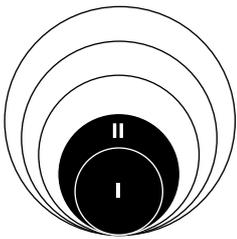


- » States should ratify the Rome Statute of the ICC, and assist the ICC in its prosecutions.

There are further *Broad POC* initiatives that fall outside these five rubrics. For example, in some circumstances the most effective protector of local communities can be those communities themselves. In times of conflict therefore, States need to be aware of the possibly deleterious impact of their activities on local self-protection capacities.

#### §4.6.b National Armed Forces

##### *National Armed Forces: R2P*



**R2P Pillar One:** A nation-state's military forces play a variety of R2P roles, depending upon their capacities and context. Most centrally, R2P requires that military forces, whether in times of peace or war, do not use large-scale and lethal force against civilian populations. In an ideal world, security sector reform and institution-building would furnish a situation where the State's army does not play a direct role in domestic security at all – that is, where purely domestic matters are capable of being handled by the State's police forces. In many countries however, military forces are required for the purposes of domestic security (these will often be situations of internal tension or internal disturbance, as described above in §2.2). As such, the First Pillar of R2P becomes an important constraint on the methods by which State military forces can respond to civil unrest. Specifically, R2P and the legal framework in which it is housed prohibit *counter-*

*insurgency by atrocity* – for example by using armed forces to punish civilian populations for their perceived support of local insurgents, or by using violence to achieve the forced displacement of such populations. The refusal of Egypt's armed forces to use indiscriminate and lethal force against the civilian population in the revolution in February 2011 is an example of the type of restraint R2P seeks to impose on armed forces, even when they are under orders from executive powers. The development of human rights offices within armies – such as has occurred in the Armed Forces of the Philippines – is a less visible but equally important mechanism for ensuring militaries comport themselves to R2P Pillar One standards.

Armed forces are also required not to commit atrocities against foreign populations or on foreign soil – the attacks by the Rwandan military on Hutu and other populations in the DRC in the aftermath of the 1994 genocide is an example of a violation of R2P duties by a State's armed forces outside their own borders.

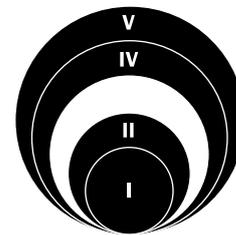
As well as these negative prohibitions on action, a State's armed forces, of course, have a major R2P Pillar One responsibility to directly defend their own civilians from other armed groups.

**R2P Pillar Two:** A State's armed forces must be sensitive to the actions of other (perhaps non-state) forces allied to it, especially those receiving its support or direction. As the ICJ ruling in the *Bosnian Genocide Case* confirmed, military and economic ties between forces may trigger a State's duties under the Genocide Convention to use their influence to prevent atrocities that the other force may be at risk of performing. Further R2P Pillar Two duties of the armed forces include:

1. Capacity-building and security sector reform, for instance by helping foreign States, through training, education and joint military exercises, in the professionalization of their armed forces, and;
2. Taking part in national, regional or international peacekeeping operations where there is a risk of atrocity crimes.

**R2P Pillar Three:** R2P can require armed forces to undertake largely traditional war-fighting operations, in order to demobilize or neutralize armed elements that constitute a standing danger to the population.

##### *National Armed Forces: POC*



The most direct application of POC to armed forces is through *Narrow POC* – in particular the Geneva Conventions and Additional Protocols of IHL. Armed forces are required by international law to constrain the tactics and weapons they use in war through the principles of distinction, proportionality and limitation. While these instruments apply most fully to cases of traditional international war, the basic protections they guarantee to civilians and soldiers *hors de combat* extend to internal contexts, to situations of occupation, and to other more marginal types of armed conflict.

The larger part of IHL as it applies to combatants imposes duties prohibiting the direct use of force against civilians and civilian objects (Mode I: Prohibitions on harm). However, other important duties include, for example, requiring combatants to identify themselves as combatants, rather than as representing themselves as civilians or other protected persons (such as humanitarian workers). This Mode IV task has become increasingly important to civilian protection, as it is regularly violated by both non-state and state-sponsored actors in contemporary civil-war conflicts, contributing to a larger environment inherently dangerous for civilians. Whether IHL imposes determinate legal duties for combatants to directly protect civilians from third-

**Three core concepts of IHL: distinction, proportionality and limitation.**

**Distinction** requires that combatants distinguish between combatants and civilians, and between military targets and civilian objects (such as infrastructure required for a city's water supplies).

**Proportionality** requires that combatants proportion the harm to civilians in relation to the direct military advantage secured by the action.

**Limitation** prohibits the use of certain sorts of weapons, particularly those that create indiscriminate damage and whose dangerous effects can outlast the conflict.

parties is a contentious question, but the spirit of Com. Art. 1 of the Geneva Conventions – with its requirement to not only respect but to *ensure respect* for the Conventions – suggests at least a *moral* prescription to do so.

POC is also significant to armed forces when they take part in peacekeeping operations that have civilian protection mandates. Experience over the last two decades has shown that civilian protection is a challenging task for military forces.<sup>153</sup> Soldiers and commanders need to be prepared for the difficult tasks and scenarios that confront contemporary peacekeeping protection missions, and national armed forces need to develop military doctrine and strategy to guide soldiers on the ground in such operations.

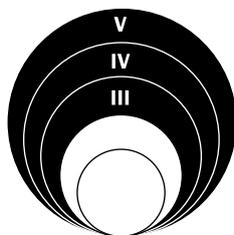
Finally, paralleling the same point made above with respect to R2P Pillar One, POC has a major role in determining the positive responsibilities of armed forces

153 Victoria Holt and Tobias Berkman, *The Impossible Mandate? Military Preparedness, the Responsibility to Protect and Modern Peace Operations* (Washington: The Henry L. Stimson Center, 2006).

to protect their civilians from other armed groups. The importance of State actors to the *Broad POC* agenda is regularly emphasized in UN Security Council Open Debates on POC, where Member State's consistently affirm that "States have the primary responsibility for the protection of their civilians".<sup>154</sup>

"Civilian populations are what defence forces exist for."

- Colonel James Davey, Australian Defence Attaché to the African Union.



**§4.6.c Civil Society: R2P and POC**

Civil Society includes NGOs, civilian advocacy organizations, religious groups and institutions, support groups, women's groups, civil groups, neighbourhood and professional associations, labour unions, and any other voluntary associations that fall outside the market and state. Civil Society plays an indispensable role in the efficacy of POC and (especially) R2P. Its activities include:

**Mode III: Dedicated Protection Activities**

- » Early warning, monitoring and awareness raising:
  - » May be on a purely domestic level, alerting local actors, populations and authorities to local problems or gaps in protection, or advocating for victims and the vulnerable.

154 Over the last two years, almost every member of the Council has invoked this principle in the Open Debates. UNSC, *July 2010 Meeting: Protection of Civilians in Armed Conflict*, S/PV.6354, 7 July 2010; UNSC, *May 2011 Meeting: Protection of Civilians in Armed Conflict*, S/PV.6531, 10 May 2011; UNSC, *November 2011 Meeting: Protection of Civilians in Armed Conflict*, S/PV.6650, 9 November 2011.

- » May have an international audience, whether governmental or popular, calling regional or global attention to a local issue. The use of social media – facebook, twitter, youtube – has become a particularly important avenue for the release of information on a crisis (especially with respect to the Arab Spring).
- » Indigenous mediation capacity, promoting and facilitating dialogue between disputants;
- » Advocacy and local awareness-raising for protection principles and legal regimes like IHL, including by building local support and "ownership" of these principles through indigenous values and cultural practices;
- » Training and education.
- » Developing lessons learned from past history, feeding into forward preparedness and planning.
- » Contributing to and advocating for legal changes (this can even include drafting bills and acts, for instance on managing social conflict<sup>155</sup>).

**Secretary-General 2011 R2P Report**

"States and civil society groups that are closer to the events on the ground may have access to more detailed information, may have a more nuanced understanding of the history and culture, may be more directly affected by the consequences of action taken or not taken, and may be critical to the implementation of decisions taken in New York."

155 As occurred in Indonesia: see Lina A. Alexandra, "Enhancing the Capacities of State and Regional Institution in Transforming Responsibility to Protect from Words to Deeds: Cases in Indonesia and ASEAN," in C. Sampford, et al. (eds.), *The Laws of Protection: Protection of Civilians and the Responsibility to Protect* (Geneva: United Nations University, 2012)