Civilian harm mitigation policies: a comparative case study of the United States and France

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Introduction

In December 2023, the United States Department of Defense published Instruction 3000.17 on Civilian Harm Mitigation and Response. This comes after more than two decades of U.S. military operations in countries like Afghanistan, Iraq, and Syria, where the protection of civilians (PoC) has proven to be a critical aspect of the effectiveness of these operations. At the same time, for several decades many human rights and humanitarian NGOs (such as Airwars, CIVIC, Human Right Watch and PAX for peace) have advocated for better PoC standards. These NGOs often emphasize that international humanitarian law is a basis for PoC, but urge state to put additional efforts to ensure effective protection of civilians (CIVIC, 2017; PAX for peace, 2021). Despite engaging in similar military operations, however, some U.S. allies have not yet developed such policies. After nearly a decade of military operations in the Sahel, France is one of them.

Although there is a rich literature on civilian protection in military operations and UN peacekeeping, research has not yet addressed the reasons for the different pace of policymaking on PoC by the U.S. and its allies. This is remarkable because civilian protection is a societal concern, and one would now expect U.S. allies, especially NATO countries, to make it a priority on their policy agendas. Therefore, in this paper, I ask: What explains the development of a Civilian Harm Mitigation and Response (CHMR) policy in the United States and the absence thereof in France?

To answer this question, I first identify what civilian mitigation (CHM) practices have been developed in the U.S. and France over the past decades, up until the DoD issued a CHMR policy in late 2023. Then, map the internal and external conditions that can explain what makes that a country will create a CHMR/PoC policy. I expect PoC to enter a country's policy agenda when there is a high level of politicization of civilian harm issues. This politicization depends on the salience of civilian harm issues in the public debate, especially through the media and NGOs (external factor), and the willingness of the political and military leadership to make PoC a priority (internal factor). I also expect that the institutional structure in the U.S. will allow for more engagement with civil society, which will also help to inform the political leadership about the need for policy change on civilian protection. In contrast, I expect that the French institutional structure tends to limit civil society's input into agenda setting, which has made it more difficult to place PoC on the French policy agenda. Methodologically, I combine a content

analysis of newspaper articles, NGO reports and policy documents with interviews with policymakers and NGO practitioners.

This paper contributes to the academic literature on the protection of civilians. It adds to debates on civil-military relations by provided new insights on how policy and military leadership, as well as civil society, can join forces to ensure that civilians are better protected during military operations.

Literature review

The protection of civilians in conflict

Research shows that the protection of civilians (PoC) has become an integral part of the conduct of military operations in recent decades, with a strong focus on UN peacekeeping. For the sake of clarity, in this paper PoC will be understood as defined by the International Committee of the Red Cross, that is "a cornerstone of IHL, which provides a robust framework within which civilians are protected. This protection extends to their direct environment and property, also known as 'civilian objects'."[1] Civilian Harm Mitigation (CHM) is the form of PoC that focuses on how military actors can "mitigate and respond to civilian harm resulting from military operations" (DoD Civilian Harm Mitigation and Response Action Plan, 2022). Moreover, I follow PAX for Peace's (2021) definition of civilian harm, according to which:

> Civilian harm consists of all negative effects on civilian personal or community well-being caused by use of force in hostilities. Effects can occur directly (death, physical or mental trauma, property damage) or indirectly through the destruction of critical infrastructure, disruption of access to basic needs and services, or the loss of livelihood.

Military operations and peacekeeping missions conducted by international organizations such as the United Nations (UN), NATO and the African Union have progressively included PoC mandates since the 1990s (Keenan, 2013). The UN Security Council adopted the first PoC resolution in 1999 for the mission in Sierra Leone. Since then, many peacekeeping missions have included PoC mandates, and scholars have focused on analyzing whether and how PoC has been effectively applied in different country contexts (Day & Hunt, 2022; Kjeksrud & Ravndal, 2011; Shesterinina & Job, 2016). *Note: I will elaborate on the main findings of this literature in a next draft.*

Another strand of the PoC scholarship analyzes specific military operations outside of the realm of UN peacekeeping, with a particular focus on U.S. operations. This research specifically addresses the issue of civilian casualties caused by military actions. Research shows that military commanders' awareness of the importance of counting civilian casualties as a means

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[1] International Committee of the Red Cross (2024) https://casebook.icrc.org/highlight/protection-civilians

of reducing civilian harm began during U.S. and NATO operations in Afghanistan (Allen et al., 2022; Gregory, 2022; Keenan & Beadle, 2015).

NGOs and civilian harm mitigation

Research has shown that the vast majority of the (unintended) civilian harm caused by military actions is caused by airstrikes and can be mitigated (Allen et al., 2021; Muzzall et al., 2021). While the U.S. began to count civilian casualties in Afghanistan, it is still generally human rights and humanitarian NGOs such as Airwars, the Center for Civilians in Conflict and Human Rights Watch that count civilian casualties and call on the U.S. government – as well as other responsible governments – for greater transparency and accountability (Allen et al., 2022). Interestingly, Allen et al. (2021) found that the presence of such NGOs in conflict zones tend to reduce the number of civilian casualties caused by U.S. airstrikes. First, because the very presence of these NGOs brings more transparency about civilian casualties resulting from U.S. actions, and by engaging in "naming and shaming" of the U.S. military practices, politicians will demand greater precaution and a reduction of civilian harm. This was particularly the case in Afghanistan particularly between 2008 and 2012, where NGO reports on civilian casualties led successive U.S. commanders to change practices in order to mitigate decrease the number of those casualties (Allen et al., 2021; Gregory, 2022). In 2008, a Civilian Casualty Tracking Cell was created by U.S. General McKiernan within the NATO International Security Assistance Force (ISAF). Over the years, and under the command of successive generals, new tactical directives were issues to better track the harm done to civilians in Afghanistan as a result of U.S. and allied military actions. In 2011, under General Allen, the tracking cell became a Civilian Casualty Mitigation Team, with more resources and the capacity to conduct more detailed analysis of civilian harm (Gregory, 2022). Ultimately, the number of civilian casualties in ISAF dropped between 2009 and 2012 (Allen et al., 2021).

Second, NGOs and IOs on the ground are in direct contact with civilians and can directly help to protect them from military airstrikes. For example, the combination of the UNMISS and the ICRC's engagement with combatants allowed to better protect civilian during the conflict in South Sudan in 2017 (Allen et al., 2021). Another example is how during coalition airstrikes against ISIS in Iraq and Syria, the Syrian NGO White Helmet trained civilians to better prepare for future airstrikes, i.e. to reduce the likelihood of being harmed (Allen et al., 2021). This emphasizes the role of NGOs, not only in reporting incidents of civilian harm, but also in helping to better protect civilians in armed conflict.

Despite notable U.S. and NATO efforts to reduce civilian harm in Afghanistan in the 2010s, studies suggest that public attention to the military's CHM practices is necessary to see sustained efforts to ensure the protection of civilians. During the time of the Obama administration, U.S. and U.S.-led coalition's airstrikes in Syria and Iraq were something of a step backward in terms of CHM, with far less effort to avoid killing civilians (Malley and Pomper, 2017). Some even argue that in Syria and Iraq, "the military did not place the same strategic emphasis on civilian protection that it had come to apply in Afghanistan." (Malley and Pomper, 2017). The power of the narrative is not to be undermined there. The public narrative

of the anti-ISIS airstrike campaign did not present civilian protection as a necessity of the operation (Malley & Pomper, 2017). And this was well reflected in the data: the U.S.-led coalition was responsible for 37% of the attacks against civilian infrastructure in Syria between 2012 and 2018, while Russia was responsible for 34% of them and the Syrian government for 12% (Muzzall et al., 2021). In addition to destroying civilian infrastructure, these airstrikes caused several thousands of civilian deaths and injuries. Allen et al. (2021) argue that the U.S. public cares about civilian casualties and that its support for U.S. military interventions tends to decrease when light is shed on civilian harm incidents caused by U.S. airstrikes. If such public attention, supported by media and NGO reports, alerted the military on the issue of civilian harm, it was also in the military's "strategic interest" to count these civilian casualties in Afghanistan (Gregory, 2022, p.27). This seems to have been far less true for U.S. airstrikes in Syria and Iraq.

There is little academic research on how other countries who participated in the U.S.-led coalition in Iraq and Syria have dealt with civilian harm resulting from their actions. NGO research, however, has shown that countries such as Belgium, Denmark, France, the United Kingdom and the Netherlands could improve their transparency on civilian casualties resulting from airstrikes (Airwars, 2016a; Amnesty International, 2019). During coalition airstrikes, these countries did not systematically share the location and date of their airstrikes and did not report civilian casualties, which made it difficult to ensure the public accountability of their armed forces (Airwars, 2016b, 2016c). The Dutch government even faced a political scandal in 2019-2020 for failing to recognize its responsibility in the 2015 bombing of the Iraqi city of Hawija, which killed at least 85 civilians (Colli & Reykers, 2022). The Hawija revelation was brought into public debate through NGO reports and an investigation published by the NOS agency and the NRC newspaper (Colli & Reykers, 2022; Gould & Stel, 2022). Since then, the Netherlands have established partnership with several NGOs to develop new CHMR practices. Here, it is clear that public attention to the military's involvement in incidents of civilian harm has led to policy change (Colli & Reykers, 2022; Gould & Stel, 2022).

Theoretical framework

In this paper, I build on the PoC literature and the concept of politicization[2] to identify and assess the conditions that explain the development of a CHMR policy in the U.S., and the absence of such a policy in France. I expect that a number of internal and external factors to the policymaking process can explain why (and how) a country develops a PoC policy. For the internal factors, I focus on the role of leadership and of a country's institutional structure. For the external factor, I focus on the public salience of civilian harm issues in those (democratic) countries that conduct military operations.

Research suggests that public debate about civilian harm and leadership are key to the development of better PoC practices by militaries. In both the U.S. and the Netherlands, it was initially the media, NGOs, and UN reports on civilian harm that helped create public debate

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[2] Building on the work of Zürn (2019, p. 977-978), I understand politization as "the act of transporting an issue or an institution into the sphere of politics – making previously unpolitical matters political."

about civilian protection issues (Allen et al., 2021; Colli & Reykers, 2022; Gould & Stel, 2022; Suhrke, 2015). This led to political scandals in the U.S. and the Netherlands over the government's lack of transparency on civilian casualties in military operations (Colli & Reykers, 2022; Gould & Stel, 2022; Suhrke, 2015). In the Netherlands, the issue of civilian harm became politicized because the parliament and the media discussed it (Colli & Reykers, 2022). The politicization of the issue of (military) transparency regarding civilian casualties caused by Dutch airstrikes in Syria and Iraq even led to a vote of no confidence in Defense Minister Ank Bijleveld in 2019 (Colli & Reykers, 2022). However, Suhrke's (2015, p. 114-115) research on the U.S. military strategy in Afghanistan also notes that:

> Negative media attention and mounting criticism from the international human rights community, the UN mission and the Afghan government and civil society had little direct effect on the US/ISAF military strategies for acceptable use of force. Directives from the US/ISAF command to reduce civilian damage were only effectively implemented when the military leadership was convinced that this was justified by military necessity as defined by the adoption of a counter-insurgency strategy.

This suggests that the public salience of civilian harm alone might not be sufficient to generate new PoC practices and policies, and that a strong military leadership is key. Combining this evidence with research on politicization[3], I therefore expect leadership, both political and military, to be a driver/condition of policymaking on PoC (Colli & Reykers, 2022; Zürn, 2019). Moreover, it is worth noting that research shows that NGOs are almost systematically engaging with military commanders (Allen et al., 2021; Lilly, 2012; Rolfe, 2011) or policymakers (Colli & Reykers, 2022) when it comes to creating or implementing better PoC practices.

This leads me to three hypotheses. First, I expect that the development of a PoC/CHMR policy in a country will be possible if there is high public attention to how that country's military operations have (unintentionally) harmed civilians (external factor). Second, I expect that a with a strong political and/or military leadership willing to improve PoC practices (internal factor) will facilitate the development of CHM practices and policies. Third, I expect that an institutional structure (or culture) that is receptive to civil society input (internal factor), e.g. in agenda agenda-setting and policy formulation, will provide an additional favorable condition for the development of PoC/CHMR policies. Conversely, I expect that a country where there is little public debate about civilian harm incidents will not develop a CHMR/PoC policy. I also expect that without political and/or military leaders who consider PoC as a priority, this will not develop a PoC/CHMR policy. Finally, if the institutional structure of the country is such that politicians do not or rarely engage with civil society, this will make the development of a PoC/CHMR policy more difficult. The factors, conditions and hypotheses are summarized in Table 1.

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[3] Which I will review in more details in a future draft.

Table 1: Summary

Factor	Condition/variable	Operationalization	Hypothesis
External	Public salience of civilian harm incidents	- Media articles on civilian casualties resulting from military actions. - NGO reports on civilian casualties	If there is a high public salience of civilian harm issues, then there will be policymaking on CHMR/PoC.
Internal	Leadership	- Military leadership: military commanders & tactical directives - Political leadership: successive administrations' agenda	If the political and military leadership perceives PoC as a priority, then it will enable the development of PoC/CHMR practices and policies.
Internal	Institutional structure	- Type of political regimes - Civil-military relations	If the institutional structure of a country is receptive to civil society input, then it will facilitate the development of PoC/CHMR policies in that country.

Data & methods

For the analysis, I will combine a content analysis with interviews.

Content analysis:
- Newspaper articles (e.g. New York Times, Washington Post, Le Monde) and NGO reports
- NGO reports (e.g. PAX, CIVIC, Human Rights Watch, Amnesty International)
- Policy documents (e.g. DoDI, CHMR-AP)

Interviews with:
- Policy and military officials
- NGO representatives

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