

Country Guidance, Country of Origin Information, and the International Protection Needs of Persons Fleeing Armed Conflicts

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ABSTRACT

The article explores whether the European Union Agency for Asylum's country guidance (CG) reflects the international protection needs of persons fleeing armed conflicts. It uses the Agency's guidance on Iraq as a case study through the lens of objectivity and relevance. The article highlights the disproportionate reliance on military and State-centric sources which adopt a traditional and narrow concept of security grounded in quantitative approaches. The article argues that the main sources of Country of Origin Information used in CG are inadequate to capture the present-day nature of violence in situations of armed conflict. The article makes the case for a re-balancing of sources to be included in CG that reflects wider security studies perspectives and approaches. The article also suggests that the indicators of indiscriminate violence used by the Agency are grounded in international humanitarian law norms and therefore fail to reflect international protection standards, whilst also being inadequate to capture the nature of violence in situations of contemporary armed conflict. The use of sources of information adopting wider security perspectives and qualitative approaches are encouraged and other factors, such as spheres of control by actors to the conflict, are proposed for inclusion into international protection assessments.

KEYWORDS: armed conflicts, country guidance, country of origin information, refugee status determination, European Union Agency for Asylum, objectivity, relevance

1. INTRODUCTION

By the end of 2021, there were 89.3 million forcibly displaced people in the world as a result of "persecution, conflict, violence, human rights violations or events seriously

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disturbing public order.”¹ This is the highest number ever recorded and more than double the figure from a decade ago.² Most refugees are fleeing situations of conflict, including Syria, Afghanistan, South Sudan, and Myanmar.³ These trends are said to arise from the international community’s failure to prevent armed conflicts and ensure their prompt resolution.⁴ Many of those fleeing will be seeking asylum in other parts of the world.

In order to support decision-makers in determining the international protection needs of persons fleeing armed conflicts and ensure consistency, various asylum actors across Europe, such as national authorities, national and regional judiciaries, and regional and international agencies have developed the practice of issuing country guidance (CG). The article is concerned with CG issued by the European Union Agency for Asylum (EUAA), which provides guidance to national authorities in the European Union (EU), when determining whether individuals claiming asylum should be recognised as refugees or persons in need of subsidiary protection, a lesser form of status. A refugee is defined in the United Nations Convention Relating to the Status of Refugees as a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country,”⁵ whilst a beneficiary of subsidiary protection in EU law is a “person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, . . . would face a real risk of suffering serious harm . . . and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.”⁶ Serious harm is defined in Article 15(c) of the Qualification Directive as a “serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.” Broadly, the article asks whether EUAA’s CG meets the protection needs of persons fleeing armed conflicts by examining, first, its sources of information and their content, and secondly, indicators of indiscriminate violence and how they are interpreted.

The EUAA is increasingly supporting EU Member States’ asylum systems. In 2016, the European Commission proposed an EU Regulation to transform the then European Asylum Support Office (EASO) into a fully-fledged EU Agency for

1 United Nations High Commissioner for Refugees (UNHCR), *Global Trends 2021*, available at: <https://www.unhcr.org/62a9d1494/global-trends-report-2021> (last visited 7 Jul. 2022) 2.

2 UNHCR, *Global Trends 2020*, available at: <https://www.unhcr.org/60b638e37/unhcr-global-trends-2020> (last visited 22 Feb. 2022) 6.

3 *Ibid.*, 7.

4 A. Guterres, “New UNHCR report says global forced displacement at an 18-year high”, 19 Jun. 2013, available at: <https://www.unhcr.org/en-ie/51b9ba826.pdf> (last visited: 22 Feb. 2022) 1.

5 Art. 1A(2) Convention Relating to the Status of Refugees, 189 UNTS 137, 28 Jul. 1951 (entry into force: 22 Apr. 1954) (“Refugee Convention”).

6 Art. 2(f) Directive 2011/95/EU of the European Parliament and of the Council of 13 Dec. 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), OJ L337/9, 20 Dec. 2011 (“Qualification Directive”).

Asylum.⁷ Although there were delays to the package of Common European Asylum System reforms, the European Parliament and the Council agreed to the measure in June 2021.⁸ On 19 January 2022, the EUAA replaced EASO with a wider mandate.⁹ Two of the Agencies' tasks are to (1) draw up and regularly update Country of Origin Information (COI) reports and other documents providing information on the situation in countries of origin at the level of the Union¹⁰ and (2) coordinate efforts among Member States to develop common analysis of the situation in countries of origin and guidance notes, in other words CG.¹¹ Although EASO had already started developing common analysis and providing guidance on Afghanistan, Iraq, Nigeria, and Syria, the EUAA Regulation creates an obligation on EU Member States to "take into account the common analysis and guidance notes when examining applications for international protection, without prejudice to their competence to decide on individual applications for international protection"¹² in order to foster convergence in applying the assessment criteria established in the Qualification Directive.¹³

Most research to date on the role of EUAA, and its predecessor EASO, has focused on its operational support¹⁴ and accountability in the course of joint implementation of asylum decision-making¹⁵ rather than its CG. The enquiry is timely and important because EU Member States are now mandated to take the guidance into account and the impact of EUAA's CG on refugee status determination is therefore likely to be significant. Tsourdi notes that although the guidance is not binding it is influential in light of the agency being regarded as a centre of expertise and the guidance's endorsement by EUAA's Management Board, which is dominated by Member States.¹⁶ To date, the EUAA has issued

7 European Commission, *Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (COM(2016) 271 final)*.

8 European Commission, "New Pact on Migration and Asylum: Agreement reached on the new European Union Agency for Asylum", 29 Jun. 2021, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3241 (last visited 28 Sep. 2021).

9 Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 Dec. 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 ("EUAA Regulation"). The article cites all agency materials as EUAA, even if published before the change, as per the EUAA's own practice.

10 Arts. 1(e) and 9 EUAA Regulation.

11 Art. 1(g) EUAA Regulation.

12 Art. 11(3) EUAA Regulation.

13 Art. 11(1) EUAA Regulation.

14 See, for example, D. Fernández-Rojo, *EU Migration Agencies: The Operation and Cooperation of FRONTEX, EASO and EUROPOL*, Cheltenham, Edward Elgar, 2021; A. Ripoll Servent, "A New Form of Delegation in EU Asylum: Agencies as Proxies of Strong Regulators", *Journal of Common Market Studies*, 56(1), 2018, 83; ECRE, *The Role of EASO Operations in National Asylum Systems: An Analysis of the Current European Asylum Support Office (EASO) Operations Involving Deployment of Experts in Asylum Procedures at Member State Level*, Nov. 2019, available at: https://ecre.org/wp-content/uploads/2019/11/EASO-Operations_Report.pdf (last visited 22 Sep. 2022).

15 E. (Lilian) Tsourdi, "Holding the European Asylum Support Office Accountable for Its Role in Asylum Decision-Making: Mission Impossible?", *German Law Journal*, 21, 2020, 506.

16 E. (Lilian) Tsourdi, "European Union Agency on Asylum: An Agency 'Reborn'?", *EU Law Live*, 98, 2022, 2, 7. For the composition of the Management Board, see <https://euaa.europa.eu/about-us/management-board> (last visited 9 Jun. 2022).

CG on Afghanistan,¹⁷ Iraq,¹⁸ Nigeria,¹⁹ Somalia,²⁰ and Syria.²¹ These five countries of origin comprised over 40 per cent of all asylum applications made in the EU in 2021.²² Gibb and Good have pointed to some of the limitations on time and resources for COI research and analysis by asylum decision-makers at both the administrative and judicial levels in France and the UK.²³ In the absence of systematic research regarding whether, and if so to what extent, domestic decision-makers rely on EUAA CG, it may be inferred that they increasingly rely on the guidance, even if some Member States have their own CG that may be limited to taking into account the EUAA guidance without necessarily drawing the same conclusions. Furthermore, as most forcibly displaced people in the world today are fleeing armed conflicts, it is essential that the content of policy guidance supporting asylum decision-making reflects the present-day realities of armed conflicts.

The article uses EUAA's CG on Iraq, issued in January 2021, as a case study.²⁴ Iraqi nationals were in the top three citizenships of asylum applicants in the EU between 2015 and 2018. Although an increase in asylum-seekers from Venezuela and Colombia was observed in 2019 and 2020, Iraqis remained the fifth largest group of asylum-seekers in the EU (4 per cent in 2019 and 3.9 per cent in 2020), totalling 26,800 and 16,220 first-time applicants, respectively.²⁵ By 2021, Syrians, Afghans, and Iraqi had resumed the top three nationalities of asylum applicants in the EU, constituting almost 40 per cent of all applicants, and Iraqis making up 4.9 per cent of the EU total.²⁶

- 17 EUAA, *Country Guidance: Afghanistan*, 20 Apr. 2022, available at: <https://euaa.europa.eu/country-guidance-afghanistan-2022> (last visited 22 Sep. 2022). The report was last updated following the significant changes in the geo-political situation in Afghanistan. For an analysis of international protection needs following these changes, see C. Querton "The Fall of Kabul: International Protection in the Context of the Armed Conflict and Violence in Afghanistan", *Refugee Law Initiative* 1 Sep. 2021, available at: <https://rli.blogs.sas.ac.uk/2021/09/01/the-fall-of-kabul-international-protection-in-the-context-of-the-armed-conflict-and-violence-in-afghanistan/> (last visited 22 Feb. 2022).
- 18 EUAA, *Country Guidance: Iraq*, 29 Jun. 2022, available at: <https://euaa.europa.eu/country-guidance-iraq-2022> (last visited 22 Sep. 2022).
- 19 EUAA, *Country Guidance: Nigeria*, 19 Oct. 2021, available at: <https://euaa.europa.eu/country-guidance-nigeria-2021> (last visited 22 Feb. 2022).
- 20 EUAA, *Country Guidance: Somalia*, 14 Jun. 2022, available at: <https://euaa.europa.eu/country-guidance-somalia-2022> (last visited 22 Sep. 2022).
- 21 EUAA, *Country Guidance: Syria*, 30 Nov. 2021, available at: <https://euaa.europa.eu/country-guidance-syria-2021> (last visited 22 Feb. 2022).
- 22 Total of 43.7 per cent. Data compiled from Eurostat, "Asylum Applicants by Type of Applicant, Citizenship, Age and Sex – Annual Aggregated Data (Rounded)" last updated 29 Aug. 2022 available at: https://ec.europa.eu/eurostat/databrowser/view/MIGR_ASYAPPCTZA__custom_3427546/default/table?lang=en (last visited 23 Sep. 2022).
- 23 R. Gibb & A. Good, "Do the Facts Speak for Themselves: Country of Origin Information in French and British Refugee Status Determination Procedures", *International Journal of Refugee Law*, 25, 2013, 291.
- 24 EUAA, *Country Guidance: Iraq*, Jan. 2021, available at: <https://euaa.europa.eu/country-guidance-iraq-2021> (last visited 22 Feb. 2022).
- 25 The decrease in asylum applications in 2020 was due to the COVID-19 pandemic and the related travel restrictions imposed by EU Member States.
- 26 Eurostat, "Annual Asylum Statistics", 18 Mar. 2022, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_statistics&oldid=558181#Citizenship_of_first-time_applicants_.E2.80.93_mostly_Syrian.2C_Afghan_and_Iraqi (last visited 16 May 2022).

The article starts by setting out the theoretical framework informing the analysis, which is grounded in knowledge acquired from the field of security studies, the legal framework, and the methodology for the quantitative aspects of the research. The relevant guidance set out in EUAA's CG report on Iraq is then summarised before evaluating the extent to which it reflects the international protection needs of persons fleeing armed conflict in Iraq through the lens of Objectivity and Relevance, two of EUAA's own guiding principles on quality COI research.²⁷ In terms of objectivity, the article highlights the disproportionate reliance in EUAA's Iraq CG on military and State-centric sources that adopt a traditional and narrow concept of security grounded in quantitative approaches. The article argues that the main sources of COI relied on in EUAA's CG are inadequate to capture the present-day nature of violence in situations of contemporary armed conflict. The article makes the case for a re-balancing of sources to be included in CG, via COI reports, that reflect wider security studies perspectives and approaches. In terms of relevance, the article suggests that the indicators of indiscriminate violence used by EUAA²⁸ to inform both its COI reports and consequently its CG are grounded in international humanitarian law norms and therefore fail to reflect international protection standards, whilst also being inadequate to capture the nature of violence in situations of contemporary armed conflict. The article notes that the narrow indicators adopted by EUAA's CG cannot ensure the "comprehensive appraisal" required to determine whether a "serious and individual threat" exists as required by the Court of Justice of the European Union (CJEU) in respect of international protection needs under Article 15(c) Qualification Directive.²⁹ Drawing on the wider field of security studies, the article highlights additional factors relevant to understanding the nature of violence in situations of armed conflict.³⁰ The use of sources of information adopting wider security perspectives and qualitative approaches are encouraged and other factors such as spheres of control by actors to the conflict are proposed for inclusion into international protection assessments. The article concludes by highlighting the interrelation between different asylum actors across Europe, including national authorities, national and regional judiciaries, and regional and international agencies in the

27 EUAA, *Country of Origin Information (COI) Report Methodology*, Jun. 2019, available at: https://coi.euaa.europa.eu/administration/easo/PLib/2019_EASO_COI_Report_Methodology.pdf (last visited 25 May 2022) 7. COI is information relating to, for example, the socio-economic, legal, political, human rights, conflict, and humanitarian situation in asylum-seekers' countries of origin, which decision-makers must take into account to determine international protection claims.

28 See EUAA, *Practical Guide: Qualification for International Protection*, Apr. 2018, available at: <https://euaa.europa.eu/sites/default/files/publications/easo-practical-guide-qualification-for-international-protection-2018.pdf> (last visited 22 Feb. 2022) 32; EUAA, *Article 15(c) Qualification Directive (2011/95/EU): A Judicial Analysis*, Dec. 2014, available at: <https://euaa.europa.eu/sites/default/files/public/Article-15c-Qualification-Directive-201195EU-A-judicial-analysis.pdf> (last visited 22 Feb. 2022) 31; EUAA, *Country Guidance: Iraq*, Jan. 2021, 128–130.

29 CJEU, Case C-901/19, *CF and DN v Bundesrepublik Deutschland*, 10 Jun. 2021, para. 40. Although the CJEU cited only a number of indicators at para. 43, reflecting Attorney General Pikamäe's criteria at paras. 56 and 59 of his Opinion, the factors listed to be taken into account were said to be non-exhaustive, see CJEU at para. 43 and AG Opinion, *CF and DN v Bundesrepublik Deutschland*, Case C-901/19, 11 Feb. 2021, para. 60.

30 C. Querton, *Conflict Refugees: European Union Law and Practice*, Cambridge, Cambridge University Press, forthcoming Aug. 2023, Chapter 3.

development of CG and how their practices co-construct the predominant understanding and approaches to the concept of security.

2. THEORETICAL AND LEGAL FRAMEWORKS AND METHODOLOGY

EUAA's CG seeks to provide asylum decision-makers with guidance in respect of all elements relevant to determining entitlement to international protection (refugee status and subsidiary protection) under the Qualification Directive. CG provides a "general assessment of the situation in the country of origin, along with guidance on relevant individual circumstances that should be taken into account."³¹ On a practical level, CG is the assessment of information collected and presented in EUAA COI reports, the making of factual findings, and the establishment of whether those facts meet the need for international protection so that decision-makers can use this guidance in the examination of asylum applications and apply it to individual circumstances of cases. In the process of drafting CG, the EUAA CG and COI Specialist Networks make important choices regarding the selection of sources found in existing COI reports, which are made with little transparency. More specifically, EUAA does not set out its rationale for the selection of sources of information (and their associated theoretical perspective and methodology) over others in its CG.³²

In order to evaluate whether EUAA's CG reflects the nature of violence in armed conflicts, this article draws on inter-disciplinary literature, in particular from the fields of international relations, political sciences, and security studies. There is a wealth of scholarship demonstrating that the characteristics of armed conflicts generally and the nature of violence in situations of armed conflict more specifically have changed over time.³³ Knowledge from the field of security studies identifies the fundamental characteristics of contemporary armed conflicts as including the rise of non-state actors and their relative control over the conduct of hostilities, weakening of State institutions, identity politics as drivers of violence, and the strategic logic of non-state armed groups. Whereas the coalition forces in Afghanistan and Iraq employed conventional military power from the outset, armed groups were unable to match these methods due to an absence of heavy weaponry, including field artillery and armour, using instead tactics aimed at exercising control over local communities through fear and intimidation.³⁴ Thus, one of the main strategies of fighting parties is to exercise political control over territory by terrorising and forcibly displacing populations through highly visible forms of human rights violations such as kidnappings, rape,

31 EUAA, *Country Guidance: Iraq*, Jan. 2021, 10.

32 Only data from the United Nations Assistance Mission for Iraq (UNAMI) and the Armed Conflict Location & Event Data (ACLED) Project are discussed at 128–129.

33 See, for example, M. Kaldor, *New and Old Wars: Organized Violence in a Global Era*, New Jersey, Wiley, 2012; M. Kaldor, "In Defence of New Wars", *Stability*, 2(1), 2013, 1; J. F. Murphy, "International Law in Crisis: Challenges Posed by the New Terrorism and the Changing Nature of War", *Case Western Reserve Journal of International Law*, 44, 2011, 59; A. Karp, "The Changing Ownership of War: States, Insurgencies and Technology", *Contemporary Security Policy*, 30(2), 2009, 375; See also H. Lambert & T. Farrell, "The Changing Character of Armed Conflict and the Implications for Refugee Protection Jurisprudence", *International Journal of Refugee Law*, 22, 2010, 237.

34 Kaldor, *New and Old Wars*, 166–172.

sexual violence, and gender-based violence.³⁵ As a result, violence is targeted at civilians and is motivated on the basis of identity politics. As the United Nations High Commissioner for Refugees (UNHCR) makes clear, the majority of situations of armed conflict and violence lead to political, religious, ethnic, social, or gender persecution justifying the grant of refugee protection.³⁶

National authorities must comply with the general rule of interpretation set out in the Vienna Convention on the Law of Treaties when discharging their obligations under the Refugee Convention³⁷ and must ensure the implementation of their obligations in good faith.³⁸ There is broad support for an interpretation of the Refugee Convention definition that requires a holistic assessment combining an analysis of the text in its context and in light of the Refugee Convention's object and purpose.³⁹ A dynamic approach to interpretation in light of the VCLT would involve treating the Refugee Convention as a living instrument to be interpreted in the light of current circumstances such as contemporary armed conflicts.⁴⁰ In the context of persons fleeing armed conflicts, it has been argued that an interpretation of the Refugee Convention without taking into account evolving relevant norms of international human rights law and the nature of violence in contemporary armed conflicts does not fulfil the obligations of States to ensure the effective protection of refugees.⁴¹

Although EUAA has issued CG on Afghanistan, Iraq, Nigeria, Somalia, and Syria, the CG on Iraq was selected as a case study for evaluating how EUAA's CG reflects the nature of violence in conflict. Three justifications for the choice of Iraq can be adduced. First, because Iraq is characterised by a protracted internal armed conflict currently involving a number of actors, with the Islamic State of Iraq and the Levant (ISIL) being the principal armed group fighting Iraqi forces. Secondly, in August 2021 the Afghan armed forces were defeated by the Taliban resulting in significant geo-political changes to the armed conflict in Afghanistan.⁴² Thirdly, EUAA updated its guidance on Afghanistan, Nigeria, and Syria during the course of this research⁴³ whilst its guidance on Somalia was published after the research was conducted.⁴⁴ Prior to publication, EUAA also updated its guidance on Iraq in June 2022.

Every EUAA's CG is divided into six chapters covering (1) Actors of Persecution or Serious Harm, (2) Refugee Status, (3) Subsidiary Protection, (4) Actors of

35 For further discussion of how the nature of violence in situations of armed conflict relate to the Refugee Convention definition, see Querton, *Conflict Refugees*.

36 United Nations High Commissioner for Refugees, *Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions*, HCR/GIP/16/12, 2 Dec. 2016, para. 1.

37 Vienna Convention on the Law of Treaties (adopted 22 May 1969, entered into force 27 Jan. 1980) 1155 UNTS 331 ("VCLT").

38 Art. 26 VCLT.

39 J.C. Hathaway & M. Foster, *The Law of Refugee Status*, Cambridge, Cambridge University Press, 2014, 7.

40 G. Goodwin-Gill, "The Dynamic of International Refugee Law", *International Journal of Refugee Law*, 25, 2013, 656

41 Querton, *Conflict Refugees*, Chapter 2.

42 For a reflection on what the changes meant for Afghans seeking international protection in the EU, see Querton, "The Fall of Kabul".

43 Afghanistan, Nov. 2021 and Apr. 2022; Nigeria, Oct. 2021; and Syria, Nov. 2021.

44 Somalia, Jun. 2022.

Protection, (5) Internal Protection Alternative, and (6) Exclusion. Reflecting its wide scope, the Iraq CG runs up to 197 pages.⁴⁵ For the purpose of the present enquiry, the analysis focuses on ISIL because the CG itself considers ISIL to be the principal armed group in conflict with the Iraqi Government.⁴⁶ In order to understand the ways in which EUAA's CG reflects the nature of violence in armed conflicts, the article reviews guidance concerning both entitlement to refugee status and subsidiary protection. Moreover, in respect of subsidiary protection, the Governorates of Baghdad and Ninewa were selected because Baghdad is the location through which most asylum-seekers are returned and Ninewa is a territory disputed between Iraqi Arabs and Kurds that ISIL has been exploiting.⁴⁷ On the basis of the above selection criteria, the analysis of the CG focuses on the following five sections: section 1.4. The Islamic State of Iraq and the Levant (ISIL);⁴⁸ section 2.6 Individuals approached for recruitment by armed groups a. Recruitment by ISIL and affiliated groups;⁴⁹ section 2.9 Individuals perceived to oppose ISIL;⁵⁰ section 3.3 Article 15(c) QD – Baghdad;⁵¹ and section 3.3 Article 15(c) QD – Ninewa.⁵² The content of this guidance is summarised below.

The section on ISIL provides a description of the organisation, its goal and ideology, and its targeting of ethnic and religious minorities.⁵³ It also notes that ISIL “was declared militarily defeated in December 2017,” and consequently its operational capabilities have reduced, and it has not held territory since. However, the guidance notes ISIL continues to operate with an increasing number of active ISIL attack cells and is seeking to establish itself in areas where “conventional military operations have been challenging.” ISIL activity was recorded in Anbar, Ninewa, Erbil, Baghdad Belts, Diyala, Kirkuk, and Salah al-Din and the types of activities, such as mass casualty attacks, small arms attacks, assassinations, kidnappings, suicide vests attacks, and bombings are noted.⁵⁴ The COI summary concerning individuals approached for recruitment by ISIL and affiliated groups is limited to the period “during the rise of ISIL” when forced recruitment of young professionals whose skills were needed, in particular doctors, occurred and forced recruitment could be violent. The guidance concludes that a person would only be at risk of forced recruitment by ISIL and affiliated groups in exceptional cases because the “intensity of armed confrontations and military operations has declined significantly” and forced recruitment is rare. The guidance points to some risk-impacting factors, however, including the presence and influence of armed groups.⁵⁵ Whilst most of the COI summary regarding

45 Other CG reports are of similar length (Afghanistan 168 pages, Nigeria 191 pages, Somalia 218 pages, and Syria 234 pages).

46 The CG report notes that Iraq is characterised by multiple “non-international (internal) armed conflicts” in particular between the Iraqi Government and ISIL; EUAA, *Country Guidance: Iraq*, Jan. 2021, 34.

47 EUAA, *Iraq: Security Situation*, Oct. 2020, 30.

48 EUAA, *Country Guidance: Iraq*, Jan. 2021, 56–57.

49 *Ibid.*, 74.

50 *Ibid.*, 77–78.

51 *Ibid.*, 134–136.

52 *Ibid.*, 147–149.

53 *Ibid.*, 56–57.

54 *Ibid.*, 57.

55 *Ibid.*, 19 and 74.

individuals perceived to oppose ISIL dates from 2018, the guidance concludes that the threat posed by ISIL to such individuals has decreased because ISIL's operational capabilities have diminished significantly. The guidance points to risk-impacting circumstances including areas of work and origin where ISIL continues to operate, tribal affiliation, visibility and position in the community, and public expression of support for the Government or critique of ISIL's actions.⁵⁶

With respect to entitlement to subsidiary protection under Article 15(c) Qualification Directive, the guidance observes that Iraq is characterised by multiple "non-international (internal) armed conflicts" in particular between the Iraqi Government and ISIL.⁵⁷ The guidance specifies that the assessment of the degree of indiscriminate violence taking place in different parts of the country is based on a holistic analysis including quantitative and qualitative information covering the period between 1 January 2019 and 31 July 2020.⁵⁸ The CG assesses the level of indiscriminate violence in each of the 18 Governorates of Iraq. The summary of indiscriminate violence for each Governorate includes geographical data, ISIL's control of territory, presence, and activities, number and type of security incidents, number of civilian casualties and proportion according to population, number of Internally Displaced People (IDPs), criminal activity and any damage to infrastructure. None of the Governorates are considered to experience a level of indiscriminate violence sufficient to demonstrate that "substantial grounds are shown for believing that a civilian, returned to the relevant region, would, solely on account of his or her presence on the territory of that region, face a real risk of being subject to the serious threat referred to in Article 15(c) QD."⁵⁹ Ninewa is assessed as experiencing a *high level* of indiscriminate violence requiring some "lower level of individual elements" to demonstrate risk, whereas Baghdad is said to experience *some* indiscriminate violence but not to such a high level thereby requiring a "higher level of individual elements" to meet the Article 15(c) threshold.⁶⁰

As there are two aspects to EUAA's CG, namely the assessment of the country situation (divided into the guidance note and common analysis)⁶¹ and the COI on which it is based, and EUAA CG only cites its own COI reports, any analysis of EUAA CG must therefore extend to its COI reports. The research methodology draws on EUAA's own Guiding Principles for COI as standards for evaluating CG on Iraq. More specifically, the methodology relies on the principles of "Neutrality and Objectivity" and "Relevance and Usability" as two distinct lenses through which to analyse the COI reports and by extension, the Iraq CG, and they are explored in turn below.⁶² Although the Iraq CG is based on a variety of COI reports and queries,⁶³ the CG sections selected for analysis as explained above relied on the

56 *Ibid.*, 20 and 77–78.

57 *Ibid.*, 34.

58 *Ibid.*, 35.

59 *Ibid.*, 35–36.

60 *Ibid.*, 36.

61 The guidance note summarises the conclusions of the common analysis and the common analysis sets out the COI and applies the relevant jurisprudence.

62 EUAA, *COI Report Methodology*, 7.

63 See list of reports and queries at EUAA, *Country Guidance: Iraq*, Jan. 2021, 9–10.

following three COI reports: (1) *Iraq Security Situation* of October 2020: sections 1.2.5. ISIL, 2.3. Baghdad and 2.6. Ninewa, (2) *Iraq Security Situation* of March 2019: sections 1.1.2. ISIL: 2014-2017, 1.3.2. ISIL and associated groups and 1.4. Recent Security Trends and Armed Confrontations in 2018 and (3) *Iraq Targeting of Individuals* of March 2019: section 2. Targeting by ISIL.

A few observations are made here in respect of the cross-referencing between the Iraq CG and these three relevant COI reports. One of the COI quality standards for sources and information is their currency. Hence, for CG to be of high quality, it must be based on up-to-date and the most recent information available. Nonetheless, the “General Remarks” section of the Iraq CG fails to refer to the most recent *Security Situation* report of 2020, relying instead on the earlier report from 2019. As a result, the inclusion of the view that ISIL is “militarily defeated” and that the level of violence has “decreased significantly since” 2017 even though “ISIL remains active in parts of the country”⁶⁴ fails to acknowledge the more recent sources of information evidencing the changes in ISIL’s location, strategy, and capabilities observed in the first half of 2020.⁶⁵

The section providing an assessment of refugee protection needs for individuals perceived to oppose ISIL⁶⁶ also does not cross-refer to the most recent *Security Situation* report of 2020, relying instead on two sub-sections from the 2019 *Targeting of Individuals* report concerned with groups of persons who actually oppose ISIL rather than merely being perceived as opposing ISIL.⁶⁷ There are also some cross-references to the 2019 *Security Situation* report. However, these cross-references appear irrelevant as some of the sub-sections do not exist,⁶⁸ or relate to Kirkuk, Ninewa,⁶⁹ and security trends from 2018, including ISIL’s targeted attacks.⁷⁰ The latest *Security Situation* report of 2020 (at the time of publication of the Iraq CG of 2021) is not cited at all in the CG on the international protection needs of individuals approached for recruitment by armed groups⁷¹ or perceived to oppose ISIL.⁷² Broadly, these cross-references appear out of date and irrelevant to determining the international protection needs of individuals perceived as opposing ISIL from January 2021 onwards when the CG was published. Significantly, the CG does not foreground the requirement that decision-makers must first consider whether applicants meet the refugee definition before considering subsidiary protection, which is merely complementary to refugee protection.⁷³ In evaluating EUAA’s CG and COI

64 *Ibid.*, 51.

65 As contained for example in s. 1.2.5. EUAA, *Iraq: Security Situation*, 2020, 24–29.

66 EUAA, *Country Guidance: Iraq*, Jan. 2021, s. 2.9, 77.

67 EUAA, *Iraq: Targeting*, 2019, s. 2.3.3 Tribal leaders known to support the government, or who supported the government against AQ-I in the past and s. 2.3.4 Local and national politicians, candidates in local or regional elections, council members who opposed to ISIL or AQ-I, 123–125.

68 EUAA, *Iraq: Security Situation*, 2019, ss. 2.3.1. and 2.3.4.

69 *Ibid.*, ss. 2.4. and 2.5.

70 *Ibid.*, ss. 1.4. and 1.4.2.2.

71 EUAA, *Country Guidance: Iraq*, Jan. 2021, s. 2.6, 74.

72 *Ibid.*, s. 2.9, 77.

73 Although see note at p. 128, EUAA, *Country Guidance: Iraq*, Jan. 2021. Art. 2(f) and Recital (33) Qualification Directive; Court of Justice of the European Union (CJEU), Case C-604/12, *H. N. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, 8 May 2014 para. 35; UNHCR, *Guidelines on Armed Conflict and Violence*, United Nations High Commissioner for Refugees, para. 9.

reports, the article adopts the terminology proposed in the Common EU Guidelines for processing COI that distinguishes between “sources” and “information.”⁷⁴ Hence, a “source” is a person or institution producing information whereas “sources of information” are items such as reports, written press, TV, radio, journals, books, or position papers. The “information” is the content and data contained in the sources of information.

3. OBJECTIVITY AND BALANCE OF COI SOURCES AND INFORMATION

As noted, one of the EUAA’s Guiding Principles in COI Methodology is Neutrality and Objectivity. EUAA’s COI Report Methodology defines objectivity as “the quality of being fact-based and not influenced by [...] interests or biases.”⁷⁵ The Common EU Guidelines for processing COI set out that assessing the objectivity of a source is part of validating a source and should also include “assessing the context of the source in which it operates (to what extent is the source influenced by its context?).”⁷⁶ This article thus engages with the notion of objectivity in respect of the context in which sources collect data and publish information. Objectivity is further enabled by balancing sources. The Austrian Centre for Country of Origin and Asylum Research and Documentation indicates that balancing in COI is achieved when different perspectives are introduced through diverse types of sources. More specifically, their training manual indicates that “using different types of sources helps to counteract the potential biases of each source, and to build up a balanced research result. A source may contain highly relevant information, but the information may be distorted because of the bias of the source, or it may be inaccurate because of flaws in the methodology used by the source to obtain the information.”⁷⁷ Accordingly, good practice emphasises the need to acknowledge the positionality of sources utilised in COI reports by questioning who the source is and why it is providing the information as part of a source assessment.⁷⁸ Further, COI researchers are encouraged to use a variety of sources, such as governmental, media, international organisations, or non-governmental organisations (NGOs), to reflect different viewpoints.⁷⁹

Gibb and Good have argued that COI is not technically “objective” because describing it as such ignores contextualisation and interpretation to which all such knowledge is subject.⁸⁰ This led the Tribunal in the UK to describe it as “background” country evidence instead of “objective” country evidence in *TK (Sri*

74 Apr. 2008, ARGO project JLS/2005/ARGO/GC/03.

75 EUAA, *COI Report Methodology*, 7.

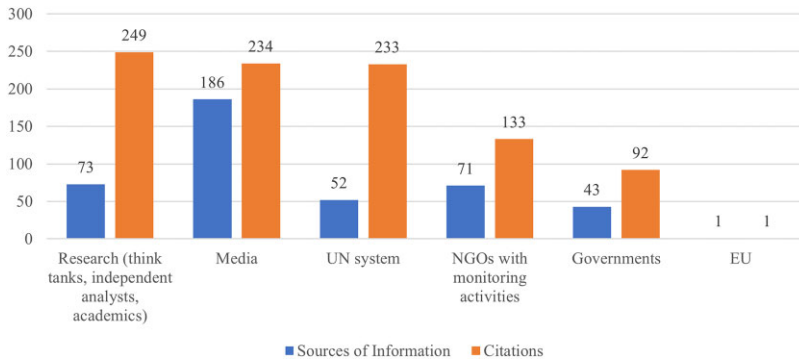
76 Apr. 2008, ARGO project, s. 2.2.4, 8–9.

77 ACCORD, *Researching Country of Origin Information: Training Manual*, 2013 edition, Austrian Centre for Country of Origin and Asylum Research and Documentation, 134.

78 EUAA, *COI Report Methodology*, 13.

79 *Ibid.*, 14.

80 Gibb & Good, “Do the Facts Speak for Themselves”, 321. See also A. Good, “Anthropological Evidence and Country of Origin Information in British Asylum Courts”, in B.N. Lawrance & G. Ruffer (eds.), *Adjudicating Refugee and Asylum Status: The Role of Witness, Expertise, and Testimony*, Cambridge, Cambridge University Press, 2015, 140.

Figure 1. Typology of sources of information

Lanka).⁸¹ Indeed, Tsangarides has claimed that the production of knowledge is inherently political.⁸² The process of producing COI reports is fundamentally and inevitably interpretive in character.⁸³ Accordingly, objectivity in COI requires the acknowledgment that in most cases the information has been produced for a purpose other than for refugee status determination and within restrictions determined by the source's mandate, purposes, and objectives. Those factors may impact the information and data, in terms of the knowledge gap it seeks to fill, how it is collected, recorded, presented, including its choice of terminology and definitions. This section of the article therefore enquires into the sources of COI selected for inclusion in the relevant passages of EUAA COI reports cross-referenced in the Iraq CG, identifies a typology of sources used in the COI reports (defined by their mandate/objective/purpose), evaluates whether the sources cited in the COI reports are objective and sufficiently balanced and whether they thereby fulfil their aim of assisting decision-makers (via CG) by providing them with relevant information for the assessment of claims brought by persons fleeing armed conflicts.

In the relevant sections of the three COI reports examined,⁸⁴ 942 citations and 426 individual sources of information were mapped. The types of sources cited in EUAA's COI reports include research-based institutions (including think tanks, independent analysts, and academics), media, UN institutions and agencies, NGOs and Government agencies. The typology indicates the relative importance of each category in drafting the relevant passages (see Figure 1). Overall, there appears to be an evenly balanced reliance on research-based, media, and UN sources (see Figure 2).

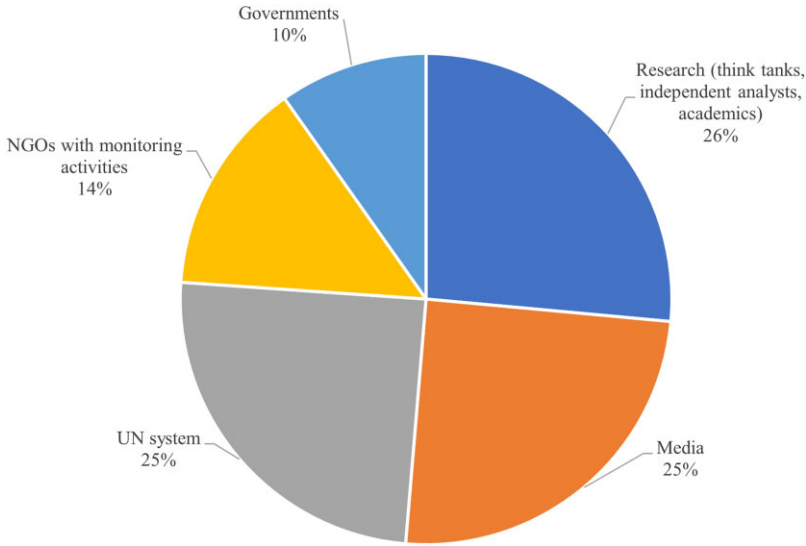
81 *TK (Tamils – LP updated) Sri Lanka CG* [2009] UKAIT 00049, para. 7.

82 N. Tsangarides, "The Politics of Knowledge: An Examination of the Use of Country Information in the Asylum Determination Process", *Journal of Immigration, Asylum and Nationality Law*, 23(3), 2009, 252.

83 Gibb & Good, "Do the Facts Speak for Themselves", 322.

84 (1) *Iraq Security Situation*, Oct. 2020: s. 1.2.5. ISIL, 2.3. Baghdad and 2.6. Ninewa, (2) *Iraq Security Situation*, Mar. 2019: s. 1.1.2. ISIL: 2014–2017, 1.3.2. ISIL and associated groups and 1.4. Recent Security Trends and Armed Confrontations in 2018 and (3) *Iraq Targeting of Individuals*, Mar. 2019: s. 2. Targeting by ISIL.

Figure 2. Proportion of citations by type of source



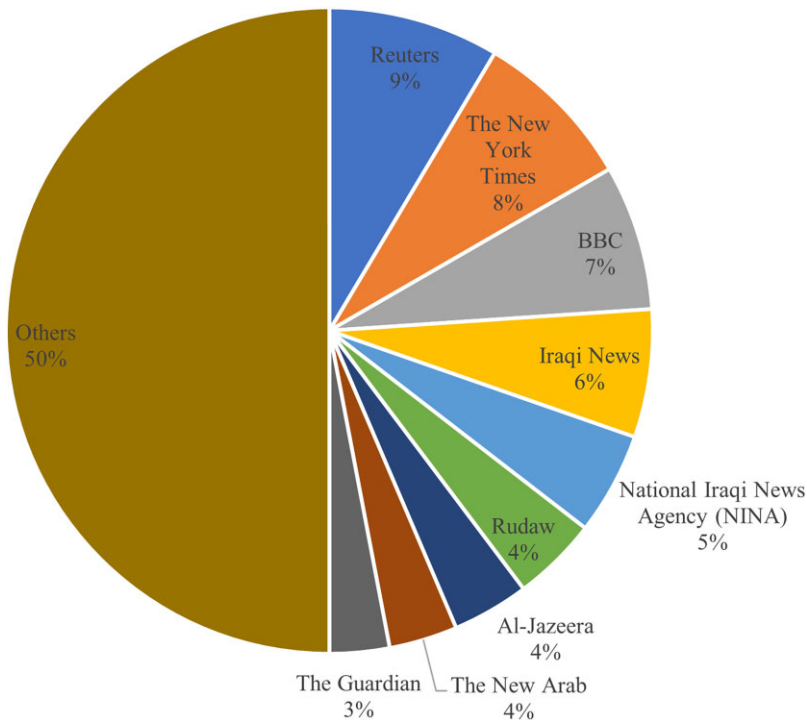
3.1. Media sources

As is evident from Figure 1, media reports are the largest number of individual sources of information (186) and the second largest cited source (234). As Figure 3 demonstrates, the most cited sources of information by media organisations include those with a US (*The New York Times*), Canadian (*Reuters*), or UK-centred perspective (*BBC*, *The Guardian*), but also those focused on the Middle East (*Al Jazeera*, *The New Arab*) and those based in central Iraq (*Iraqi News*, *National Iraqi News Agency*), and Iraqi Kurdistan (*Rudaw*). The overwhelming majority of publications are in English (171) and only around 8 per cent (15) in Arabic. The media reports in Arabic are all located in the Baghdad or Ninewa sections of the *Iraq Security Situation* report 2020.⁸⁵ Media sources of information represent a diverse variety of media outlets ranging from Iraqi, Kurdistan, and Middle Eastern news to US/UK-based outlets. As a type of source, media organisations appear balanced overall. Media sources of information mostly include short reports of events as well as a few pieces of investigative journalism or interviews. Most of the sources of information are cited only once to evidence a particular incident, such as an attack or “security incident” and the resulting number of casualties.

3.2. Research-based sources

Comparing the type of sources of information used to compile the relevant passages of the COI reports cross-referenced in the Iraq CG demonstrates that research-based publications are the most cited (249), followed closely by media (234) and UN sources (233) (see Figure 1). Research-based sources of information include

85 ss. 2.3 and 2.6, respectively.

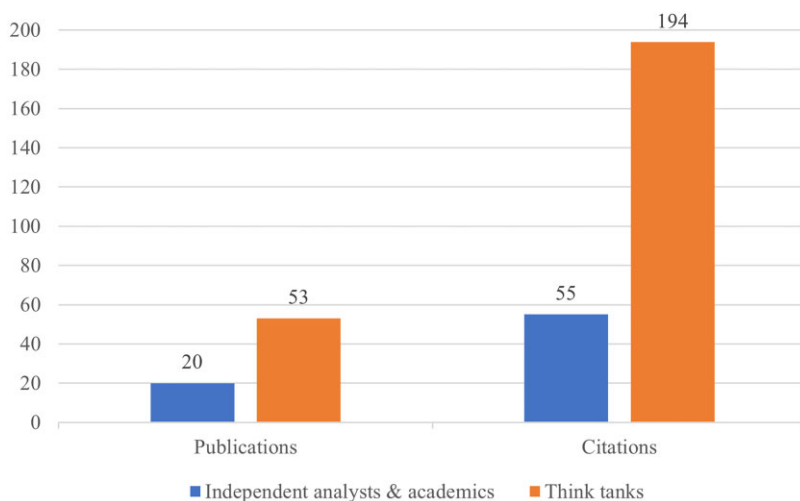
Figure 3. Sources of information cited by media organisation

publications produced by think tanks, independent analysts, and academics. Given that only one publication cited has been released by a university,⁸⁶ independent analysts, and academics were considered jointly. Sources of information published by think tanks made up 78 per cent of citations and 73 per cent of research publications cited compared to independent analysts, and academics (see Figure 4).

As Figure 4 demonstrates, think tanks represent the majority of publications and citations within research type of sources and thus seem to influence EUAA CG to a great extent. In particular, sources of information from the following 13 think tanks are cited more than once (see Table 1). The list of the 13 most-cited think tanks still reflects a degree of diversity of the type of institutions and the research outputs they publish. However, the CG relies on these sources to a different extent (see Table 1 and Figure 5).

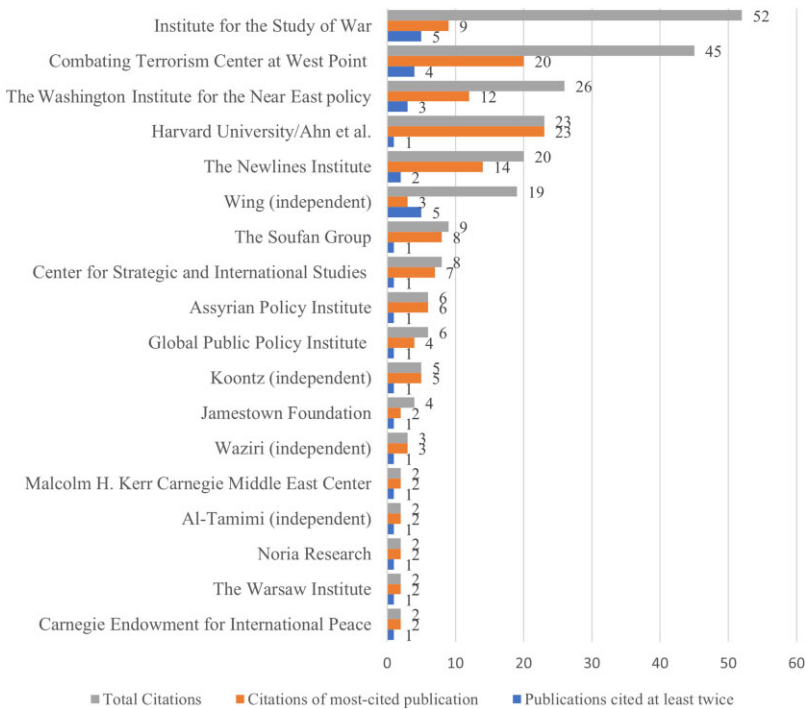
Whereas the proportion between the number of media publications and their citation is more equally distributed, there is a more uneven balance between the proportion of research publications, in particular from think tanks and their citation

86 J. Ahn et al., *The Politics of Security in Ninewa: Preventing an ISIS Resurgence in Northern Iraq*, Cambridge Massachusetts, Harvard Kennedy School, 7 May 2018, available at: https://www.hks.harvard.edu/sites/default/files/degree%20programs/MPP/files/Finalized%20PAE_Ahn_Campbell_Knoetgen.pdf (last visited 11 Jul. 2022).

Figure 4. Publications and citations by type of research-based source**Table 1: Most cited think tanks**

Think tank	Number of publications	Number of publications cited more than once	Total citations
Institute for the Study of War	9	5	52
Combating Terrorism Center at West Point	5	4	45
The Washington Institute for the Near East Policy	8	3	26
The Newlines Institute	6	2	20
The Soufan Group	2	1	9
Center for Strategic and International Studies	2	1	8
Assyrian Policy Institute	1	1	6
Global Public Policy Institute	3	1	6
The Jamestown Foundation	3	1	4
Malcolm H. Kerr Carnegie Middle East Center	1	1	2
The Warsaw Institute	1	1	2
Carnegie Endowment for International Peace	1	1	2
Noria Research	1	1	2

Notes: The table does not include the other 10 think tanks that each has one publication cited only once. They are the Baghdad-based Al-Bayan Center for Planning and Studies, the US-based Century Foundation, the UK-based Chatham House (Royal Institute of International Affairs), the French Institute of International Relations (IFRI), the Israeli Meir Amit Intelligence and Terrorism Information Center (ITIC), the US-based Middle East Institute, the Norwegian Peacebuilding Resource Centre, the US RAND Corporation, the Saudi Arabia-based Rasanah (International Institute for Iranian Studies), and the Washington Kurdish Institute.

Figure 5. Research-based sources: think tanks, independent analysts, and academics

(Figure 1). This reflects the use that is being made of each type of source in the relevant passages of the COI reports. Hence, media sources are usually used to reference particular events, for example, when collating lists of security incidents during a particular period, whereas publications by think tanks (and other research publications) provide more analytical information about the security situation in Iraq and provide more general arguments about the development of the conflict, the nature of the violence and the impact on civilians. However, research publications are also used to reference particular events or provide quantitative data. This especially applies to the most cited think tanks, such as the Institute for the Study of War (ISW), Combating Terrorism Center at West Point (CTC), or the Washington Institute for the Near East Policy. ISW is the think tank most cited (52) although 17 of those publications are Iraq Situation Reports, one-page weekly overviews of main security events, and six are short operational updates about the counterinsurgency efforts against ISIL. These 23 publications are each cited once in the Baghdad section of the *Security Situation 2020* report.⁸⁷ Meanwhile, CTC and the Washington Institute's influential publications include those analysing databases of security incidents or attacks carried out by insurgents, as discussed below.

Common attributes among the think tanks given relatively more weight include being based in the US, aiming to influence US foreign policy in the Middle East, collecting data and information through US military and security ties, and adopting narrow military perspectives and approaches. Each of these characteristics is discussed below.

All most cited think tanks (see Table 1) are based or headquartered in the USA, except for four. The Global Public Policy Institute, Noria Research, the Warsaw Institute, and the Malcolm H. Kerr Carnegie Middle East Center are based in Germany, France, Poland, and Lebanon, respectively.⁸⁸ However, only one report from each source is cited more than once and only to a limited extent (4, 2, 2, and 2 citations, respectively).⁸⁹

Most of the US think tanks cited have a global reach covering multiple regions of interest to US policymakers and feature a strong Middle East or Iraq component, in particular the ISW, the CTC at West Point, the Newlines Institute, the Center for Strategic and International Studies (CSIS), the Jamestown Foundation⁹⁰ and Carnegie Endowment for International Peace. In addition, three of the US think tanks specialise in the Middle East, including the Washington Institute for the Near East Policy, Malcolm H. Kerr Carnegie Middle East Center, and Assyrian Policy Institute, the latter of which seeks to influence US policy on matters related to the Assyrian minority found in Iraq, Syria, Turkey, Iran, Lebanon, and Jordan.

Apart from the think tanks based in Europe and the Soufan Centre, which brands itself as a consultancy, all other most cited think tanks openly seek to influence US foreign policy (70 per cent). For example, the aim of the ISW is “improving the nation’s ability to execute military operations and respond to emerging threats in order to achieve U.S. strategic objectives.”⁹¹ The Washington Institute’s stated mission is “to advance a balanced and realistic understanding of American interests in the Middle East and to promote the policies that secure them.”⁹² The CSIS, founded during the Cold War, originally was “dedicated to finding ways to sustain American prominence and prosperity as a force for good in the world.”⁹³ The Jamestown Foundation declares its mission is “to inform and educate policy makers and the broader community about

88 Note however that the Malcolm H. Kerr Carnegie Middle East Center delivers the Middle East Programme for the US-based Carnegie Endowment for International Peace.

89 E. Gaston & A. Derzi-Horváth, *Iraq After ISIL*, GPPI, Mar. 2018, available at: https://www.gppi.net/media/Gaston_Derzi-Horvath_Iraq_After_ISIL.pdf (last visited 11 Jul. 2022); R. Beaumont & A. Quesnay, *The Return of the State and Inter-Militia Competition in Northern Iraq*, Noria, 14 Jun. 2018, available at: <https://noria-research.com/the-return-of-the-state-and-inter-militia-competition-in-northern-iraq/> (last visited 11 Jul. 2022); A. Wielgos, *Iraq: Security Sector Reform Regarding Paramilitary Units*, The Warsaw Institute, Jul. 2020, available at: <https://warsawinstitute.org/iraq-security-sector-reform-regarding-paramilitary-units/> (last visited 11 Jul. 2022); F. Wehrey & A. Alrababa’h, *An Elusive Courtship: The Struggle for Iraq’s Sunni Tribes*, Carnegie Middle East Center, Nov. 2014, available at: <https://carnegie-mec.org/diwan/57168> (last visited 11 Jul. 2022).

90 The Middle East is covered by the Foundation’s “Terrorism Monitor.”

91 ISW, *Who We Are*, available at: <https://www.understandingwar.org/who-we-are> (last visited 11 Jul. 2022).

92 The Washington Institute, *About the Institute*, available at: <https://www.washingtoninstitute.org/about> (last visited 11 Jul. 2022).

93 A.H. Cordesman & S. Khazai, *Iraq in Crisis*, CSIS, May 2014, available at: https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/140513_Cordesman_IraqInCrisis_Web.pdf (last visited 11 Jul. 2022) ii.

events and trends in those societies which are strategically or tactically important to the United States and which frequently restrict access to such information.”⁹⁴ Multiple US think tank publications are produced to support US counterterrorism and counterinsurgency efforts in the region. Hence, the majority of the most-cited think tanks aim to influence US strategic interests in the Middle East.

Several of the think tanks not only aim to influence US foreign policy interests in the Middle East but also work actively with US military and security actors. The Iraq CG relies most heavily on the publications of several institutes that have ties to the US military or security services, even if they are not funded by those services (see Figure 6). The description undoubtedly applies to the CTC and the ISW. The CTC was established after the 9/11 attacks at a US military academy. Jessica D. Lewis, the Research Director at ISW and author of one of the reports cited six times, is a former intelligence officer of the US Army who has served in Iraq and Afghanistan.⁹⁵ Three retired high-ranking US army officers serve on ISW’s board, including General David H. Petraeus, former commander of US forces in Afghanistan and of coalition forces in Iraq.⁹⁶ The Board of Advisors of the Washington Institute for the Near East Policy is comprised of former high-ranking members of the US administration and military and the CIA.⁹⁷ The Soufan Group also boasts of its founder Ali H. Soufan, a former counter-terrorism Federal Bureau of Investigation (FBI) agent, and of a team of “highly decorated and experienced officers from the intelligence sector (FBI, CIA, MI5, MI6), the military, law enforcement, and government.”⁹⁸ A notable exception is the Newlines Institute that does not exhibit clear links to military and security services. All but one of the publications from Newlines Institute are authored by Al-Hashimi, an Iraqi security analyst who was Newlines Institute’s non-resident fellow based in Baghdad before his assassination in 2020.⁹⁹ A report by Al-Hashimi is the third most cited publication¹⁰⁰ (see Figure 6), another of his articles is cited twice¹⁰¹ and the others only once.¹⁰²

94 The Jamestown Foundation, *About Us*, available at: <https://jamestown.org/about-us/> (last visited 11 Jul. 2022).

95 J.D. Lewis, *Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign Part I*, Institute for the Study of War, Middle East Security Report 14, Sep. 2013, available at: https://web.archive.org/web/20130919011717/http://www.understandingwar.org:80/sites/default/files/AQI-Resurgent-10Sept_0.pdf (last visited 11 Jul. 2022) 4.

96 Institute for the Study of War, *Who We Are*, available at: <https://www.understandingwar.org/who-we-are> (last visited 11 Jul. 2022).

97 The Washington Institute, *Board of Advisors*, available at: <https://www.washingtoninstitute.org/about/board-advisors> (last visited 11 Jul. 2022).

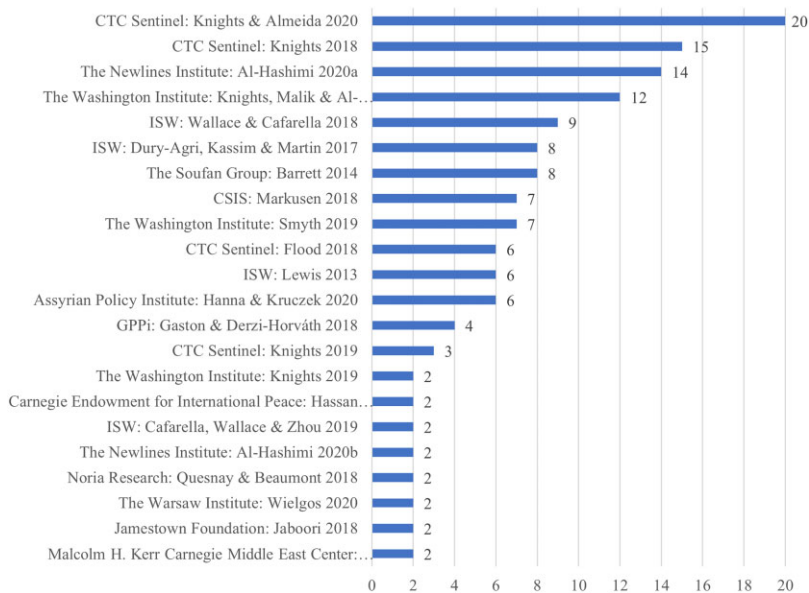
98 The Soufan Group, *About the Soufan Group*, available at: <https://www.soufangroup.com/about/> (last visited 11 Jul. 2022).

99 BBC News, “Hisham al-Hashimi: Leading Iraqi Security Expert Shot Dead in Baghdad”, 7 Jul. 2020, available at: <https://www.bbc.co.uk/news/world-middle-east-53318803> (last visited 11 Jul. 2022).

100 Fourteen citations. H. Al-Hashimi, *ISIS in Iraq: From Abandoned Villages to the Cities*, Newlines Institute, 5 May 2020, available at: <https://newlinesinstitute.org/isis/isis-in-iraq-from-abandoned-villages-to-the-cities/> (last visited 11 Jul. 2022).

101 H. Al-Hashimi, *ISIS in Iraq: The Challenge of Reintegrating ‘ISIS Families’*, Newlines Institute, 7 Jul 2020, available at: <https://newlinesinstitute.org/isis/isis-in-iraq-the-challenge-of-reintegrating-isis-families/> (last visited 11 Jul. 2022).

102 H. Al-Hashimi, *ISIS in Iraq: “Smoking the Fox Out of Its Den” Strategy*, Newlines Institute, 14 Jul. 2020, available at: <https://newlinesinstitute.org/isis/isis-in-iraq-smoking-the-fox-out-of-its-den-strategy/> (last visited 11 Jul. 2022); H. Al-Hashimi, *ISIS Thrives in Iraq’s “Money and Death Triangle”*, Newlines

Figure 6. Most cited think tank publications

CTC, Combating Terrorism Centre at West Point; ISW, Institute for the Study of War; CSIS, Centre for Strategic and International Studies; GPPi, Global Public Policy Institute.

Figure 6 shows which specific sources of information published by think tanks, including their authors, are cited most often.

The types of publications most cited include thematic articles and longer reports about the state of the insurgency in Iraq and brief operational updates. The thematic articles about the state of insurgency by ISIL are published in CTC Sentinel.¹⁰³ Thematic articles on the workings of the Popular Mobilisation Forces (PMF) as armed actors are published by the Newlines Institute,¹⁰⁴ CTC

Institute, 11 Aug. 2020, available at: <https://newlinesinstitute.org/isis/isis-thrives-in-iraqs-money-and-death-triangle/> (last visited 11 Jul. 2022); H. Al-Hashimi, *The Coalition Withdrawal from Iraq: Fact and Fiction*, Newlines Institute, 10 Apr. 2020, available at: <https://newlinesinstitute.org/iraq/the-coalition-withdrawal-from-iraq-fact-and-fiction/> (last visited 11 Jul. 2022).

103 D.H. Flood, *From Caliphate to Caves: The Islamic State's Asymmetric War in Northern Iraq*, CTC Sentinel 11(8) Sep. 2018, available at: <https://ctc.usma.edu/caliphate-caves-islamic-states-asymmetric-war-north-ern-iraq/> (last visited 11 Jul. 2022); M. Knights, *The Islamic State Inside Iraq: Losing Power or Preserving Strength?*, CTC Sentinel 11(11) Dec. 2018, available at: <https://ctc.usma.edu/wp-content/uploads/2018/12/CTC-SENTINEL-122018.pdf> (last visited 11 Jul. 2022); M. Knights & A. Almeida, *Remaining and Expanding: The Recovery of Islamic State Operations in Iraq in 2019-2020*, CTC Sentinel 13(5) May 2020, available at: <https://ctc.usma.edu/wp-content/uploads/2020/05/CTC-SENTINEL-052020.pdf> (last visited 11 Jul. 2022).

104 Al-Hashimi, *ISIS in Iraq: From Abandoned Villages to the Cities*; Al-Hashimi, *ISIS in Iraq: The Challenge of Reintegrating 'ISIS Families'*.

Sentinel,¹⁰⁵ the Washington Institute,¹⁰⁶ and the Warsaw Institute.¹⁰⁷ Longer reports on the state of the insurgency are published by the ISW¹⁰⁸ and the CSIS¹⁰⁹ or on the topic of the PMF by the ISW¹¹⁰ and the Washington Institute.¹¹¹ Finally, brief operational updates are published by the ISW.¹¹² During the campaign against ISIL in 2014–2017, ISW closely followed US military operations on the ground in Iraq and numerous of its page-long frequent overviews are referred to as a source of information on military manoeuvres, insurgent attacks, and security incidents. Although some sources did not fit this classification,¹¹³ the focus is thus usually on the actors in the conflict: ISIL as the enemy of the Iraqi Government and its allies and the PMF as an ally in the fight against ISIL but not under the direct control of the government forces, thus contributing to the complex security environment.

In terms of methodological approaches, the most cited reports by ISW, CTC, the Washington Institute, and CSIS are not always transparent about their methodology. Wherever the sources of their information are identifiable, they rely on quantitative analysis of datasets, elite interviews¹¹⁴ with anonymous government and military officials or publicly available data. These publications contain quantitative analysis of

- 105 M. Knights, *Iran's Expanding Militia Army in Iraq: The New Special Groups*, CTC Sentinel 12(7) Aug. 2019, available at: <https://ctc.usma.edu/irans-expanding-militia-army-iraq-new-special-groups> (last visited 11 Jul. 2022).
- 106 M. Knights, *Normalizing Security in the Nineveh Plains*, The Washington Institute, 5 Jul. 2019, available at: <https://www.washingtoninstitute.org/policy-analysis/normalizing-security-nineveh-plains> (last visited 11 Jul. 2022); P. Smyth, *The Shia Militia Mapping Project* (Interactive Map), The Washington Institute, May 2019, available at: <https://www.washingtoninstitute.org/policy-analysis/shia-militia-mapping-project> (last visited 11 Jul. 2022).
- 107 Wielgos, *Iraq: Security Sector Reform regarding Paramilitary Units*.
- 108 J. Cafarella, B. Wallace & J. Zhou, *ISIS's Second Comeback: Assessing the Next ISIS Insurgency*, Institute for the Study of War, Jun. 2019, available at: <https://www.understandingwar.org/sites/default/files/ISW%20Report%20-%20ISIS's%20Second%20Comeback%20-%20June%202019.pdf> (last visited 11 Jul. 2022); Lewis, *Al-Qaeda in Iraq Resurgent*.
- 109 M.B. Markusen, *The Islamic State and the Persistent Threat of Extremism in Iraq*, CSIS, Nov. 2018, available at: <https://www.csis.org/analysis/islamic-state-and-persistent-threat-extremism-iraq> (last visited 11 Jul. 2022).
- 110 J. R. Dury-Agri, O. Kassim & P. Martin, *Iraqi Security Forces and Popular Mobilization Forces: Orders of Battle*, Institute for the Study of War, Dec. 2017, available at: https://www.understandingwar.org/sites/default/files/Iraq%20-%20ISF%20PMF%20Orders%20of%20Battle_0_0.pdf (last visited 11 Jul. 2022).
- 111 M. Knights, H. Malik & A. J. Al-Tamimi, *Honored, not Contained: The Future of Iraq's Popular Mobilization Forces*, The Washington Institute, Mar. 2020, available at: <https://www.washingtoninstitute.org/policy-analysis/honored-not-contained-future-iraqs-popular-mobilization-forces> (last visited 11 Jul. 2022).
- 112 Including but not limited to B. Wallace & J. Cafarella, *ISIS Threat Update – December 2018*, Institute for the Study of War, 19 Dec. 2018, available at: <http://www.iswresearch.org/2018/12/isis-threat-update-december-2018.html> (last visited 11 Jul. 2022).
- 113 R. Hanna & G.J. Kruczek, *Contested Control: The Future of Security in Iraq's Nineveh Plain*, Assyrian Policy Institute, 1 Jun. 2020, available at: https://50f3ad00-5b28-4016-898f-6130d301c97a.filesusr.com/ugd/6ae567_98f8f8912baa40949a18a3a0b717eaea.pdf (last visited 11 Jul. 2022); H. Hassan, *The Sectarianism of the Islamic State: Ideological Roots and Political Context*, Carnegie Endowment for International Peace, Jun. 2016, available at: <https://carnegieendowment.org/2016/06/13/sectarianism-of-islamic-state-ideological-roots-and-political-context-pub-63746> (last visited 11 Jul. 2022); Gaston & Derzi-Horváth, *Iraq After ISIL*.
- 114 The term “elite” is used in qualitative research methods to describe interviewing persons with senior positions and/or the ability to exercise influence and who are generally difficult to access for research purposes.

datasets of security incidents based on Armed Conflict Location & Event Data project (ACLED), Iraq Body Count, media, private security company reports, and/or Iraqi government to count attacks and casualties and analyse patterns of attacks by insurgents.¹¹⁵ The research seeks to understand the escalation/de-escalation of the violence, insurgents' tactics, and geographical trends. Authors acknowledge the caveats related to the use of attack datasets but do not move beyond them. For example, Knights admits that his Geolocated Significant Action (SIGACT) dataset is "not only a partial sample of Islamic State attacks (because some incidents are not reported) but [...] also a conservative underestimate of Islamic State incidents."¹¹⁶ Some publications are based on elite interviews with government and military officials¹¹⁷ and contacts with armed groups to study the PMF.¹¹⁸ Some publications rely on publicly available data such as announcements by the Iraqi Ministry of Defence and PMF, Iraqi media, Iraqi Security forces units and social media accounts to study the PMF, especially the Shi'a militia.¹¹⁹

Other authors also employ interviews with government, military, and other armed group officials but go beyond the country's elite or not only for the study of the PMF. Notable examples are the reports by the Assyrian Policy Institute and GPPi based on extensive interviewing in the case study areas, including locally active NGOs and members of the local community.¹²⁰ To paint the security landscape in the Ninewa Plain, the Assyrian Policy Institute especially provides rich quotes from the interviews, giving voice to the local community. Al-Hashimi used interviews with local Iraqi officials to gauge the challenges with resettling and reintegrating families with ISIL connections.¹²¹

Overall, few of the think tank sources of information cited are concerned with a holistic assessment of risk to civilians in Iraq. Most publications are produced to support US counterinsurgency operations and rely disproportionately on quantitative analysis conducted remotely. Although the proliferation of non-accountable armed actors is a concern for counterinsurgency operations too (thus the reports on PMF), it takes the publications engaging with a wide range of local sources to fully grasp the extent and complexity of the sectarian conflict in Iraq.

The most influential think tanks cited in the sections of the COI reports cross-referenced in the Iraq CG, namely those that are US-based, concerned with safeguarding US interests in the Middle East, some with close links to US military and

115 CSIS: Markusen, *The Islamic State and the Persistent Threat of Extremism in Iraq*; CTC: Knights, *The Islamic State Inside Iraq: Losing Power or Preserving Strength?*; CTC: Knights & Almeida, *Remaining and Expanding: The Recovery of Islamic State Operations in Iraq in 2019-2020*; ISW: Lewis, *Al-Qaeda in Iraq Resurgent*; Newlines Institute: Al-Hashimi, *ISIS in Iraq: From Abandoned Villages to the Cities*; CTC: Flood, *From Caliphate to Caves* (attacks cited for illustration, no quantitative analysis).

116 Knights, *The Islamic State Inside Iraq: Losing Power or Preserving Strength?*, 2.

117 Knights, *The Islamic State Inside Iraq: Losing Power or Preserving Strength?*, 2; Knights, Malik & Al-Tamimi, *Honored, not Contained: The Future of Iraq's Popular Mobilization Forces*.

118 Smyth, *The Shia Militia Mapping Project*.

119 Dury-Agri, Kassim & Martin, *Iraqi Security Forces and Popular Mobilization Forces: Orders of Battle*; Smyth, *The Shia Militia Mapping Project*; Wielgos, *Iraq: Security Sector Reform regarding Paramilitary Units*.

120 Hanna & Kruczek, *Contested Control: The Future of Security in Iraq's Nineveh Plain*; Gaston & Derzi-Horváth, *Iraq After ISIL*.

121 Al-Hashimi, *ISIS in Iraq: The Challenge of Reintegrating 'ISIS Families'*.

security, and focused on analysis of US military operations share a narrow perspective of security through military perspectives and approaches. The data and information contained in the publications are only marginally related to the impact of the armed conflict on the civilian Iraqi population beyond casualty figures. Their analysis focuses on the operational level of the counterinsurgency campaign, trying to learn from and foresee the actions of the enemy (for example attacks by ISIL) in order to defeat it or at least to keep it at bay. Apart from some consideration of their sources of revenue,¹²² there is little reflection on how insurgents are able to sustain their activities, control territory through terror imposed on the civilian population or generally what it is like to live in an area where ISIL continues to operate.

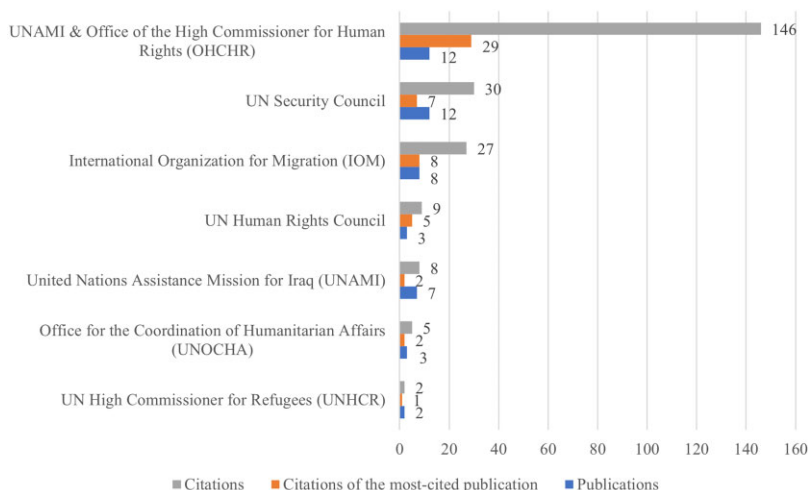
Although at first glance, the typology of sources suggests a wide range of carefully assessed sources have been used, on closer inspection it becomes apparent that different types of sources are used to a different extent and for different purposes. The most widely cited sources are research publications from think tanks, independent analysts, and academics (249) yet these citations originate from only 73 research reports and articles. Media sources on the other hand, although they constitute the second highest number of citations (234) are generally cited only once and thus originate from 186 distinct sources of information (see Figure 1). Accordingly, whereas the relevant sections of the COI reports cross-referenced in the Iraq CG contain a varied reliance on both media sources and think tanks,¹²³ it is evident that media sources are generally cited once for the purpose of compiling lists of security incidents illustrative of the wider context of insecurity. On the other hand, reports from think tanks are cited in support of the more “analytical” content of the relevant sections of COI reports. However, this analysis is based on narrow policy frames and quantitative research methods containing their own limitations, which are not fully acknowledged in the COI reports. As a consequence, asylum decision-makers’ understanding of the characteristics of the armed conflict in Iraq gleaned from the COI reports, and by extension the CG, is centred on traditional and military perspective and approaches to data collection.

3.3. United Nations agencies and institutions sources

Documents released by UN institutions are an important source of data for the COI reports. It is the third most-cited category of publications (233), although it is close to the number of citations by research-based and media sources (see Figure 1). It can be seen also that individual sources of information produced by UN institutions are used extensively as only 52 publications are cited. These documents vary from UN Security Council resolutions to newsletters published by UN agencies operating in Iraq. Figure 7 lists the sources of the most-cited documents produced in the UN system. The United Nations Assistance Mission for Iraq (UNAMI) and the Office of the High Commissioner for Human Rights (OHCHR) receive by far the most

122 B. Wallace & J. Cafarella, *ISIS's Second Resurgence*, Institute for the Study of War, 2 Oct. 2018, available at: <http://www.iswresearch.org/2018/10/isiss-second-resurgence.html> (last visited 11 Jul. 2022), cited in EUAA *Security Situation* report 2019 and EUAA *Targeting of Individuals* report 2019.

123 On the nature of think tanks, see Encyclopaedia Britannica, *Think Tank*, 13 Jan. 2015, available at: <https://www.britannica.com/print/article/1387159> (last visited 11 Jul. 2022).

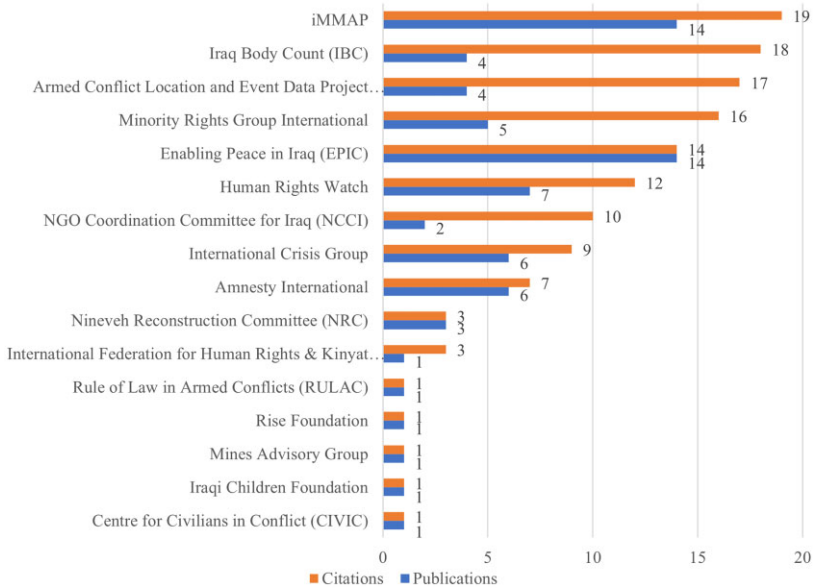
Figure 7. Citations and publications by UN sources

citations (146) for their joint reports on human rights and the protection of civilians in conflict in Iraq. UN Security Council's resolutions, statements, and resolutions implementation reports come second, followed by the International Organization for Migration (IOM) with its data on displacement and return of IDPs in Iraq. Reports to the UN Human Rights Council and its inquiry, UNAMI's press statements and reports, a map and needs assessments by the Office for the Coordination of Humanitarian Affairs (UNOCHA) also get between nine and five citations. Only two documents from UNHCR are cited once each.¹²⁴ The UN Joint Analysis Unit, the World Bank, UN Mine Action Service, UN Population Fund-Iraq, and UN Environment Programme have only one publication cited once or twice (not included in the figure).

Despite being the UN source most cited in the COI reports, the joint UNAMI and OHCHR report on human rights and the protection of civilians are relatively out of date ranging between 2014 and 2018. The reports of the UN Secretary-General to the Security Council on progress made by UNAMI are generally limited to key developments and list factual events. Reflecting the use made of media sources in the COI reports, sole-authored UNAMI sources are predominantly press statements denouncing specific security incidents. The most recent source from UNAMI (not included in the figure) is an e-mail to EUAA dated 24 July 2020, providing the number of armed conflict-related incidents and civilian casualties for the period 1 January 2019—31 July 2020 for the Baghdad and Ninewa Governorates.¹²⁵ Overall, apart from a 2020 report

124 UNHCR, *Position on Returns to Iraq*, Oct. 2014, available at: https://www.ecoi.net/en/file/local/1189762/1930_1414506610_544e4b3c4.pdf (last visited 11 Jul. 2022); UNHCR, *Iraq: Country of Origin Information on Access and Residency Requirements in Iraq (Update I)*, Nov. 2019, available at: <https://www.ecoi.net/en/file/local/2019573/5dc04ef74.pdf> (last visited 11 Jul. 2022).

125 EUAA, *Iraq: Security Situation*, 2020, 81 and 132. The email data are also used for the other Governorates.

Figure 8. Citations and publications by NGOs sources

on demonstrations in Iraq regarding the treatment of demonstrators based on interviews with individuals,¹²⁶ UNAMI sources of information are used in the COI reports for quantitative data on security incidents and civilian casualties only.

The quantitative nature of the information from UN sources is also apparent in the publications on displacement and return of IDPs in Iraq from IOM, where the data are generally limited to the number of IDPs and returnees from IOM's Displacement Tracking Matrix. Very limited information is included on the actual situation and treatment of this particular group, such as their living conditions. Finally, it is noteworthy that little reliance is placed on UNHCR materials and the lack of cross-reference to UNHCR's own guidance on returns to Iraq.¹²⁷

3.4. Non-governmental organisation sources

EUAA's COI reports rely on a variety of NGOs with monitoring or documentation activities in Iraq. This category includes international human rights monitoring NGOs (Amnesty International, Human Rights Watch, Minority Rights Group International), projects collating conflict casualties data with a global focus (ACLED, Rule of Law in Armed Conflicts portal) or specifically for Iraq (Iraq Body Count),

126 UNAMI, *Demonstrations in Iraq: 3rd Update*, 23 May 2020, available at: https://www.ecoi.net/en/file/local/2030372/3pdatemayen_1.pdf (last visited 11 Jul. 2022); cited in EUAA, *Iraq: Security Situation*, 2020, 77.

127 UNHCR, *International Protection Considerations with Regard to People Fleeing the Republic of Iraq*, HCR/PC/IRQ/2019/05_Rev.2, May 2019, available at: https://www.refworld.org/publisher/UNHCR/COUNTRY_POS/IRQ5cc9b20c4,0.html (last visited 11 Jul. 2022).

NGOs providing information management services to humanitarian and development organisations (iMMAP), NGOs monitoring developments in Iraq (Enabling Peace in Iraq (EPIC)), or NGOs coordinating development and humanitarian activities in Iraq (NGO Coordination Committee for Iraq (NCCI), Nineveh Reconstruction Committee (NRC)) (Figure 8).

NGOs were cited less often in the relevant passages of EUAA's COI reports cross-referenced in the Iraq CG than research-based, media, and UN sources. NGO sources were cited approximately half as often (133, see Figure 1) as these other sources. The number of individual sources of information relied on (71) was comparable to research-based sources of information (73), again demonstrating the greater weight being placed on research-based sources of information, in particular those published by think tanks.

Significantly, NGO sources of information relied on more extensively are data-driven publications that provide breakdown of conflict-related incidents, attacks, and casualties, often in the form of maps and tables. For example, iMMAP provides data to the Iraq Humanitarian Fund, itself managed by the United Nations Office for the Coordination of Humanitarian Affairs, in the form of monthly security incidents situations reports, weekly explosive incidents reports, and monthly hazards risk level on roads reports. EUAA also draws heavily on the quantitative data provided by Iraq Body Count, including through the collation of a supplementary COI Source on Iraq: Iraq Body Count Data and Analysis on Civilians Killed in Iraq.¹²⁸ Thus, despite the potential for relying on NGO reporting characterised by qualitative interviews with Iraqi civilians, such as Amnesty International and Human Rights Watch, the figure indicates a clear preference for large data sets driven quantitative information.

3.5. Government sources

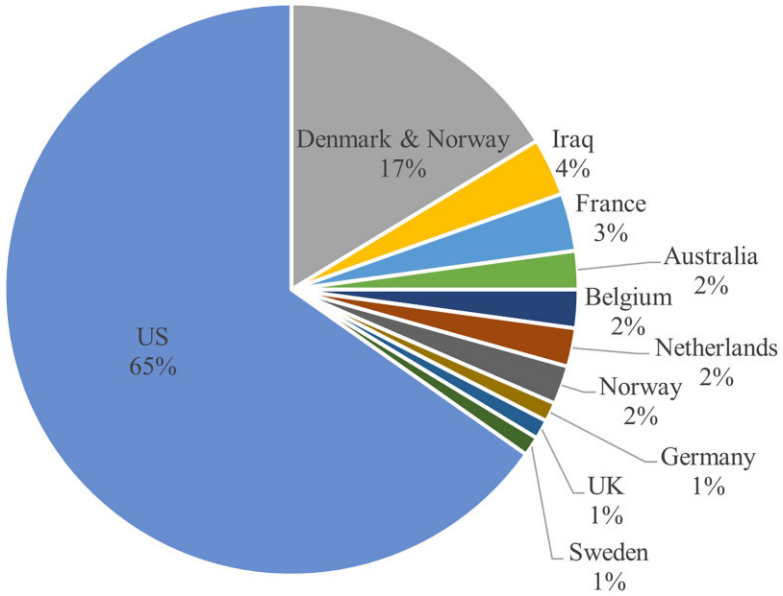
Comparatively, Government sources of information are the least cited and comprise the least number of publications than all other types of sources, including research institutions, media, UN agencies and NGOs (see Figure 1). Furthermore, there is a notable imbalance in the origin of the sources of information cited. Approximately two-thirds of government publications cited are documents produced by US Government institutions (60 out of 92: 65 per cent, see Figure 9) whereas there is a notable lack of reliance on EU Member States' own publications (Figure 10).

Most of the US Government sources of information are published by agencies concerned with intelligence, counterterrorism, and military operations (see Figure 11), whilst those produced by other Governments (Western European and Australian) tend to be COI reports on Iraq produced by the country's asylum administrative authorities. Only two sources of information by the Iraqi Government are cited, namely population estimates by the Central Statistical Organisation and a Facebook post by the Media Office of the Prime Minister.

The lack of balance amongst Government sources of information mirrors that observed amongst research-based publications, where US think tanks with close links

128 EUAA/IBC, *Iraq Security Situation – Supplementary COI Source: Iraq Body Count Data and Analysis on Civilians Killed in Iraq, 2012, 2017-2018*, Feb. 2019, available at: https://coi.easo.europa.eu/administration/easo/PLib/Iraq_IBC_Civilian_Deaths.pdf (last visited 11 Jul. 2022).

Figure 9. Proportion of government publication citations by country



Note: Includes joint publication by Denmark and Norway.

Figure 10. Number of government publications and citations by country

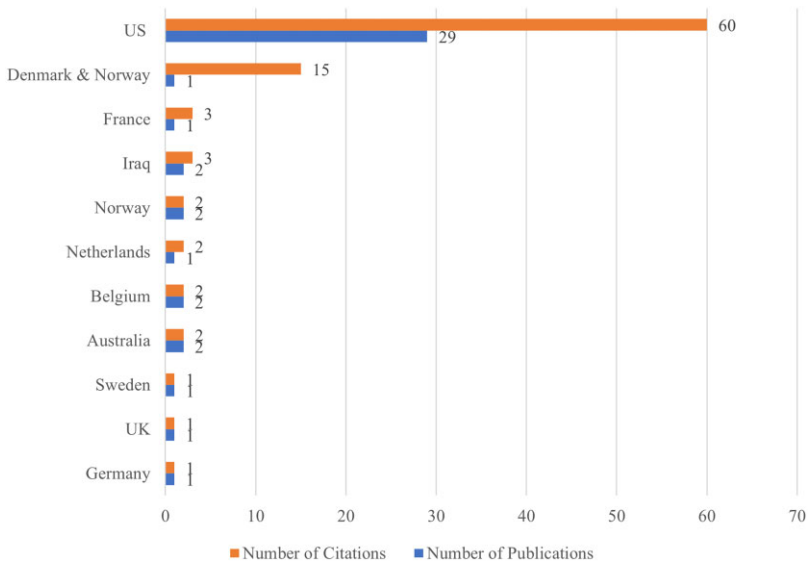
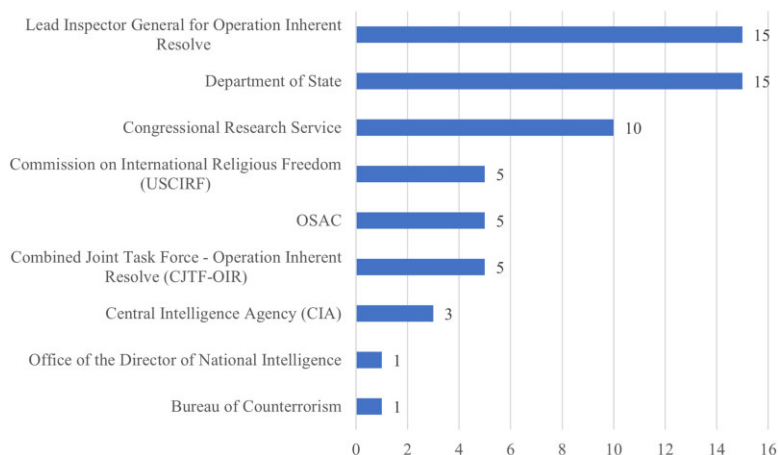


Figure 11. Citations by US government agency

to US military counterinsurgency efforts in Iraq are disproportionately cited and thus carry more weight than other research-based sources of information such as independent analysts and academics. This further entrenches the US-focused trend observed in respect of think tanks, which displayed a similar disproportionate reliance on US sources influenced by military interests, perspectives, and approaches.

3.6. Perspectives and approaches to security

Although EUAA's *Security Situation* and *Targeting of Individuals* COI reports are aimed at providing as factual as possible, and therefore as objective as possible, description of conditions in the country of origin to assist decision-makers in determining entitlement to international protection,¹²⁹ their content is drawn from sources of information within a divided field. The field of security studies is characterised by a spectrum of perspectives and approaches to the study of security ranging from traditional military State-centric perspectives, namely "the study of the threat, use, and control of military force,"¹³⁰ to critical perspectives, which question the concept of security and focus on people's experiences of insecurity.¹³¹ Debates within the field of security studies are characterised by a dichotomy between hard positivist understandings of theory which dominate in the US and softer reflective understandings of theory found more widely in Europe.¹³² The rationalists, economic and quantitative approaches are generally linked to the former whereas critical, interpretative, and qualitative forms of analysis tend to be associated with the latter.¹³³

129 EUAA, *COI Report Methodology*, 7.

130 B. Buzan, *The Evolution of International Security Studies*, Cambridge, Cambridge University Press, 2009, 162.

131 *Ibid.*, 187–192.

132 O. Wæver, "The Sociology of a Not So International Discipline: American and European Developments in International Relations", *International Organization*, 52(4), 1998, 687–727.

133 Buzan, *The Evolution of International Security Studies*, 57.

Although traditionalists have historically adopted a military State-centric perspective, the terrorist attacks of 9/11 shifted their attention to the relation between the State and Non-State Actors.¹³⁴ Their approach however remained centred on the military sector. The post-9/11 environment sparked debates within the international security studies field, including whether the field should emphasise its policy relevance or scientific understanding and whether a critical perspective could be merged with advising Government.¹³⁵ These debates were further fuelled by critiques of the relationship between policy-making and academic institutions specialising in international security studies due to a concern with the quality of work by think tanks or which is supported by defence contractors and the US Department of State.¹³⁶ It has been said that the standards of social sciences reflected in scholarly works were not reproduced in political advocacy works.¹³⁷ Nonetheless, it is perhaps unsurprising that think tank publications aimed at influencing US foreign policy adopt a traditional approach to security because, as Buzan points out, advocates of a narrow concept of security consider it to be a better guide towards making policy priorities.¹³⁸

Moreover, as the ideology of armed groups such as ISIL does not enable compromise and the US War on Terror thus allows no political solution, the US military strategy in Iraq has been to defeat ISIL at all costs.¹³⁹ Further, the conflict's impact on civilians is assessed by the US through the norms of international humanitarian law, in particular, the principle of distinction between combatants and non-combatants in the conduct of military operations.¹⁴⁰ Hence, the aim of US operations in Iraq is the protection of US national security through the defeat of terrorist groups, such as ISIL, and the principal objective of data collection in this context is military success rather than the protection of civilians.

The result of the disproportionate reliance on US security and policy-driven sources of information in EUAA's COI reports on Iraq is that the content of the reports, and by extension the CG on Iraq, are centred on attacks, incidents, and casualties through a geographical and territorial lens. The data concerned with attacks, incidents, casualties, infrastructure, displacement, and returns contained in these sources of information are collected through quantitative methods. Although the CG is based on methodical choices by EUAA's CG and COI Specialist Networks regarding the data selected for the joint assessment,¹⁴¹ the structure of the subsidiary protection guidance¹⁴² to allow comparisons between the level of indiscriminate violence per Governorate in Iraq,¹⁴³ contributes to its focus on quantitative indicators.

134 *Ibid.*, 227.

135 *Ibid.*, 228.

136 S.M. Walt, "The Renaissance of Security Studies", *International Studies Quarterly*, 35(2), 1991, 211–239.

137 Buzan, *The Evolution of International Security Studies*, 164.

138 *Ibid.*, 205.

139 M.L. Gross, *Moral Dilemmas of Modern War: Torture, Assassination, and Blackmail in an Age of Asymmetric Conflict*, Cambridge, Cambridge University Press, 2010, 19.

140 For a discussion of the US decision to apply international humanitarian law rather than international human rights law in conflicts such as Afghanistan and Iraq, see Murphy, "International Law in Crisis", 77, 79.

141 See brief discussion of sources regarding number of incidents, EUAA, *Country Guidance: Iraq*, Jan. 2021, 128–129.

142 As provided for by Art. 15(c) Qualification Directive.

143 EUAA, *Country Guidance: Iraq*, Jan. 2021, 35–36 and 126–127.

Where quantitative data is supplemented with qualitative data, these are elicited from US and Iraqi military and security personnel with extremely limited methodological explanations such as number of interviews, role, background and location of interviewees, dates of interviews and interviewing style. In the case of the most cited think tank publication, it also appears that US intelligence officers work with the authors on their datasets of Islamic State attacks.¹⁴⁴ It illustrates the potential close partnership between policy-driven US think tanks and the US military and raises queries regarding the objectivity of the sources of information for the purpose of COI production, and ultimately CG development, in the context of the refugee status determination process.

A preference for quantitative sources is perhaps unsurprising if the assessment of international protection requires an assessment of risk, in particular when this requires determining the level of indiscriminate violence in situations of armed conflict.¹⁴⁵ Further, it is important to acknowledge that asylum decision-making is a complex process, and that therefore it may be natural to fall back on a statistical assessment of risk on return.¹⁴⁶ However, scholars researching other areas of law, such as criminal justice, have noted that the imperatives of the legal process make it more difficult to distinguish between valid scientific claims and objective “truth.”¹⁴⁷ In other words, what might be considered true in the legal process might not count as true for science and *vice versa*.¹⁴⁸ As Good argued, whereas asylum lawyers and judges consider matters established to the required standard of proof as true facts, country experts such as anthropologists consider that facts are the outcome of specific theoretical approaches and truth is generally contested.¹⁴⁹ Campbell has also contended, following an analysis of refugee and subsidiary protection CG cases in the UK Upper Tribunal, that senior immigration judges assume quantitative and statistical data to be more “objective” or scientific than data collected using other methods and therefore prefer quantitative and statistical data to qualitative or ethnographic evidence.¹⁵⁰ Campbell says the approach is indicative of senior immigration judges’

144 Knights & Almeida, *Remaining and Expanding: The Recovery of Islamic State Operations in Iraq in 2019-2020*, 12 fn (b).

145 As noted by the CJEU, subsidiary protection should be granted where the degree of indiscriminate violence “reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to the serious threat referred in Article 15(c) of the Directive,” CJEU, Case C-465/07, *Elgafaji v Staatssecretaris van Justitie*, 17 Feb. 2009, para. 35.

146 In the case of UK Country Policy and Information Notes, see C. Querton and S. Huber, *A Commentary on the Use of Quantitative Assessments to Determine Risk in Country Policy and Information Notes (CPINs) Issued by the UK Home Office*, Asylum Research Centre Foundation, 2021, available at: https://asylumresearchcentre.org/wp-content/uploads/2021/11/ARC-Foundation-UWE-Commentary_Stats-in-CPINs_November-2021_Final.pdf (last visited 9 Jun. 2022).

147 S. Jasanoff, “Just Evidence: The Limits of Science in the Legal Process”, *Journal of Law, Medicine & Ethics*, 34(2), 2006, 328.

148 *Ibid.*, 333.

149 A. Good, “‘Undoubtedly an Expert’? Anthropologists in British Asylum Courts”, *The Journal of the Royal Anthropological Institute*, 10(1), 2004, 131.

150 J.R. Campbell, “The Judicial Assessment of ‘Expert Evidence’ in the United Kingdom’s Immigration and Asylum Chamber”, *Laws*, 11(32), 2022, 14.

positivist attitudes towards “objective” evidence arising from the belief that judicial reasoning is based on neutral principles of law.¹⁵¹

Another concern with the excessive reliance on certain authors of think tank sources of information in EUAA COI reports is that it may amount to the designation of country experts in CG without the procedural safeguards that generally accompany the use of expert evidence in judicial proceedings, including the ability to cross-examine experts or making submissions regarding the weight that should be placed on that evidence. Further, these experts by implication are not bound by the same duties which apply to experts being called to give evidence in the course of legal proceedings.¹⁵² In this context, judges are the authority determining the weight to be placed on particular evidence, yet in the case of EUAA CG, those choices are made by the CG and COI Specialist Networks through the selection of sources and the search for further information with little transparency. Where data is provided by email, EUAA should at the very least publish the request for further information and the full response, in the Appendix to the COI reports for example.¹⁵³ In addition, stakeholders could be invited via the EUAA Consultative Forum to submit questions to authors whose view is heavily cited in the COI reports and CG.¹⁵⁴

The sources which are disproportionately represented in the COI reports import the doctrine of their field, their express interests, and research culture into CG. Research-based sources are predominantly concerned with US national security and aim to influence US military policy on counter-insurgency. Whilst other types of sources are also used, such as UN and NGO sources, the COI reports mainly draw on their quantitative data, further reinforcing the narrow perspective of security in EUAA’s CG. Overall, the principal sources of COI relied on in EUAA’s CG are inadequate to capture the present-day nature of violence in situations of contemporary armed conflict. As researchers use different methods to collect data and interpret their empirical data using different theoretical frameworks, it is essential that COI reports rely not only on a balance of sources but also a range of sources that reflect different methodological approaches and theoretical perspectives. COI that focuses on people’s experiences rather than States and military sector would be more coherent for the purpose of refugee status determination because the process requires an individual assessment of the particular applicant’s circumstances. Academic or NGO sources of information providing data concerning the motivations of armed groups, their strategies and the impact on civilians collected using interviews or focus groups with civilians or armed groups themselves¹⁵⁵ would provide qualitative information more relevant to the assessment of the reasons for violence and thus whether the Refugee Convention is engaged and if not, a better understanding of the impact of

151 *Ibid.*, 5.

152 In the UK, for example, experts must comply with the Practice Directions of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, Part 4 s. 10, which sets out their overriding duty to the Tribunal to provide independent and objective evidence.

153 As an example of this good practice, see the Asylum Research Centre Foundation and Asylos Strategic COI reports, available at: <https://asylumresearchcentre.org/projects/> (last visited 12 Jan. 2023).

154 On the EUAA’s collaboration with organisations through the Consultative Forum, see preamble (40) and Arts. 9(2)(a) and 50(2) EUAA Regulation.

155 See for example, T. Farrell & A. Giustozzi, “The Taliban at War: Inside the Helmand Insurgency, 2004–2012”, *International Affairs*, 89(4), 2013, 845–871.

indiscriminate violence on civilians. Broadly, bringing wider and critical security studies approaches to bear on international refugee law, through COI and CG would better reflect the experiences of persons living in countries characterised by situations of armed conflicts.

4. RELEVANCE AND USABILITY OF COUNTRY GUIDANCE

Although EUAA notes that the production of its COI reports involves an analytical process which is “the neutral evaluation of an issue or problem,”¹⁵⁶ its CG represents the common assessment of the situation in the country of origin by senior policy officials from EU Member States and associated countries and aims to inform asylum decision-makers in the refugee status determination process. Thus, whereas EUAA must ensure COI is “relevant, reliable, objective, accurate and up-to-date” and gathered “in a transparent and impartial manner,”¹⁵⁷ the development of an EU-wide policy position on the protection needs of Iraqi nationals involves a legal assessment of whether the conditions in Iraq meet the refugee or subsidiary protection status criteria. As EUAA’s CG is based on its COI reports, it is necessary to enquire whether any trends identified in the relevant COI reports as discussed above permeate into the CG and how this affects the CG’s relevance, in particular as the sources of information used in COI reports are rarely ever written for the purpose of refugee status determination. Tsangarides identified relevance as being the most important characteristic that legal representatives looked for in COI.¹⁵⁸ This part of the article therefore enquires into the relevance of the COI sources cross-referenced in the Iraq CG for the purpose of determining entitlement to subsidiary protection.

EUAA states that its COI reports are now regularly developed for the purpose of developing CG.¹⁵⁹ COI reports are, of course, also developed for the purpose of supporting the assessment of applications for international protection on an individual basis that must be conducted irrespective of CG and taking into account “all relevant facts as they relate to the country of origin.”¹⁶⁰ Information on the situation in the country of origin is identified by EUAA through “broad terms of reference specifically designed to meet the needs of this detailed assessment.”¹⁶¹ The enquiry into whether EUAA’s CG reflects the international protection needs of persons fleeing armed conflicts therefore also evaluates the Terms of Reference in its corresponding COI reports,¹⁶² which relates more broadly to EUAA’s development and promotion of indicators and guidelines.¹⁶³ The framing of the Terms of Reference is evaluated in light of national and regional case law and security studies literature. The Terms

156 EUAA, *COI Report Methodology*.

157 Art. 9(1) EUAA Regulation.

158 N. Tsangarides, *The Refugee Roulette: The Role of Country Information in Refugee Status Determination*, Jan. 2010, available at: <https://www.refworld.org/docid/4b62a6182.html> (last visited 11 Jul. 2022) 49.

159 EUAA, *Country Guidance: Frequently Asked Questions*, available at: <https://euaa.europa.eu/country-guidance-frequently-asked-questions> (last visited 22 Feb. 2022).

160 Art. 4(3)(a) Qualification Directive.

161 EUAA, *Country Guidance: Frequently Asked Questions*, available at: <https://euaa.europa.eu/country-guidance-frequently-asked-questions> (last visited 22 Feb. 2022). See also Art. 9(2)(c) EUAA Regulation.

162 EUAA, *Iraq: Security Situation*, Oct. 2020, Annex 2: Terms of Reference, 323; EUAA, *Iraq: Security Situation*, Mar. 2019, Annex III: Terms of Reference, 227.

163 Art. 13 EUAA Regulation.

of Reference of the Iraq *Security Situation* COI reports focus on criteria relevant to subsidiary protection needs as provided for by Article 15(c) of the Qualification Directive.¹⁶⁴ EUAA's Practical Guide on Qualification for International Protection notes that "the application of Article 15(c) QD is significantly dependant on the general situation in the country of origin. Therefore, assessing objective and up-to-date country-of-origin information is a crucial element in this regard."¹⁶⁵

From a methodological perspective, the Terms of Reference, drafted by the EUAA COI Specialist Network and the CG Network, are the foundation for EUAA's COI reports.¹⁶⁶ It is not surprising therefore that there are close parallels between the conceptualisation of security conveyed in the Terms of Reference and that contained in the information selected for inclusion in the COI reports, discussed in Section 3 above. The traditional military-centric perspective of security from COI reports, in turn, is transposed into the EUAA's CG. More significantly, this perspective is then further co-constructed at various stages of the refugee status determination process as national administrative and judicial authorities must have regard to the CG, which may influence legally binding judicial determinations, which in turn impact on the interpretation of international protection provisions considered as part of the development of future COI reports' terms of reference.

The Terms of Reference of EUAA's *Security Situation* COI reports are based on what EUAA refers to as "indicators of indiscriminate violence." Issues to be included in the reports include the location of confrontations and their intensity, the number of security incidents and their frequency, the number and patterns of civilian casualties, and the number of displaced civilians. The Iraq *Security Situation* COI reports list indicators of indiscriminate violence that reflect a traditional military and State-centric notion of security. The indicators display quantitative and geographical characteristics that can be "measured." The indicators also convey a weighty notion of territoriality through a concern with establishing what the armed groups' areas of control are and their presence in different areas of the territory.¹⁶⁷ These indicators are reflected in the summary of indiscriminate violence for each Governorate provided in the Iraq CG, which include information about ISIL's control of territory, presence and activities, number and type of security incidents, number of civilian casualties, and proportion according to population and the number of IDPs.

4.1. Indicators of indiscriminate violence

The indicators of indiscriminate violence adopted by EUAA are based on the factors which the European Court of Human Rights (ECtHR) identified in the case of *Sufi and Elmi* as relevant for the purpose of assessing the "intensity of a

164 EUAA, *Iraq: Security Situation*, 2020, 11.

165 EUAA, *Practical Guide: Qualification for International Protection*, 30.

166 The terms of reference are part of EUAA's "common methodology" as provided for in Art. 9(2)(c) EUAA Regulation.

167 Although not presented identically, the Terms of Reference contained in the Afghanistan and Syria Security Situation reports display similar characteristics. See *Afghanistan: Country Focus*, Jan. 2022, 108; *Afghanistan: Security Situation Update*, Sep. 2021, 157; *Afghanistan: Security Situation*, Jun. 2021, 513–514; *Afghanistan: Security Situation*, Sep. 2020, 445–446; *Syria: Security Situation*, Jul. 2021, 401; *Syria: Security Situation*, May 2020, 329.

conflict.”¹⁶⁸ Those criteria included (1) the methods and tactics of warfare which increase the risk to civilians or which directly target civilians, (2) whether the use of such methods and/or tactics is widespread, (3) whether the fighting is localised or widespread, and (4) the number of civilians killed, injured or displaced.¹⁶⁹ The ECtHR considered that the factors were not exhaustive but an appropriate yardstick for an assessment of whether returning an applicant to their country of origin might breach Article 3 European Convention on Human Rights in the context of a “general situation of violence.” The notion of indiscriminate violence adopted by the ECtHR in *Sufi and Elmi*, and by extension the EUAA in its CG, is based in international humanitarian law because the ECtHR drew on the UK Upper Tribunal CG case of *AM & AM (armed conflict: risk categories) Somalia* CG, which at the time (October 2008) interpreted Article 15(c) through the norms of international humanitarian law.¹⁷⁰

Scholarly debates have been concerned with whether norms of international humanitarian law should serve as an aid to interpretation of Article 15(c) Qualification Directive, to a lesser or greater extent, in light of the similar terminology used.¹⁷¹ International humanitarian law aims to protect civilians in situations of armed conflict whilst they remain present in the territory in question. The cornerstone of international humanitarian law is the principle of distinction, sometimes referred to as the principle of discrimination, and which has attained the status of customary international law.¹⁷² In short, the concept requires fighters in armed conflicts to distinguish between lawful military objectives and protected persons such as civilians, provided they take no direct part in the hostilities.¹⁷³ In situations of international armed conflicts, the norm was codified in international humanitarian treaty law and provided that “in the conduct of military operations at sea or in the air, each Party to the conflict shall, in conformity with its rights and duties under the rules of international law applicable in armed conflict, take all reasonable precautions to avoid

168 ECtHR, *Sufi and Elmi v the United Kingdom*, Application No. 8319/07 and 11449/07, 28 Nov. 2011, para. 241. EUAA, *Country Guidance: Iraq*, Jan. 2021, 122, 128. EUAA country guidance on Afghanistan, Somalia, and Syria also draw on *Sufi and Elmi*'s indicators of indiscriminate violence. See EUAA, *Country Guidance: Afghanistan*, Apr. 2022, 123–124; EUAA, *Country Guidance: Somalia*, Jun. 2022, 133; EUAA, *Country Guidance: Syria*, Nov. 2021, 139, 147.

169 ECtHR, *Sufi and Elmi*, para. 241.

170 [2008] UKAIT 00091. On the adoption of this approach, see paras. 114–120; on the definition of armed conflict, see paras. 128–143; on the nature of the violence see paras. 146–149.

171 See, for example, C. Bauloz, “The (Mis)Use of International Humanitarian Law under Article 15(c) of the EU Qualification Directive”, in D. Cantor & J. F. Durieux (eds.), *Refugee from Inhumanity? War Refugees and International Humanitarian Law*, Leiden, Brill Nijhoff, 2014, who rejects an international humanitarian law understanding of indiscriminate violence. Others suggested using international humanitarian law as non-exhaustive supplemental interpretative guidance, see J.F. Durieux, “Of War, Flows, Laws and Flaws: A Reply to Hugo Storey”, *Refugee Survey Quarterly*, 31, 2013, 161 and E. Tsourdi, “What Protection for Persons Fleeing Indiscriminate Violence? The Impact of the European Courts on the EU Subsidiary Protection Regime”, in D. Cantor & J.F. Durieux (eds.), *Refugee from Inhumanity?: War Refugees and International Humanitarian Law*, Leiden, Brill Nijhoff, 2014.

172 R. Otto, *Targeted Killings and International Law with Special regard to Human Rights and International Humanitarian Law*, Berlin, Springer, 2012, 265.

173 For further analysis see N. Melzer, “The Principle of Distinction Between Civilians and Combatants”, in A. Clapham and others (eds.), *The Oxford Handbook of International Law in Armed Conflict*, Oxford, Oxford University Press, 2015; Y. Dinstein, *Non-International Armed Conflicts in International Law*, Cambridge, Cambridge University Press, 2014, 213.

losses of civilian lives and damage to civilian objects.”¹⁷⁴ In the context of non-international armed conflicts, international humanitarian treaty law provides that “the civilian population as such, as well as individual civilians, shall not be the object of attack.”¹⁷⁵ The general prohibition of the targeted killing of civilians has become a norm of customary international law.¹⁷⁶ As a corollary of this rule, there is a requirement that any collateral damage, to be understood as civilian casualties or damage, be proportionate to the military advantage gained.¹⁷⁷ The principles of distinction and proportionality are thus intrinsically linked and codified in the prohibition of indiscriminate attacks. An attack would be characterised as indiscriminate where the particular methods or means of combat, the effects of which cannot be limited as required by international humanitarian law or of a nature to strike military and civilian objectives without distinction.¹⁷⁸ Thus, weapons may be indiscriminate *per se* such as barrel bombs for example¹⁷⁹ whereas some methods and means of combat which are legitimate under international humanitarian law become unlawful only if they affect civilians in indiscriminate ways.¹⁸⁰ Accordingly, understanding “indiscriminate violence” through international humanitarian law norms implies violence that fails to distinguish between civilians and combatants, either as a result of the failure to target legitimate military objectives, and hence includes the direct targeting of civilians, or the disproportionate impact on civilians arising from attacks on legitimate military objectives.

Significantly, the latter necessarily implies that killings of civilians in situations of armed conflict may be lawful under international humanitarian law. As Bauloz argues convincingly, this principle cannot be reconciled with the international protection regime which safeguards against *refoulement* in cases of well-founded fear of persecution or real risk of serious harm on return.¹⁸¹ Put simply, the EU subsidiary protection regime cannot be conceptualised as excluding from its scope persons in need of protection merely because the real risk of serious harm arises as a result of proportionate collateral damage, in the international humanitarian law sense of the term.¹⁸² Overall, when comparing the two legal regimes it becomes evident that they serve different aims¹⁸³ such that the incorporation of international humanitarian law

174 Art. 51(4) Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 3, 8 Jun. 1977 (entry into force: 7 Dec. 1978).

175 Art. 13(2) Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609, 8 Jun. 1977 (entry into force: 7 Dec. 1978).

176 ICRC, *Customary International Humanitarian Law – Volume I: Rules*, Cambridge, Cambridge University Press, 2005, Rules 1, 7, and 11; Otto, *Targeted Killings*, 267.

177 ICRC, *Customary International Humanitarian Law*, Rule 14; Otto, *Targeted Killings*, 270.

178 Otto, *Targeted Killings*, 305.

179 S. Townley, “Indiscriminate Attacks and the Past, Present, and Future of the Rules/Standards and Objective/Subjective Debates in International Humanitarian Law”, *Vanderbilt Journal of Transnational Law*, 50, 2017, 1223, 1258.

180 Otto, *Targeted Killings*, 306.

181 Bauloz, “The (Mis)Use of International Humanitarian Law”, 249–252.

182 *Ibid.*, 251.

183 As highlighted by the CJEU, Case C-285/12, *Aboubacar Diakité v Commissaire Général aux Réfugiés et aux Apatrides*, 30 Jan. 2014, para. 24.

definitions into the EU subsidiary protection regime would not ensure the fulfilment of its object and purpose.

Furthermore, reliance on international humanitarian law was explicitly rejected by the CJEU in *Diakite*.¹⁸⁴ In *Diakite*, the CJEU established that eligibility for subsidiary protection under Article 15(c) is not conditional on finding that the criteria for applying international humanitarian law in the country of origin are met.¹⁸⁵ In its reasoning, the CJEU highlighted that the wording of Article 15(c) was different from the terms of art found in international humanitarian law¹⁸⁶ and the purpose of each field of law was distinct.¹⁸⁷ Indeed, the definitions of international and non-international armed conflicts found in international humanitarian law are not designed to identify situations in which international protection would be necessary.¹⁸⁸ Accordingly, using the benchmarks of international humanitarian law to define the concept of indiscriminate violence and measure its level is contrary to the requirement to give the individual provisions of Article 15(c) an autonomous interpretation as required by EU law¹⁸⁹ and thus fails to reflect international protection standards.

In international humanitarian law, the concept of “indiscriminate attacks” is understood as violence that fails to distinguish between civilians and combatants in situations defined as international or non-international armed conflicts. The indicator of whether the parties to the conflict use methods and tactics of warfare which increase the risk to civilians or which directly target civilians is clearly concerned with this notion.¹⁹⁰ This indicator is further developed in the guidance, noting that “some acts are by their nature more indiscriminate than others and create a more substantial risk for civilians.” EUAA’s Afghanistan CG develops the indicator as follows, “the nature of methods and tactics used by armed groups would be an important element to consider with regard to the risk for civilians. Certain methods and tactics would have a more significant indiscriminate impact on the civilian population.”¹⁹¹ EUAA’s Nigeria CG indicates that “some acts of violence may be indiscriminate by their nature, for example, (suicide) bombings, attacks, and armed confrontations in areas that are inhabited or frequented by civilians (e.g. market places, public roads, health-care facilities).”¹⁹² However, in the international protection sense of the term, violence is either indiscriminate or not but cannot be more or less indiscriminate. Indeed, the CJEU in *Elgafaji*, established that indiscriminate violence under Article 15(c) Qualification Directive means violence that may affect individuals irrespective of their personal circumstances.¹⁹³

184 *Ibid.*

185 *Ibid.*, para. 26.

186 *Ibid.*, para. 20.

187 *Ibid.*, para. 23.

188 *Ibid.*, para. 23.

189 CJEU, Case 283/81, 1982, *Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health*, para. 20; See also CJEU, *Diakite*.

190 See, for example, Murphy, “International Law in Crisis”, 74.

191 EUAA, *Country Guidance: Afghanistan*, Apr. 2022, 131.

192 EUAA, *Country Guidance: Nigeria*, Oct. 2021, 105, see also 107–108.

193 CJEU, *Elgafaji*, para. 34.

What is more, adopting international humanitarian law norms to identify indiscriminate violence is inadequate to capture the nature of violence in situations of contemporary armed conflict. If “indiscriminate violence” in Article 15(c) Qualification Directive is interpreted using general principles of international humanitarian law, it becomes apparent that the focus of asylum decision-makers’ enquiry would be on the direction of violence (i.e. is it directed at civilians, opposing parties to the conflict or both) and the impact of this violence, by reference mainly to the *proportion* of civilian casualties and potentially including the methods and means of violence (i.e. weapons, location, etc.), in order to determine whether the violence is indiscriminate and whether the violence has reached the required degree/level/intensity threshold,¹⁹⁴ rather than the reason(s) for the exercise of violence. Decision-makers should first be guided to enquire into the motivations of parties to the conflict to determine whether individuals are exposed to violence irrespective of their personal circumstances, thereby ensuring the primacy of the Refugee Convention.¹⁹⁵ If the determination then moves on to subsidiary protection, the narrow indicators adopted by EUAA’s CG cannot ensure the “comprehensive appraisal” required to determine whether a “serious and individual threat” exists as required by the CJEU in respect of international protection needs under Article 15(c) Qualification Directive¹⁹⁶ in a manner that reflects the nature of violence in situations of armed conflict.¹⁹⁷

4.2. Wider security perspectives and indicators

Lambert and Farrell have previously called for expanding the indicators considered as part of the assessment of the level of indiscriminate violence in light of the changing character of armed conflicts, which has increased threats to civilians, by reference to the concept of human security.¹⁹⁸ More specifically, recommendations were made to look beyond the direct effects of conflicts, such as civilian deaths caused by fighting, to also take into account population displacement and State failure, including the indirect effects of armed conflicts such as threats to human dignity resulting from starvation and destruction of critical infrastructure and services.¹⁹⁹ In a later piece, Lambert demonstrated judicial support in France, Germany, the Netherlands, and the UK for taking into account criminal violence resulting from the breakdown of law and order as an indirect consequence of armed conflicts.²⁰⁰ To some extent, this approach has been endorsed in EUAA’s CG by reason of its inclusion in EUAA’s judicial and practical guidance documents.²⁰¹ Thus, the Iraq CG for each Governorate includes data on displacement, criminal activities, and infrastructure

194 The CJEU has interchangeably referred to the degree, level or intensity of violence in *Diakite and Elgafaji*.

195 UNHCR, *Guidelines on Armed Conflict and Violence*, para. 9.

196 CJEU, *CF and DN*, para. 40.

197 Querton, *Conflict Refugees*, Chapter 3.

198 Lambert & Farrell, “The Changing Character of Armed Conflict”, 237.

199 *Ibid.*

200 Hélène Lambert, “The Next Frontier: Expanding Protection in Europe for Victims of Armed Conflict and Indiscriminate Violence”, *International Journal of Refugee Law*, 25, 2013, 207.

201 EUAA, *Article 15(c) Qualification Directive (2011/95/EU): A Judicial Analysis*, 18, 31. EUAA, *Practical Guide: Qualification for International Protection*, 33.

damage,²⁰² although the Terms of Reference of the *Security Situation* COI reports and the guidance on the indicators of indiscriminate violence in the CG refer only to displacement.²⁰³

The CJEU in *Elgafaji* emphasised that Article 15(c) Qualification Directive was designed to extend subsidiary protection to individuals who were not covered by the Refugee Convention or Article 3 of the European Convention on Human Rights, reproduced in Article 15(b) Qualification Directive. The CJEU's reasoning was based on ensuring that Article 15(c) had its own field of application²⁰⁴ but also that Article 15(c) was not subject to the same requirements of Article 15(a) and 15(b) whereby applicants have to demonstrate they are specifically exposed to the risk of a particular type of harm.²⁰⁵ The CJEU emphasised that Article 15(c) referred to a threat rather than to specific acts of violence and thus covers a more general risk of harm.²⁰⁶ Although Zalar has described the CJEU's approach in this case as minimalist,²⁰⁷ in substance, an applicant for subsidiary protection under Article 15(c) must demonstrate a real risk of a threat to their life or person rather than a real risk of actually being killed or suffering serious harm from injury. A threat in this sense is a more general risk of harm. A threat of harm in situations of contemporary armed conflicts is more likely to affect large number of persons by virtue of the nature of violence which is characterised by the strategic logic of non-state armed groups who exercise political control over territory by terrorising and forcibly displacing populations through fear and intimidation.²⁰⁸

Although the Iraq CG acknowledges that Article 15(c) covers a more general risk of harm,²⁰⁹ interpreting Article 15(c) through the prism of the *Sufi and Elmi* indicators of indiscriminate violence does not emulate the distinction highlighted by the CJEU in *Elgafaji* between a more general risk of a threat of harm and the risk of a particular type of harm. By drawing on *Sufi and Elmi*, EUAA's indicators concern particular types of harm as illustrated by specific acts of violence exercised by actors in the conflict. If applicants have to demonstrate a real risk of being killed or injured by specific methods or means of fighting, this amounts to a highly individualised risk not required by Article 15(c) as interpreted by the CJEU.

From a conceptual perspective, there should also be an analytical distinction between armed conflicts and the exercise of violence taking place in situations of armed

202 EUAA, *Country Guidance: Iraq*, Jan. 2021, 135–136, 148–149.

203 *Ibid.*, 130; EUAA, *Iraq: Security Situation*, Oct. 2020, Annex 2: Terms of Reference, 323; EUAA, *Iraq: Security Situation*, Mar. 2019, Annex III: Terms of Reference, 227.

204 *Elgafaji*, para. 36, see also para. 28.

205 *Ibid.*, para. 32.

206 *Ibid.*, paras. 33–34.

207 B. Zalar, “Comments on the Court of Justice of the EU’s Developing Case Law on Asylum”, *International Journal Of Refugee Law*, 25, 2013, 378.

208 Kaldor, *New and Old Wars*, 9, 166–172. C.M. Chinkin & M. Kaldor, *International Law and New Wars*, Cambridge, Cambridge University Press, 2017, 14. Although indiscriminate violence is discussed here, a threat of violence may also amount to persecution and applicants should be granted refugee protection where this is for reasons of race, religion, nationality, political opinion, or membership of a particular social group, CJEU, Case C-652/16, *Nigyar Rauf Kaza Ahmedbekova, Rauf Emin Ogla Ahmedbekov v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*, Judgment, 4 Oct. 2018, para. 51; UNHCR, *Guidelines on Armed Conflict and Violence*, para. 29.

209 EUAA, *Country Guidance: Iraq*, Jan. 2021, 122.

conflict. Kalyvas claims this distinction is necessary because a significant amount of violence in situations of conflict occurs outside the battlefield and there is an inverse relationship between the severity of the conflict (measured by conventional means of warfare such as size of armed forces and sophistication of weapons) and the intensity of violence.²¹⁰ Hence, rather than focusing on quantitative factors such as the number of incidents, casualties, and IDPs, other factors linked to armed groups' strategies, such as spheres of control by actors to the conflict should be included in COI reports, and by extension CG.

For example, the Centre for the Study of Armed Groups, at the Overseas Development Institute in the UK, has called for a rethink of how we understand the notion of control in civil wars.²¹¹ Traditionally, control has been understood as territorially defined, centred on violence and state dominance and conceptualised as a zero-sum game. Understanding control predominantly through territory, by establishing the location of actors to the conflicts, front lines, and control demarcations lines, generally illustrated by maps, fails to adequately reflect nuances on the ground, such as control in rural areas versus district areas, and is limiting in that it may give the impression of sudden shifts, even though changes may not be as radical. Another limitation of the traditional understanding of control is the focus on violence measurements such as the number of incidents, attacks, and casualties, which may be useful for matters such as humanitarian access but not necessarily to understand the level of control exercised by armed groups, and thus the threats that civilians may be facing. In practice, control is not always exclusive and there are generally overlapping layers of control in situations of contemporary armed conflicts. Finally, control is often understood in relation to the State, yet enquiring into armed groups in their own right and how they exercise control brings to light a more complex picture of competing authorities in situations characterised by weak States. Bahiss, Jackson, Mayhew, and Weigand argue that assessing control through territorial indicators tends to be misleading because "many armed groups exercise control over populations beyond areas where they are physically present, shaping and influencing civilian life in the economic, social and political spheres deep into areas thought of as 'government controlled'."²¹² Armed groups are dependent on civilians as sources of information, enforcement of rules may thus be negotiated to ensure compliance and support, whilst enabling recruitment of fighters. The focus of EUAA CG on incident, attack, casualty, and displacement figures does not capture how actors in conflicts, such as ISIL, have more nuanced attitudes towards civilians, as the control they exert over civilians and how civilians respond to those pressures and threats are an integral part of armed groups' strategy in armed conflicts.

Indiscriminate violence must be understood by reference to the threats faced by individuals fleeing armed conflicts which Article 15(c) Qualification Directive was designed to protect. Scholarship regarding the strategies of fighting parties in contemporary armed conflicts indicates what such potential harm or types of threats

210 S.N. Kalyvas, *The Logic of Violence in Civil War*, Cambridge, Cambridge University Press, 20.

211 I. Bahiss et al., *Rethinking Armed Group Control: Towards a New Conceptual Framework*, Centre for Study of Armed Groups Working Paper, 2022, available at: www.odi.org/publications/rethinking-armed-group-control (last visited 1 Jun. 2022).

212 *Ibid.*

may look like.²¹³ The limited means of parties to contemporary armed conflicts has resulted in the use of terror to threaten certain groups or populations in a manner which gives the fighting parties control over territory, either by forcibly displacing these groups or by ensuring control of territory without resort to conventional military power and infrastructure.²¹⁴ Reliance on fewer yet highly visible forms of human rights violations is sufficient to create the threats necessary for armed groups' authority over territory even in the absence of conventional military power.²¹⁵ Accordingly, control by armed groups is more accurately understood by reference to how armed groups seek to influence populations.²¹⁶

Whereas academic sources and human rights NGOs may be perceived by EUAA and decision-makers as less suitable for COI reports because the data they publish are less current than data contained in think tank sources of information, human rights NGOs such as Amnesty International and Human Rights Watch are able to provide up to date information in the form of quantifiable security incidents, attacks, civilian casualties, and population displacement drawing on their extensive networks of human rights monitors. Moreover, if it is accepted that a wider perspective of security is required to adequately respond to the international protection needs of persons fleeing armed conflicts, it becomes apparent that academic sources and human rights NGOs engaged in qualitative research that provides more contextual data in understanding the strategic logic of violence in conflicts and how violence is used by armed groups to implement control over civilians play an equally important role in the determination of asylum claims from applicants originating from countries such as Afghanistan, Iraq, Somalia, and Syria. In order to fully understand the impact of violence on civilians in armed conflicts by having regard to armed groups' spheres of control, knowledge based on longer-term data may be essential and thus refutes the idea that academic sources and human rights NGOs engaged in qualitative research are unable to provide up to date information about the state of the conflict and the level of indiscriminate violence on the ground. The COI quality criterion of currency should not outweigh the importance of relevant COI. A shift in researching and presenting relevant COI for refugee status determination, including for use in CG, in the context of persons fleeing armed conflict will be required to ensure their effective protection in the EU.

5. CONCLUSION

The analysis of EUAA CG in this article took as a starting point its own COI reports, on the basis that the EUAA merely cites its own COI products in its CG reports. The quantitative findings indicate a disproportionate reliance in the COI reports on sources concerned with a narrow military and State-centric concept of security rooted in quantitative methods. As the COI summary in the CG focuses on ISIL's control of territory, presence, and activities, number and type of security incidents,

213 See, for example, Kaldor, *New and Old Wars*; Chinkin & Kaldor, *International Law and New Wars*.

214 Kaldor, *New and Old Wars*, 166–172. Murphy, "International Law in Crisis", 74; A. Karp, "The Changing Ownership of War: States, Insurgencies and Technology", in K. Krause (ed.), *Armed groups and Contemporary Conflicts: Challenging the Weberian State*, Oxfordshire, Routledge, 2010, 181

215 Kaldor, *New and Old Wars*, 9; Chinkin & Kaldor, *International Law and New Wars*, 14.

216 Bahiss et al., *Rethinking Armed Group Control*.

number of civilian casualties and proportion according to population, and number of IDPs, and does not identify whether some sources were given greater weight than others, it has been assumed that the disproportionate representation of such sources must have shaped the CG to a greater extent. The quantitative nature of the indicators of indiscriminate violence found in the COI reports' Terms of Reference supports this assumption. Vogelaar has emphasised the need for accountability in CG by ensuring transparency of decisions made such as why certain COI sources are preferred over others and what weight is attached to them.²¹⁷ Whereas literature examining the use of COI by decision-makers is able to "map" its usage because of the reasons given in asylum decisions,²¹⁸ in contrast, the EUAA's choices regarding the use of its COI sources of information to draft its CG remain opaque.

Although EUAA's legal guides and COI reports consistently emphasise the need to adopt a holistic approach and take into account quantitative and qualitative factors in the assessment of subsidiary protection, the disproportionate reliance on sources concerned with a narrow military and State-centric concept of security rooted in quantitative methods indicates that the guidance ultimately fails to follow its recommended approach. Assessment of subsidiary protection claims under Article 15(c) Qualification Directive by reference to the *Sufi and Elmi* indicators of indiscriminate violence as key benchmarks that are rooted in international humanitarian law norms misses the operative element of the provision which aims to protect persons fleeing armed conflicts from serious *threats* to their life or person. The ECtHR's reference to the UK Tribunal's case law demonstrates how a national approach reflecting a particular understanding of the nature of violence in situations of armed conflict, namely through the prism of international humanitarian norms, was endorsed by a regional court and eventually became instrumental in the development of EUAA COI reports and CG. This, in turn, is likely to influence the practice in all 27 EU Member States even though the national perspective in question has since been abandoned in the UK²¹⁹ and rejected in EU Law by the CJEU.²²⁰

There is a wealth of guidelines, training, networks, and peer review processes to ensure the relevance, objectivity, accuracy, and currency of COI reports. Nonetheless, the contents of COI reports are characterised by a specific politics of knowledge. Despite the parallels with the methodology of social sciences, the objective of COI reports is not the production of (scientific) facts but the enabling of asylum decisions.²²¹ The contours of COI are thus inevitably set by the needs and demands of COI users such as legal representatives, administrative authorities, and

217 F. Vogelaar, *Country of Origin Information: The Essential Foundation for Fair and Credible Guidance for Decision-Making on International Protection Needs*, Vrije Universiteit, Migration Law Series, 2020, 220.

218 See, for example, V. Feneberg et al., "It's Not What You Know, It's How You Use It: The Application of Country of Origin Information in Judicial Refugee Status Determination Decisions – A Case Study of Germany", *International Journal of Refugee Law*, 34(2), 2022, 241–267; T.M. Liodden, "The Map and the Territory: The Use of Country Information in Asylum Assessments", *International Migration Review*, 56(1), 2022, 296–322.

219 England & Wales Court of Appeal, *QD (Iraq) v Secretary of State for the Home Department* [2009] EWCA Civ 620, 24 Jun. 2009, para. 18.

220 CJEU, *Diakite*.

221 J. Van der Kist, H. Dijkstra & M. de Goede, "In the Shadow of Asylum Decision-Making: The Knowledge Politics of Country-of-Origin", *International Political Sociology*, 13, 2019, 80.

judicial entities. The formulation of requirements for COI products, such as written instructions and oral questions to country experts or Terms of Reference for COI reports, such as those adopted by the EUAA, are themselves informed by the standards and benchmarks of international protection developed in doctrine and jurisprudence. The consequence of this process is the cyclical reinforcement between COI, asylum decisions, and CG. Accordingly, although this article explores CG issued by EUAA (and associated COI reports), traditional military and State-centric security perspectives and quantitative approaches are likely to exist in other parts of the asylum process, including in legal representatives' submissions, administrative authorities' decisions, national and regional judicial determinations, and national and judicial CG due to the way the analytical frame of security is co-constructed through a narrow and traditional lens at different stages of the refugee status determination process.

Overall, the focus on civilian casualties and violent incidents in EUAA CG is limiting because it oversimplifies the notion of control and how civilians experience situations of contemporary armed conflicts. Assessing whether there are substantial grounds to believe that a person would face a real risk of suffering serious harm in the form of a "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict" requires an understanding of how violence is used as a strategic mean to control populations, civilians' own perspective of how they experience control by armed groups and how they navigate competing demands in armed conflict situations characterised by a plethora of armed groups.

These factors are to be found in a variety of sources including academic literature, qualitative research reports from human rights NGOs and UN sources. Any use of think tank sources of information needs to be mindful of their purpose and methodology, and to ensure sufficient balancing with other sources adopting different and more transparent methods. Greater use could also be made of think tanks adopting critical perspectives of security, such as human security, and focus on uncovering a deeper understanding of the impact of violence on civilians. Addressing these shortcomings would go some way in addressing the international protection needs of persons fleeing armed conflicts.