

FOREWORD BY GARETH EVANS

The tragedies in Rwanda in 1994 and Srebrenica in 1995, and the ineffective international responses to halting them, resulted in two major new international initiatives aimed at improving the protection of civilian populations.

On the one hand, the Responsibility to Protect (R2P) dealt squarely with the political controversies surrounding intervention and sovereignty. Based on the 2001 work of the International Commission on Intervention and State Sovereignty, and authoritatively affirmed in 2005 by the General Assembly and in 2006 by the UN Security Council, R2P asserted the primary responsibility of states to protect their own populations from mass atrocity crimes, the responsibility of the international community to help willing states develop the capacities to protect their populations, and – ultimately – the responsibility of the international community, under the direction of the Security Council, to respond decisively to situations where states were manifestly failing to protect their populations.

On the other hand, the atrocities of the 1990s also stimulated the rapid development – after the Secretary General's first report on the subject in 1999 – of a much older protection regime: the Protection of Civilians in Armed Conflict (POC). In international law, POC was already well-established, most fundamentally through the guarantees provided to civilians caught in armed conflict by International Humanitarian Law (IHL), especially the 1949 Geneva Conventions and the 1977 Additional Protocols. As an instrument of policy, POC had been present in peacekeeping

since the United Nations first deployed peacekeepers – though POC objectives were only rarely made explicit in that context. After Rwanda and Srebrenica – where UN peacekeepers had been on the ground – mandates for peacekeeping operations began to include express POC directives, and increasingly prioritised them. And other actors took on more proactive POC roles. Responding to the “well-fed dead” of Bosnia, humanitarian agencies focused attention on protection issues, while the UN Security Council after 1999 made it clear that flagrant violations of IHL could constitute a threat to international peace and security, and so warrant Council action.

The relationship between these two protection regimes has been seen by many as confusing, and there are complexities and sensitivities involved in understanding in principle, and working out in practice, their related but distinct functions. That there is a close relationship between the two concepts is undeniable. They are both concerned with the protection of civilians, have common normative foundations and have regularly been invoked together. For example, most of the specific affirmations of R2P by the Security Council have been in the context of thematic POC resolutions, and the Council's Resolution 1973 (2011) mandating the use of force in Libya, makes very clear in the preamble its reliance on both R2P and POC norms. Where mass atrocity crimes – defined for R2P purposes as “genocide, war crimes, ethnic cleansing and crimes against humanity” – are occurring in the course of an internal armed conflict situation, the overlap is effectively complete.

On the other hand, there are clear differences in their scope. POC is broader than R2P, to the extent that the rights and needs of those caught up in armed conflict go well beyond their protection

from the particular mass atrocity crimes on which R2P is specifically focused. But it is also narrower, to the extent that POC is only concerned with armed conflict situations, whereas R2P is concerned with preventing and halting mass atrocity crimes regardless of whether they occur in a war environment (as was the case, for example, with the atrocities committed in Cambodia in the mid-1970s, Rwanda in 1994, Kenya in 2008 and Libya at least at the time of the first Security Council Resolution 1970 in February 2011).

The potential for overlap between the two concepts does generate some sensitivities. Although POC does not itself eschew military force – it has been invoked regularly over the last decade to justify giving strong Chapter VII coercive mandates to peacekeeping forces, essentially to enable them to deal with violent threats to civilians that may arise – and although R2P only envisages the use of coercive military force as a last resort, in extreme and exceptional circumstances, when it is clear that lesser measures will not halt or avert the harm in question, peacekeepers and humanitarians are often uneasy about the spectre of broader R2P “interventions” being seen to hover over situations where they are trying to gain the cooperation of states to improve the protection of civilians within their borders.

So, understanding the relationship between POC and R2P is important. In the field and in New York and Geneva, the protection of civilian populations can be undermined by a lack of knowledge about, and the institutionalization and operationalization of, the cross-cutting inter-relationships between R2P and POC. Civilian populations can fall through gaps in protection, while R2P and POC actors can impair – or at least fail to complement – each other’s work through a discrete pursuit of their own objectives. With

these complexities and sensitivities in mind, this Policy Guide provides welcome clarity on the normative, institutional and operational inter-relationships between R2P and POC.

The Guide draws many important distinctions, illustrating that, while there is a fundamental core concern that links together POC actors, different instruments and institutions can nevertheless display quite distinct perspectives on POC itself, even before R2P comes into the picture. It distinguishes, for example, between “Narrow POC”, covering the legally binding civilian protection instruments of IHL, and “Broad POC”, applying to the policies and practices of actors and institutions that take POC as an action to be performed or an objective to secure.

The Guide helpfully develops a “five-mode” protection framework, comprising prohibitions on harm, direct protection, dedicated protection activities, mainstreaming protection and restorative protection. It utilizes this framework to map out clearly the basic nature of different POC perspectives and the ambit of different R2P actors, and to draw attention to often under-recognized modes of protection, such as the “bottom-up” ground level self-protective efforts undertaken by communities themselves.

The Guide challenges, interestingly, several widely held assumptions about the relationship between R2P and POC. For example, while it is often declared that R2P is not a concern of peacekeepers, the Guide argues that peacekeepers can and should adopt an atrocity-prevention lens informing their protective stance, albeit with the firm proviso that they cannot be enlisted in any non-consensual (“Third Pillar R2P”) coercive action against states. So too, while it is widely held that POC is strictly limited to situations of armed conflict, the Guide shows that in the hands of peacekeepers, humanitarians

and the Security Council, POC can extend to situations of civil strife. In some detail, the Guide distinguishes such “internal disturbances and tensions” from armed conflict on the one hand, and from state repression on the other.

The arrival of this Policy Guide could not be more timely, with the international community still struggling with the lessons learned from the intervention in Libya, and at the same time confronting the even more challenging situation of civilian protection in Syria. While there is now much more conceptual clarity and commitment in principle now than a decade ago about the international community’s responsibility to act when civilians face the horror of war or atrocity crimes, it unhappily remains the case that translating principles into effective consensual action will be work in progress for a long time yet. But this Guide will be a real help in hastening that process.

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