Biased Protection?

Civilian Agency, Stigmatization and the UN Security Council's (Re-) Construction of Identity

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Abstract

Arguably, the last century has been marked by the 'humanization of humanitarian law'. In the wake of the 65th anniversary of the bedrock of International Humanitarian Law—the Geneva Conventions—the movement seems in full swing. Since the end of the Cold War, the fate and protection of war-affected populations has (re)gained a prominent spot on the international agenda: In what one might consider the latest move in the extension of the civilian protection norm, the UN Security Council has since 1999 developed its own take on the issue through a set of resolutions. However, despite its overlaps with R2P, the Council's take on the protection of civilians (PoC) has sparked much less debate or criticism. Such scrutiny is however necessary to further any protection agenda. Based on a qualitative text analysis of the Security Council's seven resolutions on the issue, I argue that the Council's PoC framework is biased in three ways: first, the Council moves away from the Geneva Conventions' proscriptive to a set of ascriptive criteria that link to proxy categories (women, children, elderly, journalists, refugees, UN personnel etc.) in order to identify *who* is to be protected. The shift mainly pushes able-bodied, draft-aged men who haven't fled the theatre of war out of the scope of protection. Secondly, by portraying civilians mainly as 'vulnerable', 'passive' and in 'need of protection', they become the 'objects' of outside intervention. By purporting a 'salvation' approach to civilian protection, the Council ignores civilians' agency and self-protection strategies—often to their overall detriment. Thirdly, the Council's interpretation of the main causes of civilian insecurity reveals a deep reliance on 'new war' narratives—mainly focusing on situations of failing statehood and rising dominance of non-state armed actors. In order to account for these biases, I turn to identity politics and argue, that these biases point to underlying processes that redraw boundaries of the community of states and reassert the very identity of its members. In the end, the Council's protection of civilians may thus be as much about the protection of war-affected populations, as it may be about the protection of the state and the community of states.

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Introduction[1]

"*We meet today under the watchful eyes of bereaved orphans, widows, thousands of wounded, detainees, displaced children, young people, the elderly and women who continue to hope for the support of the Security Council […]. It is up to the Security Council […] to realize [their] hopes*"
— Qatari delegate, 6710th UN Security Council meeting concerning the situation in Syria (Mégret 2014: 2)

"*A rarely spoken truth about protection is that the main players in the protection of civilians in conflict are the civilians themselves.*"
— Andrew Bonwick (2006: 274)

For many, the last century has been marked by the "humanization of humanitarian law" (Meron 2000; O'Connell 2008), arguably a fundamental shift from the perception of war as "a collision between rival national interests" to a conception of armed conflict "as a human tragedy" (Neff 2005: 340). In the wake of the 65th anniversary of the cornerstone of this "humanitarian revolution" (ibid.)—the Geneva Conventions—the movement seems in full swing: After the end of the Cold War and the experiences of the Yugoslav wars, the Rwandan civil war and subsequent genocide, the Congo wars and the breakdown of the Somali state among others, the fate and protection of war-affected populations and the victims of (non-) international armed conflict has (re)gained a prominent spot on the international agenda. In what one might consider the latest move in the extension of the civilian protection norm, the UN Security Council has since 1999 developed its own take on the issue through a set of hitherto seven resolutions.[2]

During the very first Council debate explicitly devoted to the topic, the presiding Canadian Minister of Foreign Affairs, Lloyd Axworthy, summarized what could easily be seen as the grammar of the Council's approach to civilian protection:

> "I think it is true to say that the victimization of civilians in war is as old as time, but never more so than at the end of this century. As so many here have commented, what is most disturbing today and provides the global community with a compelling reason for engagement is the increasing "civilianization" of conflict itself. More than ever, non-combatants — especially […] the most vulnerable — are the principal targets, the instruments and, overwhelmingly, the victims

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[1] An earlier version of this paper was presented at this year's *Law & Boundaries Conference* at SciencesPo Paris and I am most thankful for all comments to previous versions.

[2] Resolutions 1265 (1999), 1296 (2000), 1674 (2006), 1738 (2006), 1894 (2009), 2175 (2014), and 2222 (2015)

> of modern armed conflict. […] Promoting the protection of civilians in armed conflict is no side show to the Council's mandate for ensuring international peace and security; it is central to it.[3]

Unsurprisingly, these events have unfolded—at least at a discursive level—in parallel to and in interaction with the emergence of the (in)famous *responsibility to protect* (R2P). As much as R2P is omnipresent in the debates of the recent years, as much it remains the subject of fierce controversies, with discussions focusing on the novelty and roots of the concept (Marks / Cooper 2010; Mégret 2009; Molier 2006; Orford 2011) as well as its value (or even existence) as a legal norm (Peters 2009; Reinold 2010; Stahn 2007). However, despite (or because of) its overlaps with R2P (Breakey 2010), the Council's take on the protection of civilians (hereafter *PoC*) has sparked much *less* debate or scrutiny. After all, who could meaningfully claim to oppose the protection of victims of war and innocent civilians, the principle that arguably constitutes the hard core of the (legal) humanization of war? Yet, as we shall see, the Council's take on the issue is far from being unproblematic.

The initial concept of the protection of civilians is enshrined in the fourth Geneva Convention (GC) and its two Additional Protocols (AP) at the heart of which lie the *principles of distinction* and of *proportionality* (Gasser / Dörmann 2008). According to these, parties to (non-) international armed conflicts shall direct their operations only against military objectives and strictly "distinguish between the civilian population and combatants and between civilian objects and military objectives" (Art. 48 AP I; Art. 13(2) AP II); thus, the *deliberate* targeting of civilians is prohibited and violations are considered war crimes (Art. 85(3)(a) AP I; Art. 8(2)(b)(i) Rome Statute). Additionally, "the civilian population and individual civilians shall enjoy general protection against dangers arising from military operations" (Art. 51(1) AP I; Art. 13(1) AP II; see also Art. 27 GC). The category of the civilian is defined in the negative: "A civilian is a person who is not a member of the armed forces or of a levée en masse" (Neff 2005: 233; Art. 50(1) AP I). However, civilians loose their protection and become lawful targets if "they take a direct part in hostilities" (Art. 51(3) AP I). Hence, the Geneva Conventions' devise a test of *proscribed behavior* (i.e. the membership in armed forces, and participation in hostilities) to delineate the civilian population. However, the death or injury of civilians is considered lawful if it is the result of an attack that is not "excessive in relation to the concrete and direct military advantage anticipated" (Art.51(5)(b) AP I) and did not deliberatively target the civilians. However, special protection is accorded in some circumstances to

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[3] 3977th Council meeting, on the Protection of Civilians in Armed Conflict, 12 February 1999 (S/PV.3977, p. 31)

women ("in particular against rape, enforced prostitution, or any form of indecent assault", Art. 27 GC, Art. 76(1) AP I), Children (Art. 77 GC), Journalists (Art. 79 AP I) and elderly, disable and infirm (Art. 16, 17 GC IV).

The Geneva law has however not been free from critique: While some have pointed to the "dark sides" of the larger humanitarian movement (Kennedy 2004), others have outlined how International Humanitarian Law (IHL) legitimizes some forms of violence through the regulation of others (Koskenniemi 2008; Zehfuss 2012) or have taken a postcolonial stance (Mégret 2006). This paper intends to add to this critical assessment by taking a closer look at the UN Security Council's general *PoC* framework.

Based on a qualitative text analysis of the Security Council's seven resolutions on the issue, I argue that the Council's *PoC* framework is inherently structured by three biases: *firstly*, the Council moves away from the Geneva Conventions' proscriptive to a set of ascriptive criteria (sex, age, disability etc.) and of explicitly allowed behavior (fleeing, working for recognized bodies) that link to proxy categories (women, children, elderly, journalists, refugees, UN personnel etc.) in order to identify *who* is to be protected. This move is justified via references to a purported 'vulnerability', 'helplessness' and a 'need for protection' in face of the hardships of war. While the shift mainly pushes able-bodied, draft-aged men who haven't fled the theatre of war out of the scope of protection, it *secondly* renders civilians 'passive' and makes them 'objects' of outside intervention. By purporting a 'salvation' approach to civilian protection either through the state, or—if the state fails—through the community of states, the Council ignores civilians' agency and self-protection strategies—often to their own detriment. *Thirdly*, the Council's interpretation of the main causes of civilian insecurity reveals a strong reliance on 'new war' (Kaldor 2012; Münkler 2002) narratives—mainly focusing on situations of failing statehood and rising non-state armed actors. In accordance to these narratives, the Council invokes its *PoC* framework only very selectively, further reducing its protective scope to a worrying degree. Consequently, one may find it difficult to uncritically acclaim the Council's civilian protection efforts, but wonder *how to account for these biases*.

The following paper is structured as follows. I first introduce a systematized overview of the Council's *framing* of civilian protection (section 1), mainly distinguishing between its *issue definition*, the *proposed remedies*, and the *reasons given to justify action* (Snow / Benford 1988: 199ff.). I subsequently move to an analysis of the three inherent biases of the Council's *PoC* framing (section 2 to 4). I finally turn to a possible explanation for these biases (section 5). While idealist, pragmatist, neo-institutionalist and –realist as well as critical explanations

may bear some explanatory power, I argue that they are insufficient to fully grasp the phenomenon. Instead, I turn to "identity-constitutive" reasoning (Reus-Smit 2006: 25) as possible explanation. I argue that these biases reveal a tendency of Council members to stigmatize their main contenders—non-state armed actors—by portraying them as mainly apolitical criminals primarily responsible for the civilians' insecurity. Additionally, by portraying civilians as passive and ignoring their own self-protection strategies, states reassert their claim of rightful authority and portray themselves as only viable security providers. Through these processes, the boundaries of the community of states are redrawn and the very identity of its members reasserted. The paper closes with some concluding remarks.

1. The UN Security Council's Framing of Civilian Protection

The UN Security Council has started to focus regularly on the protection of civilians as a general issue in 1999. The suffering of war-affected populations and especially the deliberate targeting of civilians during armed conflict is however neither a new phenomenon (Carr 2002; Rummel 1994), nor has it necessarily increased in recent times (Eck / Hultman 2007: 237f.; Melander / Oeberg / Hall 2009; Schütte 2015: 109ff.). Rather, as Stathis Kalyvas (2001: 109) notes, "the end of the Cold War seems to have caused the demise of the *conceptual categories* used to interpret" armed conflicts and has thus allowed for (and required) a new perspective on armed conflicts. Furthermore, its end has increased the *visibility* of international armed conflicts between minor powers and of non-international armed conflicts. Arguably, one of these new perspectives has been the plight of war-affected populations and civilians. While in the past "humanitarian action had been closely associated with meeting the material needs of victims of armed conflict" and the distribution of relief, attention shifted to the issue of the "well-fed dead" and protection from lethal and non-lethal violence (Goldberg / Hubert 2001: 225). It is mainly through transnational "civilian protection networks […] of international and non-governmental bureaucrats, citizens, journalists, and statespersons" (Carpenter 2005: 298ff.) that such issues have been successfully pushed to the international agenda. These efforts culminated inter alia in a series of workshops organized between 1996 and 2000 by the International Committee of the Red Cross (ICRC) on the topic (see Giossi Caverzasio 2001 for a summary of the results). However, these developments were not automatically followed by similar considerations among Security Council members. Indeed, the UN Security Council had a tradition for "stead-fastly refus[ing] to discuss the plight of civilians" as it did for in-

stance during the Biafra conflict in the 1960s out of concerns for Nigeria's sovereignty (Bonwick 2006: 272). This position changed during the last 25 years: first, sporadically such as in Resolution 688 (1991), demanding the Iraqi government to stop oppressing Iraq's minority populations or Resolution 733 (1992) in the case of the Council's examination of the situation in Somalia. However, as Goldberg and Hubert (2001: 225) argue, it is only the push of specific Council members—the Canadian government in particular—and the access to Council debates they provided to the civilian protection network, that induced a permanent shift in the Council's practice. During its February 1999 Council presidency the Canadian government organized the first thematic debate on *PoC* on 12 February 1999. The debate was presided over by the Canadian Minister of Foreign Affairs Lloyd Axworthy, and opened with briefings by the President of the ICRC (invited for the first time to speak in front of the Council**),** the Executive Director of UNICEF as well as the Special Representative of the Secretary-General for children and armed conflict as representatives of the transnational civilian protection network.[4] The Presidential Statement adopted on that day asked the Secretary-General to assemble a report until September 1999. This report induced further debates in the Security Council (Goldberg / Hubert 2001: 225) and paved the way for the Canadian-led Resolution 1265—the first Council resolution on the protection of civilians in armed conflict passed during the Dutch Council presidency on 17 September 1999. In the following month, the Canadian government chaired an informal working group (as provided for in Resolution 1265, para. 22) to review the Secretary-General's recommendations and laid the groundwork for the second resolution (Resolution 1296) on the topic passed during its next presidency on 19 April 2000 (Goldberg / Hubert 2001: 227ff.).

As of July 2015, the UN Security Council has developed its *PoC* framework in seven resolutions, four of which are of a broader character (Resolutions 1265 (1999), 1269 (2000), 1674 (2006) and 1894 (2009)), while three address specific parts of the civilian population, namely *journalists and media professionals* in Resolutions 1738 (2006) and 2222 (2015) as well as *humanitarian and United Nations personnel* in Resolution 2175 (2014). Additionally, Council members have discussed their views in about forty Council meetings between February 1999 and July 2015 and agreed upon eleven presidential statements as well as five *aide memoires* outlining and systematizing the agreed wording in the matter.

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[4] See 3977th Council meeting (S/PV.3977, p. 2-14)

As Goldberg and Hubert (2001: 228) conclude, "Canada's Security Council initiative on the protection of civilians has yielded concrete results. […] There is now general agreement among members that the safety of civilians in times of war is a central, rather than tangential, concern of the UN Security Council"—and indeed, starting with Resolution 1296 the Council repeatedly asserts

> "that the deliberate targeting of civilian populations or other protected persons and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict *may constitute a threat to international peace and security*, and, in this regard, reaffirms its readiness to consider such situations and, where necessary, to adopt appropriate steps" (Resolution 1296, para. 5, highlights by the author).

By *securitizing* (Buzan / Wæver / De Wilde 1998) the fate of war-affected populations and civilians, the UN Security Council not only asserts its own competency to act in the matter, but also unlocks the full set of instruments put at its disposal by the UN Charter, including coercive measures provided for in Chapter VII. However, the careful wording (indicating that such violations "may" constitute a breach of the UN Charter) equally points to a (persisting) reluctance of Member states to create any legal *obligation* for the Council and UN Member states (Goldberg / Hubert 2001: 227). Nevertheless, a considerable shift in the Council's attention towards issues of civilian protection can be clearly observed—at least at a discursive level: Figure 1 visualizes the increased used of corresponding vocabulary in all Security Council resolution over time up to May 2015.[5] References to civilians and civilian objects, as well as to protection issues and violence as well as to UN and humanitarian personnel increase sharply after 1990. References to women and children increase parallel since the 2000s. Recently, references to journalists and elder people start to appear more often.

[5] All resolutions up to Resolution 2215 (2015) were analysed for the purpose of this visualization. A more intense colour points to a higher frequency of the term. Additionally, the figure reflects the increased output of the Council, thus the x-axis is not linearly dimensioned. Before counting the occurrence of relevant words, all words were normalized, i.e. variant forms of each word were reduced to a common form ('stemming'). As the distribution of frequencies is highly skewed, the logarithm of all frequencies was taken to ease visual interpretation (Benoit 2011). For both data transformation and visualization the statistical package *R* was used in version 3.2.0. All replication data and code is available at *http://nicolasklotz.de/ma-thesis/vu-amsterdam/*.

Figure 1: Frequency of PoC related terms in all Council resolutions (source: own data and visualization)

However, the mere fact that *PoC* has found its place on the Security Council's agenda tells us little about the Council's understanding of *PoC*. Table 1 summarizes the results of a qualitative text analysis conducted mainly on the basis of the seven thematic resolutions. The focus has been put on these documents, as among all produced documents they are the only that are legally binding for all UN Member states and represent a carefully crafted consensus among its Members. While the Council's secretariat and UN OCHA use their own systematization in the *aide memoires*[6], I propose a slightly different systematization based on the analytical differentiation between the Council's definition of the issue (*diagnostic framing*), the ways of action it sees fit (*prognostic framing*) as well as the reasons given to justify any action at all (*motivational framing*; see Snow / Benford 1988: 199–202).

[6] See Statement by the President of the Security Council, 12 February 2014 (S/PRST/2014/3, p. 20-80)

Issue definition (*diagnostic aspect*)	
Who is concerned?	**What are the threats for civilians?**
- "All affected civilians", but mainly: - Women - Children - Refugees and IDP - UN and humanitarian personnel - Journalists and media professionals (including women journalists and grassroot journalists) - People with disabilities - Elderly	**Direct physical threats and abusive practices** - "Majority of casualties" are civilian - Deliberately targeted by warring parties - Genocide - Sexual abuse (including by UN personnel) - Human trafficking and kidnapping - Torture - Forced Displacement - Use as human shield **Threatening circumstances** - Missing respect for international law by warring parties - Use, trafficking and surplus of "small arms and light weapons" as well as "mines, booby traps" and other explosive devices - Abduction, kidnapping and recruitment as (child-) soldier - Existence of lootable resources - "Non-state armed groups, terrorists and criminal networks" **Obstructions of attempts to help/protect** - Deliberate obstruction / denial of and unsafe humanitarian assistance - Infiltration of refugee and protection camps

Proposed ways of action (*prognostic aspect*)	
Who should act?	**What should be done?**
- International community - All parties involved in conflict - States - Security Council and Secretary-General - Regional and humanitarian organizations	**Compliance, accountability and rule of law** - Ratify, Implement and comply with IHL, IHRL and refugee law - Implement International criminal law and "end impunity" - Implement relevant Council resolutions - Assure discipline among soldiers (including "zero tolerance" for sexual violence) **Provide physical protection and assistance** - Coercive measures in accordance with UN Charter - Ensure safety of humanitarian and UN personnel - Adequate peacekeeping mandates and resources - Strengthen civilian police and law enforcement - Maintain security of refugee camps - Provide (access) to humanitarian aid - Security zones and safe corridors - Demining - Disarmament, Demobilization and Reintegration

	Information, media and knowledge - Training, education and awareness-rising on IHL issues - Disseminating knowledge on UN missions - Information gathering, monitoring and benchmarking - Stopping violence-inciting media
Reasons given for action (*motivational aspect*)	
- Deliberate targeting of civilians considered a threat to international peace and security - "Increasing" urgency and "enduring need" to act	

Table 1: UN Security Council's framing of PoC (data: all PoC resolutions between September 1999 and July 2015, own systematization)

In large parts, the Council mimics the Geneva Conventions and the aforementioned principles of distinction and proportionality outlined therein. It thus repeatedly

> "reiterates its condemnation in the strongest terms of attacks in situations of armed conflict directed against civilians as such and other protected persons or objects as well as indiscriminate or disproportionate attacks and the utilisation of the presence of civilians to render certain points, areas or military forces immune from military operations, as flagrant violations of international humanitarian law and demands that all parties immediately put an end to such practices" (Resolution 1894, para. 2).

In this regard, the *deliberate* targeting of civilians constitutes the overarching theme of the Council's issue definition and is thus repeatedly identified as the primary risk for civilians' security during armed conflict. Therefore, the Council argues

> "that civilians account for the vast majority of casualties in armed conflicts and *are increasingly targeted* by combatants and armed elements, [and is thus] gravely concerned by the hardships borne by civilians during armed conflict, in particular as a result of acts of violence *directed against them*" (Resolutions 1265, 1296, preambular clauses 4, highlights by the author).

However, the deliberate targeting of civilians can take several forms. I argue, that the Council's issue definition can be regrouped in three sets of threats for civilians. First, the Council repeatedly refers to direct *physical threats and abusive practices* such as "genocide", "torture", "human trafficking" and "kidnapping", "forced displacement" as well as "sexual abuse" and "use as human shield" (see for instance Resolution 1674, para. 5), all of which may violate the Geneva Conventions' distinction and proportionality principles. Secondly, the Council recognizes a set of threatening *circumstances*, first and foremost a lack of respect for existing international legal norms and an environment of "impunity" (Resolutions 1265, para. 5;

1674, para. 8; 1894, para. 10). Equally, the Council points to the easy availability of "small arms and light weapons", the danger from mines, booby traps and other explosive devices, the risk to be recruited as child solder, and, at a few occasions to the particular risk from "non-state armed groups, terrorists and criminal networks" (especially in the context of kidnapping). Third, the Council identifies the *deliberate* obstruction of humanitarian work as a particular risk (Resolutions 1296, para. 8; 1674, para. 5; 1894, para. 4).

While the Security Council occasionally recognizes that "all affected civilian populations" may be in need of protection (Resolution 1894, para. 9), it refers mainly to the risks for specific parts of the civilian population. These include mainly "women, children and other vulnerable groups, including refugees and internally displaced persons" (Resolution 1265) as well as "United Nations and associated personnel" and "personnel of international humanitarian organizations" (ibid. para. 8, see also Resolution 2175). More recent resolutions specifically point to the risks for "journalists, media professionals and associated personnel" (Resolutions 1738 and 2222), as well as "persons with disabilities and older persons" (Resolution 1894).

In order to tackle these threats and increase civilian protection, the Council proposes three sets of actions. First, it calls for "all parties involved in conflict" to comply with international humanitarian law and other applicable international law, to assure compliance among its armed forces and to punish wrongdoers. Second, it calls for physical protection and assistance, including coercive measures as allowed by the UN Charter where necessary and feasible (see for instance Resolution 1265, para. 10). This includes calls to the "international community" and UN Member states to support peacekeeping missions with sufficient resources, to help with adequate knowhow in the training of civilian law enforcement, demining, disarmament, demobilization and reintegration as well as with the provision of humanitarian aid. Lastly, the Council points to the necessity (mainly for UN Secretariat-General and UN agencies) of monitoring and benchmarking to guide its decision-making and to the adequate dissemination of information about UN peacekeeping mandates and other available help to war-affected populations.

In light of these increasing and rather detailed discussions of civilian protection issues by the Security Council, we might be tempted to hail the Council's framework as a further step towards the humanization of warfare and the effective protection of civilians in armed conflict. However, while discussion the Council's framing in more detail in the following sections, I will argue that the Council' vision of *PoC* is hugely biased on three dimensions: first, in its

way to define *who* is to be protected; second, in its identification of adequate protection *measures* and lastly, in identifying *when* to protect.

2. Identifying Civilians by Proxy: The Council's Vision on Who to Protect

As outlined in the introduction, the Geneva Conventions accords protection to civilians if they are not part of organized armed groups and do not take active part in hostilities. I argue however, that the Security Council implicitly relies on a biased conceptualization of the civilian that may—at least for some—reduce the scope of the accorded protection. The Council moves past the Geneva Convention's *prescriptive definition* and relies instead on "ascriptive characteristics" such as sex, age, and disability (Carpenter 2005: 310), and increasingly on professional occupation as *proxies* to distinguish between civilians and combatants and to identify those it wants to protect. Furthermore, these groups are not conceptualized to be *legally entitled* to some sort of protection, but to be in *need* for (outside) protection because of their particular *vulnerability*.

Such arguments are not new. Mainly with gender essentialisms in mind, Charli Carpenter has argued a decade ago, that "through this process, the 'civilians' frame has been distorted by reliance on a proxy […] that both encompasses some combatants ([e.g.] female and child soldiers) and excludes some non-combatants ([e.g.] adult civilian men)" (Carpenter 2005: 296)—however, I would add, that while continuing to be biased along gender lines the number of proxy categories has expanded. Nevertheless, this reliance on proxies to determine what protection-worthy populations consist of continues to be characterized by the omission or exclusion of a rather precise set of persons that may face an *increased* risk of become a target during armed conflict.

Globally, the Security Council refers to a large extend to "civilians" in general and recognizes sporadically that "all affected civilian populations" may be at risk in armed conflict (in Resolutions 1674 and 1894). However, the Council focuses to an equally large extend on the seven parts of war-affected populations mentioned above, i.e. women, children, refugees and IDP, UN and humanitarian personnel, journalists and media professionals, people with disabilities, and older people. In total, about 30 % (44 out of 149) of all operative clauses in the Council's *PoC* resolutions contain direct references or are specifically limited to one or more of the

above listed categories. As Figure 1 already **Erreur ! Source du renvoi introuvable.**indicated, references to these categories are unequally distributed across all Council resolutions. Similar observations can be made for the *PoC*-specific resolutions. Across these, the Council makes references to the particular vulnerability of women, children, refugees and IDP—around 20 to 30 times for the former two, slightly less for latter. As indicated earlier, the Council furthermore goes as far as devoting *three* of the seven *PoC* resolutions to protection issues of two previously not or only rarely considered groups: journalists (Resolutions 1738, 2222) as well as UN and humanitarian personnel (Resolution 1894).

The wording employed by the Council reveals however, that in its large focus on these civilians, it starts to *equate* them with notion of the civilian. For instance, the Council is repeatedly

> "stressing the particular impact that armed conflict has on women and children, including as refugees and internally displaced persons, *as well as on other civilians* who may have specific *vulnerabilities* including persons with disabilities and older persons" (Resolution 1894, preambular clause 9; see also Resolution 1674).

First, the wording indicates that the Council considers all these groups to be integral parts of the civilian population (specifically the sub-clause is indicative in this regard): for the Council members, women, children, refugees are without question and thus *automatically* civilians. All groups together may not be a complete representation of the civilian population. However, the wording leaves little room for the consideration of other non-indicated groups (because other civilians are immediately defined as disabled and older people). They risk becoming the *representation* of civilians. This view, however, skips the test devised by the Geneva Conventions and allows for identifying civilians through a *proxy*, i.e. by simply determining whether a person is part of at least one of the considered *vulnerable groups* or not (Carpenter 2005: 296).[7] Instead of relying on the Conventions' *status*-based approach that determines status through the *absence of prohibited behavior* (i.e. not actively taking part in hostilities and not being member of organized armed forces), the Council rather relies on the observation of as-

[7] Very recently, the Council seems to have become aware of that fact and hence reintroduces specific language in reference to the Geneva Conventions: In Resolutions 2222, para. 3 from May 2015, the Council "recalls […] that journalists, media professionals and associated personnel […] shall be considered as civilians […], *provided that they take no action adversely affecting their status as civilians*". However, this is the only such mention and is only formulated with regard to one such group. This is thus a tendency to be observed in the future and could be an indicator of the Council slowly correcting the bias analysed in this section.

criptive characteristics (e.g. sex, age, disability) and *intended behavior* (e.g. fleeing the battlefields, working has humanitarian aid personnel or journalists etc.).

Secondly, the Council argues that its selection process of groups in need of protection is guided by their *vulnerability*. By doing so, the Council de facto introduces a *hierarchy* among civilians and divides them into two groups: those explicitly recognized as vulnerable and thus seen as in a special need of protection, and all those whose are not recognized as (sufficiently) vulnerable to justify protection. While Carpenter (2005: 308; see also Bouchet-Saulnier 2002: 141) notes that "humanitarian principles allow for prioritizing those in most need of assistance" the Council's approach constitutes a further departure from the Geneva Conventions' test: in essence, the Council introduces an *additional standard of vulnerability* to which all war-affected populations have to conform to qualify for protection. However, *vulnerability* is both a *context-* and *interpretation-sensitive* concept. At times, a person's (biological, sociological, or contextual) characteristics may put that person at particular risk of being harmed, but also play no role at all or even play to its advantage at other times. (However, as we shall see in following section, the Council seems to have a rather clear idea about which circumstances are particularly threating and which not.) But the Council's overall approach seems far more *static* in detail: vulnerability serves as a criterion to identify protection-worthy groups (or justify their selection), but once that process of identification has taken place (hence, as it seems, prior to the existing resolutions), these groups are considered vulnerable and in need of protection *across time and space*, i.e. across all situations considered by the Council from thereon. The Council's definition of protection-worthy groups thus leaves little room for variation *within* and *across* armed conflicts and makes it hard to appreciate threats created by the intersection of several characteristics. Additionally, the very task of assessing whether a particular outcome is *worse* for a person than another, or the differences in risk and thus whether a person might be *more* vulnerable then another is often open to interpretation—an interpretation done by the Council without providing any information on its own assessment process. In this regard, one might argue that the Council has—willingly or not—liberated itself and UN Member states from a rigid to-the-letter interpretation of the Geneva Conventions' and the Additional Protocols' test and has given itself and Member states a new flexibility in the division of protection measures via an unspecified criterion of vulnerability.

Drawing on similar observations, Carpenter (2005: 302) argues, that

> "the intersubjective meanings attached to the distinction principle—based on assumptions of wartime gender roles—make it far more likely that women and young children will be interpret-

> ed as civilians by belligerents, and thus that women and children to a greater degree than adult males will benefit from whatever protection 'civilian' status affords, if any, in a particular context"

—a process that in the end "represents a liability to efforts to strengthen the immunity norm" of the Geneva Conventions (Carpenter 2005: 303). While the recently increased focus on parts of war-affected populations that are not necessarily defined through their gender questions Carpenters focus on such essentialisms[8], her assessment of the problematic overall consequences of the Council's framing of the civilian remains valid. As Frédéric Mégret reminds us, "every protection under the laws of war, every status, might also be gained by denial of an 'other', so that the law is both inclusive and exclusive" (Mégret 2006: 266), or, "more precisely, it is necessarily exclusive of something if it is to be inclusive of anything" (Mégret 2006: 304). Continuously repeating the particular vulnerability of *some* logically implies and consolidates the point of view that *others* are per se *less* vulnerable and hence less in need of protection throughout *all armed conflicts* envisaged by the Council under the perspective of the present framework.

Who are the Council's "others" (Orford 2003, 2006)? Which parts of war-affected populations remain hidden by the Council's focus on other groups and are thus implicitly considered less in need of protection or less protection-worthy? For Carpenter, "the immunity norm is more robust when the civilians in question are adult females or young children than when they are adult males" (Carpenter 2005: 303; 2003), but the previously discussed analysis helps sharpen that image even further. The perimeter drawn by the overlaps of the boundaries of those groups' explicitly considered by the Security Council mainly marginalizes *young-adult, draft-aged men* in possession of their *full physical and mental capacities*, who have *not (yet) fled the conflict zones* (or at least are not recognized as parts of the refugee and IDP population) and *do not work for recognized bodies* such as the UN, humanitarian aid organizations or the media. It may come at no surprise that this group has traditionally been considered to be more likely to engage in fighting, to be recruited by the army or to be simply abducted and forced to fight.[9] Especially in light of growing discussions surrounding 'part-time combatants'

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[8] However, gender essentialism keep playing an integral part of the Council's considerations and reverberate in recent resolutions, for instance through the specific references to "women journalists" (Resolution 2222, preambular clause 21)

[9] Indeed, Kinsella (2005) argues, that the traditional civilian / combatant distinction was at first intrinsically linked to gender roles.

(e.g. members of terrorist groups without clear hierarchy, who do not wear uniforms or carry arms openly, and who most of the time live among and act as civilians and do not necessarily join a clearly defined combat area), 'targeted killings', and so-called 'signature' (drone) strikes, characterized by target selections that presumably closely resemble the criteria listed above (see for instance Crawford 2015; Kretzmer 2005; Lewis 2012; Sterio 2012)[10], such a development in Council policy may seem troublesome to proponents of a humanitarian agenda. In the *worst* case, the Council's *practice* to turn to proxies to guide its protection efforts may legitimize such targeting practices in the medium term, and may hence even play a role in the formation of customary international law in the long term.

However, the issues go further. Such a reliance on proxies obfuscates both hardships suffered by the marginalized ones as well as the self-protection efforts and other non-victimizing types of behavior of those groups seen by the Council mainly as vulnerable (the latter point will be discussed more fully in the following section). While men may be more likely to become victims of lethal violence, some studies suggest that women are disproportionately more likely to suffer from indirect effects of armed conflict (e.g. food shortages or inadequate medical care) and non-lethal (e.g. sexual) violence (Carpenter 2006: 88ff.; Human Security Centre 2005: 123ff.; Plümper / Neumayer 2006: 787). For instance, examples from Rwanda and Bosnia underline, that men and boys are frequently singled out for summary executions by opposing forces (Judy El-Bushra 2000: 73; Dubravka Zarkov 2002). While the Security Council (among many others) focuses on sexual violence as a particular risk for *women* and *girls*, scholars increasingly point to wartime sexual violence against *men* (Carpenter 2006; Sivakumaran 2007). While *possibly* less frequent then wartime sexual violence against women, male victims may face even more severe stigma and fewer access to specialized health care, psychological treatment and law enforcement. Equally, male "homosexuals, conscientious objectors, […] and boys of draft age" (Carpenter 2005: 308) in belligerent countries with obligatory military service for men also face particular vulnerabilities unrecognized by the Council, while on the other hand female combatants (Alison 2004; McKelvey 2007) play no role in the Council's considerations at all.

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[10] See *The Public Committee Against Torture et al. v. The Government of Israel et al.*, Israel High Court of Justice, 2005.

Occasionally, the Council recognizes the flawed character of the proxy categories.[11] For instance, it notes in Resolution 1296, para. 3 (highlights by the author)

> "that *the overwhelming majority* of internally displaced persons and other vulnerable groups in situations of armed conflict *are* civilians."

The wording indicates that the Council is aware that internally displaced persons may at times be combatants (but interestingly, it does not explicitly recognize the opposite: that those who have not fled the conflict zones may also be civilian to an "overwhelming majority"). What appears as a positive protection measure—it may strip armed actors from legitimizing attacks against IDP and their camps by simply pointing to armed elements hiding among them—has consequences for all those who do not flee their homes. By explicitly emphasizing that the *rule of doubt* heralded by the Geneva Conventions applies to IDP, the Council seems to assume that a similar conclusion may be less easy to reach for other parts of the population, especially for war-affected populations that are not recognized as *vulnerable*. This underlines the Council's willingness to rely on proxies to guide its protection efforts despite known flaws that may indeed *reduce* protection for the civilian population at large.

I do however not intend to suggest that the purported vulnerabilities and special needs do not reflect material realities. However, the Council's rather reliance on statically defined proxies entails considerable shifts away from the Geneva Conventions' protection norms that may be (partially) at odds with the humanitarian project. Worse, a second bias can be identified in the Council's proposals for remedy to which we shall turn in the following section.

3. Ignoring Civilians' Agency: The Council's Vision on How to Protect

As I argued before, the Security Council's practice to rely on *proxy categories* and a *standard of vulnerability* to guide its protection effort constitutes an implicit but notable departure from the protection provided by the Geneva Conventions. In addition to possibly counter-productive biases stemming from the use of such proxies, the Council seems equally biased in in its definition of *how* to adequate protect. As I have already suggested earlier, the Council

[11] See also Carpenter (2005: 325f.) for examples of counter-narratives in the larger civil protection network.

tends to have a very limited view on the behavior of war-affected populations, which is particularly visible in its proposed protection measures. As I will argue in the following section, these measures resolve around a "paradigm of salvation" (Mégret 2009; Pasic / Weiss 2006) that reaffirms the state and the community of states as the primary security providers but denies agency to war-affected civilians by ignoring their own survival strategies and self-protection measures.

3.1 The State and the Community of States as the Saviors of the Vulnerable

As briefly outlined before, the Council proposes three sets of actions (see Table 1): first, the Council urges Member states and parties to armed conflict to comply with applicable international law, to assure compliance (e.g. through training measures) and specifically to 'end impunity' by prosecuting and punishing individual wrongdoers. Secondly, Council members point to their own role in designing peacekeeping missions but equally to the instrumentarium of coercive measures at their disposal through Chapter VII of the UN Charter. A last set of actions includes monitoring, benchmarking and information dissemination to the larger population on relevant parts of international law and the work of the UN in the matter—tasks primarily delegated to the UN Secretary-General and humanitarian organizations.

Traditionally, discussions on military humanitarian interventions construe a tension between a state's sovereignty and its independence from outside interference in its internal affairs on the one hand and the interests of a larger community of states on the other hand. At first sight, such a tension seems also inherent to the Council's *PoC* framework. In this regard, the Council consistently repeats its

> "commitment to the principles of the political independence, sovereign equality and territorial integrity of all States" (Resolution 1296, preambular clause 6).

However, while the Council avoids creating any legal obligations for Member states that go beyond those already enshrined in the Geneva Conventions and the UN Charter (Breakey 2010: 86), it nevertheless shows a tendency to underline "the primary responsibility [of states] to respect and ensure the human rights of their citizens" as well as "the primary responsibility [of parties to armed conflicts] to take all feasible steps to ensure the protection of civilians" (Resolution 1894, preambular clause 6). On the other hand, as mentioned earlier, the Council consistently affirms "its readiness to consider […] situations [in which civilians are deliber-

ately targeted] and, where necessary, to adopt appropriate steps" (Resolution 1296, para. 5; see also Resolution 1674, para. 26)—a wording that includes the UN Charter Chapter VII's coercive measures. Of particular significance in this regard is the Council's endorsement of "paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity" (Resolution 1674, para. 4). Para. 139 of the said *Outcome Document* (admittedly a minimalist version of the responsibility to protect conceived of by the International Commission on Intervention and State Sovereignty in 2001) explicitly outlines, that

> "the international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, […] through the Security Council, in accordance with the Charter, including Chapter VII, […] should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity."

From such a perspective, state sovereignty and interventions by the international community to protect civilians are not two *opposite* concepts but rather *complementary* ones: the community of states is thought to only step in in situations in which the sovereignty of a state and—in the logic of *R2P*, its capacity to protect—has already (in an empirical rather than a legal) sense vanished or is at the verge of doing so. In an *ideal typcal* case, the community of states acts as a *substitute* to secure and restore state sovereignty—thus, where protection is not provided by a (belligerent) state, it is to be provided by *other* states. As we will see at a later stage, the Council seems to apply its *PoC* framework principally to conflicts in which state sovereignty is indeed already scattered; effectively, this measure does thus not limit sovereignty, but serves its reassertion and reestablishment (I shall come back to such considerations in section 5).[12] Unsurprisingly, the Council has thus also mostly relied on (consent-based) peacekeeping missions in its efforts to protect civilians (Hultman / Kathman / Shannon 2013; Mégret 2015), but has stuck to careful, and often limiting language. For instance, in its mandate of the UN Mission in Sudan (UNMIS), the Council

[12] R2P and PoC do not fully overlap—arguably, the former is much broader in scope then the latter (which is, by definition, only limited to armed conflicts). While R2P is largely believed to be no *legal norm* (not to even one in the making) (Peters 2009; Reinold 2010; Stahn 2007), others (Breakey 2012) have pointed out that *PoC* with its much more limited scope and restraint wording has had a greater success in being adopted by the UN Security Council (see above).

> "Decides that UNMIS is authorized to take the necessary action, *in the areas of deployment of its forces* and as it deems *within its capabilities*, […] and, *without prejudice to the responsibility of the Government of Sudan*, to protect civilians under imminent threat of physical violence" (Resolution 1590, para. 16(i)).

Thus, in its identification of ways of action to adequately protect civilians in armed conflict, the Council sticks to "a ritual recognition of the role of the state" (Mégret 2009: 578), mirroring the Secretary-General's High-level Panel's conclusion in its report on *A More Secure World* that

> "the front-line actors in dealing with all the threats we face, new and old, continue to be individual sovereign States" (United Nations 2004: 11).

"From there", summarizes Mégret (2009: 578), "the key question is who should step in when the state is deficient" and concludes, that "there is little doubt that the 'international community' is the big winner in the process." However, such a focus on *macro-level actors* masks the *agency of micro-level actors*, the civilians themselves first and foremost. As Anne Orford (1999: 695) notes:

> "Missing is any sense of the agency of the peoples of the states where intervention is to be conducted. There is no sense in which these peoples are understood to be themselves actively working to shape their communities and their world, except to the extent of seeking the protection of the international community."

The reason for this, argues Mégret (2009: 580), results from a construction of "'victims' as essentially passive, depoliticized and in need of international intervention. The victim is cause, object, but never actor or subject." While Orford and Mégret make their arguments in relation to broader discussions of humanitarian interventions and R2P respectively, the argument can be easily transferred to the Council's vision on *PoC*. Civilians as acting subjects are nearly entirely absent from the Council's considerations (see below for a discussion of—again very telling—exceptions). Indeed, in light of the massive violence civilians have to bear according to the Council's own framing (see section 4), it is hard to construe them as actors and subjects: Instead, they are 'slaughtered' in genocides and through war crimes, kidnapped and abducted, sexually abused, tortured and used as human shields, or starved to death through "the intentional denial of humanitarian assistance" (Resolution 1674, para. 5). In this vision, protection for the civilian can logically only come from "outsiders" (Seybolt 2007). In situations in which the state is not able (or willing) anymore to provide such protection, such outsiders—e.g. peacekeeping operations or regional and humanitarian organizations—may come

to the rescue of these vulnerable "strangers" (Wheeler 2000) and "others" (Orford 2003, 2006).

However, in the case of Council resolution, a conceptualization of the civilian as a mainly passive bearer of atrocities is rather surprising—e.g. in the case of women—if we keep in mind, that the Council does not get tired of calling for the "empowerment" of women and their particular role for international peace and security in the context of its *women agenda* (see for instance Resolutions 1325). By acknowledging that women *should be* empowered, the Council indeed accepts *elsewhere* the view that parts of the populations *can* play active roles and be subjects of their own protection. However, such characterizations of women's (or others') roles are curiously absent from the Council's *PoC* resolutions.

On one occasion however, the Council acknowledges indeed "the importance of *empowering* vulnerable civilians through education and training" but specifies afterwards in the operational part of the same resolution that this "training" and "education" amounts in essence to "awareness"-rising among "public officials", "civilian police and law enforcement personnel", "civil society and the civilian population" on applicable international law in order to "achieve full and effective compliance" (Resolution 1894). In other words, empowering civilians thus essentially means reminding them of their obligations under International Humanitarian Law, i.e. to abstain from actively participating in hostilities. Ironically, the Council thus understands "empowering" not as a measure to provide civilians with the *capacity to act on their own behalf*, but rather as a plea *not* to act!

Secondly, in its most recent resolution on the topic, the Security Council recognizes that civilians might be "seeking, receiving and disseminating information by different means, online as well as offline", i.e. act actively as what one might call "grassroot journalists" (Mégret 2014: 3). It is however noteworthy that the Council in the same resolution only recognizes "media *professionals*" to "play an important role." While the Council seems to recognize the agency of these parts of civilian population, their actions have however only value as an "early warning mechanism" that inform the action of higher instances (e.g. the Council) and enable *these instances* to take informed decisions (Resolution 2222, preambular clause 13). Furthermore, the Council seems to focus its protection considerations mainly on such "professional" information-providers. However, it does not recognize that it might be civilians themselves who profit too from the information in order to *avoid* endangering situations and make informed decisions on how to react to ongoing conflict. Furthermore, it is questionable who the Council has in mind when referring specifically to "journalists" as "media professionals". The Coun-

cil's understanding of media professionalism remains largely unclear and one might question whether local journalists—faced by the possible destruction and obstruction of their equipment and distribution networks—continue to qualify for such an attribute in the Council's eyes. One might indeed suspect the Council to have mainly foreign journalists in mind, who are certainly part of the civilian population, but in some way also part of the external 'salvation' movement that comes to the rescue of war-affected populations (and mainly reports not to them, but to foreign audiences).

Thirdly, by focusing on refugees and IDP, hence on persons who have *actively* sought to leave the combat zones at least for the duration of the conflict either by crossing borders or moving to more secure areas within a country, the Council recognizes that civilians may *protect themselves* by fleeing. However, by labeling these persons 'particularly vulnerable' the Council makes it clear that it does not interpret such behavior as a viable means to *increase* civilians' protection but rather as an *issue*. This is not to say, that the Council advises civilians against fleeing. Rather, it treats the phenomenon as a material reality to which it reacts by providing outside protection. It is however interesting, that one of the only civilian activities openly recognized by the Council is solely treated as *risky* behavior.

As Mégret (2009: 576; Bonwick 2006: 274) thus reminds us, the focus on the protection efforts by salvaging outsiders "largely neglect[s] the contribution that local 'non-state actors', civil society, social movements, indeed victims themselves can make to resist the commission of atrocities." Indeed, a growing number of authors has identified very diverse "repertoires of self-protection" (Suarez / Black 2014: 3), that underline that the Council's bias to outside action is not necessarily a guarantee for increased protection.

3.2 Civilian Self-protection Strategies in Armed Conflict

In light of the indisputable hardships faced by war-affected populations and despite all possible outside interventions, the rather interesting question arises: How do civilians manage to survive in these circumstances at all (Baines / Paddon 2012: 232)? As Mégret (2009: 576) and Bonwick (2006: 274), Kaplan suggests that "civilians d[o] not wait for intervention […]. Instead, they [take] matters into their own hands" (Kaplan 2013: 365). In fact, "a very large proportion [of those having survived mass atrocities and war crimes] owed their rescue to themselves, the courage of ordinary strangers or resistance movements" (Mégret 2009: 583). Unsurprisingly, a growing number of anthropologists and sociologists has identified what one

might call civilian "repertoires of self-protection" (Suarez / Black 2014: 3) and survival strategies (see also Baines / Paddon 2012; Barrs 2010; Barter 2012; Corbett 2011; Gorur 2013; Levine 2013; Mégret 2009; South / Harragin 2012; Williams 2013) that are often at odds with the protection measures devised by the Council. These strategies include (but are certainly not limited to) *hiding* and *fleeing*, *submitting* or *cooperating*, *witnessing*, *speaking out* and *contesting*, open *confrontation*, attempts to remain *neutral*, as well as *solidarity* among civilians.

While permanently leaving combat areas may seem as the most evident self-protection strategy, it is nevertheless "a very ambiguous" one (Mégret 2014: 4): not only do civilians have to abandon most of their possessions; they also leave behind their local networks, living areas and social context they knew very well only to find "themselves in very precarious situations" (Mégret 2014: 4). Both the journey and the new living environments often constitute new sources of insecurity (Baines / Paddon 2012: 232), considerably increasing their dependency from third party actors providing them (often only insufficiently) with food, shelter, healthcare and security. Additionally, refugee camps may pose "new protection concerns, including overcrowding, disease, hunger, humiliation and debilitation" (Baines / Paddon 2012: 241; Utas 2005: 421) and often an increased likelihood of attacks by nearby armed forces, as recognized by the Council who refers to these camps as vulnerable "to infiltration by armed elements" (Resolution 1296, para. 14). Thus, some Liberian civilians are for instance reported to have resolved themselves to return (!) to the war zones "due to the hardships Liberians had to withstand in the refugee camps" (Utas 2005: 421).

Instead of fleeing, civilians may hence adopt more subtle and short-term behaviors and e.g. decide to only hide during specific times of the day. Tenth of thousands of youth from northern Uganda used to 'commute' to nearby cities for the night to avoid abduction by armed forces (Baines / Paddon 2012: 238; Bonwick 2006: 274). Equally, many Ugandan civilians put a lot of effort in constructing hidden night shelters outside of their villages, while North Sudanese Nuba civilians chose to move to the nearby mountains which they knew very well (Corbett 2011: 23ff.). In contrast, those Ugandan civilians who stayed in the villages used at least to prepare themselves to flee immediately at the sight of armed troops, while elder people unable to move quickly often hid during daytime in the bush (Baines / Paddon 2012: 238f.). These more subtle efforts are however not recognized or supported by the Council's *PoC* framework, with often devastating consequences: for instance, despite increased protection from attacks, the North Sudanese Nubas' decision to flee to the mountains for "protracted

periods of time […] resulted in high levels of mortality and suffering from hunger, disease and lack of basic services" (Corbett 2011: 24).

For many civilians, fleeing or hiding is simply not an option and they may thus decide to *co-operate* with armed actors. Forms of (coerced or voluntary) cooperation may include the provision of goods, information, labor, and symbolic support, and the ferrying of weapons and supplies (Barter 2012: 559; Suarez / Black 2014: 6). In the case of Liberia, Utas (2005: 424f.) reports that women regularly and strategically bartered sex for protection (however, one might ask the legitimate question to which extend such behavior is strictly voluntary). Furthermore, as Mégret (2014: 4) underlines, some civilians may "have stakes in the general ongoing political struggle" and are thus *political actors* on their own; their actions "may even shape armed groups and the course of violent conflicts" (Barter 2012: 545). The overall peace process may thus strongly depend on civilian involvement (or their disengagement through further victimization). This involvement may take the form of local civilian organizations with the aim to „resolv[e] disputes between neighbors and manag[e] relations with […] armed actors" as in the case of the Peasant Worker Association of the Carare River (ATCC) in Colombia (Kaplan 2013: 351) or it may reach the level of highly organized groups of women in Liberia that met with rebel leaders in order to broker local peace arrangements (Levine 2013: 5ff.; particularly on women, see also Haeri / Puechguirbal 2010).[13] While such success stories may be rare, it is telling that they find nevertheless no mention in the Council's framework at all. Where outside support of such groups would possibly bolster their negotiation positions, the Council's focus on what can be done from the top instead of supporting such bottom-up initiatives may doom other attempts from the outset. As a consequence, civilians may see fit to engage in forms of "popular justice", "ad hoc acts of violence in retaliation against specific offenders", more organized "local defense groups" or simply join existing armed groups (Gorur 2013: 4) and thus—knowingly or not—step outside the protection accorded by the Geneva Conventions.

Other accounts point to increased *solidarity* among civilians, including collective alert systems (such as whistles to warn of imminent attacks", Gorur 2013: 4), the regrouping in safer buildings of families living in bombed areas, sharing of money and goods, as well as the

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[13] However, instead of working towards peace, Kalyvas (2006) has powerfully shown that civilians may very well *use* and *fuel* the larger political struggle underlying the armed conflict to violently settle private feuds and advance own agendas.

emergence of shadow welfare sectors and "parallel social and medical services", especially where the official services are non-existent or suspected to abuse critiques such as in Syria (Mégret 2014: 3). In this regard, civilians may also opt for a strategy of strict neutrality towards armed actors, especially when distinguishing between the warring parties is difficult (Baines / Paddon 2012: 238). Again, drawing on a considerable amount of local knowledge, such initiatives may provide better adapted and quicker protection, but often lack adequate resources—resources that could be provided by outside actors. The Syrian case seems to provide some support for such a view. As Frédéric Mégret reports, not only have non-state actors such as "Doctors Without Borders medics […] been known to infiltrate Syria to help with treatment", also governments have increasingly resorted to initiatives "that seem more expressly directed at helping civilians to self-protect", including the UK government which pledged "$5 million in medical equipment, water purification kits and radios", while the US and France provided communications equipment and training to 1,000 unarmed opposition groups and helped revolutionary councils to "restore basic public services such as water supplies, sanitation, health services and even bakeries" in rebel-held parts of Syria (Mégret 2014: 9f.). Hence, one might come to the conclusion that "it is in fact often highly unorthodox international strategies that have had some limited success" (ibid.). However, despite occasionally differing behavior by some of its members, the Council's framework does not mirror such insights and rather sticks to the described external salvation paradigm.

Conciliating such self-protection efforts with external interventions and peacekeeping measures and "creating 'hybrid' systems of protection" is challenging at best (Levine 2013: 1, 7ff.). Of course, civilians' own survival strategies are often insufficient and most certainly "not a panacea" (Kaplan 2013: 366). However, ignoring them completely and mainly referring to protection efforts by external actors, as does the Security Council in its PoC resolutions, may leave civilians with a bitter choice: on the one hand, they may engage in alternative, mostly *unsupported* and *unnoticed* local initiatives (at the expense of outside help); on the other hand, they may 'embrace' their vulnerability, conform to the Council's perception and behave accordingly, i.e. entrust themselves to the care of mainly external actors and resort "narratives, performances, and self-representations of 'victimhood'" in order to "increase their opportunities to receive assistance during and after war" (Suarez / Black 2014: 3; Harrell-Bond 2002). While they may risk running out of any support at all in the former case, but may at least profit from their local knowledge and a certain predictability of events, the latter may deepen their dependency on third parties and face them with new and uncertain risks. Again, the Council's own understanding of PoC thus risks at times *decreasing* civilians'

security instead of improving their protection. A closer look at how the Council frames the *environment* in which its involvement in *PoC* is required, will lead us to similar conclusions.

4. Selective Invocation of PoC: The Council's Vision on When to Protect

So far, I have identified biases in the Council's delineation of protection-worthy populations through proxies, as well as protection strategies that are largely biased towards external and top-down interventions and largely ignore civilians' own self-protection behavior. However, the Council not only focuses on the questions of *who* and *how* to protect, but also provides bases its *PoC* efforts on an interpretation of *when* its action is particularly required. While the Council is keen to underline in its resolutions its preoccupation with civilians in *all* armed conflicts, its characterization of the sufferings, threads and warring circumstances faced by civilians points however to a bias in favor of what has been dubbed 'new wars'. Concordantly, the Council *invokes* its *PoC* framework primarily in situations of failed or failing statehood in which the sovereignty[14] of states is under massive pressure by non-state armed actors.

4.1 'New Wars' as Blueprint for the Council's PoC Framework

During the second half of the 1990s, several scholars have drawn attention to a category of "new wars" (Kaldor 2012; Münkler 2002), "wars of the third kind" (Holsti 1996) or "post-modern wars" (Duffield 1998; Gray 1997) in order to capture what they perceived as a fundamental shift in the quality of post-Cold War armed conflicts. The novelty, empirical accuracy and scientific value of these concepts have been questioned and heavily criticized (e.g. Kalyvas 2001). However, it is not such critical assessments of the concept that shall interest us in the following but rather its pervasiveness in political policy making, and especially its apparent influence on the Council's *PoC* framework. In this regard, Kalyvas (2001: 109) argues that "the end of the Cold War seems to have caused the demise of the conceptual categories used to interpret" armed conflicts. The collapse of block politics, nuclear stalemates, and

[14] It should be noted that 'sovereignty' is here understood in a gradual and empirical manner instead of the more static *legal* understanding of the concept.

overall balances-of-power as main interpretative categories of (mostly international) armed conflict coupled with the sudden realization that a growing number of non-international armed conflicts had accumulated over time (Fearon / Laitin 2003: 76ff.) and had—as the highly mediatized Somali, Rwandan and Balkan conflicts forcefully underlined—become a far more common phenomenon than interstate wars (Pettersson / Wallensteen 2015: 436ff.) created an interpretative void that allowed for the success of novel interpretations both in the academic and the political sphere.

For proponents of the 'new war' paradigm, two major causes account for a qualitative shift in warfare (Kaldor 2012: 72ff.): first, fueled by the end of the Cold War a further globalization of (notably war and black market) economies and second, a decline of the political authority and the Weberian monopoly of legitimate violence of Nation-states. In this light, 'new wars' feature three intertwined characteristics.

First, 'new wars' take mainly place within "'failed', 'failing', 'fragile', 'weak' or 'collapsing'" states (Kaldor 2012: 95f.). The weakness and disintegration of these states is thus accompanied by a rising importance and influence of (armed) non-state actors and hence "a growing privatization of violence" (Kaldor 2012: 9) that remains largely unchecked due to the virtual non-existence of law enforcement institutions. The multiplication of armed actors goes hand in hand with a proliferation of "light weapons", e.g. "rifles, machine guns, hand grenades, landmines [and] improvised explosive devices", as these weapons are light, easy to transport, and "can be used to great effect by unskilled soldiers, including children" (Kaldor 2012: 101). More importantly, however, due to the end of the Cold War and a massive downsize in military expenditures and the breakdown of the Soviet army, they are available in surplus for small amounts of money, e.g. from raided Cold War (mostly Soviet) stockpiles, from "redundant soldiers selling their weapons on the black market" or from arms dealers seeking new markets (Kaldor 2012: 101).

Secondly, in 'new wars' the lines between warfare and criminality are blurred (Kaldor 2012: 2). Since (legal) domestic economies crumble as a result (or cause) of state failure, armed actors "need to seek alternative sources of funding", including the extraction of "valuable commodities" where possible, "looting, robbery, extortion, pillage and hostage-taking", external assistance through family and diaspora networks but also for instance the diversion of "humanitarian assistance" (Kaldor 2012: 109f.). Furthermore, Keen (1998, 2005) argues, that 'new wars' are primarily fought for *personal* gains, and are principally "loot-seeking" (Collier / Hoeffler 1999, 2004) and "quasi-criminal activities" (Collier 2000). Therefore, 'new wars'

are believed to be the virtual opposite of 'old wars', which are portrayed as largely rational activities, conducted mainly by states as—according to the infamous Clausewitzian formula—continuation of politics by other means (Kaldor 2012: 15ff.). Thus, as Kalyvas (2001: 102) sums up the widespread opinion, 'old wars' were "political and fought over collectively articulated, broad, even noble causes, such as social change". 'New wars' on the other hand are purely private and "by its very definition […] depoliticized" (Dexter 2007: 1066).

Thirdly, the terrorization and deliberate targeting of the civil population becomes a striking characteristic of these conflicts, employed as a tactic to further fuel conflict. More concretely, Kaldor (2012: 106) observes "the tendency to avoid battle and to direct most violence against civilians", and even claims, that "at the turn of the century, the ratio of military to civilian casualties in wars was 8:1. Today, this has been almost exactly reversed; in the wars of the 1990s, the ratio of military to civilian deaths is approximately 1:8" (cited in Dexter 2007: 1063), hence that it is an *increasing* practice. In such a view, civilians are seen as mere bystanders in Clausewitzian 'old wars' that could unintentionally become collateral victims, but while "all wars are destructive in societal terms but this is generally considered to be a consequence or by-product of military activities, in contrast, recent wars appear to be aimed at societal destruction" (Kaldor 1998: 96). Civilian targeting is not perceived as an irrational act, though, but as a suitable means to maintain instability and thus to allow armed actors to continue to pursue their private goals—'new wars' are thus inherently characterized by a disdain for the laws of war and other legal rules (Dexter 2007: 1065).

All three characteristics of 'new wars' are predominant in the Council's *PoC* framing (see again Table 1). At the heart of the Council's concerns lies the assertion that

> "civilians account for the vast majority of casualties in armed conflicts and are *increasingly* targeted by combatants and armed elements" (Resolutions 1265, 1296, preambular clauses 4).

Furthermore, it recognizes

> "the *deliberate targeting* of civilian populations or other protected persons and the committing of *systematic, flagrant and widespread violations* of international humanitarian and human rights law in situations of armed conflict" (Resolution 1296, para. 5, Resolution 1674, para. 26, Resolution 1738, para. 9, Resolution 1894, para. 3)

as one of the primary concerns for civilian protection. Especially in the two first resolutions, the Council's reference to an *increasing* practice of deliberate targeting flags its understand-

ing of dealing with a *novel* situation. While the Council can hardly maintain such an assertion over ten years after the first *PoC* resolution, it keeps declaring that

> "civilians *continue* to account for the vast majority of casualties in situations of armed conflict" (Resolution 1894, preambular clause 8)

and thus underlining that the main issue (and thus in its eyes the reason to act) persists. However, as the Council highlights, civilians not simply get killed, but are, in the eyes of the Council, equally subject to terrorizing and brutal acts such as torture, sexual abuse and trafficking, kidnapping and abduction as well as forced displacement and usage as human shields. In a report explicitly endorsed by the Council in its first resolution on the topic, the Secretary-General describes the key issue for civilians thus as follows (consider for a similar assessment Lloyd Axworthy's statement during the very first Council debate, quoted in the introduction):

> "In many of today's armed conflicts, civilian casualties and the destruction of civilian infrastructure *are not simply byproducts of war, but the consequence of the deliberate targeting* of non-combatants. The violence is frequently perpetrated by non-state actors, including irregular forces and privately financed militias." [15]

The resemblance to 'new war' vocabulary is striking, and finds similar application in the Council's verbal discussions. However, the second sentence's explicit reference to non-state actors, suggesting their primary responsibility for the death of civilians in line with a 'new war' interpretation, is not directly applied in any *PoC* resolution. Only twice does the Council indicate a preoccupation with non-state actors: first, in the case of the infiltration of refugee camps where it refers to the role played by "armed elements", a term indicating that the Council has especially non-international armed conflicts in mind instead of international armed conflicts that would allow for the use of the "combatant" term. As the Council usually uses both terms conjointly, the exclusive usage of the former indicates that the Council does not see an issue with state- but rather with non-state actors (Resolution 1296, para. 14). Secondly, the targeting of civilian UN and humanitarian personnel is seen as

> "exacerbated by the presence of armed actors, including *non-state armed groups*, *terrorist* and *criminal networks*, and their activities" (Resolution 2175, preambular clause 11).

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[15] Report by the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflicts (S/1999/957, para. 8)

However, Council members get more specific in their verbal statements to the Council. For instance, the Nigerian representative outlined in a recent Council meeting on the matter[16]:

> "The reality is that most conflicts occur in an atmosphere of lawlessness where the activities of non-State actors, including extremist groups, terrorists and criminal networks, present a major challenge in the protection of civilians."[17]

On another occasion, the Japanese delegate remarked, that

> "non-State actors, which often operate outside the effective rule of government […] deliberately make use of civilians to attain their goals" [18],

while the US representative added on the same occasion:

> "The perpetrators—often rebels, terrorists, extremist groups and other non-State actors—are unmoved by the law and operate outside it. War-torn States often lack the capacity to bring perpetrators to justice and provide security for their citizens." [19]

As these examples highlight, Council members see non-state actors as key actors in the targeting of civilians. In accordance with the 'new war' paradigm, these non-state actors are however not portrayed as political actors, but as *thugs*, *criminals* and *extremists* who operate in an "atmosphere of lawlessness"[20] and—a hint to the failure of the state—"outside the effective rule of government"[21], an interpretation that reverberates in the Council's frequent references to "impunity" for perpetrators (for instance Resolutions 1265, para. 6). In a further reference to the 'new war' template, the Council repeatedly points to the dangers caused by a "surplus" (Resolution 1296, para. 16) of "small arms and light weapons" (Resolutions 1265, 1296,

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[16] As should have become clear until now, I treat the UN Security Council mainly as a black box. While I recognize that its Members (may) have diverging opinions and interests, I am mainly interested in the position of the Council as a whole. Therefore, quotes from the process verbaux are mainly chosen as illustration of overall Council position. My focus does not lie on the *divergence* of its members' views but rather on their *convergence*. At a later point, I will stage an argument about the influence of these processes on the reconstruction of the community of states; I thus largely ignore processes that structure the relations *within* that community.

[17] 7374th Council meeting, on the Protection of Civilians in Armed Conflicts, 30.01.2015 (S/PV.7374, p. 18)

[18] 6216th Council meeting, on the Protection of Civilians in Armed Conflicts, 11.11.2009 (S/PV.6216, p. 17)

[19] 6216th Council meeting, (S/PV.6216, p. 20)

[20] 7374th Council meeting, (S/PV.7374, p. 18)

[21] 6216th Council meeting, (S/PV.6216, p. 17)

1674, 1894), landmines (Resolution 1894, para. 29) as well as—in reference to the 'personal greed' hypotheses of 'new war' proponents—conflict-inciting "effects of the illicit exploitation and trafficking of natural resources" (Resolution 1296).

Consequently, the deep structure of the Council's interpretation of *which* situations require its involvement to protect civilians seems highly influenced by the 'new war' narrative. Even more interesting, though, a similar pattern can be observed in the Council's invocation of *PoC* in concrete conflict situations.

4.2 Invoking PoC in the Context of Failing Statehood

While the Council's *PoC* resolutions claim to be generally applicable, I have argued in the previous section that they contain a rather specific understanding of *which* situations require particular attention by the Council. I argue in the following section that such a bias is not only visible *within* the resolutions, but impacts the *invocation* of *PoC* resolutions in other resolutions. These invocations, I would argue, are indicative of *when* the Council assumes that protection of civilians is an issue that has to be addressed.

In total, the scope of *PoC* invocation seems rather limited. Figure 2 visualizes which Council resolutions since 1999 invoked one or more of the general *PoC* resolutions at any point in the resolution text.[22] While the large majority of Council resolutions (129 in total) which invoke *PoC* resolutions (marked green in the figure) discuss concrete (conflict) situations (marked in red), 26 resolutions (marked in gray) treat a general agenda topic (rather unsurprisingly discussing the topics "Children and Armed Conflict", as well as "Women, Peace and Security" for the most part) or refer to regional areas ("Africa" and "Middle East"). The latter capture well the regional orientation of most situation specific resolutions that mostly concern conflicts in North and Central Africa.

[22] Replication data and code is available at *http://nicolasklotz.de/ma-thesis/vu-amsterdam/*.

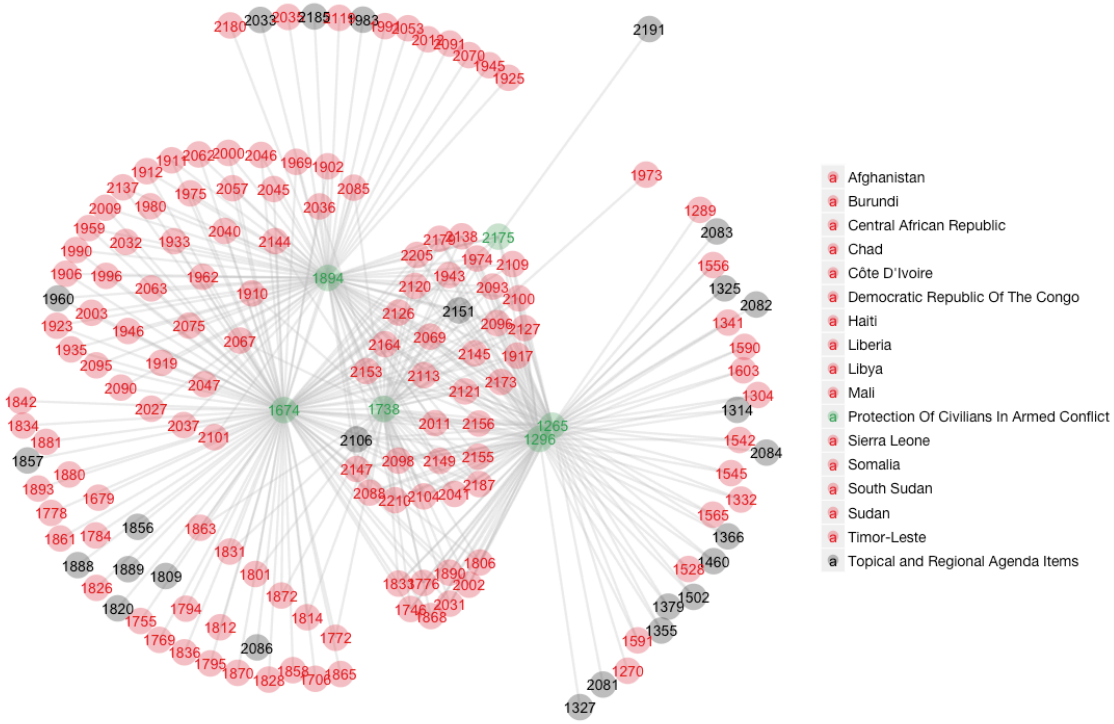

Figure 2: UN Security Council resolutions invoking PoC framework resolutions (all resolutions up to Council Resolution 2210, Source: own data and visualization)

Another apparent bias than the regional one is however more important for the purpose of the present argument: In total, the Council refers to issues of civilian protection in the context of only 15 (!) countries and conflict situations. Most of these cases either feature purely *non-international* armed conflicts or are at least characterized by significant involvement of non-state actors in fighting and constitute blatant examples of failing statehood. For instance, 10 out of the 15 countries targeted by the resolutions listed above feature among the top-20 of the *Fund For Peace*'s 2015's multi-dimensional *Fragile State Index*; among the countries considered by the Council are all the top-5 of the list. Still listed highly on position 34 (of 178), Timor-Leste ranks *lowest* of all 15 countries.[23] Of course, there is the rather obvious counterargument, that conflicts in these countries are simply the worst in terms of civilian targeting. Indeed, Hultman (2013: 59) claims based on logistic regression analyses that "the likelihood of a UN peace operation is higher in conflicts with high levels of violence against civilians." However, Figure 3 visualizes available data from the *UCDP One-sided Violence* dataset (Eck / Hultman 2007) on violence against civilians in the conflicts linked by the Council to *PoC*

[23] See *http://fsi.fundforpeace.org/rankings-2015* for the complete ranking.

issues.[24] In addition to each conflicts level of reported civilian deaths, the red ribbon indicates each years *maximum* and *minimum* number of civilians deaths (i.e. the range of civilian deaths across all recorded conflicts per year), while the solid red line indicates the yearly *mean* number of civilian deaths in all recorded conflicts *not* linked by the Council to PoC issues. Despite all possible issues in data collection (Eck / Hultman 2007: 236f.; more generally Weidmann 2015) the figure points to a rather clear tendency: with the main exceptions of the conflicts in the Democratic Republic of the Congo and in Sudan nearly all other of the conflicts were data was available feature levels of deliberate violence against civilians that is *comparable* to the mean level in all other conflicts and well below the yearly maximum. Thus, it does not seem as if the Council's invocation of its PoC framework simply mirrors material realities.

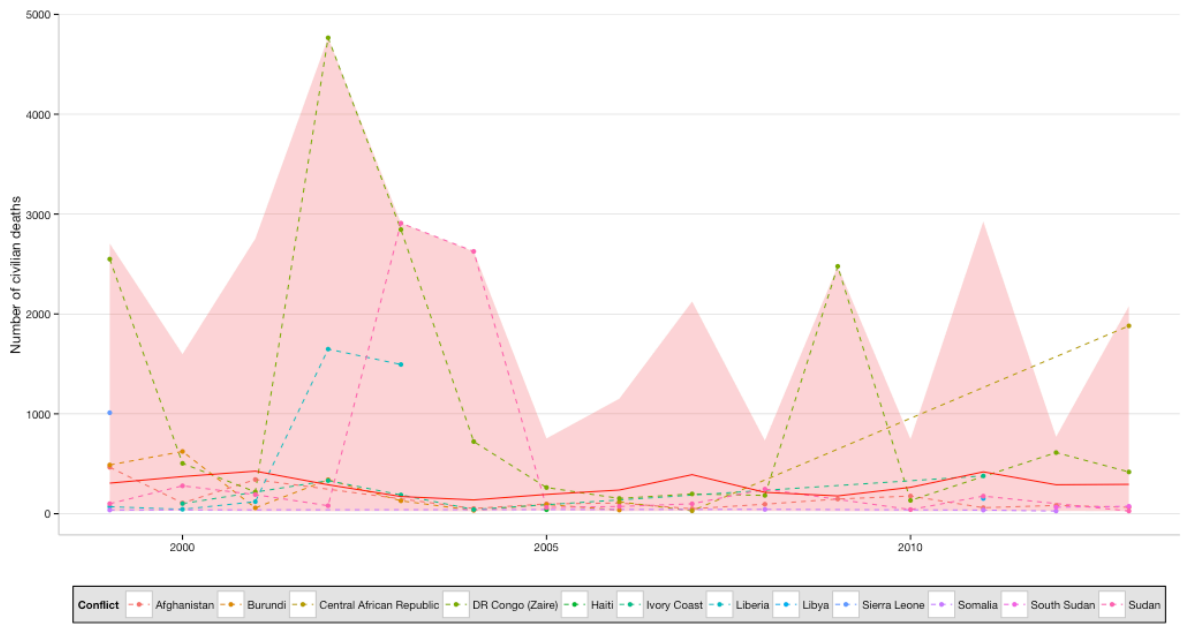

Figure 3: Number of civilian deaths in conflicts with references to PoC resolutions (source: Eck / Hultman 2007; own visualization)

[24] The dataset measures 'one-sided violence', defined as "the use of armed force by the government of a state or by a formally organized group against civilians which results in at least 25 deaths per year" (Eck / Hultman 2007: 235) which is roughly comparable to a legal understanding of a 'deliberate targeting of civilians', but the data collection procedure may of course not withstand legal scrutiny, but may provides valuable tendencies. Additionally, the Council not only refers to lethal civilian casualties but also to non-lethal violence not captured by the data. However, additional data sets, e.g. with regards to sexual violence in armed conflict (Cohen / Nordås 2013) points to similar patterns.

However, one might argue on a more qualitative level that not all of the mentioned conflicts match the 'new war' narrative outline above. For instance, the UN-mandated interventions in Afghanistan and Libya arguably constituted rather classical examples of *international* armed conflicts with the involvement of rather sophisticated armies targeting opponent governments. In the Afghan case, it is however rather telling that the Council only starts referencing *PoC* issues in 2007—arguably at a point in time, where the control by state and intervention forces is slipping away to non-state actors operating in the country—and not during the mainly state-led operations. The Libyan case is however indeed slightly different. *PoC* issues were already mentioned in the intervention-mandating Resolution 1973 (2011) which led some of the intervening NATO countries to argue that they were authorized to regime-change. "Not surprisingly, there is thus a chronic suspicion in the post-Libya context that civilian protection may be a slippery slope, or even a Trojan horse for 'regime change'" (Mégret 2014: 8)—the case may however be the exception that proofs the rule, as it is the only one so far and is sided, as I outlined before, by rather careful language in the *PoC* resolutions themselves. Furthermore, the bulk of Libya-related resolutions with references to *PoC* stems from the post-intervention period and thus again from a situation that is less characterized by interstate war but by internal conflict between an increasing number of non-state actors and a control-loosing state. A third telling example is Haiti where most resolutions with references to *PoC* (Resolutions 2012, 2070, 2119 and 2180) stem from the period after the 2010 earthquake, but only one (Resolution 1542, mandating the MINUSTAH peacekeeping mission) from the immediate context of the 2004's internal uprisings. From the author's point of view, it is questionable whether the post-2010 period constitutes a situation of (non-international) armed conflict to which international humanitarian law and the Councils *PoC* resolutions would apply. However, MINUSTAH's mandate rather point (again) to a situation of a weakened government fighting the spread of local criminal networks in the aftermaths of a natural disaster. It is thus interesting—and again, rather telling in the context of the bias towards a 'new war' narrative—that the Council purports nevertheless an interpretation of the situation under the angle of *PoC*.

The implications of such a bias are noteworthy. First, this (implicit) prioritization of only a rather low number and only certain types of conflict environments marginalizes other types of conflict and warfare and strips populations affected by these warring contexts from the Council's attention. In addition to conflicts featuring weak governments and strong non-state actors, the Council seems preoccupied with a type of warfare that does not require heavy infrastructure but relies on light weapon systems and explosives—hence one that is more typical of

the military equipment of rebel groups, militias and other non-state actors. Heavier weapon systems—which may be as dangerous (and indiscriminate) for civilians (think inter alia of cluster bombs)—require the sophisticated infrastructure still primarily provided by state militaries. However, these infrastructures are nearly completely excluded from the Council's consideration (despite the fact, that their use may very well be criticized within the vocabulary of the Geneva Conventions). As Crozier put it fifty years ago (cited in Kalyvas 2001: 115):

> "The violence of the strong may express itself in high explosives and napalm bombs. These weapons are no less discriminate than a hand-grenade tossed from a rooftop; indeed, they will make more innocent victims. Yet they arouse less moral indignation […]."

As the previous two biases, a framing and invocation of *PoC* that is deeply linked to the 'new war' narrative considerably narrows down the scope of the Council's *PoC* framework to situations of limited statehood and to civilian protection issues caused by *non-state* armed actors. In light of these three biases, it seems rather difficult to hail the Council's efforts as an extension of the civilian protection norm. However, how do we then account for these biases? I will turn to a possible explanation in the following section.

5. Biased Protection as a Reassertion of State Identity

So far, I have discussed three biases inherent to the Security Council's framing of civilian protection. Firstly, instead of relying on the Geneva Conventions' proscriptive criteria (i.e. a set of prohibited behavior) to identify populations to protect, the Council increasingly relies on ascriptive criteria and proxy categories to identify *who* to protect—a shift that moves in particular draft-aged, able-bodied men outside the scope of protection. Secondly, the Council favors a set of protection measures intended to 'rescue' these groups from the outside, but completely disregards their agency and own self-protection attempts. Thirdly, the Council invokes its *PoC* framework only very selectively and seems mainly concerned with protection issues in situations that conform to the 'new war' narrative. I have argued that these biases limit the scope of the protection norm to a worrying degree, and may—in the worst-case scenario—even provide *less* legal protection than do the Geneva Conventions. However, these raises the rather pressing question how to explain these biases?

Idealists may argue, that the Council's frequent treatment of the issue in and of itself is a success and a further sign of the "humanization of humanitarian law" and a welcome attempt to

"narrow the gap between the battlefield and the norms" (Meron 2000: 277). However, I believe that in light of the preceding discussions such points of view should at least be taken with a pinch of salt. Instead, the *pragmatist* may thus feel inclined to argue that "it is better to save lives in one case than in none" (ibid.). From such a perspective, the biases may be interpreted as harsh but necessary restrictions needed if any of the momentum of the idealist project is to be carried over into a material reality. In other words, the biases are undesirable yet inevitable concessions made during the planning and implementation of protection efforts in the resource-scarce humanitarian environment. The pragmatist may be joined in her explanation by *neo-institutionalists* who may interpret the Council's resolutions as "strategically negotiate[ed set of] functional rules" that carefully balance competing military, political, legal and humanitarian interests (Reus-Smit 2006: 19; see also Keohane 1997: 495). While such explanations may seem appealing at first sight, they are unsatisfactory in at least two ways: first, they assume that protection can be seen as a *positive-sum game*; the protection of some does at least not go to the detriment of others. However, the previous discussions rather suggest, that protection may be a *zero-sum game* where protection efforts of some may indeed worsen the protection of others. Secondly, the shift in identifying protection-worthy populations and the 'salvation' approach inherent to the discussed protection measures may only change the set of risks 'protected' groups face or even put them occasionally at greater risk. In revenge, *neo-realists* may question the causal impact of these resolutions and rather argue that they are the epiphenomenal mirror of underlying power relations between Council members (Reus-Smit 2006: 15ff.). *Neo-marxists* and *neo-colonialists* would not necessarily disagree but add that these resolutions have causal effect in the sense that they represent "a deliberate tactic that supports Western intervention" and thus help forcing "Western Neo-interventionalism" on others (Dexter 2007: 1055, 1068; Chandler 2006: 485). However, these accounts have a hard time accounting for the Council's rather limited use of interventionist language, for its focus on (consent-dependent) peacekeeping missions and for the observation, that the Council seems to invoke *PoC* primarily in situations where the independence of a peer government plays—empirically speaking—little role anymore because the state is at the verge of failing.

I do not intend to argue that these theories have no explanatory power at all. Rather, they all capture different dimensions of what according to Reus-Smit (2006: 25) constitutes together "political deliberation [and] action", namely "purposive, ethical and instrumental" types of reasoning. However, Reus-Smit identifies a forth dimension that is not captured by these explanations: "idiographic" or "identity-constitutive" reasoning (ibid.). I argue in the following,

that it is only by recognizing the identity-politics that one can gain a full picture of the processes at work. More specifically, I argue that the biases inherent to the Council's *PoC* framework are indicative of a process that reasserts the state and the community of states as the main authority on the global scene and that discards possible contenders. The mechanisms at work are twofold: on the one hand, the Council delegitimizes powerful contenders, i.e. non-state *armed* actors, by stigmatizing and criminalizing them. On the other hand, it depoliticizes non-state *non-armed* actors and relies on their plight to reassert its claim as only legitimate authority.

Despite all criticism on the validity and centrality of the concept (Koskenniemi 2011: 61ff.; Krasner 1999), *sovereignty* continues to be the central criterion of membership in the community of states (here mainly understood as membership in the main UN decision-making bodies). While Koskenniemi (2011: 62) observes that sovereignty seems to have "lost much of its normative or descriptive meaning", Werner and De Wilde (2001: 286) argue that "in order to understand the meaning of these concepts, it is more fruitful to reconstruct their use than to look for corresponding realities." As they content, 'sovereignty' as part of the legal vocabulary "is a speech act to (re–)establish the claimant's position as an absolute authority, and to legitimize its exercise of power" (Werner / De Wilde 2001: 287). In this regard, the vocabulary of "international law" and sovereignty "can serve as a focal point for discursive struggles over legitimate political agency and action […]. When states negotiated the laws of war", and, we might add, continue to discuss their interpretation and application for instance through the Council's *PoC* resolutions, "they were not just formulating and enshrining a set of rules, they were enacting and proclaiming a particular conception of legitimate statehood and rightful state action" that has "become [a] key justificatory touchstone in the constitutive political struggles of global society" (Reus-Smit 2006: 20). In other words, in defining *for whom*, *how*, *where* and *when* to 'protect', the Council members not only engage in a (technical) debate on how to regulate the issues at hand, but also reassert their "beliefs about the 'moral purpose' of the state, beliefs that define the reasons that historical agents hold for organizing their political life into centralized, autonomous political units" (Reus-Smit 2001: 528; 1999: 31).

With the shift to a "'functional' notion of sovereignty" at the turn of the millennium, the responsibility of "a ruler or government to rule a population for its own good" (Koskenniemi 2011: 63) has become such a possible 'moral purpose' and hence a legitimate claim for authority. In this regard, the claim of rightful action and moral purpose is constantly contested and thus requires repeated reassertion and rejustification. Equally, an actor's claim to fulfill

the 'moral purpose' as well as its assertion that competing actors do not, helps drawing the boundaries and answering the question who is to be included and who excluded from the community.[25]

During armed conflict, the main contestants to state sovereignty and the community of states are arguably *armed* non-state actors as they openly reject a state's claim to authority over a territory and its population.[26] As I argued before, the Council seems to focus on protection issues and to invoke its *PoC* framework mainly in conflicts involving strong non-state armed actors (consider for instance Somali warlords in relation to only locally existing state authority). By imposing a *protection frame* and hence bringing attention to the plight of 'vulnerable', 'unprotected' and 'inoffensively passive' war-affected populations, the Council *stigmatizes* those that are portrayed as mainly responsible for their suffering—non-state armed actors, according to its framing.

Based on Émile Durkheim's "insistence on the role of stigma in constituting society", Mégret argues that stigma "delineat[es] socially acceptable and inacceptable behavior, forming a society's deep sense of self, and constituting a society through the designation of its 'other'" (Mégret 2013: 288; see also Durkheim 1984). A key element for the stigmatization of behavior is its *criminalization*. As outlined before, the invocation of *PoC* implies a breach of international humanitarian law, but possibly also of international human rights law, refugee law and other applicable legal rules. Hence, the Council constantly calls to respect the law, to 'end impunity' and to rigorously apply international *criminal* law and to prosecute war criminals. The (deliberate) targeting of civilians is thus a *criminal* behavior, a behavior that goes against the moral consciousness and basic rules of society. By combining its *PoC* framing with a

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[25] I assume that communities are strictly *conservative* in the sense that members tend to defend the status quo and to avoid a reconfiguration in membership. Such an argument is of course hugely simplifying. For and foremost, it ignores members' struggles among themselves and the possibility, that some members may favour a restructuring of the community's membership to help altering their own position vis-à-vis their peers (e.g. to counter the dominance of others). From such a perspective, one should expect that it is especially the more powerful within a community that favour a conservative stance. However, as I mentioned before, questions of such internal structuring of the community of states have been excluded from consideration in this paper.

[26] Technically, one might argue that armed non-state actors aim most of the time at overthrowing a state's *government*, they are hence not a threat to the sovereignty of the state as an abstract unit and legal person, but rather to its ruling elites. Instances of secessionist conflicts in which armed non-state actors directly threaten the territorial integrity of the state are of course an obvious exception. However, also in cases where conflicts are about governing an established state, the very nation of the conduct of military operations implies that armed non-state actors are (for the period of time that they did not succeed or where not defeated) threats to a states claim of control of its territory and population.

‘new wars’ narrative, Council members portray armed non-state actors *solely* as criminals and thugs driven by private (mainly economic) goals. By stripping non-state armed actors from any political, and thus possibly more legitimate, goal their behavior (in contrast to ‘old’ international armed conflicts as purposeful and legitimate state behavior) is not only criminalized but also de-politicized—any claim they may formulate looses legitimacy in light of such allegations. To paraphrase Chandler (2006: 485): “to perceive [such] conflicts [and protection issues] as crimes to be judged and righted rather than as political conflicts to be mediated” equates the Council, and more importantly: the sovereign state, “with the neutrality of policing”. Unsurprisingly, the Council calls thus repeatedly upon states to ‘end impunity’ and to rightfully act against such actors.

Of course, such stigma could also be attached to state behavior (and occasionally is, however mostly by different actors than the Security Council). However, by carefully limiting *PoC*’s invocation to situations that involve strong non-state armed actors, and by mainly relying on a ‘new wars’ narrative that focuses on non-state armed actors as criminals, as well as by focusing on unsophisticated military behavior more typical for these actors than for states, the Council makes it *more likely* that the stigma of civilian targeting is associated with non-state actor’s behavior than with state behavior.

In addition to the stigmatization of its main contenders that pushes them outside of the margins of the community of states, the Council further reasserts its claim to legitimate authority through its portrayal of states as the main acting entities. Therefore, by relying on a ‘salvation’ approach that solely focuses on possible actions of *states*, or *state-sponsored actors* (such as UN bodies and agencies) to further the protection of civilians, these actors appear as the *only* actors engaged (and able to) engage in protection efforts. Ignoring self-protection efforts by war-affected populations has a similar effect. Such a point of view particularly allows accounting for the portrayal of civilians as ‘vulnerable’, in ‘need of protection’ and ‘passive’. In the end, opening up *PoC* to ‘hybrid protection’ models that accept that civilians may be principal protection actors on their own would make states *one legitimate actor among others* (which may indeed be a sound description of *actual* protection efforts). The marginalization of self-protecting civilians thus furthers the states’ claim as the only absolute authority, and the only authority which can legitimately claim to act on the global level.

Therefore, casting the Council’s vision of *PoC* not only as the latest installment of an idealist project, the mere result of technical considerations or interest-driven negotiations, but (at least

partially) as a result of identity-politics thus helps accounting for the three biases inherent to the Council's approach to the protection of civilians in armed conflict.

Conclusion

During the last decades, many have hailed the efforts made to further the "humanization of humanitarian law" (Meron 2000) as a means to tame the deadliness of war through legal vocabulary. In what could be considered the latest move in the process, the Security Council has since 1999 devised it's own *Protection of Civilians in Armed Conflict* agenda.

However, based on a qualitative text analysis, I argue that inherent to the Council's *PoC* framework are three biases: First, the Council shifts from the Geneva Conventions' proscriptive criteria (i.e. a set of *prohibited* behavior) to a set of ascriptive criteria (sex, age, disability etc.) and of *explicitly allowed* behavior (fleeing, working as journalist or aid worker) that link to respective proxy categories (women, children, elderly, journalists, refugees, UN personnel etc.) in order to identify *who* to protect—a shift that moves in particular draft-aged, able-bodied men that outside the scope of protection. Secondly, the Council sticks to a 'salvation' paradigm to identify *how* it should protect: these measures portray outside actors as the rescuers of the vulnerable, but entirely disregard the agency of these groups and their 'repertoires of self-protection'. Thirdly, the Council's interpretation of *when* to protect reveals a strong reliance on 'new war' narratives, that equate civilian victimization with failing statehood and the rise in power of non-state armed actors. Unsurprisingly, the Council thus invokes its *PoC* framework only very selectively and mainly in the context of non-international armed conflicts and failing states. In light of these biases, it seems rather difficult to uncritically acclaim the Council's efforts. Indeed, I have argued that these biases may limit the scope of the protection norm to a worrying degree, and may even *reduce* the legal protection provided by the Geneva Conventions.

In order to account for these biases, I have argued that idealists, pragmatist, neo-institutionalist, neo-realist and critical explanations may have some explanatory power. However, to gain a fuller picture, I contend that we can fruitfully turn to identity-politics as an explanation for these biases. I have argued that two processes are key in this regard: firstly, the Council *delegitimizes* the action of powerful contenders, i.e. non-state armed actors. By making civilian protection mainly an issue of non-state armed actors, the Council stigmatizes

and criminalizes their behavior. By portraying their actions as mainly driven by private goals, it further de-politicizes their behavior and strips them from any possibility to claim rightful authority. Secondly, by portraying civilian non-state *non-armed* actors as primarily 'vulnerable', 'in need of protection' and 'passive', the Council positions the state as the only rightful claimant of legitimate authority that can provide security (or, where the individual state fails) resort to the community of states as a backup. As much as the protection of civilians during armed conflict may thus be about the protection of war-affected populations, as much it may be about the protection of the state and the community of states.

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