

PROTECTION OF CIVILIANS

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OXFORD
UNIVERSITY PRESS

Introduction

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The protection of civilians is a highly topical issue, which has been of increasing importance in international relations discourse for some time. It is at the heart of United Nations (UN) peacekeeping deployments, including to Darfur, South Sudan, the Democratic Republic of the Congo, the Central African Republic, and Mali; it was central to the North Atlantic Treaty Organization (NATO) intervention in Libya; and it is a part of the debates on the failures of the international community in Sri Lanka and Syria. Various described as a moral responsibility, a legal obligation, a mandated peacekeeping task, and the culmination of humanitarian and development activity, it has become a high-profile concern of international organizations, governments, and civil society. Yet, the concept remains unclear and confusion persists regarding the legal framework, both of which undermine the effective protection of civilians in practice.

This volume was conceived in an effort to develop a holistic and coherent understanding of the protection of civilians. That intent is reflected in its structure and the spectrum of contributors. The first section probes deeply into the academic roots of the issue, examining it from ethical, theoretical, conceptual, and historical perspectives. The following section attempts to draw together a cohesive international legal framework, exploring the treatment of civilian protection within the bodies of international law governing the use of force (*jus ad bellum*), the conduct of hostilities (*jus in bello*), human rights, and refugees. The final section examines civilian protection practice across a number of fields including diplomacy, military, human rights, humanitarian, development, and community self-protection. Providing this multidisciplinary analysis are experts drawn from academia and practice, including ethicists, international lawyers, diplomats, UN officials, and military, humanitarian, human rights, and development professionals.

Hugo Slim, who was at the time of writing Senior Research Fellow at the University of Oxford's Institute for Ethics, Law and Armed Conflict, opens the volume with a consideration of the ethical basis for the protection of civilians. He examines the ethical background of the compassionate view of war as it is epitomized in the 'doctrine of civilians' that has emerged in modern times, and the distinction between those who fight and those who do not. He explores the two traditions of ruthless and limited war and the strong rhetorical and operational emergence of compassion and restraint in international society in modern history.

He also considers the victimhood and agency that characterizes the civilian experience of war to see how this can cause ethical and legal ambiguity that queries a simplistic notion of distinction. Dr Slim then examines why most war ideologues still opt for a more ruthless form of violence than the espoused norm, and how that poses ethical and legal problems for the wider project of restraint. Finally, he argues for continued normative and legal consolidation around the ethics of compassionate war, supporting a generous definition of 'civilian'.

Scott Sheeran, Senior Legal Adviser at the New Zealand Permanent Mission to the UN, and Catherine Kent, a human rights specialist, consider the related concepts of protection of civilians, responsibility to protect, humanitarian intervention, and responsibility while protecting, analysing their development and interactions on legal, political, and operational levels. The authors find that humanitarian intervention is now a largely abandoned idea, but one still necessary to retain in the absence of Security Council reform. They argue that the responsibility to protect has failed to lead to real change, the selectivity of its application has fuelled mistrust, and it is not capable of crystallizing into an effective obligation in light of the veto embedded in the UN Charter. Protection of civilians has, however, had some successes where the responsibility to protect has been less able. Due to the acceptance among the UN membership of the protection of civilians peacekeeping mandate, it has become the foundation stone for the use of force under the Charter, and has made the UN's intervention in conflicts more palatable. The authors argue that it represents a fundamental trend in global governance and use of force for humanitarian and human rights purposes by the UN, and a recalibration of the Security Council's powers under the Charter.

Ralph Mamiya, the head of the protection of civilians team in the UN Department of Peacekeeping Operations, outlines the historical evolution of civilian protection concepts. He considers key developmental drivers and explores the various modern conceptions of civilian protection, comparing and contrasting how it is understood and applied in humanitarian, human rights, and military contexts. Mr Mamiya contrasts the conception and practice of the protection of civilians during the inter-war period, which focused heavily on neutral and impartial action, with the concept and practice latterly developed by the Security Council, incorporating greater focus on international human rights law and the use of force. He concludes by examining the responsibility to protect and the use of protection of civilians language in the Security Council resolution authorizing the 2011 intervention in Libya.

Under the auspices of the Norwegian Defence Research Establishment (Forsvarets forskningsinstitutt (FFI)), Stian Kjeksrud, Jacob Aasland Ravndal, Andreas Øien Stensland, Cedric de Coning, and Walter Lotze compare organizational approaches to the protection of civilians. Focusing on military activities to protect civilians, the authors analyse the approaches taken by the UN, the European Union (EU), NATO, and the African Union (AU). They address the inter-related aspects of protection discourses, concepts, and operational practices. The authors find that despite the unprecedented concern with improving the physical security of civilians under threat, none of the four organizations does so

effectively. The UN knows what it takes to protect, but seldom displays the will to apply military force for this purpose. NATO is willing to use force to protect, but is less aware of how it should be done when civilians are directly targeted. The AU has the knowledge, experience, and willingness to apply force to protect, but remains highly dependent on external resources to do so consistently. And the EU has both concepts and relevant capabilities, but struggles to generate troops in time, when needed. The authors posit that understanding the limitations and comparative advantages of each organization is an important step towards more effective protection in the future.

Haidi Willmot, a UN Secretariat official, explores the impact of the protection of civilians on the evolution of the UN collective security system, framing this analysis within international relations theory. She examines changes in three key aspects of the collective security system: (a) the *mechanism* for determining aggression and deciding response measures; (b) the *determination* of threats to the peace; and (c) the *measures* used to address such threats. Ms Willmot finds that the system recognizes the legitimacy of civilians as a group to be protected irrespective of their polity, but at the same time remains committed to States as the primary security actors, and therefore seeks to execute protection within that paradigm. In doing so, the system creates two distinct but closely linked communities—a society of individuals and a society of States—both of which civilians are simultaneously members of, and that, it is argued, represents a trajectory toward a cosmopolitan idea of the ordering of global society.

Opening the section on the international legal framework, Andrew Clapham, Professor of Public International Law at the Graduate Institute of International and Development Studies, Geneva, considers the protection of civilians under international human rights law. He notes that the role of international human rights in protecting civilians is complex. Unlike international humanitarian law, international human rights law does not distinguish between civilians and others. Professor Clapham elucidates the debates regarding whether certain human rights obligations apply to a State and their troops when operating outside of their own territory. He examines whether armed non-State actors owe human rights obligations to those who find themselves under their control. He also considers the related problem of the international legal responsibility and accountability of the UN itself for human rights violations. In the wake of the UN's failure to avert the genocide and atrocities in Rwanda and Srebrenica, or address the human rights violations in Sri Lanka, Professor Clapham notes a realization that human rights warnings should not be ignored, and yet there remains apprehension about what the duties are of those who become aware of human rights atrocities. He finds that UN peacekeeping missions are obliged to observe human rights standards and to halt human rights violations whether or not the operation has a protection of civilians mandate.

Jamie Williamson, the head of the International Committee of the Red Cross (ICRC) unit for relations with militaries, security forces, and armed groups, considers the protection of civilians under international humanitarian law. Mr Williamson notes that sixty-five years after the adoption of the Fourth Geneva

Convention, the number of civilian casualties remains alarmingly high in many armed conflicts. He concludes that too often belligerents seem to act with utter disregard for the protection of civilians, with many of the most egregious attacks against civilians committed by non-State actors. His chapter considers whether that state of affairs can be apportioned to the conceptual limitations of international humanitarian law, or whether it is simply a result of the challenges posed by the complex dynamics of many contemporary armed conflicts. He argues that improving the protection of civilians through compliance with international humanitarian law requires more integrated efforts by the international community, not only in preventing harm from occurring, but also to address the root causes of today's humanitarian challenges.

Erin Mooney, an academic at York University, considers the state of the protection of civilians under international refugee law. She situates the protection of displaced persons in the broader challenge of protection of civilians, considering the place that displacement occupies in the protection agenda of the Security Council. Ms Mooney examines the protection that international law affords civilians who are at risk of, or experiencing, displacement in situations of armed conflict. In her analysis, she focuses on three elements: (a) protection against the act of forced displacement; (b) protection when displaced, both cross-border and internally; and (c) safe and sustainable solutions to displacement. Ms Mooney illustrates her legal analysis by reference to actual situations of displacement in contemporary conflicts.

Mona Khalil, a Senior Legal Officer with the Office of the Legal Counsel, provides a cross-cutting analysis of the legal aspects of the protection of civilians in UN peacekeeping operations. She examines the evolution and *raison d'être* of the protection of civilians mandate and elaborates the legal framework governing the use of force by UN peacekeepers to protect civilians from the imminent threat of physical violence. Ms Khalil finds that the legal framework for the protection of civilians mandate and the authority to use all necessary means, up to and including deadly force, is both broad and deeply founded. However, she concludes that a number of factors may have an inhibiting effect on the use of force by UN peacekeepers beyond self-defence and for the protection of civilians. These factors include: confusion regarding the meaning and scope of the legal terminology; concerns regarding the host State's consent; lack of clarity around the mission leadership's roles and responsibilities; the potential for criminal accountability and/or becoming a party to the conflict; the duality of contingent and mission command structures; and the 'basic principles' of peacekeeping. She concludes that the use of force for the protection of civilians is a right afforded to, and a duty expected from, UN peacekeepers.

Concluding the legal section, Siobhán Wills, Professor of Law at the University of Ulster, explores a specific aspect of the international legal framework, namely international responsibility and accountability for failure to protect civilians. She focuses specifically on protection obligations of UN Security Council-mandated missions. Professor Wills notes that civilian protection norms have developed in an ad hoc manner through a combination of legal and political enterprises. Consequently, although peacekeeping mandates authorize protection activities

there is little established guidance as to what a force is *expected* to do, and even less as to what it is *obliged* to do, to carry out its mandate. She argues that there are legal obligations to protect that are derived largely from international human rights law, international humanitarian law, and the International Law Commission's Draft Articles on the Responsibilities of International Organizations. These obligations are comparatively weak because they depend on a narrow intersection of developing (or debatable) law, practice, and circumstance, but nevertheless, they have important operational implications for UN missions.

Opening the discussion on politics and practice, Jean-Marie Guéhenno, President of the International Crisis Group and former Under-Secretary-General of the UN Department of Peacekeeping Operations, analyses the UN's practice on the protection of civilians, primarily in the UN peacekeeping context. He questions whether the UN has effectively used the range of tools at its disposal to protect civilians in conflict and considers the role that the UN, the international community, individual States, and civilian populations can and should play to protect civilians. Mr Guéhenno finds that both the UN's efforts to provide physical protection and to build State capacity have revealed the Organization's limitations. Noting the shallow political consensus for dealing with protection issues, he suggests that protection of civilians peacekeeping mandates may simply reflect Security Council recourse to a concept adopted from international humanitarian law, used to mask continuing political divisions. For the protection of civilians to truly serve people on the ground, and be more than a temporary response to an emergency, he argues that UN efforts need to go beyond the superficial and address the creation of a lasting protective environment, which ultimately empowers communities.

Ben Kioko, Justice of the African Court on Human and Peoples' Rights and former AU Legal Counsel, and Lydia Wambugu, an independent researcher, together consider the protection of civilians within the framework of the AU. Conflicts in Africa, and the international community's response to those conflicts, have played a large role in shaping the legal and operational framework for civilian protection activity. The AU recognizes and supports a right to intervention to stop mass violations of international humanitarian and human rights law. The authors provide an overview of the AU framework for the protection of civilians, based on an examination of relevant AU organs and actual regional responses. They also address the NATO intervention in Libya in 2011, finding that international or regional intervention for the protection of civilians would be more likely to be embraced by African States if the duties and responsibilities of intervening States were more clearly articulated. The authors conclude that the most effective measure for ensuring civilian protection on the continent would be for the AU to operationalize its unique normative framework for intervention, so that it becomes a living instrument for protecting civilians and arresting violations of international humanitarian, human rights, and refugee law.

Bruno Stagno Ugarte, Deputy Assistant Director of Human Rights Watch, former Executive Director of Security Council Report, former Foreign Minister of Costa Rica, and former Ambassador on the UN Security Council, examines Security Council diplomacy on protection. He tracks the practice of the Security

Council in addressing the protection of civilians, presenting an ‘inside story’ of protection of civilians diplomacy within the Council. Mr Stagno also considers Council interaction with other stakeholders, including host States and troop contributing countries, the UN Secretariat, and regional and sub-regional organizations. He draws conclusions about the benefits and limitations of Security Council engagement on protection issues given its composition and function as prescribed by the UN Charter as well as its working methods, highlighting the fundamental importance of political will and the role of non-permanent Security Council members.

Fiona Blyth, a member of the Permanent Mission of the United Kingdom to the UN, and Patrick Cammaert, a former UN Military Adviser and Force Commander, together consider the use of force to protect civilians in UN peacekeeping operations. The authors examine the framework under which force is authorized to protect civilians, the role that force can play in the protection of civilian populations, and the challenges facing the UN when deploying forces with protection mandates. Using examples drawn from the authors’ respective operational experiences, they argue that for force to be effectively employed, troops must be well trained and equipped, supported by adequate assets, and led by visionary and proactive commanders at all levels. To allow adequate resources to be mobilized, there must be political cohesion at the strategic level among UN Member States and within the Secretariat with a focus on effects-based force generation. The authors also consider a number of political challenges, including differing interpretations by troop contributors of protection of civilians mandates, a lack of political will to implement such mandates to their fullest extent, and the need to hold troop contributors accountable for mandate implementation. Above all, they assert that there must be a political peace process in place, without which the impact of any military operations will be transitory.

Stian Kjeksrud, a researcher at the Norwegian Defence Research Establishment (FFI) and at the time of writing resident at the University of Cape Town, uses empirical analysis to consider the utility of military force to protect civilians. He seeks to develop conclusions about the utility of the use of force, drawing on an assessment of 188 military protection operations across ten UN peacekeeping missions in Africa during the period 1999–2014. Based on analysis of data, he tests a theory regarding the effective use of force for the protection of civilians. Mr Kjeksrud concludes that the ways in which UN peacekeepers apply force to protect civilians can be improved. Not only do UN forces seldom respond to ‘force with force’, but when they do, in most cases they seem unable to effectively protect civilians. Presenting typologies of force used by protectors and perpetrators, he argues that there is substantive support for claiming that if the types of force employed by UN peacekeepers were better suited to address the types of violence exerted by the perpetrators, more civilians would be protected in the majority of cases.

Michael Keating, at the time of writing Associate Director, Research Partnerships at Chatham House, and Richard Bennett, Amnesty International’s Representative in New York, examine the contribution of human rights to protecting people in conflict. The authors consider the link between human rights and the protection of civilians and describe human rights protection practice, using examples from

Sri Lanka, Afghanistan, and South Sudan. Drawing on the three case studies, the authors conclude that UN human rights protection practice can significantly contribute to overarching civilian protection objectives before, during, and after conflicts. However, they find that despite a strong normative basis and renewed determination by the UN, serious challenges persist with regard to operationalizing human rights standards and ensuring that human rights work plays a full part in protection strategies on the ground.

Sara Pantuliano and Eva Svoboda, both from the Humanitarian Policy Group at the Overseas Development Institute (ODI), discuss the humanitarian elements of protection. The authors describe the humanitarian protection policy framework and humanitarian protection practice, noting a significant gap between the two. They argue that the lack of definitional clarity of the concept of humanitarian protection, a proliferation of protection actors, and differing mandates and objectives have all contributed to disjointed humanitarian protection activity, even as mechanisms such as the Inter-Agency Standing Committee (IASC) aim to counter this effect. Humanitarian actors recognize that an improved collective analysis of protection threats and needs is critical for protection work to influence the behaviour of armed actors and thus better protect affected communities. The authors assert that too often local actors are insufficiently incorporated into the humanitarian response, and improved collective analysis needs to reflect the role of local actors who have knowledge of and networks among communities. They conclude that, regardless of protection actors' involvement, the local population ultimately constitutes the first line of defence when people are threatened. Civilians' own activities are frequently the most important element of their survival based on an often sophisticated and intricate understanding of the threats they face.

Lise Grande, who currently serves as the Deputy Special Representative of the Secretary-General for the UN Assistance Mission in Iraq and has been a UN Development Programme (UNDP) Resident Coordinator in India and South Sudan, considers the problems and dilemmas of building national capacity to protect civilians. Although most international effort to protect civilians focuses on military intervention, humanitarian relief, or promotion of human rights, State responsibility for the security and safety of the people who live within their borders is the end-goal of the 'protection chain'. Ms Grande examines the strategies that international actors use to help build the capacity of States to protect their own people, questioning whether the approaches being used are effective and, if not, what the preferred alternatives are. She describes capacity-building practice and notes that there are two primary competing approaches: rapidly and rigorously pursuing the security and safety of civilians, or working to establish institutions of governance and justice as State-building priorities. While recognizing the risks, the author assesses that a 'security-first' approach, giving priority to building the capacity of a State to ensure the safety of its population is the most pragmatic means of achieving the end-goal of the protection chain.

Concluding the politics and practice section, Aditi Gorur, a research analyst at the Stimson Center, and Nils Carstensen, of the Local to Global Protection Initiative, consider community self-protection. Discussions on the protection of civilians

frequently focus on what the international community, governments, or armed groups do or fail to do to protect civilians. Yet often it is civilians themselves who do the most to guarantee their own safety, and the safety of their families and communities. The authors explore the importance of understanding local perspectives on protection and review current efforts to support individual self-protection and community-based protection strategies. Based on research in several major crises, they seek to demonstrate how understanding and supporting community-based protection strategies in a flexible and sensitive manner can significantly improve the impact of protection interventions by both affected communities themselves and external humanitarian, human rights, or peacekeeping protection actors.

Informed by the rich analysis provided by our contributors, we conclude this volume with a humble attempt to offer a holistic vision of the protection of civilians, in particular, to reconcile definitions, identify a cohesive legal framework, and find complementarities in protection activities. The issue is as complicated and diverse as the conflicts in which it arises. But it is imperative to clear the extraneous political machinations and institutional skirmishes, to focus cleanly and clearly on saving civilian lives. It is as difficult and as simple as that.