



AMISOM medical staff treat Somali civilians at a 'civilian outpatient day' in Mogadishu, Somalia.



Policy & Practice Brief

Knowledge for durable peace

Reclaiming protection of civilians under international humanitarian law: Reflections from the Oslo global conference

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Executive summary

Over the past sixty years, international humanitarian law (IHL) has established a comprehensive legal framework for the protection of civilians (PoC) in armed conflicts. There is broad consensus that these guidelines afford non-combatants significant protections from the effects of military operations – provided they are carefully implemented by all sides to a conflict. Notwithstanding these measures, on a daily basis civilians are directly affected, through death, injury, rape and forcible displacement as a direct consequence of war, or indirectly through conflict-induced increases in disease, hunger and malnutrition. As modern conflicts are often fought in areas with large populations, civilians find themselves increasingly caught in the crossfire, contributing to a legacy of socio-economic challenges to be dealt with long after the cessation of hostilities. It is important to further regulate and clarify IHL if academics and practitioners alike are to keep up with new developments in modern warfare and humanitarian concerns. It is a widely understood, however, that the main obstacles to better PoC in armed conflicts primarily relate to the ways in which IHL is implemented, and general lack of respect for the rules by parties to conflicts. In response to these gaps, some countries – Argentina, Austria, Indonesia, Norway and Uganda – have hosted global conferences to come up with vital and workable recommendations on the best implementation of PoC ideals and practices under international humanitarian law. This Policy & Practice Brief (PPB) discusses select recommendations that emerged from the Oslo, Norway, global conference of 2013, which built on the Geneva conventions of 1947 and 1977, respectively.¹ It highlights these endorsements, while linking their application to ongoing processes and frameworks in the context of peace operations in Africa, with the goal of revamping the application of IHL in moderating existing and emerging hostilities across the globe.

Introduction

Contemporary wars are increasingly fought in ways that result in civilians getting caught up in hostilities. The effects on non-combatants during these times can be alarming, foregrounding the need for discussions, supported by information and data from the field, about the manner in which IHL is implemented (or not) as the first step to identifying and implementing workable solutions to effectively address humanitarian challenges faced by civilians during times of war. With this background, the inaugural conference on the topic of reclaiming PoC in IHL was launched in 2009. The forum aimed to bring together, in a series of meetings, representatives from governments, civil society organisations, the United Nations (UN) and African Union (AU) to engage in discussions. The first global conference was hosted in Indonesia, the second in Argentina, the third in Uganda and the fourth and final one in Oslo in 2013. This brief outlines commitments made and examines the extent to which recommendations endorsed in the final forum are reflected or factored into the activities of current peace support operations in Africa.

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Background to international humanitarian law and protection of civilians

The PoC in armed conflict has its roots in 18th century IHL protection concepts put forward by the International Committee of the Red Cross (ICRC). At the time, the notion of protection was broadly defined by the ICRC as ensuring full respect for the rights of an individual, and the obligations of the authorities or armed groups in accordance with the relevant bodies of law to preserve people's safety, integrity and dignity.¹ The ICRC further refined the term to mean those activities aimed at preventing, ending or avoiding recurrent violations

of individual rights by authorities and other defence norms in situations of armed conflict.² International humanitarian law is, therefore, the first body of regulations instituted to ensure the protection of non-combatants during armed conflict and to regulate war. It essentially focuses on two issues:

- the protection of persons who are not, or are no longer, taking part in hostilities
- restrictions on the means and methods of warfare, including choice of weapons and military tactics.³

The broader humanitarian community became increasingly concerned with the issue of protecting civilians during the early 1990s, as the Cold War ended. In spite of the guidelines established in the Geneva Convention of 1949 and its additional protocol of 1977, however, conflict continues to be devastating for civilians; in Darfur and Somalia for instance. However, the concept of humanitarianism in itself could be a challenge in ensuring the PoC. Humanitarianism has led to the establishment of numerous agencies, although some of their quests to influence funding patterns and their struggles over conflicting views of policies guiding humanitarian or peacekeeping activities (e.g. impartiality, neutrality and consent) have to some extent contributed to, rather than lessened, the challenges inherent in protecting civilians in modern conflict situations.⁴ A statement by the Secretary-General of the United Nations Security Council (UNSC) in 2004 stressed the need to adopt a broad conflict prevention strategy that addressed the root causes of conflict, if progress was to be made in enhancing long-term PoC strategies. It also recognised the role of the UNSC in increasing both legal and physical protection of civilians, stressing the need for compliance with IHL, addressing impunity, improving access for, and safety of humanitarian personnel, and continuing existing efforts in conflict prevention and cooperation with regional and other organisations.⁵

As the concept of PoC evolved, however, the asymmetric patterns of warfare also changed, with civilian protection simply becoming more difficult to enhance. This challenge necessitated the development of a PoC strategy within the UN and AU. A key consideration in this plan is based on evidence that armed groups increasingly devise new ways of conducting hostilities that deliberately target civilian locations. One of these is the use of

improvised explosive devices (IEDs). Both the UN and AU PoC strategies included plans that insist on the following four assurances:

- protection of part of the political process
- protection from physical violence
- right-based protection
- the establishment of a protective environment for civilians.⁶

In 2005, the UN adopted a new resolution to reflect emerging challenges to efforts aimed at protecting non-combatants.⁷ Whilst efforts were made to implement protection plans included in UN legal frameworks, civilians continue to suffer severe humanitarian constraints as a result of being displaced. To illustrate, Darfur alone recorded over 2.2 million internally displaced persons (IDPs),⁸ while Somalia had an estimated 1.1 million IDPs and over 12 000 asylum seekers and refugees living within its borders.⁹

Mainstreaming of PoC in peace operations

The PoC has also been echoed in state militaries, particularly those deployed by the UN. This is likely because PoC is one of the UN's potential benchmarks to determine the success of peacekeeping missions. The concept has also become increasingly important to regional and international organisations with crisis management roles, such as the AU, European Union (EU) and North Atlantic Treaty Organization (NATO). The plans and conduct of regional organisations' operations are increasingly being scrutinised for their inclusion of plans to ensure that state militaries comply with IHL principles for the wellbeing of non-combatants. For instance, NATO's operations in both Afghanistan and Libya raised the significance of PoC as a specific objective (i.e. rather than as a component of regime change or a counter-insurgency strategy).¹⁰ Also, the protection mandates of AU and UN peacekeeping missions have been extended beyond IHL obligations (specifically in making the distinction between combatants and non-combatants), and are now focused on establishing safe and secure environments, positive civil-military relations and much-needed humanitarian support.¹¹

PoC is one of the UN's potential benchmarks to determine the success of peacekeeping missions

Despite the extension of PoC beyond the scope of IHL however, civilians remain at risk in any conflict situation. The problem likely stemmed from the conduct of armed groups during hostilities. It is a problem of legitimacy wherein non-state actors or illegitimate warring parties do not see themselves as bound to upholding IHL during conflict. On the other hand, legitimate actors – in this case the state and a recognised military or peacekeeping force – are taking all necessary measures to uphold international norms as they conduct operations.¹² This did not happen automatically; over the years states have been transformed to respect the rules governing behaviour during war, through training of security sectors, mentoring, development and implementation of appropriate policies, and participation in conferences and seminars. Legitimate military forces gradually inculcate IHL principles and keep improving on their conduct, just as the concept of PoC itself evolved over time. Today, efforts to streamline PoC into all international peacekeeping operations are on-going, and this will contribute to ensuring that peacekeeping forces and most states understand the principle of proportionality in the conduct of hostilities.

There are significant developments within the UN and AU with regard to policies, procedures and guiding principles in respect to the conduct of peacekeeping forces.¹³ However, the operations of recognised illegitimate armed groups form a major limitation to the new and evolving normative framework in place for the protection of civilians. In implementing these policies, armed extremist or illegitimate armed groups often do not abide by the changing processes that further expand, broaden or simplify IHL. These armed groups are not trained on the AU draft guidelines for the PoC, nor are they educated on any policy, tools or processes that have been developed by the AU, UN and humanitarian agencies. For instance, armed groups like al-Shabaab and al-Qaeda do not form part of global efforts to make PoC a condition in the conduct of hostilities, and therefore stimulate little confidence in their desire or willingness to change their methods of operation. As a result, the violent conduct of asymmetric warfare and violent extremism nowadays further challenge efforts to uphold IHL during times of war. There are many reasons for this; it can be practically impossible for collectives such as this to uphold IHL due to security concerns, or armed groups may simply not be interested in these processes. It may also be the case that there is no one to start and maintain

communication around this issue when trust is completely absent on either side. Therefore, while states make efforts to maintain the responsibility to protect,¹⁴ armed extremist groups on the other hand are unwilling, or unable, to which significantly limits the universality of implementation of PoC in armed conflict, even where normative frameworks are in place.

Application of protection of civilians recommendations in Africa

Recommendations from the Oslo Global Conference on Reclaiming the Protection of Civilians under International Humanitarian Law focus on key thematic areas, as highlighted in the sections that follow. These are discussed from an African perspective, and are specifically targeted at the AUC, UN and African troop-contributing countries (TCCs).

Reducing harm to civilians in military operations

The recommendations encourage parties to a conflict to ensure that all legal obligations are respected and reflected in all relevant doctrines and procedures, and that pertinent personnel are sufficiently educated on the need to ensure that IHL is respected in practice. They outline practical steps to be taken in military operations to ensure that existing IHL obligations, including the fundamental rules of distinction and proportionality, are respected. Even in situations where IHL is respected, civilians may be severely affected. The recommendations in this area are thus based on practical measures aimed at reducing the harm caused to civilians.

Where armies have introduced policies to protect civilians, casualty figures have dropped dramatically.¹⁵ A concrete example of this is Somalia, where the African Union Mission in Somalia (AMISOM) has succeeded in reducing civilian casualties in its more recent operations. In 2010, a team from the organisation Civilians in Conflict started working with AMISOM to prove protection for civilians. Together they developed an ‘Indirect fire policy’ that was adopted by AMISOM. The policy consisted of three categories, each with specific recommendations, namely:

- avoid civilian harm
- attribute responsibility for civilian harm
- make amends for civilian harm caused through appropriate responses.

Gradually, civilian casualty rates went down (both due to the policy and as a result of the changing situation on the ground). Efforts by warring parties to track civilian harm have also been observed in Iraq by United States of America (US) forces and in Afghanistan by International Security Assistance Force (ISAF). AMISOM is working to put in place its own guidelines.

The UN Secretary-General reported that in 2011, AMISOM took steps to restrict operations that would arbitrarily harm civilians by refining its policy on the use of indirect fire.¹⁶ Similarly, Human Rights Watch reported in August 2011 that instances of indiscriminate shelling appeared to have diminished, indicating possible efforts on the part of AMISOM to improve its targeting and reduce unselective fire, notably through the identification of no-fire zones.¹⁷ Whilst this was reported in 2011, these gains were eroded in preceding years. Upon expansion of the AMISOM mandate by the UN and an increased number of military peacekeepers in Somalia, al-Shabaab launched more assaults and suicide bombings explicitly targeting civilians both inside Somalia and in neighbouring Kenya than before. To further implement the reduction of civilian harm broader engagement, including negotiation with non-state actors, is important.

The role of humanitarian actors

The recommendations focused on different ways of ensuring that humanitarian actors are given rapid and unimpeded access to all those in need of protection and assistance. States should be active in facilitating timely humanitarian access, and should not hinder charitable work. In addition, those providing much-needed humanitarian assistance should themselves be provided with the protection they need to carry out their work. In 2015, Kang Kyung-wha, Assistant Secretary-General for Humanitarian Affairs and Deputy Emergency Relief Coordinator, delivered a statement on behalf of Valerie Amos, Under Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator. In this speech, Kyung-wha noted that civilians in need of protection had increased dramatically, underlining that during 2014, those in need of assistance rose to 76 million, from 52 million.¹⁸ While peace support operations (PSOs) are evolving to respond to complex environments, humanitarian actors are also adapting to the new changes by focusing on regional coordination mechanisms and adopting a cluster approach to respond to issues of famine, climate

change and diseases in Somalia and the Middle East, for example. In contemporary times, various actors now implement humanitarian programmes that seek to prevent or respond to threats posed to civilians by other actors.¹⁹

Promoting compliance with IHL during armed conflict

States have an obligation not only to respect, but ensure adherence to IHL, and to do their best, together with other parties to armed conflicts, to comply with IHL. In strengthening accountability for IHL, countries need to use their leverage, individually or collectively, to raise the political costs of non-compliance with IHL, for instance through exerting diplomatic pressure, public denunciations or referrals of situations to the International Criminal Court (ICC). The need to engage with non-state armed groups to promote respect for IHL was also stressed here. This can be done by explaining the benefits of compliance in achieving set objectives and goals.²⁰ States should take active measures to combat sexual and gender-based violence, including ensuring that victims are able to access justice and that women are actively empowered to participate in decision-making processes.

In strengthening accountability for IHL, countries need to use their leverage, individually or collectively, to raise the political costs of non-compliance with IHL

States or TCCs that make up specific regional economic communities (RECs) have their training centres of excellence where they ensure that military, police and civilian personnel receive relevant training on PoC and the conduct of operations in a conflict environment. These training centres prepare uniformed and non-uniformed personnel to demonstrate high levels of professionalism needed to guide their conduct in peacekeeping environments, utilising AU training directives.

States contributing to African PSOs are cognisant of their obligations in relation to IHL, human rights law and relevant AU policies and guidelines; this is overseen by the AU's Peace Support Operations Division. AMISOM, for instance, continues to make considerable efforts to ensure that its operations are conducted in compliance with applicable IHL. AMISOM Force Commander, Lieutenant General

Jonathan Rono issued a 'Force Commander's Legal Directives on Operations'²¹ to all sector commanders, requiring them to adhere strictly to the UN Secretary-General's Human Rights Due Diligence Policy (HRDDP) in the conduct of operations. The HRDDP is a carrot and stick for compliance to human right laws, including IHL; HRDDP and IHL can be used concurrently in a mission area. Although this policy came from the UN, it is not a legally binding instrument, but is rather a condition for UN support to non-UN forces. As such, troops should not necessarily comply with the UN HRDDP, but with IHL and human rights standards as applicable.

In terms of training, AMISOM, with the support of the United Nations Support Office for AMISOM (UNSOA) and United Nations Assistance Mission in Somalia (UNSOM), continued to conduct AU-UN mandatory pre-deployment training in IHL and human rights law for all state forces represented in AMISOM.²² Internationally, there are continent-wide field training exercises for police and military officers that focus on the development of a rapid deployment capability of police elements in crisis management operations. An example of this is the European Union Police Service Training exercise usually offered by states to enhance the skills of police officers from EU and non-EU countries contributing to Common Security and Defence Policy in EU or AU missions. As such, states have modern ways of training their forces in international standards and best practices for the conduct of operations in a conflict setting; the dilemma comes about, perhaps, in determining how the training outcome could be translated into measures and procedures for ensuring that civilians, and women and children in particular, are protected from all forms of conflict-instigated harm.

Enhancing documentation of the conduct of military operations

A key factor in improving the protection of civilians is documentation. Adequate analysis and calculations of casualties during the conduct of military operations, and striving for increased transparency, both during and after an armed conflict, is essential. It is necessary to prevent further violations, and to protect civilians. Recommendations in this regard include measures to ensure that all relevant information on the conduct of military operations is recorded both by parties to a conflict and civilian actors. Parties to an armed conflict should ensure proper documentation, including by recording the

types and locations of explosive weapons used, mapping areas that may be contaminated by unexploded devices, and systematically recording casualties.

The importance of civilian casualty tracking and fact finding missions was also stressed. In response, NGOs, states and peace operations have worked to put in place a Civilian Casualty Tracking, Analysis and Response Cell (CCTARC) mechanism for recording and monitoring non-combatant casualties as a result of armed conflict in Africa. The CCTARC aims to assess the impact of missions' military activities on civilians and to take corresponding actions, looking at lessons learnt and having these reflected into AMISOM's combat planning etc. AMISOM and UNSOA have established focal points to the CCTARC. In September 2014, a consultant was recruited to mentor the CCTARC, which is operational, and further supported through the development of a Civilian Casualty Matrix.

Strengthens accountability

It is important to ensure that states are able to launch and conduct the necessary criminal investigations and prosecutions against possible perpetrators. Recommendations from the Oslo Conference also include measures to ensure that fact-finding and accountability mechanisms are effective.²³ There are various methods that have been adopted to promote compliance with and enforcement of IHL. For instance, international *ad hoc* tribunals (e.g. International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR)), mixed tribunals (like the Special Court for Sierra Leone), and the permanent ICC have been set up to enforce individual and collective criminal responsibility for violations of IHL rules. Responsibility is incurred not only by acting, but also by failing to act where there is an obligation to do so.

Conclusion and recommendation

There has been some progress made in implementing recommendations from the Oslo Conference, including: reductions in civilian casualties in African peace operations and the promotion of compliance to IHL through training, normative frameworks, legal directives and the establishment of better tracking and documentation mechanisms for measuring civilian casualties. This will mean that PSOs in Africa will conduct operations with the maximum possible care to safeguard the lives

of non-combatants. Furthermore, PSOs in Africa will increase collaboration with humanitarian organisations and host governments in implementing practices that will strengthen their adherence to IHL. The following recommendations should be taken into consideration going forward.

Recommendation to states

Training: States, TCCs of peacekeeping forces, including deployed uniformed personnel in peacekeeping operations, should regularly receive training in IHL. Capacity-building should emphasise the principle of proportionality for the reduction of harm to civilians caused by military operations. Regular field training exercises should also be conducted on pre-deployment and in-mission contexts to imbibe a culture of respect for IHL by uniformed personnel.

Recommendation to the United Nations and African Union

Coordination: Increased coordination should continue between humanitarian actors, states and peacekeepers in conflict or peace operations environments. Humanitarian actors need to keep developing new strategies where necessary, for the effective delivery of joint PoC activities.

Representation and inclusivity: The gaps between states, peace missions and non-state actors in respecting the principle of IHL is very wide. Considering that it is likely that non-state actors are not constantly involved in IHL training and discussion forums, the AU and UN should find ways of enhancing the involvement of armed extremist groups in such processes.

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