

The Relationship between the Responsibility to Protect and the Protection of Civilians in Armed Conflict

I. Introduction

The United Nations Security Council (UNSC) holds an open debate on the Protection of Civilians in Armed Conflict (POC) twice yearly. Following the UNSC's reaffirmation of the World Summit agreement on the Responsibility to Protect (R2P) populations from genocide, ethnic cleansing, war crimes and crimes against humanity in Resolutions 1674 (2006) and 1894 (2009) on POC, discussion of R2P has been an important component of these debates. This is reflected in government statements, presentations by the Emergency Relief Coordinator, and in the Secretary-General's 2007 report on POC where he referred to the agreement on R2P as a "cardinal achievement."

Yet, sensitivities around the inclusion of R2P within the POC agenda remain. There are concerns that POC is being politicized by the introduction of R2P into the UNSC's work and resolutions on the protection of civilians. Misconceptions about POC and R2P abound with some erroneously assuming that both POC and R2P are solely about military intervention and regime change. In his 2012 report on POC, the Secretary-General urged member states to avoid conflating the two concepts. This brief seeks to provide clarity on the relationship between R2P, a norm relating to the prevention of mass atrocity crimes, and the POC agenda, a framework enhancing the protection of civilian populations from the effects of armed conflict.

II. Explanation of Relevant Terms

What is the Responsibility to Protect?

R2P is a unanimous commitment by UN member states to never again fail to act in the face of genocide and other mass atrocity crimes. The norm stipulates: (1) states have a responsibility to protect their citizens from mass atrocity crimes; (2) the international community should assist them in doing so; and (3) the international community has a responsibility to use all appropriate "diplomatic, humanitarian and other peaceful means" to help protect populations from these crimes, and if the state is manifestly failing to protect and peaceful means are inadequate, the international community is prepared to take collective action through the UNSC in a timely and decisive manner.

What is the Protection of Civilians in Armed Conflict?

Broadly, POC refers to the measures that can be taken to protect the safety of civilians during times of war which are rooted in obligations under international humanitarian law (IHL), refugee law and human rights law. States bear the primary responsibility to respect, protect and meet the needs

of civilians in times of armed conflict. Organized armed groups also have clear obligations toward civilians under IHL. Humanitarian organizations that have been accorded protection mandates, such as the International Committee of the Red Cross (ICRC), sections of the UN and humanitarian non-governmental organizations (NGOs), have a subsidiary role to press parties to an armed conflict to uphold their protective responsibilities and alleviate suffering where parties to the conflict fail to do so.

POC is more narrowly understood as a thematic subject of UNSC deliberations. The protection of civilians has been an item considered by the UNSC since 1999 when it received the first report of the Secretary-General on the subject and held its first open debate in response. That resulted in a call for the Secretary-General to report regularly on POC, and the UNSC has since adopted various resolutions specifically addressing POC (1265, 1296, 1674, 1738 and 1894). Resolutions on women (1325), children (1612), the protection of humanitarian workers (1502), conflict prevention (1625) and sexual exploitation (1820) also include civilian protection in conflict elements. Furthermore, numerous country-specific UNSC resolutions include measures aimed at protecting civilians.

The UNSC's activities cross a spectrum that encompasses: exhorting parties to a conflict to uphold their legal obligations; robust measures to pressure parties to do so; measures to hold parties to account for serious violations of IHL; as well as authorizing operations to provide greater physical protection to civilians under threat of violence. In its resolutions, statements and missions to conflict regions, the UNSC frequently calls upon parties to a conflict to observe IHL. It also imposes sanctions on those violating IHL. In extreme cases it has authorized action to hold individuals accountable for serious violations of IHL (for example, in the cases of the former Yugoslavia and Rwanda for which the UNSC established criminal tribunals, or referring situations to the International Criminal Court). The UNSC uses its Chapter VII powers to impose arms embargoes and authorize UN peace operations, regional organizations or groups of member states to use military force for the protection of civilians.

III. The Relationship between POC and R2P

Shared normative foundations

Both POC and R2P share the same normative foundation: the protection of individuals. They share the same legal underpinning, both requiring states to uphold specific, pre-existing obligations under IHL, refugee law and human rights

law. Furthermore, as explained in the 2007 UN Secretary-General's report on the protection of civilians, in its "important affirmation of the primary responsibility of each State to protect its citizens and persons within its jurisdiction from genocide, war crimes, ethnic cleansing and crimes against humanity," R2P has advanced the "normative framework" of the protection of civilians.

Both specify a role for the UNSC

Both the broader POC agenda and R2P specify a role for the UNSC to adopt measures to protect human beings from suffering - although neither agenda is limited to action by the UNSC but involves a wide range of players including governments, organized armed groups, UN institutions, NGOs and other non-state actors.

In fact, the responsibilities that UN member states accepted in paragraph 139 of the World Summit Outcome Document (WSOD) can be understood as bringing greater precision to the commitments made by the UNSC in earlier resolutions on POC, recognizing that such situations may constitute threats to international peace and security and fall squarely within the UNSC's remit.

For example, in Resolution 1265 (1999), the UNSC expressed "willingness to respond to situations of armed conflict where civilians are being targeted." Paragraph 5 of UNSC Resolution 1296 (2000) went further noting that, "the deliberate targeting of civilian populations or other protected persons and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict may constitute a threat to international peace and security," and, in this regard, reaffirmed its, "readiness to consider such situations and, where necessary, to adopt appropriate steps."

In paragraph 139 of the WSOD, member states made their commitment even more explicit, stating they are prepared to take timely and decisive collective action through the UNSC in situations where national authorities manifestly fail to protect their populations from the four mass atrocity crimes.

Neither is synonymous with military intervention

Another common element, worth noting because the issue is often confused in policy discourse, is that neither agenda can be reduced to the use of military measures. In both cases, protection comprises a wide variety of activities. The possible role for the UNSC also spans a wide range of measures in accordance with Chapters VI, VII, and VIII of the UN Charter. While more than ten UN missions have been mandated by the UNSC to protect civilians in some way, the entire protection of civilians' agenda cannot be reduced to the actions of peacekeepers. R2P also envisions the use of a

wide range of measures, the majority of which do not entail the use of military force, to prevent mass atrocities.

At the core of R2P lies the need to prevent, to assist and to take peaceful measures to protect populations pursuant to Chapters VI and VIII, with Chapter VII collective action as a last resort and only if peaceful means are inadequate (paragraph 139). All action is to be guided by the UN Charter.

IV. Distinctions between POC and R2P

The protection of civilians extends beyond R2P

Although sharing many features, R2P is not synonymous with POC. R2P is only a part of the broader agenda of protecting civilians during armed conflict, as R2P is specifically concerned with the protection of populations from genocide, war crimes, ethnic cleansing and crimes against humanity - the gravest violations of international humanitarian law and human rights. The rights of populations caught up in warfare extend well beyond protection from mass atrocities.

The scope of R2P extends beyond conflict situations

R2P is concerned with preventing and halting crimes against humanity, genocide and ethnic cleansing regardless of whether or not they take place in the context of armed conflict. The two agendas overlap but each extends beyond the other.

V. Conclusion

Efforts to fulfill and advance the well-established POC agenda should not abate. As this brief has argued, it is impossible to deny the relationship between these two concepts that share legal underpinnings, moral force and UNSC commitment. Supporters of POC and of R2P need to jointly challenge misperceptions and misrepresentations of these commitments. This requires supporters to mount a robust, articulate defense of the connections and differences between the POC and R2P; to reject inaccurate characterizations that reduce either agenda to the use of force; and to remind critics that the common moral purpose of both R2P and POC is to respect our common humanity and diminish human suffering.