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The UN and the Protection of Civilians: Sustaining the Momentum

Alexander Gilder*

Abstract

The protection of civilians (PoC) concept remains contested twenty-three years after the first PoC mandate. Current PoC frameworks used by the United Nations (UN) do not assist with determining applicable legal standards. They lead the UN down an unsustainable path that risks diminishing political support for PoC, especially within intense conflicts and following well-documented protection failures. With ever-rising expectations from communities under protection, the UN's 'Three Tiers of PoC Action', and the complexity and dilution of PoC mandates under a whole-of-mission approach, it becomes challenging to determine what missions must do to protect individuals. Undertaking a major re-evaluation of PoC, this article charts the progression of PoC mandates drawing on examples from several missions drawing out the diverse nature of PoC and subsequent activities. The article then argues that current definitions and practical applications of PoC have cast the net too wide, presented uncertainties, and leave PoC open to attack from Member States amidst a political climate of weakened support for collective security action. Instead, the discussion must shift towards a concise and shared understanding of what protection mandates entail for UN peace operations. The article suggests how PoC can be reconceptualised to distinguish a narrow and easily communicated minimum obligation to be placed on UN peacekeepers.

1. Introduction

In 2022 the United Nations (UN) Secretary-General commended the international community for developing and sharing policies and practices 'to respect and ensure respect for international humanitarian law and *strengthen the protection of civilians*'.[1] His statement comes after a 2019 call to 'more broadly reflect on how to build on the progress to date and move the protection of

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[1] S/2022/381 (10 May 2022) para 89 (emphasis added).

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civilians (PoC) agenda forward in the years to come'.[2] Institutional, policy-making, and academic efforts have been poured into the PoC agenda over the last few decades. Those exploring PoC policies for the first time would be forgiven for thinking the UN has crafted a detailed framework, well-grounded in international law, that provides precise mechanisms for *how* and *when* peacekeeping personnel should protect civilians that, in turn, are easily operationalised by forces in the field. This is not the case. PoC has become both 'the most visible moral standard to judge the credibility of any UN peacekeeping mission' and 'a central means by which to judge the overall effectiveness of peacekeeping'.[3] However, PoC remains a contested concept, in need of clarification and enhancement as UN peace operations cannot risk ineffectiveness and repeats of the gross protection failures of Rwanda and Bosnia.[4]

The UN Department for Peace Operations (UNDPO) defines PoC as:

> without prejudice to the primary responsibility of the host state, integrated and coordinated activities by all civilian and uniformed mission components to prevent, deter or respond to threats of physical violence against civilians, within the mission's capabilities and areas of deployment, through the use of all necessary means, up to and including deadly force.[5]

The definition does not clarify what personnel *should* or *must* do to prevent, deter or respond to threats of physical violence. Such specifics are typically left to the individual mission mandates issued by the Security Council and tactical decision-making by force commanders. Mandates are carefully crafted to receive support from the P5. Alongside policy developments, the language used to authorise the use of force under Chapter VII to protect civilians has evolved from mission to mission. For instance, UNDPO states,

> [i]n *most* multidimensional missions, the word 'imminent' has since been removed and the mandate now requires the protection of civilians under 'threat of physical violence.' This language change clarified that a mission *can* and *should* take proactive and preventive action to protect civilians under threat and that these actions can include all necessary means (including the use of deadly force).[6]

[2] S/2019/373 (7 May 2019).

[3] TR Müller, 'Protection of Civilians Mandates and "Collateral Damage" of UN Peacekeeping Missions: Histories of Refugees from Darfur' (2020) 27 *Int Peacekeep* 760, 761; L Hultman, JD Kathman and M Shannon, *Peacekeeping in the Midst of War* (OP 2019) 103.

[4] L Vermeij and others, 'UN Peacekeeping Operations at a Crossroads: The Implementation of Protection Mandates in Contested and Congested Spaces' 193 Effectiveness of Peace Operations Network (June 2022) <https://effectivepeaceops.net/wp-content/uploads/2022/06/EPON-Protection-Report.pdf>.

[5] UN Department for Peace Operations, 'The Protection of Civilians in UN Peacekeeping Handbook' 3 <https://peacekeeping.un.org/sites/default/files/dpo_poc_handbook_final_as_printed.pdf> accessed 5 August 2022.

[6] ibid 8 (emphasis added).

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As international lawyers will no doubt have appreciated, the UNDPO positions PoC as a discretionary right which authorises peacekeepers to use force where they see fit but does not seek to require the use of force to protect civilians.

Further complicating matters, the Security Council mandates will include a whole host of activities for civilian and uniformed personnel under the heading of PoC. The PoC section of a UN peacekeeping mandate can consist of 'everything from public information campaigns and the UN's good offices to robust operations to "neutralise" armed groups, buttressed with platitudinous appeals for comprehensive planning, respect for human rights and other good things'.[7] PoC within UN peace operations has burgeoned into an agenda that authorises the use of force, alongside comprehensive whole-of-mission activities and lofty expectations from populations under protection that the UN will respond with force and establish peacebuilding programmes to deter future violence.

Despite attempts to ground PoC in international legal frameworks of human rights, humanitarian law and the use of force, PoC is typically invoked by the Security Council as 'a general, non-legalised concept of physical security aimed at addressing a wide range of threats to civilians in conflict and post-conflict settings'.[8] PoC contains aspects that implement existing law and others that go further than the requirements under international law.[9] Despite the volume of attention and literature on PoC, the usage of protection, its content and responsibilities are disparate across humanitarian, human rights and peacekeeping communities.[10]

But in recent years, legal scholars have seldom investigated the exact nature of the legal obligation of peacekeepers to protect civilians.[11] Given the continued contestation, a re-evaluation of how PoC is defined and has developed, its practical application, and legal formulation, is necessary to break new ground towards a clear and shared understanding of what protection mandates entail for UN peace operations. This article will not address specific legal obligations found in international human rights law or international humanitarian law and instead focus on PoC mandates themselves and the existence of any resultant legal obligations.[12]

[7] A Gorur and others, 'Special Report: Evolution of the Protection of Civilians in UN Peacekeeping' 8 <https://www.jstor.org/stable/resrep23103.1> accessed 5 August 2022.

[8] EP Rhoads and J Welsh, 'Close Cousins in Protection: The Evolution of Two Norms' (2019) 95 *Int Aff* 597, 601.

[9] ibid.

[10] S Krishnan, 'UN Peacekeeping, Responsibility to Protect and Humanitarian Intervention' (2020) 76 *India Q J Int Aff* 120, 121.

[11] Two isolated examples include H Bourgeois, '"All Necessary Means" to Protect Civilians: The Interpretation and Implementation of UN Security Council Mandates Authorising the Protection of Civilians' (2020) 24 *J Int Peacekeep* 53; H Bourgeois and PI Labuda, 'When May UN Peacekeepers Use Lethal Force to Protect Civilians? Reconciling Threats to Civilians, Imminence, and the Right to Life' [2022] *J Confl Secur Law* 1 (epub before print).

[12] For coverage of international human rights law and international humanitarian law as applicable to UN peacekeepers see S Wills, *Protecting Civilians: The Obligations of Peacekeepers* (OUP 2009).

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This article shifts the discussion from mission-by-mission analyses of PoC and unique features of recent missions, such as the robust use of force and effect of stabilisation, towards critical questions of how to formulate future PoC mandates and resolve the uncertainty that has flourished within the agenda.

This article's major re-evaluation of PoC mandates is necessary to clarify the development, practice and future of PoC activities in UN peace operations. With the proliferation of PoC activities, international lawyers must ask whether PoC mandates are sufficiently clear for missions to realise their obligations under international law.

First, the article charts the evolution of PoC within UN peace operations, covering the early PoC mandates issued by the Security Council and the role of PoC in today's missions. Second, examples of PoC mandates and activities in Mali (MINUSMA), South Sudan (UNMISS), Central African Republic (MINUSCA), the Democratic Republic of the Congo (MONUSCO) and Côte D'Ivoire (UNOCI) are discussed to provide context on how diverse PoC mandates can be. Third, the article argues that current definitions and practical applications of PoC have cast the net too wide, presented uncertainties and left PoC open to attack from Member States amidst a political climate of weakened support for collective security action. Finally, suggestions are provided for how PoC can be reconceptualised to distinguish between a narrow and easily communicated, legal minimum obligation to be placed on UN peacekeepers and broader protection-related activities undertaken by the whole-of-mission.

2. The evolution of the PoC by UN peace operations

PoC was borne out of 'the desire by the Security Council to make the civilian population one of the beneficiaries of the external military presence'.[13] Civilian protection is paramount because while deaths and injuries in armed conflicts have decreased in the last few decades, the proportion of civilians among the remaining fatalities and injuries has increased significantly.[14] The process of undertaking work to counter the trend of civilian deaths began in 1999, instigated by Canada during its term as President of the Security Council, with the first resolution on civilian protection, Resolution 1265, and a subsequent Working Group on the Protection of Civilians.[15] Resolution 1265 spoke of the need to enhance protection long-term through many strategies, such as

[13] T Tardy, 'The Dangerous Liaisons of the Responsibility to Protect and the Protection of Civilians in Peacekeeping Operations' (2012) 4 *Glob Responsib Prot* 424, 428.

[14] D Lilly, 'The Changing Nature of the Protection of Civilians in International Peace Operations' (2012) 19 *Int Peacekeep* 628, 629.

[15] S/RES/1265; Tardy (n 13) 426; See E Goldberg and D Hubert, 'The Security Council and the Protection of Civilians' in R McRae and D Hubert (eds), *Human Security and the New Diplomacy: Protecting People, Promoting Peace* (McGill-Queen's University Press 2001).

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promoting human rights, economic growth, poverty eradication, sustainable development, national reconciliation, good governance, the rule of law and respect for and promotion of human rights.[16]

From the start, PoC was not only about using military force to interject troops into protection actions but also about focusing the operation's wider strategic goals on achieving greater protection. While many will link PoC to the fulfilment of human rights and humanitarian law obligations, states also see PoC as a method of realising the objectives found in the UN Charter.[17]

Concurrently, the Responsibility to Protect (R2P) doctrine emerged alongside the operation of early PoC mandates as part of the institutional response to the international community's failures during the 1990s.[18] A UN peace operation with a PoC mandate can be characterised as a less controversial method of implementing the consent-based aspects of R2P, despite PoC predating R2P.[19] While often seen as complementary, the failures of PoC and R2P are impacted by behavioural contestation between the two agendas.[20] The rising expectations of what a PoC mandate can achieve has been attributed to the rhetoric of R2P.[21] The PoC agenda has burgeoned and been complicated by competing rhetoric that may serve similar purposes, but has reduced the clarity of each concept.

The UN included the first protection of civilian mandate in the United Nations Mission in Sierra Leone (UNAMSIL) in 1999.[22] PoC was included because civilians were regular targets in the fighting between the Revolutionary United Front (RUF) and the Economic Community of West African States Monitoring Group (ECOMOG). The UN knew it was paramount that the PoC be achieved after civilians regularly had limbs hacked off, were used as slave labour, recruited as child soldiers and eaten.[23] UNAMSIL was mandated under Chapter VI but included one paragraph adopted under Chapter VII where,

> UNAMSIL may take the necessary action to ensure the security and freedom of movement of its personnel and, within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence, taking into account the responsibilities of the Government of Sierra Leone and ECOMOG.[24]

16 S/RES/1265 (17 September 1999), Preamble.
17 S/PV.6531 (10 May 2011), 11; See also S/PV.6650 (9 November 2011), 19.
18 R2P was also a concept rooted in Canadian foreign policy efforts having been shaped by the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (International Development Research Centre 2001).
19 CT Hunt, 'Analyzing the Co-Evolution of the Responsibility to Protect and the Protection of Civilians in UN Peace Operations' (2019) 26 *Int Peacekeep* 630, 640.
20 Rhoads and Welsh (n 8).
21 Hunt (n 19) 652.
22 S/RES/1270 (22 October 1999).
23 C Foley, *UN Peacekeeping Operations and the Protection of Civilians: Saving Succeeding Generations* (OUP 2017) 110.
24 S/RES/1270 (22 October 1999) para 14.

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UNAMSIL was restrained in its use of the Chapter VII powers it was afforded. UN forces would return fire in self-defence but did not feel under an obligation to rescue even other country's soldiers deployed as part of UNAMSIL, let alone civilians.[25] Importantly for the normative significance of PoC, the protection tasks were not considered a significant separate task and would be achieved by successfully completing the mission's strategic objectives.[26]

The following year, the Security Council adopted a resolution to give suitable mandates and adequate resources for peacekeepers to protect civilians from imminent physical danger.[27] Temporary security zones and safe corridors were also considered possible ways to protect civilians.[28] The 2000 Report of the Panel on United Nations Peace Operations (Brahimi Report) suggested the Secretariat must tell the Security Council what it needs to know, as opposed to what it wants to hear, to prevent situations where a force has been mandated to protect civilians without adequate resources or training.[29] Furthermore, the Report found that 'United Nations peacekeepers—troops or police—who witness violence against civilians should be presumed to be authorised to stop it, within their means, in support of basic United Nations principles'.[30]

As a result of the Brahimi Report's recommendations, the UN Secretariat revised its rules of engagement that all missions, not only those authorised under Chapter VII, can use force to 'defend any civilian person who is in need of protection against a hostile act or hostile intent, when competent local authorities are not in a position to render immediate assistance'.[31] PoC then needs attention in all UN operations. Still, it is limited by the capability of the mission in question, which will differ from a Chapter VI mission with fewer military resources compared to a Chapter VII mission.[32]

In 2000 the Security Council, after an initial Chapter VI mandate, *decided* under Chapter VII that the UN Mission in the Democratic Republic of the Congo (MONUC) 'may take the necessary actions' to protect civilians under imminent threat in the areas of its deployment and within its capabilities.[33] However, the UN knew MONUC would not have sufficient capacity to protect civilians and would escort humanitarian assistance 'under favourable security conditions'.[34] The UN knew from the beginning that the protection of civilian

[25] International Crisis Group, 'Sierra Leone: Time for a New Military and Political Strategy' (Africa Report No. 28, 11 April 2001) 20.
[26] Foley (n 23) 116.
[27] S/RES/1296 (19 April 2000) para 13.
[28] ibid para 15.
[29] A/55/305–S/2000/809 (21 August 2000) para 64.
[30] ibid para 62.
[31] UN Master List of Numbered ROE, Guidelines for the Development of ROE for UNPKO, Attachment 1 to FGS/0220.001 (April 2002), Rule 1.8.
[32] S Sheran, 'The Use of Force in United Nations Peacekeeping Operations' in M Weller (ed), *The Oxford Handbook of The Use of Force in International Law* (OUP 2015) 368.
[33] S/RES/1291 (24 February 2000) para 8.
[34] S/2000/30 (17 January 2000) para 67.

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mandate was unachievable, and MONUC could not respond to widespread human rights abuses.[35] MONUC's protection mandate was reaffirmed on several occasions, but MONUC could not deploy enough troops to the necessary areas to respond.[36] It was not until 2004 that MONUC was mandated to '*ensure* the protection of civilians' and, in 2005, to use cordon and search tactics to prevent attacks following an increase in troop strength.[37] Despite this, violence in the DRC increased following MONUC's deployment and widespread human rights abuses continued following the deployment of a Force Intervention Brigade in 2013 with the specific purpose of neutralising groups that threaten civilians.[38] MONUC, and later MONUSCO, has consistently not used force against the Congolese forces even though government forces have been engaged in violence against civilians.[39] Here we can see how the evolution of PoC has exacerbated the often difficult relationship between the UN and the host state.

In 2003 the UN Mission in Liberia (UNMIL) was mandated 'to protect United Nations personnel, facilities, installations and equipment, ensure the security and freedom of movement of its personnel and, without prejudice to the efforts of the government, to protect civilians under imminent threat of physical violence, within its capabilities'.[40] As can be seen, by the wording of the mandate, the Security Council did not place the PoC in a position that gives particular importance to that task. Instead, the protection of civilian mandate is at the end of a list, a subsection of four overarching goals of UNMIL, despite years of fighting and the proliferation of small arms.

The lack of a prominent place for the PoC in UNMIL's mandate may be because of two factors. First, the National Transitional Government of Liberia (NTGL) requested the UN to 'facilitate, constitute, and deploy a UN Chapter VII force in the Republic of Liberia to support the transitional government and to assist in the implementation of this Agreement'.[41] It may have been that the NTGL was not seeking a UN peace operation to assist with protecting its own people. However, the more convincing argument is that following the Brahimi Report calling for the Security Council and Secretariat to more openly communicate the risks of missions so that mandates can be achievable and the failures of the 1990s, the UN was conscious of setting the bar too high. Drawing attention to protecting civilians as a critical strategic goal would have set the scene

[35] Wills (n 12) 57.
[36] See S/RES/1417 (14 June 2002); S/RES/1493 (28 July 2003).
[37] S/RES/1565 (1 October 2004) para 4 (emphasis added); S/RES/1592 (30 March 2005) para 7.
[38] S/RES/2098 (28 March 2013).
[39] D Zaum, Keynote speech at 'The UN and Global Order: how research can support and strengthen the United Nations' (University of Reading, 26 April 2018).
[40] S/RES/1509 (19 September 2003) para 3.
[41] Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy, the Movement for Democracy in Liberia and the political parties (Accra, Ghana, 18 August 2003); Available at, S/2003/850 (29 August 2003) 6.

for potential embarrassment. Especially the caveat 'within its capabilities' is drawn directly from the Brahimi Report's recommendations to ensure a peace operation is not asked to perform operational and tactical tasks it simply would never be able to achieve.

UNMIL's heavy presence, initially up to 15,000 military personnel, was a potent deterrent against the resurgence of non-state armed groups that the mission had to counter. To that end, UNMIL had a quick reaction force that patrolled robustly but did not typically take the offensive.[42] UNMIL's volition to avoid conflict is most visible in its handling of rubber plantations under the control of the Liberians United for Reconciliation and Democracy (LURD), a rebel group. UNMIL did not initially intervene despite ex-combatants vying for political power by threatening to take up arms if removed from the plantations and the strained relationship between the ex-combatants and the local community.[43]

In 2004, the UN Operation in Côte d'Ivoire (UNOCI) was mandated under Chapter VII 'to protect civilians under imminent threat of physical violence, within its capabilities and its areas of deployment'.[44] Despite policy changes from the Brahimi Report, the Secretary-General expressed concern over both misconduct of UNOCI forces and instances where they had not intervened when civilians were under attack.[45] The Secretary-General further reported that violence against civilians in Côte d'Ivoire was widespread.[46] However, the presence of UNOCI likely prevented major massacres.[47]

A. Subsequent reforms and development of protection of civilian mandates

The trend of developing protection of civilian mandates continued with the UN's Capstone Doctrine in 2008, which paid close attention to PoC recognising, '[t]he ultimate aim of the use of force is to influence and deter spoilers working against the peace process or *seeking to harm civilians*'.[48] Protection of civilian mandates were seen to be a natural progression of multidimensional missions because PoC requires both 'concerted and coordinated action among the military, police and civilian components of a United Nations peacekeeping operation' and close cooperation between UN agencies and NGOs.[49]

[42] KM Jennings, 'United Nations Mission in Liberia (UNMIL)' in J Koops, N MacQueen, T Tardy, PD Williams (eds), *The Oxford Handbook of United Nations Peacekeeping Operations* (OUP 2015) 697.
[43] ibid 697.
[44] S/RES/1528 (27 February 2004) para 6(i).
[45] S/2007/275 (14 May 2007) para 30.
[46] S/2008/1 (2 January 2008) paras 2–3, 45–48.
[47] Wills (n 12) 56.
[48] UN Department for Peacekeeping Operations, 'United Nations Peacekeeping Operations: Principles and Guidelines' 35; See also S/RES/1894 (11 November 2009) para 19.
[49] ibid 24.

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In 2015, a High-Level Panel on Peace Operations (HIPPO) was established to comprehensively assess the current state of peace operations. The Panel gave special attention to issues facing operations, such as the changing nature of conflict, evolving mandates, challenges to peacebuilding and good offices, administrative and planning challenges, human rights and PoC.[50] The resultant report regarded PoC as a 'core obligation' and noted significant progress had been made to promote the norms and frameworks for its implementation.[51] The HIPPO Report notes a gap between what is asked for and what is delivered on the ground.[52] The policy discussion and consistent mandating by the Security Council demonstrates that it is normative practice for an operation to have express provisions for the PoC.[53]

Part of why there is a gap between expectations and what can be delivered is due to divergence in how different missions implement their PoC mandates. An expectation exists that force will be used to ensure physical protection. Where it is not used, the UN is criticised regardless of whether other strategies were employed. Both the Brahimi and HIPPO Reports underscored issues with mission resourcing and capabilities.

Another factor contributing to the protection challenge is that Security Council language is political and consequently not always clear for forces on the ground.[54] Guidance in 2010 stated force may be used to protect civilians where the government is unwilling to fulfil its responsibility, including using force against elements of government forces.[55] Nevertheless, in 2014 the UN Office of Internal Oversight Services (OIOS) found that peacekeepers intervened in only 20% of cases where civilians were in imminent physical danger or being attacked in the area of deployment.[56] The UNDPKO stated the OIOS had over-emphasised military action and needed to consider the political solutions that peace operations seek.[57]

UNDPKO had four years before drafted three tiers of protection activities which operations would implement in pursuit of their mandates.[58] The three

[50] UN Peacekeeping, 'Reforming Peacekeeping', <http://peacekeeping.un.org/en/reforming-peacekeeping> accessed 5 August 2022.

[51] A/70/95–S/2015/446 (17 June 2015), 11; See also, A Gorur and L Sharland, 'Prioritising the Protection of Civilians in UN Peace Operations: Analysing the Recommendations of the HIPPO Report' (Stimson, February 2016).

[52] HIPPO Report (n 52) 11.

[53] Wills (n 12) 66.

[54] ibid 70.

[55] UNDPKO, 'Framework for Drafting Comprehensive Protection of Civilians (POC) Strategies in UN Peacekeeping Operations' (2010) para 5 <https://www.refworld.org/pdfid/523998464.pdf> accessed 5 August 2022.

[56] UN General Assembly, 'Evaluation of the Implementation and Results of Protection of Civilians Mandates in United Nations Peacekeeping Operations: Report of the Office of Internal Oversight Services' (7 March 2014) A/68/787 para 55.

[57] ibid. Annex I para 4.

[58] 'Draft Operational Concept on the Protection of Civilians' (UN Department of Peacekeeping Operations and Department of Field Support, 2010).

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tiers are (i) protection through dialogue and engagement, (ii) provision of physical protection and (iii) establishment of a protective environment.[59]

The first tier is mainly political, seeking dialogue with the perpetrators and parties to the conflict to come to a resolution and public information and reporting on the issue. The second tier includes using force to prevent, deter, pre-empt or respond to threats of violence. The inclusion of preventative force is notable because, in 2004, UN commanders had noted that PoC often requires pre-emptive force but, at the time, they were limited to merely responding.[60] The third tier ties into the growth and entrenchment of multidimensional operations where protection is achieved through medium to long-term peacebuilding programmes. Many activities under the third tier are holistic and delivered in cooperation with the UN Country Team and other humanitarian actors. These tiers of protection have now been used as strategies for pursuing the mandates of many missions, including UNOCI, MONUSCO, UNAMID and UNMISS.[61]

Notably, there is a distinct lack of 'legally defined triggers' where PoC is linked to violations of international law.[62] For instance, mandates do not refer expressly to humanitarian and human rights law violations as requiring the use of force in response. Nor does the Security Council include reference to the International Criminal Court and a responsibility to prevent atrocity crimes.[63] The UN Office of Legal Affairs has said that the term 'civilian' is meant broadly and not to be interpreted in keeping with humanitarian law.[64] A phrase such as 'threat of physical violence' without linkages to strictly defined violations of law allows for greater discretion on the part of the peacekeepers but does provide for subjective interpretations of mandates, as well as scope for inaction.[65]

The UN has also investigated inaction in terms of PoC and the security of peacekeepers following rising fatalities. In 2016, the Secretary-General instructed Major General Cammaert, former Military Advisor to UNDPKO, to conduct a special investigation into UNMISS' responses to the outbreak of violence in Juba in July 2016.[66]

Cammaert reported that immediate changes were needed in how UNMISS carried out its PoC mandate. For instance, on 11 July, South Sudanese Government forces entered a camp housing civilians, including UN personnel

[59] Department of Peacekeeping Operations and Department of Field Support, 'The Protection of Civilians in United Nations Peacekeeping' (Ref 2015.07, 1 April 2015) para 30; UNDPO, 'The Protection of Civilians in United Nations Peacekeeping (Ref 2019.17, 1 November 2019) para 40.

[60] V Holt and T Berkman, 'The Impossible Mandate? Military Preparedness, the Responsibility to Protect and Modern Peace Operations' (Stimson, 2006) 53.

[61] Foley (n 23) 122.

[62] R Mamiya, 'A History and Conceptual Development of the Protection of Civilians' in H Willmot and others (eds), *Protection of Civilians* (OUP 2016) 79. D Lilly, 'The UN Agenda for Protection: Policy, Strategic, and Operational Priorities' 7.

[63] Mamiya (n 62) 79.

[64] UNDPKO (n 55) para 14.

[65] Mamiya (n 62) 79.

[66] S/2016/924 (1 November 2016).

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and humanitarian workers. The civilians notified UNMISS when the forces began looting, but UNMISS contingents turned down the requests for assistance. Later that day, the South Sudan National Security Service extracted all but three female humanitarian workers from the residence. A UN security officer dismissed one of the women when a call for assistance was made, and the call was not logged. UNMISS failed to deploy any forces to extract the women, and an NGO dispatched a private security firm that performed the task the following morning. During this event, civilians in the camp were subjected to sexual violence and acts amounting to torture. Cammaert importantly notes that the individuals who were in the camp fell within the mission's PoC mandate.

With fatalities during UN peace operations rising from 2011 onwards, Lieutenant General dos Santos Cruz, former Force Commander of the United Nations Stabilization Mission in Haiti (MINUSTAH) and MONUSCO, investigated why the UN was suffering higher rates of casualties and how the situation should be addressed.[67] His report does not make a single mention of PoC. dos Santos Cruz suggests '[p]eacekeepers must adopt a proactive posture in self-defence: they must take the initiative to use force to eliminate threats and end impunity for attackers by quickly organising special operations … Overwhelming force is necessary to defeat and gain the respect of hostile actors'.[68] dos Santos Cruz does not make any links to whether the implementation of PoC mandates has contributed to the rise in fatalities, and likewise, what impact the use of overwhelming force would have on civilians.

Protection of civilian mandates adopted under Chapter VII are today a cornerstone of UN peace operations. They are intertwined with the work of the wider multidimensional operation and part of the impetus for the turn to more 'robust' uses of force found in MINUSMA, MINUSCA, UNMISS and MONUSCO.[69] However, where peacekeepers use 'robust' force against non-state actors but are less willing to do so against government forces we see a key flaw of PoC emerging. Does dos Santos Cruz believe that overwhelming force must be used against all hostile actors even in a situation where the government is hostile to civilians? This is an important concern because PoC mandates have created difficult situations that require the mission to consider foundational principles of host state consent and impartiality. How can a mission remain impartial, and more broadly, legitimate to the population they are mandated to protect, if using force against government forces is vitiated by concerns that the mission will lose host state consent?

What protection means for the principles of peacekeeping and how best to recast PoC mandates to account for these tense considerations and

[67] C A dos Santos Cruz, 'Improving Security of United Nations Peacekeepers: We Need to Change the Way We Are Doing Business' <https://peacekeeping.un.org/sites/default/files/improving_security_of_united_nations_peacekeepers_report.pdf> accessed 5 August 2022.

[68] ibid 10.

[69] On robustness see M Longobardo, '"Super - Robust" Peacekeeping Mandates in Non - International Armed Conflicts under International Law' (2020) 24 *Span Yearb Int Law* 42.

relationships should feature in current and future UN policy discussions. For instance, in 2020, the Secretary-General committed to developing an Agenda for Protection for the United Nations System.[70] The Agenda should consider '[s]etting out a common framework of protection measures to be implemented', including the 'scope of the actions the UN system will take'.[71] An Agenda for Protection must consider the scope of PoC within UN peace operations, how other UN entities can better coordinate and address the needs of those requiring protection, and the long-standing concern of what PoC means for the UN's relationship with the host state. The following section will provide examples of PoC mandates and activities undertaken by missions, such as in Mali (MINUSMA), South Sudan (UNMISS), the Democratic Republic of the Congo (MONUSCO) and Côte D'Ivoire (UNOCI).

3. Contemporary examples of PoC mandates and practice

MINUSMA, UNMISS and UNOCI have all undertaken PoC mandates during their deployment. MINUSMA has had a PoC mandate since its deployment in 2013; consequently, physical protection has become the centre of gravity of the operation. In the planning for MINUSMA, the Secretary-General stated that any UN operation would assist the Malian authorities re-establish its authority to be able to provide *physical* security to all its people and emphasises protecting civilians 'under imminent threat of physical violence'.[72] The 2014 renewal of MINUSMA's mandate included long-range patrols beyond essential cities in the north to better protect the population in rural areas from physical threats.[73] As of 2022, MINUSMA's PoC mandate comprises the strengthening of early warning and response mechanisms, community engagement, including mediation and quick impact projects, the use of ground and air assets to protect civilians, mitigating risks from military and police operations, and providing specific protection and assistance for women and children.[74]

Like MINUSMA, UNMISS was granted a PoC mandate when first authorised in 2011.[75] UNMISS used its initial mandate to deter violence through political consultations and patrols to deter inter-communal violence.[76] In 2013 the three

[70] UN, The Highest Aspiration: A Call to Action for Human Rights (24 February 2020) 6 <https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/2020_sg_call_to_action_for_hr_the_highest_aspiration.pdf> accessed 5 August 2022.

[71] Lilly, 'The UN Agenda for Protection: Policy, Strategic, and Operational Priorities' (n 62) 7.

[72] S/RES/2100 (25 April 2013) para 16(c)(i).

[73] S/RES/2164 (25 June 2014), 4, para 13(a)(iv).

[74] S/RES/2640 (29 June 2022).

[75] S/RES/1996 (8 July 2011) para 3(b)(v).

[76] S/2011/678 (2 November 2011) para 45.

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tiers of PoC were interwoven into the mission strategy for the mission to (i) seek protection through the political process, (ii) protection from physical violence and (iii) protection through establishing a protective environment.[77] The PoC strategy has a distinct focus on linking work on protection to national reconciliation with one mandate stating the mission should 'foster sustainable local and national reconciliation as an essential part of preventing violence'.[78] In 2014, after the outbreak of civil war, the PoC became the overriding mission priority, with the mandate being modified to include more comprehensive guidance on PoC activities.[79]

UNMISS' most recent mandate, Resolution 2625, devoted significantly more detail to PoC when compared to MINUSMA's renewal three months later.[80] UNMISS' mandate includes the deterrence of violence against civilians, the maintenance of public safety on UNMISS protection of civilian sites, to deter, prevent and respond to sexual and gender-based violence, to prevent and mitigate intercommunal violence through supporting community-led peace dialogues leading to local and national reconciliation, support in creating gender-responsive community violence reduction programmes, assist with reforming the rule of law and justice sector, foster a secure environment for internally displaced persons (IDPs), facilitate free movement in and around Juba and effectively engage any actor credibly found to be preparing attacks against civilians.

The first PoC mandate for UNOCI upon its deployment provides little detail on the mission's protection activities. Resolution 1528 states that UNOCI will 'protect civilians under imminent threat of physical violence, within its capabilities and its areas of deployment'.[81] The UN assessed the main security threats as combatants not yet being disarmed, ethnic militias, extremist groups, other persons who feel disempowered, rising crime and human rights abuses.[82] UNOCI was deployed alongside French forces, Opération Licorne, which the mission depended on for quick reaction support.[83]

UNOCI carried out its protection mandate by conducting long-range patrols, air patrols and maintaining mobility to ensure quick responses to emergencies.[84] After the 2010 elections, UNOCI's protection strategy was altered. The mission would be more responsive in rural areas and engage more with local populations, and 'measures to prevent gender-based violence' were added to the mandate.[85] UNOCI's final mandate, Resolution 2284, included a minimal PoC

77 S/2013/651 (8 November 2013).
78 S/RES/2223 (28 May 2015) para 4(a)(v).
79 cf S/RES/1996 (8 July 2011) and S/RES/2155 (27 May 2014).
80 S/RES/2625 (15 March 2022).
81 S/RES/1528 (27 February 2004) para 6(i).
82 S/2006/2 (3 January 2006) para 25.
83 S/2007/275 (14 May 2007) para 36.
84 S/2009/344 (7 July 2009) para 25.
85 S/2012/186 (29 March 2012) para 59; S/RES/2000 (27 July 2011) para 7(a); S/2011/387 (24 June 2011) para 65; S/2012/506 (29 June 2012) para 12.

mandate, stressing UNOCI's role was to support Ivorian security forces given UNOCI's reduced capabilities due to the mission's withdrawal.[86]

MONUSCO's most recent mandate from December 2021 includes expansive PoC activities.[87] The mandate asks the mission to have the capacity to protect civilians in specific regions, including the use of good offices to facilitate protection, whilst maintaining the further capacity to intervene elsewhere in the country. The mission must also support disarmament, local mediation efforts, pay particular attention to civilians at displacement camps, be mobile, flexible and robust in their deployments, create joint prevention and response plans alongside the host state and humanitarian organisations, enhance community engagement and early warning mechanisms, build trust with communities, carry out targeted offensive operations with the host state, work with other UN agencies to strengthen the justice system and investigate international crimes, provide good offices and support to the host state on human rights compliance, and record and analyse the rate of sexual violence. This is an expansive set of activities that is provided here in full to demonstrate the burgeoning of the PoC agenda and, subsequently, the mandates.

The differences in the texts of PoC mandates is striking (Table 1). Although UN peace operations are a product of their environment and mandates develop organically, context will shift, and mission priorities will evolve throughout the mission's deployment. It is not difficult to see that the text is the product of political negotiations, and negotiations have resulted in different approaches. For instance, out of the PoC mandates outlined in Table 1, only the mandate for UNMISS does not stress the primary responsibility of the South Sudanese government to protect civilians (although statements to this effect appear elsewhere in the Resolution). The most recent mandate for MONUSCO is also the only one to single out geographic locations by stating several provinces would be the primary focus 'whilst retaining a capacity to intervene elsewhere in case of *major* deterioration of the situation'.[88]

PoC mandates continue to include wide-ranging activities that are linked to the broad goals of the UN's wider PoC agenda. Including activities, for example, related to the rule of law or community engagement, detracts from the core legal obligation to protect civilians from the imminent threat of physical violence. This is not to say that missions cannot and should not undertake these broader activities. But, PoC mandates must instead be legally distinct from other obligations and activities that do not provide direct protection to those under imminent threat of violence. Broad conceptualisations of PoC, where the mandate is understood to include non-coercive activities aimed at reducing violence, should be distinguished from a PoC mandate that imposes concise obligations to use force to protect from imminent violence.

[86] S/RES/2284 (28 April 2016) para 15(a).
[87] S/RES/2612 (20 December 2021) para 29(i).
[88] S/RES/2612 (20 December 2012) para 29(i)(a)

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Table 1.

Mission and the most recent resolution	The first paragraph of the PoC mandate
MINUSMA, Resolution 2640	To protect, without prejudice to the primary responsibility of the Malian authorities, civilians under threat of physical violence.
UNOCI, Resolution 2284	To support the Ivorian security forces to protect civilians in the event of a deterioration of the security situation that could risk a strategic reversal of peace and stability in the country, taking into account UNOCI's reduced capabilities and areas of deployment
UNMISS, Resolution 2625	To protect civilians under threat of physical violence, irrespective of the source of such violence, within its capacity and areas of deployment, including in the context of elections, with specific protection for women and children, including through the continued and consistent use and deployment of UNMISS's Child Protection Advisers, Women Protection Advisers, and uniformed and civilian Gender Advisers, the positions for which should be filled expeditiously, and share best practices with relevant local stakeholders for the purpose of capacity building
MINUSCA, Resolution 2605	To protect, in line with S/PRST/2018/18 of 21 September 2018, without prejudice to the primary responsibility of the CAR authorities and the basic principles of peacekeeping, the civilian population under threat of physical violence
MONUSCO, Resolution 2612	Take all necessary measures to ensure effective, timely, dynamic and integrated PoC under threat of physical violence within its provinces of current deployment, with a specific focus on Ituri, North Kivu and South Kivu, including the use of good offices, whilst retaining a capacity to intervene elsewhere in case of major deterioration of the situation, through a comprehensive approach and in consultation with local communities, including by preventing, deterring, and stopping all armed groups and local militias from inflicting violence on the populations, by disarming them, and by supporting and undertaking local mediation efforts and national level advocacy

(*Continued*)

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Table 1 (continued)

Mission and the most recent resolution	The first paragraph of the PoC mandate
	to prevent escalation of violence and to counter hate speech, paying particular attention to civilians gathered in displaced persons and refugee camps, peaceful demonstrators, humanitarian personnel and human rights defenders, in line with the basic principles of peacekeeping, while ensuring the risk to civilians are mitigated before, during and after any military or police operation, including by tracking, preventing, minimising and addressing civilian harm resulting from the mission's operations, including when in support of national security forces

A. Robustness and the PoC

MINUSMA and UNMISS have carried out 'robust' mandates to use force which has fed into their activities and capability to protect civilians. In 2016, MINUSMA was given a more robust mandate, where the operation became increasingly proactive in its protection efforts.[89] The Secretary-General notes robust measures 'dissuade' potential attackers and are essential to prevent terrorist groups from taking control of territory.[90] MINUSMA carried out operations 'to neutralise threats, targeting improvised explosive devices', area and axis control of main supply routes to identify and arrest terrorists, and conducted patrols with the support of attack helicopters.[91] MINUSMA aimed to 'progressively dominate areas adjacent to population centres' to prevent access to terrorist groups and criminals.[92] The mission has sought to implement early response mechanisms alongside communities to protect civilians, has deployed unmanned aerial vehicles (UAVs) and combat helicopters as a deterrent, and the robust mandate from 2016 onwards has been said to allow MINUSMA to 'pre-empt certain threats while carrying out proactive and preventive operations'.[93]

Despite the Security Council's intentions to make MINUSMA more robust, 9000 civilians were displaced in early 2017. Nine months after that year's mandate renewal, none of the additionally authorised military and police personnel had been deployed.[94] As a result, MINUSMA lacked 'critical capacity' and was

[89] S/2016/819 (29 September 2016) para 32; S/RES/2227 (29 June 2015).
[90] S/2019/454 (31 May 2019) para 84; S/2019/207 (5 March 2019) para 13.
[91] S/2016/819 (29 September 2016) paras 32, 38.
[92] S/2014/403 (9 June 2014) para 66.
[93] S/2014/1 (2 January 2014) para 38; S/PV.7202 (18 July 2014), 3; S/2014/692 (22 September 2014) para 32; S/PV.7975 (16 June 2015), 3; S/2020/1282 (24 December 2020), 3.
[94] S/2017/271 (30 March 2017) paras 28, 71.

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on the back foot to deter physical violence perpetrated by terrorist groups, including where a patrol was sent to deter violence only after civilians had been executed.[95]

In 2016 Resolution 2304 provided UNMISS with the Regional Protection Force (RPF) to enhance its protection of civilian capabilities.[96] The RPF would be responsible for providing security around Juba and was authorised to take 'robust action where necessary'.[97] A subsequent resolution authorised the RPF to '[p]romptly and effectively engage any actor that is credibly found to be preparing attacks, or engages in attacks, against United Nations protection of civilians sites'.[98] The RPF was instructed to take the initiative in using force against armed elements threatening PoC sites.

The RPF was framed as part of UNMISS's broader mission indicating the force was to be distinct from the other military personnel deployed to UNMISS.[99] Deployment of the force did not start for a year, and one reason for the delay was disagreement with the government over where the RPF base would be located, separate from the other UNMISS compound in Juba. The government pushed back against the deployment of the RPF as it was perceived that the RPF was being deployed in preparation for a foreign invasion.[100] In the final years of UNOCI's deployment, the UN drew up plans for a similar Quick Reaction Force and, in May 2014, undertook military exercises to develop UNOCI's capacity to respond to an emergency anywhere in the Ivory Coast within twelve hours.[101] The Quick Reaction Force was fully operational by mid-2015 and was used in March 2016 to protect civilians and deliver aid when over 2000 persons were displaced.[102]

B. Protection through dialogue and engagement

Activities linked to Tier 1 of PoC, protection through dialogue and engagement, are the most wide-ranging. However, it can be challenging to identify all such activities that contribute to Tier 1. UN documents generally do not specify under which tier an activity falls and instead use general 'Protection of civilians' headings that will not capture all activities linked to the tiers of PoC. Nevertheless, mission mandates regularly include activities as part of the overall mandate that, whilst not specifically categorised as PoC, are part of wider mission efforts to improve dialogue and engagement leading to a protective environment. For example, UNOCI sought to improve its working relationship with

[95] ibid paras 71, 28.
[96] Regional Protection Force mandated in S/RES/2304 (12 August 2016).
[97] S/RES/2304 (12 August 2016) paras 8, 10.
[98] S/RES/2327 (16 December 2016) para 9(iii).
[99] S/PV.7754 (12 August 2016), 3.
[100] ibid 6.
[101] S/PV.7197 (16 June 2014), 4.
[102] S/PV.7459 (19 June 2015), 4; S/PV.7669 (12 April 2016), 2–3.

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local authorities and more closely monitor security developments at a local level 'to help prevent conflict'.[103]

Reconciliation at national and local levels through the involvement of all Ivorians, including women and civil society, was mandated in 2013 and 2014.[104] Here we can see how the lines can become blurred between Tier 1 PoC efforts and other areas of the mandates. Preventing conflict through working with local authorities and monitoring local developments can contribute to PoC as part of the mission's preventative protection efforts; however, the mission reporting does not make clear whether this activity is categorised as Tier 1 or even part of PoC.

Similarly, in MINUSMA, the Security Council acknowledged 'the significant contribution women can have in conflict prevention, peacebuilding and mediation efforts'.[105] MINUSMA was mandated to promote women's organisations' participation, to ensure women's representation in the transitional government, and to ensure women's active involvement in implementing the Bamako agreement.[106] MINUSMA has actively consulted women in the north to discuss the contribution they can make, supported women's participation in elections, supported the Government's hosting of a regional forum on women, and advocated for the inclusion of women in the Government and interim authorities in the north.[107] Following the Bamako Agreement, the Security Council mandated MINUSMA to support the implementation of the agreement 'including by promoting the participation of civil society, including women's organisations, as well as youth organisations'.[108]

To mitigate the risk of escalation, UNOCI supported creating two types of committees to promote dialogue and engagement. First, local security committees coordinate security activities at the local level with the involvement of local prefects, law enforcement and other officials.[109] Second, local early warning and sensitisation committees included local authorities, politicians, civil society and traditional leaders.[110] As a result, it was later reported that the early warning committees 'have been instrumental in easing intercommunity tensions and violence', and by 2015 there had been a slight decrease in inter-communal conflict.[111]

With regards to UNMISS, in 2016, the Secretary-General's review of the mandate suggested that UNMISS should strengthen conflict management and reconciliation at the community level and prevent and mitigate inter-communal

[103] S/2014/892 (12 December 2014) para 15.
[104] S/RES/2112 (30 July 2013) para 14; S/RES/2162 (25 June 2014), 2.
[105] S/RES/2056 (5 July 2012) para 26.
[106] S/RES/2100 (25 April 2013) paras 16(b)(iii), 25; S/RES/2295 (29 June 2016) para 26.
[107] S/2013/582 (1 October 2013) para 10; S/2014/1 (2 January 2014) para 13; S/2015/1030 (24 December 2015) para 10; S/2014/229 (28 March 2014) para 11; S/2017/478 (6 June 2017) para 58.
[108] S/RES/2227 (29 June 2015) para 14(c).
[109] S/2012/506 (29 June 2012) para 34.
[110] ibid para 35.
[111] S/2013/377 (26 June 2013) para 43; S/PV.7358 (13 January 2015), 4.

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violence.[112] Furthermore, the review stated that mobilising local populations towards peace and reconciliation is vital.[113] The subsequent mandate renewal included the Secretary-General's suggestion, though it provided little detail on how local-level peace initiatives would look.[114] Much of how UNMISS engages with local communities falls under Tier 1 of the PoC strategy as the mission is aware that intercommunal violence must be prevented. The mission has supported peace conferences to facilitate dialogue in affected communities, and community-based workshops have been run to teach conflict management skills.[115] The mission has drawn on the involvement of traditional community leaders to improve peace at the local levels by using them as arbiters and mediators, all of which form part of the mission's PoC strategy.[116] UNMISS regularly conducts community dialogue workshops to promote women, youth and traditional leaders in peacebuilding.[117]

4. The uncertainty presented by current PoC mandates

A. The proliferation of PoC activities and the UN's whole-of-mission approach

Despite a wide array of PoC mandates, UNDPO policies and guidelines, UN Secretary-General reporting on mandate implementation and protection issues, and in-depth research on PoC, there remains contestation. Bernard Ramcharan, the former acting UN High Commissioner for Human Rights, believes there is 'no *common, system-wide* . . .understanding of the concept of "protection"' in the UN.[118] The UN has not fully demarcated what protection entails and how its peacekeepers should achieve protection, with protection having different meanings depending on the source you consult, including international human rights law obligations.[119]

A core challenge when considering what protection means in the UN context is the implications of the meaning adopted. For instance, the UN's shift to expanding its understanding of PoC to include physical protection, dialogue and engagement, and the establishment of a protective environment makes the UN and its peace operation directly accountable to those who interact

[112] S/2016/951 (10 November 2016) para 33.
[113] ibid para 33.
[114] S/RES/2327 (16 December 2016) para 7(a)(vi).
[115] S/2013/651 (8 November 2013) para 39; S/2015/118 (17 February 2015) para 29; S/2015/655 (21 August 2015) para 35; S/2019/722 (10 September 2019) paras 37, 46.
[116] S/2015/899 (23 November 2015) para 46.
[117] S/2019/191 (28 February 2019) para 38, 41; S/2019/491 (14 June 2019) para 41; S/2020/145 (26 February 2020) paras 34, 43.
[118] Staff, 'Protection in the Field: Human Rights Perspectives' in B Ramcharan (ed), *Human Rights Protection in the Field* (Brill 2006) 121.
[119] M Nel, 'From Peacekeeping to Stabilisation: Interorganisational Co-Operation, Challenges and the Law' (2020) 14 *J Interv Statebuilding* 237, 245.

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with and receive support from the mission not only for not providing physical protection but also for failing to take all manner of preventative action and engagement strategies. Missions today must not only protect civilians, through force if necessary but also 'address an expansive range of root causes. from which threats to civilians emanate'.[120] Consequently, the widening of what the obligation of PoC entails has raised the expectations of populations to an unsustainable level, as well as challenges the sovereignty of the state despite the UN's instance that host states have the primary responsibility to protect civilians.[121]

How peacekeepers are meant to intervene and *what* types of actions are required for PoC have been underspecified.[122] The three tiers of PoC have simply introduced areas for 'confusion and conflicting interpretations'.[123] The potential for conflicting interpretations runs deep throughout the history of PoC mandates. Nine years after the first PoC mandate, there remained 'no consistent perception of Security Council intent amongst senior UN mission staff, either within the UN Secretariat or UN peacekeeping missions'.[124] The intent of mandates and the language used is confused by diplomatic terminology that is hard to follow and, importantly, creates inconsistencies, as demonstrated above in Table 1.[125]

UNDPO explains in its PoC Handbook that the PoC agenda is complementary to programmes and mandates on human rights, children and armed conflict, and women, peace and security.[126] Here the UN has clearly distinguished between activities that form part of PoC and those that do not. But in practice, the distinction is less clear. Missions are littered with examples, such as protecting children in armed conflict and empowering women to play a role in local conflict resolution, that fall under Tiers 1 or 3 of PoC. The complex web of PoC and other agendas is complicated by how the integration and expansion of PoC continues. Emphasising how PoC has become the centre of gravity of peace operations, 'most, if not all, other areas of peacekeeping activity are being retrofitted to align with PoC'.[127] Promoting this integrated approach to PoC, UN policy on PoC asks for Tier 1 activities to be connected to the mission's

[120] T Donais and E Tanguay, 'Protection of Civilians and Peacekeeping's Accountability Deficit' (2021) 28 *Int Peacekeep* 553, 566.
[121] Müller (n 3) 761.
[122] Rhoads and Welsh (n 8) 602.
[123] ibid.
[124] V Holt, G Taylor and M Kelly, Protecting Civilians in the Context of UN Peace Operations: Successes, Setbacks and Remaining Challenges (UN 2009) <https://www.refworld.org/pdfid/52399ae24.pdf> accessed 5 August 2022, 7
[125] Gorur and others (n 7) 8.
[126] UN Department for Peace Operations (n 5) 2.
[127] AJ Bellamy and CT Hunt, 'Using Force to Protect Civilians in UN Peacekeeping' (2021) 63 *Survival* 143, 146; PI Labuda, 'With or Against the State? Reconciling the Protection of Civilians and Host-State Support in UN Peacekeeping' 13.

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political strategy and broader political objectives.[128] However, the thoroughness of how PoC is linked to political strategy 'varies wildly'.[129]

Numerous challenges have been posed by the broadening of PoC, both in terms of the difficulty of implementing the broader objectives of PoC and the traditional core, protecting civilians from imminent danger. For instance, activities are often rebranded to fall under the PoC banner for funding purposes but 'without a broader strategic vision of how these activities should be mutually reinforcing', leading to a potentially unnecessary proliferation of tasks and programmes falling under the PoC tiers.[130] Due to the UN's view that PoC is a day-to-day operational activity, the UN has been less interested in planning how to shift from a protection mandate to other forms of UN activity once a peace operation departs.[131]

It is also true that peace operations implement the use of force in different ways.[132] The UN found in 2017 that implementing mandates 'was subject to varying individual understandings and preferences', with some personnel in MINUSCA understanding their PoC obligation as 'just sitting near a camp'.[133] With regards to MONUSCO, MINUSCA and MINUSMA, the Office of Internal Oversight Services states,

> [a]cross the three missions, there were inconsistencies in military contingents' approach to proactively protecting civilians from threats. While some contingents were singled out as proactive, most interviewees across the three missions pointed to the limited commitment of others to face risks.[134]

The variation in how PoC is implemented could be due to a lack of capacity of national contingents deployed to operations.[135] This is due to insufficient pre-deployment training on responding in different situations and the deployment of forces without the necessary equipment for the appropriate posture necessitated by a PoC mandate.[136] Another issue is that peacekeepers do not show

[128] United Nations Department of Peace Operations, Policy: The Protection of Civilians in United Nations Peacekeeping, Ref 2019.17, 2019.

[129] J Russo, 'The Protection of Civilians and the Primacy of Politics: Complementarities and Friction in South Sudan' (2022) 25 *J Int Peacekeep* 1, 20.

[130] ibid 28.

[131] D Lilly, 'Considering the Protection of Civilians during UN Peacekeeping Transitions' 3.

[132] Bellamy and Hunt (n 127) 146.

[133] Bourgeois (n 11) 57. Evaluation of the effectiveness of United Nations peacekeeping operations in deterring and confronting armed elements in the Democratic Republic of Congo, Mali and the Central African Republic (IED-17-013, 2 October 2017) para 74.

[134] Evaluation of the effectiveness of United Nations peacekeeping operations in deterring and confronting armed elements in the Democratic Republic of Congo, Mali and the Central African Republic (IED-17-013, 2 October 2017) para 84.

[135] I Bode and J Karlsrud, 'Implementation in Practice: The Use of Force to Protect Civilians in United Nations Peacekeeping' (2018) 25(2) *Eur J Int Relat*458.

[136] ibid; F Blyth and P Cammaert, 'Using Force to Protect Civilians in United Nations Peacekeeping Operations' in H Willmot and others (eds), *Protection of Civilians* (OUP 2016).

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the same deployment response when the perpetrator of violence against civilians is government forces, as opposed to non-state actors.[137]

There is also the question of whether peacekeepers are given sufficient, coherent guidelines on civilian protection.[138] With the comprehensive policies, handbooks and mandates available, one might expect such guidelines would be easily discerned. However, PoC has suffered from quite the reverse fate. Namely, a proliferation of policies and activities leaves ambiguity and a lack of 'practical substance of the mandate'.[139]

The UN has cast a wide net by understanding PoC as involving all mission elements in the prevention, deterrence or response to threats of physical violence.[140] This is the so-called whole-of-mission approach where PoC includes all mission elements and a comprehensive approach to coordination with other actors.[141]

The whole-of-mission approaches to PoC risks ambiguity without clear guidance on methods of implementing the mandate and, importantly, how the mission should realise PoC.[142] For instance, missions will regularly undertake quick impact projects (QIPs) that promote the peace process and meet local populations' needs. Under a whole-of-mission approach, QIPs may be linked to protection efforts and form part of the overall PoC approach adopted by the mission. However, QIPs can have unintended consequences and be dangerous for civilians and humanitarian workers.[143]

B. The inability to protect everyone everywhere

Many factors contribute to the UN's ability to protect civilians; consequently, limitations exist. Despite the rising expectations brought about by all-encompassing PoC mandates and the prioritisation of PoC for all uniformed and non-uniformed personnel, UN peace operations cannot protect everyone, everywhere. Instead, peace operations are often overwhelmed by the protection needs in their deployment area and 'can only deal with the tip of the iceberg of threats'.[144] UN peacekeepers cannot protect all civilians from harm, especially where the forces do not have effective control.[145] However, the expectation of

[137] A Phayal and BC Prins, 'Deploying to Protect: The Effect of Military Peacekeeping Deployments on Violence Against Civilians' (2020) 27(23) *Int Peacekeep* 311, 333.
[138] ibid 318.
[139] H Willmot and S Sheeran, 'The Protection of Civilians Mandate in Un Peacekeeping Operations: Reconciling Protection Concepts and Practices' (2014) 95 *Int Rev Red Cross* 517, 518.
[140] Donais and Tanguay (n 120) 565.
[141] UN Department for Peace Operations (n 5) 3.
[142] For a contrasting view see Bellamy and Hunt (n 127) 161.
[143] M Sauter, 'A Shrinking Humanitarian Space: Peacekeeping Stabilization Projects and Violence in Mali' [2022] *Int Peacekeep* 1, 22 (epub before print).
[144] Donais and Tanguay (n 120) 566.
[145] Wills (n 12) 267.

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the international community and, importantly, local populations looking to the UN for help is that where peacekeepers witness violence against civilians, they should be in a position to intervene.

By expanding PoC and casting a wide net, the mandates have introduced an unanswerable question: 'who exactly is worthy of international protection and who is not?'[146] If a mission will never realistically have the capability of protecting all civilians in all regions of a country, the broad mandating of missions without any limitations or setting expectations on the level of protection that is possible necessitates triaging threats to civilians.

The Security Council often mandates missions to expand their areas of operations to protect civilians in other parts of the country.[147] In other situations, such as MINUSMA, the mission was mandated to focus its PoC efforts on specific regions.[148] The International Peace Institute found there were concerns in the UN over the geographical scope of PoC mandates, with MINUSMA unable to provide a 'whole-of-Mali protective presence'.[149] Particularly where armed groups operate over large territories, a PoC mandate that does not impose geographic restrictions results in the expectation the mission will provide security to a vast population that will often be out of reach.[150]

Broad PoC mandates demand sizable deployments of peacekeepers to be able to convey a sense of security and to have the capability to react to threats of physical violence.[151] Despite many missions being deployed and operating with a PoC mandate over the last two decades, empirical evidence remains limited on the ability of the UN to protect civilians.[152] Shortcomings exist in other areas, with findings that UN peacekeepers can present a danger to civilians due to local mission elements contributing to the risk of terrorism and PoC mandates failing to reduce sexual violence perpetrated by government forces.[153]

In July 2022 violence broke out between MONUSCO and protesters who were voicing dissatisfaction with the mission's inability to protect civilians

[146] Donais and Tanguay (n 120) 567.
[147] Bellamy and Hunt (n 127) 145.
[148] International Peace Institute, 'Prioritization and Sequencing of Security Council Mandates: The Case of MINUSMA' 6 <https://www.ipinst.org/2022/05/prioritization-and-sequencing-of-security-council-mandates-the-case-of-minusma> accessed 5 August 2022.
[149] ibid 6.
[150] FR Goulart, 'Blue Helmets, Armed Groups, and Peace at Stake: Does Combat Motivation Matter for Robust Peacekeeping to Succeed?' (2020) 28 *Int Peacekeep* 30, 34; H Fjelde, L Hultman and D Nilsson, 'Protection Through Presence: UN Peacekeeping and the Costs of Targeting Civilians' (2019) 73 *Int Organ* 103.
[151] Hultman, Kathman and Shannon (n 3) 107.
[152] Fjelde, Hultman and Nilsson (n 150) 105.
[153] HE Hansen, SC Nemeth and JA Mauslein, 'United Nations Peacekeeping and Terrorism: Short-Term Risks and Long-Term Benefits' (2020) 46 *Int Interact* 199; K Johansson and L Hultman, 'UN Peacekeeping and Protection from Sexual Violence' (2019) 63 *J Confl Res* 1656, 1675.

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from violence in the east of the DRC.[154] Protesters forcibly entered bases, looted and destroyed UN property, set fire to UN residences, and took weapons from Congolese police and used them to open fire on UN peacekeepers.[155] The UN has condemned these actions as war crimes committed against peacekeepers but there must also be recognition of how broad PoC mandates have contributed to the conditions leading to the violent protests. Several days after protests began UN peacekeepers opened fire for 'unexplained reasons', killing two protesters.[156] With thirty-six people killed during the protests in July, MONUSCO has found itself in a 'crisis of confidence' in which the UN's own PoC mandates have played a critical role.[157] The expectations of communities have been lifted by PoC mandates and policies that speak of the all-encompassing whole-of-mission approach. But MONUSCO's inability to convey a sense of security and respond to violent threats has driven a potentially immovable wedge between peacekeepers and the communities they are mandated to protect.

Simultaneously, the UN asks peacekeepers to respond to threats of physical violence with the robust use of force, implying they have the capacity to do so. PoC mandates have been argued to present a drift towards peace enforcement due to the robust turn in the use of force and confuse the primacy of the host state as the provider of PoC.[158] Nevertheless, UN peace operations remain unsuited to 'war fighting or protracted insurgencies, in spite of the fact that PoC may well take peacekeepers in that direction'.[159]

MONUSCO's failure to use robust force to protect civilians from a resurgent armed group, M23, demonstrates just how problematic a wide-ranging PoC mandate can be where the UN lacks the capacity to put the mandate into practice. The Deputy Special Representative of the Secretary-General for MONUSCO, Khassim Diagne, believes people misunderstand the UN, the Security Council and MONUSCO and importantly recognises the need to improve

[154] J Weenink, 'Is the UN overstaying its Welcome in the Democratic Republic of Congo?' (IPIS Briefing October/November 2022, 28 November 2022) <https://ipisresearch.be/weekly-briefing/is-the-un-overstaying-its-welcome-in-the-democratic-republic-of-congo/> accessed 8 December 2022. See also, Center for Civilians in Conflict, 'Prioritizing the Protection of Civilians During Peacekeeping Operations: Lessons Learned from MONUSCO' (November 2022) <https://civiliansinconflict.org/wp-content/uploads/2022/11/Prioritizing-the-Protection-of-Civilians-During-Peacekeeping-Transitions.pdf> accessed 8 December 2022.

[155] UN News, 'Guterres Strongly Condemns Attack on Peacekeepers in DR Congo which left 3 Dead, Amid Protests' (27 July 2022) <https://news.un.org/en/story/2022/07/1123372> accessed 8 December 2022.

[156] UN News, 'DR Congo: Guterres 'outraged' Over Peacekeepers' Aggression, Calls for Accountability' (31 July 2022) <https://news.un.org/en/story/2022/07/1123692> accessed 8 December 2022.

[157] S/PV.9142 (30 September 2022), 4.

[158] Nel (n 119) 245; Longobardo (n 69) 70.

[159] R Murphy, 'UN Peacekeeping in the Democratic Republic of the Congo and the Protection of Civilians' (2016) 21 *J Confl Secur Law* 209, 241.

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communication.[160] However, one major root cause of such misunderstandings is the broad nature of PoC. The expectations of protection will remain disconnected from mission communications and capabilities until PoC mandates and policies undergo significant reformulation.

C. Political commitment to PoC

The different conceptualisations and focuses of PoC have presented contestation, with some Member States favouring the robust use of force to provide physical protection and others believing the widening of PoC into three tiers has 'allowed the norm to continue to exist'.[161] Whether peacekeepers should proactively use force causes deep divisions between members, and the political negotiation of PoC mandates has come at the expense of clarity and performance standards.[162]

PoC is the source of much controversy within the UN Special Committee on Peacekeeping Operations (also known as the C-34). PoC was first mentioned in a Report from C-34 in 2009, 10 years into the use of PoC mandates by the Security Council.[163] Consequently, states involved in the C-34 have expressed that the inclusion of PoC reflected recognition of Security Council mandates, not consensus on PoC.[164] Debates within the C-34 show clear divides between different groups of states on matters of peacekeeping policy. Most states in the C-34 are affiliated with the non-aligned movement (NAM) and broadly represent the global South.[165] NAM members have been opposed to the assertive language used in the Brahimi Report and Capstone Doctrine on 'robust' capabilities and mandates, the use of force and PoC.[166]

PoC is an agenda dually dictated by both political and military considerations. On the one hand, political disagreements within the Security Council complicate discussions of PoC.[167] On the other, military commanders must have the appetite and their forces the combat motivation to use force in pursuit of PoC.[168] In addition, the current geopolitical situation has led to less support

[160] K Diagne, "2/ Nous avons besoin de mieux communiquer. Bcp de gens comprennent mal les NUs, le Conseil de sécurité & la @MONUSCO. Cela conduit à des attentes excessives, à la suspicion & à l'oubli des réalisations. 2022 n'est pas comme 1999 & la MONUSCO s'est déjà retirée de 8 provinces" (@k_diagne, 29 July 2022) <https://twitter.com/k_diagne/status/1553058152467337218> accessed 8 December 2022.

[161] S Podder and K Roy, 'Use of Force to Protect Civilians in United Nations Peacekeeping: Military Culture, Organisational Learning and Troop Reticence' [2022] *Civil Wars* 3 (author pre-print); Rhoads and Welsh (n 8) 616.

[162] Donais and Tanguay (n 120) 570.

[163] A/63/19 (24 March 2009).

[164] EP Rhoads, *Taking Sides in Peacekeeping: Impartiality and the Future of the United Nations* (OUP 2016) 99.

[165] M Berdal, *Building Peace after War* (Routledge 2009) 150.

[166] Rhoads (n 164) 94.

[167] Gorur and others (n 7) 7.

[168] Donais and Tanguay (n 120) 570; Goulart (n 150) 45.

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for robust action in protection crises. This has fed into senior UN officials having less commitment to protection efforts.[169] As a result, PoC mandates must be revisited to regain commitment for PoC in an agreeable and consistent form.

China and Russia remain sceptical of PoC due to the critique of UN peace operations as western intervention into the internal affairs of other states. African states believe 'African actors are best placed to protect "their own"'.[170] Looking at Russia more closely, Russia is opposed to new international concepts and endless categories of people who require protection.[171] Instead, they favour traditional interpretations of PoC to save lives in imminent threat.[172]

China has provided significant finances and troops in its support of PoC.[173] However, China is wary of PoC mandates that endorse the use of force against government forces despite endorsing offensive missions.[174] The lack of consistency in China's approach could present unwanted consequences.[175] Continuing contestation on PoC points to a need to deeply consider the future mandating of PoC mandates, whilst considering the capabilities of peacekeepers and the political landscape of the UN, to create a clear legal mandate.

5. The future mandating of PoC activities

How can the UN sustain the momentum of the PoC agenda to ensure protection in times of crisis? The UN faces twin challenges of competing conceptualisation of PoC vying for primacy in broad organisational understandings of the agenda and lofty expectations from the populations served.

First, the UN must delineate a core minimum standard expected in implementing PoC mandates. Without clear guidance or standards, the current three tiers and whole-of-mission approach will continue to result in conceptual vagueness that undermines the legal clarity and implementation of PoC. The broad framing of PoC to create synergy with R2P and other UN agendas has limited practical usefulness for peacekeepers in the field who, as has been explained

[169] Lilly, 'The UN Agenda for Protection: Policy, Strategic, and Operational Priorities' (n 62) 20, 22.

[170] Gorur and others (n 7) 8; L Gelot, 'Civilian Protection in Africa: How the Protection of Civilians Is Being Militarized by African Policymakers and Diplomats' (2017) 38 *Contem Secur Policy* 161, 166.

[171] SC/13822 (23 May 2019) <https://press.un.org/en/2019/sc13822.doc.htm> accessed 5 August 2022.

[172] Gorur and others (n 7) 8.

[173] C Jacob, 'The Status of Human Protection in International Law and Institutions: The United Nations Prevention and Protection Architecture' (2021) 38 *Aust Year B Int Law* 110, 122.

[174] M Barelli, 'China and Peacekeeping: Unfolding the Political and Legal Complexities of an Ambivalent Relationship' (2022) 12 *Asian J Int Law* 157, 172, 174.

[175] ibid 174.

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above, lack consistent understanding of what action must be taken under a PoC mandate to meet their legal obligations.

Second, the Security Council must clarify and implement the language used for PoC consistently. To continue its successes, PoC must receive buy-in from the Security Council and key troop-contributing countries (TCCs). Political negotiations to agree on the terminology used in PoC mandates undermine the clarity and, importantly, the legal meaning and scope of Security Council authorisation to use force to protect civilians. By changing the content of PoC mandates from mandate renewal to renewal, the legal clarity of PoC has been lost.

This section argues for consistent clarity in PoC mandates' language to retain the concept's distinctiveness. This is not to say that missions cannot and should not be mandated on a case-by-case basis for the situation faced by peacekeepers on the ground or that current broad PoC activities do not meaningfully contribute to protection. Instead, for PoC mandates to retain their unique place in international peace and security, they must be distinct from complementary activities that do not provide direct protection to those under imminent threat of violence.

Broad conceptualisations of PoC, where the mandate is understood to include non-coercive activities aimed at reducing violence, should be distinguished from a PoC mandate that imposes concise obligations to use force to protect from imminent violence. For instance, broad state-building and peacebuilding activities now form part of the UN's three tiers of PoC.[176] For example, security sector reform (SSR) significantly overlaps with PoC, making it increasingly difficult to house an activity under one roof.[177] Stabilisation mandates in Mali and the Central African Republic have been at the root of this trend, where missions possess PoC mandates alongside 'efforts in favour of the extension of State authority'.[178] Stabilisation missions (i) deter armed groups and (ii) undertake peacebuilding activities to create state legitimacy.[179] Both of these actions are intended to extend state authority, first by displacing armed groups through force for state-centric counter-insurgency or a more robust posture to be taken by UN forces, followed by civilian-led activities to entrench state authority in the vacuum left behind.[180] Stabilisation further blurs the distinction between PoC and other mandated activities. The missions include robust force to deter armed groups and non-coercive activities to enhance protection in the space left

[176] Bellamy and Hunt (n 127) 146.

[177] See eg L Sprik, J Giblin and A Gilder, 'The Role of UN Peace Operations in Security Sector Reform and the Relationship with the Protection of Civilians' (2022) 25 *J Int Peacekeep* 33; F Chappuis and A Gorur, 'Conflicting Means, Converging Goals: Civilian Protection and SSR' in A Ebo and H Haenggi (eds), *The United Nations and Security Sector Reform: Policy and Practice* (LIT Verlag 2020).

[178] S/RES/2149 (10 April 2014).

[179] A Gilder, *Stabilization and Human Security in UN Peace Operations* (Routledge 2021) 40; A Gilder, 'The Effect of "Stabilization" in the Mandates and Practice of UN Peace Operations' (2019) 66 *Netherlands Int Law Rev* 47, 51.

[180] Gilder (n 181) 40.

behind by armed groups. Within this approach, PoC must be singled out as a legally distinct aspect of the mandate with clear guidelines for commanders to use force to protect civilians, set apart from activities that seek to entrench state authority.

The elephant in the room is when peacekeepers should use force. How should a PoC mandate authorise the use of force, and should peacekeepers be obligated to do so? PoC mandates that *require* peacekeepers to use force under Chapter VII are a very different proposition from those that merely authorise the use of force. The UN intends to implement protection mandates to protect those in imminent threat of physical danger.[181] But despite possessing such mandates, numerous missions have not always responded to violence committed against civilians with the use of force, such as MONUC and UNAMID, who have both failed to protect civilians.[182]

The UNDPO also encourages mission leaders to 'not shy away from tackling violence perpetrated by host government security forces or government proxies' but does not specify whether the mission should use force in response, where necessary.[183] PoC mandates have led host states to resist UN personnel's activities, for example, with peacekeepers obstructed to allow the host state to freely conduct counter-insurgency operations in the name of PoC.[184] Better delineating where force is to be used would assist with the tension between host state consent and impartiality of the mission. By clarifying where peacekeepers must use force, including against government forces, the UN would be in a stronger position to show it acts impartially. Simultaneously, host states would be clear from the beginning of a PoC mandate what wrongful acts would result in a use of force by peacekeepers. This would better deter the host state from committing abuses against civilians and incentivise cooperation with the UN mission.

As mentioned earlier, the UN Security Council's shift away from including imminence in its PoC mandates has been a consequence of peace operations moving towards robust use of force and assisting the host state in extending its authority, key features of the UN's current 'stabilisation' missions.[185] In so doing, the Security Council has arguably opened the door for peacekeepers to use force in a wider variety of situations, as opposed to more traditional instances of self-defence and imminent violence faced by civilians, which concurrently raises questions of the lawfulness of such uses of force. As this article has discussed, despite the maturity of the PoC agenda, the UN has not been forthcoming with legal assessments of the upper or lower limits of the use of force to protect civilians.

[181] S/RES1674 (28 July 2006).
[182] ND White, 'Empowering Peace Operations to Protect Civilians: Form over Substance?' (2009) 13 *J Int Peacekeep* 327.
[183] UN Department for Peace Operations (n 5) 33.
[184] A Duursma, 'Pinioning the Peacekeepers: Sovereignty, Host-State Resistance against Peacekeeping Missions, and Violence against Civilians' (2021) 23 *Int Stud Rev* 670, 676.
[185] Bourgeois and Labuda (n 11) 3.

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What is most concerning is that in 2016 it remained unclear 'to what extent pre-emptive or proactive force is authorised or expected, and if the use of force *is at all obligatory*'.[186] The lack of guidance on whether the use of force is obligatory is rooted in the UN not wishing to provide an expectation of blanket protection.[187] Nevertheless, PoC mandates have expanded to include a wide range of activities alongside 'a continuing lack of knowledge at all levels of command regarding the mission mandate and the rights and obligations to use of force to protect civilians'.[188] Even amongst troop-contributing state military advisers, there are concerning differences in the understanding of PoC mandates and whether force should be used, with the lack of clarity extending from the Security Council to mission rules of engagement (RoE).[189]

A mandate to use 'all necessary means' is not a blank cheque to use any amount of force because UN peace operations have an upper limit to what they may lawfully do to protect civilians.[190] Consequently, it can equally be suggested that there may be a minimum that peacekeepers must implement to meet their legal obligations. However, discretion at the tactical level has meant 'force is almost never used to protect civilians under attack', with forces favouring a 'low profile use of power'.[191]

The OIOS concluded in 2014,

> Successive Council resolutions have authorised missions to use force, including deadly force. *Legally, this creates a requirement to do so within their capabilities when civilians are in imminent physical danger or actually being attacked in their areas of deployment*. While no mission can be expected to protect all civilians all the time, each can reasonably be expected to provide protection in areas of highest risk.[192]

Similarly, the *Leuven Manual on the International Law Applicable to Peace Operations*, prepared by a group of experts, states, 'Peace Forces who witness violence against civilians *are required* to do what they can to stop it'.[193] Both statements appear to suggest a minimum legal standard with which to measure the implementation of civilian protection. The minimum standard must draw from the Security Council mandate and the other legal underpinnings of UN peace operations, including international humanitarian law, international human rights law and international refugee law.[194] This article has shown that

[186] Blyth and Cammaert (n 136) 325 (emphasis added).
[187] A/55/305–S/2000/809 (21 August 2000).
[188] Blyth and Cammaert (n 136) 309.
[189] Bode and Karlsrud (n 135) 16.
[190] Bourgeois (n 11) 77.
[191] A/68/787 (7 March 2014) para 40. Murphy (n 159) 212.
[192] A/68/787 (7 March 2014) para 15 (emphasis added).
[193] TD Gill and others (eds), 'The Protection of Civilians', in *Leuven Manual on the International Law Applicable to Peace Operations* (CUP 2017) 3 (emphasis added).
[194] UN Department for Peace Operations (n 5) 13; Murphy (n 159) 210.

there appears to be less and less of an understanding of what the legal requirement to act entails due to the UN's inability to provide clear and concise guidance to missions either in Security Council mandates, RoE or other guidelines and policies from UNDPO.

With the UN currently preparing its so-called 'Agenda for Protection', the Agenda should set out a 'menu' of protection interventions that can be used by the UN when populations are at risk.[195] To facilitate a consistent understanding amongst commanders, the 'menu of protection' should set out a minimum set of actions expected from UN forces when civilians are under *imminent* threat, focusing on PoC as purely an authorisation to use force that imposes a minimum legal obligation to act. The UNDPO suggests PoC mandates have removed the word imminent to encourage proactive and preventative action.[196]

The Security Council must be encouraged to delimit mandates and return to the strict use of terms such as 'imminent' and 'within the area of deployment' to provide clear guidance for commanders to formulate protection plans that warrant the use of force. Consistency in mandate terminology would promote a 'deliberate, conscious and concerted focus on civilian protection' and ensure commanders know when force may be used lawfully.[197]

The UN has, at a minimum, a moral obligation to populations the organisation commits to protect under Chapter VII of the Charter. Particularly where peacekeepers witness atrocities, there is a general expectation that UN forces possessing a Chapter VII mandate to protect civilians will use force to protect those under threat. This expectation has been described as one where peacekeepers '*try* and stop' atrocities.[198] Lethal force may potentially be used if a temporally imminent threat to life exists, with force less likely to be lawful under international human rights law if such an imminent threat is not or no longer present.[199] However, while upper limits on the use of force are a legal necessity, it can equally be argued a minimum obligation to 'try' to protect would provide further legal clarity and prevent idleness and inaction where UN peacekeepers are unclear on their legal obligations.

It cannot be the case that a PoC mandate imposes an unachievable legal obligation to prevent harm or similar, both in situations of imminence and where imminence is not present. But for the UN to temper the expectations of those it is mandated to protect, PoC mandates should impose a minimum legal obligation on UN peacekeepers to undertake specific actions aimed at protecting civilians under imminent threat of physical violence, within the area of deployment and the mission's reasonable capabilities, up to and including the use of force where necessary.

[195] Lilly, 'The UN Agenda for Protection: Policy, Strategic, and Operational Priorities' (n 62) 26.
[196] UN Department for Peace Operations (n 5) 8.
[197] Bellamy and Hunt (n 127) 160.
[198] Wills (n 12) 268.
[199] Bourgeois and Labuda (n 11) 57–63.

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To temper expectations, mandate language must be consistent. The Security Council cannot continue to negotiate terminology that obscures the legal obligation imposed by a PoC mandate or eschews the need for clarity due to political contestation. The mandate should consistently use key phrases such as requiring action where civilians are 'under imminent threat of physical violence' and that peacekeepers must do what is 'reasonable within their capabilities' and area of deployment. The other activities currently found under PoC headings should appear elsewhere in the mandate to avoid any potential for ambiguity in the PoC mandate ensuring they are separate but complementary activities.

Alongside clear and concise mandates, the missions, and importantly contingent commanders, must be given detailed, mission-specific RoE and UN-wide guidelines on PoC that crucially detail the actions to be taken in various situations. This should include minimum expectations of where peacekeepers are expected to use force or steps short of force to meet their legal obligations to protect civilians under the mandate. Indeterminacy in the implementation of PoC is its Achilles heel. As one military adviser states, 'you have failed your mission if you don't protect civilians. You have failed humanity'.[200]

With over twenty years of practical experience and numerous investigations into the implementation of PoC, concrete actions must be detailed for peacekeepers to set clear expectations of where force should be used whilst retaining discretion to act as appropriate in a given scenario to ensure peacekeepers are not caught idle. PoC cannot suffer further failures where UN guidance is lacking, and legal obligations are again not realised. Multilateral buy-in for PoC mandates, and consequently many of the large, multidimensional peace operations undertaking necessary work, may be lost.

6. Conclusion

This article has undertaken a major re-evaluation of PoC to provide comprehensive coverage of one of the UN's most important areas of activity. Of the 95 956 peacekeepers deployed to UN missions around the world, 92 384 of those peacekeepers are currently operating under a PoC mandate. It is vital for the UN to clarify the legal requirements of contingents implementing PoC mandates and to resolve continuing issues with the complexity of mandates and unclear RoE and UN policies on PoC. PoC within UN peace operations has burgeoned into an agenda that authorises the use of force alongside comprehensive whole-of-mission activities whilst bringing lofty expectations from populations that the UN will respond with force and implement peacebuilding programmes to deter future violence. Definitions do not clarify what personnel *must* do to prevent, deter or respond to threats of physical violence.

By separating the legal minimum imposed by a PoC mandate and other activities that contribute to broader protection goals, the UN can retain political

[200] Bode and Karlsrud (n 135) 15.

buy-in for PoC and sustain the momentum of the PoC agenda. Such an approach may be attractive to Security Council members with mixed views on current PoC mandates, such as Russia and China. The UN prioritisation of PoC must not be consigned to the history books. To ensure continued success, the UN must prioritise the longevity of the PoC agenda and establish clear guidance on the baseline of protection offered by UN peacekeepers.

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