

CHAPTER 28

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THE R2P, PROTECTION OF CIVILIANS, AND UN PEACEKEEPING OPERATIONS

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PAUL D. WILLIAMS

THE responsibility to protect (R2P) and the protection of civilians (POC) are distinct but inevitably related ideas. Over the last decade, the relationship between them has come to the foreground of debates within the United Nations (UN) system, generating a considerable degree of consensus but also significant controversy, especially in relation to what role these concepts should play in contemporary UN peacekeeping operations. For advocates of either or both concepts, and for supporters of the UN in general, it is important to get the R2P–POC relationship right because the failure to protect civilians always damages the organization’s credibility. The UN’s failure to protect more civilians in the 1994 Rwandan genocide has been described as ‘the single worst decision the United Nations ever made’.¹ Similar failures persist, perhaps most notably related to the massacres at the end of Sri Lanka’s civil war in 2009 which the Secretary-General described as a ‘systemic failure’ and the ongoing strategy of war crimes perpetrated by the Syrian government against its own people.²

As UN peacekeepers are now commonly deployed around the globe with explicit mandates to protect civilians, the complex relationship between R2P and POC is likely to come under further scrutiny, not less. It is in that context that this chapter hopes to make a contribution by outlining the key similarities and differences between the two concepts and examining some of the opportunities and challenges of linking them together in the context of UN peacekeeping operations.

Throughout this chapter, R2P is understood as a political principle designed to prevent mass atrocity crimes and their incitement. In its 2005 World Summit Outcome Document, the UN General Assembly listed these crimes as genocide, war crimes, crimes against humanity, and ethnic cleansing (despite the latter not having its own legal standing under international law).³ R2P is therefore best understood as a moral and political principle rooted in concerns to generate greater respect for the existing

legal obligations of states to prevent these atrocity crimes and to challenge the prevailing norm in international society of non-intervention in cases of mass atrocities. Although debate continues amongst some international lawyers as to R2P's legal impact, this chapter proceeds on the basis that R2P does not alter existing international law on the use of force, nor does it generate new legal obligations for peacekeepers in the field.⁴

POC, on the other hand, is a framework for enhancing the protection of civilian populations from the negative effects of armed conflicts. It is rooted in a long-standing and wide-ranging set of legal obligations derived from International Humanitarian Law (IHL), refugee law, and human rights law. It has been a long-standing concern of various international institutions and non-governmental actors, most notably the International Committee of the Red Cross (ICRC), but was explicitly incorporated into the business of the UN Security Council and the mandates for some of its subsequent peacekeeping operations in 1999. At the UN Security Council, POC has been considered a thematic issue and the subject of explicit deliberations since February 1999, which was also the year of the first report of the Secretary-General and the first Security Council resolution, number 1265, on the subject.⁵ Since 1999, in the name of protecting civilians, the UN Security Council has initiated various actions including calling on parties to armed conflicts to uphold their legal obligations; trying to hold parties accountable for violations of their legal obligations; imposing various forms of sanctions (diplomatic, economic, and military); and giving POC mandates to some UN peacekeeping operations.⁶ Arguably the most controversial of these actions was the March 2011 decision in resolution 1973 to authorize the use of 'all necessary measures ... to protect civilians and civilian populated areas under threat of attack' in Libya. The arguments only intensified with the acrimonious debate over how the resolution was implemented.

Not surprisingly, R2P has also been linked to contemporary UN peacekeeping operations, although not without controversy. Perhaps most importantly, some missions—including UNMISS and MINUSMA—have been mandated to assist the host government uphold their responsibility to protect their populations. This chapter analyses the relationship between these two sets of ideas and their application within the context of contemporary UN peacekeeping operations.⁷ To do so, it proceeds in four parts. The first and second sections provide an overview of the main similarities and differences between R2P and POC. The third section then examines various attempts to link the two concepts paying particular attention to their application within UN peacekeeping operations. The final section analyses some of the main criticisms levelled against their linkage.

The chapter advances several arguments. First, R2P and POC cannot be completely divorced because they stem from the same normative goal and have significant operational overlap in the issues they address. Some attempts to separate them (usually by supporters of POC) are understandable when viewed in light of the international political controversies surrounding both concepts, especially after the Libyan intervention in 2011. Ultimately, however, a de-coupling strategy is unlikely to succeed because the substantive overlap between the two concepts cannot be wished away, nor can POC ever be made completely apolitical and uncontroversial as some of its advocates have suggested.

Second, since R2P and POC cover some of the same substantive issues and some of those issues will unfold in areas where UN peacekeepers are deployed, peacekeeping operations will continue to face both POC and R2P-related challenges. UN peacekeepers will therefore act as instruments in operationalizing both R2P and POC agendas. The key policy challenge will be ensuring that the relationship between R2P and POC does not become counter-productive in such contexts. Consequently, and third, UN peacekeeping operations must continue to grapple with both concepts: while peacekeepers will likely face POC challenges more frequently than R2P atrocity crimes, it would be ill-advised for the UN not to clarify its position on how its peacekeepers should work to prevent or respond to the latter.

SIMILARITIES BETWEEN R2P AND POC

POC and R2P share a number of important similarities which taken together mean it is impossible to completely divorce the two sets of ideas. These similarities are apparent in the origins and conceptualization of these ideas, as well as their operationalization.

First, both ideas stem from the concern to ensure the protection of individuals and civilian populations from certain kinds of harm. Although they sometimes operate in different political contexts and with a potentially different range of instruments, both R2P and POC can be said to share a common moral heritage and a similar strategic goal.

Second, both POC and R2P are based on the same set of international legal concepts and conventions, specifically, the UN Charter, IHL, refugee law, and human rights law.⁸ Both concepts are thus interested in ensuring greater respect for the legal rights of individuals and civilian populations and the obligations of various actors arising from these laws. In this sense, R2P's adoption by the UN in 2005 did not fundamentally change existing legal rules in these areas. Indeed, Article 89 of Additional Protocol I to the Geneva Conventions requires that states take collective action to prevent war crimes, providing a much stronger legal basis for some of R2P's core agenda than the paragraphs contained in the World Summit Outcome Document.⁹ As the UN Secretary-General clarified in 2009:

It should be underscored that the provisions of paragraphs 138 and 139 of the Summit Outcome are firmly anchored in well-established principles of international law. Under conventional and customary international law, States have obligations to prevent and punish genocide, war crimes and crimes against humanity. Ethnic cleansing is not a crime in its own right under international law, but acts of ethnic cleansing may constitute one of the other three crimes. . . . In that regard, the responsibility to protect does not alter, indeed it reinforces, the legal obligations of Member States to refrain from the use of force except in conformity with the Charter.¹⁰

Nevertheless, R2P has not been completely devoid of a legal impact. For one thing, it has certainly reinvigorated debates about the precise nature of the legal obligations deriving from IHL, human rights law, and in some contexts the laws of occupation, which peacekeepers have to civilians in their theatres of operation.¹¹

R2P has also had some discernible impact on wider debates about international law and questions of international peace and security. Michael Doyle has argued that R2P may be on the way to having at least two identifiable effects. First, it may be in the process of encouraging a record of general practice which might affect ‘the sense of obligation that builds customary international law.’¹² And, second, although R2P does not quite qualify as *opinio juris vel necessitatis*—acting on the basis of legal obligation—the use of “responsibility” language is approaching that normative strength.¹³ Although many international lawyers would dispute Doyle’s second point, the precise relationship between POC and R2P and these various bodies of law is at least the subject of debate.

A third similarity is that both POC and R2P are firmly rooted in the society of states inasmuch as they suggest the primary responsibility for protection lies with states, particularly the state in which mass atrocities or other sources of civilian harm are located. This is not to say that POC and R2P only focus on states and international organizations since both sets of ideas envisage roles for non-governmental actors, including organized armed groups and humanitarian non-governmental organizations (NGOs). A related similarity is that the UN Security Council occupies a privileged status within international society as the principal source of authority for both POC and R2P.

A fourth similarity is that both POC and R2P envisage a spectrum of activities related to their own substantive areas of focus.¹⁴ For R2P, the operational agenda encompasses actions designed to prevent, mitigate, and halt the perpetration and incitement of the four atrocity crimes, as well as initiatives to rebuild communities afterwards. For POC, the potential agenda is much broader, encompassing a wide range of preventive, reactive, and environment-building activities designed to ensure that civilian populations affected by armed conflict can enjoy the rights they are entitled to under international law. Such concerns might include displacement, health, food, housing, access to land and property, and so on.

Fifth, it is important to recall that neither POC nor R2P are synonymous with ‘humanitarian military intervention’—defined as the use of military force without host state consent aimed at preventing or ending widespread and grave violations of human rights such as genocide, ethnic cleansing, or crimes against humanity.¹⁵ While R2P recognizes that humanitarian military intervention (authorized by the UN Security Council) may be required to stop mass atrocities, the POC framework is generally based on the position that while military force against host state authorities may be required at the operational/tactical level, it should not occur without the strategic consent of the host state authorities (this is discussed further in what follows).¹⁶ The complicating factor is that while the humanitarian supporters of POC and the UN’s Department of Peacekeeping Operations (DPKO) have used the POC framework in this way, the UN Security Council has used POC language to justify military intervention in Libya (as noted previously). Moreover, in the Council’s landmark resolution on POC (1265,

17 September 1999), operational paragraph 10 expresses its willingness to respond to situations of armed conflict where civilians are being attacked but does not mention the qualifier—with the consent of the host state.

Sixth, neither R2P nor POC relies solely on military agents or coercive instruments. Rather, both concepts envisage important roles for persuasion and cooperative endeavours in the field and both see crucial roles not only for militaries (and other components of security forces such as intelligence agencies), but also for police officers, civilian officials from states and international organizations, NGOs, and other civilians.

Finally, both POC and R2P recognize the important roles that UN (and other) peacekeepers can play in operationalizing both concepts, albeit as part of a larger toolbox of mechanisms. Mass atrocities can and do occur in areas where UN peacekeepers are deployed. Where such crimes occur, R2P would expect peacekeepers to play a role in preventing or stopping them. Indeed, the UN Security Council made this link explicit in relation to Darfur (through resolution 1706 and subsequent resolutions on UNAMID). Analysts have also called for this connection to be made explicit.¹⁷

POC and R2P can thus be understood as sharing a number of important similarities based on their origins, conceptualization, and operationalization. These attributes inevitably link the two sets of ideas, although as discussed in the following section, they do not erase all their differences.

DIFFERENCES BETWEEN R2P AND POC

Despite the important connections and similarities between R2P and POC, the two concepts are also distinct from one another in important ways. First, in terms of their substantive agenda, POC embraces a broader set of issues than R2P. While R2P's remit is limited to the four atrocity crimes, POC is concerned with a much longer list of issues that might threaten the rights civilians are entitled to under international law. Sources of civilian harm might include but are not limited to concerns about displacement, health, food, housing, access to land and property, and so on.¹⁸ In sum, civilian populations have many more rights than protection from R2P's four atrocity crimes.

However, and second, in another respect, the scope of R2P's application is wider than POC. While POC is limited to situations of armed conflict, R2P's concern to prevent the four atrocity crimes is not so limited. Put another way, R2P is a principle that applies in all places at all times because it is concerned with any political context in which the four atrocity crimes are incited or perpetrated. While it is clear that most cases of large-scale atrocity crimes are committed in situations of armed conflict, sometimes such crimes can occur in other contexts, including during electoral competition as happened in Kenya (2007–8) and Kyrgyzstan (2010), in Syria before the start of the current civil war, and possibly in Guinea (2009).

A third difference relates to the principal agents envisaged by both concepts. For R2P, the primary, although not sole, responsibility to prevent the incitement and perpetration

of atrocity crimes falls on UN Member States themselves. However, if the state in question is manifestly failing to uphold its responsibilities and peaceful diplomatic and humanitarian instruments have also failed to stop the atrocities, then the primary responsibility for reacting coercively falls to the UN Security Council. Within the POC framework, in contrast, the legal obligation to protect civilians rests equally with all parties to the armed conflict whether they are states or non-state groups.¹⁹ Furthermore, it is not always as clear as in the R2P agenda that the UN Security Council needs to play the leading role in organizing the protection response compared to other UN agencies. For instance, it is the UN Refugee Agency (UNHCR) that leads for the Global Protection Cluster.²⁰

A fourth key difference can be found in how the two concepts approach the issue of state sovereignty and consent. Here, it is important to note that R2P includes the potential strategic use of humanitarian military intervention when authorized by the UN Security Council *against* a sovereign state. Hence the R2P principle sometimes envisages the use of military force in the absence of host state consent. There appear to be two ways in which military force might be used against a sovereign state in a way that advances R2P. First, the UN Security Council could authorize a humanitarian military intervention as it did in Libya under resolution 1973 (2011). However, a second possibility, under R2P's second pillar, could involve the use of military force against a sovereign state using collective self-defence as the legal basis but which stemmed the perpetration of atrocity crimes, that is, if a coalition used force to collectively defend State A against State B, after State B had invaded State A and began perpetrating atrocity crimes on the conquered territory.²¹ As noted previously, it remains unclear if the UN Security Council has ruled out the use of such types of military action to pursue its POC agenda given the language used in resolution 1265 operative paragraph 10. When the POC framework is utilized for UN peacekeeping operations, however, the UN has tended to explicitly rule out the strategic use of peace enforcement against a sovereign state. As the UN's 2008 *Principles and Guidelines* document for peacekeeping operations puts it, POC can involve the use of force 'at the tactical level with the authorization of the Security Council and consent of the host nation and/or the main parties to the conflict'.²²

A fifth operational difference between R2P and POC relates to how they envisage the response to the relevant sources of civilian harm. The R2P principle frames the issue as states having a moral and political obligation to prevent and stop the four atrocity crimes as well as their incitement, although while they have a legal obligation not to perpetrate atrocity crimes on their own populations, states do not necessarily have a legal obligation to act in other countries.²³ This does not mean that all instruments must be deployed in all cases, but there is a shared expectation to respond to all instances where the four atrocity crimes are being incited or perpetrated. As Ed Luck put it, we have a 'responsibility to try'.²⁴ POC, however, is not framed this way.²⁵ In POC situations, the relevant agents are not obliged to stop all cases of civilian harm—even those that occur within their area of operations—because various forms of obstacles and limitations are recognized. For humanitarian NGOs, this may revolve around the limits to gaining access to certain civilian populations. But for UN peacekeepers,

POC mandates have always been written with several caveats that limit the instances in which a response is required. UN peacekeepers in missions with explicit POC mandates thus only have an obligation to protect civilians under certain circumstances not as a general rule.

The UN's three mandate caveats on POC limit the obligations of peacekeepers to those situations where civilians face the 'imminent threat of physical violence', those cases that are within the peacekeepers' 'area of deployment', and those episodes which peacekeepers feel they can handle 'within their capabilities'. Sometimes a fourth caveat is also present in the sense that UN peacekeepers will protect civilians 'without prejudice to the responsibility of the host nation'. The first caveat means that UN peacekeeping forces with POC mandates need not focus on all sources of civilian harm but only those civilians facing immediate and direct attack from hostile forces. However, it is important to note that some recent POC mandates have now dropped this reference to 'imminent'—and instead call on peacekeepers 'to protect civilians under threat of physical violence'.²⁶ The second caveat suggests that while UN peacekeepers must protect civilians sheltering in or near their bases, they are not obliged to protect those much further afield—although how far beyond the area of deployment is too far remains the subject of debate. Finally, the third caveat related to capabilities suggests that only peacekeeping forces with the requisite political will, relevant training and preparedness, and allocation of relevant resources within the mission should be obliged to respond.²⁷ As a direct consequence of these caveats, it is notable that UN peacekeepers have tended not to use military force to discharge their POC mandates, even when episodes of physical violence towards civilians fall within their remit. They have been criticized for this accordingly.²⁸

The final important difference between R2P and POC discussed here is the variable notions of 'protection' upon which the concepts are based. Ever since the Geneva Conventions, key constituencies and actors involved with the POC agenda have envisaged 'protection' to encompass 'all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law, and refugee law'.²⁹ This was popularized by the development of the interagency approach to humanitarian protection known as the 'egg model', which grew out of a series of ICRC-led workshops in the late 1990s. The 'protection egg' was a graphic representation of three different levels of action in the face of any pattern of abuse: halting its occurrence, working alongside the victims, and promoting lasting changes in the environment in order to diminish the likelihood of recurrence (see Figure 28.1).³⁰

In contrast to notions of protection prevalent in the humanitarian community as defined by the ICRC-led workshops, the military and other actors engaged in peacekeeping operations thought about 'protection' in a variety of different ways. Writing in 2006, Victoria Holt and Tobias Berkman identified six ways of conceptualizing civilian protection that were common within Western militaries:

- Obligations under military law where soldiers protect civilians by obeying the laws of war.

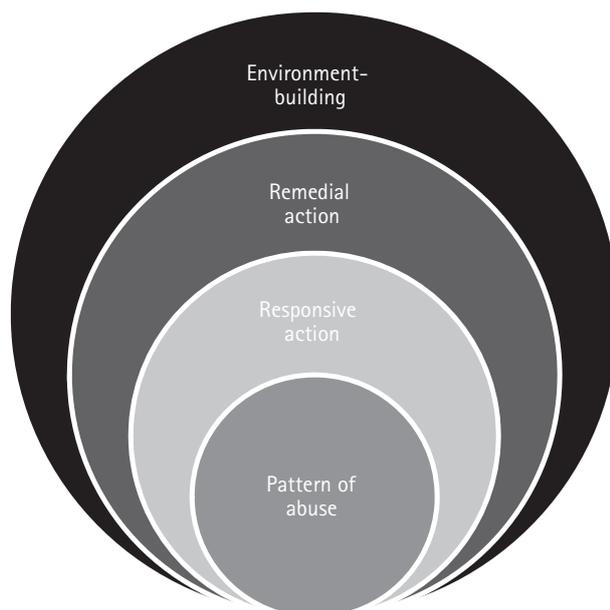


FIGURE 28.1 The humanitarian interagency 'protection egg'.

- Provision of humanitarian space that is protected by armed peacekeepers.
- Assistance in the operational design of assistance programmes, such as camps and their organization.
- Protection as part of a peace operation whereby peacekeepers implement specific civilian protection mandates.
- Indirect protection where the use of force against those attacking civilians leads to protection.
- The deliberate use of military force to prevent mass killing, including defensive and/or offensive operations.³¹

It is the last two of these approaches that would be at the forefront of any R2P-inspired humanitarian military intervention authorized by the UN Security Council, as under resolution 1973 on Libya in March 2011.

Debates over these different approaches also led the UN's DPKO to clarify its own approach to civilian protection, in part to elucidate its relationship with the emerging concept of R2P but also to provide greater clarity in the practical guidance it offered to peacekeepers in the field. Hence, since the mid-2000s a largely internal consultation process on these issues took place among different actors within the UN system and its Member States. In its 2008 *Principles and Guidelines* document, DPKO identified civilian protection as a core task of UN peacekeeping but did not elaborate on what protection entailed or how UN peacekeepers might achieve it in practice. The document noted

only that civilian protection required the promotion of international humanitarian law and coordination among disparate actors, stating:

The protection of civilians requires concerted and coordinated action among the military, police and civilian components of a United Nations peacekeeping operation and must be mainstreamed into the planning and conduct of its core activities. United Nations humanitarian agencies and non-governmental organization (NGO) partners also undertake a broad range of activities in support of the protection of civilians. Close coordination with these actors is, therefore, essential.³²

Later that year, DPKO and OCHA commissioned a major study of how civilian protection mandates were being developed within the UN system and implemented within UN peacekeeping operations.³³ In light of the study's recommendations, in early 2010 DPKO/DFS drafted an operational concept on the protection of civilians in UN peacekeeping operations. Its purpose was to '(i) arrive at a shared understanding of the implementation of POC mandates in United Nations peacekeeping operations, and (ii) identify and organize the range of POC mandated tasks undertaken by missions into a clear conceptual framework to support their practical implementation.'³⁴

The operational concept adopted a three-tier approach to the protection of civilians (see Figure 28.2). Tier 1 entailed protection by promoting a political process of conflict resolution to end the armed conflict that was a major source of threats to civilians. Indeed, DPKO/DFS stated that the 'maintenance of peace through an effective peace process is

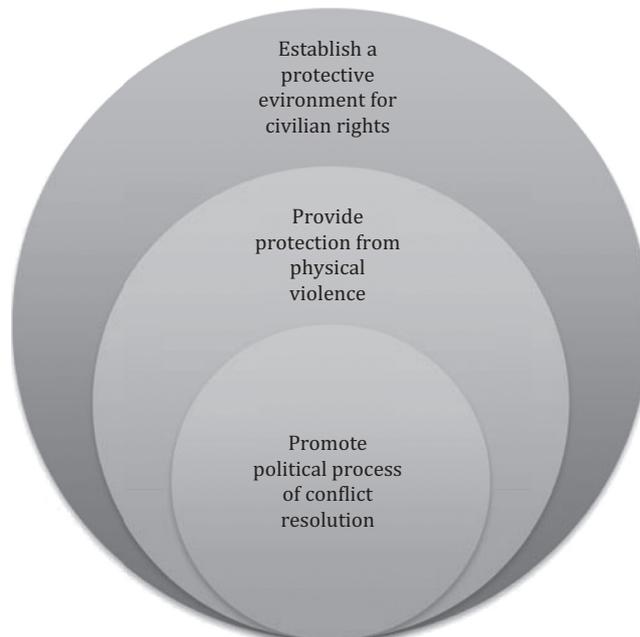


FIGURE 28.2 The UN DPKO/DFS 'tiered' approach to protection of civilians.

perhaps the single largest contribution a mission can make to protecting civilians.³⁵ Tier 2 entailed providing protection from physical violence. This was to take place in four broad phases: assurance and prevention, pre-emption, response, and consolidation. Tier 3 entailed establishing a protective environment that enhances the safety and supports the rights of civilians. This was conceptualized as involving the promotion of legal protection (especially IHL but also relevant human rights and refugee law), the facilitation of humanitarian assistance and advocacy, and support for national institutions.³⁶ The three tiers were said to be ‘mutually accommodating and should be taken forward simultaneously, in accordance with mission mandates and in light of the circumstances on the ground.’³⁷ The interrelationship of these tiers should be emphasized, not least because research from populations suffering from armed conflict has consistently shown that locals rarely see the utility of separating out what they see as intimately connected issues.³⁸

The envisaged outcome of this framework at the mission level was a ‘mission-wide protection strategy’. These strategies are intended to identify the respective protection risks in the theatre in question and set out the roles and responsibilities of the different components of the peacekeeping operation as well as their interaction with relevant external actors. The UN Secretariat completed a framework for drafting such mission-wide strategies in early 2011 and since then they have been developed in several UN operations, including the UN Stabilization Mission in the DR Congo (MONUSCO), the AU–UN Mission in Darfur (UNAMID), the UN Operation in Côte d’Ivoire (UNOCI), and the UN Mission in South Sudan (UNMISS). In 2011, the UN Secretariat also finished a series of protection of civilians training modules and in 2012 it created a new position of ‘Protection of Civilians Coordination Officer’ within DPKO.³⁹ And yet despite all these developments, in the October 2014 Security Council debate on peacekeeping the UK representative expressed the urgent need for ‘an agreed standard and formal DPKO guidance on the remit of protection of civilians.’⁴⁰

Overall, these differences in how relevant actors understand the pivotal concept of ‘protection’ remind us that although ‘protection of civilians’ has become a popular concept, debate continues over its meaning and how to operationalize it in very different situations of armed conflict and beyond.

LINKING R2P AND POC

It is not surprising that the complex relationship between the concepts of R2P and POC has given rise to considerable debate and controversy. Indeed, since the sections on peacekeeping in the World Summit Outcome Document do not refer to R2P, and the paragraphs on R2P do not mention peacekeeping, it has been left to other actors to deliberate over the relationship between the two concepts. This space has produced differences among advocates of R2P and POC over whether and/or how the two ideas should be linked at the conceptual, strategic, and operational levels. Based on this chapter’s discussion of their similarities and differences, it is possible to depict the overall

relationship between R2P, POC, and UN peacekeeping operations in two different ways based on how one defines the POC agenda. The first defines the protection framework in its broadest sense to represent its use by both the peacekeeping and humanitarian communities (see Figure 28.3). In the second approach, POC is understood in a more limited sense as a subset of the mandates given to UN peacekeeping operations (see Figure 28.4).

In relation to Figure 28.4, where POC refers to an explicit mandated task for a UN peacekeeping operation, there are three different contexts in which R2P atrocity crimes could theoretically occur. First, in territories where no UN peacekeeping operation is deployed. This could occur within the context of armed conflict (e.g. Libya 2011) or outside a situation of armed conflict (e.g. Kenya 2007–8). Second, R2P atrocity crimes could occur in a territory where UN peacekeepers were deployed and have an explicit POC mandate, such as Darfur (UNAMID) from January 2008, the UN stabilization mission in Mali (MINUSMA) from July 2013, or the UN stabilization operation in Central African



FIGURE 28.3 The relationship between the R2P and protection agendas and UN peacekeeping operations.

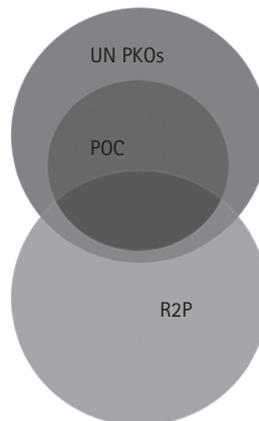


FIGURE 28.4 The relationship between R2P, POC, and UN peacekeeping operations.

Republic (MINUSCA) from September 2014. Third, hypothetically at least, R2P atrocity crimes could occur in a territory where a UN peacekeeping operation was deployed but did not have an explicit POC mandate, such as the UN Supervision Mission in Syria (UNSMIS). Moreover, it is not beyond the realm of possibility that such a scenario could unfold along the Israeli–Syrian border within UNDOF’s area of operations. There are, of course, also situations where a UN peacekeeping operation is deployed—either with or without a POC mandate—but no R2P atrocity crimes were incited or perpetrated.

With regard to Figure 28.3, there are even more contextual variations because the protection agenda could encompass a variety of activities conducted by NGOs and other actors where no UN peacekeeping operation is deployed. Practical examples of each contextual category are provided in Figure 28.5.

The complex relationship between the concepts has generated different political and advocacy strategies among supporters of both R2P and POC. The complexity and fluid nature of the issue since 2005 has also been reflected in the evolving positions of both the UN Security Council and Secretary-General’s office. In 2006, the UN Security Council explicitly linked R2P and POC. First, it is notable that the first Security Council resolution to mention R2P—number 1674, 28 April 2006—was one concerned with POC. Later that year, the Security Council once again explicitly linked R2P and POC in the context of peacekeeping in Darfur, Sudan under resolution 1706 (31 August 2006). However, since then, with the exception of its resolutions on Sudan/South Sudan and the stabilization mission in Mali (MINUSMA), the Security Council has mandated peacekeepers to protect civilians in other missions without making explicit reference to R2P beyond acknowledging the host state’s responsibilities.⁴¹

The Secretary-General’s office has also shifted its stance as the concepts and international political debate evolved. Shortly after the UN’s adoption of R2P, the Secretary-General saw R2P and POC as mutually reinforcing. In his 2007 report on POC, for instance, Ban Ki-moon welcomed R2P as an advance to the normative framework on POC.⁴² And in his landmark 2009 report on R2P, the Secretary-General called for UN peacekeepers and peacebuilders to mainstream the ‘goals relating to the responsibility

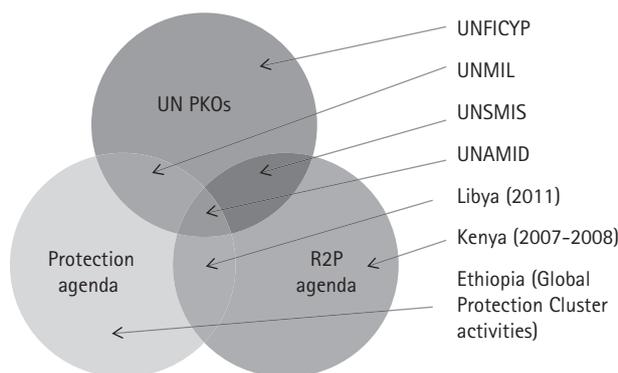


FIGURE 28.5 Illustrative examples of the relationship between the R2P and protection agendas and UN peacekeeping operations.

to protect, including the protection of refugees and the internally displaced.⁴³ This was important because at the time, the major policy document on UN peacekeeping operations—the 2008 DPKO/DFS *Principles and Guidelines*—did not mention R2P. Similarly, even six months after the Secretary-General’s 2009 report on R2P the ‘New Horizon’ DPKO/DFS non-paper did not mention R2P.⁴⁴ Since then, the Secretary-General has identified peacekeeping operations as an important tool for advancing R2P’s second pillar in particular.⁴⁵

Some analysts have also argued that R2P and POC should be seen as ‘mutually reinforcing’ in the context of UN peacekeeping operations, specifically because peacekeeping operations are one instrument through which the UN can operationalize R2P and meet some of the local expectations about protection that have previously bedevilled the organization.⁴⁶ Others have taken R2P as a spur to develop new thinking about the military tasks required to protect civilian populations and how government bureaucracies can be made fit for that purpose.⁴⁷

However, as international debate continued, and especially after the political fallout in some quarters from the NATO-led Libyan operation authorized in Security Council resolution 1973, the Secretary-General’s office has been careful to highlight the distinctions between R2P and POC. In his May 2012 report on POC, the Secretary-General criticized the ‘continuing and inaccurate conflation of the concepts.’⁴⁸ He reminded his audience that:

The protection of civilians relates to violations of international humanitarian and human rights law in situations of armed conflict. The responsibility to protect is limited to violations that constitute war crimes or crimes against humanity or that would be considered acts of genocide or ethnic cleansing.⁴⁹

He also reiterated the point that POC was a legal concept whereas R2P was a political principle based on existing international laws. Similarly, in his next report on R2P of July 2012, Ban Ki-moon emphasized that ‘While the work of peacekeepers may contribute to the achievement of R2P goals, the two concepts of the responsibility to protect and the protection of civilians have separate and distinct prerequisites and objectives.’⁵⁰

In sum, different actors continue to use the concepts of R2P and POC in different ways. This has made it difficult to come to a consensus on how exactly they are related, but it is clear that they are linked. But as discussed in the following section, these links have generated some concerns.

CRITICISMS OF LINKING R2P AND POC IN UN PEACEKEEPING OPERATIONS

The Secretary-General and UN Security Council have not been alone in exercising caution about consistently tying the concepts of R2P and POC together. There have also been criticisms of such attempts in the context of UN peacekeeping operations.

One line of argument suggested that associating a political concept like R2P with a legal concept like POC would taint (i.e. politicize) the latter, rendering it less likely to attract supporters. As one analyst argued, ‘Conflating R2P and POC could affect the IHL legal nature by “politicizing” it and therefore, could also put at risk the actors charged with implementing it.’⁵¹ Of course, it would be wrong to conflate R2P and POC as they are not the same. But the idea that POC is somehow apolitical or neutral should be dismissed. Despite POC’s basis in various bodies of international law, practical measures undertaken in the name of protecting civilians will inevitably be viewed as political by the conflict parties in question, especially those that deliberately target civilian populations.

The messy politics of protecting civilians has been evident in a variety of recent contexts. Within ongoing UN peacekeeping operations, for example, Argentina recently criticized POC’s association in some missions with targeting spoiler groups. Its representative at the Security Council lamented that ‘the active protection of civilians should not be confused with the neutralization of the armed groups through aggressive activities.’⁵² Yet this was precisely the basis on which the Force Intervention Brigade in MONUSCO was formed in 2013 under a POC rubric. Similarly, during 2014 the UN Mission in South Sudan (UNMISS) was heavily criticized for not doing enough to protect civilians from government troops in that country while simultaneously being chastised by the government of South Sudan for paying too much attention to civilian protection issues, and hence complicating its attempts to defeat its opponents in the country’s ongoing civil war.⁵³ At the UN Security Council, there have also been other concerns about the potential for POC mandates to camouflage nefarious motives. Speaking about peacekeeping operations not R2P-inspired military interventions, the Russian ambassador stated:

we have serious concerns over the recently observed desire to loosely interpret the standards of international humanitarian law regarding the protection of civilians in armed conflict. It is unacceptable that there should be any action taken under the slogan of protecting civilians that in practice pursues selfish geopolitical aims, including the removal of legitimate authorities in sovereign States.⁵⁴

A more thoughtful critique that recognizes the political nature of both concepts has been articulated by Thierry Tardy. His concern is that linking R2P and POC in the context of UN peacekeeping operations could ‘lead to the dilution of the RtoP norm’ and run ‘the risk of undermining the civilian protection dimension of peacekeeping mandates.’⁵⁵ For Tardy, such ‘issue-linkage’ is counter-productive for three reasons.

The first problem is that R2P’s narrow focus on the four atrocity crimes means it is designed to trigger an exceptional set of measures. Consequently, attempts to normalize the acceptance of R2P will undermine it. POC on the other hand tackles a much larger list of threats making it more suited to the routine nature of multiple peacekeeping operations and leaving plenty of work to be done without addressing the R2P crimes. The problem with this argument is that R2P’s first two pillars are not intended to generate exceptional, rare actions but rather to make the cooperative attempts to prevent the four atrocity crimes routine across a large number of states and international institutions.

Third-pillar activities will be exceptional or increasingly common depending on the behaviour of the world's governments. Moreover, it would make no sense for UN peacekeepers to address other sources of civilian harm but ignore the four R2P crimes if they were incited or perpetrated in their area of operations.

Tardy's second concern relates to the use of force; specifically the fact that R2P includes the potential strategic use of force authorized by the UN Security Council against a sovereign state without its consent. He sees this as being incompatible with POC, because UN peacekeeping operations explicitly rule out such peace enforcement against a sovereign state. As Tardy puts it, 'While ultimately RtoP implies the possibility of waging wars, peacekeeping does not.'⁵⁶ But once again there are problems with this line of thinking. First, Tardy's pithy summary needs an addendum. A more accurate version would be: 'While ultimately RtoP implies the possibility of waging wars, peacekeeping does not—at least against states.' In practice, various UN peacekeeping operations have waged (albeit relatively small) wars against a variety of non-state actors from General Aideed's militia in Somalia in the early 1990s to the M-23 rebels in eastern DR Congo in 2013. Indeed, some critics of UN peacekeeping would dispute the idea that UN blue helmets have not coerced states. Philip Cunliffe, for example, has argued that the UN peacekeeping operations have employed military coercion to engineer regime change in several locations, notably Namibia, Sierra Leone, Haiti, and Côte d'Ivoire.⁵⁷ Second, the fact that R2P can involve humanitarian intervention does not necessarily make it incompatible with a POC mandate per se because this instrument (military intervention) relates to a different political context than UN peacekeeping operations.

Tardy's third point is that there are political risks that stem from seeing R2P and POC as part of the same continuum of activities. Specifically, the potential for abusing R2P in order to override the rights of the host sovereign state means that governments that fear such R2P-inspired reprisals will be less likely to accept UN peacekeeping operations with POC mandates for fear that this might 'be an open door to an RtoP situation'. The principal spectre in this regard is the 2011 intervention in Libya based on Security Council resolution 1973. In the aftermath of the Libyan intervention, the Brazilian concept note on 'Responsibility while Protecting: Elements for the Development and Promotion of a Concept' (November 2011) argued that there is a 'growing perception' that R2P 'might be misused for purposes other than protecting civilians, such as regime change'.⁵⁸ Tardy argues that such concerns will taint POC, in part because they are particularly apparent among many states in the Non-Aligned Movement (NAM), which are uncomfortable with blurring the lines between POC, 'robust peacekeeping', and R2P-inspired peace enforcement.

Once again, however, there are problems with Tardy's analysis. First, all concepts are open to abuse and POC is no exception. In 2010–11 in Côte d'Ivoire, for example, it was not an R2P-inspired peace enforcement operation but a UN peacekeeping operation with a POC mandate that was accused by some of engineering regime change (albeit with the help of parallel French forces).⁵⁹ The criticisms levelled against UNMISS by the government of South Sudan, cited earlier, raise similar issues although that case

has not involved regime change. It is therefore incorrect to suggest that only R2P might become a Trojan horse for sovereign states when POC mandates for UN peacekeepers have generated similar charges. Second, while it is understandable that the main practitioners of POC peacekeeping mandates (UN peacekeepers and the Secretariat) would like this agenda to remain as uncontroversial as possible, pretending that these mandates can ignore the four R2P crimes or that they do not arise from a similar sentiment as R2P-inspired military intervention is not helpful. Avoidance is not the solution. Rather, designing workable strategies that take account of different political contexts, build greater consensus and political support, but acknowledge the links between them is a better way forward.

Third, in the last few years, the African Union (which contains many NAM members) has explicitly called for the UN Security Council to authorize and pay for troops to conduct robust, ‘peace imposition’ missions that explicitly blur the lines between POC and peace enforcement in Somalia, Mali, the Central African Republic, and DR Congo. It is therefore incorrect to paint this as a North vs. South, or NAM vs. the West set of dynamics when the reality is more complex. Finally, in some contexts, implementing POC mandates probably requires a more forceful posture than has often been adopted by peacekeepers in the past. To take just one recent example, MONUSCO’s Force Commander recently warned the Security Council that in his mission, ‘Deterrence by presence is not always effective. Only an active force with a proactive, robust posture can neutralize and defeat threats to the civilian population.... A robust posture is indeed safer for all.’⁶⁰ All this suggests that POC mandates are inherently political and are themselves raising questions of the need for peace enforcement at the operational level. It is therefore wrong to conclude that the risks to the broader acceptance of POC mandates all stem from their association with R2P.

CONCLUSIONS

R2P and POC are distinct but related concepts. Both have evolved based primarily over the issue of how to operationalize them in practice in a variety of different theatres. And both retain some significant sources of ambiguity, which is to be expected for ideas that remain work-in-progress. While some governments, organizations, and analysts have argued that they should not be linked, this is an unsustainable strategy because these concepts stem from the same normative goal and, sometimes, must tackle the same policy challenge: how to prevent and/or stop genocide, war crimes, crimes against humanity, and ethnic cleansing. Just because the idea of R2P-inspired military interventions is controversial and the Libyan case of 2011 has generated concerns about the potential to abuse R2P does not mean that UN peacekeeping operations can or should ignore their responsibility to protect endangered populations. It is also incorrect to suggest that POC offers an uncontroversial alternative to R2P. In this context, some of the UN’s peacekeeping operations will continue to face both POC and R2P-related challenges.

UN peacekeepers will therefore act as instruments in operationalizing both the R2P and POC agendas. The key policy challenge will be to ensure that the relationship between R2P and POC does not become counter-productive in such contexts. UN peacekeeping operations have no choice but to grapple with both concepts: while peacekeepers will likely face POC challenges more frequently than R2P atrocity crimes, the UN will need to clarify how its peacekeepers should address the latter.

NOTES

1. Kennedy 2007, p. 103.
2. Speech, New York, 24 September 2013. <<http://www.un.org/sg/statements/index.asp?nid=7119>>.
3. United Nations General Assembly 2005.
4. For an overview of some of the main legal issues see Bellamy et al. 2011; Glanville 2012; van Steenberghe 2014. For a discussion of the legal obligations of peacekeepers with regard to civilian protection see, Wills 2009.
5. The first UN Security Council debate on POC took place 12 February 1999 (UN doc. S/PRST/1999/6), the first report of the Secretary-General on POC was 8 September 1999 (UN doc. S/1999/957), and UN Security Council resolution 1265 was authorized on 17 September 1999.
6. The UN Security Council has also authorized other actors to protect civilians, including the EU-led Interim Emergency Multinational Force in DR Congo (2003) under resolution 1484 and the African Union mission in the Central African Republic (MISCA) under resolution 2127. However, this chapter will focus on UN-led operations.
7. It should be noted that a variety of other international actors have subsequently tried to develop tactics, techniques, and procedures relevant to operationalizing POC mandates. These include the African Union and the United States but this chapter will focus on debates within the UN. See, for example, African Union 2010; Sewall et al. 2010.
8. This is despite the fact that Chapter VII of the UN Charter contains no references to human rights, IHL, or POC.
9. Durham and Wynne-Pope 2012.
10. UN General Assembly 2009, A/63/677, para. 3. See also Australian Red Cross 2011.
11. See, for example, Wills 2009.
12. Doyle 2011, p. 82.
13. Doyle 2011, p. 83.
14. van Steenberghe 2014, p. 93.
15. For a high-profile example of this misguided view of R2P see Pape 2012.
16. Example of MONUC mandate shifting to acknowledge culpability of state's armed forces: whereas previous UNSCRs defined MONUC's mandate to protect civilians 'without prejudice to the responsibility of the government of the DRC', in contrast, resolution 1856 (2008) did not use such wording, stating that MONUC must 'Ensure the protection of civilians, including humanitarian personnel, under imminent threat of physical violence, in particular violence emanating from any of the parties engaged in the conflict'. van Steenberghe 2014, p. 102.
17. See, for example, Holt and Berkman 2006.

18. See, for example, OCHA 2011.
19. van Steenberghe 2014, p. 103.
20. The Global Protection Cluster ‘coordinates and provides global level inter-agency policy advice and guidance on the implementation of the cluster approach to Protection Clusters in the field, supports protection responses in non-refugee situation humanitarian action as well as leads standard and policy setting relating to protection in complex and natural disaster humanitarian emergencies, in particular with regard to the protection of internally displaced persons.’ See <<http://www.globalprotectioncluster.org/en/index.html>>.
21. Thanks to Alex Bellamy for bringing this point to my attention.
22. UN DPKO/DFS 2008, p. 34.
23. Somewhat confusingly, advocates of R2P have tended to use the term ‘responsibility’ to suggest a duty or obligation. In international law, however, it usually denotes accountability for violation of a duty or obligation, or identifies the scope of authority of a given actor. See Glanville 2012, footnote 4.
24. Luck 2012.
25. Foley 2013, p. 85.
26. See the renewal of the UNMISS mandate in Security Council resolution 2155 (27 May 2014), operative para. 4. See also resolution 2147 (28 March 2014), operative para. 4, which extended MONUSCO’s mandate.
27. Nasu 2011, p. 369.
28. See Report of the Office of Internal Oversight Services 2014, A/68/787.
29. ICRC 2009, p. 8.
30. See Caverzasio 2001.
31. Holt and Berkman 2006, pp. 37–46.
32. UN DPKO/DFS 2008, p. 24.
33. Holt and Taylor with Kelly 2009.
34. UN DPKO/DFS 2010, para. 6.
35. UN DPKO/DFS 2010, para. 18.
36. UN DPKO/DFS 2010, para. 20.
37. UN DPKO/DFS 2010, para. 15.
38. See Baines and Paddon 2011; Corbett 2011.
39. Security Council Report 2012, p. 14.
40. UN Security Council 2014, S/PV.7275, p. 11.
41. See Tardy 2012, pp. 434–5.
42. UN Secretary-General 2007, S/2007/643, para. 11.
43. UN General Assembly 2009, A/63/677, para. 68.
44. UN DPKO/DFS 2009.
45. See UN Secretary-General 2012a, S/2012/376; and UN Secretary-General 2013, S/2013/689, especially Section C in both documents.
46. Hunt and Bellamy 2011, p. 1.
47. See, for example, Sewall et al. 2010.
48. UN Secretary-General 2012a, S/2012/376, para. 21.
49. UN Secretary-General 2012a, S/2012/376, para. 21.
50. UN Secretary-General 2012b, A/66/874–S/2012/578, para. 16.
51. van Steenberghe 2014, p. 113.
52. UN Security Council 2014, S/PV.7275, p. 26.
53. See Nicholas 2014.

54. UN Security Council 2014, S/PV.7275, pp. 15–16.
55. Tardy 2012, p. 436.
56. Tardy 2012, p. 440.
57. Cunliffe 2013, p. 21. While I do not subscribe to Cunliffe's view in all of these cases, his position demonstrates the contentious nature of Tardy's claim.
58. 'Letter from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General' 2011, S/2011/701, para. 10.
59. See, for example, Mbeki 2011, pp. 57–9.
60. UN Security Council 2014, S/PV.7275, p. 3.

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