1. PROTECTING CIVILIANS FROM HUMAN RIGHTS VIOLATIONS

The Protection of Civilians (POC) during armed conflict forms one of the central pillars of international humanitarian law/law of war and international human rights law. The United Nations was founded on the idea of maintaining international peace and security, so to prevent armed conflict but also as importantly to stop the atrocities that occurred during World War II from every reoccurring. Human rights violations, some on a massive scale, continued during the violence of decolonization and the Cold War, but with little inter-governmental action possible during the very polarized period of the United Nations.

The protection of civilians from grave human rights violations during armed conflict became an issue of global attention and concern through the 1990s, during the post-Cold War era of violent transition and state collapse in which parties to conflict ignored international safeguards to commit atrocities against men, women, and children, while the international community failed to act to prevent these abuses. The massacres in Rwanda and Srebrenica in Bosnia and Herzegovina, and widespread abuse of civilians during the wars in the African Great Lakes region, West Africa, Somalia and elsewhere were glaring indicators of the failure of all to protect civilians. Some analysts began to question the sanctity of state sovereignty in the face of widespread grave violations and the role that the UN and other international actors should play to protect civilians should the government be unable or unwilling to do so.

That discussion branched into several work streams in the United Nations. Responsibility to Protect (R2P), the Protection of Civilians, Prevention of Genocide, Children and Armed Conflict (CAAC) and Women, Peace, and Security (WPS), the latter of which split into two work streams, one on increasing the inclusion of women and women’s issues in peacekeeping and peace efforts and the other on sexual violence in conflict, all emerged during this period. Each of these areas of work has progressed along different paths and at different speeds; so, while there is coordination and complementarity between them, the work strands have largely remained distinct.

The focus of the United Nations on human rights violations in conflict-affected countries went through another round of review following the final offensive of the Sri Lankan armed forces against the Liberation Tigers of Tamil Elam (LTTE). Thousands of civilians are estimated to have been killed during those final months. A review of UN performance during those events described system-wide failure of the UN to speak out or otherwise address the violations there. That review led to the development of an action plan, entitled Rights Up Front, that was meant to ensure that the UN did not fail in its duty to uphold human rights. This new action plan is intended to lead to lasting reforms that will further strengthen the UN’s ability to address grave human rights violations when armed conflict erupts and to allow for a more coordinated One UN response in that regard.
This document aims first to provide a brief overview of the five aforementioned work streams, and then focus specifically on how the Protection of Civilians agenda has been implemented, how UNICEF has and can engage in this agenda for the benefit of children, and related emerging issues. Separate papers have been developed on Children and Armed Conflict and Rights Up Front, while another will be forthcoming on Sexual Violence in Conflict.

1.1 Protection of Civilians

Protection of Civilians lies at the center of international humanitarian law and also forms a core component of international human rights, refugee, and international criminal law. These laws and standards are intended to shield civilians from abuse during times of war and otherwise limit the impact of conflict on them by setting legal constraints on and assigning accountabilities to the parties to the conflict. Abuses, nevertheless, have continued in major as well as low-intensity conflicts. The UN Security Council in recent years has become increasingly concerned with the protection of civilians, the Secretary-General regularly including it in his country reports to the Council and the Council providing it as a common part of peacekeeping mission mandates in its resolutions.

Security Council Resolutions on Regular Protection Themes

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The scope of the concept in the work of the United Nations, however, has remained unclear. The question of how POC is defined, therefore, has continuously been raised since its initial use in the Security Council in 1998 in a Presidential Statement in which the Council raised the issues of targeting of civilians, obstruction of humanitarian assistance, incitement to violence, the spread of small arms, and the overall gap between the letter and practice of international humanitarian law. The Council has never provided an explicit definition of the concept, so its intent has had to be interpreted from the evolving broad range of issues reflected in past Security Council practice, resolutions, and presidential statements. Questions now remain as to whether the Children and Armed Conflict and Sexual Violence in Conflict areas of work should be considered as sub-components of the Council’s POC agenda and therefore see the three merged in some way.

In terms of the UN capacity to act, the Report of the Panel on United Nations Peacekeeping (the Brahimi Report), commissioned by the Secretary-General in response to the events of the 1990s to assess the short comings of UN peacekeeping missions and recommendations for improvement, made two key points relevant to the protection of civilians that continue to be relevant to discussions on the issue:

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2. The OCHA Aide-Memoire on Protection of Civilians has pulled together in one reference all those actions and statement by the SC that help to form a picture of how it defines POC in practice. For a good discussion about the tensions between various institutional interpretations of POC see Jon Harald Sande Lie and Benjamin de Carvalho, *Protecting Civilians and Protecting Ideas: Institutional Challenges to the Protection of Civilians*, Security in Practice 4/NUPI Working Paper 760 (Oslo: Norwegian Institute of International Affairs, 2009).
that “peacekeepers — troops or police — who witness violence against civilians should be presumed to be authorized to stop it, within their means, in support of basic United Nations principles…”

but that it was unclear that peacekeepers had the resources to deliver on this responsibility.

When missions are given POC mandates, there is still concern that they do not have the resources to allow them to deliver in line with expectations.

Within the Security Council structure, unlike the CAAC agenda, the one for Protection of Civilians does not have a formal monitoring and reporting mechanism, nor has the Council established a working group as a subsidiary body to address the issue.

1.2 Children and Armed Conflict

The 1996 Graca Machel Study represented the first comprehensive report of the wider impact of conflict on children submitted to the General Assembly and Security Council. The study called for UN system-wide enhanced engagement on behalf of conflict-affected children, leading to the involvement of new actors addressing issues facing children in armed conflict. In 1997, following one of the recommendations of the Machel report, the Secretary-General Kofi Annan appointed a Special Representative for Children and Armed Conflict. In 1999, the Security Council adopted its first resolution (SCR 1261) on children and armed conflict. This was a decisive step forward, as it was a recognition that the impact of conflict on children can have implications for international peace and security and therefore falls under the mandate of the Security Council.

Since then the Security Council has made significant progress in operationalizing its Children and Armed Conflict (CAAC) agenda. In 2005, the Secretary-General, upon the request of the Security Council outlined a plan for creation of the mechanism to monitor and report on grave child rights violations in situations of armed conflict and declared that the Office of the Special Representative for Children and Armed Conflict and UNICEF would play a particularly important role in the establishment and implementation of the MRM. In response to a specific request made by the UN Secretary-General, UNICEF has assumed a leading role in the implementation of this system since it was formally established by SCR 1612 (2005) and then further elaborated in SCR 1882 (2009), SCR 1998 (2011), and SCR 2068 (2012).

1.3 Sexual Violence in Conflict

Women, men, girls and boys have suffered sexual violence in conflict situations. During the 1990s, parties to conflict used rape as a weapon of war to terrorize populations, intimidate the opposition, and force communities to flee internally or across borders. Sexual violence was included in the Security Council agenda on Women, Peace, and Security, but later developed as a distinct agenda item of its own. Resolution 1888 (2009) specifically focused on sexual violence and called on the Secretary-General to appoint a Special Representative on Sexual Violence in Conflict. The SRSG, appointed in 2010, leads the UN Action Against Sexual Violence in Armed Conflict (UN Action), replacing the previous co-chairs UNICEF Deputy Executive Director and DPKO Deputy Executive Director. With support from the UN Action Network, the SRSG leads the preparation of the Secretary-General’s Annual Report on Sexual Violence in Conflict. This report contains annexes in which parties committing sexual violence against adults and/or children are listed. The Security Council, however, has not established a subsidiary body (working group) to receive country based reports or take action.

In Resolution 1888, the Security Council also requested the establishment of a Monitoring, Reporting and Analysis Arrangement (MARA), which monitors and reports on trends in sexual violence in a select number of conflict and post-conflict countries. The subsequent SCR 1860 further emphasizes the need to ensure systematic gathering of timely, accurate, reliable and objective information on

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3 See UNICEF Strategic Positioning Paper, MRM Field Manual, and MRM Global Good Practices Study for more information on UNICEF’s roles and responsibilities within the Security Council’s CAAC agenda.
conflict-related sexual violence. The MARA is currently being rolled out in four priority countries including the CAR, Cote d’Ivoire, DRC, and South Sudan.

1.4 Responsibility to Protect and the Prevention of Genocide
Responsibility to Protect, with its focus on the prevention of genocide, war crimes and crimes against humanity and ethnic cleansing, also seeks to address the issue of grave human rights violations in situations of armed conflict. R2P, however, is sometimes perceived to be a normative framework for states that includes the option for armed intervention in cases where a government is unwilling or unable to protect its populace. R2P and Prevention of Genocide are represented by two separate Special Advisors of the Secretary-General, but are co-located in one office. The role of the Special Representative on the Prevention of Genocide is to collect information on possible situations of genocide, give early warning of situations that could develop into genocide, make recommendations to the Security Council, through the Secretary-General, on actions to prevent or halt genocide. The Special Advisor on Responsibility to Protect is “charged with the development and refinement of the Responsibility to Protect concept and with continuing a political dialogue with Member States and other stakeholders on further steps toward implementation.”

UNICEF has engaged with this office to provide input on possible ways to strengthen early warning.

1.5 Rights Up Front
The Secretary-General formed an Internal Review Panel (IRP) to prepare a report on UN action on human rights issues during the Sri Lanka conflict. That report, which was made public in November 2012, concluded that “while many UN staff had distinguished themselves during the final stages of the conflict, some agencies and individuals had failed in their mandates to protect people”, in particular during the final stages of the conflict. It made a number of recommendations on how to improve the response of the UN to situations of grave violations of international human rights and humanitarian law.

In response, the Secretary-General asked the Deputy Secretary-General (DSG) to identify practical ways in which the UN system could better protect people in crisis contexts. The final report from this process, in which UNICEF was very actively involved, is called “Rights Up Front: A Plan of Action to strengthen the UN’s role in protecting people in crises.” The SG endorsed the Action Plan and shared a short version "Aide Memoire" with staff, media and member states on 11 November 2013. He has asked the Senior Management Group to ensure its full implementation.

The Action Plan seeks to put the imperative to protect people at the heart of UN strategies and operational activities. It identifies six key actions that can make a qualitative difference in the way the UN meets its responsibilities to protect people. All six key actions are within the prerogative of the Secretary-General and part of the UN’s existing responsibilities as set by the Charter and Member States.

The six action areas are:

1) Ensuring a greater understanding among all staff of what the UN’s commitment to human rights means for their department, agency, fund or programme and for them personally, and how they will be held accountable. Embed the vision into recruitment and employment practices; roll out mandatory induction and training.
2) Being more strategic, pro-active and creative in mobilizing Member States and other stakeholders to prevent and stop grave violations of international human rights and humanitarian law, particularly when situations are not on the Security Council agenda (area 2). Conduct ‘horizon

5 See proposal for UNICEF engagement on the Rights Up Front action plan.
scanning’ briefings for the Security Council; when situations of grave violations are not on the Security Council’s agenda, the DSG to brief all Member States; use Article 99 when needed.

3) Having the right leaders and the right footprint to address situations where people are at risk. Develop a strategy to address potential or actual grave violations: spelling out what UN political, human rights, humanitarian and development entities will do at country, regional and global level to address the situation.

4) Leveraging the different capacities in the system and deploying political, human rights, humanitarian and development capacities in a concerted, rather than fragmented manner; adopting a whole-of-UN approach at UN headquarters, starting well before a crisis strikes and building on experiences gained with integrated missions. If required, appoint a Situation Response Coordinator to pull the system together and convene a Situation Response Cabinet chaired by the Deputy Secretary-General

5) Achieving greater impact in our human rights protection through more operational capacity, but equally more coordination and collaboration among the UN’s human rights offices.

6) Establishing a more robust system for gathering and analysing information on threats and risks to populations. Establish a common information management system on violations of human rights and international humanitarian law.

This new model for addressing and preventing human rights violations in armed conflict has already been activated in the situations of the Central African Republic and South Sudan for which a Senior Action Group has been created for each.

2. INSTITUTIONALIZATION OF THE PROTECTION OF CIVILIANS WITHIN THE UNITED NATIONS

The concept of POC has been gradually institutionalized within the UN, particularly over the past five years and within the peacekeeping missions. POC has permeated Security Council and peacekeeping processes at a number of levels, including as a thematic issue within the Security Council, as part of mission mandate preparation and renewal, and in guidance for the implementation of POC mandates. This section identifies and describes some of these processes since UNICEF has used them as entry points for promoting child protection.

2.1 Security Council Open Debates and Resolutions

The Security Council has become more engaged in the issue of protection of civilians. The Council first held an open debate on POC in 1999 and now meets twice a year on the topic, with the Secretary-General presenting a report every 18 months and the Emergency Relief Coordinator presenting a briefing every six months. OCHA leads the drafting of the Secretary-General’s report. That report has been used to raise particular areas of concern, several of which have been taken up by the Council.

One example is the issue of the use explosive weapons in populated areas. The POC report has been used to draw attention to the harm it has caused, but also to urge parties to limit its use. The topic has received much attention in the past five years, but especially recently due to the extensive use of artillery, airstrikes, and improvised explosive devices, including car bombs, in urban areas of Syria. Those weapons with wide area effects have inflicted particularly heavy damage. UN agencies have argued that the use of explosive weapons in these areas is indiscriminate and disproportionate.

2.2 Peacekeeping Mission Mandates

The authorization of peacekeepers to intervene to protect civilians in the areas in which they operate has become increasingly common. The UN Assistance Mission in Sierra Leone (UNAMSIL) was the first peacekeeping operation to receive a protection of civilians mandate, but currently nine missions have a similar mandate.

The Security Council now also convenes an Informal Experts Group on Protection of Civilians prior to the renewal of mission mandates, during which OCHA briefs the Council experts on protection
UNICEF contributes to the preparation of the briefing paper at country level and from headquarters. In the past, no other UN agencies were present during the briefing, but now the meetings have been opened to all UN protection agencies.

In its resolutions defining country-specific mission mandates, the Council directs the mission “within its capabilities and in its areas of deployment, to protect civilians under imminent threat of physical violence.” This standard phrase in itself, however, is somewhat vague and so has required SRSGs and force commanders to interpret it. Over the last three years, an effort has been made to standardize some of the relevant tools and guidance for the missions and the UN system in general so as to provide some consistency in approach. A number of mechanisms and tools have either been operationalized or are under development to assist in POC planning and implementation.

Policy discussions regarding the scope of POC in peacekeeping missions continue to advance. Initially, the different missions provided their own interpretation of the concept and how it should be implemented based on their distinct operational environment, resources, and partners. For many, the concept hinged on physical protection, an area which peacekeeping missions have been uniquely placed to address among UN actors, but it was also understood by some to include the work to promote and protect human rights. The former interpretation stemmed in part from the standard POC language the SC has used in mission mandates. The SC in its resolutions charges the missions to “protect civilians under imminent threat of physical violence.”

As a result of this lack of clarity, the Special Committee on Peacekeeping Operations (C34), representing those troop and police contributing countries which are often expected to implement much of the physical protection element of POC mandates and will thus be held accountable for delivering on it, requested DPKO and DFS to produce a concept of operations. This concept of operations delivered in 2011 went beyond physical protection to broaden the concept to include three main tiers or areas of work through which missions would contribute to the protection of civilians:

- **Tier 1: Protection through political process**: Missions help to protect civilians through maintenance of peace during peace process or other political processes. The activities included in this tier include facilitation, mediation, support to reconciliation processes, and liaison between the negotiating parties.

- **Tier 2: Providing protection from physical violence**: This tier includes the missions’ efforts to prevent, deter, and respond to situations in which civilians are under threat of physical violence. It includes patrolling, ensuring freedom of movement for humanitarians and the displaced, evacuation, public order management, conflict mediation, monitoring human rights, early warning, and political engagement. It is further sub-divided into four phases: assurance and prevention; pre-emption; response; and, consolidation.

- **Tier 3: Establishing a protective environment**: This area of work encompasses promotion of legal protection; facilitation of humanitarian assistance and advocacy; and support to national institutions. More specifically, it includes the wide range of mission activities ranging from human rights monitoring; child protection; prevention and response to sexual and gender-based violence; strengthening government capacity for the rule of law; disarmament, demobilization and reintegration; and security sector reform.

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6 The group has an “informal” status because Russia does not participate.
10 For more information on the phases, see DPKO/DFS, 2011, pp. 8-9.
Strategies for the protection of civilians have been finalized in MONUC/MONUSCO, UNMIS (pre-South Sudan independence) and UNAMID. While common elements were evident in each, these plans were not prepared from a common framework. To provide a harmonized approach to POC planning, DPKO led the development of a new standard template for the preparation of comprehensive strategies covering the aforementioned three tiers of POC. It was hoped that this tool would help to create greater consistency in POC planning and application, while recognizing the differences in operational environments and relevant issues in each situation. Among the processes that it outlines are two key components:

- **Capacity Gap Analysis**: The key to implementing the POC mandate in a more meaningful way seems to be a combination of getting the right information into the right early warning systems, as well as having the Troop Contributing Countries committed to implementing the mandates, and instructing their battalions to move to protect civilians when needed. Securing the right combination of assets can begin with a capacity gap analysis. The new framework for drafting POC strategies has called on missions to include an assessment of the resources necessary for delivering on its POC mandate.

- **Risk Assessment - Identifying Threats to Civilians**: Missions are often given broad POC mandates, which sometimes are not well designed for meeting particular threats. The Security Council and mission planners need to improve the quality of their information as well as better identify which are the major threats to civilians in a given context at a given moment. This may entail having analysis/threat assessment inform more directly mission mandate and planning decisions. The mission POC mandate should then be designed to address these threats, including by providing the mission with the appropriate military and civilian resources to undertake risk assessment. Again, the aforementioned framework calls for a risk assessment as part of the planning process and provides guidance on how it should be conducted.

### 2.3 Tools for Monitoring Protection of Civilians

In addition to the tools available to the missions, the Security Council and other organizations have begun to apply tools in order to press parties to the conflict to protect civilians.

**POC Benchmarks**: Benchmarks, while developing slowly, will hopefully allow for better measurement of the impact of mission work to protect civilians and progress in its implementation. Discussions are ongoing about what approach should be taken with these benchmarks, including whether they should measure the overall situation of protection for civilians in a given context (including violations committed against them), whether they should serve as performance indicators for UN missions, or whether they should be a combination of both.

**Monitoring and Reporting**: Unlike the Children and Armed Conflict and Sexual Violence in Armed Conflict agenda items, POC does not have a dedicated systematic monitoring and reporting mechanism associated with it, and the SC appears reluctant to create any other monitoring and reporting mechanisms. Information instead tends to be reported through the drafting of SG country reports to the SC and through contributions to the Informal Experts Group briefings.

**Commissions of Inquiry and Special Investigations**: Commissions of Inquiry and Special Investigations have been increasingly deployed to investigate the treatment of civilians and document human rights violations in situations of armed conflict. The investigation into the final months of the conflict in Sri Lanka that produced a lengthy and detailed report on violations by all sides, the Commission of Inquiry for Libya, Syria, and Central African Republic, as well as OHCHR investigations of violations in Côte d’Ivoire are all recent cases. Commissions of Inquiry can be mandated by the Human Rights Council or the Security Council and report to each accordingly.
The Human Rights Due Diligence Policy
The Secretary-General’s Human Rights Due Diligence Policy evolved as a result of the United Nations being increasingly called upon to provide support to non-UN security forces, including national military and police forces and non-UN peacekeeping forces. Such support takes a variety of forms: from technical assistance for capacity- and institution-building, to operational and logistical support for troops or police forces. A number of UN funds, programmes, as well as UN peacekeeping, special political missions and field support operations are engaged in such support. UN support to non-UN security forces takes place most often in situations where there is a history of human rights violations by those forces, or in conflict or post-conflict environments where rule of law and related institutions are weak or absent. It is in the interest of both the United Nations and of the security forces receiving support that they are strongly encouraged to respect the human rights standards to which they have voluntarily subscribed as international legal obligations. The UN is also obliged to avoid association with violations of human rights by security forces that it is called upon to support. Experience in recent years, notably in the DRC, has underlined that the UN must take deliberate actions to ensure its legitimacy and its credibility as a universal organization dedicated to the promotion and protection of human rights and to the respect of international law.

To provide clear guidance to all UN entities engaged in such support, the Secretary-General’s Policy Committee endorsed and issued the HRDDP on 13 July 2012. The policy sets out measures UN entities must take to exercise due diligence, within the scope of their mandates, to ensure that any support they provide to non-UN security forces is consistent with the Organization’s Purposes and Principles in the Charter and its obligations under international law. The HRDDP makes clear that UN support cannot be provided to non-UN security forces where there are substantial grounds for believing there is a real risk of the receiving entities committing grave violations of international humanitarian, human rights or refugee law, and where the relevant authorities fail to take the necessary corrective or mitigating measures. However, the policy’s intent is to promote engagement in favour of ensuring the respect of human rights, as opposed to a punitive intent. UN officials in country are encouraged to use the policy as an entry point for proactive engagement with armed forces, to influence behaviour, rather than as an excuse to withhold support post facto.

It requires UN entities to take a number of measures, in particular a requirement for UN entities to conduct a risk assessment prior to commencing such support in order to determine the risks in providing the support, including the risk of the recipient committing grave violations of international human rights, humanitarian or refugee law.

The policy defines what “support” is, but activities that are meant to prevent or address human rights violations, including engagement in work on Security Council resolutions related to children and armed conflict such as 1612, are excluded from the scope of the policy. Likewise, UNICEF worked in tandem with the SRSG CAAC office to ensure that Action Plans and other measures intended to bring an armed force into compliance with international standards under the UN Monitoring and Reporting Mechanism are exempt from the provisions of this policy.

2.4 Accountability Mechanisms
Action in the Security Council related to the secure protection of civilians can be taken through justice mechanisms, but also by use of punitive measure at the Council’s disposal to compel behaviour change by the parties to conflict.

While the Council has the power to refer cases to the International Criminal Court, it has rarely been willing to do so. In its history, the Council has only ever done so twice, referring Sudan over the case of Darfur in 2005 and Libya in 2011.

The use of sanctions regimes to protect civilians has been limited. The Security Council has created stronger links between its Children and Armed Conflict and Sexual Violence in Armed Conflict mechanisms and its sanctions bodies, but even these have not been used extensively in the sanctions regimes.
UNICEF engages with the Protection of Civilians agenda in several key ways, but it is important to note that it does so through a lens of child protection and the promotion of child rights. POC is not a substitute for child protection in the humanitarian sense and engagement in the agenda should be considered on a case by case basis.

**Annual Report of the Secretary-General on Protection of Civilians:** UNICEF (EMOPS/HPS) is a member of the headquarters inter-agency working group on POC, which reviews the report. UNICEF is able to propose thematic issues as well as influence the text of the country sections and recommendations of that report.

**SG Reports Country Reports:** Reports of the Secretary-General on particular country situations, particularly during mandate renewal, have offered an important opportunity for documenting protection of civilians concerns. UNICEF has an opportunity as part of the UNCT and Integrated Task Forces (EMOPS/HFSS) to input text on child protection issues and recommendations in the SG’s report. SG country reports sometimes have dedicated child protection sections, but many do not and so child rights issues must be presented under protection of civilians or human rights sections.

**Security Council Informal Expert Group on Protection of Civilians:** The informal expert group is an opportunity for the UN system to brief the Security Council prior to the renewal of mission mandates. As a member of the inter-agency working group on POC, UNICEF contributes to the preparation of the briefing paper, which is consolidated and presented by OCHA. The process for submitting information to the briefing is often done in country, frequently through the protection cluster, and through the inter-agency working group. UNICEF COs and EMOPS/HPS develop the UNICEF submission to the POC briefing note. UNICEF also attends the POC briefings to answer questions raised by Member States.

**Security Council Resolutions:** UNICEF is able to advocate directly with Member States for the inclusion of certain child protection provisions within Security Council resolutions. It is important to note that resolutions are also informed by SG reports and their recommendations and the briefing for the informal experts group on POC.

**Protection Risk Assessment:** UNICEF can advocate that the child rights issues are included within protection risks assessments. In some cases (Mali), it has been advocated that the UN conduct an assessment that is then used to develop different protection strategies: one for the protection cluster and a protection of civilians one for the mission. This could also potentially include a human rights strategy for the human right section of the mission.

**Protection of Civilians Strategies:** UNICEF Country Offices and Headquarters (EMOPS/HPS) can provide input into protection of civilians strategies drafted by peacekeeping missions. Some of these strategies have been integrated strategies (DRC), while others are for the mission only but in collaboration with the UNCT. The entry point for commenting on these strategies varies. Sometimes they are shared via the cluster and other times with each agency bilaterally or through a working group.

**Commissions of Inquiry:** UNICEF can provide information on grave violations to Commissions of Inquiry to help inform their reporting and analysis. Detailed case files, however, should not be shared without prior discussion with headquarters.

**Human Rights Due Diligence Policy:** UNICEF can play a proactive role by providing information to other members of the UNCT or mission on violations committed by the security forces to inform the aforementioned risk assessment. This is particularly relevant in countries that are part of the MRM.
3. Emerging Issues and Dilemmas in the Protection of Human Rights in Armed Conflict

The current attention to the protection of human rights in armed conflict has created a few dilemmas and challenges within the UN system. Some of these are related to scope, others to which organization will lead the efforts, while still others to the relationship between humanitarians and missions, particularly the military component, each of which is charged with protection activities.

3.1 Evolution of the Concept? Application of POC in Cote d’Ivoire and Libya

Disputes over election results in Cote d’Ivoire erupted in violence between the two presidential candidates: Laurent Gbagbo and Alassane Ouattara. With civilians coming under attack in many parts of the country, ECOWAS in March called on the UN Security Council to “strengthen the mandate of the United Nations’ Operation in [Ivory Coast], enabling the Mission to use all necessary means to protect life and property and to facilitate the immediate transfer of power to Mr. Alassane Ouattara.” Following Security Council Resolution 1975, which authorized the mission to protect civilians and prevent use of heavy weapons, UNOCI in collaboration with French forces launched attacks on Gbagbo’s heavy artillery and also attacked the hotel at which he was based. This joint military action followed an “urgent” request for help by UN Secretary General Ban Ki-moon in a letter to French President Nicolas Sarkozy. AFP reported that the letter from Ban stated that “It is urgent to launch necessary military operations to put out of action the heavy arms which have been used against the civilian population and the peacekeepers.”

In Libya, the protection of civilians in the conflict between pro-Qadafi forces and the insurgents was among the main objectives stated in SC Resolution 1973. In that Resolution, the SC gave member states the authority to use “all necessary measures” to defend civilians. The response was mainly restricted to the use of airpower to strike air, land and sea military assets, due to restrictions on foreign occupation of Libyan territory, but the resolution did leave open scope for other types of attack, including the use of ground forces. Airpower was initially used to drive back government forces as they advanced on Misrata and other cities contested by the insurgents in the east, but later in the campaign a wider range of targets was identified until in September NATO forces were essentially providing air support for the National Transitional Council, an action that was never sanctioned by the Security Council.

During the Security Council’s Open Debate on POC in May 2011, the application of the POC concept was criticized by some member states. Several said that the Council should apply the concept consistently, not just pick and choose the situations in which it would be relevant. The ability of a highly political body such as the Security Council to apply POC standards across all situations has always been a question. In general, it is also a challenge for the SC to address situations not on its formal agenda.

Other member states said that the SC should not use POC as a pretext for political action, such as regime change. This criticism was echoed in several periodicals later in the year. In an editorial critical of the election process in Cote d’Ivoire, Thabo Mbeki wrote that “The United Nations elected to abandon its neutrality as a peacemaker, deciding to be a partisan belligerent in the Ivorian conflict” and had failed to protect civilians. He went on to write that instead UNOCI had allowed the Forces Nouvelle to advance unhindered from the north into the south and also did not act to protect civilians.

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in Duékoué, where it is believed at least 800 people were killed. Another writer also noted that in Côte d’Ivoire and Libya the UN had enabled rebels to effect regime change.  

It remains to be seen to what extent these developments will impact the overall POC agenda and its future application.

3.2 Military Action by Robust Peacekeeping Missions

The Security Council has increasing mandated peacekeeping mission to take more robust action. These missions have been directed to prevent action by parties to conflict. For example, in Mali, MINUSMA was authorized to take the necessary action to prevent armed groups from returning to cities in northern Mali. This meant that the mission could come into direct conflict with these groups, something which did happen on several occasions in 2013, including through joint operations with the French military mission Serval. Perhaps the most significant example, however, was the creation in 2013 of the Force Intervention Brigade (FIB) in MONUSCO: a type of rapid response force that include attack helicopters and special forces units. The mission of FIB is to carry out targeted operations to “neutralize and disarm” the 23 March Movement (M23), as well as other Congolese rebels and foreign armed groups in eastern DRC.

These mandates raise questions among humanitarian and other protection actors about the extent to which they can cooperate openly with peacekeeping missions. It is felt by some that these missions are clearly parties to the conflict and therefore some distance between them and the protection actors must be maintained.

3.3 Neutrality

Missions have also been assigned the role of operating in conjunction with national armed forces. In the Mali, the MINUSMA mandate was such that the mission would operate in support of the Malian armed forces. In the DRC, the mission also undertakes joint operations with the FARDC. This has had implications regarding the protection of people from human rights violations in two ways. First, the UN force be perceived as supporting one side. This cooperation also creates a dilemma when the government force is the one committing violations. How does the mission then protect civilians from these forces?

This issue has been addressed in a number of ways. The Secretary-General issued the Human Rights Due Diligence Policy which requires any UN organization to undertake an assessment of the human rights record of any national security organization it wishes to support. As described above, if that organization, such as a certain battalion of an army, is found to have committed grave rights violations, the UN is not permitted to engage with it and should inform the government of this fact and the reason behind it. This policy is intended both to prevent the UN from being complicit in any violation but also to press those units that have a poor record to take remedial action.

Another way that the dilemma has been addressed is through clear instructions from the Security Council. In South Sudan in late 2013, violence that began as a dispute between rival political faction and the security forces that supported them began develop ethnic undertones, pitting the majority Dinka and the largest minority group, the Nuer, against one another. Nuer militia overran the UNMISS base in Akobo, killing UN peacekeepers and reportedly over a dozen Dinka civilians who had sought refuge there. Reports suggested that this attack may have been in revenge for an earlier killing of Nuer in the capital of Juba. More and more civilians fled to UN bases to seek refuge and protection from this spiralling violence. In response, the Security Council met to discuss the strengthening of UNMISS. Among the actions it authorized, the Security Council made it clear that

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UNMISS was to protect civilians from all threats, no matter their origin. This line implied that the provision included against elements of the South Sudanese military and its allies.

3.4 Maintaining Humanitarian Space: POC and Protection
One emerging challenge related to the broader definition is the overlap of the POC concept with that of protection as it is understood by humanitarian agencies, such as UNHCR, OHCHR and UNICEF. This is particularly the case when going into issues such as protective environment. Protection of civilians and protection as a humanitarian action should not be conflated: the latter is used in humanitarian contexts, but during both armed conflict and natural disasters. It is also used in the development phase, in the case of UNICEF to describe those programmes that address violence, exploitation and abuse, often through juvenile justice/rule of law, anti-trafficking, and other programme areas. The coordination of protection during crises is managed through the protection cluster or other mechanisms that bring together the main UN protection bodies, governments and NGOs. The aforementioned note on the POC concept acknowledges the division, emphasizing that missions should not see themselves as the lead or even be active in all aspects of POC.

It is critical to distinguish between humanitarian action, i.e. emergency relief conducted according to humanitarian principles, and other stabilization aid or other forms of assistance that is non-humanitarian. The blurring of these different forms of assistance can create risks for UNICEF and others delivering humanitarian aid, as the impartiality of humanitarian actors is degraded, and their acceptability to all parties to conflict is reduced. Challenges do emerge then when a peacekeeping mission or UN authorized force is also by its actions or outright a party to the conflict.

Protection or POC: The Case of Chad
Mission drawdown in Chad brought to the fore the tension between definitions. At the beginning of 2011, MINURCAT, the UN mission to Chad and northern Central African Republic, withdrew from the country. With its departure, the Policy Committee of the Secretary-General requested that the RC/HC and UN Country Team prepare a comprehensive strategy to support the government in the protection of civilians. That plan was developed through collaboration between the UN Country Team in Chad and UN HQ and went into effect in July 2011 for one year. For the first time, the protection of civilians was transferred from a peacekeeping mission to a UN Country Team in support of a government’s security sector. While the drafters sought to manage expectations and keep the terms of reference within the capabilities of the UNCT, it did raise questions about why a POC strategy needed to be inherited by the UNCT instead of reverting to a protection programme as usually happens upon the withdrawal of a mission.14

14 In May 2011, the Secretary-General also submitted his report on protection of civilians in Chad, the first time a country-specific report examined POC.