Hitting the Target?

How New Capabilities are Shaping International Intervention

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‘Casualty Recording as an Evaluative Capability: Libya and the Protection of Civilians’
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Casualty Recording as an Evaluative Capability: Libya and the Protection of Civilians

Jacob Beswick and Elizabeth Minor

The Conduct of participating NATO militaries in 2011’s Operation Unified Protector aimed to minimise harm to civilians and civilian structures. In so doing, NATO sought to demonstrate compliance with international law and fulfil the mandate to protect civilians granted by UN Security Council Resolution 1973. Rigid rules of engagement, which incorporated pre-attack surveillance and restrictive attack procedures, were employed to the same end. However, by the end of the conflict, key NATO officials began to conflate the expected outcomes of precision strikes regarding the mitigation of harm to civilians with the actual outcomes. As a consequence, NATO claimed that its forces caused zero civilian casualties and that the mandate under UN Security Council Resolution 1973 was therefore comprehensively fulfilled. This claim was made without having undertaken systematic post-attack assessments, and in the absence of supporting evidence.

Knowledge of civilian deaths is vital to evaluating the operational conduct of the intervention in Libya, which was mandated to protect civilians directly. This was clearly reflected in debate within the Security Council as well as in the concerns of the media, civil society and states. This chapter argues that understanding civilian deaths is fundamental to the protection of civilians in armed conflict more broadly. To make this argument, the relationship between the mandate granted under Resolution 1973, Operation Unified Protector and the protection of civilians in armed conflict framework at the UN level is examined. In doing so, areas of vulnerability within the protection-of-civilians framework are highlighted and possible resolutions are proposed.

In light of the Libyan case, this chapter concludes, first, that there is a need for clear requirements within Security Council resolutions for operations mandated to protect civilians to systematically assess their effects on civilians; and, second, that there should be recognition that such systematic assessment can support the accountability of conflict parties and may provide the basis for legitimate (as well as legitimising) discussions on whether the operations have been effective.

Resolution 1973, Libya and the Protection of Civilians

Resolution 1973 authorised member states ‘acting nationally or through regional organisations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures ... to protect civilians and civilian populated areas under threat of attack’ in Libya, ‘while excluding a foreign occupation force of any form.’ The mandate also approved a no-fly
zone over Libya, which was an ‘important element’ for the protection of civilians, and enforced the arms embargo and asset freeze introduced in Security Council Resolution 1970 in February 2011.\textsuperscript{5} Acknowledging the (ongoing) debate over the interpretation of Resolution 1973 as enabling regime change, the discussion here instead views the resolution as it relates to the protection of civilians in order to identify recommendations.

The purpose of the protection-of-civilians framework is to ‘ensur[e] full respect for the rights of the individual in accordance with international human rights law, humanitarian law, and refugee law.’\textsuperscript{6} The UN Secretary-General and Security Council have addressed ‘five core challenges’ to the implementation of mandates to protect. Three of these are relevant to the discussion at hand: enhancing compliance of parties to conflict with their obligations under international law; enhancing the protection of civilians through UN peacekeeping and other relevant missions; and enhancing accountability for violations. Comprehensive information and casualty recording are significant in addressing these challenges.

\textit{Enhancing Accountability and UN-Mandated Missions to Protect}

In recent years, there has been a focus on the role of ‘comprehensive and reliable’ information in effectively implementing and assessing protection activities.\textsuperscript{7} Security Council Resolution 1894 (2009) reaffirmed the requirement for benchmarks and information-gathering which, as the Secretary-General explained in 2010, would enable the ‘measurement and review of progress’ of protection missions.\textsuperscript{8} This, in turn, would inform the ‘development and revision of peacekeeping and other mission mandates.’\textsuperscript{9} Fulfilling the core aims of protection mandates therefore requires that missions are accountable for their conduct insofar as they relay key information on their operations.

\textit{Enhancing Accountability and Compliance among Parties to Conflict}

Resolution 1894 also makes clear the role of information in ‘addressing in its country specific deliberations the compliance of parties to armed conflict’ with international law.\textsuperscript{10} While it recognises the existence of a ‘range of existing methods’ available ‘on a case by case basis, for gathering information on alleged violations’, it refers only to the International Humanitarian Fact-Finding Commission by name.\textsuperscript{11}

Sources of information are viewed more broadly. Resolution 1894 ‘stresses that mandated protection activities must ... [include] information and intelligence resources’ in their implementation, implying that commissions’ field investigations need not be the only source of information.\textsuperscript{12} Resolution 1894 also refers to the Secretary-General’s reports to the Council, which require ‘detailed information relating to the protection of civilians in armed conflict, including on protection-related incidents and actions taken by parties to armed conflict to implement their obligations to respect and protect the
As such, language on accountability and compliance refers to commissions as significant tools, while actors mandated to protect may be seen as key resources for relevant information.

It is worth noting that the UN Human Rights Council’s International Commission of Inquiry on Libya contributed to building a clearer picture of violations against civilians committed by all parties to the conflict. The Commission’s work has provided an assessment of the legality of NATO’s conduct, thereby addressing accountability and compliance with humanitarian law – to the extent permitted by the information that NATO provided. However, while conformity with international humanitarian and human rights law is central to the protection of civilians, a full assessment of a mission (in terms of overall harm caused or protection achieved) requires a comprehensive accounting of civilian casualties, rather than an enumeration of those casualties that could be seen as in violation of international law. Such comprehensive assessment is a distinct activity that relates to all three of the core challenges identified above.

These commitments to accountability, compliance with the law and improving protection-of-civilians missions through review are evident in Resolution 1973. In particular, the Secretary-General’s Panel of Experts and the request that ‘Member States concerned ... inform the Secretary-General immediately of the measures they take’ demonstrate this. It is worthwhile quoting the mandate placed on the Panel of Experts, who were to:

1. Gather, examine and analyse information from States, relevant United Nations bodies, regional organisations and other interested parties regarding the implementation of the measures decided in resolution 1970 (2011) and [Resolution 1973], in particular incidents of non-compliance;

2. Make recommendations on actions the Council, or the Committee or State, may consider to improve implementation of the relevant measures;

3. Provide to the Council an interim report ... and a final report to the Council ... with its findings and recommendations.

The continuities between the protection-of-civilians framework, its aspirations within the core challenges and Resolution 1894, and the mandate to intervene in Libya are quite clear. However, given the omission by NATO and the Panel of Experts to systematically ‘gather, examine, and analyse information’ on civilian casualties caused by the intervening forces, implementation did not match policy aspirations. Indeed, the Panel of Experts’ reports included information on all aspects of the mandate except civilian harm. So how are the objectives laid out by the broader protection-
of-civilians framework engaged and assessed by the very institution that mandated them in the first place?

The next section examines this disjuncture by looking at statements made by NATO representatives, in addition to restrictions placed on NATO forces by Resolution 1973.

**Unified Protector and Resolution 1973**

At a press conference on 24 October 2011, near the conclusion of *Unified Protector*, Lieutenant General Charles Bouchard articulated NATO’s position on the implementation and outcome of the operation:

> The operational concept was a simple one – protecting the civilian population from Qadhafi forces, and in doing so, ensuring no civilian casualties. We did that through very careful targeting process and precision munitions and courageous restraints ... Throughout we stayed focused on the mandate, to protect the population, to ensure a No-Fly Zone and to conduct the embargo.

Bouchard’s statement covers the ‘strategic objective’ informed by Resolution 1973 to directly protect civilians; the ‘operational concept’ referring to the procedures undertaken to achieve that objective, including mitigation strategies; and the outcome of ‘ensuring no civilian casualties’. In this case, as well as in statements made by NATO Secretary-General Anders Fogh Rasmussen, the logical flow demonstrates an unproblematic relationship of causality between objectives, operations and ideal outcomes.

Commitment to directly protecting civilians and ensuring zero civilian casualties inevitably raises questions regarding the means of evaluation. With civilians’ safety a priority, NATO upheld rigid rules of engagement, which incorporated cautious targeting procedures and weapons systems designed to minimise civilian harm. However, the expected results of mitigation strategies, though they may be based on rigorous targeting protocols, are not the same as empirically informed conclusions concerning actual outcomes. Indeed, the dependence on mitigation strategies for providing vital information on civilian deaths runs contrary to the aspirations within the protection-of-civilians framework as discussed above.

In addition to mitigation strategies, NATO conducted battle-damage assessments (BDAs) to investigate attack sites. These were ‘conducted when possible to determine damage and otherwise evaluate the effects of the strike’; however their efficacy and frequency of use are publicly unknown. Furthermore, ‘additional assessment’, though this was not clarified further, ‘was carried out where possible in instances where there was a claim of civilian casualties.’
The means of acquiring information to assess are key to the development of this chapter’s argument. As Peter Olson (legal adviser to the Secretary-General and international staff of NATO) notes, information on civilian harm was acquired through ‘extensive air and intelligence, surveillance and reconnaissance assets of all kinds, as well as video footage and other evidence [such as] open source and media reporting.’ However, when compared to the findings of NGOs, the Commission of Inquiry instigated by the Office of the High Commissioner for Human Rights and the New York Times, all of which were acquired through on-the-ground assessments, the efficacy of BDAs and mitigation strategies to ensure zero civilian casualties proves inadequate, and cause for serious consideration of a more systematic approach. Greater transparency of NATO’s methods of acquiring information would enable scrutiny of strengths and weaknesses. Moreover, there is an opportunity for clarifying what can and cannot be used to successfully assess the impacts of an operation on the civilian population.

Importantly, in the Libyan case it must be understood that the very mandate to protect, whose core elements were rooted in resolutions such as 1894, restricted NATO’s access to attack sites by prohibiting ‘boots on the ground’. As a consequence, the mandate excluded systematic assessments by NATO. Nevertheless, the logic employed by Bouchard and Rasmussen and the capability of the assessment methods used remains questionable. Thus, regardless of the operational constraints, more needs to be done to collect information to enhance accountability, compliance and protection missions more generally.

Reflecting on the Protection of Civilians and the Mandate to Protect
The protection-of-civilians framework within the Security Council can be viewed as a ‘strategic toolkit ... [that] continues to expand’, within which aspirations are articulated and mandated. These mandates, in addition to the rules of engagement of a particular mission, are a ‘legally binding instruction on when, where, and how soldiers may use force’ and ‘help the operation’s leadership and field personnel define the mission and its goals.’ Along with the use of force, the particularities of mandates, such as information-gathering, should remain equally binding.

Despite this, a challenge remains: in UN peace operations, ‘armed forces of Member States ... do not have clear concepts or doctrinal guidance on what it means to “protect civilians”’, resulting in a ‘conceptual gap [that] has led to operational gaps in the field.’ This chapter argues that similar gaps exist in relation to information-gathering in the case of Libya.

While Resolution 1894 contributes to articulate the role information plays in addressing the core challenges discussed above, it fails to stipulate what kinds of information are essential. While this issue has been addressed in general
terms by the Department of Peacekeeping Operations, the Office for the Coordination of Humanitarian Affairs and even the Secretary General, mission mandates need to clarify in specific terms what information is regarded as essential. The case of Libya is helpful in discerning this ‘gap’ insofar as civilian deaths became a de facto benchmark by which the international community understood the efficacy of protection achieved through *Unified Protector*. After all, it was through civilian deaths that questions of accountability, compliance and the efficacy of protection were publicly evaluated both within and outside the Security Council.

Applying this conclusion to protection-of-civilians missions more broadly has its challenges. However, from Resolutions 1894 and 1973, it is evident that while information on conduct is essential for addressing these challenges, there should be clarity as to who is responsible for collection and what means are suitable for assessments. Moreover, the role of such information should contribute to the formulation of mandates. As was the case with Resolution 1973, by prohibiting ‘boots on the ground’, the Security Council created a challenge to NATO’s capability for systematic assessments.30

What a systematic assessment may look like is another matter. In general, UN peacekeeping missions systematically acquire information through human rights components and the Department for Peacekeeping Operations’s Joint Operations Centres and Joint Mission Analysis Centres.31 However, in the light of Resolution 1973 and *Unified Protector*, this chapter argues that casualty recording should be considered as fundamental to future information-gathering work.

**Casualty Recording**

Casualty recording is the comprehensive, systematic and continuous documentation of individual conflict deaths or the incidents in which these occur, with the public release of this information when it is safe to do so. This provides a fundamental type of data contributing to systematic information about protection-of-civilians operations, and has a variety of operational and other benefits within the framework.32 This chapter recommends that a requirement for casualty-recording should be incorporated into any Security Council mandate for military engagement which invokes the protection of civilians. For effective implementation, this is the key level at which casualty-recording activity needs to be authorised, the actors who must carry it out defined, and the reporting and integration of findings into other procedures (such as accountability or lessons learned) set out.

Granular data on casualties can contribute to understanding developing threats to protection and whether civilians are being adequately protected, as well as generating information useful to accountability and lessons-learned processes. Data can contribute to enhancing compliance by supporting the
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There are a variety of methods for recording casualties. Recording should start as soon as possible, even if the information available is not detailed, and continue for as long as necessary in order to develop the most comprehensive and useful record. In terms of military intervention, this means that any information initially available to militaries through their internal assessment procedures should be supplemented by mandated on-the-ground investigations carried out by these forces as soon as it is safe to do so. The authors’ research also shows the uses and potential benefits of casualty-recording, which are relevant to its incorporation into mandates for military engagement and the designing of procedures for recording.

There are different ways to record casualties that are possible under different circumstances, including at different points during or after conflict. These will give different levels of certainty and detail, and often have different uses. For records to be meaningful and distinguishable, recording must include the date, location, numbers killed and a description of the violent incident (for instance, the weapons used). Distinguishing individual casualties by name is also methodologically important and enables a deeper investigation into the consequences of conflict. Work done at different stages of conflict or through different methods can provide a starting point for, or feed into, more detailed types of investigations which may be done later. When done to the comprehensive standard that the Oxford Research Group calls for, casualty-recording means systematically collecting a wide range of specific details useful for building a very detailed knowledge of individuals killed (including both personal details and information about affiliations, such as combat status), actors responsible for their deaths and incidents for every case.

The spectrum of recording is demonstrated in Figures 1–5, which illustrate how different approaches to casualty recording are connected. These are drawn from the authors’ research into current casualty-recording practice. The potential relevance of different parts of the spectrum to practice during military intervention is noted where applicable. The explanation should be read by numbered step with reference to numbered areas on the illustrations.
At different stages during and after conflict (1), different approaches, offering different levels of certainty, will be possible (2). What is feasible will depend on the context, including the types and quality of sources available and investigations that recorders are able to do (3). These produce different types of results (4), uses or benefits (5).

**Figure 2: A Scenario during Conflict.**

During intense conflict, certain sources containing information about casualties might be available (6), which might include information collected through battle-damage assessments. It may not be feasible to independently investigate the information given by these sources, but this can be aggregated and corroborated (7) into a database of incidents (8). Combined with mapping technology, this database can be useful to risk and needs assessments (9). It
can also provide analysis useful to formulating policies to reduce violence or examining existing policy limitations (10).

**Figure 3: When the Context Changes.**

With a change in the context (for example, violence has decreased) different sources and investigative possibilities will become available (11). Work that has already been done can provide a baseline or starting point for new investigations. That is, it can give indications about where further investigations should be directed, and records that can be built on and added to (12). During military interventions, where incident-level information cannot be created from battle-damage assessments, operational information could at least provide indications for where and when incidents causing casualties may have occurred.

**Figure 4: More Detailed Investigation.**
New investigations may be detailed, on-the-ground and use new sources to build a more detailed and certain picture (13). Such investigations could produce a more comprehensive, detailed database about individual casualties, building on an existing database of incidents (14). Such records can contribute to more sophisticated policy analysis and to procedures requiring a greater standard of proof or level of detail, such as assigning compensation or evaluating the conduct of participants to conflict (15). This type of on-the-ground investigation should be mandated for military interventions to take place at the earliest possible point. For an intervention such as *Unified Protector*, where no on-the-ground presence for combat was mandated, this would be when military operations cease. For other operations where forces are already present on the ground, investigation should be an ongoing part of intervening forces’ responsibilities.

After conflict, previous investigations can assist work to search for and determine the fate of missing people, investigate graves and identify unknown remains (16).

**Figure 5:** Completing the Diagram – Missing People, Memorialisation and Legal Processes.

This is needed to end families’ uncertainty about the fate of their loved ones, and to return their relatives’ remains (17). The identification of unknown remains contributes to a more comprehensive picture of casualties, which are not limited to the missing (18). Information from a comprehensive and detailed database of casualties or from unidentified remains can contribute to memorialisation (19). Casualty records do not constitute legal analysis, but do provide information either on individual cases or on patterns of harm that can be used to make legal determinations (20). This can contribute to enhancing compliance with the law and accountability of conflict parties.
Conclusion
This chapter has explored the relationship between Resolution 1973, its implementation in Operation *Unified Protector*, and the protection of civilians in armed conflict framework at the UN, to illustrate the importance of systematically recording civilian casualties. While demonstrating a variety of recording methodologies available, the argument holds that the pursuit of the core challenges to the protection-of-civilians framework requires systematic information on casualties. Such information – its acquisition and analysis – should be given a clear and fundamental role when drafting Security Council resolutions mandating protection.

The Libyan case proves helpful, in that it illustrates areas where shortcomings in the mandating resolution undermined broader protection-of-civilian aspirations:

- Mandates to protect civilians require clarity regarding the obligations – in terms of procedures and responsible parties – to collect information on civilian harm
- Through the clarification and implementation of systematic assessment measures for casualty-recording, accountability, compliance with the law and greater understanding as to the efficacy of missions to protect can be better realised.

Within the UN Secretariat, numerous agencies are currently working towards building capacities to obtain improved information on civilian harm and casualties. There is an undeniable bureaucratic and logistical complexity in determining which agencies are most suitable for undertaking such assessments in a given conflict environment. However, the research findings on the range of existing practices presented here provide a set of considerations which those drafting and operationalising mandates for the protection of civilians can usefully keep in mind.

Notes and References


11. *Ibid.* Ad hoc commissions and commissions of inquiry are also vital in this regard, and are found in other resolutions and reports by the UN Secretary General.

12. *Ibid.* Indeed, the DPKO hosts Joint Operational Commands and Joint Mission Analysis Centres for the purpose of informing field and headquarters staff. However, it is unclear to the authors whether the quality of data produced through these entities is of the same high standard as that produced by commissions.


14. Commissions of inquiry do not seek ‘evidence of a standard to support a criminal conviction, but an assessment based on a “balance of probabilities” to determine whether a violation had occurred.’ In so doing, the UN Human Rights Council’s International Commission concluded that NATO ‘conducted a highly precise campaign with a demonstrable determination to avoid civilian casualties … [though on limited occasions where attack sites] showed no evidence of military utility … the Commission was unable to draw conclusions … on the basis of the information provided by NATO and recommends further investigation.’ UN, ‘Report of the International Commission of Inquiry on Libya’, A/HRC/19/68, 2012, pp. 2, 5.


20. This is a key concept. While operations in Afghanistan have an indirect objective of protecting civilians, in the Libyan case the direct goal was to protect civilians.

22. Letter from Peter Olson, 23 January 2012; UN, ‘Report of the International Commission of Inquiry on Liberty’, 2012, p. 205, emphasis added. It was explained to the authors by a NATO representative that further information on the matter is kept secret for security reasons.


24. Ibid.

25. Take, for instance, the 9 September 2011 attack in Sirte, in which Human Rights Watch found two dead civilians, and the 8–9 August 2011 attacks in Majer, in which thirty-four people died. In these cases, as NATO reported to the UN International Commission of Inquiry on Libya, no battle-damage assessments were undertaken. Human Rights Watch, ‘Unacknowledged Deaths’, May 2012, pp. 67, 69; UN, ‘Report of the International Commission of Inquiry on Libya’, pp. 214–15.


27. Hugh Breakey, ‘The Protection of Civilians in Armed Conflict: Four Concepts’, in Angus Francis, Vesselin Popovski and Charles Sampford (eds), _Norms of Protection: Responsibility to Protect, Protection of Civilians and their Interaction_ (Tokyo: United Nations University Press, 2012), pp. 48–53. This is reflected by Holt, Taylor and Kelly: ‘the Council’s conceptualisation of the protection of civilians has varied over time. It has used the term “protection of civilians” in relation to protection norms set out in the Geneva Conventions and subsequent Protocols’. Alternatively, it has used the term in a much more narrow sense to describe the mandated role of peacekeepers ‘to provide physical protection’ through their use of ‘military capability in the field either to deter attacks on civilians or, sometimes, to use force to defend civilians from attack’.” Victoria Holt, Glyn Taylor and Max Kelly, ‘Protection of Civilians in the Context of Peacekeeping Operations’, independent study jointly commissioned by United Nations DPKO/OCHA, 2009, pp. 25–26. The ‘five core challenges’ elaborated by Secretary General Ban Ki-moon are a good example of how the Security Council’s protection-of-civilians framework shapes aspirational and operational policies.


30. In addition to the fundamental role of the Security Council in formulating mandates, it is acknowledged that there must be political will by member states generally, and those in the Security Council in particular, for the argument to be fulfilled.

31. The Oxford Research Group is currently undertaking research into such entities.


34. That every casualty of armed violence is promptly recorded, correctly identified and publicly acknowledged is the call of the Every Casualty Campaign. See <www.everycasualty.org/campaign>, accessed 13 March 2013.