E.MA Master Thesis

Protection of Civilians in the Context of UN Peacekeeping: Lessons Learned from South Sudan

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Abstract

The main questions this study aims to answer are: Firstly, to what extent have lessons learned from the protection of civilians in the past been implemented in the case of United Nations Mission in South Sudan (UNMISS); and secondly, what are the challenges related to civilian protection that UN peacekeeping operations are facing in general, and in particular - the UNMISS. The primary objective is to analyse the efficiency of modern UN peacekeeping operations in protecting civilians and identify gaps and tensions in the protection agenda. To that end, the study defines peacekeeping and compares traditional first-generation peacekeeping to modern multidimensional peacekeeping operations. Furthermore, the study discusses the reform in peacekeeping and evolution of the concept of civilian protection. The final focus of this study is to analyse the effectiveness of protection provided to the most vulnerable groups (women, children, refugees and IDPs) from both legal and practical aspects. After assessing the effectiveness of civilian protection in the case of UNMISS, the conclusion presents a look ahead at what are some of the remaining challenges that need to be address and provides suggestions on how to improve the effectiveness of civilian protection.

Table of Acronyms

AU	African Union
C34	General Assembly's Special Committee on Peacekeeping Operations
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPA	Comprehensive Peace Agreement
DDR	Disarmament, demobilisation and reintegration
DPKO	Department of Peacekeeping Operations
DRC	Democratic Republic of Congo
ECOWAS	Economic Community of West African States
EU	European Union
GA	General Assembly
GBV	Gender-based violence
GOS	Government of Sudan
GOSS	Government of South Sudan
HIV	Human immunodeficiency virus
HRD	Human Rights Division
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
IDPs	Internally displaced persons
IHL	International Humanitarian Law
IOM	International Organization for Migration
IPA	International Peace Academy
MONUC/MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the

	Congo
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organisation
OAU	Organisation of African Unity
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organisation for Security and Cooperation in Europe
PCCs	Police contributing countries
PKO	Peacekeeping operation
POC	Protection of civilians
PSO	Peace support operation
R2P	Responsibility to protect
RoL	Rule of law
SAF	Sudan Armed Forces
SC	Security Council
SG	Secretary-General
SGBV	Sexual and gender-based violence
SPLA	Sudanese People’s Liberation Army
SPLM	Sudanese People's Liberation Movement
SPLM-N	Sudanese People’s Liberation Movement-North
SRSG	Special Representative of the Secretary General
SSPS	South Sudan Police Service
SSR	Security sector reform

TCCs	Troop contributing countries
TCSS	Transitional Constitution of Republic of South Sudan
UN	United Nations
UNAMID	UN/AU Hybrid Mission in Darfur
UNAMIS	UN Advance Mission in Sudan
UNAMSIL	United Nations Mission in Sierra Leone
UNHCR	UN High Commissioner for Refugees
UNICEF	UN Children's Fund
UNMIS	United Nations Mission in Sudan
UNMISS	United Nations Mission in South Sudan

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Chapter 3. Case Study on South Sudan: Protection of Civilians in the Context of UNMIS and UNMISS

Introduction

This study will elaborate on the topic of protection of civilians in the context of United Nations (UN) peacekeeping. In that respect the ongoing United Nations Mission in South Sudan (UNMISS) will be used as a case study. The aim of this study is to analyse the efficiency of modern UN peacekeeping operations in protecting civilians and identify gaps and challenges that prevent peacekeepers from performing their tasks effectively. The case of South Sudan is unique due to the fact that after independence the United Nations (UN) got a second chance for its peacekeeping and the possibility to apply lessons learned from the past when it established a new mission. The study will go further to see to what extent lessons learned have been implemented in the field. Particular attention will be given to the most vulnerable groups (women, children, internally displaced persons (IDPs) and refugees) with the aim of evaluating their situation in terms of the protection received both from legal and practical aspects.

The concept of protection of civilians (POC) is used by various international communities of actors, within or outside of the UN system. The main problem is a lack of understating about what protection means and what is expected from peacekeepers in the field. The POC concept is based on two main documents: DPKO/DFS, *United Nations Peacekeeping Operations, Principles and Guidelines,* 2008 (Capstone doctrine) and DPKO/DFS, *Operational Concept on the Protection of Civilian in United Nations Peacekeeping Operations*, 2010 (Concept note). Building on the Capstone doctrine the Concept note adopts a three-tiered approach to protection: a) protection through political process (encompassing political engagement, advocacy and assistance by the UN mission to the effective implementation of a peace agreement or other political process to resolve the conflict); b) protection from physical violence (involving actions to prevent, deter, and respond to situations in which civilians are under the threat of physical violence); and c) establishing a protective environment (that enhances the safety and supports the rights of civilians through promoting legal protections, facilitating humanitarian assistance, and supporting national institutions).[1] This three-tiered

[1] DPKO/DFS, 2010 (c), para. 2.

approach has been used in the research to conceptualise the role of UN peace operations in terms of the POC.

The methodology used during the research consists of collection of data, mapping, and conducting series of interviews with different actors in the field during my trip to South Sudan. I conducted semi-structured interviews with open-ended questions upon which I structured my final chapter dedicated to South Sudan. My objective was to compare their views and trace the evolution of the POC mandate from the establishment of the first United Nations Mission in Sudan (UNMIS) in 2005, through the independence and establishment of the new United Nations Mission in South Sudan on 9 July 2011, until the current moment, one year after the independence. Most of my interviewees have experience from both missions (UNMIS and UNMISS) and were able to give me an overview of the lessons learning process and its influence on evolution of the POC mandate. The primary data I used for the case study is mainly drawn from the interviews, but also it also relies on various UN documents, reports, articles, internet sources and political maps of Sudan and South Sudan.

The thesis is organised into three chapters. The first chapter deals with the emergence and evolution of peacekeeping, gives definitions and generations of peacekeeping and explains the reform in UN peacekeeping, which started after the failure of the UN to protect civilians in Somalia, Rwanda and the former Yugoslavia. The publication of the Brahimi Report in 2000 marked a beginning of this reform. Focusing on best practices from past experience the report identified shortcomings in the UN's ability to provide protection to civilians, especially in defining the mission and providing adequate resources. With the issuance of the Capstone doctrine the UN has published its first doctrine for peacekeeping. The doctrine argues that the principles of *consent*, *impartiality* and *non-use of force* except in self-defence and the defence of the mandate have "traditionally served and continue to set United Nations peacekeeping operations apart as a tool for maintaining international peace and security".[2]

The increased attention given to the protection of civilians led to the Security Council introducing a vocabulary of robustness in its resolutions. Robust peacekeeping (what used to be the "grey area" of peacekeeping during 1990s) allows peacekeepers to use all 'necessary means to protect civilians when under imminent threat of physical violence' but only as a measure of

[2] DPKO and DFS, p. 31

last resort. As a result of the Brahimi Report, most multidimensional UN peace operations are mandated nowadays to protect civilians "under imminent threat of physical violence", the peacekeeping became more oriented towards peacebuilding and the role of civilian components of peacekeeping operations became more dominant. In terms of the POC it meant a big step further as the protection has come to be a central tasks that gives significance to the peacekeeping practice.

Considerable progress has been achieved since the first landmark resolution 1265, and currently there are twelve peacekeeping mission expressly mandated to protect civilians. The resolution established "the deliberate targeting of civilian populations or other protected persons and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict" as a "threat to international peace and security"[3]—the legal trigger for a UN response.[4] Although the Security Council has increased the frequency with its civilian protection mandates it has not issued clear guidance as to what this entails. In the absence of clear guidance, actors are left to make decisions on an *ad hoc* basis, without the benefits of past lessons learned and best practices.[5] This lack of conceptual clarity is exacerbated by the complexity of peacekeeping mandates, many of which incorporate a huge range of difficult and resource-intensive responsibilities alongside civilian protection.[6] If organisations cannot clearly define what protection means, they have little chance of achieving it. This suggests that the major challenge for the foreseeable future will revolve around how best to achieve protection in concrete contexts. This will require organisations to improve in two areas in particular: devising benchmarks and key indicators of progress, and generating actionable lessons learned and best practices.[7]

The second chapter deals with the protection of civilians as a cross-cutting issue in UN peacekeeping. It explains the strategic and normative frameworks for the protection of civilians and identifies gaps and tensions in the protection agenda. The biggest challenge that UN peacekeeping is facing is a gap between expectations and capabilities. Although military peacekeepers have the theoretical capacity to provide physical security more often than not they

[3] Idem, para. 5
[4] Holt & Berkman, 2006, p. 25.
[5] Bellamy & Williams, 2010, pp. 151.
[6] Weir, 2010, p. 2.
[7] Williams, 2010 (a), p. 50

are deployed without the numbers, equipment or expertise necessary to complete a civilian protection mandate.[8] The Capstone doctrine identified 'legitimacy' and 'credibility' as key success factors for UN peacekeeping operations. The ability and willingness of UN peacekeepers to protect civilians is critical to achieving and maintaining both the legitimacy and credibility of the mission.[9]

After elaborating on policy and strategy dilemmas and the current mission's activities related to the protection of civilians, the study focuses on the thematic POC mandates. The UNSC has called for the inclusion of protection issues as they relate to women and children in all peace processes and the mainstreaming of these thematic mandates across the UN system, including peacekeeping.[10] There is no doubt that peace and security issues, as they impact women and children, are directly linked to protection issues, and that protection of civilians, and of women and girls in particular, is a critical requirement for achieving a higher level of security.[11] In the past two decades, rape and other sexual violence have been used as systematic weapons of war. Therefore, peacekeeping operations must target this vicious phenomenon through political pressure to get host governments to recognise, investigate and punish such predatory behaviour, laying out consequences for failure to do so. The role of the human rights components is to promote accountability through direct monitoring and investigation of human right abuses and by organising victim and witness protection programmes in conjunction with civil society organizations to facilitate the prosecution of human rights abusers.

In addition to that, the study stresses the importance of the coordination in the field between peacekeepers and humanitarians. The work of peacekeepers and humanitarians is closely interrelated, particularly where protection is concerned. Peacekeepers often provide security in order to enable the free flow of humanitarian assistance, as well as direct logistical and security assistance to humanitarian agencies that ask them for it.[12] In regard to that, the POC is of particular importance to both refugees and IDPs, especially in ensuring the civil and humanitarian nature of camps and settlements, and assisting in finding durable solutions through return and reintegration activities. For that reason, the peacekeeping mandates should make

[8] Bellamy & Williams, 2010, p. 155.
[9] International Forum for the Challenges of Peace Operations, 2010, p. 382.
[10] DPKO/DFS, 2010 (c), para. 13.
[11] Pearson Peacekeeping Center, 2010, p. 8.
[12] Weir, 2010, p. 23.

explicit reference to displaced populations in order to ensure that their needs are sufficiently prioritised.[13]

The third chapter discusses the protection of civilians in the context of two UN missions (UNMIS and UNMISS) that have operated on the territory of South/Southern Sudan from 2005 until present. The chapter starts by giving the background to the conflict and continues analysing external and internal threats to the security in South Sudan. Furthermore, it explains the roots of the North – South conflict related to the border areas and intercommunity ethnic tensions and violence in Jonglei State. The UNMIS was initially designed and deployed to observe and monitor the Comprehensive Peace Agreement (CPA), not to provide physical protection to civilians. The UNMIS did not have a strong mandate to intervene militarily in Sudan. Rather, the mission was deployed and equipped as a lightly armed peacekeeping operation under Chapter VI, with troops sent primarily to protect UN staff and property, as well as to facilitate the delivery of humanitarian assistance. [14] After the violence that erupted in Abyei in May 2008 and UNMIS's inability to react it became clear that the mission did not have enough resources to protect civilians.

South Sudan's independence on 9 July 2011 brought an end to UNMIS. This opened a new opportunity for the UN in South Sudan, to take lessons from the previous mission and build on successes in a new capacity. The Security Council authorised the UNMISS to act under Chapter VII of the UN Charter and placed a central focus of the mission on the civilian protection. This represented a chance for the UN to revitalise the image of peacekeeping in South Sudan. The Chapter VII mandate gives the authority to UNMISS to use all necessary means to protect civilians. Nevertheless, the limits of the current mandate are related to the problem that has been seen in the past – the gap between capacities and expectations of the mandate. Even at full strength, UNMISS will have only 7,000 troops that will never be able to perform physical protection in situations of armed conflict.[15] The biggest challenges that UNMISS is facing in the field are related to the nonexistent infrastructure in the country and limited resources of the

[13] UNHCR, September 2010, p. 27

[14] Refugees International, Sudan: UNMIS Must Be More Proactive in Protecting Civilians, available at http://www.refintl.org/policy/field-report/sudan-unmis-must-be-more-proactive-protecting-civilians (consulted on 25 June 2012).

[15] Interview with Giovanni Bosco, Head of UN OCHA South Sudan.

peacekeepers.[16]

In addition to that, other huge problem areas are administration of justice, criminal justice system and security agencies. The formal system has a serious deficit in capacities, knowledge and skills. The absence of any accountability mechanism has undoubtedly contributed to the increasingly brutal cycles of violence. However, South Sudan's domestic legislation contains strong provisions which could be used to investigate and prosecute the most serious crimes, including murder, child abduction, deprivation of liberty, rape and other forms of sexual violence, hate speech and persecution on the basis of ethnicity. Besides, the Republic of South Sudan has announced its intention to ratify key international human rights instruments. [17]

After comparing the two existing legal frameworks (statutory vs. customary law) in South Sudan, the study spotlights on the protection of vulnerable groups with particular attention on three following areas: women/girls and gender based violence (GVB), children affected by conflict, and situation of refugees, returnees and IDPs. The Study concludes by giving a brief overview on the three chapters, and also recommendations on how to improve the remaining gaps in challenges in the civilian protection. The conclusion ends with a new mandate and high hopes for the future of South Sudan: "Underscoring its commitment to seeing the world newest State become prosperous and living side by side with Sudan in peace and security, on 5 July 2012 the Security Council extended the mandate of the United Nations Mission in South Sudan (UNMISS) for one year, through 15 July. Unanimously adopting resolution 2057 (2012), almost one year to the day of the first anniversary of South Sudan's declaration of independence, the Council kept the mandate unchanged, underlining the priorities of protecting civilians through a strategy entailing early warning and response, and, pending the establishment of formal monitoring mechanisms, reporting on any flows of personnel, arms and related material across the border with Sudan".[18]

[16] Interview with Maj Gen Moses Obi, Force Commander, UNMISS.
[17] UNMISS, 25 June 2012, p. 28 – 30.
[18] SC/10701, 5 July 2012, p. 1.

Chapter 1

1. United Nations and the Changing Nature of Peacekeeping

1.1 The emergence and evolution of peacekeeping

Released from the constraints of the Cold War, the United Nations was finally able to fulfill its role as the guarantor of international peace and security. The United Nations peacekeeping became the most widely employed means of containing violent conflict and contributing towards its ultimate resolution in the post-Cold War world.[19]

Since the inception of UN Peacekeeping missions, three core principles have guided the operations of all missions. They are: *consent* of the parties to the presence of peacekeepers, *impartiality* in implementation of the peacekeeping mandate, and a very restricted *use of force*. For some time the use of force was limited to self-defense. This principle has since evolved to encompass not only self-defence, but defence of civilian non-combatants and enforcement (defence) of the UN mandate.[20] The measures to be taken by the UN to achieve this purpose are set out in Chapters VI and VII of the Charter. Chapter VI deals with the pacific settlement of disputes. If the peaceful means outlined in Chapter VI are insufficient and the conflict threatens international peace and security, then Chapter VII is resorted to. Chapter VII allows for the Security Council to undertake enforcement action to maintain and restore peace and security.[21]

The UN helped keep the peace by serving as an independent and objective party that had the putative will of the international community behind it. Early UN missions occurred in the global context of the Cold War between NATO and Warsaw Pact countries and were relatively simple affairs mainly limited to helping keep a pre-established peace once ceasefires had already been declared or peace treaties had been signed. They included tasks such as observation and monitoring, confidence building activities, and support to both the existing peace process and political resolution of the underlying issues causing the conflict.[22]

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[19] Duffey, 1998, p. 1
[20] Swope, 2011, p -5.
[21] Duffey, 1998, p. 4
[22] Swope, 2011, pp. 5 – 6.

After several decades, peacekeeping activities took on a greater diversity and began to involve larger and more powerful forces, including greater numbers of nonmilitary organisations. "Peace Support Operations" (PSO) describes the operations and activities of all civil and military organisations deployed to restore peace and/or relieve human suffering. They may include diplomatic actions, traditional peacekeeping, and the more forceful military actions required to establish peaceful conditions.[23]

1.1.1 Definitions and Generations of Peacekeeping

The United Nations suggests that peacekeeping was born of necessity, largely improvised and, moreover, a practical response to a problem requiring immediate action. Because of its *ad hoc* birth and lack of a constitutional base, there is no consensual definition of peacekeeping. However, a widely-used working definition is offered by the International Peace Academy (IPA): peacekeeping is *"the prevention, containment, moderation and termination of hostilities between or within states, through the medium of a peaceful third party intervention organised and directed internationally, using multinational forces of soldiers, police and civilians to restore and maintain peace."*[24]

The most recent attempt by UN to define the peacekeeping can be found in what was initially referred to as *Capstone Doctrine* (2008). Instead of specifying what peace operations were representing, the Department of Peacekeeping Operations (DPKO) simply identified "peacekeeping" as one of five "peace and security activities":

- *Conflict prevention* including structural and diplomatic measures to prevent disputes from developing into violent conflict;
- *Peacekeeping* action undertaken to preserve peace, however fragile, where fighting has been halted and to assist in implementing agreements achieved by the peacemakers;
- *Peacemaking* the use of military, police and other measures to enforce the will of the UN Security Council;
- *Peace enforcement* the use of military, policy and civilian personnel to lay the foundations of sustainable peace;

[23] Mackinlay, 1996, p. 2.
[24] Duffey, 1998, p. 5.

- *Peacebuilding* "a range of measures aimed at reducing the risk of lapsing or relapsing into conflict"[25]

The proliferation of peacekeeping after the end of the Cold War had brought a new categorization that divides peacekeeping into two types*: traditional* or *first-generation,* on the one hand, and *new* or *multidimensional peacekeeping (*the *2nd and 3rd generation of peacekeeping)* on the other. The UN peace operations had to be adapted to different scenarios because they could not fit into classical scheme of the so-called *first-generation of peacekeeping,* associated mostly with observation missions, whose composition and functions were essentially military and whose objective was to ensure peace or ceasefire in order to gain a necessary time to negotiate pacific dispute arrangements.[26]

In *the second generation* multifunctional operations, the UN became involved in ending internal conflicts through multidimensional processes, which included activities such as: separation of combatants, disarmament of irregular forces, assistance with reintegration into civil society, establishment of new policing systems; and monitoring of elections for new governments. *The third generation* operations have been precipitated by the resurgence of more primordial animosities which had been suppressed, rather than addressed, during the Cold War freeze, and which led to conflicts marked by the most despicable abuses of human rights in the midst of anarchic conditions. The efforts of such peacekeeping missions have focused on the more limited objective of providing humanitarian relief, rather than brokering a comprehensive settlement.[27]

1. 2 A Decade of Reform: The Brahimi Report and Beyond

The nature of UN peacekeeping dramatically changed in the 1990s after the fall of the Soviet Union and the end of a bipolar world where the greatest threat to international security was major interstate war. In the new era of intrastate conflicts that followed, such as those in Somalia, Rwanda and the former Yugoslavia, peace support operations mandated by the UN

[25] DPKO/DFS, 2008, pp. 17 – 18.
[26] Durall Gifra, 2011, p. 5.
[27] Malan, Mark, Peacekeeping in the New Millennium: Towards "Fourth Generation "Peace Operations?, (available at http://www.iss.co.za/pubs/asr/7no3/Malan.html, (last accessed on 6 May 2012).

Security Council were widely viewed as failures for their inability to maintain peace, enforce the UN mandate, and protect civilians.[28] During these "uncivil wars" of the 1990s, civilians bore the impact of the violence. Wars between distinguishable, uniformed armies facing off over national boundaries were the exception rather than the rule. Most warfare, instead, took place within states, often among armed groups that operated beyond the control of governments. Conflicts spilled across borders to impact entire regions.[29]

In the case of Rwanda an existing UN force stood by while over 800,000 people were killed in around 100 days during the 1994 genocide. Throughout the Bosnian war, UN forces were ineffective in enforcing both UN Security Council resolutions and maintaining agreed upon ceasefires by the combatants. And despite the UN Security Council designation of Srebrenica as a "safe area," and the deployment of a battalion of Dutch soldiers to the city, the UN failed to protect the inhabitants, who were overrun in 1995 by Serb military forces who then massacred approximately 7000 males of military age.[30]

The UN Security Council has long tasked particular peace operations with achieving specific protection goals, although it was rare for civilian protection to be explicitly considered the central objective of the mission. Indeed, it was not until the publication of the Brahimi Report in 2000 that it became unofficial UN doctrine that peacekeepers who witnessed violence against civilians should "be presumed to be authorised to stop it, within their means".[31] The report identified serious shortcomings in the UN's ability to "confront the lingering forces of war and violence. Tackling such change and solving operational problems — from planning new missions to recruiting capable forces, deploying them rapidly and sustaining them in the field — are vital for the successful conduct of peace operations, a tool of international security policy that is likely to see heavy use for the indefinite future. The challenge to the Panel was clear: to identify and assess the weaknesses of the United Nations' best known tool for stabilising recent zones of conflict, and to offer practical recommendations to remedy those weaknesses.[32]

The foundation of reform is a willingness on the part of the Security Council, the Secretariat, and the General Assembly to follow through on change in two key areas: defining

[28] Swope, 2011 pp. 5 – 7.
[29] Holt & Berkman, 2006, pp. 16 -17.
[30] Swope, 2011, p. 6.
[31] Williams, 2010 (a), p. 11.
[32] Durch et al, 2003. pp. 29 – 34.

the mission and providing adequate resources. In doing so, the result is a clear, credible, and achievable mandate along with the possibility of a rapid deployment of effective forces, which means peacekeeper are present in sufficient numbers with the right equipment, proper training, excellent leadership, and a good operational strategy that is versatile enough to respond to events on the ground. All this together allows for the implementation of the mandate, and it's enforcement if needed, whether that means simply maintaining the peace or engaging in state-building and reconstruction activities, to the protection of civilians (POC). By achieving these two things, the UN may call its intervention a success. With success come greater benefits for the host population and increased standing in the international community and more credibility for the UN as a force for good.[33]

1.2.1 Building on Brahimi: From the Capstone Doctrine to the New Horizon Initiative

The initial impulse of the Brahimi Report was followed up by other documents like *Capstone Doctrine* (2008) and *the New Horizon Report* (2009) which closed the long chapter of inputs and efforts given in order to reach a consensus on a general doctrine that would establish the principles and methods of the UN peace operations and their adjustment to the current situation and challenges, together with defining their role in humanitarian crises.[34]

While not a doctrine as such The Brahimi Report contributed in filling this need focusing on best practices from past experience. However while guidance was available from disparate sources on specific dimensions of peace operations, a unifying codification of doctrine was still lacking. With the issuance in February 2008 of the UN Capstone document (*The United Nations Peacekeeping Operations: Principles and Guidelines*) which represents the highest level international source of legitimacy for such operations, the UN has published its first doctrine for peacekeeping that embraces widening mandates in turning internal conflicts into sustainable peace, including support to related political processes and the protection of civilians.[35] "Any subordinate directives, guidelines, standard operating procedures, manuals and training materials issued by DPKO/DFS should conform to the principles and concepts referred to in this guidance

[33] Swope, 2011, p. 26.
[34] Durall Gifra, 2011, p. 13.
[35] Troeller, 2008, p. 4

document".[36]

1.2.2 Development of Peacekeeping Principles and Guidelines: The Capstone Doctrine

On the issue of peacekeeping principles, the Capstone doctrine continues with Brahimi's general support of the traditional principles. It argues that the principles of *consent*, *impartiality* and *non-use of force* except in self-defense and defense of the mandate have "traditionally served and continue to set United Nations peacekeeping operations apart as a tool for maintaining international peace and security". [37] The Capstone doctrine also goes into much more detail and uses much more space in discussing the principles than does Brahimi.

The *consent* from the "main parties to the conflict" is necessary if the UN is to avoid being dragged into the conflict. At the same time, this does not necessarily mean that "local consent" will be secured, and peacekeeping operations (PKOs) must have the skills and will to confront breakdowns in local consent (including through the use of force). It is unclear, however, if this distinction between the consent of main parties and local parties is as clear in the field as it is in the doctrine. The armed groups are often multifaceted and complex, and it is not always possible to act against the unwelcome actions of a group at the local level if they are closely linked to a major party whose consent is required.

In regards to the principle of *impartiality*, the Capstone doctrine builds up closely on Brahimi, which referred to the danger of confusing this concept with neutrality.[38] It defines impartiality as "*without favour or prejudice to any party*" or as "*even-handedness*". [39] Just as with needing consent of the parities for cooperation and good relations, "a peacekeeping operation must scrupulously avoid activities that might compromise its image of impartiality." Doing so puts both the mission and peacekeepers at risk. [40]

As with the issue of impartiality, the third principle of *non-use of force* has evolved due to the changing nature of missions. Originally, force was supposed to be used only for self-defense, however, it has expanded now to include defense of the mandate, as the principle of the

[36] DPKO and DFS, p. 9
[37] DPKO and DFS, p. 31
[38] Christensen, 2010, pp. 33 – 35.
[39] UN DPKO and DFS, p. 33
[40] UN DPKO and DFS, p. 33

non-use of force had been keeping peacekeeping operations from effectively carrying out its duties when resistance attempts by armed spoilers arose to challenge or impede peacekeepers. Since UN missions are deployed in situations of instability, to include non-party militias and criminal gangs as well as others armed groups, there may be instances in which spoilers seek to undermine the peace or threaten civilians.[41]

1.2.3 Lessons from Past Experiences: Necessity of Robust Peacekeeping Forces

After the Brahimi Report the mandates of new operations increasingly included the idea that UN peacekeepers must be given the political and operational means to successfully implement their mandate. In particular, the simultaneous attention given to the protection of civilians in peace missions led the Security Council to introduce a vocabulary of robustness in its resolutions. In the majority of the mandates in the last decade, resolutions have authorised peacekeepers to use all 'necessary means to protect civilians when under imminent threat of physical violence'. In these various cases, robustness is understood to give an operation a degree of credibility, in particular vis-a`-vis 'spoilers'. Robustness is designed to allow a peacekeeping force to protect itself, to provide freedom of manoeuvre, and to prevent situations where the implementation of the mandate, or more broadly the peace process, is 'taken hostage' by spoilers.

Robust peacekeeping was at the heart of what, in the early 1990s, was referred as the "grey area" of peacekeeping, an illdefined activity situated between traditional peacekeeping and peace enforcement. The UN and its member states have faced great difficulty in handling this grey area, in terms of both doctrine and operations. At the core of the matter is the use of force by the military in situations that are not wars. This implies a doctrinal and cultural shift that the UN, states, and their military institutions have long resisted. The 'Principles and Guidelines' clarifies the distinction as follows[42]: *"Robust peacekeeping should not be confused with peace enforcement, as envisaged under Chapter VII of the Charter. Robust peacekeeping involves the use of force at the tactical level with the authorization of the Security Council and consent of the host nation and/or the main parties to the conflict. By contrast, peace enforcement does not*

[41] Swope, p. 50
[42] Tardy, 2011, pp. 152 – 153.

require the consent of the main parties and may involve the use of military force at the strategic or international level, which is normally prohibited for Member States under Article 2(4) of the Charter, unless authorised by the Security Council."[43]

Regardless of the type of force used, the manual maintains that it only be used as a measure of last resort after all other means have been exhausted. And it should be remembered, according to the manual, that the ultimate aim of the use of force "is to influence and deter spoilers working against the peace process or seeking to harm civilians; and not to seek their military defeat."[44] It carries a meaning that goes beyond the framework of a given operation and touches on international politics and the principles that regulate it. In this context, peacekeeping practices have evolved over the last two decades in a somewhat improvised manner, and with little reflection on the broad implications of these changing practices. Robust peacekeeping is presented as a response to standing weaknesses of UN operations, and, although it may well be part of the solution in some cases, it also reflects the ambiguities of UN and state policies in the management of international and intrastate crises. Moreover, it confirms the inherent difficulty in reconciling UN multilateralism and politics with coercion.[45]

1.2.4 Evolution in Doctrine: Peacekeepers as "Early Peacebuilders"

When discussing the "core business" of UN peacekeeping operations, the manual goes to great lengths to make clear that it involves more than just the tasks assigned to traditional missions (observation, monitoring and reporting, supervision and verification of ceasefires, interposition and confidence building measures). It repeatedly stresses that PSOs have become more complex and "multi-dimensional," involving a mix of military, police, and civilian capabilities to support tasks along the spectrum from peace enforcement to peacebuilding in a wide variety of scenarios from existing conflict to fragile peace. [46] Within this context, the "core functions" of UN PSO missions are to:

- Create a secure and stable environment while strengthening the State's ability to provide

[43] DPKO/DFS, 2008, p. 19.
[44] Swope, 2011, p. 51.
[45] Tardy, 2011, p. 154
[46] Swope, 2011, pp. 44 – 51.

security, with full respect for the rule of law and human rights;

- Facilitate the political process by promoting dialogue and reconciliation and supporting the establishment of legitimate and effective institutions of governance;
- Provide a framework for ensuring that all United Nations and other international actors pursue their activities at the country-level in a coherent and coordinated manner.[47]

Furthermore, as result of the Brahimi Report, most multi-dimensional United Nations peacekeeping operations are now mandated by the Security Council to protect civilians under "imminent threat of physical violence". While past keeping missions were about maintaining and sustaining the peace through low impact measures that don't necessarily address the drivers of conflict, new missions are also charged with "peacebuilding" activities designed to make the peace sustainable.[48]

The peacekeeping needs to be understood as an integral part of a broader response to challenges of postconflict recovery. In the early stages of many postconflict situations, humanitarian crisis persists or unfolds, and protracted armed violence continues despite a formal cessation of hostilities. In such cases, the constructive management of the delicate interface between early humanitarian and political action, peacekeeping, and peacebuilding has become a fundamental issue of global crisis response. Thus, peacekeeping actors need to improve their ability to operate in and contribute to peacebuilding action.

The growing interface between peacekeeping and peacebuilding also leads to a higher demand for civilian expertise. The continued existence of large zones of human suffering, where states are unable to provide security, shelter, and health requires a global system of conflict management, peacekeeping, and peacebuilding.[49] As UN peacekeeping missions became more peacebuilding orientated, the role of civilians became more central, their functions increasing in range and their role shifting from a peripheral support role, to the core of contemporary missions. Civilians now represent approximately 20% of all UN peacekeepers. Standard civilian components in most UN peacekeeping operations include political affairs, civil affairs, public information, policy and planning, human rights and gender. In addition, and depending on the

[47] DPKO/DFS, 2008, p. 23.
[48] Swope, 2011, p. 45.
[49] Tanner, Fred, Addressing the perils of peace operations: toward a global peacekeeping system, available at http://findarticles.com/p/articles/mi_7055/is_2_16/ai_n55407198/pg_3/?tag=content;col1, (consulted on 15 May 2012).

mandate, peacekeeping operations may also include protection of civilians, child protection, humanitarian liaison, rule of law (RoL), electoral affairs, disarmament, demobilization and reintegration (DDR) and security-sector reform (SSR).[50]

1.2.5 Towards a New Agenda: Partnering for Peace

The latest chapter of the reform efforts, continuing the work begun with the Brahimi Report, is the so-called *New Horizon Process*, based on a non-paper, which was issued by the DPKO and the DFS of the UN Secretariat in 2009.[51] Among the goals of the New Horizon Initiative is to "renew" the global partnership for UN peacekeeping among the Secretariat, members of the SC, GA, contributors of personnel and financial resources, and every other stakeholder from within and outside the UN system, and to forge a policy agenda that reflects and integrates the perspectives of each group.[52]

It argues that international peacekeeping "needs a global system to match the global enterprise it has become."[53] For such a system to be effective, it needs to rely more so on the broadening partnerships of the UN with various regional organisations while increasing the interface between peacekeeping and peace-building at the same time. Over the past twenty years, regional organisations have become real players in crisis management, including peacekeeping action. The North Atlantic Treaty Organisation (NATO), the European Union (EU), the Organisation for Security and Cooperation in Europe (OSCE), the African Union (AU), as well as the Economic Community of West African States (ECOWAS), have developed their own peacekeeping capabilities. Most peace missions are today carried out as a partnership between two or more institutions.[54] Obviously, the issue of the UN working in partnership is not new. Chapter VIII of the UN Charter gives the Security Council the ability to utilise 'regional arrangements or agencies for enforcement action under its authority'.[55]

Along with the proliferation of actors involved and the expansion in mandated tasks in

[50] De Coning, 2011, p. 579.
[51] Stock, 2011, p. 3.
[52] Swope, 2011, pp. 60 – 61.
[53] DPKO/DFS, 2009, p.iii.
[54] Tanner, Fred, Addressing the perils of peace operations: toward a global peacekeeping system, available at http://findarticles.com/p/articles/mi_7055/is_2_16/ai_n55407198/pg_3/?tag=content;col1, (consulted on 15 May 2012).
[55] Smith, 2011, p. 512.

peacekeeping, a third trend that makes partnership inevitable is the growing complexity of conflict dynamics. These dynamics call for collaboration among actors with different mandates and capacities.[56] Member State investments have led to progressively stronger UN policies, standards and practice as well as support systems that missions can draw upon in DDR, elections, mediation support, human rights, SSR, courts and prison management. A shared understanding of common mandated tasks, the resources they require, and the challenges encountered in implementing them could further strengthen delivery.

Three cross-cutting tasks present particular challenges: *protection of civilians, robust operations* and *peacebuilding tasks*. In each case, there is little clarity or consensus on what peacekeepers can reasonably be expected to perform. The UN peacekeeping partnership must articulate what it can and cannot do in these three areas and equip itself to contribute effectively to a broader effort. This can only happen through an active partnership in policy and practice with contributing countries, UN and other international actors.[57]

While some years ago there was no explicit understanding of what the POC meant, it is now acknowledged as a mission-wide task. That includes a comprehensive approach that goes far beyond a physical – or military – understanding of protection. Moreover, the multifaceted setting of contemporary integrated UN peacekeeping missions fit well in a broader concept of security. At the decision-making level, the POC has also come to be a central task that bestows meaning on the practice of peacekeeping. [58]

1.3 Protection of Civilians and UN Peacekeeping

1.3.1 Context and Legal Framework

As Security Council Resolutions often note, the legal framework for the POC in armed conflict is provided by international humanitarian law (IHL), human rights law and refugee law. In addition, in terms of assuring accountability and combating a culture of impunity, international criminal law, and the creation of institutions such as international tribunals,

[56] Mancini, 2011, p. 628.
[57] DPKO/DFS, 2009, p. 19
[58] Idem, p. 4.

including the International Criminal Court (ICC) with its Rome Statute, are increasingly important. In addition to this international legal framework, the UN Security Council has also adopted a number of relevant resolutions relating to the protection of civilians in armed conflict (which mentions specific groups such as refugees and IDPs, women and children affected by armed conflict).[59] Over the past 13 years the SC has focused on the role of UN peacekeeping missions and has further expanded to address more civil wars, children affected by conflict, and the use of rape and sexual violence as a weapon of war. Millions of men, women, and children were killed, raped, displaced, injured, or recruited by force in armed conflicts throughout the world. Whether caught in the crossfire or deliberately targeted, civilians too often suffer disproportionately as a result of conflict.

The primary obligation to protect civilians affected by conflict lies with national governments and parties to conflict. However, when these actors are unable or unwilling to fulfill this obligation, the international community, in particular the UN Security Council has a responsibility to recognise the plight of civilians caught up in conflict and to take action to protect them. [60] Protection of civilians has become the centrepiece of many peace support missions. Today, even when a mission (whether under UN auspices or otherwise) does not have a specific protection mandate there is an expectation that the civilian population will be protected against attacks by armed groups.[61]

The discourse on the imperative to protect civilians in armed conflicts has evolved over centuries. In the last decade, the issue has received unprecedented attention within and among states. This is true in particular in the United Nations, where the most substantial conceptual and operational developments have taken place.[62] While it is true that protection has always been part of the work of peace operations personnel (military, police and civilian), recent challenges in the field point to gaps in the ability to react in a timely fashion, design a comprehensive strategy, and implement efficient action. Protection of civilians in peace operations is both a short-term and long-term mandated task of the military component as well as a mission-wide political and development priority that requires a coordinated approach among military, civilian, and police. It goes well beyond taking the necessary military action and/or using all necessary means to

[59] UNHCR, PDES/2010/11, September 2010, p. 27.
[60] Oxfam, May 2011, pp. 1 - 9.
[61] Rolfe, 2011, p. 561
[62] Kjeksrud at el, 2011, p. 9.

protect civilians under the threat of physical violence.[63]

1.3.2 Why Civilian Protection Matters

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

There is a growing consensus, in the UN Security Council (UNSC) and the General Assembly's Special Committee on Peacekeeping Operations (C34) that UN peacekeeping operations must address POC and that peacebuilding initiatives must include POC as a cross-cutting issue. No one wants to be complicit in abuse through failure to act, and the moral imperative requires operational follow-up – doctrine, training, and contingency plans.[64] Increasingly, the legitimacy and survival of the organisation is seen to depend on its ability to protect civilians.[65] The presence of a peacekeeping mission generates high expectations among host populations and international opinion as to its ability to protect. When these expectations are not met, as seen in Srebrenica, Rwanda, Darfur, and elsewhere, the (in)ability to protect civilians affects not only the mission, but the legitimacy of the UN as a whole.[66]

1.4 United Nations and the Civilian Protection Agenda

In 1999, efforts by several actors both within and outside the UN system contributed to place the responsibility for upholding the principle of protection of civilians, not only with the member states and parties to the conflict, but also with the Security Council itself. This constituted a turning point in the protection discourse. Responsibility was given not only to the parties to the conflict, but also to the society of states at large. It also introduced civilian protection as an activity, as a last resort, to be performed by a third party. Since then, twelve UN

[63] Fischer, 2011, pp. 1 – 2.
[64] Durch & Giffen, 2010, p. 22.
[65] DPKO/DFS, 2009, p. 19
[66] Kjeksrud at el, 2011, p. 12

peacekeeping operations have been given explicit protection mandates[67], the Security Council has treated protection as a cross-cutting issue with emphasis on the most vulnerable groups of individuals, and some nations have developed their own national strategies to protect civilians.[68]

Considerable progress has been achieved since the first landmark resolution 1265 (1999), and not least through the increasing number of peacekeeping missions expressly mandated to protect civilians, beginning with UNAMSIL (United Nations Mission in Sierra Leone). The Council has taken many steps both in country-specific decisions and in thematic resolutions to improve the protection of civilians on the ground. Troop and police contributing countries (TCCs/PCCs) have provided personnel in difficult and dangerous environments to fulfill protection of civilians' requirements in peacekeeping mandates.[69]

"Resolution 1265 stressed the need to ensure compliance with international humanitarian law, address impunity, and improve access for and safety of humanitarian personnel, and it also emphasised the importance of conflict prevention and cooperation with regional and other organisations."[70] A new resolution indicated the Council's intention to provide peacekeeping missions with appropriate mandates and resources to protect civilians.[71] It also called on peacekeepers to consider the use of "temporary security zones for the protection of civilians and the delivery of assistance in situations characterised by the threat of genocide, crimes against humanity, and war crimes against the civilian population."[72] The resolution established "the deliberate targeting of civilian populations or other protected persons and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict" as a "threat to international peace and security"[73]—the legal trigger for a UN response. Therefore, the Council's approach to protection of civilians began to shift.[74]

The Council interest in the protection of civilians as a broad theme continued during this

[67] These are UNAMSIL (Sierra Leone), MONUC (DR Congo), UNMIL (Liberia), ONUB (Burundi), MINUSTAH (Haiti), UNOCI (Cote d'Ivoire), UNMIS (Sudan), UNIFIL (Lebanon), UNAMID (Darfur), MINURCAT (Central African Republic), UNMISS (South Sudan) and UNISFA (Abyei).
[68] Kjeksrud at el, 2011, p. 11
[69] DPKO/OCHA, 2009, p. iii
[70] Security Council Report, No. 2, 20 July 2011, p. 4.
[71] Holt & Berkman, 2006, p. 24
[72] S/RES/1296, 19 April 2000, para. 15.
[73] Idem, para. 5
[74] Holt & Berkman, 2006, p. 25.

period also in the form of support for three initiatives aimed at moving the debate from 'abstract principles into more practical measures': a 'roadmap' outlining the responsibilities of various UN bodies, the drafting of the first *Aide Mémoire,* and a call for better coordination between OCHA and DPKO. The Council adopted the first *Aide Mémoire* in October 2002. As with later iterations, the document recognised the need for mandates to be context-specific; as such it did not offer a 'blueprint for action' but rather a list of issues for consideration by the Council that 'pertain to the protection of civilians during the Security Council's deliberation of peacekeeping mandates'. Following the 2002 *Aide Mémoire*, a number of thematic resolutions and presidential statements as well as periodic Secretary-General reports to the SC were adopted.[75]

In 2006 the Council adopted resolution 1674 that, unlike earlier resolutions, provides some specific guidance to peacekeepers. The resolution reaffirms the Council's practice of including provisions for the protection of civilians in peacekeeping mandates.[76] It proposes that "such mandates include clear guidelines as to what missions can and should do to achieve those goals," and that measures to protect civilians be "given priority in decisions about the use of available capacity and resources, including information and intelligence resources, in the implementation of the mandates." [77]

1.4.1 Conceptual and Practical Developments

Civilian protection has become mainstreamed in UN peacekeeping discourse in the ten years since the first deployment of peacekeepers with a civilian protection mandate in 1999. Despite many developments and the recognition of its significance by the UN Security Council, continued operational difficulties and failures in the field have raised concerns about the lack of operational guidelines in relation to civilian protection tasks. Parallel to this development, emerged the *Responsibility to Protect* (R2P) concept.[78]

In October 2005, world leaders unanimously adopted the "Responsibility to Protect" principle in paragraphs 138–140 of the UN World Summit Outcome Document. In April 2006, the Security Council reaffirmed the principle in resolution 1674. As agreed by member states, the

[75] DPKO/OCHA, 2009, p. 54
[76] Idem, p. 33.
[77] S/RES/1674, 28 April 2006, para. 16 (i)-(ii).
[78] Nasu, 2011, p. 364

R2P rests on three pillars: First, each state is to use appropriate and necessary means to protect its own population from genocide, war crimes, ethnic cleansing, and crimes against humanity, and from their incitement. The second pillar refers to the commitment of the "international community" to encourage and help states to exercise the responsibility set out in the first pillar.[79] Third, is the international community's responsibility to take timely and decisive action, through peaceful diplomatic and humanitarian means and, if that fails, other more forceful means, in a manner consistent with chapters VI (pacific measures), VII (enforcement measures) and VIII (regional arrangements) of the UN Charter, in situations where a state has manifestly failed to protect its population from the four crimes.[80]

Conceptually, the R2P and the better established POC agenda are distinct but very closely linked. Put simply, the R2P is a political framework for preventing mass atrocities and protecting civilians in the most egregious cases of abuse. Its added value lies in the political consensus that surrounds it, the responsibilities that member states have accepted for themselves and given to the UN and in its articulation of a holistic approach to preventing atrocities and protecting the targets that makes use of all the capacities available to the UN system. Although the whole POC agenda is wider than R2P because it applies to armed conflict in general, some aspects of R2P's prevention components extend beyond POC.[81]

Already before this breakthrough of R2P, UN peacekeeping operations were making practical contributions benefiting the protection of civilians. In fact, the protection of civilians has been adding another layer of complexity to the contemporary, multidimensional peacekeeping operations that furthermore also entail tasks as varied as security sector reform, repatriation of refugees and the support of elections. The United Nations Organisation Stabilization Mission in the Democratic Republic of the Congo (MONUC/MONUSCO) as well as the United Nations Mission in Darfur (UNAMID) are cases in point for the grown complexity of today's peace operations.[82] Since the UN SC has come to recognise that the overriding priority for the UN mission in the Democratic Republic of Congo (DRC) is the protection of civilians, some innovative structures have been set, such as joint protection teams and protection clusters,

[79] Williams, 2010 (a), p. 13.
[80] A/RES/60/1, 24 October 2005, paras. 138–140.
[81] Hunt & Bellam, 2011, pp. 2 – 4.
[82] Shutte Robert, Minding the Gap: Approaches and Challenges to Robust Civilian Protection, available at http://www.schutzverantwortung.de/rtop-in-der-diskussion/minding-the-gap-approaches-and-challenges-to-robust-civilian-protection426.html (consulted on 9 June 2012).

humanitarian/UN military contingency planning and mobile operational bases, which enable humanitarians to ask for the dispatch of UN soldiers to war off attacks by militias, and the national military.[83]

Joint protection teams and protection clusters have enhanced the effectiveness of these efforts by providing a more comprehensive approach to civilian protection to include humanitarian relief as well as social and economic support to threatened civilian populations. It also targets the perpetrators of violence through deterrence, supports disarmament and reintegration of former combatants and fosters reconciliation on the ground to ensure sustainable security for civilian populations.[84]

1.4.2 Challenges of Civilian Protection

"Protection of civilians under imminent threat of violence" is now routinely cited as a peacekeeping priority, but there is a real lack of clarity as to what "protection" means in the context of a peacekeeping operation.[85]. In the absence of clear guidance as what protection mandate entails, actors are left to make decisions on an *ad hoc* basis, without the benefits of past lessons learned and best practices. There is an impossibility to implement long-term strategies.[86] Therefore, peacekeepers often lack proper training and guidance on protection activities before they deploy. This lack of conceptual clarity is exacerbated by the complexity of peacekeeping mandates, many of which incorporate a huge range of difficult and resource-intensive responsibilities alongside civilian protection. Disagreement and misunderstanding over the protection role of peacekeepers in relation to their non-military counterparts creates difficulties in coordinating the activities of the wider community of groups responding to a humanitarian crisis — including UN humanitarian agencies and humanitarian and development focused non-governmental organisations (NGOs).[87]

A further obstacle to effective civilian protection can be *contradictory mandates*, *missing*

[83] Mountain, Ross, Democratic Republic of Congo: Past. Present. Future?, available at http://www.fmreview.org/DRCongo/mountain.htm (consulted on 10 June 2012).
[84] Citizens for Global Solutions, Protecting Civilians in Armed Conflict, available at http://www.globalsolutions.org/.../CP-Factsheet-Protecting-Civilians-in-Armed-Conflict-3.pdf, (consulted on 8 June 2012).
[85] Weir, 2010, p. 2
[86] Bellamy & Williams, 2010, pp. 151 – 152.
[87] Weir, 2010, p. 2.

equipment and *lacking benchmarking*. As for the former, a good example is MONUSCO. The mission is not only tasked to protect civilians but also to support the country's national army that is itself responsible for most human rights violations against civilians. In this case, the blue helmets find themselves between a rock and a hard place because the UN Security Council has endowed them with a contradictory mandate. Moreover, insufficient equipment, ranging from missing satellite phones to lacking helicopters, can be a huge problem for two reasons: On the one hand, because it obstructs the mission's capacity to carry out its job; on the other, because it leaves the impression that a mission does not enjoy sufficient political backing. Both factors understandingly undermine the morale and commitment of blue helmets to put their lives on the line for the protection of threatened civilians.

However, even if missions can employ effective protection strategies, a lack of evidence-based benchmarking encumbers the elaboration and transmission of good practices across different missions. To date, no UN peacekeeping operation systematically benchmarks its own performance in protecting civilians. For example, polling amongst affected populations would be one amongst a couple of options to get a better picture of mission performance but is rarely being done. As a consequence, peace operations can to date neither assess nor verify their impact on civilian security.[88]

1.4.3 Future of Civilian Protection

If organisations cannot clearly define what protection means, they have little chance of achieving it. The good news is that although still a work in progress, the various operational definitions of protection emerging from the diverse range of NGOs, governments, and international organisations discussed above show a significant degree of consensus about what it means. This suggests that the major challenge for the foreseeable future will revolve around how best to achieve protection in concrete contexts. In other words, the debate will be more about means than ends.

Enhancing civilian protection policies tomorrow will be made easier by reflecting systematically on the extent of progress today. This will require organisations to improve in two

[88] Shutte, Robert, Minding the Gap: Approaches and Challenges to Robust Civilian Protection, available at http://www.schutzverantwortung.de/rtop-in-der-diskussion/minding-the-gap-approaches-and-challenges-to-robust-civilian-protection426.html (consulted on 9 June 2012).

areas in particular: devising benchmarks and key indicators of progress, and generating actionable lessons learned and best practices. Field operations in Sudan, DRC, and elsewhere have made significant strides in developing performance indicators but this should be done more systematically across missions. In addition, the institutional memory of potential protection organisations needs to extract, analyse, and systematise the practical wisdom gained through the field experience of their personnel.

The general message that needs to be conveyed is simple: without more resources, better planning and training, and greater levels of political support, there are real limits to how many civilians the world's peacekeepers can protect, especially when governments choose to massacre segments of their own populations. In the field, MONUSCO's Joint Protection Teams represent an important innovation and highlight the potential for what could be achieved in this area. While more extended deployments of such teams are clearly needed, this is an initiative worth building upon and replicating elsewhere. [89]

Chapter 2

2. Protection of Civilians: A UN Cross-Cutting Issue

2.1 Comprehensive Operational Guidance and New Opportunities for Progress

The Special Committee, Security Council, and Secretariat each have taken steps over the past years to address the POC guidance gap at the strategic level. The 2009 annual report of the Special Committee asked the Secretary-General to provide a note on the lessons learned from peacekeeping operations mandated to protect civilians; the DPKO/DFS non-paper *A New Partnership Agenda: Charting a New Horizon for UN Peacekeeping* asserted that DPKO/DFS would produce a draft strategic guidance note on robust peacekeeping for discussion with member states;[90] and Security Council Resolution 1894 recognised: *"the need for comprehensive operational guidance on peacekeeping missions' tasks and responsibilities in the implementation of protection of civilians mandates and requests the Secretary-General to develop in close consultation with Member States including troop and police contributing countries and other*

[89] Williams, 2010 (a), p. 48 – 51.
[90] DPKO/DFS, 2009, p. 42.

relevant actors, an operational concept for the protection of civilians, and to report back on progress made…" [91]

In response, the Secretariat developed three documents: 1) "DPKO/DFS *Lessons Learned Note on the Protection of Civilians in UN Peacekeeping Operations: Dilemmas, Emerging Practices and Lessons Learned*;" 2) "Draft DPKO/DFS *Concept Note on Robust Peacekeeping* and 3) "Draft DPKO/DFS *Operational Concept on the Protection of Civilians in UN Peacekeeping Operations*."[92]

2.1.1 Lessons Learned from the Implementation of Protection Mandates

"The Special Committee requested the Secretary-General to provide for its consideration detailed information, based on lessons learned, on the provision of resources, training and concepts of operations in existing peacekeeping missions regarding the mandate of protection of civilians, and requests an assessment of their adequacy in effectively achieving all mandated tasks. The Special Committee further requested the Secretary-General to submit proposals to improve the ability of existing peacekeeping missions to respond to situations adversely affecting civilians, including all the necessary logistical support and training required for troop-contributing countries."[93]

Responding to the aforesaid request the DPKO and DFS have started to gather lessons learned from mission personnel and troop and police contributors on the provision of resources, training and concepts of operations in existing peacekeeping missions with respect on the implementation of the POC mandates."[94] The *Lessons Learned Note* builds on mission best practices and lessons learned with the aim of arriving at a common understanding of what POC means and how POC mandated tasks are to be implemented on the ground. Within the context of peace operations, POC requires a multi-faceted and coordinated approach with clear roles and responsibilities for the military, police and civilian components, which recognises the protection activities of the host state authorities, local communities, humanitarian, and other actors.[95]

[91] S/RES/1894, 11 November 2009, para. 20.
[92] Durch & Giffen, 2010, p. 29.
[93] A/63/19, 23 February – 20 March 2009, para. 128.
[94] DPKO/DFS, 2010 (b), para. 1.
[95] Fischer, 2011, p. 4.

"While some of the good practice and lessons that have emerged can be applied or replicated within different missions implementing the POC mandates, there remain a number of outstanding questions which will require focused policy consideration to guide future POC efforts.[96]

Drawing on lessons learned and further elaborated in the *Lessons Learned Note*, it is clear that mission protection strategies should cover minimum considerations such as the articulation of the senior mission leadership's understanding of protection of civilians and the mission's detailed roles and responsibilities in undertaking such protection activities. Within this context, the strategies should provide clarity on the mission roles and responsibilities vis-à-vis those of the host government; articulate the communication strategies that would support the mission; provide direction for mission component planning documents; include a threat and vulnerability assessment; and detail how the mission would respond to acute POC crises. Moreover, these strategies must be based on realistic assessments of available resources and capabilities, should stress prevention as the overriding priority, and should articulate the mission's intended approach towards the policy dilemmas outlined in the *Lessons Learned Note*.[97]

This note is designed to index a number of the good practices and lessons that have come to light thus far, as well as to capture some of the principal policy and strategy dilemmas that impact on the international community's efforts to protect civilians in the context of UN peacekeeping operations. While some of the good practice and lessons that have emerged can be applied or replicated within different missions implementing the POC mandates, there remain a number of outstanding questions which will require focused policy consideration to guide future POC efforts. Given that lessons learning is an ongoing process, this note should be seen as a living document that will continue to be updated as new lessons and good practices are revealed.[98]

2.1.2 Strategic Framework for Protection of Civilians

These emerging lessons also provide the basis for the DPKO/DFS draft operational concept on the protection of civilians in UN peacekeeping operations. The draft operational

[96] DPKO/DFS, 2010 (b), para. 2.
[97] DPKO/DFS, 2010 (c), para. 23.
[98] DPKO/DFS, 2010 (b), para. 2

concept builds on lessons and experience both to arrive at a shared understanding of the implementation of POC mandates by United Nations peacekeeping operations, and to identify and organise the range of POC mandated tasks undertaken by missions into a clear conceptual framework to support their practical implementation.[99] The operational concept proposes a framework for conceptualising the role of UN peace operations that is constituted of three mutual reinforcing tiers:

- *Tier 1: Protection through political process*
- Support to the political process
- Conflict management and support to reconciliation

- *Tier 2: Providing protection from physical violence*
- Establishing deterrent presence and taking pro-active actions to reduce vulnerability of civilians – taking into account the special needs of women and children– through forward field deployments; day and night patrols in vulnerable communities, and in targeted locations (such as markets, schools, refugee sites)
- Responding to violent attacks with all necessary means including, if necessary, the use of force, to protect civilians and stabilise the situation.

- *Tier 3: Establishing a protective environment*
- Mine action activities
- Creating conditions conducive to the delivery of humanitarian assistance
- Promotion and protection of human rights
- Reduction of forcible displacement and creating of conditions suitable for return
- Reform to the police, judicial and defence sectors of the host country, as well as DDR[100]

Although there is no inherent hierarchy between the tiers, the mission must ensure that it has taken all possible measures within its capacity to help the host authorities to protect civilians from physical violence when mandated to do so. Peacekeeping operations are generally the only

[99] Idem, para. 3.
[100] Fischer, 2011, pp. 4.

international entity responsible for playing a direct role in the provision of protection from physical violence; in that regard, they have a unique responsibility among protection actors.[101]

The three tiers illustrate that protection of civilians in the context of peace operations "goes beyond the domain of physical protection from imminent threat."[102] As a result, given the integrated and multidimensional nature of contemporary peace operations and the scope of protection challenges, it is important to emphasise that protection responsibilities will rest with military, police, and civilian components.[103] The three tier conceptual framework above provides a starting point for mission specific approaches to POC. Because UN peacekeeping operations are responsible for implementing a wide range of POC tasks, it is critical for missions to develop comprehensive POC strategies that draw together their efforts in all three tiers, where mandated, in consultation with other UN actors who deliver mandates across the tiers.[104]

With this conception of protection in mind, the priority for policymakers is to ensure that peace operations can engage in effective "protection activities". This in turn requires that protection activities are linked to a political strategy defined as "the process of selecting goals and choosing appropriate means to achieve them within the resource constraints faced." It is through a strategy that decision-makers set priorities and focus their resources accordingly. In this context, once protection activities have been defined as a priority, a key issue will be to figure out how to use military power to achieve humanitarian ends.[105]

2.1.3 Normative Framework for the Protection of Civilians

"The concept of protection of civilians is founded in the universally accepted rules of international humanitarian, human rights and refugee law which are set out in a range of international legal instruments. They include:

- The Geneva Conventions of 12 August 1949, in particular the Fourth Convention, and their 1977 Additional Protocol I relating to the Protection of Victims of International Armed Conflicts and Protocol II relating to the Protection of Victims of Non-

[101] DPKO/DFS, 2010 (c), para. 16.
[102] Idem, para. 4.
[103] Fischer, 2011, p. 5.
[104] DPKO/DFS, 2010 (c), para. 22.
[105] Williams, 2010 (a), pp. 17 – 18.

International Armed Conflicts.

- The 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Economic, Social and Cultural Rights and the 1966 International Covenant on Civil and Political Rights.
- The 1951 Convention Relating to the Status of Refugees and its 1967 Optional Protocol.
- The 1989 Convention on the Rights of the Child and its Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.
- The 1994 Convention on the Safety of UN and Associated Personnel and its 2005 Optional Protocol.
- The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- The 1998 Rome Statute of the International Criminal Court; and customary international humanitarian law."[106]

National governments bear the primary responsibility for ensuring that their populations are effectively protected, and all parties to conflict – governments and armed groups – have an obligation to prevent harm to civilians in the conduct of hostilities. When states are unable or unwilling to protect their population, international actors, such as individual member states, regional organisations, intergovernmental organisations (such as the International Committee of the Red Cross (ICRC)), or the United Nations Security Council may become engaged in efforts to remind parties of their obligations to protect civilians, and may take measures to prevent abuses and protect people from harm.[107]

The norms of international humanitarian law (IHL) and international human rights law are necessary to remind troops of their obligation to protect civilians from human rights abuses and, at the same time, hold members of these missions accountable for alleged crimes and violations. The UN troops, on different occasions, did less than nothing when civilians were at risk of becoming victims of serious violations, (such as the collective blood baths and mass rape campaigns in Bosnia-Herzegovina and Rwanda). The ambiguity of obligations imposed on UN peacekeeping missions to protect civilians during armed conflict under IHL (particularly

[106] Security Council Report, No.3, October 2008, p. 4
[107] Oxfam, May 2011, p. 3

common article 1 to the 1949 Geneva Conventions) has resulted in many incompatibilities in peacekeepers' mandates. This vagueness has encouraged the UN to treat the norms of IHL, as they relate to UN troops, as moral standards rather than laws compelling obedience has undermined many peacekeeping missions and caused the failure of these operations in different regions of the world. Even though the UN is not a party to IHL treaties and consequently cannot be expected to carry out all obligations included in these treaties, it is widely accepted that UN troops must respect the "principles and spirit" of the laws of war. However, this "respect" does not impose any obligation on UN peacekeepers to prevent violations of IHL or require that they be held responsible for their felonies in territories under their control.

The abovementioned underlines the necessity to reform the United Nations' founding laws and procedures, particularly the laws of intervention under Chapters VI and VII of the UN Charter. At the same time, the international community must take further steps to end the conspiracy of silence, combat the culture of impunity, and eradicate the UN peacekeepers' human rights violations, including sexual misconduct and exploitation. This will not be possible without introducing an effective judicial mechanism within the United Nations to bring blue-helmeted perpetrators to justice rather than repatriating them to face prosecution, if any, in their own countries.[108]

2.2 Gaps and Tensions in the Protection Agenda

Peace operations in Afghanistan, Burundi, Côte d'Ivoire, Darfur, Sierra Leone, Somalia, and Sudan, amongst others, have proven unable to protect civilians from attack. There are at least three reasons for this:

1. *Gap between expectations and capabilities* – between what agents are expected to deliver (either by insiders or outsiders) and what they are capable of, or committed to, delivering. Thus: some states simply lack the capacity to protect their citizens, and many others lack the political will to do so; humanitarian agencies cannot sustain life in the face of immediate physical threats and find it difficult to deliver aid effectively in insecure environments; although military peacekeepers have the theoretical capacity to provide physical security more often than not they are deployed without the numbers, equipment

[108] Wills, 2011, pp. 1 - 4

or expertise necessary to complete a civilian protection mandate; and while IHL promises an end to impunity it lacks the judicial authority or policing capacity to deliver protection on the ground. In these four instances, expectations about what ought to happen do not match reality. In some cases, this may be because those expectations are unrealistic.

2. *There is no clear doctrine to guide military forces in their civilian protection activities* – operational guidance for the UN and regional organisations remains a problem**.** Although the Security Council has increased the frequency with its civilian protection mandates it has not issued clear guidance as to what this entails. In the absence of clear guidance, actors are left to make decisions on an *ad hoc* basis, without the benefits of past lessons learned and best practices. There is an impossibility to implement long-term strategies.
3. *Lack of coherence and effective coordination* between peacekeepers and humanitarians in the field - In contexts such as the DRC, South Sudan, Darfur and Chad, UN peacekeeping missions and the humanitarian community do not interact around protection issues, but their relationship can be best described as one of co-existence rather than a meaningful desire to coordinate better. The interaction is often *ad hoc* and not strategic.[109]

2.3 Civilian Protection and Legitimacy and Credibility of Peacekeeping Missions

The Capstone doctrine identified 'legitimacy' and 'credibility' as key success factors for UN peacekeeping operations. The ability and willingness of UN peacekeepers to protect civilians is critical to achieving and maintaining both the legitimacy and credibility of the mission.[110] Peacekeeping missions are among the most high- profile manifestations of UN action and their conduct has implications for the organisation as a whole. The inability of peacekeeping missions to address violence against civilians has damaged the standing of the United Nations and threatened to discredit the practice of peacekeeping in general.

Civilian security is critical to the legitimacy and credibility of peacekeeping missions. Most fundamentally, a political peace cannot be founded on a peace that does not address civilian insecurity. Further, missions rely upon their legitimacy with the local civilian population and external observers alike to help build peace and maintain political momentum behind the

[109] Bellamy & Williams, 2010, p. 154 - 156.
[110] International Forum for the Challenges of Peace Operations, 2010, p. 382.

peace process. Moreover, wherever peacekeepers deploy, they raise expectations among the local population—and among those who view missions from afar—that the reason for their presence is to support people at risk. Whilst the mission works to manage high expectations, it must also address civilian insecurity in order to build and maintain the legitimacy and credibility needed to carry out its other mandated peacebuilding tasks.

Peacekeeping missions risk failure if they are unable to anticipate, mitigate, or halt extreme violence against the population. While all peacekeeping missions innately face hazards, the vulnerability of the population in so-called post-conflict environments is one area that all missions must take into consideration, and which can undermine the mission's own credibility and effectiveness in short order.[111] This loss of confidence in UN peacekeeping was evidenced following the failures of the mid-1990s, and more recently the violent protests against the MONUC/MONUSCO (following the failure to protect civilians in Bukavu (2004) and Dungu (2008)).[112]Successful missions are those that deal with the protection of civilians as an integrated part of their aims. Whether charged by the Security Council to support security and stability, to organise elections, to help build the rule of law, or to help implement a power-sharing accord, the mission's ability to appreciate the threats and vulnerabilities facing the civilian population will strengthen its ability to deliver on these mandated tasks.[113]

2.4 Policy and Strategy Dilemmas

The policy and strategy dilemmas have contributed to the *ad hoc* approach to POC taken by UN peacekeeping operations, and have left missions without the strategic guidance they require to undertake these extremely complex mandated tasks. Some of these areas include the interpretation of the "*imminent threat*" clause in protection of civilians mandates, the interpretation of the "*within capabilities and within areas of deployment*" caveats, the challenge of prioritising protection tasks over other mandated tasks, the application of force to protect civilians, balancing the responsibility of the host authorities to protect civilians with the mission's mandate to protect civilians, as well as the importance of communicating protection

[111] DPKO/OCHA, 2009, p. 22.
[112] International Forum for the Challenges of Peace Operations, 2010, p. 382.
[113] DPKO/OCHA, 2009, p. 23.

tasks and limits at the international and local levels. In all cases, these dilemmas must be considered in light of the particular circumstances of each mission, given the context-specific challenges that missions face.[114]

These enduring policy dilemmas bring to light a number of the complexities surrounding the implementation of the POC mandates by UN peacekeeping operations. In particular, these dilemmas underscore that:

- It is evident that early, preventive action is the best form of POC.
- To this end, action is required from a range of stakeholders, not just the military component of UN peacekeeping operations.
- Missions have to adapt their actions and policies to specific situations given the unpredictable nature of POC.
- Traditional peacekeeping instruments need to be strengthened. Innovative ways of using military and police deployments need to be conceptualised as a part of this effort.
- Other elements of the mission, which can play a significant role in POC, need to be strengthened. The public information, human rights and civil affairs components of a mission are one example.[115]

2.4.1 Civilian Protection Mandates and the "Imminent Threat" Language

The first case where the Security Council provided an explicit mandate to protect civilians under imminent threat of physical violence was the UN Mission in Sierra Leone (UNAMSIL) in 1999: "*Acting under Chapter VII of the Charter of the United Nations, [the Security Council] decides that in the discharge of its mandate UNAMSIL may take the necessary action to ensure the security and freedom of movement of its personnel and, within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence…*"[116] Since then specific POC language has been included in twelve UN mission mandates. The imperative of civilian protection is particularly strong in the UN context given the centrality of human rights in the UN Charter. With wide recognition of the importance

[114] DPKO/DFS, 2010 (b), para. 4.
[115] Idem, para. 5.
[116] S/RES/1270, 22 October 1999, para.14.

of protecting civilians and the increased international focus on the issue, it is likely to remain a feature of UN mission mandates.[117]

Yet the scope of the legal responsibility under such civilian protection mandates has been left undefined despite the fact that numerous UN documents have been produced in relation to this topic. Policy analysts have identified the doctrinal deficit of civilian protection activities and have developed a set of proposals. For example, DPKO and the Office for the Coordination of Humanitarian Affairs (OCHA) jointly commissioned an independent study in 2009, *Protecting Civilians in the Context of United Nations Peacekeeping Operations*. Several of its findings and recommendations have led to initiatives in the UN, (including the drafting of the *Operational Concept* and *Lessons Learned Note*). Those documents are expected to contribute to the development of a strategic framework on civilian protection. Although this may be an important step in addressing gaps in guidance at the strategic level, many critical issues, particularly with regard to identifying the reach of the mandate and balancing and prioritising the mandate against other tasks, are left unaddressed.[118]

As the OCHA/DPKO study pointed out: "*It is widely recognised that the Council's conceptualization of the protection of civilians has varied over time. It has used the term POC in relation to protection norms set out in the Geneva Conventions and subsequent Protocols. Alternatively, it has used them in a much more narrow sense, to describe the mandated role of peacekeepers 'to provide physical protection' through their use of 'military capabilities in the field to deter attacks on civilians or, sometimes, to use force to defend civilians from attack."*[119] In other words, the members of the Security Council are anxious to prevent massacres and other serious attacks against people, but have no common, agreed definition as to what they mean when they ask peacekeepers to "protect" civilians. Nonetheless, the "imminent threat" language in mandates has remained fundamentally the same, even as expectations have changed and increased dramatically.[120]

The language in the 2005 UNMIS mandate is a good example of the types of caveats now typically associated with "imminent threat" language in a mandate: *"The Security Council; Acting under Chapter VII of the Charter of the United Nations, (i) Decides that UNMIS is*

[117] International Forum for the Challenges of Peace Operations, 2010, p. 377.
[118] Nasu, 2011, p. 366.
[119] OCHA/DPKO, 2009, p. 26.
[120] Weir, 2010, p. 10.

authorised to take the necessary action, in the area of deployment of its forces and as it deems within its capabilities, […] and without prejudice to the responsibility of the Government of Sudan, to protect civilians under imminent threat of physical violence."[121] First, this caveat restricts the UNMIS area of responsibility to the parts of Sudan that peacekeepers were deployed in. For example, UNMIS was deployed in Southern Sudan and Khartoum in 2005. Even though serious protection concerns existed in the Darfur region of Sudan at this time, this caveat — coupled with real geographic restrictions associated with the UN's Status of Forces Agreement with the government of Sudan — meant UNMIS was not being asked to take action in that part of the country.[122]

2.4.2 'Within Capabilities and Areas of Deployment' Caveats

The caveats are useful in defining a role for peacekeepers, rather than to exclude their actions. The Council has consistently used caveats to offer useful limits for what peacekeeping missions could do for civilian security. Protecting civilians *'within capabilities and areas of deployment'* and with 'respect to the responsibilities' of the host state should help avoid creating unrealistic expectations both internationally and in the mission area about the extent of the protection a mission can provide; the language helps avoid mandating the force beyond what it can realistically do.

Additionally, the Council's language urges the host state not to neglect its duties towards its own population. Indeed, this approach reflects the basis of UN peacekeeping and where it can founder when some states fail to provide security or prevent violence against their populations, or where the state perpetrates violence. The Council promoted the idea that 'any potential violator of human rights on a gross scale' should know that 'the international community will not turn a blind eye if and when innocent civilians are under threat of physical violence'.[123]

The operations with civilian protection mandates have important caveats that limit what they are expected to do. First, the Council usually recognises that the protection of civilians is primarily the responsibility of the host government where the mission is operating — regardless

[121] S/RES/1590, 24 March, 2005, para. 16(i).
[122] Weir, 2010, p. 11.
[123] DPKO/OCHA, 2009, p. 75.

of whether it is a highly functioning state or one bordering on collapse. Second, the Council also limits the realm of the mission's responsibility to protect civilians to *"within its area of deployment"* and *"within its capacity"* for nearly all operations.[124]

Both of these caveats are provisions that recognise that peacekeeping operations have finite resources and cannot be expected to protect civilians from physical violence in all areas of a theatre of operations. In many protection situations, missions will simply not have the resources to respond, nor will they be able to have a presence in all areas in which protection incidents may occur. It is an oft-stated lesson in UN peacekeeping that the mission and Secretariat should report frankly to the Council what limitations are being faced in implementing the POC mandates, and what additional resources would be required to achieve them. However, a number of senior leaders have noted that there is always likely to be a deficit in resources, and that mission leaders must therefore be prepared to make decisions on how to prioritise the use of certain key capabilities, such as aviation assets.[125]

The caveat *"within its capabilities"* gives field commanders the authority to determine whether or not they have the means to intervene effectively without incurring undue risk to the peacekeepers themselves. This often means that that protection mandates are interpreted and applied very differently, even within the same mission. Lack of sufficient and appropriate resources — troops, mobility, field hospitals, etc. — can (and has) result in protection mandates going unfulfilled.

There are often valid reasons why a commander invokes the *"within capabilities"* caveat. Yet, this language is also vague enough as to be a convenient excuse if a commander, or the home capital of the troop contributing country in question, is unwilling to use robust military action to protect civilians. This makes it all the more important that the Security Council makes their intentions clear from the outset; that troop contributing countries are clearly aware of what sort of a commitment they are making; and that peacekeepers are properly equipped to provide protection from the real threats in country.[126]

[124] Holt & Berkman, 2006, p. 86.
[125] DPKO/DFS, 2010 (b), para. 16.
[126] Weir, 2010, p. 12.

2.5 Prioritising the Protection of Civilians in Peacekeeping: Challenges in Applying Protection Mandates

In November 2009, the Security Council adopted resolution 1894 which stressed that mandated protection activities must be given priority in decisions about the use of available capacity and resources. This was the first time the Council specified a priority for POC. In subsequent resolution 1906, the Council specified that the first priority for MONUC, the operation in DRC, shall be to "ensure the effective protection of civilians, humanitarian personnel and United Nations personnel and facilities" and that "protection of civilians must be given priority in decisions about the use of available capacity and resources over any other tasks".[127] In the context of DRC and the wholesale violence against civilians there, this priority makes sense.

Troop and police contributing countries (TCCs/PCCs) may be reluctant to expose their personnel to the assumed and real force protection risks that protection of civilians in faraway places may entail. And even if they were willing to commit those forces without national caveats, a peacekeeping mission, regardless of mandate or resources, will not be able to protect all of the civilians within its area of operations all of the time. If the security expectations of a host population are not met, mission credibility and leverage will diminish.[128]

It would be important to ensure that the mission has a common understanding with the humanitarian community and host government as to the POC risks prevalent in the mission area. This does not mean that the mission would respond to all POC risks. The mission would have to prioritise risks based on their gravity and likelihood of occurrence, while taking into consideration the mission's mandate, resources and capabilities. Unless otherwise specified by the Security Council, POC mandates apply throughout the mission area, and missions should conduct risk assessments and plan appropriate responses irrespective of the source of the threat. It shall be required to constantly monitor and if necessary adjust its priority activities based on the emergence or development of newly identified risks.[129]

In the field, mission-wide protection strategies play an important part in establishing

[127] S/RES/1906, 23 December 2009, paras. 6 -7.
[128] Durch, 2010, pp. 146 – 147.
[129] DPKO/DFS, 2010 (a), para. 4.

benchmarks that allow for the measurement and review of "progress made in the implementation of peacekeeping mandates"[130]. The strategies also allow mission leaders to contextualise generic UN frameworks. The strategies play an important role in communicating mission's POC priorities to all mission members. Three peace operations – MONUSCO, UNMIS and the UN/AU Hybrid Mission in Darfur (UNAMID) – have developed comprehensive protection strategies. Other missions are in the process of developing such strategies.

The three missions' protection strategies highlight the integrated nature of protection concerns. They include elements such as:

- Enhancing state capacity to protect through capacity building and institutional support to government authorities;
- Physical protection of civilians under imminent threat of violence by anticipating, preventing, and mitigating protection risks;
- Establishing accountability mechanisms for combating impunity and improving access to assistance, justice, rehabilitation, and redress for victims;
- Promoting the rule of law, building the capacity of the military justice system, and supporting the restoration of state authority;
- Active monitoring and addressing developing situations through engagement with local authorities;
- Harmonising collection and analysis of data and analysing the impact of military operations against civilians;
- Coordination and delivery of effective protection responses by different military, civilian, and police actors;
- Provision of humanitarian assistance.[131]

2.6 Current Mission Activities Relevant to POC

The mission's efforts to protect civilians shall be based on a thorough analysis of the POC risks facing the population. The analysis of the POC risks shall be based further on ongoing

[130] S/RES/1894, 11 November 2009, para. 20.
[131] Fischer, 2011, pp. 5 – 6.

monitoring, including of the human rights and humanitarian situation, and derived from analysing the threats posed to the population (external to the civilians themselves) and their vulnerabilities (the factors that expose civilians to the threat). The vulnerabilities of civilians should be defined based on any characteristics of the civilians that make them susceptible to those threats (e.g. refugees/IDPs, children, gender, etc.), or to certain geographical features or activities that expose them to threats.

The activities that the mission and other UN protection actors in the mission area intend to undertake to mitigate the POC risks are the following:

1. Information-Gathering and Sharing System:

The mission must have in place effective information gathering and sharing mechanisms to gather and analyse data, and disseminate POC related information. This will assist in identifying deteriorating situations to ensure a timely and coordinated response. While concerns over confidentiality and consent may limit the degree of information sharing from such assessments within the mission and with other protection actors, in particular with regard to individual cases and protection incidents, the trends and main POC concerns should be discussed with relevant protection actors to arrive at a common understanding of prioritised protection risks.

2. Early Warning Systems and Crisis Response:

Setting up an effective early warning and response system can help manage situations before they escalate to unmanageable proportions. This should define what role external actors, including the host authorities and local population will play in these mechanisms, as the systems function best when they are well coordinated with local counterparts. Furthermore, the mission shall articulate the rapid decision-making process to address POC crises, involving the relevant components.

3. Analysis of Mission Capacities, Resources and National Caveats:

This analysis must go beyond a discussion of the physical, financial and human resources at the mission's disposal, and shall include a frank assessment of what is beyond the mission's capacity to protect civilians. It shall also include an analysis of the impact of national caveats, as well as of the ability of mission personnel to undertake POC activities. The gaps identified in mission capacities and resources shall lead to a realistic assessment of the mission's options to minimise such gaps. These discussions shall take place with other relevant protection partners to

maximise all available resources.[132]

2.7 Ensuring Coherence: Thematic POC Mandates and UN Peacekeeping

Before the UNSC recognised that the protection of civilians, was a concern to international peace and security, it began to highlight concerns related to specific civilian populations. The first UNSC mandate recognising protection, UNSC resolution 1261 (1999), addressed the protection of children in armed conflict as a "fundamental concern for peace and security".[133] A year later, the UN Security Council recognised that, "the protection of and full participation [of women] in peace processes would contribute significantly to the promotion and maintenance of international peace and security,"[134] in UNSC resolution 1325 (2000).

In subsequent resolutions, the UNSC has issued language to ensure that these thematic mandates are being integrated in and implemented by peacekeeping operations. For example, the UNSC has called for the inclusion of protection issues as they relate to women and children in all peace processes and the mainstreaming of these thematic mandates across the UN system, including peacekeeping; Although the record of implementation by and integration of these thematic mandates varies, in many ways the development of policies, guidance, training and mechanisms to protect women and children in armed conflict have outstripped that of the broader category of POC discussed above. The success of these efforts may provide best practices or lessons learned in the development and implementation of forthcoming POC guidance.

2.7.1 Protection of Children in Armed Conflict

Peacekeeping operations are mandated to undertake a range of specific tasks on child protection, either pursuant to thematic Security Council resolutions on children and armed conflict such as 1612 (2005) and 1882 (2009) or mission specific resolutions. This reflects a commitment by the Security Council to mainstream child protection concerns in all aspects of

[132] DPKO/DFS, 2010 (a), paras. 7 – 10.
[133] S/RES/1261, 30 August 1999, para. 1.
[134] S/RES/1325, 31 October 2000, para.1.

the peace process and adopt a child sensitive approach to the mission's activities and strategies.[135]

In 2009, the UNSC issued resolution 1882, which was viewed as a, "major step forward," in deterring and holding those that perpetrate crimes against children in armed conflict accountable. The resolution expanded the "triggers" that determine which parties are listed in the annex of the Secretary General's report. The triggers now include, "those who kill and maim children as well as commit rape and other forms of sexual violence against children,"[136] and the UNSC reiterated its commitment to use this list to determine action, including sanctions. The resolution also called for appropriate members of the UN system to engage with parties to the conflict in the development of "time-bound," action plans to end such abuses.[137]

A number of Security Council resolutions on children and armed conflict articulate other priorities to be undertaken by peacekeeping operations, including training peacekeeping personnel on child protection and child rights, dialogue with parties to develop and implement action plans to end the recruitment and use of children by armed forces and groups and to release such children from their ranks, as well as monitoring and reporting grave violations committed against children.[138]

2.7.2 Women and Peace and Security

The normative framework for the Women, peace and security agenda arises from principles and discourses of both IHL and human rights. The need for all actors in armed conflict to respect and uphold IHL and human rights, in relation to women and girls, is reaffirmed in Security Council resolutions 1325 (2000), 1888 (2009), and 1889 (2009). In addition to IHL, the Women, peace and security resolutions are built on human rights principles, including equality, indivisibility of rights, and empowerment. Acknowledging the importance of participation, the Security Council missions must ensure the consideration of women's rights, utilise a gender perspective, and consult with local and national women's groups.[139]

The SC resolution 1325 (2000) provides the most important mandate for mainstreaming

[135] DPKO/DFS, 2010 (c), paras. 13 – 16.
[136] S/RES/1882, 4 August 2009, para. 4 (b).
[137] Giffen, 2011, p. 21.
[138] DPKO/DFS, 2010 (c), para. 13.
[139] Butler & Kean, 2010, p. 31

gender perspectives in peacekeeping operations. It recognises the contribution of women and to the maintenance and promotion of peace and security, while acknowledging their specific needs and concerns in armed conflict and its aftermath.[140] There have been a number of thematic resolutions on women, peace and security since 2000. Some of the most recent resolutions reflect increased UNSC attention to these issues. However, the extent to which these issues have been integrated into and implemented by peace operations is difficult to measure. [141] A more specific international regime, 'gender mainstreaming in peace missions', applies these principles of women's rights and humanitarian needs to the formulation and implementation of UN peacekeeping missions.[142]

Common models for integrating gender components into peace operations implemented by the United Nations are: the deployment of full-time gender advisers and the deployment of gender units (also called sections, divisions and/or offices), including national and international gender officers/experts.[143] Peacekeeping missions have supported women's participation in peace processes and provided support to host-state governments to enact laws protecting women's rights.[144] In its report from 2009 The Special Committee "acknowledges the important role of women in the prevention and resolution of conflicts and in peacebuilding, and stresses the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security.

The Special Committee urges the DPKO to continue to develop a comprehensive strategy to increase the participation of women in all aspects and at all levels of United Nations peacekeeping operations, pursuant to General Assembly resolution 59/164 and Security Council resolutions 1325 (2000) and 1820 (2008). In addition, the Special Committee encourages the DPKO to continue to support the effective implementation and promotion of gender perspectives in multidimensional peacekeeping activities."[145]

[140] United Nations, 2005, p. 1.
[141] Giffen, 2011, p. 23.
[142] Carey, 2001, p. 50.
[143] Boehme, 2008, p. 15.
[144] Giffen, 2011, p. 23.
[145] A/63/19, 23 February – 20 March 2009, para. 108

2.7.3 Sexual and Gender-Based Violence

Sexual violence in armed conflict is often widespread and systematic. Rape and other forms of sexual violence have been recognised as violations of universal and fundamental human rights. Women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group. Violence, intimidation and discrimination, in turn, erode women's capacity and legitimacy to fully participate in post-conflict societies. While women and girls are the main targets of sexual violence, men and boys are also victims. Conflict and post-conflict societies typically experience a higher incidence of sexual and gender-based violence (SGBV).[146]

Addressing SGBV in peacekeeping operations includes protecting civilians, particularly women and girls, from all forms of sexual violence, either pursuant to thematic Security Council resolutions on women, peace and security such as 1820 (2008) and 1888 (2009) or mission specific resolutions. Missions are responsible for fostering prevention of SGBV across all its mandated tasks, including through pursuing judicial and legal reforms. The police for example may play a role in providing protection through child and family protection officers.[147]

The resolution 1820 views sexual violence through a security, not just a gender lens. Forced impregnation in camps designed specifically for that purpose is not a 'continuum of gender-based violence'. Neither is the deliberate infection of women with human immunodeficiency virus (HIV), nor gang rape in public for maximum humiliation. Conflict generates sexual violence of a scale and severity rarely seen in times of peace. Rooted in politics rather than personal relationships or random criminality, war rape is a security issue because women's bodies have become part of the battlefield. As long as sexual terror has a stranglehold on a nation's greatest resource, its women and children, there can be no peace or development. There can be no security without women's security.[148]

[146] Pearson Peacekeeping Centre, 7 – 9 December 2010, pp. 6 – 7.
[147] DPKO/DFS, 2010 (c), para. 13.
[148] Anderson, 2010, pp. 257 – 258.

2.8 Role of the Human Rights Components of Peace Operations in the Civilian Protection

"When the security environment requires the dispatch of peace- keeping missions, a clear mandate with robust and well resourced human rights components becomes essential for effective implementation of protection measures."[149] – UN High Commissioner for Human Rights Navi Pillay

Today's complex peace operations assist in the creation of security conditions that enable efforts aiming at the consolidation of peace. In doing so, peacekeepers undertake a variety of tasks ranging from security sector reform to human rights monitoring, and assisting in the development of public institutions that are sustainable. There is no doubt that peace and security issues, as they impact women, are directly linked to protection issues, and that protection of civilians and of women and girls in particular, is a critical requirement for achieving a level of security, both political and physical, in which the participation and empowerment of women can take place.[150]

In the past two decades, rape and other sexual violence have been used as systematic weapons of war as in the Bosnian civil war of 1992–95, or as punishment for cooperation with the wrong group(s) as in the anarchy and mercenary militia violence of the eastern DRC. There, sexual violence also appears to increase once fighting stops and the situation is [otherwise] stabilised. It is committed on a widespread scale, including by demobilised combatants and as "continuation of inter-group conflict by other means," reflecting a legacy of impunity and constituting a "war within a war" that carries no consequences for its perpetrators. When comparable predation is visited upon civilian population by government forces to which the United Nations gives logistical support, the resulting damage is not just to the government but also to the UN itself. Peacekeeping operations must target this vicious phenomenon not only through military and police strategies but through political pressure in collaboration with major donors to get host governments to recognise, investigate and punish such predatory behavior, laying out consequences for failure to do so. Peace operations' human rights components can

[149] OHCHR, Open Debate on Protection of Civilians in Armed Conflict: Statement by Ms. Navi Pillay at the United Nations Security Council, http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10197&LangID=e, (consulted on 13 June 2012).
[150] Pearson Peacekeeping Center, 7 – 9 December 2010, p. 8.

promote accountability through direct monitoring and investigation of human right abuses and by organising victim and witness protection programmes in conjunction with civil society organisations to facilitate prosecution of human rights abusers. Peacekeeping operations should reinforce the status of women in post-war settings, since the higher the status of women where peacekeeping missions work, the higher the probability of peacebuilding success. Furthermore, mission human rights components should have the capability to investigate – in a thorough, professional, and timely fashion – instances of serious human rights violations and alleged atrocities for later prosecution or transitional justice proceedings.[151]

The human rights components of multi-dimensional peace operations carried out by the United Nations have been mandated to undertake monitoring, reporting and advocacy measures, to build capacities and institutions, to support transitional justice, and to facilitate in-mission human rights sensitisation. One focus of their work is inward, as they try to mainstream human rights throughout the mission, in particular by providing training, advice, and expertise on human rights issues. Other activities are directed to the field, supporting the promotion and protection of human rights in host countries, which means that they support, assist and further the state in fulfilling its obligations and press for the respect, protection and fulfillment of human rights.[152]

2.9 Humanitarian and Peacekeeping Protection Concepts and Dialogue

The main actors in relation to POC as a *theme* are obviously the Security Council, the Secretary-General with his related reports, the General Assembly's Special Committee on Peacekeeping and Office for the Coordination of Humanitarian Affairs (OCHA). If one looks at POC from an operational viewpoint, then the main actors are the relevant parties to a conflict, including states and non-state actors, International Committee of the Red Cross (ICRC), the three protection-mandated UN agencies (Office of the High Commissioner for Human Rights (OHCHR), United Nations High Commissioner for Refugees (UNHCR), UN Children's Fund (UNICEF)), UN peacekeeping missions and humanitarian NGOs.

Of the three UN protection agencies, UNHCR stands out as the agency without an explicit relationship to an aspect of the POC "process", as compared to UNICEF with its role in

[151] Durch & Giffen, 2010, p. 68 – 72.
[152] Jeannette, 2008, p. 12.

relation to Children in Armed Conflict and OHCHR's support for the human rights components of peacekeeping missions. UNHCR should consider assuming a higher profile in the POC process, given its role of protector of a significant proportion of civilians affected by conflict. POC has the merit of providing an integrating concept for UNHCR‟s work for both refugees and IDPs. However, it does so in a limited manner as it relates only to situations of armed conflict.[153]

UNHCR has a mandate to protect refugees and to work with host governments and other governments around the world to find durable solutions to refugee crises. As such, UNHCR is often responsible for facilitating discussion and coordination among protection actors — civilian or uniformed — in the field. [154] The underlying objective of UNHCR‟s work with refugees, IDPs and stateless persons is to work to overcome their vulnerability through the creation of an effective protection regime, be it international or national.[155]

While people often characterise peacekeepers and humanitarians as having the same goals, the truth is that these two communities have very different, though complimentary, roles to play in protection, as well as the wider stabilization of humanitarian crises. Nevertheless, there is often a great deal of tension between peacekeepers and their humanitarian counterparts in the field. For reasons of security and of principle, humanitarian agencies deliver their services according to short-term need, and without reference to political expediency. They need to remain as impartial and independent as possible from the political peacebuilding calculations of peacekeeping operations. Peacekeepers necessarily take a long-term view of their objectives, seeking durable stabilization and security, a deeply political enterprise. In spite of these differences, however, the work of peacekeepers and humanitarians is closely interrelated, particularly where protection is concerned. Peacekeepers often provide security in order to enable the free flow of humanitarian assistance, as well as direct logistical and security assistance to humanitarian agencies that ask them for it. [156]

2.9.1 Displacement and Security Issues

Refugees and internally displaced persons are a sub-set of the civilian category, and share

[153] UNHCR, PDES/2010/11, September 2010, pp. 2 – 3.
[154] Weir, 2010, p. 23.
[155] UNHCR, PDES/2010/11, September 2010, p. 3.
[156] Weir, 2010, p. 23.

the common characteristic of "displacement". It is for this reason that UNHCR should be at the heart of the ongoing discourse on the POC. UNHCR understandably places great weight on the humanitarian nature of its work, without denying the role of the political in achieving enduring solutions to displacement. Hence the relevance of the Security Council and its mandates given to peacekeeping missions, for the effective discharge of its different responsibilities as the UN refugee agency and as the Lead of the Global Protection Cluster.

The POC is of particular importance to both refugees and IDPs, especially in ensuring the civil and humanitarian nature of camps and settlements, and assisting in finding durable solutions through return and reintegration activities. In his address to the Security Council on 8 January 2009, the High Commissioner stated: *"As a humanitarian agency, UNCHR has limited capacity to provide physical security for its beneficiaries. In some situations, ensuring the security of camps and maintaining civilian and humanitarian character is only possible with the support of peacekeepers"*.[157] In terms of UNHCR‟s solutions mandate, again POC in the form of peacekeeping (or rather peacebuilding mandates) has a lot to offer. [158]

In situations of ongoing conflict and displacement, the deployment of a peacekeeping mission may have a crucial role in securing the physical security of IDPs and refugees. Security Council resolution 1674 (2006) on the protection of civilians provides an important framework in this respect. Therefore, peacekeeping missions may be mandated to provide support to host governments in maintaining the civilian character of refugee and IDPs camps and settlements, in line with Security Council Resolution 1674 (2006). Support may also be provided to reinforce security within displaced communities: for example, the policing and rule of law component of a multi-dimensional mission may provide training and support to local law enforcement personnel and others engaged in camp security. Peacekeeping troops may also play an important role in preventing attacks on displaced populations, through a dissuasive presence, and in exceptional circumstances may even assist in the evacuation of populations or the establishment of humanitarian corridors to enable populations to reach safety. General opinion is that a broad 'protection of civilians' mandate is not necessarily enough, and that (where appropriate) mandates should make explicit reference to displaced populations in order to ensure that their

[157] UNHCR, High Commissioner Guterres briefs Security Council on global protection challenges, available at http://www.unhcr.org/49661c7e4.html, (consulted on 13 June 2012).
[158] UNHCR, September 2010, p. 27

needs are sufficiently prioritised (although even then, under-resourced deployments may limit the capacity of the mission to deliver). [159]

Chapter 3

3. Case Study on South Sudan: Protection of Civilians in the Context of UNMIS and UNMISS

Fig. 1. Political Map of Sudan/South Sudan

(Source: Life and Peace Institute, 2012, p. 2)

[159] UNHCR, August 2009, p. 19.

3.1 Conflict Background and Point of Entry for the UN: UNMIS (North/South Sudan)

The never-ending conflict between the North and the South has its roots in the colonial history of Sudan. The first civil war between the powerful center of Khartoum and the neglected periphery in the South started after independence in 1956 and ended in 1972 with the signing of the *Addis Ababa Agreement.* The county's only period of peace followed for 10 years. In 1983 the Government of Sudan (GOS) planned to introduce Sharia law in the whole of Sudan, applying it not only to Muslims but also to black Africans in the Southern part.[160] Two decades of war between the Khartoum-based government and the southern-based rebel groups, the Sudan People's Liberation Movement **(**SPLM), started. Almost two million people were killed in that time. In 2004 the UN offered its support for the implementation of the peace agreement. For this reason the UN Advance Mission in Sudan (UNAMIS) was established to assess the realities on the ground for the prospective PSO.

In January 2005 the GOS and the SPLM signed the CPA, ending almost two decades of civil war. The CPA stipulated the sharing of power (SPLM is part of the Government of National Unity) and wealth (50/50 sharing of southern oil revenues), planned a troop withdrawal, and scheduled an election in Southern Sudan for the summer of 2009 (already postponed to April 2010) and a referendum for 2011 where Southerners could decide on independence. In 2005 the UN SG reported to the SC and recommended the deployment of a multi-dimensional peace support operation with 10,000 military personnel, 700 police officers and an appropriate number of civilian staff with the aim of supporting the implementation of the CPA. [161]

3.2 Post-Independence Security Environment: External and Internal Threats in South Sudan

[160] Occasionally the war between the North and South was simplified as a religious war between Arabic Muslims and black African Christians/Animists. Religion and ethnicity played a certain role, but as such cannot be seen as the determining factor that fuelled the war. Northern elites have been developed much more by the British colonialists than elites in the South. As a consequence, the Northern elite ruled the whole of Sudan and saw Southerners as inferior, even referring to them as slaves (Laurent, 2010, p. 1).
[161] Laurent, 2010, pp. 1 – 2.

Decades of marginalisation by central authorities, and civil war have left the remote South as the most underdeveloped in Sudan, with its periphery areas suffering some of the worst development indicators in the world. Most of the population is young and unemployed, and without access to the dividends of peace and oil revenue sharing they expected following the 2005 peace agreement. Most of the country consists of primarily pastoral communities whose lives revolve around cattle and cattle migration. Cattle raiding linked to competition for scarce resources, has been one of the main triggers of conflict between ethnic groups, which has cost an increasing number of lives, particularly since 2009.[162]

The ultimate milestone of the CPA was reached with the implementation of the referendum, where an overwhelming majority of the South Sudanese people voted in favour of secession from the North. On 9 July 2011, South Sudan achieved its long awaited independence, and a few days later the UN General Assembly admitted the new state (the Republic of South Sudan) as the 193rd Member of the United Nations.

Failure by the parties to reach agreements over the contested North-South borders, the Abyei area, oil and water resources, security arrangements, and citizenship have had serious ramifications for peace and security in the region. The recent escalation of the security situation in Abyei and Southern Kordofan, including reports of mass atrocities by government forces and aligned militia against the civilian population in these areas, do not only raise serious protection concerns, but could also undermine the fragile peace process between the former warring parties. The security and protection concerns in South Sudan, however, do not pertain solely to the North–South dispute, but are also related to internal tensions in the South. [163]

It is important to mention the Dinka dominance in the political power system within the South; especially the Nuer tribe, mostly settling in Jonglei state.[164] Jonglei state, located in the central part of South Sudan, has since the signing of the CPA been marked by violent inter-communal conflicts.[165] While historically cattle raids and retaliatory attacks were predominantly carried out by small, loosely organised groups against those directly responsible for looking after the cattle, since 2009, revenge attacks have evolved to target civilians indiscriminately and aimed at inflicting maximum damage on communities as a whole. The Nuer tribe has developed

[162] UNMISS, June 2012, p. 5.
[163] Breidlid et al, 2011, p. 9.
[164] Laurent, 2010, p. 5
[165] Breidlid, et al, 2011, p. 10.

large-scale, militarily organised attack structures with a clear chain of command. As a result, women, children and the elderly have increasingly become the primary victims of these large-scale attacks, even though historically the killing of women and children was culturally unacceptable.[166]

By forcefully disarming the civilian population in some areas and in combating local rebellions, the Government of South Sudan has become a perpetrator of violence and source of insecurity in Jonglei State. An array of international organisations has attempted to assist the government of South Sudan in stabilising Jonglei state. These actors have focused their attention and funding on activities intended to improve government control over its territory and population. Initiatives in support of the security sector include professionalising, demobilising, disarming and reintegrating military personnel; expanding, equipping and training the civilian police force; and disarming a highly militarised 'civilian' population.[167]

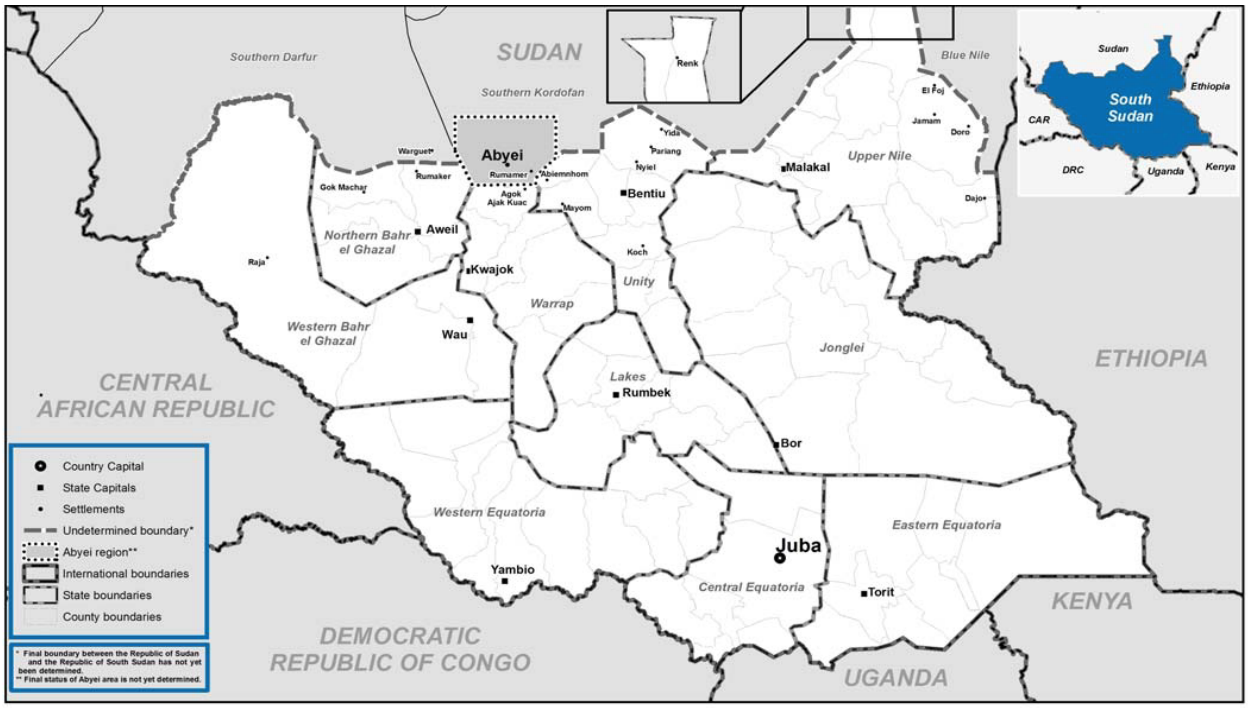

Fig. 2. Map of South Sudan with the Disputed Abyei Area

(Source: OCHA South Sudan, , 18 - 24 May 2012, p. 2)

[166] UNMISS, June 2012, p. 7.
[167] Rolandsen & Bredilid, 2012, p. 52.

3.2.1 North - South Conflict and Border Areas

Signed on 9 January 2005, the Comprehensive Peace Agreement (CPA) lays the conceptual and substantive foundation for post-conflict recovery and rehabilitation in Sudan. In order to promote peace, stability, and reconciliation throughout the country, the CPA includes detailed instructions for the sharing of power and resources between the Sudan People's Liberation Movement /Army (SPLM/A), the Government of Sudan (GOS), and other stakeholders. These power-sharing arrangements are particularly crucial in the Three Protocol Areas - Abyei, Blue Nile State, and Southern Kordofan State. Due to their wealth of natural resources (including oil, agricultural land, water and minerals), as well as their geographic location, the Protocol Areas are critical to long-term stability and economic development in Sudan. Thus, in recognition of this unique situation they were each afforded special status under the CPA. [168]

As of mid-February 2012, three factors formed the basis for external threat around South Sudan's northern border with Sudan: unresolved negotiations over oil transit fees through Sudan; a failure to demarcate the North–South border (including disputed Abyei); and an insurrection by the Sudan People's Liberation Movement-North (SPLM-N) in Sudan's South Kordofan and Blue Nile states, which border South Sudan. The resulting tensions in the southern border states, particularly in oil producing Unity and Upper Nile, are undoubtedly high. The Sudan Armed Forces (SAF) regularly conduct military over-flights, bombings, and ground incursions. The Sudanese army has also used proxy forces, such as migrating tribal groups or militias, to provoke a military response from the SPLA.[169]

[168] UNDP, Protocol Areas, available at http://www.sd.undp.org/UNDP_protocol_areas.htm, (consulted on 2 July 2012).
[169] Snowden, June 2012, pp. 9 – 10.

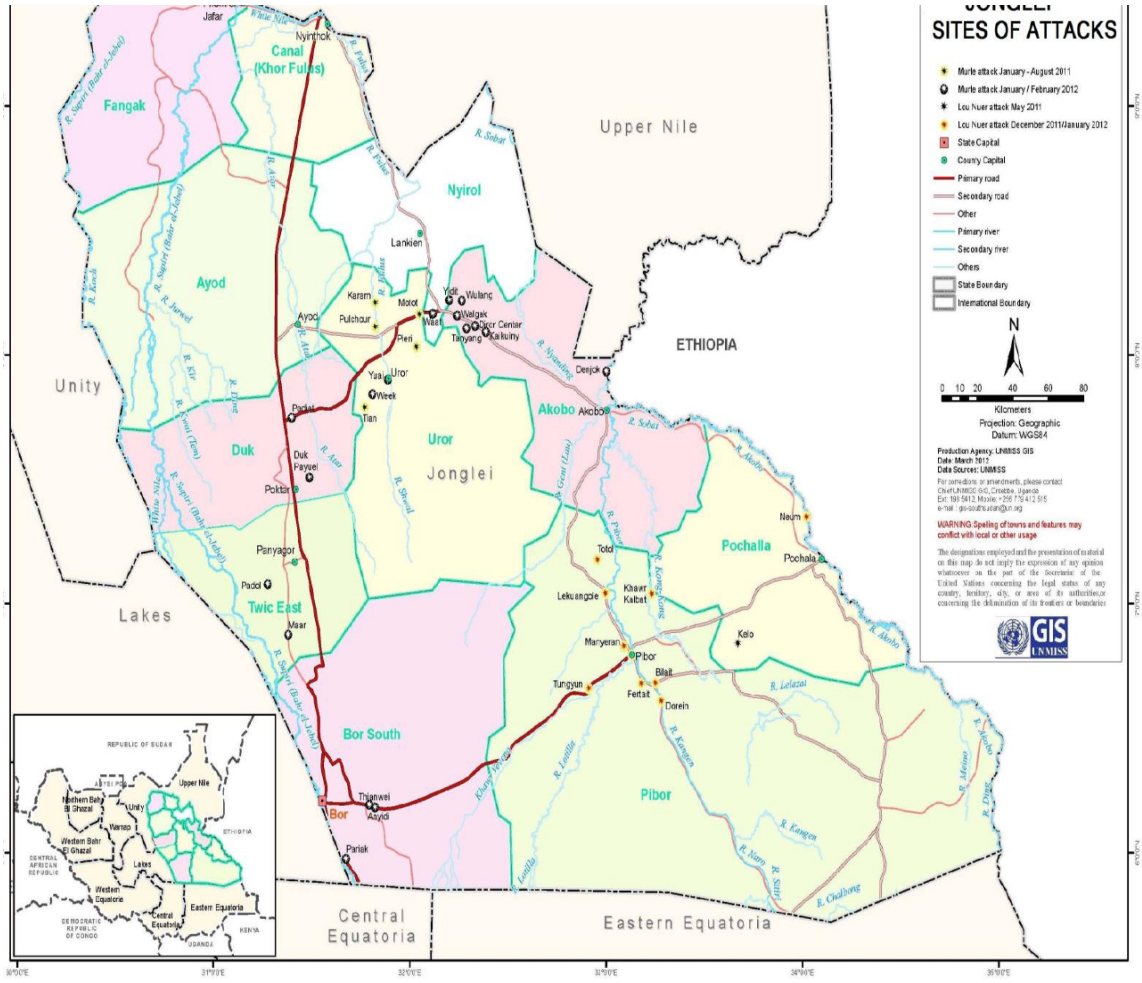

Figure 3. Map of Jonglei state with the sites of attacks

(Source: UNMISS, June 2012, p. 10)

3.2.2 Inter-Community Violence in Jonglei

In December 2011, an estimated 6,000 – 8,000 armed youth, militarily organised and primarily of the Lou Nuer ethnic group, calling themselves the "White Army", mobilised in Jonglei State and launched a series of systematic attacks over 12 days on areas inhabited by the Murle ethnic group. During that period, hundreds were killed or injured and tens of thousands displaced. Many others were unaccounted for, including abducted women and children. The events that occurred in Jonglei State in December 2011 and January 2012 were undoubtedly

among the worst to have occurred there in terms of the scale and brutality of the violence and the ensuing devastation.

UNMISS recorded 612 fatalities in the course of the attacks on settlements of the Murle community between 23 December and 4 January. It also recorded 276 deaths resulting from the attacks on the Lou Nuer and Dinka communities between 27 December and 4 February. Investigations showed that the attacks were not only aimed at stealing cattle, but targeted entire communities, including women and children, and possibly aimed at destroying their livelihoods and social and economic infrastructure. Hate speech and incitement to violence based on ethnicity – crimes under domestic law and violations of international human rights law – contributed to the violence.

While the causes of inter-communal violence in Jonglei State are complex, ranging from arms proliferation and insecurity to marginalisation and lack of development, it is imperative that the newly-independent State demonstrates its commitment to preventing further inter-communal attacks and protecting civilians from violence and abuse, regardless of their ethnic origin. Its success in creating a new state and national identity will greatly depend on its ability to overcome ethnically driven conflict, and to safeguard the human rights of all its people and communities, including access to food, education and healthcare.[170]

3.3 Role of UNMIS: Failure to Protect Civilians

The mission created by resolution 1590 (2005) broadly reflected the vision set out in the Secretary-General's report of January 2005. Acting under Chapter VI of the Charter, it instructed UNMIS first and foremost to 'support the implementation of the Comprehensive Peace Agreement.[171] While the Secretary-General proposed a mandate entirely under Chapter VI, the Council placed a key POC clause under Chapter VII: *"Acting under Chapter VII of the Charter of the United Nations, [the Council decides] that UNMIS is authorised to take the necessary action, […] without prejudice to the responsibility of the Government of Sudan, to protect civilians under imminent threat of physical violence."*[172]

[170] UNMISS, 25 June 2012, p. i.
[171] DPKO/OCHA, 2009, p. 320.
[172] S/RES/1590, 24 March 2005, para. 16 (1).

Nevertheless, UNMIS did not have a strong mandate to intervene militarily in Sudan. Rather, UNMIS was deployed and equipped as a lightly armed peacekeeping operation under Chapter VI, with troops sent primarily to protect UN staff and property, as well as to facilitate the delivery of humanitarian assistance. The core priority of the mission continues to be the promotion of the CPA. But the mandate also includes a Chapter VII element by the Security Council that gives the mission permission, although not the capacity, to protect civilians under imminent threat of violence. In spite of the severe limitations on the mission's protection capacity, the mere presence of large numbers of international military peacekeepers created expectations among the local people that they would be protected if violence erupted. In Sudan this expectation was compounded by a failure on the part of the mission to communicate the UNMIS mandate and capabilities to people, and by a general failure on the part of UNMIS forces to positively interact with the communities in which they have been deployed. [173]

UNMIS initially was designed and deployed to observe and monitor the CPA, not to provide physical protection to civilians. As such, it wasn't tactically deployed in areas where actors posed the greatest threats to civilians, it didn't have the right mobility and assets to reach these areas, and/or it didn't believe it had the capacity to take action beyond CPA-related tasks and protecting its own forces. Moreover, UNMIS lacked appropriate assets and systems for effective information gathering and analysis (intelligence). From the time of its deployment, UNMIS's focus on the protection of civilians in the South and along the border was obscured by the situation in Darfur. UNMIS headquarters were based in Khartoum, and its area of operation included areas in north Sudan. In the absence of a multidimensional UN mission in Darfur, UNMIS provided civilian support to protection activities in Darfur until these were handed over to UNAMID in 2008. Although UNMIS had a protection of civilians unit that monitored threats to civilians, the military's inability or unwillingness to prevent or respond to threats, left the operation few sticks beyond naming and shaming the GOS, GOSS and other armed actors. UNMIS didn't increase its focus on its protection of civilians mandate until 2008, which was the

[173] Refugees International, Sudan: UNMIS Must be More Proactive in Protecting Civilians, available at http://www.refintl.org/policy/field-report/sudan-unmis-must-be-more-proactive-protecting-civilians, (consulted on 25 June 2012).

same time that civilian displacement and death from violence increased as a result of north-south tensions, tribal violence, and LRA attacks.[174]

The violence that erupted in Abyei in May 2008 is a perfect illustration of expectations outstripping UNMIS capabilities. This outbreak of violence between the Sudan People's Liberation Army (SPLA) and the Sudanese Armed Forces (SAF) in the town of Abyei, an oil rich and contested area on the border between the north and the south, started as a small incident between individual soldiers at a military checkpoint that snowballed quickly into a full scale military confrontation. The incident resulted in the displacement of the entire population of Abyei and its surrounding areas, and the town itself was razed to the ground. Situations like this one, in combination with the inability and occasional unwillingness of the UNMIS military to engage with local people, has led some to insist that UNMIS really stands for "Unnecessary Mission in Sudan."[175]

3.4 UNMISS: A Second Chance for UN Peacekeeping in South Sudan

With the transition to independence came the end of UNMIS. Established in 2005, UNMIS had faced difficulty in implementing a mandate, which ranged from monitoring the peace agreement to police reform and rule of law, technical assistance to humanitarian co-ordination and the protection of civilians. But the end of UNMIS heralds the start of a new opportunity for the UN in South Sudan, to take lessons from the previous mission and build on successes in a new capacity. Although institutional capacity building and the protection of civilians were part of the UNMIS mandate, the primary task was one of monitoring and promoting the implementation of the Comprehensive Peace Agreement. However, it was the protection mandate that has received the most attention and criticism. [176]

UNMISS was established through Security Council Resolution 1996 on 8 July 2011. The Security Council determined in its resolution that the situation faced by South Sudan continues to constitute a treat to international peace and security in the region and acting under Chapter VII of

[174] Giffen, April/May 2011, pp. 10 – 11.
[175] Refugees International, Sudan: UNMIS Must Be More Proactive in Protecting Civilians, available at http://www.refintl.org/policy/field-report/sudan-unmis-must-be-more-proactive-protecting-civilians (consulted on 25 June 2012).
[176] South Sudan Monitor, August 2011, p. 1.

the UN Charter decided to establish the United Nations Mission in the Republic of South Sudan (UNMISS) for an initial period of one year with the intention to renew for further periods as might be required.[177]

The mission would support the Government of South Sudan (GOSS) in delivering security for its people through assisting conflict mitigation at national and local levels, and by working with the UN agencies, funds and programmes to support reform and strengthening of the armed forces and the police. Where the GOSS is unable to provide security, UNMISS has a mandate to protect civilians threatened with physical violence. UNMISS consists of 7,000 military personnel, 900 police and a civilian staff deployed at national, state and county level to support peace consolidation.[178]

The protection component of the mandate will undoubtedly remain one of the most controversial and contested parts of the legacy of UN peacekeeping in South Sudan and the ability or inability to intervene militarily will always be a standard against which their performance is measured. The mission has been given more substantive tasks some of which are not usually associated with peacekeeping missions.[179] In that respect, the conflict prevention, mitigation and resolution component is focused on:

- Assisting authorities to anticipate, prevent, mitigate and resolve conflict;
- Establishing and implementing a mission-wide early warning capacity with an integrated approach to information gathering, monitoring, verification, early warning and dissemination;
- Monitoring, investigating, verifying and reporting on human rights abuses and potential threats against the civilian population;
- Advising and assisting the Government of South Sudan in fulfilling its responsibility to protect civilians;

[177] S/RES/1996, 8 July 2011, para. 1.
[178] UK Mission to the United Nations, Sudan and South Sudan, available at http://ukun.fco.gov.uk/en/uk-at-un/geographic-issues/sudan (consulted on 25 June 2012).
[179] South Sudan Monitor, August 2011, p. 1.

- Deterring violence through proactive deployment and patrols in high-risk areas, within its capabilities and its areas of deployment, protecting civilians under imminent threat of physical violence; in particular when the GOSS is not providing such security.[180]

The mandate of UNMISS is ambitious but offers significant room for flexibility in implementation. Revitalising the image of UN peacekeeping in South Sudan will entail offering some form of improved protection. But this new mandate is more heavily geared towards post-conflict reconstruction under the rubric of peace consolidation than towards military intervention. Crafting the right balance of having the military power capable to be used in extreme circumstances with speed and efficacy as well as having the largely civilian capacity to support state-building processes will be fundamental to the success of UNMISS.[181]

3.5 Protection of Civilians Mandate in the Context of UNMISS

Compared to the previous mission UNMISS has a slightly more robust mandate relating to the protection of civilians. The difference is that during the entire period of the old mission, UNMIS had very little in terms of strategy how to deal with the issue of protection. During the last six months UNMISS has worked on formulating the strategy of the mission, which is being implemented at the moment. Due to the fact that this is a Chapter VII mission, the hopes are high that this mission will actually be able to do something where the previous failed.[182]

The Government of South Sudan frequently does not have the capacity to provide the protection, thus protection falls on UNMISS. In practice, that is largely meant as a military response.[183] The military is closely linked to physical protection, in which case UNMISS carries out rapid deployment to deter attacks up to the point where force has to be used to protect where people's lives are in danger and where there is a direct threat of physical violence. The Chapter VII mandate gives the authority to use all necessary means to protect civilians. Recent conflicts between Sudan and South Sudan have created challenges for civilians and the people wonder at

[180] UNMISS, UNMISS Mandate, available at http://www.un.org/en/peacekeeping/missions/unmiss/mandate.shtml (consulted on 25 June 2012).
[181] South Sudan Monitor, August 2011, p. 2.
[182] Interview with Fergus Boyle, State Coordinator for Warrap State, UNMISS.
[183] Interview with Theodore Rectenwald, Senior Human Rights Officer, UNMISS.

this point what UNMISS can do. Nonetheless, UNMISS can protect them only within the limits of deployment and its own capabilities.[184]

The other aspects of the protection lay with the civilian components: human rights, civil affairs, police etc. The POC is a cross-cutting issue across the entire mission.[185] This mission has the POC Advisor who works directly under the Special Representative of the Secretary General (SRSG), Ms. Hilde Johnson. His role is to be in charge of coordinating activities of all components involved in the protection of civilians. In that respect, human rights would be one of the main components of UNMISS with tasks and duties related to the protection of civilians. Sometimes the boundary between the POC and human rights is blurred. There has been an ongoing effort to achieve the separation of duties among the actors and have a better coordination mechanism to avoid performing each other's tasks. In the previous mission, the protection of civilians issue was being tackled through the human rights because the POC mandate was very weak.

Additionally, there are the Child Protection and Gender Protection Units who are working similarly under the SRSG. Gender protection, as the biggest priority of the mission in general, has been mainstreamed into all sections of UNMISS.[186] The role of the Child Protection Unit is to make the mission children sensitive, to do advocacy and awareness rising in coordination with other units (particularly with the Human Rights Division (HRD)).[187] The mission also has the Women Protection Advisors coming onboard who are part of both the HRD and POC mechanisms.[188]

3.5.1 Limits of the Mandate

The limits of the mandate are related to the problem that has been seen in the past – the Security Council and the DPKO never match the mandate with the capacity. The two main edges of the mandate are: Firstly, there is no agreement with the troop contributing countries (TCCs) on the military capacity of the mission, which is obviously very important for the Chapter VII mandate.

[184] Interview with Maj Gen Moses Obi, Force Commander, UNMISS.
[185] Interview with Damian Lilly, POC Advisor, UNMISS.
[186] Interview with a Human Rights Officer, UNMISS.
[187] Interview with Fatuma Ibrahim, Chief of Child Protection, UNICEF South Sudan.
[188] Interview with a Human Rights Officer, UNMISS.

Secondly, there is a problem of perception and a problem of clear understanding. Even at the full strength, UNMISS will only have 7,000 troops that will never be able to perform physical protection in the situations of armed conflict, except for the very few isolated cases. Therefore, it is important for the Security Council and the DPKO to have a clearer definition of what the limits of the mandate related to protection are.[189] The limits are always the resources. Usually DPKO missions never have enough troops. During the crisis in Jonglei, UNMISS was taking the troops from other areas and sent them to Jonglei, and even that was not enough.[190]

On the civilian side, the main limits are logistical rather than anything else. One of the main tasks is to develop an early warning systems, to actually be in the hot spot locations and have a good idea of what is happening in the those locations. To be able to do that, the mission needs to have enough vehicles and camping equipment in order to stay out in places where there might not be proper accommodation for the staff. Unfortunately, 50 per cent of the POC-related activities are not very well supplied due to the very weak logistical support.[191]

It does not appear from an outside observer's standpoint that much is being done to protect the civilians. In Jonglei, the SPLA is still going around and beating and shooting the local communities, robbing people and taking food from them. This is all happening in the areas where there is no UN presence. The UN has a thin presence in Jonglei and did not have the opportunity to go out and see what was happening there. The UNMISS personnel cannot really travel too far out to the areas where the activities are occurring. They are just on the ground for couple hours at the time. On the other hand, they might have a stained reputation because UNMISS also has a mandate to support the GOSS and SPLA, which changes the perception of the mission among the population and spreads distrust of the UN.[192]

3.6 Protection of Civilians: Challenges in the Field

The two biggest challenges in the protection of civilians UNMISS (and especially its military component) faces in the field are the following: First, South Sudan is a large country in terms of landmass; and second, the physical infrastructure is very limited and generally absent.

[189] Interview with Giovanni Bosco, Head of UN OCHA South Sudan.
[190] Interview with a Human Rights Officer, UNMISS.
[191] Interview with Fergus Boyle, State Coordinator for Warrap State, UNMISS.
[192] Interview with Chase Hannen, Security Focal Point, NGO Secretariat and NGO Forum in South Sudan.

There are almost no road networks and airfields, and the country does not actually work at all in the rainy season. Furthermore, the troop size of 7,000 is a limitation in such a large country. Due to the absence of an infrastructure troops need to be brought in by air to be able to intervene. Right now UNMISS does not have any military aircraft, especially helicopters. Where the terrain is such that there are no roadways, helicopters become perfect means to introduce troops into difficult areas. Thus, the challenges are in terms of resources, terrain, absence of helicopters and limited capabilities.[193]

The situation in the Warrap state is one example of the challenges the military components are currently facing. Most of the states have battalions or companies head quarters based in the states. There is no military station in the Warrap state. In theory the military should be able to respond relatively quickly to problems in the area. The battalion that is providing the military coverage in the Warrap state is the Mongolian Battalion, which has recently been deployed to Rumbek. They will be based in Rumbek and they plan to have a company operating and based in Turalei (which is in the far north area of the Warrap state). If anything happens within the next year or year and a half, before they set up company operating based in Warrap, it's going to be the big challenge how to respond effectively.[194]

3.6.1 Challenges in the Cooperation with the Host State Government

The cooperation with the host government varies widely, depending on the personalities involved. These are people who frequently got their positions because of the past military or political connections. There have always been some tendencies to balance fractions with SPLA and most of the governors have a military background but very little background in governance and civil administration. In some cases they can be very supportive and in some cases they can be very disruptive. In many cases, governors interfere in the criminal justice system and the administration of justice. They do not seem to understand the limits and separation of their powers. The extensive interference from the executive branch and administration of justice is a problem area in general.[195]

[193] Interview with Maj Gen Moses Obi, Force Commander, UNMISS.
[194] Interview with Fergus Boyle, State Coordinator for Warrap State, UNMISS.
[195] Interview with Theodore Rectenwald, Senior Human Rights Officer, UNMISS.

Another problem area is the security agencies, because they have the mentality of still fighting the war in the bush. There is a culture of people who are used to surviving by using weapons and the whole issue of violence that UNMISS needs to address in order to develop a human rights concept.[196] Human Rights Watch documented grave human rights abuses and violations of humanitarian law by SPLA soldiers in the course of fighting in the Upper Nile, including unlawful killings, beatings, and looting, particularly when conducting forcible community disarmament operations.[197]

Fundamentally, the majority of South Sudanese security force personnel do not see UNMISS as any different from its predecessor UNMIS. The latter was utterly distrusted, mainly because its headquarters was in Khartoum and because it was perceived that UNMIS reports on southern security issues were going straight into the hands of the South's enemy. On occasions, this led to the SPLA deliberately misleading UNMIS forces or being uncooperative. It is not just the security forces that lack confidence in the new UN mission. Comments from the Jonglei State government indicated that there are concerns that UNMISS interference in security responses by the SPLA could affect the success of operations.[198]

There are serious human rights violations in the administration of justice such as prolonged periods of pre-trial detention and poor conditions of detention. Children are often detained with adults, while persons with mental disabilities languish in prison without any legal basis for their detention and do not receive treatment. Lack of legal aid also renders defendants vulnerable to due process violations.[199] Currently there are 102 persons in prison in Malakal (Upper Nile) awaiting trial. Some of them have been waiting for up to 18 months. The good lawyers are the ones who were trained in the traditional Arabic system but it is difficult for them to adjust to another system due to the language barrier and their understanding of the law.[200] The reason why children under the age of 10 are often found in detention or in police custody is because the judges have no understanding of the criminal age of responsibility.[201]

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[196] Interview with a Human Rights Officer, UNMISS.
[197] Human Rights Watch, World Report 2012: South Sudan, available at http://www.hrw.org/sites/default/files/related_material/southsudan_2012.pdf, p. 4 (consulted on 27 June 2012).
[198] UNMISS, 25 June 2012. p. 27.
[199] Human Rights Watch, World Report 2012: South Sudan, available at http://www.hrw.org/sites/default/files/related_material/southsudan_2012.pdf, p. 4 (consulted on 27 June 2012).
[200] Interview with a Human Rights Officer, UNMISS.
[201] Interview with Fatuma Ibrahim, Chief of the Child Protection, UNICEF South Sudan.

3.7 Lessons Learned from the Past: The Case of UNMISS

UNMISS is a new mission and is trying to adopt a lot of tools and approaches. In terms of the protection of civilians UNMISS is adopting models following MONUSCO's work, due to the mission's extensive experience on that issue. Many lessons also came from UNMIS, the previous mission as well.[202] Knowledge of the environment and the lessons learned have led to the robustness of the mission's mandate and gives it authority to act under Chapter VII.[203]

The mission cannot know all the protection threats at all times. For that reason the mission needs to develop an early warning system. There was quite a good early warning response in December and January 2012 for the towns of Pibor and Likuangole.[204] In Jonglei State, the mission was able to generate early warning through the use of its field presence, aerial surveillance, military deployments and local information networks and thus was able to inform the government of the impending attacks more than a week before the Lou Nuer offensive began.[205] 40 disabled people from Likuangole were evacuated and that was a real success for the mission in terms of early warning.[206] In the engagement with the communities the best way is to understand the threats to them and then to have adequate military presence in the area to deter attacks. UNMISS has such a limited role which consist of supporting the government, and mobilising and acting as a catalyst for them. A lot of what happened in Jonglei did not have much to do with UNMISS acting, but with putting political pressure on the government to act.[207]

Even tough the UN puts serious efforts to spread the lessons learned, people still have a tendency to go ahead and not learn from what has happened in the past. Then again, lessons learned have their limitations because the context is very different in each case and the context in South Sudan is extremely different from most of the other missions. South Sudan is a very special case in many ways because of the fact that, for instance, there was a previous mission in Sudan before independence that was dealing with two partners to a peace agreement. Then one of those partners gained independence without the previous peace accord having been fully

[202] Interview with Damian Lilly, POC Advisor, UNMISS.
[203] Interview with Maj Gen Moses Obi, Force Commander, UNMISS.
[204] Interview with Damian Lilly, POC Advisor, UNMISS.
[205] S/2012/140, March 2012, para. 49.
[206] Interview with a Human Rights Officer, UNMISS.
[207] Interview with Damian Lilly, POC Advisor, UNMISS.

implemented, which created problems for the new mission. Besides, there are so many unresolved questions from the previous mandate.[208]

Compared to the previous mission there is a real progress in the POC. It is being addressed seriously. For example, now the HRD is sending their reports and findings on civilian disarmament violations to the government on a weekly basis. In those reports UNMISS is asking them to respond to those allegations, which is something that they would have never been able to do in the previous mission. The previous mission was doing whatever the government wanted while the current approach is more progressive.[209]

3.8 Legal Framework for the Protection of Civilians in South Sudan

Most of the international actors consider the situation in South Sudan to be a post-conflict reconstruction, which is not necessarily the best model to be applied because the post-conflict reconstruction implies that there was something before. The Government put in a big effort during the CPA to strengthen the state administration at all levels but the problem is that this state is very new, and that is something that must be considered.[210] The formal system has a serious deficit in capacities, knowledge and skills. This is the case with judges, prosecutors, police and defence counsels. There is also a deficit in legal tools, including access to copies of current laws and a corresponding understanding of how to apply them. Much of the police force is illiterate, without the necessary skills to undertake basic criminal investigations and maintain investigation records. The absence of any accountability mechanism has undoubtedly contributed to the increasingly brutal cycles of violence. It is therefore imperative that strong measures to tackle impunity be part of an integrated response to resolving the violence.

South Sudan's domestic legislation contains strong provisions which could be used to investigate and prosecute the most serious crimes, including murder, child abduction, deprivation of liberty, rape and other forms of sexual violence, hate speech and persecution on the basis of ethnicity. The State's obligation to respect, uphold and promote human rights is primarily enshrined in the Bill of Rights of the 2011 Transitional Constitution of the Republic of South

[208] Interview with Theodore Rectenwald, Senior Human Rights Officer, UNMISS.
[209] Interview with a Human Rights Officer, UNMISS.
[210] Interview with Giovanni Bosco, Head of UN OCHA South Sudan.

Sudan (TCSS). The rights to life and the physical integrity of an individual are also protected by South Sudan's criminal law in several provisions of the Penal Code Act of 2008. South Sudan's domestic legislation codifies many international and regional human rights standards on child rights and protection, namely: the Penal Code Act of 2008 and the Child Act of 2008 both criminalise child abduction and child trafficking.

The Republic of South Sudan has announced its intention to ratify key international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) and is in the process of developing legislation to do so. However, International Human Rights Law is already applicable in South Sudan. Once a people has been accorded the protection of their rights (under a ratified human rights treaty), they continue to enjoy protection of those rights, regardless of any change in government of the State party, including disintegration into more than one State or State succession or any subsequent action of the State party designed to deprive them of the rights guaranteed by the Covenant. Thus, the treaties ratified by Sudan prior to South Sudan's Independence, should provide protection for the people of South Sudan and oblige the GOSS to respect their provisions.[211]

3.8.1 Parallel Legal Frameworks: Statutory vs. Customary Law

Two bodies of law operate side by side in South Sudan. Statutory law is generated by the state and consists of the constitution, legislation, and precedent created through court judgments. Operating alongside the statutory system is that of customary law, which consists of numerous unwritten bodies of law that have regulated South Sudan's tribes for centuries.

Chiefs who preside over customary courts are generally older men with deeply ingrained patriarchal views, which are reflected in their decisions. Their judgments are often biased in favour of men. Across the country, law enforcement services are weak and police are undertrained and under-resourced. In particular, police are given little training on how to handle cases of gender-based violence and for the most part, they have little knowledge of the concept of women's rights. Women in focus groups explained that police often refuse to deal with women who report domestic abuse, claiming that this area falls outside of their jurisdiction and

[211] UNMISS, 25 June 2012, p. 28 – 30.

sending them home to address the issue within their families. Police insensitivity can be a significant barrier for women who are seeking protection.

The newly developed Special Protection Units seek to address this shortfall. Situated at police stations, these specialised units are staffed by police who are specially trained to assist women and children offering legal aid, protection, medical care, and psychosocial support. The development of these units has been slowed by a lack of trained personnel, however, and they remain largely unavailable outside of major urban centres.[212]

3.9 Situation in the Field: Protection of Vulnerable Groups (Women, Children, Refugees, Internally Displaced Persons and Returnees)

3.9.1 Women and Gender Based Violence in South Sudan

The protection of women and girls places a high focus on prevention and response to sexual violence through promotion of gender equality and recognising women's capacities, their right to participate in decision making, and their contributions to management and transformation of conflict. In general, the different types of GBV can be divided into five categories: sexual violence (e.g. rape, sexual exploitation and abuse, and forced prostitution); physical violence (e.g. beating or kicking); psychological or emotional violence (e.g. harassment); economic violence (e.g. denial of opportunities or denial of education); and harmful traditional practices (e.g. forced or early marriage, female genital mutilation/cutting, or widow inheritance).[213]

Many thousands of women were raped and sexually assaulted during South Sudan's brutal civil wars. In the long years of war, when violence was a common feature of everyday life, sexual violence became pervasive, perpetrated against women from all sectors of the populations by soldiers and civilians alike. Although much of this has improved since the signing of the CPA, the relative peace is tarnished by the fact that women remain unsafe. As in other post-conflict situations, high levels of sexual violence continue to tarnish the lives of women and

[212] Small Arms Survey, Women's Security and the Law in South Sudan, available at http://reliefweb.int/node/478869, pp. 2 -3 (consulted on 29 June 2012).
[213] Republic of South Sudan's Ministry of Gender, Child and Social Welfare et al, 2011, pp. 9 – 10.

girls, destroying the well-deserved sense of security that should have come with the end of the war.[214]

Besides, South Sudan has a long legacy of abduction, from slave raiding, which has been practiced since the 18th century, to the abductions by militias for forcible recruitment and the abduction and enslavement of women and girls during the war. Today, in Jonglei and Eastern Equatoria, for example, Murle tribesmen have been blamed for abduction of women and children.[215] With regard to abduction and gender-based violence, the South Sudan Police Service (SSPS) and government authorities rarely recognise that abductions may lead to sexual offences, perhaps because of a perception that the "marriage" that usually follows and through which children are born supersedes the crime. In rare cases where an abducted woman or girl is able to escape and provide a statement to the police, the SSPS does not investigate the possibility of incidents of sexual violence, nor are they equipped and trained to do so. As a result, sexual offences associated with widespread abductions are poorly documented, if at all. Despite forced marriage being an accepted cultural practice routinely upheld by customary courts, in violation of the TCSS, sexual relations that take place within this context and the marriage itself can constitute sexual and gender-based violence.[216] These tendencies reflect the fact that cultural beliefs and attitudes among members of the judiciary towards women can constitute notable impediments to women's access to justice.[217]

Women and girls are routinely deprived of the right to choose a spouse or to own and inherit property. They are subjected to degrading practices such as forced and early marriage, wife-inheritance, the use of girls to pay debts, and various forms of domestic violence.[218] In South Sudan, a teenage girl is far more likely to be a wife than a student. Out of a population of over 7 million people, only about 500 girls complete primary school each year. By contrast, one in five adolescent girls is already a mother. Early marriage is common across the region, but in South Sudan, wracked by decades of civil war, the problem has been exacerbated by endemic

[214] Bubenzer & Orly, 2011. pp. 53 – 54.
[215] Republic of South Sudan's Ministry of Gender, Child and Social Welfare et al, 2011, p. 36.
[216] UNMISS, 25 June, p. 31.
[217] Republic of South Sudan's Ministry of Gender, Child and Social Welfare et al, 2011, p. 43.
[218] Human Rights Watch, World Report 2012: South Sudan, available at http://www.hrw.org/sites/default/files/related_material/southsudan_2012.pdf, p. 4 (consulted on 27 June 2012).

poverty. A 'bride price', usually paid in cows, is due to a girl's family on her wedding day.[219] Evidence shows that girls who marry early often abandon formal education and become pregnant. Child marriage is also a strategy for economic survival as families marry off their daughters at an early age to reduce their economic burden.[220]

Much remains to be done in terms of building awareness about GBV among rule of law actors. Clear instructions about the prosecution of rape cases need to be issued from the highest levels of the SSPS. The police also should make clear that rape cases (and in general all cases falling within the Penal Code) need to be directed to the Attorney General and addressed within the framework of statutory law, rather than mediated by individual police officers or sent to customary courts. Continued recruitment and training of women in the police forces and within the judiciary could be a helpful step towards increased protection in cases of GBV. Now that South Sudan has become an independent state, the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) would offer a legal framework around which national legislation could be adapted.[221]

3.9.2 Children Affected by Conflict in South Sudan

Thousands of children in South Sudan are without parents and some of these have been targeted for recruitment by armed forces and groups, and about 800 of these children are yet to be released. There are also increasing reports of children working and living on the streets in major cities and towns in South Sudan who are at risk of getting into conflict with the law. A significant number of children are threatened by land mines on a daily basis. Displacement, increased poverty, reduction of opportunities for socialization, play and education coupled with uncertainty, all undermine the protective environment for children and young people.[222]

In terms of the protection of children, there are two UN key actors in South Sudan - the UNMISS Child Protection Unit and the UN Children's Fund (UNICEF). While the role of the

[219] UNICEF, *Southern Sudan: Early marriage threatens girls' education,* available at http://www.unicef.org/infobycountry/sudan_28206.html (consulted on 29 June 2012)
[220] UNICEF, *Child Marriage*, available at http://www.unicef.org/protection/57929_58008.html (consulted on 30 June 2012).
[221] Republic of South Sudan's Ministry of Gender, Child and Social Welfare et al*,* 2011, pp. 48 – 49.
[222] United Nations Children's Fund (UNICEF) South Sudan, Children in South Sudan, 2011, available at http://reliefweb.int/node/424684, p. 5 (last accessed 28 June 2012).

UNMISS is more political, the role of UNICEF, with its larger budget, is to take action in the field to protect children, and especially those who are directly affected by conflict.[223] UNICEF played a key role in the development of a comprehensive Child Act (2008) for South Sudan, which talks about the rights of children and the mechanisms available for realising them. UNICEF is now supporting its implementation, through different interventions such as establishing child-friendly justice systems.[224]

In line with resolution 1612 the Sudanese People's Liberation Army (SPLA) signed an agreement called an action plan with the United Nations in March 2012 and renewed their commitment to release all children within their ranks. This new action plan, signed by the Ministry of Defence, the UNMISS, UNICEF, and the Special Representative of the Secretary-General for Children and Armed Conflict, also ensures that all militias currently being incorporated into the SPLA are childfree.[225]

Since independence, UNICEF, UNMISS and the South Sudan Disarmament, Demobilisation and Reintegration (DDR) Commission have been actively involved in the release of child combatants.[226] Once they are released, they get support to go back home and from there the reintegration assistance starts. For the younger ones that want to go back to school UNICEF provides assistance by supporting the school in giving books and training teachers. Others would rather start some business of their own, so they would be given some training and then a little grant to develop the business.[227] "The United Nations verified 352 cases of recruitment or use of children in 2011. Of these, 253 were associated with SPLA, while 99 were associated with other armed groups. In addition, 272 boys were released to the South Sudan DDR Commission from various armed groups."[228]

"Intertribal violence is the main cause of child abductions in South Sudan. A total of 602 children were reportedly abducted during 2011, of which 356 cases were verified by the United

[223] Interview with Fatuma Ibrahim, Chief Child Protection, UNICEF South Sudan.
[224] United Nations Children's Fund (UNICEF) South Sudan, Children in South Sudan, 2011, available at http://reliefweb.int/node/424684, p. 5 (last accessed 28 June 2012).
[225] Office of the Special Representative of the Secretary-General for Children in Armed Conflict, South Sudan commits to making the national army child-free, http://www.un.org/children/conflict/english/pr/2012-03-12280.html (consulted on 30 June 2012).
[226] Internal Displacement Monitoring Centre, 2012, p. 13.
[227] Interview with Fatuma Ibrahim, Chief Child Protection, UNICEF South Sudan.
[228] S/2012/261, 26 April 2012, para. 105.

Nations. Most of the abductions took place in the context of tribal conflict in Jonglei State."[229] The causes of the apparent surge in abductions are related to the politicization and militarization of differing ethnic groups during and after the civil war, the weakening of traditional systems of authority and the rapid proliferation of modern weaponry. Abduction of children by Murle has been linked in the historical literature to low fertility in Murle communities, and this has been alleged to be the result of the prevalence of sexually transmitted diseases. There is low population growth in Murle society and the Murle themselves are concerned about low fertility rates.[230]

Due to the border tensions and displacement there is a huge number of children who are separated or unaccompanied. According to the last South Sudan Household Health Survey, about 70 % of those children are actually orphans.[231] UNICEF is working closely with colleagues and the government in Sudan to receive the children. Before the children come to South Sudan, the colleagues in Sudan provide the names to all the UNICEF partners so that they can trace the families. By the time the children get there, in many cases, the families have been traced. The biggest group of 2000 children registered as separated or unaccompanied is currently in the Yida camp. In cooperation with ICRC, UNICEF is working on establishing family links by telephone. The children have the possibility to find information about their parents, and at least they know that their parents are alive.[232]

3.9.3 Situation of Refugees, Returnees and Internally Displaced Persons

Continuing clashes between the army and rebel militia groups, inter-communal violence, and instability along the northern border results in 500,000 people cumulatively displaced by the end of 2011. Communities and returnees living in border states, including Upper Nile, Unity State, Warrap, Jonglei and Northern Bahr el Ghazal, are most affected. Specific military tactics by rebel militia and the SPLA result in high levels of civilian deaths and casualties, and

[229] Idem, para. 107.
[230] Riak & Jok, 2010, November 2010, pp. 5 – 7.
[231] South Sudan Household Health Survey, available at http://www.healthmetricsandevaluation.org/ghdx/record/sudan-south-household-health-survey-2010 (consulted on 5 July 2012).
[232] Interview with Fatuma Ibrahim, Chief Child Protection, UNICEF South Sudan.

widespread displacement contributes to the spread of diseases.[233] Return from the north remains a sensitive issue, and means of regularising the presence of South Sudanese who remain in the north have yet to be found.

Refugees, people at risk of statelessness, returnees and IDPs will hence continue to be of concern to the UNHCR in South Sudan, where the number of refugees could further increase, should the conflict in the states of Southern Kordofan and Blue Nile, as well as Darfur worsen. Limited outflows of South Sudanese to countries of asylum may result from renewed post-independence clashes, particularly in the states of Eastern Equatoria and Jonglei. At the same time, refugee returns from neighbouring countries of asylum to South Sudan may resume in 2012.[234]

The UN also estimated that as many as 500,000 southerners may be living in Khartoum who were displaced before their country's independence and whose residency status has yet to be resolved. Following independence, however, they are no longer considered IDPs. They face significant protection problems in terms of obtaining identity documents to confirm their South Sudanese citizenship and the permits required to remain in Sudan, conduct business or own property. The GOS established a nine-month transition period for southerners in the north to clarify their status, which expired on 8 April 2012. Given the impossibility of organising major returns over a short period of time, the UN is advocating for the GOS to open more corridors between the two countries that would allow for safe returns.[235]

The UNHCR will help the new Government to accede to the 1954 and 1961 Statelessness Conventions, as well as to develop procedures for the implementation of the recently approved citizenship bill. Accession to the 1951 Refugee Convention, the drafting of national refugee legislation and the creation of an implementation body are priorities. Facilitating the voluntary repatriation of South Sudanese from asylum countries will continue. Implementation of community-based reintegration projects to provide protection, basic services and livelihood opportunities to returnees in areas of high return will be pursued with the help of the GOSS and the humanitarian community (e.g.), in particular the OCHA South Sudan, the International Organisation for Migration (IOM), the UN Refugee Agency (UNHCR) and their NGO partners.

[233] UN OCHA, 2011, p. 11.
[234] UNHCR, South Sudan, available at http://www.unhcr.org/cgibin/texis/vtx/page?page=4e43cb466&submit=GO (consulted on 1 July 2012)
[235] Internal Displacement Monitoring Centre, 2012, p. 11.

Protection and assistance to refugee populations in South Sudan will focus on self-reliance, primary education and support for secondary and non-formal education.

Sexual and Gender-Based Violence (SGBV) is widespread in South Sudan and affects IDPs, returnees, refugees and host communities alike. Referral pathways under the standard operating procedures for dealing with SGBV have been established in many locations where people of concern to the UNHCR can be found, including in refugee settlements in South Sudan. These procedures have been agreed by UN agencies, the Government of South Sudan, local and international NGOs, community-based organisations, women's associations and local chiefs.[236]

In the case of national refugee legislation, the Government has promulgated nationality law, which provides substantial protection to persons of South Sudanese ancestry to avoid statelessness. With regard to refugees, there is a draft refugee law, which is currently before the President waiting for his signature before it becomes law. There is no national legislation concerning IDPs and regarding returnees in general. As citizens and nationals of South Sudan they have access to all the rights and obligations that come with being South Sudanese.[237]

The UNHCR, in its capacity as Lead of the Global Cluster for Protection, has been involved closely with the POC agenda, especially as it relates to peacekeeping.[238] The UNHCR has also been closely involved in establishing UNMISS, including the design of and strategy for its protection of civilians, acting as the intermediary between the mission and the humanitarian community on protection issues.[239] One of the biggest protection issues is the safety of refugee camps, which in many cases is determined by their location. For that reason, refugee camps should be located where they can be relatively safe (secure distance from the border). Because of its proximity to the border, the informal refugee camp in Yida (Unity State) is under threat of aerial bombardment. [240]

The UNHCR expressed concern about the refugees' safety because of the camps' close proximity to the border with Sudan, and has repeatedly urged refugees to move to locations further inside South Sudan. Risks associated with the close proximity to the border include the

[236] UNHCR, South Sudan, available at http://www.unhcr.org/cgibin/texis/vtx/page?page=4e43cb466&submit=GO, (consulted on 1 July 2012).
[237] Interview with Hy Rubin Doved Shelow, Assistant Representative (Protection), UNHCR South Sudan.
[238] PDES/2010/11, September 2010, p. 3.
[239] UNHCR, South Sudan, available at http://www.unhcr.org/cgibin/texis/vtx/page?page=4e43cb466&submit=GO, (consulted on 1 July 2012)
[239] Internal Displacement Monitoring Centre, 2012,
[240] Interview with Maria Helena Ariza Gonzalez, Head of Office, Nonviolent Peace Force, Yida.

possibility the camp could be used as a military base, in addition to a supply and/or transit point for armed opposition groups, which would put refugees in increased danger of being harmed or directly targeted in cross-border attacks. For these reasons, international standards, including the 1969 Organisation of African Unity (OAU) Convention on Refugees, state that refugees should be located at a reasonable distance from the borders of their countries of origin, in order to ensure the civilian and humanitarian character of the refugee camps.[241]

Violence between the Sudan People's Liberation Movement - North (SPLM-N) and the Sudan Armed Forces (SAF) has worsened over the last nine months as more than 300,000 people have been displaced from their homes in South Kordofan State, Sudan. The camp was bombed in November 2011 by the Sudan Armed Forces (SAF). [242] There are two reasons for this in the case of the Yida camp: Firstly, the refugee leadership is aligned with the leadership of South Kordofan. Secondly, due to the presence of SPLA – North the camp becomes a legitimate military target. [243] This camp operates under international law but the situation is very challenging as this camp does not meet all the international guidelines (in terms of distance of the border and its civilian character) that make it a proper refugee camp and it has therefore only been labeled as a transit camp.[244]

The relevance of the range of activities that are normally found under the concept of POC should be essential for UNHCR. While it could be argued that any one of these activities might be pursued by UNHCR without reference to the theme of POC, there would be obvious benefits from more closely linking UNHCR's work to the *theme* of POC, especially in the deliberations of the Security Council. Such an approach would give greater coherence to the work of UNHCR in relation to conflict-induced or forced displacement as it would link its work for refugees, returnees and IDPs in a recognised thematic manner.

The underlying objective of UNHCR's work with these three categories of beneficiaries is to work to overcome their vulnerability through the creation of an effective protection regime, be it international or national. The POC, as a concept that integrates UNHCR's work with refugees and IDPs in armed conflict situations, through a range of activities, including the

[241] Amnesty International, 2012, p. 17.
[242] International Rescue Committee, February 2012, p. 1.
[243] Interview with Hy Rubin Doved Shelow, Assistant Representative (Protection), UNHCR South Sudan
[244] Interview with Maria Helena Ariza Gonzalez, Head of Office Yida, Nonviolent Peace Force, Yida.

restoration of the rule of law, could be seen as a stepping stone along this path to greater integration of the work of UNHCR.[245]

Conclusion

Protecting civilians from the vagaries of war will always raise huge challenges, but as a variety of earlier studies have concluded, it is not an impossible mandate for peacekeepers. Indeed, since 1999, the protection of civilians has become a requirement for the operational success of most UN peace operations in Africa.[246] This study has tried to identify some elements of the successful protection of civilians on the one hand, and on the other to identify gaps and challenges, which impede effective protection. The study concluded that the critical success factors for POC mandate are the following: First, POC must be mandated by the UN Security Council and use appropriate language; second, POC must remain the primary responsibility of the host state; third, resources and capabilities must match the mandate and finally, the mandate must be clear and achievable.[247] Furthermore, this study aims to clarify what the POC mandate means in practice and to grasp how the lessons learned from the past have been applied on South Sudan. The study concludes with recommendations on how different protection actors should collaborate better in the field to improve the protection.

Peacekeeping has moved beyond its traditional role of monitoring peace agreements to more multidimensional and integrated operations with an increasing focus on the protection of civilians. This trend demands, in turn, greater clarity from the Council on how the protection of civilians should be prioritised and implemented by peacekeeping missions. This is particularly necessary in light of the tensions with other mandated objectives that can arise in complex post-conflict environments characterised by tenuous consent and cooperation from the host nation or determined spoilers. In using the same mandate language for various missions, the Council needs to give regular attention to its subsequent impact, for the populations, peacekeepers and the missions overall.[248] Thus, while peacekeeping is only one of the tools of the United Nations, and

[245] UNHCR, September 2010, paras.108, 111.
[246] Williams, 2010 (a), p. 47.
[247] Durch, 2010, p. 144.
[248] DPKO/OCHA, 2009, p. 10.

particularly of the Security Council, to ensure the protection of civilians in armed conflict, it has come to be regarded as a key tool.

The protection of civilians in armed conflict as an objective is primarily grounded, from a historical and legal perspective, in the humanitarian agenda. This does not mean that a constructive and mutually beneficial partnership between humanitarian actors and UN peacekeeping forces is not desirable and, in certain contexts, even necessary. An important recent study *Protecting Civilians in the Context of UN Peacekeeping*, sponsored by DPKO and OCHA, noted that the UN peacekeeping missions do not and cannot, however, „own" the concept of protection. They bring their skills and assets to operational arenas in which other protection actors are present, including the host government, mandated UN protection agencies, non-governmental organisations, and the ICRC.[249]

Rather than fear that mandates directing missions to protect civilians are directing peacekeepers to protect everyone from every risk, mission leaders should welcome the direction to do what is intrinsic to their mission's success, and to open up a dialogue with the host nation, UN agencies, past and potential belligerents, the local leaders and those whom they aim to support in the political process about what roles they all should play in bringing about the end to conflict. There is no more compelling or credible stance for a mission than to advocate for the most vulnerable. This is deeply tied to assisting the host State in fulfilling its protection responsibilities, and in speaking up if that is not a responsibility that the government can meet.

That role is the basis of the UN's moral authority, and a powerful tool in winning over reluctant peacemakers, in speaking truth to the abusive, and in building credibility with both the local population and those worldwide concerned for civilians caught in conflict. This apolitical but firm stance will help deliver credence to the mission's authority and determination to use its impartiality against those who challenge its efforts. In the end, this approach to protection of civilians does not guarantee success. But the effort to protect will generate respect and stave off those who would consider challenging the United Nations in the future.[250]

To be successful, peacekeepers must be given the resources necessary to achieve their goals. There are at least two dimensions to this issue. First, the goals of an operation should be neither contradictory nor technically impracticable. They should be set out in clear, credible, and

[249] UNCHR, September 2010, pp. 2 – 3.
[250] DPKO/OCHA, 2009, p. 16.

flexible mandates. Second, once mandated, policymakers need to prevent large discrepancies from developing between the authorised force levels and the actual numbers of personnel on the ground. Such personnel gaps not only hamper a mission's ability to take advantage of the so-called golden hour immediately after the cessation of fighting, but they also signal to the conflict parties a lack of political will within the authorising organisation.[251]

In any case, it has become clear that many of the deficiencies that the international community collectively faces in its efforts to protect civilians from physical harm are systemic and must be addressed holistically. The Security Council has an important role to play in ensuring sustained political support for the efforts in the field and also in garnering the resources and capabilities that are required for the implementation of this mandated task. Troops and police have to arrive in the mission area with the required training, capabilities and awareness that their lives may be put on the line to protect civilians in the theatre of operations. Missions, through their planning and strategy efforts, must be clear about the resources they require to implement POC mandates. They must show steadfast leadership and commitment to POC and must ensure that all relevant mission components are oriented towards this task.[252]

In 2000, the so-called Brahimi Report concluded that once deployed, peace operations must be based on robust doctrine, force posture, and rules of engagement that do not "cede the initiative to their attackers." This would enable missions to achieve their mandated tasks as well as protect their own personnel and local civilians. Ideally, military units within peace operations should be strong enough to deter parties from using force against peacekeepers and civilians. While it is hard to argue against the idea of "robustness" in principle, what it should mean in practice needs greater clarification. Operations that envisage threatening or using force to protect the mandate, civilians, and their own personnel clearly need to be authorised under Chapter VII of the UN Charter. But this alone does not clarify what types of military capabilities or rules of engagement are most suitable for a particular operation.

In peace operations, maintaining legitimacy in the eyes of the relevant audiences — including the conflict parties, local civilians, international NGOs, and foreign governments — is a crucial part of achieving success. Importantly, peacekeepers are never in total control of their legitimacy because it depends on the perceptions of other actors. Operations perceived as

[251] Williams, 2010 (b), p. 6
[252] Nakamitsu, 2010, p. 219.

legitimate will be more likely to achieve their objectives, not least because they will find it easier to attract personnel, funds, and political support, and locals will provide them with good intelligence and other forms of assistance.

Failed peace operations seriously damage the credibility of the organisation involved and sometimes even endanger the notion of peacekeeping itself. As a consequence, once the decision has been made to deploy an operation, maximum international effort should be expended to ensure that it succeeds. In time, a critical mass of successful missions will invigorate the peacekeeping brand and strengthen the credibility of the UN Security Council and other peacekeeping actors such as the AU and EU. Peacekeepers therefore deserve to be given more and better resources. Specifically, resources are needed to overcome personnel overstretch, assets/capabilities overstretch, financial overstretch, and headquarters/command and control overstretch.[253]

The UN peacekeeping mission in Sudan (UNMIS) is a telling example of the confusion and human cost of unclear mandates. It also illustrates the consequences of the failure to equip peacekeepers to fulfill mandated protection tasks. The focus of the UNMIS mandate was not protection. Rather, UNMIS was conceived primarily as an observer and verification mission, deployed in order to support implementation of the CPA and militarily equipped for a bare minimum of force protection activities. "Imminent threat" language was included in order to give peacekeepers the authority to intervene if and when they deemed it necessary and possible, but the mission was never equipped to carry out large-scale protection efforts. Implicit in the Secretary General's reports and Security Council resolutions was that protection was an afterthought. In this circumstance, the imminent threat language raised the expectations of civilians. Meanwhile, scarce resources and the lack of prioritization of the UNMIS protection role by the Security Council and mission leadership functionally guaranteed that those expectations would not be met. When violence broke out in Abyei in May 2008, local communities were outraged that UNMIS had failed to prevent the crisis and the resulting displacement of thousands of people. Yet, the mandate simultaneously fostered a defensive attitude among UNMIS peacekeepers that "protection is not what we are here for."[254]

[253] Williams, 2010 (b), pp. 6 – 7.
[254] Weir, 2010, p.13.

Until 2009, the United Nations had not developed guidance on what protection of civilians meant and what was expected of peacekeeping operations. This previous lack of guidance from UN headquarters meant that peacekeepers up and down the civilian and military chain of command did not know how to interpret and operationalise the mandate and rules of engagement to provide effective protection. In the case of UNMIS, the protection of civilians was not effectively integrated into the mission planning documents and directives. Although there were previous attempts to create security concepts and/or protection strategies, UNMIS finalised a mission-wide strategy on the protection of civilians in 2010.

The combination of factors outlined above contributed to UNMIS's inability to adapt to a deteriorating environment for civilians in South Sudan and along the north-south border. Many of these obstacles to effective protection were taken into consideration in the planning and deployment of a new operation – the UNMISS. This time the UN Secretariat ensured that the protection is treated as integral priority. Such a focus provided the Secretariat with the opportunity to generate new, more appropriate forces and assets with fewer restrictions on their application (including a robust and mobile military component with Chapter VII authorization to use force to protect civilians under imminent threat). A shift of UN headquarters and leadership from Khartoum to South Sudan resulted in greater capacity to engage, support, and advise the GOSS. Furthermore, the GOSS could be initially less opposed to and/or more susceptible to international pressure to allow an international peacekeeping force's assistance in providing protection, than the GOS. In the case of UNMISS, the United Nations was more prepared to plan and deploy peacekeeping operations that can protect civilians, integrating new guidance, best practices, and lessons learned from UNMIS to avoid mistakes of the past.

Violence against civilians in South Sudan will continue. The GOSS is not yet capable of protecting civilians from serious threats and like many other governments the GOSS is distrustful of an international military force being deployed within its borders with a mandate to protect civilians, regardless of who is posing the threat. Given the size of the SPLA, the GOSS at one point could make the argument that it has the capacity to protect its borders and its people from threats. Conflicts between the North and South or within South Sudan could escalate beyond the capability of any UN peacekeeping operation. The international community will need

to consider whether it has the will and capacity to deploy additional bilateral, regional or multilateral military power to prevent or respond to crises as it has done in other contexts. [255]

Due to the very weak state administration, serious deficit in capacities, knowledge and legal tools, the most vulnerable groups are still lacking protection. The existence of parallel legal framework, the customary law, plays a critical role in regulating South Sudanese society. The reliance on customary practices has negative consequences on women and children. The majority of South Sudanese customary law systems show plainly a conflict between international human rights laws and rights granted to women and children in the customary law. As the new state develops its justice sector, drafts new laws, and establishes a functional legal system, it faces the challenging task of reconciling customary law with the guarantees of human rights that are enshrined in the constitution.[256]

The best solution how to close this gap is the capacity building of the current legal system in South Sudan with a particular emphasis on the customary law. In that respect, the UNMISS Human Rights Division, with a support of the OHCHR, has a strong capacity building mandate which exclusively covers trainings, raising awareness and reinforcing capacity of the government, all security agents, civil society, lawyers, and parliamentarians; it also covers capacity building of the South Sudan Human Rights Commission as their mirror institution.[257] The creation of the new state and its potential legal system provides South Sudan with a unique opportunity to reform social practices and to align them with the fundamental guarantees of human rights and equality.[258]

When it comes to the problem with displacement, the GOSS should ensure that the civilian and humanitarian character of the refugee camps is maintained, including through efforts to locate refugee camps and settlements in safe and humane locations at a reasonable distance from the border, managing law and order, preventing the use of arms in refugee camps, and through the disarmament of armed elements and the identification, separation and internment of fighters. The GOSS should also ensure minimum essential levels of water, sanitation, health,

[255] Giffen, 24-26 May 2011, pp. 10 – 21.
[256] Small Arms Survey, Women's Security and the Law in South Sudan, available at http://www.smallarmssurveysudan.org/pdfs/facts-figures/women-security/HSBA-women-security-law.pdf, pp. 2 -3 (consulted on 29 June 2012)
[257] Interview with a Human Rights Officer, UNMISS.
[258] Small Arms Survey, Women's Security and the Law in South Sudan, available at http://www.smallarmssurveysudan.org/pdfs/facts-figures/women-security/HSBA-women-security-law.pdf, pp. 9 (consulted on 29 June 2012).

food and education to all, and while allocating resources, priority should be given to the most disadvantaged groups including the refugee population in South Sudan. The UNMISS and UNHCR should work with the South Sudanese government to ensure that all policing and security activities in Yida and other refugee sites in South Sudan are conducted by bodies which have transparent and accountable powers, established in law; and that they operate in full accordance with international human rights standards.[259]

While massive steps forward have been made, South Sudan remains one of the poorest countries on the Earth, where even the most basic infrastructure such as roads, electricity and water distribution networks still has to be built.[260] Though hopes for progress remain high, the young nation is struggling on several fronts - internal security, relations with Sudan, development, rule of law and statebuilding.[261] While South Sudan has achieved its long-awaited independence, the nation-building process is just beginning. In addition to building the infrastructure of the country from the ground up – from roads and hospitals to a new constitution – the world's newest nation faces remarkably similar political challenges to those in the north, as it must find ways to share power among and accommodate its ethnic and tribal diversity. Moreover, the Government of South Sudan will have to lead security sector reform and disarmament, demobilization and reintegration processes to transform the Sudanese People's Liberation Army into a national army.

In addition to these internal challenges, in the past few months, tensions between the North and South have come to a head. In May, violence erupted in the hotly disputed border area of Abyei, killing an unknown number of civilians and creating a humanitarian crisis through the displacement of estimated 100,000 people. While the North and South agreed to temporary security arrangements for Abyei, including the withdrawal of the northern Sudan Armed Forces (SAF), the deployment of Ethiopian peacekeepers, and the creation of a demilitarised zone under the auspices of the UN-approved security force, the long-term viability of these arrangements are still unclear.[262]

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[259] Amnesty International, 2012, pp. 30 – 31.
[260] Agence France,-Presse, Conflict, Economic Woes, in Though First Year for South Sudan, July 2012, available at http://reliefweb.int/node/508319 (last accessed 8 July 2012).
[261] Untied States Institute of Peace, First Anniversary of the Independence of South Sudan, available at http://www.usip.org/publications/the-first-anniversary-the-independence-south-sudan (last consulted 8 July 2012).
[262] Untied States Institute of Peace, South Sudan, available at http://www.usip.org/countries-continents/africa/south-sudan (last accessed 8 July 2012).

"Underscoring its commitment to seeing the world newest State become prosperous and living side by side with Sudan in peace and security, the Security Council extended the mandate of the United Nations Mission in South Sudan (UNMISS) for one year, through 15 July 2013. Unanimously adopting resolution 2057 (2012), almost one year to the day of the first anniversary of South Sudan's declaration of independence, the Council kept the mandate unchanged, underlining the priorities of protecting civilians through a strategy entailing early warning and response, and, pending the establishment of formal monitoring mechanisms, reporting on any flows of personnel, arms and related material across the border with Sudan. Calling upon the Government to take greater responsibility for civilian protection, and on UNMISS to help build capacity for that purpose, the Council encouraged the greatest possible co-location of appropriate mission components with South Sudanese counterparts."[263]

In the resolution 2507 (2012) the Security Council "*notes the priority of UNMISS' mandated tasks in resolution 1996 (2011) for the protection of civilians and for the achievement of an improved security environment urges UNMISS to deploy its assets accordingly, and underscores the need for UNMISS to focus adequate attention on capacity-building efforts in this area, welcomes the development of a protection of civilians strategy and early warning and early response strategy, encourages UNMISS to implement them, and requests the Secretary-General to include progress made in implementing these strategies in his reports to the Council*"[264]

One year after achieving independence, it is difficult to measure the success of the mission. The new resolution brings optimism with its emphasis on the protection of civilians and on solving problems with Sudan over border demarcation, nationality and the oil pipeline. The Republic of South Sudan continues along the path of building a sustainable democracy. However, the road ahead will not be without challenges. The hopes are high that the North and South can reach some sort of accommodation where they can live together in peace, and that domestic ethnic tensions, which led to increased violence, will come to an end. The UNMISS will continue to support the Government's efforts to protect its civilians and consolidate peace throughout the country.

[263] SC/10701, 5 July, p. 1.
[264] S/RES/2057, 5 July 2012, para.3.

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Annex I

List of Figures