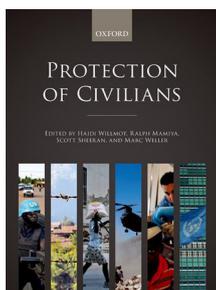
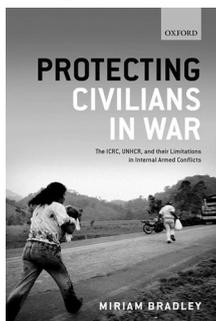


COMPARATIVE BOOK REVIEW



Protection of Civilians

Haidi Willmot, Ralph Mayima, Scott Sheeran and Marc Weller (eds)



Protecting Civilians in War: The ICRC, UNHCR, and Their Limitations in Internal Armed Conflicts

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Protection of civilians (PoC) is a theme that is high on the policy agenda of the international community. This is well illustrated by the activity of the United Nations (UN) Security Council in 2016. The Security Council held an open debate on this topic in January, was briefed on attacks on medical facilities and personnel in armed conflict as part of its PoC agenda in May, held a ministerial-level open debate on PoC in peace operations in June, and in September was briefed on measures to prevent attacks on health care in armed conflict as a follow-up from the resolution adopted after its May meeting. However, PoC is a priority issue not only for the Security Council, but also for States, international organizations, non-governmental organizations and civil society.

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The expression “protection of civilians” may appear simple and easy to understand, but in fact its meaning can differ depending on who the interlocutor is. As the editors of *Protection of Civilians* write in their introduction, the concept remains unclear and confusion persists regarding the legal framework that applies to it. This edited volume is an attempt to develop a holistic and coherent understanding of PoC.

The topic is examined from a number of different perspectives. Divided into three thematically defined parts, the book consists of nineteen chapters. In the first part, a number of authors address the conceptual and historical foundations of PoC. The second part provides an analysis of the underpinning legal framework, while the third examines civilian protection practice across a number of fields. Finally, in the conclusion the editors attempt to draw these various parts together and offer a holistic vision of PoC by reconciling definitions, identifying a cohesive legal framework and finding complementarities in protection activities.

The list of authors that contributed to the volume is multidisciplinary and impressive. It includes practitioners with extensive practical experience in dealing with PoC in conflict areas, such as Patrick Cammaert, Richard Bennett and Lise Grande; contributors with a background in policy or experience in advising States or international organizations on issues relating to the topic, notably Ralph Mayima, who leads the Protection of Civilians Team in the UN Department for Peacekeeping Operations’ Department of Field Support; and respected academic experts in a particular field of expertise relevant to PoC, such as Siobhan Wills and Cedric de Coning.

This broad range of contributors and perspectives suggests that the targeted audience is also diverse. The book will be of interest not only to academics from different fields, but also to interested practitioners including diplomats, peacekeepers, human rights workers and humanitarian professionals.

The scope of this review does not allow for a discussion of each chapter, but the editors have provided a useful brief synopsis of the chapters in the introduction to the volume. This review will therefore look at the three different parts of the book and attempt to draw out some common themes that present themselves therein.

The first part, which relates to the conceptual and historical foundations of PoC, comprises five chapters. By discussing the development of PoC and its relationship with other concepts such as the Responsibility to Protect, these chapters provide a framework for better understanding the subject matter. An important point made by several authors is that the history of PoC is tied to the development of international humanitarian law (IHL) and the latter’s concern for protecting civilians from the consequences of armed conflict. Another important point is that the concept is used in different fields of activity. Sheeran and Kent explain that PoC plays an important role in UN peacekeeping. They state that “the genesis of PoC lies in the well-documented failures of UN Peacekeeping in the 1990s and, most notably, concerning the atrocities within so-called ‘safe havens’ in the former Yugoslavia and the genocide in Rwanda”.¹ Mayima

1 Scott Sheeran and Catherine Kent, “Protection of Civilians, Responsibility to Protect, and Humanitarian Intervention: Conceptual and Normative Interactions”, in *Protection of Civilians*, p. 43.

explains that there is also a close connection between humanitarian assistance and PoC. In his view, the growth of humanitarian action in the 1990s had an important impact on concepts and practices of civilian protection. However, the main problem is the lack of precision in defining the concept of PoC. The fact that it has many fathers is a contributing factor. As Mayima writes, distinct fields of practice among humanitarians and peacekeepers led to different principles, precepts and definitions being developed. Dissatisfaction with current definitions remains, and the language of protection continues to register confusion among field practitioners. There is no single authoritative source for understanding the concept of PoC. Even within a particular field of activity there are different perspectives. As Sheeran and Kent explain (within the context of UN peacekeeping), some argue that PoC entails protection from physical harm, while others employ a rights-based approach and expand the concept to incorporate the protection and promotion of human rights, humanitarian relief and development activity. In their chapter, Kjeksrud *et al.* examine the organizational approaches to PoC of the UN, the North Atlantic Treaty Organization, the African Union and the European Union. They demonstrate how these international organizations approach PoC differently, largely as a result of their distinct institutional frameworks.

The second part of the book attempts to draw together a cohesive international legal framework by exploring the treatment of civilian protection within the *jus ad bellum*, the *jus in bello*, international human rights law (IHRL) and international refugee law (IRL). These chapters demonstrate that there are obligations in a number of different branches of international law that are directly relevant to PoC. A particularly relevant branch is IHRL, discussed in the chapter written by Clapham. Although the chapter is somewhat less clearly structured than others, it usefully points out that IHRL goes beyond commitment to physical protection and offers a reminder for governments, armed groups and individuals of existing accountability for their actions before a court of law. The latter point is arguably less true with respect to IHL, at least as far as States and non-State armed groups are concerned (in contrast to individual criminal responsibility). As Williamson explains, the lack of effective enforcement mechanisms is a weakness of that body of law. Unlike many human rights conventions, there is no provision for the creation of a strong monitoring body or complaints procedures. On the other hand, he does conclude that IHL provides a robust, wide-ranging and detailed legal framework to facilitate the protection of civilians in armed conflicts. This conclusion is based on a discussion of IHL treaties and customary international law. Interestingly, Williamson does not make reference to common Article 1 of the Geneva Conventions. It has been argued recently that this provision entails far-reaching obligations for States to ensure that other parties to an armed conflict respect their IHL obligations.² Though this concept is not

2 See, in particular, the updated Commentary on Article 1 of the first Geneva Convention. ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, Geneva, 2016, available at: ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588AFA66200C1257F7D00367DBD (all internet references were accessed in February 2017).

accepted by a number of States, it may become an important element in the legal underpinning of the PoC concept.

The nature of the obligation under common Article 1 is discussed in the chapter contributed by Wills, which focuses largely on the question of whether, under international law, the UN or its member States taking part in UN missions have a legal obligation to protect civilians. She concludes that such obligations can be derived from IHRL, IHL and the law of international responsibility. These obligations are relatively weak because they depend on a narrow intersection of developing (or debatable) law, practice and circumstance, but have important operational implications for UN missions.³ One very interesting question discussed here is whether the mandate creates obligations for a UN mission. In other words, if the mission fails to carry out its PoC task, can it be held responsible for failure to carry out the mandate? Wills states that the majority view is that mandates provide an authorization to act but do not, in themselves, create any legal obligation to do so. However, she adds, some provisions in peacekeeping mandates do imply that at least those particular paragraphs are intended to be obligatory, such as an obligation to report gross violations of human rights “immediately”.⁴ However, the correctness of this conclusion seems doubtful.⁵ Even if it is not, it is clear that there are other sources of law that impose an obligation to protect civilians. This is a point of vital importance, because it means that PoC goes beyond an authority to act. Wills also briefly discusses the question of accountability for a breach of international obligations, which is a very important issue. Similar to other chapters in this part, Mooney’s chapter on displacement and PoC under IRL underlines the fact that the lack of protection experienced by many today is not the result of a lack of norms. Rather, it is the result of a lack of implementation of those norms.

It would have been useful if the part on the legal framework contained a chapter discussing the relationship between different branches of international law, in particular IHRL and IHL. These fields are now largely discussed in isolation, which suggests that their application is the same in all situations. However, depending on the situation, norms of either one or the other may be more relevant. In particular, in a situation of armed conflict, norms of IHL as *lex specialis* may displace human rights norms.⁶

The third and final part of the book examines politics and practice with regards to civilian protection across a number of different fields, including diplomacy, the military and humanitarian fields, human rights, development, and

3 Siobhan Wills, “International Responsibility for Ensuring the Protection of Civilians”, in *Protection of Civilians*, p. 225.

4 *Ibid.*, p. 232. Wills refers in particular to UN Security Council Resolution 1996, which included a requirement for the United Nations Mission in the Republic of South Sudan of “immediately reporting gross violations of human rights to the UN Security Council”. UNSC Res. 1996, 8 July 2011, para. 3(b)(iii).

5 For more detail, see the reviewer’s contribution to a symposium on the blog *Opinio Juris* in which the chapter by Wills is discussed, available at: opiniojuris.org/2016/09/07/protection-of-civilians-symposium-some-thoughts-on-legal-obligations-for-un-peacekeeping-operations-to-protect-civilians/.

6 For a discussion of this issue, see *inter alia* Marten Zwanenburg, “The Interplay of International Humanitarian Law and International Human Rights Law in Peace Operations”, in Erika de Wet and Jann Kleffner (eds), *Convergence and Conflicts of Human Rights and International Humanitarian Law in Military Operations*, Pretoria University Law Press, Pretoria, 2014, p. 53.

community self-protection. As such, it presents less of a cohesive picture than the other two parts, though this is not to say that it is less important. One contribution that may be of particular interest to readers is the one by Guéhenno, who between 2000 and 2008 was undersecretary-general for peacekeeping operations of the UN. Unsurprisingly, he largely focuses on PoC by UN peacekeeping operations. He argues that in order to have credibility, a peacekeeping operation must have the trust of the local population. This in turn depends on the operation's ability to protect that population, which has led to the inclusion of the task of PoC in UN peacekeeping operations mandates. However, a weakness of these operations is that they often do not have the requisite capabilities to carry out that task. Additionally, another weakness is that troop-contributing States are reluctant to use force pre-emptively. Guéhenno considers that the use of force is only one element of protection, and that ultimately, outsiders to the conflict cannot protect civilians in a lasting way. If PoC is to be more than a temporary response to an emergency, it needs to address the foundations of what constitutes a protective environment – that is, the consolidation of the State.

Guéhenno's call for a broad conception of PoC that focuses on the political settlement of conflicts can be compared with the perspective put forward in the contribution by Grande, currently the deputy special representative of the UN secretary-general for Iraq. Her perspective is focused primarily on the physical protection of civilians. She argues strongly for a "security-first" approach. This implies that priority is given to building the capacity of a State to ensure the safety of its population and communities, instead of all-encompassing reforms of the State. According to Grande, the focus should be on "building the capacity and capability of selective security forces to physically protect and ensure the safety of civilians".⁷ As the chapters by Grande and Guéhenno demonstrate, there are many different, often diverging views on what PoC is and how it can be achieved.

Finally, this divergence in views is recognized in the conclusion of the book, which deplores the lack of clarity of the concept because it undermines political consensus at the strategic level and cooperation and implementation of practical activities in the field. The conclusion attempts to bring together different strands of the volume and, on this basis, to offer a holistic vision of PoC. Although the editors are to be commended for this attempt, success is ultimately only partly achieved. The definition of PoC offered by the editors does not necessarily clarify matters very much.⁸ It is long and unwieldy, and it does not succeed in clarifying

7 Lise Grande, "The Problems and Dilemmas of Helping to Build Protection Capacities", in *Protection of Civilians*, p. 405.

8 The proposed definition reads: "'Protection of civilians' is the act of protecting from violence and minimizing harm toward those not directly participating in hostilities, in conflict situations. Such acts are undertaken pursuant to the rights and responsibilities of national authorities, belligerents, and the international community, and are governed by a legal framework of positive and negative obligations based on the UN Charter, IHL, IHRL, and refugee law. In this context, the state of being protected manifests primarily as a fulfilment of the rights to life and physical integrity, whether citizen or alien. Direct protection activities are those that have a proximate casual [*sic*] connection resulting in the immediate and direct physical protection of civilians. Indirect protection activities are those that have a less proximate casual [*sic*] connection vicariously resulting in the protection of civilians."

the interrelationship of different elements. Much more useful is the list of general principles that should guide protection practice set out by the editors. This list draws on the analysis in many of the chapters of the volume. Although not everyone will agree with all these principles, they provide a useful overview of considerations that should at least be taken into account when undertaking protection activities. Perhaps the most important conclusion drawn concerns the importance of political will for protection to be successful. As the editors state, what is required above all is real political commitment underwritten by a willingness to act. With this in mind, the volume is an important contribution to the literature on PoC as it brings together many different elements of the topic, and it represents a small but vital step toward a more coherent understanding of PoC.

In her book *Protecting Civilians in War: The ICRC, UNHCHR, and their Limitations in Internal Armed Conflicts*, Miriam Bradley also focuses on PoC in armed conflict. However, her approach is very different to the one taken in *Protection of Civilians*. Bradley focuses exclusively on the humanitarian activities for PoC. More specifically, she analyzes how the International Committee of the Red Cross (ICRC) and the Office of the United Nations High Commissioner for Refugees (UNHCR) understand protection, and how they put that understanding into practice in Colombia, the Democratic Republic of the Congo (DRC) and Myanmar. This specific topic does not appear to have been addressed in the literature so far; as such, Bradley's book is a useful contribution, and the narrow focus allows her to delve deeper into the subject. The ICRC and UNHCR were chosen because they were considered the most significant humanitarian agencies in terms of scale of operations, as well as wider influence on protection actors. The three countries were selected for a number of different reasons, including the fact that the ICRC and UNHCR have sizeable operations there, that they are also of significant international policy importance, and that they conform to trends in contemporary conflicts.

Bradley recognizes that protection is a contested concept which can be interpreted narrowly or broadly. She chooses to conceptualize protection narrowly, with a focus on the physical safety and security of civilians.

The book is divided into six chapters, with an introduction and a conclusion. In the first chapter, the author examines the institutional history, structure and culture of the ICRC and UNHCR. She finds that UNHCR is more bound to States, as well as financially and politically more dependent on them than the ICRC. However, she notes that the ICRC needs to take State preferences into account when making institutional policy choices. Additionally, decision-making in the ICRC is more bottom-up, while in UNHCR it is more top-down. The author goes on to describe the ICRC as an organization that does a better job of sharing information internally, with personnel that are characterized as much more confident and more consistent in their approach than those of UNHCR. In both organizations, a combination of moral and institutional imperatives has driven mandate expansion. While the public justification for this

expansion tends to rest on the moral case for incorporating the new issue area, a more market-based logic can often also be identified.

The second chapter discusses how the humanitarian principles of humanity, impartiality, neutrality and independence are interpreted by the two organizations. It finds that interpretations vary between the two. These differences are closely linked to the institutional characteristics of each organization, manifesting themselves *inter alia* in their interpretation of neutrality. Since UNHCR sees its role primarily as supporting the State, it mainly works with States, whereas the ICRC also works with non-State armed groups. Another interesting example is with regards to the organizations' independence; as UNHCR is part of the UN system, there are more constraints on its independence. The ICRC is not a member of any organization that can formally influence it, though this does not mean that there are no pressures on it. Notably, both the ICRC and UNHCR rely heavily on voluntary contributions from a small number of governments, which as a result have certain leverage over them. Bradley also notes that the ICRC has not always acted independently of influence from Switzerland. The overarching conclusion of this chapter is that the institutional culture of an organization mediates its role in balancing principles with pragmatism.

The legal frameworks for protection are the subject of the third chapter. It finds that IHL is the principal relevant legal framework for the ICRC, while the law relating to refugees and internally displaced persons (IDPs) is central to the work of UNCHR. This legal framework is important as it determines on which issues and in which manner the organizations work, although both occasionally do work outside their legal mandate. The author concludes that both organizations have a preference for legalistic approaches to protection. The ICRC's approach is underpinned by the assumption that an approved legal framework will make protection wider-reaching and more systematic. This may be supplemented or substituted on a case-by-case basis with non-legal argumentation if that is expected to generate better results. Guiding principles and domestic legal instruments of the State in which it operates are the favoured protection tools of UNHCR.

The fourth chapter focuses on objectives and strategies of protection. It analyzes what the ICRC and UNHCR have set out to achieve in their protection work and how they aim to achieve it. Four types of objectives have been identified: reducing the overall level of violence, reducing the threat such violence poses to civilians, reducing the vulnerability of civilians, and reducing or mitigating the consequences of violence. Bradley finds that the ICRC emphasizes threat reduction through strategies that are mainly actor-centred and direct, while UNHCR is much more focused on structural change in the form of developing public policy with the aim of reducing vulnerability. The author is very critical of UNHCR, stating that the organization has come to see legal protection and public policy changes as ends in and of themselves, rather than as means to ensure the physical safety and security of civilians.

The fifth chapter discusses the protection roles and responsibilities of other actors. These other actors include the States in which the organizations do their

work, non-State armed parties to conflict, international peace operations and affected communities. The chapter finds that whereas the ICRC emphasizes the role of armed parties, UNHCR focuses on that of the State. This difference in emphasis, the chapter argues, can largely be explained by institutional factors such as the fact that the UNHCR terms of engagement in a country are set by the government and the fact that the mandate of the ICRC leads it to engage with all parties to armed conflicts. However, from the case studies it also becomes clear that the local situation plays an important role. The ICRC worked more closely with government forces than with armed groups in Colombia and the DRC, but not in Myanmar; this was due, at least in part, to the fact that the organization was relatively new there.

The sixth chapter looks at protection activities by the ICRC and UNHCR. It distinguishes a wide range of different activities undertaken by the two organizations in the context of their protection mandate and discusses the organizations' approach to them. It concludes that in many ways the activities emphasized by the ICRC and UNHCR in their efforts to protect IDPs and other civilians replicate the activities that each organization undertakes to address prior issue areas within its mandate. The ICRC generally has a much more clearly conceptualized rationale linking its activities to particular protection objectives than UNHCR does.

The conclusion of the book starts from the fact that the two organizations have expanded the issues they deal with: the ICRC's mandate has come to include non-international armed conflicts in addition to international ones, while UNHCR is now concerned with IDPs in addition to refugees. The approach adopted to the pre-existing issue areas, together with the logic used to justify their expansion, has shaped the approaches towards new issue areas. This can be seen in the legal framework employed, the objectives pursued and the actors engaged with by the two organizations. The author refers to this as "old approaches for new problems", a description which makes clear that she is quite critical of this approach. She considers that old solutions are likely to be of limited effectiveness in addressing new problems for several reasons. First, the lack of a clear mandate for new activities leads to the two organizations being less confident when dealing with them and to old issues being prioritized. Second, both organizations operate in a legalistic way and take a State-centric approach. Such an approach is not necessarily the most effective one when dealing with in-country protection of IDPs, for example, which requires greater attention to non-State actors. Third, UNHCR often works at least one step away from conflict and violence, and does not always seem to analyze how its activities might indirectly impact the levels of violence and threats.

Bradley's book will be of particular interest to those developing protection policies for humanitarian organizations, either at headquarters or in countries where those organizations are active. It is difficult to assess whether her conclusions are validated by the practice of humanitarian organizations more broadly. They are, however, clearly argued and supported by the facts taken from the work of the ICRC and UNHCR in Colombia, the DRC and Myanmar, as discussed in the

book. Minor notes of criticism concern the book's readability and its reference to theoretical frameworks. The style in which it is written does not make it an easy read; the writing is dense and not always easy to follow. This may be a result of the fact that the book is based on doctoral research. The same can be said for the sections in which the author refers to theoretical models, for example where she refers to the work of Michael Barnett and Martha Finnemore. These references to theoretical work give the impression of being somewhat extraneous to the substantive analysis, rather than being an integral part of it. This does not detract from the fact that the book achieves its aim – that is, to explain how the ICRC and UNHCR understand protection and how they put that understanding into practice in a number of selected States.

Overall, these two books paint a mixed picture of the state of the “protection of civilians project”. There is increasing political attention towards PoC, and as the editors of *Protection of Civilians* write, a growing acceptance that the international community has an interest in, and responsibility for, the safety of civilians in conflict situations. There has been significant progress in implementation of PoC, but at the same time the action often falls well short of the rhetoric. The PoC doctrine is applied selectively, and the political will to implement it is often lacking. At a more fundamental level, there is much confusion concerning what PoC means, making it clear that further reflection is needed. These books, particularly *Protection of Civilians*, provide an important input for that reflection.

