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THE ROLE OF THE SECURITY COUNCIL IN ENHANCING THE PROTECTION OF CIVILIANS IN ARMED CONFLICTS

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¹ The views expressed do not necessarily reflect those of the United Nations Office for the Coordination of Humanitarian Affairs.

² Security Council resolution 1270 (1999), OP 14, (UN Doc S/RES/1270, 22 October 1999). More specifically, acting under Chapter VII of the United Nations Charter, the Council decided that "UNAMSIL may take the necessary action ... within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence, taking into account the responsibilities of the Government of Sierra Leone and ECOMOG (The Military Group of the Economic Community of West African States).

³ UN Doc S/1999/957, 8 September 1999.

⁴ Security Council resolution 1265 (1999), (UN Doc S/RES/1265, 17 September 1999). In this resolution the Security Council outlined for the first time a broad understanding of the protection of civilians, encompassing the promotion of compliance with international humanitarian law, human rights and refugee law; the need for accountability for perpetrators of serious violations of international humanitarian law; the circulation of small arms and light weapons; disarmament, demobilization and reintegration; and humanitarian access, as well as the specific impact of armed conflict on women, children, refugees and internally displaced persons.

⁵ On the challenges raised by the implementation of peacekeeping operations' protection of civilians mandates see, for example, Victoria Holt and Glyn Taylor, *Protecting Civilians in the Context of UN Peacekeeping Operations: Successes, Setbacks and Remaining Challenges*, independent study jointly commissioned by the Department of Peacekeeping Operations (DPKO) and the Office for the Coordination of Humanitarian Affairs (OCHA), United Nations, (2009). <https://docs.unocha.org/sites/dms/Documents/Protecting%20Civilians%20in%20the%20Con>

A. THE SECURITY COUNCIL AND THE PROTECTION OF CIVILIANS

I. The first decade

1999 was a watershed year for the United Nations Security Council's engagement on the protection of civilians in armed conflict. In the wake of a number of high-profile failures by peacekeeping missions to protect civilian populations in contexts where they were deployed, for the first time, the Security Council specifically authorized a peacekeeping mission, the UN Mission in Sierra Leone (UNAMSIL), to afford protection to civilians under imminent threat of physical violence.² In the same year the Council also introduced the protection of civilians in armed conflict as a specific item on its agenda, requesting a dedicated report by the UN Secretary-General.³ This led to the adoption of the first thematic resolution on the topic, highlighting ways the protection of civilian populations in armed conflict could be enhanced.⁴

Initially, the link between the Security Council and the protection of civilians was primarily through the prism of the role of peacekeeping operations in providing protection from threats of physical violence, a topic that fell squarely within the Council's role under Chapter VII of the UN Charter. How could peacekeeping operations' role in protecting civilians be enhanced?⁵ While this has remained an important dimension of the Security Council's focus, in the years since 1999, as it has grown increasingly comfortable with its role in promoting the protection of civilians more generally, the Council has incrementally moved to address a wider range of protection concerns experienced by civilians in armed conflict, adding humanitarian and human rights elements to the security

text%20of%20UN%20Peacekeeping%20Operations.pdf. See also, Haidi Willmot and Scott Sheeran, "The protection of civilians mandate in UN peacekeeping operations: reconciling protection concepts and practices", *International Review of the Red Cross*, (2013), 95, 517; and Haidi Willmot and Ralph Mamiya, "Mandated to Protect: Security Council Practice on the Protection of Civilians", in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law*, (2015).

⁶ In 1999 the Security Council also added the topic of children and armed conflict to its agenda, adopting the first thematic resolution on this topic in August 1999 (Security Council resolution 1261 (1999), (UN Doc S/RES/1261, 30 August 1999). In resolution 1612 (2005), (UN Doc S/RES/1612, 26 July 2005), the Council endorsed the establishment by the Secretary-General of a monitoring and reporting mechanism to regularly report on six grave violations committed against children in situations of armed conflict, and requested parties to armed conflict listed in the Annexes to the Secretary-General's annual report on children and armed conflict for having recruited or used children in situations of armed conflict to develop and implement action plans, in close consultation with UN peacekeeping operations and UN Country Teams, to put an end and prevent such recruitment and use. In the same resolution, the Security Council established a subsidiary body – the Working Group on Children and Armed Conflict – for the consideration of issues pertaining to Children and Armed Conflict (see <http://www.un.org/sc/committees/WGCAAC/>).

The topic of Women, Peace and Security (WPS) was added to the Council's agenda in 2000, and the first resolution on this issue was adopted in the same year (Security Council resolution 1325 (2000), (UN Doc S/RES/1325, 31 October 2000)). The WPS agenda item is broad, covering issues that are specific to situations of armed conflict, such as sexual violence in conflict and the role of women in peace processes, as well as issues that are of relevance at all times, such as women's empowerment and gender equality. Although it is not a self-standing item on the Council's agenda, sexual violence in armed conflict has been addressed in specific open debates and in Security Council resolutions since 2008 (UN Doc S/RES/1820, 19 June 2008). In resolution 1960 (2010) the Council established mechanisms similar to those for children and armed conflict to respond to sexual violence in conflict: monitoring and reporting arrangements and the elaboration of actions plans by parties listed as having committed sexual violence to put an end to it and prevent its recurrence. The only difference is the absence of a Security Council Working Group. (UN Doc S/RES/1960, 16 December 2010).

⁷ UN Docs S/1999/957, 8 September 1999; UN Doc S/2001/331, 30 March 2001; UN Doc S/2002/1300, 26 November 2002; UN Doc S/2004/431, 28 May

dimension. In thematic and country-specific resolutions it has called upon parties to armed conflicts to comply with their obligations under international humanitarian law, human rights and refugee law. It also regularly addresses specific protection concerns such as humanitarian access, displacement, conduct of hostilities, sexual violence, the impact of armed conflict on children and women, the rule of law, weapons issues, and accountability. In fact, some of these issues now constitute separate and self-standing items on the Security Council's agenda with associated working groups, monitoring and reporting mechanisms, open debates and resolutions.⁶

There have now been eleven Secretary-General reports, issued at 18 month intervals;⁷ six thematic resolutions;⁸ and eleven presidential statements⁹ on the protection of civilians in armed conflict. In addition to the open debates to discuss the Secretary-General's periodic reports, since 2006 the Security Council has hosted six-monthly open debates on the topic. These debates commence with a briefing by the Emergency Relief Coordinator/Under Secretary-General for Humanitarian Affairs, who gives a general overview of the main trends, issues and country-specific protection concerns. Frequently the presidency of the Security Council also invites other speakers including, most notably, the International Committee of the Red Cross, which provides an update on the main challenges to the implementation of international humanitarian law, as well as high-level representatives of UN entities involved in the protection of civilians, such as the Office of the High Commissioner for Human Rights, the Department of Peacekeeping Operations, or the United Nations Entity for Gender Equality and the Empowerment of Women. Briefings are followed by statements by Security Council and other Member States.

The Council also has recourse to "Arria-formula meetings" on the protection of civilians. These are informal gatherings that enable Security Council members to engage in a direct dialogue with a variety of actors, including international and non-governmental organisations, to obtain additional, and often first-hand, information on particular protection concerns.

The first decade of the Council's engagement on protection of civilians can be seen as a gradual familiarization with the topic in terms of range of issues falling within the concept of protection and possible Council action to address them. A decade after its first thematic consideration of the topic, the Council had come to accept that enhancing the protection of civilians in armed conflict as a central element of its role in the maintenance of international peace and security.

2004; UN Doc S/2005/740, 28 November 2005; UN Doc S/2007/643, 28 October 2007; UN Doc S/2009/277, 29 May 2009; UN Doc S/2010/579, 11 November 2010; UN Doc S/2012/376, 22 May 2012; UN Doc S/2013/689, 22 November 2013; and UN Doc S/2015/1453, 18 June 2015.

⁸ Security Council resolution 1265 (1999), (UN Doc S/RES/1265, 17 September 1999); Security Council resolution 1296 (2000), (UN Doc S/RES/1296, 19 April 2000); Security Council resolution 1674 (2006), (UN Doc S/RES/1674, 28 April 2006); Security Council resolution 1738 (2006), (UN Doc S/RES/1738, 23 December 2006); Security Council resolution 1894 (2009), (UN Doc S/RES/1894, 11 November 2009); and Security Council Resolution 2175 (2014), (UN Doc S/RES/2175, 29 August 2014); and Security Council Resolution 2222 (2015), (UN Doc S/RES/2222, 27 May 2015). All these resolutions were discussed and adopted by the Security Council under its protection of civilians agenda item. While resolutions 1265 (1999), 1296 (2000), 1674 (2006), and 1894 (2009), address the protection of civilians in a general and holistic manner, including its security, humanitarian and human rights dimensions, resolutions 1738 (2006), 2175 (2014) and 2222 (2015) focus on specific issues. The protection of journalists, media professionals and associated personnel (resolutions 1738 and 2222), and the protection of United Nations and humanitarian personnel (resolution 2175).

⁹ UN Doc S/PRST/1999/6, 12 February 1999; UN Doc S/PRST/2002/6, 15 March 2002; UN Doc S/PRST/2002/41, 20 December 2002; UN Doc S/PRST/2003/27, 15 December 2003; UN Doc S/PRST/2004/46, 14 December 2004; UN Doc S/PRST/2005/25, 21 June 2005; UN Doc S/PRST/2008/18, 27 May 2008; UN Doc S/PRST/2009/1, 14 January 2009; UN Doc S/PRST/2010/25, 22 November 2010; UN Doc S/PRST/2013/2, 12 February 2013; and UN Doc S/PRST/2014/3, 12 February 2014.

¹⁰ UN Doc S/2001/614, 21 June 2001.

¹¹ *Aide Memoire for the Consideration of Issues pertaining to the Protection of Civilians in Armed Conflict*, UN Doc S/PRST/2002/6, 15 March 2002; and UN Doc S/PRST/2003/27, 15 December 2003, respectively.

¹² UN Doc S/PRST/2009/1, 14 January 2009.

2. THE SECOND DECADE

In the second decade, the Council's engagement on protection of civilians entered the next phase. Efforts now turned to translating the important thematic framework it had developed into its country-specific work in a more systematic and consistent manner, with the ultimate aim of achieving more effective and better-coordinated protection efforts on the ground. Doing so required progress and innovation on two fronts: finding ways of reminding all Council members of how specific protection concerns had been addressed in resolutions in the past; and ways of providing more detailed information on the actual protection situation in the countries under review. In the years immediately preceding Portugal's membership of the Council means were found for addressing both issues.

a. The revised Aide Memoire

As part of its process of familiarization with protection of civilians concerns, and in order to facilitate its consideration of such issues, in 2001 the Security Council had called for the elaboration of an Aide Memoire on the protection of civilians.¹⁰ The Council adopted a first version of the Aide Memoire in 2002 and a second version the next year, calling for it to be kept updated as required.¹¹

The two first editions of the Aide Memoire listed a wide array of protection concerns and suggested, in rather general terms, issues for consideration by the Council. The aim of the document was to accustom the Council with these issues in a gradual manner. This meant that particular topics were addressed in broad strokes or only partially. For example, the section on peacekeeping forces in the 2002 edition of the Aide Memoire only mentioned the need to ensure their adequate sensitization to issues pertaining to the protection of civilians. Some protection concerns were addressed in rather narrowly, focusing on specific issues that had arisen recent years. For example, the section on displacement focused exclusively on the separation of armed elements in mixed refugee flows.

The third version of the Aide Memoire, adopted by the Council in 2009, was significantly more focused, analytical and detailed, both in terms of the protection concerns addressed but also in terms of the possible Council action suggested for responding thereto.¹² It also reflected the important advances in the Council's work on protection since 2003, including, in particular, in relation to children and women.

The 2009 version of the Aide Memoire identified the most prevalent and serious protection concerns with the most immediate impact on civilians, grouping them in three sections. The first section focused on general protection concerns pertaining to the conflict-affected population and included the protection of, and assistance to, the conflict-affected population; displacement; humanitarian access and safety and security of humanitarian workers; conduct of hostilities; small arms and light weapons, mines and explosive remnants of war; compliance, accountability and the rule of law; and media and information. The second and third sections addressed the specific protection concerns of children and women affected by armed conflict respectively.

This version of the Aide Memoire was also far more focused than previous editions in terms of possible Council action, and highlighted, for each issue, specific actions that the Council could take, ranging from calling upon parties to the conflict and other relevant states to take specific measures, to the actions that the Council itself could take, such as giving particular mandates to UN peacekeeping operations; the imposition of targeted measures against persons or groups suspected of having committed violations of IHL or human rights law, or human rights abuses; the establishment of ad hoc judicial mechanisms or commissions of inquiry; and the referral of situations to the International Criminal Court. It also provides examples of past resolutions where the Council had taken the suggested action.

A further useful innovation was the inclusion, in an Annex to the Aide Memoire, of a compilation of language taken from Security Council resolutions and Presidential Statements, illustrating precisely how the Council had addressed particular protection concerns in the past. The Council tends to be cautious when drafting resolutions, frequently resorting to past language to avoid lengthy negotiations of new language, as well as the risk of unintended consequences thereof. A recurring question when discussing whether and, if so, how to address a specific point in a resolution is how it has been addressed in the past. While permanent Council members may be aware of precedents although not inevitably, because of staff turn over at the New York mission elected members are less likely to have the same historical memory. The Annex makes relevant past language easily accessible to Council members and by means of precedents that have addressed a particular issue in the most legally accurate and operationally effective manner.

Country-specific Council resolutions frequently addressed protection concerns, but in an inconsistent manner, both in terms of which concerns were included and also in terms of the language used. As its name suggests, the Aide Memoire aims to assist the Council in adopting a more consistent and informed

¹³ See UN Doc S/PRST/2010/25, 22 November 2010; and UN Doc S/PRST/2014/3, 12 February 2014, respectively.

¹⁴ The policy sets out measures that all UN entities must take to ensure that any support that they may provide to non-UN forces is consistent with the purposes and principles set out in the UN Charter and with the UN's responsibility to respect and promote. See UN Doc A/67/775 – S/2013/110, 5 March 2013, http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/110&referer=http://www.un.org/en/sc/documents/letters/2013.shtml&Lang=E.

¹⁵ Three missions with such a mandate are currently in activity: the United Nations Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), the United Nations Stabilization Mission in Mali (MINUSMA), and the African Union Mission in Somalia (AMISOM).

¹⁶ There have been isolated instances in which the Security Council has requested a dedicated protection of civilians report in particular contexts, as was the case, for example, in relation to Chad and the Central African Republic (CAR) (request in UN Doc S/PRST/2010/29, 20 December 2010, and report in UN Doc S/2011/278 of 29 April 2011); or where missions prepare periodic protection of civilians reports *proprio motu* is the case for the United Nations Assistance Mission for Afghanistan (UNAMA). (The most recent UNAMA annual protection of civilians was report was issued in February 2015, and is available at <http://www.unama.unmissions.org/Portals/UNAMA/human%20rights/2015/2014-Annual-Report-on-Protection-of-Civilians-Final.pdf>.)

However, these cases are the exception rather than the norm, even though the Council routinely calls for regular reporting on human rights and international humanitarian law, by a variety of modalities, for example by requesting the Secretary-General to report to the Council on specific developments in his country-specific reports (see, for example, Security Council resolution 2014 (2103), OP 18, (UN Doc S/RES/2104, 29 May 2013); or by requesting peacekeeping and other UN Missions to report directly to the Council (see, for example, Security Council resolution 2012 (2013), OP 2(e), (UN Doc S/RES/2102, 2 May 2013). Two peacekeeping missions – the UN Operation in Cote d'Ivoire (UNOCI) and the UN Mission in South Sudan (UNMISS) – are mandated by the Council to issue public human rights reports (Security Council resolution 2000 (2011), OP 7(g), (UN Doc S/RES/2000, 27 July 2011); and Security Council resolution 2155 (2014), OP 4(b), (UN Doc S/RES/2155, 27 May 2014), respectively.

approach. Council members have found the methodology adopted in the 2009 version of the Aide Memoire extremely useful.

Since 2009 the Aide Memoire has been revised and updated twice: in November 2010 and in February 2014.¹³ The 2014 edition retains the same structure as the 2009 version and includes six new subsections on the following emerging issues: the condemnation of wilful impediments to the implementation of peacekeeping and other relevant missions' mandates; reporting on the implementation of the UN Secretary-General's Human Rights Due Diligence Policy on UN Support to non-UN Security Forces by UN actors on the ground;¹⁴ the possibility of relying on violations of international law involving forced displacement as a trigger for the imposition of UN sanctions; the adoption of general exemptions to UN sanctions to facilitate the provision of humanitarian assistance; requests to parties to armed conflict – including a UN-authorized missions mandated to conduct or support offensive operations – to adopt and implement precautionary measures to mitigate the risk of harm to civilians or civilian objects;¹⁵ and calls to parties to armed conflict to pay particular attention to the disarmament, demobilization and reintegration of children associated with armed forces and groups.

b. The Expert Group

Equally important in assisting the Council to address protection concerns in a consistent, relevant and effective manner is detailed and up to date information on the situation on the ground in contexts under review. The Secretary-General issues periodic reports in advance of the renewal of the mandate of peacekeeping or other missions, to provide an update on the situation on the ground and on the implementation of the mandate. While these are useful resources, they do not enter into protection concerns in detail, frequently focusing on points of immediate relevance to the mandate.¹⁶

At times, the Secretary-General's reports present an overly positive picture of situation on the ground and progress achieved. Moreover, protection actors operating on the ground that are not part of UN system are not involved in a direct and timely manner in the preparation of these reports, something that may lead to the omission of valuable input. While larger Council members frequently have diplomatic or other presences on the ground in the contexts under review that can provide additional information, this is by no means the case for all members.

In view of this, means had to be found for providing all Council members with additional information on key protection concerns in advance of their consideration of a particular context and adoption of resolutions.

To address this need, in early 2009, the United Kingdom, the “lead” state on protection of civilians on the Council, established an informal Expert Group on the protection of civilians in armed conflict. Chaired by the United Kingdom, the Group meets to discuss protection of civilians issues in the context of upcoming deliberations on specific situations or items on the Council’s agenda. In particular, the Expert Group has met regularly to discuss protection concerns ahead of negotiations of the authorisation, creation or renewal of the mandates of missions or operations with a protection role – mainly UN peacekeeping operations, but also some UN special political missions (the UN Mission in Iraq, UNAMI, and the UN Assistance Mission in Afghanistan, UNAMA) and other missions authorized by the Council such as the African Union Mission in Somalia (AMISOM), the hybrid UN-African Union Mission in Darfur (UNAMID), and the now terminated, NATO-led, International Security Assistance Force in Afghanistan (ISAF). On the basis of information collected from UN and other humanitarian and human rights actors operating in the context under review, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) presents the key protection concerns, highlighting new developments and provides an update of how the situation has evolved and how protection-related elements of previous resolutions have been implemented. On the basis of the Aide Memoire and its Annex, OCHA then suggests possible ways specific protection concerns could be addressed in the forthcoming resolution.

The Expert Group was intentionally established as an informal and interactive forum to facilitate as frank a discussion as possible on the situation on the ground and ways for the Council to enhance protection. Briefing and attendance is at working-level and the Group itself does not generate any documents. In recognition of the role of peacekeeping and other missions or operations authorised by the Council in the protection of civilians, from the outset representatives of the United Nations Department for Peacekeeping Operations (DPKO) have also been participated in Expert Group meetings as observers, to answer any specific questions that may arise on the mission’s implementation of its protection of civilians mandate.

The establishment of the Group was met with a degree of wariness and skepticism by some states, essentially stemming from a concern that it would add to their workload in this area, as the Security Council Working Group on Children and Armed Conflict had done, or create unrealistic expectations of Council action on protection. Concerns were also expressed that Council members did not want to receive potentially conflicting information from a multitude of sources at the briefings. A number of steps were taken to address these

apprehensions: it was made clear that participation at the Expert Group meetings was not compulsory and that the Group would not generate any documents or other output; and presentations were made exclusively by OCHA, which did not provide any written materials.

As Council members familiarised themselves with the objectives and working modalities of the Expert Group, they came to value it. At the time of writing, over six years after its first meeting, the Expert Group has become an informal but integral part of the Council's work on the protection of civilians. As Council members grew increasingly comfortable with the forum, they progressively agreed to receiving information from other sources: from public materials by a range of protection actors, including NGOs, set out at the back of the meeting room; to the distribution by OCHA of a written summary of concerns and possible ways for the Council to address them; to the presence in the room during the briefings of representatives of UN agencies and Secretariat entities with a role in protection in addition to OCHA and DPKO, with the same observer status as the latter; and, most recently, to receiving additional briefings on specific points by such representatives following OCHA's main briefing.

The Expert Group has also proved useful for humanitarian actors seeking to influence which protection concerns are addressed in Security Council resolutions and the manner in which this is done. Prior to its establishment, input was provided in an *ad hoc* manner, frequently on an issue-specific manner according to the mandate or focus of interest of the party approaching "friendly" Council members, rather than in a comprehensive manner. The contacts were informal and usually bi-lateral. Whether or not a specific point was taken up depended to a large extent on the good-will of the particular Council member that had been approached; whether the topic was one which it was championing; and, whether the suggestions tallied with that state's political interests. There was no guarantee that they would be shared with all Council members and, all too frequently, suggestions were made too late to be included in resolutions. The Expert Group made it possible for key protection concerns to be brought to the attention of the entire Council membership in a comprehensive and timely manner, when they could still influence the negotiation of resolutions.

This said, there is scope for improvement, including most notably with regard to the contexts that are discussed by the Expert Group. At present these have remained limited to those where there is a peacekeeping or other relevant mission authorised by the Council. However, there is no reason why this should be the case. Serious protection concerns also exist in other contexts on the Council's agenda where there are no such missions, such as Syria and Ukraine; and

¹⁷ Security Council resolution 1894 (2009), OPs 4 and 12 to 16.

¹⁸ Security Council resolution 1894 (2009), OP 7 (a), (b) and (d).

¹⁹ Security Council resolution 1894 (2009), OPs 22 and 33 on guidance to peacekeeping personnel, and OP 23 on training for peacekeeping personnel.

¹⁹ Security Council resolution 1894 (2009), OPs 8, 9, 17, 31 and 32.

²¹ Security Council resolution 1894 (2009), OPs 10 and 11 on accountability, and OP 7(c) on security sector reform.

²² Security Council resolution 1894 (2009), OP 19.

²³ Security Council resolution 1894 (2009), OP 27 and 24, respectively.

²⁴ *Security Council Norms and Practice on the Protection of Civilians in Armed Conflict: Analysis of Normative Developments in Security Council Resolutions 2009 – 2013*, Policy and Studies Series, UN OCHA, May 2014, available at https://docs.unocha.org/sites/dms/Documents/Security%20Council%20Norms_Final%20version%20for%20print%2017%20June%202014.pdf. This study analyses the evolutions in the Security Council language on the protection of civilians based on an extensive review of resolutions adopted by the Security Council from 2009 to November 2013, highlighting the specific developments in relation to each of the main protection issues addressed by the Council during that period.

²⁵ Since 2009, the Council has requested five peacekeeping operations to establish and implement early warning systems to deter or monitor threats to civilians: UNAMID, in Security Council resolution 2062 (2012), OP 3(a), (UN Doc S/RES/2062, 26 July 2012); UNMISS in Security Council resolution 1996 (2009), OP 3(b)ii, (UN Doc S/RES/1996, 8 July 2011); UNOCI in Security Council resolution 2112 (2013), OP 6(a), (UN Doc S/RES/2112, 30 July 2013); MONUSCO, in Security Council resolution 1991 (2009), OP 8, (UN Doc S/RES/1991, 28 June 2011); and the UN Stabilization Mission in the Central African Republic (MINUSCA), in Security Council resolution 2149 (2014), OP 30(a)iii, (UN Doc S/RES/2149, 10 April 2014). The same five operations were expressly requested or encouraged by the Council to establish and/or implement a protection strategy (see Security Council resolution 1925 (2010), OP 12, (UN Doc S/RES/1925, 28 May 2010); Security Council resolution 2003 (2011), OP 3, (UN Doc S/RES/2003, 29 July 2011); Security Council resolution 2109 (2013), OP 3, (UN Doc S/RES/2109, 11 July 2013); Security Council resolution 2112 (2013), OP 6(a), (UN Doc S/RES/2112, 30 July 2013); and Security Council resolution 2149 (2014), OP 30(a)iv, (UN Doc S/RES/2149, 10 April 2014). With the exception of UNOCI, all of these missions were also mandated to conduct patrols in areas of high risk of conflict (Security Council resolution 1996 (2011), OP 3(v), (UN Doc S/RES/1996, 8 July 2011); Security Council resolution 2039 (2012), OP 4(a)i,

the Council would benefit from additional information on the protection situation in these contexts too. The same holds true, if not more so, for contexts which, despite extremely serious protection concerns, are not for whatever reason on the Council's agenda, as was the case for Sri Lanka in 2009, or those where serious protection concerns are emerging as situations unfold, as for example Northern Nigeria, Cameroon or Burundi in 2014 and 2015.

It has also been suggested that the informal character of the Group could be used to further advantage, for example by opening the possibility of co-briefing the Group to NGOs and research institutes, or inviting field actors to participate in the meetings via video conference.

3. TRENDS IN HOW THE SECURITY COUNCIL HAS ADDRESSED PROTECTION OF CIVILIANS CONCERNS

2009 marked a turning point in the Council's engagement on the protection of civilians, which became more comprehensive and systematic, particularly in terms of how the Council receives relevant information, with the creation of the informal Expert Group, and how the Council addresses the protection of civilians in its resolutions and presidential statements.

Resolution 1894 (2009), the latest thematic resolution to address the protection of civilians in a comprehensive manner, is indicative of the Council's view that the protection of civilians is a broad concept, encompassing protection against threats of physical violence, but also activities such as the facilitation of humanitarian access¹⁷, training of national authorities and security forces on international humanitarian law, human rights, and refugee law;¹⁸ training of, and guidance to, peacekeeping personnel for the implementation of protection mandates;¹⁹ monitoring and reporting on violations of international law;²⁰ and the promotion of accountability and support to justice and security sector reform.²¹ Resolution 1894 also contains fundamental provisions on the role of UN peacekeeping operations in protection and on the importance to be assigned to the protection of civilians in their mandates: among other things the resolution required the prioritization of the protection aspects of mandates in decisions about the use of available resources and capabilities;²² as well as the elaboration of protection benchmarks and strategies.²³

As systematically documented and analysed by OCHA in a recent study,²⁴ since 2009 the Security Council has addressed a wide range of protection issues in country-specific resolutions more frequently, and it has often done so with a greater degree of specificity and detail than in the past, in the wake of the adop-

(UN Doc S/RES/2039, 29 February 2012); Security Council resolution 2063 (2012), OP 3(a), (UN Doc S/RES/2063, 31 July 2012); and Security Council resolution 2149 (2014), OP 30(a) (UN Doc S/RES/2149, 10 April 2014). UNAMID and UNOCI were requested to reconfigure their presence to ensure that they focus on areas where civilians are the most at risk (Security Council resolution 2063 (2012), OP 6, (UN Doc S/RES/2063, 31 July 2012); and Security Council resolution 2112 (2013), OP 5 (UN Doc S/RES/2112, 30 July 2013), respectively. The Council has also reiterated its general request for the prioritization of protection activities in decisions about the use of available resources and capacities in country-specific resolutions, introducing an express request for such prioritization in the mandate of four of ten UN peacekeeping operations with a protection of civilians mandate, namely MONUSCO, in Security Council resolution 2053 (2012), OP 1, (UN Doc S/RES/2053, 27 June 2012); UNAMID, in Security Council resolution 1935 (2010), OP 2, (UN Doc S/RES/1935, 30 July 2010); UNMISS, in Security Council resolution 2057 (2012), OP 3 (UN Doc S/RES/2057, 5 July 2012); and UNOCI in Security Council resolution 2062 (2012), OP 2, (UN Doc S/RES/2062, 26 July 2012).

²⁶ This includes aerial bombings in Libya, Sudan and Syria (Security Council resolution 1970 (2011), OP 17, (UN Doc S/RES/1970, 26 February 2011); Security Council resolution 2063 (2012), PP 12, (UN Doc S/RES/2063, 31 July 2012, PP 12); and Security Council resolution 2139 (2014), OP 3 (UN Doc S/RES/2139, 22 February 2014), respectively; the use of barrel bombs, artillery, indiscriminate shelling by mortars, car bombs, suicide attacks and tunnel bombs, as well as chemical weapons in Syria (Security Council resolution 2139 (2014), OP 3; Security Council resolution 2191 (2014), (UN Doc S/RES/2191, 17 December 2014); and Security Council resolution 2209, (2015), OP 1, (UN Doc S/RES/2209, 6 March 2015); the use of cluster munitions in South Sudan (Security Council resolution 2187 (2014), PP 22, (UN Doc S/RES/2187, 25 November 2014); and that of improvised explosive devices in Afghanistan and Syria (Security Council resolution 2145 (2014), OP 28, (UN Doc S/RES/2145, 17 March 2014); and Security Council resolution 2163 (2014), PP 7, (UN Doc S/RES/2163, 25 June 2014), respectively.

²⁷ See, for example, on the UN Stabilization Mission in Mali, MINUSMA, Security Council resolution 2100 (2013), OP 26, (UN Doc S/RES/2100, 25 April 2013); and Security Council resolution 2211 (2015), OP 9(e), (UN Doc S/RES/2211).

²⁸ See Security Council resolution 2124 (2013), OP 21, (UN Doc S/RES/2124, 12 November 2013); Security Council resolution 2158 (2014), OP 14 on forced relocations (UN Doc S/RES/2158, 29 May 2014); and Security Council resolution 2187 (2014) PP 10 on the protection of IDPs on UNMISS bases, (UN Doc S/RES/2187, 25 November 2014).

²⁹ Security Council resolution 2117 (2013), PP 9, (UN Doc S/RES/2117, 26 September 2013).

tion of resolution 1894 (2009). For example, the protection mandate a member of UN peacekeeping operations was considerably fleshed out, with the Council requesting the adoption of specific protection measures in a number of situations.²⁵

With regard to the conduct of hostilities, the Council has increasingly condemned or expressed concern at specific tactics employed by parties to armed conflict because of their adverse impact on civilians²⁶ and has recalled the obligation to take all feasible precautions, including by UN-authorized missions with a mandate to participate actively in military operations.²⁷ In recent resolutions on Somalia and South Sudan, the Council addressed some specific issues related to displacement for the first time: forced relocations and the protection of internally displaced persons (IDPs) in UN peacekeeping mission bases, respectively.²⁸

On humanitarian access, the Security Council has introduced novel language in recent resolutions and presidential statements, including on the effect of small arms and light weapons on the safety of humanitarian actors and the effective provision of humanitarian assistance;²⁹ on bureaucratic impediments in resolutions on Darfur;³⁰ and on cross-border operations and the arbitrary deprivation of objects necessary to the survival of the civilian population in resolutions and presidential statements on Syria.³¹

Despite these positive developments, gaps remain both in terms of how consistently evolutions are applied by the Council across relevant situations, as well as the manner in which they are addressed in resolutions. Displacement and humanitarian access are the issues where the lack consistency is most marked.

With regard to displacement, in some resolutions the Council still refers exclusively to returns in some resolutions instead of referring to the full range of durable solutions for refugees and IDPs (i.e. returns, local integration in the area of displacement and resettlement), even in situations where there are indications that other durable solutions are privileged by many displaced persons, as for example in South Sudan or Cote d'Ivoire.³² Housing, land and property issues have not been addressed in resolutions pertaining to countries where such problems are acute, such as South Sudan or Somalia, even though these issues had been repeatedly raised inter alia in relevant briefings to the informal Expert Group.³³

On humanitarian access, since 2009 the Council has used no fewer than 19 different formulations to describe what it wants parties to ensure, ranging from "full, safe, independent, timely and unimpeded access",³⁴ to "unimpeded and regular access".³⁵ The same inconsistency can be found in the mandates given to UN peacekeeping missions in relation to humanitarian access, some being mandated to "ensure humanitarian access",³⁶ while others are mandated to "facilitate" such

³⁰ See, for example, Security Council resolution 2113 (2013), OP 16, (UN Doc S/RES/2113, 30 July 2013).

³¹ See Security Council resolution 2139 (2014), OP 6; Security Council resolution 2165 (2014), OP 2, (cross-border delivery of humanitarian assistance to Syria), (UN Doc S/RES/2165, 14 July 2014); and UN Doc S/PRST/2013/15, 2 October 2013, paragraph 11 (arbitrary deprivation of objects indispensable to survival).

³² See Security Council resolution 2187 (2014), where the Council mandated UNMISS to foster a secure environment for the eventual safe and voluntary return of internally-displaced persons and refugees (OP 4(a)(vi)), and stressed that any returns had to be voluntary, informed, safe and dignified (OP 18), without mentioning the other possible durable solutions, (UN Doc S/RES/2187, 25 November 2014). See also, in the case of UNOCI, Security Council resolution 2162 (2014), OP 19(a) and (h), (UN Doc S/RES/2162, 25 June 2014). By contrast, in its resolutions on Darfur and Iraq, the Security Council refers to the full range of durable solutions (see, for example, Security Council resolution 2113 (2013), OP 21, (UN Doc S/RES/2113, 30 July 2013); and Security Council resolution 2061 (2012), PP 11, (UN Doc S/RES/2061, 25 July 2012). Following suggestions made at an April 2015 meeting of the informal Expert Group, the Security Council recently added references to local integration and resettlement in MINUSCA's mandate. See Security Council resolution 2217 (2015), OP 32(c), (UN Doc S/RES/2217, 28 April 2015).

³³ See Security Council resolution 2187 (2014), where the Security Council addressed important issues pertaining to displacement, in particular the protection of IDPs on UNMISS bases (see UN Doc S/RES/2187, 25 November 2014, PP 10) but remained silent on housing, land and property issues, despite the problems of land grabbing and secondary occupation of land by IDPs in a climate of uncertainty over property rights. See also Security Council resolution 2158 (2014), which addressed the issue of forced evictions of IDPs from publicly owned land in Somalia, but does not mention housing, land and property issues, (UN Doc S/RES/2158, 29 May 2014). By contrast, the Security Council specifically refers to land issues in contexts such as the Democratic Republic of the Congo (DRC). See Security Council resolution 2053 (2012), OP 20, (UN Doc S/RES/2053, 27 June 2012); and, in relation to Cote d'Ivoire, Security Council resolution 2112 (2013), OP 18, (UN Doc S/RES/2112, 30 July 2013).

³⁴ See, for example, Security Council resolution 2102 (2013), PP 7, (UN Doc S/RES/2102, 2 May 2013).

³⁵ See, for example, Security Council resolution 2091 (2013), OP 11, (UN Doc S/RES/2091, 14 February 2013). Other formulations have included "safe and unhindered access and the timely delivery of humanitarian aid to persons in need

of assistance", (see, for example, Security Council resolution 2121 (2013), OP 14, (UN Doc S/RES/2121, 10 October 2013); "safe, rapid and unimpeded passage of relief consignments, equipment and personnel", (see, for example, Security Council resolution 2117 (2013), OP 14, (UN Doc S/RES/2117, 26 September 2013); and "full, safe and unhindered access of relief personnel to all those in need and delivery of humanitarian assistance", (see, for example, Security Council resolution 2109 (2013), OP 13 (UN Doc S/RES/2109, 11 July 2013)).

³⁶ See, for example, on UNAMID, Security Council resolution 2113 (2013), OP 4, (UN Doc S/RES/2113, 30 July 2013).

³⁷ See, for example, on UNOCI, Security Council resolution 2112 (2013), OP 6(g), (UN Doc S/RES/2112, 30 July 2013). While this resolution was adopted on the same day as resolution 2113 (2013) on UNAMID, the Council used different formulations to characterize the respective roles of UNAMID and UNOCI with regard to humanitarian access.

³⁸ See, for example, on AMISOM, Security Council resolution 2093 (2013), OP 1(e), (UN Doc S/RES/2093, 6 March 2013); on UNMISS, Security Council resolution 1996 (2011), OP 3(b)(vi), (UN Doc S/RES/1996, 8 July 2011); and on MINUSMA, Security Council resolution 2100 (2013), OP 16(e), (UN Doc S/RES/2100, 25 April 2013).

³⁹ In its most recent resolutions on CAR and Mali, the Security Council required MINUSCA and MINUSMA to prioritize a list of 26 and 21 tasks, respectively, including the protection of civilians (see Security Council resolution 2217 (2015), OP 32, (UN Doc S/RES/2217, 25 April 2015); and Security Council resolution 2164 (2014), OP 13, (UN Doc S/RES/2164, 25 June 2014). During informal Expert Group meetings and on other occasions OCHA and other UN entities have repeatedly pointed out that this approach did not amount to prioritization. By contrast, taking into consideration the deterioration of the situation in South Sudan and the fact that the Government itself was responsible for large-scale violations of human rights and international humanitarian law, in resolution 2155 (2014) the Security Council streamlined UNMISS' mandate to focus on four key protection tasks (protecting civilians from threats of physical violence; monitoring and investigating human rights violations and abuses; creating enabling conditions for the delivery of humanitarian assistance; and supporting the implementation of the cessation of hostilities agreement) and removing tasks in support to the Government (UN Doc S/RES/2155, 27 May 2014, OP 4).

⁴⁰ A comparison of successive resolutions adopted by the Council on Somalia or Syria on the one hand, and on Iraq on the other – three contexts characterized by the presence of armed groups conducting hostilities in a manner that violet international humanitarian law, and controlling parts of the state's territory, and Govern-

access,³⁷ and others still to "contribute to the creation of conditions conducive to humanitarian access" (South Sudan, Somalia and Mali respectively).³⁸

The Council's language has also remained inconsistent from one resolution to the other without apparent objective reason on key issues such as the prioritization of the protection of civilians in peacekeeping missions' mandates;³⁹ the use of certain indiscriminate tactics such as the use of weapons with wide-area effects in populated areas;⁴⁰ and monitoring and reporting on protection threats and human rights.⁴¹

Also debatable is the Council's reliance, on certain occasions, on an approach that does not necessarily translate into a better protection response from the UN system; for example language requesting a strict division of tasks and responsibilities between UN Country Teams and UN Missions,⁴² even though the protection of civilians is at the confluence of these different actors' respective mandates, and requires coordination rather than isolation. More fundamentally, the recent move towards "robust" protection mandates for peacekeeping operations – i.e. mandates to participate actively in hostilities alongside Government forces – in DRC and Mali,⁴³ also raises questions that go to the heart of the role of peacekeeping operations in protecting civilians.

Finally, in an effort to address the all too frequent lack of compliance with its resolutions and presidential statements, including those relating to the protection of civilians, as well as with the underlying obligations towards civilians under international humanitarian law and human rights law, the Council has increasingly resorted to targeted sanctions. In particular, in recent years the Council has imposed sanctions against individuals and entities determined by the relevant sanctions Committee as engaging in or providing support for acts of violence

ment forces reportedly committing violations of international humanitarian law and human rights law – provides a striking example of the inconsistency in the Council's condemnation of such tactics in similar situations. In the case of Somalia, the Council stressed “the responsibility of all parties ... to take appropriate steps to protect the civilian population ..., in particular by avoiding any indiscriminate attacks on populated areas”, as early as 2008 (Security Council resolution 1814 (2008)), OP 17, (UN Doc S/RES/1814, 15 May 2008)). More recently, in the case of Syria, the Council condemned the use by the parties of a number of indiscriminate tactics (see *supra*, footnote 28). In contrast, in the case of Iraq, where the parties to the conflict also routinely resorted to indiscriminate tactics such as improvised explosive devices, mortars and aerial bombardment in populated areas, relevant Security Council resolutions do not mention the use of any specific tactic, or even the indiscriminate character of some attacks (see Security Council resolution 2169 (2014) (UN Doc S/RES/2169, 30 July 2014)).

⁴¹ While most peacekeeping operations are mandated to monitor and report to the Security Council on human rights violations, and to monitor threats to civilians, only UNOCI and UNMISS are mandated to issue public human rights reports (see *supra*, footnote 17). In practice, there are important disparities in the frequency and quality of public human rights reporting by UN peacekeeping operations and other missions. For example, the human rights sections of UNAMA and UNAMI issue regular and comprehensive reports, without being expressly requested to do so; on the other hand, in the absence of such an express request from the Council in UNAMID's mandate, the last public report on human rights in Darfur issued by the Mission dates back to January 2009. Despite repeated calls for reporting, the Council still has not requested public human rights reporting by UNAMID. See, for example, Security Council resolution 2187 (2014), UN Doc S/RES/2187, 25 November 2014).

⁴² See, for example, Security Council resolution 2098 (2013), (UN Doc S/RES/2098, 28 March 2013).

⁴³ Security Council resolution 2098 (2013), and Security Council resolution 2164 (2014), (UN Doc S/RES/2164, 25 June 2014), respectively.

⁴⁴ At present, six UN sanctions regimes provide that individuals and entities determined by the relevant sanctions Committee as engaging in or providing sup-

port for violations of international humanitarian law may be subjected to sanctions. See Security Council resolution 1572 (2004), OP 9 on Cote d'Ivoire (UN Doc S/RES/1572, 15 November 2004); Security Council resolution 1591 (2005), OP 3(c), on Sudan, (UN Doc S/RES/1591, 29 March 2005); Security Council resolution 1970 (2011), OP 22(a), on Libya (UN Doc S/RES/1970, 26 February 2011); Security Council resolution 2140 (2014), OP 18(c), on Yemen (UN Doc S/RES/2140, 26 February 2014); Security Council resolution 2196 (2015), OP 12(b), on CAR (UN Doc S/RES/2196, 22 January 2015); and Security Council resolution 2206 (2015), OP 7(c), on South Sudan (UN Doc S/RES/2206, 3 March 2015). Individuals and entities determined by the relevant sanctions Committee as engaging in or providing support for attacks against UN peacekeepers or UN personnel may be subjected to sanctions under two UN regimes: Security Council resolution 2078 (2012), OP 4(i), on DRC (UN Doc S/RES/2078, 28 November 2012); and Security Council resolution 2196 (2015), OP 12(f), on CAR, (UN Doc S/RES/2196, 22 January 2015). Five UN sanctions regimes provide that individuals and entities determined by the relevant sanctions Committee as engaging in or providing support for acts that obstruct the delivery of humanitarian assistance, or access to, or the distribution of, humanitarian assistance, may be subject to sanctions: Security Council resolution 1844 (2008), OP 8(c) on Somalia, (UN Doc S/RES/1844, 20 November 2008); Security Council resolution 1857 (2008), OP 4(f), on DRC, (UN Doc S/RES/1857, 22 December 2008); Security Council resolution 2196 (2015), OP 12(e), on CAR, (UN Doc S/RES/2196, 22 January 2015); Security Council resolution 2206 (2015), OP 7(f), on South Sudan (UN Doc S/RES/2206, 3 March 2015); and Security Council resolution 2219 (2015), OP 19, on Yemen (UN Doc S/RES/2216, 14 April 2015). The Council has also imposed targeted sanctions against individuals and entities determined by the relevant sanctions Committee as engaging in or providing support for acts that constitute violations against children and sexual violence in relation to four situations. See Security Council resolution 2002 (2011), OP 1(d) and (e), on Somalia and Eritrea, (UN Doc S/RES/2002, 29 July 2011); Security Council resolution 2078 (2012), OP 4(d) and (e), on DRC, (UN Doc S/RES/2078, 20 November 2012); Security Council resolution 2196 (2015), OP 12(b) and (c), on CAR, (UN Doc S/RES/2196, 22 January 2015); and Security Council resolution 2206 (2015), OP 7(d) and (e), on South Sudan (UN Doc S/RES/2206, 3 March 2015).

against civilians, or acts that obstruct the delivery of humanitarian assistance, or access to, or the distribution of, humanitarian assistance.⁴⁴

B. THE ROLE OF THE UNITED NATIONS OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS IN THE SECURITY COUNCIL'S WORK ON PROTECTION OF CIVILIANS IN ARMED CONFLICT

In addition to its field-based work, at United Nations Headquarters in New York OCHA contributes to the Security Council's work on the protection of civilians by means of its support to the mandate of the Emergency Relief Coordinator/Under Secretary-General for Humanitarian Affairs in this area.

In particular, OCHA has lead responsibility for drafting the Secretary-General's periodic reports to the Security Council on the protection of civilians; preparing the Emergency Relief Coordinator's briefing for the Security Council six-monthly open debates on protection; compiling and presenting the country-specific briefings to the Council Expert Group; and elaborating and maintaining updated the Aide Memoire.

Within OCHA, responsibility for these activities lies with the Protection of Civilians Section in the Policy Development and Studies Branch, and essential in discharging these responsibilities effectively is constant and close communication with counterparts at Security Council members' Permanent Missions in New York. With Portugal, during its membership of the Council, this was more than close communication, it was camaraderie.

C. PORTUGAL'S MEMBERSHIP OF THE SECURITY COUNCIL

From the outset of its Council membership in January 2011, Portugal took a committed and principled approach to advancing the Council's role in the protection of civilians. It dynamically engaged in the Council's various protection-related work streams, such as Children and Armed Conflict; Women Peace and Security, including sexual violence in armed conflict; peacekeeping; and, of course, the protection of civilians agenda item itself, working to promote consistency and avoid duplication or gaps between these various protection-related agenda items.

Portugal also strove to ensure that developments made in these thematic groups were reflected in the Council's country-specific work. As outlined above, the disconnect between progress at the thematic level and engagement in specific contexts has been a recurring weakness in the Council's work in this area, that exposes it to criticism of inconsistency and double-standards.

I. Entrenching the Expert Group

When Portugal assumed its Security Council membership in 2011, the protection of civilians agenda had become an entrenched part of the Council's work; the Expert Group less so. Portugal played an important role in increasing the Council's appreciation of this forum. From the outset – the introductory session for incoming Council members – Portugal made full use of the Expert Group, attending every session, participating actively and critically: it was frequently the first to take the floor after presentations and to raise difficult questions; and pushing for an expanded use of the Group. Its engagement was extremely valuable both in relation to the specific discussions of the context under review but also in persuading other more wary Council members of the value of the Group.

Portugal was an assiduous and dynamic participant in Expert Group meetings, where it adopted the wise tactic of, on the one hand, demanding as comprehensive and honest a picture of the situation on the ground in the context under review, asking prying questions including about issues not addressed in briefing, and on the other, judiciously selecting the specific issues whose inclusion in the resolution it would promote. This was a shrewd and realistic approach at a time when Security Council resolutions were frequently criticised for being too long and including too many protection issues in response to requests of particular interest groups, rather than the most pressing on the ground; and for creating unrealistic expectations.

Whenever possible, considering the relatively small size of its UNNYP mission, it was not just the counsellor in charge of the protection of civilians file who

⁴⁵ Security Council resolution 1998 (2011), (UN Doc S/RES/1998, 12 July 2011) and Security Council resolution 2068 (2011), (UN Doc S/RES/2068, 19 September 2012).

⁴⁶ Prior to the adoption of resolution 1998 (2011), Annex I of these reports already listed parties that recruit or use children, or engage in patterns of killing and maiming of children and/or rape and other sexual violence against children, in situations of armed conflict, in violation of international law and are on the Council's agenda; Annex II listed parties responsible for the same violations in situations of armed conflict not on the Council's agenda or in other situations of concern.

attended the Expert Group meetings, but also the geographic expert, who followed the discussions of the context under review in other relevant UN fora, including, most notably, those relating to peacekeeping. This was crucial to avoid the UN's all too frequent "compartmentalisation" that can lead to thematic points not being carried over to country – specific discussions and, conversely, constraints flagged in other UN fora with different memberships, such as the General Assembly's Special Committee on Peacekeeping Operations, not properly informing the Council's protection of civilian discussions.

Unlike other Council members, including some of the P5, during its membership of the Council Portugal was not a party to any armed conflict, including those on the Council's agenda. This was an important consideration that allowed Portugal to be more objective as to the issues on which to demand more information; and to highlight in resolutions and to do so in a relevant and accurate manner, both in terms of realities on the ground and of the language with which such issues were addressed in the resolutions. These efforts did not inevitably translate into the final version of resolutions, but contributed to the Council membership having a more comprehensive and accurate picture of the situation on the ground.

2. Protection-related resolutions

The Expert Group was seen as valuable forum for highlighting specific protection concerns and reminding Council members how similar problems had been addressed in the past. The Council was not open, however, even in this informal setting, to receiving suggestions for specific wording for resolutions. This was seen as too sensitive and falling within the exclusive authority of the Council. Portugal navigated the delicate line between respecting these sensitivities and recognising the value of focused suggestions from OCHA. Like some other Council members, it was willing to bilaterally hear suggestions from OCHA on particular wording. Again, while these did not all necessarily make it to the version of the resolution that was eventually adopted, they added a level of detail and accuracy.

During Portugal's membership, the Council adopted two protection-related thematic resolutions, both as part of the Children and Armed Conflict agenda item: resolution 1998 (2011) of 12 July 2011 and resolution 2068 of 19 September 2012.⁴⁵ Resolution 1998 (2011) added recurrent attacks against schools and hospitals, and recurrent attacks against protected persons in relation to schools and hospitals in situations of armed conflict to the list of grave violations that trigger inclusion of responsible parties in the annexes of the Secretary-General's annual report on children and armed conflict.⁴⁶ Resolution 2068 (2012)

⁴⁷ Security Council resolution 1379 (2001), UN Doc S/RES/1397, 20 November 2001.

⁴⁸ Security Council, Report of the Secretary-General on the Protection of Civilians in Armed Conflict, UN Doc S/2009/277, 29 May 2009, para 5. The five core challenges have been taken up in all subsequent reports of the Secretary-General on the Protection of Civilians in Armed Conflict, *supra* footnote 7.

⁴⁹ *Report of the workshop on accountability and fact-finding mechanisms for violations of international humanitarian law and human rights law: the role of the Security Council – past and future*, New York, 1 November 2011, organized jointly by the Permanent Mission of Portugal to the United Nations and the Office for the Coordination of Humanitarian Affairs of the United Nations Secretariat, UN Doc S/2012/373, 30 May 2012, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/N1235537.pdf>.

essentially reiterated provisions of previous thematic resolutions on children and armed conflict, in particular on the issue of accountability for perpetrators of grave violations against children. The negotiations of both resolutions, initially drafted by Germany, were particularly difficult, not so much because of the substance of the texts themselves, but due to some Council members' strong opposition to the inclusion of situations of concern not on the Council's agenda to the scope of the listing mechanism, pursuant to resolution 1379 (2001).⁴⁷

During the negotiations of these resolutions Portugal made it clear that it considered any restriction of the scope of the mechanism an unacceptable step back, refusing to consider the possibility of such a restriction as a possible element in the negotiations. During the negotiations of what became resolution 1998 (2011) Portugal was one of the most committed supporters of Germany's proposal to expand the criteria for designation in the annexes to the Secretary-General's annual reports. Similarly, during the negotiations of what became resolution 2068 (2012), Portugal was one of the most active delegations on the issue of accountability for perpetrators of grave violations against children, bringing into the discussions the ambitious idea of an automatic imposition of sanctions on all parties listed in the annexes of the Secretary-General's annual reports on children and armed conflict, combined with the establishment of a children and armed conflict-specific sanctions Committee. While this idea was not included in resolution 2068 (2012), it has remained in the debate ever since and could gather support within the Security Council as it continues intensifying its resort to targeted sanctions.

3. Workshop on accountability

In addition to its important contribution to more country-specific resolutions, Portugal also advanced the Council's work on protection at a thematic level. Since 2009, in order to galvanize the Council's reflection and engagement, the Secretary-General has articulated his periodic reports around the five most prevalent and recurring protection concerns: enhancing compliance of parties to armed conflicts with their obligations under international law, in particular the conduct of hostilities; engagement with non-State armed groups; protecting civilians through UN peacekeeping and other relevant missions; humanitarian access; and enhancing accountability for violations.⁴⁸

During its Presidency of the Council in November 2011, Portugal co-organised a workshop with OCHA, focusing on one dimension of the last of these challenges: the role of the Security Council in promoting accountability.⁴⁹ The workshop brought together state representatives, academics and practitioners with direct experience

in three areas of accountability in which the Council had set significant precedents: promoting individual criminal responsibility; requesting the establishment of fact-finding mechanisms to investigate alleged violations; and reparations. The workshop reviewed past Security Council practice as well as relevant national and international experience and reflected on the possible future role of the Council.

Of enduring, if not even greater, relevance some four years after the workshop was one of the suggestions that emerged: the elaboration of an indicative checklist to guide the Security Council's engagement with the International Criminal Court (ICC) when considering referrals and also more generally. This could include reflections on when a situation constitutes a threat to international peace and security that warrants a referral to the ICC; considerations of funding for cases referred to the Court by the Council; exceptions in referrals; the Council's role in promoting cooperation with the Court by relevant States; and the issue of deferrals under Article 16 of the ICC Statute. The checklist would not be prescriptive but rather enable a well-informed debate and promote consistency in Council practice.

4. Concluding considerations

Beyond its unwavering and self-critical commitment to advancing the Council's engagement on the protection of civilians, other, possibly more "operational" and fortuitous, considerations allowed Portugal to contribute dynamically and effectively to the protection of civilians.

First among these is Portugal's strategy of maximising a "transversal" approach to the Council's work, facilitated (if not rendered inevitable) by the relatively small size of its Mission in New York, which made for a less "siloed" environment in terms of responsibilities and also simply in terms of physical proximity with colleagues, meant that Portugal's contribution to the Council's work on protection drew together thematic and country-specific strands. Staff members responsible for the various portfolios relevant to a particular discussion – thematic, geographic, legal and political when relevant – would strive to attend Expert Group meetings and other discussions or would be briefed on salient elements. They all contributed to the drafting and negotiation of resolutions and other documents. This ensured that developments in one Council thematic "agenda item" were reflected in Council's work in other areas and that suggestions made in relation to particular context took account the realities on the ground. Regrettably, this seamlessness among topics within Missions is frequently not the case, something that contributes to the perpetuation of the disjoint between the Council's thematic and country-specific work.

⁵⁰ Portugal was the pen-holder for a resolution on Guinea Bissau imposing sanctions on coup leaders and establishing a new sanctions Committee to oversee their implementation, see Security Council resolution 2048 (2012), (UN Doc S/RES/2048, 18 May 2012).

Also extremely valuable was Portugal's close relationship with Brazil, who was also a Council member in 2011-2012. Coupled with similar positions on many protection-related issues addressed by the Council, this bond facilitated Portugal's engagement with other state groupings with which Brazil was associated, such as troop-contributing states and BRICS, and which positively influenced the politics of the Council's work on protection of civilians.

In view of its commitment to protection, coupled with the fact it was not involved in any of the conflicts on the Council's agenda it is a shame that Portugal was not the pen-holder – i.e. the Council member responsible for leading the drafting and negotiation of a resolution – for a country-specific resolution with a protection of civilians dimension during its Council membership.⁵⁰

The important and committed role played by an elected member in advancing the Council's protection agenda raises the question whether the Chair of the informal Expert Group should not be allocated on a two-year basis to elected members as is the case for the Chair of the Council's Working Group on Children and Armed Conflict. Since its establishment the Expert Group has been chaired by the United Kingdom, a permanent member of the Council that in recent years has been a party to various armed conflicts on the Council's agenda. This has inevitably led to claims that it was unable to promote the protection of civilians in a manner that disinterested and detached from its political interests. A temporary and rotating Chair would both allow greater geographic representation and also make it possible to avoid the Chair being a party to a conflict – at least at the time of its selection. It would be without disadvantages, including, most notably, the loss of historical memory.