



**OCHA**

United Nations  
Office for the Coordination  
of Humanitarian Affairs

# Security Council Norms and Practice on the Protection of Civilians in Armed Conflict:

## Analysis of Normative Developments in Security Council Resolutions 2009-2013

**OCCASIONAL  
POLICY PAPER**

**OCHA POLICY AND  
STUDIES SERIES**

May 2014 | 008



# OCHA

This publication was developed by OCHA Policy Development and Studies Branch (PDSB)  
Greg Puley, Policy Advice and Planning Section  
Hansjoerg Strohmeyer, Chief, Policy Development and Studies Branch

This paper was written by Pauline Maisonneuve and Torill Saeteroey

**For more information, please contact:**

Policy Development and Studies Branch  
United Nations Office for the Coordination of Humanitarian Affairs  
(OCHA)

**E-mail:** [ochapolicy@un.org](mailto:ochapolicy@un.org)

These occasional policy papers are non-papers. They are produced primarily for internal purposes and serve as a basis for promoting further discussion and policy analysis in their respective areas.

They do not necessarily represent the official views of OCHA. They are available online on the OCHA website ([www.unocha.org](http://www.unocha.org)), and on ReliefWeb ([www.reliefweb.int](http://www.reliefweb.int)) under "Policy and Issues".

© OCHA, PDSB 2014

## TABLE OF CONTENTS

<b>Table of Abbreviations</b>	<b>v</b>
<b>Background: The Security Council’s Informal Group on the Protection of Civilians (PoC)</b>	<b>vi</b>
<b>Executive Summary</b>	<b>01</b>
<b>I. INTRODUCTION</b>	<b>04</b>
Thematic and Situation-specific Resolutions on Protection of Civilians	04
Secretary-General Reports on Protection of Civilians	04
The Aide Memoire	04
<b>II. ANALYSIS OF SECURITY COUNCIL RESOLUTIONS</b>	<b>05</b>
<b>A. COMPLIANCE WITH INTERNATIONAL LAW</b>	<b>05</b>
Compliance with international humanitarian, human rights and refugee law	05
Attacks on civilians and other acts of violence	05
Respect for the principle of distinction	06
Respect for the principle of proportionality	06
Respect for the principle of precautions	06
Targeted sanctions as a response to violations of IHL and IHRL	07
<b>B. PROTECTION OF CIVILIANS: THE ROLE OF UN PEACEKEEPERS AND OTHER COUNCIL MANDATED OPERATIONS</b>	<b>08</b>
Prioritization of the protection of civilians in peacekeeping mandates	08
Comprehensive protection strategies and activities	09
Training of peacekeepers on protection of civilians	10
Reporting	10
Benchmarks	11
Conditionality Policy and Human Rights Due-Diligence Policy	12
<b>C. HUMANITARIAN ACCESS</b>	<b>12</b>
Attacks on humanitarian personnel and obstructions of the delivery of humanitarian aid	13
Safe, rapid and unimpeded humanitarian access	13
Role of peacekeeping operations in facilitating humanitarian access	13
Respect for the humanitarian principles	14
<b>D. LANGUAGE PERTAINING TO OTHER PROTECTION ISSUES</b>	<b>14</b>
Internally Displaced Persons (IDPs) and refugees	14
Children affected by armed conflict	15
Conflict-related sexual violence	16
Sexual Exploitation and Abuse	18
Small arms, light weapons, mines and explosive remnants of war	18
DDR and DDRRR	19
Security Sector Reform	19
Accountability and the Rule of Law	20
The International Criminal Court	21
Detention	21
<b>III. CONCLUSION</b>	<b>22</b>



## TABLE OF ABBREVIATIONS

<b>AFISMA</b>	African International Support Mission in Mali
<b>AMISOM</b>	African Union Mission in Somalia
<b>ANSF</b>	Afghan National Security Forces
<b>CAAC</b>	Children and Armed Conflict
<b>CCTARC</b>	Civilian Casualty Tracking, Analysis, and Response Cell
<b>DDR</b>	Disarmament, Demobilization and Reintegration
<b>DDRRR</b>	Disarmament, Demobilization, Repatriation, Resettlement and Reintegration
<b>ERWs</b>	Explosive Remnants of War
<b>FARDC</b>	The Armed Forces of the Democratic Republic of Congo (Forces Armées de la République Démocratique du Congo)
<b>HRDDP</b>	United Nations Human Rights Due Diligence Policy
<b>ICC</b>	International Criminal Court
<b>IDPs</b>	Internally Displaced Persons
<b>IEDs</b>	Improvised Explosive Devices
<b>IHL</b>	International Humanitarian Law
<b>IHRL</b>	International Human Rights Law
<b>ISAF</b>	International Security Assistance Force
<b>MARA</b>	Monitoring, Analysis and Reporting Arrangements on conflict related Sexual Violence
<b>MINURCAT</b>	United Nations Mission in the Central African Republic and Chad
<b>MINUSMA</b>	United Nations Multidimensional Integrated Stabilization Mission in Mali
<b>MONUC</b>	United Nations Organization Mission in the Democratic Republic of Congo
<b>MONUSCO</b>	United Nations Organization Stabilization Mission in the DR Congo
<b>OCHA</b>	United Nations Office for the Coordination of Humanitarian Affairs
<b>PoC</b>	Protection of Civilians in Armed Conflict
<b>SEA</b>	Sexual Exploitation and Abuse
<b>SGBV</b>	Sexual and Gender-Based Violence
<b>SSR</b>	Security Sector Reform
<b>UNAMA</b>	United Nations Assistance Mission in Afghanistan
<b>UNAMI</b>	United Nations Assistance Mission for Iraq
<b>UNAMID</b>	African Union –United Nations Mission in Darfur
<b>UNISFA</b>	United Nations Interim Security Force for Abyei
<b>UNITAR</b>	United Nations Institute for Training and Research
<b>UNOCI</b>	United Nations Operations in Côte d'Ivoire
<b>UNMIS</b>	United Nations Mission in Sudan
<b>UNMISS</b>	United Nations Mission in the Republic of South Sudan
<b>WPS</b>	Women, Peace and Security

## BACKGROUND: The Security Council's Informal Expert Group on the Protection of Civilians (PoC)

**The Security Council's** Informal Expert Group on the Protection of Civilians (the Expert Group) was established in January 2009 in response to a recommendation in the Secretary-General's 2007 report on the Protection of Civilians in Armed Conflict.<sup>1</sup> Chaired by the United Kingdom, experts from Security Council Members consider a wide range of protection issues pertaining to situations on the Council's agenda, based on briefings provided by OCHA with inputs from relevant UN Secretariat departments, agencies, Humanitarian Coordinators, and non-governmental organizations. OCHA also serves as secretariat to the Group.

The Expert Group convenes to discuss specific protection concerns in situations on the Security Council's agenda. Specifically, it meets ahead of mandate renewals or mandate adoptions for Council authorised operations with PoC concerns. In the case of mandate renewals, OCHA's briefing outlines the progress made in addressing protection concerns, or lack thereof, in order for the Expert Group to provide up to date information to the Council. On some occasions the Expert Group has also served to discuss in more detail with Council members some of the generic thematic protection concerns pertaining to a wide range of situations on the Council's agenda.

In briefing the Expert Group, the main protection concerns in the specific situation under consideration are identified, and for each of these concerns: factual information is provided; actions taken by protection actors are outlined; trends, dynamics and threats are analyzed, and suggestions are presented on possible Security Council action along with specific language proposals for Security Council resolutions in line with the Aide Memoire for the consideration of issues pertaining to the protection of civilians in armed conflict.<sup>2</sup>

Since its establishment, the Expert Group has met 55 times, and Council members have received comprehensive infor-

mation on protection of civilians issues. These briefings have informed Council discussions on the protection aspects of most resolutions adopted in the past five years. As this document shows, the engagement with the Council on country specific protection of civilians concerns has led to an enhanced understanding among Council members of the issues and options for action, and to a greater standardisation of Council language on protection related issues in its resolutions.

The UN Secretary-General and Council members have welcomed the continuing role of the informal Expert Group as a forum for briefing Council members on protection issues, recognizing it as a useful vehicle to inform the Council's deliberations on particular situations from a protection perspective.<sup>3</sup> OCHA and other relevant entities have also committed to enhance and strengthen the use of the Expert Group as part of the Rights up Front initiative, which is an initiative to renew the commitment by the UN to prevent and respond to serious violations of international human rights and humanitarian law.

1 See S/2007/643.

2 See S/PRST/2010/25.

3 See S/2010/579, and S/2012/376.

## EXECUTIVE SUMMARY

**This paper examines developments** in Security Council (the Council) language relating to the protection of civilians (PoC) in its situation-specific resolutions<sup>4</sup> from January 2009 to October 2013. During this period, concerns relating to PoC have been included more frequently and more comprehensively in situation-specific resolutions. Nonetheless scope remains for greater consistency in the Council's approach on how it addresses PoC from one context to another, and in some cases in successive resolutions addressing the same situation. Greater effort is also required to systematically integrate language adopted in thematic resolutions relevant to the protection of civilians, which often present significant developments in the Council's approach, into its situation-specific resolutions.

### Inconsistent application of key IHL principles

During the period under review, the Council has increasingly referred to the need for compliance with international humanitarian law (IHL) and international human rights law (IHRL) in situation-specific resolutions. It has also widened the scope of such demands for compliance, asking all parties to conflict, including UN peacekeepers or other UN-authorized operations, to comply with IHL and IHRL.

In regard to compliance with IHL, the Council has adopted language to strengthen compliance with certain key principles, but has addressed them inconsistently.<sup>5</sup> For example, while the principle of distinction is reflected through the Council's frequent condemnation of attacks against civilians, the Council has less frequently condemned the indiscriminate nature of attacks. The principle of proportionality is rarely referred to by the Council, and specific language on this issue is found in only one situation-specific context during the

<sup>4</sup> Generally, resolutions from the Council can be grouped into two main categories: thematic resolutions, and resolutions that refer to a situation in a region, country or an area within a country. In this report the term situation-specific resolutions will be used to cover resolutions from the latter group.

<sup>5</sup> These principles are explained in further detail in page 8 and 9.

period under review. While the principle of precautions has been rarely referred to in the past, in recent resolutions the Council has proposed risk mitigation measures to avoid or limit harm to the civilian population, such as for instance civilian casualty tracking in the context of operations conducted by UN peacekeeping or other UN mandated operations.

### Expanding role of UN peacekeepers in PoC

There has not been a significant increase in the number of missions that are mandated to protect civilians during the period under review. However, there has been an increase in the number of tasks that are included under PoC mandates, and the level of detail with which the Council's instructs missions to conduct such tasks. Nonetheless, there are a number of measures outlined in the Council's latest thematic resolution on PoC, resolution 1894 (2009) that have not been systematically applied in situation-specific resolutions, including the demand that PoC should be a prioritized task of the mission when deciding the allocation of available capacities and resources, and for peacekeepers to receive training on PoC. As a means to strengthen the implementation of resolutions by the missions on the ground, during the period under review, the Council has increasingly requested the development of mission-wide strategies on PoC and for the Secretary-General to assess and report on challenges to the implementation by the missions. These requests have however not been consistently applied across missions, and the assessments presented have often been more a list of activities undertaken by the missions, than an examination of the challenges impeding implementation of their PoC mandates.

The Council has been more consistent in including requests in situation-specific resolutions for the Secretary-General to report on protection related issues, the adoption of benchmarks to measure the performance of the missions in terms of PoC, and has demonstrated increased commitment to respect for international humanitarian, human rights and refugee law through the request for UN missions to comply with

the Secretary-General's Human Rights Due Diligence Policy when providing support to non-UN counterparts.

### **Recognizing the diversity of obstacles to humanitarian access**

The Council's approach to humanitarian access has remained largely unchanged during the reporting period, however some additional concerns have been taken into account. While the practice of the Council has been to continue to condemn attacks against humanitarian personnel, it has increasingly called on all parties to provide humanitarian personnel with safe, and unimpeded or unhindered access to all people in need of assistance. The issue of timeliness has however been inconsistently applied. There is also an increasing recognition by the Council that impediments to humanitarian access go beyond direct attacks against humanitarian personnel, and it has expressed concern with other impediments to humanitarian access such as insecurity, banditry and, most recently, bureaucratic impediments.

With regard to the role of peacekeepers in facilitating humanitarian access, the precise language presented in resolution 1894 on PoC (2009), for peacekeepers to "create the security conditions conducive to humanitarian access", is not consistently applied in situation-specific resolutions. There is also lack of consistency in the use of language to ensure that peacekeeping missions operate with respect for humanitarian principles.

### **Durable solutions for Internally Displaced Persons (IDPs) and Refugees**

Internal displacement is one issue where the language applied by the Council has developed more in the context of situation-specific resolutions than through its thematic resolutions on PoC. For example there has been an increasing reference to the need for durable solutions for IDPs, including safe and voluntary return, as well as local integration or resettlement. In a few country contexts, the Council has also addressed issues that affect return and reintegration of IDPs, such as the need to resolve land conflicts in order to provide the conditions for a sustainable return. Notwithstanding these positive developments, during the period under re-

view, the Council rarely condemned forced displacement in situation-specific resolutions despite its strong condemnation of forced displacement in resolution 1674 on PoC (2006).

### **Requesting action by national governments on children and armed conflict**

The Council has raised its concern and condemned grave violations of child rights committed against children in a number of situation-specific resolutions since 2009. Thematic resolutions on children and armed conflict, most notably 1539 (2004), 1612 (2005) and 1882 (2009), contain detailed provisions applicable in country situations, which are increasingly applied by the Council in situation-specific resolutions. The Council has repeatedly called on national authorities and security forces to adopt and implement national action plans to end and prevent grave violations against children; requested the deployment of child protection advisors in peacekeeping missions; and required monitoring and reporting on child violations, in line with the provisions in the thematic resolutions. An issue included in the thematic resolutions which has been less consistently applied by the Council in situation-specific resolutions is the need for accountability for perpetrators of violations against children.

### **Strengthening efforts to combat sexual violence in armed conflict**

The Council has strengthened its language addressing sexual violence in situation-specific resolutions, condemning attacks on women, including sexual violence in a number of contexts. As with children and armed conflict, the main reference point in regard to sexual violence is the specific thematic resolutions on this issue, particularly resolutions 1820 (2008) and 1888 (2009), and more recently 1960 (2010) and 2106 (2013), which contain detailed provisions on prevention and response to sexual violence. Amongst the provisions that are increasingly applied in country-specific resolutions are requests for the deployment of women protection advisors; for monitoring and reporting systems on sexual violence in armed conflicts to be established; and for the development of comprehensive strategies to combat sexual and gender-based violence (SGBV), or the inclusion of SGBV in mission protection strategies.



Thematic resolutions on sexual violence, and in particular resolution 2106 (2013), have emphasized the need to fight impunity for sexual violence, which has been echoed in several situation-specific resolutions. More recently, the Council has sought to strengthen accountability through time-bound commitments to combat sexual violence at the country level, which has so far been taken up in two contexts. In one context, the improvement of the situation with regard to sexual violence has been set as a benchmark for the withdrawal of the peacekeeping mission.

### **Recognizing threats posed by small arms and explosive weapons**

During the period under review, the Council has strengthened language on small arms and has expanded the mandates of peacekeeping forces to monitor the flow of small arms and their involvement in disarmament programs. The Council has also increasingly recognized the threat posed to civilians by improvised explosive devices (IEDs), as well as antipersonnel mines and explosive remnants of war (ERW). It has, however, stopped short of calling for specific precautions to be taken, as requested in resolution 1894 on PoC. On mine action, the Council has encouraged the UN to continue to support to national efforts to implement mine action programs and weapons and ammunition management.

### **Promoting accountability for violations**

During the period under review, and in line with provisions in thematic resolutions on PoC, the Council has increasingly referred to the promotion of accountability in situation-specific resolutions. It has also referred to transitional justice mechanisms and in one instance to commissions of inquiry. It has encouraged governments to cooperate with the International Criminal Court (ICC) in several situation-specific resolutions, and has, on two occasions referred a country-specific situation to the prosecutor of the ICC.

### **Lack of consistency between thematic and situation-specific resolutions**

While recognising the important developments that have been made by the Council, more consistent application in situation-specific resolutions of the language adopted in the thematic PoC resolutions and other relevant resolutions is required. The provisions in the existing thematic resolutions, if applied more systematically and consistently in situation-specific resolutions, would be sufficient for ensuring a comprehensive response to protection challenges in most contexts and would strengthen the Council's efforts to ensure more effective protection for civilians by parties to conflict, Member States and United Nations actors. The Council should also continue to request realistic assessments of performance and challenges to implementation of the PoC component of mandates, which will inform and strengthen its actions in specific contexts.

## I. INTRODUCTION

**Beginning in 1999**, the protection of civilians has come to occupy a prominent place on the Security Council's (the Council) agenda, as manifested in the biannual open debates and the Secretary-General's periodic reports, the adoption of the Council's Aide Memoire on the protection of civilians and the establishment of the informal "Expert Group" (see background). Most importantly, the protection of civilians has increasingly permeated the country-specific deliberations and decisions of the Council. This has resulted in concrete proposals and decisions intended to improve the situation of countless men, women, girls and boys, affected by the horrors and indignities of conflict. It has also contributed to the increasing awareness among Member States and the broader international community of the need to respond to protection issues.

### Thematic Resolutions on Protection of Civilians

1. To date, the Council has adopted five thematic resolutions on the protection of civilians: resolutions 1265 (1999), 1296 (2000), 1674 (2006), 1738 (2006) and 1894 (2009). These have addressed a broad range of challenges: the need for compliance with international humanitarian law (IHL), refugee law and international human rights law (IHRL); the need to address impunity, to improve access for and safety of humanitarian personnel; the role of peacekeeping operations in the protection of civilians in armed conflict (PoC); and the protection of journalists and other media professionals.
2. While thematic resolutions provide the overall framework for the Council's action on PoC, the latter have greatest impact when their provisions are reflected in situation-specific resolutions. In this respect, the inclusion of protection activities in the mandates of United Nations peacekeeping missions, beginning with the United Nations Mission in Sierra Leone in 1999, is among the most significant of the Council actions to this end. There are currently ten UN peacekeeping operations with PoC mandates<sup>6</sup>.
3. To date, the Council has adopted 11 presidential statements on PoC.
4. Since 1999, the Council has considered ten reports submitted by the Secretary-General every 18 months with recommendations for improving PoC. According to the 2009 Secretary-General's report, "these have raised a range of issues, reflecting the fact that improving the protection of civilians is not a purely humanitarian task; rather, it is a task that requires focus and action in the peacekeeping, human rights, rule of law, political, security, development and disarmament fields". Recommendations contained in the reports address such issues as the ratification of international instruments, protection of specific new weapons systems, protection of specific groups, humanitarian access, sexual violence, impunity, small arms, and the role of peacekeeping missions and regional organizations.
5. The *Aide Memoire for the Consideration of Issues Pertaining to the Protection of Civilians* facilitates the Council's consideration of issues relevant to PoC in armed conflict. Developed at the Council's request in 2002, updated in 2003, substantially revised in 2009, and updated again in 2010, the aide memoire is a practical tool to assist the Council in identifying the key PoC concerns in situations under its review. Based on the Council's past practice, the Aide Memoire sets out specific actions the Council could take to respond to those concerns. A fifth version of the Aide Memoire was annexed to the latest presidential statement of the Council on PoC, in February 2014.

### Secretary-General Reports on Protection of Civilians

### The Aide Memoire

MINUSTAH/Haiti; UNIFIL/Lebanon; UNMIL/Liberia; MINUSMA/Mali; UNMISS/South Sudan; UNAMID/Sudan (Darfur); UNISFA/Abyei; and MINUSCA/CAR.

<sup>6</sup> UNOCI/Côte d'Ivoire; MONUSCO/Democratic Republic of the Congo;

## II. ANALYSIS OF SECURITY COUNCIL RESOLUTIONS

**The following section** analyses key trends in the Council's PoC language from January 2009 to October 2013, focusing on situation-specific resolutions. Where necessary, reference is made to the Council's thematic resolutions on PoC. The key trends have been organized around the main themes highlighted in the successive Council thematic resolutions on PoC: (i) compliance with international law, (ii) the protection mandates of UN peacekeeping and other operations, (iii) humanitarian access; and (iv) other protection issues such as internal displacement, children and armed conflict, conflict-related sexual violence and rule of law.

### A. COMPLIANCE WITH INTERNATIONAL LAW

#### Compliance with international humanitarian law and human rights law

6. The Council has tended to request compliance with IHL and IHRL in addition to, or instead of, the more general condemnation of attacks against civilians. It has also widened its scope, demanding such compliance from all relevant parties to conflict and not only specific armed groups.
7. The Council is also increasingly demanding that UN peacekeepers or Council-authorized regional operations comply with IHL and IHRL. In resolution 2093 on Somalia for example, it directly requested AMISOM to carry out its tasks in full compliance with its obligations under IHL and IHRL. In resolution 2098 on the Democratic Republic of Congo (DRC), the Council specifically requested MONUSCO, while only through the Intervention Brigade, to adhere to IHL when carrying out targeted offensive operations. In resolution 2100 on Mali, it requested MINUSMA to adhere to IHL, IHRL and refugee law.

#### Attacks on civilians and other acts of violence

8. The Council has continued to condemn the deliberate targeting of civilians by parties to conflict but it has also gone further to condemn specific types of attacks and

means and methods of warfare. Examples include: targeted attacks against civilians, widespread sexual violence, recruitment and use of child soldiers, extrajudicial executions, and forced displacement in resolutions on the DRC;<sup>7</sup> increased inter-tribal fighting and attacks on humanitarian personnel in resolutions on Darfur;<sup>8</sup> gender-based violence, including rape and other forms of sexual violence, intentional killing and maiming of children, and abduction and attacks against schools and hospitals in South Sudan<sup>9</sup>; extrajudicial executions and sexual and gender-based violence (SGBV), forced amputations and forced displacement in resolution 2100 (2013) on Mali.

9. The Council has condemned specific means and methods of warfare for their effects on civilians, especially when used in populated areas. A particularly striking example was the Council's expression of deep outrage over the use of chemical weapons in Syria<sup>10</sup>. The Council has also condemned or expressed concern about the use of improvised explosive devices (IEDs) and human shields by armed groups in Afghanistan, and aerial bombings in resolutions on Darfur, Sudan and Libya. In resolution 1975 (2011) on Côte d'Ivoire, the Council authorized UNOCI to use force to prevent the use of heavy weapons against civilians. Previous resolutions on Syria also underlined

7 See resolution 1925 (2010) "condemning in particular the targeted attacks against the civilian population, widespread sexual violence, recruitment and use of child soldiers and extrajudicial executions"; resolution 1991 (2011) "condemning in particular the targeted attacks against civilians, widespread sexual and gender-based violence, recruitment and use of children by parties to conflict, forced displacement and extrajudicial executions"; resolution 2053 (2011) "condemning in particular the targeted attacks against civilians, widespread sexual and gender-based violence, recruitment and use of children by parties to conflict, in particular the mutineers of ex-Congrès National pour la Défense du Peuple (ex-CNDP) and the 23 March Movement (M23), the displacement of significant numbers of civilians, extrajudicial executions and arbitrary arrests"; and resolution 2098 (2013) "condemning in particular those involving the targeted attacks against civilians, widespread sexual and gender-based violence, systematic recruitment and use of children by certain parties to conflict, the displacement of significant numbers of civilians, extrajudicial executions and arbitrary arrests".

8 See resolutions 1935 (2010), 2003 (2011), 2063 (2012) and 2113 (2013).

9 See resolutions 1996 (2011), 2057 (2012), including attacks against schools and hospitals, and 2109 (2013).

10 See resolution 2118 (2013).

the importance of the withdrawal of heavy weapons from populated areas<sup>11</sup>.

### Respect for the principle of distinction<sup>12</sup>

10. While the Council has frequently condemned the deliberate targeting of civilians, it has referred to the indiscriminate nature of attacks in only three situations: Somalia, Sudan and Afghanistan.<sup>13</sup> Furthermore, the condemnation has not been consistently applied and a clear distinction is not always made between attacks that are illegal under IHL and those that are not. Examples from Afghanistan and Sudan show how the Council's language can vary from one resolution to another while referring to the same context. Resolutions renewing ISAF's mandate referred to the indiscriminate nature of attacks, but those renewing UNAMA's mandate include no such reference. In resolutions on Sudan, the Council specifically mentioned the indiscriminate nature of attacks in its resolutions renewing the mandate of the Panel of Experts, but resolutions renewing UNAMID's mandate did not explicitly qualify the attacks as either indiscriminate or intentionally targeting civilians.

11. In certain resolutions, the Council has condemned, in the same paragraph, attacks by non-state armed groups against civilians, including humanitarian actors, on the one hand, and against national or international armed forces by non-state armed groups on the other. Yet, while attacks targeting civilians or indiscriminate attacks are in violation of IHL, attacks against parties to conflict are permitted.<sup>14</sup>

11 See resolutions 2042 (2012) and 2014 (2012).

12 Distinction is a core principle of IHL. All parties to a conflict should always distinguish between civilians and combatants, and between civilian objects and military objectives. Furthermore, indiscriminate attacks are prohibited and may constitute war crimes. These are defined as attacks that are not directed at a specific military object, or that employ a method or means of combat which cannot be directed at a specific military objective.

13 See resolutions 1863 (2009), 1964 (2010), 2010 (2011), and 2093 (2013) on Somalia; resolutions 1891 (2009), 1945 (2010), 2035 (2012) and 2091 (2013) on the mandate of the Panel of Experts for Sudan; and resolutions 2011 (2011), 2069 (2012), and 2120 (2013) on renewing ISAF's mandate authorization.

14 See resolutions 1868 (2009), 1890 (2009), 1917 (2010), 1943 (2010), 1974 (2011), 2041 (2012) and 2096 (2013) on Afghanistan, which "[Condemn]

### Respect for the principle of proportionality<sup>15</sup>

12. Despite a reference to the proportionality principle in resolution 1894 (2009) on PoC and its relevance in all conflict settings, it has been referred to in only one context, i.e. Somalia, where the Council stressed the responsibility of all parties in Somalia to comply with their obligations to protect the civilian population from the effects of hostilities, in particular by avoiding any excessive use of force<sup>16</sup>.

### Respect for the principle of precautions<sup>17</sup>

12. While in the past the Council has rarely made reference to the principle of precautions, in the last few years there has been an increasing tendency to include measures to mitigate risks to the civilian population in the mandates of UN peacekeeping or other UN mandated operations. Examples include resolutions on Afghanistan, Somalia, Mali and DRC as described below.

---

in the strongest terms all attacks [...] targeting civilians and Afghan and international forces"; and resolutions 2010 (2011) on Somalia, which "condemn[s] all attacks, including terrorist attacks on the Transitional Federal Government, AMISOM and the civilian population by armed opposition groups, and foreign fighters, particularly Al-Shabaab"; and to a lesser extent 2093 (2013) which "reiterat[es] its strong condemnation of all attacks on Somali institutions, AMISOM, United Nations personnel and facilities, journalists, and the civilian population by armed opposition groups, and foreign fighters, particularly Al-Shabaab". The new formulation moderates, to some extent, the impression of the initial one that the Transitional Federal Government, AMISOM and the civilian population formed a single category under international law.

15 Under IHL, the principle of proportionality prohibits attacks that may be expected to result in civilian casualties or cause damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated from the attack.

16 See resolutions 1863 (2009), 1964 (2010), 2010 (2011) and 2093 (2013).

17 Under IHL, in the conduct of military operations, constant care shall be taken to spare civilians and civilian objects from the effects of hostilities. Accordingly, parties to conflict must take all feasible precautions to minimize civilian casualties and damage to civilian objects. In particular, parties should do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects; they must take all feasible precautions in the choice of means and methods of attack, and refrain from launching an attack that may be expected to cause excessive harm to civilians.

14. In successive resolutions on Afghanistan<sup>18</sup>, the Council has called for efforts to minimize the risk of civilian casualties, notably by calling on ISAF to conduct continuous reviews of tactics. It has also welcomed the introduction of tactical directives by ISAF and progress by Afghan and international forces in reducing civilian casualties; recognized the progress made by ISAF and other international forces in minimizing the risk of civilian casualties; and noted the work of the ISAF Civilian Casualties Tracking Cell with regard to the monitoring and reporting of civilian casualties to the Council.
15. In resolution 2010 (2011) on Somalia, the Council referred expressly, for the first time, to AMISOM's obligation to prevent civilian casualties during its operations, welcomed the mission's progress in reducing civilian casualties and urged it to continue efforts in this regard. In resolution 2036 (2012), the Council commended AMISOM's commitment to establish a Civilian Casualty Tracking, Analysis and Response Cell (CCTARC), and called on international donors and partners to further support the establishment of a CCTARC. In resolution 2093 (2013) the Council underlined the importance of the establishment of such a cell, requested AMISOM to report on the progress of establishing it and called on international donors and partners to further support its establishment.
16. In resolution 2085 (2012) on Mali, the Council specified that AFISMA should take appropriate measures to reduce the impact of military action on civilians, and asked the Secretary-General to advise the Council on ways to mitigate any adverse impacts of military operations on civilians. In resolution 2100 (2013) establishing MINUSMA, it requested the mission to take into account the need to protect civilians and mitigate the risk to civilians and civilian objects in implementing its mandate.
17. In resolution 2098 (2013) on DRC, the Council asked MONUSCO "to mitigate the risk to civilians" before, during and after any military operation. Notably, in the context of DRC and Mali, the Council did not call for the

establishment of a mechanism to track and analyse civilian casualties during offensive operations as it did for the two non-UN offensive operations authorized by the Council, i.e. AMISOM and ISAF. However, in the case of DRC, the Council requested the Secretary-General to report to the Council on any violations of IHRL and IHL that may occur, and on efforts to mitigate civilian harm.

### Targeted sanctions as a response to violations of IHL and IHRL

18. The Council has continued its practice of referring to human rights and PoC as designation criteria for sanction regimes. To date, five out of thirteen sanctions regimes include listing criteria related to violations of IHRL or IHL.
19. In the case of three of these regimes, any serious violation of IHL or IHRL triggers the application of asset freezes and/or travel bans for people who have been designated by the relevant sanctions committee (Sudan, Côte d'Ivoire and Libya). In the Côte d'Ivoire sanctions regime, the Council underlined its readiness to impose targeted or graduated sanctions against individuals who violate IHL and IHRL.<sup>19</sup> It is to be noted that resolution 1975 (2011) imposed a travel ban and assets freeze on President Laurent Gbagbo and members of his entourage.<sup>20</sup> In Sudan, the Council decided that persons designated by the Sanctions Committee<sup>21</sup> as committing violations of IHL or IHRL or other atrocities shall be subject to asset freezes and/or travel bans.<sup>22</sup> In resolution 1970 (2011) on Libya, the Council adopted similar sanctions against President Muammar Qaddafi and members of his family, and extended them to other individuals and entities in resolution 1973 (2011).<sup>23</sup>

18 See resolutions 1868 (2009), 1890 (2009), 1917 (2010), 1943 (2010), 1974 (2011), 2011 (2011), 2041 (2012), 2069 (2012), 2096 (2013) and 2120 (2013).

19 See resolution 1980 (2011) extending the Côte d'Ivoire sanctions regime and the mandate of the group of experts monitoring it. Resolutions 2045 (2012), 2101 (2013) and 2112 (2013) recall resolution 1980.

20 In resolution 1975 (2011), the Council determined that five people, including Mr. Gbagbo, met the criteria listed in resolution 1572 (2004) as people who had committed serious violations of human rights and IHL.

21 See resolution 1591 (2005), which established a Sanctions Committee and a Panel of Experts to oversee the relevant sanctions measures. See resolution 2091 (2013), which extends the mandate of the Panel of Experts until 17 February 2014.

22 See resolution 1591 (2005), also referred to in resolution 2091 (2013).

23 Resolutions 2040 (2012) and 2095 (2013) extended the mandate of the

20. The two other relevant sanction regimes impose sanctions in relation to a limited set of violations only. In Somalia, sanctions are limited to the recruitment and use of children; targeting of civilians including women and children, including killing and maiming; SGBV; attacks on schools and hospitals, abduction and forced displacement; and obstructing the delivery of humanitarian assistance.<sup>24</sup> In the east of DRC, violations that would trigger the imposition of sanctions are limited to grave violations against children and women, including killing and maiming, sexual violence, abduction and forced displacement, the recruitment and use of children, and the obstruction of the delivery of humanitarian assistance.<sup>25</sup>

21. Another notable development is that sanction regimes applicable to DRC and Somalia include sanctions against “individuals responsible for obstructing the access to or the distribution of humanitarian assistance”, but this has not been followed up in situation-specific resolutions with specific measures that should be taken to ensure accountability for the perpetrators of attacks against humanitarian personnel.

## B. PROTECTION OF CIVILIANS: THE ROLE OF UN PEACEKEEPING AND OTHER COUNCIL MANDATED OPERATIONS

22. There are currently nine UN peacekeeping operations that have PoC mandates.<sup>26</sup> During the period under review, several provisions in resolution 1894 on PoC relating to the mandates and role of peacekeeping operations have not been consistently applied by the Council in situation-specific resolutions. These include demands for PoC to be a prioritized task in peacekeeping missions, the development of mission-wide protec-

tion strategies, or, training of peacekeepers on PoC. The Council has increasingly asked the Secretary-General to report on protection related issues, and has in several contexts adopted benchmarks that are relevant for measuring progress in terms of PoC, and has strengthened its commitment to IHL, IHRL, and refugee law through the request of UN missions to comply with the Secretary-General’s Human Rights Due Diligence Policy (HRD-DP) when providing support to non-UN counterparts.

### Prioritization of the protection of civilians in peacekeeping mandates

23. While resolution 1894 stressed that mandated protection activities must be given priority in decisions about the use of available capacity and resources,<sup>27</sup> this specific provision has only been included in resolutions for UNAMID, and MONUC/MONUSCO.<sup>28</sup> The prioritization of PoC has however also been explicitly stated in the mandates of UNMISS and UNOCI.<sup>29</sup> In resolution 2100 (2013) on Mali, while the Council mandated MINUSMA to protect civilians under imminent threat of physical violence, it did not expressly specify PoC as a priority for the mission.

24. The lack of consistency in the application of this provision is demonstrated in the case of MONUC/MONUSCO, where the priority of PoC in decisions about the use of available capacity and resources has been included in every consecutive resolution from 2009 to 2012, but was not reaffirmed in resolution 2098 (2013).

Panel of Experts assisting the 1970 Libya Sanctions Committee.

24 See resolution 2002 (2011). Subsequent resolutions 2060 (2012) and 2111 (2013) recalled resolution 2002.

25 See resolution 2078 (2012) which extended the mandate of the DRC sanctions regime and the group of experts until Feb 2014.

26 UNOCI/Côte d’Ivoire; MONUSCO/Democratic Republic of the Congo; MINUSTAH/Haiti; UNIFIL/Lebanon; UNMIL/Liberia; MINUSMA/Mali; UNMISS/South Sudan; UNAMID/Sudan (Darfur); and UNISFA/Abyei; and AMISOM/Somalia.

27 OP19: “Reaffirms its practice of ensuring that mandates of UN peacekeeping and other relevant missions include, where appropriate and on a case-by-case basis, provisions regarding the protection of civilians, stresses that mandated protection activities must be given priority in decisions about the use of available capacity and resources, including information and intelligence resources, in the implementation of mandates; and recognizes, that the protection of civilians when and as mandated requires a coordinated response from all relevant mission components.”

28 See resolutions 1935 (2010), 2003 (2011), 2063 (2012), and 2113 (2013) for UNAMID; and resolutions 1906 (2009), 1925 (2010), 1991 (2011) and 2053 (2012) for MONUSCO.

29 See resolutions 2057 (2012), and 2109 (2013) for UNMISS; and resolutions 1933 (2010), 2000 (2011), 2062 (2012), and 2012 (2013) for UNOCI.

## Comprehensive protection strategies and activities

25. The request made in resolution 1894 for peacekeeping missions with protection mandates to incorporate comprehensive protection strategies into the overall mission implementation plans, has been followed up by the Council in four out of the nine current peacekeeping mission mandates, notably UNOCI, UNAMID, UNMIS/UNMISS<sup>30</sup>, and MONUC/MONUSCO<sup>31</sup>. The DRC again provides an example of the lack of consistent application by the Council, where the first request for the implementation of a system-wide protection strategy came with resolution 1906 (2009) on MONUC and continued in consecutive resolutions on the DRC until resolution 2098 (2013), where the language encouraging the implementation of the mission's PoC strategy was not retained. The retention of such language would seem appropriate in terms of stressing the importance that the Council ascribes to the development and effective implementation of protection strategies.
26. In some instances, the Council has made additional demands including:
- Specifying that the mission's PoC strategy should be developed in consultation with the UN Country Team.<sup>32</sup>
  - Specifying the types of protection activities to be undertaken by the mission, including frequent patrolling in high-risk areas and conflict-resolution mechanisms;<sup>33</sup> threat assessments;<sup>34</sup> joint protection teams, community liaison interpreters, joint investi-

gation teams,<sup>35</sup> setting up an early warning system, monitoring and reporting on IHRL and IHL, conducting pro-active patrols in areas at high risk of conflict;<sup>36</sup> and monitoring and reporting on flows of personnel, arms and related materiel across borders.<sup>37</sup>

- Specifying how the mission should use its existing capacities and resources. For example, in resolution 2062 (2012) on Côte d'Ivoire, the Council introduced new language signalling to all UN bodies operating in Côte d'Ivoire that they should adapt to the reality on the ground when dealing with PoC by reconfiguring within their existing capacities and reinforcing the Mission's field presence in areas where civilians are at greater risk.
  - Specifying how the mission could better implement its PoC strategy in particular, by enhancing its interaction with the civilian population (resolutions 2053 (2012) on MONUSCO and resolutions 2057 (2012) on South Sudan).
27. On protection activities specifically, the explicit inclusion of PoC under the tasks of the mission's military component, as seen in resolution 2098 (2013) on MONUSCO, represents a new development. While MONUSCO's military component is mandated to "take all necessary measures" to protect civilians, its civilian component is mandated to "support", "as appropriate", the implementation of PoC. This may be read to suggest that PoC is primarily a military matter when it is a concern of the entire mission. This perception is further reinforced by the inclusion under military component of the mandate, of human rights promotion, child-protection tasks and the deployment of women-protection advisers, all of which would normally fall under the responsibility of the mission's civilian component.
28. A final PoC strategy-related concern in the area of peacekeeping is the request for assessment of and reporting on the implementation challenges faced by missions. The Secretary-General has been requested to un-

30 While the request was made for UNMIS to develop such a strategy in resolution 1919 (2010), UNMISS developed its strategy in the absence of such a request by the Council in resolution 1996 (2011). The Council then welcomed the development of such a strategy and encouraged its implementation in resolution 2057 (2012).

31 See resolutions 1933 (2010), 2000 (2011), 2062 (2012), and 2112 (2013) for UNOCI; resolutions 1935 (2010), 2003 (2011), 2063 (2012), and 2113 (2013) for UNAMID; resolution 1919 (2010) for UNMIS; resolutions 1991 (2011) 2057 (2012), and 2109 (2013) for UNMISS; and resolutions 1906 (2009) 1925 (2010), 1991 (2011) and 2053 (2012) for MONUSCO.

32 See resolutions 1935 (2010), 2003 (2011) and 2063 (2012) on Darfur (only the military component of UNAMID had been involved in the design of the mission's previous strategy).

33 See resolution 1919 (2010) on Sudan.

34 See resolution 1933 (2010) on Côte d'Ivoire.

35 See resolutions 1906 (2009) and 1925 (2010) on DRC.

36 See resolution 1996 (2011) on South Sudan.

37 See resolution 2057 (2012) on South Sudan.

dertake such assessment and reporting in five instances<sup>38</sup>, but the requests are not consistent. For instance, in resolution 2063 (2012) renewing UNAMID's mandate, the Council discontinued its earlier requests for the Secretary-General to report on the implementation of the mission's strategy. It should however be noted that this could be due to the fact that in practice, this request had to some extent resulted in generic reporting in the form of a descriptive list of the mission's activities, rather than an assessment of the mission's capacity to fulfil its mandate to protect civilians.

### Training of peacekeepers on protection of civilians

29. Following the requirement in resolution 1894 that UN peacekeepers receive pre-deployment training on PoC,<sup>39</sup> resolution 1906 (2009) on DRC was the first to request the provision of such training and in-theatre guidance to the mission's military and police personnel.<sup>40</sup> This request was not followed up in other situation-specific resolutions until resolution 2085 (2012) establishing AFISMA, where the Council requested the African Union to report to it on the effective training of military and police units of AFISMA in their obligations under international law, which constituted a benchmark for the start of offensive operations in northern Mali. Resolution 2100 (2013), establishing MINUSMA, called on the mission to take its relevant resolutions on PoC, children and armed conflict (CAAC) and women, peace and se-

38 See resolution 1906 (2009) on DRC; 1935 (2010) and 2003 (2011) on Darfur; 2057 (2012) on South Sudan; and 2062 (2012) on Côte d'Ivoire.

39 OP23: "Requests the Secretary-General, in consultation with relevant actors, to ensure that peacekeeping missions with protection of civilians' mandates, in keeping with the strategic plans that guide their deployment, conduct mission-wide planning, pre-deployment training, and senior leadership training on the protection of civilians and requests troop and police contributing countries to ensure the provision of appropriate training of their personnel participating in UN peacekeeping and other relevant missions to heighten the awareness and responsiveness to protection concerns, including training on HIV/AIDS and zero tolerance of sexual exploitation and abuse in UN peacekeeping missions."

40 OP13: "Requests the Secretary-General to ensure that technical support is provided, in pre-deployment and in theatre, to MONUC's troop- and police contributing countries to include guidance and training for military and police personnel on the protection of civilians from imminent threat and appropriate responses, including on human rights, sexual violence and gender issues."

curity (WPS) into account and to abide by IHL, IHRL and refugee law, but also recalled the importance of training in this regard. Again, it would seem important to consistently refer to the need for pre-deployment training and in-theatre guidance so as to stress the importance attached to this by the Council.

30. Moreover, DPKO and the United Nations Institute for Training and Research (UNITAR) have developed specific training materials for troops and other personnel deployed to missions with PoC mandates. In addition, in-mission training on PoC through the Integrated Mission Training Centres also exists for some missions, i.e. as of May 2013 in UNMISS, MONUSCO and UNOCI.<sup>41</sup>

### Reporting

31. In resolution 1894 (2009), the Council requested the Secretary-General to systematically include in his country reports developments on protection-related issues.<sup>42</sup> This requirement has been reiterated in resolutions on Darfur, Abyei, Côte d'Ivoire, DRC, Mali and to a certain extent Afghanistan.<sup>43</sup>

32. There is also an increased emphasis by the Council on monitoring and reporting on violations and abuses<sup>44</sup>

41 DPKO-DFS Comparative Study and Toolkit, *Protection of Civilians Coordination Mechanisms in UN Peacekeeping Missions*, 2012, p. 25.

42 OP32: "Requests the Secretary-General to include in his reports to the Council on country-specific situations more comprehensive and detailed information relating to the protection of civilians in armed conflict, including on protection-related incidents and actions taken by parties to armed conflict to implement their obligations to respect and protect the civilian population, including information specific to the protection needs of refugees, internally displaced persons, women, children and other vulnerable groups."

43 See resolutions 1935 (2010), 2003 (2011), 2063 (2012), and 2113 (2013) on Darfur; resolutions 1990 (2011), 2032 (2011), 2047 (2012), 2075 (2012), and 2014 (2013) on Abyei; resolutions 1933 (2010) and 2000 (2011) on Côte d'Ivoire; resolutions 1906 (2009), 1925 (2010) (less specific on reporting requirements), 1991 (2011), 2053 (2012), and 2098 (2013) on MONUSCO; resolutions 2085 (2010), and 2100 (2013) on Mali; and resolutions 1943 (2010), 1974 (2011), 2011 (2011), 2041 (2012), 2069 (2012) and 2096 (2013) on Afghanistan.

44 The concept of "abuse" is more general than the concept of "violation" of human rights in that it encompasses any act causing harm or damage, or threatening harm or damage, regardless of whether the act in question could be characterized as a "violation" of a specific legal norm. Human rights abuses that cannot be characterized as human rights violations



of IHRL and IHL as seen in resolutions on UNAMID, UNOCI, UNISFA, MINUSMA and MONUSCO.<sup>45</sup> In the case of Darfur, the Secretary-General is specifically required to report promptly on gross violations and abuses to the Council and in the case of Côte d'Ivoire the Secretary-General is authorized to report publicly and to the Council on IHRL and IHL violations. It should be noted that while the Council has repeatedly requested the Secretary-General to ensure that effective human rights monitoring and reporting to the Council is carried out in the case of Abyei,<sup>46</sup> the lack of progress in this regard has not promoted the Council to strengthen its language on this in subsequent resolutions.

## Benchmarks

**33.** Resolution 1894 stressed the importance of including progress indicators regarding PoC in the benchmarks developed by UN peacekeeping and other missions.<sup>47</sup> Over the last few years, the Council has requested the development of such benchmarks in Chad, Darfur, South Sudan, Côte d'Ivoire, and in the DRC. Nevertheless, in several cases they are geared towards determining exit strategies for the missions rather than the state of PoC. Such benchmarks were first introduced in relation to Chad<sup>48</sup> and were aimed at the Government meet-

include, for example, acts committed by people not acting on behalf of a State party. However, while legally distinct, the use of the concepts of "abuses" versus "violations" should not, and does not seem to, make any difference on reporting in practice, as missions report on both the actions of State parties (violations) and non-State actors (abuses). Moreover, the use of one or the other is not consistent in the Council's resolutions and does not seem to follow any pattern. It is worth noting that this specific legal distinction works for human rights only, both States and non-States actors 'violate' IHL.

<sup>45</sup> See resolutions 1935 (2010), 2003 (2011), 2063 (2012), and 2113 (2013) for UNAMID; resolutions 1933 (2010), 2000 (2011), 2062 (2012), and 2112 (2013) for UNOCI; resolutions 1990 (2011), 2032 (2011), 2047 (2012), 2075 (2012), and 2014 (2013) on UNISFA; resolution 2100 (2013) for MINUSMA; and resolutions 1906 (2009), 1925 (2010), 1991 (2011), 2053 (2012) and 2098 (2013) for MONUSCO.

<sup>46</sup> See resolutions 1990 (2011), 2032 (2011), 2047 (2012), 2075 (2012) and 2014 (2013).

<sup>47</sup> OP27: "Reaffirms its practice of requiring benchmarks, as and where appropriate, to measure and review progress made in the implementation of peacekeeping mandates and stresses the importance of including indicators of progress regarding the protection of civilians in such benchmarks for relevant missions."

<sup>48</sup> On the Government's ability to ensure a voluntary return and

ing certain conditions. Without explicitly stating that the withdrawal of MINURCAT would depend on the degree of achievement against the benchmarks, the Council established a high-level working group to monitor progress and requested that the Secretary-General report on its findings, stating that the mandate of MINURCAT would be reviewed as necessary.

**34.** In resolutions on Darfur,<sup>49</sup> the Council requested the Secretary-General to continue reporting on progress against the benchmarks developed pursuant to resolution 1881 (2009), from which three out of four were relevant to PoC.<sup>50</sup> In resolution 2057 (2012) on South Sudan, the Council also established benchmarks where three out of five were relevant to protection<sup>51</sup> and requested the Secretary-General to keep the Council regularly informed of progress made against these benchmarks. The following reports from the Secretary-General on South Sudan<sup>52</sup> did not provide a specific update on progress against these benchmarks. While the reports cover the relevant topics such as PoC, rule of law, and monitoring and prevention of HR violations, the information included is more focused on listing the activities undertaken by the mission to support the Government of South Sudan, than an assessment of the Government's capacity to take on these issues, which was the purpose of these benchmarks.

**35.** In the cases of DRC and Côte d'Ivoire, the Council stated that any drawdown of the mission should be pre-con-

resettlement for IDPs and refugees, demilitarization of IDP and refugee camps and a strengthening of law enforcement agencies in Eastern Chad.

<sup>49</sup> See resolutions 1935 (2010), 2003 (2011) and 2063 (2012), and 2113 (2013).

<sup>50</sup> The restoration and upholding of a stable and secure environment throughout Darfur; the achievement of a stabilized humanitarian situation in which the humanitarian community has free and unhindered access to the population in need; and UNAMID's contribution to enhanced rule of law, governance and human rights.

<sup>51</sup> The sufficient capacity of the Government of South Sudan to prevent, mitigate and resolve conflicts and effectively carry out its responsibility to protect civilians; the strengthening of the capacity of the Government of South Sudan security and the rule of law institutions to maintain public order and administer justice; and the monitoring and prevention of human rights violations by the Government of South Sudan.

<sup>52</sup> See the Secretary-General's Reports on South Sudan: S/2012/820, S/2013/140, and S/2013/366.

ditioned on the attainment of benchmarks. While the resolution on Côte d'Ivoire<sup>53</sup> only included benchmarks related to the country's stability, the benchmarks in resolutions on DRC are more detailed and refer to the Government's improved capacity to protect civilians and the reduction of violence against civilians, including SGBV and violence against children to a level that can be effectively managed by the Congolese justice and security institutions.<sup>54</sup>

### Conditionality Policy and Human Rights Due-Diligence Policy

36. Following the adoption of the United Nations Human Rights Due Diligence Policy for UN support to non-UN security forces (HRDDP), the Council has increasingly requested missions not to provide support where there are substantial grounds for believing that the receiving entities are committing grave violations of IHL, IHRL or refugee law, and where the relevant authorities fail to take the necessary corrective measures. The origins of the HRDDP lie in the development of a conditionality policy in the DRC in 2009 which sought to limit MONUSCO's support to Congolese armed forces that were accused of IHL and IHRL violations. The Council first made explicit reference to the conditionality policy in resolution 1906 (2009), specifying that respect for IHL and IHRL by the Congolese armed forces should be a necessary pre-condition for receiving the mission's support. It also called on MONUSCO to immediately intercede with the command of the Congolese armed forces if military units receiving support from the mission were believed to be committing grave violations, and to suspend support if no action was taken to address such concerns or if violations continued.

37. The Secretary-General endorsed the HRDDP in July 2011. The Council has since made similar requests for UN peacekeeping missions to refrain from supporting national armed and security forces responsible for IHL

and HRL violations, although not as robust and clearly as in resolution 1906 (2009). Resolution 2062 (2012) on Côte d'Ivoire called for strict adherence by the Ivorian armed forces to IHL, IHRL, and refugee law, however, it did not explicitly condition the mission's support on such compliance. In resolution 2085 on Mali, the Council reiterated this language, i.e. that AFISMA shall carry out its tasks in compliance with applicable IHL and IHRL and requested that before the start of offensive operations, the AU should report to the Council on specific benchmarks including the effective training of AFISMA and the Malian defense and security forces on their obligations under IHRL, IHL and refugee law. The Council also emphasized that any support by the UN, regional and sub-regional organizations and Member States in the context of the military operation in Mali shall be consistent with IHL, IHRL and refugee law.

38. In resolution 2093 on Somalia, the Council made reference to the HRDDP for the first time. The Council later continued referring to the HRDDP in several resolutions, including 2098 on DRC<sup>55</sup> and 2100 on Mali<sup>56</sup>.

### C. HUMANITARIAN ACCESS

39. During the period under review, the Council's approach to humanitarian access remains largely unchanged, but additional concerns have been taken into account. The practice of the Council has been to continue to condemn attacks against humanitarian personnel, but it has increasingly called on all parties to provide humanitarian personnel with safe and unimpeded or unhindered access to all people in need of assistance. The issue of timeliness has however been inconsistently applied. It has also recognized that impediments to humanitarian access go beyond direct attacks against humanitarian personnel. Resolution 1894 on PoC, called

53 See resolution 1933 (2010) on Côte d'Ivoire.

54 See resolutions 1925 (2010), 1991 (2011), 2053 (2012), and 2098 (2013) on DRC.

55 Resolution 2098 specifies that MONUSCO, through the Force Intervention Brigade, should carry out targeted offensive operations either unilaterally or jointly with the Congolese armed forces "in strict compliance with the human rights due-diligence policy on UN support to non-UN forces".

56 In resolution 2100, the Council requests MINUSMA to act in strict compliance with the policy when providing support to the Malian defence and security forces.

for peacekeepers to create conditions conducive to the safe, timely and unimpeded delivery of humanitarian assistance, but this language is not consistently applied in situation-specific resolutions. There is also lack of consistency in the use of language to ensure that peacekeeping missions operate with due respect for humanitarian principles.

### Attacks on humanitarian personnel and obstruction of the delivery of humanitarian aid

40. The Council has been inconsistent in its condemnation of attacks against humanitarian personnel. It has condemned such attacks in several resolutions on DRC, Darfur, Somalia and Afghanistan. However, resolution 2057 (2012) on South Sudan made no reference to attacks against humanitarian personnel despite this being a problem on the ground. Resolution 2098 (2013) on DRC also removed previous language condemning all attacks against humanitarian personnel, despite no reported change in the situation, and is now limited to condemning attacks against peacekeepers.
41. The Council has continued to express concern about restrictions on humanitarian access in a number of situation-specific resolutions, including on Darfur, DRC and South Sudan. In some instances, the Council has detailed the type of constraints that impede humanitarian access, as in resolutions on Chad, which mentioned the negative impact of banditry on humanitarian operations. Resolutions on Darfur have referred to the negative impact of ceasefire violations, attacks by rebel groups, aerial attacks, intertribal fighting as well as attacks on humanitarian personnel and peacekeepers. In resolution 2113 (2013) on Darfur, the Council deplored the increased restrictions on humanitarian access resulting from bureaucratic impediments imposed by the Sudanese Government. In resolution 2100 (2013) on Mali, the Council expressed its concern about the presence of landmines throughout the territory of Mali which “exacerbates” the ongoing food and humanitarian crisis in the Sahel region as well as insecurity that hinders humanitarian access.

### Safe, rapid, and unimpeded humanitarian access

42. Resolution 2117 (2013) on small arms contains new and more comprehensive language on access, calling on parties to armed conflict to take all required steps to facilitate the safe, rapid and unimpeded passage of relief consignments, equipment, and personnel. Prior to this, the Council adopted variations of this language in several situation-specific resolutions on DRC and CAR/Chad in which it called for immediate and unhindered access<sup>57</sup>. Several resolutions on Somalia and Darfur followed the same approach, underlining the need to ensure the timely delivery of humanitarian aid<sup>58</sup>. In many other resolutions, the temporal aspect has not appeared, calling only for free and unimpeded access. This is the case in resolutions on South Sudan, Afghanistan, and Iraq<sup>59</sup>. That said, unlike resolution 2117, these resolutions call for access to all people in need of assistance, and is not limited in scope to the passage of relief consignments, equipment, and personnel.

### Role of peacekeeping operations in facilitating humanitarian access

43. In resolution 1894 (2009), the Council expressed its intention to mandate UN peacekeeping and other missions to assist in “creating conditions conducive to” the safe, timely and unimpeded delivery of humanitarian assistance<sup>60</sup> i.e., clearly limiting the role of peacekeeping and other missions to supporting humanitarian assistance indirectly and not coordinating it, or being directly

57 See resolutions 1906 (2009), 1925 (2010), 1991 (2010), 2053 (2012) and 2098 (2013) on the DRC, and resolutions 1861 (2009), 1923 (2013) on CAR/Chad. However, it should be noted that in the resolutions on the DRC, the Council refers to access for “United Nations and associated personnel”, without specifying humanitarians.

58 See resolutions 1863 (2009), 1872 (2009), 1910 (2010), 2036 (2012), and 2093 (2013) on Somalia; and resolutions 1881 (2009), 1935 (2010), 2003 (2011), 2063 (2012), and 2113 (2013) on Darfur.

59 See resolutions 1996 (2011), 2057 (2012), and 2109 (2013) on South Sudan; resolutions 1868 (2009), 1917 (2010), 1974 (2011), 2041 (2012), and 2096 (2013) on Afghanistan (UNAMA); resolutions 1883 (2009), 1936 (2010), 2001 (2010), 2061 (2012), and 2110 (2013) on Iraq;

60 OP15 b: “Mandate UN peacekeeping and other relevant missions, where appropriate, to assist in creating conditions conducive to safe, timely and unimpeded humanitarian assistance.”

involved in its provision. Resolutions on South Sudan<sup>61</sup> and Mali<sup>62</sup> called on the missions concerned to “contribute to” creating the security conditions conducive for humanitarian access. In resolutions on Chad, Côte d’Ivoire and Abyei, the Council has limited the role of the mission to “facilitating” humanitarian assistance, notably by enhancing security conditions.

### Respect for the humanitarian principles

44. In resolution 1894 (2009), the Council stressed the importance of upholding and respecting humanitarian principles, namely humanity, neutrality, impartiality and independence. Since 2009, they have been referred to in resolutions on only five country-specific contexts, i.e. Afghanistan and Somalia, and in the most recent resolutions on Darfur, DRC and Mali<sup>63</sup>. In the latter, for the first time, the Council specified the ultimate purpose of the need to respect the humanitarian principles, which is “to ensure the continued provision of humanitarian assistance, the safety of civilians receiving assistance and the security of humanitarian personnel operating in Mali”. However, simply referring to the principles is not sufficient if the mission activities are perceived to contradict or undermine those principles.

61 See resolution 1996(2011) on South Sudan

62 See resolution 2100 (2013) on Mali

63 See resolutions 1868 (2009), 1917 (2010), 1974 (2011), 2041 (2012) and 2096 (2013) on Afghanistan (UNAMA); resolutions 1972 (2011), 2060 (2012), 2093 (2013) and 2102 (2013) on Somalia; 2063 (2012) and 2113 (2013) on Darfur; 2098 (2013) on DRC; and 2100 (2013) on Mali.

### D. LANGUAGE PERTAINING TO OTHER PROTECTION ISSUES

45. The Council has also referred to a broader range of other protection issues in its situation-specific resolutions since 2009.

### Internally Displaced Persons (IDPs) and refugees

46. Despite its strong condemnation of forced displacement in resolution 1674 on PoC (2006)<sup>64</sup>, the Council has rarely condemned forced displacement in situation-specific resolutions in the period under review. More often the Council has expressed general concern about displacement situations and made particular reference to the protection needs of IDPs. It has also increasingly included references to the need for durable solutions for IDPs, and has in a few instances addressed the need to resolve land conflicts in order to provide the conditions for a sustainable return.

47. In the period under review, the first resolution condemning forced displacement was resolution 1991 (2011) on DRC, which was followed by resolutions on Mali, and on Somalia<sup>65</sup>. In addition to the condemnation of forced displacement, in resolutions on Somalia<sup>66</sup> the Council affirmed its readiness to impose sanctions on persons designated by the Sanctions Committee as responsible for violations of applicable international law in Somalia, including forced displacement.

48. Other resolutions have condemned and/or expressed the Council’s concern regarding “the displacement of significant numbers of civilians;”<sup>67</sup> “the displacement

64 While stressing the protection needs of IDPs, this condemnation was not repeated in the last PoC resolution (1894).

65 See resolutions 2056 (2012) and 2100 (2013) on Mali; and resolution 2093 (2013) on Somalia.

66 See resolutions 2002 (2011), 2060 (2012) and 2093 (2013).

67 See resolutions 2053 (2012) and 2098 (2013) on DRC, which actually removed the “forced displacement” language of resolution 1991; resolution 2057 (2012) on South Sudan; and resolutions resolution 2057 (2012) on South Sudan and resolutions on Abyei.

of tens of thousands of civilians;<sup>68</sup> or the increase in displacement.<sup>69</sup> Resolution 2075 (2012) on Abyei went further, with the Council for the first time expressing its determination to “prevent” the displacement of civilians. However, it did not specify how it the Council intended to implement such a prevention. As of October 2013, this remains the only context, where the Council expressed such a determination.<sup>70</sup>

49. A notable development has been the inclusion of references to durable solutions in a number of situation-specific resolutions. The Council has traditionally referred to only one of the durable solutions for refugees and IDPs, i.e. voluntary, safe and dignified return to places of origin, and not to the two additional durable solutions, namely local integration and resettlement.
50. Resolution 1923 (2010) on Chad was the first resolution specifically mentioning the importance of achieving “durable solutions” for refugees and IDPs. In resolutions on Darfur, the Council has explicitly referred to durable solutions, mentioning local integration as an alternative to return, and also underlining the importance of fully involving displaced people in planning and managing such solutions.<sup>71</sup> In the DRC, neither resolution 1925 (2010) nor resolution 1991 (2011) expressly stressed the importance of achieving durable solutions. However, MONUSCO was mandated to support the Government’s efforts to create an environment conducive to the voluntary, safe and dignified return of IDPs and refugees and to voluntary local integration or resettlement. The subsequent resolution 2098 (2013) on DRC did not reiterate this reference. The Council also referred to local integration as an alternative to return in resolutions on Iraq.<sup>72</sup>
51. Another encouraging development is the inclusion in resolutions on Côte d’Ivoire<sup>73</sup> of the importance of ad-

ressing land-tenure issues in creating the conditions conducive to the sustainable return of IDPs and refugees. This reference has been reiterated in resolutions on Liberia,<sup>74</sup> and in resolution 2053 (2012) on DRC, although it was absent in the subsequent resolution 2098 (2013).

52. Finally, some resolutions, including on Darfur<sup>75</sup> and South Sudan,<sup>76</sup> recalled applicable international conventions on the protection of refugees and IDPs. Some have also recognized the need to take specific measures to protect IDPs and refugees. For instance, in resolution 2098 (2013) on the DRC, the Council specifically asked MONUSCO to take the necessary steps to protect civilians under imminent threat of physical violence, “including civilians gathered in displaced and refugee camps.” Resolution 2093 (2013) on Somalia condemned all human rights and abuses committed against IDPs, expressed concern at the pervasive sexual violence in IDP camps and the need to hold accountable those who commit such crimes. Resolution 2100 (2013) on Mali specifically mentioned IDPs when requesting MINUSMA to take fully into account the need to protect civilians and mitigate risk to civilians.

### Children affected by armed conflict

53. The Council has expressed concern and condemned grave violations of children’s rights in a number of situation-specific resolutions since 2009. Thematic resolutions on children and armed conflict, most notably 1539 (2004), 1612 (2005) and 1882 (2009), contain detailed provisions applicable in country situations, which are increasingly applied by the Council in situation-specific resolutions.
54. In line with the provisions in thematic resolution 1612 for the establishment of a monitoring and reporting mechanism on grave violations against children in armed conflict<sup>77</sup>, the Council has emphasized the im-

68 See resolutions 2003 (2011) on Darfur and 2053 (2012) on DRC.

69 See resolution 2113 (2013) and 2063 (2012) on Darfur.

70 Subsequent resolution 2104 (2013) renewing UNISFA’s mandate authorization reiterated this determination.

71 See resolutions 1935 (2010), 2003 (2011) and 2063 (2012).

72 See resolutions 2001 (2011), 2061 (2012) and 2110 (2013).

73 See resolutions 1880 (2009), 1933 (2010) and 2062 (2012).

74 See resolutions 1938 (2010), 2008 (2011), 2025 (2012), and 2116 (2013).

75 See resolutions 1935 (2010), 2003 (2011), 2063 (2012), and 2113 (2013).

76 See resolutions 1996 (2011), 2057 (2012), and 2109 (2013).

77 The grave violations are: recruitment and use of children, killing and maiming of children, sexual violence against children, attacks against

portance of monitoring and reporting on violations against children in situation-specific resolutions, such as for example on Côte d'Ivoire, Darfur and South Sudan, Somalia, Mali and CAR.<sup>78</sup>

55. Amongst the provisions in the thematic resolutions that have most often been applied in situation-specific resolutions are calls upon national authorities and security forces to adopt and implement national Action Plans to end and prevent grave violations against children. Examples include resolutions on Afghanistan, Darfur, DRC, Somalia, South Sudan and Sudan.
56. Based on the thematic resolution 1314 (2000) on child protection capacity in mission settings, and subsequent resolutions,<sup>79</sup> the Council has also requested the appointment of child-protection advisers in resolutions on Afghanistan, Iraq, Somalia, South Sudan and Mali<sup>80</sup> and has requested the strengthening of child protection components in missions in Somalia, Afghanistan and South Sudan.<sup>81</sup>
57. Only a few resolutions explicitly address accountability for perpetrators of grave violations against children. In general, the Council condemns all violations of human rights and IHL against civilians, including children, and stresses that the perpetrators must be brought to justice. In resolutions on Afghanistan,<sup>82</sup> the Council dedicat-

---

schools or hospitals, abduction of children, and denial of humanitarian access.

78 See resolution 2000 (2011) on Côte d'Ivoire; resolutions 1935 (2010), 2003 (2011), 2063 (2012), and 2113 (2013) on Darfur; resolutions 2057 (2012), and 2109 (2013) on South Sudan; resolutions 1964 (2010), 2010 (2011), and 2093 (2013) on Somalia; resolution 2100 (2013) on Mali; and resolutions 2121 and 2127 on CAR. During the reporting period resolutions on Afghanistan, DRC, Libya, Iraq and Chad also recall or reaffirm the resolutions 1612 (2005), 1882 (2009), but do not specify provisions regarding monitoring and reporting on grave violations against children.

79 See resolutions 1379 (2001), 1539 (2004), 1882 (2009), and 1998 (2011).

80 See resolutions 1806 (2008), 1868 (2009), 1917 (2010) and 1974 (2011) on Afghanistan; resolutions 1883 (2009) and 1936 (2010) on Iraq; resolution 2093 (2013) on Somalia; resolution 2109 (2013) on South Sudan; and resolution 2100 (2013) on Mali.

81 See resolution 1964 (2010) and 2010 (2011) on Somalia regarding UNPOS and 2093 (2013) on AMISOM; 20141 (2012) and 2096 (2013) on Afghanistan (UNAMA); and 2057 (2012) and 2109 (2013).

82 See resolutions 1868 (2009), 1917 (2010), 1974 (2011), 2041 (2012) and

ed a paragraph to children, expressing its serious concern about violations and abuses against children, and calling for those responsible to be brought to justice. In resolution 2053 (2012) on DRC, the Council specifically named perpetrators of child rights violations, recalled the need for all crimes to be expeditiously investigated, and the need for all perpetrators to be arrested and brought to justice. In its subsequent resolution on the DRC,<sup>83</sup> the Council reinforced the importance of protecting children by establishing the effective “reduction of violence against children” as one of the benchmarks determining future reconfigurations of MONUSCO and its mandate.

### Conflict-related sexual violence

58. Following the adoption of thematic resolutions 1820 (2008) and 1888 (2009), the Council strengthened its language on sexual violence in situation-specific resolutions. Resolution 1960 (2010), marked a further milestone in the Council's approach to conflict-related sexual violence, paving the way for more coherent, systematic and robust actions in this area. It provides for the possible inclusion of rape and sexual violence as designation criteria triggering the application of sanction regimes, requests the Secretary-General to establish a monitoring and reporting mechanism similar to the one set up by resolution 1612, and call on parties to conflict to make and implement time-bound commitments to combat sexual violence. In its latest thematic resolution on this issue, resolution 2106 (2013), the Council reiterates its intention to forcefully fight impunity and uphold accountability and urges existing sanctions committees to apply targeted sanctions against those responsible for sexual violence in conflict.
59. Regarding the role of missions in preventing and responding to sexual violence, resolution 1906 (2009) on the DRC stressed that pre-deployment and in-theatre training for the mission's military and police components should also include training on combating sexual

---

2096 (2013) renewing UNAMA's mandate authorization.

83 See resolution 2098 (2013) on the DRC

violence. Resolutions on Côte d'Ivoire and Somalia<sup>84</sup> also include provisions on the role of peacekeepers and national security forces in preventing and responding to sexual violence. Resolutions from 2011 onwards on Darfur<sup>85</sup>, requested UNAMID to report on SGBV, and emphasized the importance of including measures in the mission's protection strategy to protect women and children from SGBV, as the Council had already done in resolution 2000 (2011) on Côte d'Ivoire. Resolution 2098 (2013) on the DRC also reinforced the importance of combating sexual violence by deciding that the effective "reduction of sexual and gender-based violence" should be one of the benchmarks to determine future reconfigurations of MONUSCO.

- 60.** Pursuant to resolution 1888 (2009), the Council has paid growing attention to the development and implementation of comprehensive strategies to combat sexual violence. Resolution 1880 (2009) on Côte d'Ivoire urged the Government to develop a national action plan to combat sexual violence and referred to commitments made by armed groups. Resolution 1935 (2010) on Darfur requested UNAMID to implement and report on its comprehensive strategy to combat sexual violence. While the first request to pursue a comprehensive strategy to combat sexual violence in the DRC came already in 2007, thus outside the scope of this paper, the Council has, without making specific reference to the comprehensive strategy, requested the Government of the DRC to "implement appropriate responses" and, as in resolution 2098 (2013) for MONUSCO to work with the Government to identify threats to civilians and implement existing response plans to ensure the protection of civilians from abuses and violations of human rights and violations of IHL, including all forms of SGBV.

- 61.** As requested in resolution 1888 (2009) and reiterated in subsequent thematic resolutions, the Council has consistently requested the deployment of women-protection advisers in resolutions on Côte d'Ivoire, Darfur,

Sudan, South Sudan, DRC, Somalia and Mali. However, implementation has been slow and as of October 2013, only UNMISS had women-protection advisers that were operational on the ground.

- 62.** As a follow up to resolution 1960 (2010), resolution 1996 (2011) on South Sudan was the first country resolution that contained provisions aimed at implementing the 'MARA' mechanism for monitoring, reporting and analysis on sexual violence. Resolution 2098 (2013) requests MONUSCO to accelerate the implementation of monitoring, analysis and reporting arrangements on conflict-related sexual violence as called for in resolution 1960. In resolution 2100 (2013) on Mali, without specifically mentioning the MARA, the Council stressed the need for the mission to monitor, help investigate and report to the Council specifically on violations committed against women, including all forms of sexual violence in armed conflict.
- 63.** In line with the focus on ending impunity for sexual violence in its thematic resolutions, resolution 2098 (2013) on the DRC explicitly called for those responsible for violations, including acts of SGBV, "to be swiftly apprehended, brought to justice and held accountable". Resolutions on Côte d'Ivoire and Somalia also underscore the need to end impunity and hold accountable those who commit sexual violence.
- 64.** Also, in line with the request in resolution 1960 (2010) for time-bound commitments to combat sexual violence, resolution 2113 (2013) on Darfur applies this request, demanding that the parties to the conflict immediately cease all acts of sexual violence, and make and implement specific and time-bound commitments to combat such violence. The same request has also been made in resolutions on South Sudan.<sup>86</sup> Resolution 2098 (2013), making reference to resolution 1960 (2010), requests MONUSCO through women protection advisers to engage with parties to the conflict in order to seek commitments on the prevention and response to conflict related sexual violence. However, similar provisions

<sup>84</sup> See resolutions 1933 (2010), 2062 (2012), and 2112 (2013) on Côte d'Ivoire; and resolution 2093 (2013) on Somalia.

<sup>85</sup> See resolutions 2003 (2011), 2063 (2012), and 2113 (2013).

<sup>86</sup> See resolutions 1996 (2011), 2057 (2012), and 2109 (2013).

have not been included in situation-specific resolutions in contexts such as Somalia, Côte d'Ivoire or Mali.

### Sexual Exploitation and Abuse

65. While a number of resolutions have recalled the United Nations zero-tolerance policy on sexual exploitation and abuse (SEA)<sup>87</sup> and the obligation of UN peacekeeping or Security Council-mandated missions to comply with the policy<sup>88</sup> the reference to this policy has not been consistently applied. It has for instance not been referred to in the context of the UN missions in Côte d'Ivoire, Liberia, Darfur, Iraq and Afghanistan. As it is a policy that applies to all UN staff, reference to it should be applied across all situation-specific resolutions with a UN presence or a Council mandated presence.

### Small arms, light weapons, mines and explosive remnants of war

66. During the period under review, the Council has strengthened language with regards to small arms and has expanded the mandates of peacekeeping forces to monitor the flow of small arms and their involvement in disarmament programs. With regards to explosive remnants of war (ERWs), IEDs and mines the Council is increasingly recognizing the threat they pose to civilians, but has still not followed up on the provision in resolution 1894 on PoC to call for precautionary measures. On mine action, the Council has encouraged the UN to further support national efforts to implement mine action programs and weapons and ammunition management.

67. Following several presidential statements on the issue, the first thematic resolution on small arms was adopted in September 2013. It focused on the illicit transfer, destabilizing accumulation and misuse of small arms and light weapons.<sup>89</sup> As this resolution is quite recent, most situation-specific resolutions during the period under review referred to existing language in resolution 1894 (2009) on PoC which noted that the excessive accumulation and destabilizing effect of small arms and light weapons posed a considerable impediment to the provision of humanitarian assistance, and had the potential to exacerbate and prolong conflicts, endanger civilians and undermine security and the confidence required for a return to peace and stability.<sup>90</sup> The Council expressed its concern about the issue of small arms for the first time in a situation-specific resolution in resolution 1919 on Sudan (2010) and in subsequent resolutions on Darfur, Haiti, DRC, Somalia, Libya and Mali.

68. The Council has also mandated peacekeeping missions to monitor arms embargos or cross-border flow of arms and related materials in resolutions on Darfur, DRC, Côte d'Ivoire and South Sudan. In South Sudan, the Council also mandated UNMISS to monitor civilian-disarmament exercises led by the armed forces of South Sudan. In resolution 2000 (2011) on Côte d'Ivoire, the Council mandated UNOCI to support the Government in developing and implementing a community weapons-collection programme, and to support the authorities in collecting, registering, securing and disposing of weapons and clearing ERWs.

87 Also known as the UN Secretary-General's Bulletin on protection from sexual exploitation and abuse (PSEA), in resolution language referred to as the United Nations zero-tolerance policy on sexual exploitation and abuse (SEA)

88 Resolutions 1944 (2010), 2070 (2012), and 2119 (2013) on Haiti made reference to it, as well as resolutions 1990 (2011), 2032 (2011), 2047 (2012), 2075 (2012), 2104 (2013), and 2126 (2013) on Abyei, and more recently resolutions 2098 (2013) on DRC, resolution 2100 (2013) on Mali, and 2109 (2013) on South Sudan, where the Council requested the Secretary-General to ensure full compliance of the missions with the policy, and to keep the Council fully informed if such cases of misconduct occur. In addition, resolution 2093 (2012) on Somalia also referred to the policy and suggested that AMISOM apply policies consistent with the United Nations zero-tolerance policy on SEA.

89 Resolution 2117 (2013)

90 OP29: "Notes that the excessive accumulation and destabilizing effect of small arms and light weapons pose a considerable impediment to the provision of humanitarian assistance and have a potential to exacerbate and prolong conflicts, endanger civilians and undermine security and the confidence required for a return to peace and stability, calls on parties to armed conflict to take all feasible precautions to protect the civilian population, including children, from the effects of landmines and other explosive remnants of war, and in this regard, encourages the international community to support country efforts in clearing landmines and other explosive remnants of war and to provide assistance for the care, rehabilitation and economic and social reintegration of victims, including persons with disabilities".



69. Resolution 1894 (2009) on PoC called on parties to armed conflict to take all feasible precautions to protect civilians from the effects of landmines and ERW, and encourages the international community to support country efforts in providing care, rehabilitation and economic and social reintegration of victims, including persons with disabilities. In resolution 1868 (2009) on Afghanistan, the Council expressed for the first time its concern about the serious threat that anti-personnel mines, ERW and IEDs may pose to civilians, and stressed the need to refrain from using weapons and devices prohibited by international law. It also encouraged the Government, with the support of the UN and all relevant actors, to continue its efforts towards removing anti-personnel landmines, anti-tank landmines and ERW. In resolutions on Abyei,<sup>91</sup> the Council has repeatedly demanded the Governments of Sudan and South Sudan to facilitate the deployment of the UN Mine Action Service and to ensure freedom of movement for mine action personnel, as well as the identification and clearance of mines in the affected area. In resolution 2100 (2013) on Mali, the Council authorized MINUSMA to contribute, “through training and other support, in mine action and weapons and ammunition management”, in order to help the transitional authorities in Mali to mitigate and manage explosive threats.

### DDR and DDRRR

70. During the period under review, the Council has increasingly included support to Disarmament, Demobilization and Reintegration (DDR) and Disarmament, Demobilization, Repatriation, Resettlement and Reintegration (DDRRR) processes in the mandates of peacekeeping missions, including resolutions on MONUSCO, UNMIS/UNMISS, UNOCI and AMISOM.
71. The Council has been increasingly specific about different aspects of DDR/DDRRR programs. Resolution 1919 (2010) on Sudan emphasized the sustainability of the DDR process with reference to the importance of the timely implementation of reintegration programs and

coordination with UN agencies to create opportunities for demobilized soldiers. Resolutions 1880 (2009) and 1933 (2010) on Côte d’Ivoire addressed the issue of funding for DDR, both by donors and the parties to the peace agreement, while resolution 2000 (2011) mandated UNOCI to assist the Government in developing and implementing a DDR programme. In resolution 2062, the Council provided a detailed description of what the programme should include such as clear and strict eligibility criteria, a new secure and transparent database and a central authority to oversee all aspects of the DDR programme. In resolution 1925 (2010) on DRC, the Council underlined the link between the completion of DDR processes and the launch of security sector reform (SSR) programs and the State’s ability to assume its responsibility to protect civilians. Resolution 2053 (2012) on MONUSCO emphasizes the importance of DDRRR programs by recommending benchmarks for measuring their progress and impact on the strength of foreign armed groups.

### Security Sector Reform

72. In a number of situation-specific resolutions, the Council has emphasized the need to take concrete steps to build national security actors’ capacity to protect civilians and ensure the rule of law. Such steps have included establishing professional, legitimate and sustainable security forces in resolutions on DRC, Afghanistan and Somalia; restoring a civilian-policing presence or strengthening civilian police capacities in resolutions on Côte d’Ivoire (since 2009), Abyei and South Sudan (since 2011); developing and implementing national security strategies in resolutions on Somalia and Haiti (since 2010), Timor-Leste and South Sudan (since 2011); developing coherent legal frameworks ensuring civilian oversight and accountability for security forces in resolutions on Afghanistan and Timor-Leste (since 2011); and specifically asking national security forces to act in full compliance with their obligations under IHL and IHRL in resolution 2093 (2013) on Somalia.
73. On several occasions, the Council elaborated its specific expectations of Security Sector Reform (SSR)

91 See resolutions 2032 (2011), 2047 (2012), and 2075 (2012).

programmes and the need for international support. The Council has made specific references to the need to establish “vetting mechanisms” aimed at screening members of the security and armed forces to determine if their prior conduct, notably their respect for IHL and human rights standards, warrants their exclusion from the security forces and possible prosecution. Originally referred to in resolution 1872 (2009) on Somalia, such mechanisms have subsequently been included in resolutions on DRC, Somalia, Afghanistan, Côte d’Ivoire and Haiti.<sup>92</sup> However, on DRC, the clear and strong language of resolution 2053 requiring the Congolese Government to set up a vetting mechanism to exclude members of the security forces responsible for serious human rights violations is not reiterated in resolution 2098 (2013) in spite of the lack of progress in establishing this mechanism. Instead, resolution 2098 reiterated that those responsible for human rights abuses and violations of IHL would be held accountable and should not be eligible for integration into the FARDC or other elements of State security forces, but did not specify the mechanisms needed to achieve this objective.

- 74.** The Council has also called for sustained material and financial support from the international community in several contexts, such as Afghanistan and Somalia. In the specific context of Afghanistan, in resolution 2069 (2012), the Council adopted language pertaining to the Afghan national security forces’ (ANSF) capabilities to protect civilians by noting the importance of continuing cooperation with the ANSF towards the further institutionalization of PoC.

### Accountability and the Rule of Law

- 75.** The Council has often referred to the need to fight impunity and bring perpetrators to justice. In resolution 1894 on PoC, the Council affirmed its strong opposition to impunity for serious violations of IHL and IHRL, re-

called that accountability for such serious crimes must be ensured by taking measures at the national level, and underlined the Council’s role in ending impunity. In some situation-specific resolutions, the Council has strengthened its language on the role of UN missions in this regard.

- 76.** Reference to the promotion of accountability was included in resolution 1917 (2010) on Afghanistan in relation to UNAMA and was maintained in subsequent resolutions renewing UNAMA’s mandate. Other resolutions have strengthened such language over the years. On Côte d’Ivoire, resolution 1933 (2010) requested UNOCI to investigate violations of IHL and IHRL with a view to ending impunity, and the Secretary-General to continue to report on human rights, including on restoring the rule of law and ending impunity. Resolution 2000 (2011) stressed the importance of investigating violations committed by “all parties” and of ensuring accountability for such violations regardless of the affiliation of the perpetrators. Resolution 2062 (2012) reinforced the need to achieve accountability in the justice system, to fight against impunity and to bring all perpetrators of any crime to justice. In resolution 2085 (2012) on Mali, the Council highlighted the importance of accountability by calling upon AFISMA to support efforts to bring to justice perpetrators of serious human rights abuses and violations of IHL in Mali. In Resolution 2093 (2013) on Somalia, the Council strengthened its language pertaining to efforts to end impunity, including by underscoring the need to uphold human rights and hold those who commit crimes accountable.

- 77.** In resolution 1906 (2009) on the DRC, the Council introduced particularly strong language on accountability, including a request to the Government to implement fully its “zero-tolerance policy” for perpetrators of IHRL and IHL violations. Resolution 1991 (2011) reiterated the urgent need to prosecute all perpetrators of human rights abuses and IHL violations, and encouraged the authorities to combat impunity for such abuses and violations, including those committed by elements of the Congolese security forces. In its most recent reso-

<sup>92</sup> See resolutions 1906 (2009), 1910 (2010), 1991 (2011) and 2053 (2012) on DRC; resolution 2010 (2011) on Somalia; resolutions 1917 (2010), 1974 (2011), 2011 (2011), 2041 (2012), 2069 (2012) and 2096 (2013) on Afghanistan; resolutions 1933 (2010), 2000 (2011) and 2062 (2012) on Côte d’Ivoire; and resolutions 1944 (2010), 2012 (2011) and 2070 (2012) on Haiti.

lution on DRC<sup>93</sup>, the Council sent a strong message to the Government to accelerate its justice reform, and to swiftly apprehend, bring to justice and hold accountable all those responsible for violations of IHL or abuses of human rights.

78. Finally, in a number of resolutions the Council referred to ad hoc judicial mechanisms, such as transitional justice mechanisms, recognizing their importance in promoting national reconciliation in Burundi<sup>94</sup>, and mandating the mission to support them in Afghanistan.<sup>95</sup> In the same approach, the Council also emphasized the importance of accountability and impartial justice through the National Commission of Inquiry in Côte d'Ivoire<sup>96</sup>.

### The International Criminal Court

79. A particularly significant development during the reporting period in terms of ensuring accountability was the Council's referral in resolution 1970 (2011) of the situation in Libya to the International Criminal Court. This was only the second occasion on which the Council has taken such a step. The first such referral pertained to the situation in Darfur<sup>97</sup>. Beyond this the Council has noted the ICC's role in relation to Côte d'Ivoire and encouraged the Ivorian Government to continue its cooperation with the ICC, although it did not request it to consider ratifying the Rome Statute. In resolutions on DRC, the Council made reference to the Government's commitment to collaborate with the ICC and the need to hold accountable those responsible for war crimes and crimes against humanity in resolution 1906 (2009); reiterated the importance of actively seeking to hold accountable those responsible for war crimes and crimes against humanity in the country, including through cooperation with the ICC, in resolutions 1991 (2011) and 2098 (2013); and mandated MONUSCO to support and work with the Government of the DRC to arrest

and bring to justice those responsible for war crimes and crimes against humanity in the country, including through cooperation with States of the region and the ICC, in resolution 2098 (2013). In resolution 2085 (2012) on Mali, the Council stated that perpetrators of human rights abuses must be held accountable, and it specifically recognized the ICC's jurisdiction over "some of such acts".

### Detention

The Council addressed the issue of access to places of detention for the first time in resolution 1868 (2009) on Afghanistan, and in subsequent resolutions renewing the mandate of UNAMA. However, the Council has not included reference to detention in other situation-specific resolutions despite the fact that similar challenges may exist in those situations. In resolution 2093 (2013) on Somalia, the Council demanded that AMISOM ensure that any detainees in its custody are treated in strict compliance with AMISOM's obligations under IHL and IHRL.

93 See resolution 2098 (2013).

94 See resolutions 1902 (2009), 1959 (2010), 2027 (2011) and 2090 (2013).

95 See resolutions 1917 (2010), 1974 (2011), 2041 (2012), and 2096 (2013).

96 See resolutions 2062 (2012) and 2112 (2013).

97 See resolution 1593 (2006).

### III. CONCLUSION

**Important developments** have taken place in terms of the Council's treatment of the protection of civilians in its situation-specific resolutions across all the themes examined in this report:

#### A) Compliance with international law:

- Increasing focus on compliance with IHL and IHRL by all actors, including on means and methods of warfare.
- Key principles of IHL such as the principle of distinction, proportionality and precautions could be more consistently applied.

#### B) The role of UN Peacekeeping and other Council mandated operations:

- Increase in the number of tasks included under PoC mandates and the level of detail with which the Council instructs missions to conduct such tasks.
- Lack of consistent application of requests for protection to be a prioritized task of missions, as well as on training for peacekeepers on PoC.
- Increasing requests for mission-wide strategies on PoC and for the Secretary-General to assess and report on challenges in the implementation of PoC mandates.
- Increasing focus on monitoring and reporting on PoC, and the establishment of benchmarks to further measure performance of missions in this area.

#### C) Humanitarian Access:

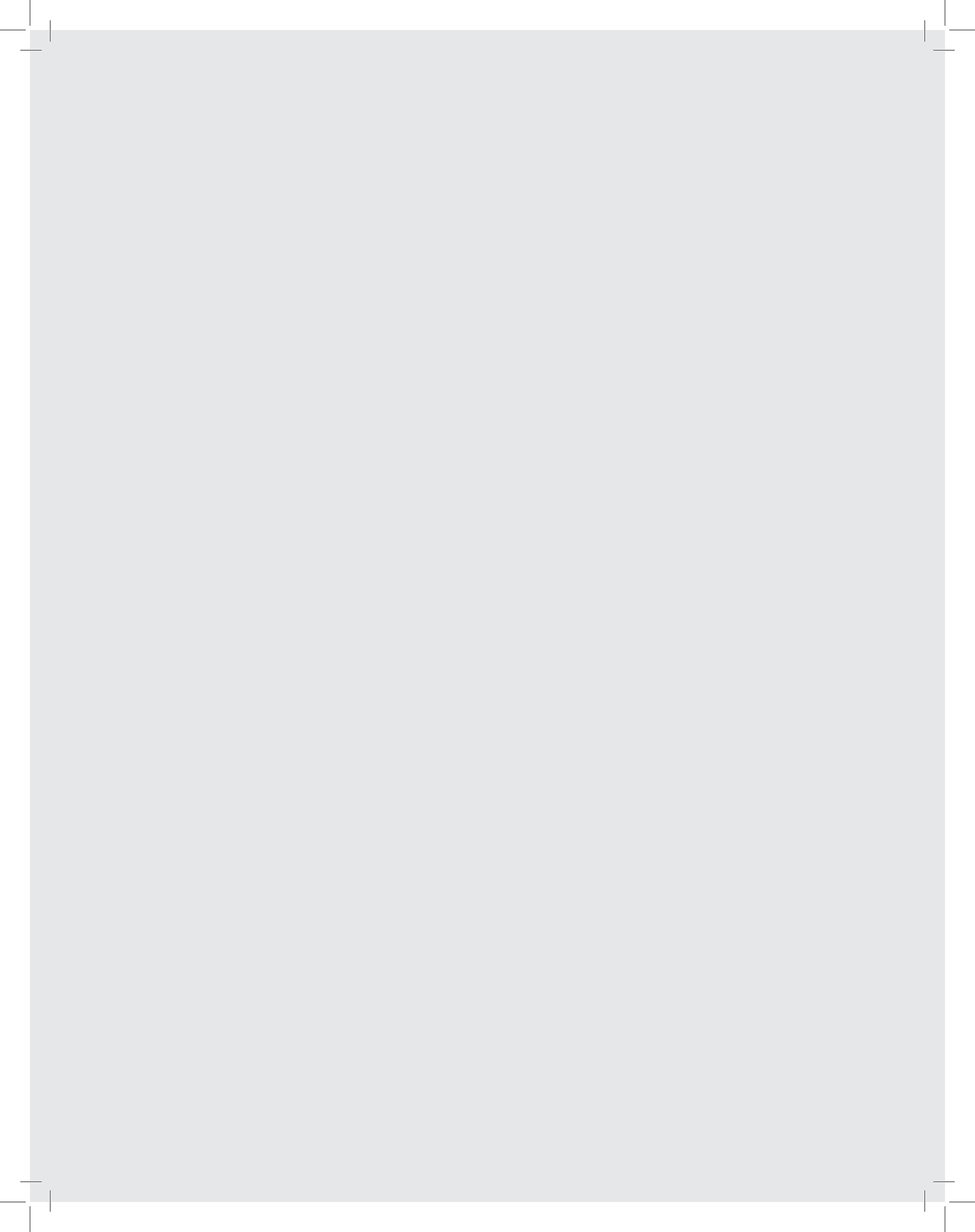
- The Council is increasingly calling on all parties to provide humanitarian personnel with safe and unhindered or unimpeded access to all people in need of assistance. The issue of timeliness is however inconsistently applied.
- Increasing recognition by the Council that impediments to humanitarian access go beyond direct attacks against humanitarian personnel, expressing concern about insecurity, banditry and bureaucratic impediments.
- Lack of consistency in the use of language to ensure that peacekeeping missions operate with respect for humanitarian principles.

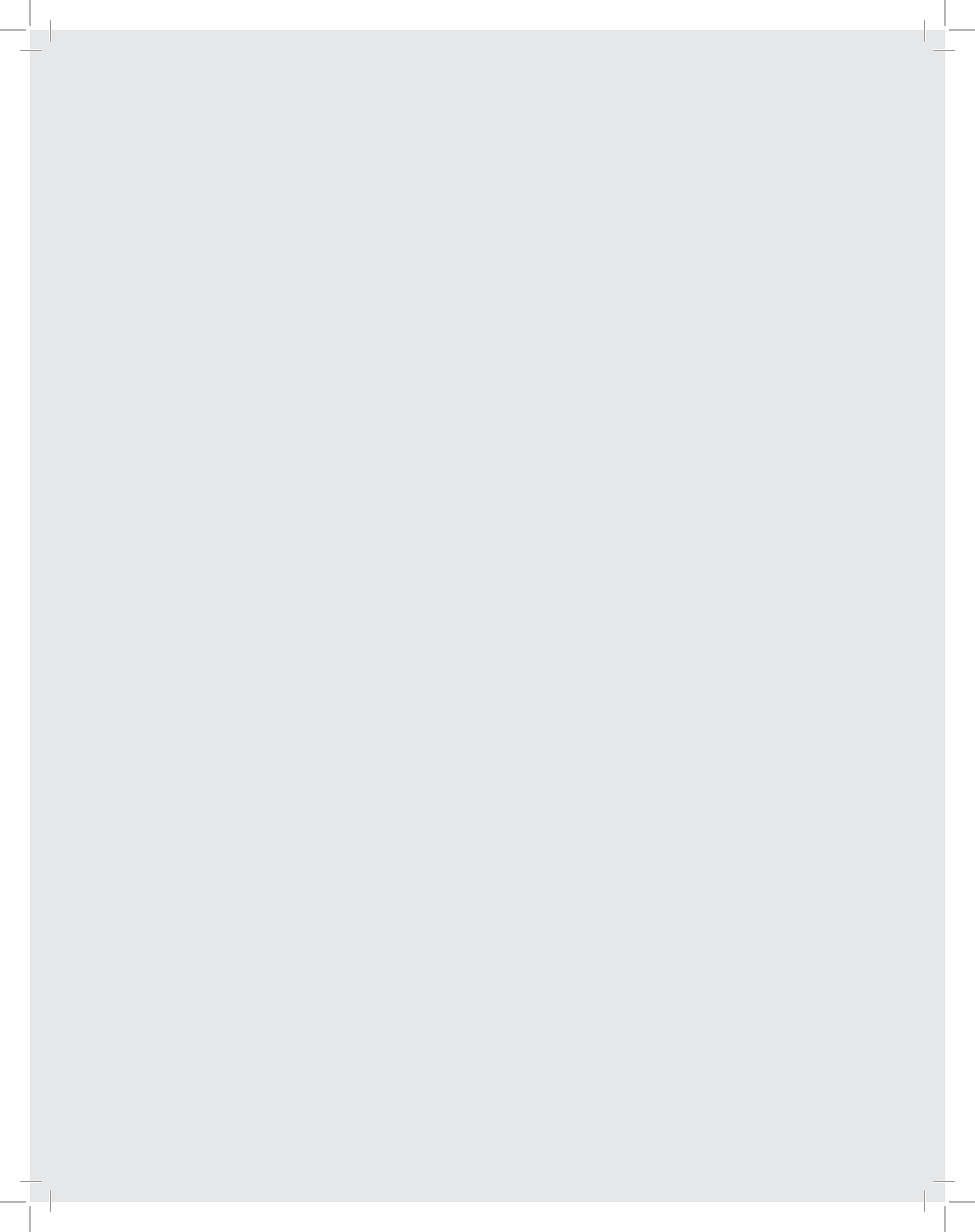
#### D) Other Protection Issues:

- On IDPs and refugees, the Council is increasingly highlighting the need for durable solutions and including all three options, i.e. safe and voluntary return, local integration or resettlement.
- On children and armed conflict the Council is increasingly calling on national authorities to adopt and implement national action plans to prevent recruitment and other violations against children.
- On sexual violence in conflict the Council has strengthened its language, condemning attacks against women, including sexual violence in a number of resolutions. It has also increasingly requested the deployment of women protection advisors and has requested the establishment of monitoring and reporting systems on sexual violence in conflict.
- On weapons-related issues, the Council has strengthened language on small arms and reinforced the role of peacekeeping missions in the monitoring of the flow of small arms as well as in disarmament programs. The Council has also increasingly recognized the threat posed by IEDs and ERWs.
- Throughout the period the Council has continued to promote accountability, emphasizing the use of transitional justice mechanisms and encouraging Governments to cooperate with the ICC.

Generally, there has been a lack of consistency in the extent to which provisions contained in thematic resolutions on PoC, as well as children and armed conflict and sexual violence, find expression in situation-specific resolutions. There is a lack of consistency also in terms of how the same issues are addressed from one context to another, or even in resolutions addressing the same context and from one year to another.

New protection concerns are emerging, such as for instance new weapons technologies, and there are existing issues such as IDPs and humanitarian access, that could be further addressed and which may eventually warrant the need for a sixth thematic resolution on PoC. Until then, it remains clear that the Council's more systematic and consistent application of the existing thematic resolutions would help to strengthen and sharpen the Council's efforts to ensure more effective protection for civilians by parties to conflict, Member States and United Nations actors.







# OCHA

United Nations  
Office for the Coordination  
of Humanitarian Affairs

**OCHA POLICY AND  
STUDIES SERIES**  
May 2014 | 008



**OCCASIONAL  
POLICY PAPER**