

## Protecting civilians in armed conflict International framework and challenges

### SUMMARY

In today's armed conflicts, whether international or intra-state, the vast majority of casualties are now civilians. Increasingly, civilians are victims of deliberate attacks and other serious violations by parties to a conflict – both states and non-state armed groups, despite the existence of strict legal rules intended to spare civilians from the effects of hostilities: the principles of international humanitarian law, of international human rights law and refugee law. The lack of compliance with these norms, as well as the United Nations Security Council's inability to take action to protect civilians in some specific cases, reflects the key concerns regarding the protection of civilians affected by armed conflicts worldwide. Moreover, specific protection concerns relate to the situation of women, children and displaced persons.

Besides this international legal framework, another related concept has garnered significant support internationally in the past decade: the Responsibility to Protect (R2P), meant to apply only in cases of atrocity crimes. However, R2P remains controversial, given the challenge of adequate implementation, particularly with regard to its military intervention aspects.

Notwithstanding the many challenges with regard to protecting civilians in armed conflict, the European Union is a strong promoter of international humanitarian principles and of R2P, and other protection-related issues are consistently among its priorities.



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## Trends in armed conflicts and impact on civilians

Today's armed conflicts are [said](#) to be longer in duration, broader in regional impact and [more violent](#) than those in the past. Moreover, they have become increasingly asymmetric. While international armed conflicts between states have decreased in number, internal conflicts or non-international armed conflicts which oppose one or more non-state armed groups or these groups against the state [have become the norm](#).<sup>1</sup> Weak states and armed groups are deepening the asymmetrical nature of conflicts, which in turn [prompts](#) militarily inferior groups to resort to acts prohibited by international law, including deliberately targeting civilians. Moreover, the [demarcation lines](#) between civilians (non-combatants) and combatants have become increasingly [blurred](#) leading to a rise in civilian casualties. Fighting increasingly expands into populated areas and urban centres; the illegal use of weapons and the use of illegal weapons (e.g. use of forbidden cluster bombs etc.) raise the human costs, while growing transnational security threats and the deployment of new types of weapons (e.g. armed drones, autonomous weapons etc.) pose questions about the suitability of the existing legal framework and the legal responsibilities of states and non-state actors in protecting civilians.

## Protection of civilians: sources of law and normative developments

The protection of [civilians and civilian populations](#) in armed conflict (PoC) is a cornerstone of international humanitarian law (IHL), with strict rules defining the obligations and duties of parties to a conflict towards civilians. Besides IHL, PoC in armed conflict is also founded on principles of international human rights law (IHRL) and refugee law. Moreover, the concept of 'responsibility to protect' (R2P) is gaining more traction at international level, although it remains controversial. Finally, in a broader sense, civilian protection has evolved to cover a wide range of activities destined also to protect civilians outside armed conflict.

### International humanitarian law (IHL)

IHL regulates the conduct of parties in an [armed conflict](#) (*jus in bello*) by imposing limits on weapons and methods of warfare, in order to ensure that only military targets are attacked and that disproportionate civilian casualties are avoided, therefore forbidding indiscriminate attacks. IHL also [regulates](#) the treatment of certain categories of persons not taking part in combat.<sup>2</sup> The contemporary rules on IHL are codified by the four [1949 Geneva Conventions](#) (GCs) – now binding on all states, the Additional Protocols (AP) to the Geneva Conventions,<sup>3</sup> as well as other relevant [treaties and agreements](#) (e.g. the Convention prohibiting or restricting Certain Conventional Weapons, the Cluster Munitions Convention, the Landmines Convention, the Chemical Weapons Convention, the Rome Statute of the International Criminal Court (ICC), etc.). IHL also comprises customary international law on the conduct of hostilities. The role of the [International Committee of the Red Cross](#) (ICRC) is recognised in monitoring observance of IHL.<sup>4</sup>

The four 1949 Geneva Conventions and AP I and II, together with international [customary law](#), constitute the core provisions on the protection of civilians in armed conflict. The GCs and AP I cover the protection of civilians in international armed conflict, while Common Article 3 of the Geneva Conventions and AP II confer protection to civilians in non-international armed conflict; nevertheless, it is today considered that Common Article 3 applies without distinction to **all types** of armed conflict (international and non-international).<sup>5</sup> The duty to protect, respect and treat civilians humanely is part of customary international law.<sup>6</sup>

- Key IHL rules on PoC in armed conflict

The core principles of IHL are **distinction** (parties to the conflict must distinguish between the civilian population and combatants and between civilian objects and military objects, and no one may target civilians); **military necessity** (conflicting parties must engage only in military operations that are necessary to achieve a legitimate military objective); and **proportionality** (parties to the conflict must not use force beyond what is required to attain the military advantage anticipated).<sup>7</sup>

- Who benefits from protection

According to [API](#), **everyone who is not a combatant is a civilian** benefiting from protection. Civilians [lose their protection](#) from attack and the effects of the hostilities if, and for such time as, they directly participate in hostilities. **Women** are given [special protection](#) under IHL, both as civilians and combatants. **Children** also benefit from special protection

during armed conflict. In particular, IHL aims to prevent the participation of children in hostilities and forbids parties to the conflict to recruit children into their armed forces. If captured, child soldiers need to be afforded special protection. Other categories protected are **war correspondents** and **journalists**. IHL also [recognises](#) the right of civilian populations affected by armed conflicts to receive humanitarian assistance, and conflicting parties have the obligation to allow humanitarian relief operations to reach civilians.

- Main prohibitions under IHL

IHL prohibits attacks against civilians and civilian objects, including attacks whose purpose is to terrorise the population. Moreover IHL prohibits parties to the conflict from using civilians as a shield, from using starvation as a method of warfare, taking hostages, forcibly enrolling protected persons, and from undertaking deportations. IHL also [prohibits](#) means and methods of warfare causing indiscriminate effects or that could cause unnecessary suffering, as well as those intended/expected to cause widespread, long-term and severe damage to the natural environment. Although the GCs and APs do not interdict particular weapons, other conventions do. On the other hand, IHL [does not prohibit](#) attacks directed at military objectives simply because they may also affect civilians, if they respect the **proportionality** rule.<sup>8</sup>

### International Human Rights Law (IHRL)

Civilians' life, health and dignity in armed conflict are [protected](#), not only by IHL, but also by the body of [international human rights law](#) (IHRL). The latter normally covers the relationship between a state and its citizens and those under its control in peacetime. However, in 2004, the International Court of Justice (ICJ) stated that 'the protection offered by human rights conventions does not cease in armed conflict', although some derogations are allowed in situations of emergency, such as armed conflict. On the

#### Common Article 3

Each Party to the conflict shall be [bound](#) to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities ... shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court ...

(2) The wounded and sick shall be collected and cared for. (...)

other hand, no derogations are allowed under IHL (with a [few exceptions](#)). Among the major [human rights treaties](#) are the International Covenant on Civil and Political Rights; the International Covenant of Economic, Social and Cultural Rights; the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention for the Protection from Enforced Disappearance; and other regional human rights treaties.

The [interactions](#) and relationship between IHL and IHRL are still subject to debate. For example, the application of IHL alongside 'non-derogable' IHRL rights (e.g. right to life) in international armed conflict is not entirely clarified. In addition, the binding character of IHRL on non-state armed groups remains [controversial](#). Finally, IHRL gives individuals a right of complaint against violations of their rights, while IHL does not grant such an individual right (only a state can lodge a complaint).

### Refugee Law

The 1951 [Convention Relating to the Status of Refugees](#) and its 1967 [Protocol](#) are the main instruments which grant protection to refugees. Accordingly, the [principle](#) of *non-refoulement* must be respected, as protected persons cannot be transferred to states where they fear persecution on political or religious grounds. IHL also [prohibits](#) forced movement of civilians, and protects internally displaced persons (IDPs) as well as refugees, according to the applicable rules.

#### PoC and the United Nations Security Council

The inclusion of PoC on the **United Nations Security Council** (UNSC) [agenda](#) as a thematic issue since 1999 is a significant step in promoting its principles. That year, the UNSC first requested a dedicated [report](#) from the United Nations (UN) Secretary-General, which was followed by the adoption of resolution [S/RES/1265](#), the UNSC's first thematic resolution concerning PoC in armed conflict. Several [resolutions](#) have followed since, including on the protection of specific categories of civilians, e.g. journalists and media professionals, humanitarian workers etc. Moreover, the UNSC has held regular open debates dedicated to PoC and, since 2008, has produced seven cross-cutting reports on the protection of civilians in armed conflict. Since 2000, protection of civilians is [embedded](#) in all UN peacekeeping operations' mandates. In 2015, the **UN Secretary-General** published the 11th [report](#) on PoC in armed conflict.

### Normative debates: the Responsibility to Protect (R2P)

First [elaborated](#) in 2001, in the [report](#) of the International Commission on Intervention and State Sovereignty, the concept of Responsibility to Protect was [endorsed](#) by UN members at the 2005 World Summit, in paragraphs 138-139 of the Outcome Document. Essential to the R2P doctrine is the concept of state sovereignty, understood as responsibility of states towards their citizens: states bear a [responsibility to protect](#) their population from mass atrocities, but, when the state is unwilling or unable to fulfil this obligation, the international community has a collective responsibility to act.

The scope of R2P, as enshrined by the World Summit outcome, is limited to the protection of populations from four [atrocity crimes](#): genocide, war crimes, crimes against humanity and ethnic cleansing.<sup>9</sup> R2P rests upon three pillars: prevention, cooperation and intervention. Pillar one refers to the primary responsibility of each state to protect its population from mass atrocities, including incitement to these crimes. It is widely [assessed](#) that pillar one obligations are firmly rooted in international law and, as such, states which carry out or fail to prevent atrocity crimes are violating international and in most cases domestic law. Pillar two encompasses international community cooperation in supporting states with capacity-building to protect their

populations; these commitments are said to have some correspondence in international law. Finally, under pillar three, the international community has the responsibility to take collective action, 'in a timely and decisive manner', in situations where states manifestly fail to protect their populations from atrocity crimes. Pillar three foresees the use of force as a last resort, but only the UNSC can mandate such military interventions, in conformity with the UN Charter; yet the UNSC is under no legal obligation to authorise an intervention under R2P. Although the focus of many analyses of R2P has been placed on the use-of-force aspects, pillar three includes other measures (diplomatic, political pressure, sanctions) available to the international community. Actions under pillar three have the nature of political obligations; therefore no legal duty of the international community to act is yet established.

As for the [relationship between R2P and PoC](#), although they share the same aim – protecting civilians – they have specific characteristics. In essence, PoC can be both broader and narrower in scope than R2P. PoC encompasses more situations than the four mass atrocities to which R2P applies, but at the same time is limited to situations of armed conflict, while R2P [extends](#) beyond armed conflict as mass atrocities can occur in other situations of armed violence. Many point to a strong link between the two concepts and see R2P as an integral part of PoC as much as PoC is seen as reinforcing the idea of R2P.<sup>10</sup> [UNSC Resolution 1674](#) (2006) on the protection of civilians in armed conflict represents the first instance when a Security Council document includes a reference to the responsibility to protect populations from atrocity crimes. Since 2009, the UN Secretary-General has produced [annual reports](#) on R2P, the [latest](#) issue, from August 2015, focuses on implementing R2P.

A decade after its endorsement, R2P has not yet [evolved](#) into a full-fledged legally binding norm and its role in the international system has still to be determined. While for some scholars, R2P is an emerging norm in international law, for others it is mostly a moral or political obligation, whose essential aspects are already 'firmly anchored in well-established principles of international law'.<sup>11</sup> Moreover, for some experts R2P has the potential to undermine existing legal instruments; conversely, others consider that R2P can potentially clarify and expand various legal norms related to international armed conflicts.<sup>12</sup> R2P also remains [controversial](#) in light of experience, in particular with regard to its third pillar. In 2011, the UNSC referenced R2P in authorising the enforcement of a no-fly zone over Libya, stating the need to stop further attacks on civilians by government forces and prevent crimes against humanity. UNSC Resolution 1973 (2011) reiterated 'the responsibility of the Libyan authorities to protect the Libyan population' and was hailed by R2P supporters as a watershed moment for the doctrine (although the authorised military intervention is placed under a PoC chapter in the resolution).<sup>13</sup> Subsequently, the North Atlantic Treaty Organization (NATO)-led [intervention](#) in Libya (the only military intervention so far under R2P), criticised for having exceeded its mandate and for having used R2P as cover for regime change, was considered the demise of R2P.

Following the Libya experience, therefore, both the study and practice of R2P are considered to be at a [crossroads](#). Confronted with crises with a profound humanitarian dimension, such as the situation in Syria, and despite increasing calls for intervention, the UNSC has been unable to act. It is argued that another military intervention invoking R2P is unlikely to be authorised in the near future. For the near future, R2P will continue to struggle with the challenge of adequate implementation, as well as with the inconsistency of UNSC action. In 2011, Brazil proposed a new concept, [Responsibility](#)

[while Protecting](#) (RwP), intended to establish a set of criteria for intervention under R2P and greater oversight of implementation. As for UNSC inconsistency, there have been [calls](#) to [limit the UNSC veto](#) in situations of mass atrocities, including a proposal by UNSC permanent member [France](#), opposed by [Russia](#). The UN Secretary-General also [recommended](#) UNSC members to exercise restraint in using the veto in such situations, or publicly justify its use and propose alternative solutions.

Notwithstanding, it seems there is some agreement among states to focus on the preventive pillar of R2P and to utilise all peaceful tools, before considering military force. Initiatives, such as the 2010 proposal made by Denmark and Ghana to establish [R2P national focal points](#) embedded in a global network for the prevention of mass atrocities, have gained adherence from an increasing number of states: by September [2015](#), over 50 states from around the world, as well as the EU, had established an R2P focal point.

### **Civilian protection in a broader sense**

According to the International Committee of the Red Cross (ICRC) and relevant UN agencies, [protection](#) refers to 'all activities aimed at ensuring full respect for the rights of the individual in accordance with human rights law, IHL and refugee law', and it becomes a major concern in all humanitarian crises – in conflicts but also in natural disasters. A wide range of actors and institutions are involved in efforts to protect civilians in armed conflict or in other situations of violence as well as in the context of natural disasters. As they undertake various roles and responsibilities, the need for [coordination](#) in order to avoid undermining the protection efforts of others and ultimately to ensure protection for vulnerable persons has become evident.

### **State of protection of civilians in current armed conflicts**

According to the UN,<sup>14</sup> civilians continue to [account](#) for the vast majority of casualties in [armed conflict](#).<sup>15</sup> They are also regularly and deliberately targeted and the subject of indiscriminate attacks and other violations by parties in conflict – be they state forces or non-state armed groups. Torture, enforced disappearance, hostage-taking, sexual and gender-based violence, enslavement, and recruitment of children have become widespread practices in international and internal conflicts, as parties to the conflict fail to comply with their international humanitarian law obligations and international human rights law. Non-state armed groups have increasingly been using civilians as human shields, recruiting them forcibly, or specifically targeting ethnic and religious groups, women and children. Many civilian casualties also occur because of the explosive remnants of war and the use of [explosive weapons in populated areas](#). Moreover, direct attacks against civilian objects – damage or destruction of schools, hospitals and other essential infrastructure, such as water or electricity supply systems – have also become widespread, impeding civilians from fulfilling their basic needs and contributing to forced migration. Armed conflict also generates massive displacement of populations. At the end of 2014, [displacement](#) had reached record levels since the Second World War, as wars, conflicts and persecution forced 59.5 million people to flee their homes, the majority of them women and children. Also, humanitarian access to people in need is constantly impeded – almost [78 million](#) people worldwide were in urgent need of assistance and protection (from conflict and natural disasters) at the end of 2014, while attacks continue to be perpetrated against humanitarian and relief personnel and facilities, in violation of international law. Peacekeeping and healthcare personnel, human rights activists, and journalists are [other targets](#) of direct attacks by

parties in conflict. Finally, although accountability and justice for the victims are seen as a [precondition](#) for ensuring truth, reconciliation and sustainable peace, [failure](#) to end impunity for violations against civilians and civilian populations continues to characterise today's conflicts.

The most recent UNSC cross-cutting [report](#) on the protection of civilians in armed conflict (May 2015) – covering the period 2013-2014 – concludes that the 'deterioration of existing crises and the emergence of new ones had a devastating impact on civilians'. In particular, the report points to the growing challenge posed by terrorist groups such as ISIL/Da'esh and Boko Haram which occupy territory and commit atrocities against civilians. At the same time, the UNSC recognises its own inability to take decisive action to protect civilians in specific cases.

In addition, the 2015 [UN Secretary-General's report](#) on PoC lists 17 country-specific situations, where armed conflicts, international and intra-state, have raised great concern about the state of protection of civilians.

In **Afghanistan**, 2014 was the year with [most civilian casualties](#) since 2009, impacting disproportionately on women and children. In particular, child casualties rose by 40% compared to 2013. High levels of displacement and impediments to humanitarian access, including kidnappings and murders of humanitarian workers, remain a significant challenge, as well as the use of explosive weapons in populated areas.

In the **Central African Republic**, [attacks on civilians](#) remain widespread, with reports of extrajudicial killings, arbitrary arrests, abductions, torture and attacks against minority groups. Up to 10 000 children have been recruited or used by armed groups, and sexual abuse by parties to the conflict as well as by [international peacekeeping forces](#) have been reported. One fifth of the population has been displaced and more than 60% require humanitarian assistance.

In **Colombia**, the intra-state conflict has produced more than 6 million IDPs and the risk of landmine accidents remains high.

In **DR Congo**, all parties to the conflict, including government forces, have committed serious violations against civilians, including executions, torture and sexual abuse. Children continue to be recruited and schools directly targeted. More than 3 million people are displaced.

In **Iraq**, the security situation has deteriorated dramatically since 2014, also due to the rise of ISIL/Da'esh. Sectarian and ethnically motivated killings and abuses have been committed by all parties to the conflict, children recruited and women abducted, subjected to forced marriages, and sexually abused. One [report](#) puts the number of civilians killed at 15 000, and injured at 30 000, as of 30 April 2015. Around 3 million people are displaced, half of them children, and almost 20% of the population cannot access essential services – health, water and sanitation.

In **Libya**, the civil conflict has led to extensive violations of international law: unlawful killings, arbitrary executions, torture abductions and forced displacements. The use of explosive weapons in populated areas has seriously impacted on civilians and civilian infrastructure.

In **Mali**, conflict has led to civilian casualties, recruitment of children by armed groups and arbitrary arrest and detention, as well as displacement.

In **Myanmar**, recruitment of children has continued, as well as attacks against minority groups, and humanitarian workers.

In **Nigeria**, the terrorist group Boko Haram has kidnapped and abused more than 2 000 women and girls, recruited children and used them as suicide bombers or human shields. The national security forces and those of neighbouring countries taking part in the counter-insurgency efforts have also been accused of [crimes](#) and serious human rights violations.

The July-August 2014 conflict in **Gaza** has seen the highest toll of civilian casualties and damage to civilian infrastructure since 1967, with more than 1 400 Palestinian civilians [killed](#), more than half being women and children. All sides were found to have targeted civilians indiscriminately including through the use of explosive weapons in populated areas.

In **Pakistan**, conflict in the Federally Administered Tribal Areas led to the displacement of 1.6 million people, as well as direct [attacks](#) on schools and children.

**Somalia** continues to be confronted with the world's largest humanitarian crisis: 1 million people are displaced and terrorist groups such as Al-Shabaab have continuously targeted civilians, journalists and humanitarian workers.

In **South Sudan**, both parties to the conflict are accused of targeting civilians and civilian objects and of using sexual violence as a military tactic. Tens of thousands of [civilians](#) have been killed and more than 2 million are displaced, while several thousand children have been recruited or used by armed groups. In **Sudan**, conflict in Darfur and other regions has seen indiscriminate attacks against civilians and widespread violations of IHL and IHRL.

**Syria** remains one of the great recent failures of the international community in terms of protecting civilians. More than 250 000 people [were killed](#) and more than 1 million have been [injured](#) since 2011. Civilians are targets of direct and indiscriminate attacks, including through the use of barrel bombs in populated areas and of [chemical weapons](#). Almost 12 million Syrians are now displaced, including more than 4 million refugees [representing](#) 'the biggest refugee population from a single conflict in a generation', while humanitarian access continues to be obstructed.

In **Ukraine**, the conflict led to thousands of civilians killed and more than 2 million displaced. Civilians have also been subject to [indiscriminate attacks](#), in particular through the use of explosive weapons in populated areas, including cluster munitions, while access to basic services in conflict areas is impeded.

The escalation of the conflict in **Yemen**, and the Saudi-led military intervention, have left [80% of the population](#) in need of humanitarian assistance. More than 2 000 [civilians](#) have been killed and 4 000 injured since the conflict began in March 2015. Attacks on the civilian infrastructure have deprived Yemenis of access to basic services, including medical services, [food and fuel](#).

Another report by [Amnesty](#) International underlines the failure of governments and politicians to protect civilians and, in many situations, their ignoring of blatant violations of human rights and IHL. Failure to prevent mass atrocities was accompanied by failure to protect displaced persons fleeing violence, and by failure to end impunity.

### **Main challenges concerning PoC in armed conflict**

In his reports on PoC in armed conflict (2009, 2012 and [2013](#) and [2015](#)), the UN Secretary-General identified **five core challenges**:

- Enhancing compliance of conflicting parties with their international law obligations;
- Engagement with non-state armed groups;
- Protecting civilians through UN peacekeeping and other relevant missions;
- Improving humanitarian access;
- Enhancing accountability for violations.

New challenges for PoC relate to the increasingly brutal methods used by some terror groups that specifically target civilians, especially ethnic and religious communities, as well as the impact of new or emerging weapon technologies, such as drones or autonomous weapon systems ('killer robots').

**Enhancing combatants' compliance with their obligations to protect civilians**

In today's conflicts many parties show wide [disregard](#) for their obligations under international law, conducting direct attacks against civilians and civilian infrastructure or against humanitarian workers and aid facilities, correlated with impunity for the perpetrators. Despite some positive steps – such as the adoption of the Arms Trade Treaty prohibiting arms transfers to states that would use them for serious crimes against civilians – the challenge of enhancing compliance is significant. Initiatives to establish more effective international mechanisms to promote dialogue and methods for a compliance system with IHL, encouraging states to refrain from the use of explosive weapons with wide-area effects, as well as improving civilian casualty-tracking and recording, are mentioned among efforts that could result in progress in this respect.

**Engagement with non-state armed groups**

The increasing number of [asymmetric conflicts](#) renders the challenge of ensuring that non-state armed groups also guarantee civilian protection all the more significant. Some proposals focus on linking respect for international law with the possibility of granting amnesty to members of armed groups at the end of conflicts, so as to incite insurgents to comply with IHL. Additionally, the need to ensure humanitarian access and the safety of aid workers has made it essential for humanitarian agencies to engage with all parties in conflict, including with non-state armed groups. The [Geneva Call](#) Deeds of Commitment represents an important initiative to engage with non-state actors (including armed groups) on compliance with IHL and IHRL. Non-state actors can formally express their consent to be bound by certain international law norms. The three Deeds of Commitment refer to the prohibition to use antipersonnel mines; to the commitment to protect children from the effects of armed conflict; and to the prohibition of sexual violence in armed conflict.

**Humanitarian access**

Enhancing [humanitarian access](#) to people in need of protection, as well as preventing violence against humanitarian workers and facilities, constitutes an important challenge for PoC.<sup>16</sup> Consent for relief operations must not be arbitrarily withheld, and depriving populations of essential items to their survival is a violation of IHL. However, many states experiencing conflict continue to impose unjustified restrictions on the movement of humanitarian relief personnel, while access to territory controlled by non-state armed groups proves even more difficult. Furthermore, in places where peacekeeping missions are deployed, [confusion](#) between the distinct roles of peacekeepers and humanitarian workers may increase the difficulties for humanitarian organisations. The principle of [neutrality](#) and impartiality of humanitarian action is essential in order to ensure communication with all parties in conflict and access to people in need. Problems related to civilian protection in conflict are one of the main topics to be addressed at the first [World Humanitarian Summit](#) to take place in May 2016.

**PoC in peacekeeping operations and other missions**

Peacekeeping forces have an important [role](#) to play in protecting civilians in conflict and post-conflict situations. Since 2000, UN peacekeeping forces are authorised to use force to stop violence against civilians, and most UN peacekeeping operations are now mandated to protect civilians under imminent threat of physical violence.<sup>17</sup> The UNSC has continued to add to the PoC-related tasks of UN peacekeeping missions, which generally [include](#) political dialogue, physical protection and promoting a protective environment. Many [UN missions](#) have PoC advisors, as well as advisors on the

protection of women and children. The missions also contribute to civilian protection through human rights monitoring, political engagement with the parties in conflict, and in many cases they have a deterrent role.

On the other hand, UN peacekeeping missions face significant challenges in [implementing](#) their PoC mandate.<sup>18</sup> In particular, the gap between resources and mandates has been emphasised. Some [reports](#) also point to the 'lack of capacity and willingness' of UN troops to actively intervene to protect civilians, due to the differing approaches and instructions given to peacekeepers (by countries contributing troops and mission leadership) or lack of clarity on a mission's obligation to act to protect civilians in certain situations. In addition, [political challenges](#) and credibility risks in cases of missions failing to protect civilians are also underlined. Finally, efforts need to be strengthened to ensure accountability of the same peacekeeping troops if they engage in human rights violations, as recent [allegations](#) of sexual abuse, including of [children](#), by UN personnel in the Central African Republic have made manifest.

### **Accountability and ending impunity**

Achieving accountability and ending impunity are seen as key conditions to deterring further violence, and to ensuring reconciliation and ultimately sustainable peace. While established international mechanisms such as the [International Criminal Court](#) continue to investigate and prosecute serious crimes, they are complementary to the [primary responsibility](#) of states in identifying and prosecuting persons responsible for serious violations of IHL and IHRL. The [challenge](#) lies in states taking the necessary measures to adopt appropriate legislation incriminating the most serious violations, but also in strengthening their capacities to investigate and prosecute these crimes. In this respect, international community assistance to states experiencing difficulties is essential.

### **Specific protection concerns: women, children and displaced persons**

The numbers of [people displaced](#) by conflicts around the world have reached record highs, with women and children accounting for [around 80%](#) of the world's refugees and a majority of IDPs. As emphasised during a UNSC [open debate](#) on PoC, armed conflict impacts women and girls disproportionately, in particular if they are displaced. Most often women remain the heads of households and they must provide for the livelihood and safety of their families. They are particularly at risk of various types of violence, including being a direct target in conflict, sold into slavery, sexually abused, as well as being forced into marriage. States again hold primary responsibility for ensuring accountability for all crimes committed against women and girls, including by adapting their national legislation to criminalise all forms of sexual violence, prosecuting their perpetrators and ensuring remedies for victims. Other measures have been advocated to ensure the inclusion of a gender approach in PoC strategies, as well as increasing the representation of women in peacekeeping forces and in political processes at all levels. [Children](#) are also the direct target of armed groups that have abducted, killed, recruited, or submitted them to sexual violence. Furthermore, attacks on civilian infrastructure, and schools in particular, prevent children from pursuing their education. A 2015 Unicef [report](#) found that conflicts in Middle Eastern and North African countries prevent 13 million children from attending school.

### **The European Union and the protection of civilians**

The European Union is a strong [supporter](#) of international humanitarian law and humanitarian principles, and all EU Member States adhere to the Geneva Conventions and Additional Protocols I and II. In 2005, the EU adopted Guidelines on International

Law, [updated in 2009](#), which promote compliance with IHL by third countries and non-state actors. In this respect, the EU has [provided](#) funding for various activities and training programmes that aim to disseminate information on IHL, including to non-state armed groups. As part of its own Common Security and Defence Policy (CSDP) missions and operations, the EU offers training for security forces in third countries on IHL, protection of women and children and human rights. Moreover, [in 2010](#), the EU revised its 2003 Guidelines for PoC in CSDP missions and operations. The document mentions that provisions relevant to PoC, including on the protection of women and children, are included in CSDP mandates, but the concept as such has not been explicitly mentioned in the mandates. In March 2015, the EU adopted the [concept on PoC in EU-led military operations](#) which aims for 'greater integration of PoC factors in all phases of EU-led military operations'. The EU has also adopted Guidelines on [Violence against women and girls and combating all forms of discrimination against them](#) (2008). The EU [Guidelines on children and armed conflict](#) (adopted in 2003 and revised in 2008) are accompanied by considerable [efforts](#) to integrate this issue in CSDP missions and operations, as well as to prevent and combat the recruitment and use of child soldiers.

In addition, the EU is [considered](#) a strong [supporter](#) of R2P.<sup>19</sup> Some of the EU's [strategic documents](#) refer to the responsibility to protect populations from atrocity crimes, and R2P has consistently been mentioned as an EU priority internationally. However, although the EU Member States share a positive attitude towards R2P and there is agreement to promote the concept, [experts](#) maintain that there is not yet a consensual position on the specific aspects of R2P. Finally, at the current 70th UN General Assembly, several protection-related issues count among the EU's [priorities](#): prevention of mass atrocities, support for efforts to assist states to implement R2P and to render R2P operational, respect for humanitarian principles, and compliance with international law with regard to humanitarian workers' access and safety, as well as strong backing for the ICC and for a stronger link between this international judicial body and the UNSC.

#### The European Parliament

The European Parliament (EP) has underlined the necessity to strengthen efforts to protect civilians, to address the specific needs of women and children affected by conflicts, as well as to ensure prosecution and punishment for perpetrators of IHL crimes. Among more recent resolutions figure: the EP [resolution](#) on Humanitarian crisis in Iraq and Syria, in particular in the IS context (February 2015); the EP [recommendation](#) to the Council on Humanitarian engagement of non-state actors in child protection (March 2014); the EP [resolution](#) on the EU's priorities for the UN Human Rights Council in 2015 (March 2015); the EP [resolution](#) on the EU and the global development framework after 2015 (November 2014), etc. The EP has regularly made recommendations to the Council on the EU priorities for the UN General Assembly (e.g. in [2013](#) and [2014](#)). The EP has also strongly supported R2P. In its [resolution](#) on the UN Principle of the 'Responsibility to Protect' of 18 April 2013, the EP recommended the adoption of an interinstitutional 'Consensus on R2P' and the integration of R2P in EU's development assistance. The EP also encouraged the High Representative and the Council to 'work towards establishing R2P as a new norm of international law' and promote a UNSC voluntary code of conduct limiting the veto in cases of atrocity crimes.

#### Main references

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International Human Rights and Humanitarian Law in the Global Legal Order, Sandvik K.B., PRIO Policy Brief, 1, Oslo, 2012.

## Endnotes

- <sup>1</sup> [Research](#) by Peace Research Institute Oslo (PRIO) from 2014 however points to the fact that the trend in number and severity of civil armed conflicts has been descending over the past 20 years and globally this trend will continue.
- <sup>2</sup> The Handbook of International Humanitarian Law, Fleck D., (Ed.), Oxford, Third Edition, 2013.
- <sup>3</sup> The first three Geneva Conventions [deal with](#) the protection of the wounded and sick (GC I), shipwrecked individuals (GC II) and prisoners of war (GC III). The fourth Convention concerns the protection of civilians in occupied territories in time of war (GC IV). The [Additional Protocols](#) (AP) to the Geneva Conventions have broadened the protection granted to civilians during armed conflicts from the effects of hostilities and further limited the way in which wars may be fought: the 1977 Additional Protocol I (related to international armed conflicts), and AP II (related to non-international armed conflicts), and the 2005 AP III (on an additional distinctive emblem). Neither has achieved universal [adherence](#), with 174, 168 and 72 states parties respectively in August 2015.
- <sup>4</sup> Fleck D., op. cit., pp. 690- 91.
- <sup>5</sup> Ibidem, pp. 231-257.
- <sup>6</sup> Ibidem, p. 234.
- <sup>7</sup> 'Attacks on military objects [must not cause](#) incidental loss of civilian life, injury to civilians, or damage to civilian objects excessive in relation to the concrete and direct military advantage anticipated.'
- <sup>8</sup> Fleck D., op. cit., pp. 231-257.
- <sup>9</sup> International law strictly [defines](#) three atrocity crimes: genocide, crimes against humanity and war crimes. Ethnic cleansing is not established as an independent crime but refers to acts that may amount to one of the three atrocity crimes, in particular crimes against humanity.
- <sup>10</sup> RtoP within the Security Council's Open Debates on the protection of civilians, Poli L., in Responsibility to Protect: from principle to practice, Hoffman J., Nollkaemper A. (Eds.), Amsterdam, 2012, pp. 71-81.
- <sup>11</sup> The Responsibility to Prevent: On the assumed legal nature of RtoP and its relationship with conflict prevention, Cuyckens H., De Man Ph., in Responsibility to Protect: from principle to practice, pp. 111-123.
- <sup>12</sup> Consensual intervention and RtoP, Lieblich E., in Responsibility to Protect: from principle to practice, pp. 139-154.
- <sup>13</sup> UNSC [Resolution](#) 1973(2011), preceded by UNSC [Resolution](#) 1970(2011).
- <sup>14</sup> [Report of the Secretary-General to the UN Security Council on the protection of civilians in armed conflict](#), S/2015/453, 18 June 2015. The report covers the period from November 2013 to May 2015.
- <sup>15</sup> On the difficulties in collecting and analysing data related to conflict violence, see [Selection bias and the statistical patterns of mortality in conflict](#), Price , M., Ball , P., [Statistical Journal of the IAOS](#), vol. 31, no. 2, pp. 263-272, 2015.
- <sup>16</sup> Recently a US airstrike on a [Doctors without Borders hospital](#) in Afghanistan killed 12 medical staff and 10 patients. The aid organisation is calling for an enquiry into the attack, under the Geneva Conventions.
- <sup>17</sup> Other regional organisations, e.g. NATO and the EU, also engage in various conflict prevention or peacebuilding operations. The mandates of these missions normally include an objective to protect the civilian population.
- <sup>18</sup> In May 2015, the top troop-contributing countries and financial contributors to UN peacekeeping adopted the [Kigali Principles](#) pledging to better equip their forces and use force where necessary to protect civilians.
- <sup>19</sup> See Responsibility to Protect and the EU, Eglite Ilze, Navigator, EPRS, published in 2011, updated on 7 May 2012.

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