

# OVERCOMING PROTECTION OF CIVILIAN FAILURES

## THE CASE FOR AN EVOLUTIONARY APPROACH WITHIN NATO

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## OPEN Publications (2017-04) Overcoming POC Failures

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“Overcoming POC Failures: The Case for an Evolutionary Approach within NATO”  
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## OPEN PUBLICATIONS

## Contents

|   |    |
|---|----|
| INTRODUCTION.....   | 1  |
| BACKGROUND.....   | 2  |
| POC CHALLENGES.....                                       | 5  |
| PoC Challenges: Libya .....                               | 5  |
| PoC Challenges: Afghanistan.....                          | 7  |
| Public Perceptions of Safety .....                        | 7  |
| Civilian Harm Mitigation (CHM).....                       | 8  |
| Humanitarian Access.....                                  | 9  |
| Internal Displacement.....                                | 9  |
| EMERGING NATO FRAMEWORK.....                              | 10 |
| Pillar 1: Mitigate Harm (MH).....                         | 11 |
| Pillar 2: Safe and Secure Environment (SASE) .....        | 12 |
| Pillar 3: Facilitating Access to Basic Needs (FABN) ..... | 13 |
| OVERCOMING THE POC CHALLENGE.....                         | 15 |

## OPEN PUBLICATIONS

## INTRODUCTION

In developing a concept on the Protection of Civilians (PoC), NATO should consider a cautionary approach, recognizing that the policy adopted by the Warsaw Summit emerges from decades of failure to protect civilians in conflict (NATO, 2016).<sup>2</sup> These failures range from ethnic cleansing in the Balkans, genocide in Rwanda, civilian casualties in Afghanistan, security gaps in Libya, and the inability of the international community to protect civilians during the war in Syria.

The reasons for failure are well documented. Inadequate military planning to assess the nature of the threat, insufficient use of force to counter the threat, and a lack of political will to intervene in situations of violence are some of the reasons why protection efforts have failed. These failures have led to the evolution of international norms and standards on the conduct of war, the emergence of PoC as central to the mandate of UN peacekeeping missions, and the Responsibility to Protect (R2P) framework. The need to develop more preventative frameworks is inherent in each of these approaches, recognizing that international action often comes too late in the conduct of hostilities to prevent large-scale violence. Even when the international community agrees to take action with the aim of ending a conflict, peace operations are often limited in political scope and financial resources.

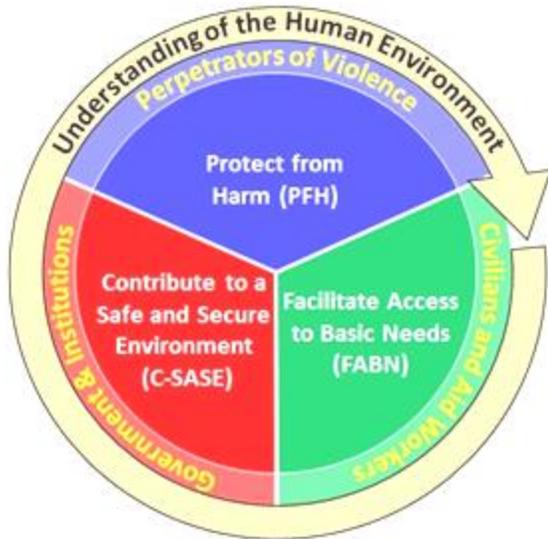
This paper will explore what the international community has learned from such failures, and how NATO's emerging concept on PoC might consider addressing these challenges. Recognizing that many protective actions carried out by NATO missions occurred after grave violations had already taken place, the role of NATO in conducting PoC functions during all phases of conflict including prevention, response, and rebuilding will be considered.

This paper will show how NATO action in Bosnia and Kosovo presents a broad range of PoC capabilities within NATO that offer early lessons learned (Kjeksrud, Ravndal, Stensland, de Coning & Lotze, 2016). Which is counter to the view of some scholars that NATO has only been concerned with protecting civilians in the context of the intervention in Libya, and in civilian casualty mitigation in Afghanistan. The paper will further address PoC challenges in Libya and Afghanistan, and comparative UN approaches.

This paper will also explore how the emerging NATO framework for PoC can address historic failures and current challenges. The proposed NATO concept consists of three PoC pillars; Mitigate Harm (MH), Contributing to a Safe and Secure Environment (C-SASE), and Facilitating Access to Basic Needs (FABN). Understanding the Human Environment (UHE) is an essential requirement for all pillars. Find a depiction of the emerging concept on the next page.

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<sup>2</sup> From 2016-2017, NATO Supreme Allied Command Transformation (SACT) has been working on developing a Concept of Operations (CONOPS) on the Protection of Civilians (PoC) policy adopted during the Warsaw Summit in July 2016. The concept will be publicly available at the end of 2017.



The ability of NATO to address PoC across the spectrum of the conflict will pose considerable challenges. While some NATO actions may be mandated to address a specific threat, failing to address broader PoC principles will lead to gaps in security, protection, and accountability. The paper offers suggestions for how NATO can fill these gaps by working with international partners.

In conclusion, this paper offers recommendations on what NATO can offer the international community to enhance its PoC capabilities. Given that NATO actions, like the UN, are subject to the political will of multinational decision-making bodies that may limit the

scope of its mission, NATO should consider the following factors. First, NATO should consider its approach as evolutionary, taking steps toward the goal of protecting civilians while acknowledging that the policy will need to be reviewed and updated as NATO gains experience integrating PoC concepts more fully into its operations. Second, NATO should recognize the full range of protection tasks that are carried out by other agencies, and continue to emphasize its commitment to a comprehensive approach, which includes civil-military engagement. Third, NATO should focus its PoC efforts on documenting successes as well as failures, and track progress made on PoC implementation over time. By doing these things, NATO can ensure that its PoC policy will withstand the test of time and the changing dynamics of conflict intervention.

## BACKGROUND

This section of the paper offers a brief overview of how the concept of protecting civilians emerged from international law. It also reviews protection implications of NATO’s first expeditionary mission in the Balkans as a case study highlighting early lessons learned within the alliance. The failure to prevent mass atrocities against Bosnian Muslims in the “safe zone” of Srebrenica highlights the importance of agreement between United Nations (UN) and NATO forces in approving the use of force. The UN’s reluctance to use force to protect civilians in Bosnia led NATO to intervene in Kosovo without international authorization.

The PoC concept, while evolving is not new. While NATO adopted its first official PoC policy at the Warsaw Summit in 2016, efforts to protect civilians in armed conflict date back to the 1800s, when conflicts in the U.S. and Europe led to the establishment of the laws of war (NATO, 2016). During the U.S. Civil War, President Abraham Lincoln wrote the Lieber Code, ordering the humane treatment of populations in occupied territory. In Europe, a Swiss executive Henry Dunant documented the lack of care for wounded soldiers in the Battle of Solferino, leading to the adoption of the first Geneva Convention in 1864.

## OPEN PUBLICATIONS

In addition to the Geneva Convention, which provided protection to sick and wounded soldiers who no longer participate in hostilities, The Hague Conventions of 1899 and 1907 also sought to codify PoC. Despite these efforts to develop norms of armed conflict through the formulation of international law, the conduct of hostilities during World Wars I and II disproportionately affected civilian populations. Aerial bombardments, deportations, forced labor, and concentration camps deprived civilians of their liberty and basic means of survival. The Holocaust further galvanized world leaders to establish laws of war.

In 1949, the four Geneva Conventions were consolidated to provide the building blocks of the Law of Armed Conflict (LOAC) and International Humanitarian Law (IHL). These rules bind all states and all parties to the conflict without need for formal adoption (Kellenberger, 2005). The Geneva Conventions define “civilians” as non-combatants and those who are no longer participating in hostilities. While states are held accountable for these actions in traditional forms of international armed conflict, the application of these standards in non-international conflict involving non-state actors has been more difficult.

Although PoC is a fundamental concept, its application in conflict environments has proven to be difficult at best, with lessons learned emerging largely out of failed attempts. The current UN framework for the PoC grew out of failures in peacekeeping missions in Bosnia and Rwanda. Lessons learned from these missions are documented in two high-level reports on the fall of Srebrenica and the Rwanda genocide (UN Report A/54/549 and UN Report S/1999/1257).

The war in Bosnia Herzegovina represents the first operation during which NATO’s resolve to protect civilians was tested. The fall of Srebrenica and massacre of over 8,000 Bosnian Muslim men and boys is one of the greatest failures to protect civilians in Europe since World War II. During debates about the establishment of safe zones, permanent members of the Security Council acknowledged that keeping the population safe could not be accomplished without the back up of an enforcement mechanism (UN A/54/549). Thus, NATO’s first military engagement in Bosnia Herzegovina, Operation Deliberate Force (ODF), was to conduct air strikes to protect the UN peacekeeping force (UNPROFOR), from being attacked by Serb forces.

When it became clear that threats of airstrikes alone could not keep safe areas from being attacked, a lightly armed Dutch battalion was sent in to support UNPROFOR. When the Dutch battalion requested air support to keep Srebrenica from falling, they were denied. Serb forces held 400 UN troops hostage as a negotiating tactic for reducing airstrikes. The hostage crisis led to confusion about when airstrikes were appropriate (UN A/54/549). This confusion aided the Serb offensive in Srebrenica, which went unchallenged, and culminated with the massacre of thousands of civilians.

In the aftermath of Srebrenica, civil-military coordination was critical to understanding the human environment (UHE). The UN report detailing events regarding the fall of Srebrenica noted that military officers on the ground were not aware of the extent of violence that had taken place. It was only after nongovernmental organizations (NGOs) and human rights groups began documenting the testimony of

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survivors that the full extent of the massacre became known (UN A/54/549). The involvement of these organizations was essential to documenting the massacre as a war crime.

Once the Dayton Peace agreement was signed, NATO launched the Implementation Force (IFOR), to ensure compliance with the peace process and re-establish public order. To create a safe and secure environment (SASE), NATO established a special police unit that operated under military control (Lightburn, 2001). During IFOR, NATO also learned that “maintaining a secure environment for civil implementation meant close cooperation with a wide range of other participants in the peace process” (Lightburn). IFOR forces worked closely with the UN High Commissioner for Refugees (UNHCR) to facilitate the return of refugee populations. IFOR also established SASE by separating warring parties, conducting demobilization and disarmament campaigns, and providing security for elections (Crouch, 1997).

Several important PoC themes emerge from NATO’s experience in Bosnia. First, the UN’s reluctance to use force led NATO to use kinetic capabilities to address imminent threats to the population and UN personnel. Second, NATO carried out protection functions after a series of gross violations had occurred. In response, the mission worked to restore order not only by military means, but also through policing functions and civil-military coordination. In Bosnia, the limited use of force against a well-armed and determined aggressor did not prevent ethnic cleansing. However, NATO’s actions did restore SASE through sustained engagement after the peace agreement was signed.

In 1999, NATO conducted airstrikes to counter Serb aggression against ethnic Albanians in Kosovo. This time it did not wait for the UN Security Council to act first. Instead, a “coalition of the willing” came together under the auspices of NATO to intervene. This pre-emptive action was a lesson learned from Bosnia: not to wait for permission before intervening to minimize harm to the civilian population. Yet, in determining how to target the command and control of Serbian forces, NATO made calculated decisions to strike infrastructure that disrupted civilian life including access to transportation, water, electricity, and telecommunications (Power, 2002 and Wentz, 2002). Rebuilding this infrastructure was an important aspect of the Kosovo Force (KFOR) mission, which worked to restore order and civilian control (Reinhardt, 2000).

In the case of ethnic cleansing in the Balkans and genocide in Rwanda, failures to protect civilians were due to several factors. These include delays in early action that could have prevented violence, insufficient troop numbers and capabilities, and a lack of willingness to use force as a means of intervention. These were collective failures at the political level within the UN Security Council, which led NATO to act independently to intervene in Kosovo.

The Balkan experience offers NATO an example of the complexity of operations necessary to protect civilians across the spectrum of conflict from prevention (Bosnia airstrikes), response (Kosovo airstrikes), and recovery (IFOR and KFOR). These case studies show that NATO’s use of force was necessary to disrupt the command and control of perpetrators, but the use of force also had unintended consequences such as destroying civilian infrastructure that is needed to establish a safe environment.

While NATO intervention did not prevent the forced displacement of millions of people, NATO's involvement in post-conflict missions facilitated humanitarian assistance and enabled refugees to return home. By developing a concept that further addresses how to protect civilians in NATO operations, these historical examples can serve to manage expectations. It is clear that NATO is not able to address every protection challenge through military means. However, NATO could play a leadership role in political negotiations with the international community and national authorities; build the capacity of defense authorities to protect civilians; and engage with civilian agencies to achieve the protection outcomes envisioned by the initial PoC concept under development.

## **POC CHALLENGES**

Deliberations on PoC have evolved considerably since the failures in Bosnia and Rwanda. In the late 1990s, some member states blamed UN inaction on the principle of non-intervention. They sought to develop a framework that would override state sovereignty and give the UN a right to intervene without the consent of a host state. In 2001, an international commission developed the "Responsibility to Protect (R2P)" framework, which argued that states forfeit their sovereignty when they commit gross violations including genocide, ethnic cleansing, war crimes, and crimes against humanity (ICISS, 2001). The R2P framework claims that the international community has three responsibilities for addressing such violations: a responsibility to prevent, react, and rebuild (ICISS).

### **PoC Challenges: Libya**

NATO's intervention in Libya was largely based on the R2P principle to prevent civilian harm. However, a close review of the effort shows that preventative action in the absence of rebuilding the state institutions had a limited impact on security. When the Security Council passed Resolution 1973 for NATO to "use all necessary means" to prevent violence against civilians in Libya in 2011, it was the first time that the UN authorized the use of force to protect civilians in a country with a functioning government that did not consent (Mamiya, 2016). While the R2P framework was invoked as a leading consideration for NATO's intervention in Libya, regional support from the Arab League made it politically feasible.

Operation Unified Protector (OUP) was a short, targeted air campaign aimed at destroying the command and control of Muammar Gaddafi's forces threatening to kill civilians who were protesting against the government. An advisor to Allied Joint Force Command (JFC) in Naples described the difficulty of operationalizing the language in the mandate. "PoC does not indicate an end state to be achieved, nor does it identify an enemy...concrete indications needed to be found that would point to effectively protected civilians." JTF-Naples came up with three criteria for success: 1) all attacks and threats against civilians and civilian populated areas have ended 2) the regime has verifiably withdrawn all military forces from all populated areas they have forcibly entered and c) the regime has permitted humanitarian access to all people in need of assistance. (Gaub, 2013)

## OPEN PUBLICATIONS

Although NATO did not have forces on the ground, small teams of military advisors from Western and Arab countries were sent in to equip and advise Libyan rebels (Gaub). When the statements of U.S. leaders indicated that the mission was shifting from protecting civilians to removing Gaddafi from power, NATO was accused of using humanitarian rhetoric to achieve a political objective. However, the R2P framework recognizes that when the government is the primary perpetrator of atrocities, changing the leadership may be the only effective way to end the crimes (Adams, 2012)."

Following Gaddafi's death, NATO airstrikes ended. However, the security situation worsened as weapons stockpiles were plundered. In the absence of centralized control, local militias were the only security. Libyans protested the role of the militias, calling for them to be disbanded, but militia leaders refused because there was no military or police force to take over (Gaub). Nonetheless, Libya's National Transitional Council (NTC) firmly rejected the idea of a stabilization force that would put foreign troops into the country. Instead, it approved a modest UN political mission (UNSMIL).

When reports of civilian casualties due to airstrikes began to surface in the media, NATO was unable to verify the claims (Gaub and Younus & Pennington, 2011). Without its own forces on the ground, NATO depended on imagery to investigate its impact. Human Rights Watch issued a report citing evidence of 72 civilian deaths (Human Rights Watch, 2012). In response to the report, NATO issued a statement saying that it did everything possible to minimize risks to civilians, including dropping leaflets warning civilians before airstrikes took place (NATO, 2012). Most importantly, the statement emphasized, "NATO did not have any troops on the ground during the operation, and received no mandate to conduct activities in Libya afterward" (NATO). Nonetheless, human rights organizations claimed that NATO should have tracked, investigated, and made amends for civilian harm through the diplomatic missions of allied forces (Younus & Pennington). The Libyan council eventually made reparations to war victims through the Ministry of Finance and Oil, which registered over 5,000 victims from all parties to the conflict, but NATO was not involved in the process (Younus & Pennington).

Several dimensions of the NATO intervention in Libya have important lessons for PoC implementation in future operations. First, mission planners need clear indicators for accomplishing PoC within the mandate. Second, plans for mitigating civilian casualties should be made in advance of every mission, including methods for investigating reports and making amends. Third, defeating the command and control center of perpetrators of violence may not be an adequate response to PoC if such actions are not followed up with demilitarization and security sector reform. This highlights the importance of applying PoC across the spectrum of conflict, anticipating gaps, and preparing contingency plans with the UN and other partners.

NATO played a short-term role in the Libya crisis, with long-term effects. When considering the long-term role that NATO has played in the stabilization of Afghanistan, we can draw additional conclusions on the impacts of sustained engagement on PoC over time.

## PoC Challenges: Afghanistan

Defining success in efforts to protect civilians has been a major challenge for UN peacekeeping operations, and it will likewise present a challenge for NATO. Assessing the nature of threats to civilians and the range of interventions to address them is best done in partnership with civilian agencies. One example is how the UN Mission in the Democratic Republic of the Congo (MONUSCO, 2016) developed Joint Protection Teams with military, police, and humanitarian agencies to determine what “Must-Should-Could” be protected, recognizing that they could not cover the full range of protection concerns in the operating environment (MONUSCO, 2016).

Scholars at the Norwegian Defense Research Establishment have suggested that NATO use the following six metrics to measure PoC: (1) civilian casualty figures (2) civilian behavior (3) perception of security (4) territorial control (5) delivery of humanitarian assistance, and (6) perpetrator capabilities (Beadle & Kjeksrud, 2014). NATO’s sustained engagement in Afghanistan allows for a more comprehensive review of related data indicating whether civilians have been protected using these criteria. The following section of the paper will consider three of those factors; Afghan perceptions of security and security sector forces; civilian casualties (CIVCAS), and humanitarian indicators including access to affected populations, aid worker safety, and the number of internally displaced persons (IDPs).

### Public Perceptions of Safety

The Asia Foundation has been conducting public opinion polls in Afghanistan for more than a decade. Public perception of safety data varied tremendously over the last decade, largely along geographic lines depending on whether active fighting was occurring in the region (Asia Foundation, 2016). When people were asked if the country was headed in the right direction, positive factors included disarmament of the Taliban, reconstruction projects, girls attending school, return of refugees and greater freedom to travel as signs of progress. These are all factors that contribute to (SASE). Indicators of problems were unemployment, insecurity, corruption, Taliban, warlords, poverty, lack of education, electricity, roads, water, health care, and poor governance. These concerns focus on security and development gaps.

The NATO Communications and Information Agency (NCIA) also analyzes public perception surveys in Afghanistan.<sup>3</sup> In early 2017, only 31% of the population stated that security in their community is good, with the highest perceptions of safety in the capitol city of Kabul (Eles, 2017). Over 60% of the population has a high opinion of the Afghan National Army (ANA) and Afghan National Police (ANP). However, only 15% of those surveyed approve of women joining the ANA, only 17% approve of women joining the ANP; and 66% of women would never consider a job in the security sector (Eles). This view is

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<sup>3</sup> NCIA provides analytical support to NATO-sponsored surveys for RS Headquarters through a project run by Joint Forces Command JFC Brunssum.

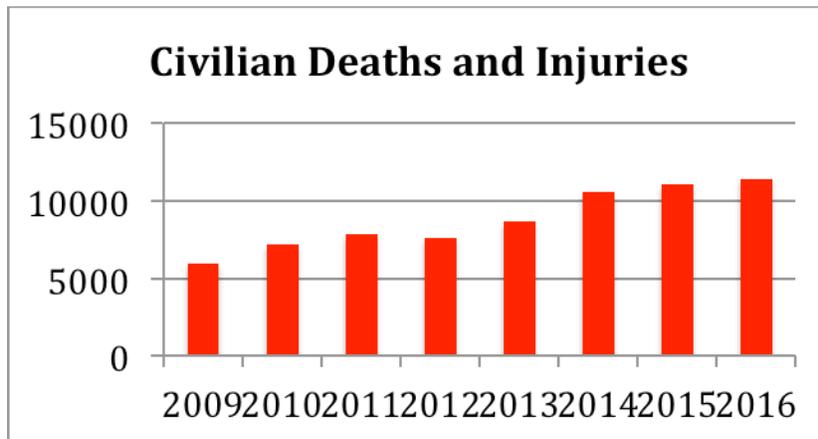
problematic for Women, Peace, and Security (WPS) initiatives that support the advancement of women in the security sector.<sup>4</sup>

Overall, perception surveys showing that the Afghan population looks to the national army and police to provide security and continue to fight the Taliban, and that the population is more concerned about economic development and infrastructure than security, are strong indicators of local ownership. However, governance is undermined by corruption and civilians continue to be at-risk of significant harm from the conflict.

**Civilian Harm Mitigation (CHM)**

In 2008, ISAF established a Civilian Casualty Tracking Cell (CCTC) to gather data of reported casualties from several sources, including UN and non-governmental organizations (NGOs). The CCTC used the data to change tactics; resulting in an 80% reduction in ISAF related casualties by 2014 (JALLC, 2015). The transition from international to national responsibility in Afghanistan has also shifted responsibility for CHM to Afghan national forces since 2015. While ISAF tracked CHM by its own actions, it did not systematically track civilian harm from other parties to the conflict.

The UN Assistance Mission in Afghanistan (UNAMA) has been tracking civilian harm by both pro-government forces and anti-government forces. UNAMA has documented (2009-2014) the death of 24,841 civilians and 45,347 conflict-related injuries (UNAMA, 2016). These deaths are due to a combination of tactics including aerial operations, ground engagements, improvised explosive devices (IEDs), land mines, suicide bombers, and targeted killings. See below chart of civilian casualties and injuries:



Source: UN Mission in Afghanistan (UNAMA) 2016 Report

Data indicates that while NATO has reduced its combat operations in Afghanistan, civilians continue to be disproportionately affected by fighting from other parties to the conflict. Children have been significantly affected by explosive remnants. In 2016, UNAMA recorded 923 deaths and 2,589 such

<sup>4</sup> Asia Foundation surveys have consistently found that a lack of education and illiteracy are the top issues facing Afghan women from 2004-2016.

injuries among children (UNAMA, 2016). In 2016, NATO sent its first advisor on Children in Armed Conflict (CAC) to Afghanistan to build the capacity of national security forces (NATO, 2016). As NATO continues to build the capacity of the Afghan army and police, it can encourage forces to remain accountable for mitigating civilian harm in partnership with UNAMA and the Afghan Independent Human Rights Commission (AIHRC). NATO should also standardize CHM practices across all missions.

### **Humanitarian Access**

Several humanitarian indicators may also be considered in determining NATO's impact on the civilian population. These include the extent of humanitarian access to affected populations, threats to aid worker safety, and the number of IDPs.

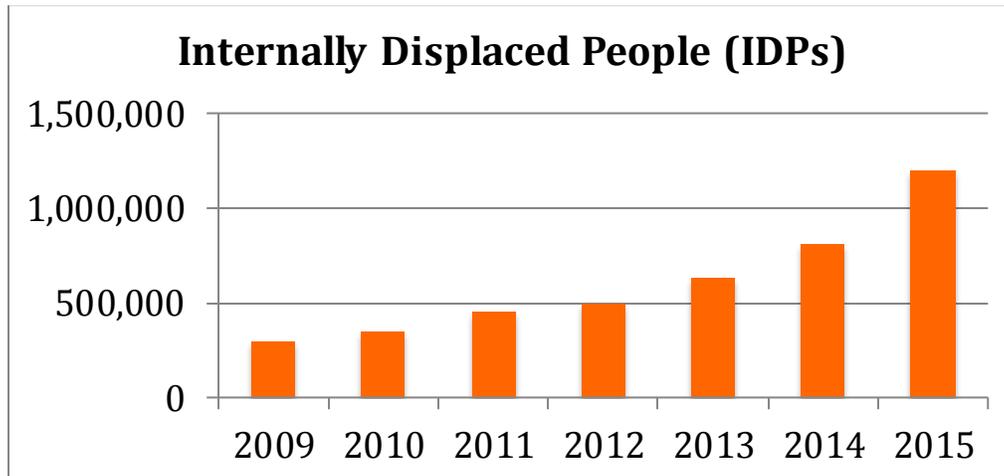
Humanitarian access is the ability for aid to reach affected populations. Constraints to humanitarian access can include bureaucratic restrictions on personnel and supplies; diversion of aid to armed actors and interference in the delivery of goods; impediments due to weather and the terrain including lack of infrastructure; and active fighting in areas of operations (OCHA, 2010). NATO can contribute to increasing humanitarian access by providing security to humanitarian actors upon request and facilitating the transport of relief supplies according to the Oslo Guidelines on the use of military assets for disaster relief (OCHA, 2007).

In Afghanistan, the development of civil-military Provincial Reconstruction Team (PRTs) to conduct security and development activities in every region of the country caused considerable friction between ISAF and humanitarian aid agencies. Humanitarian agencies were concerned that communities would perceive all aid activity to be tied to political and military objectives. A working group was established to develop specific guidelines that emphasized the importance of "maintaining a clear distinction between the role and function of humanitarian actors from that of the military (Jackson and Haysom, 2013)." Ultimately, the role of foreign militaries in Afghanistan reduced the amount of humanitarian space given for neutral, impartial, and independent action on behalf of humanity. These are fundamental principles of humanitarian action (OCHA, 2012).

Given the confluence of military and humanitarian action; some relief agencies blamed violence against aid workers on the prevalence of armed actors giving aid. Others have pointed out that violence against aid workers shows a lack of respect for humanitarian norms and the laws of war by non-state actors (Terry, 2011). Regardless of the motive for violence, Afghanistan continues to be one of the most dangerous countries to conduct aid work. The Aid Worker Security Index has documented 467 incidents of violence against aid workers from 2003-2016 including kidnapping, shooting, bodily assault, and explosive devices (Humanitarian Outcomes, 2016). One way to mitigate violence against aid workers is to track patterns of movements of armed actors, and to share information so that military action and relief activities can be timed in a way that minimizes harm to all parties.

### **Internal Displacement**

The forced movement of people can also reveal patterns in threats to civilians. In the case of Bosnia, it is clear that forcing populations to move granted perpetrators a strategic advantage over controlling territory and ethnic groups. Population movement is indicative of the fear of violence. In Afghanistan, increasing numbers of IDPs are an indicator of prevailing instability. The Internal Displacement Monitoring Center shows an increase in the number of IDPs over the last seven years:



Source: Internal Displacement Monitoring Centre, Afghanistan Country Data 2015

In Afghanistan, the highest numbers of displaced people remain in the south and northwest regions where there is ongoing fighting. This corresponds with regional differentiations in security perceptions in NCIA survey data. For IDPs to return to their area, they must have confidence that the situation that led them to flee has changed (Williamson S.P. 2002). In Afghanistan, IDPs have consistently moved to Kabul where security perceptions are higher, pushing population trends toward urbanization.

These indicators pertaining to protecting civilians in Afghanistan give NATO some preliminary data to consider for further measurement. A more thorough analysis should also include data on sexual violence and the protection of children.<sup>5</sup> A comprehensive approach to measuring PoC would be to conduct a civil-military assessment that includes national and international approaches for developing a more protective environment.

## EMERGING NATO FRAMEWORK

NATO's work on protecting civilians in conflict began well before the new PoC policy was adopted during the 2016 Warsaw Summit. As discussed previously, NATO can draw from a range of historical and current operational scenarios to construct further guidance on PoC. The following section of the paper will consider how each aspect of the emerging concept can take into consideration lessons learned and overcome common failures to protect civilians. This paper reveals that failures to protect are often due

<sup>5</sup> The Afghanistan Independent Human Rights Commission (AIHRC) 2012 Biennial Report on Violence Against Women (VAW) shows that 90% of reported cases of gender-based violence (GBV) in Afghanistan are perpetrated by close family members.

to critical gaps in the mission mandate, the ability to address protection across the spectrum of conflict, and gaps in accountability to affected populations. It also reveals that military action alone is not able to fulfill security and development gaps without the support of national authorities and dedicated civil-military engagement.

NATO's emerging concept on PoC establishes a framework based on three pillars: 1) (MH), 2) Contribute to a Safe and Secure Environment (C-SASE), 3) Facilitate Access to Basic Needs (FABN). Each aspect of the framework needs to be considered separately for how it can address PoC challenges. Understanding the Human Environment (UHE) is also considered a necessary step for integrating these PoC pillars into the planning and conduct of NATO operations.

### **Pillar I: Mitigate Harm (MH)**

Protection from physical harm is arguably the most important pillar of any PoC framework. Conflicts in Syria, Iraq, and Afghanistan have led to the highest numbers of casualties since the Cold War (Dupuy et al, 2016). Non-state actors that deliberately target civilians or blend into civilian populations to avoid attack pose significant challenges for the military and humanitarian actors working to mitigate harm. Deterring physical violence has proven especially difficult in urban environments, especially when airstrikes target densely populated areas.

NATO's approach to (MH) includes minimizing harm from its own and others' actions including protection from perpetrators of violence. The "Do No Harm" principle, which is used by numerous civilian relief agencies, can also be applied to protecting civilians. The principle focuses on the necessity of conducting a conflict analysis to determine whether one's actions increase the capacity of dividers and sources of tension, and how one's actions enable connectors to build capacity for peace, so that one's actions can be adjusted accordingly (CDA Collaborative, 2004). While these principles were designed with civilian relief agencies in mind, armed actors including military and police personnel can use them to consider the potential unintended consequences of one's own actions in the operating environment. These actions can range from standards of ethical and professional conduct, how to interact with children, appropriate interactions with women in a given culture, and accountability for the loss of civilian life.

NATO must first commit to ensuring that its own actions reduce harm to the civilian population by having a standard mechanism for tracking, investigating and providing amends as part of a comprehensive set of civilian casualty mitigation (CIVCAS) tools. While NATO's mandate may limit its presence on the ground, as was the case in Libya, NATO should work with and through partners to ensure that CIVCAS is part of every intervention. NATO can use the CIVCAS tools and methods developed in Afghanistan to model accountability to affected populations, to have accurate data to address criticisms of its actions, and to improve its performance on civilian harm mitigation.

When considering actions to mitigate harm by other perpetrators of violence, NATO will need to ensure that missions have a method for tracking violence perpetrated by others and how different segments of

the population experience this violence, including women and children. This work can be done in concert with humanitarian agencies with a protection mandate. Protection agencies regularly interact with affected populations to determine threats faced and how these can be mitigated with local authorities. This paper has suggested that NATO convene joint civil-military teams for this purpose.

## **Pillar 2: Safe and Secure Environment (SASE)**

As the historical case studies show, NATO operations have largely commenced in the absence of (SASE). NATO interventions have often followed grave human rights violations and war crimes. In such an environment, accurately assessing the risks to the civilian population is a critical aspect of determining the actions necessary to deter the threat. The U.S. Army considers this such an important factor, that an entire pillar of their PoC doctrine focuses on risk assessment. As the historical case studies show, NATO has only been able to facilitate the restoration of SASE within a mission mandate to engage in stability and reconstruction. NATO has facilitated SASE through the following actions:

- Deterring and preventing recurring hostilities
- Demobilizing parties to the conflict
- Securing weapons stockpiles
- Demining
- Security sector reform
- Stability policing functions addressing public order and criminality
- Support to transitional justice mechanisms such as hybrid courts
- Supporting national political institutions
- Supporting elections
- Facilitating refugee returns
- Protecting minorities
- Civil-Military interaction
- Enabling conditions for humanitarian access to affected populations
- Rebuilding public infrastructure such as electricity and telecommunications

Although these functions are important for restoring SASE, NATO's mandate may restrict its ability to engage in certain stability functions. In post-Gaddafi Libya, the greatest challenge was security sector reform and securing weapons stockpiles, neither of which took place in a coordinated fashion, leading to further instability. When the mission cannot apply PoC across the spectrum of the conflict, it can engage in strategic dialogue within the alliance and negotiate with regional actors to ensure that its actions do not destabilize the area.

Defining what is a safe environment for civilians depends on numerous factors in the local context. Tracking changes in the environment over time is important to determining whether conditions for SASE have been met. Metrics may include safety perception surveys, level of access to humanitarian assistance and basic needs, and whether local services have been restored. Working with national authorities and local civil society can help facilitate SASE.

NATO must also plan for the transition from military action to neutralize armed actors to police functions that address public order and criminality. Police functions may differ depending on whether NATO is called upon to replace or reinforce national police. The ability of police to restore order is crucial to public confidence, the establishment of the rule of law (RoL), and good governance. Police also have a unique role in addressing the safety of children in armed conflict and sexual and gender based violence (GBV).

In this pillar, NATO has omitted one of the fundamental tenets of the UN approach to protecting civilians: protection through dialogue and engagement. This includes negotiating cease-fires, persuading government, and other armed actors to protect civilians, reporting PoC violations to the relevant authorities, and other forms of information sharing which can shape perpetrator behaviors. In the civilian context, this is often called “humanitarian diplomacy,” working toward the desired solution on behalf of the population’s well-being. The International Committee for the Red Cross (ICRC) also engages in “confidential dialogue” with all parties to the conflict to remind them of their obligations under international humanitarian law (IHL) and the Laws of Armed Conflict (LoAC). NATO forces will need a similar skill set to shape the operating environment toward protecting civilians.

### **Pillar 3: Facilitating Access to Basic Needs (FABN)**

There is a certain danger to including access to basic needs as a core PoC function. Given the blurring of the lines between military and humanitarian space in Afghanistan, it will be difficult for the humanitarian community to accept NATO’s role in FABN, except on a limited basis when it complies with the rules of engagement in accepted guidelines. The Military and Civil Defense Assets to Support UN Agencies in Complex Emergencies (MCDA) guidelines apply to situations of conflict, and the Oslo Guidelines apply to disaster relief. These guidelines include an acknowledgement that humanitarian assistance is to remain under civilian control and that direct military provision of aid is only to be used only as a last resort. The MCDA guidelines clearly state that, “As a matter of principle, the military and civil defense assets of belligerent forces or of units that find themselves actively engaged in combat should not be used to support humanitarian activities” ([OCHA, 2006](#)). Further, the guidelines also state that, “Humanitarian work should be conducted by humanitarian organizations. Insofar as military organizations have a role to play in supporting humanitarian work, it should, to the extent possible, not encompass direct assistance” (OCHA).

Military and humanitarian agencies should revisit the MCDA and Oslo Guidelines in order to provide more guidance on the conduct of military assistance as a last resort. Given the increase in non-permissive environments where humanitarian access is constrained, and the increasing scale of natural disasters due to changes in the environment, it is possible that armed actors will continue to play a major role in the direct provision of aid. However, this is a controversial issue worthy of separate consideration by the established Consultative Group on the MCDA Guidelines. It should not be the focus of the PoC concept. Facilitating Access to Basic Needs (FABN) is an important aspect of Contributing to a Safe and Secure Environment (C-SASE), but the provision of aid should not be a military objective.

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Another important principle in the guidelines is that support to humanitarian actors should be extended upon request, when necessary for the provision of aid. Another good practice for engaging in constructive dialogue is to set aside time for meetings to share information, rather than making surprise requests for information or assistance that require further approvals.

Given this, NATO may wish to consider placing the FABN pillar under C-SASE. The two most important considerations would be to 1) Facilitate humanitarian access and 2) Support local authorities in restoring services. Assessing the needs and conditions facing the local population that would determine the requirements for humanitarian action can be considered under Understanding the Human Environment (UHE). As it stands, the FABN pillar of the emerging concept on PoC currently focuses on, 1) Easing adverse footprint 2) Humanitarian access and 3) Provide humanitarian aid as a last resort.

The international humanitarian community is comprised of dedicated professionals who specialize in protection functions. Understanding the perspectives and modalities of humanitarian agencies is critical to enhancing civil-military coordination on PoC.

The UN humanitarian system managed by the Office for the Coordination of Humanitarian Affairs (OCHA) has a Global Protection Cluster that provides inter-agency policy advice and guidance to field-based protection activities at the country level. The protection cluster has responsibilities for monitoring the conditions of refugees, IDPs, and vulnerable migrants. The UN High Commissioner for Refugees (UNHCR) leads the cluster, with the support of the International Organization for Migration (IOM) on camp management, and the UN Children's Agency (UNICEF) on child protection and gender based violence (GBV). The UN Office of the High Commissioner for Human Rights (OHCHR) also participates in cluster activities depending on the location.

International NGOs, human rights, and peacebuilding organizations conduct protection activities as implementing partners of the UN or as independent entities. Which organizations are in any given area of operations (AOR) largely depends on the organization's mission, funding, and access to affected populations.

The International Committee of the Red Cross (ICRC) is an independent, neutral organization focused on humanitarian protection and assistance for victims of war according to international humanitarian law (IHL). The ICRC has led the charge to clarify the definition of protection and to establish standards for protection work. The humanitarian definition of protection is:

Protection encompasses all activities aimed at ensuring full respect for the rights of the individual in accordance with human rights law, international humanitarian law, and refugee law (ICRC, 2013).

Protection activities in the humanitarian sector include

- Monitoring conditions of individuals and communities affected by conflict
- Tracking displacement

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- Ensuring access to assistance
- Collecting data and analyzing the threats to civilian populations
- Providing support to especially vulnerable groups
- Witnessing and documenting human rights abuses
- Referring victims to services
- Separating civilians from armed actors through relocation or evacuation
- Negotiating cease-fires
- Engaging with authorities and armed actors to remedy or redress harm.

As NATO missions begin to adopt a formal PoC framework, protection agencies will be key stakeholders to engage at the global and country level. CIMIC officers will play a special role in improving civil-military relations in the post-Afghanistan context. Human rights groups will continue to press NATO for high standards of accountability. NATO should be prepared to engage with these stakeholders, and to welcome their input for improving operational effectiveness.

## OVERCOMING THE POC CHALLENGE

NATO's emerging concept on PoC can play a major role in overcoming notable failures of the past. This paper has considered historic case studies showing that NATO's role in protecting civilians is not new, but has already been tested by numerous conflicts. Whether NATO's role has been remedial (in Bosnia), pre-emptive (in Libya) or a sustained engagement (in Afghanistan), PoC considerations have played a significant role in the scope and purpose of NATO missions and in determining the ultimate outcome of events.

Like the UN, NATO missions may be limited by their mandate. However, NATO's comparative advantage over the UN approach centers on its use of force, which has both positive results (defeating perpetrators) and negative consequences (civilian harm). Tactics for minimizing harm while using force should continue to be an important operational consideration for all NATO members.

Where NATO intervenes along the spectrum of conflict will largely determine how the PoC is applied. For example, mitigating harm (MH) may not be possible if preventative action has been delayed and significant casualties have already occurred (in Rwanda). Contributing to a safe and secure environment (SASE) will not happen if there is no mandate for post-conflict stabilization. The future of facilitating access to basic needs (FABN) during conflict depends on the ability of NATO to coordinate with humanitarian agencies that have the principal mandate for this work.

Therefore, NATO should consider its approach to PoC as an evolutionary one, taking steps toward the goal of protecting civilians, while being open to adapting its approach in partnership with key stakeholders. PoC encompasses a broad set of challenges that military forces cannot address on their

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own. Humanitarian protection agencies have considerable expertise that NATO can leverage. Sustained engagement with local communities, national authorities, and international actors is a fundamental requirement for success.

NATO should also recognize that not all pillars of protection are equal. Protection from physical harm is the foundation upon which other pillars of protection should be established. The right to life is the most basic of all human rights. When NATO conducts airstrikes in densely populated areas, civilian casualties should be assumed. Trends toward the urbanization of conflict and the use of civilians as human shields by non-state actors will only increase the likelihood of casualties. Setting the expectation that civilian casualties will occur can lead to a predictable, institutional response. CIVCAS should be integrated into the planning and conduct of all NATO operations.

As the case studies have shown, gaps in political will can also lead to protection failures. NATO should raise protection concerns in talks with regional organizations including the European Union, African Union, and Arab League. NATO should also engage in a strategic dialogue with the UN to ensure that its efforts are mutually reinforcing. As the Warsaw Summit policy states, protecting civilians is important for the continued credibility and legitimacy of NATO. Protecting civilians is not an easy objective, but with NATO's advanced military and police capabilities, it can overcome the challenge.

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