

Introduction

Since time immemorial, civilians have fallen prey to the ravages of war. History is filled with stories about battles, displacement and atrocities, and some may argue that human history is essentially a tale of war. All human societies had their particular ways of understanding armed conflict, and each developed norms and rules prescribing how to wage war as well as how to treat the vanquished. Depending on the cultural background of the belligerent party, the defeated could be killed on the spot, captured for ceremonial sacrifice; raped; sold into slavery; taken hostage; made a tributary; proselytized; or, occasionally, be treated with mercy. While different social backgrounds led to different forms of warfare with varying consequences for civilians, the post-Cold War world has witnessed an unprecedented development of international norms pertaining to the protection of non-combatants. There is no doubt that civilian victimization remains a feature of any armed conflict. Yet its perception has increasingly changed over the past decades. Two massacres of the recent past serve to illustrate this: the massacre in Hama in 1982 and 2011.

The first massacre took place in the Syrian city of Hama in 1982, when the then Syrian president Hafiz al-Assad gave orders to shell the city, which had become the epicenter of an Islamist-led insurgency against his government. At least 10,000 people died, including scores of women and children. Instead of denying the atrocity, Hafiz al-Assad decided to exaggerate the number of victims at meetings with international media representatives in order to amplify the horror of the massacre.¹ Khanfar holds that “this occurred in the shadow of the cold war and with the cover of the Soviet Union, which was then allied to Hafiz al-Assad's regime.”² Nearly thirty years later, Hafiz al-Assad's son and successor, Bashar al-Assad, was also faced with an uprising. Again, the epicenter of the massacre was the city of Hama. In August 2011, a military crackdown led to the deaths of approximately 200 protesters. In contrast to his father, Bashar al-Assad made efforts to conceal the events by excluding international journalists, and blamed the massacre on Islamist extremists and foreign agents. Additionally, in contrast to 1982 the violence in Syria was at the top of the international

¹ Van Crefeld, Martin: *Die Gesichter des Krieges. Der Wandel bewaffneter Konflikte von 1900 bis heute*, Siedler Verlag, Munich, 2009, pp. 208f.

² Khanfar, Wadah: *Syria between two massacres: Hama's memory endures*, The Guardian, 06.02.2012, available at <http://www.guardian.co.uk/commentisfree/2012/feb/06/syria-massacres-hama> (accessed on 06.07.2012)

agenda, notwithstanding the opposition of Russia and China to take coercive actions through the United Nations (UN).³

Two things had changed in the course of only three decades. First, the international community had become more assertive in its condemnation of atrocities against civilians, even if not to the point of a military intervention. What might have been a footnote during the Cold War was, in 2011, elevated to the status of one of the world's most pressing security crises. It is certainly not wrong to judge the international reaction to the civil war in Syria as insufficient given the systematic nature of the human rights abuses. Nevertheless, the international community was not content with ignoring the crisis but continued making the atrocities and humanitarian fallout an issue. Most importantly, the common perception that the United Nations Security Council (UNSC) was failing to live up to its role, and the general frustration this wrought, speaks volumes about the expectations towards the international community in the twenty first century. The second difference between Hama in 1982 and Hama in 2011 was the way in which those responsible dealt with the public relations fallout of the massacres. Against the background of the Soviet Union's unflinching support, Hafiz al-Assad did not fear a looming humanitarian intervention or the wrath of the United Nations. Instead, the Hama massacre was a carefully tailored and extremely brutal message to the Syrian public and rebelling insurgents that resistance was futile. By contrast, Bashar al-Assad knew that his father's straightforward public terror tactic was no viable option for him. He had to pay heed to the world's public opinion to avoid sanctions, an indictment by the International Criminal Court (ICC), or a Libya-style military intervention. His military operations had to be compatible with his international public relations strategy: keeping the international press and UN away from the sites of violence, blaming radical Islamists for the uprising, and letting his proxy militias do the dirtiest work. Even without an all-out humanitarian intervention, three decades of normative and political change have had an impact on the international community's way of viewing and dealing with mass atrocity crimes.

The past decades have seen what I later describe as four revolutions in the realm of human security: a normative revolution, a legal revolution, a societal revolution and a political revolution. Human rights and civilian protection issues have assumed an unprecedented role in international relations. Concepts such as "Human Security" and "Responsibility to Protect" (R2P) have altered the way citizens, states, and the international community relate to each other by increasingly elevating the safety and rights of individuals to the center of discourse. The establishment of international criminal tribunals and the further development of international law have strengthened the legal protection of civilians lending credence to the aspiration that even heads of state do not stand above the law. The emergence of social media and human rights Non-

³ Bakri, Nada: Civilian Toll is Mounting in Assault on Syrian City, New York Times, 05.08.2011, p. A4

Governmental Organizations (NGOs) has dramatically curtailed the capability of national governments to control and cut off information and images about atrocities. Instead, non-state actors have become important players in monitoring, setting domestic agendas, and advocating for compliance with human rights. Lastly, a political revolution has taken place in which the international community has increasingly assumed the prerogative and responsibility to intervene in fragile states and conflict zones to protect civilians.

The recent preoccupation with civilian protection is the high point of a development that has its foundations in the Middle Ages and that came to fruition in Modernity. While the quality and quantity of legal safeguards for non-combatant populations is indeed a new phenomenon, it must be noted that practically all human societies knew some form of protective precautions for women, children; the elderly; and sometimes even the defeated. At its core, the so-called innocents comprised anyone incapable of directly engaging in warfare. One has to be aware that it was a long way from the ambiguous notion of the “innocent” to the concept of the “civilian” as we know it today. Its legal breakthrough was in 1863 when the Lieber Code, issued by the United States government during the American Civil War, brought the laws of war to paper for the first time. Conventions on rights and duties in armed conflict were previously passed from generation to generation, regulating among other questions the conduct towards so-called innocents. The Lieber Code followed the positivist *zeitgeist* and transformed the *jus in bellum* into written laws which were then adopted by the powers of Europe. What followed were the Hague and Geneva Conventions, as well as additional treaties regulating such issues as the use of poisonous gas and biological weapons, expanding bullets; mines; the use of mercenaries; the treatment of Prisoners of War; the wounded and the sick; the protection of cultural property; and naturally, the Protection of Civilians (POC).

Many authors have remarked that the majority of today's wars are characterized by a degradation of compliance with International Humanitarian Law (IHL) and human rights law. Münkler even argued that contemporary armed conflicts have more in common with the often savage conflicts of the pre-state era than with Westphalian interstate warfare as we know it since 1648. If this is true, deeper insights into the situation and protection of non-combatants in pre-state wars may contribute to our understanding of contemporary warfare and civilian victimization. Unfortunately, the further we look into the past, the less knowledge we have about the fate of conflict-affected populations. The protection of civilians in humanity's past armed conflicts is indeed a strikingly under-researched topic. The most important reason can be found in the fact that earlier annalists often did not explicitly report about POC issues because they lacked many of the categories and presumptions we hold today. Consider for example the case of Sexual and Gender Based Violence (SGBV) which has recently become a focus of scholarly and public attention. Ancient Greek thinkers would have neither understood the notion of war rape - which they would have regarded as a damage of a male's property – nor why such “spoils of

war” could be found repugnant. The women of a vanquished community were a natural part of the booty and for many soldiers the very reason to campaign at all. A Mongol warrior from Central Asia would have agreed with this idea as much as a South American Yanomamo Indian, a European medieval knight, or many of today's militia warriors in the Congo's conflict-ridden Kivu region.⁴ The chroniclers of the past reported atrocities in a different light than we do today. Hence, any inquiry into the civilian victimization of earlier wars needs a keen eye for detail and must pay attention to a bias towards modern notions and ideas.

Another difficulty is the still significantly lacking research about civilian protection related issues. There is a comprehensive body of literature on humanitarian assistance which has made an important contribution to the understanding of human security threats and possibilities for non-coercive outside assistance. However, coercive protection measures to curb mass atrocities through either full-scale military interventions, or the deployment of blue helmets, are barely analyzed. A further thread of thought about civilian protection is contained in the legal literature on International Humanitarian Law and its development. The normative examination of POC questions is indeed highly important but does not reveal much about the operational implementation. Due to its nature, International Humanitarian Law prescribes how to minimize harming civilians in war, not how to protect them. A third repository of POC thinking is the literature dealing with Counter Insurgency (COIN) operations in which civilian protection plays a central role. Nevertheless, one should be aware of the fact that civilian protection in COIN operations is not an end in itself but a strategy to defeat an adversary. There are a number of operational lessons that can be learned from Counter Insurgency but the situation and conditions for robust peace missions or humanitarian interventions are still very different. My claim is that there is not only a manifest lack of historical research into the development of civilian protection and victimization, but also a knowledge gap with regards to the practical implementation of coercive POC approaches. Armed civilian protection operations remain a relatively new item on the contemporary research agenda which is reflected in a still patchy body of theoretical and empirical literature. It is therefore not surprising that researchers tend to focus their attention on patterns of violence in twentieth and twenty first century conflicts rather than analyzing the effects and rationalities of atrocities in ancient or medieval wars.

The present work attempts to close a number of gaps in our current understanding of civilian victimization and protection. Each of the following three chapters deals with one focus area which I delineate and analyze. Chapter I examines how civilian victimization and protection developed in the course of human history up to the end of the Cold War, and which factors gave rise to our

⁴ Kelly, Jocelyn: Rape in War: Motives of Militia in DRC, United States Institute of Peace, Special Report 243, 2010, available at <http://www.usip.org/files/resources/SR243Kelly.pdf> (accessed on 09.07.2012)

modern notion of the non-combatant. In the first sub-chapter I discuss and define the terms “war/armed conflict” and “civilian/innocent” in order to raise awareness of bias towards modernity or Occidentalism. In the following sub-chapters I deal with consecutive epochs of human history in which I describe the evolution of warfare, the prevailing forms of civilian victimization, as well as existing mechanisms of civilian protection. The epochs analyzed are Pre-History, Antiquity; the Middle Ages; the Modern Age; the Age of Industrialization; and the Short Twentieth Century. The chapters show how functional, normative and eventually, legal civilian protection mechanisms emerged, and how changes in warfare have impinged on civilian victimization.

Chapter II examines the post-Cold War international order from the angle of civilian victimization and protection. The availability of hitherto unknown amounts of data on recent armed conflicts makes it possible to analyze the changing nature of armed conflict and its effects on civilian populations from a quantitative point of view. What do we know about the evolution of warfare after 1989, and what was its impact on civilian populations? This work analyzes the situation of civilians in contemporary armed conflicts as well as the modes and sources of civilian victimization. In the following sub-chapter, I show how the international community has dramatically altered its way of dealing with systematic breaches of human rights and International Humanitarian Law. To illustrate my argument, I define and analyze what I call a normative, legal, societal and political revolution of human security that has taken place since the end of the Cold War. At the heart of these four revolutions lies a straightforward observation: never in the past has the international community made a comparable effort to monitor, prevent and prosecute mass-atrocities against civilian populations. My claim is not that all of these efforts were crowned with success but that the steps undertaken were unprecedented in human history. The work draws on qualitative analysis as well as quantitative data to corroborate these findings.

Chapter III analyzes one of the key subject areas in which, post-1989, the international community has taken unprecedented steps to provide human security: the deployment of United Nations peace operations and the Protection of Civilians in fragile states and conflict zones. The chapter questions how the United Nations have dealt politically with the issue of robust civilian protection, and how these decisions affected the operations of peace missions on the ground. The work traces the political and doctrinal development of POC within the United Nations from 1989 to 2011, and reveal how civilian protection overcame two hurdles before taking center stage in the UN's agenda. Importantly, in the period from 1989 to 1999 Protection of Civilians changed from being an implicit aim to an explicit objective of UN peace operations. This process was catalyzed by the international community's failures to curb atrocities in Bosnia and Rwanda, and the pledge to prevent such situations from unfolding again. From 1999 onwards, POC increasingly developed from a secondary to a primary mission objective. It was a difficult process for the United Nations to understand

that civilian protection was not a cheap by-product of peacekeeping operations but required careful planning, thorough training, precise guidance, and suitable equipment. Sub-chapter three is a case study examining the implementation of POC by the United Nations Mission to the Democratic Republic of the Congo (MONUC) - at the time of writing, the longest-serving and most sophisticated UN peace operation with a POC mandate. I analyze how the mission operationalized its mandate to protect civilians and which obstacles and shortcomings it had to deal with. To corroborate and illustrate my findings, I examine the Kiwanja massacre of 2008 and the Luvingi Mass Rapes of 2010 as case studies.

The present work makes a contribution to our understanding of civilian protection, its origins and development, as well as its political challenges and present operational shortcomings. It shows that even if civilian populations still remain an object of aggression and violence in our modern world, humanity has come a long way in protecting the otherwise unprotected and convicting those guilty of systematic human rights abuses. By historical standards, this is a more than noteworthy achievement.

Civilian Protection in Armed Conflicts
Evolution, Challenges and Implementation

Schütte, R.

2015, XVI, 220 p. 2 illus., Softcover

ISBN: 978-3-658-02205-1