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Protection of Civilians and Responsibility to Protect: the role of NATO Stability Policing in protecting the civilian population

by Nicola Bonomi

Introduction

International law and the international community began to actively deal with the events involving the civilian population in conflicts as early as the second half of the nineteenth century. In fact, the first references to the need to adopt rules having as their object the limitation of conflict-related violence and the protection of war victims date back to this period. In this sense, the "Hague Law"¹ and the "Geneva Law"² have been increa-

singly integrated with each other to form the so-called "International Humanitarian Law", which was the first legal reference to be used to foster acting directly towards and in favour of the civilian population, considering it as one of the subjects involved in warfare and suffering its consequences. The first and immediate outcome of any conflict is the subversion of the set of freedoms, rights and guarantees that are indicated by the term "human rights". Therefore, the need arose to dictate some form of regulations in case of war, especially for those aspects of warfare which affect civilian populations. In addition to this, "classic" war, a conflict where the armed forces of two or more States face one another, has become rare. On the other hand, hybrid non-inter-

national armed conflicts in which regular forces of a state are confronted with non-state armed groups have greatly increased. In modern, non-linear conflicts, the civilian population almost immediately becomes a victim of violence, both indirectly as a result of armed clashes, but also directly, often being intentionally targeted by belligerents. The protection of civilians in armed conflicts has therefore become one of the major challenges for the international community. The international community has begun to question how to effectively protect the citizens of a state whose human rights are seriously and systematically violated. The result has been a series of documents which reaffirm the need to protect human rights and which



seek to identify tools which support the effective implementation of protective actions. At the core of the new concept lies a two-dimensional understanding of State responsibility: the primary role of the state itself; its responsibility to protect its citizens from atrocities, and the responsibility of the international community to prevent and react to massive human rights violations.

Responsibility to Protect

One of the most important developments in world politics over the past decades has been the spread of the twin ideas that State sovereignty comes from accountability, both internally and internationally, and that there is a global responsibility to protect people threatened by mass atrocities. For this reason, the primary responsibility for the protection of its population rests with the State itself. And when a State is unable or unwilling to fulfil this responsibility – not to mention if it is the actor itself of the violations – the international community must take action

to ensure the safety and security of that State's citizens. The recognition of security of individuals as the ultimate referent object finds its overarching guidelines in the UN Human Security concept, which is the methodology for assisting States in identifying and addressing a wide range of threats to people's survival, nourishment and dignity. This concept requires comprehensive and preventive responses tailored to the

single context, aimed at reinforcing the protection of the people³. This concept drives the shift of the attention from a state-centred to a people-centred approach to security; the security of the international community must focus on is the one that allows the population to live free from both fear (of physical, sexual or psychological abuse, violence, persecution, or death) and from want (of gainful employment, food, and health). Human Security therefore deals with the capacity to identify threats, to avoid them

principle of sovereignty and the protection of human rights was addressed by the *International Commission on Intervention and State Sovereignty*. In the report that followed the work of the commission, the theme of “*responsibility to protect*” emerged for the first time⁵. This new doctrine is based on the idea that sovereign States are responsible for protecting their population from serious violations of human rights and, in the event that they are unwilling or unable to guarantee it, this re-



when possible, and to mitigate their effects when they do occur⁴. After the tragedies in Rwanda and the Balkans in the 1990s, a serious debate led to the formulation of the “*responsibility to protect*” concept, which contributed to overcoming the protection of a single national interest, in favour of an obligation for States to defend and protect every individual on a global scale. The delicate question of the relationship between respect for the

responsibility must be taken over by the international community. In addition to this, in 2004 the emerging norm of a responsibility to protect was endorsed by the United Nations General Assembly, stating that there is a collective international responsibility “*exercisable by the Security Council, authorizing military intervention as a last resort, in the event of genocide and other large-scale killing,*





*ethnic cleansing and serious violations of humanitarian law which sovereign governments have proved powerless or unwilling to prevent*⁶. These conclusions have also received formal recognition and endorsement from the United Nations General Assembly⁷. Since its formal adoption, the doctrine of responsibility to protect has also been repeatedly recalled by the United Nations Security Council and by the General Assembly, which outlined a “three-pillar strategy” (responsibility to prevent, responsibility to react and responsibility to rebuild)⁸, necessary for its progressive development. This tripartite strategy places emphasis on the value of prevention and, when this is not effective, on a flexible response adapted to the specific circumstances of the individual case.

NATO Protection of Civilians

As noted above, the concept of civilian protection occupied a central position in the concerns of the international community in

the late 1990s. Since then NATO has made considerable efforts to integrate civilian protection at the theoretical and doctrinal level, and finally this important principle has been operationalized and institutionalized on the ground. NATO has translated the theoretical and principled indications set out over the years into practice and has encompassed the ideas of various reports and resolutions into

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key documents that facilitate their application in real-world missions. As an organization committed to peace and security, NATO is deeply interested in the application of international law, particularly with regards to International Humanitarian Law (IHL) and Human Rights (HR). The protection of civilians has been the subject of much attention within the Alliance in the recent past and even more

so today, also because it is clear to everyone that violence against civilians contributes to endless cycles of conflict and instability. Protection of vulnerable groups, individual freedoms, and fundamental human rights have been areas in which, in recent years, NATO has developed policies and guidelines, which are reflected in the planning and conduct of today’s missions. The NATO Protection of Civilians (PoC) Policy was a product of the 2016 Warsaw Summit and it addresses many of the concerns related to these sensitive issues, while also providing guidelines for the planning and conduct of military operations, within which Stability Policing has a relevant role. The aim of NATO’s PoC policy is to standardize and strengthen NATO civilian protection and harm-mitigation efforts, including capabilities to learn from those operations that have affected civilians and to adapt tactics to avoid harm. It encompasses a wide range of activities up to and

including the use of force to prevent, deter, and respond to situations where civilians experience or are threatened with physical violence⁹.

Protection of civilians within the NATO framework is defined as all efforts taken to avoid, minimize and mitigate the negative effects that might arise from military operations on the civilian population and, when applicable, to protect civilians from conflict-related physical violence or threats of physical violence by other actors, including through the establishment of a safe and secure environment¹⁰.



The definition is intended to focus primarily on two types of threats the policy seeks to address. Firstly, it seeks to mitigate the negative effects that could result from NATO's own actions. Secondly, it addresses protection from physical harm that can result from the action of others. The Alliance's PoC Policy therefore goes far beyond simple high-intensity military operations, as the policy is integrated across all of NATO's core tasks, regardless of the organization's role as either a lead player, or simply a supporting actor. Interestingly, the Alliance aspires to integrate PoC in all phases of operations, from the earliest planning stages to transition and redeployment. While NATO intervention can be very invasive and can have great powers of action, this in no way limits or diminishes the primary responsibility of the host State to protect civilians on its territory, and most certainly does not relieve the State from its protection obligations.

Responsibility to Protect vs NATO Protection of Civilians

As we recalled previously, the reason that led to the formulation of doctrine with regards to the "responsibility to protect" must be sought in the apparent failure of the international community to adequately respond to humanitarian disasters. This need to intervene effectively to protect human rights has led to the formulation of the concept that states have a responsibility to protect the human rights of their own people, and that the international community has a responsibility to step in when the state fails to do so¹¹. According to the doctrine of "responsibility to protect", the State has the main responsibility for

the protection of populations from mass atrocities such as genocide, war crimes, crimes against humanity and ethnic cleansing. On the other hand, the international community has the responsibility of assisting States in fulfilling this responsibility and possibly replacing them when their work is inadequate or blatantly contrary to protection efforts, as they themselves are perpetrators of violence against civilians. If a state fails to protect its populations or is even the perpetrator of those crimes,

that does not include specific sanctions or strategies and should be adapted to each individual case. Based on its NATO has developed a specific policy on the matter which acknowledges that civilian protection is a cross-cutting topic, equally relevant to the Organisation's overarching core tasks¹². With this in mind, four overarching principles form the basis on which the policy was built, namely: NATO's approach to the protection of civilians is grounded on legal, moral and political imperatives;



the international community must then be prepared to take stronger measures, including the collective use of force through the United Nations Security Council.

Since Human Rights treaties have not created a true legal obligation for the international community and its member States to guarantee the protection of human rights, the adoption of "responsibility to protect" was a compromise between establishing a real obligation to act and a regulatory status quo. Responsibility to protect is not specific: it is a principle

NATO's approach to protection of civilians is to be consistent with and conducted in accordance with applicable legal frameworks, including IHL and HR; NATO's fulfilment of its responsibilities under this policy is subject to the legal basis for the specific NATO operation, mission or activity, and to the specific Council-approved mandate, without prejudice to force protection and collective defence obligations. NATO recognises that all feasible measures must be taken to avoid, minimise and mitigate harm to civilians and that when planning and implementing such measures,



STABILITY POLICING HUB

NATO should give consideration to those groups most vulnerable to violence within the local context. The policy also takes into account the need to protect civilians from the actions of others. This aspect was highlighted as a component of protection of civilians not only out of moral, legal and political considerations, but also very practical ones. It was introduced due to the realization that despite the obligation to protect civilians du-

the outcomes of these variables for civilians, are seen as elements that would enable Alliance planners at all levels to recommend military response options for NATO and NATO-led operations. Protection of civilians also includes not only persons, but also all civilian objects, with particular attention paid to those of importance to the population, such as items of religious and cultural heritage, the natural environment, as well

se actions are enabled by a sound Understanding of the Human Environment, which is very much based on the UN's Human Security approach, seeking to understand the local populations perceived security and developmental risks, as well as identifying key stakeholders, their internal dynamics, and the resiliencies of the local population.

NATO Stability Policing: an added value to protect the civilian



ring armed conflict, certain parties to the conflict have, and continue putting civilians at risk, or even targeting them deliberately in order to achieve their specific aims. On the issue of protection of civilians from the actions of others, the Policy notes that understanding the nature of the threat against civilians is critical to understand if the use of military force can effectively protect the civilian population. Aspects such as the identification of threats, including the varying types of perpetrators, their motivation, strategies and tactics, as well as their capabilities and

as necessary public services linked to critical civilian infrastructure. To achieve these objectives, three are the elements to be considered. These are distinct, but interrelated thematic lenses focused on key protection of civilian issues and actors: mitigate harm, focused on mitigating harm from own actions as well as mitigating the threat from perpetrators of violence; facilitating access to basic needs, focused on civilians, civil society and aid providers; contributing to a safe and secure environment, focused on the Host Nation government and institutions¹³. All of the-

population

Modern NATO military operations benefit from the inclusion of Stability Policing¹⁴ as a substantial contribution focusing on Indigenous Police Forces (IPF) and the local populace. The aim of Stability Policing is in fact to support the re-/establishment of a safe and secure environment, restoring public order and security, and contribute to create the conditions for meeting longer term needs with respect to governance and development. Looking back to its early days, IHL referred only to conventional and symmetrical conflicts, in which the



civilian population was usually relatively removed from the fighting. Nowadays, the breadth of its normative provision and its capacity are much weaker in the face of the intra-national, hybrid and asymmetrical nature that characterizes current conflicts, where the populace is the object of violence. There is therefore a concrete possibility that in these contexts, the principles of distinction between combatants and civilians and that of limiting armed attacks to military targets, are systematically and deliberately ignored. It is therefore

cluding by investigating or detaining/arresting war, organized and transnational criminals, terrorists and insurgents, as well as violators of host-nation and international laws. This innovative tool is designed to meet all the needs related to the policing of a State; it is a tool that, by combining the capabilities and flexibility of military assets with the professional and specific ones of the police, expands the intervention capabilities of military missions outside their traditional areas to cover the policing remit as well. By doing so, it significantly

establishing the rule of law. The main objective of the responsibility to protect is to prevent genocide, war crimes, serious and persistent violations of human rights, providing greater attention from the international community on preventing violations of human rights. These heinous crimes indeed squarely fall within the remit of Stability Policing. Hence the need to conduct police activities in weak and fragile areas clearly emerges. Crime and violence disrupt the daily life and undermine the norms and institutions that foster stable societies; internal security actors, such as police and law enforcement agencies, are a gateway to the justice system, preventing and investigating criminal activities, helping prosecute suspected criminals, and providing victims with access to justice. This is the courtyard where the added value of Stability Policing is enhanced: wherever the Alliance is bestowed by an executive mandate, it reduces insecurity by addressing IHL and HR violations, widespread violence and criminality, building trust and confidence in the local populace. Protecting civilians during a conflict, however, can be very difficult. There are circumstances, particularly with regards to internal conflicts in which the State is one of the parties involved, and in some cases there

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clear how a tool able to effectively mitigate the effects of violence and abuse on the civilian population in modern contexts of asymmetric and hybrid conflicts is needed. Stability Policing can tremendously contribute to the solution. It is a concept created and developed within NATO which, under a different name, is applied by other international or regional organizations: it is an innovative response that overcomes a combat-only approach, expands the reach of the military instrument into the remit of policing and contributes to a comprehensive approach to win the war while aiming at building peace. Stability Policing can in fact address the new emerging threats to civilian population with different means in the remit of policing, in-

contributes to the comprehensive approach necessary to address all issues related to the protection of civilians, as well as provides many of the required relevant tools¹⁵. This is indeed a new model to protect the population, more flexible and close-fitting its needs, which are persistently met by simply delivering basic community policing and empowering members of the civil society. In fact, this new holistic approach sets conducive conditions to prevent and deter conflicts by addressing the root causes of conflicts, by ensuring the protection of civilians and humanitarian assistance, as well as re-e-



is no stable government at all. Additionally, there are theatres where several armed groups are involved, with the danger of the crisis becoming radicalized and escalating into an international conflict. Stability Policing arises as the tool available to NATO with the largest impact on the day-to-day lives of the population: performing effective police tasks and activities – starting from the basic community-oriented up to the highly specialized ones – is critical to prevent the escalation of internal violence, maintain the Rule of Law, provide public safety and foster a secure environment in which governance can flourish; furthermore, population-focused police activities ensure security needs for the entire community and bring improvement to the overall security, allowing the conditions for development to take place. Practical experience and political difficulties in giving prompt solutions have led to the recognition that declarations of political intent and humanitarian action alone cannot protect civilians from the effects of armed conflict and internal violence. Situations of war or high internal crisis, combined with weak or absent institutions allow non-state actors and criminal groups to rage. The result is a security void, the disappearance of the Rule of Law and an intolerable increase in the level of violence and insecurity: such environments favour the impunity of criminals and the uncontrolled proliferation of IHL and HR violations. In such cases, words are not enough. Military ac-

tors might be able to enhance the physical protection of the civilian population. They may also be able to contribute to the establishment of a secure environment, conducive to the provision of humanitarian assistance. Stability Policing is the ideal tool to stem illegal conducts and the indiscriminate use of violence. Its population-centric policing skills enable these assets to prosecute and bring criminals to justice, protecting victims of gross violations and atrocities from persecution, retaliation, and violence.



When mandated, Stability Policing also allows furthering the reduction in the use of force and decreasing collateral damage besides responding to the security needs of the population. Therefore, it contributes to improve acceptance and legitimacy within audiences from the local to the international level and enhancing mission sustainability. Stability Policing in this way helps winning the battle of narratives by showing the populace and the world how a civil-oriented approach, that goes beyond military means, leads to

the re-establishment of a safe and secure environment in a less violent and more sustainable way. In PoC-mandated missions the activities to protect civilians are always planned and given a clear end-state. All mission components constantly work to prevent, pre-empt and respond to threats to civilians, and not just react to attacks. Stability Policing is one of the tools that helps creating a credible deterrent posture and supporting national protection capacities and maintaining a constant dia-

logue and engagement with local key leaders and stakeholders in areas under greatest threat. When called to protect civilians, Stability Policing considers the characteristics of the population within the operating environment throughout the decision-making process, to include their culture, history, demographics, strengths, informal power structures such as religious and non-governmental leaders and influencers, resiliencies and vulnerabilities.

In this regard, one cannot fail to recall again how the Alliance can use Stability Policing assets as a fully suitable and highly effective instrument in the implementation of “responsibility to protect” guidelines and in the protection of the civilian population. Indeed, history shows that Stability Policing can and should be conducted throughout the full spectrum of conflict and crisis in all operations’ themes (from peacetime military engagement to warfighting), before, during and after armed conflicts and manma-



de and natural disasters, because the Host Nation and its populace may require help whenever and wherever there are policing gaps. The policing gaps are addressed by envisioning two missions: reinforcing or temporary replacing IPF. Reinforcement consists in intervening on IPF capabilities and capacity, to raise their overall performance; when IPF are missing or unwilling to carry out their duties, they may be temporarily replaced by Stability Policing until they can resume their duties or other actors from the international community intervene and/or take over as follow-on force. It is also interesting to notice how an essential, albeit informal principle about Stability Policing states, *"all can contribute to Stability Policing, but not everyone can do everything"*. This means that Stability Policing is a tool that can benefit from the expertise and professional skills of a large number of forces (from Gendarmerie-type Forces to Military Police, from armed forces to contractors). In this vein, NATO's PoC Policy, which *"includes a Stability Policing dimension"*¹⁶, states that *"all feasible measures must be taken to avoid, minimize and mitigate harm to civilians"*: Stability Policing can significantly contribute to this. Security challenges such as hybrid threats, the crime-war overlap as well as the so-called irregular activities¹⁷ and threats to human security are likely to become more relevant in the future. In this vein, NATO Stability Policing strives for building peace by virtue of its expertise in law enforcement within a military framework through the so-called *"soldiers of the law"*¹⁸, whose additional value lies in their flexibility to deliver a military capability focu-

sed on police-related needs of the local population. This innovative approach focuses on providing security to local communities preyed upon by criminals. Indeed, by filling the public security gap governance improves, and alternative, legal livelihoods thrive. As public support and the battle of narratives are won by the Alliance, the outlook of NATO's success is significantly enhanced, ensuring long-term peace, security, and development.

Disclaimer: this paper is a product of the NATO Stability Policing Centre of Excellence and its content does not reflect NATO policies or positions, nor represent NATO in any way, but only the NSPCoE or author(s) depending on the circumstances.

1. This term refers to the Conventions and Declarations stipulated during the International Peace Conferences held in The Hague in 1899 and 1907
2. This term refers to the Conventions and Additional Protocols signed in Geneva between 1864 and 1977
3. UN General Assembly Resolution 66/290. Follow-up to paragraph 143 on human security of the 2005 World Summit Outcome (A/RES/66/290) and UN Secretary General Report, "Human security" (A/64/701)
4. UN Development Programme. "Human Development Report", 1994
5. ICISS, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, Ottawa, 2001
6. Report of the United Nations High-level Panel on Threats, Challenges and Change, 2004.
7. UN General Assembly Resolution: 2005 World Summit Outcome (A/RES/60/1), para 138, 139 and 140, 2005
8. UN Secretary General Report, "Implementing the Responsibility to Protect" (A/63/677), 2009
9. NATO Policy for the Protection of Civilians, para 11
10. NATO Agreed term

11. UN Secretary General Report, "In larger freedom: towards development, security and human rights for all" (A/59/2005)
12. NATO Policy for the Protection of Civilians, para 3
13. See ACO Protection of Civilians Handbook
14. A set of police-related activities intended to reinforce or temporarily replace the indigenous police in order to contribute to the restoration and/or upholding of the public order and security, rule of law, and the protection of human rights.
15. For more on Stability Policing see Allied Joint Publication AJP-3.22 "Allied Joint Doctrine for Stability Policing", 2016
16. NATO Policy for the Protection of Civilians, endorsed at the NATO Warsaw Summit 8-9 July 2016
17. The use or threat of force by irregular forces, groups or individuals, frequently ideologically or criminally motivated, to effect or prevent change as a challenge to governance and authority. NATO Agreed Term
18. Straight translation of the French expression "soldats de la loi", which in France directly refers to the gendarmerie

PICTURES:

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Nicola Bonomi
Lt. Col. - Italian Carabinieri
NATO SP COE Doctrine &
Concept Development Section
Staff Officer

