

§3.1.a Common Ethical Roots of R2P and PoC

This section's focus on R2P and PoC's common origins and presence in international humanitarian law and human rights law should not obscure the fact that they spring from the same, and deeper, ethical roots. Both principles emphasise the value of protecting members of other communities from violence (R2P and PoC) and other severe deprivations (PoC). All cultures celebrate the special ties people have with particular groups of fellow humans (kin, locality, ethnicity, religion and culture itself). While these values may be utilised to generate conflict, most or all cultures also recognise, in one form or another, a common humanity and a concern for others. The duties to avoid harming others and to go to the aid of those who are suffering are a prominent part of many religions. In the last century it has been formalised in IHL, reinforced by the UN Charter, the UN Declaration on Human Rights and the Human Rights Conventions. While these are obligations to which all nations have committed, this does not mean the variety of supports found within the diverse cultures and religions of the world should be ignored. To the contrary, these should be emphasized as part of "norm localisation" and a community-centred approach to implementing principles. Both principles emphasize the primary responsibility of the relevant sovereign States – an idea that is grounded in the long standing attempts by rulers to legitimise their regimes based on the claim that they protect their people. While there were other claims to legitimacy, this is always, at least, a supplementary claim of those who justify the power they wield.³⁸

38 Sampford, "A Tale of Two Norms."

3.2 Commentary

§3.2.a UN Charter

UN Charter: Art. 1(3) The Purposes of the United Nations are: ...To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion...

UN Charter: R2P

The UN Charter provides a lynchpin normative framework for R2P. Since R2P's beginnings in the ICISS report, the human rights commitments of the Charter have been invoked to ground national and international duties to protect populations from atrocity crimes.³⁹ These commitments are set out in thematic form in the Charter's Preamble, where it announces its determination both, "to save succeeding generations from the scourge of war", and "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". These commitments are then given concrete form in the Charter's human rights articles, including Articles 1(2), 1(3), 13(1), 55 and 56. This incorporation of human rights as a fit subject for international attention and concern is a hallmark of the UN Charter. It is one of the central ways in which the

39 International Commission on Intervention and State Sovereignty ICISS, *The Responsibility to Protect* (Ottawa: IDRC, 2001), p. 14. For further commentary building on this link, see: Carsten Stahn, "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?" *American Journal of International Law* 101.1 (2007): 99-120; Thomas G. Weiss, *Humanitarian Intervention* (Cambridge: Polity, 2007); Jennifer Welsh, "Taking Consequences Seriously: Objections to Humanitarian Intervention," in J. Welsh (ed.), *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004), 52-68.

Invocations of "Ch. VII of the Charter" indicate that the Security Council is using its powers under Articles 41 and 42 to respond to a threat to the peace. Such powers are necessary for the legal authorization of transnational use of force.

Charter differs from prior international instruments such as the Covenant of the League of Nations.⁴⁰

Needless to say, the Charter's principles uphold not only human rights but also – and with at least equal force – the vital principle of non-intervention. As well as being motivated by the human rights articles, then, R2P must not be in breach of articles 2(4) and 2(7) of the Charter. R2P has two mechanisms ensuring its compliance with these parts of the Charter. First, it envisages a suite of actions to be taken under *Pillar Two* with the willing consent of the State in question. The consensual nature of such measures allows Pillar Two protection and prevention to occur wholly within the non-interventionist framework of the Charter.

Second, in *Pillar Three* situations where the State is itself implicated in the atrocities, coercive and/or military R2P action can only be taken with the authorization of the Security Council under its Chapter VII powers.⁴¹ The Security Council has authority under Articles 41 and 42 of Chapter VII of the UN Charter to take such actions as it considers necessary to maintain or restore international peace and security.

40 Robert Kolb, *An Introduction to the Law of the United Nations* (Portland: Hart Publishing, 2010).

41 Or by other mechanisms consistent with the Charter, such as through the General Assembly *Uniting for Peace* process: see Secretary-General, *Implementing the Responsibility to Protect*.