



**CHALLENGES OF STRENGTHENING THE
PROTECTION OF CIVILIANS IN
MULTIDIMENSIONAL PEACE OPERATIONS**

by

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**Background Paper Prepared for the 3rd International Forum for
the Challenges of Peace Operations, 27–29 April 2010,
Queenbeyan, Australia,**

**Hosted by the
Asia Pacific Civil-Military Centre of Excellence**

October, 2010

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INTRODUCTION: CONTEXT AND CHALLENGES ¹

Last year marked the tenth anniversary of United Nations Security Council (UNSC) attention to the protection of civilians (POC) in armed conflict and the 60th anniversary of the Geneva Conventions of 1949. The reform of peacekeeping and humanitarian assistance to better protect the fundamental rights of individuals and populations was catalyzed by failures in Rwanda, Srebrenica and other crises where international operations were unable to prevent or adequately respond to widespread and systematic abuses—including genocide—unfolding around them. The changing character of conflict and the failure of UN (and other) peacekeeping efforts to deal with it adequately led first to the Brahimi Report² and a decade of structural and doctrinal reforms intended to make peacekeeping more effective. The Brahimi Report argued for the presumed responsibility of UN peacekeepers to stop violence against civilians when they encountered it, but also cautioned that operations needed to be given the necessary means to do so.³ The Security Council did include protection language in the mandates of most operations launched in the following nine years, but neglected the means and the methods (the doctrines, strategies, training, and equipment) needed to implement that mandate language.

In this century, civilians continued to suffer as a result of armed actors—state and non-state—failing to uphold International Humanitarian Law (IHL), international human rights law, international refugee law, or domestic criminal law so as to minimize the direct and indirect impact of their actions on civilian populations. UN peacekeeping operations have deployed into such environments, where there is little or no peace to keep.⁴

¹ This background paper is an independent “think piece” produced at the invitation of the organizers of the 3rd International Challenges Forum. The authors are, respectively, the Director and Deputy Director of the Future of Peace Operations program at the Stimson Center, Washington, DC. As with all Challenges Forum research and/or background papers, the views expressed in this paper are those of the authors and do not necessarily reflect the views of the Challenges Partnership or the Forum hosts.

² United Nations, “Identical letters dated 21 August 2000 from the Secretary-General to the President of the General Assembly and the President of the Security Council,” A/55/305-S/2000/809, 21 August 2000, forwarding the Report of the Panel on United Nations Peacekeeping Operations (the “Brahimi Report”).

³ The Brahimi Report referred bluntly to the need for POC (at paras. 62–63) but also expressed concern about mission capabilities and unmet expectations: “[P]eacekeepers—troops or police—who witness violence against civilians should be presumed to be authorized to stop it, within their means, in support of basic United Nations principles and, as stated in the report of the Independent Inquiry on Rwanda, consistent with ‘the perception and the expectation of protection created by [an operation’s] very presence’ (see S/1999/1257, p. 51). However, the Panel is concerned about the credibility and achievability of a blanket mandate in this area. There are hundreds of thousands of civilians in current United Nations mission areas who are exposed to potential risk of violence, and United Nations forces currently deployed could not protect more than a small fraction of them even if directed to do so. Promising to extend such protection establishes a very high threshold of expectation. The potentially large mismatch between desired objective and resources available to meet it raises the prospect of continuing disappointment with United Nations follow through in this area. If an operation is given a mandate to protect civilians, therefore, it also must be given the specific resources needed to carry out that mandate.”

⁴ For the purposes of this paper, “[p]eacekeeping is a technique designed to preserve the peace, however fragile, where fighting has been halted, and to assist in implementing agreements achieved by the peacemakers. Over the years, peacekeeping has evolved from a primarily military model of observing cease-fires and the separation of forces after inter-state wars, to incorporate a complex model of many elements—military, police, and civilian—working together to help lay the foundations for sustainable peace.” Further, peacekeeping operations are “deployed to support the

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Multiple groups have targeted civilians in UN peacekeeping missions' areas of operation. Some have political, strategic, or ideological aims; others seek new soldiers (often children) and forced labor (often women); while still others are little more than vicious criminal bands. Sometimes they are proxies of the host government or other signatories to a peace agreement. Sometimes their supply lines or safe havens can be found in neighboring states.

There is growing consensus, in the UNSC and the General Assembly's Special Committee on Peacekeeping Operations (the "Special Committee"), that UN peacekeeping operations must address POC and that peacebuilding initiatives must include POC as a cross-cutting issue. Multiple motivations leaven this consensus. Morally, no one wants to be complicit in abuse through failure to act, and the moral imperative requires operational follow-up—doctrine, training, and contingency plans. Moreover, communities where peacekeepers deploy expect them to be proactive in POC, so their ability to protect directly affects their credibility and legitimacy and thus the mission's ability to reach its overarching goals. The question, in short, is no longer whether to protect but how.

Efforts over the last year to identify "how"—including the Department of Peacekeeping Operations and Department of Field Support (DPKO/DFS) New Horizon non-paper, July 2009;⁵ the DPKO- and Office for the Coordination of Humanitarian Affairs (OCHA)-commissioned independent study, *Protecting Civilians in the Context of UN Peacekeeping Operations: Successes, Setbacks and Remaining Challenges*,⁶ November 2009; UNSC Resolution 1894, November 2009;⁷ the DPKO/DFS Draft Operational Concept on POC,⁸ January 2010; and the March 2010 report of the Special Committee⁹—all contribute to the momentum for change.

This paper builds on these efforts and others within and beyond the United Nations system to give participants in the 3rd International Challenges of Peace Operations Forum an up to date assessment of progress on POC in UN peacekeeping operations from an array of normative and operational perspectives. It offers observations and recommendations aimed at making POC in UN peacekeeping more effective. Designed to follow the structure of the Forum, Part I addresses the UN strategic level and Part II strategic humanitarian and regional perspectives. Part III moves to the operational level of UN peacekeeping operations, and Part IV examines the particular roles

implementation of a cease-fire or peace agreement, they are often required to play an active role in peacemaking efforts and may also be involved in early peacebuilding activities. United Nations peacekeeping operations may also use force at the tactical level, with the authorization of the Security Council, to defend themselves and their mandate, particularly in situations where the State is unable to provide security and maintain public order." See United Nations Department of Peacekeeping Operations and Department of Field Support (DPKO/DFS), *United Nations Peacekeeping Operations Principles and Guidelines* (the "Capstone Doctrine"), January 2008, p. 18.

⁵ DPKO/DFS, *A New Partnership Agenda: Charting a New Horizon for UN Peacekeeping* ("New Horizon"), non-paper, July 2009.

⁶ Victoria Holt and Glyn Taylor with Max Kelly. *Protecting Civilians in the Context of UN Peacekeeping Operations: Successes, Setbacks and Remaining Challenges*. Independent study jointly commissioned by the DPKO and the UN Office for the Coordination of Humanitarian Affairs (OCHA), 17 November 2009 ("*Protecting Civilians in the Context of UN PKOs*").

⁷ Forthcoming Special Committee on Peacekeeping 2010 Annual Report.

⁸ "Draft DPKO/DFS Operational Concept on the Protection of Civilians in UN Peacekeeping Operations," January 2010.

⁹ United Nations General Assembly (UNGA) Special Committee on Peacekeeping Operations ("Special Committee"), 2010 Annual Report, Advanced Unedited Version, 20 March 2010, 12:30AM.

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and requirements in POC of the uniformed components of these operations (military and police). Part V addresses civilian POC stakeholders, with emphasis on conflict prevention and human rights, and Part VI addresses the importance of the rule of law for POC.

TEXT BOX 1:

UNDERSTANDING PROTECTION CONCEPTS, ACTORS AND RESPONSIBILITIES

In what contexts should missions consider the protection of civilians (POC): The UNSC and others refer to the “protection of civilians in armed conflict.” In fact, UN peacekeeping and other operations often face protection threats in a broader spectrum of environments including generalized violence and post-conflict situations that may not qualify as international or non-international armed conflict and where the term “civilian” may lose its legal distinction. For the purposes of this background paper and the Challenges Forum, the term *protection of civilians* will apply to the broader spectrum of environments.

Who contributes to POC: A number of actors within a conflict contribute to POC. Vulnerable individuals and populations under threat employ diverse strategies to protect themselves. In addition, other state authorities or domestic non-governmental agencies often contribute to efforts to protect. Finally, many international humanitarian, human rights, and development entities, as well as non-UN military and multidimensional operations may contribute to POC in any given setting. The Challenges Forum will focus primarily on the contributions of the United Nations to POC, and on the relationship of the UN peacekeeping mission with the host state and key international (third-party) actors. This focus in no sense diminishes the importance of the protection work of other actors and will, we hope, encourage exploration of how protection actors can best complement one another’s work.

Who is responsible for POC: Under international humanitarian and human rights law, host state governments hold the primary responsibility for ensuring the security of their civilian population. This requires states to both refrain from committing violent human rights abuses and to fulfill their positive obligations to secure civilians from other threats. Although it is generally accepted and understood that international or third-party actors should refrain from committing human rights abuses, there is not yet consensus about whether they are legally obligated to secure civilians from threats. This paper does not seek to establish whether third-party actors are legally obligated to protect, but rather to discuss what they can do to better protect civilians under threat, given the moral, operational, and pragmatic imperatives to protect.

PART I: PROTECTION OF CIVILIANS IN UN PEACEKEEPING OPERATIONS— A COMMON STRATEGIC VIEW?

SUMMARY OF PART I

A Decade of Reform

For over a decade, the UN Security Council and many UN actors and agencies have aspired and worked to enable UN peacekeeping operations to better protect civilians. Since 1999, the UN Security Council has authorized ten peacekeeping missions to use force to protect civilians under imminent threat of violence; issued a number of thematic resolutions on the protection of civilians and in particular vulnerable populations, and addressed POC in other official and unofficial mechanisms. During this time, the tasks related to protecting civilians, and the number of actors within and outside a peacekeeping mission tasked with contributing to POC, have proliferated. Despite this attention to the issue, there is no common strategic view among stakeholders within or outside the UN on the definition of POC or how peacekeeping missions are expected to implement it. The absence of a strategic view has undermined the planning and training for and implementation of POC by peacekeeping missions.

New Opportunities for Progress

In 2009 and 2010 respectively, the Security Council and the Special Committee requested that the Secretariat take steps to address this gap in guidance and training. As such, the Secretariat has taken steps in consultations with troop- and police-contributing countries to develop a “strategic framework,” guidance, and training on POC. This guidance should ensure that POC is integrated in the Technical Assessment Missions and other planning processes from the beginning and ensure that peacekeeping missions are gathering lessons learned and best practices. Moreover, the Secretariat should develop benchmarks for POC success and continue to assess whether current Concepts of Operations and resources are adequate and appropriate to missions mandated to protect.

A DECADE OF REFORM

UN peacekeeping operations before 1999 included objectives and tasks to uphold human rights, but in 1999 the UNSC issued the first specific mandate “to afford protection to civilians under imminent threat of physical violence” when it authorized the United Nations Mission in Sierra Leone (UNAMSIL).¹⁰ The Security Council continued to address POC in subsequent years along three tracks: other resolutions mandating peacekeeping operations to protect; thematic resolutions

¹⁰ S/RES/1270 of 22 October 1999, OP 14.

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on POC; and other official and unofficial mechanisms of the Security Council such as presidential statements, informal expert groups, and Arria Formula sessions.¹¹

Altogether, ten UN peacekeeping operations have included mandates similar to UNAMSIL's. In 2009, eight such missions were in operation (Text Box 2), involving a majority of UN peacekeepers.

Text Box 2:

MISSION-SPECIFIC MANDATES THAT INCLUDE THE PROTECTION OF CIVILIANS

Mandate language for missions mandated to protect civilians often includes a variant of the phrases “to protect civilians under imminent threat of physical violence,” “within its capabilities and its areas of deployment,” and “without prejudice to the responsibility of the host government.”

MINURCAT	Chad and Central African Republic
MINUSTAH	Haiti
MONUC	Democratic Republic of the Congo
UNAMID	Darfur, Sudan
UNIFIL	Lebanon
UNMIS	Sudan
UNMIL	Liberia
UNOCI	Côte d'Ivoire

Security Council thematic resolutions include Resolutions 1674 (2006) and most recently 1894 (2009), on the protection of civilians in armed conflict, which provide the overarching framework for UNSC consideration of POC; Resolutions 1325 (2000) and 1889 (2009) on women, peace, and security; Resolutions 1612 (2005) and 1882 (2009) on children and armed conflict; and Resolutions 1820 and 1888 (2008) on sexual and gender-based violence. These thematic resolutions often shape the strategies, roles and responsibilities of UN peacekeeping mission components and the work of specialized UN agencies on the ground.

Presidential Statements include an Aide Mémoire, developed by OCHA, outlining issues that the UNSC had addressed on POC in its resolutions, issued by the Council in March 2002.¹² The most recent version of the *Aide Mémoire for the Consideration of Issues Pertaining to the Protection of Civilians in Armed Conflict* was issued in January 2009.¹³ In the same month, an informal Security Council ‘Expert Group’ on POC was formed that serves as a forum for discussions of POC-specific matters in advance of Security Council action on UN peacekeeping mandates.

This progress over the past decade has contributed to a concept of POC for UN peacekeeping missions and UN agencies that is broad and evolving. The 2009 independent study, *Protecting Civilians in the Context of UN PKOs*, found that the breadth and evolving nature of the concept has contributed to confusion on the ground.

¹¹ “The Arria Formula is an informal arrangement held outside the Council chambers that allows the Council to be briefed by one or several experts in a matter of concern to the Council.” United Nations Non-Governmental Liaison Service.

¹² S/PRST/2002/6, 15 March 2002.

¹³ S/PRST/2009/1, 14 January 2009.

“[T]he UN Secretariat, troop- and police-contributing countries, host states, humanitarian actors, human rights professionals and the missions themselves continue to struggle over what it means for a peacekeeping operation to protect civilians, in definition and practice.”¹⁴

The study found that “protection” has been used to describe a broad spectrum of activities undertaken by UN peacekeepers and other stakeholders, from immediate protection from physical violence to the full range of peacebuilding, human rights, and capacity-building activities that may contribute to POC in the longer term. Further, the Security Council has previously characterized the authorization to protect civilians under imminent threat of violence both as an operational-level objective and as a tactical-level task.¹⁵ Over the last decade, with the notable exceptions of Resolutions 1865 and 1906 for MONUC in the Democratic Republic of the Congo (DR Congo), UNSC mandates failed to indicate clearly how the objectives and/or tasks should be implemented or prioritized against other objectives and tasks. Res. 1906 (relevant excerpts in Text Box 3) followed the latest Security Council thematic resolution on POC (S/Res/1894), which stressed that “mandated protection activities must be given priority in decisions about the use of available capacity and resources.”¹⁶

TEXT BOX 3:

***UN SECURITY COUNCIL RESOLUTION 1906:
GIVING HIGHEST PRIORITY TO PROTECTION***

5. Decides that, from the adoption of this resolution, MONUC, working in close cooperation with the Government of the Democratic Republic of the Congo, shall have the following mandate, in order of priority: (a) Ensure the effective protection of civilians, humanitarian personnel and United Nations personnel and facilities [...]

7. Emphasizes that the protection of civilians, as described in paragraph 5 (a), must be given priority in decisions about the use of available capacity and resources, over any of the other tasks [...];

Source: UN Security Council Resolution 1906, S/RES/1906 (2009), 23 December 2009.

¹⁴ Holt et al., *Protecting Civilians in the Context of UN PKOs*, p. 4.

¹⁵ Holt et al., *Protecting Civilians in the Context of UN PKOs*, pp.6–7. Security Council resolutions including Chapter VII authorization to protect civilians have also used the phrases “take necessary action” or “use all necessary means”—which have been interpreted with considerable variation in rules of engagement and other guidance for missions.

¹⁶ S/Res/1894, OP 19.

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Priority is not strategy, however. Security Council mandates have regularly included caveats that, while intended to limit expectations or circumscribe mission responsibilities, have not assisted the implementation of POC in practice.¹⁷ Instead these caveats have at times been used as loopholes or excuses for inaction. Attempts to define these caveats more precisely within mandates may be less beneficial than efforts to develop the standing operational concepts and procedures to meet the mandates' intended objectives, and the resources and training to get the job done.

Moreover, these caveats do little to achieve their intended affect of managing the expectations of communities on the ground and communities watching the United Nations' performance around the world. Regardless of the mandate or the resources and assets, a peacekeeping mission will not be able to protect all of the civilians within its area of operation all of the time. Given a mission's ability to protect civilians goes to its credibility and legitimacy, the United Nations must review and develop better systems for managing public information campaigns and expectations. Implicit in expectation management and improving effectiveness is the need to develop indicators for success. Without a clear strategy that a) prioritizes protection among other operational-level objectives, b) prioritizes various protection needs within the mission's area of operation, c) undertakes contingency planning, and d) sets benchmarks for success, the mission may not be able to set realistic objectives and meet its commitments to protect civilians.

NEW OPPORTUNITIES FOR PROGRESS

The Special Committee, Security Council, and Secretariat each have taken steps over the past year to address the POC guidance gap at the strategic level. The 2009 annual report of the Special Committee asked the Secretary-General to provide a note on the lessons learned from peacekeeping operations mandated to protect civilians; the DPKO/DFS non-paper *A New Partnership Agenda: Charting a New Horizon for UN Peacekeeping* asserted that DPKO/DFS would produce a draft strategic guidance note on robust peacekeeping for discussion with member states;¹⁸ and Security Council Resolution 1894 recognized:

the need for comprehensive operational guidance on peacekeeping missions' tasks and responsibilities in the implementation of protection of civilians mandates and requests the Secretary-General to develop in close consultation with Member States including troop and police contributing countries and other relevant actors, an operational concept for the protection of civilians, and to report back on progress made....¹⁹

In response, the Secretariat developed three documents: 1) "DPKO/DFS Lessons Learned Note on the Protection of Civilians in UN Peacekeeping Operations: Dilemmas, Emerging Practices and Lessons Learned;" 2) "Draft DPKO/DFS Concept Note on Robust Peacekeeping;"²⁰ and 3) "Draft DPKO/DFS Operational Concept on the Protection of Civilians in UN Peacekeeping Operations." Troop- and police-contributing countries (TCCs and PCCs, respectively) were consulted in early 2010 on these notes. The Special Committee's 2010 annual report asked the

¹⁷ Holt et al., *Protecting Civilians in the Context of UN PKOs*, pp. 11, 44.

¹⁸ DPKO/DFS, *A New Partnership Agenda: Charting a New Horizon for UN Peacekeeping*, p. 42 (para 14).

¹⁹ S/Res/1894, OP 22.

²⁰ "Draft DPKO/DFS Concept Note on Robust Peacekeeping," January 2010.

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Secretary-General to further develop a “strategic framework” on the protection of civilians and training modules on the subject for all peacekeeping personnel.²¹

The Draft Operational Concept is an important first step in addressing gaps in guidance at the strategic level, organized around three “tiers” of protection:

1. Protection through political process;
2. Providing protection from physical violence; and
3. Establishing a protective environment.²²

This framework was developed based on current understandings of and activities undertaken by UN peacekeeping operations to promote POC. DPKO and DFS did not adopt the same framework as humanitarian actors. Peacekeeping is a political enterprise usually engaged in encouraging the brokering or implementation of a peace agreement—a political document—which may require an operation to partner with the host-state government (engaging in reconstruction of the host state’s security services) and/or use force to stop spoilers. Such activities may contradict the principles of neutrality, impartiality and independence that guide humanitarian work (discussed in Part II, below).

The first tier captures the political and advocacy efforts that mission leadership and personnel should undertake in regard to POC. The second tier outlines different actions that the mission will need to consider to prevent and pre-empt violence against civilians as well as respond to and finally consolidate a situation following an incident. The third tier captures activities such as promoting legal protection, facilitating humanitarian assistance, and supporting effective national institutions.²³ The Draft Operational Concept offers some strategic-level guidance but additional guidance will be needed at both the strategic and operational levels to effectively implement the Concept, as discussed in Part III: Applying Protection in UN Missions.

The Special Committee’s 2010 annual report acknowledged that the Secretariat should continue to develop guidance, or a strategic framework for UN peacekeeping missions. However, the Special Committee’s annual report did not acknowledge that additional guidance is needed in relation to robust peacekeeping. This lack of consensus translates into a lack of clarity on how proactive peacekeeping missions should be in defending their mandate, and correlatively, what guidance and resources peacekeeping missions may require.

Recommendations for UN Peacekeeping Operations, a Strategic View:

- Effective POC planning and implementation requires accurate situational awareness based on timely and effective information. The current lack of an operational definition and guidance on POC has knock-on effects for strategic-level planning. For example, Technical Assessment Mission (TAM) reports, on which the UN Secretary-General’s report is based, and on which mandates are often constructed, have generally failed to address POC in a holistic manner. Guidance should be created detailing what TAMs should look for in regard

²¹ Special Committee, 2010 Annual Report, Advanced Unedited Version, paragraphs 149–150.

²² “Draft DPKO/DFS Operational Concept,” p 1.

²³ “Draft DPKO/DFS Operational Concept,” pp 8–10.

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to POC and TAMs should include a POC specialist. Subsequently, a POC mandate by the UNSC should reflect the cross-cutting protection requirements identified by the TAM team, and assign sufficient resources to ensure that protection can be achieved.²⁴

- Indicators for success in POC mandated missions do not yet exist. As requested in S/Res/1894, benchmarks for success for POC should be developed at the strategic level and inform metrics and indicators developed by mission components at the operational and local level. Guidance should be developed by DPKO/DFS in this regard. Missions should report progress on their respective mission-wide protection strategy and/or POC mission directive (as detailed in Part III below).
- Gathering lessons learned on information management and expectation setting could also be synthesized into guidance for missions.
- There is still a lack of consensus within the UNSC, and in particular among the Special Committee, on how proactive a mission should be on protection and what assets it will require to protect itself and civilians. Nevertheless, missions continue to be deployed into environments of generalized violence and/or active armed conflict. As recognized in S/Res/1894 and the March 2010 Special Committee report, the Secretariat should continue to review whether concept of operations (CONOPS) and resources are adequate for missions mandated to protect.²⁵ Such a review could help to facilitate consensus. However, in the absence of such a consensus, the knowledge learned from the review should be used internally by the Secretariat to better prepare missions for POC.

²⁴ See S/Res/1894 paragraphs 20–21.

²⁵ S/Res/1894 and Forthcoming Special Committee on Peacekeeping 2010 Annual Report, paras 148–149.

PART II:

HUMANITARIAN AND REGIONAL PROTECTION PERSPECTIVES

SUMMARY OF PART II

Humanitarian Protection Initiatives

The mass atrocities of the 1990s challenged humanitarian organizations to look in the mirror and review how the provision of humanitarian assistance may have exacerbated or could have prevented the violence perpetrated against civilians. As a result, the humanitarian community began developing a significant body of guidance, principles, manuals, strategies and programs to the physical protection of individuals and populations. Humanitarian protection has continued to evolve as actors strive to reduce the vulnerabilities of civilians and eradicate the causes of violations. The concept is now applied to situations of armed conflict, ongoing generalized violence, natural disasters, and post-conflict situations. The ICRC, the UN's Inter-Agency Standing Committee (IASC) and OCHA have developed frameworks and coordination mechanisms for a diverse set of humanitarian actors contributing to POC.

Unfortunately, as the humanitarian concept of protection has evolved alongside reforms in peacekeeping, fault lines have arisen between humanitarians and the parties that grant them access to vulnerable populations as well as between humanitarians and integrated peacekeeping missions. As such, additional guidance is needed to increase communication and coordination within humanitarian protection actors, between humanitarian protection actors and peacekeeping missions and within peacekeeping missions to ensure all actors are able to implement protection activities safely and effectively in the same area of operation.

Regional Peace and Security Initiatives: A Spotlight on the African Union

Regional peace and security organizations have long been involved in addressing violence against civilians through political pressure and mediation to end violations, in efforts to prevent and respond to violence and in contributing to peacekeeping and establishing a protective environment. The African Union, North Atlantic Treaty Organization and the European Union have all conducted field operations relevant to POC and each has some strategic-level guidance related to POC,¹ although the African Union has taken the lead in developing comprehensive guidance for peace support operations. Inasmuch as regional force deployments may precede, succeed, or occur in parallel with UN peacekeeping operations, it behooves the United Nations and regional organizations to coordinate the development of POC policy, strategy and guidance for avoidance of misunderstanding at a minimum and better prospects of success where deployments are close, in time or space.

HUMANITARIAN PROTECTION INITIATIVES

Generally speaking, guidelines for humanitarian protection are more advanced than equivalent POC guidelines for UN peacekeeping missions. Humanitarian entities—including UN agencies—have developed a significant body of guidance, principles, and manuals to help improve protection mechanisms for those affected by conflict and injustice.

In 1999, the International Committee of the Red Cross (ICRC) convened a series of workshops engaging humanitarian and human rights actors. The initiative resulted in a definition of “protection”²⁶ and a framework for providing protection, widely known as the “egg model,” which included responsive, remedial, and environment building activities that contribute to individual and community protection.²⁷ The workshops were in part a reaction to the mass atrocities of the 1990s that challenged humanitarian organizations to look in the mirror and review how the provision of humanitarian assistance may have exacerbated or could have prevented the violence perpetrated against civilians. As a result, the humanitarian community became more aware of the importance of avoiding “the well-fed dead” by addressing the physical protection of individuals and populations as well as providing other life-saving assistance.

Since the 1990s, humanitarian protection has continued to evolve as actors strive to reduce the vulnerabilities of civilians and eradicate the causes of violations. The concept is now applied to situations of armed conflict, ongoing generalized violence, natural disasters, and post-conflict situations.²⁸ Humanitarian activities that operationalize the concept include, but are not limited to, the following:

- Programming guided by the principle of “do no harm,” which seeks to ensure that humanitarian assistance does not worsen the vulnerabilities of individuals and communities. This may entail conflict and situation analysis to emphasize program designs that reduce the vulnerabilities of communities (e.g., placing latrines, water points, clinics and schools in areas that reduce the probability of sexual and gender based violence (SGBV)).
- Protection-specific programming that can be preventive or responsive. Preventive activities include educating communities about their rights or helping to organize coordinated firewood collection. Responsive activities include providing medical services or helping survivors access legal systems.
- Outreach and advocacy (directly or through appropriate intermediaries) to armed actors to raise awareness of their responsibilities under international human rights and humanitarian law and to dissuade them from perpetrating abuses.

²⁶ The International Committee of the Red Cross (ICRC) definition of protection included efforts to: ensure that authorities and other actors respect their obligations and the rights of individuals; prevent or put a stop to actual or potential violations of international humanitarian law and other relevant bodies of law; eradicate the causes of violations and the circumstances that lead to them; and reinforce the security of individuals and reduce threats. ICRC, “Enhancing Protection for Civilians in Armed Conflict and other Situations of Violence,” September 2008, p. 9–10.

²⁷ Holt et al., *Protecting Civilians in the Context of UN PKOs*, p. 67.

²⁸ For example, although not discussed in this report, the scope of humanitarian protection has evolved to include populations displaced or at risk as a result of ‘organised armed conflict, ongoing generalized violence, natural disasters and post-conflict situations.’ See Sorcha O’Callaghan and Sara Pantuliano, *Protective Action: Incorporating Civilian Protection into Humanitarian Response*, HPG Rpt. 26. London: Overseas Development Institute, Humanitarian Policy Group, December 2007, p. 1.

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The UN's Inter-Agency Standing Committee (IASC) and OCHA have undertaken reviews and developed frameworks and coordination mechanisms for the humanitarian community on protection. The IASC developed *Growing the Sheltering Tree* in 2002, which gathered and categorized best practices of protection. Of note, the UN Emergency Response Coordinator commissioned the 2005 Humanitarian Response Review, largely in reaction to failures to protect in Darfur. The review resulted in the creation of the "humanitarian cluster" approach which seeks to define roles and responsibilities and provide a coordination mechanism for all humanitarian activities, including protection, at the global, operational, and local level.²⁹ In 2008, the IASC Protection Cluster Working Group released a "Discussion Note on Collection of Good Practices in Protection," which collected best practices.³⁰ Further, the ICRC has developed a number of very helpful tools on designing and implementing protection activities in armed conflict and situations of violence, a useful tool that can be applied to diverse and complex environments by numerous protection actors.³¹

These initiatives have resulted in a more coherent operational concept of humanitarian protection and a framework to encourage the evolution of the concept toward the shared objective of reducing vulnerabilities. Nevertheless, the concept is dynamic and contentious. Some governments assert that protection work and some of its components—conflict analysis, outreach to armed actors and sometimes media and advocacy—are outside the bounds of humanitarian mandates.³²

As the humanitarian concept has evolved alongside reforms in peacekeeping, additional fault lines have arisen. Over the last decade, for example, UN peacekeeping has moved toward "integrated missions" intended to pull together UN activities. Such missions may include political, electoral, judicial, corrections, human rights, and other elements in addition to police and military components. Some have included humanitarian components but humanitarian agencies often operate outside of the mission, at varying levels of communication and coordination with the mission. Integration has led to a more coherent approach on protection within the United Nations but humanitarian actors (including UN humanitarian agencies) worry that working alongside and/or in coordination with UN peacekeeping missions—which may be partnering with current or former parties to a conflict or may be associated locally with the political agendas of regional or global powers—could compromise the humanitarian principles that guide their work. The move toward integrated missions is not the only issue that has emerged between humanitarian actors and UN peacekeeping missions, but is an important fissure that merits further attention.

Humanitarian operations depend on the understanding that their work is independent of any government, that services are distributed in an impartial way (based on need) and that they remain neutral from any party to a conflict. These principles contribute to their effective work with communities, the protection of their beneficiaries, and their own protection in the midst of conflict. Unfortunately, these concerns have contributed to a lack of communication between

²⁹ Holt et al., *Protecting Civilians in the Context of UN PKOs*, pp. 36, 67–68.

³⁰ Inter Agency Standing Committee, Protection Cluster Working Group, "Discussion Note on Collection of Good Practices in Protection."

³¹ See ICRC, "Enhancing Protection for Civilians."

³² See Sorcha O'Callaghan and Sara Pantuliano, "The 'protection crisis': A review of field-based strategies for humanitarian protection in Darfur." Overseas Development Institute, HPG Discussion Paper, December 2006, pp. 21–22.

actors. Given that effective protection often hinges on the coordination and leveraging of numerous actors within the same area, lack of communication and respect for different stakeholders' purposes and contributions can undermine protection.

There are a number of humanitarian guidelines on civil-military coordination,³³ but they do not focus explicitly on POC. Similarly, the evolving policies, tools, and approaches on humanitarian protection have made minimal reference to how humanitarian actors should engage and coordinate with peacekeeping missions on protection despite their increasingly important role in this area. Existing humanitarian guidelines and frameworks could be reviewed or supplementary guidelines could be created to focus on communication and, when appropriate, coordination related to POC between humanitarian actors and those responsible for military, police, and political components.³⁴

Recommendations Related to Humanitarian Protection Initiatives:

- Guidelines for humanitarian protection are based on IHL, human rights, and refugee law. As recognized in the UNSC Aide Memoire on POC, humanitarian protection provides the basis for the successful implementation of POC mandates. UN peacekeeping missions should develop mechanisms to coordinate protection efforts of actors within the mission and (as appropriate) liaise, coordinate and/or collaborate with humanitarian coordination mechanisms external to the mission.
- In order to facilitate the above recommendation, and per existing IASC civil-military guidelines,³⁵ UN peacekeeping missions should develop protection frameworks and strategies that allow humanitarian and other protection actors outside the mission to engage in different ways and at different degrees of proximity to a mission, consistent with existing humanitarian strategies.
- UN peacekeeping operations should ensure that “comprehensive” or “mission-wide” strategies for POC (discussed in subsequent sections of this paper) include guidelines for information collection and sharing within and external to the mission that in turn reflect victim protection and related guidelines to ensure that information sharing does not put vulnerable sources at risk. Further, information that has been synthesized and aggregated by the mission should be shared as appropriate with protection actors within and external to the mission. Mission personnel should be trained to implement the guidelines.
- Agencies tasked with coordinating humanitarian protection activities such as the UN High Commissioner for Refugees (UNHCR, the lead for the global protection cluster) and OCHA should facilitate better communication and coordination between humanitarian and other protection actors on the one hand and UN peacekeeping missions on the other. This should occur at the global, operational, and local level.³⁶

³³ See Civil-Military Guidelines and References for Complex Emergencies, United Nations (UN) and the Inter-Agency Standing Committee (IASC), January 2009; Guidelines on The Use of Foreign Military and Civil Defence Assets in Disaster Relief - Oslo Guidelines, OCHA-November 2006, Revision November 2007, January 2009; United Nations Humanitarian Civil-Military Coordination - Concept Paper, United Nations (UN) and the Inter-Agency Standing Committee (IASC), March 2005; and the IASC Principles on Military-Civilian Relations, January 1995.

³⁴ Holt et al., *Protecting Civilians in the Context of UN PKOs*, pp. 69–73.

³⁵ See Civil-Military Guidelines and References for Complex Emergencies, United Nations (UN) and the Inter-Agency Standing Committee (IASC), January 2009, section 1 *Civil-Military Relationship in Complex Emergencies—An IASC Reference Paper*, June 24, 2004, Part 3, pp. 13–14.

³⁶ Holt, et al., *Protecting Civilians in the Context of UN PKOs*, pp. 69–73.

REGIONAL PEACE AND SECURITY INITIATIVES: A SPOTLIGHT ON THE AFRICAN UNION

Regional peace and security organizations have long been involved in addressing violence against civilians through political pressure and mediation to end violations, in efforts to prevent and respond to violence and in contributing to peacekeeping and establishing a protective environment.

The African Union's (AU's) peace and security architecture was in part designed to address the shortcomings of the Organization of African Unity (OAU) and to prevent a repeat of crises like those in Rwanda and Burundi in the 1990s. As a result, the AU is particularly concerned with early warning and conflict prevention and mitigation. One of the AU's founding principles is "non-indifference," in contrast to the OAU's principle of "non-interference."³⁷ As a reflection of this commitment to prevent and respond quickly to atrocities, the AU included the authority within its Constitutive Act to, "intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity."³⁸

The AU has deployed peace support operations³⁹ under UN mandate to Darfur and Somalia, tasked to undertake POC. AU member states also contribute heavily to UN peacekeeping missions with POC mandates in Africa. The AU had set 30 June 2010 as the deadline for the second phase development of its African Standby Force (ASF), by which time it planned to have the capacity to manage a complex peacekeeping operation.⁴⁰ The ASF is multidimensional, comprising civil and police as well as military components from each of its five economic regions.

From 2 to 5 March 2010, the AU convened an international symposium in Addis Ababa, supported by the Government of Australia, to consider *Draft Guidelines for the Protection of Civilians by Peace Support Missions*. The draft guidelines were considered by AU officials, representatives from its member states, key UN stakeholders, and international experts. The draft guidelines recognize that peace support operations in Africa are increasingly tasked with POC and that the AU's ability to protect civilians will impact the AU's legitimacy and credibility. The draft guidelines primarily outline principles and best practices by addressing three areas:

- Fundamental concepts and principles, including the definition of key terms;
- Best practice in relation to planning, mandating, and supporting peace support operations; and
- Guidance in relation to the operationalization of a protection mandate at the mission level, in particular through a mission-wide protection strategy to be developed by a head of mission.

³⁷ International Peace Institute (IPI). "Operationalizing the African Standby Force," meeting notes, January 2010, p. 5.

³⁸ African Union Constitutive Act, article 4(h).

³⁹ Note that the African Union and North Atlantic Treaty Organization use the term *peace support operation* versus *peacekeeping operation*. This paper uses their terminology in referring to their operations.

⁴⁰ Note that the AU delayed this deadline to late 2010.

Should comparable guidelines be adopted by the AU, additional guidance and correlative training would be needed for AU headquarters personnel, regional ASF military brigades,⁴¹ and other regional components. The AU's initiative to develop protection guidance at the strategic and operational level is the only regional initiative of its kind, and is going forward in close collaboration with the United Nations and ICRC. This collaboration is in recognition of the fact that AU peace support operations would benefit from greater interoperability with UN peacekeeping efforts, a lesson learned from Darfur and Somalia.

The North Atlantic Treaty Organization and the European Union have also conducted field operations relevant to the protection of civilians and each has some strategic-level guidance related to POC,⁴² although neither has gone as far as the AU in taking steps to develop comprehensive guidance for peace support operations. Inasmuch as regional force deployments may precede, succeed, or occur in parallel with UN peacekeeping operations—with or without close coordination—it behooves the United Nations to coordinate the development of POC policy and strategy with regional actors, for avoidance of misunderstanding at a minimum and better prospects of success where deployments are close, in time or space.

Recommendations in Relation to Regional Peace and Security Initiatives:

- UN and regional organizations should work together to ensure that developing concepts, guidance and training are complementary to a) learn from best practices, b) promote a common definition and understanding of the concepts, roles, and responsibilities, and c) ensure greater interoperability when handing over or working in support of another mission.
- Regional organizations should develop their own guidelines and concepts for POC to enable appropriate planning, resourcing, and training. As far as possible, these should be consistent with extant UN practices, and where necessary help advance UN practices where the latter have been proven ineffective or doctrine is non-existent.
- Regional peace support operations have a better chance of success in POC when they include non-military components with objectives that address both short-term and longer-term protection needs, including root causes of threats.
- Mission personnel should receive protection training from senior leadership across the mission and down the cascading leadership structures to enable their contribution to developing and implementing the strategy (see Part III).

⁴¹ For example, additional doctrine and training for militaries will be needed. Some recent doctrine has begun to address the protection of civilians from violent threats. British, NATO, and African Union peace support operations doctrine contain references to addressing widespread human rights abuses, ethnic cleansing, and (in the case of the latter) genocide. However, while acknowledging or even emphasizing the importance of protecting civilians, these publications have provided limited guidance on how to actually go about doing so, leaving it to those planning and implementing such operations to develop the conceptual approaches required to turn ambition into reality.

⁴² Further discussion of NATO and the European Union activities may be found in the Annex.

PART III:

APPLYING PROTECTION IN UN MISSIONS

SUMMARY OF PART III

The Prioritization of Protection

With the exception of a few cases—involving large scale war crimes, ethnic cleansing, or genocide—POC will rarely be the primary objective of a mission. Rather, peacekeeping operations will likely continue to have an overall objective of contributing to sustainable peace and development, which requires a multiplicity of efforts. However, POC should be one of the operational-level objectives of a mission, not simply a set of tasks carried out at the tactical level. The establishment of effective protection mechanisms contributes directly to the desired end-state and exit strategy of a mission, while enabling sustainable peacebuilding initiatives to prosper.

Tensions and Trade-Offs

Given that POC will likely be one of many mission objectives, mission leadership will need to determine and clarify how the mission will prioritize protection in relation to other operational-level objectives, which will lead to inherent tensions and trade-offs. Mission leadership and staff will need to identify and manage the risks and consequences of taking action to protect and of failing to act. For example, establishing a protective environment could entail working closely alongside host state security forces. If the host state forces were (or are) involved in abuses, the mission may have to choose between working with them or prioritizing the prevention of further physical violence.

Implications for UN Peacekeeping Operations

As such, additional guidance is needed to assist UN missions in prioritizing and managing the risks and consequences of action and inaction in protecting civilians. Heads of missions should develop comprehensive mission-wide protection strategies in consultation with appropriate stakeholders. Missions should also ensure effective communication and coordination mechanisms which seek to provide a framework for protection stakeholders within the mission. Given the critical importance of effective information sharing and analysis, POC strategies should include guidance on the collection and sharing of information (as appropriate) within and external to the mission. Finally, effective leadership is critical to POC. Mission leaders at every level should receive POC training on identifying protection vulnerabilities and threats; effective information collection and analysis; and sharing, identifying, and managing risks of action and inaction.

THE PRIORITIZATION OF PROTECTION

Recent discussions at the United Nations and African Union⁴³ demonstrate that there is a lack of clarity and consensus about whether the recent attention to POC is an effort to make it the highest priority or overarching objective of a peacekeeping (or peace support) operation. With the exception of a few cases—involving large scale war crimes, ethnic cleansing, or genocide—POC will rarely be the primary objective of a mission. Rather, peacekeeping operations will likely continue to have an overall objective of contributing to sustainable peace and development, which requires a multiplicity of efforts. However, POC should be one of the operational-level objectives of a mission, not simply a set of tasks carried out at the tactical level. This is because the establishment of effective protection mechanisms contribute directly to the desired end-state and exit strategy of a mission, while enabling sustainable peacebuilding initiatives to prosper. POC, therefore, is essential to reinforce the nexus between security, development, and governance efforts that aim to build a sustainable peace.

In addition to contributing to the desired end-state and exit strategy of a mission, there are other pragmatic reasons why missions should include POC as an operational-level objective. These include but are not limited to the following:

- Effective POC is a product of leveraging—and, where possible, coordinating—various actors contributing to protection within and outside the mission. This requires guidance and direction from the operational level to ensure coordination and communication horizontally across the mission, as well as vertically down through cascading levels of responsibilities.
- POC crises and mission response at the tactical level could have direct implications for the mission at the operational and even strategic level. This is especially true in cases where the host state government or main parties to the conflict are actively or passively (through proxies) involved in abuses. As a result the mission's leadership and coordination mechanisms at the operational level need to understand the risks and consequences of action and inaction at the tactical level and empower mission leadership down to the local level to manage these decisions and risks within certain limits and/or when time is of the essence.
- Situations on the ground are fluid and can deteriorate quickly, especially in the context of active conflict and fragile peace where a lack of effective POC can be the catalyst for an outbreak of violence. Missions need to maintain a birds-eye view at the operational level to monitor and assess situations and quickly reprioritize resources to prevent, pre-empt, and/or respond to potential crises.

Given that POC will likely be one of many mission objectives, mission leadership will need to determine and clarify how the mission will prioritize protection in relation to other operational-level objectives. The UNSC may help provide this guidance as it did in the most recent resolution on the situation in the DR Congo (S/Res 1906; Text Box 3). However, in the absence of specific guidance and in recognition that a situation could change more quickly than the Security Council is able or willing to issue an updated resolution, mission leadership should be empowered to reprioritize within principal operational-level objectives as needed.

⁴³ Australia-Uruguay Roundtable of the Protection of Civilians, January 19, 2010, Millennium UN Plaza Hotel; and African Union Commission International Symposium on the Protection of Civilians in Conflict Zones, 2–5 March, Addis Ababa Ethiopia.

TENSIONS AND TRADE-OFFS

The prioritization of POC has implications for UN peacekeeping missions. As discussed in Part I, the Draft DPKO/DFS Operational Concept is a step towards organizing protection around a three-tiered framework:

1. Protection through political process;
2. Providing protection from physical violence; and
3. Establishing a protective environment.⁴⁴

The Draft Operational Concept asserts that the tiers are mutually accommodating and should be taken forward simultaneously. However, this does not recognize that there are inherent tensions and trade-offs within these tiers. For example, establishing a protective environment could entail working closely alongside host state security forces. If the host state forces were (or are) involved in abuses, the mission may have to choose between working with them or prioritizing the prevention of further physical violence. The Draft Operational Concept says that DPKO will work with missions to identify roles and responsibilities at the operational level, but additional strategic and operational guidance will be needed on how peacekeeping operations are expected to balance and prioritize POC responsibilities against multiple other tasks, often with inadequate resources. Additional guidance also will be needed to assist missions in identifying and managing the tensions that may arise between the various mission components as a POC strategy is implemented, and managing the trade-offs required to implement the three tiers simultaneously.

Finally, the Draft Operational Concept was not intended to and does not address one of the most critical issues in UN peacekeeping missions mandated to protect civilians: how missions are expected to identify and manage the risks and consequences of prioritizing and implementing protection objectives and tasks (taking action or inaction). This issue is explored further in Part IV in relation to the military component but will need to be addressed for other components as well. In particular, guidance will be needed to help UN peacekeeping missions address situations where host state and main parties to the conflict may be complicit in abusing civilians. Further, guidance and tools could be used to help missions identify/manage risks of taking action to deter or compel actors who may be affiliated in different ways with those that grant strategic consent. This critical issue is addressed to some extent in the DPKO/DFS Lessons Learned Note on the Protection of Civilians in Armed Conflict, but should be addressed in subsequent guidance from the strategic and operational level.

IMPLICATIONS FOR UN PEACEKEEPING OPERATIONS

Implications for operational-level guidance

A number of independent and UN reports and resolutions (especially UNSC Resolution 1894 on the protection of civilians in armed conflict and the 2010 Annual Report of the Special Committee) have recommended that missions develop comprehensive protection strategies;⁴⁵ or,

⁴⁴ “Draft DPKO/DFS Operational Concept,” p 1.

⁴⁵ *Statement by the President of the Security Council*, (S/PRST/2009/1), 14 January 2009, p. 8; Holt, et al., *Protecting Civilians in the Context of UN PKOs*; DPKO/DFS Lessons Learned Note on the Protection of Civilians in Armed Conflict, p. 11.

more specifically, that Heads of Missions develop comprehensive mission-wide protection strategies.⁴⁶ A “comprehensive” or “mission-wide” strategy should be developed a) horizontally across a mission’s various components; b) vertically between the strategic level (UN headquarters), operational, and local levels; and c) with protection actors (UN agencies, NGOs, beneficiaries, and host state governments as appropriate) external to the mission. The recent UNSC resolution on POC in armed conflict requested the Secretary-General to ensure these strategies are developed:

Request[ing] the Secretary-General to ensure that all relevant peacekeeping missions with protection mandates incorporate comprehensive protection strategies into the overall mission implementation plans and contingency plans which include assessments of potential threats and options for crisis response and risk mitigation and establish priorities, actions and clear roles and responsibilities under the leadership and coordination of the SRSG, with the full involvement of all relevant actors and in consultation with United Nations Country Teams.⁴⁷

A comprehensive or mission-wide POC strategy that involves various actors also acknowledges that diverse groups are often involved in perpetrating threats against civilians for different reasons in the same area or across the mission’s area of operation. Similarly, different individuals and/or populations are likely to have diverse vulnerabilities. Although best practices and lessons learned could go a long way to informing strategies, each of these threats and vulnerabilities is likely to require a tailored response. Finally, the diverse actors contributing to POC are likely to be addressing these threats and vulnerabilities in different ways. A comprehensive or mission-wide strategy could capitalize on the need for and the application of diverse strategies at the local level, while ensuring a) that POC remains a priority for mission resource allocation and capacity across the mission; and b) that adequate management of the risks of both action and inaction at the local level occurs so as not to undermine operational and strategic objectives.⁴⁸

Moreover, mission-wide strategy or guidance should reflect a proactive approach to protection. One of the fundamental differences between effective POC as a mission objective and traditional peacekeeping practices is a proactive stance, which will require patrolling, mobility, and connectivity with the people—potentially a substantially reconfigured operation that may need the added guidance noted earlier to help it balance and manage tensions and trade-offs between tiers of protection and other mission goals.

Implications for resources and planning

A proactive strategy including but not limited to patrolling, mobility, and connectivity with the people will require appropriate and adequate assets and logistics. Most critical are mobility assets that allow missions to identify, monitor, and address protection needs across more of their operating area. These include helicopters and improved logistics systems and are particularly

⁴⁶ Alison Giffen, *Addressing the Doctrinal Deficit: Developing Guidance to Prevent and Respond to Widespread or Systematic Attacks Against Civilians, A Workshop Report*, The Stimson Center, Spring 2010; African Union Commission, “Draft Guidelines;” and International Forum for the Challenges of Peace Operations, “Considerations for Mission Leadership in UN Peacekeeping Operations,” draft of 22 March 2010, pp. 19–20.

⁴⁷ S/Res/1894, OP 24.

⁴⁸ MONUC, UNMIS, and UNAMID have begun to develop guidance at the operational level, which should be reviewed for best practices and lessons learned in the development of comprehensive strategies.

important when pre-empting or responding to threats and perpetration of physical violence.⁴⁹ Similarly, reviews have identified the importance of effective information collection and analysis of timely, reliable, and widely-sourced information, with particular attention to special needs groups; the motivations behind abuses and the types and perpetrators of abuse; and the protection efforts of host state authorities, other protection actors, and local communities.⁵⁰ This information should be shared as broadly as possible with other protection actors to the extent that security protocols and confidentiality measures allow.

Best practices and guidelines are emerging to ensure that information collection, analysis and sharing does not put individuals and/or organizations at risk.⁵¹ The ICRC's guide to protection for civilians provides useful tools on a) data gathering on protection problems and needs and b) data gathering on specific events and their follow-up.⁵² Although the gathering and sharing of all information can be sensitive, the latter category is of particular concern to individuals and communities under threat and other protection actors external to the mission and will therefore require particular attention in guidelines and training on information collection and sharing (see Part II, Humanitarian Protection). The way in which these ICRC tools are applied would depend on who is using them. For example, police, military, humanitarians, and human rights monitors will all have different purposes for collecting POC related information, unique protocols and diverse training. Entities would need to take this diversity into account when developing and implementing POC guidelines.

This operational-level approach also has implications for planning. Former and current mission leaders have asserted that missions aren't always deployed in a way that allows for mobility and flexibility in responding to changing protection threats. Moreover, given that situations can deteriorate quickly and violence against civilians can escalate, missions should engage in contingency planning.

Implications for leadership and training

The above comprehensive and proactive strategy has implications for leadership and training. On the one hand, it invests greater responsibilities in the mission leadership to develop, implement, and be accountable for mission-wide comprehensive strategies. On the other hand, it implies a decentralization of decision-making regarding a) the application of mission resources to activities that contribute to protection as well as b) managing risks of action and inaction related to vulnerabilities and threats. As a result, mission leaders across mission components, from the operational down to the local level, will require training on identifying protection vulnerabilities and threats; effective information collection, analysis and sharing; and on identifying and managing risks of action and inaction.⁵³ Security Council Res. 1894:

⁴⁹ International Forum for the Challenges of Peace Operations, "Considerations for Mission Leadership in UN Peacekeeping Operations," draft of 22 March 2010, p. 50.

⁵⁰ Holt et al., *Protecting Civilians in the Context of UN PKOs*; DPKO/DFS Lessons Learned Note on the Protection of Civilians in Armed Conflict, pp. 6–8; African Union Commission, "Draft Guidelines."

⁵¹ African Union Commission, "Draft Guidelines."

⁵² ICRC, "Enhancing Protection for Civilians," pp. 63–68.

⁵³ Giffen, *Addressing the Doctrinal Deficit: Developing Guidance to Prevent and Respond to Widespread or Systematic Attacks Against Civilians, A Workshop Report*, and International Forum for the Challenges of Peace Operations, "Considerations for Mission Leadership in UN Peacekeeping Operations," draft of 22 March 2010, p. 50.

Requests the Secretary-General, in consultation with relevant actors, to ensure that peacekeeping missions with protection of civilians' mandates, in keeping with the strategic plans that guide their deployment, conduct mission-wide planning, pre-deployment training, and senior leadership training on the protection of civilians.⁵⁴

Training should occur before deployment—for example, in Senior Mission Leadership seminars—as well as during deployment. The latter training would raise awareness about the mission-wide protection strategy and context-specific issues and allow for scenario training involving diverse protection actors within and external to a mission.

Recommendations Related to Applying Protection in UN Missions:

- The Security Council, Secretary-General, and UN Secretariat together should ensure that heads of mission develop comprehensive mission-wide protection strategies in consultation with appropriate stakeholders. Component leaders at the local level should also develop comprehensive protection strategies. The variances between current operational-level POC guidance from MONUC, UNMIS, and UNAMID demonstrate the need for a strategic framework or guidance from the Secretariat that ensures strategies meet minimum requirements but allow for enough flexibility to reflect the specific mandate and needs on the ground.
- Missions should ensure effective communication and coordination mechanisms which seek to provide a coordination framework for protection stakeholders within the mission. This should also include frameworks to liaise with external actors as appropriate to share information, identify needs and gaps and coordinate responses when appropriate. This may be done through the protection cluster or other appropriate mechanisms specific to the local and country context.
- POC strategies should include tools and guidance on how local-level mission leaders and actors can identify and manage risks and consequences of action and inaction related to protection threats and vulnerabilities. As explored in Part I, these strategies should also include indicators for success and a plan for public information campaigns and managing expectations related to POC.
- Given the critical importance of effective information sharing and analysis, POC strategies should include guidance on the collection and sharing of information (as appropriate) within and external to the mission in order to safeguard sensitive information that could put individuals and organizations at risk and to encourage timely and wide dissemination of synthesized information to diverse protection actors.
- Effective leadership is critical to POC. Given that effective protection described above requires a) communication and coordination across and at every level of a mission, and b) effective leadership and management of resources and risks across and at every level of the mission, mission leaders at every level should receive POC training on identifying protection vulnerabilities and threats; effective information collection and analysis; and sharing, identifying, and managing risks of action and inaction.

⁵⁴ S/Res 1894, OP 23.

PART IV:

MILITARY AND POLICE REQUIREMENTS FOR EFFECTIVE IMPLEMENTATION OF PROTECTION OF CIVILIAN MANDATES

SUMMARY OF PART IV

Requirements and Issues Common to Military and Police Components

The legitimacy and credibility of a UN peacekeeping operation will often hinge upon the ability of the mission to improve security for civilians. Whether a mission is mandated to protect civilians or authorized to use force in doing so, communities on the ground and around the globe expect uniformed personnel to provide protection during crises. As such, uniformed personnel must improve planning, guidance and training specific to police and military components as well as between police and military components of missions.

A number of recommendations are common to both police and military. First, uniformed mission components must engage in effective planning that includes protection of civilians operations from the earliest point in the process. Consideration of the threats to civilians and the mission's role in protecting them is essential in: (a) early mission planning, (b) development of the CONOPS, (c) force generation and briefings to T/PCCs, (d) information gathering and analysis, and (e) contingency planning. Second, additional guidance and training is needed in relation to when and how armed uniformed personnel can and should use force in the protection of civilians and what imminent threat means in context. Third, the military and police components of a mission must coordinate operations and reach agreement on what thresholds of disorder indicate military lead of joint operations and which indicate police lead. Fourth, uniformed personnel are critical actors in effective intelligence gathering and analysis and should identify common mechanisms for analyzing and sharing information. Finally, effective protection requires flexibility and reserve military and FPU capacity for rapid response.

Military-specific Elements

Military components of peacekeeping operations are most identified with the provision of protection from physical violence, although this is the responsibility of many actors. Military strategies and actions should always be nested within a political strategy and used primarily to complement political lines of effort. Within this strategy, the military's posture and actions will likely change in relation to the situation, the level of threat to civilians, and the intensity of violence. The military may work with non-military mission elements or on its own. Such variable roles and responsibilities have implications for military leadership, assets and training. Leadership training specific to POC, including scenario-based training, can be critical to effective military support of POC. Military components need integrated capacity to gather a variety of intelligence, analyze it, and inform superior commanders and the JMAC. Military units also require high mobility, operational flexibility, and substantial local language capabilities to implement POC mandates effectively.

(Summary cont.)

Military-related issues that could use further clarification and guidance include: postures and activities appropriate to protecting civilians under imminent threat, the meaning of imminent threat, better linkages between tactical actions and strategic consequences, and how to manage protecting civilians with other mission priorities including liaising with parties to a conflict or peace agreement and building host state military capacity, when these actors are perpetrating violence against civilians or opposing the mission's role in protecting civilians.

Police-specific Elements

Police components of an operation may be the elements most commonly visible to the local population. They come in two varieties: formed units tasked with public order and crowd control that may offer higher firepower and mobility against heavily-armed criminals, but less capacity for community policing, mentoring and training, information-gathering, and relationship-building critical for mission relations with its local police counterparts and the local community. This balance between collective and individual policing must be struck early in the mission planning process. Police peacekeepers need a comprehensive doctrinal framework, a generic concept of operations that can readily be adapted to specific mandate environments, higher-quality and more-specialized officers who are permitted by their sending states to engage in POC operations, secure police communications and databases, and effective disciplinary measures, as police in missions often fall between the stools of sending state and local state jurisdiction with regard to serious allegations of misconduct.

Police requirements specific to supporting and building the local capacity in civilian protection include improved local language capabilities, adaptation of mentoring programmes to civilian protection, and ensuring that local police are paid regularly, to minimize corruption and shakedowns.

UNIFORMED PERSONNEL: FOUNDATIONAL REQUIREMENTS AND KEY PROCESSES LEADING TO EFFECTIVE PROTECTION

As discussed earlier, the legitimacy and credibility of a UN peacekeeping operation will often hinge upon the ability of the mission to improve security for civilians and live up to local and international expectations. Therefore, it is not a question of whether to protect, but how to protect. In order to effectively protect civilians from violence, the military and police components must better utilize a number of processes that help the force to understand threats to civilians, and prepare for the operating environment. Consideration of the threats to civilians and the mission's role in protecting them is essential in a number of key processes, including: (a) early mission planning, (b) development of the CONOPS, (c) force generation and briefings to T/PCCs, (d) information gathering and analysis, and (e) contingency planning.

Early mission planning

Protecting Civilians in the Context of UN PKOs asserts that POC should be considered within the earliest stages of the planning process. The study identifies several critical junctures within the

Integrated Mission Planning Process (IMPP) where threats to civilians should be analyzed and the implications for the force considered: the Strategic Assessment, the Under-Secretary-General's Planning Directive, the TAM, and the Secretary-General's report to the Security Council.⁵⁵ Throughout the process, it is absolutely necessary for the mission to assess threats to civilians, the potential for mass and/or systematic violence, the motivations and capabilities of perpetrators, the role for military and police in preventing/responding to such violence, and the tensions/constraints/tradeoffs that will deeply affect decision-making in the face of violence against civilians.

Development of Concept of Operations

The CONOPS, developed simultaneously by military and police components, outline each component's strategy and provide "a concise explanation of how a mission will apply its military and police resources to achieve its objectives as derived from the Security Council mandate."⁵⁶ CONOPS outline the basic force structure, describe the role that each component will play pursuant of the strategy, and serve as the basis for planning at the tactical level. To better implement POC mandates, the CONOPS should clearly describe, among other things, that POC is an operational level objective, the nature of the threats to civilians, the challenges and dynamics of the security environment, expected tactical tasks and how the protection objective influences the execution of those tasks, and how activities are to be woven together in pursuit of the protection objective.

Force generation and pre-deployment briefings to T/PCCs

Throughout the force generation process it is critically important that T/PCCs be briefed and understand the nature, risks, and operational capabilities that are required by the mission. As noted in *Protecting Civilians in the Context of UN PKOs*, "In the past, contingents and TCCs have sometimes refused to carry out operations designed to protect civilians because those operations exceeded the role they had agreed to assume. In other cases, contingents did not possess the operational flexibility and capacities required to execute the CONOPS."⁵⁷ In order for uniformed personnel to be able to perform protection duties, they must have a clear understanding of their role, the operational environment, and the posture they are to assume.

Contingency planning

Military and police components must understand the options and limitations of action when faced with large-scale violence. Missions must plan in advance for outbreaks in violence, including a range of scenarios and options for the forces involved. This should involve the development of scenarios and possible courses of action as well as scenario-based training. Similar to other planning, this should be coordinated with (and done jointly as appropriate) with other components of the mission and external protection actors (humanitarian actors in particular). Options available will largely depend on consent and capacity, two issues that require further political-military guidance, doctrine, and training in order for on-scene commanders to make decisions.

⁵⁵ Holt et al., *Protecting Civilians in the Context of UN PKOs*, p. 234; DPKO/DFS Lessons Learned Note on the Protection of Civilians in Armed Conflict, Chapter 3.

⁵⁶ Holt et al., *Protecting Civilians in the Context of UN PKOs*, p. 234; DPKO/DFS Lessons Learned Note on the Protection of Civilians in Armed Conflict, p. 131.

⁵⁷ Holt et al., *Protecting Civilians in the Context of UN PKOs*, p. 234; DPKO/DFS Lessons Learned Note on the Protection of Civilians in Armed Conflict, p. 141.

Information gathering and analysis

In order to effectively implement a mandate to protect civilians, missions must develop a systematic approach to collecting and analyzing information. Methods for all-sources information collection are still nascent within the United Nations; however, this is an area that should be further developed. Analysis should map civilian vulnerabilities, potential threats to civilians, and escalatory dynamics and patterns, as well as perpetrators' motivations and capabilities.⁵⁸ Military observers and police should have close ties with the Mission Joint Mission Analysis Center (JMAC) and UN peacekeeping mission or humanitarian coordination mechanisms (e.g. the protection cluster as appropriate). They should also have reliable and secure communications and secure databases for trend tracking. In order to prevent violence against civilians, as well as minimize collateral damage, operations must be intelligence-led.

Differentiation of mission police and military protection roles

The military and police components of a mission must coordinate their POC approaches and reach decisions—taking into account both the circumstances of a given mission and the capacities of the two components—on what thresholds of disorder indicate military lead of joint operations and which indicate police lead. Intelligence from both components should be routed through the JMAC. Joint command and control arrangements for managing public disorder should be worked out in advance and built into both components' CONOPS. Military units that are dual-hatted for public order functions—that is, intended to supplement police in operations that remain under police lead—should be properly trained and equipped for those tasks before they deploy, and periodically exercised and proficiency-tested in those tasks after deployment.

Reserve/surge requirements

A military strategic reserve with rapid response capabilities should be maintained within the mission area to safeguard against breakdowns in POC mechanisms and to respond quickly to outbreaks of violence beyond the threshold capacity of local units of peacekeepers or host state forces. Similarly, the Formed Police Unit (FPU) element of a mission should maintain a rapid response reserve to assist individual UN Police (UNPOL), whether they are operating on their own or embedded with host state police, when UNPOL encounter situations of imminent physical threat to themselves or civilians on a scale that risks growing unmanageable without backup. A comparable military reserve force should be available on short notice to back up FPUs that encounter levels of violence that are approaching the triggering threshold for military command of the situation.

Use of force

As explored more fully below, military ROEs and police Directives on Use of Force should include authorization to respond to imminent physical threats toward civilian third parties (generally and specific to mission). Additional guidance and training is needed on when and how to use force and what imminent threat means in context.

Recommendations Common to Military and Police:

- Additional guidance and training is needed in relation to when and how armed uniformed personnel can and should use force in the protection of civilians and what imminent threat

⁵⁸ Holt et al., *Protecting Civilians in the Context of UN PKOs*, p. 234.

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means in context. Further, additional guidance is needed to help uniformed personnel identify and manage the risks and consequences of action and inaction in using force to protect civilians.

- POC should be considered within the earliest stages of the planning process, including in the development of CONOPS and throughout the force generation process.
- The military and police components of a mission must coordinate operations and reach agreement on what thresholds of disorder indicate military lead of joint operations and which indicate police lead.
- Missions must develop a systematic approach to collecting and analyzing information. Military observers and police should have close ties with the mission Joint Mission Analysis Center (JMAC) and UN peacekeeping mission or humanitarian coordination mechanisms (e.g. the protection cluster as appropriate).
- Military and police components should engage in contingency planning and undertake commensurate scenario-based training (with each other, with other civilian mission components, and with external protection actors as appropriate).
- Effective protection requires flexibility and reserve military and FPU capacity for rapid response. Similarly, reserve military units should be trained, equipped, and available on short notice to back up formed police units in situations where public disorder threatens to escalate beyond police control.

MILITARY-SPECIFIC REQUIREMENTS, DILEMMAS, AND AREAS NEEDING FURTHER GUIDANCE

The roles and responsibilities of the military component of a mission in the POC can vary widely. For example, military components may be requested at the operational level to accompany political lines of effort to facilitate or maintain peace, through liaison with parties to the conflict/peace agreement and serving as observers to processes and mechanisms that implement the security protocols of peace agreements. The military is also often called upon to perform tasks that establish a protective environment, such as supporting national institutions in disarmament, demobilization, and reintegration processes and in security sector reform. The military can also play an important role in facilitating the work of humanitarian actors by providing security to aid agencies and protection programming to vulnerable populations. Moreover, it should be emphasized that at all times the military component, and particularly military observers, will serve an important function in gathering and analyzing information that could inform the effective development and implementation of a mission-wide protection strategy as well as the actions of protection actors external to the mission. This role is critical, even when there may be only low-levels of violence against civilians.

Military components are most identified with the provision of protection from physical violence. Military actions should be nested within a political strategy and used primarily to complement political lines of effort. However, the military's posture and actions will likely change in relation to the situation, the level of threat to civilians, and the intensity of violence.

The Draft DPKO/DFS Operational Concept captures the changing roles and responsibilities of various components of a UN peacekeeping mission in four phases (see Text Box 4) which illustrate that physical protection is not the sole responsibility of the military component, and that the military may be used in different combinations with non-military mission elements or as a

standalone component. These variable roles and responsibilities have implications for the leadership, assets and training of the military component of a peacekeeping operation.

Military Requirements

As the Brahimi Report explains, “United Nations operations . . . do not deploy into post-conflict situations so much as they deploy to create such situations.”⁵⁹ Troops must be prepared to operate within the contexts of an ongoing low-level conflict where actors may target mission personnel and civilians. This requirement affects training, strategy, intelligence, mobility, flexibility, and language capabilities.

Pre-deployment and, if possible, in-mission training

Leadership training specific to the POC should be developed, including scenario training. Contingents must be trained in tasks they are likely to undertake and should fully understand the environment within which they are operating.

Strategy

In conjunction with the mission-wide strategy to be developed by the Head of Mission, the military component should develop a military strategy that considers the nature of threats to civilians, and coordinates military activities to prevent and respond to those threats. The strategy, to be conveyed in the CONOPS or Force Commander directives with correlative standard operating procedures, should communicate the commander’s intent down to the lowest levels.

Intelligence⁶⁰ and analysis capabilities

Military components should be capable of gathering human, signal, and imagery intelligence from the field to inform superior commanders and the JMAC. Ideally, deployed contingents should have their own organic intelligence ability and structure, led by experienced intelligence officers that guide the process of information collection. Contingents should contain a dedicated HUMINT field collection capability, at minimum guided by a HUMINT orientation and training program offered in pre-deployment training. Force headquarters requires competent and experienced information officers to analyze and vet information. To secure this information, security firewalls and systems of classification must be in place during mission start-up. Intelligence personnel will need to understand what information to look for and report for protection purposes that may differ from other intelligence tasks, including what civilians are vulnerable and why, who is perpetrating threats or abuse and why, etc.

Mobility requirements

Rapid reaction, air assets, and tactical mobility are critical if military components are to prevent and respond to violence. Units should be capable of long-range patrols and short-term deployments as well.

⁵⁹ “Report of the Panel on United Nations Peacekeeping Operations,” para. 20.

⁶⁰ Although intelligence gathering in PKOs is a contentious issue, it is not unprecedented, and it is necessary for analyzing threats to civilians and the UN force. See for example: A. Walter Dorn, “Intelligence-led Peacekeeping: The United Nations Stabilization Mission in Haiti (MINUSTAH), 2006–7,” *Intelligence and National Security* 24, No. 6 (December 2009), pp. 805–835.

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Flexibility and reconfiguration

Military contingents should be able to operate in small highly mobile units (company) for long periods of time with sufficient logistical, medical, and other assets. This must be communicated within the Memorandum of Understanding with each TCC.

Language capabilities and auxiliary equipment (communications)

POC mandates bring military forces into close and regular proximity to the local population, making local language facility even in lower ranks critical (platoon, section, or squad). A lack of translators and language capabilities limits these units' ability to communicate with and gather valuable information from the population that they are trying to protect.

Text Box 4:

Draft DPKO/DFS Operational Concept: Military Tasks and Others

In [the provision of protection from physical violence], tasks include patrolling, ensuring freedom of movement and route security for both humanitarian aid and refugees/internally displaced persons (IDPs), evacuation of non-combatants, public order management, conflict mediation and support to inter-community dialogue, monitoring (including of the human rights situation) and early warning measures, and political engagement, among many others. This tier requires close coordination between—and concerted action from—the civilian and uniformed components of the mission. It is important to note that these phases do not necessarily occur in sequential order, as a mission may have to respond to rapidly unfolding circumstances.

Phase 1 – Assurance and Prevention: The measures in this phase are aimed at reassuring the local population of the mission's intent to protect them, largely through routine, passive measures. They may also include assessing the intent of and signaling to potential aggressors or perpetrators of human rights violations that they will be held accountable. Standing police and military patrols, deployment of human rights and other civilian staff, conflict prevention, mediation, active liaison and advocacy with government and non-government armed actors and potential parties to a conflict, as well as monitoring and early warning measures are fundamental elements of this phase.

Phase 2 – Pre-emption: Where measures under Phase 1 prove insufficient, or when heightened risks are detected, more active pre-emptive measures may be required. Increased liaison with government and non-government armed actors, and potential parties to a conflict, enhanced human rights monitoring, reporting, and advocacy, as well as heightened political pressure are engaged during this phase in order to deter violence against civilians. The increased involvement of other civilian elements of the mission, including civil affairs and public information, among others, should be considered. With regard to the military and police component, the deployment of forces and an increase in proactive, high-visibility patrolling could be employed.

Phase 3 – Response: When the threat of physical violence to civilians is apparent, and if actions under Phases 1 and 2 are not sufficient, more active measures aimed at deterring potential aggressors from conducting hostile acts may be necessary. Deployment of police and/or direct military action should be considered as an option, such as the interposition of peacekeepers between a vulnerable population and hostile elements or the use of force as a last resort when the population is under imminent threat of physical violence. Heightened political engagement, including at the international and regional level, must be employed here.

Phase 4 – Consolidation: This range of activities addresses the stabilization of a post-crisis situation. The aim is to assist the local population and host authorities to return to a state of normalcy, and create the conditions in which a return to crisis is diminished. Liaison with the parties to the conflict, and dialogue with the conflict-affected members of the community and investigation into human rights violations committed during the crisis are essential elements of this phase. Re-establishing ties between the population and governance structures, including the police, where they have been broken, will be central.

Military Dilemmas and Areas for Further Clarification and Guidance

There are a number of issues touched on previously that would benefit from further clarification and guidance. The lack of definition and/or guidance may be the result of a lack of consensus on the limits of the application of military components of peacekeeping operations and/or a lack of recognition of the tensions and trade-offs that arrive within multidimensional peacekeeping operations with multiple and broad operational level objectives.

Use of force

One of the enduring challenges of military components is the lack of understanding of when and how they can use force in self-defense or in defense of the mandate. The DPKO/DFS Lessons Learned Note asserts that “There are times when, as a last resort missions must use force in order to respond to attacks on civilians.”⁶¹ The Draft Concept Note on Robust Peacekeeping sought to clarify that missions will need to depend on credible deterrence which is based on the readiness to use force. This means that troops will need to be willing to assume postures and take actions that will require them to use force if tested. Additional guidance (ideally doctrine) and training is needed to clarify the spectrum of postures and activities that a military may employ in protecting civilians and how the use of force may differ when protecting civilians versus undertaking other traditional military or peacekeeping activities.

Defining imminent threat

Similarly, *Protecting Civilians in the Context of UN PKOs* and the DPKO/DFS Lessons Learned Note on the Protection of Civilians in Armed Conflict emphasized that even though mandate language is consistent, the phrase “protect civilians under imminent threat of physical violence” is not well understood. This lack of clarity puts commanders and troops at risk of being held responsible for action and inaction in upholding the mandate.

Scenario-based training

Protecting Civilians in the Context of UN PKOs advised that troops receive pre-deployment and if possible in-mission training on protection issues and that this should include scenario-based training.⁶² Research gathering best practices and lessons learned from military and civilian leaders of peacekeeping operations mandated to protect civilians indicates that UN peacekeeping missions need improved guidance and training in the following contexts: protecting civilians in dispersed rural areas, protecting civilians in densely populated urban areas, and protecting IDPs in camps when the threat exceeds the threshold of individual and/or formed police units.⁶³

Managing the risks and consequences of action and inaction at every level

As discussed in Part III, action and inaction at the tactical level can have implications at the operational and strategic level. This is particularly true when actors threatening and targeting civilians are more affiliated with the host state government and/or main parties to the conflict. Additional guidance and training is needed to provide military leaders at the sector, battalion, and

⁶¹ DPKO/DFS Lessons Learned Note on the Protection of Civilians in Armed Conflict, p. 4.

⁶² Holt et al., *Protecting Civilians in the Context of UN PKOs*, p. 220.

⁶³ Giffen, *Addressing the Doctrinal Deficit: Developing Guidance to Prevent and Respond to Widespread or Systematic Attacks Against Civilians, A Workshop Report*.

company level with tools to a) understand the protection environment, b) identify risks of action and inaction, and c) manage tradeoffs when deciding when and how to act.

Managing short-term vs. long-term objectives and tasks

The same mission may be tasked with the short-term objective of protecting civilians under imminent threat of violence at the same time as it is tasked with longer-term objectives of security sector reform and/or monitoring implementation of peace agreements. This combination of tasks could give rise to conflicts, tensions and trade-offs.⁶⁴ For example, MONUC has been tasked with supporting the government's army (FARDC). However, the FARDC has been implicated in committing human rights abuses. It took nearly a year for MONUC to disengage its logistics support from even the most abusive FARDC units. How are UN military components at every level meant to manage such conflicts, tensions, and trade-offs?

Hard Cases

Leaders and planners of UN missions have identified a number of scenarios that UN peacekeeping missions have struggled to tackle effectively. These scenarios include situations of protection threats such as tribal violence in dispersed rural areas and providing protection in densely populated urban areas or IDP camps when the level of violence exceeds the threshold that a police unit can handle. Best practices and lessons learned should be sought in this area and translated into guidance and training.

Recommendations for the Military:

- Additional guidance (ideally doctrine) and training is needed to clarify the spectrum of postures and activities that a military can employ in protecting civilians and how the use of force may differ when protecting civilians versus undertaking other traditional military or peacekeeping activities. This should include an understanding of how to identify and manage tensions and trade-offs between short and long-term goals and the risks and consequences of action and inaction.
- Additional guidance should be developed to assist military components in addressing protection threats in dispersed rural populations and in densely populated urban areas and inside IDP camps if/when violence exceeds civilian/police capability.
- Military components should be capable of gathering human, signal, and imagery intelligence from the field to inform superior commanders and the JMAC. Intelligence personnel will need to understand what information to look for and report for protection purposes that may differ from other intelligence tasks, including what civilians are vulnerable and why, who is perpetrating threats or abuse and why, etc.
- Military leaders at every level of a mission and their troops should understand what protection means in practice. Troops are generally aware that they must refrain from taking life in an extrajudicial or arbitrary manner and in a situation of armed conflict they are proscribed from targeting civilian populations and from indiscriminate targeting that could result in detrimental harm to civilians. However, military actors are less clear on whether, when, and how they are obliged to take action to prevent and respond to the targeting of civilians.

⁶⁴International Forum for the Challenges of Peace Operations, "Considerations for Mission Leadership in UN Peacekeeping Operations," draft of 22 March 2010, p. 56.

- On the whole, the mission must develop an understanding of the threats that civilians face and must align and weave coordinated activities and tactical actions toward the goal of protecting civilians. In order to do so, the military component, in coordination with other components, must create a strategy, collect and analyze information, and plan for worst case scenario crises.

POLICE-SPECIFIC ROLES, RESPONSIBILITIES, AND REQUIREMENTS

United Nations police, both individual police officers and FPU, can play critical roles in POC if properly trained and equipped for those roles. Police personnel, particularly individual officers, are far more likely than military personnel to have been protection-focused in their operations at home, but the mission area of operations may be less stable and more violence-prone than what they are accustomed to. Moreover, the great majority of individual UN police deploy unarmed. Missions with executive policing authority or heavily-armed “assistance” missions like MINUSTAH, in Haiti, have been the historical exception. FPU, on the other hand, are always armed. Mission planners, in considering the role of UNPOL in POC, need to take such considerations into account. A higher proportion of FPU in a police component offers more crowd control, mobility, and firepower against heavily-armed criminals, but less capacity for community policing, mentoring, information-gathering, and relationship-building that may be crucial for the mission’s interface with both its local police counterparts and the local community. This balance between collective and individual policing is one that must be struck early in the mission planning process, not just with respect to POC, but POC considerations may be important drivers of police component structure.

Constabulary-style Protection Roles

FPU can be used, as can military units, to provide perimeter security for camps against organized external threats of a criminal rather than military nature (e.g., raiding parties). Such activities may be preventive or deterrent in nature. Preventive action becomes deterrent action when a potential threat materializes and police operational posture alters to indicate willingness and ability to confront the threat.

Appropriately-trained and disciplined FPU also can be used for intra-camp or neighborhood security against, for example, criminal gang violence, subject to appropriate mandates.

Note that UN police can be authorized to use force pro-actively against imminent threats and even to detain such persons briefly, preparatory to handing over them to host state authorities, without an “executive” mandate. Use of force should not be confused with the power to hold, try, convict, and imprison; to tax; or to apportion the spending of taxes, which are the sorts of powers that an executive mandate can convey. The UN mission in Haiti (MINUSTAH) does not have an executive mandate but engaged in heavy use of force, with the concurrence of the government and in cooperation with the Haitian National Police, against violent criminal gangs that had controlled significant areas of at least three Haitian cities for up to five years.⁶⁵

⁶⁵ United Nations, “Report of the Secretary-General on the United Nations Stabilization Mission in Haiti,” S/2007/503, 22 August 2007, pp. 5–6.

Community-based Policing Protection Roles

To achieve ‘quick wins’ in civilian protection by host state police that do not entail major formal restructuring or retraining programs, UNPOL advice and mentoring at the strategic, operational, and tactical levels should encourage local police to pay greater attention to public needs, fears, and input. Much serious crime is solved based on tips from the public and the public may be more forthcoming if it sees the police meeting its daily needs for security—which may have more to do with police control of persistent harassing or nuisance behavior (gang activity, drug sales) than with solving more serious but less frequent types of crime. A public that sees real-time utility in police actions—and feels respected by the police—will be more likely to report more serious crime and provide essential evidence to police investigations.⁶⁶ Police can best protect the public by preventing common crime through presence or patrolling, by collaborating with neighborhood watch groups, and by establishing emergency call numbers that empower average citizens to summon police presence. Developing a culture of response to such calls is a critical step in transforming a police service, in fact and in public perception, from a protector of the state to a protector of the people.⁶⁷ In prior decades, such systems could not have been set up without an unwieldy prior infrastructure of telephone landlines feeding elaborate switching facilities, whereas cell networks permit police and other law enforcement, in this realm at least, to jump ahead several generations and facilitate self-reporting of threats.

Police-Specific Requirements

In addition to the need for experienced and competent leadership, discussed earlier, mission police components require appropriate doctrine and CONOPS, competent seconded officers who are permitted by their governments to engage in POC operations, local language proficiency or access to interpretation, good police intelligence gathering and analysis capability, and good discipline.

Police peacekeeping doctrine

A strategic doctrinal framework for international police peacekeeping is presently being developed with UN Police Division lead and cooperation from Member States and other regional and professional organizations such as Interpol, AU, and EU. A Ministerial-level Action Plan to support this is due to be completed by the end of 2010.

UN Policy for FPU in particular has been recently updated and, as re-promulgated, requires operational proficiency and periodic re-testing of that proficiency while on UN deployment. FPUs are also subject to verification of unit and personal equipment before deployment and after arriving in the mission area, as the UN defrays wear and tear on FPU equipment as it does military contingent equipment.

Police Concept of Operations

Police CONOPS should be consistent with higher-level DPKO Policy and/or strategic guidance to mission leadership on POC. For effective police POC, directives on use of force (including coercive tactics, less-lethal weapons, temporary detention, and use of firearms, in extremis) must

⁶⁶ David Bayley, *Changing the Guard: Developing Democratic Police Abroad*. Oxford and New York: Oxford University Press, 2006, pp. 59–60.

⁶⁷ Bayley, *Changing the Guard*, pp. 21.

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include authorization to respond to imminent physical threats directed toward civilian third parties and not just the force itself or mission staff or facilities. Police CONOPS should build-in preventive as well as responsive measures.

Competent police personnel provided by Member States

Competence is defined here as meeting UN standards for international police, either as individual officers or as FPUs, and as such is a minimum standard of professionalism.

A barrier to recruitment of quality police personnel with appropriate skills is the present lack of UN compensation to contributing police agencies for the individuals they provide. Although sending states are compensated for provision of FPUs at rates standard for provision of military contingents, states or police agencies continue to pay salaries and benefits of individual officers who are released for UN duty. However, the officers themselves receive substantial UN per diem to defray their cost of living in mission and as a form of hazard pay. (FPU members received substantially smaller allowances.)

All police personnel deployed to UN missions should have undergone the now standardized UN Police Pre-Deployment Training which includes basic familiarization training with UN command structures and procedures. There often still remains a need for mission-specific training on the area of operation, and training on the Police CONOPS for the mission and its rules for use of force and firearms. Additional training on mission-specific protocols and mission-wide strategy for POC is provided as UN Induction Training upon arrival in the mission area.

Police contributing country concurrence with operations to protect civilians

Where PCCs are reluctant to allow their officers and units to engage in POC operations owing to force protection concerns, their willingness to do so may increase if they see competent mission (including police) leadership, effective mission planning, a careful and thorough CONOPS, and focused training on POC both prior to and after deployment.

Mission language proficiency sufficient to allow effective direction of deployed personnel

Knowledge of mission (operational) language is necessary if UNPOL are to react swiftly and effectively to rapidly evolving tactical situations in response to Mission HQ direction. The new FPU doctrine requires mission language proficiency in the FPU leadership capability down to the section leader level (a section has ten police and is the smallest permitted deployable unit of operation of an FPU).

Police component intelligence-gathering and analysis capacity sufficient to track organized crime and other potential sources of public insecurity

Mission-based police intelligence should be shared and integrated with mission military and other intelligence and situational reporting via the mission JMAC. Appropriate data security measures are essential to safeguard such information, especially once integrated into operational intelligence. Any arrangements for intelligence sharing between the mission and supported host state entities, especially police command staff in capital and key provincial centers, must be carefully designed and incorporate mechanisms intended to identify any misuse of shared

intelligence at an early stage. At present, however, neither Police Division at UN Headquarters nor police components in missions have dedicated police intelligence capacity, nor is there standardized doctrine on the collection, collation, analysis, or use of police-related information/intelligence. Police officers assigned to the mission JMAC thus lack the requisite supporting structures and a mission police component that has no intelligence collection or processing capacity of its own may lack credibility in attempting to advise the host state in building such capacity or using it consistent with international human rights norms, for example.

Reliable and secure police communications technology

For effective POC, the mission police component will require a secure operational communications center staffed continuously to manage communications and to forward threat indications from and to officers and units on patrol, to the JMAC, and to operations planners.

Reliable and secure police incident-tracking database

Tracking patterns of crime and of threats to civilians is necessary to develop more effective protection strategies with limited resources. Such “evidence-based policing” is also necessary to demonstrate whether the police component is meeting its objectives for direct operations and/or support of host state police. Any such database needs to be tied in with JMAC.

Procedures for maintaining discipline and responding rapidly to alleged misconduct

UN policy at present relegates all disciplinary responsibility for UNPOL (individual and FPU) to the sending state, regardless of the availability of extraterritorial criminal jurisdiction on the part of the sending state, or the sending state's record of response to prior instances of substantiated allegations of serious misconduct on the part of its nationals. DPKO maintains a database of named individuals who are not to be allowed to work in UN operations in future owing to prior substantiated allegations, but has no means of disciplining any UNPOL beyond basic administrative sanctions, which are especially weak in the case of police, as UN provides only per diem and transport to and from the mission area for most officers. Only a handful of police component personnel are UN staff and thus on UN salary. UN investigative competence also ends when an individual of concern leaves the mission area.⁶⁸ Better ability to discipline police personnel in UN operations will be particularly important as UNPOL become more directly involved in POC. The local population, especially its most vulnerable groups, must see UN police as a source of protection and not exploitation or threat.

Police Requirements for Support of Host State Police Services

Police requirements specific to supporting and building the capacity of host state police services to protect civilians include improved local language capabilities, adaptation of mentoring programmes to civilian protection, and ensuring that local police are paid regularly, to minimize corruption and shakedowns.

⁶⁸ William J. Durch, Katherine N. Andrews and Madeline L. England, with Matthew C. Weed, *Improving Criminal Accountability in United Nations Peace Operations*, Report 65, rev. 1. Washington, DC: Stimson Center, 2009.

Sufficient local language capability in police component to enable effective interaction with the local population on the street in real time

Local language facility is a difficult standard to meet for UNPOL mentoring local police, except where the officers' native language and the national language are roughly the same (as, English, French, Spanish, Arabic). At least one interpreter/language assistant should be available per FPU section, for FPUs that do not have colloquial capability. (This equals roughly 17 interpreters/language assistants per FPU; more if FPUs have to operate at full strength on multiple shifts.) Numbers and ratios of interpreters/language assistants needed for non-native-speaking individual officers will be highly task-dependent.

Using mandates to advise or mentor local police to advance protection concepts

Any advisory activities should be consistent with the mission mandate and with UN norms and standards (rather than those of contributing countries), and should be built into those elements of the peace agreement dealing with police structure and responsibilities. That said:

UNPOL should convey to host state police their own institutional and individual interest in being seen by the public as impartial guardians of public order.

In the short run, a guardian role may generate greater 'gifts' from the public but also greater public respect and higher social status for the police. Services that buy-into the guardian role will keep their populations safer.

UNPOL should encourage host state police to interact with civil society groups at several levels to encourage two-way communications.

UNPOL should collaborate with Mission Civil Affairs in such efforts to initiate informal, no-fault interactions between police and community leaders that can grow into the community stabilization and crime-fighting relationships discussed earlier.

Using high-level demarches with the host state and donors to ensure that police are paid

The costs of police salaries are trivial by comparison to the costs of widespread bribery and corruption, predatory police behavior, or collaboration with criminal groups. Salary costs are also trivial by comparison to the benefits to the national economy of externally-perceived social stability for investment, entrepreneurship, and wealth-generation.

Recommendations for the Police

- In using mission police components to implement POC:
 - Police components need sufficient mission operational language capability for police leadership to communicate directly with deployed mission police personnel engaged in protection operations.
 - Mission directives on use of force (including coercive tactics, less-lethal weapons, temporary detention, and use of firearms, in extremis) must authorize response to imminent physical threats directed toward civilian third parties.
 - Police components must have sufficient intelligence gathering and analysis capacity to track organized crime and other potential sources of public insecurity and help to build host state police intelligence capacity; reliable and secure communications capacity; and

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- a reliable and secure database to track and collate threats to individuals, groups, or locales.
- Police components must have personnel specially trained and prepared on a standardized criminal information analysis methodology.
 - PCC's caveats on UN operational employment of their personnel must allow their engagement in POC operations.
 - Appropriately trained, proficient and disciplined FPUs should be considered for perimeter security at IDP/refugee camps that are not subject to military-pattern violence, and for intra-camp or neighborhood security against, for example, criminal gangs.
 - Missions should maintain an FPU rapid response element to assist UNPOL who encounter situations of imminent physical threat to themselves or civilians on a scale that requires FPU backup.
 - To work with host state police and population on POC issues, UNPOL:
 - Needs sufficient *local language capability* to enable effective interaction with the local population on the street in real time.
 - Should use advisory/mentoring mandates to advance POC concepts and encourage local police to pay greater attention to public needs and fears, as developing a culture of responsiveness is a critical step in transforming a police service and generating public inputs that help solve crimes.
 - Should convey to host state police that their institutional and individual interests are served in being seen as impartial guardians of public order.
 - Should encourage host state police to interact with civil society groups at several levels to encourage two-way communications.
 - Should use high-level demarches with the host state and donors to ensure that police are paid.

PART V:

CONFLICT PREVENTION, HUMAN RIGHTS, AND THE PROTECTION OF CIVILIANS: CIVILIAN MISSION STAKEHOLDERS

SUMMARY OF PART V

Conflict Prevention and Protection

One of the greatest protective benefits that a mission can bring to ordinary people is preventing a country's relapse into war, in whole or in part. Effectiveness of conflict prevention by peace operations varies with the level of political attention given prevention by great powers, regional powers, and the host government; by mission strategy, commander's intent, and force capability; and by the rapidity of force turnover and consequent loss of institutional memory. Peacebuilders may face a trade-off between peace and justice but the contrast is not always sharp, and lack of peace rarely leads to justice. Peace therefore appears to be the dominant goal—but at what price, and for whom?

Human Rights and Protection

This section looks at the need to deal with sexual and gender based violence (SGBV) and at human rights monitoring, investigation, and witness protection. SGBV is a scourge not only of wartime but of the “post-war” period as not only former fighters are socialized to such predatory violence, which too often carries no consequences for the perpetrators. Peacekeeping operations must target this vicious phenomenon through military and police strategies and political pressure on host governments to recognize, investigate and punish SGBV. DDR must build counter-predatory features into its processing of ex-combatants and give communities the ability to manage those who are accustomed by war to deriving pleasure from the uninhibited infliction of pain. Conversely, the higher the pre-war social status of women, the higher the probability of successful peacebuilding while peacekeepers are present, pointing to the urgency of protecting and empowering women in pre- and post-war settings a necessity for sustainable peace.

Peace operations' human rights components can promote accountability through direct monitoring and investigation of human right abuses and by organizing victim and witness protection programmes in conjunction with civil society organizations to facilitate prosecution of human rights abusers.

CONFLICT PREVENTION, PEACEBUILDING, AND UNITED NATIONS MISSIONS

One of the greatest protective benefits that a mission can bring to ordinary people is preventing a country's relapse into war, in whole or in part. Debate continues among scholars about the rate of relapse, the conditions that favor relapse, and the role of peacekeeping operations in reducing that

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rate (or not).⁶⁹ That debate tends to view war-torn states as undivided wholes; whereas, at least in the larger places where UN operations deploy, parts of the state may be stable while others are not. Chad, Sudan, and DR Congo are three examples of states with variable violence.

DR Congo has had successive episodes of severe ethnic militia violence in its north, northeast, and east since country-wide peace agreements were reached in 2002, causing UN troop deployments, in particular, to become successively larger over time but with highly variable impact on levels of violence. Some of this variability may be traced to the capacities (training, mobility) of troops and constraints placed on their use by contributing governments. Some can be blamed on the second-order level of political attention paid to Central Africa by great powers pre-occupied with conflicts elsewhere and thus the lack of political pressure on local and regional leaders who are intent on strip-mining the DR Congo's abundant mineral resources for private or non-Congolese national gain.⁷⁰ Some can be traced to variability in the acumen and risk-taking propensities of UN military commanders, who at all times have had command of the air and a number of attack helicopters. These assets have been, at times, used against violent militias but MONUC has had relatively poor intelligence to guide its operations and no clear policy to bridge the transitions from one rotation of military forces and commanders to the next. Effective conflict prevention to protect civilians is similarly affected in other missions by similar combinations of political inattention, strategy deficit, varying commander's intent, varying force capability, relatively rapid force turnovers, and consequent lapses of institutional memory.

In war-peace transitions, peacebuilders may face a trade-off between peace and justice; that is, between buying the cooperation of war-time wielders of power and confronting that power on behalf of those that it abused. Buy-outs may take the form of post-war power sharing arrangements or deferral of "transitional justice." Confrontation may be direct, as with the indictment of Liberian president Charles Taylor by the Special Court for Sierra Leone, or indirect, as in the case of commissions empanelled to search for and expose the truth but not to try or imprison (or grant amnesty to) the subjects of their investigations. But the contrast between peace and justice is not always sharp: the Taylor indictment hastened peace in Liberia and the arrest of senior and mid-level military or militia leaders in Sierra Leone by the Special Court did not reignite that country's conflict; on the other hand, indictment by the International Criminal Court (ICC) of Sudan's sitting president probably has not hastened peace. Yet a general lack of justice in eastern DR Congo has not facilitated peace in that region. Buy-outs focused on political and military status have come unraveled in part because a third factor—economics—has outweighed them in value and not been matched by sufficient international counterweight. In places like Eastern DR Congo, therefore, without peace or justice, protection of civilians by any measure is extremely difficult. Peace can take hold without transitional justice but justice cannot take hold without peace. (Justice deferred may lose some of its memory but careful and contemporary documentation can reduce that loss.) Peace therefore appears to be the dominant goal—but at what price, and for whom?

⁶⁹ Paul Collier, et al., *Breaking The Conflict Trap*. Washington, DC: World Bank, 2003. Michael W. Doyle and Nicholas Sambanis, *Making War and Building Peace: United Nations Peace Operations*. Princeton: Princeton Univ. Press, 2006. Virginia Page Fortna. *Does Peacekeeping Work?* Princeton: Princeton Univ. Press, 2008. Astri Suhrke and Ingrid Samset, "What's in a Figure?" *International Peacekeeping* 14, No. 2, April 2007, pp. 195–203. Lawrence Woocher, "Preventing Violent Conflict: Assessing Progress, Meeting Challenges," Special Report 231. Washington, DC: US Institute of Peace, September 2009.

⁷⁰ Global Witness, *War and the Militarization of Mining in Eastern Congo*, July 2009.

Recommendations Regarding Conflict Prevention:

To protect civilians in mission areas from partial or total relapse of conflict, missions require:

- Continuing, high-level political attention from regional powers and major development donors to ensure that signatory parties live up to their peace agreement obligations and that neighboring states do not undermine implementation;
- Effective and well-led military components willing to engage violent political spoilers and criminal enterprises—which in some settings may be the same groups; and
- Incentives for peace to present to local parties that dominate incentives for war and criminal enterprise; these may include sanctions on neighboring states that participate in or benefit from resource smuggling and mission strategies to deal with illicit resource exploitation at the source.

HUMAN RIGHTS

The plague of sexual violence in wartime and transitional settings

In the past two decades, rape and other sexual violence have been used as systematic weapons of war as in the Bosnian civil war of 1992–95, or as punishment for cooperation with the wrong group(s) as in the anarchy and mercenary militia violence of the eastern DR Congo. There, sexual violence also “appears to increase once fighting stops and the situation is [otherwise] stabilized.” It is committed “on a widespread scale,” including by demobilized combatants and as “continuation of inter-group conflict by other means,” reflecting a legacy of impunity and constituting a “war within a war” that carries no consequences for its perpetrators.⁷¹ When comparable predation is visited upon civilian population by government forces to which the United Nations gives logistical support, the resulting damage is not just to the government but to the UN itself. Peacekeeping operations must target this vicious phenomenon not only through military and police strategies but through political pressure in collaboration with major donors to get host governments to recognize, investigate and punish such predatory behavior, laying out consequences for failure to do so. Disarmament, demobilization, and reintegration programming for ex-combatants must also build counter-predatory features into its processing and use its “Second Generation” concepts to give receiving communities the abilities to manage the influx of former fighters who are accustomed by war to coercing pleasure, much of which draws from the uninhibited infliction of pain. Like other forms of torture, this is not some cultural variation to be accepted as inevitable but deeply and destructively aberrant behavior that must be stopped.

For peacebuilding, however, there is another side to women's status and war. Recent research indicates that the pre-conflict social status of women significantly affects the probability of successful peacebuilding *when a peacekeeping operation is present*, even when the impact of many other plausible war- and peace-contributing variables is taken into account. The higher the pre-war social status of women, the higher the probability of successful peacebuilding within five years of the end of conflict. In other words, protecting and empowering women in post-war settings, often cast as a moral imperative, can also be considered as an operational necessity for achieving sustainable peace. Moreover, it only has the opportunity to generate such positive effects together with peacekeeping. Pre-war status of women has no effect on peacebuilding when

⁷¹ Anne-Marie Goetz and Letitia Anderson, “Women Targeted or Affected by Armed Conflict: What Role for Military Peacekeepers?” Conference Summary, Wilton Park Conference No. 914, 27–29 May 2008, Sussex, UK. Ledio Cakaj, “LRA Attacks and Congolese Army Abuses in Northeastern Congo,” Enough Project, March 2010.

no peace operation deploys.⁷² In Resolution 1888 (September 2009), the Security Council deplored these and other instances of sexual and gender-based violence, but directed the Secretary-General to deal with the issue within existing UN personnel resources and with voluntary contributions from Member States.⁷³

Human rights monitoring, investigation, and witness protection programmes

Many current UN operations have human rights components to monitor host nation compliance with international human rights law. Because of its size and range of activity, we use the Human Rights Division of MONUC, in the DR Congo, as an example of what the human rights components of missions can do to protect civilians. The Division's Special Investigations Unit, formed in 2002, investigates allegations of major human rights violations, including mass atrocities, either to support an eventual Truth and Reconciliation process or to document violations that may eventually find their way to a war crimes tribunal or the ICC. HRD's Justice Support Unit has supported the ICC. After 2005, the HRD integrated into its ranks the work and the personnel of the High Commissioner for Human Rights in DR Congo, with a peak joint staff of about 150, nearly half Congolese, spread over 19 field offices. HRD's Analysis and Information Unit began to track (and periodically publicize) human rights violations by the Congolese Army (FARDC) in 2007. Its Victims, Witnesses and Human Rights Defenders Protection Unit collaborated with other elements of MONUC and a large network of Congolese NGOs to protect victims or witnesses of human rights violations who are judged to be under imminent threat of violence, from either unofficial or official sources. Protection measures range from close observation of the beneficiary to their physical relocation within DR Congo, using MONUC assets when necessary, and drawing on a voluntary Protection Trust Fund to help manage several hundred protection cases, over time.

Recommendations Regarding Human Rights Components

- Heads of Mission, in collaboration with major donors, should strongly encourage host governments to investigate and punish sexual and gender-based violence, offer assistance in conducting such investigations, and lay out consequences for failure to deal with the problem, especially where perpetrators are members of government security forces.
- DDR should build counter-predatory and other appropriate counseling (counseling should address armed actors that were perpetrators and/or victims of violence) into its demobilization process and use “Second Generation” concepts to give receiving communities the abilities to manage influxes of former fighters de-socialized by war.
- Peacekeeping operations should reinforce the status of women in post-war settings, since the higher the status of women where peacekeeping missions work, the higher the probability of peacebuilding success.
- Mission human rights components should have the capability to investigate—in a thorough, professional, and timely fashion—instances of serious human rights violations and alleged atrocities for later prosecution or transitional justice proceedings;

⁷² Theodora-Ismene Gizelis, “Gender Empowerment and United Nations Peacebuilding,” *Journal of Peace Research* 46, 2009, p. 518. The author used the pre-war ratio of women's to men's life expectancies, which is largely unrelated to other common measures of well-being such as GDP per capita, as a measure of women's relative social status. The UN Human Development Report for 1998 (at p. 133) gives the DR Congo a life expectancy ratio of 1.06 in 1995. This would give the country a probability of peacebuilding success of just 10% five years after conflict ends, with a peacekeeping force present and a fully-functioning democracy. Without peacekeepers, the probability is nearly zero.

⁷³ United Nations Security Council, S/RES/1888, September 2009, op. 8.

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- Human rights components should build reliable support networks with civil society to protect victims of and witnesses to human rights violations and, as necessary, human rights defenders.

PART VI:

THE IMPORTANCE OF THE RULE OF LAW IN THE PROTECTION OF CIVILIANS

SUMMARY OF PART VI

Peace operations seeking to promote the rule of law may be struggling not only to rebuild/create formal institutions of governance but also to demonstrate that these institutions are or will soon be worthy of people's faith and trust. At the earliest feasible point in the life of an operation, police, judicial, and corrections can contribute to a sense of protection via training for host state personnel and, in collaboration with development organizations and donors, begin rebuilding the facilities and functions of those institutions. Short-term goals with police should include reconstitution of pay systems with close accounting of allotments, "evidence-based management," accountability to non-police higher authority; and responsiveness to the community. Protection for judges and other court officials may have a high multiplier effect on the functionality of courts; and training for local defense lawyers to petition for release of detainees held in violation of host state law can reduce the prison crowding endemic to fragile and post-conflict states. Better sanitation and perimeter security can both improve conditions inside detention facilities and prisons. Basic literacy programs for police and corrections personnel can promote better reporting and record keeping essential to detainee/prisoner protection.

Creating a fully working criminal justice system after armed conflict that enjoys full public trust may take a generation. The international community needs minimum standards of practice in criminal justice support designed to reduce violations of human rights while marginally improving institutional effectiveness in the immediate post-war period. Countering serious organized crime may require further, supportive international deployments, intelligence and communications capacities. Informal processes for dispute settlement may be the most familiar institutions of justice for most persons living outside large urban areas and can promote local protection in the early post-conflict period, including reintegration of demobilized fighters. Localized institutions offer localized stability, however, and mirror the fragmentation of society.

RULE OF LAW AND POC

"The rule of law" is a concept that binds the state as well as the individual to a set of common rules for behavior in society. These rules should be *generated* in a transparent manner widely viewed as legitimate by the governed; *bind* the governed and the government alike; be *enforced* without discrimination by professional and apolitical institutions of justice; and be *believed in* by large majorities of the population, such that compliance with the law is mostly voluntary, most of the time. The effectiveness of the rule of law depends, in other words, not only on institutional structure and process and the content of the law but the *faith and trust* of the people and their

conclusion that adherence to the law on a daily basis is in their best collective and individual interests.⁷⁴ Building up that faith and trust, post-war, is difficult enough where there is some reservoir of it left from pre-war days. Where such faith and trust in government was weak, pre-war, or the authority of the government never reached, those seeking to promote the rule of law will be struggling not only to rebuild or to create formal institutions of governance but also to demonstrate to people that these institutions are or will soon be worthy of their faith and trust, and that the laws they attempt to enforce are worthy of voluntary compliance. In many of the places where peacekeeping operations deploy, the rule of law in the above sense, that not only meets standards of procedural fairness and efficiency but standards of content or justice consistent with international human rights law, does not exist and likely did not exist even prior to conflict and “a realistic timeframe for re-creating a working criminal justice system following serious armed conflict with formal courts, trained judges and a retrained police force is close to twenty years.”⁷⁵

There may be localized alternatives. Informal or traditional processes for the settlement of disputes on the basis of local custom likely were the prevailing forms of pre-war justice in many places where peacekeeping operations deploy, at least outside major urban areas. If they or their leaders survived the war, they may be the prevailing form of post-war justice as well.⁷⁶ Such localized institutions can offer localized social stability. On the other hand, they also mirror the continued fragmentation of society and do not sum up to a whole that can interact with neighboring states or the broader international community; engage in trade; or meet formal international treaty obligations. Nor can they “bind people through shared values and identity across the borders of province, district, clan, [or] family.” That is the function of “a strong, credible state apparatus providing justice and the rule of law that is perceived as fair, fast and effective ...that gives people a real, tangible reason to buy into that state.”⁷⁷ If building such apparatus may take twenty years, are there nonetheless some things that peacekeeping operations and other international implementing partners can do to promote the beneficial *effects* of the rule of law, in the near term, to protect civilians in post-conflict settings and start that process of buy-in? Yes, there are.

Speed Counts: Rule of Law vs. Embedded Impunity

“We have learned that supporting a transition based on a concept of postponing justice—in the hope of securing a fragile peace—may lead to an unintentional contribution to the culture of impunity.” *UN Mission Human Rights Director, 2008*

Complex UN peacekeeping operations deploy either to help implement peace agreements arising from battlefield stalemate (Sierra Leone, 1999–2005; DR Congo 1999+; Burundi 2004; South Sudan 2005) or to help stabilize fragile states (Côte d'Ivoire or Haiti 2004+). Only rarely have their mandates risen to the level of governance itself (Timor Leste 1999–2002 and Kosovo 1999–

⁷⁴ Jane Stromseth, et al., *Can Might Make Rights? Building the Rule of Law After Military Intervention* (Cambridge, UK: Cambridge Univ. Press, 2006), chs. 3, 8. Comparable support for the rule of law must, of course, be simultaneously built up within institutions of governance.

⁷⁵ Kirsti Samuels, “Rule of Law Reform in Post-Conflict Countries: Operational Initiatives and Lessons Learnt,” World Bank Social Development Papers, Conflict Prevention and Reconstruction Paper no. 37, October 2006, p. 18.

⁷⁶ Bruce Baker and Eric Scheye, “Multi-layered justice and security delivery in post-conflict and fragile states,” *Journal of Conflict, Security & Development* 7, No. 4 (2007): 503–527.

⁷⁷ Antonia Potter, “The Rule of Law as the Measure of Peace? Responsive Policy for Reconstructing Justice and the Rule of Law in Post Conflict and Transitional Environments,” paper for UNU-WIDER Conference on Making Peace Work, Helsinki, 4–5 May 2004.

2008). The fact that not just the state but the peace itself may be fragile, with dominant political roles filled by the former wartime leaders from all surviving sides of the conflict, leads to the notion of tension between “peace” and “justice,” at least to the extent that the latter refers to “transitional justice” or accountability for war crimes or crimes against humanity alleged to have been committed by these same leaders' forces in the recent war.

As noted earlier, however, implementing peace need not derail justice. On the contrary, justice is often, if not always, a necessary contribution to sustainable peace. The question is not whether, but when and how justice will be implemented. The process of rebuilding institutions of justice—those which serve and protect ordinary people, and consequent respect for those institutions cannot wait until peace is completely assured or those responsible for war have been brought to bar. People need to see the law respected and enforced, fairly, impartially and consistently, in order to feel protected and secure in their daily lives.

The police, judicial, and corrections components of peace operations can contribute to such a sense of protection via the training provided and, in collaboration with development organizations and donors, the facilities and capacities made operational at the earliest feasible point in the life of an operation.

Following the Money: Close Oversight of Recipients' Use of International Reconstruction Funds

In September 2005, the World Bank launched the Governance and Economic Management Assistance Program (GEMAP) for Liberia, designed to promote transparency and accountability in government by embedding international monitors at several levels of key institutions of the government of Liberia to both mentor local counterparts and exercise binding co-signing authority on all government spending, deterring corruption while building administrative capacity.⁷⁸ While an indirect measure for civilian protection, such a structure helps to ensure that funds meant for services and institutions engaged in the POC actually reach their intended destinations, so the institutions can function and their personnel are paid. Complementary measures include public transparency of budgets and budget allocations (variations on “publish what you pay”) and training for civil society organizations to monitor the use of public funds in both central and outlying districts.

Promoting Effective and Impartial Host State Law Enforcement

If the police, courts, and prisons of a host state have been rendered dysfunctional by war or by the long-term institutional decay that is characteristic of fragile or failing states, then strategies for international support must include plans for interim public security, justice and corrections or alternative institutions serving comparable purposes. Historically, the international community has not been very creative or very organized in its approaches to interim justice and security. The best thing it could do, then, to improve what is acknowledged to be a meager track record in

⁷⁸ World Bank, “Governance and Economic Management Assistance Program” (GEMAP basic document). Program implementation was overseen by an Economic Governance Steering Committee chaired by Liberia's president. A vice-chair is appointed by the International Contact Group for Liberia (the United Nations, ECOWAS, African Union, European Union, International Monetary Fund, World Bank, Ghana, Nigeria, and the United States). Cited in Alix J. Boucher, et al., *Mapping and Fighting Corruption in War-Torn States*. Washington, DC: The Stimson Center, February 2007, 50–52.

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criminal justice support,⁷⁹ is to reach common agreement on minimum standards of practice and on fallback arrangements when those standards cannot readily be applied in a given situation. The suggested minimum standards and fallbacks would be intended to reduce violations of human rights while marginally improving institutional effectiveness, but likely would not suffice to enable them to gain the upper hand against large criminal gangs or internationally-linked organized crime. For that they would need the pro-active assistance of international deployments, intelligence, and communications. The intent of the standards would be to start the process of building public trust in formal justice institutions and lay the groundwork for longer-term institutional development assistance.

Promoting Protection by the Police

Short-term goals with police should include reconstitution of pay systems with close accounting of allotments and monitoring to deter kickbacks to superiors; basic police literacy training (with financial incentives to participate); promotion of “evidence-based management” that keeps records of crime; police action to *prevent* as well as react to it; and the results in terms of crime rates and public perceptions of police effectiveness. All assistance programming should be act in the service of four basic principles: respect for the rule of law; respect for human rights; police accountability to non-police higher authority; and police responsiveness to the community they serve.⁸⁰

Court-related Protection Activities

In many post-conflict environments, the courts may malfunction in part because their personnel, especially judges, are subject to threats to sway their decisions, which may do so or drive them out of the country. Missions should consider the potentially high multiplier effect on justice system functionality of offering close protection to judges and their immediate families until threats to judges subside. Similar protection—or at minimum, assurance of steady pay—may need to be offered to court registry officials, and assistance with record keeping and basic administration may be more valuable as protection for accused persons than other, more elaborate and costly measures to enhance court performance such as new courthouses or computerized records.

Given the high percentage of persons detained in over-crowded host state prisons who are awaiting preliminary hearings or trials, missions should train local defense lawyers to petition magistrates or equivalent judicial officials with evidence of length of detention in violation of host state law to promote release and reduction of pre-trial crowding. Bail-jumping could be deterred by providing employment to those released from detention, contingent on their being available for trial when scheduled (unless charges are dismissed). Pilot programs in Haiti were successful in reducing pre-trial detention from over 80 percent to roughly 50 percent of the jail population. Offer training for court clerks to improve record-keeping on cases so that individuals are less likely to be lost in the system.

⁷⁹ Samuels, “Rule of Law Reform in Post-Conflict Countries.” David Bayley and Robert Perito, *The Police in War*, Boulder, CO: Lynne Rienner Publishers, 2010.

⁸⁰ Bayley, *Changing the Guard*, ch. 5.

Corrections Advisory and Remediation Activities

Work with corrections leadership to improve record-keeping on detainee and prisoner populations. Interview detainees and prisoners and record their stories. Compare with jail/prison records, if they exist. Refer mismatches to public defender program, above. Offer basic literacy programs for corrections officers who lack functional literacy. Establish and fund feeding programs for detainees and prisoners under contract with local firms; promote basic sanitation; and improve prison perimeter security to ease lock-down conditions within facilities.

Utility of Customary and Informal Justice Arrangement

Where government police and courts do not reach or reach infrequently, missions should work with quasi-public community security and justice processes where conditions are sufficiently stable to permit them to function. Collaboration should discourage discriminatory as well as human-rights-violating processes and outcomes. Engage and encourage the empowerment of informal community justice arrangements to promote reintegration of, and/or transitional justice measures for, ex-combatants.⁸¹

Recommendations for Rule of Law and POC:

- Justice looks forward as well as back; as countries struggle to deal with their populations of former fighters and other legacies of war, missions should encourage critical justice institutions to improve their performance and treat their constituents in a way that lays the groundwork for the faith and trust that the rule of law—and sustainable peace—ultimately will require.
- Twinning of national officials and international monitor/mentors with joint authority over expenditures helps to ensure that funds meant for services and institutions engaged in the POC actually reach their intended destinations, so these institutions can function and their personnel are paid. Where official corruption has been or is judged to be a serious problem, such an approach can promote more effective governance and more effective protection.
- The best thing the international community could do to improve a meager track record in criminal justice support, and especially interim justice and security, is to reach common agreement on minimum standards of practice and on fallback arrangements when those standards cannot readily be applied in a given situation.
- Measures for police should include reconstitution of pay systems with close accounting of allotments and monitoring to deter kickbacks to superiors; basic police literacy training (with financial incentives to participate); and promotion of “evidence-based management.”
- Missions should consider the potentially high multiplier effect on justice system functionality of close protection for judges and their immediate families, and similar protection—or, at minimum, assurance of steady pay—for court registry officials.
- Mission assistance with court record keeping and basic administration may be more valuable as protection for accused persons than other, more elaborate and costly measures.
- Missions should train local defense lawyers to petition magistrates or equivalent judicial officials with evidence of length of detention in violation of host state law to promote release and reduction of pre-trial crowding.

⁸¹ Peacebuilding Initiative, “Judicial and Legal Reform/(Re)construction and Peacebuilding Processes,” HPCR International (Brussels) and the UN Peacebuilding Support Office, updated 7 May 2009.

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- Work with corrections leadership to improve record-keeping on detainee and prisoner populations; refer mismatches to public defender program, above; offer basic literacy programs for corrections officers who lack functional literacy.
- Where government police and courts do not reach or reach infrequently, missions should work with quasi-public community security and justice processes where conditions are sufficiently stable to permit them to function.
- Engage and encourage the empowerment of informal community justice arrangements to promote reintegration of, and/or transitional justice measures for, ex-combatants.

CONCLUSIONS AND RECOMMENDATIONS

There is a growing consensus that UN peacekeeping operations must address the protection of civilians. As evidence, the last decade has been characterized by peacekeeping reforms related to POC, a proliferation of protection actors within and outside peacekeeping missions, and a dynamic concept of protection. Guidance clarifying what POC means in practice, what effective POC requires, how diverse protection actors should coordinate for greater impact, how missions should manage potential risks in the protection of civilians, and what success looks like for peacekeeping missions has lagged behind the consensus. New momentum within the UNSC and UNGA Special Committee on Peacekeeping has enabled the Secretariat to take laudable steps forward in beginning to address these gaps. However, additional work to gather best practices and lessons learned and to translate these learnings into guidance is needed at the strategic, operational, and tactical level. This paper has sought to take note of progress made and point to remaining gaps and possible next steps.

It should be noted that although additional guidance, resources, and training are essential to enabling UN peacekeeping missions to protect civilians more effectively, these tools will not serve as a panacea. Greater consensus is needed in regard to the obligations and responsibilities of actors to domestic and international norms, and in particular whether third-party actors are legally obligated to protect—an issue which this paper did not seek to address. Without this consensus, peacekeeping operations will continue to struggle to implement their mandates, fulfill expectations, and ultimately protect civilians. Similarly, it must be acknowledged that despite reforms, peacekeeping operations will remain but one, often inadequate, tool to prevent and respond to protection crises. The United Nations and other stakeholders must continue to identify and develop other complementary methods to address the root causes of conflicts and the underlying motivations of belligerents targeting civilians.

ANNEX: ADDITIONAL EXPERIENCES OF REGIONAL PEACE AND SECURITY INITIATIVES

The European Union (EU) has developed specific guidelines related to POC, although it has not gone as far as drafting a concept or framework for protection similar to the AU.⁸² The EU has contributed to protection efforts of peace operations through operations in the DR Congo (Operation Artemis in 2003 and EUFOR RD Congo in 2006) and in Chad. The most recent operation, in Chad, was an example of why effective protection often requires a multidimensional approach and the combination of both short-term and longer-term strategies. The UN strove for a multidimensional mission, combining the deployment of EUFOR as the military component alongside MINURCAT (a UN police training force) and the *Detachement Intégré de Sécurité* (DIS) (a Chadian police/gendarme force trained by MINURCAT). The components were intended to “create security conditions conducive to a voluntary, secure and sustainable return of refugees and displaced persons ... by contributing to the protection of refugees, displaced persons and civilians in danger.”⁸³

While EUFOR was deployed, it reportedly made positive efforts to work with various actors to promote protection. For example, EUFOR established good information sharing and working relationships with humanitarian actors also engaged in protection work.⁸⁴ However, the overall initiative was criticized for its inability to fulfill its protection mandate, given the slow deployment of MINURCAT and training of the DIS, which delayed engagement of the prominent protection threats of “banditry, criminality, and forced recruitment, all exacerbated by an underlying culture of impunity.” Although EUFOR contributed to protection through “patrolling, destroying unexploded ordnance, and positioning themselves around camps and sites during rebel and government fighting,” EUFOR was not a police force, and thus “ill suited to deal with banditry and criminality;” and it was “not mandated to act within the camps and sites.”⁸⁵ The overall initiative’s lack of a political component to promote an inclusive peace process or address the cross-border issues fueling the conflict meant that it did not have the tools to end the active conflict or contribute to a secure environment going forward.⁸⁶

⁸² EU related guidelines include, Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL), published in the Official Journal of the European Union 15.12.2009 C 303/12; EU Guidelines on Human Rights Dialogues (approved by the Council on 13 December 2001, updated on 19 January 2009); Guidelines for EU Policy towards Third Countries on Torture and other Cruel, Inhuman or Degrading Punishment or Treatment (approved by the Council on 9 April 2001, updated on 29 April 2008); EU Guidelines on Children and Armed Conflict (approved by the Council on 8 December 2003, updated on 17 June 2008); EU Guidelines on the Promotion and Protection of the Rights of the Child (approved by the Council on 10 December 2007); Guidelines on Violence against women and girls combating all forms of discrimination against them (approved by the Council on 8 December 2008) and Council Common Position 2003/444/CFSP of 16 June 2003 on the ICC (OJ L 150, 18.6.2003, p. 67).

⁸³ Oxfam, “Mission incomplete: why civilians remain at risk in eastern Chad,” Briefing Paper, September 2008, p. 2.

⁸⁴ Erin Weir, “Greater Expectations: UN Peacekeeping & Civilian Protection,” Refugees International, Washington DC, July 2009, p. 17.

⁸⁵ Oxfam, “Mission incomplete,” p. 2.

⁸⁶ Oxfam, “Mission incomplete,” p. 3.

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EUFOR ended after 12 months as originally stipulated, but the date was arbitrary with respect to the state of conflict and insecurity in the area of operation. Some EUFOR contingents stayed on with an expanded MINURCAT, but the force never reached full deployment and in early 2010 the government of Chad invited MINURCAT to leave. Despite the fact that EUFOR was always meant to be a bridging force, its exit should have been based on milestones and/or a more reasonable time for handover, than by the calendar; and/or the UN mission should have been authorized earlier, giving at least six months for handover. Despite these challenges, EUFOR has received accolades for establishing a “strong foundation” for MINURCAT.⁸⁷ Further, despite some reports of lack of discipline by the DIS, the MINURCAT-trained DIS has generally been welcomed and is reportedly helping to address the criminality and banditry that EUFOR and MINURCAT were ill-equipped to address, which may serve as a lesson-learned for future missions.⁸⁸ The sustainability of this success in training may be in jeopardy if support is discontinued following the potential withdrawal of MINURCAT.

Overall, the absence of an agreed peace process within Chad and the ongoing instability and proxy wars over the border with Sudan (despite agreements between the two countries) meant that EUFOR and subsequently MINURCAT would always be a temporary and inadequate response to the crisis. Second, neither EUFOR nor MINURCAT had the mandate to try to address these political issues or the border-issue with Sudan. Finally, although the DIS is potentially a best practice for future missions, its ability to protect came long after the deployment of EUFOR and MINURCAT, and earlier attention to the protection threats of criminality and banditry may need to be explored if the model is to be replicated.

In addition to the AU and EU, the North Atlantic Treaty Organization (NATO) has also been involved in operations to protect civilians. In the 1990s, NATO monitored operations in the Adriatic in support of the UN arms embargo against republics of the former Yugoslavia. NATO also monitored and enforced the UN no-fly zone over Bosnia and Herzegovina and provided close air support to the UN Protection Force (UNPROFOR). NATO authorized air strikes to open humanitarian access to Sarajevo and UN Safe Areas, including Srebrenica, which later fell to Serbian forces.⁸⁹ Following the 1995 Dayton peace accords, NATO established the Implementation Force (IFOR) and subsequently the Stabilization Force (SFOR) to support and monitor the peace agreement and contribute to a secure environment. Although the Security Council resolutions and NATO directives that authorized these operations did not explicitly include the term “protection of civilians,” their mandates included a number of tasks that would contribute to the security of populations and respect for international humanitarian law and justice.⁹⁰

Just four years later, citing an international humanitarian emergency, NATO launched Operation Allied Force, a bombing campaign in the Federal Republic of Yugoslavia, without endorsement of the UNSC and despite vocal objections of some of its permanent members, in part to halt alleged war crimes by Serbian forces against Kosovar civilians. Although criticized for the

⁸⁷ Weir, “Greater Expectations,” p. i.

⁸⁸ Weir, “Greater Expectations,” pp. 18-19.

⁸⁹ Elizabeth Cousens and David Harland, “Post-Dayton Bosnia and Herzegovina,” in *Twenty-First-Century Peace Operations*, ed. William J. Durch. Washington, DC: United States Institute of Peace, 2006, pp. 59–60.

⁹⁰ UN Security Council Resolution, S/Res/1031, 1995.

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collateral damage that it caused,⁹¹ the operation was an example of a regional military operation launched to protect civilians from systematic and wide-spread abuses. NATO also assisted in the set-up of refugee camps, the delivery of humanitarian assistance to those fleeing the violence, and later helped to establish Kosovo Force (KFOR), a NATO-led force responsible for establishing a safe and secure environment in Kosovo. Although it did not explicitly use the term “protection of civilians,” NATO cites the following as objectives for its involvement in KFOR: “a verifiable stop to all military action and the immediate ending of violence and repression and the unconditional and safe return of all refugees and displaced persons and unhindered access to them by humanitarian aid organizations.”⁹²

From August 2009, “protecting the Afghan people” became the stated primary mission of NATO’s International Security Assistance Force (ISAF) in Afghanistan.⁹³ Violence against civilians spiked in 2009 and continues to rise, with 67 percent of civilian deaths attributable to “anti-government elements,” including the Taliban; and 25 percent attributable to “pro-government forces,” including ISAF.⁹⁴ Of those civilian deaths attributable to pro-government forces, a majority resulted from aerial attacks. The UN Assistance Mission in Afghanistan also criticized pro-government search and seizure operations for what it deemed “excessive use of force.”⁹⁵ However, civilian deaths attributable to pro-government forces dropped 28 percent in 2009 compared to 2008, in a deteriorating security situation in which civilian deaths attributable to anti-government forces increased roughly 40 percent. NATO faces the dual challenge of continuing to curtail civilian casualties due to its own and Afghan government actions, per its obligations under IHL, while at the same time developing strategies to protect the population from increasingly violent opposition tactics. Although NATO involvement in ISAF was not specifically mandated for POC, there may be lessons from its operations that can be applied in future peacekeeping operations. A detailed analysis of the relevance of these NATO operations to improved POC is yet to be undertaken.

⁹¹ Amnesty International. NATO/Federal Republic of Yugoslavia: “*Collateral Damage*” or *Unlawful Killings?: Violations of the laws of War by NATO During Operation Allied Force*. New York, Amnesty International, 2000. See also Benjamin S. Lambeth, *NATO’s Air War for Kosovo, A Strategic and Operational Assessment* (Santa Monica, CA, RAND Project Air Force, 2001), p. 139.

⁹² NATO Handbook, updated 17 January 2004.

⁹³ Headquarters, International Security Assistance Force, “ISAF Commander’s Counterinsurgency Guidance,” Kabul, August 2009, p. 1.

⁹⁴ United Nations Assistance Mission in Afghanistan (UNAMA), “Afghanistan Annual Report on Protection of Civilians in Armed Conflict,” 2009, p. 1. UNAMA could not attribute 8 percent of civilian deaths to either pro- or anti-government forces.

⁹⁵ UNAMA, “Afghanistan Annual Report on Protection of Civilians in Armed Conflict, 2009,” pp. 1, 6, 16.

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