

demobilization and reintegration of combatants, and may even extend to promoting economic development and capacity-building more generally. A further objective will be the safe return, including to appropriate property entitlements, of refugees and IDPs who fled the conflict. Additionally, attention may again have to be placed on measures involving the promotion of the political process (*Tier One*).

At a higher executive level, the Security Council will need to remain seized of the situation, and alert to the usefulness of various measures at its disposal to encourage security. Other international bodies and UN organs may be needed to promote economic development, and member States may need to support these politically and monetarily.

Legally, POC will require the pursuit of war criminals, whether by domestic courts or international tribunals (either the ICC or an ad hoc tribunal created by Security Council resolution). Politically, institutions such as truth and reconciliation commissions may be important steps towards a peaceful, secure society.

§2.4.c Main points of convergence regarding the “when” and “how” of POC and R2P

The parallels between R2P and POC are considerable. Both R2P and POC have duties of preparation and capacity-building in peacetime, and both have further (increasingly robust) responses that are triggered when violence occurs. Both principles impact on peacekeeping operations and Security Council Resolutions, and in each case, there is a broadening and increasingly robust suite of measures that may be adopted as movement occurs from peacetime to armed conflict to violence against civilians and entire populations – and then to post-violence situations.

§2.4.d Main points of divergence regarding the “when” and “how” of POC and R2P

R2P’s legal framework is always in effect. Whether in times of peace or war, States may not commit or support the commission of atrocity crimes. While the legal core of POC does impose peacetime duties, especially upon States, its full application awaits situations of armed conflict. On the other hand, R2P’s threshold for acting in response to atrocity crimes is much higher than POC – as “armed conflict” has a far larger compass than the comparatively rarer atrocity crimes. This legal situation is, to an extent, paralleled by the soft laws and political duties of R2P and POC. That is, R2P arguably has a deeper preventive agenda than POC. Because atrocity crimes are far graver and rarer than armed conflicts in general, different and more substantial preventive measures may be tenable in a way that would not be workable in response to every potential armed conflict. Thus, in both legal and political arenas, the *prevention* duties of R2P *before* atrocities occur run comparatively deeper and more consistently. These will usually be the first commitments that start to mobilize action, analysis, dialogue and concern. On the other hand, the *response* obligations of POC *during* armed conflicts often will be triggered before the response commitments in R2P, as armed conflict usually (but not always) precedes atrocities.

Furthermore, in response to an occurring atrocity crime, R2P provides much more detail on the process that can lead, through Security Council invocation of its Chapter VII powers, to military intervention for protective purposes.

The significance of humanitarian actors during POC’s armed conflicts, without having a similar presence during R2P’s atrocity crimes, is understandable inasmuch as peaceful measures become of less efficacy when the destruction of populations is a settled policy of powerful armed actors. At such a point, humanitarian measures will be subject to

Impartiality consists of the unbiased application of objective standards.

Neutrality consists of refraining from taking sides in a dispute.

Subjective impartiality or neutrality refers to the perception of a given actor that the operation is adequately impartial or neutral, and not a ‘fifth column’.

systematic disruption and humanitarians themselves are in grave danger. As such, their ability to impact on atrocity crimes is much less than their ability to improve civilian protection in more permissive environments.

Neutrality and Impartiality in R2P and POC

It is sometimes asserted that POC, as compared with R2P, is impartial and neutral, and that it does not controversially impinge on state sovereignty. At a very general level of analysis it is correct that POC is more neutral and respectful of sovereignty than R2P. R2P is more overtly confronting of sovereignty – and so less neutral – than POC, as the presence of atrocities automatically implies a perpetrator that may need to be challenged. For its part, some elements of POC are exemplars of impartiality, neutrality and respectful of sovereignty – the long-standing action and policies of the ICRC with respect to POC are a prime example.

At a finer-grained level of analysis however, the picture becomes more complex. First, IHL can carry implications for absolutist sovereignty. For example, since Additional Protocol II of 1977 applies to non-international armed conflicts, IHL constrains the way States may confront and punish rebellions inside their own borders. Second, *Peacekeeping POC* always requires the impartial pursuit of the PKO’s mandate and respect for international law. Doing so, however, can require acting decisively against

perpetrators (in violation of neutrality), especially in *Primary POC PKOs*. The Brahimi Report was explicit on this point: “Impartiality for such operations must therefore mean adherence to the principles of the Charter and to the objectives of a mandate that is rooted in those Charter principles.”³⁷ (*Peacekeeping POC* is always respectful of State sovereignty, in the sense of requiring formal consent for deployments.) Third, while respect for sovereignty is a vital element of international peace, in extreme situations *Security Council POC* can authorize the (non-neutral) use of coercive measures to protect or help protect civilians from perpetrators.

2.5 Conclusion and Summation

In conclusion, for some actors and organizations, there is little effective difference between R2P and POC. Actors like the UN Security Council and States (in their domestic protection activities) will perceive R2P simply as the limit case of POC – as a progression of their existing POC activities as they apply to the specific case of atrocity crimes.

Other actors may need to distinguish between R2P and POC on a strategic or operational level – for instance, peacekeeping operations may need to adopt different doctrines and strategies to prevent atrocity crimes.

Actors may also need to differentiate between POC perspectives. Peacekeepers may wish to differentiate between *Peacekeeping POC* – which always requires State consent – and *Security Council POC* – which can adopt coercive measures under Ch. VII in extreme cases. So too, combatants will need to differentiate their larger *Broad POC* tasks to protect specific populations from the perennial legal constraints on the methods and means of war (*Narrow POC*).

Finally, some institutions will have an exclusive focus on either R2P or POC. For instance, humanitarian actors may adopt a variety of protection tools that are effective for POC, but would be unapt in situations of atrocity.

37 Brahimi, *Brahimi Report*, p. 9.