PRIO

What's in It for Them?

Why the Veto Powers All Support Protection of Civilians (And Why They Often Fail to Agree on It)

The Protection of Civilians (PoC) expands the responsibility of the UN Security Council (UNSC) for international peace and security to the internal affairs of conflict-ridden countries. As such, it bolsters the authority of the five permanent members (the P5) in world politics and presents them with a flexible tool for exercising this authority. In addition to shaping their responses to situations like Syria and Libya, the principle of PoC shapes the very dynamics of the Council itself, and ultimately the decisions of conflict actors anticipating international responses.

Brief Points

- The Protection of Civilians in Armed Conflict (PoC) was adopted at the agenda of the UN Security Council in February 1999, expanding the attention of the Council from the security of states to the security of individuals.

- The principle has been integrated into most Security Council resolutions regarding war-torn countries and peace operations since the early 2000s.

- The ability of the Security Council to pass a resolution authorising the use of military force for the protection of civilians in Libya, a decision in which Russia and China abstained instead of vetoing, was seen as a major breakthrough for the PoC agenda.

- The eventual failure of the Council to protect civilians in Syria since 2011 indicates that the resolution on Libya did not represent an absolute commitment of the P5 to the principle.

Kristoffer Lidén   *Peace Research Institute Oslo (PRIO)*

Simon Reid-Henry   *Peace Research Institute Oslo (PRIO)*

From Libya to Syria – the Rise and Fall of PoC?

The difference in the international response to the twin crises that erupted in Libya in 2011 (to which the UNSC responded with a firm resolution) and Syria in 2012 (where a state of civil war continues in the absence of any Security Council protection resolution) offers a useful entry point to the question of 'protection' as it is understood and acted upon in the UNSC. Protests in both countries flared up within the wider context of the Arab Spring upheavals across the Middle East/North Africa region from late 2010. In both cases the Libyan and Syrian authorities responded with force, leading to a sharp escalation of the violence. The subsequent responses of the international community, however, could scarcely have been more different.

In the case of Libya, the international community responded with condemnation and, between February and March 2011, with two clear Security Council Resolutions (SCRs). The first (SCR-1970) condemned the violence and called on the 'government of Libya to meet its responsibility to protect its population'.[1] That was followed in March by SCR-1973, which explicitly forbade foreign forces on Libyan soil, but also affirmed the international community's right to use 'all necessary means' in its 'determination to ensure the protection of civilians'. The Council was responding to reports that around 1000 civilians had been killed in the fighting at that point. While affirming Libya's ostensible sovereignty, it also authorised military support by NATO for a 'humanitarian' intervention, short of occupation or regime change.[2] That mission – Operation Protector – assisted the protestors-turned-opposition forces, culminating in the NATO airstrike that unseated Gaddafi's convoy on October 20, 2011.

In Syria the following year, protestors were far more reluctant to take up arms than they were in Libya, and yet international offers of protection were less forthcoming. According to one source, 'the local coordinating committees and other opposition elements maintained a strong commitment to non-violence for months, despite brutal regime violence'.[3] Yet whereas in the case of Libya the Security Council passed its resolutions authorising military support with the abstention of Russia and China (which was taken at the time as a step forward for the protection agenda), it was only a relatively short-lived advance. With what they eventually saw as a failure by NATO to comply with the limits to the mandate, Russia and China subsequently opposed any similar interventionist response to the crisis in Syria.

Turning Away from PoC?

This development – resolute action in Libya but gridlock over Syria – has been interpreted by some as the maturation and sudden death of PoC in the Security Council. Certainly some suggest that the PoC agenda is suffering from a 'Libya trauma' as a result of the 'mission creep' in Libya and the impact this had upon China and Russia's future approach to the Security Council. Yet, it is not evident that this blow to the political momentum of PoC has been fatal. This would presuppose that the difference in mandates over Libya and Syria reflects a fundamentally changed stance on the principle of PoC as such.

A focus on the political contexts of the resolutions renders a different impression. Firstly, the conflict of interest among the P5 was much greater in Syria than Libya. Secondly, the feasibility of protecting civilians in Syria through military intervention was seriously questioned. Thirdly, Russia and China had a strategic interest in heeding the principle of non-interference in response to the NATO operation in Libya.

The Bashir regime of Syria was a longstanding ally of Russia in particular, whose overthrow and replacement by a more Western-friendly government would be a cost to Russia both geo-strategically and economically (since it enables Russia to project itself into the Mediterranean and Middle-Eastern theatre). However, while Russia used the norm of protection to dress this geopolitical stance of non-intervention in the virtues of a normative and ostensibly humanitarian agenda in Syria (in 2011), it also made reference to PoC to justify its own actual intervention in the Ukraine, with the annexation of Crimea (in 2014). It made similar arguments in the course of its intervention in Georgia (in 2008): this time for the ostensible protection of 'Russian' citizens. In both of these cases, the P3 objected strongly with reference to the principle of non-intervention.

Furthermore, the costs to NATO of a successful military operation in Syria – with or without a mandate from the Security Council – were deemed much higher than in Libya. The Syrian military was stronger and better organised, and exercised more control over the territory than was the case in Libya. It was assumed that ground forces would be needed in order to topple the government, putting NATO forces at a higher risk. Instead, the US, UK and France have supported parts of the opposition forces, possibly exacerbating the fighting at the expense of civilians. On the other hand, one might argue that the tolls for civilians of an outright military intervention could be equally high, or higher, especially if operations dragged on. Furthermore, the opposition was less united in Syria than it at least seemed in Libya, with several factions fighting for the role as the legitimate opposition, including radical Islamist groups. In general, there was a higher risk of destabilising the region through a foreign intervention, especially against the backdrop of the intervention in Iraq. These concerns with the economic, political and human costs of intervention are just the sort of 'realpolitik' that the PoC agenda was intended to override. But they are also part of the reason why the P3 have not pushed harder for PoC in the Syrian context.

Playing with the Rules

It appears that an unqualified commitment by any of the major powers to a universal agenda like Protection of Civilians is an unlikely prospect.[4] Instead, it seems that both the norms of protection and non-intervention have largely been *incorporated* by the P5 into their own geopolitical calculations.[5] In a situation where certain states stand to gain from military action at the expense of any of the veto powers, the principle of non-intervention is essential for justifying vetoes against such action (as well as for mandating international reactions like the response to the Iraqi occupation of Kuwait). After the Cold War, Russia and China in particular have pursued this approach, primarily as a limitation on Western-led interventions.

Yet, in most situations of civil war, the P5 share an interest in an effective international response: to contain the problem and to promote a more governable and profitable international order. Civil wars tend to destabilise entire regions, undermining international trade and investment, generating international military threats, and demanding costly humanitarian responses (including refugee management) and post-conflict reconstruction efforts. In Africa,

Photo: Albert Gonzalez Farran, UNAMID

for instance, where many of the most severe civil wars take place, China has considerable investments to protect, alongside the US, UK and France – while the latter also are concerned with the establishment of Islamist 'terrorist havens' in war-torn countries – a concern they share with Russia. In general, the veto powers are united by an interest in preserving the international political and economic order that their privileged positions rely on. The notion of protection lends itself to such system maintenance, *justifying* preventive efforts to avoid political disorder as well as concerted *reactions* when prevention fails.

All of the P5 can thus say that they are committed to PoC: but primarily as a flexible and qualified principle of state governance, peacekeeping, humanitarian assistance, refugee management, conflict prevention and resolution, and for the purposes of extending international humanitarian and human rights law.[6] These spheres of protection (associated with Pillars I and II of RtoP) leave extensive room for political interpretation, however – something which to date has been insufficiently addressed. Having the power to define the meaning and implications of PoC is a useful way for the veto powers to justify previously controversial forms of foreign policy, like the imposition of economic and political institutions (in the name of prevention) or military collaboration with undemocratic regimes

(as sources of security) – while opening up new approaches to older forms of intervention, like the 'sharpening' of peacekeeping operations (i.e. in Mali and the DR Congo). As Richard Gowan suggests in an interview with the authors, commenting on the sudden commitment of Saudi Arabia to PoC: '*If you wanna play in the existing world order, you have to play by the institutions and norms that are there*'.

How the Game Is Played

As with the difference between Security Council resolutions over Libya and Syria, the divergence between general resolutions advancing PoC in the Council and the resolutions in response to particular situations like Syria could also be taken as an indication of hypocrisy. This divergence is nonetheless rather symptomatic of the difference between the more practical *country resolutions* and the more general *thematic resolutions* of the Security Council, the former being subject to a combination of political interpretation and *consequentialist* reasoning, in opposition to the apolitical and *principled* (deontological) language of the thematic resolutions.

The details of policy formation matter here. In each case, the personnel and institutions involved in forming these resolutions are different. The *thematic* resolutions are generally

formulated by the assigned experts on PoC in the delegations of the veto powers (and the p3 in particular), as backed by OCHA, and partly by DPKO and interest groups working specifically on PoC, like the Swiss-led 'Group of Friends on PoC in Armed Conflict'.

The *country* resolutions, on the other hand, are negotiated by the country experts, the 'heavyweights' of the delegations, as informed by their embassies and their ministries 'at home'. These people and institutions may not be very familiar, or preoccupied, with PoC as a principle of foreign affairs of relevance to the country resolutions in the Council. It is the role of the PoC experts to influence them and make sure that the PoC principle is maintained in their resolutions. Currently, the informal procedure tends to be that the P3 agree on a draft resolution, take it to Russia and China for negotiation, strike a deal, and then present it to the elected ten SC members. This makes it possible for the P5 to strike strategic deals across resolutions without subjecting the resolutions to too much open debate on underlying principles.

But, as we set out at the beginning, those institutions and norms should not themselves be taken as fixed and immutable. Rather, when the UNSC is debating protection in these ways, it is also always simultaneously reaching for new ways to *determine* international authority, and developing a new vocabulary on which to base its own legitimacy as a core component of the international system. Two examples illustrate this. First, via the discourse of protection, the UNSC accrues to itself a greater capacity to present itself as the 'right authority' to authorize military force. This was highlighted in the ICISS report as a specific requirement of enacting the RtoP. And it was taken up in Resolution 1973.

This same trend is no less apparent, second, in the 'Responsibility while Protecting' discourse most directly sponsored by Brazil. The intention here is to demand greater clarity over how force is enacted (for which the ICISS report in fact leaves considerable scope) and it lays greater emphasis on prevention over intervention. But it also, as Benedetta Berti points out, not only 'revives but [also] restricts the 'just authority' criterion by closing all loopholes and asserting that explicit UNSC authorization under Chapter VII is the only acceptable legal basis for the use of force'.[7] The effect, of course, is to further lock international authority into the Security Council

and to enhance the constitutive power of the veto.

The Power of the Veto

It is here that we argue for the importance of taking the veto power seriously as a form of constitutive power on the international scene, rather than as simply the negative 'block' it is usually interpreted as being in media representations of the operation of the Security Council. The basic functions and powers of the UNSC are posited by Articles 24–26 of the UN Charter. However, as Dag Hammarskjold himself observed in a lecture to mark the opening of the Chicago University Law School in 1960, the UN system is an ongoing 'experiment': an act of international constitutionalism in the making.[8] When one examines histories of the veto power in other contexts (as with the history of the US presidential veto, for example) it becomes clear that what begins as a power of rejection can soon become a constitutive power, as its threat shapes the way that actors frame and present policies for consideration.

This captures something of how the Security Council veto has developed as well. It began very much in the 'negative' mould: it being a necessary bribe to the major powers at the end of the Second World War to convince them to take their place in the UN system alongside the rest of the world's nations. But it has, as Hammarskjold himself was alluding to already in the 1960s, become an increasingly constitutive form of power. The veto moves, in the words of McCarty, from an instrument of 'quality control' to one of 'issue definition'.[9] When it comes to the question of protection and intervention, the veto power, through the intense offstage bargaining and negotiation its threat gives rise to, has a very strong influence as to not only whether interventions take place or not, but how actors on the ground operate (in light of their expectations of what the

Security Council may do). This impact may be likened to how a trump alters the dynamics of a card game.

This is a matter of some considerable importance to debates over the operation and legitimacy of the Security Council and to proposals for its reform more generally. The Security Council has been both more and *less* central to the UN during its 70-year history, and international norms, like 'protection' or 'security', play a role in its ability to present itself as relevant and legitimate both to the UN and the wider international community of (other) nations. PoC and RtoP have been important to it because they have *enhanced* the power of the SC, collectively, and the P5 severally. This means that for all that the issue of protection of civilians appears to have *divided* the Security Council, we see that on a more fundamental level protection in fact *unites* the P5 in their role as hegemonic actors. The dual history of events in Libya and Syria continues to unfold, but it is already certain that it will come to be a defining point in the future of the Security Council itself as a political institution. ◼

Notes

1. UNSC Resolution 1970 (2011), February 26, 2011 S/RES/1970.

2. UNSC Resolution 1973 (2011), March 17, 2011 S/RES/1973.

3. Gazzini, C. (2011) 'Was the Libya Intervention Necessary?', *Middle East Report*, No 261, Illicit Crossings, (Winter 2011): 2-9, p. 6.

4. Stuenkel, O. (2014), 'The BRICS and the Future of R2P: Was Syria or Libya the Exception?', *Global Responsibility to Protect* 6 (1): 3-28; Thakur, R. (2013), 'R2P Libya and Syria: Engaging Emerging Powers', *The Washington Quarterly* 36 (2): 61-76; Welsh, J. (2013), 'Norm Contestation and the Responsibility to Protect', *Global Responsibility to Protect* 5: 365–396; Brockmeier, S. et al. (2016). 'The Impact of the Libya Intervention Debates on Norms of Protection', *Global Society*, 30(1): 113-133.

5. See e.g. Steele, B and E. Heinze (2014), 'Norms of Intervention, R2P and Libya: Suggestions from Generational Analysis', *Global Responsibility to Protect* 6: 88-112; Moses, J. (2013), 'Sovereignty as Irresponsibility? A Realist Critique of the Responsibility to Protect', *Review of International Studies* 39 (1): 113-135.

6. Breakey, H. (2012), 'The Protection of Civilians in Armed Conflict: Four Concepts', in A. Francis et al. *Norms of Protection: Responsibility to Protect, Protection of Civilians and their Interaction* (New York: UN University Press).

7. Berti, B. (2014) 'Forcible Intervention in Libya: revamping the 'politics of human protection'?', Global Change, *Peace & Security* 26 (1): 21-39.

8. Hammarskjold, D. (1960) 'The Development of a Constitutional Framework for International Cooperation', Address at the University of Chicago, Illinois, May, 1960, UN Press Release SG/910, April 29, 1960. www.un.org/depts/dhl/dag/docs/chicagospeech.pdf, p.587.

9. McCarty, N. (2009) 'Presidential Vetoes in the Early Republic: Changing Constitutional Norms or Electoral Reform?', *The Journal of Politics* 71(2), 369-384.

THE AUTHORS

Kristoffer Lidén is Senior Researcher at the Peace Research Institute Oslo (PRIO). Email: Kristoffer@prio.org

Simon Reid-Henry is Senior Researcher at the Peace Research Institute Oslo (PRIO). Email: simrei@prio.org

THE PROJECT

Protection of Civilians: From Principle to Practice aims to ascertain the role and impact of contemporary policies and practices of PoC. The project is organized under the auspices of PRIO and the Norwegian Centre for Humanitarian Studies.

PRIO

The Peace Research Institute Oslo (PRIO) is a non-profit peace research institute (established in 1959) whose overarching purpose is to conduct research on the conditions for peaceful relations between states, groups and people. The institute is independent, international and interdisciplinary, and explores issues related to all facets of peace and conflict.