

Protection of civilian populations in situation of armed conflict



Migration and Development Series Course on International Migration Law
UNITAR - New York, 19-20 June 2007
addressed by the ICRC

Protection : a definition

- ▶ Broad sense :ensuring the full respect of the rights of the individual and the obligations of the authorities/arms carriers in accordance with the letter and the spirit of the relevant bodies of law and, therefore, to preserve people's safety, integrity and dignity

- ▶ Strictest sense : the protection action encompasses those activities aimed at preventing putting an end to and/or avoiding the recurrence of violations of their obligations or the rights of the individuals

by the authorities/arms carriers in accordance with the letter and the spirit of IHL and other protective norms in situations of armed violence

Protection of civilian population (PCP)

DEFINITION:

All actions which aim at **preventing and/or putting an end to:**

- ▶ **violations of the law** (IHL, HR, Refugee law, national legislation if appropriate)
- ▶ **against civilians** and other persons not or no longer participating in hostilities/violence (e.g. combatants *hors de combat*)

Areas of concern/intervention in situations of armed conflict

- ▶ **Use of force :**
 - ▶▶ in the conduct of hostilities
 - ▶▶ for law enforcement operations
- ▶ **Treatment of persons** by authorities/weapons bearers (State or Non-State)

Main principles : CONDUCT OF HOSTILITIES

▶ Distinction

- ▶▶ between civilians and combatants
- ▶▶ between civilian and military objects

▶ Prohibition of **direct attacks** against civilians

▶ Prohibition of **indiscriminate attacks**

▶ **Proportionality** in the use of armed means



Main principles : CONDUCT OF HOSTILITIES

- ▶ Precaution in attack
- ▶ Protection against the effects of hostilities
- ▶ Prohibition of human shields
- ▶ Special protection:
 - ▶ Objects: essential goods, cultural objects, environment, objects containing dangerous forces
 - ▶ Medical & religious services and personnel (civilian & military), relief personnel
 - ▶ Specially protected areas

Main principles : TREATMENT OF PERSONS

HUMANE TREATMENT

- ▶ Right to life, physical and psychological integrity
- ▶ Access to at least minimum living conditions (food, water, hygiene, clothing, shelter) and to essential health services
- ▶ Right to family unity
- ▶ Freedom of movement
- ▶ Protection of property
- ▶ Access to education and exercise of religion (esp. in situations of occupation)

SPECIAL PROTECTION OF CERTAIN CATEGORIES

- ▶ **Foreigners, population in occupied territories, wounded & sick, IDPs, refugees, children, women, elderly, etc.**

Treatment of foreigners on the territory of a party to the conflict

- ▶ Right of foreigners to leave the territory at the outset of, or during a conflict
- ▶ State has the right to detain them on certain conditions related to national interests
- ▶ In all cases, foreigners benefit from the rules stated under *General Protection* of all person affected by the armed conflict

ENEMY ALIENS

- ▶ Among enemy aliens, refugees merit special attention. Art 44, IVGC provides that “*detaining power shall NOT treat as enemy aliens exclusively on the basis of their nationality de jure of an enemy State, refugees who do not, in fact enjoy the protection of any government*”
- ▶ *Protocol I art.73 adds that persons who, at the beginning of hostilities, were considered as stateless persons or refugees under relevant international instrument shall be protected*

- ▶ It is also prohibited to transfer protected person to a Power which is not a party to the Convention.
- ▶ Art. 42, 43,45, adds that **protected persons can in no circumstances be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious belief**
- ▶ If assignment to residence is ordered , the decision will be reconsidered as soon as possible (at least twice yearly)

Environment conducive to protection

- ▶ Be party to treaties
- ▶ Implement them in national laws and norms
- ▶ Disseminate laws and norms
- ▶ Instruct and supervise those in charge of implementing them
- ▶ Adequate resources and capacities
- ▶ Assist victims of violations
- ▶ Inquire into violations and sanction those responsible
- ▶ Provide remedy, reparation and compensation to victims

Target and objectives

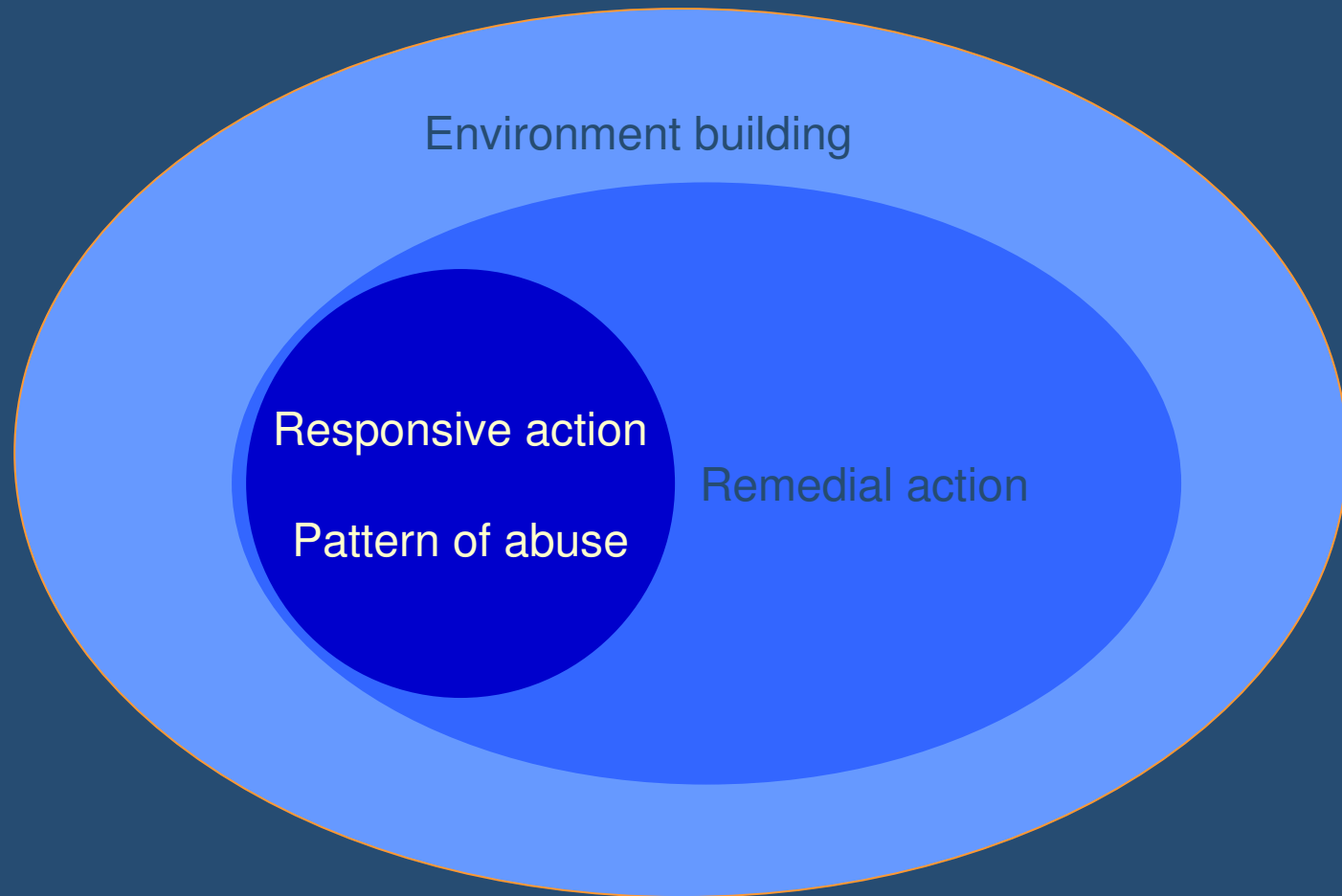
Persons at risks

- ▶ reduce vulnerability
- ▶ remove from danger

Authorities (broad sense)

- ▶ make responsible
- ▶ support
- ▶ deter

The Protection Framework :



key issues in data gathering and analysis

Thank you for your attention