STIMSON

BUILDING BRIDGES, REINFORCING PROTECTION:

How NATO's Protection of Civilians Framework Influenced Ukraine's Approach

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CENTER FOR CIVILIANS IN CONFLICT

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Strengthening NATO's Ability to Protect

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COVER July 29, 2015. A Ukrainian soldier stands alongside his armoured troop carrier, the flag of his country flying overhead. Photo by NATO.

Report designed by Dena Verdesca

TABLE OF CONTENTS

ABOUT THE PROJECT

Strengthening NATO's Ability to Protect is a research initiative of the Transforming Conflict and Governance Program at the Stimson Center. This project seeks to build bridges between NATO stakeholders and the expert community to act on the Alliance's ambition to protect civilians in its operations around the world.

In 2016, the NATO Policy on the Protection of Civilians (PoC) made protection a goal of future operations, kicking off the development of an action plan and a military concept on PoC. Whether in active security operations, train and assist missions, or support to disaster relief, NATO policy is to mitigate harm from its actions and, when applicable, protect civilians from the harm of others. To help NATO succeed, Stimson launched this project, in partnership with PAX and supported by the Dutch Ministry of Foreign Affairs, to cultivate and offer external expertise to NATO as well as assess the current levels of doctrine and guidance on PoC within NATO nations and partners. Emphasis is on solutions-focused research and building bridges across governments, academia, international organizations, and NGOs.

In support of this project, Stimson is commissioning a series of papers authored by leading experts in their fields that considers protecting civilians and NATO's future missions, capabilities, and approaches. The papers, published throughout 2021 and 2022, aim to engage NATO stakeholders as they consider NATO's role in future conflict, support further implementation of the NATO Policy on the Protection of Civilians, and focus on NATO's 2030 agenda and beyond.

We would like to thank our partners at PAX and the Dutch Ministry of Foreign Affairs for their insights and generous support of this work.

Stimson is a research and policy institute in Washington, D.C. that has worked on advancing the protection of civilians in conflict zones for more than 20 years. Today, as new challenges emerge, Stimson continues to be at the forefront by engaging new voices, generating innovative ideas and analysis, and building solutions that promote international security, prosperity, and justice.

ABOUT THE TEAM

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Liza Baran is the Ukraine Country Director for the Center for Civilians in Conflict (CIVIC). Liza has over fifteen years of managerial experience in technical assistance and development as program director, chief of party, project manager, fundraiser and program development specialist. She worked with the Ukrainian government, USAID funded projects, and with Mercy Corps in Iraq and Nigeria on conflict management and countering violent extremism (CVE) programs. In her current role as Country Director in Ukraine she oversees CIVIC operations in the country and ensures the successful implementation of its mandate in protection of civilians and civilian harm mitigation.

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Suleiman holds a master's degree in International Law at Taras Shevchenko National University of Kyivand a certificate on internal displacement course at the International Institute of Humanitarian Law. His areas of expertise include international law, IHL, protection of civilians, legal and policy analysis, advocacy, project management, and rights of indigenous peoples.

ABOUT CIVIC

Center for Civilians in Conflict (**CIVIC**) is an international organization dedicated to promoting the protection of civilians in conflict. CIVIC envisions a world in which no civilian is harmed in conflict. CIVIC's mission is to support communities affected by conflict in their quest for protection and strengthen the resolve and capacity of armed actors to prevent and respond to civilian harm.

CIVIC was established in 2003 by Marla Ruzicka, a young humanitarian who advocated on behalf of civilians affected by the war in Iraq and Afghanistan. Honoring Marla's legacy, CIVIC has kept an unflinching focus on the protection of civilians in conflict. Today, CIVIC has a presence in conflict zones and key capitals throughout the world where it collaborates with civilians to bring their protection concerns directly to those in power, engages with armed actors to reduce the harm they cause to civilian populations, and advises governments and multinational bodies on how to make life-saving and lasting policy changes.

CIVIC's strength is its proven approach and record of improving protection outcomes for civilians by working directly with conflict-affected communities and armed actors. Those at CIVIC believe that civilians are not "collateral damage," and civilian harm is not an unavoidable consequence of conflict — civilian harm can and must be prevented.

ACKNOWLEDGEMENTS

ACRONYMS

ACO	Allied Command Operations
ACT	Allied Command Transformation
AFU	the Armed Forces of Ukraine
ANP	Annual National Program
ATO	Anti-Terrorist-Operation
CAP	Comprehensive Assistance Package
CCMT	Civilian Casualty Mitigation Team
CCTC	Civilian Casualty Tracking Cell
CCTPG	Civilian Casualty Tracking Provisional Group
CHM	Civilian Harm Mitigation
CHT	Civilian Harm Tracking
CIMIC	Civil–Military Cooperation Directorate of the General Staff of the AFU
CIVCAS	Civilian Casualties
CMU	Cabinet of Ministers of Ukraine
COE	Center of Excellence
DOTMLPF-P	Doctrine, Organization, Training, Material, Leadership and Education, Personnel, Facilities, and Policy
DPM	Deputy Prime Minister
EOP	Enhanced Opportunity Partner
EU	the European Union
GoU	Government of Ukraine
HRW	Human Rights Watch
IHL	International Humanitarian Law
IO	International Organization
ISAF	International Security Assistance Force in Afghanistan
JALLC	Joint Lessons Learned and Analysis
JFO	Joint Forces Operation
LD & PoC COE	Lawfare Defense and Protection of Civilians Center of Excellence
MOD	the Ministry of Defense of Ukraine
NATO	North Atlantic Treaty Organization
NGCA	Non-Government Controlled Area
NGO	Non-Governmental Organization
NLO	NATO Liaison Office
NSDCU	National Security and Defense Council of Ukraine
NUC	NATO-Ukraine Commission
OHCHR	The Office of the High Commissioner for Human Rights
OSCE	the Organization for Security and Co-operation in Europe
PoC	Protection of Civilians
RoEs	Rules of Engagement
SFA	Security Force Assistance
SHAPE	Supreme Headquarters Allied Powers Europe, NATO
SOP	Standard Operating Procedures
UNAMA	United Nations Assistance Mission in Afghanistan
UNDPO	the United Nations Department of Peace Operations

INTRODUCTION

In the aftermath of the 2014 Ukrainian Revolution and Euromaidan movement, the Russian Federation annexed Ukraine's Crimea while playing a decisive role in establishing and resourcing the functioning of the so-called "people republics" in the parts of Donetsk and Luhansk regions, escalating an initial burst of social discontent into an armed conflict. This conflict posed the most significant challenge for Europe's collective security since the Balkans war in the 1990s. Europe's territorial integrity was threatened. A NATO Partner was under attack.

From the beginning of the conflict, NATO steadfastly supported Ukraine's sovereignty and territorial integrity. Ukraine was elevated to the status of "Enhanced Opportunity Partner" (EOP) in June 2020. The country is key to the Euro-Atlantic security agenda. According to NATO, "In response to the Russia-Ukraine conflict, NATO has reinforced its support for capability development and capacity-building in Ukraine. The Allies condemn and will not recognize Russia's illegal and illegitimate annexation of Crimea and its destabilizing and aggressive activities in eastern Ukraine and the Black Sea region. NATO has increased its presence in the Black Sea and stepped up maritime cooperation with Ukraine and Georgia."[1]

Now, with the conflict in eastern Ukraine in its eighth year, recent tensions between Russia and Ukraine in March-April 2021 point to the risk of an escalation of violence. Fighting continues and deaths, injuries, and the destruction of homes and civilian infrastructure mount. At least 3,375 civilians have been killed in the conflict, and more than 7,000 civilians wounded.[2] Today, 3.4 million civilians in Ukraine require humanitarian assistance or protection services. Meanwhile, the 2.8 million people living in the Donbas region of Ukraine face daily challenges. These include restrictions on freedom of movement, mines and explosive remnants of war, barriers to accessing official documentation such as birth and death certificates, difficulty receiving payment of social benefits and pensions, and a lack of access to psychosocial support services.[3] The dramatic situation faced by the population of Donbas called for the Ukrainian authorities to develop a new, robust approach to civilian protection. During this process, NATO's Protection of Civilians (PoC)[4] experience and policy were a source of inspiration for Ukrainian policy and decision-makers as they shaped Ukraine's nascent PoC frameworks.

EURO-ATLANTIC INTEGRATION AND THE PRIORITIZATION OF POC

To reinforce the Euro-Atlantic integration agenda—a key priority for Ukraine over the last 25 years—Ukraine's political strategy is to prioritize PoC and demonstrate a commitment to NATO's values.

Ukrainian authorities have made progress on this since 2014 by adopting deep structural reforms and promoting European and Euro-Atlantic integration at the highest levels of the state apparatus. In December 2014, a provision that foreign and security policy should be based on "deepening Ukraine-NATO cooperation to achieve criteria necessary for NATO membership" was added to the Law of Ukraine,[5] "On the Principles of Domestic and Foreign Policy,"[6] and "On the Fundamentals of National Security of Ukraine."[7] Furthermore, in June 2017, the Ukrainian Parliament amended the provision, further shifting its focus to make NATO membership a precise objective of cooperation with the Alliance, thus reinstating NATO membership as a strategic foreign and security policy objective.[8] A corresponding amendment to Ukraine's Constitution entered into force in 2019.

Most recently, in September 2020, Ukrainian President Volodymyr Zelensky approved the creation of a Commission for Coordination of Euro-Atlantic Integration of Ukraine and NATO, aimed at coordinating efforts across government agencies. A NATO Liaison Office (NLO) piloted by the NATO Ukraine Commission (NUC), facilitates daily NATO-Ukraine cooperation. Their priorities include strengthening broad Euro-Atlantic reforms, Annual National Programs (ANP) planning and implementation, and supporting structural reforms in security and defense.

In addition to these institutional processes, the Ukrainian authorities created the position of Deputy Prime Minister (DPM) on European and Euro-Atlantic integration in 2016 to lead a corresponding committee established in 2014 within the Secretariat of the Cabinet of Ministers of Ukraine (CMU). The primary mandate of this position is to craft the government's European and Euro-Atlantic integration strategies and ensure the implementation of relevant international agreements. In addition, the DPM ensures the Ukrainian government's priorities are aligned with those that stem from the EU-Ukraine Association Agreement. The DPM is entrusted with introducing proposals to the CMU's agenda and fostering coordination between the President, the parliament, and the CMU and between the ministries during the preparation, adoption, and execution of legislative and executive acts.

The drive for Euro-Atlantic integration creates a favorable political and strategic context to bolster PoC efforts and supports the push for Ukraine's full membership in NATO and the European Union (EU).[9] Creating bridges between Ukraine's and NATO's PoC approaches would reinforce interoperability between partners and support the implementation of consistent strategic and political visions anchored in shared values—including prioritizing the wellbeing of conflict-affected civilians.

August, 2020, Luhansk oblast, Ukraine. Ukrainian serviceman at the checkpoint on CIVIC's way to community located near the contact line. Photo by CIVIC (Yevheniia Korotka).

THE NEED FOR A COMPREHENSIVE POC APPROACH

NATO's PoC Policy: A Template

In 2016, NATO Heads of State adopted the NATO Policy for the Protection of Civilians.[10] This pioneering document laid out a coherent and consistent approach to PoC in NATO and NATO-led operations and paved the way for higher PoC standards among Allies and Partners. This high-level political document acknowledges the commitment of NATO to protecting civilians "in the planning and conduct of operations and missions." Also, it clarifies how NATO understands PoC—distinguishing between protecting civilians from the alliance's actions (civilian harm mitigation) and protecting civilians from threats arising from other actors. It also highlights that "promoting long-term, self-sustained peace, security, and stability is best achieved in cooperation with local authorities, population, and civil society."

Only a few documents of this kind exist today: the Concept on PoC in EU-led Military Operations,[11] the United Nations Department of Peace Operations (UNDPO) 2019 PoC Policy[12], as well as a handful of national policies, such as those adopted by Afghanistan,[13] Switzerland,[14] the United Kingdom,[15] and the United States.[16]

Faced with acute and chronic protection needs, the Armed Forces of Ukraine (AFU) realized as early as 2016 the need for a consistent approach to preventing, responding to, and mitigating civilian harm.[17] The AFU recognized that unaddressed civilian harm would contradict Ukraine's values and legal obligations under international humanitarian law (IHL) and fuel tensions between the local population and the Ukrainian military. Thus, a few champions within the AFU—specifically within the Civil-Military Cooperation Directorate of the General Staff (CIMIC)—initiated a series of actions to support civilian protection. Over several years, a civilian casualty tracking mechanism was established within the Joint Forces Operation (JFO), dedicated PoC training modules were developed, and a National Strategy on the Protection of Civilians (the PoC strategy) was drafted. Initial steps were taken toward creating a Lawfare Defense and Protection of Civilians Center of Excellence (LD & PoC COE). These initiatives were influenced mainly by NATO's experience prioritizing and implementing PoC mechanisms and incorporating existing PoC products and guidance.

In 2017, the AFU, with the leading role of CIMIC, initiated the development and implementation of a developing PoC approach. In this early stage, they used resources provided by Center for Civilians in Conflict (CIVIC), including an assessment of civilian harm patterns in Donbas in 2016[18] and a PoC Capabilities Assessment[19] that identified strengths and gaps in PoC in Ukraine. Using the Doctrine, Organization, Training, Materiel, Leadership and Education, Personnel, Facilities, and Policy (DOTMLPF-P) methodology,[20] this study revealed significant capability gaps, including:

- The lack of a singular national policy emphasizing PoC,
- A corresponding lack of cohesion among agencies in addressing civilian harm,
- The absence of training programs within the AFU designed specifically around PoC and civilian harm mitigation (CHM),[21]
- The need for a structure to implement consistent PoC approaches within the anti-terrorist operation (ATO)[22] zone.

Based on this assessment, the AFU explored how to develop good practices and policies to improve the lives of civilians in Donbas.

Against this backdrop, it made sense for Ukraine to use the experiences, policies, and frameworks from Allies and Partners as a starting point. NATO and Ukraine have developed a strong relationship over time, starting with the signing in 1997 of a NATO-Ukraine Charter on a Distinctive Partnership, which established the NATO Ukraine Commission (NUC). Since then, they have signed the 2009 Declaration Complementing the NATO-Ukraine Charter, established the provision of a Comprehensive Assistance Package for Ukraine in 2016, developed a Ukraine-NATO Annual National Program (ANP)[23], and elevated Ukraine in 2020 to the status of "Enhanced Opportunity Partner."[24]

NATO's approach to PoC is one of the world's most comprehensive and includes an overall framework to think strategically about PoC and integrate it into military operations effectively.

NATO's approach to PoC is one of the world's most comprehensive and includes an overall framework to think strategically about PoC and integrate it into military operations effectively. Having learned from past experiences, including with the International Security Assistance Force (ISAF) in Afghanistan, NATO drafted the Policy for the Protection of Civilians (adopted in 2016) and subsequently published the Allied Command Operations Handbook in 2021.[25][26] Building bridges between Ukraine's and NATO's PoC approaches was not only a logical move, it also allowed the Government of Ukraine (GoU) to signal an alignment of values and frameworks on critical issues on the conduct of hostilities. In the longer term, the respective approaches of NATO and Ukraine in PoC can be mutually reinforcing. The innovative practices developed over the past few years by the GoU and the AFU during an active conflict may inform further policy development and strengthen PoC within NATO.

How NATO's PoC Policy Influenced Ukraine's National Strategy on the Protection of Civilians

The existence of NATO's PoC Policy, and the fact that NATO has sustained its efforts in defining and implementing PoC over the past five years,[27] echoes NATO's ongoing commitment to PoC to Ukraine. The NATO PoC Policy helped shape a convincing, comprehensive narrative around the strategic value of PoC in general and opened a space for dialogue on PoC at the strategic and political levels with Ukrainian authorities. It helped provide a rationale for Ukrainian political and military leadership as to why adopting a PoC policy was timely and relevant for Ukraine. The NATO PoC Policy offered a solid base to anchor such political support, as it stressed that "PoC Capabilities are of common interest to Allies and Partner nations."

In addition to humanitarian, ethical, and legal arguments calling for a robust PoC approach, the policy highlights how mitigating the negative impacts of military operations on civilians while enhancing their safety and security may contribute to the success of the military mission and better accomplish strategic and political objectives.

Such arguments, especially in the context of intense use of hybrid tactics like information warfare—tactics NATO is likely to see in future conflicts—convinced critical stakeholders within the Ukrainian military and political leadership of the need for a Ukrainian PoC policy. Additionally, key NATO officials in Ukraine and elsewhere actively encouraged the development, adoption, and implementation of a Ukraine National Strategy for the Protection of Civilians. For instance, Clare Hutchinson, NATO Secretary General's Special Representative for Women, Peace, and Security, in April 2019, said:

> *"The NATO PoC policy clearly states that the Alliance and partner nations must do their best to avoid, minimize, and mitigate any negative impacts of NATO-led operations on the affected civilian population, and also to protect by all means the civilian population from conflict-related violence, including conflict-related sexual violence. I am very happy that Ukraine, as a partner nation, has associated with our policy and action plan. We look forward to working more closely together as we advance."*

Likewise, Alexander Vinnikov, the Head of the NATO Representation to Ukraine, said in October 2020:

> *"I would also like to acknowledge the efforts that Ukraine has undertaken for the protection of its civilian population during the conflict in the east, especially establishing the Directorate for Civil-Military Cooperation in the Armed Forces of Ukraine in 2014, and the creation of a civilian casualty mitigation team. These practical efforts have been complemented by the development of an overarching policy, Ukraine's strategy for the protection of civilians in armed conflict, and we certainly look forward to its adoption. And from the NATO side, we have also provided additional feedback and comments to the draft strategy."*

In Ukraine, NATO's narrative resonated with the critical need to demonstrate to civilians on both sides of the contact line that the government takes their protection seriously—no matter who harms them—and that it is committed to the provision of assistance to mitigate the effects of the conflict.

When the war broke out in 2014, the mandate of the AFU did not include responsibility for protecting civilians in armed conflict.[28] The AFU's mission was to protect the country's territorial integrity and independence. Instead, the State Emergency Service[29] of Ukraine was considered responsible for the protection of civilians. In the beginning of the conflict, there were no existing policies authorizing military or civilian actions to protect civilians—policies that are vital for building trust and enhancing civilian protection.[30] Discussions around NATO's experience creating a PoC Policy allowed for discourse on the need to add protection of civilians to the AFU's mandate as an integral responsibility.

June 2021, Kyiv, Ukraine. The National Guard of Ukraine officers while at a training course on the protection of civilians held by CIVIC. Photo by the press center of the National Guard of Ukraine.

Using the NATO PoC Policy as a template for drafting a similar national policy in Ukraine served Ukraine's internal needs. However, it also demonstrated Ukraine's commitment to Euro-Atlantic integration. In 2018, the AFU CIMIC Directorate started to draft a National Strategy for the Protection of Civilians. After a nine-month drafting process, lawyers for the Ministry of Defense (MOD) and all relevant Ministries reviewed the draft,[31] which was approved by the Cabinet of Ministers of Ukraine in October 2020. By mid-2021, the National Security and Defense Council of Ukraine was vetting the document for final approval by President Zelensky.

Effective PoC requires high-level policies and guidance at the strategic level, complemented by good practices and clear direction at the operational and tactical levels.

The draft Ukraine National PoC Strategy[32] includes a reference to the NATO PoC Policy, characterizing the Strategy as consistent with the "strategic course of the state on the acquisition of full membership in the European Union and the North Atlantic Treaty Organization."[33] The NATO-Ukraine Annual National Programs (ANPs) for 2019 and 2020 also offered inroads to discuss the Ukraine National PoC Strategy. The CIMIC Directorate of the AFU included adopting the Strategy in the general submission from the Ukraine Defense Ministry to the DPM for European and Euro-Atlantic integration, responsible for putting together the final version of the ANP. The final version of the ANP did not include the strategy, unfortunately, but it did initiate additional discussions at the highest government level on the need for an overarching PoC policy.

On a technical level, the text of the NATO PoC Policy was a starting point from which to produce a Ukraine-specific strategy. A comparative analysis of the NATO Policy and Ukraine's draft National Strategy shows how Ukrainian authorities built on NATO's document to write a policy with many similar features and, in some cases, goals that are slightly more ambitious.

The similarities are obvious. First, the format of the documents takes like-minded approaches at the strategic level. Like the NATO PoC Policy, Ukraine opted for a high-level political document that clarifies the commitment of the whole government to building a robust approach to PoC. Moreover, both documents provide overarching frameworks linking PoC to other legal, regulatory, or policy frameworks, including cross-cutting topics such as Children in Armed Conflicts and Women, Peace, and Security.

Second, both documents define PoC. But while Ukraine's draft National Strategy provides a general definition of both PoC and CHM, it does not explicitly distinguish between harm from AFU operations and harm perpetrated by other armed actors. Acknowledging and defining CHM is considerable progress toward a comprehensive PoC approach and corresponds to a relatively high standard compared to existing PoC policies. Furthermore, how the draft Ukraine National Strategy defines civilian harm demonstrates international good practice, including civilian casualties and other types of harm, such as psychological harm, material/financial harm, and damage to civilian infrastructure.

Ukraine's draft National Strategy augments the NATO PoC Policy in a few crucial ways.[34] For instance, the Ukraine Strategy is more explicit about reflecting important challenges arising from current and future conflicts, such as fighting a war in urban environments or CHM concerns related to arms transfers. In addition, Ukraine's draft National Strategy establishes a link between the protection of civilians and the provision of assistance to civilians harmed in conflict (in line with the Constitution of Ukraine),[35] while the notion of post-harm assistance or simply amends is absent from NATO's PoC Policy.[36]

If approved, Ukraine's National PoC Strategy could be a source of inspiration for updating NATO's PoC framework and PoC efforts in other countries and contexts, thanks to innovative practices on the part of the Ukraine government and the AFU over the last few years.

However, there were also challenges with using a high-level, international document as a starting point for a national strategy on protecting civilians. The process proved to be lengthy and complex, especially from a legal and administrative perspective. Unforeseen objections by MOD lawyers, concerned that the enactment of the Strategy would create new legal obligations that were redundant or contradictory to existing obligations under current international and domestic law, caused delays. In addition, during the drafting process, there were three changes in the Cabinet of Ministers (CMU) of Ukraine. Since the document had to be validated by all relevant ministries, a change of ministers meant that the entire consultation and validation process had to start over.

Adopting the National PoC Strategy is crucial. It would lay the legal groundwork for updating existing AFU Standard Operating Procedures (SOPs) and for developing new ones to avoid and minimize harm to civilians from military action. It would also allow institutionalizing some of the existing POC/CHM mechanisms, such as the Civilian Harm Tracking Cell discussed later in this paper. Overall, the Strategy would support the effective implementation of international humanitarian law (IHL), reduce harm to conflict-affected communities, and help Ukraine achieve several strategic goals, including security sector reform and Euro-Atlantic integration.

PROTECTION IN PRACTICE: CIVILIAN HARM TRACKING IN THE AFU, INSPIRED BY NATO'S EXPERIENCE IN AFGHANISTAN

Effective PoC requires high-level policies and guidance at the strategic level, complemented by good practices and clear direction at the operational and tactical levels. Civilian harm tracking (CHT)[37] is one of the critical tools available to transform PoC commitments into practice, allowing armed forces to understand better the impact of military operations on civilians, respond appropriately to allegations of harm, and to prevent future harm.

In Afghanistan, from 2008–2014, the NATO-led International Security Assistance Force (ISAF) pioneered a civilian casualty reduction approach by implementing one of the first large-scale civilian harm tracking mechanisms by a warring party. Initially created as a tracking and reporting mechanism, the Civilian Casualty Tracking Cell (CCTC) developed into a comprehensive Civilian Casualty Mitigation Team (CCMT) that was able to:

- Track, analyze, and report evidence on civilian casualties (CIVCAS);
- Perform preliminary assessments;
- Maintain a database of CIVCAS;
- Engage in consequence management (including ex gratia payments to victims and their families);
- Adapt quickly and appropriately to the environment.

The CCMT performed these functions while liaising closely with international organizations and nongovernmental organizations operating in Afghanistan, including the United Nations Assistance Mission in Afghanistan, Human Rights Watch, and CIVIC.

In a 2015 Joint Lessons Learned and Analysis[38] report, NATO considered the CCMT "the central pillar of ISAF CIVCAS reduction efforts." Despite challenges, the JALLC report widely saw ISAF's CCMT as a success. Aggregated data from civilian casualty tracking was used to identify patterns of harm and the need to adapt tactics and rules of engagement. It also allowed the ISAF to "be first with the truth,"[39] thereby contributing to the legitimacy of its operations and preventing disinformation campaigns.

The creation of a Ukraine-specific CHT mechanism reflected a similar mix of necessities: to mitigate civilian harm in eastern Ukraine, to develop a better understanding of incidents causing harm, and to increase the military's capacity to manage and respond to the consequences of its actions. This mechanism took the form of a Civilian Casualty Tracking Provisional Group (CCTPG) as created by the commander of the Joint Forces Operation.[40]

ISAF's experience developing a CCMT informed initial discussions within the Ukrainian Security Forces on what a CHT mechanism could deliver for the military, what the core functions and features of the mechanism would be, what type of products it would create, how it should be structured, and what resources would be needed. CIVIC had assisted NATO with the development of ISAF's CCMT and was able to provide technical expertise and provide lessons learned from ISAF for JFO's needs in Ukraine. CIVIC hypothesized that if the Ukrainian military could track and analyze civilian harm and appropriately assess and investigate alleged or known incidents, they could respond to affected civilians appropriately.

Before establishing the CCTPG, the AFU could not consistently collect data on civilian harm, analyze civilian harm patterns or trends, nor respond to relevant allegations. Harm to civilians—either inflicted by the AFU or by other armed actors—was neither disaggregated, adequately analyzed, nor used for adjusting tactical decisions, SOPs, or Rules of Engagement (RoEs). Civilian harm and the lack effectively accounting for it substantially damaged the credibility and legitimacy of the AFU in the eyes of many civilians.

In May 2018, with the support of the CIMIC Directorate and the leadership of Gen. Serhiy Nayev, commander of the JFO, PoC was publicly declared to be one of the JFO's priorities. Later that year, the CCTPG was officially created.[41] Ukraine's initiative was set up as a pilot group stationed at the Joint CIMIC Center in Kramatorsk, staffed with CIMIC officers, and reporting directly to the Deputy Joint Forces Commander. Today, the CCTPG's vital functions include:

- Coordinating with a variety of internal and external stakeholders to verify information on civilian casualties;
- Analyzing the received information;
- Identifying the causes of the civilian casualties;
- Providing a detailed description of events;
- Drafting analytical memos on civilian casualty incidents with recommendations to minimize such cases in the future; and
- Providing the JFO Command and other military commands with reliable data on civilian casualty cases, as ordered.

The CCTPG also started producing storyboards of specific incidents, weekly lists of recorded civilian casualties with identified causes and recommendations, a monthly comparative analysis, and a quarterly paper on the efficacy of measures taken to minimize harm.

Though Ukraine's CCTPG benefitted significantly from the experience and learnings of ISAF's CCMT, it departed from ISAF's model in several ways. First, the CCTPG was designed as a tracking mechanism which, contrary to ISAF's CCMT, did not formally establish the link between mitigation and response. That said, critical sources interviewed by CIVIC mentioned that CCTPG reports were regularly communicated to the JFO leadership (when asked for) and discussed in routine operational meetings. This approach suggests that CCTPG recommendations could potentially be used to inform operational adjustments leading to civilian harm reduction.

Second, the operational environment of the CCTPG is different from the one ISAF faced in Afghanistan. In 2019 and 2020 in Ukraine, the numbers of civilian and military casualties were relatively low in the context of low-intensity military operations. ISAF, however, dealt with extreme levels of violence and high-intensity military operations, especially between 2009 and 2013.[42] Ukraine's CCTPG has not been thoroughly tested as a tool for civilian casualty reduction under similar conditions.[43]

In its first two years of operation, Ukraine's CCTPG faced several challenges, some of which were similar to those faced by ISAF's CCMT. CHT mechanisms remain a relatively new instrument for civilian harm reduction, and lessons learned from a more significant number of experiences will help create the evidence base needed to support the replication of such tools in other contexts.

Access to information from various security and civilian actors has been a challenge for both ISAF's and Ukraine's efforts. For the CCTPG, one of the most significant constraints to data collection on civilian casualties has been accessing the Non-Government Controlled Area (NGCA). To mitigate this challenge, data is collected through various channels: CIMIC structures in the JFO area, other defense and security structures and government-related structures, and external sources, such as international organizations and media, and others. Therefore, most of the information related to the NGCA comes from third-party actors operating there, such as the OSCE Special Monitoring Mission[44] and the OHCHR[45] monitoring mission. Another challenge related to data collection has been irregular information sharing between the AFU, the National Police, and other security and defense components in the JFO.

September 2020, Lviv oblast, Ukraine. Civil-military cooperation officers while the Ukrainian-American command and staff exercise "Rapid Trident 2020." Photo by CIVIC (Sergii Doma).

Moreover, Ukraine's CCTPG, like ISAF's CCMT, was developed as a temporary tool within a given military operation instead of a permanent structure. Institutionalizing such mechanisms would be crucial to replicability. With staff rotations every 6–8 months, the current set up of the CCTPG is hampered by the lack of proper handover and the constant need to train new staff. In July 2021, AFU and JFO leadership were still considering ways to turn the CCTPG into a permanent unit.

OPPORTUNITY: ESTABLISHING A LAWFARE DEFENSE AND PROTECTION OF CIVILIANS CENTER OF EXCELLENCE IN UKRAINE

In 2018, the Ukraine MOD took steps toward creating a Ukraine Lawfare Defense and Protection of Civilians Center of Excellence (LD & PoC COE). This partially drew from NATO's experience encouraging the establishment of centers of excellence (COEs). The purpose of NATO COEs is to support the transformation of the Alliance through offering training and education, assisting in doctrine development, identifying lessons learned, and testing and validating concepts.[46] In other words, the COEs catalyze, specializing in one functional or subject-matter area and producing and disseminating knowledge through the delivery of training, conferences, seminars, concepts, lessons learned, and other reflection papers.

In particular, the Ukraine LD & PoC COE is meant to be a hub of knowledge and expertise on PoC. Its establishment represents an important step for the MOD and the AFU to continue developing innovative PoC approaches relevant to current and future conflict situations. In 2018, the Deputy Chief of the General Staff of AFU endorsed the idea of creating the LD & PoC COE, and CIMIC and the MOD started to work on an initial concept.

While the project is evolving, the LD & PoC COE profile and objectives are similar to the NATO COE model. They can be described as follows:

1) Provide subject matter expertise in the field of LD & PoC during an armed conflict to support the operational requests of the Ukraine MOD, the AFU, Sponsoring Nations, and other customers;
2) Initiate a regional discussion around LD & PoC within academic, political, and military networks in Ukraine, its neighboring countries, and beyond through international conferences, roundtable discussions, and other networking events;
3) Build intellectual leadership by developing forward-thinking research on critical LD & PoC-related areas that have emerged during the conflict in Donbas, with recommendations for policies and SOPs; and
4) Serve as a hub of knowledge and expertise on LD & PoC training for Ukraine security and defense staff as well as partner militaries.

NATO supported this initiative. In agreement with the MOD, a dialogue between the office of the Ukraine DPM on European and Euro-Atlantic integration and the NATO Liaison Office has integrated the LD & PoC COE as an action item in the 2020 NATO-Ukraine ANP. While the ANP is a nonbinding document, it provides a framework to support internal and external advocacy efforts to create the center.

Once the Center of Excellence is created, NATO's support will also contribute significantly to the success of the LD & PoC COE by fostering synergies between the Center of Excellence and relevant NATO entities. For instance, there is potential for the center to liaise with existing NATO COEs on areas of common interest, as well as with relevant NATO entities, including the NATO Defense College, the Joint Warfare Center, the CIMIC COE in The Hague, the European Center of Excellence for Countering Hybrid Threats, and NATO HQ's Human Security Unit.

The creation of a COE requires the Ukraine MOD and AFU leadership take ownership of the process. NATO's influence may be insufficient to overcome internal limitations. While a few PoC champions support the project within the MOD and AFU, securing institutional buy-in is still a challenge. A primary obstacle is AFU and MOD commanders' continuing insufficient understanding of the strategic value of PoC. They do not see how the COE will help fill this gap. Other obstacles include the lack of resources available for creating the COE and questions around its ideal location. Overall, creating such a hub requires a strong commitment from military and political leaderships, which is still lacking. Further encouragement from NATO—both in Ukraine and elsewhere—as well as technical and financial support by the international community, would help move this project forward.

NATO should systematically and proactively integrate PoC into current and future partnership frameworks, political engagement with partners, and security force assistance activities and measures.

FINDINGS AND RECOMMENDATIONS

Ukraine has established itself as a pioneer in its national support for the protection of civilians in armed conflict. Ukraine's leadership has demonstrated its commitment to PoC through its development of a draft National PoC Strategy, establishing a mechanism to prevent civilian harm with the CCTPG, and its consideration of a center of excellence. NATO's experience and frameworks have directly inspired these initiatives.

Likewise, the work with Ukraine demonstrates that NATO should systematically and proactively integrate PoC into current and future partnership frameworks, political engagement with partners, and security force assistance activities and measures. Integration would send a clear message that countries should prioritize PoC if they aspire to NATO membership. This inclusion would also support high-level AFU commanders' prioritization of prevention and mitigation of civilian harm in the active conflict in Donbas, an essential prerequisite for longer-term peace and stability, including the potential reintegration of territories.

Recommendations to NATO HQ, NATO Allied Command Transformation, and NATO Supreme Headquarters Allied Powers Europe:

- Systematically document NATO's PoC approach and experience, identify best practices, and generate timely lessons learned to feed into NATO's PoC frameworks. Documentation of lessons learned will allow the alliance to widely share its experience with allies, partners, and assisted nations or forces. It is an important source of inspiration for those who are new to PoC. Lessons learned include those from NATO's own experience and from members' and partners' experiences when they adopt new PoC policies and implement them in ongoing conflicts like Ukraine.

- Widely disseminate the PoC framework (policy, concept, and handbook) to nations, partners, and host countries/local forces, as well as lessons learned from previous and current experiences. Use the vast array of NATO training and exercise facilities (e.g., the Joint Warfare Center in Norway and the Joint Force Training Center in Poland), Centers of Excellence (e.g., the Civil-Military COE in the Netherlands and the Security Force Assistance COE in Italy), as well as research entities (e.g., the NATO Defense College), to further promote NATO's approach to PoC.

- Embed PoC in training programs and exercises conducted with allies, partner countries, and security and defense local forces.

- Encourage partners and host nations to prioritize PoC and adopt best practices and policies. Systematically include PoC in NATO's bilateral dialogue with Allies and Partners, and integrate the doctrine into the design, planning, resourcing, and implementation of partnerships and security force assistance (SFA) activities. PoC should be understood as crucial for accomplishing political objectives (including supporting peace and stability) that security partnerships aim to achieve.

- Incorporate PoC in ANPs and other partnership frameworks when appropriate. Anchoring PoC approaches in partnership frameworks can contribute to the institutionalization, prioritization, and resourcing of innovative approaches. In doing so, NATO may consider including political, policy, and financial incentives.

- Recognize the value of engaging with civil society organizations with experience and knowledge on PoC policies and best practices.

Recommendations to the NUC, NLO Ukraine, and NATO HQ:

- Encourage the President of Ukraine to approve Ukraine's National Strategy on PoC, based on the draft validated by the Cabinet of Ministers on Oct. 28, 2020, without further delay. The National PoC Strategy will help Ukraine achieve several strategic goals, including security sector reform and Euro-Atlantic integration. The Strategy will also support the effective implementation of IHL and reduce hostilities-related harm to conflict-affected communities.

- Support the establishment of the LD & PoC COE. This knowledge hub will allow Ukraine to continue developing innovative approaches to PoC in current and future conflict scenarios while sharing its experience and exchanging pioneering initiatives with international partners and countries in the region. Encouragement from NATO leadership in the country and beyond would help move this project forward within the AFU and MOD. Intellectual and financial support by NATO and NATO nations may hasten the creation of the LD & PoC COE.

ENDNOTES

1   NATO, "Relations with Ukraine" (April 27, 2021), https://www.nato.int/cps/fr/natohq/topics_37750.htm?selectedLocale=en.

2   "Report on the Human Rights Situation in Ukraine - August 1 2020 to January 31 2021" (OHCHR, March 2021), https://www.ohchr.org/Documents/Countries/UA/31stReportUkraine-en.pdf.

3   "Humanitarian Needs Overview - Ukraine," February 2021, https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/hno_2021-eng_-_2021-02-09.pdf.

4   As per the Center for Civilians in Conflict (CIVIC) definition, the protection of civilians encompasses all efforts undertaken to protect civilians from conflict-related harm.

5   On Introducing Amendments to Certain Laws of Ukraine Concerning Ukraine's Rejection of the Non-Alignment Policy, Ukraine Law No. 35-VIII (2018), https://zakon.rada.gov.ua/laws/show/35-19#n11.

6   *On the Principles of Domestic and Foreign Policy, Ukraine Law No. 2411–VI (2018),* https://zakon.rada.gov.ua/laws/show/2411-17#n163.

7   *On the Fundamentals of National Security of Ukraine, Ukraine Law No. 964–IV (2017),* https://zakon.rada.gov.ua/laws/show/964-15/ed20170709#Text, substituted by *On the National Security of Ukraine, Ukraine Law* No. 2469-VIII (2018), https://zakon.rada.gov.ua/laws/show/2469-19/ed20180621#Text.

8   *On Introducing Amendments to Certain Laws of Ukraine Concerning Foreign Policy Direction, Ukraine Law No. 2091-VIII (2018),* https://zakon.rada.gov.ua/laws/show/2091-19#n9 and "Distinctive Partnership between Ukraine and NATO" (Ministry of Foreign Affairs of Ukraine, December 18, 2019), https://mfa.gov.ua/en/about-ukraine/euroatlantic-cooperation/distinctive-partnership-between-ukraine-and-nato.

9   In 1998 Ukraine adopted the Euro-Atlantic Strategy and later, in 2000, a Program declaring the long-term strategic course toward European integration of Ukraine. In 2007, Ukraine and the EU started negotiations on the new treaty, which led to the political agreement to develop and conclude an Association Agreement (AA) based on the political association and economic integration the following year. The AA, signed in 2014, included a Deep and Comprehensive Free Trade Area (DCFTA). This AA was provisionally applied in November 2014 and entered into force on September 2017. It has enhanced the EU-Ukraine collaboration on human rights, fundamental freedom, and the rule of law; political dialogue and reforms; movement of persons; and strengthened cooperation in several sectors, including, energy; the environment and climate action; transport; financial services; public finances, including anti-fraud; agriculture and rural development; fisheries and maritime policies; consumer protection and civil society. Ukraine is considered a "key partner" for the European Union and the EU's Eastern Partnership.

10   "NATO Policy for the Protection Of Civilians" (NATO, July 9, 2016), http://www.nato.int/cps/en/natohq/official_texts_133945.htm.

11   "Concept on Protection of Civilians (PoC) in EU-Led Military Operations" (Brussels: European External Action Service, March 2, 2015), https://data.consilium.europa.eu/doc/document/ST-6730-2015-INIT/en/pdf.

12   "The Protection of Civilians in United Nations Peacekeeping" (United Nations Department of Peace Operations, November 1, 2019), https://www.globalprotectioncluster.org/wp-content/uploads/DPO-Policy-on-The-Protection-of-Civilians-in-United-Nations-Peacekeeping.pdf.

13   Government of Afghanistan, *National Civilian Casualty Mitigation and Prevention Policy* (September 2017).

14   "Strategy on the Protection of Civilians in Armed Conflicts" (Bern: Swiss Federal Department of Foreign Affairs, 2013), https://www.eda.admin.ch/dam/eda/en/documents/publications/MenschenrechtehumanitaerePolitikundMigration/Strategie-zum-Schutz-der-Zivilbevoelkerung-in-bewaffneten-Konflikten-2013_en.pdf.

15 "UK Government Strategy on the Protection of Civilians in Armed Conflict" (London: Foreign and Commonwealth Office, 2010), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/32950/ukstrategy-protect-cvilians-arms-conflict.pdf.

16 Exec. Order No. 13,732, 3 C.F.R. 499 (2017). https://www.govinfo.gov/content/pkg/CFR-2017-title3-vol1/pdf/CFR-2017-title3-vol1-eo13732.pdf.

17 As per CIVIC's definition, civilian harm consists of conflict-related death, physical and psychological injury, loss of property and livelihood, or interruption of access to essential services.

18 "'We Are Afraid of Silence': Protecting Civilians in the Donbass Region" (Center for Civilians in Conflict, December 2016), https://civiliansinconflict.org/wp-content/uploads/2020/12/2016.We-Are-Afraid-of-the-Silence.Report.pdf.

19 "Ukraine: Protection of Civilians Capabilities Assessment" (Center for Civilians in Conflict, July 15, 2017), confidential.

20 The DOTMLPF-P methodology has been first designed by the US Department of Defense, enabling strategic planners to consider specific critical issues, identifying gaps, and new efforts to undertake.

21 As per CIVIC's definition, Civilian Harm Mitigation consists of all measures taken by armed actors to prevent, minimize and address civilian harm resulting from their presence, activities, and operations.

22 The Anti-terrorist Operation (ATO) concluded on April 30, 2018. The Joint Forces Operation (JFO) was created as a result of the entry into force of the law, "On The Special Aspects of State Policy Aimed at Ensuring Ukraine's State Sovereignty Over the Temporarily Occupied Areas of the Donetsk and Lugansk Regions" or "Law On Reintegration of Donbas."

23 See: "Annual National Programme Under the Auspices of NATO-Ukraine Commission for 2020" (Brussels: NATO-Ukraine Commission, June 16, 2020), https://nato.mfa.gov.ua/en/documents/annual-national-programme-under-auspices-nato-ukraine-commission-2018, pages 1–3: "The Annual National Program under the NATO-Ukraine Commission is a systemic document that has the description of reforms of relevant spheres, defines strategic goals, objectives, priority tasks and measures needed to ensure effective, purposeful implementation of the Constitutionally recognized strategic course of the State toward full accession to NATO."

24 Under the Partnership Operability Initiative, Enhanced Opportunity Partners make significant contributions to NATO Operations and Alliance Objective, opening enhanced opportunities for dialogue and cooperation.

25 In its "NATO Policy for the Protection of Civilians," NATO recognizes "that all feasible measures NATO must be taken to avoid, minimize and mitigate harm to civilians. When planning and implementing such measures, NATO should consider those groups most vulnerable to violence within the local context."

26 For more information about the NATO PoC framework, including PoC policy, Concept, and Handbook, please refer to: Hill, S. and Manea, A., 2018. "Protection of Civilians: A NATO Perspective." *Utrecht Journal of International and European Law*, 34(2), pp.146–160. DOI: http://doi.org/10.5334/ujiel.461.

27 By developing the NATO Military Concept and Action Plan in 2018, the creation of a Human Security unit in 2019, and the Allied Command Operations PoC Handbook in 2021.

28 "The Vision of the Armed Forces of Ukraine" (Ministry of Defence of Ukraine, January 11, 2020), https://www.mil.gov.ua/en/news/2020/01/11/the-vision-of-the-armed-forces-of-ukraine/.

29 The State Emergency Service of Ukraine (SESU) implements state policies in civil protection, protection of population and territories from emergencies, prevention of emergencies, the rectification of emergency consequences, rescue work, fire extinguishing, fire and technogenic safety, accident rescue service activities, and hydrometeorological activities. See: "Tasks of the SESU," The State Emergency Service of Ukraine, n.d., https://www.dsns.gov.ua/en/Diyalnist-sluzhbi.html.

30   The NATO PoC Policy states that: "Promoting long-term, self-sustained peace, security, and stability is best achieved in cooperation with local authorities, population, and civil society." See: "NATO Policy for the Protection of Civilians," paragraph 10, https://www.nato.int/cps/en/natohq/official_texts_133945. htm#:~:text=NATO%20has%20a%20robust%20framework,related%20Sexual%20Gender%2DBased%20 Violence.&text=To%20be%20effective%20in%20integrating,activities%20of%20other%20international%20 actors.

31   This includes the Ministry of Reintegration of Temporarily Occupied Territories, the Ministry of Justice, the Ministry of Social Policy, the Ministry of Internal Affairs, the Ministry of Energy and Environmental Protection, and the Ministry of Finance.

32   "Draft Decree of the President of Ukraine 'On the Decision of the National Security and Defense Council of Ukraine: On the National Strategy for the Protection of Civilians in Armed Conflicts until 2030'" (Ministry of Defence of Ukraine, May 19, 2020), https://www.mil.gov.ua/ministry/normativno-pravova-baza/gromadske-obgovorennya/57744/proekt-ukazu-prezidenta-ukraini-pro-rishennya-radi-naczionalnoi-bezpeki-i-oboroni-ukraini/.

33   "On the National Strategy for the Protection of Civilians in Armed Conflicts until 2030," as validated by the Cabinet of Ministers on October 28, 2020. As of mid-2021, the strategy was undergoing final review and approval by the Presidential Office.

34   Ministry of Defense of Ukraine, d*raft Decree of the President on the decision of the National Security and Defense Council of Ukraine on the National Strategy for the Protection of Civilians in Armed Conflicts until 2030,* (May 19, 2020), https://www.mil.gov.ua/ministry/normativno-pravova-baza/gromadske-obgovorennya/57744/proekt-ukazu-prezidenta-ukraini-pro-rishennya-radi-naczionalnoi-bezpeki-i-oboroni-ukraini/.

35   Article 56 of the Constitution of Ukraine states that "everyone has a right to a compensation/indemnification of the moral and property damage caused by illegal acts/activities or inactivity of the state authorities, local self-government, their officials when exercising their powers." See: Constitution of Ukraine, art. LVI, https://rm.coe.int/constitution-of-ukraine/168071f58b.

36   NATO allies and partners chose not to include ex gratia payments or amends in the policy, choosing instead to leave it up to each nation to handle this issue in future conflicts.

37   As per CIVIC's definition, Civilian Harm Tracking refers to an internal process by which an armed actor aims to reduce civilian harm by gathering and analyzing data in its area of responsibility.

38   "Protection of Civilians: How ISAF Reduced Civilian Casualties" (Joint Analysis and Lessons Learned Center, June 1, 2015).

39   As per a quote of General David McKiernan in the report, "Civilian Harm Tracking: Analysis of ISAF Efforts in Afghanistan" (Center for Civilians in Conflict, 2014), https://civiliansinconflict.org/wp-content/uploads/2017/09/ISAF_Civilian_Harm_Tracking.pdf.

40   The JFO corresponds to the operation led by the AFU in eastern Ukraine, which consists of a set of military and legal measures aimed at "countering Russia's aggression." For more on the Joint Force Operation, please refer to: Vera Zimmerman, "What Does Ukraine's New Military Approach Toward the Donbas Mean?," Atlantic Council (blog), May 15, 2018, https://www.atlanticcouncil.org/blogs/ukrainealert/what-does-ukraine-s-new-military-approach-toward-the-donbas-mean/.

41   The Order #851 signed by the Joint Forces Commander on Dec. 29, 2018, officially created a "Provisional Group on Collecting and Analyzing the Data Related to the Cases When Civilians are Injured or Killed," hereabove referred to as the Civilian Casualty Tracking Provisional Group (CCTPG).

42   "Protection of Civilians: How ISAF Reduced Civilian Casualties."

43   Acknowledging that, on the other hand, the lower operational tempo indeed gave space for the CCTPG to be developed and piloted.

44 The OSCE Special Monitoring Mission to Ukraine is an unarmed civilian mission, present on the ground 24/7 in all regions of Ukraine. Its main tasks are to observe and report impartially and objectively on the situation in Ukraine and to facilitate dialogue among all parties to the crisis.

45 The Office of the High Commissioner on Human Rights produces quarterly reports on the human rights situation in Ukraine.

46 On NATO's Centers of Excellence, please refer to: "Centres of Excellence," NATO, November 3, 2020, http://www.nato.int/cps/en/natohq/topics_68372.htm.