

The Relationship between the Responsibility to Protect and the Protection of Civilians in Armed Conflict

Introduction

In recent years, the United Nations Security Council has held an open debate on the Protection of Civilians in Armed Conflict (POC) twice yearly. The most recent debate took place on 14 January 2009. Following the Council's reaffirmation of the World Summit agreement on the responsibility to protect populations from genocide, ethnic cleansing, war crimes and crimes against humanity (abbreviated as R2P) in Resolution 1674 (2006) on the protection of civilians, discussion of R2P has been an important component of these debates. This is reflected in government statements, presentations by the Emergency Relief Coordinator, and in the October 2007 report of the Secretary-General on the protection of civilians, which took note of the agreement on R2P as a "cardinal achievement."¹ Open debates on POC have indeed been the only occasions within the formal Council agenda to reflect on the development of the R2P norm and its practice.

Yet the sensitivities around the inclusion of R2P within the protection of civilians' agenda have increased in recent months. There are concerns that the POC agenda is being needlessly politicized by the introduction of R2P into the Council's work and resolutions on the protection of civilians, as those who seek to roll back the 2005 endorsement of R2P raise questions about the protection of civilians in the attempt to challenge hard-won consensus reached on both issues. The purpose of this briefing is to provide clarity on the relationship between R2P, a norm relating to the prevention of mass atrocity crimes, and the protection of civilians' agenda, a framework enhancing the protection of civilian populations from the effects of armed conflict.

I. Explanation of Relevant Terms

What is the Responsibility to Protect?

The responsibility to protect is a norm which seeks to ensure that the international community never again fails to act in the face of genocide and other mass atrocity crimes. The norm stipulates, first, that states have an obligation to protect their citizens from genocide, war crimes, ethnic cleansing, and crimes against humanity, that entails the prevention of such crimes; second, that the international community should assist them in doing so; and, third, that, if the state in question fails to act appropriately, the responsibility to do so falls to that larger community of

states.² The international community thus has the responsibility to use appropriate "diplomatic, humanitarian and other peaceful means" to help protect populations from these crimes, but if the state is manifestly failing to protect its populations and peaceful means are inadequate, the international community agreed to take collective action through the Security Council in a timely and decisive manner.³

What is the Protection of Civilians in Armed Conflict?

For the purpose of this briefing paper, the protection of civilians has both a broad and narrow definition.

Broadly, the protection of civilians in armed conflict refers to the measures that can be taken to protect the safety, dignity, and integrity of all human beings in times of war which are rooted in obligations under international humanitarian law (IHL), refugee law, and human rights law. States bear the primary responsibility under these legal regimes to respect, protect and meet the needs of civilians in times of armed conflict. Organized armed groups also have clear obligations toward civilians under IHL. Humanitarian organizations that have been accorded protection mandates, such as the International Committee of the Red Cross (ICRC), several parts of the UN system including the UN High Commissioner for Refugees (UNHCR), the UN High Commissioner for Human Rights (UNHCHR), and the UN Children's Fund (UNICEF), as well as the Office for the Coordination of Humanitarian Affairs (OCHA), and humanitarian non-governmental organizations (NGOs), have a subsidiary role to press parties to an armed conflict to uphold their protection responsibilities and alleviate suffering where parties to the conflict fail to do so.

The protection of civilians in armed conflict is also more narrowly understood as a thematic subject of Security Council deliberations. As a separate thematic issue, the protection of civilians has been an item considered by the Council since 1999 when it received the first report of the Secretary-General on the subject and held its first open debate in response.⁴ That resulted in a call for the Secretary-General to report regularly on the protection of civilians in armed conflict, and the Council has since adopted four resolutions specifically addressing protection of civilians (1265, 1296, 1674, 1738). Resolutions on women (1325), children (1612), the protection of humanitarian workers (1502), conflict prevention (1625)

and sexual exploitation (1820) also include elements of civilian protection in conflict situations. Furthermore, numerous country-specific Council resolutions include measures aimed to protect civilians.

The Council's activities cross a spectrum of exhorting parties to a conflict to uphold their obligations, more robust measures to pressure parties in this regard, measures to hold parties to account for serious violations of IHL, as well as authorizing operations to provide greater physical protection to civilians under threat of violence. For example, in its resolutions, statements, and missions to conflict regions, the Council frequently calls on parties to conflict to observe IHL. It also imposes sanctions on those violating IHL. In extreme cases, it has authorized action to hold individuals accountable for serious violations of IHL (for example, in the cases of the former Yugoslavia and Rwanda for which the Council established criminal tribunals, or referring situations to the International Criminal Court).⁵ The Council uses its Chapter VII powers to impose arms embargoes or authorizes UN peace operations, regional organizations or groups of member states to use military force for the protection of civilians. Since 1999, at least ten UN authorized peace operations have been mandated to provide physical protection to civilians under imminent threat of violence.

II. The Relationship between POC and R2P

The World Summit's agreement on the norm of the responsibility to protect is related to the protection of civilians in armed conflict in a number of ways.

Shared normative foundations

Both the protection of civilians' agenda and R2P share the same normative foundation: the protection of individuals. They share the same legal underpinning, both requiring states to uphold specific obligations that they have under international humanitarian law, refugee law, and human rights law. Furthermore, as explained in the most recent report of the UN Secretary-General on the protection of civilians, in its "important affirmation of the primary responsibility of each State to protect its citizens and persons within its jurisdiction from genocide, war crimes, ethnic cleansing and crimes against humanity," R2P has advanced the "normative framework" of the protection of civilians."⁶

Both specify a role for the UN Security Council

Both the broader protection of civilians' agenda and R2P specify a role for the Security Council to adopt measures to protect human beings from suffering, although neither agenda is limited to action by the Council but involves a wide range of players -governments, organized armed groups, UN institutions, NGOs and other non-state actors.

In fact, the responsibilities that UN member states accepted in paragraph 139 of the World Summit Outcome

Document can be understood as bringing greater precision to the commitments made by the Security Council in earlier resolutions on the protection of civilians in armed conflict, recognizing that this matter was one that falls squarely within the Council's remit. For example, in Security Council Resolution 1265 (1999), the Council expressed "willingness to respond to situations of armed conflict where civilians are being targeted." Paragraph 5 of Security Council Resolution 1296 (2000) went further; the Council noted that, "the deliberate targeting of civilian populations or other protected persons and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict may constitute a threat to international peace and security," and, in this regard, reaffirmed its, "readiness to consider such situations and, where necessary, to adopt appropriate steps."

In paragraph 139 of the World Summit Outcome document (WSOD), member states made their commitment even more explicit, stating they are prepared to take timely and decisive collective action through the Security Council in situations where national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.

Neither is synonymous with military intervention

Another common element, worth noting because the issue is often confused in policy discourse, is that neither agenda can be reduced to the use of military measures. In both cases, protection comprises a wide variety of activities. The possible role for the Security Council also spans a wide range of measures in accordance with Chapters VI, VII, and VIII of the UN Charter. While at least thirteen UN missions have been mandated by the Security Council to protect civilians in some way, the entire protection of civilians' agenda cannot be reduced to the actions of peacekeepers. As for R2P, preventing mass atrocity crimes also requires a wide range of measures, which should not wait until the outbreak or escalation of armed conflict, nor necessarily entail the deployment of military force. At the World Summit, heads of state committed to a responsibility of the state to prevent such crimes, and for the international community to assist in prevention (WSOD paragraph 138) and to take peaceful measures to protect populations pursuant to Chapters VI and VIII, with Chapter VII collective action as a last resort and only if peaceful means are inadequate (paragraph 139). All action is to be guided by the UN Charter.

III. Distinctions between the Protection of Civilians Agenda and R2P

The protection of civilians extends beyond R2P

Although sharing many features, R2P is not synonymous with the protection of civilians in armed conflict. R2P is only a part of the broader agenda of protecting populations

during armed conflict, as R2P is specifically concerned with the protection of people from genocide, war crimes, ethnic cleansing, and crimes against humanity - some of the gravest violations of international humanitarian law and human rights. The rights and needs of populations caught up in warfare stipulated by the protection of civilians extend well beyond protection from mass atrocities.

The scope of R2P extends beyond conflict situations

On the other hand, the responsibility to protect may be limited in terms of the crimes it protects against, but this responsibility is not limited to mass atrocities that occur in times of armed conflict. R2P is concerned with preventing and halting mass atrocity crimes regardless of whether or not they take place in the context of armed conflict. The two agendas overlap but each extends beyond the other.

Conclusion

It is vital that fulfilling and advancing the well-established agenda of the protection of civilians in armed conflict is not held hostage by the controversy associated with R2P. Yet it is not possible to deny the relationship between these two agendas that share legal underpinnings, moral force and Security Council commitments. Instead, supporters need to challenge misperceptions and misrepresentations of both. This requires supporters to mount a robust, articulate defense of the connections and differences between the protection of civilians and R2P; to reject inaccurate characterizations that reduce either agenda to the use of force; and to remind critics that the common moral purpose of both agendas is to respect our common humanity and limit human suffering.

¹ Report of the Secretary-General on the Protection of Civilians in Armed Conflict, (Security Council document S/2007/643), 28 October 2007, para. 11.

² See Global Centre for the Responsibility to Protect, *Responsibility to Protect: Primer*, 2008.

³ General Assembly, "World Summit Outcome," October 24, 2005 (A/RES/60/1), 138,139.

⁴ Report of the Secretary-General on the Protection of Civilians in Armed Conflict, (Security Council document S/1999/957), 8 September 1999.

⁵ A description of the emergence of a framework for the protection of civilians in the Security Council is available at Security Council Report, *Protection of Civilians*, 2008, No. 2, 14 October 2008.

⁶ *Supra* note 1.