

The Relationship between the Responsibility to Protect and the Protection of Civilians in UN Peacekeeping

INTRODUCTION

The international norms of the Protection of Civilians (POC) and the Responsibility to Protect (R2P) emerged as a response to the failures to adequately protect populations during the 1990s in both Rwanda and the former Yugoslavia. The emergence of POC and R2P was a recognition of the fact that the international community and the United Nations needed to do more to protect populations in conflict zones from atrocity crimes in order to fulfill the promise of the United Nations Charter.

DEFINING POC AND R2P

POC has different meanings and has been considered as a moral responsibility, a legal obligation, a mandated peacekeeping task, and an activity undertaken by humanitarian and civil society organizations. Broadly, the Protection of Civilians (POC) refers to measures that can be undertaken to ensure the safety of civilians during times of armed conflict and which are rooted in obligations under international humanitarian law (IHL), refugee law and human rights law. States bear the primary responsibility to respect and protect civilians during times of armed conflict. Non-state 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), sections of the UN and humanitarian non-governmental organizations (NGOs), have a subsidiary role to press parties to an armed conflict to uphold their protective responsibilities and alleviate human suffering when parties to the conflict fail to do so.

R2P is a unanimous commitment made by UN member states in 2005 at the UN World Summit and stipulates that I) every state has the Responsibility to Protect its populations from four mass atrocity crimes: genocide, war crimes, crimes against humanity and ethnic cleansing; II) the wider international community has the responsibility to encourage and assist individual states in meeting that responsibility; and III) if a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter.

POC AND R2P AS CONCEPTS IN UN PEACEKEEPING MANDATES

The scale and complexity of conflicts and atrocities in the 1990s, and the immense suffering experienced by civilians, led to a request by the UN Security Council (UNSC) in February 1999 to the UN Secretary-General to submit annual reports with recommendations on how it could improve both the physical and legal protection of civilians in situations of armed conflict. Since then, the protection of civilians has been considered by the UNSC and led to the adoption of various resolutions specifically addressing POC (1265, 1296, 1674, 1738, 1894, 2222, and 2286). Resolutions on women (1325), children (1612), the protection of humanitarian workers (1502 and 2175), conflict prevention (1625), sexual

exploitation (1820) and protection of healthcare (2286) also include civilian protection in conflict elements. Furthermore, numerous country-specific UNSC resolutions include measures aimed at protecting civilians.

United Nations Peacekeeping is a multi-dimensional instrument designed to protect peace and to create political space for implementing agreements achieved by the parties to the conflict. In 1999 the UN Mission in Sierra Leone (UNAMSIL) was the first peacekeeping operation mandated to take the necessary action to afford protection to civilians under imminent threat of physical violence. Since 1999 numerous UN Security Council resolutions have further defined the role of peacekeeping in protecting civilians and the various mandated tasks that contribute to achieving this mandate.

Eight out of fourteen current UN peacekeeping missions have the Protection of Civilians at the core of their mandates, meaning that 96% of deployed peacekeepers are currently tasked with protecting civilians as part of their mission objectives.

Since 2005 the UNSC has also included references to the Responsibility to Protect in resolutions it has adopted, including within mandates for Peacekeeping Operations. Since 2006, 68 UNSC resolutions include a reference to the Responsibility to Protect, often *underlining*, *reaffirming* or *reiterating* the primary responsibility of the host state to protect its own population. The responsibility to protect is often referred to in the preambular paragraphs of a resolution, which means that R2P as a concept does not in itself authorize peacekeepers to fulfill certain tasks. However, the reference to R2P in the preamble sets the tone for a clear theme of R2P throughout the operative provisions: peacekeeping missions are often deployed because host states are manifestly unable or unwilling to uphold their responsibility to protect populations and are therefore increasingly called upon to assist in upholding the international community's responsibility to protect civilians from mass atrocity crimes.

THE RELATIONSHIP BETWEEN POC AND R2P IN THE CONTEXT OF UN PEACEKEEPING

What does each norm protect from?

Based on the language used by the UN Security Council in POC mandates, the physical protection of civilians in UN peacekeeping can be defined as: "all necessary action, up to and including the use of force, aimed at preventing or responding to threats of physical violence against civilians, within capabilities, and areas of operations, and without prejudice to the responsibility of the host government to protect its civilians." POC is aimed at preventing or responding to threats of physical violence against civilians. R2P refers to wider protection responsibilities relating to prevention and protection from the four crimes of genocide, ethnic cleansing, war crimes, and crimes against humanity.

Who is protected under each norm?

Both POC and R2P share the same normative foundation: the protection of vulnerable human beings. POC applies to crimes against civilians, whereas R2P applies to crimes against populations – this includes both civilians and combatants.

Under what circumstances does each norm apply?

POC is mandated in missions where civilians are under the threat of physical harm. R2P protects against the four atrocity crimes of genocide, war crimes, crimes against humanity and ethnic cleansing. As these crimes can also happen in the absence of armed conflict – R2P applies everywhere at all times and not only in a peacekeeping context. Within a peacekeeping context, a reference to R2P in the preamble of the mandate sets the tone for the operational provisions of the mandate and underlines the importance for the mission to focus on protection of populations.

Who carries out the protection under each norm?

For both norms, the primary responsibility lies with the state (the first pillar of R2P). Peacekeeping can also play an important role under the second pillar of R2P: the international community has the responsibility to assist states in

upholding their R2P. The authorization of peacekeeping missions with POC mandates is a way for the UN Security Council (and the international community) to respond to mass atrocity situations. Within a peacekeeping context, POC involves multi-faceted/multi-layered protection: diverse actors (including military, police and civilian personnel) are called upon at different times to perform actions specifically tailored to their role and capacities. References to R2P can be found in the preamble of mandates, and therefore do not authorize actors to undertake specific tasks. However, actions under POC contribute to the protection of populations from atrocities.

How might actors respond to threats under each norm?

Diverse actors within UN Peacekeeping are called upon at different times to perform actions specifically tailored to their role and capacities. Neither POC nor R2P should be reduced to the use of military measures. The UN defines POC as “all necessary action, up to and including the use of force, aimed at preventing or responding to threats of physical violence against civilians.” Since 1999 the UN Security Council resolutions have further defined the POC and the various mandated tasks under “all necessary action” that contribute to it. It includes a range of activities from dialogue to the provision of robust physical protection. R2P emphasizes the prevention of atrocity crimes through actions that reinforce good governance, strengthen mechanisms for human rights protection, and generate cooperation among diverse communities, etc. R2P also uses a preventive framework to identify and to ameliorate the risk of mass atrocity crimes. When atrocities are ongoing, tactics to protect civilians from the four crimes are similar to POC.