Points of Convergence and Divergence: Normative, Institutional and Operational Relationships between R2P and PoC

Hugh Breakey and Angus Francis

As an international norm, the Responsibility to Protect (R2P) has gained substantial influence and institutional presence—and created no small controversy—in the ten years since its first conceptualisation. Conversely, the Protection of Civilians in Armed Conflict (PoC) has a longer pedigree and enjoys a less contested reputation. Yet UN Security Council action in Libya in 2011 has thrown into sharp relief the relationship between the two. UN Security Council Resolutions 1970 and 1973 follow exactly the process envisaged by R2P in response to imminent atrocity crimes, yet the operative paragraphs of the resolutions themselves invoke only PoC. This article argues that, while the agendas of PoC and R2P converge with respect to Security Council action in cases like Libya, outside this narrow context it is important to keep the two norms distinct. Peacekeepers, humanitarian actors, international lawyers, individual states and regional organisations are required to act differently with respect to the separate agendas and contexts covered by R2P and PoC. While overlap between the two does occur in highly visible cases like Libya, neither R2P nor PoC collapses normatively, institutionally or operationally into the other.

In 2005, the international community took a bold step forward when it accepted a shared responsibility to use peaceful means to prevent genocide, war crimes, ethnic cleansing and crimes against humanity, and in the event peaceful means proved inadequate, to take collective action through the United Nations (UN) Security Council in accordance with the UN Charter.[1] Yet while the Responsibility to Protect (R2P) doctrine, as it is known, gradually grew in significance within the UN, including the Secretary-General's appointment of a Special Adviser on R2P in 2007,[2] it was of limited operational relevance outside New York. The Security Council, in particular, despite affirming R2P in 2006[3] and evoking it in the context of the

[1] 2005 World Summit Outcome, GA Res. 60/1, paras. 138-9 (24 October 2005) [hereafter Outcome Document].
[2] Secretary-General Appoints Edward C. Luck of United States Special Adviser, Secretary-General, (SG/A/1120, BIO/3963), 21 February 2008.
[3] United Nations Security Council, *Resolution 1674 (2006)*, 28 April 2006.

conflict in Darfur, appeared to be holding off on applying the norm in a more robust and consistent fashion.[4]

UN Security Council Resolutions 1970 and 1973 on Libya marked a turning point.[5] Their language, context, purpose and effect demonstrated the Security Council's willingness to operationalise the R2P norm—and robustly. Resolution 1970, which was adopted unanimously, determined that the attacks on the civilian population in Libya may amount to crimes against humanity and sought international accountability for those acts by referring the situation to the International Criminal Court. When sanctions failed to halt the violence, the Security Council passed Resolution 1973, which reiterated "the responsibility of the Libyan authorities to protect the Libyan population" and authorised Member States "to take all necessary measures … to protect civilians and civilian populated areas under threat of attack" in Libya. Thus, each of the key elements of R2P was met. R2P's 'First Pillar' invokes the responsibilities of states to protect their own populations, its 'Second Pillar' describes the responsibilities of the international community to work with willing states to develop their capacities to protect their populations, and its 'Third Pillar' provides for Security Council-authorised sanction and military response to states manifestly violating their First Pillar responsibilities.[6] In the context of Libya in 2011, there was clear evidence of a state engaged in mass atrocities against its population (failure of its Pillar One obligations); the failure of pacific measures to prevent further bloodshed (failure of R2P Pillar Two measures and the pacific sanctions of Pillar Three); and an international community prepared to take more robust action through the Security Council and Chapter VII of the UN Charter (R2P Pillar Three). With Resolution 1973 the Security Council did what it had never done before: it authorised a military intervention for humanitarian purposes against the express will of a functioning government.[7]

The fact that R2P has evolved from concept to concrete action has thrown up new challenges of definition and implementation. Not least of which is its relationship to a parallel doctrine that has developed in international humanitarian law and in the operational context of UN peacekeeping operations: the *Protection of Civilians* (PoC). Resolutions 1970 and 1973, as well as the statements of members of the Security Council at the time,[8] are ripe with the language of PoC. The common objective of the resolutions, despite the usual blogs that it is "*all about the oil*', is clearly the end of

[4] Alex J. Bellamy, 'The Responsibility to Protect—Five Years On', *Ethics & International Affairs*, vol. 24, no. 2 (Summer 2010), p. 144.
[5] United Nations Security Council, *Resolution 1973 (2011)*, 17 March 2011.
[6] UN Secretary-General, Implementing the Responsibility to Protect: Report of the Secretary-General, UN Doc A/63/677 (12 January 2009);
[7] Paul Williams, 'Briefing: The Road to Humanitarian War in Libya', *Global Responsibility to Protect*, vol. 3, no. 2 (2011), p. 249.
[8] United Nations Security Council 6498th meeting, 17 March 2011, S/PV.6498, p. 8 (Mr Cabral, Portugal); p. 9 (Mrs Ogwu, Nigeria); p. 10 (Mr Sangqu, South Africa).

violence and the protection of civilians. In this regard, the resolutions build on the work on PoC in the Security Council and General Assembly over the last decade that has witnessed PoC become entrenched in the mandates of numerous UN peacekeeping operations.

This reading of Resolutions 1970 and 1973 raises a fundamental question: If the resolutions can be seen as implementing both R2P *and* PoC, do they represent a merger of what have been regarded by most as distinct, though related, doctrines? The question has two significant implications. First, the hard-won international consensus on R2P was achieved largely because of the *exclusive* focus on mass atrocities. PoC is altogether much broader. Associating the grounds for international intervention with PoC (as opposed to how protection is to be carried out once UN peacekeepers are on the ground), may undermine this consensus.

Second, R2P is more controversial than PoC principally because of the robust military intervention entertained by R2P discourse (and actioned in Libya). Proponents of PoC in UN peacekeeping operations, such as the UN Department of Peacekeeping Operations, may have concerns that a convergence of R2P and PoC will make it less likely for agreement to be reached on the inclusion of PoC mandates in UN peacekeeping operations. This could lead to the highly unsatisfactory state of affairs whereby high profile cases like Libya attract international commitment and action, while the more day-to-day grind of engaging PoC across an array of peacekeeping opportunities falls by the wayside.

This article argues that both these negative implications can be avoided by a rigorous interpretation of Resolutions 1970 and 1973 against the background of the normative, institutional and operational characteristics of R2P and PoC. A precise interpretation of the UN Security Council's resolutions on Libya—and one promoted in this article—is that the resolutions represent a convergence of the twin protection norms of R2P and PoC in the context of directly preventing and responding to *imminent mass atrocities*. However in many other respects the two doctrines should not be conflated, as they each retain distinct characteristics that must be preserved.

This article moves through the normative, institutional and operational dimensions of R2P and PoC, noting areas where it is vital the two norms remain distinct, while explaining how—in the specific context of Security Council reaction to imminent atrocities—the two norms will coalesce.

Normative Level

THE NORMATIVE CORE OF R2P AND POC

To what extent do R2P and PoC share a normative core? At the most fundamental level, both are rooted in notions of empathy and humanity. They also reflect long-standing attempts to ensure states protect those

falling within their jurisdiction—and that the international community takes steps to enforce this obligation. But R2P has a narrower agenda—dealing exclusively with mass atrocities.[9] While the institutional and operational engagement demanded by R2P is broad, the normative focus is narrow.

However, this does not necessarily restrict R2P's influence on PoC. At a recent workshop on R2P and PoC in Jakarta, Dr Mangadar Situmorang from the Universitas Katolik Parahyangan astutely highlighted the added political and organisational influence/power/weight that R2P has generated for the "whole concern and interest in protecting civilians". The fact that R2P was formulated and proposed by internationally prominent former politicians (and sponsored by the Canadian Government)—and then supported and adopted by the UN General Assembly and the Security Council—boosted the significance of PoC in the UN, thereby contributing to the emergence of the "civilian protection principle" and the "civilian protection network" (the latter constituted by a transnational community of citizens, journalists, protection organisations and statespersons).

R2P also can be seen paving the way for the application of PoC in Libya. The reference to "crimes against humanity" in Resolutions 1970 and 1973 framed the international response to the atrocities being committed in Libya in the unmistakable language of R2P.[10] So too, R2P's core idea of "sovereignty as responsibility"—that sovereignty over a state is not absolute, but is contingent on fulfilling some basic responsibilities regarding the security of the civilian population—suffused the statements of Security Council member states voting in favour of Resolution 1973.[11] But the language used in the resolutions to define the scope of protection is unmistakably PoC.[12]

Normative Divergence Between R2P and PoC in Non-Reaction and Non-Atrocity Cases

Historically, the core normative framework of PoC is *International Humanitarian Law* (IHL)—especially the Geneva Conventions of 1949 and the Additional Protocols of 1977. These instruments—and their moral antecedents throughout the centuries and across myriad cultures[13]—spell out the laws of armed conflict. States engaging in war, and the combatants thereof, must obey the three norms of proportionality, distinction and

[9] Outcome Document, para. 138.

[10] United Nations Security Council, *Resolution 1970 (2011)*, 26 February 2011, Preamble; *Resolution 1973 (2011)*, 17 March 2011, Preamble.

[11] UNSC 6498th meeting, 17 March 2011, S/PV.6498. Note especially the statements of Libya's sovereignty by Bosnia/Herzegovina (p. 7) and of South Africa (p. 10).

[12] United Nations Security Council, *Resolution 1973 (2011)*, 17 March 2011, paras 4-5.

[13] See, e.g. Helen Durham, 'The Laws of War and Traditional Cultures: A Case Study of the Pacific Region', *Commonwealth Law Bulletin*, vol. 34, no. 4 (2008), pp. 833-41; James Turner Johnson, 'Maintaining the Protection of Non-Combatants', *Journal of Peace Research*, vol. 37 (2000), pp. 421-48.

limitation. For their part, peacekeeping and humanitarian operations, within their means and scope of authority, aim to protect civilians within their zone of operations from the crimes outlawed by IHL.

R2P, as noted above, centres not on war, but on atrocity. The legal instruments which most directly shape R2P are those defining international atrocity crimes, including the Genocide Convention, the Rome Statute, and the statutes of the ICTR and ICTY. All these instruments are explicit that atrocity crimes are not limited to armed conflict narrowly construed: genocide and crimes against humanity (including ethnic cleansing through the crimes of deportation or persecution) may occur in times of war *or peace*.[14]

In application, the legal core of PoC (IHL) is far wider than the scope of R2P, as it applies to isolated actions of individual combatants, and prohibits not only assaults on people's person, but upon, for instance, their private and cultural property.[15] In practice, advocacy for and state-implementation of the norms of PoC revolves around ensuring that troops and their commanders are familiar with, trained in and regulated by IHL. Advocacy for and state-implementation of R2P, however, takes a very different form—focusing instead on civil society, security sector reform and implementation of human rights commitments. In these ways the two norms are distinct in application, and their implementation by reformers should be approached differently.

NORMATIVE CONVERGENCE BETWEEN R2P AND POC IN SECURITY COUNCIL REACTION-TO-ATROCITY CASES

With atrocity crimes however, the founding norms of PoC and R2P begin to coalesce. Morally, the normative logic overlaps. If State B, in prosecuting war against State A, is understood to be bound by *jus cogens* limitations on what they may do to the enemy population of A, then it is ethically inconceivable that the government of State A itself would not be bound by similar restraints, vis-à-vis its own population (whether in peace or war). It would defy any imaginable moral logic to hold that an enemy fighting an existential threat in a state of war owes *more* moral consideration to the enemy population than that which is owed to that population by their own government. If even the horror of war admits of certain minimal levels of respect for humanity, then those levels cannot be lower than that expected of a government with respect to its own population.

Legally, too, overlap occurs. The legal threshold for a determination of "armed conflict" in IHL is not demanding, requiring only the presence of armed resistance with a military structure or of UN troops being involved in

[14] E.g. Genocide Convention, Art. 1; similarly the Rome Statute of the International Criminal Court (ICC), Art. 6 and Art. 7 contain no limitations regarding armed conflict.

[15] See, e.g. Rules 38-41 and 49-52 in: Jean-Marie Henckaerts, 'Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict', *International Review of the Red Cross*, vol. 87, no. 857 (2005), pp. 175-212.

fighting.[16] These conditions would have been fulfilled in most recent atrocity cases, including Rwanda, Srebrenica, Kosovo, Darfur, the Democratic Republic of the Congo, Côte d'Ivoire and (importantly for our purposes) Libya.

Libya represents the coming together of R2P and PoC to prevent mass atrocities. The Security Council Resolutions are accompanied by repeated reference to the mass violence and attacks on the civilian population by Libyan authorities. There are none of the usual caveats in PoC mandates that might limit the scope of protection. Of course, there is the explicit rejection of ground troops, but this goes to the *means of* protection as opposed to *who is* being protected and *against what*.

The prevention of crimes against humanity in Libya is only one context in which the R2P and PoC norms might converge. They could also converge to prevent or respond to war crimes, genocide and ethnic cleansing. In the future another Rwanda might be prevented if we had an effective R2P principle to generate political action and hold states to their obligations under the Genocide Convention, together with a UN and regional peacekeeping force mandated and appropriately resourced to protect civilians.

In all, while the distinct status and scope in law of PoC and R2P duties must be recognised, and will be important in various applications, once atrocity crimes begin in earnest in cases like Libya, the two normative regimes will converge.

Institutional Level

INSTITUTIONAL DIVERGENCE BETWEEN R2P AND POC IN NON-REACTION AND NON-ATROCITY CASES

There are several institutional contexts where R2P and PoC must be distinguished.

First, R2P's preventive agenda is quite different to PoC's. Several sorts of institutions are employed by R2P in pursuit of the prevention of atrocity crimes. The Office of the Secretary General (including the Joint Office of the Special Advisors), the General Assembly and Regional Organisations are all called upon by R2P to engage in preventive actions with the mutual consent of all involved. Such actions may include preventive deployments, capacity building, training peacekeepers, dispute resolution and more.[17] R2P, rather than PoC, is better able to promote this deep preventive agenda because the threat of atrocity crimes is morally graver, and has larger consequences

[16] Robert Kolb and Richard Hyde, *An Introduction to the International Law of Armed Conflicts* (Oxford: Hart Publishing, 2008), pp. 78-81.
[17] UN Secretary-General, *Implementing the Responsibility to Protect*, A/63/677, 12 January 2009; UN Secretary-General, *The Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect*, A/65/877–S/2011/393, 27 June 2011.

for international peace. R2P therefore, can act as a rallying cry for preventive action as much as action in response to imminent atrocity.

Arguably, R2P's narrower ambit also makes preventive action more tractable: prevention of atrocities is manageable in a way that prevention of armed conflict *per se* is not.[18] The institutional difference here is pronounced vis-à-vis the General Assembly. As the institution that controls the internal organisation and funding of the UN's organs, the development of R2P's preventive capacities reposes primarily in the hands of the Assembly. The Assembly has, however, arguably not yet been up to the challenge it imposed on itself in the Outcome Document,[19] with only weak support being offered, for instance, to the R2P Special Advisor to the Secretary General.[20] Given that the likely concerns of the Assembly surround R2P's controversial Third Pillar action however, its hesitancy is misplaced. As Resolution 1973 amply demonstrates, decisions over Third Pillar military action lie firmly in the hands of the Security Council. The Assembly's lack of support for R2P undermines only R2P's consent-based, preventive capacities.

Second, like other preventive measures, the institutional development of R2P early-warning mechanisms is important.[21] In this case, once again, the specificity and gravity of R2P crimes make it a more effective device—as compared to PoC—for motivating the development of such capacities. Specifically, since robust early-warning impacts on various aspects of sovereignty, R2P's norm of "sovereignty as responsibility" shapes as an ineluctable factor in the institutional development of such capacities by regional and global organisations. It is only because states no longer are understood to have the authority to perform atrocities on their people that a normative space is opened for monitoring state in this regard.

Third, R2P and PoC will be strongly distinguished by states that are faced with civil disturbances threatening civilians, especially when state actors are implicated in such threats. In such cases, states may be effectively faced with a choice *between* PoC and R2P. That is, they may opt for the deployment of an international peacekeeping operation with a robust PoC mandate in order to demonstrate that the situation in their country is not one that should be approached, as Libya ultimately was, through the R2P Pillar Three lens. States in this position will thus perceive R2P and PoC disjunctively.

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[18] Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Cambridge: Polity, 2009), pp. 102-31.
[19] UN General-Assembly, *Res. 60/1: World Summit Outcome Document*, A/Res/60/1, 16 September 2005, para. 139.
[20] See the opposition described in:
<http://www.responsibilitytoprotect.org/index.php/component/content/article/3618>
[21] Secretary-General, *Implementing the Responsibility to Protect*, Annex; UN Secretary-General, *Early Warning, Assessment and the Responsibility to Protect*, A/64/864, 14 July 2010.

INSTITUTIONAL CONVERGENCE BETWEEN R2P AND POC IN SECURITY COUNCIL REACTION-TO-ATROCITY CASES

In cases of reaction to imminent atrocity, like Libya, the norms of R2P and PoC will converge upon the institution of the UN Security Council. In terms of PoC, while the Security Council concerns itself with many different situations where civilians are threatened, it has determined that the gravest and most large-scale cases of threats to civilians (i.e. atrocity crimes) may constitute a threat to international peace and security.[22] Given the Security Council's mandate and powers under Chapter VII of the UN Charter, this determination authorises the Security Council to act to protect civilians, including by the use of military force if necessary.

In terms of R2P, the same determination by the Security Council regarding threats to international security is applicable. Here too however, there is additional political and legal support for the role of the Security Council. The Outcome Document, pursuant to the UN Charter, explicitly places decisions regarding coercive and military action in the hands of the Security Council. The largest ever gathering of world leaders therefore, have consented to the role of the Security Council in determining the proper response to atrocity cases. On a like footing, Article VIII of the Genocide Convention provides that the contracting parties may "call upon the competent organs of the United Nations to take such action under the Charter … as they consider appropriate for the prevention and suppression of genocide". Here too, the Security Council is the primary—if not exclusive—organ of the UN vested with the authority to prevent genocide by a member state of its own people.

Thus, in cases of imminent atrocity, both PoC (through threats to international peace) and R2P (additionally through the Outcome Document and the Genocide Convention) converge in placing the authority for action on the institution of the UN Security Council.

Operational Level

OPERATIONAL DIVERGENCE BETWEEN R2P AND POC IN NON-REACTION AND NON-ATROCITY CASES

At the operational level, it will often be important to sharply distinguish R2P and PoC. Two examples follow:

First, in the last decade humanitarian actors (Oxfam, the International Committee of the Red Cross (ICRC) and so on) have increasingly come to play a key role in PoC, not only in their traditional roles of advocating for civilians and those *hors de combat* and in urging states to ratify IHL treaties, but more directly by targeting and expanding their humanitarian activities in

[22] United Nations Security Council, *Resolution 794 (1992)*, 3 December 1992, Preamble; *Resolution 1265 (1999)*, 17 September 1999, para. 10; *Resolution 1296 (2000)*, 19 April 2000, para. 5.

order to enhance the protection of local civilians from violence.[23] The focus of such humanitarian operations is explicitly, and rightly, on PoC rather than R2P. In R2P situations, when armed parties have the systematic destruction or persecution of a civilian population as one of their settled war aims, the types of pacific solutions utilised by humanitarians are no longer viable and—indeed—the humanitarians themselves are likely to be in grave danger. On the operational plane at least, PoC is a focus of humanitarian actors in a way that R2P cannot be.

Second, the literature on peacekeeping operations has found it useful to distinguish ordinary peacekeeping operations' engagement with PoC from 'R2P missions' in the sense that the latter calls for a much deeper and systematic response to civilian protection. In R2P situations, there is the threat of atrocity crimes, meaning that violence against civilians is not peripheral to the armed conflict. Rather, the threat against civilians posed by one or both sides is large-scale, deliberate and systematic. At an operational level, this type of threat must be dealt with quite differently to instances of small-scale, localised and opportunistic violence against civilians. As Holt and Berkman argue, in making this distinction,

> a military intervention designed expressly to protect civilians from mass killing is fundamentally different from a peace operation mandated to protect civilians from much lesser risks.[24]

As such, it is important to distinguish 'PoC missions' from 'R2P Pillar Two missions'.[25] As Rwanda and Srebrenica have taught us, if a peace operation is mandated and resourced only for dealing with sporadic violence against civilians it will find itself impotent in the face of determined armed opposition. One cannot send a PoC mission to do an R2P Pillar Two mission's work.

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[23] See, for example, Hugo Slim and Andrew Bonwick, *Protection: An ALNAP Guide for Humanitarian Agencies* (London: Overseas Development Institute, 2005); Inter-Agency Standing Committee (IASC), *Growing the Sheltering Tree: Protecting Rights through Humanitarian Action, Programmes and Practice Gathered from the Field* (Geneva: UNICEF, 2002); Sorcha O'Callaghan and Sara Pantuliano, 'Protective Action: Incorporating Civilian Protection into Humanitarian Response', HPG Report 26, December 2007; Oxfam, *Protection into Practice* (Oxford: Oxfam, 2005).

[24] Victoria Holt and Tobias Berkman, *The Impossible Mandate? Military Preparedness, the Responsibility to Protect and Modern Peace Operations* (Washington: The Henry L. Stimson Center, 2006), p. 3; see similarly: Siobhán Wills, *Protecting Civilians: The Obligations of Peacekeepers* (Oxford: Oxford University Press, 2009), p. 80, though Wills makes this distinction between two types of R2P activity, rather than between R2P and PoC.

[25] There is no such thing as a *R2P Pillar Three peacekeeping mission*. Peacekeepers cannot operate if a state government with a functioning military treats them as an invading force. Complicatedly however, R2P *Pillar-Two-and-a-Half* peacekeeping missions are possible. In these cases, states acquiesce for political reasons at an executive level to the deployment of international peacekeepers with protection mandates. However, elements of the state or state-sponsored actors are nevertheless pursuing objectives of ethnic cleansing or genocide. Rwanda is a historic example of such a case, the Darfur region of the Sudan presents a contemporary one.

OPERATIONAL CONVERGENCE BETWEEN R2P AND POC IN SECURITY COUNCIL REACTION-TO-ATROCITY CASES

The operational convergence of R2P and PoC in terms of reaction to atrocities is plainly in evidence in UN Security Council Resolution 1973. Action here occurs under the express PoC rubric. Indeed, the Resolution refers only obliquely and fleetingly to R2P, and instead phrases the operative part of the resolution explicitly in terms of the protection of civilians.[26] The action was however—and as noted earlier—manifestly R2P in design, procedure and outcome.[27]

While R2P in principle is explicit in opening a space for direct, robust military force as a last resort, the military action of the international forces (ultimately headed by NATO) demonstrated that, once there is an imminent threat of atrocity, PoC allows for the direct application of force against the military targets of a regime. This is particularly true in cases like Libya, where members of the international community came to regard the regime *itself* as constituting a standing large-scale threat to a civilian population. If it becomes plausible to believe—or culpably naïve to deny—that one party to a conflict will, if a future opportunity presents itself, deliberately engage in atrocities against civilians, then a direction to take "all necessary measures" to protect civilians[28] comes perilously close to a mandate to neutralise the armed forces of that regime and/or to support the regime's opponents in their endeavours against it. That is, at the point where it becomes reasonable to believe that any future armed victory of the Gaddafi regime over the insurgency would imperil the civilian population of Benghazi,[29] then the neutralisation—or at least the demobilisation—of Gaddafi's forces becomes an ineluctable avenue to the protection of civilians. To be sure, issues of mission creep here are a legitimate concern, and the UN Security Council wisely curtailed the scope for interpretation of Resolution 1973 by explicitly ruling out the presence of ground forces.[30] It is nevertheless clear that, as far as the UN Security Council (and the actors that engage on its behalf) is

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[26] United Nations Security Council, *Resolution 1973 (2011)*, 17 March 2011, paras 4-5.

[27] It is also likely (though not certain) that, despite its non-invocation of R2P, Resolution 1973 will come to be acknowledged as an *official* R2P resolution, through the process of authoritative interpretation. Given the Secretary-General's position on the tight link between R2P and Resolution 1973 (UN Secretary-General, 'Statement by the Secretary-General on Libya', 17 March 2011, <http://www.un.org/apps/sg/sgstats.asp?nid=5145>, it is likely that he will describe Resolution 1973 as an instance of R2P action in, for instance, his next thematic report on PoC to the Security Council. When the Security Council *takes note* of the Secretary-General's report in the Preamble to their subsequent thematic resolution on PoC, if they do not explicitly reject this characterisation of Resolution 1973, then it will be reasonable to accept the Secretary-General's characterisation as an authoritative interpretation of Resolution 1973.

[28] United Nations Security Council, *Resolution 1973 (2011)*, 17 March 2011, para. 4.

[29] Benghazi was the explicit population-centre of concern in United Nations Security Council, *Resolution 1973 (2011)*, 17 March 2011, para. 4, and the subject of Gaddafi's threats of attack with "no mercy".

[30] They here followed the lead of the various relevant regional organisations, especially the *League of Arab States*, which had called for the no-fly zone but drawn the line at deploying ground troops. See Williams, 'Briefing: Libya', pp. 252-3.

concerned, PoC is no less able than R2P to provide for the direct and robust use of military force.[31]

Conclusion

In conclusion, there is a close relationship between these two powerful international protection norms. This is to be expected: principles that have evolved rapidly in the last decade in response to the same humanitarian tragedies draw on the same well of international obligation, espouse the same language of civilian protection, and engage a similar cross-section of protection actors. In the specific context of UN Security Council reaction to imminent atrocities by states on their own populations, this article has argued that the normative bases, institutional structures and operational capacities of R2P and PoC converge. UN Security Council Resolutions 1970 and 1973 are at once both R2P and PoC resolutions.

Yet this does not mean more generally that either norm collapses into the other. As has been argued, the legal instruments underpinning PoC and R2P remain distinct, the institutional prevention agenda of R2P is stronger than that of PoC, states implicated in atrocity crimes will be faced with a choice between PoC peacekeeping and R2P Pillar Three sanction, and peacekeeping and humanitarian actors will on an operational plane distinguish sharply between PoC and R2P contexts. Thus, while the agendas of R2P and PoC overlap in the most visible cases, they yet remain normatively, institutionally and operationally distinct.

Casting back to the first of the two questions raised at the beginning of this article, the scope of R2P must remain narrowly focused on atrocity crimes. Smearing this key distinction between the norms and expanding R2P's scope to include all violations of PoC would widen its potential applicability dramatically, rendering the norm unworkable in practice and unacceptable in legal and institutional terms. On the second question of the comparative controversy of the two norms however, the two norms *are* closer than usually allowed. PoC—at least in the hands of the UN Security Council, rather than peacekeepers, combatants and humanitarians—has allowed for the possibility of Chapter VII action in the gravest cases at least since the UN Security Council's thematic PoC Resolutions of 1999 and 2000, and arguably as far back as Resolution 688 on Iraq in 1991.[32] When war crimes

[31] The recent use of decisive military force in Côte d'Ivoire on the basis of the PoC elements of United Nations Security Council, *Resolution 1962 (2010)*, 20 December 2010 and *Resolution 1975 (2010)*, 22 December 2010 also attests to this link between PoC and (regime changing) robust force. See UN Secretary-General, 'Statement by the Secretary-General on the Situation in Côte D'Ivoire', 4 April 2011.

[32] United Nations Security Council, *Resolution 688 (1991)*, 5 April 1999; *Resolution 1265 (1999)*, 17 September 1999; *Resolution 1296 (2000)*, 19 April 2000.

become atrocity crimes, the UN Security Council position on PoC comports exactly with its position on R2P.[33]

As this article has shown, the relationship between R2P and PoC is complex. Genuine overlap is possible, but as a general matter each norm remains distinct. As the UN Secretariat moves to implement the R2P norm,[34] the above analysis points to the need for careful attention to the specific areas where R2P and PoC converge and diverge.

Dr Angus Francis lectures in public international law and refugee law at the Queensland University of Technology's Faculty of Law and is the Programme Leader of the Faculty's Human Rights and Governance Research Programme. He is currently undertaking research into the relationship between the Responsibility to Protect and Protection of Civilians as part of a collaborative grant funded by the Australian Responsibility to Protect Fund. angus.francis@qut.edu.au.

Dr Hugh Breakey is a Research Fellow at the Institute for Ethics, Governance and Law at Griffith University, Australia. He researches on the nature of rights, especially bodily, intellectual and property rights, and their relation to laws, duties, responsibilities, and international protection norms. h.breakey@uq.edu.au

[33] This explains why, despite the differences between the two norms discussed throughout this article, the Security Council consistently considers R2P under the broader rubric of PoC: e.g. S/RES/1674; S/RES/1894.
[34] UNSG, Implementing the R2P; UNSG, Early Warning, Assessment and the Responsibility to Protect, UN Doc A/64/864 (14 July 2010); UNSG, The Role of Regional and Sub-Regional Arrangements in the Responsibility to Protect, UN Doc A/65/877 (27 June 2011).