factor’ that creates a demand for humanitarian response. Second, the paper takes a step back to a more theoretical and fundamental analysis by re-engaging with the very justification for humanitarian action, the principles of humanitarianism and the humanitarian imperative. These questions are analysed together to determine whether and to what extent it is possible and appropriate to consider urban violence through a humanitarian lens at both of these levels.

“Triggers” of Humanitarian Action

The most logical reasons for international humanitarian actors to label a situation a humanitarian crisis include: to call for humanitarian response, maintain international attention on a given country or situation, or to justify their presence there. Yet definitions of humanitarian crisis, or emergency, are difficult to identify. Surprisingly few humanitarian organizations or networks actually define what they mean when they talk about a humanitarian crisis or emergency. Some organizations refer to such “crises” in publications and appeals without indicating what the organization understands by that term. Instead the characteristics of a crisis are implied or assumed to be understood, perhaps based on the respective mandates of organizations that choose to respond to them.

It is not a mere exercise in semantics to discuss the content of definitions, since the labelling of a situation as a crisis or emergency has a real impact on the creation, maintenance and funding of a humanitarian response. It is not, of course the only factor – there are multiple organizational and political considerations that will also influence the launch of relief operations; however, the way a crisis is defined, or what is labelled a crisis, may influence popular opinion, perhaps media coverage, and it carries moral weight. Returning to the definitions of humanitarian crisis, then, those that can be identified have key points in common that may be used to draw out the implied characteristics of crisis or emergency situations. In this

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68 See, for example, doctorswithoutborders.org and publications like “Top 10 under-reported crises” yearly reports.
69 Other considerations include budget restrictions, probability of making an impact, access to the country or affected population, political restrictions or political interest in some countries more than others, availability of funds from international donors, etc.
section, the available definitions will be explored to determine whether situations of urban violence may be considered a humanitarian crisis or emergency.

In the most basic way, the ReliefWeb Glossary of Humanitarian Terms defines an emergency as a “sudden and usually unforeseen event that calls for immediate measures to minimize its adverse consequences.” The most significant aspect of this definition is that the emergency is “sudden” and requires an “immediate” response. The UNHCR goes further, defining humanitarian emergency as “any situation in which … life or well-being … will be threatened unless immediate and appropriate action is taken, and which demands an extraordinary response and exceptional measures.” Oxfam GB similarly defines humanitarian crisis as “any situation in which there is an exceptional and widespread threat to life, health or basic subsistence, that is beyond the coping capacity of individuals and the community.”

Characteristic of the last two definitions is the indication that the situation affects a significant population group; while UNHCR does not directly indicate a scale in the same way that Oxfam does, it does note that an ‘extraordinary’ response would be necessary, something that can be interpreted to refer to the scale of the problem. Second, both definitions highlight the exceptional character of the situation in question, something that falls out of the ‘normal’ range of events or experiences and which, therefore, requires an immediate and exceptional response. This concept of what is or is not “normal” in a given country, city or community is often key in the mobilization of the humanitarian community for a number of reasons and will be further discussed below.

Already it is clear that urban violence will not fit easily into these conceptions of humanitarian emergency. First, urban violence often affects a particular and marginalized population within a city, those who live in slums, outskirts or low income urban areas, meaning that the majority of the risks and impact are concentrated rather than ‘widespread’. As a percentage of the total population of the city, the affected population may not be a majority; however, it is difficult to estimate the number of people who are affected by urban violence since

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demographic information for the slums or low-income neighbourhoods that are hardest hit may be incomplete or non-existent.\textsuperscript{74}

Second, and perhaps more important, it is difficult to conceptualize urban violence as an exceptional situation when most often it is one better described as a chronic condition, or protracted crisis. As mentioned in the previous chapter, the level of intensity or the identity of the protagonists may change over time, but remains a concern for affected populations and their governments for years, even generations. This means that there is no ‘trigger’ event or emergency for humanitarian actors to easily identify and respond to, as they do in the case of an earthquake or the start of an armed conflict. More than that, because of the normalization of violence described in Chapter 1, over time both the population’s own and the humanitarian community’s conception of what constitutes “emergency” levels of violence may change.

\textit{Redefining the Emergency Threshold in Chronic Situations}

As pointed out in the HPG Report “According to Need?”, it is very difficult in situations of chronic conflict or instability to identify what the norm is and therefore what constitutes a significant deviation from the norm (an exceptional situation, or emergency). The report notes that if a situation remains critical for an extended period of time, the norm for that country or region might be effectively redefined, leading to a situation in which the bar for humanitarian response is raised. For example, the authors provide the examples of chronic food shortages in South Sudan and Somalia, which create situations in which 20% global acute malnutrition or higher has become accepted as ‘normal’ despite that this is fully double the rate of acute malnutrition considered acceptable by international standards. Still, humanitarian actors will make decisions on where and when to open, for example therapeutic feeding projects, based on this newly defined normal.\textsuperscript{75} It appears from this type of case that in a chronically serious situation, the level of humanitarian need comes to be judged against relative rather than absolute standards.\textsuperscript{76}

\textsuperscript{74} For example, in the Soacha area outside Bogota, census information is incomplete and greatly under-estimates the population since it used data from public transportation and the majority of people do not or are not able to use that service. Padre Ricardo Martinez. Pastoral Social. Interviewed by autor. Soacha, Bogota. 19 September 2012.

\textsuperscript{75} ODI, “According to Need?” p. 15

\textsuperscript{76} This is to be expected, given that humanitarians must plan projects based on realistic foreseen objectives and outcomes. Where it appears unlikely that an actor would be unable to reduce a chronic malnutrition rate, it would be very difficult to justify a high use of resources for a project in this area.
It is probable that the same is true in situations of urban violence. How can humanitarian actors evaluate what is an “acceptable” level of violence when communities and others become accustomed to it? When generations of people have lived with a high level of chronic violence? Some of the highest homicide rates in the world can be found in cities across Latin America like San Salvador, Sao Paolo, Medellin and Kingston, and they have been worryingly high for years.

The UNODC has called the wave of violent crime in Central America and the Caribbean as “nearing crisis point” where regional homicide rates are almost 16 times the global average.\textsuperscript{77} And the trends are not new for those regions experiencing high levels of violence. Between 1995 to 2010, Central America and the Caribbean were the only two subregions to experience an actual increase in the homicide rate (though regional data is unavailable for Africa). Moreover, from 2005 to 2009, homicide rates increased in those countries where they were already high.\textsuperscript{78} This indicates that violence has been and will continue to be a chronic condition in vulnerable countries, and a chronic situation that has arguably already reached crisis levels. Still, such homicide rates appear to have been accepted as normal in these regions. While the statistics are shocking from an objective view comparing regions of the world, they do not yet appear to have called the attention of international humanitarian actors based on the literature reviewed above.

Urban violence may not, then, fit the traditional criteria of what is considered a humanitarian emergency because it has no ‘trigger’ and it does not manifest as an immediate and exceptional situation threatening a large proportion of the population. Yet the levels of violence and the nature of violence described here and in the first chapter indicate that the level of human suffering in these contexts is very high. It would not be appropriate to simply leave urban violence unexamined because it is difficult (or impossible) to classify as a humanitarian emergency; therefore, international humanitarian actors should take one step further back to examine the fundamental (\textit{a priori}) purpose and justification for humanitarian action itself and what this might indicate about how, or whether, to address urban violence.

\textbf{What is Humanitarian Action}

As with humanitarian emergency, humanitarian action has been defined in different ways by different actors and in many cases only referred to and not defined at all. Actors may use the

\begin{footnotes}
\footnote{UNODC, \textit{Global Study on Homicide}, p. 10}
\footnote{UNODC, \textit{Global Study on Homicide}, p. 24}
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word “humanitarian” to legitimize activities or provide them with moral authority. In order to draw some general conclusions about a general and basic understanding of humanitarian action, definitions have been gathered from various sources and will be analysed below.

The OCHA Glossary of Humanitarian Terms, with a clear link to UN operations, defines humanitarian assistance as

[a]id that seeks to save lives and alleviate suffering of a crisis-affected population. Humanitarian assistance must be provided in accordance with the basic humanitarian principles of humanity, impartiality and neutrality, as stated in General Assembly Resolution 46/182 (19 December 1991). In addition, the UN seeks to provide humanitarian assistance with full respect for the sovereignty of States. Assistance may be divided into three categories - direct assistance, indirect assistance and infrastructure support - which have diminishing degrees of contact with the affected population.”  

Given the nature of the UN and the close link between aid and development prioritized by the global body, it is not surprising that this definition includes three stages of work that merge into longer-term and large-scale structural initiatives.

The Global Humanitarian Assistance website defines humanitarian aid more simply, as “aid and action designed to save lives, alleviate suffering and maintain and protect human dignity during and in the aftermath of emergencies.” Both definitions highlight as principle to the definition the intention to save lives and alleviate suffering. Importantly, both definitions also actually link the concept of humanitarian action to the context of emergency or crisis; yet, as noted, the organizations providing them do not usually clearly define crisis and emergency.

A more in-depth and thoughtful consideration of humanitarian action is provided by the Humanitarian Policy Group (HPG) in their report on needs assessment. It suggests that humanitarian action encompasses

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80 Global Humanitarian Assistance, “Data and Guides: defining humanitarian aid”
... the aims of protecting life, health, basic subsistence and physical security, where these are under threat on a wide scale. Health is understood to include short-term nutrition; subsistence to include access to adequate food, water, shelter and clothing to sustain life; and physical security to include freedom from violence and coercion, including forced displacement.\(^81\)

This report is the result of a year-long study on the international humanitarian system and derives from a thoughtful consideration of policies, goals and principles within that system. The definition, while not perfect, is a much stronger and more holistic one than those previously provided, and can be linked to international human rights legislation that protects the same aspects of personal security and well-being.\(^82\)

Some of the most important differences are that it moves much beyond the more simplistic idea of aid to crisis-affected groups and includes broader concepts like protection and physical security that incorporates freedom from coercion and forced displacement (although of course how to achieve this goal is always a difficult topic). It indicates that, over time, actors in the international system have recognized the ethical and operational short-comings of too-limited a definition given that the humanitarian needs that actors were responding to went far beyond saving life and providing basic services.

Other authors have taken a similar view. This definition, for example, articulates the developments in the sector from classic humanitarian aid to more wide-ranging humanitarian action:

“[Humanitarian] action as such is more than humanitarian aid (the latter understood as the normal distribution of goods and services in situations of crisis in an adequate quantity and quality), it implies in addition the guarantee of access of the civilian population to such goods –

\(^{81}\) ODI, “According to Need?” p 13
\(^{82}\) The legal framework for humanitarian action, specifically in context of urban violence, is addressed further in Chapter 3.
distribution – and also implies the protection of beneficiaries. ... It is not only then classic humanitarian aid (clothing, clean water, food, health care, etc); the conceptual extension to principles and to scope leads us to include other activities in that action like advocacy, activities of prevention and preparation that reduce vulnerability and increase capacities of people and communities.”

Clearly, many actors in the international humanitarian network see humanitarian action as something that goes beyond the basic actions of saving life and alleviating suffering through the provision of basic goods; it is action that attempts to build individual’s human security to the extent that it seeks protection, the reduction of vulnerability and even risk reduction and capacity building.

The Sphere Standards Humanitarian Charter from 2012, although not a legally binding document, attempts to articulate a consensus among humanitarian agencies on the principles and purpose of humanitarian action and therefore is a relevant place to examine the intention of humanitarian action, and a starting place to determine its potential reach. The Charter states:

“We believe that the principles described in this Humanitarian Charter are universal, applying to all those affected by disaster or conflict wherever they may be, and to all those who seek to assist them or provide for their security. These principles are reflected in international law, but derive their force ultimately from the fundamental moral principle of humanity: that all human beings are born free and equal in dignity and rights. Based on this principle, we affirm the primacy of the humanitarian imperative:

83 Translated by author from the original: “La accion como tal es mas que la ayuda humanitaria (entendiendo por esta la usual distribucion de bienes y de servicios en situaciones de crisis en cantidad y calidad adecuada), implica ademas la garantia del acceso de la poblacion civil a tales bienes - distribucion - y ademas implica la proteccion de los beneficiarios. … No es solo pues la ayuda humanitaria clasica (abrigo, agua potable, alimentos, atencion sanitaria, etc.); la extencion conceptual a principios y a alcances hace que se entiendan tambien como parte de la accion otras actividades como el advocacy o testimonio, y las actividades de prevencion y preparacion que disminuyen la vulnerabilidad y aumentan las capacidades de personas y comunidades.” Rey Marcos and Currea-Lugo, El debate humanitario, Barcelona, Icaria editorial, 2002, p. 53-54.
that action should be taken to prevent or alleviate human suffering arising out of disaster or conflict, and that nothing should override this principle. (emphasis added) \(^{84}\)

While there is a focus in the Charter, reflecting the focus in the humanitarian network, on the two scenarios of conflict and (natural) disaster, the more fundamental concern is the principle of humanity, which holds that all people are equal in rights and dignity, and so all human beings should be entitled to rights defined in the charter, particularly as it concerns the humanitarian imperative. In that case, it should be asserted that action be taken to prevent or alleviate all human suffering, not only suffering arising out of disaster or conflict, since that leaves actors to make decisions based on the definition of disaster or conflict.

This is made further evident by the rights articulated in the “Common rights, principles and duties” section of the Charter. This section defines three core rights of the affected population: the right to life with dignity, the right to receive humanitarian assistance and the right to protection and security. The basis of these rights, again, is the principle of humanity – that all human beings are born equal in rights and dignity – and so the implication is that some situation, read disaster or conflict, has brought into jeopardy the rights articulated here and the purpose of humanitarian action is to restore or protect these rights for anyone that sees them threatened or violated. Following this line of argument, any situation that puts into jeopardy these fundamental rights and individual’s human dignity should be of consideration to humanitarian actors, an assertion that most certainly brings urban violence into the debate.

The HPG group has articulated this more fundamental humanitarian imperative as well, suggesting that "[i]n more general terms, humanitarian action is understood to be concerned with the relief of human suffering and its proximate causes. This leaves open the question of how far up the causal chain humanitarian action should go, and the extent to which its rationale is preventive.” \(^{85}\) In addition to how preventive humanitarian action should be, it is unclear how inclusive humanitarian action should be when considering the situations that call for response. To look beyond situations of disaster or conflict is more appropriate than, for example, reconsidering the definition of ‘conflict’ to include urban violence, since creating more

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\(^{85}\) ODI, “According to Need?” p. 13
expansive definitions will make them more general and may create further debate while not necessarily contributing to the fundamental goal of addressing human suffering.

The right to protection and security is an extremely important one in this discussion since it is the right most commonly threatened in urban violence and more generally the right that has the most potential to pull humanitarian actors outside of their traditional parameters of work into overlap with the development sector. It reads:

“The right to protection and security is rooted in the provisions of international law, in resolutions of the United Nations and other intergovernmental organisations, and in the sovereign responsibility of states to protect all those within their jurisdiction. The safety and security of people in situations of disaster or conflict is of particular humanitarian concern, including the protection of refugees and internally displaced persons. As the law recognises, some people may be particularly vulnerable to abuse and adverse discrimination due to their status such as age, gender or race, and may require special measures of protection and assistance. To the extent that a state lacks the capacity to protect people in these circumstances, we believe it must seek international assistance to do so.”

This section notes that disaster and conflict are of “particular” humanitarian concern, implying that they are not the only scenarios of concern. The above quote begs the question: is the most

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86 While Sphere does not indicate exactly what sources of law it has based this statement on, further reading about the movement’s interpretation of the rights it describes here point to international human rights treaty law (specifically the right to life, the prohibition on torture and the right to an adequate standard of living found in the International Conventions on Civil and Political Rights and Economic, Social and Cultural Rights. These rights are discussed further in Chapter 3. The quote may also be referring to UN resolutions such as GA/RES/46/182 which, although it reaffirms state sovereignty and the need for consent, clearly articulates the State’s responsibility for humanitarian assistance in its territory and the expectation that State’s fully cooperate with and facilitate humanitarian operations. It likewise recognizes that international humanitarian organizations should continue to contribute to national efforts in this regards. GA/RES/46/182, articles 3-7. Although not a binding resolution, this resolution represents growing recognition in the international community of the responsibility to ensure the protection and victims of disaster.

important aspect the requirement to provide protection and ensure the safety and security for populations, or is it the assertion that people in situations of disaster and conflict are of particular concern? Again, in line with the humanitarian imperative, it must be the first aspect that is the most important one, and that same requirement to provide protection and safety creates much debate on how and when to call for international actors to fill the protection gap where states have not demonstrated they are able or willing to act.

An important question is the extent to which humanitarian actors currently consider the more inclusive and, indeed, subjective goals of protection and reducing vulnerability when they occur separate from an identifiable ‘trigger’ event such as conflict or natural disaster, manifesting instead in a chronic crisis. Parameters must be set to separate humanitarian action from other kinds of work that seek to improve human welfare, and so this question draws out the fundamental dilemma on where to draw the line between humanitarian action and development. Secondly, the ‘trigger’ event usually provides the justification for international agencies to pursue access (authorization to operate) in a country. It can be more complex to negotiate access with a government for issues that may be considered development concerns and where humanitarian agencies have much less experience. Therefore, understanding how urban violence may fit into the mandate of humanitarian action will help organizations to determine how responding to urban violence can fit into their own mandate; it would also reconcile these newer types of projects with their identities and with host governments. Of course, it is not necessarily true that all agencies will see a role for humanitarians in responding to urban violence. There are reasons both in favour of and against the consideration of urban violence as a humanitarian concern.

Urban Violence: a Humanitarian Concern?

As has been shows, urban violence may not be easy to define as a humanitarian crisis, though there is clearly a humanitarian imperative that urges actors to respond to the needs created by urban violence. Whether international actors do so or not will depend to a large extent on their mandates, identity, opportunity and budgets (among other considerations); and it will also have certain consequences. The following section looks to the arguments for and against viewing urban violence as a humanitarian issue.
There are three main reasons why urban violence should be considered by international relief agencies. These are: a) in order for traditional humanitarian agencies to stay relevant in a changing world, b) to ensure that vulnerable populations are not neglected, and c) because humanitarian actors may bring an added value to urban violence or fill a gap left by governments and development actors.

**Arguments in favor:**

*a) Staying relevant in a changing world*

The future is in the cities. All humanitarian agencies appear to agree on this, from the most traditional and exclusive humanitarians like MSF and ICRC to the more cross-over relief and development groups like Oxfam, though they take varying perspectives on the primary threats of urban environments for vulnerable populations.\(^{88}\) Not only is the trend of urbanization creating a world in which humanitarian challenges will be increasingly city-based, but the changing nature of conflict already widely discussed in the literature means that those actors that see themselves as the first responders on the battlefield need to find a role for themselves where the battlefield has been replaced by the city block.\(^ {89}\) These actors are aware of the trend towards a decrease in international conflicts and increase in internal conflicts. Moreover, there is a growing body of thought and literature on the concept of “failed or “fragile” cities, especially in the security sector, in which public authorities cannot maintain control or fulfill social contracts and may lose the monopoly over the legitimate use of violence. It is feared that these ‘fragile’ cities will become sites of urban terrorism and havens for other criminal networks. So, as the battlefield changes, humanitarian actors are being forced to redefine themselves, adapting to new trends and threats in order to continue to protect lives and dignity, but also as an organizational survival mechanism.

*b) Preventing the neglect of hard-to-define populations*

International humanitarian groups will be debating the definitions of “humanitarian action” and “emergency” for as long as they continue to do the work, but none will debate the

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\(^{88}\) Recall the publications and initiatives discussed in Chapter 1. Also, Oliver Schulz, Head of Mission, MSF-OCA, Interview by author via Skype, Port-au-Prince, Haiti. 19 & 21 September 2012.

\(^{89}\) Oliver Schulz, Head of Mission, MSF-OCA, Interview by author via Skype, Port-au-Prince, Haiti. 19 & 21 September 2012.
idea that aid must be impartial – based on the needs and without discrimination based on gender, age, race, religion, political affiliation or any other status. If humanitarians make operational decisions based on the (often political) definition of a situation as humanitarian crises, and not necessarily on an objective review of the humanitarian needs created by a given situation, they will not uphold this key humanitarian principle. Therefore it is important to evaluate needs in all contexts where human life and dignity is threatened, even and especially where this occurs outside of a disaster or conflict scenario since they will likely receive less attention.

This issue is perhaps the most important point for the integrity of humanitarian work as a profession. Decisions about where to operate should be made on objective criteria that assess needs. To rely on needs assessment, however, highlights another of the dilemmas surrounding urban violence. Needs assessments are most often implemented once organizations have decided to intervene or consider it very likely they will intervene.\footnote{The purpose of needs assessment is to determine: “whether to intervene, the nature and scale of the intervention, prioritisation and allocation of resources and programme design and planning.” See ODI, “According to Need?” p. 26. The majority of the objectives of the needs assessment are related to planning the operation and, although it may happen at times, it is impractical for organizations to invest the necessary resources where they do not see a great probability for deciding to intervene.} Humanitarian agencies do not appear to be considering urban violence as a potential theatre of need in a systematic way, and it is unlikely to appear on the organizational radar given the lack of a ‘trigger’ in chronic crises, explained above. It will be very uncommon, therefore, that agencies compare humanitarian needs in a context of urban violence against other more traditional potential projects – unless the violence coincides with or impacts work after another kind of disaster, like the earthquake in Haiti. And without a comparison of needs, operational decision-making may not be truly impartial.

c) Filling the Gap

Humanitarians recognize the responsibility of the government of the country where they work to provide for the humanitarian assistance required by their populations, and also know that where humanitarian needs emerge, the local population often has an incredible capacity for resilience and is usually the primary actor responding to those needs.\footnote{See the Sphere Standards, Humanitarian Charter for an articulation of these beliefs.} International humanitarians, therefore, see their role as filling any gaps that the government and local actors are unable or unwilling to provide for. Although the scenario is not a rapid-onset emergency, it
may be the case that the needs created by urban violence are not being addressed by local authorities, either because of a lack of interest (given that urban violence disproportionally affects low-income communities, or the possible political benefits of violence) or perhaps because local capacity is negatively affected by violence. Where armed gangs control territory, for example, it may be dangerous for government service-providers to work. In Medellin health care workers have been victims of attack or been asked to leave by the combos that control certain neighbourhoods before a clash is going to take place. Another concern is that many health care workers may not want to work in centers located in violent areas.92

Humanitarians have identified gaps where they bring an added value in the city.93 Not all issues of urban violence can be addressed by development – and development strategies may be an exacerbating factor in some cases.94 Moreover, humanitarians can fill a gap where there may be mistrust of, or complicated access for, government services due to their very identity as part of the state. A recognized, neutral actor like the ICRC may have a major advantage over state actors when attempting to access communities where there is a major presence of a gang or organized crime.95 These actors may also have success educating on and negotiating respect for certain humanitarian concerns, like preventing child recruitment and respecting spaces like schools and health centers.96

**Arguments against:**

All of the arguments above help to explain why it is legitimate for humanitarian agencies to consider urban violence a humanitarian concern, but not all agencies will agree that that is the most appropriate perspective. There are also important arguments against opening up urban

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94 See for example McPhun and Lucchi, “Challenges in understanding and responding to crisis in urban contexts,” p. 2.
95 While the ICRC’s most widely recognized field of operation is armed conflict, the organization’s mandate also allows it to operate in “other situations of violence.” See International Committee of the Red Cross, “The ICRC’s Mandate and Mission,” 29 October 2010, http://www.icrc.org/eng/who-we-are/mandate/overview-icrc-mandate-mission.htm (accessed 5 October 2012). It is under this part of the mandate that the ICRC conducts its work in, e.g., Medellin and Rio de Janeiro.
96 The ICRC has had some success in this area in their work in Medellin. Katherine Zapa Cardenas, Comité Internacional de la Cruz Roja (CICR, ICRC), Interviewed by author. Medellin, 30 August 2012; Faruk Samam Gonzales. Comité Internacional de la Cruz Roja (CICR, ICRC). Interviewed by author. Medellin, 29 August 2012.
violence to international humanitarian operations. Three important arguments against taking the humanitarian approach to violence in cities are: d) that it will only serve to further blur the lines between humanitarian action and development; e) that humanitarians will do more harm than good in these settings, and; f) in more practical terms, it is extremely difficult for agencies to develop indicators for needs and impact, which will mean that management and evaluation of these projects is complicated.

\(d\) Blurring the lines

It is not new for humanitarians to be concerned with the blurring of the lines between relief action and operations undertaken in other sectors, whether development, military or governmental. As the humanitarian sector as a whole has become more concerned with continuity and sustainability of relief work, strong preventive components both at the beginning and end of project cycles have been integrated.\(^97\) Yet as humanitarians go further and further up the preventive chain, it becomes less and less clear where relief efforts stop and development work begins. There does need to be a strong link between the two so as not to leave gaps in services but at the same time, parameters must be set that distinguish one kind of work from the other. In the case of urban violence, it is the chronic nature of the violence that creates potential confusion. The projects that humanitarians develop to respond to urban violence may not be strictly relief – health care, food, or shelter – because there exist government services in these areas, though other factors often restrict access. They will have to engage with the structural causes of violence.

For example, after-school sports programs are not traditional humanitarian activities; however, if we take into account McPhun and Lucchi’s assertion that there are more child soldiers in urban gangs than in militias or insurgent groups worldwide, a youth community outreach program could do more to combat child recruitment than programs designed for the same purpose in conflict-affected countries. And this could be an appropriate gap for humanitarians to address since other actors that might normally provide after-school programs in a city not experiencing armed violence may not be well-equipped to manage the potential threats or needs of children at risk of forced recruitment. Still, one of the consequences of engaging at

\(^{97}\) For example, the LRRD phase that refers to “linking relief, rehabilitation and development” has led some agencies to give more attention to supporting livelihoods in the post-disaster or post-conflict phase of work.
this level is a further blurring of the lines between relief and development. Moreover, it is not clear that humanitarians would be the best actors for the job.

e) Doing more harm than good

Humanitarians still have relatively little experience in the urban sector. While they are building on this experience and studying the environment in order to best adapt their strategies, it is not yet clear that they are the best actors to respond to urban crises. The operating environment in the city is dense, dynamic and diverse and one the humanitarian sector is still trying to adapt to. Opening projects always builds up expectations of the beneficiary population and risks unintentionally replacing the state. Beyond these traditional concerns, humanitarians still do not plan projects with a long-term commitment in mind and in chronic situations it is important to do just that. Projects must be long-term, coordinate with multiple governmental and societal actors, reduce rates of turn-over among staff in order to build up trust and working relationships with governments, armed gangs and communities and to best understand the most hidden needs and how to respond to them. And in a situation that has existed for generations, it is extremely difficult define a responsible exit-strategy. If humanitarians begin projects before they have established clear working guidelines appropriate for the urban context, they may do more harm than good.

f) Management and evaluation

It would be very difficult for humanitarian organizations to present data that justifies projects in urban violence internally and externally because indicators that evaluate first the level of need and second the impact of a given project will be difficult to create. ‘Traditional’ humanitarian projects may be able to record the number of patients treated for malnutrition or the number of food distributions carried out; in the city, on the other hand, results are more difficult to measure. For example, the ICRC works in urban centers on outreach to reduce adolescent pregnancy, train police on human rights and the use of force, negotiate with gangs to improve their respect for human rights, provide first aid training and promote mental health care. These

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98 ALNAP, Meeting Humanitarian Challenges, p. 4.
kinds of projects may take years to bear fruit and when they do it will still be extremely difficult to identify the extent to which they are a result of ICRC activity. The nature of improvements in mental health or the respect for human rights is more qualitative than quantitative in that it is difficult to record a quantitative value for an individual’s reduced sense of fear or the increase in perceived access to services.

As a result, although the impact of urban violence may warrant a humanitarian response, it is not easy for international humanitarian actors to justify that response within their organization or with external groups like international donors. For example, even at the height of violence in Port-au-Prince, when access to hospitals was compromised and mortality rates were increasing rapidly, it was difficult for organizations to secure funding for projects that addressed violence as the primary issue.\textsuperscript{100} Looking now to why humanitarians may still be unable to address urban violence as a humanitarian concern, it is difficult for these actors to justify a project that relies on qualitative rather than quantitative indicators.\textsuperscript{101} These projects need plans for evaluation, indicators of success, and even indicators that justify intervention to host governments, donors and other humanitarian actors. In the case of urban violence, those indicators are difficult to create but even where they can be articulated, they may not be the most appropriate method of evaluation.

\textbf{Conclusions}

Urban violence is not easy to conceptualize as a humanitarian crisis the way that the terms crisis and emergency are most often used because urban violence is chronic and long-term, it varies over time in intensity and impact, and it can also be ‘hidden’ in less visible forms like extortion, sexual violence, threats and a culture of silence and fear. More than that, high levels of violence in countries that are not experiencing armed conflict or that are post-conflict, especially when they are high for decades, can become normalized in the eyes of the community itself, the government and the humanitarian sector. There is no ‘trigger’ event that calls humanitarians to action and the situation is not extraordinary nor likely to change in a short time even with intervention.

\textsuperscript{100} Interview with Oliver Schulz, MSF-OCA Head of Mission. Port-au-Prince, Haiti. Skype. September 19, 2012.
\textsuperscript{101} Interview with Oliver Schulz, MSF-OCA Head of Mission. Port-au-Prince, Haiti. Skype. September 19, 2012.
Yet the level of need created by urban violence does warrant attention by humanitarian actors under the principle of humanity – that all individuals are born with equal rights and dignity – and the humanitarian imperative that calls for the alleviation of human suffering. Where a population is living in fear, under threat, witnessing or falling victim to homicide, sexual violence, forced displacement, extortion or any of the other myriad types of violence that may manifest in urban environments, and where this violence is not being addressed by local authorities, it is legitimate for international humanitarian actors to assess and respond to the situation. It must be remembered that urban violence is not armed conflict; it has consequences that, while they may be comparable to armed conflict, are unique and should be considered separately. For example, the chronic nature of urban violence means that a high proportion of people may be suffering from mental health disorders, the ‘hidden’ nature of violence means that there is a culture of silence and fear in many communities, leaving them unable to seek help by normal means even where services may already exist. Those humanitarian actors that do intend to consider work in this context must bear in mind that it may require an expansion of the contexts considered to be within the realm of humanitarian action.
Chapter 3

The Limits and Opportunities of Formal and Functional Legal Approaches to Urban Violence

One of the most important considerations for humanitarian actors to take into account is the legal framework in which they operate. International humanitarian organizations that intend to respond to urban violence will likewise need to take into account the international legal context of their work, and this is especially important in the sense that urban violence is not a traditional sphere of humanitarian action. For international humanitarian organizations to operate in countries not experiencing armed conflict nor in response to natural disasters may have major political implications in the view of host States. Of course, there is some debate about whether it is possible and appropriate to classify grave situations of urban violence as armed conflict not of an international character.\(^{102}\) There are major differences, from the perspective of protection and the legal operating framework, between a situation of urban violence defined as conflict and one defined as a matter of internal security; however, neither under international humanitarian law nor under human rights law does there exist an explicit right to provide humanitarian assistance or a right to receive it.\(^{103}\) Indeed under both bodies of law humanitarian assistance remains subject to the consent of the recipient State.

This section, therefore, is organized as follows: it addresses the matter of consent first, before moving to an analysis of the various legal frameworks and their potential advantages and disadvantages from the perspective of civilian protection from violence. The chapter then moves on to: a) review the complexity of the potential application of IHL to urban violence, b) consider the alternative of applying human rights law and finally c) consider potential ‘functional’ alternatives that have been promoted in recent legal literature. It is argued that IHL is not the most appropriate or advantageous legal framework to apply, first because situations of urban


violence are unlikely to meet the factual criteria necessary for a classification of armed violence and because, even if a situation did meet the criteria, IHL does not necessarily provide better protection to civilians than does human rights law. Still, as has been mentioned, neither framework provides for the right to provide humanitarian assistance and international actors must therefore first of all address the matter of State consent for their activities.

State sovereignty and Consent

The equal and total sovereignty of States is the oldest and founding principle of international law. In recent years, the total sovereignty of states has been questioned – first with the Universal Declaration of Human Rights, which developed the argument that individual citizens in fact have rights before their States in the sense that governments are deemed legitimate only insofar as they are able to fulfill the “social contract” with their citizens. While this did not directly challenge the sovereignty of States in the international arena, it did the foundation for later, more serious, challenges to unconditional sovereignty; the most recent of these is the notion of humanitarian intervention, more commonly discussed as the Responsibility to Protect (R2P) doctrine after 2005. This doctrine presents conditions under which the international community may violate a State’s sovereignty by intervening in its territory with military and humanitarian operations without that States consent, and even in contravention of the State’s will, on humanitarian grounds. Still, R2P remains a new doctrine in international law that has not been universally accepted and there is only one, widely debated and criticized, example of the implementation of the principle in the internal violence Libya in 2011.

105 While the UDHR is not a legally binding document, the two principle human rights treaties that were inspired by it, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, are binding on State Parties, as are other regional human rights treaties. The creation of these specific treaties articulating the rights of citizens that are to be guaranteed by their national government further entrenched the idea of the conditionality of sovereignty.
107 R2P was first recognized in UN General Assembly Resolution 63/308 following the World Summit of 2009, although action still cannot be taken without the approval or direction of the Security Council. On the one hand, it
Despite this tendency in recent years towards the conditionality of sovereignty on the fulfillment of the human rights contract with citizens, the international community is far from reaching a consensus on the limitation of State sovereignty, and the same is true in humanitarian action. The primary actor responsible for humanitarian activities in a State’s territory is the State itself. Of course, as States are often unable or unwilling to manage all the humanitarian needs that arise in the wake of a crisis situation, many international humanitarian actors have built their mandates on filling the gaps. In some cases, these actors even take a leading role in humanitarian planning and operations. Still, it is generally agreed among legal scholars and actors like that there exists no right on the part of international humanitarian actors to provide humanitarian assistance, whether in cases of armed conflict or natural disaster.

In the Geneva Conventions governing armed conflict, for example, there are few articles that relate to the provision of humanitarian aid, and even less that reference the provision of aid by international actors. The most important article with relation to non-international armed conflicts is common Article 3, which states that an impartial humanitarian actor such as the International Committee of the Red Cross “may offer its services to the Parties to the conflict”; aside from the clear difficulties in identifying the organizations that may constitute impartial humanitarian actors pursuant to this article, the language of “may offer” of course only secures the opportunity for actors to offer their services. There is no explicit requirement for the Parties to the conflict to accept. Moreover, this article provides for an offer of relief services to both a State party to the conflict and a non-State party alike, and in practice the provision of services may also depend on the consent of the non-State party.

On the other hand, there is a legal opinion that holds that there may exist an obligation to accept an offer of humanitarian assistance based on Article 18 of the second Additional Protocol does not therefore appear to change the regulations on the use of force; however, it does provide an additional basis by which the Council can authorize the use of force, and it provides additional authority to the notion that sovereignty is conditional on respect for the population and ensuring their protection.

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108 This is in line with the continued supremacy of the concept of State sovereignty. See for example, UN A/RES/46/182, “Guiding Principles”, para. 4, which articulates an expectation that States cooperate with international humanitarian efforts based on the needs of victims of disaster, but which still reaffirms State’s primary role in initiating, organizing and implementing humanitarian assistance in its territory.

109 See above note 104.

110 Common Article 3 of the Geneva Conventions provides minimum standards for the humane treatment of those taking no active part in the hostilities and some limits on the acceptable acts during conflict. The Second Additional Protocol, 8 June 1977, relates to the protection of victims of non-international armed conflicts.

111 Geneva Conventions 1949, Article 3, emphasis added

112 Geneva Conventions 1949, Article 3.

of the Geneva Conventions.\textsuperscript{114} Paragraph 2 of this article states that “relief actions ... of an exclusively humanitarian and impartial nature... shall be undertaken subject to the consent of the High Contracting Party.” While this article reasserts the condition of consent, it is argued that the language of “shall be undertaken” makes humanitarian assistance a legal obligation, though it remains unclear which actors should be bound to undertake them.\textsuperscript{115} Given that States are the primary actors responsible for the welfare of their populations, it would be reasonable to infer that the obligation implied here falls first to the State, but that where the State fails to fulfill it, an international humanitarian actor could argue that it then has a right to undertake such relief actions and that there is likewise an obligation to accept those services.

In some cases of urban violence, for example the \textit{favelas} of Rio de Janeiro, there has been a significant level of discussion on whether or not the situation may qualify as a non-international armed conflict and therefore whether the provisions of IHL discussed above may apply. Harroff-Tavel notes that the “humanitarian consequences of urban violence between gangs or dealers and the police in some towns in countries at peace ... are very similar to those of armed conflict: people killed, ill-treated or tortured, short or long-term displacement as a result of the fighting or expulsion, psychological traumas among children, excessive use of force during repression or detention.”\textsuperscript{116} However, most cases do not reach the level of intensity required for such a classification because the gangs involved do not qualify as organized armed groups for the purposes of armed conflict (discussed further below), and in any case States are extremely hesitant to accept the classification of internal violence as armed conflict because of the recognition this may afford the insurgents or rebels in their territory. In non-conflict cases, then, the Geneva Conventions and other sources of IHL do not apply and there is even less legal basis for international humanitarian actors to defend their ‘right’ to operate in a sovereign

\textsuperscript{114} Paragraph 1 of Article 18 notes that “relief societies located in the territory” where the conflict is taking place may offer their services to victims on all sides of the conflict; however, this chapter deals primarily with international humanitarian actors.

\textsuperscript{115} Spieker, “The Right to Give and Receive Humanitarian Assistance,” p. 13. It must also be noted that this Protocol is only legally binding on States Parties and has not been universally ratified; however, the ICRC has published in its study on existing rules of customary international law Rule 55: “The parties to the conflict must allow and facilitate humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.” See ICRC, “Rule 55: Access for Humanitarian Relief to Civilians in Need,” Customary IHL, \url{http://www.icrc.org/customary-ihl/eng/docs/v1_chapter17_rule55} (accessed 9 December)

\textsuperscript{116} Harroff-Tavel, “Armed violence and humanitarian action in urban areas”
country. In countries not experiencing armed conflict, there is no debate that the State must provide its consent for international humanitarian operations.

This does not mean, however, that a State may disregard the needs of a civilian population that is affected by violence in its territory. Unless the derogations allowed for are invoked in situations of national emergency, in peacetime the State must respect, protect and fulfill its citizens’ human rights in accordance with its applicable national and international human rights legislation. An argument could be made that, where the State fails to meet its obligations under human rights law by failing to respond to humanitarian needs that arise in its territory (where the humanitarian needs correspond to a gap in the fulfillment of a particular human right), an impartial humanitarian actor may offer its services to help fill this gap and the State may be obliged to accept such an offer. This point will be further discussed below, in the section on protection under the human rights legal framework.

As has been demonstrated above, neither a classification as non-international armed conflict nor the applicable legal regime in peace time necessarily imply a right to provide humanitarian assistance to populations in need. Arguments may be made by international humanitarian actors in each case to support their operational proposals, but these actors continue to rely on the consent of the host State in order to achieve access to populations affected by urban violence. In the next section, therefore, this chapter explores which legal framework may provide the best legal protection to civilians affected by violence. The object of this section is to analyze the legal frameworks not from the perspective of which framework is the most appropriate based on the factual situation, although there is some discussion to that extent, but rather to highlight which framework includes the strongest protections that humanitarian actors may refer to in order to promote the protection of affected civilians. From that departure point, humanitarian actors may advocate for the implementation of the legal framework that they feel is the most appropriate and effective from a protection perspective.

The application of IHL to urban violence

There are two major perspectives that can be used as points of departure when considering the question of whether to apply IHL to urban violence: first, on a case-by-case basis it needs to be determined whether a situation actually meets the criteria of armed conflict; second, from the perspective of protection, it should be analysed whether IHL will actually
provide benefit to the civilian population, as this is one of the major purposes of regulating conflict through IHL. While the first perspective is the natural starting point for legal analysts, it is not necessarily the case for those with other interests. For example, when humanitarian actors address urban violence, there is a tendency to address it from the reference point of armed conflict with the intention of: drawing attention to the humanitarian impact of the violence; creating humanitarian space through a rhetoric that connects the situation to one that is traditionally the domain of humanitarian actors; and perhaps also making the comparison in order to encourage the application of international humanitarian law as they hope that to do so would moderate to some extent the methods of conflict employed by the parties.

It is by no means clear that situations of armed violence in urban settings actually meet the criteria of a non-international armed conflict. Moreover, the legal classification of a situation of violence has many political and practical implications. Some of those implications were discussed above. International humanitarian actors and other experts in the field clearly agree that urban violence should be analysed through a humanitarian lens, as is demonstrated by the recent conferences, debates and reports mentioned in Chapter 1; what is needed now is a more critical discussion of which legal framework would best support humanitarian operations and their objectives in environments of urban violence, rather than the habitual discussion of whether international humanitarian law can and should be applied to such situations, especially since it is not clear that situations of urban violence would meet the definition of armed conflict.

Additional Protocol II of the Geneva Conventions defines NIAC as conflict “[…]in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.”117 While IAC must include at least two States participating on opposing sides of the conflict, a non-international armed conflict may be undertaken between a State and a non-State group or between such groups. That non-international armed conflict may exist without the participation of a State appeared in jurisprudence of the International Tribunal for the Former Yugoslavia, in the Tadić decision of 1995. In this decision it was determined that there exists “armed conflict whenever there is a resort to armed forces between States or

117 See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, article 1(1).
protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.” From this decision, what became known as the Tadic test identifies two components as necessary for the classification of armed conflict: a) the intensity of violence and b) the organization of the (non-State) group, or groups, involved.

In an article that examines the urban violence affecting Brazil’s favelas, Sven Peterke argues that it would not be viable to label the situation there as armed conflict because the armed groups in question do not meet all the criteria, or constituting elements, of parties to armed conflict, as referred to in the Tadić decision of the International Criminal Tribunal for the former Yugoslavia (ICTY). In that decision, the Tribunal decided that there was both an intensity requirement and an organizational requirement (for the groups party) in the assessment of what may constitute an armed conflict. In the case of urban violence, it is easier to argue that the intensity requirement is met than the organizational requirement. In different periods of time when violence is most intense, for example Port-au-Prince in 2005-2008, Medellin in the early

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119 Obviously the notions of ‘level of violence’ and ‘degree of organization’ ... are open to interpretation and depend on a case-by-case analysis of the situation concerned. Yet several examples could be interpreted as meeting those criteria, such as the drug-related violence in Brazil’s Rio de Janeiro or Mexico’s Juarez: in 2007, in Rio’s mainly drugs-related police offensive against the gangs that rule many of the city’s slums, 1,330 people were killed; and in Juarez the fight against the cartels cost more than 1,300 lives. In comparison, the conflict between the Colombian government and the FARC insurgents, generally recognized as a noninternational armed conflict (in terms of the criteria cited above) caused approximately 1,000 casualties in that same year.” Marion Harroff-Tavel, “Violence and humanitarian action in urban settings: new challenges, new approaches,” Vol 92, No 878 June 2010, International Review of the Red Cross, pg 365.

120 As violence in Port-au-Prince is not as well known as violence in other Latin American cities, it is worth noting that “[for] the period between February 2004 and December 2005, the worst phase of the violence, Kolbe and Hutson (2006) suggest that 8,000 people were murdered in the city, with a murder rate of 219 per 100,000 inhabitants per year. The sexual assault of women and girls was common in the same period, with findings suggesting that 35,000 women were victimised in the city, at a rate of 1,698 per 100,000 inhabitants per year. Kidnappings and extrajudicial detentions were also common; physical assaults were rated at 563 per 100,000 inhabitants per year. In a number of individual slums in the city, the mortality rates were significantly higher, however. Ponsar et al. (2009) suggest that, in 2006 and 2007, in the slum known as Cité Soleil, violence (especially gun-related violence) was the primary cause of mortality, causing 30 per cent of all deaths, with a murder rate of 457 per 100,000 per year. Young men aged between 15 and 39 years were most affected by the violence there. For that particular group, the murder rate was 1,109 per 100,000 per year. According to a UN Secretary-General report (UN, 2006), it is estimated that up to 50 per cent of young women living in conflict zones such as Cité Soleil have suffered rape or sexual violence.” See Lucchi, “Between war and peace: humanitarian assistance in violent urban settings,” p. 976.
1990s or Rio de Janeiro in the first decade of the 2000s, the number of casualties in violent urban settings may exceed those in armed conflicts, the types of weapons and equipment used are comparable to those used in armed conflicts and the number of people participating and affected by violence are also very high. On the other hand, armed groups and gangs involved in urban violence may not meet the organizational requirements. Specifically, in the Tadić decision it was decided that to be a Party to an armed conflict, an armed group must meet the requirements of

“... a command structure and disciplinary rules and mechanisms within the group; the existence of a headquarters, the fact that the group controls certain territory, the ability of the group to gain access to weapons, other military equipment, recruits and military training; its ability to plan, coordinate and carry out military operations, including troop movements and logistics; its ability to define a unified military strategy and use military tactics; and its ability to speak with one voice and negotiate and conclude agreements such as cease-fire or peace accords.”

Armed groups in Rio de Janeiro or Medellin can easily be said to control territory, have access to weapons and even access to military training. A major component that they may not display is a unified military strategy, the ability to plan and carry out military operations and, perhaps most of all, the ability to speak with one voice, particularly for the purpose of negotiating a cease-fire or peace accord. One important reason for this is the rapid turn-over

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124 A recent development that may influence the classification of the gang violence in El Salvador was the informal peace negotiation that took place in a high security prison between the Mara Salvatrucha and the Barrio 18, two of Latin America’s largest and most dangerous gangs. The result appears to be a significant drop in murder and other
of leaders due to high homicide rates. While the leader of the Revolutionary Armed Forces of Colombia (FARC, by their Spanish acronym) may remain in power for decades, gang leaders may change multiple times per year depending on casualty rates.\(^{125}\) The lack of consistent leadership makes it difficult to create and sustain an effective hierarchy of command.

A second reason is the heavy dependence on minors as recruits, and poor (if any) military discipline and training among them. New recruits may be as young as nine years-old\(^ {126}\) which means they may be too young to fully understand and abide by a chain of command. Moreover, in order to gain and secure the child’s loyalty (and dependence), he or she may be given drugs or alcohol and may be under the influence while “on duty” patrolling group territory or manning check points. These recruits are comparable to child soldiers; however, given that the gangs are unlikely to have any political motivation or desire to fundamentally challenge the State or replace it in terms of administration and provision of services, as discussed below, they are unlikely to have the motivation or capacity to plan, coordinate and carry out military operations in the traditional sense, nor to speak with one voice, as is required in the definition above.\(^ {127}\)

This kind of distinction is what differentiates parties that are considered to be party to the Colombian internal armed conflict, or not – while the FARC demonstrate the kind of command structure required by the organizational component of international law, the new armed groups that emerged in the wake of the paramilitary demobilization process of 2006 are much less easy to identify and define in terms of membership, control, interests and motivations, leaving it unclear whether they can be considered part of the country’s internal armed conflict (and

\(^{125}\) Katherine Zapa Cardenas, Comité Internacional de la Cruz Roja (CICR, ICRC), Interviewed by author. Medellin, 30 August 2012.  
\(^{127}\) A proper evaluation of each gang or armed group against the criteria and the relative importance of their dependence on minors would need to be carried out on a case-by-case basis. In cases where gangs rely heavily on minors, such as perhaps El Salvador, IHL may not be an appropriate legal framework because minors, under 15 years old, cannot be held accountable for violations of humanitarian law and therefore the deterrence provided by an application of that law is very low. On the other hand, Mexico’s drug cartels may be more easily classified as an armed group, though again they have no desire to replace the State and so will not carry out a planned and coordinated attack against it; rather they use violent means to defend territorial control for purely economic interests.
therefore responsible for war crimes) or not.\textsuperscript{128} Still, they remain one of the principle actors involved in urban violence in the country and must be considered by humanitarian actors and the State alike in any response to this violence. The application of IHL through the classification of a conflict that would lead to the exclusion of some of the groups involved may not be the most appropriate legal solution.

\textit{Advantages of applying IHL: visibility and humanitarian space}

As has been mentioned, humanitarian actors may have a variety of intentions in comparing urban violence to armed conflict, including drawing attention to the grave humanitarian impact of violence; creating humanitarian space through a rhetoric that connects the situation to one that is traditionally the domain of humanitarian actors; and encouraging the application of international humanitarian law in the hopes that it may moderate to some extent the methods of conflict employed by the parties and facilitate protection. These are all viewed as advantages in the sense that they are meant to increase the visibility of the impact of urban violence, increase the potential access to its victims and increase protection respectively.

For example, in the case of comparing violence to armed conflict, actors may be attempting to create “humanitarian space” in a context where there is no traditional agreement that humanitarians belong.\textsuperscript{129} The ICRC enjoys special status under international law and so has ‘space’ available to it by virtue of its mandate to protect the lives and dignity of victims of armed conflict and other situations of violence.\textsuperscript{130} According to international law, such assistance from the ICRC may be provided without being considered a threat to state sovereignty, although there may still be resistance on the part of States to accept such aid; government authorities continue to fear that for international humanitarian actors to negotiate the application of humanitarian standards with such groups may be seen to confer a legal status, however limited, on the group.\textsuperscript{131}

\textsuperscript{128} These groups have been labeled criminal bands (\textit{bandas criminales}, or BACRIM) by the Colombian government, and fall outside the legal realm of the armed conflict in the view of the State.

\textsuperscript{129} Based on the analysis of traditional humanitarian action in Chapter 2

\textsuperscript{130} Emphasis added. International Committee of the Red Cross, “The ICRC’s Mandate and Mission,” 29 October 2010. It is under this part of the mandate that the ICRC conducts its work in, e.g., Medellin, Colombia.

\textsuperscript{131} Especially the case where humanitarians attempted to negotiate with armed groups on the application of minimum humanitarian standards, an act which may be seen to confer status. See Peterke, “Regulating ‘Drug Wars’ and Other Gray Zone Conflicts: Formal and Functional Approaches,” p. 17. For example, the Colombian government has in the past been resistant to grant the ICRC a full mandate to work with gangs in violent areas
Other humanitarian organizations do not enjoy the same liberty of action as the ICRC and need to seek other legal and moral justification for operating outside of the traditional scenarios of armed conflict and natural disaster. Therefore, to compare a situation of urban violence to armed conflicts creates a language in which outside intervention by humanitarian actors becomes both justifiable and even necessary. Likewise, such rhetoric draws the attention of other humanitarian actors who may not yet be systematically analyzing urban violence as a potential sphere of attention, despite that the needs that arise in the wake of urban violence may indeed be similar. It can also draw the attention of the State itself to the seriousness of the impact of violence and identify those who may otherwise remain “invisible” victims of what is deemed to be a law and order concern, a situation common to most urban environments.

**Disadvantages of applying IHL: the protection gap**

While the classification of urban violence as a new form of armed conflict could increase its visibility, the application of IHL may not actually provide better protection for civilians. One major concern is that the application of IHL actually implies a restriction on the application of the human rights regime.\(^{132}\) Perhaps most importantly, under the application of IHL it becomes legal to kill enemy combatants and those otherwise actively participating in hostilities.\(^{133}\) However in the case of urban violence it is extremely difficult to identify who is a combatant participating in hostilities. Indeed in IHL itself, there is no clear distinction between civilians and combatants. Civilians, according to the ICRC and many military manuals are considered to be “any person who is not a member of the armed forces.” However, in practice it is still unclear in non-international armed conflicts whether members of armed opposition groups are civilians or not.\(^{134}\) The Geneva Conventions provides for those placed *hors de combat* and civilians, but civilians only retain this status so long as they do not take active part in hostilities, leaving some

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\(^{132}\) It has been determined that human rights law continues to apply during times of war, though some restrictions or derogations may be made in times of war, pursuant to the application of IHL as *lex specialis*. Still, certain rights are non-derogable even in times of conflict, such as the prohibition against torture. See Peterke, “Regulating ‘Drug Wars’ and Other Gray Zone Conflicts: Formal and Functional Approaches,” Rio de Janeiro, Discussion Paper 2, October 2012 [http://hpcrresearch.org/sites/default/files/publications/Svens%20Paper.pdf](http://hpcrresearch.org/sites/default/files/publications/Svens%20Paper.pdf) (accessed 22 October 2012), p. 14


room to argue that those who carry and use arms as part of non-State armed groups may be viewed as combatants.135

In the case of urban violence it may be even more unclear because in addition to the determination as to whether the groups in question may be considered organized armed groups for the purposes of armed conflict, a second analysis is required on whether and which members of the group should then be considered combatants. As was mentioned in the first chapter, the nature of urban violence is such that often children and women have been recruited, voluntarily or by force, to join gangs and participate in information-sharing, movement of goods, providing shelter and more violent acts including even killings. Therefore even if it were argued that gangs may be considered armed groups and their members combatants, distinguishing between combatants and non-combatants remains a serious challenge. Still more difficult is that members of street gangs often live among the community, their community, and to fight them by military means would leave the whole community vulnerable to further, potentially fatal, violence. It should be remembered that IHL is essentially a permissive legal regime; what is not expressly prohibited in it can be assumed to be permitted. This can lead to abuses under IHL that would otherwise be considered illegal under a full application of human rights law (HRL).136 Among those essential guarantees that have been identified as most likely to be violated in cases of public emergency, when some human rights may be derogated, include the guarantee of due process, humane treatment of detainees and freedom of movement.137

Second, there is no guarantee that non-state groups, especially gangs, are likely to respect humanitarian norms if an armed conflict is declared and IHL applied. Many of the provisions of the Second Additional Protocol and Common Article 3 of the Conventions are not applicable to

135 Colombia’s military manual, for example, defines civilians as those not taking direct part in military hostilities, though most other manuals define civilians negatively with respect to combatants in armed forces. ICRC, “Rule 5: Definition of Civilians,” Customary IHL, no date, http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule5 (accessed 10 December 2012).
136 The ICCPR allows under Article 4(1) for the derogation from some treaty obligations in the case of public emergency; however under Article 4(2) the Convention goes on to prohibit the derogation from certain articles, the most relevant of which for the purpose of the paper include the prohibition on arbitrary deprivation of life, the prohibition on torture and the prohibition on slavery (articles 6, 7 and 8). Of course in the event of armed conflict, it is permitted to kill within the confines of the law of war, that is, it is permitted to kill combatants. The ICESCR is arguably less flexible with potential derogations, as it only allows under article 4 for “such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.”
street gangs in any case, as the Conventions depart from the assumption that two or more parties are fighting each other and therefore may take measures to minimize the impact on civilians, whereas with urban violence, gangs are not necessarily fighting the State nor do they have a desire to replace the State. Rather they often desire economic and practical control over territory to maintain the drug trade or other illicit business. They do not directly attack the State as an enemy group but rather defend their territory when it is threatened by State actors, and therefore the provisions on planning attacks to minimize civilian casualties and the impact on civilian targets, for example, are not easy to apply to gang activity. These groups do not necessarily wish to win the political support of the population at large and care less about their perceived legitimacy, thereby precluding one of the major incentives for groups to adopt IHL. For example, youth gangs in El Salvador have largely formed as a result of various socio-economic and political factors, such as unemployment, poverty, broken households and the legacy of civil war. The gangs do not seek to replace the State and have no political agenda but form among communities as an alternative family or social structure, and have gradually become involved in criminal economic activity.

**The Application of Human Rights law to Urban Violence**

Given the major disadvantages of applying humanitarian law, it is important to review the protection available under the continued application of human rights law, the applicable legal regime in times of peace (or the absence of armed conflict). Traditionally, IHL regulates conflict between States (and between States and non-State actors), whereas IHRL regulates the relationship between a State and its citizens. In the case of urban violence, where the population is victim to the actions of one or more armed groups inside the national territory, it may be more appropriate to advocate for the continued and full application of relevant human rights law.

The human rights regime may provide an avenue for the protection of vulnerable populations and for ensuring access for humanitarian organizations to vulnerable populations.

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138 What Winton refers to as “alternative societal membership” that arises where the State fails to provide meaningful citizenship. “Urban Violence: A guide to the literature,” p. 175.
140 Except for the permitted derogation from the full implementation of select rights for national security per Article 4 of the ICCPR and ICESCR, discussed above in note 135.
The State is the body responsible for ensuring the guarantee of human rights for its citizens and those under its jurisdiction. More than a responsibility not to violate these rights, the State in fact has a positive obligation to protect and fulfill citizens’ human rights according to international treaty obligations, as well as customary international law. In the case that urban violence results in the violation of a community’s fundamental human rights, the State would therefore be obligated to act to remedy the situation. For example, the State has an obligation to ensure the highest attainable standard of physical and mental health under article 12 of the ICESCR. In its fourteenth General Comment, released in 2000, the Committee on Economic, Social and Cultural Rights asserts this right for all people “conducive to living a life with dignity” and articulates the State’s duty to take into account in the fulfillment of this right both the biological and socio-economic factors that affect physical and mental health, making specific mention of wider determinants of health such as gender, violence and armed conflict, determinants of special interest for those affected by urban violence. Under this obligation, therefore, the State would need to devise solutions to the needs of those people who cannot access their health centers due to the territorial control of armed groups that create what have been labelled “invisible borders” or in case national health staff are unable or unwilling to work in unsafe locations.

141 The ICCPR states in article 2(1) that each State Party “undertakes to respect and to ensure… the rights recognized” in the Covenant, emphasis added. The ICESCR in article 2(1) that each States Party “undertakes to take steps… to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means including particularly the adoption of legislative measures.” The obligations imposed by human rights treaties are negative, to the extent that States are prohibited from violating them, and positive to the extent that States must take action to protect and fulfill them. As noted by the Human Rights Commission, the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. States are reminded of the interrelationship between the positive obligations imposed under article 2 and the need to provide effective remedies in the event of breach…


If the State is unable or unwilling to respond to violations of human rights caused by urban violence, it would be obliged to accept the offer of external organizations to carry out the same work in light of its positive obligations to ensure the fulfillment and enjoyment of human rights for its citizens. Likewise, it would be obliged to refrain from interfering in such work. Those who take this line of legal argumentation may even assert that where the States does not or will not protect the human rights of its citizens, it is required to not only to authorize but also to support the work of humanitarian organizations that do take on such work by passing legislation that facilitates and protects their full operationality or at a very minimum refrain from passing legislation that may interfere with this work.

The most pertinent human rights legislation in this context, and that which is consistent across States, come from the International Covenant on Civil and Political Rights (ICCPR, which has 167 State Parties) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, with 160 State Parties).\textsuperscript{144} From the ICCPR, it is relevant to recall: the principle of non-discrimination pursuant to Article 2 (where urban violence disproportionately affects those marginalized by poverty and living in slums); the right to life pursuant to Article 6 (where homicide rates are high); the prohibition on torture or cruel, inhuman or degrading punishment pursuant to Article 7 (where gangs or armed groups carry out acts that may be considered under this article, such as torturing members of rival gangs for information); the right to liberty and security of person pursuant to Article 9 (in all cases of urban violence that creates a climate of fear and restricts people’s liberty though fear to travel outside their neighbourhood, fear of extortion, recruitment or other violence); the right to liberty of movement within the territory of a State pursuant to Article 12 (where this is violated by “invisible borders”); and the protection of children pursuant to Article 24 (where children are targeted for forced recruitment).

From the ICESCR, the most relevant rights include: non-discrimination in application of rights pursuant to Article 2 (as with the ICCPR); the right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions pursuant to Article 11; and the right to the highest attainable standard of physical and

mental health pursuant to Article 12. It is easy to conceptualize how the rights indicated in this list here may be violated by the factors indicated in the paragraph above and based on the information provided in Chapter 1. The right to the highest attainable standard of mental health pursuant to Article 12 is an extremely relevant one in the case of urban violence because of the climate of fear that is created where armed groups control the territory in which communities live. Gangs and armed groups are known to extort the population, implement punishments against those that do not abide by the social regulations imposed and punish or kill family members of rivals among other abuses. In addition to this, when the State sends police or military personnel to the community to fight these groups, there may be increased levels of fatal violence during the clash. All of these dynamics create an extremely tense living environment that has major impacts on people’s mental health, and, importantly, to their capacity to live a life with dignity. The ICRC has identified the serious toll that violence takes on mental health in its assessment of the impact of violence in Rio de Janeiro and has been operating projects in *favelas* to respond to this need and others since 2008.\(^\text{145}\)

Given the range of rights assured in these conventions, it appears that the human rights regime offers much more comprehensive legal protections to civilians than IHL. Moreover, the Conventions that enshrine the human rights listed have also established mechanisms for the monitoring of the enjoyment of these rights in the territory of State Parties. Article 28 of the ICCPR establishes the Human Rights Committee to which States undertake to submit reports on measures they take to implement the Convention as well as progress that is made in the area of human rights, pursuant to article 40. States also recognize by virtue of article 41 that the Committee is competent to receive communications from other State Parties where the latter believes the State in question is not fulfilling its obligations, and by article 42 the Committee can even appoint an ad hoc Coalition Commission to aid in the achievement of an amicable solution to a matter raised under article 41. Further, in March 1976 the First Optional Protocol to the ICCPR entered into force which allows for individuals to submit complaints where domestic remedies have been exhausted.

Likewise, the ICESCR has mechanisms that allow for monitoring and complaints. According to article 16 of the Covenant, State Parties undertake to submit reports on the

implementation and progress made by member States under the Convention. Information from these reports may be shared in a general way with the General Assembly of the United Nations (UN), or with other organs and subsidiary organs of the UN which may provide technical assistance to facilitate a fuller implementation of the Convention. Moreover, in December 2008 an Optional Protocol to the ICESCR was adopted that creates a complaints procedure for individuals and groups of individuals; however, although it has 24 signatories, it still lacks the 10 ratifications necessary to bring it into force. The parallel protocol to the ICCPR indeed took 10 years to bring into effect and given that the ICESCR codifies what are in some ways much more far-reaching and comprehensive rights (such as to a standard of living and the highest attainable standard of physical and mental health), it is to be expected that States may be hesitant to facilitate individual complaints for violations of the Covenant.

Nevertheless, the very creation of these monitoring mechanisms provides a potential opportunity, now or in the future, for the monitoring of human rights violations that occur as a consequence of urban violence. Particularly, the possibility for other States to submit communications under article 41 of the ICCPR provides one avenue by which other interested States could identify serious humanitarian needs of civilians affected by urban violence in order to encourage further attention to those needs by governments. In addition, the possibility of sharing information about State progress on the implementation of the ICESCR with UN organs that provide technical assistance is an even more direct way in which an international agency may not only identify the needs that arise from urban violence, but also offer its assistance in meeting those needs. The UN often works with non-governmental organizations as implementing partners, so it is conceivable that this mechanism could in the future be adapted to serve the purpose of highlighting humanitarian or human rights needs and offering operational support to meet those needs. While humanitarian actors do not have a right to submit reports about the situation in a State Party under the ICCPR, these actors could make use of such a mechanism to support their advocacy activities that push for operations in urban areas. Moreover, if the Committee itself or another authorized State Party submits a communication identifying humanitarian needs arising from urban violence, then where the State does not

adequately respond to those needs, an international humanitarian actor may propose that it has a right to operate in the country to fill the gap.

The above should be conditioned by the recognition that the obligations entailed by these Covenants do not apply to non-State groups; however, as discussed above, the State is the body responsible for ensuring their guarantees and has a positive obligation to protect and fulfill citizens’ human rights, not only to refrain from violating them.\footnote{The ICCPR states in article 2(1) that each State Party “undertakes to respect and to ensure… the rights recognized” in the Covenant, emphasis added. The ICESCR in article 2(1) that each States Party “undertakes to take steps… to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means including particularly the adoption of legislative measures.” The obligations imposed by human rights treaties are negative, to the extent that States are prohibited from violating them, and positive to the extent that States must take action to protect and fulfill them. As noted by the Human Rights Commission, the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. States are reminded of the interrelationship between the positive obligations imposed under article 2 and the need to provide effective remedies in the event of breach… See UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, http://www.unhcr.org/refworld/docid/478b26ae2.html (accessed 12 January 2013)} They therefore have a duty to protect and fulfill the rights of the ICCPR and ICESCR even where violations may be perpetrated by other actors, including non-State groups. And, while the suggestions here imply an active and even interventionist use of the monitoring mechanisms described in the Conventions that would almost certainly be met with resistance from States, it still provides a potential opportunity for a greater assessment of the impact of urban violence and a potential avenue for stressing the obligation to provide a human rights response to that violence.

**Non-State actors and HRL**

Despite the strong potential protections offered by the human rights legal regime as regards the obligations of States, one dilemma that arose in the discussion of the IHL regime applies here again, and that is, how to encourage and ensure adherence to IHRL by non-State actors. In practice, both regimes are difficult to enforce. However perhaps education from a human rights perspective, that emphasizes the protection of the communities where these groups operate and...
live, where their families are from, would have an impact. Otherwise, as mentioned above, under human rights law States are responsible for citizen protection and so they can be held accountable for attacks on civilians by non-State actors.149

The ‘Functional’ Approaches to New Armed Conflicts

Recognizing that a formal, black-and-white approach to the application of IHL may be inadequate to engage with the new conflicts facing governments and populations today, some alternative legal frameworks have begun to emerge and aim to provide potential solutions to the issues identified above. While it is not an exhaustive list of alternatives, this section considers three alternatives that have been described in a recent publication by Sven Peterke. Peterke argues that the formal approach to legal regulation of conflict through IHL fails to offer a sufficient degree of certainty in the face of new conflicts and that alternative, functional approaches may provide a complementary regime that helps to regulate “gray zone” violence. The functional approaches presented in his work are: the Minimum Fundamental Standard approach; the Pillar approach, and; the Unilateral Self-Restraint approach.150

The Minimum Fundamental Standard approach, as the name suggests, promotes the affirmation of “an irreducible core of humanitarian norms and human rights that must be respected in all situations and at all times.”151 As opposed to debating the appropriateness of the application of IHL based on the characteristics of the armed groups involved, or the intensity of the violence, this approach shifts the focus from assessing definitions to a practical framework underlining protection as the primary objective. It is based on the premise that so-called “gray zone” conflicts, such as the war on drugs and violence between transnational gangs, will continue to be part of life and that defining minimum standards could fill a protection gap that emerges where IHL does not apply but human rights are restricted, situations such as internal disturbances or threats to national security.

149 See above, note 147.
151 Peterke, “Regulating ‘Drug Wars’ and Other Gray Zone Armed Conflicts,” p. 17.
The discussion of this approach in fact began in the 1980s and in 1990 discussion resulted in the development of the Turku Declaration of Minimum Humanitarian Standards. The Declaration is intended to apply in all situations and, according to article 2, to all persons, groups and authorities irrespective of their legal status. In this way the Declaration attempts to appease State fears that the application of the standards may confer some kind of legal status on non-State groups in their territory. Moreover, article 19 defines individual criminal responsibility for major violations of the standards before national or international tribunals. Although it is asserted that many of the provisions are declarative of customary international law, the Declaration was not adopted by the UN Human Rights Council (then the Human Rights Commission) and it therefore remains an indicator rather than a binding document or paper.152 In light of the increasing attention of humanitarians on urban violence, however, it could be a useful tool to revisit and perhaps advocate for.

The Pillar Approach is similar in that it aims to articulate minimum standards, but it targets specific areas of law that considered to have an “operational need” to establish norms protecting all persons in all situations. These situations may be considered “legal no-man’s-land.”153 For example, in the fight against terrorism and the State’s right to use lethal force, some believe that IHL is too permissive while HRL is too restrictive for States to be able to take effective action. Taking a concrete legal issue, such as targeting and detaining suspects, Monica Hakimi recently argued that, applying the pillar approach, when targeting and detaining individuals States should be held to the standards of liberty-security, mitigation and the mistake principle. As described by Hakimi

the liberty-security principle posits that, in order for targeting or detention to be justifiable, the security benefits must outweigh the costs of individual liberty. The mitigation principle requires states to try to lessen those costs by pursuing reasonable, less intrusive alternatives to contain the threat. The mistake principle demands that states exercise due diligence to reduce mistakes.154

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152 Peterke, “Regulating ‘Drug Wars’ and Other Gray Zone Armed Conflicts,” p. 18.
154 Quoted in Peterke, “Regulating ‘Drug Wars’ and Other Gray Zone Conflicts,” p. 18.
Although the Pillar approach outlines potential criteria, as was done here by Hakimi, it is still left to States to interpret their application. This is intentional in that the approach is designed to be adaptable to temporal, political and cultural considerations; however, one critique of the approach is that it may in fact be too flexible, and by adapting to various contextual elements, could create legal fragmentation.

Finally, the Unilateral Self-Restraint Approach, as the name suggests, promotes voluntary adherence to humanitarian standards, such as those identified in the Turku Declaration. In many countries, the government’s approach to law enforcement (securitization) in the war on drugs or fight against violent crime has created a crisis of legitimacy. For example, in Brazil the excessive use of force in violent invasions carried out by police in *favelas* without a warrant, or with general warrants that label the whole community criminal, have led to perceptions of illegitimacy. The excessive use of force, acts of torture, unlawful killings and high levels of corruption have been reported in cities all over the world.\(^{155}\) In these cases where governments justify the limitation of certain rights in the name of national security, the unilateral self-restraint approach could be promoted as a way to fill the protection gap. The gains in perceived legitimacy are not only gains for the state but may also be valuable to non-State group members when these enter into negotiations with the State over demobilization and reintegration in society. Therefore the promotion of this approach is based on mutual restraint.

The systems with the most realistic chance of compliance and effectiveness among non-State actors will depend on the interests, needs and motivations of the non-State group and so will need to be determined on a case-by-case basis. For example, politically motivated groups or those interested in negotiations with the State will be most interested in public legitimacy and so may be more receptive to the promotion of the unilateral self-restraint approach. Gangs operating in their home communities, among their family and friends, may also respond to this approach if it is promoted by an impartial humanitarian actor such as the ICRC. The ICRC has already had some success with education and the promotion of humanitarian norms among armed groups in Medellin.\(^{156}\) On the other hand, transnational groups involved in drug trafficking, especially those at the highest level of such criminal organizations who do not live

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\(^{155}\) Human security for an Urban Century, p. 27.  
among their communities, would likely be motivated more by economic factors and care less about public legitimacy. Individuals in those groups may respond more to the threat of international or national prosecution for grave violations of international law.

These alternatives were conceptualized to circumvent the “legal formalism” that complicates the search for practical solutions to the protection gap. Minimum fundamental standards may help to provide a solution in gray zone conflicts where human rights are limited by derogations called for in the name of public security, and where humanitarian law does not apply. Still, these standards will be most useful if they are also flexible to some degree so that they may be applied in the most appropriate way based on the situation and threats presented in each case.\(^\text{157}\)

**Conclusions**

It must be remembered that urban violence is different from international armed conflict and even from the non-international conflicts such as the civil wars seen in recent years. It is necessary to address such violence from an understanding of its unique dynamics in order to provide the best rights-based protection as well as to design the most appropriate humanitarian response. In particular, the “invisible” element of urban violence and the blurred lines between of ‘civilian’ and ‘combatant.’ To apply IHL, therefore, requires confronting some important problems, outlined above, regarding the labeling of so-called “combatants” and the practicality of irregular non-State armed groups adhering to IHL. On the other hand, a human rights regime may be unrealistic to apply in its entirety in cases of grave violence where States combat non-State groups, or where the State sees itself required to derogate from the full application of human rights because of the gravity of the situation of insecurity. This in itself should not necessarily be problematic but for the protection gap that has been identified above and the potential rights abuses that occur as a result.

As Kees Kooning has noted, humanitarian action may require a new legal and institutional framework for operations that takes into account the specific characteristic of urban violence.\(^\text{158}\) An alternative legal framework may help to fill the protection gap left here and

\(^{157}\) Peterke, “Regulating ‘Drug Wars’ and Other Gray Zone Conflicts,” p. 21.

ensure that debates about legal classification do not sideline the protection needs of citizens. The alternatives discussed above provide a good starting point for this discussion, but of course it is critical to debate and analyse which alternative would be the most appropriate based on the characteristics of the violence and the groups involved in each particular case, and perhaps even to propose other alternatives that have not been discussed. The law provides significant challenges to international humanitarian actors attempting to work in countries around the world, especially those not experiencing armed conflict; however, it is important for these actors to participate in a discussion and analysis of the legal framework in which they operate. It should be remembered that international law also provides opportunities for humanitarians that should not be overlooked, such as those of the monitoring mechanisms associated with human rights treaties. More than that, it is critical to maintain respect for the international legal system, a system that in fact forms the basis of the operations and advocacy of most of these groups, even when such legal formalism may not seem as important to some actors as simply responding to the immediate needs on the ground.
Conclusions:
Grappling with needs, limitations and identity

The world continues to urbanize at incredible rates. More than 90 percent of global urban growth is occurring in the developing world, which will account for almost all population growth in the next 25 years.\textsuperscript{159} One billion people in low- and middle-income countries already live in slums, and that figure is expected to double. Research into living conditions in some of the most violent cities (and slums) shows without doubt that there are communities with serious humanitarian needs that are falling through the cracks because they do not fit into the categories that call for intervention by an international humanitarian body. It was a concern for these communities and a sense of dissatisfaction at the apparent failure of the humanitarian community to do more for them that initially motivated this study. At first glance it appeared that affected people were being neglected due to the overly narrow vision of humanitarians, able to see only natural disaster and war. The intention at the outset was, therefore, to see if there was a way to argue for humanitarian intervention in settings of urban violence in order to ensure that the most serious needs would be met; however, in the process of researching and writing it became clear that there are complexities and challenges that need to be addressed in order to advocate for humanitarian action in urban violence, not all of which have clear answers.

At the outset, this paper aimed to contribute to the discussion by highlighting some of the gaps in existing knowledge on urban humanitarianism, as well as to take a critical look at the initiatives that are attempting to address this challenge and offer new knowledge. Specifically, the paper set out to consider the extent to which urban violence can and should be responded to as a humanitarian issue. In order to answer this question, it considered first the nature of urban violence and the nature of and justification for humanitarian action, in order to analyze how urban violence fits into the concept of humanitarian action. Given that this analysis discusses the possibility of humanitarian operations in countries not experiencing armed conflict or natural disaster, the relevant formal and functional legal frameworks within which international humanitarian actors would be working were also identified.

\textsuperscript{159} Human Security for an Urban Century, p. 9.
There has been a considerable amount of research done on urban violence outside the humanitarian community, which identifies various categories of violence, as well as the causes and trends in urban violence in recent years. These statistics are helpful in understanding violence from a macro-perspective, yet for humanitarian actors, it is also important to put a human face to such violence and to understand what the trends and dynamics mean in peoples’ everyday lives. Urban violence is a changeable phenomenon in which multiple actors play a role; the most common forms of violence that appeared in both the literature and the interviews include: extrajudicial killings, extortion, rape and other forms of sexual violence, high rates of gang, police and civilian casualties, recruitment of “urban child soldiers” into armed gangs, social cleansing of those considered ‘undesirable’, threats to life and well-being, forced displacement, forced disappearances and, of course, homicide. Moreover, this violence is often inter-generational; whole communities may be affected by significant mental health problems as a result of witnessing violence, facing threats, confronting invisible borders and living in fear.

Those who have analysed or responded to urban violence compare its effects to armed conflict, and cities experiencing such violence are reported as “among the most dangerous places in the world to live.” McPhun and Lucchi have also described the level of deprivation and scale of need as a humanitarian crisis.

Even when a situation like this appears to be a crisis from the perspective of those affected by it and others who witness it, humanitarians may be slow to identify the need to intervene in such cases given that they are protracted crises. There is no “trigger” to respond to, and the longer a situation continues, the higher the risk that it becomes normalized for humanitarians as well, effectively raising the bar of intervention. It is logically more difficult for humanitarians to identify the need for intervention in chronic crises, since these cannot be considered among the ‘exceptional situations’ that define in large part the mandates of humanitarians organizations; however, the research found that even when humanitarians do wish to respond, it is incredibly difficult to plan objective evaluation mechanisms that allow an organization to both justify projects and assess the appropriate moment for exit.

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161 McPhun and Lucchi, “Challenges in understanding and responding to crisis in urban contexts,” p. 5.
This situation results in a significant dilemma in which actors can identify clear humanitarian needs, but may not be able to respond with a relevant operational strategy that can be justified internally and externally. What would be the appropriate exit strategy? What does peace look like, or the equivalent of the post-conflict phase, in situations of chronic urban violence? After all, it is often in the post-conflict phase that humanitarian actors attempt to hand over responsibilities back to national government or local groups.

International humanitarian actors have, of course, often faced similar dilemmas – situations in which potential projects entail a long-term commitment, where there is a low expectation of the situation changing significantly over time, and therefore it is difficult to predict the organization having a meaningful impact. However, an additional layer of difficulty in this case is that urban violence is not a recognized (traditional) sphere of humanitarian response to begin with, so that to advocate for urban violence projects requires engaging in another major conceptual debate that complicates decision-making.

To provide some potential arguments from both sides of that debate, it was argued that there are three main reasons why urban violence should be considered more consistently by international relief agencies. First, such a shift would allow traditional humanitarian agencies to stay relevant in a changing world. Second, and more in line with the humanitarian charter and philosophy, such engagement would help to ensure that vulnerable populations are not neglected. Finally, humanitarian actors may bring an added value to urban violence, filling a gap left by governments and development actors or providing an example of how to respond to urban violence that could later be emulated by governments.

On the other hand, there are three important arguments against taking the humanitarian approach to violence in cities. A major operational concern is that it is extremely difficult for agencies to develop appropriate mechanisms to assess needs and impact, and this would complicate the management and evaluation of relief projects. In an age that demands ever greater measures of accountability, this is no small consideration. Second, the involvement of relief workers in cities considered to be “at peace” will only serve to further blur the lines between humanitarian action and development, a line that many are still struggling to define. And finally, humanitarian actors risk doing more harm than good in urban settings. Indeed, the risk of doing harm is a concern for humanitarians in all settings, but its particular dynamics (and risks) in each environment are different and this question must be addressed for the urban scenario.
Those humanitarians that decide the first three arguments outweigh the last will be required to look beyond their traditional fields of operations and to expand their conception of humanitarian action. Going forward, the question for these actors will be to identify the most important driving factors behind the continued development and transformation of the humanitarian sector; these factors are many and they do not necessarily align easily. The demand for accountability and transparency, for example, has driven humanitarians to rely on logical frameworks, measurable indicators and regular reports for donors and beneficiaries. On the other hand, as the nature of threats change, so too must humanitarians adapt and change their traditional ways of working and places of work. The desire to respond to real humanitarian needs may draw relief workers to difficult situations like urban violence, in which the impact of a project on a community’s improved ability to live a life with dignity is not easy to measure with existing tools.

When international actors do choose to respond to urban violence, it must be remembered that urban violence is not armed conflict; it has consequences that, while they may be comparable to armed conflict, are unique and should be considered separately. For example, the chronic nature of urban violence means that a high proportion of people may be suffering from mental health disorders, the ‘hidden’ nature of violence means that there is a culture of silence and fear in many communities, leaving them unable to seek help by normal means even where services may already exist. It is necessary to address such violence from an understanding of its unique dynamics in order to provide the best rights-based protection as well as to design the most appropriate humanitarian response.

From a legal perspective the “invisible” element of urban violence and the blurred lines between of ‘civilian’ and ‘combatant’ mean that IHL may not be the most appropriate legal framework for humanitarian actors to advocate for. The lack of political interests or motivations of most urban armed groups, even where these otherwise arguably meet the organizational requirement in the definition of parties to an armed conflict, must be taken into account. Moreover, to argue for the classification of situations of urban violence as conflict could set a precedent that significantly lowers the bar in the declaration of official armed conflict. This in turn entails a serious challenge to the existing international norms of non-intervention and sovereignty and will therefore be met with great resistance from States. In order to successfully make this argument, therefore, advocates must do more than simply argue that urban violence at
times meets the minimum requirements of the definition of armed conflict. Given the significant implications of attempting to label urban violence armed conflict, there must also be a greater justification for challenging the existing norms; in the absence of a viable argument that the legal protections for civilians improve under IHL, this aspect is still lacking.

On the other hand, it may be unrealistic to advocate for the continued and full application of the human rights framework in cases of grave violence where the State sees itself required to derogate certain rights because of the gravity of violence and the threat it produces; however, human rights monitoring mechanisms provided for in the ICCPR and ICESCR present interested actors with a potential avenue for assessing the human rights violations that occur as a consequence of urban violence as well as the State response to it. This could be the foundation of an argument that attempts to facilitate humanitarian work in violent urban settings, or that simply seeks to draw attention from a range of actors to the situation of populations affected by such violence. From the perspective of the most effective protection for civilians, however, interested actors may require a new legal and institutional framework that takes into account the specific characteristic of urban violence. An alternative legal framework such as those discussed in Chapter 3 may help to fill the protection gap left here and ensure that debates about legal classification do not sideline the protection needs of citizens. Further analysis of the interests and structures of armed groups involved violence would be required on a case-by-case basis in order to determine the relevance and potential effectiveness of those approaches in different cities and contexts.

Moving forward

Each humanitarian organization has to determine for itself what its mandate will be in the context of an urban future. The decision on whether urban violence will fit into the organizational mandate is far from simple; it requires some serious reflection that must go beyond a comparison of urban violence to armed conflict, a comparison that leaves humanitarians in their traditional form and sphere of operation. It requires a reflection on the nature of urban violence as it differs from conflict and other traditional contexts of relief operations. It requires an exploration of organizational priorities and operating guidelines of each actor in order to determine the extent to which they are willing to commit (resources, time and energy) to learning about violent urban environments, which vary greatly among each other.
Finally, one of the principal issues that arose in this work, one that will resonate with the humanitarian traditionalists, is that to advocate for humanitarians to become involved in chronic crises in non-war settings risks taking too much under the humanitarian umbrella and blurring the lines further between humanitarian action and development. It may also risk diluting the meaning and weight that can be carried in the very term “humanitarian”, which assumes impartial, neutral and independent actors that respond according to needs, the very characteristics that allow humanitarian groups with strong reputations like ICRC and MSF to gain access to countries or communities that distrust intervention by international actors. To take on too much and stretch too far the definition of what can be considered humanitarian action may mean risking that reputation and what it offers.

Those that invest resources into specifically humanitarian organizations may not want to see a humanitarian organization slide into more controversial development work. This is a concern in all areas where humanitarians work, but the chronic nature of urban violence and the operational implications of becoming involved mean that this risk needs special consideration. In order to address this concern, decisions need be made at the organizational management level on the best way to fulfill a humanitarian mandate – whether it should mean sticking to the emergency situations with clear triggers, or whether it should lead actors to attempt to address human suffering wherever they see a clear need. If the answer is the latter, then the implications of that decision need to carefully drawn out, especially as regards the role that each humanitarian organization wishes to play in the larger context of the development of the field of humanitarian action in the future.

While humanitarian actors may be justified in maintaining their more traditional and limited mandates, so they are not spread too thin, is this a sufficient response to the growing numbers of people who continue to fall through the cracks of protection and human security? If humanitarians are confined to short-term and emergency-based interventions, and development has a long-term and more holistic vision, could there be a need for a third actor that can address chronic crises like urban violence? Would this also require a third, alternative legal framework to complement this type of work? It appears there is cause to at least consider this alternative, given that so far there have been no satisfactory answers to the many questions raised by both the idea of humanitarian action and inaction in urban violence.
The paper has attempted to raise these questions because they urgently need to be explored by humanitarians and others in order to reach out to affected populations and ensure they are no longer neglected. Urban violence is an issue that will only continue to become more pressing, not less so. Furthermore, humanitarian staff themselves will require clarification from their organizations on how their movement will respond to these challenges, especially when there are identifiable needs of populations at risk. A key characteristic of humanitarian action is its core humanity; this is what inspires people to engage in the work and to grapple with these daunting questions. The operational choices of humanitarian organizations must make sense to staff, donors, and affected populations, and more importantly, must provide assurance that we are upholding the core values that are at the heart of this work.
Annex

1. Top ten most violent cities and their states (various years)\textsuperscript{162}

<table>
<thead>
<tr>
<th>Most populous city</th>
<th>Country</th>
<th>City homicide rate (per 100,000)</th>
<th>National homicide rate (per 100,000)</th>
<th>Multiple</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caracas</td>
<td>Venezuela</td>
<td>122 (2009)</td>
<td>46 (2009)</td>
<td>2.6</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Guatemala</td>
<td>116.6 (2010)</td>
<td>41.4 (2010)</td>
<td>2.8</td>
</tr>
<tr>
<td>Belize</td>
<td>Belize</td>
<td>106.4 (2010)</td>
<td>41.7 (2010)</td>
<td>2.5</td>
</tr>
<tr>
<td>Basseterre</td>
<td>St. Kitts and Nevis</td>
<td>97.6 (2009)</td>
<td>38.2 (2010)</td>
<td>2.5</td>
</tr>
<tr>
<td>San Salvador</td>
<td>El Salvador</td>
<td>94.6 (2010)</td>
<td>69.2 (2011)</td>
<td>1.4</td>
</tr>
<tr>
<td>Tegucigalpa</td>
<td>Honduras</td>
<td>72.6 (2009)</td>
<td>91.6 (2011)</td>
<td>0.8</td>
</tr>
<tr>
<td>Maseru</td>
<td>Lesotho</td>
<td>61.9 (2009)</td>
<td>33.6 (2009)</td>
<td>1.84</td>
</tr>
<tr>
<td>Cape Town</td>
<td>South Africa</td>
<td>59.9 (2007)</td>
<td>33.68 (2007)</td>
<td>1.77</td>
</tr>
<tr>
<td>Port of Spain</td>
<td>Trinidad and Tobago</td>
<td>60.7 (2008)</td>
<td>35.2 (2009)</td>
<td>1.72</td>
</tr>
<tr>
<td>Panama</td>
<td>Panama</td>
<td>34.6</td>
<td>21.6 (2010)</td>
<td>1.6</td>
</tr>
<tr>
<td>Port-Au-Prince</td>
<td>Haiti</td>
<td>40.1 (2010)</td>
<td>6.9 (2010)</td>
<td>5.8</td>
</tr>
</tbody>
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