Protecting Civilians and Protecting Ideas

Institutional Challenges to the Protection of Civilians

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Executive Summary

Although the Protection of Civilians (PoC) today is largely embedded in the UN system as a whole, there are a number of issues still critical to address at the institutional level for the PoC to inform a shared culture of protection effectively. These include addressing the extent to which preparations for civilian protection are an integral component of mission planning, and whether protection activities are part of the mission's *mandate* per se or a mere part of its many *tasks*. Also of key concern is the extent to which operational capacity is achieved and designed to enhance protection.

At headquarter level, two main challenges remain. How can PoC become part of a shared *interagency* culture, rather than remaining the sole prerogative or task of UN OCHA *without thereby losing its institutional momentum*, and how can UN DPKO take greater ownership to PoC without this being prejudicial to the ability of the concept to include both military and humanitarian segments of peace operations. Finally, as the effective protection of civilians in mission depends not only on the UNSC's ability to adopt new measures aimed at protecting civilians, but also on the extent to which these measures are effective in protecting vulnerable groups on the ground, there needs to be clearer institutional mechanisms for learning from experience. As of today, the reporting from the field is largely lost to those drafting resolutions.

The ability of UN missions to protect civilians in peacekeeping operations will only become fully effective once the UN system manages to set in place institutional structures for learning on the basis of the experiences on the ground, and cooperate on PoC on a case-to-case basis.

1. Introduction

Since 1999, the Protection of Civilians (PoC) has been gradually sought institutionalized as a guiding framework and principle for UN peace operations. But in spite of the wide acceptance the principle enjoys, its application in the field remains unclear and fuzzy (see Lie and de Carvalho 2008). Furthermore, while protection issues enjoyed a strong momentum at UN headquarters, especially with the UN Office for the Coordination of Humanitarian Affairs (OCHA), the process had recently stagnated, and PoC has been challenged both within and outside the United Nations (UN). However, parallel to these challenges we also see attempts at regaining the momentum PoC once enjoyed, and at refining and clarifying its conceptual character and meaning.

The present report is an attempt at addressing the institutional hindrances PoC has met at headquarters, and suggesting ways ahead. The little research that has addressed PoC has tended to concentrate on the field and on how PoC is implemented in practice, leaving the process at headquarters and the institutional challenges PoC meets there unaddressed. Thus, we outline some of these challenges and the synchronic initiatives to counter and comply with them. Our underlying assumption is that only by understanding the assemblage of challenges and new initiatives are we able to embark on transformative acts to mitigate problems associated with PoC.

First, however, the report provides a brief outline of PoC's policy trajectory, institutional realm and content. As will be illustrated, protection language is increasingly being incorporated into Security Council resolutions and when establishing new missions. The main part of this report thus focuses on the rationales and instruments pertaining to the protection of civilians at UN's headquarter level.

We go on to discuss the extent to which PoC has become implemented at headquarters level, and the extent to which there are measures in place to ensure that PoC concerns are not only taken into account when mandating new operations, but also when renewing existing mandates of Security Council authorised operations. Of crucial concern here is the ability of headquarters to understand the extent to which mandated PoC tasks are relevant and effective once implemented in the field. Today, different culture between UN agencies and

the lack of reporting routines institutionalized at headquarters level largely hinder such a learning process.

1.1 Challenges to the UN's Protection Agenda

In the context of UN peace support operations, civilian protection is no longer the task of humanitarian agencies alone, as illustrated by the recent UN Capstone Doctrine on peacekeeping operations:

> In situations of internal armed conflict, civilians account for the vast majority of casualties. Many civilians are forcibly up-rooted within their own countries and have specific vulner-abilities arising from their displacement. As a result, most multi-dimensional United Nations peacekeeping operations are now mandated by the Security Council to protect civilians un-der imminent threat of physical violence. The protection of ci-vilians requires concerted and coordinated action among the military, police and civilian components of a United Nations peacekeeping operation and must be mainstreamed into the planning and conduct of its core activities. United Nations hu-manitarian agencies and non-governmental organization (NGO) partners also undertake a broad range of activities in support of the protection of civilians. Close coordination with these actors is, therefore, essential (UN 2008: 24).

As the UN doctrine emphasizes, the protection imperative requires a comprehensive and multi-dimensional approach to peacekeeping, but also more robust mandates and intentions. Reducing the level of vio-lence and protecting civilians may require the use of force, no matter the mandate of the mission. The use of force to reduce violence is what has been termed the 'the protection paradox.' This paradox is further exacerbated by the intended comprehensiveness of PoC, in that it makes the difficult interface between humanitarian and security segments necessary.

The UN faces several severe challenges to its protection agenda. The most difficult challenge concerns the empirical realities that contrast the UN's vast ambitions. Time and again we witness the UN's failure in protecting civilians in situations of crises and conflicts, as recently witnessed by the civilian sufferings in the eastern Democratic Repub-lic of Congo, the detrimental situation of refugees and displaced per-sons in Chad, and the continuous atrocities taking place in Darfur. One side of this inability on behalf of the UN is the moral and ethical dilemma, as the UN fails the most vulnerable – those who have en-trusted the UN the role to protect them become the chief victims of UN's weak enforcement of its own responsibilities. Although writing

on the World Bank, Weaver terms this phenomenon – that is, the disconnect between theory and practice, mandate and implementation, promises and delivery – as the 'hypocrisy trap' of multilateral organisations (Weaver 2008). Potential consequences of such hypocrisy are the loss of credibility and respect throughout the international community in general and among donor institutions and the intended beneficiaries in particular, that the UN undermines itself and the very fundament on which the institution rests, and the very raison d'être of the overall civilian protection agenda and the UN's role in contexts calling for civilian protection.

In response to these external challenges, the UN attempts internally to refine and improve existing concepts and mechanisms pertaining to the protection of civilians, as well as devising new concepts. The Protection of Civilians (PoC) represents the main established concept for dealing with protection concerns, but one should also note the related concepts of human security, humanitarian intervention, and the more recent Responsibility to Protect (R2P) (Lie 2008). 'Although intellectually related and sometimes overlapping, these ideas have sometimes been compounded with protection resulting in confusion and controversy' (Security Council Report 2008: 4). This study, however, focuses on PoC and processes internal to the UN's HQ level that aim to improve, enhance, and disseminate PoC throughout UN in order to engender a more robust framework for providing civilian protection.

2. Protection of Civilians: A Conceptual and Institutional Overview

The Protection of Civilians (PoC) concept is rooted in International Humanitarian Law (IHL) and maintained by international humanitarian agencies' subscription to the humanitarian imperative as their beacon.[1] Within UN, OCHA owns the policy franchise of PoC and serves as its conceptual anchor. As a coordinating body of humanitarian efforts OCHA consequently relates to other key UN agencies and non-UN humanitarian partners organised in the Inter-agency Standing Committee (IASC) in their operational activities within the humanitar-

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[1] The humanitarian imperative draws on the first Geneva Convention 'for the amelioration of the conditions of the wounded and sick in armed forces in the field' – first adopted in 1864 and last revised in 1948. The first convention set the standards for humanitarian concerns and how to respond to them, and followed the foundation of the International Committee of the Red Cross in 1863.

ian space.[2] The IASC was established in 1992 and operates under the coordinated leadership of UN's Emergency Relief Coordinator (ERC).[3] As a response to urgent humanitarian needs worldwide following the challenging political dilemma of how to respond to crises involving an increased number of civilian casualties as wars became less a matter of interstate conflicts and more a struggle between intra-state parties, the UN in 1998 (UN SG 1998) coined the protection of civilians concept to address that '[…]the civilian toll relative to the to that suffered by combatants in situations of armed conflict [have] increased dramatically, but civilian casualties in conflicts today are increasingly the result of deliberate targeting by fighting parties rather than indirect victims' (Vogt, de Carvalho et al. 2008). Attention was put on 'the extreme levels of suffering for civilians caught up in situation of armed conflict where the protagonists were demonstrating lower and lower levels of respect for IHL norms (Security Council Report 2008).[4] Notably the experience from Rwanda and Kosovo propelled rethinking of international and Security Council approaches to civilian protection.

The articulation of Protection of Civilians as a separate conceptual thematic realm first appeared in 1998. The Secretary-General's report on the situation in Africa was seminal in mentioning the Protection of Civilians concept (UN SG 1998), following which the Security Council's resolutions 1265 and 1296 (UN SC 1999; UN SC 2000) were adopted. These resolutions reaffirmed the Council's presidential statement that outlined a set of issues that were to become the core of PoC (UN SC 1999), namely (i) the need to ensure safety of civilians, (ii) ensure compliance with IHL, (iii) address impunity and injustice, (iv) the unimpeded access and safety of humanitarian personnel, and (v) address the proliferation of small arms and the problems by conventional armaments.

PoC is thus broad in scope and draws on a comprehensive notion of security that transcends the mere physical protection. Resolution 1296 emphasises the need for PoC to 'proceed on a case-by-case basis'. Although this seemed to signal more intensive attention to PoC by the Council, it also reflects growing caution to the norm-setting role of PoC (Security Council Report 2008: 7). Nevertheless, PoC has over the last decade conveyed increased attention to civilian suffering.

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2   The concept 'humanitarian space' was originally formulated by Medicine Sans Frontiers' previous leader, Rony Brauman, as 'a space of freedom in which we are free to evaluate needs, free to monitor the distribution of and use of relief goods and have a dialogue with the people'.

3   The ERC, or the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, was created in December 1991 and is a high-level UN position that heads OCHA – the Office for the Coordination of Humanitarian Affairs.

4   This is illustrated by the conflicts throughout the 1990s in Somalia, Bosnia, Rwanda, Angola, Liberia, DRC, Sierra Leone, Timor-Leste and Kosovo.

In 2002, OCHA devised – at the Council's request – an *Aide Memoire* to help guide the Council in catering for issues pertaining to protection in its 'deliberations on the establishment, change or close of peace-keeping mandates' (UN SC 2001). The memoire was updated in 2003 (UN OCHA 2004). In addition, the Secretary-General every 18 months conveys the Security Council a report on PoC, and every six months the ERC provides an oral briefing – all of which intend to keep the Council informed and abreast of relevant PoC issues as well as up to date with the evolving 'culture of protection' (UN 2001) as there exist no definition of PoC.[5] Lack of a definition and the Council's contextual treatment of protection issues have maintained '[…]disagreement as to the extent to which it ought to be binding for the international community as a whole, or whether these issues ought to be the responsibility of individual member states' (Vogt, de Carvalho et al. 2008: 3). Finally, the UNSC adopted the third edition of the *Aide Memoire* updated by UN OCHA on its 6066th meeting on January 14, 2009.

There is thus an ambiguity related to the overall protection agenda identified in the nexus between the 'culture of protection' and the potential need for a stringent PoC definition (Lie and de Carvalho 2008). On the one side, the UN system and its military franchise in particular operate on strict defined concepts with stipulated thresholds and criteria in order to determine when to apply which instrument from its comprehensive toolbox. A clearly defined PoC concept would enhance conceptual robustness and make it more binding for UN agencies when situations call for it. On the other hand, however, just as a strict definition yields commitment by demarcating when, where, and who to respond, it also excludes actors which mandate and core competencies do not fit with the definition. This ambiguity results from the institutional formation of PoC within the UN system and the Council's reluctance to agree on any definition as it also perceives thresholds and criteria as too binding. Rather, the UN focuses on creating a 'culture of protection' (UN 2001: paragraph 226), a work that UN OCHA has taken the lead on.

Building such a culture of protection is not necessarily a second-best alternative. First, in enables to diffuse protection issues throughout the UN system, and not only to certain designated agencies. Second, it recognises that protection concerns are complex matters that necessitate comprehensive solutions including humanitarian and military actors. Third, it allows for non-UN agencies to be included in protection activities under UN-lead, as illustrated by IASC. Fourth, the protec-

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[5]   The Secretary General's reports are UNSG S/1999/957; S/2001/331; S/2002/1300; S/2004/431; S/2005/740; and S/2007/643. The ERC has to date delivered thirteen briefings to the UNSC since 1999. The briefings are delivered in June and December each year.

tion agenda is by and large uncontested and thus enjoys general ad-
herence. The main problem with the culture of protection, however, is
that it different actors – civilian and military, UN and non-UN agen-
cies – do not have a common defined platform. Rather, what protec-
tion is, what it entails and how to provide for it are interpreted and
acted upon differently by the various actors. Actors tend to perceive
protection within their own, separate and respective institutional
realms, mandates and core competencies. In brief, although a culture
of protection is more easily disseminated and more inclusive than a
strict PoC definition, it loses the conceptual clarity a definition yields,
and becomes open for interpretation with the potential risk of dispa-
rate activities and conceptual dilution. Implementing and streamlining
PoC are contingent on various UN agencies manage this balancing
act, and that neither the Security Council nor PoC's institutional an-
chor OCHA make an either–or decision. Rather it is important that
PoC is thoroughly understood throughout UN and that various UN
agencies are supportive to this balancing act.

UN OCHA and the UN in general employ various mechanisms to en-
sure that all UN agencies are abreast of relevant protection issues and
that protection measures are considered when drafting resolutions, es-
tablishing missions and devising other activities where protection con-
cerns are necessary. Every 18 months the Secretary-General conveys
to the Security Council a report on PoC, and every six months the
ERC delivers the Council an oral briefing on issues pertaining to the
protection of civilians (UN SG 2005). OCHA, moreover, serves as a
thematic anchor available for other UN agencies, and has produced
the *Aide Memoire* (2004; 2009), which is intended as a diagnostic tool
to assist the Council '[…] in ensuring that the protection needs and
rights of civilians are reflected in relevant resolutions and the man-
dates of peace-keeping operations' (UN OCHA 2004). The *Aide
Memoire* is also designed to be applicable in field situations calling
for protection measures, and as a tool for systematic analysis and re-
porting.

These practices and measures keep the Council continuously abreast
to relevant protection issues, have the effect that the protection agenda
enjoys universal acceptance throughout the UN system, and in sum
are instrumental in disseminating and upholding a 'culture of protec-
tion'. This is reflected in the UN's practical matters, as PoC-
proponents such as UN OCHA, have been largely successful in infus-
ing protection measures into the Council's deliberations and authorisa-
tion of mandates. A growing number of Security Council mandated
peace operations, including both civilian and military components,
included protection language. Since 1999 the phrase 'protect civilians
under imminent threat of physical violence' has become an integral

part of just about all UN mandated peace operations (Holt 2005).[6] The mandates given to UNAMSIL (Sierra Leone) and INTERFET (Timor-Leste) in 1999 are important landmarks in the formation of PoC as they allow the use of force if necessary to protect civilians. Furthermore, as peace operations during the last decade have grown both in number and in terms of broader executive mandates, there has been, as Victoria Holt (2005) notes, a clear trend towards including PoC issues when deciding upon new peacekeeping operation mandates, as well as when revising old ones. This usually comes in the form of the standard phrase 'protect civilians under imminent threat of physical violence', which usually is accompanied by disclaiming any prejudice to the host government's responsibility to civilian protection. The latter point is in line with Deng's insistence on the necessity of operating with host government's consent, on its invitation (Deng, Kimaro et al. 1996).

Today, a number of missions have mandates with direct reference to protection-language.[7] There is, however, an important factor to consider regarding protection-mandates. As Holt asserts, 'the authorisation for civilian protection is clear, but the Council's resolution leaves the decision to protect civilians up to the Special Representative of the Secretary General (SRSG), the force commander or another actor further down the chain to 'deem' it to be within the scope of 'its capabilities'. What is not clear is if the capabilities, from the beginning, were deemed sufficient to protect civilians or were planned to be so' (Holt 2005: 14). Of special interest here is the work of L. M. Howard which addresses the conventional understanding that UN led peace operations regularly fail in asserting that the potential success of such operations is contingent on the degree of relative autonomy the mission enjoys vis-à-vis headquarters (Howard 2008).[8] As UNSC mandates make peacekeeping missions' protection efforts the responsibility of the SRSG or others further down the chain one could expect a generally successful implementation of the protection agenda – as the interpretation of protection mandates happens relatively autonomously from headquarters. This is, however, not always the case. One thing, as Holt notes, is the uncertainties whether the capabilities to underpin the protection agenda from the start are sufficient or intended. Another aspect is the contextual interpretation of the protection culture that

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6   The only mission since 1999 that does not include this phrase is UNMEE – the United Nations Mission in Eritrea and Ethiopia.

7   These operations include ONUB in Burundi, UNOCI in Côte d'Ivoire, MONUC in DR Congo, MINUSTAH in Haiti, UNMIL in Liberia, UNAMSIL in Sierra Leone, and UNMIS and UNAMID which both are in Sudan. In addition there are a number of other UN mandated missions with implications for PoC (see Holt 2005: 49-57).

8   The degree of autonomy can both be an effect of the respective mission's intended architectural design and be an effect of how the SRSG or mission head interpret the mandate, her roles and functions, and hollows the space for contextual acts.

also risks undermining protection efforts (cf. Lie and de Carvalho 2008).

2.1 The Protection of Civilians and the Use of Force

Although protection language has become increasingly integral to Security Council deliberations when agreeing upon new mission mandates as well as when renewing old ones, the protection language is somewhat fuzzy and blurred. 'To protect civilians under imminent threat of physical violence' is just one example of ambiguous UN jargon that both indicate good intentions and necessary liabilities, while simultaneously undermining responsibility and concealing the responsibility and practicalities of *how* and *when* protection measures are to be applied. The ambiguous protection language recognises the case-by-case applicability, as it lacks clearly demarcated thresholds and criteria for what constitutes a protection situation, and its decentralised intent, that the mission head is responsible to deem the when and what of protection activities. The language is also an expression of a larger dilemma integral to the workings of the UN that concerns the contestation between the tectonic plates of security and humanitarian issues, which has been brought to the fore due to the increased security–development nexus.

While protection issues largely are associated with the humanitarian realm, peacekeeping missions are perceived of in the realm of security and the military use of force. As PoC is included in mission mandates, there is also a potential for conflict as the two separate rationales and discourses of security and humanitarianism interface. The humanitarian raison d'être ever since its inception at the first Geneva Convention is based on abstinence from physical violence and rather relies on '[…]the force of the moral argument, of mutual self-interest, of legal codes and of the innate humanitarian impulse occasionally in all people' (Slim 2001). To some it thus raises the concern that 'the UN is now increasingly being mandated to provide physical protection through its missions, particularly peacekeeping operations, which have been tasked with using military capability in the field either to deter attacks on civilians or, sometimes, to use force to defend civilians from attack' (Security Council Report 2008: 4). The debate on the potential use of force for protection purposes evolving as PoC was installed in Council deliberations from the late 1990s '[…]reflect a deeper moral paradox around the use of force. This paradox is the old one that the best way to stop violence might be to use it' (Slim 2001: 326). The everyday practice of applying and disseminating PoC within the UN take place against the backdrop of this paradox, and the tension between different means available to different actors all involved in protecting civilians.

3. The Institutional Implementation of PoC

At the UN headquarters in New York, the implementation of the PoC agenda has rested largely with UN OCHA, who since the first publication of the *Aide Memoire* has become the institutional guardians of the measures adopted by the UNSC concerning protecting civilians in armed conflict, and largely claim ownership to those ideas. Such a situation ensures that the UNSC remains alert to protection issues, especially after the expert group on protection issues was established in January 2009 as a way for UN OCHA protection experts to brief and discuss protection issues with the UNSC in relation with peacekeeping mandates. However, through interviews with different UN agencies in New York it was clear that other UN agencies viewed PoC with a certain scepticism, as an instrument UN OCHA was using to gain more importance and relevance within the UN system. Furthermore, as UN OCHA claims ownership to protection issues, the process of further institutionalization of PoC system-wide involves a certain degree of tension between agencies which often jealously guard their turf and ideas. The effect this has on the balancing act between a culture of protection and a clearly defined PoC concepts remains, however, an empirical question.

3.1 The UN Department of Peacekeeping Operations and PoC

While the policy franchise of PoC is claimed by UN OCHA, UN DPKO is charged with the planning, preparation, management and direction of UN-led peacekeeping operations. In conventional terms the former connotes the humanitarian segment, and the latter to the military segment. This distinction is becoming increasingly blurred as peacekeeping operations increasingly involve multidimensional and integrated efforts at ending conflicts and post-conflict reconstruction. The increased attention to PoC throughout UN and its increased inscription into missions mandates since the late 1990s have however not materialised in any formalised interlocutory system between OCHA and DPKO to enhance protection issues. As an illustration, the first and only person at DPKO working specifically on protection has been there for less than two years, having PoC as mere one amongst many designated responsibilities. The protection tasks are limited to monitoring what other agencies, internal and external to UN, are doing on protection. It is thus neither time nor the role of this person to proactively strengthen DPKO–OCHA ties and to enhance DPKO's attainment in the protection agenda. The existing DPKO–OCHA protec-

tion-relations have developed over time, but usually with OCHA in the lead. OCHA has pushed for strengthening these links for a long time, but were somewhat unsuccessful until member states, notably the UK and France, signalled they wanted DPKO to take stronger part in the protection agenda. DPKO's current involvement in PoC is that it tries to stay updated on the concept by following discussions and by keeping itself abreast with relevant documents and research conducted both within and external to UN.

Of special importance here is the 'Independent Study on the Implementation of Security Council Mandates on the Protection of Civilians in UN Peace Operations, 2008-2009' which is being conducted by Victoria Holt and Glyn Taylor and jointly commissioned by UIN OCHA and UN DPKO. The study will be made public mid-2009. While this study signals more interagency cooperation of poc at headquarters, the success of such a report will depend on the extent to which the headquarter level will be more attentive the extent to which the implementation of poc measures is successful on the ground. Indeed, the terms of reference of the study state the aim as 'examining how UN peace operations implement their mandates to protect civilians. […] Specifically, the study aims to identify the experiences of key actors involved at each stage of the process in which the concept of 'protection of civilians' evolves through UN mandate language and into activities on the ground. The study also aims to identify gaps and areas where further action is required and to examine all factors that may impact on the ability of missions to effect civilian protection in accordance with their mandates.'

Infringing on the OCHA–DPKO relations is also DPKO's wish to link R2P with PoC. This agenda was pushed for by Australia, Canada and New Zealand – all officially pronounced R2P supporters. DPKO's response has so far been positive as long as this would not deter the UN's operational capacity in any way. The OCHA-side, however, are highly reluctant to R2P due to its strong militaristic and political connotations. To OCHA staff there is a concern of conceptual equation between R2P and PoC, while they also understand the proliferation of R2P and its reception at DPKO being due to its framing as militaristic and interventionist and thus presumably easier to operationalise than PoC (cf. Lie 2009).[9]

Related is the perception among the DPKO that PoC is hard to implement and thus challenging to include at the level of planning. There is a tension between those who provide and promote protection language in Council resolutions, notably OCHA and its allies among member

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[9] However, in May 2008 the Secretary-General gave his first talk on R2P where he attempted to defend and clarify the concept without enshrining it with PoC (UN SG 2008).

states, and those who provide troops and manage peacekeeping operations, i.e. DPKO. HQ officials at both DPKO and OCHA perceive a gap in between HQ desk officers, and between desk officers and field personnel in terms of how PoC is perceived and implemented. Consequently, they share the need for more guidance on the content and practicalities of PoC for both planning and operational staff. As it stands now, desk officers in DPKO do not share the understanding of PoC which UN OCHA are seeking to promote. Thus, when PoC issues are reported from the field, there are no institutional guarantees that this will be reported further up the line once it reaches the desk officer in DPKO.

3.2 The UN Office for the Coordination of Humanitarian Affairs and PoC

OCHA staff recognise the difficulties in 'selling' PoC to the Security Council, DPKO and other UN agencies pertaining to the security segment. These problems are illustrated by the decline in OCHA's PoC-activities since 2002. After the inception in the late 1990s the PoC-agenda proliferated, but after finalising the first *Aide Memoire* in 2002 the overall agenda lost momentum, arguably due to capacity issues and not political reasons.[10] Still, the protection language was maintained in the Council's mandates. Although in broad wordings without any clear plan of progress, PoC is nevertheless now a well anchored concept within the UN system despite its practical meaning and implications remain unclear.

OCHA is pursuing a two-pronged approach to enhance PoC. One concerns the active participation of the Security Council, and the other aims at operationalising PoC so that the Council, other agencies and field personnel know how to apply the protection framework. On the former, OCHA's attempt to enrol one of the P5s to take the lead on PoC within the Council has failed. Rather, OCHA has been left with either one of the elected Council members as PoC promoter within the Council, or by approaching on a case-by-case basis the respective member states responsible for drafting resolutions. In effect, OCHA so far has lost the necessary continuity within the Council and in its deliberations that are vital to uphold the momentum of the general protection agenda. In spite of this lack of impetus and continuity, protection language is included in the Council's authorisations of new – and renewal of old – mission mandates. The inclusion of protection

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[10] The first *Aide Memoire* was devised in 2002, and updated in 2003 (UN OCHA 2004). Also, the R2P-concept, which evolved since 2001, contributed to PoC loosing momentum as many saw this as a more robust and effective way of providing protection and countering the challenges integral to the protection agenda (ICISS 2001). The debates triggered in conjunction to and following the universal endorsement of R2P at the 2005 World Summit (UN 2005) installed OCHA and the PoC-proponents with new impetus.

language, however, is no guarantee for the thorough implementation of protection activities at mission level, as the language remains broad with few clear propositions, and because it is most often left to the mission leadership to interpret this language and translate it into action.

OCHA has realized these challenges and sought to mitigate them, knowing that operationalising PoC is crucial for its dissemination. To the extent that there is a 'culture of protection' among HQ agencies, this is largely shared among the humanitarian actors. To have actors belonging to the security realm onboard, OCHA staff are acutely aware that operationalising PoC entails stringent language and definitions although this might undermine the 'culture of protection' and consequently make the protection agenda less inclusive. There is also a concern regarding non-UN agencies: to OCHA, a coherent protection effort involving non-UN humanitarian agencies is crucial – as illustrated by the IASC, coordinated by OCHA and chaired by the ERC. DPKO, however, only rarely involves itself with non-UN agencies. Defining PoC to accommodate DPKO and the security segment may thus be counter-productive to overall protection activities as some non-UN agencies are bound to fall outside of a strict conception of PoC. Also, the security segment has formal limitations to the interface with non-UN agencies. This dilemma of an inclusive protection culture versus a more confined definition is also reflected at the mission level (Lie and de Carvalho 2008). There is no formal contact between missions and HQ agencies on PoC issues that allows for a formal learning to happen. Rather, information sharing seems to be confined to read field reports on an ad hoc basis by HQ staff. This is a critical challenge that needs to be overcome in order to successfully implement the measures regarding PoC. Since the successful implementation of these measures largely depends on how they are interpreted in the field, how they are adapted to local contexts, and how UN staff involved in protection learn from this application of the measures to concrete issues, there needs to be a way for these experiences to trickle back to HQ, and especially to the UNSC if these experiences are to inform the further implementation of the PoC agenda, the measures the UNSC includes in mandates, and the resources made available to meet these objectives.

Most of these problems are acknowledge by OCHA, OCHA realises there should be more PoC expertise in other UN agencies, but this is undermined by the formal and thematic compartmentalisation of UN bodies. OCHA thus struggles to maintain the PoC momentum and relevance to accommodate the internal challenges of conceptual clarity and interagency coherence, and the external challenges to helping civilian casualties of war and conflict. The main modalities for meet-

ing these challenges are the updating of the *Aide Memoire* and ensuring that the (finally) newly established expert group to serve the Council on protection issues can work as envisioned.

4. Mitigating the Problem of Reproducing the Schisms?

Numerous instruments and practices aim at keeping the UN in general and the Security Council in particular abreast to relevant protection issues. These include the Secretary-General's regular reports and the ERC's biannual briefings, which both are conveyed to the Council. Security Council resolution 1674 on the protection of civilians in armed conflict, adopted April 28, 2006, is the last thematic resolution on PoC (UN SC 2006).[11] Although being a PoC resolution, it is usually referred to as the resolution in which the Council reaffirmed the 2005 World Summit's commitment to R2P (see UN 2005: paragraph 138 and 139). R2P was included in the resolution after much controversy and months of negotiations, and eventually further spurred the internal and conceptual challenge to PoC and OCHA (Lie 2008).

As a means to counter the challenges facing PoC and in an attempt to regain momentum of the protection agenda, OCHA's Policy and Studies Branch proposed two important measures to be implemented in 2008 (UN OCHA 2008) which were adopted by the UNSC in January 2009, namely the Council Expert Group on PoC (cf. UN SG 2007), and the adoption of the third updated *Aide Memoire on Issues Pertaining to the Protection of Civilians in Armed Conflict*. The working group and memoire should be seen together as a two pronged approach to enhance the Council commitment and involvement in protection situations.

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[11] In addition, there are three other thematic PoC resolutions: S/RES/1265 (adopted November 17, 1999), S/RES/1296 (adopted April 19, 2000) and S/RES/1502 (adopted August 26, 2003). The latter, however, does not directly deal with the conventional civilian protection as its predecessors, rather it concerns the safety of UN and humanitarian personnel, and emerged in the wake of the crisis that followed the killing of 22 UN personnel in Baghdad in August 2003, including Sérgio Vieira de Mello (head of OCHA 1998–2001).

4.1 The Protection Expert Group

October 28, 2007 the Secretary-General's report on the protection of civilians recommended that the Council considers establishing a working group on the protection of civilians, that is,

> […] a dedicated, expert level working group to facilitate the systematic and sustained consideration and analysis of protection concerns, and ensuring consistent application of the aide memoire for the consideration of issues pertaining to the protection of civilians in Council deliberations on the mandates of United Nations peacekeeping and other relevant missions, draft resolutions and presidential statements, and in Council missions (UN SG 2007: paragraph 66m).

In November 2007, the Secretary-General reiterated this recommendation, as a matter of priority, that the Security Council establishes a Council working group to facilitate enhanced consideration and analysis of protection issues (UN SG 2007). This call came as in recognition to the 'dreadful toll' civilians continue to pay in armed conflicts around the world. The working group was to be dedicated to improving protection for civilians in such situations and to ensure that protection issues were at heart to all Council deliberations requiring it. The Secretary-General stated:

> I believe the establishment of such a group is an important next step, perhaps even an inevitable next step, in the evolution of the Council's consideration of the protection of civilians. It would not only underline the Council's commitment to this cause, it would give practical meaning to your commitment. It would ensure more timely and systematic consideration of the protection of civilians in the Council's deliberations. And it would assist the Council to move decisively towards practical implementation (UN SG 2007).

Following this, establishing a Council working group became part of OCHA's planned 2008-activities. The group was intended as a thematic anchor to support the Council and member states when drafting resolutions and mandates comprising protection issues, develop response capabilities and other practical measures to safeguard civilians. The working group shall provide the Council with accurate and timely information, provide the best analysis of protection aspects enabling the Council to make wise decisions when establishing and renewing mandates for peacekeeping operations.

The working group took long to materialise. On November 16, 2007, the Security Council Report (Security Council Report 2007) – in a

forecast report on expected Council actions – asserted it 'unclear whether members will want to adopt a formal outcome from the debate[…] It is unclear whether there will be appetite for a new Council working group on protection of civilians'. Reasons given were that several member states were not able or ready to take on '[…] large load of work at the abstract level without some sort of rationing mechanism that clarified and defined the issues to be covered and without some sort of country-specific focus' (ibid.). By May 2008, it was reported that '[…]the idea of setting up formally a new working group on the protection of civilians appears unlikely' (Security Council Report 2008) due to fear up duplicating already existing work and thus adding another bureaucratic layer and mechanism to the Council's already extensive practices.

Apart from OCHA, the process of establishing the working group was driven by the French, although, among member states, it is the UK who claims ownership to PoC. The expert group was long vetoed by the three other P5s as they were afraid it would add to the bureaucracy of the Council.

It seems that a *working* group was a bridge too far for the Council to agree upon as it abandoned the idea settled for a more informal *expert* group. Interviewees stated it was the denotation as working group that triggered reluctance by Council members, as it implied another layer added to the Council. Rather it opted for an *expert* group. An informal expert group would yield less bureaucracy for the Council and rather enhance more flexible working methods. This expert group will receive regular updates on humanitarian and protection issues from the field, mission level and from OCHA's thematic work in order to advice the Council when establishing and renewing peacekeeping missions' mandates, and ensure that protection language become integral to all relevant Council resolutions.

The notion of a working group is, however, not new, and its intricate trajectory illustrates the Council's reluctance in committing to PoC. The expert group was first time proposed by the Secretary-General in 1998 but was also then refused by the Council (Security Council Report 2008: 9). In the landmark report of 1999, (UN SC 1999) where the content of PoC was carved out, the Secretary-General proposed a working group to be integral to PoC to safeguard continuous protection concerns, but this was shied away by the Council when deciding upon the content of PoC.[12]

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[12] Other proposals to enhance PoC have also been rejected. The proposal to compile the provisions of PoC-resolutions 1265 and 1296 into a roadmap indicating the responsibilities of various UN organs never saw any formal Council reaction. Efforts by Norway and other member states to establish a PoC support group, never materialised. In 2003, ERC Jan Egeland – in sensing the Council's decreased momentum in PoC – proposed ten ac-

4.2 Updating the Aide Memoire

Until January 2009, The *Aide Memoire* had not been updated since 2004. The 2004 *Aide Memoire* was intended as a diagnostic tool to assist the Council 'in ensuring that the protection needs and rights of civilians are reflected in relevant resolutions and the mandates of peace-keeping operations' (UN OCHA 2004). The memoire was also designed to be applicable to field situations; as a tool for systematic analysis and reporting. The document listed issues pertaining to the protection of civilians to facilitate the Council's due consideration of them whenever appropriate. The Aide Memoire listed 17 primary objectives and 58 issues, grouped under 13 broad headings,[13] for the Council's contemplation when devising mission mandates. Due to its wide scope and the plethora of issues for considerations, document has not been as effective and influential as expected. Member states and UN HQ staff external to OCHA see the document as somewhat irrelevant when drafting resolution. The typical response among mandate drafters on the applicability, use and importance of the memoire is 'none'.

At mission level, confusion prevails among and between humanitarian and peacekeeping personnel concerning *how* to relate to the *Aide Memoire*. While the former group largely embodies a culture of protection and thus is reluctant to recalibrate their notion of it, the latter lacks a clear conception of protection to install it in operational activities. The new and revised *Aide Memoire* intends to counter these problems,[14] but the problems associated with having a broad all-encompassing concept are likely to remain as the new memoire version is just as comprehensive and wide in scope as earlier versions.

The updated *Aide Memoire* lists 49 issues under three main headings, namely 'General Protection Concerns Pertaining to the Conflict-Affected Population, 'Specific Protection Concerns Arising from Security Council Discussions on Children Affected by Armed Conflict', and 'Specific Protection Concerns Arising from Security Council Discussions on Women Affected by Armed Conflict'. The first of these

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tion points drawn from the failed roadmap to strengthen PoC, to which the Council's response was limited to note 'with interest' without any promises of formal reaction (Security Council Report 2008: 7–11).

13   The headings are Security for displaced persons and host communities; Access to vulnerable populations; Safety and security of humanitarian and associated personnel; Security and the rule of law; Disarmament, demobilization, reintegration and rehabilitation; Small arms and mine action; Effects on and contribution of women; Effects on children; Justice and reconciliation; Training of security and peacekeeping forces; Media and information; natural resources and armed conflict; and Humanitarian Impact of sanctions.

14   Revising the Aide Memoire is part of OCHA's 2008 activities. An informant stated it was supposed to be finalised in mid-august 2008, but was postponed due to the conflict in Georgia. In resuming the work with the new Aide Memoire, OCHA's Protection of Civilians Section embarked on the process of bilateral consultation with Council member states to discuss the content of the updated document, following discussions among the membership before it was to be brought before the Council.

headings is divided under 'Protection of, and assistance to the con-flict-affected population', 'Displacement', 'Humanitarian access and safety and security of humanitarian workers', 'Conduct of hostilities', 'Small arms and light weapons, mines and explosive remnants of war', 'Compliance, accountability and the rule of law', and 'Media and information'.

The expert group discussion and the *Aide Memoire* revision signal not only the need to constantly update the PoC framework both in light of new UNSC resolutions and in terms of experiences with PoC in the field, but also that the protection realm has gained new momentum that brings it closer to the heart of Council and member states delib-erations. Still, the intricate trajectory of PoC seems to sustain. The working-vs.-expert group controversy demonstrate the Council's con-tinuous indignation and lack of a formal and binding commitment to PoC, which makes the overall balancing act of driving PoC issues forward a difficult task for UN OCHA.

5. Conclusion

Although PoC today is largely embedded in the UN system as a whole, there are a number of issues still critical to address at the insti-tutional level for the PoC to inform a shared culture of protection ef-fectively. These include addressing the extent to which preparations for civilian protection are an integral component of mission planning, and whether protection activities are part of the mission's *mandate* per se or mere part of its many *tasks.* Also of key concern is the extent to which operational capacity is achieved and designed to enhance pro-tection.

Another issue of concern relates to how to cater for different notions of impartiality and neutrality between humanitarian efforts and peace operations – being indicative to the protection paradox. As Holt as-serts, while 'humanitarian staff may neutrally provide food to all members of a needy population, regardless of their previous actions […] military forces within a peace operation will forgo neutrality to uphold their mandate, however, yet still be impartial in its actions, in-cluding use of force, against spoilers who act outside of a political agreement of undermine security' (Holt 2005: 12).

Finally, at headquarter level, two main challenges remain. How can PoC become part of a shared *interagency* culture, rather than remaining the sole prerogative or task of UN OCHA *without thereby losing its institutional momentum*, and how can UN DPKO take greater ownership to PoC without this being prejudicial to the ability of the concept to include both military and humanitarian segments of peace operations. Finally, as the effective protection of civilians in mission depends not only on the UNSC's ability to adopt new measures aimed at protecting civilians, but also on the extent to which these measures are effective in protecting vulnerable groups on the ground, there needs to be clearer institutional mechanisms for learning from experience. As of today, the reporting from the field is largely lost to those drafting resolutions.

The update of the *Aide Memoire* to include and reflect changes in the PoC on the basis of UNSC resolution is only one step in the right direction. The expert working group *can* be another step. However, the ability of UN missions to protect civilians in peacekeeping operations will only become fully effective once the UN system manages to set in place institutional structures for learning on the basis of the experiences on the ground, and cooperate on PoC on a case-to-case basis.

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