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Protection gaps for civilian victims of political violence

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Protection gaps for civilian victims of political violence

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This article begins by explaining why the United Nations' civilian protection agenda is particularly relevant and important for Africa and why the Responsibility to Protect (R2P) might be said to be an African norm export to the rest of the world. Next, it traces the reasons for peace operations' reluctance to use force. It then shows how the civilian protection agenda has tried to fill critical gaps in the existing normative architecture, with both R2P and the Protection of Civilians (POC) resulting from growing shame at the accumulating list of atrocities in which the international community stood by as passive onlookers, frustrations at the 'constitutional' constraints and normative inadequacies rather than indifference and apathy to the plight of civilian victims that produced the passivity, and a determination to reposition the United Nations system to be empowered and capacitated to be able to respond better on both the timeliness and effectiveness dimensions when confronted by repeat occurrences of similar tragedies. The fourth section discusses the merits of the R2P and POC norms in responding to the challenge of civilian protection. The final part notes that, despite these two valuable additions to the repertoire of the international community in dealing with atrocities perpetrated on civilians, there remain many gaps in the protection agenda, as shown in several recent cases.

Keywords: R2P; POC; Africa; United Nations; protection gaps

Introduction

> There are substantial gaps in capacity, imagination and will across the whole spectrum of prevention and protection measures relating to the responsibility to protect. Nowhere is that gap more pronounced or more damaging than in the realm of forceful and timely response to the most flagrant crimes and violations relating to the responsibility to protect. Here, weaknesses of capacity and the paucity of will, including in many capitals that speak in favour of advancing goals relating to the responsibility to protect, feed off each other in a particularly vicious cycle of hesitation and finger-pointing in the face of unfolding atrocities.[1]

The above quote from the United Nations (UN) Secretary-General Ban Ki-moon's first report on the responsibility to protect (R2P) shows three things. First, it demonstrates the importance of civilian protection to the UN's contemporary security agenda. Second, it acknowledges that there are still many significant gaps in the protection response capacity of the organisation. Third, it confirms that the demand–supply civilian protection gap continues to be a matter of concern at the highest level of the UN system.

Created from the ashes of the Second World War with the allies determined to prevent a repeat of Adolf Hitler's horrors, the UN for most of its existence has focused far more on external aggression than internal mass killings. Yet Nazi Germany was guilty of both.

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Unlike aggression against other countries, the systematic and large-scale extermination of Jews with industrial efficiency was a new horror. In the new century, the organisation is at long last elevating the doctrine of preventing mass atrocities against people to the same level of collective responsibility as preventing and repelling armed aggression against states. Given the changing nature and victims of armed conflict, the need for clarity, consistency and reliability in the use of armed force for civilian protection now lies at the heart of the UN's credibility in the maintenance of peace and security.

The proportion of civilians killed in armed conflict, either from direct violence or from 'excess deaths'[2] caused by conflict-related hunger and disease, has risen over the last two centuries. The international community has responded to the calls to protect innocent victims by developing two parallel principles, the protection of civilians (POC) and R2P. Both grew out of critical shortcomings ('gaps') in the theory and practice of UN peacekeeping — in particular the collapse of the core assumptions of traditional consent-based peacekeeping amidst the violence of messy post-Cold War intrastate armed conflicts — and in turn contributed to the evolution of the understanding, doctrinal reshaping and practices of contemporary UN and UN-authorised peace operations.

The tragedy of the Rwanda genocide in 1994 and the cruel paradox of the Serbian massacre of Bosnian civilians sheltering in UN-protected safe areas in Srebrenica in 1995 were powerful stimuli to the normative shift from neutral, combat-averse and passive peacekeeping to the mandate to protect civilians under imminent threat. The fact that Kofi Annan was the UN Under-Secretary-General for Peacekeeping in 1994 and 1995 is fundamental to his championing of new normative understandings from 1999 onwards that led directly to the two new, mutually reinforcing norms of POC and R2P. This explains his comment after retirement as Secretary-General that R2P was one of his 'most precious of all' achievements.[3] The norm brokers in the two cases were the Report of the Brahimi Panel in 2000 on UN peace operations set up by Annan as an internal UN high-level panel,[4] and the report of the International Commission on Intervention and State Sovereignty (ICISS) set up as an independent commission by Canada in response to Annan's challenge of humanitarian intervention.[5] Several UN resolutions and statements now routinely insert both POC and R2P language, and sometimes POC and/or R2P tasks, in the mandate creating new UN peace operations or renewing existing ones.[6] Unfortunately, the language of R2P generates expectations of UN protection that the organisation often is unable to deliver. To date Libya in 2011 and the less-noticed Côte d'Ivoire resolution at the same time,[7] are the sole examples of coercive action being authorised by the United Nations under the rubric of POC/R2P.

This article begins by explaining why the civilian protection agenda is particularly relevant and important for Africa and why R2P might be said to be an African norm export to the rest of the world. Next, it traces the reasons for peace operations' reluctance to use force. It then shows how the civilian protection agenda has tried to fill critical gaps in the existing normative architecture, with both R2P and POC resulting from growing shame at the accumulating list of atrocities in which the international community stood by as passive onlookers, frustrations at the 'constitutional' constraints and normative inadequacies rather than indifference and apathy to the plight of civilian victims that produced the passivity, and a determination to reposition the UN system to be empowered and capacitated to be able to respond better on both the timeliness and effectiveness dimensions when confronted by repeat occurrences of similar tragedies. The fourth section discusses the merits of the R2P and POC norms in responding to the challenge of civilian protection. The final part notes that, despite these two valuable additions to the repertoire of the international community in dealing with atrocities perpetrated on

civilians, there remain many gaps in the protection agenda, as shown in several recent cases.

Africa and the civilian protection agenda

The future of R2P will depend on how the big emerging powers engage with it, and on conversations among them and between them and the relatively declining Western powers.[8] Contrary to common belief and the appropriation of the discourse by Westerners, in many ways R2P is a distinctly *African* contribution to the global normative architecture, as argued by Mohamed Sahnoun, the often (unfairly) forgotten co-chair of ICISS.[9] Amitav Acharya develops this argument still further to make the strongest claim yet that R2P should be considered an African norm export that has been elevated to the global level. In addition to Sahnoun being a powerful and active ICISS co-chair, Acharya recalls the role of Francis Deng in reconceptualising sovereignty as responsibility and that of Kofi Annan in calling for and then championing the new ICISS resolution, in R2P, of the previous contradiction between sovereignty and 'humanitarian intervention'. As Acharya puts it, 'The fact that Deng and Annan were both from Africa should not be regarded as a mere or unimportant coincidence, but a central aspect of the genesis of R2P'.[10] From my own direct knowledge of the personalities, process and history of this normative shift, I would endorse this observation.

In part R2P is a distinctively African response because it spoke to a distinctively African need. The structural coercion of colonial rule, often backed by sectarian feud-perpetuating policies of group-based divide-and-rule, the delineation of inter-state boundaries based more on military equations and political accommodations among colonial capitals than on ground realities in the colonies, and the uneven and messy timing, means, terms and processes of independence from the European colonial powers (and liberation from white minority rule) produced a cascade of violent transitions across Africa in the second half of the last century. After independence, inherited problems were often exacerbated by bad governance, the creation of rent-seeking internal security states ruled by family or clan dynasties through terror, and grievance and resource wars.[11] The points at which these intersected with external Cold War and post-Cold War dynamics intensified the insecurity dividends for African peoples while enriching the entrenched elites. All of these help to explain why, by the end of the last century, Africa was home to the overwhelming proportion of violent armed conflicts and associated civilian casualties.[12]

So far at least in the 21st century, Africa has been a continent of hope and optimism. Growth rates have been impressive, albeit from a low base. Investments in health, education and provision of safe water and sanitation; improved commitment to good governance norms, democratic institutions, the shift of political contestation from armed insurgency to the ballot box, power sharing, human rights; creation of markets and business-friendly laws and policies; increasing ownership of responsibility and mechanisms for preventing and muting conflict in the continent, etc., have all underpinned rising and spreading income levels and distribution, encouraged investment, lifted people out of poverty, decreased the incidence and deadly tentacles of armed conflict, and raised confidence in the continent and abroad that the benefits and gains can be sustained.

Yet challenges remain, including the increasingly blurred lines between interstate and intrastate armed conflict, on the one hand, and criminal violence, on the other; the risks of resource wars as populations grow and food and water scarcity rise with dwindling resources, likely to be exacerbated with the impacts of climate change; cross-infections

from persisting pockets of 'bad neighbourhoods', particularly in the Great Lakes region and the Horn of Africa; growing numbers of and factionalised rivalry between non-state armed challengers to 'legitimate governments'; and, in the shadow of globalisation, the growth of globally networked uncivil society engaged in trafficking people, guns, drug and money laundering, and terrorism.[13] Moreover, the African success story has been dependent since the global financial crisis on robust and resilient growth in China and India, in particular, and is vulnerable to these two economies faltering. The civilian protection agenda thus could well remain Africa-centric. The caveats notwithstanding, a systematic examination of the literature on conflicts and trends opts in the end for optimistic rather than gloomy assessments of Africa's economic, human and traditional security prospects, with a gradually fading impact of the inertia of past conflict determining the trajectory of future relations.[14]

Limitations on the use of force in UN peace operations

The use and non-use of force alike have empirical consequences, shape the struggle for power, and help to determine the outcome of political contests. The UN was set up but failed to develop as a collective security system. The primary UN purpose is to maintain international peace and security. The Charter specifies two chief means to this end, namely pacific settlement of disputes (Chapter 6) and collective enforcement against threats to or breaches of the peace (Chapter 7). Secretary-General Dag Hammarskjöld's priority in the 1950s to early 1960s was to localise conflicts. Peacekeeping, which famously finds no mention in the UN Charter, evolved in the grey zone between pacific settlement and military enforcement, hence the quip about it being grounded in Chapter 6.5. Lester Pearson, one of the originators of UN peacekeeping, described it as 'an intermediate technique between merely passing resolutions and actually fighting'.[15]

UN peacekeeping based on consent was thus an innovative attempt to circumvent the failure to realise a workable collective security system. The consensus on traditional, consent-based missions was that peacekeepers should not have the obligation, soldiers or equipment to engage violators in hostilities. Using them as a fighting force would erode international consensus on their function, encourage withdrawals by contributing contingents, convert them into a factional participant in the internal power struggle, and turn them into targets of attack from rival factions. The consensus on classical peacekeeping held through the Cambodia operation but began to fray in Somalia under the strains of the post-Cold War messy internal conflicts in the early 1990s.[16]

The end of the Cold War did not mark the start of a successful collective security system. Even with UN authorisation, states are reluctant to transfer control over their national armed forces to the organisation because of doubts over its managerial capacity for military operations,[17] scepticism about its institutional capacity to police the world wisely and effectively, and the fear of creating a military monster that one day might turn against them. Continuing inhibitions on the use of UN force include an inoperative Military Staff Committee, non-fulfilment of Articles 42 and 43 requiring national troop contingents to be placed at UN disposal, and recurring suspicions of transient majority coalitions in the UN Security Council (UNSC).

Humanitarian, peacekeeping, electioneering and enforcement measures by the UN face distinctive difficulties when they have to be undertaken with regard to civil rather than international wars.[18] States provide troops to UN missions in the belief and expectation that the environment into which they are being deployed is benign, permissive and low risk. When the operational environment was transformed after the

Cold War in messy civil and sectarian armed conflicts, rather than meet the new operational requirements, state contributors continued to find innovative ways of reducing risks to their peacekeepers by evacuating them at the first signs of danger and rejecting requests for fresh contributions. One consequence has been a creeping apartheid in UN peace operations where troops are provided overwhelmingly by developing countries.

Attempts to convert peacekeeping missions into collective enforcement operations remain fraught with grave risks resulting from the conceptual confusion. Most civil conflicts have deep historical roots and are characterised by broad and mutual suspicions based on past traumatic experiences. The distinctions between combatants and civilians are often blurred and UN intervention necessitates measures to protect widely dispersed and highly vulnerable populations that are bitterly hostile towards one another. UN use of force cannot be politically neutral insofar as the outcomes of civil conflicts are concerned. The resort to overt force also entails certain 'opportunity costs', including a reduced ability to make the peace.

A gap analysis

Global governance advances and retreats by filling or widening five analytical gaps: knowledge, norms, policies, institutions and compliance.[19] Over the past decade and a half, concerned citizens, engaged academics and reflective practitioners have joined mandated and non-governmental organisations in becoming exercised about a much more acute empirical gap, namely the protection gap. With the benefit of hindsight, another striking observation to note is that neither the provision of humanitarian relief nor the protection of civilians was an explicit or primary concern of traditional UN peacekeeping. Yet, in a remarkable passage in 1960, Hammarskjöld informed Katanga's secessionist leader, Moïse Tshombe, that it was 'the duty of the United Nations Force to protect the civilian populations and [that] this duty is … in no way restricted by the rule of non-intervention applied by the Force in relation to domestic conflicts'.[20] Even though UN operation in the Congo used force to prevent the secession of Katanga and not to protect civilians, Hammarskjöld was foreshadowing the conscience as well as the controversies that were to be awakened and generated around the turn of the century. In a number of cases in the 1990s, the UNSC endorsed the use of force with the primary goal of humanitarian protection and assistance: in the (ineffectual) proclamation of UN safe areas in Bosnia, the delivery of humanitarian relief in Somalia, the restoration of the democratically elected government of Haiti, and the deployment of the multinational Kosovo Force.

It is easy to forget that the UN was never meant to be a pacifist organisation. Its origins lie in the anti-Nazi wartime military alliance among Britain, the US and the Soviet Union. The UNSC is the world's one duly sworn-in sheriff for enforcing international law and order. Under the impact of the Holocaust, the international community also progressively curtailed the right of sovereign states to use violence internally. The expansion of permissive norms for the international community to use force within sovereign jurisdictions paralleled the increasing fetters placed on the right of states to use force within and across borders. After the Cold War, the proliferation of complex humanitarian emergencies — and the inappropriateness of the classical tenets of UN peacekeeping for dealing with them — dramatised the uneven impact of the neutrality of traditional peacekeeping on perpetrators and victims. In highlighting this, the Brahimi Report was an important milestone on the road from humanitarian intervention to R2P.

The frequency and deadly consequences of armed conflict rise and fall on the ebb and tide of history and they have waned from a peak in the mid-1990s. However, that statistical decline in the numbers and lethality per battle and per year is little solace to innocent civilians killed by intent or when caught in the crossfire, starved into submission or death, ethnically cleansed, displaced from their homes, villages and communities, and in other cruel fashion terrorised and brutalised. Moreover, unlike the non-linear movement on the number and lethality of wars, there seems to have been more or less a linear progression over the last two centuries in the increasing proportion of civilians being killed in conflict-related direct and structural violence.

Traditional warfare is the use of force by rival armies of enemy states fighting over a clash of interests: us against them. Collective security rests on the use of force by the international community of states to defeat or punish an aggressor: all against one. Traditional peacekeeping involved the insertion of neutral and unarmed or lightly armed third-party soldiers as a physical buffer between enemy combatants who had agreed to a ceasefire. Peace-enforcement accepted the use of force by better armed but still neutral international soldiers against spoilers and transgressors of a peace agreement. 'Humanitarian intervention' differs from all these in that it refers to the use of military force by outsiders for the protection of victims of atrocities: us between perpetrators and victims.[21]

The debate on 'humanitarian intervention'[22] was ignited in the closing years of the last century by humanitarian crises in Somalia, Rwanda, Srebrenica and East Timor, which revealed a dangerous policy gap between the codified best practice of international behaviour as articulated in the UN Charter and actual state practice as it had evolved in the half century since the Charter was signed. The angry and bitter debate highlighted a triple policy dilemma — that is, a three-fold protection gap — of complicity, paralysis and illegality:

(1) To respect sovereignty all the time is to be complicit in humanitarian tragedies sometimes. If we have the means to stop mass killings underway or imminently threatened but choose to look the other way, we are not the moral equivalent of the perpetrators of the atrocities, but we are part-complicit through our deliberate act of omission. The Rwanda genocide in 1994 fits this description.

(2) If we insist that any effective international action to protect populations at risk of mass atrocity must be formally authorised by the UNSC, the practical effect of this is to surrender the agenda to the obstructionist obduracy of any one of the five veto-wielding permanent members of the Council (P5), as has been the case in Syria in 2011–2013, or indeed to the apathy and indifference of the Council as a whole: no draft resolution on Rwanda was submitted and vetoed in 1994.

(3) However, if we accept therefore that effective intervention by one power or a coalition of states is justified, as with the intervention by the North Atlantic Treaty Organization (NATO) in Kosovo in 1999, then we are endorsing action that under existing UN Charter law is illegal.

Since those conscience-shocking scenes from the 1990s, several efforts have been launched to strengthen the protection gaps in global governance. With respect to knowledge gaps: what are the causes of atrocity crimes and contributing factors behind them? Can we identify early warning signs? Who are the actors best placed to respond quickly and effectively to avert or halt atrocities? On normative gaps: how can old, outdated and ineffectual norms be replaced by robust new powerful ones? Who are the norm entrepreneurs, brokers, champions, carriers and spoilers? On policy gaps: what policy

remedies work best? By whom can they be adopted? On institutional gaps: do we need new institutions or can existing ones be adapted, reformed and improved to be made fit for purpose? How can the division of labour between them be optimally allocated to avoid duplication and institutional infighting? Most crucially, what are the compliance gaps and how can they best be filled to ensure predictable, credible and reliable protection?

One answer to these series of questions came through ICISS, which published its path-breaking report *The Responsibility to Protect* in 2001. In 2004, the Secretary-General's High-Level Panel reaffirmed the importance of changing the terminology from the deeply divisive 'humanitarian intervention' to 'the responsibility to protect' and endorsed the ICISS argument that 'the issue is not the "right to intervene" of any state, but the "responsibility to protect" of *every* State'.[23] Annan endorsed R2P as well.[24] The core elements of its ideas were adopted unanimously at the UN summit of world leaders in 2005. The 2005 Outcome Document with four atrocity crimes added clarity, rigour and specificity, limiting the triggering events to war crimes, genocide, crimes against humanity and ethnic cleansing. Norms frame identities, interpretations and behaviour. By realigning the emerging political norm of protection to the existing categories of international legal crimes, the 2005 formulation enhanced the prospect of the R2P principle becoming a norm robust enough to shape international behaviour. Member states further declared that they 'are prepared to take collective action, in a timely and decisive manner, through the Security Council … and in cooperation with relevant regional organisations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations'.[25]

Ban's special reports on R2P have sustained and consolidated the new international consensus on the subject.[26] Civil society organisations — the Global Centre for R2P, the International Coalition for the Responsibility to Protect, the Asia-Pacific Centre for R2P — have promoted a vigorous process of R2P norm socialisation and crystallisation. The annual debates by the UN General Assembly on Ban's special reports have helped to forge a shared understanding of R2P to distinguish it from humanitarian intervention and align it with building capacity to help states exercise their sovereignty more effectively. The debates show that the consensus on R2P is broadening, its legitimacy is strengthening and most states are more concerned to move on to questions of implementation.[27] However, in the wake of the resort to Pillar Three external military intervention in Libya in 2011, R2P remains a subject of debate and some confusion conceptually, contested normatively and controversial politically.[28]

A second triple policy gap

R2P represents a response also to a different triple policy gap. First, the typical form of armed conflict has changed from inter-state war to internal armed conflicts. However, the UN Charter specifically prohibits the organisation from intervening in the internal affairs of member states. How can the UN abide by this injunction yet pursue its primary mandate of maintaining peace and security? Second, the UN Charter clauses on the promotion and defence of human rights have been reinforced by a growing number of human rights regimes and resolutions. However, human rights are primarily, although by no means exclusively, claims by citizens against their own governments. This too raises troubling questions of UN competence with respect to two seemingly incompatible policy goals: the promotion of human rights and respect for state sovereignty. Third, human rights and international humanitarian law originated in attempts to limit the use of armed

violence by states against their own citizens and enemy soldiers. Yet the prevention and halt of atrocities inside sovereign borders may sometimes require the use of armed force by the international community across international borders against perpetrator regimes. How can this policy circle be squared?

R2P as the international cavalry

R2P can be discussed and analysed from any one or more of four distinct analytical perspectives: as a discursive conceptual advance; as a norm shift; as a policy template; or as a legal obligation. Its origins lie in the need to distinguish disinterested, legitimate, UN-authorised intervention of, by and for the international community from unilateral 'humanitarian intervention' by an individual or coalition of self-interested states pursuing their own narrow agenda. In today's world, the use of military force overseas is always highly controversial and fiercely contested. The origins of the Westphalian sovereign state lie in the effort to limit uncontrolled domestic armed violence. Faced with internal anarchy and large-scale lawlessness, the state was granted a monopoly on the legitimate use of force as the solution to the problem of internal violence. In a matching vein, as competing outside powers intervened on opposite sides in internal power struggles, external state sovereignty and the doctrine of nonintervention as its logical corollary were seen as the solution to the problem of international violence and anarchy. The current controversy over R2P in the aftermath of the UN-authorised NATO operation in Libya brings to a head the question of whether the delegitimisation of internal atrocities comes with the ineluctable risk of relegitimising international force if used to stop internal atrocities: a normative gap between delegitimising violence and using force to stop it.

R2P does not address the distribution of jurisdiction and authority among states, but between states and international actors. The goal of protective intervention is not to wage war on a state in order to destroy it and eliminate its statehood, but to protect victims of atrocities inside the state, to embed the protection in reconstituted institutions after the intervention, and then to withdraw all foreign troops. While R2P affirms that states have the primary responsibility to protect their own populations, it strengthens the UN's responsibility for the international community as a whole, and in doing so 'represents one of the most significant normative shifts in international relations since the creation of the UN in 1945'.[29] There had developed a widening gap between the practice of UN peace operations and their legal underpinnings in the UN Charter. Hammarskjöld had the skills but also the structural conditions to be able to exploit the margins and use equivocation 'in the service of virtue', as his aide Conor Cruise O'Brien put it.[30] In the more complex environment and challenges of the 1990s, this was no longer sustainable, and R2P steps into the breach to provide the necessary principled underpinnings.

Orford argues that R2P processed UN deeds since 1945 into words in 2001. In the period of decolonisation after the Second World War, as European empires crumbled and retreated from around the world, the UN steadily expanded the range of executive actions it undertook to fill power vacuums in many newly independent countries. These 'practices of governing' were not always accompanied by clearly articulated forms or bases of authority. Instead, it fell to ICISS to provide 'a detailed normative articulation' of the 'international authority to undertake executive action for protective ends'.[31] R2P is therefore an effort to integrate existing and evolving but dispersed practices of protection into a conceptually coherent account of international authority: to fill the gap between evolving practice and static formal authority.

The tensions inherent in his broadening conception and practice of UN executive action, kept dormant by the genius of Hammarskjöld's personality and diplomatic skills, could no longer be contained in the UN's expansive responses to the more complex humanitarian emergencies after the end of the Cold War. The only too public setbacks and flaws of UN actions in Somalia, Rwanda, the Balkans and East Timor raised questions about the organisation's authority, credibility and legitimacy with pressing urgency. According to Orford, ICISS stepped into the normative breach to provide the theoretical justification for the accumulated body of practices bequeathed by Hammarskjöld. Informed by a new global managerialism, international authority reaches deep into domestic jurisdictions to rearrange relations between the state, rulers and people with reference to external normative benchmarks.

Just as Hammarskjöld's notions of preventive diplomacy and peacekeeping were meant to avert great power intervention by inserting the UN as a neutral presence, so R2P came about in opposition to efforts to justify 'humanitarian interventions' by non-UN coalitions of the willing led by powerful states. It is a deliberate substitute for imperial visions and governance practices. Hammarskjöld's refusal to confront the reality of the collapse of state authority in Congo meant that he stubbornly resisted answering a fundamental question. If the UN was intervening with force, whose law and whose authority would it be upholding if not its own? The logic of Hammarskjöld's conception and legacy of practices with respect to UN executive action was to culminate at the turn of the 20th century in international administrations in the Balkans and East Timor.

R2P and POC as sibling protection norms

As noted in the introduction, R2P and POC emerged as twin protection norms in the late 1990s.[32] Their parallel emergence and consolidation is no mere coincidence. The relationship between R2P and POC can seem confusing as there are many complexities and sensitivities involved. Both are concerned with the protection of civilians, have common normative foundations and have regularly been invoked together. The shared protection agenda can be undermined by a flawed grasp of the normative, institutional and operational relations between R2P and POC. Civilian populations can fall through gaps in protection, while R2P and POC actors can impair each other's work through a discrete pursuit of their separate objectives. Because POC is markedly less contentious, its advocates and practitioners fear contagion from the more politicised R2P.

On some points, the differences between them are straightforward. While POC, for example, applies to discrete acts of violence against individuals, R2P has a much narrower scope, applying to mass atrocity crimes only. Nevertheless, where mass atrocity crimes are occurring, the POC–R2P overlap is effectively complete. Contrary to common perception, moreover, POC is not restricted to armed conflict as defined by international humanitarian law. According to one classification,[33] 'narrow POC' refers to the obligations of parties to an armed conflict to distinguish between combatants and civilians, and to avoid attacking the latter or harming them beyond what is necessary to achieve military objectives. 'Broad POC', on the other hand, is a policy framework used by UN and other peacekeepers, the UNSC, the Secretariat and humanitarian agencies who aim to contribute positively to the protection of civilians in situations of widespread, grave and lawless violence that have not reached the threshold of armed conflict.

Another common mistake is claiming that protection of civilians is a legal concept, while R2P is political. The two reports by Ban Ki-moon in 2012 on POC and R2P, published two months apart, are internally inconsistent, if not in outright contradiction.

'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'.[34] By contrast, Ban's report on POC states that '*the protection of civilians is a legal concept based on international humanitarian, human rights and refugee law, while the responsibility to protect is a political concept*'.[35]

On the contrary, R2P and broad POC are both rooted in, but extend beyond, legal principles. The four R2P atrocity crimes — war crimes, crimes against humanity, genocide and ethnic cleansing — have legal definitions in the 1998 Rome Statute (which governs the International Criminal Court) and the 1948 Genocide Convention. Some R2P duties — for example, those that prohibit complicity in genocide by such means as inciting communal hatred — are found in international law. By recourse to the UNSC, even military interventions are made consistent with international law, as distinct from Kosovo-style unilateralism, where NATO used military force against Serbia without UNSC authorisation.[36] Like R2P, broad POC draws on the law but extends beyond its strict requirements. The positive duties of peacekeepers to protect civilians are not dictated by international law. So, too, the UNSC has great discretion over the coercive measures it can take to protect civilians and the situations in which it may deploy troops. In 2011, Libya and Côte d'Ivoire, where the French military and UN peacekeepers ousted Laurent Gbagbo from the presidency, were cases in point.

R2P is comparatively more sensitive, as the presence of atrocities implies a perpetrator who may need to be identified and confronted. However, it is a mistake to believe that protection of civilians, unlike R2P, is always impartial, neutral and apolitical. Broad POC used by humanitarian agencies is fully impartial and neutral, but peace-keeping protection of civilians requires the impartial pursuit of the *mandate* of the peacekeeping force. This may require rejecting neutrality in order to take decisive action against perpetrators, which occurred in Côte d'Ivoire. As the Brahimi Report emphasised, the UN, while striving to remain impartial, should subordinate its long-standing principle of neutrality between belligerents in favour of 'adherence to the principles of the Charter and to the objectives of [the] mandate'.[37] Where one side resorts to morally reprehensible conduct, the UN should no longer extend, directly or indirectly, a seal of moral equivalency in its relations with combatants.

The UN report criticising its own lack of action in Sri Lanka highlights the need for different protection players to be aware of one another's limits. Humanitarian protection workers can adopt highly apolitical stances to ensure access to those in need. However, as the report said, 'The UN's reference to what was "political" seemed to encompass everything related to the root causes of the crisis and aspects of the conduct of the war'.[38] In this situation, it was vital to introduce protection actors with the authority and ability to challenge unacceptable behaviour by a UN member country, Sri Lanka. Humanitarian workers cannot do so. Only the Security Council can create and deploy strong protection forces.

Finally, many hold that peacekeepers, humanitarian and human-rights workers may perform specific atrocity-prevention work, but it is better not to refer to these as R2P activities. In some situations, needless controversy may indeed arise by referring to atrocity-prevention as R2P. However, the systematic avoidance of R2P language by those engaged in protecting civilians would result in R2P being spoken about only as military intervention. This stance would neglect efforts to rebuild a country's institutions and provide international help to prevent atrocities. It would also produce a self-fulfilling collapse of R2P into coercive military intervention, ignoring its many major contributions to building a nation's capacity to exercise its sovereignty with responsibility.

Remaining protection gaps

Thus both POC and R2P are important normative advances in the civilian protection agenda, filling some critical gaps in the 20th century normative architecture. The world would be an even more cruel place for civilian victims without them. Equally, however, the world remains cruel for civilian victims even with these two norms. In particular, it is in the field with actual test cases where the rubber has already hit the road that the norm–implementation gap is most acute. Some are worth discussing for highlighting how limitations that are inherent in POC and R2P perpetuate protection gaps with respect to the situation of civilians caught in occupied territories, natural disasters, kin states and armed civil wars and insurgencies.

The responsibility of occupying powers: Iraq 2003–2013 and Gaza 2008–2009

Saddam Hussein's record of brutality in Iraq was a taunting reminder of the distance yet to be traversed before we reach the goal of eradicating domestic state criminality; his ousting and capture by unilateral force of arms in 2003 by a self-appointed international posse led by Washington as the global sheriff was a daunting setback to the effort to outlaw and criminalise wars of choice as an instrument of state policy.[39] Prior to the 2003 war, Britain and the US were the most insistent on keeping in place the comprehensive UN sanctions that caused large-scale deaths and inflicted considerable human misery on Iraqi civilians. The humanitarian toll of the 2003 war was just as devastating. Nobel Peace Laureate Desmond Tutu, recalling the 'immorality' of the US and British invasion of Iraq, writes: 'in a consistent world, those responsible for this suffering and loss of life should be treading the same path as some of their African … peers who have been made to answer for their actions in the Hague'.[40]

By April 2013, the number of *US soldiers* killed totalled almost 4500,[41] and the number of *combatants* of all nationalities killed was just short of 40,000.[42] According to the Iraq Body Count project, by mid-March 2013 (10 years after the war began), between 112,017 and 122,438 *civilians* had been killed in Iraq, with another 11,500 likely to be added to the total from the Iraq War Logs.[43] A US medical team, collaborating with Iraqi specialists, calculated the civilian casualty based on a scientific household survey and came up with the stunning figure of 650,000 'excess deaths' by June 2006.[44] Women and children made up more than half the total killed.[45] According to the Iraqi government, the death toll is almost a quarter of a million. The toll climbs to more than a million dead by August 2007 as estimated by the London-based polling organisation Opinion Research Business.[46] According to The Costs of War Project, finally, the distribution of deaths is as follows: US military, 4488; US contractors, 3418; Allied military and police, 10,819; opposition forces, 36,400; journalists and humanitarian workers, 293; civilians, 134,000. Importantly, however, the last study adds the caveat that its tally does not include indirect deaths, owing to war-related hardship, which may total many hundreds of thousand more than this estimate.[47]

Epidemiologists use scientifically validated procedures to estimate the range of 'excess deaths': numbers dead who otherwise would have lived. The war badly degraded Iraq's health infrastructure and caused many doctors to flee, contributing indirectly but hugely to the death toll. Unless commentators are lazy, incompetent or intimidated, they should say 'between 174,000 and one million Iraqis have been killed or have died as a result of the 2003 war'. In addition, the war caused 'the largest human displacement in the Middle East since 1948'.[48] Two million fled abroad and another two million were

displaced internally. Iraq's Christians, in particular, have left in large numbers.[49] Who should be held responsible for the protection of civilians in such circumstances?

The same broad issue, of the responsibility of occupying powers to protect populations living under their authority, is relevant to Palestinian territories under Israeli occupation. The Goldstone Report marshalled evidence of wrongdoing by both Hamas and Israel during the December 2008–January 2009 Gaza war and called on both Palestinian and Israeli authorities to conduct good-faith investigations in conformity with international standards.[50] It called on the UNSC to monitor these and, if credible inquiries were not carried out within six months, to refer them to the International Criminal Court. Nothing happened.

It is not at all clear that the invocation of R2P would be the most relevant or helpful contribution to protecting civilians under foreign occupation. However, if no other remedy is available, then by definition protection gaps remain.

Natural disasters

There is no morally significant difference between large numbers of people being killed by soldiers firing into crowds and the government blocking help being delivered to victims of natural disasters, as with Myanmar's deadly Cyclone Nargis in 2008. Yet the generals were in effective control of Myanmar. The only way to get aid quickly to where it was most needed was with the cooperation of the authorities. If they refused, the notion of fighting one's way through to the victims was ludicrous. The militarily overstretched Western powers had neither the capacity nor the will to start another war in the jungles of Southeast Asia; all the Asian powers were opposed in principle. If foreign soldiers are involved, it does not take long for a war of liberation or humanitarian assistance to morph into a war of foreign occupation in the eyes of the local populace. If the invocation of R2P does not help in the immediate emergency, and may indeed cause even more determined opposition and intensify the backlash against R2P, then the painfully forged consensus on the R2P norm will fracture without any material help being provided to the displaced and distressed. However, this is another way of acknowledging that R2P and POC norms are inadequate to cover the contingency of natural disasters in which the government lacks the capacity to render effective help to its affected population but is not prepared to accept international assistance to fill the gap.

Cartographic lines of statehood versus bloodlines of nationhood

The map lines that delineate statehood can become blurred by the bloodlines of nationhood.[51] This happened with the conflict between Russia and Georgia over South Ossetia in 2008 and is of particular concern to many developing countries whose borders reflect the convenience of administrative boundaries of former colonial powers rather than territorial demarcations of different ethno-national groups. The general international opinion was that Russia invoked R2P to camouflage highly traditional geopolitical calculations in launching military action against Georgia in defence of its interests in South Ossetia. How can R2P be applied to the protection of persons belonging to national minorities who make up the majority in the neighbouring state (as with Tamils in Sri Lanka and India)? Whose responsibility is it to protect such persons? A sensible answer might come from the formula that France uses to describe its relationship with Quebec in Canada: *ni ingérence ni indifférence* (neither interference/intervention nor indifference). At the same time, the attempted but failed misappropriation attests to the power of the

norm as an analogue to imitation being the sincerest form of flattery, or hypocrisy the tribute that vice pays to virtue.[52]

Civil wars

In May 2009 there was fresh debate over the relevance and applicability of R2P to Sri Lanka in the closing stages of the government's successful military campaign against the Liberation Tigers of Tamil Eelam. To what extent did R2P apply to the Tigers, the government and the international community for evacuating the civilians caught in the crossfire? At the Human Rights Council in Geneva, China, Cuba, Egypt and India were among 29 developing countries who supported a Sri Lanka-sponsored resolution that described the conflict as a domestic matter that did not warrant 'outside interference', praised the defeat of the Tigers, condemned the rebels for using civilians as human shields, and accepted the government's argument that aid groups should be given access to the detainees only 'as may be appropriate'. While Colombo was jubilant, Western diplomats and human rights officials were shocked by the outcome at the end of the acrimonious two-day special session.[53]

In the Darfur crisis,[54] on the one hand, R2P was an influential mobilising pull on the world's conscience which triggered UN activism in addressing the plight of the affected populations and alleviating their humanitarian suffering, and led to the deployment of peacekeepers with more robust civilian protection mandates, the imposition of economic sanctions and international criminal indictment. On the other hand, strangers in peril were not saved and Sudan's president is yet to be taken to The Hague. Given the logistical and other practical difficulties of using force against the Sudanese government, and the likely damaging consequences for humanitarian relief operations and the fragile peace process, Gareth Evans argues that, in Darfur, 'the failure has been in the application of other measures, not the non-application of coercive force'. However, he concedes that, by failing to apply sustained diplomatic, legal and economic pressure, the international community 'has so far failed dismally in its responsibility to protect the people of Darfur from mass atrocity crimes'.[55]

By contrast, Libya in 2011 best showcased the mobilising power of the R2P norm that led to China and Russia abstaining from instead of voting against and thereby vetoing UNSC Resolution 1973. The initial response to the crisis was a textbook example of R2P Pillar Three military intervention. However, the NATO operation very quickly showed up several critical gaps. First, there was a yawning gap between the UNSC-mandated proclamation of a no-fly-zone, the prohibition of regime change and the effectiveness of civilian protection. Second, there was an unbridgeable gap between effective civilian protection with regime change, and the maintenance of UNSC consensus. Third, there developed a significant gap in communications, expectations and accountability between those who authorised and those who implemented Resolution 1973.

The post-Gaddafi turmoil and volatility in Libya have complicated international responses to the ongoing crisis in Syria. China and Russia have been adamantly opposed to authorisation of any international action without host-state consent and to any resolution that could set in train a sequence of events leading to a Resolution 1973-type authorisation for outside military operations in Syria.[56] The fluid and confused internal situation, question marks over the identity, intent and methods of the rebels, the risk of atrocities against minority groups if the regime collapses, relations with Iran, China and Russia, and the deepening Sunni–Shia divide all around the Islamic crescent in the

Middle East, have made it impossible to assess the balance of consequences of outside intervention with any degree of confidence.

Most importantly, in civil wars:

(1) Is the recognised state prohibited from employing force to fend off armed challenges to its authority by various rebel and secessionist groups?

(2) How can the moral hazard be avoided of encouraging other opposition and secessionist groups to take up arms against governments all over the world, with the ensuing spread and escalation of humanitarian crises?

(3) If the complexities, nuances and balance of consequences suggest caution in invoking R2P in Syria, how else can civilians be protected?

Conclusion

The protection of civilians is an outcome, not an activity. The growing numbers and types of POC actors include humanitarian, military and diplomatic personnel. While their numbers and activities might have grown, there does not seem to have been a commensurate increase in actual protection. POC and R2P norms impose moral obligations to act but do not by themselves indicate what courses of action to follow in order to achieve the best outcomes. Nor have satisfactory measures been devised to gauge impact and outcomes. However, what does seem clear is that POC is a 'wicked problem' with no solutions, only better or worse outcomes. In keeping with the thesis of this article, at a recent Ditchley conference it was noted that the gap between the rhetoric of protection norms and their effective implementation in protecting civilians is widening.[57] Even so, it is important to emphasise that the primary responsibility for civilian protection is that of national authorities and conflict parties and the international community has only a fallback responsibility; the chief blame for atrocities should not be shifted to the UN or other regional or international actors.

That said, on the one hand, our common humanity demands an acceptance of a duty of care by all of us who live in zones of safety towards all those who are trapped in zones of danger. In the vacuum of responsibility for the safety and security of the marginalised, stigmatised and dehumanised out-groups at risk of mass atrocities, both POC and R2P provide points of entry — sometimes different, sometimes the same — for the international community to take up the moral, political, institutional and military slack. By its very nature, including unpredictability, unintended consequences and the risk to innocent civilians caught in the crossfire, warfare is inherently brutal: there is nothing humanitarian about the means. Yet to be meaningful, the R2P spectrum of action must include military force as the option of last resort (conceptually, not sequentially).

On the other hand, R2P is no more self-guaranteeing than any other type of external intervention. It is not a magical formula by means of which good intentions can guarantee good policy outcomes in distant foreign lands. The risks of unintended and perverse consequences remain only too real. There is no humanitarian crisis so grave that it cannot be made worse by an outside military intervention. Hence the due diligence imperative: on an informed assessment, are we reasonably confident of doing more good than harm? That is, even with R2P, protection gaps remain in our normative architecture. Global governance understood as the filling of various discrete but inter-related gaps remains indeed an unfinished journey.

Notes on contributor

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Notes

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4. *Report of the Panel on United Nations Peace Operations*. New York: United Nations, document A/55/305-S/2000/809, 21 August 2000.
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6. Security Council Resolution 1674, S/RES/1674 (28 April 2006) '4. *Reaffirms* the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity'; Yemen S/RES/2014 (21 October 2011); South Sudan S/RES/1996 (8 July 2011); Presidential Statement S/PRST/2011/18 (22 September 2011).
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16. Thakur R, 'From peacekeeping to peace enforcement: The UN operation in Somalia', *Journal of Modern African Studies*, 32.3, 1994, pp. 387–410.

17. Major-General Lewis Mackenzie, the former Canadian head of UN forces in Sarajevo, made the memorable comment that a UN commander in the field should not get into trouble 'after 5 p.m. in New York, or Saturday and Sunday. There is no one to answer the phone'. Quoted in Roberts A, 'The United Nations and international security', *Survival*, 35.2, 1993, pp. 17–18. In 1993 the UN established a 24-hour, seven days a week Situation Room that provides a direct link to its peacekeeping operations.

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20. Quoted in Berdal M, 'United Nations peacekeeping and the responsibility to protect', in Thakur R & W Maley (eds) *Theorising the Responsibility to Protect*. Cambridge: Cambridge University Press, forthcoming.

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22. '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?'; Annan KA, *Report of the Secretary-General on the Work of the Organization*. New York: United Nations, document A/54/1, 1999, p 48.

23. High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*. New York: United Nations, document A/59/565, December 2004, paragraphs 201 and 207 (emphasis in original).

24. Annan KA, *In Larger Freedom: Towards Development, Security and Human Rights For All*. Report of the Secretary-General. New York: United Nations, document A/59/2005, 21 March 2005, paragraphs 122–35.

25. *2005 World Summit Outcome*, adopted by UN General Assembly Resolution A/RES/60/1, 24 October 2005, paragraphs 138–40.

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