

OVERVIEW DOCUMENT



Enhancing Protection Capacity: **Policy Guide to the Responsibility to Protect and the Protection of Civilians**

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Acronyms

ICC:	International Criminal Court
ICRC:	International Committee of the Red Cross
IHL:	International Humanitarian Law
IHRL:	International Human Rights Law
IDPs:	Internally Displaced Persons
NGOs:	Non-Government Organizations
OSAPG:	Office of the Special Advisor on the Prevention of Genocide
POC:	Protection of Civilians
PKOs:	Peacekeeping Operations
R2P:	Responsibility to Protect
UN:	United Nations
UNSC:	United Nations Security Council
WSOD:	2005 World Summit Outcome Document (A/RES/60/1)

POLICY GUIDE: PURPOSE AND OBJECTIVES

The Policy Guide seeks to enhance the ability of policy makers and practitioners—in governments, regional and international organizations, and civil society—in strengthening their efforts to protect civilians from conflict-related grave harm and mass atrocity crimes.

The Guide clarifies and compares the twin principles of R2P and POC in their normative, institutional and operational dimensions, distinguishes the principles' different actors and methods, and specifies the situations when the two principles converge for specific actors and organizations.

With full acknowledgement of the controversies, diversities of position and ongoing dynamics of these evolving concepts, the objectives of this Policy Guide are to:

Inform relevant protection actors about the normative, institutional and operational scope of R2P and POC;

Clarify the relationship between R2P and POC, including their points of intersection and divergence (with a specific focus on the needs of policymakers and practitioners); and,

Provide practical guidance regarding when, how and by whom R2P and POC might be implemented.

OVERVIEW

Civilian populations face unprecedented threats in modern conflicts. No longer at risk merely of being caught in the crossfire, civilians have been placed in the crosshairs of combatants. Murder, assault, terror, displacement and rape are now the settled strategies of many contemporary armed actors.

Two distinct international protection principles aim to protect vulnerable peoples from mass violence: the *Responsibility to Protect* (R2P) and the *Protection of Civilians* (POC) in *Armed Conflict*. **Yet in a theatre where a lack of coordination and shared understanding can cost lives, there remains much confusion and controversy regarding the normative, institutional and operational links between these two principles.** This Overview Document clarifies the nature of the principles, their similarities and differences, and the common myths and misperceptions surrounding them.

POC:

Born out of the horrors of international wars in the 19th and 20th Centuries, the traditional idea of POC (Narrow POC) is the principle that non-combatants should—so far as possible—be spared the harms of war.

Narrow POC—part of the humanitarian constraints on the means and methods of war—is found in *International Humanitarian Law* (IHL), especially the Geneva Conventions of 1949 and the Additional Protocols of 1977, and the customary international law of armed conflicts.

Narrow POC's immediate roots stretch further back to the work of Henry Dunant and the *International Committee of the Red Cross* (ICRC) in the 1860s, but countless cultures across the globe have developed norms protecting unarmed civilians from armed soldiers. In the first instance, then, POC is a canon of international law determining that combatants in armed conflicts must distinguish between enemy combatants and civilians, and must not target or disproportionately harm the latter.

Secretary-General Kofi Annan, 2000:

“To the critics I would pose this question: if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity?”

As well as its presence in IHL, POC is an activity and objective positively pursued by a variety of institutional actors in accordance with wider understandings of POC (*'Broad POC'*) drawing on different aspects of international human rights law, international criminal law, international refugee law and Security Council Resolutions as well as IHL. For example, when authorized by the UN Security Council, peacekeepers contribute to the protection of civilians affected by conflict and violence. In so doing, the peacekeepers work alongside other UN agencies and NGOs that seek to protect civilians in accordance with their own mandates and policies. Consistent with their distinct capacities, resources, constraints, mandates and legal authority, each of these actors has developed its own distinct POC role. Yet despite their differences all POC actors aim to contribute to the protection of communities caught in armed conflict and other situations of violence.

R2P:

Whereas POC has a broad protection focus, R2P addresses four specific atrocities: genocide, war crimes, ethnic cleansing, and crimes against humanity.

Throughout the 1990s the world was faced with an array of humanitarian crises, culminating in the atrocities in Rwanda, Bosnia-Herzegovina and Kosovo. In Rwanda and Bosnia-Herzegovina, the United Nations failed to act decisively, and the genocides in those two countries proceeded without effective intervention. In Kosovo, and in the face of on-going UN Security Council paralysis, NATO intervened militarily to prevent ethnic cleansing—arguably in breach of international law and the sovereignty of Serbia. The need for a principled, legal and effective response to atrocities was manifest, and the Responsibility to Protect (R2P) developed to fill this need.

R2P is the principle that, while States bear the primary responsibility for protecting their populations from atrocities, the international community bears a backup responsibility for protection.

In cases where States are unable to meet their primary responsibility, the international community should assist them in developing the capacities to do so. In cases where States are unwilling to protect their populations—and indeed are the very agents of their destruction—the international community should act to ensure their protection from atrocities. Consistent with international law, the UN Security Council is required to authorize any R2P coercive measures taken against the State, including sanctions, embargoes and—in extreme cases—military intervention to protect populations.

The initial idea of R2P originated in the 2001 Report of the International Commission on Intervention and State Sovereignty. The principle was authoritatively formulated and adopted by the General Assembly in the World Summit Outcome Document (WSOD) of 2005, and affirmed by the UN Security Council in Resolution 1674 of 2006. Several Secretary-General Reports since 2009 have developed the principle, and the General Assembly issued its first specific R2P resolution in 2009 (A/RES/63/108).

Shared Origins:

While R2P was created in direct response to failures in Rwanda and the former Yugoslavia in the 1990s, the shadow of these atrocities also played a major role in framing the contemporary concerns of *Broad POC*.

As the 1990s drew to a close, many humanitarian actors began to develop explicit protective strategies in response to the phenomenon of the 'well-fed dead' of Bosnia.

Equally, the United Nations' POC agenda emerging at this time was back-dropped by a series of reports analysing the failures of UN organs to halt attacks on civilians in Rwanda and Srebrenica. The significance of these two genocides to the emerging protection of civilians agenda is apparent in the two landmark POC documents of this period: the Secretary-General's first report to the Security Council on the protection of civilians in armed conflict (S/1999/957), and the Report of the Panel on UN Peace Operations ('Brahimi Report' S/2000/809). Even before the inception of R2P, therefore, POC was beginning to confront deliberate and widespread attacks on civilians, as well as more limited violations of IHL.

DISTINGUISHING R2P AND POC

Three situations are material in distinguishing R2P and POC.

1. Narrow POC in Armed Conflict (IHL)

Narrow POC applies only to 'armed conflict' as IHL defines that term. This requires:

- » Fighting between two armed groups, each holding territory and having a recognisable military structure; or,
- » International forces (including United Nations forces) being involved in fighting; or,
- » Any occupation of territory by an international force
- » IHL can continue to apply to a situation if it has previously qualified as armed conflict, even if later it does not reach this threshold.

2. Broad POC in Situations of Mass Violence

In the context of civilian protection, 'armed conflict' can also refer to a broader context of grave, mass, lawless violence, even if these do not strictly meet the requirements for the application of IHL. These 'situations of mass violence', which include 'internal disturbances', go beyond the usual lawful state use of force to preserve order in three respects:

- I. **Grave violence:** There are violations of the minimum and non-derogable guarantees of IHL and IHRL, involving direct violence causing death, injury or loss of basic dignity (such as in cases of rape).
- II. **Widespread:** There is a large number of interconnected violent acts, spread over distance or protracted over time.
- III. **Lawlessness:** The violence occurs outside the operation of local domestic law, and may even be denied by those responsible.

Internal disturbances are serious confrontations involving extra-legal violence, usually in the context of state response to disruptions of internal order.

Broad POC applies to armed conflict broadly construed, including these situations of mass violence.

3. R2P in Atrocity Crimes

R2P applies to atrocity crimes, namely, genocide, war crimes, crimes against humanity and ethnic cleansing. While all four crimes constitute massive violations of IHRL and/or IHL, the first three have their own strict legal definitions, provided in the 1948 *Genocide Convention* and in the 1998 Rome Statute of the *International Criminal Court*. The last, ethnic cleansing, is a subset of crimes against humanity.

- I. **Genocide:** Deliberate attempt to destroy in whole or in part a national, ethnical, racial or religious group, especially by systematic violence.
- II. **Crimes against Humanity:** Deliberate systematic policy of attacking civilian populations through methods such as mass murder, enslavement, torture, rape and enforced disappearances.
- III. **War Crimes:** Grave breaches of the laws and customs of armed conflict.
- IV. **Ethnic Cleansing:** a subset of Crimes against Humanity, ethnic cleansing involves systematic attacks on sect-defined groups of civilians by persecution, deportation and forced displacement.

To count as atrocity crimes, all these must meet a 'substantiality test', requiring that there must be huge numbers of civilians at risk of imminent, systematic and intentional violence. Genocide, ethnic cleansing and crimes against humanity can all occur outside armed conflict, in other situations of violence.

THE PREVENTIVE DIMENSION

Even if a principle is limited in its application to a particular situation, it may still impose duties outside that situation, in order to prevent the harms that would occur if the situation develops. For instance, IHL requires peacetime preparations such as ensuring military targets are not built near civilian objects like hospitals. **The scope of a principle describes the situations where the rights-violations it seeks to prevent occur, but not where the duties it imposes should be performed.**

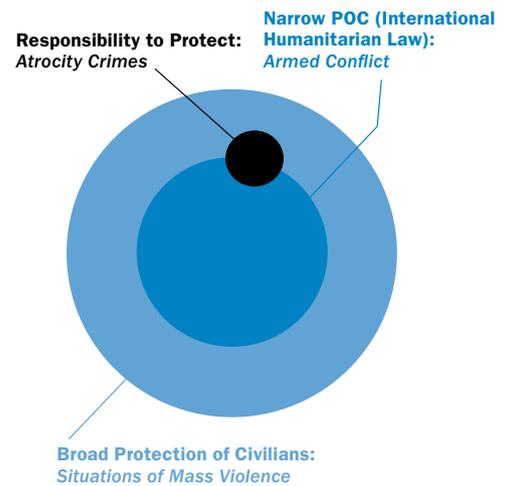


Figure 1: Scope of R2P, Broad POC and Narrow POC

FIVE MODES OF PROTECTION

There are five modes through which civilians' lives, security and dignity can be protected. The five modes illustrate the ways protection can be understood as a *constraint* (Mode I), as an *action* (Mode II), or as a larger *objective* (Modes III, IV and V).

In different ways, both R2P and POC draw on each of these modes. The following two sections (pp. 6–10) use the five modes to describe the roles of different POC actors and the different tasks called for by the R2P's three Pillars. Pursuant to their capacities, roles and the legal authority they operate under, different types of actors are able to use some modes but not others. Similarly, specific situations will require some modes of protection and not others. For example, in some contexts the use of force for direct protection (Mode II) may do no more than further militarize or inflame a conflict. In such cases protective efforts may have to focus on more indirect protection (Modes III and IV), or even constrain itself to remedying the situation of those who have already been harmed (Mode V).

These five modes may be set out graphically (Figure 2) illustrating the proximity of each mode to the harms it seeks to prevent.

Note that each mode is not isolated from the others (as the successful use of one

mode can contribute to the others) and that the ordering of the modes presented is not a sequence or a prioritization. For example, Direct Protection (Mode II) may often only be considered after the indirect protection activities of Mode III have been attempted.

MODE I Prohibitions on harm

Mode One prohibits actions that harm or risk harm to the lives, bodies or dignity of civilians, and the incitements to such acts. It includes laws prohibiting murder, rape, pillage, the use of certain weapons, the targeting of civilians and civilian objects, and enlisting children as combatants.

MODE II Direct Protection

This second mode involves the actor directly protecting civilians from third parties attempting to harm them. The activity is performed in order to protect the civilians and it aims to accomplish their protection directly (that is, without relying on other actors undertaking further complementary actions). Direct Protection may include the use of a security presence, patrolling, escorts or the interposition of forces, and ultimately the threat or use of robust force against perpetrators.

MODE III Dedicated Protection Activities

In this third mode, actors undertake specific activities to achieve protection objectives. These activities contribute to a better protection environment where threats to civilians are diminished. Dedicated protection activities include early warning and risk-assessment, monitoring and reporting, advocacy, moving or hiding vulnerable civilians, the strategic use of unarmed presence and information dissemination (for instance through radio broadcasts).

MODE IV Mainstreaming Protection

The fourth mode does not require protection actors to perform entirely new actions (as Modes II and III do). Instead, mainstreaming protection requires that protection actors alter the manner in which they perform, prioritize or resource their activities in such a way as to improve—and

never to impair—the larger protective environment. Such protection measures are important in peacebuilding programs to promote local capacity and enhance prospects for sustainable peace.

The single most important element of Mode IV is to *do no harm*—to make sure that the way the operation or agency pursues its other goals does not have downstream consequences exacerbating civilian vulnerability. Useful mainstreaming protection activities can include the sighting and lighting of latrines and wells so as to reduce everyday civilian vulnerability, and facilitating political solutions and ceasefires in such a way as to ensure protective outcomes.

MODE V Restorative Protection

Mode V comprises actions which remedy the situation of those persons who have previously been harmed (either civilians or combatants whose injuries have placed them *hors de combat*).

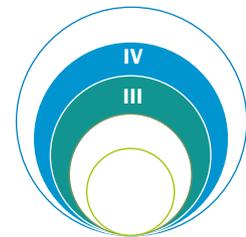
Restorative protection can itself be divided into different modes of action, as it can include (for instance) *legal prohibitions* not to target those helping the injured (such as Red Cross workers), *dedicated protection activities* to return displaced persons and refugees to their homes or to other places of safety, and *mainstreaming protection* by including peace and reconciliation commissions in plans for long-term peace arrangements.

Complementarity and Modes of Protection

'Complementarity' means that one institution's protection work respects and facilitates (and does not unnecessarily duplicate) the protection activities of other actors. Two key types of complementarity in the context of protection are community-based and authority-based protection.

Community-based (bottom-up) protection involves protection actors respecting, empowering and facilitating local attempts at self-protection.

Authority-based (top-down) protection involves protection actors respecting, empowering and facilitating the protective efforts of recognized legal authorities (usually State figures).



Complementarity usually has implications for more than one mode of protection. For example, Mode III includes dedicated protection activities such as soliciting input from local communities on their perceived safety risks (bottom-up complementarity), and exhorting State authorities to shoulder their protection responsibilities (top-down complementarity). The key contribution of Mode IV to community-based and authority-based protection is that interveners should avoid superseding, or impeding the development of, indigenous protection efforts and institutions.

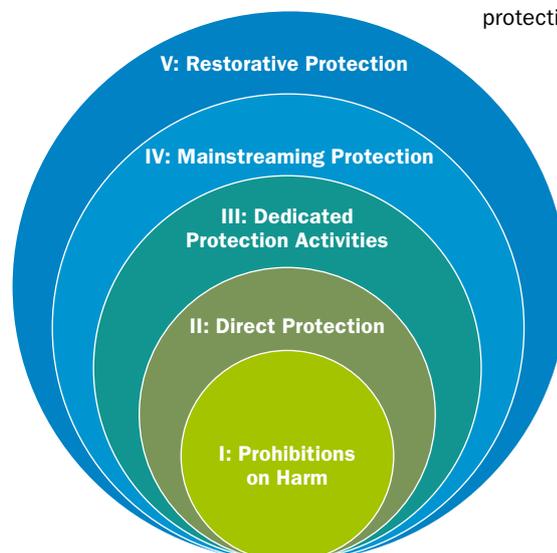


Figure 2: Five Modes of Protection

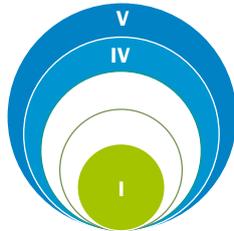
FOUR POC PERSPECTIVES

All POC actors share the fundamental objective of limiting harm to civilians in armed conflicts and other situations of violence.

While they differ in the modes of activity they use to protect civilians, POC actors share a common goal, namely, the protection of civilians' lives, security, dignity and basic human rights. The key threats to civilians, and the basic rights to security and dignity such threats transgress, are described in IHL (and in the core, non-derogable articles of International Human Rights Law). This common objective ensures that different POC actors are in principle capable of coordinated activity. *Common Article Three* of the Geneva Conventions (see text-box) sets out the minimum legal standards of treatment required in any armed conflict.

Notwithstanding this shared concern for civilian protection, different protection actors operate under distinct constraints—they have different means, resources and liberties to act in a given situation. For some, one mode of protection will be crucial to protection; others may have no possibility of using that mode at all. For this reason, many protection actors have developed specific perspectives on POC commensurate with their sphere of activity.

This section describes four POC perspectives to help illustrate these distinct roles and complementary approaches—acknowledging that variation can occur within these perspectives depending on the institution in question, and also that different specific contexts call for further specification and prioritization within a given perspective.



Combat-related POC (Narrow POC)

IHL (especially the Geneva Conventions and Additional Protocols) is directed to States and parties to a conflict. It includes:

I. Prohibitions on Harm: prohibiting direct targeting of civilians and disproportionate harms to them (see Com. Art. 3 text-box).

IV. Mainstreaming Protection: by distinguishing themselves from civilians, and placing military objects apart from civilian objects and populations, combatants contribute materially to a larger environment where enemy combatants can pursue war objectives without necessarily targeting civilians.

V. Restorative Protection: Combatants have specific duties to aid the injured, and wide duties not to target or harm those whose role it is—such as medical personnel and the Red Cross, who are specifically earmarked in IHL—to aid those in need.

FUNDAMENTAL LIMITING PRINCIPLES

IHL is applicable only in armed conflicts, leaving a domain between war and peace ('other situations of violence') that is not covered by the full application of either IHL or International Human Rights Law.

CURRENT OPERATIONAL CHALLENGES

The major challenge for Combatant POC, reflective of the environment of armed conflict within which it operates—and the corollary breakdown of traditional mechanisms of law enforcement—is combatting impunity: including the lack of courts with jurisdiction to try alleged crimes, and of police to arrest those charged.

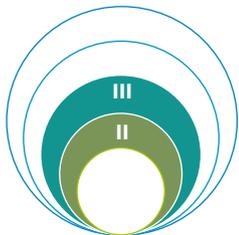
Key IHL Instrument: Common Article 3 of the 1949 Geneva Conventions

... (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 ...



Security Council POC

Security Council POC is the *Broad POC* perspective taken by the UNSC in its resolutions and open debates, and in Secretary-General Reports on POC to the Council.

II. Direct Protection: The UNSC can authorize peacekeeping operations to protect civilians; in extreme situations it can authorize military action.

III. Dedicated Protection Activities: The UNSC can create international pressure for State and non-State actors to obey IHL, including through sanctions and arms embargoes. It can play a role in encouraging dialogue and peacefully resolving armed conflicts. In the 1990s the UNSC created ad hoc international courts for Rwanda and the former Yugoslavia; since the coming into force of the Rome Statute in 2002 it has used its powers to refer situations to the ICC. The UNSC also gives PKOs peacebuilding mandates to help States develop protective institutions and capacities.

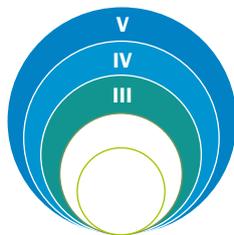
FUNDAMENTAL LIMITING PRINCIPLES:

The Council's mandate, as provided for in the UN Charter, is to maintain international peace and security. While responding to large-scale threats to civilians can be a crucial means to this end, the Council must ensure that it does not inflame a situation or widen a conflict-zone. Additionally, due to the structure of UNSC decision-making, the possibility of veto by one of the Permanent Five Council members is a significant constraining factor on Security Council POC.

CURRENT OPERATIONAL CHALLENGES

INCLUDE:

- a. the political nature of the UNSC, where Council members can pursue narrow state interests when considering responses to situations where civilians are imperilled; and,
- b. the need for shared understanding of the meaning of UNSC POC Resolutions, whether in a peacekeeping context like Cote d'Ivoire (with respect to S/RES/1975) or an offensive military action like Libya (with respect to S/RES/1973: see p. 11).



Humanitarian POC

Humanitarian POC is the perspective on *Broad POC* taken by humanitarian actors—including mandated organizations like the ICRC, UN agencies, and non-mandated agencies like Amnesty International and Oxfam. *Humanitarian POC* is one of the most flexible POC perspectives, reflective in particular of the different types of constraints regarding neutrality and impartiality the specific organization upholds.

III. Dedicated Protection Activities: includes advocacy and persuasion, visitation, humanitarian diplomacy, mobilizing third party pressure on violators, condemnation and denunciation, the use of unarmed presence, and of hiding, moving or sheltering civilians.

IV. Mainstreaming Protection: includes ensuring actions do not increase long term civilian vulnerability (e.g., by paying armed groups for 'protection'), and positively contributing to a protective environment by strategically distributing aid and designing camps so as to reduce everyday civilian vulnerabilities.

V. Restorative Protection: includes providing information to refugees and Internally Displaced Persons (IDPs) about conditions for safe return, providing humanitarian aid to the dispossessed, refugees and IDPs, and giving medical care and support to the injured or sick.

FUNDAMENTAL LIMITING PRINCIPLES:

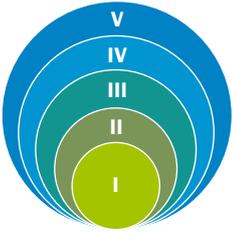
All actions:

- a. require the consent of parties to the conflict;
- b. must be nonviolent;
- c. must avoid superseding State protection activities; and,
- d. must remain neutral and impartial.

CURRENT OPERATIONAL CHALLENGES

INCLUDE:

- a. present limitations on knowledge regarding the best strategies for nonviolent civilian protection,
- b. the best approaches to controversial measures like condemnation and calls for international action, and;
- c. approaches to coordination and complementarity among agencies who have (and should retain) a diversity of POC objectives and capacities.



Peacekeeping POC

Peacekeeping POC is the Broad POC perspective guiding peacekeeping operations (PKOs) with protection mandates. Its primary source is not IHL, but the specific mandate for that PKO, issued by the UNSC or other (e.g. regional) executive body.

I. Prohibitions on harm: PKOs are expected to fully uphold the spirit and rules of IHL's protection of civilians provisions.

II. Direct Protection: While PKOs must pursue every available avenue to contribute to civilian protection, Council mandates can direct PKOs to prioritize Direct Protection (e.g. S/RES/1906). Indeed, PKOs are commonly judged locally and internationally on their ability to use presence, patrolling, inter-position and (ultimately) the robust use of force to protect local civilians under imminent risk of violence.

III. Dedicated Protection Tasks: Includes monitoring and reporting of rights violations, early warning and assessment of risks of civilian harm, and conveying and receiving information on the security of local civilians.

IV. Mainstreaming Protection: requires that activities like the facilitation of political processes, humanitarian aid, ceasefires, disarmament, demobilization and reintegration of combatants, and institutional capacity-building all must be pursued in ways that do not expose civilians—especially vulnerable groups like women and children—to danger.

V. Restorative Protection: includes aiding the return of refugees and IDPs to their homes and—ideally—their properties.

	Situation with regard to civilian violence	Operation's Primary Mandate	Operation's POC Activities
Incidental POC Mission	Organized violence against civilians is not anticipated.	Monitor ceasefire; facilitate political process; ensure humanitarian aid; etc.	Force only used reactively against isolated actors in urgent situations.
Mixed POC Mission	Substantial violence anticipated as a symptom of the conflict.	Protect civilians alongside other force priorities.	Presence and patrolling key; if necessary the use of force at a tactical level.
Primary POC Mission:	Grave violence anticipated as war strategy or geopolitical goal of parties to the conflict.	Civilian protection is the <i>raison d'être</i> of mission.	Pro-active, system-wide preventive action. Robust force may be necessary at a strategic level.

Table 1: Three Types of POC Peacekeeping Operation

FUNDAMENTAL LIMITING PRINCIPLES:

All actions,

- a. must have the formal consent of the Host State (usually in a Status of Forces Agreement);
- b. will be limited by the PKO's mandate and area of deployment;
- c. must avoid superseding indigenous protection efforts; and,
- d. will be tempered by the value of maintaining a perception of neutrality and impartiality by all parties to the conflict.

CURRENT OPERATIONAL CHALLENGES

include:

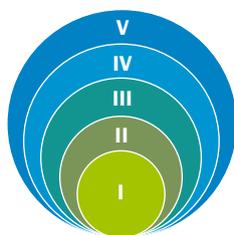
- a. knowledge management, lessons learned practices and information sharing with respect to POC strategies and policies;
- b. the need for increased training of troops and police on POC; and,
- c. the abiding issue of resource allocation to PKOs from the international community.

THE THREE PILLARS OF R2P

R2P actors utilize the different modes of protection according to their own capacities and constraints. However, rather than protecting against all the major harms to security and dignity that armed conflict and situations of violence present to individuals (as POC aims to do), the shared objective of R2P actors is exclusively to protect populations from *atrocities crimes*.

All protection actors will, just by the nature of their activities and objectives, contribute to atrocity-prevention. The effective protection of civilians from the harms of armed conflicts and other situations of violence will also help protect them from the risk of atrocities. To be an R2P actor, however, requires having a specific concern for atrocity-prevention, additional to a general concern for POC.

The following summarizes the main protection responsibilities of actors using the framework of the Secretary-General's 2009 'Three Pillar' formulation of R2P (A/63/677) and the language of the 2005 WSOD.



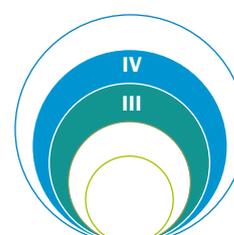
R2P Pillar One

"Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement..."

- I. **Prohibitions on atrocity:** the State is prohibited from visiting atrocities upon its own population.
- II. **Direct protection from atrocity:** the State must protect different groups of its population against attacks by each other.
- III. **Dedicated atrocity-protection activities:** Includes building capacities specifically to minimize the risks of atrocity, and to raise awareness when atrocity risks emerge.
- IV. **Mainstreaming Atrocity Protection:** Includes incorporating an atrocity-prevention perspective into key areas of legislation and executive action: for instance, diminishing hate speech and identity-politics, encouraging civil society actors, security sector reform and implementing human rights treaties.
- V. **Restorative Protection:** Includes protection for refugees and IDPs, and, where appropriate, the use of reconciliation and 'truth and justice' commissions.

Main R2P Pillar One Actors:

- » States: Executives and Parliaments
- » Domestic Civil Society Institutions and Human Rights Organizations
- » Armed Forces
- » Judiciary and Police Forces



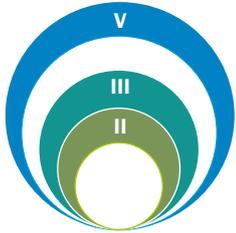
R2P Pillar Two

"The international community should, as appropriate, encourage and help States to exercise this responsibility."

- III. **Dedicated atrocity-protection activities:** includes neighbouring states, United Nations organs and Regional Organizations—always with the consent of the State in question —contributing to *Primary POC* PKOs that have atrocity-prevention mandates, playing a role in early warning and assessment, and helping mediate between armed groups and factions.
- IV. **Mainstreaming Atrocity Protection:** includes efforts at structural prevention implicating other policy areas, such as curbing small-arms trade and the trade of conflict resources. An atrocity-lens can also be important in human rights, anti-discrimination and power-sharing arrangements, laws and machinery.

Main R2P Pillar Two actors:

- » United Nations organs, including the Secretary-General, Secretariat and the OSAPG.
- » Regional Organizations.
- » International monitors and contributors to early warning.
- » Peacekeepers in certain Primary POC Missions.
- » States as members of the international community.



R2P Pillar Three

“The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations... In this context, we are prepared to take collective action, in a timely and decisive manner... should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”

II. Direct protection from atrocity.

Robust measures, including military interventions to protect populations from atrocity crimes, may be required to directly protect civilians. R2P places exclusive authority—and the correlating responsibility—for deciding on such matters on the UN Security Council.

III. Dedicated atrocity-protection activities:

Through playing a role in creating international pressure and univocal condemnation of atrocity situations, and in contributing to UN authorized arms-embargoes and targeted sanctions, the international community creates an environment where States are pressured to assume their protection responsibilities.

V. Restorative Protection:

includes the responsibility to rebuild nations and indigenous institutions where interventions have occurred.

Primary R2P Pillar Three actors:

- » UN Security Council and the UN Secretariat
- » Regional Organizations
- » States as members of the International Community.

R2P and ‘Humanitarian Intervention’

R2P differs in several ways from the notion of a ‘right of humanitarian intervention’:

- I. In focusing on the obligations of the international community, rather than their rights, it makes central the needs of the vulnerable.
- II. Even in its Third Pillar, R2P includes non-military strategies aiming to protect civilians.
- III. 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.
- IV. According with international law, R2P places exclusive responsibility for authorizing military action on the UNSC. It does not legitimize unilateral intervention.

R2P’S NON-WESTERN ROOTS

Though sometimes characterized as a primarily Western principle, the formation and development of R2P has deep non-Western, especially African, roots.

R2P’s core idea of ‘sovereignty as responsibility’ was developed in the context of IDPs in Africa by Francis Deng. African regional organizations were at the vanguard of international protection efforts against atrocities, with the African Union’s Article 4(h) of 2000 providing for the right of the Union to intervene in a Member State in cases of ‘war crimes, genocide and crimes against humanity’.

The ICISS members who formulated the initial idea of R2P included Cyril Ramaphosa from South Africa, Fidel V. Ramos from the Philippines, Eduardo Stein Barillas from Guatemala, Ramesh Thakur from India, Vladimir Lukin from Russia, and Co-Chair Mohamed Sahnoun from Algeria. Finally, Secretary-General Kofi Annan was a decisive force in R2P’s affirmation at the World Summit in 2005.

THE LEGAL STATUS OF R2P’S THREE PILLARS

R2P Pillar One is strict international law:

A State’s performing or failing to attempt to prevent atrocity crimes on its own citizens constitutes a direct violation of a wide array of international legal instruments, including IHL, IHRL, the Genocide Convention and the Rome Statute. Violations of Pillar One will also, in almost all cases, be a direct violation of domestic law.

R2P Pillar Two has key elements in law:

Both the letter and the spirit of different parts of international law have implications for some (but not all) Pillar Two international duties of atrocity prevention—especially as regards the use of influence over perpetrators and the protective actions of peacekeepers. Relevant instruments include Geneva Convention IV and the two Additional Protocols, the Genocide Convention and IHRL (including the human rights provisions in the UN Charter).

R2P Pillar Three is a Political Obligation:

Some international legal instruments imply international action should occur through UN processes in response to atrocities, such as the Genocide Convention and (arguably) Com. Art. 1 of the Geneva Conventions. However these instruments do not amount to a determination of legal duties.

CONVERGENCE AND CONTROVERSY: LIBYA AND ‘RWP’

RESOLUTION 1970 AND 1973 LIBYA 2011 R2P AND POC

UNSC Resolutions 1970 and 1973 in 2011 on Libya should be understood as both R2P *and* POC.

R2P:

Resolution 1970 of February 26 considered that attacks in Libya may amount to crimes against humanity, and recalled the Libyan authority's "responsibility to protect its population".

It imposed a variety of measures on the regime, including an arms embargo, travel bans, targeted sanctions and a referral of the situation to the ICC. With the perception that these non-military actions were insufficient to protect vulnerable civilians, especially in the besieged population of Benghazi, and that the Libyan authorities had failed to comply with Res. 1970, the Council authorized military intervention into Libya in Res. 1973 of 17 March 2011. The process leading up to this intervention, including the non-military measures and the ongoing United Nations and regional efforts at diplomatic solutions, followed the key lineaments of R2P.

POC:

The authorized action, however, was placed by the Council under a POC rubric, and the protection of civilians was the explicit objective of the military action authorized. This determination is arguably consistent with the Council's on-going *Broad POC* agenda, and its earlier declarations that large-scale violations of IHL can amount to threats to international peace and security and so can warrant response under Ch. VII of the UN Charter (S/RES/1265; S/RES/1296).

“RESPONSIBILITY WHILE PROTECTING”

While the process leading up to the passing of Res. 1973 followed in key respects the lines set down by R2P (and the broad idea of *Security Council POC*), controversy surrounds the implementation of the resolution by NATO forces and the swiftness with which military objectives seemed to steer towards supporting regime change.

Some Council Members argued that NATO had overstepped the authority provided by Res. 1973 by using military force against Gaddafi strongholds. In this context the Permanent Representative of India to the Council observed that it was important to separate the doctrine of R2P from its implementation in a specific case. One could be supportive of the former and critical of the latter.

In November 2011 Brazil outlined its concerns and noted potential ways forward in its important Concept Note on *Responsibility while Protecting*, declaring that, "There is a growing perception that the concept of the responsibility to protect might be misused for purposes other than protecting civilians, such as regime change." (See text-box)

On the other hand, it is arguable that the success of the local rebel Libyan forces—at least as a defensive unit—was lynchpin in protecting civilians in population centres like Benghazi, and so to this extent NATO had no choice but to act as air support for the rebel forces.

The way to resolve this impasse is at present unclear; there is a need to appropriately limit the actions and military objectives of intervening forces within basic parameters but without thereby hamstringing their capacity to offer genuine and timely protection to populations at risk.

Concept Note: Responsibility While Protecting:

Elements for the Development and Promotion of a Concept

... 11. As it exercises its responsibility to protect, the international community must show a great deal of responsibility while protecting. Both concepts should evolve together, based on an agreed set of fundamental principles, parameters and procedures, such as the following: ...

(d) The authorization for the use of force must be limited in its legal, operational and temporal elements and the scope of military action must abide by the letter and the spirit of the mandate conferred by the Security Council or the General Assembly, and be carried out in strict conformity with international law, in particular international humanitarian law and the international law of armed conflict;

(e) The use of force must produce as little violence and instability as possible and under no circumstance can it generate more harm than it was authorized to prevent; ...

(h) Enhanced Security Council procedures are needed to monitor and assess the manner in which resolutions are interpreted and implemented to ensure responsibility while protecting; (Brazil, A/66/551; S/2011/701, 11 November 2011)

INSTITUTIONAL AND OPERATIONAL OVERLAP BETWEEN R2P & POC

As the foregoing discussion suggests, there is substantial overlap between the major R2P and POC actors. Combined with the fact that there are different Pillars of R2P and separate concepts of and perspectives on POC, the result is that there is no easy one-size-fits-all answer to the question of the institutional and operational relationship between the two. Drawing with a broad brush, however, four main inter-relationships can be discerned.

1. Progression:

For some actors R2P will be simply the progression of *Broad POC* as situations irrupt from conflict and violence into threatening full-blown atrocity. For these actors R2P is simply *Broad POC* applied to the specific and urgent case of atrocity crimes.

UN Security Council: The Security Council's *Broad POC* concern progresses into its engagement with R2P, with no sharp distinction at work. This explains why its affirmations of R2P have been in thematic POC resolutions (S/RES/1674; S/RES/1894) and why both R2P and POC language and processes were present in the Council's response to violence against civilians in Libya in 2011 (S/RES/1970; S/RES/1973).

States (Domestic): Domestically, States may feel more comfortable in enacting *Broad POC* measures rather than specifically R2P (Pillar One) measures, because the latter can seem to admit a risk of domestic atrocity crimes. For the most part, a State that pro-actively pursues *Broad POC* (the protection of its civilians from widespread, serious, lawless violence) will in so doing also fulfil its R2P Pillar One obligations.

2. Distinction (R2P & POC):

For some actors the different institutional, strategic and operational responses required to prevent atrocity crimes may mean they may need to distinguish between their R2P and POC roles.

Peacekeepers: Primary POC PKOs will always require the use of comprehensive *Broad POC* doctrine and strategies, and these will often reduce the likelihood of atrocity crimes. However, in certain cases PKOs may need to utilize a specific atrocity-prevention lens in order to gauge the risks of atrocities and the appropriate strategies to prevent them, as such crimes have different causes and require different responses as compared with less-systematic harms to civilians. To this extent, peacekeepers will distinguish between their R2P and POC tasks.

3. Differentiation (within POC):

Some actors will distinguish between different POC concepts/perspectives:

Combatants: Combatants must distinguish sharply between IHL (*Narrow POC*) and both *Broad POC* and R2P. They will differentiate *Narrow POC*'s irremovable and determinate legal constraints on the methods and means of warfare (keeping in mind that IHL can impose positive protective duties), from the larger objective combatants have to protect particular groups of civilians in specific situations, impelled by *Broad POC* considerations, State policy and military doctrine.

Peacekeepers: Peacekeepers may in some cases need to draw the distinction between *Peacekeeping POC*—where host state consent is a necessary condition—and the POC perspective used by the Security Council, which can controversially use Ch. VII of the UN Charter to adopt measures against States' wills.

4. Exclusivity:

Other actors will have a central role to play in one arena, but not in the other.

OSAPG: The Office of the Special Advisor on the Prevention of Genocide (OSAPG) is a specialized R2P institution. R2P's comparatively narrow scope, focusing only on the four atrocity crimes, makes the OSAPG's task of atrocity prevention and early warning both more urgent and more tractable. The same can be true for States as members of the international community, who may develop specific modalities to prevent and respond to atrocity crimes in other countries (such as the US Atrocities Prevention Board), that would be inappropriate applied more widely to *Broad POC*.

Humanitarian actors: Humanitarian actors have proven well-placed to promote *Broad POC* in a range of challenging contexts. However, their neutral and consensual status makes them less apt to invoke R2P, and their peaceful measures are of limited application in the face of the determined armed assaults on unarmed populations that characterize R2P's atrocity crimes. For this reason they will usually be POC, rather than R2P, actors. (However, some humanitarian organizations may play an important role in R2P early-warning networks, and in mobilizing global attention.)

Overlap on various aspects is not the same as conflation. Even in institutions that deal closely with each—such as the UN Security Council—it is crucial to be aware of the key differences between the two, in particular the narrow scope of R2P.

R2P AND POC: PERCEPTIONS AND REALITIES

I. 'R2P has a narrower scope than POC, applying only to the four atrocity crimes.'

AGREE

Applying in law to all situations of armed conflict, and as a practice also to other situations of violence, POC is wider in scope than R2P.

However, R2P is deep in terms of its preventive dimension: the modes of protection utilized to prevent atrocities. Broad POC parallels R2P in this respect—both have a wide arsenal of tools to enable civilian protection.

II. 'POC is strictly limited to situations of armed conflict, as defined by IHL.'

DISAGREE

While IHL is (for the greater part) limited in application to contexts that contain two military forces directly engaging one another, the consistent usage of *Broad POC*—in the hands of the UN Security Council, the Secretary-General, peacekeepers and humanitarians—also applies to internal disturbances when they reach a threshold of widespread, grave, lawless violence against civilians.

However, it is arguable that outside armed conflict proper, a term such as 'protection of civilians in situations of mass violence' could be developed to mark this change in the field of application. Even so, an ordinary lay understanding of 'armed conflict' in the context of civilian protection will include the systematic use of lethal force by military forces against civilians, meaning that the present term is still apt.

III. 'POC is impartial and neutral, and—unlike R2P—it does not breach State sovereignty.'

IT DEPENDS

- » *Humanitarian POC*—especially as understood by the ICRC—is indeed fully respecting of impartiality, neutrality and State authority.
- » *Narrow POC* 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.
- » *Peacekeeping POC* always requires the principled 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*. As the Brahimi Report in 2000 stated, "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." However, *Peacekeeping POC* always respects State sovereignty by requiring formal consent for its deployment and spheres of action.
- » While respect for sovereignty is a vital element of international peace, in extreme situations *Security Council POC* can impel the (non-neutral) use of coercive measures to protect or help protect civilians from perpetrators.

However, R2P as a whole is potentially more confronting of sovereignty than POC, as the presence of atrocities automatically implies a perpetrator that may need to be challenged. Furthermore, if the perpetrator that must be confronted is a State, then the Pillar III use of force to protect populations may well carry implications for regime change—a geopolitical outcome that some parties may desire for independent reasons. For these reasons R2P in general will always be more politicized and controversial than POC.

IV. 'POC is a legal concept; R2P is a political concept.'

DISAGREE

The above dichotomy was asserted by the Secretary-General in his 2012 POC Report (S/2012/376). However, it is hard to align this view with the traditional understanding of R2P as a framework drawing on international law, or with the policies and institutions of *Broad POC*. None of the Secretary-General's prior POC or R2P reports, or the thematic Security Council Resolutions that followed them, have ever used this language. In the Secretary-General's later 2012 R2P Report (S/2012/578) he eschewed such formulations and returned to the traditional understanding of the normative groundings of R2P: "The responsibility to protect is a concept based on fundamental principles of international law as set out, in particular, in international humanitarian, refugee and human rights law."

Our analysis is aligned to this more traditional position. R2P and *Broad POC* both have elements comprising international law and elements going beyond the law's strict requirements.

R2P's affinities with law include:

- » R2P's Pillar One responsibilities for States to protect—and not to slaughter—their populations are firmly based in law. The four atrocity crimes have legal definitions, provided in the Rome Statute and the Genocide Convention. The 2005 WSOD R2P principle realigned human protection as a political norm in ICISS' formulation to existing categories of international legal crimes.
- » Some R2P Pillar Two duties—namely those prohibiting complicity in genocide occurring in other countries—are found in international law (e.g. the Bosnian Genocide Case).
- » By recourse to the UN Security Council, R2P Pillar Three aims to impel interventions that are consistent with international law (as distinct from Kosovo-style unilateralism).

Furthermore, *Broad POC* has major elements that are not specified by international law, which make confining it to a 'legal concept' difficult. For example:

- » The positive duties of peacekeepers to protect civilians are not dictated by international law (indeed, the practice of peacekeeping receives little doctrinal support from the UN Charter itself).
- » The Security Council has great discretion over the coercive measures it may utilize, and the situations it may employ them in, over which there is no legal oversight.
- » Many of the pro-active strategies of humanitarians to improve protection are not determined by law (though IHL does give a legal mandate to the traditional protection activities of the ICRC).

The view here is that R2P and *Broad POC* are developing norms (or principles) with common roots in the longstanding claims by states to protect those who live within their borders, the empathy for the sufferings of others found in most cultures, and the acceptance that individuals as well as states have rights.¹ As developing norms R2P and POC can influence both legal and political decisions—providing guides for conduct and reasons for action. As developing norms they gather support, attract critique, and shift in nature as they are applied.

Both because of their different origins and through their ongoing application, these two norms will have different trajectories, in which they may converge, diverge, wax or wane. It is possible that they might finally be distinguished in the dichotomous way suggested in in the Secretary-General's 2012 POC Report. However, it is hard to agree that we have reached this stage or that this is the distinction the international community will ultimately want to adopt.

Nevertheless, *Narrow POC*—IHL—is strict international law, based both on universally signed treaties and customary international law. In this respect *Narrow POC* must be sharply distinguished from both R2P and *Broad POC*.

¹ As well as the larger *Policy Guide*, see Charles Sampford, "A Tale of Two Norms", in C. Sampford, et al. (eds.), *The Laws of Protection: Protection of Civilians and the Responsibility to Protect* (Geneva: United Nations University, 2012)

V. ‘Ground-level atrocity-prevention (R2P) always requires war-fighting against states (and so cannot be a task for peacekeepers).’

DISAGREE

- » Capacity and credible will to use robust force can often be sufficient insurance against having to fight wars.
- » Atrocities can be committed by non-state forces, and peacekeepers may have the wherewithal to confront these.
- » Even those atrocities precipitated by (elements of) the State are usually not performed by regular military forces, but instead by clandestinely state-supported (or state-unleashed) militia, as was the case confronting INTERFET in East Timor. Peacekeepers may have the wherewithal to confront these.
- » Atrocities often begin with smaller ‘trial massacres’ to test the waters on international response. Early responses to these might be possible for peacekeepers, nipping violence in the bud.
- » Atrocity-prevention does not automatically require the robust use of force. An atrocity-prevention lens used by peacekeepers may focus attention on hate-speech from local radios, for example, and warning broadcasters of their potential legal culpability may be sufficient to suppress this problem.

However, any time atrocity-protection requires acting without formal state consent, or such that peacekeepers will be confronted by state forces as a ‘third belligerent’, peace-keeping operations cannot be asked to protect civilians. Peacekeeping operations are never R2P Pillar Three operations, and a switch from one operation to the other (as perhaps should have occurred in Rwanda in 1994) requires an explicit change in mandate and operation.

VI. ‘Peacekeeping Operations—and even some humanitarian actors—may perform specific atrocity-prevention activities, but it is better not to speak of these as R2P activities.’

IT DEPENDS

- » In many situations, it may needlessly add to controversy, and even invoke hostility and suspicion, to refer to atrocity-prevention activities as R2P. In such cases, ‘R2P language’ may be avoided. Even so, in situations where systematic dangers to civilians are present, the need for dedicated atrocity-prevention activities, threat-assessment and mainstreaming cannot be diminished.
- » While R2P Pillar Two language may be avoided because protection actors wish to dissociate their activities from the controversies in R2P Pillar Three, the *systematic* avoidance of R2P language by protection actors would result in R2P only being spoken about in Pillar Three situations—thus giving rise to a self-fulfilling prophecy where R2P comes to be automatically understood as Pillar Three coercive action (thus justifying the continued avoidance of R2P Pillar Two language by protection actors).
- » Many states—both Host States and Troop Contributing Countries—are well aware of the links between R2P and POC, especially as these emerge in Secretary-General Reports and Security Council Resolutions. In the Council’s open debates on POC, States regularly display a sophisticated understanding of the three pillars of R2P, and of the nature and scope of POC. In such cases categorical assertions that POC and R2P are unrelated are likely to be met with scepticism. It may be more persuasive – as well as more accurate – to emphasize the strong distinctions *within* these groupings: for instance, the irremovable significance of Host State consent in R2P Pillar Two and *Peacekeeping POC*, as compared with the coercive elements that may be found in *Security Council POC* and, of course, R2P Pillar Three.
- » In some cases, clarity of language, purpose and resolve may contribute to atrocity prevention, for instance by signalling to potential perpetrators that the operation is willing and able to defend against atrocities.

CONCLUSIONS

All protection actors need to understand the R2P and POC norms to enable them to contribute fully in efforts to enhance protection.

'R2P and POC have powerful synergies and mutually reinforcing applications.'

R2P and POC are distinct norms, but share common applications and common goals—namely, the saving of civilian lives from conflict and mass violence. Neither POC nor R2P should function without awareness of the normative, institutional and operational requirements of the other. Protecting vulnerable people requires that protection actors—whether R2P or POC—work in mutually supportive roles, and not at cross-purposes.

'POC and R2P should not be conflated. They are and must remain distinct principles.'

The visible and urgent status of R2P crimes that 'shock the conscience of humanity' should not distract from the far more prevalent and everyday abuses of civilians in the situations of violence that POC polices.

Equally, atrocity crimes present very specific normative, institutional and operational challenges, and POC methods that work in lesser conflicts may be ineffective. However, the urgency and moral gravity of atrocity crimes allow new measures to become possible. These factors explain the added value that the atrocity-specific R2P can have for the protection of vulnerable persons.

For further detail and analysis of the issues raised in this Overview Document, see Hugh Breakey, Angus Francis, Vesselin Popovski, Charles Sampford, Michael G. Smith and Ramesh Thakur *Enhancing Protection Capacity: Policy Guide to the Responsibility to Protect and the Protection of Civilians in Armed Conflicts* (Institute for Ethics, Governance and Law, 2012).

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