

Global Peacebuilding Association of Japan

First Annual Meeting, Tokyo (2 Dec 2017)

[Session 1] Changing UN Peace Operations Policies

Promotion of “Pillar Two-and-a-half”
of the Responsibility to Protect (R2P) ?

Focusing on conceptual overlap of the
Protection of Civilians (POC) and R2P

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* The views and opinions expressed herein are those of the author and do not necessarily reflect the views of the organization the author belongs to.

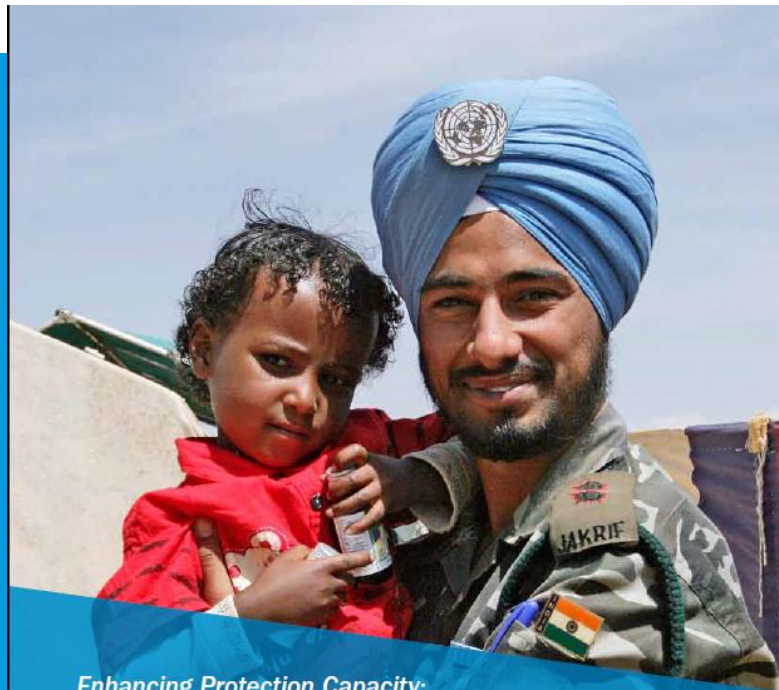
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1. R2P and POC in the UN Peace Operations after the end of Cold War

- ✓ R2P: ICISS Report (2001), World Summit Outcome Document (2005)
= Protection of populations from four grave atrocity crimes, regardless of armed conflicts
- ✓ POC: International Humanitarian Law + UN Peace Operations Policies (ex. mandate by the Security Council, POC site in South Sudan)
= Protection of non-combatants (individual civilians) under armed conflicts
- ✓ Difference in ends (objects, scopes) & means (policies, institutions) → “Sisters, but not Twins”

1. R2P and POC in the UN Peace Operations after the end of Cold War



[Reference]

Hugh Breakey *et. al.*, *Enhancing Protection Capacity: A Policy Guide to the Responsibility to Protect and the Protection of Civilians in Armed Conflicts* (Institute for Ethics, Governance and Law, 2012)

<https://www.griffith.edu.au/criminology-law/institute-ethics-governance-law/research/responsibility-to-protect-protection-of-civilians-policy-guide>

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

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A joint initiative of the United Nations University,
Griffith, ANU, QUT, OP Jindal Global University
and the Center for Asian Integrity

SUMMARY OF SCOPE

Broad POC has the widest scope, applying to all situations of mass violence; it therefore includes both armed conflict and atrocity crimes.

Narrow POC has a tighter focus; IHL applies only to situations of armed conflict.

R2P Atrocity Crimes have the smallest scope, applying only to the comparatively rare case of atrocities. These usually occur in armed conflicts, but can occur in peacetime.

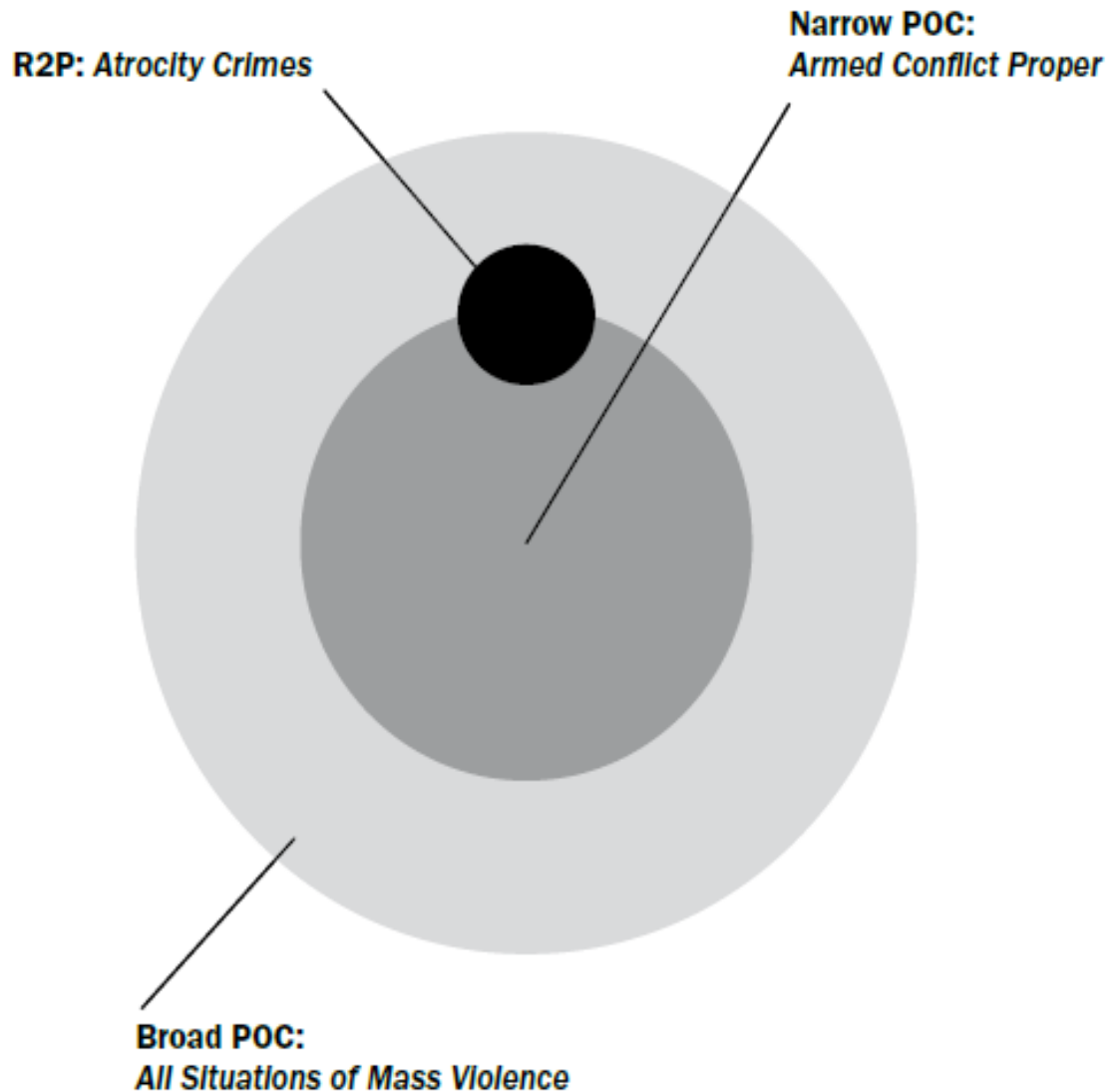


Figure 1: Scope of protection principles

POC applies to crimes against *civilians*:

R2P applies to crimes against *populations*.

While there remain ambiguities in certain (non-international) contexts regarding the legal definition of “civilians”, broadly speaking a civilian is a person who is not a member of State armed forces or organized armed groups of a party to the conflict, and who is not taking a direct part in hostilities. “Populations”, on the other hand, refers to the total number of people in a nation, region or other larger grouping, irrespective of their involvement in hostilities. Three points follow:

1. POC’s concern for civilians includes isolated and small-scale attacks against individuals. R2P’s focus on populations, on the other hand, requires assaults, (a) of a much larger-scale, and (b) with the specific intention to persecute or destroy the group as such.
2. Especially in the context of IHL and Narrow POC, the distinction implies that POC occurs primarily in situations where the civilian-combatant distinction is material. Since R2P crimes explicitly can occur in times of peace, the term “populations” is more apt in this regard.
3. Without the limitation to apply only to unarmed civilians, R2P crimes can include certain types of attacks against combatants, if such attacks are part of a larger assault against a group. A genocidal regime might modify its treatment of enemy combatants (such as with declarations of “no quarter”) as one part of its overall purpose of destroying the enemy population. In such a case, egregious violations of duties to enemy combatants may comprise part of an R2P atrocity crime.

2. R2P's recent trajectory: its “Three Pillars” and trends after the Libya intervention in 2011

- ✓ Report of the Secretary-General “Implementing the responsibility to protect” (A/63/677, 2009)

Pillar One The protection responsibilities of the State

Pillar Two International assistance and capacity-building

Pillar Three Timely and decisive response

- ✓ Intervention in Libya and non-intervention in Syria in 2011 → Criticism of R2P (esp. Pillar Three)
- ✓ But, continued discussion in UN (w/ SC resolutions) → made R2P a formal agenda of UNGA in 2017-18

3. POC's recent trajectory: “Kigali Principles” on POC proposed in 2015

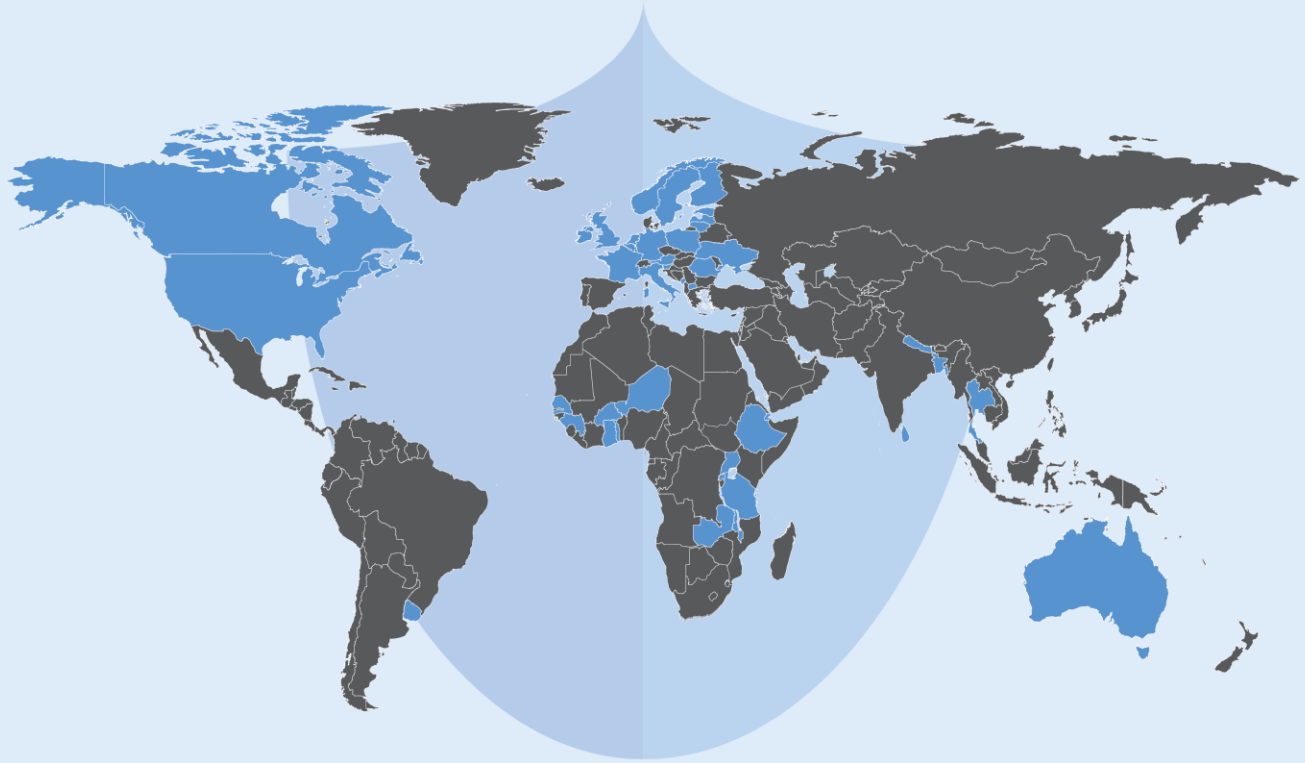
- ✓ **Kigali Principles** proposed by Rwanda in May, HIPPO Report released in June, and Second PKO Summit held in September 2005
41 States (providing 53% of all UN Peacekeepers) endorsed **Kigali Principles** (as of September 2017)
- ✓ **Kigali Principles on the POC**
 - = 18 Principles on POC in UN Peace Operations
- ✓ Characteristics: promoting “use of force” for POC by deployed PKO commanders’ judgement, and clearly overlapping with R2P

The Kigali Principles on the Protection of Civilians

Peacekeepers are increasingly called upon to uphold the international community's Responsibility to Protect civilians from mass atrocity crimes, namely genocide, war crimes, ethnic cleansing and crimes against humanity. The Kigali Principles are a set of eighteen pledges for the effective implementation of civilian protection mandates in UN peacekeeping. Nine out of fifteen current UN Security Council-authorized missions, constituting 96% of peacekeepers, have the Protection of Civilians at the core of their mandates.

Signatories

- | | |
|---|--------------------|
| 1. Australia | 21. Montenegro |
| 2. Austria | 22. Nepal |
| 3. Bangladesh | 23. Netherlands |
| 4. Belgium | 24. Niger |
| 5. Burkina Faso | 25. Norway |
| 6. Canada | 26. Poland |
| 7. Djibouti | 27. Romania |
| 8. Estonia | 28. Rwanda |
| 9. Ethiopia | 29. Senegal |
| 10. Finland | 30. Slovenia |
| 11. Former Yugoslav
Republic of
Macedonia | 31. Sri Lanka |
| 12. France | 32. Sweden |
| 13. Germany | 33. Tanzania |
| 14. Ghana | 34. Thailand |
| 15. Guinea | 35. Togo |
| 16. Ireland | 36. Uganda |
| 17. Italy | 37. Ukraine |
| 18. Latvia | 38. United Kingdom |
| 19. Lithuania | 39. United States |
| 20. Malawi | 40. Uruguay |
| | 41. Zambia |



Updated as of 16 September 2017

Percentage of all UN Peacekeepers
currently provided by signatories **53%**

Global Center for the Responsibility to Protect:
http://www.globalr2p.org/our_work/peacekeeping_and_civilian_protection

The Kigali Principles on the Protection of Civilians

1. To train all of our troops on the protection of civilians prior to their deployment to missions.
2. To ensure that our sector and contingent-commanders, [...] have a high level of training and preparedness on peacekeeping operations and, in particular, the protection of civilians.
3. To be prepared to use force to protect civilians, as necessary and consistent with the mandate. Such action encompasses making a show of force as a deterrent; [...]; and taking direct military action against armed actors with clear hostile intent to harm civilians.
4. Not to stipulate caveats or other restrictions that prevent us from fulfilling our responsibility to protect civilians in accordance with the mandate.
5. To identify and communicate to the UN any resource and capability gaps that inhibit our ability to protect civilians.
6. To strive, within our capabilities, to contribute the enabling capabilities [...] to peacekeeping operations [...].
7. To avoid undue delay in protecting civilians, by investing our contingent commander with the authority to use force to protect civilians in urgent situations without the need for further consultations with capital.

The Kigali Principles on the Protection of Civilians

8. Not to hesitate to take action to protect civilians, in accordance with the rules of engagement, in the absence of an effective host government response or demonstrated willingness to carry out its responsibilities to protect civilians.
9. To demand clarity from the UN and mission leadership on our rules of engagement, including under which circumstances the use of force is appropriate.
10. To seek to identify, as early as possible, potential threats to civilians and proactively take steps to mitigate such threats and otherwise reduce the vulnerability of the civilian population.
11. To seek to enhance the arrangements for rapid deployment [...].
12. To be vigilant in monitoring and reporting any human rights abuses or signs of impending violence in the areas in which our personnel serve.
13. To take disciplinary action against our own personnel if and when they fail to act to protect civilians when circumstances warrant such action.
14. To undertake our own review, in parallel to any after-action review, in the event that our personnel are unable to protect civilians, and identify and share key lessons for avoiding such failures in the future.

The Kigali Principles on the Protection of Civilians

15. To hold our own personnel to the highest standard of conduct, and to vigorously investigate and [...] prosecute any incidents of abuse.
16. To better implement protection of civilians mandates and deliver on our responsibilities, we request better, regular and more extensive consultations on the mandating of peacekeeping missions. When mandates of peacekeeping missions are under review and may change, it should also be mandatory for the Security Council to consult all troop and police contributing countries deployed to the mission. [...]
17. To urge the Security Council to ensure that mandates are matched with the requisite resources, and to commit to support a process that addresses the current critical resource gaps in several missions. [...]
18. [...] To call for effective support of all military plans, including contingency plans; and to commit to work with the Secretariat to review the current support arrangements, **including possible transfer of authority over more of the logistical capability to the military component**, where appropriate.

4. Conceptual overlap of R2P and POC: R2P's "Pillar Two-and-a-half" is promoted?

- ✓ **Event on the Kigali Principles** co-organized by Rwanda, Netherlands and the Global Center for the R2P (GCR2P) in May 2016

PKO capacity-development project (to identify and respond to the warning signs of mass atrocity crimes) during 2017-19 by Canada and GCR2P

- ✓ First Report of the Secretary-General Guterres on the R2P in 2017 → emphasizing **Prevention** and referring to the **Kigali Principles**
- ✓ Measures of more than **Pillar Two** but less than **Three**? (ex. S/RES/1975, Cote d'Ivoire in 2011)

4. Conceptual overlap of R2P and POC: R2P's "Pillar Two-and-a-half" is promoted?

- ✓ Strengthening **International executive power/** authority of the UN?
- ✓ **Mechanisms to control as well as strengthen** the UN's power/authority should be established
ex. Serious problems of "sexual abuse/violence" by the UN Peacekeepers
 - Monitoring, Accountability, Inspection by a third party, Awareness-raising, Training etc.

* For R2P, see Masataka Nakauchi, Hiroshi Takazawa, Nagafumi Nakamura and Hirotugu Ohba (eds.) *The Responsibility to Protect: Basic Documents and Commentaries, from the end of the Cold War to 2016* (Osaka University Press, 2017), available at <https://ir.library.osaka-u.ac.jp/repo/ouka/all/67203/>