

Comparison: R2P Pillar Three and 'Humanitarian Intervention'

R2P differs in several key ways from the prior notion of a 'right of humanitarian intervention':

- » In focusing on the obligations of the international community, rather than their rights, it makes central the needs of the vulnerable.
- » Even in its Third Pillar, R2P includes non-military strategies aiming to protect civilians. Taking into account all three pillars, military intervention becomes just one last-resort measure that forms part of a larger protective process.
- » R2P is strictly limited to responding to the four atrocity crimes. It does not justify intervention to free populations from repression, or to promote democracy or human rights.
- » According with international law, R2P places exclusive responsibility for authorizing military action on the UNSC. It does not legitimize unilateral intervention.

§2.1.b POC in Armed Conflicts

"The Security Council must make up its mind on what it means by protection of civilians. It must have clarity about who is to be protected and what constitutes a threat. It must also clarify what kind of response it expects and who is to respond."

Indian statement in November 2011 Security Council POC Debate: S/PV.6650.

At base, POC in armed conflicts is the idea that even war must have limits – that the violence of armed conflicts must, so far as possible, spare civilians. As such, POC is a very old concept, dating back through the many legal instruments of the twentieth century to longstanding moral traditions on the conduct of war.

The contemporary conception of POC draws in part on the larger concept of "Protection" that was developed in 2001 by the International Committee of the Red Cross (ICRC) who declared:

*The concept of protection encompasses all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e., human rights, humanitarian and refugee law).*⁹

This definition has been endorsed by the peak international humanitarian policy body, the Inter-Agency Standing Committee (IASC), a key forum bringing together UN and non-UN humanitarian organizations.¹⁰ It is a broad definition of protection able to be applied generally by humanitarian actors, and is not explicitly confined to protection in armed conflicts. As the ICRC/IASC definition suggests, international law plays a key role in shaping the meaning of protection. With respect to POC in particular, this link is even tighter, with the legal core of POC founded on International Humanitarian Law (IHL) – especially the 1949 Geneva Conventions and the 1977 Additional Protocols. These instruments constrain the actions, tactics and weapons of armed conflict in order to protect civilians. Many (though not all) of the rules included in these instruments are not only applicable by treaty law to signatories of the conventions, but are accepted parts of customary international law, meaning they legally bind even non-signatories to the conventions. They will often also be a part of positive or common law, and military doctrine and regulation, in various jurisdictions. IHL imposes its legal duties on soldiers, force commanders and States. When POC is spoken of in the context of international law, it connotes what this Guide will refer to as *Narrow POC* – that is, the duties of IHL that provide for the protection of civilians in situations of armed conflict.

9 S. G. Caverzasio, *Strengthening Protection in War: A Search for Professional Standards* (Geneva: International Committee of the Red Cross, 2001).

10 Inter-Agency Standing Committee IASC, *Growing the Sheltering Tree: Protecting Rights through Humanitarian Action, Programmes and Practice Gathered from the Field* (Geneva: UNICEF, 2002).

International Humanitarian Law (IHL) comprises the core of Narrow POC.

The Major IHL Treaties include:

First Geneva Convention (1949):
Protects wounded and sick combatants.

Second Geneva Convention (1949):
Protects shipwrecked combatants.

Third Geneva Convention (1949):
Protects Prisoners of War.

Fourth Geneva Convention (1949):
Protects civilians and those in occupied territories.

First Additional Protocol (1977):
Broadens protection of civilians and limits the means and methods of war.

Second Additional Protocol (1977):
Protects civilians and civilian objects in non-international armed conflicts.

The principle of POC more generally however, applies to many different sorts of actors – including humanitarian organizations, peacekeepers and UN organs such as the Security Council and the Secretariat. All these institutions and actors aim to promote, through the various means at their disposal, the conformity of armed actors to POC's legal core. In such cases, POC becomes a positive goal to be pursued, implemented and facilitated. The Guide will refer to this larger policy-orientated concept as *Broad POC*.

Key IHL Instrument: Common Article 3 of the 1949 Geneva Conventions

[...] Each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities ... shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth [...]

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- » violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- » taking of hostages;
- » outrages upon personal dignity, in particular humiliating and degrading treatment;
- » the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for [...]

The Secretary-General in his 2009 and 2010 reports¹¹ picks out five core challenges to POC, reflecting the different priorities various institutions may attach to different aspects of POC. The five challenges are:

1. Enhancing compliance of IHL by parties to the conflict,
2. Enhancing compliance by non-State armed groups,
3. Enhancing protection by UN peacekeeping and other relevant missions,
4. Enhancing humanitarian access,
5. Enhancing accountability for violations of the law.

The *Aide Memoires* on POC issued regularly by OCHA – most recently in 2011 – synthesize previous Security Council concerns and actions with respect to POC, adding further depth and breadth to each of the Secretary-General's core challenges.

As might be expected, reflecting the different capacities and powers at their disposal, States, humanitarian institutions, regional organizations, peacekeeping operations and UN organs have all developed different *modus operandi* for protecting civilians. Thus, from the broad concept of protection articulated by ICRC/IASC and found in the five core challenges of the Secretary-General, more refined perspectives on POC are crafted by institutions like States, humanitarian agencies, regional organizations, peacekeepers and UN organs. These may be thought of as specific components of, or perspectives on, the larger idea of POC.

A good example of the way specific institutions develop specific tasks, sensitive to their capacities and limitations to promote protection, is found in the 2010 UN *Department of Peacekeeping Operations* (DPKO) and *Department of Field Support* (DFS) *Operational Concept on POC in UN Peacekeeping Operations*.¹² While acknowledging that other POC agents

11 S/2009/277; S/2010/579.

12 DPKO/DFS, *Draft Operational Concept on the Protection of Civilians in United Nations Peacekeeping Operations*, 2010.

will utilize different POC paradigms, this document describes the component of POC as it appears in the work of UN peacekeepers – *Peacekeeping POC*, as it might be termed.¹³ The *Operational Concept* outlines three tiers, reflecting the several different activities available to peacekeepers to promote the protection of civilians:

- » **Tier One:** Facilitating the implementation of the political process and peace agreement.
- » **Tier Two:** Protecting Civilians from physical violence.
- » **Tier Three:** Establishing a protective environment, including through capacity-building, developing democracy and rule of law institutions, and disarmament, demobilization and reintegration of combatants.

As this list suggests, *Peacekeeping POC* is quite different from other *Broad POC* perspectives; peacekeepers have different capacities and operate under different constraints, as compared to (for example) humanitarian agencies and the UN Security Council. Despite these differences in perspective and capacities, however, all POC action is intended to ensure civilians are protected from the threats of violence and assaults on dignity that can occur in situations of violence.

§2.1.c Basic Convergence of R2P and POC

There are deep parallels between the two international protection principles. First, the central purpose of both R2P and POC is to protect people's most basic rights of physical security from large-scale violence. Both R2P and POC impose duties on States and their organs not to perform the prohibited acts themselves, but they also go beyond this in requiring positive acts to protect unarmed populations from third-parties and to contribute to a larger protective environment.

Second, R2P and POC both involve multi-faceted/multi-layered protection: diverse actors are called upon at different times to perform actions specifically tailored to their role and capacities. Both principles

13 *Ibid.*, ¶¶10-11.