

NOREF Policy Brief

India's approach to the protection of civilians in armed conflicts

C. S. R. Murthy

Executive summary

India's approach to the issue of protecting civilians during armed conflicts is built on legal, ethical, political and policy considerations. India condemns the use of oppressive violence in armed conflicts, regardless of who commits it, and holds that the protection of civilians should be in conformity with international law and the principle of sovereign equality. Accordingly, it views demands for automatic access to civilians as a violation of both the Fourth Geneva Convention and the principle of the sovereignty of states.

India believes that the trigger for the invocation of R2P should be mass atrocities. However, there is no agreement on what constitutes war crimes and

crimes against humanity. As a policy guideline, India suggests that any action by the international community and the UN Security Council must be pragmatic and proportional to the threat to civilians, and should be based on credible and verifiable information.

While critical of the NATO air strikes against Libya in 2011 that resulted in civilian casualties, India pleads for adequate procedures to ensure that those who act in the name of the Security Council should be accountable for their actions. It attributes UN peacekeepers' failure to protect civilians to lack of resources and non-co-operation from the parties concerned.

C. S. R. Murthy is a professor of international organisation in the School of International Studies at Jawaharlal Nehru University, New Delhi. He has authored and/or edited four books, and has written nearly 50 book chapters and research papers on international conflicts; security, peacekeeping and peacebuilding; UN reforms; the Third World; human rights; and India's foreign policy. He was chief editor of *International Studies* and was awarded the Friedrich Ebert Foundation Visiting Fellowship, the Senior Fulbright Scholarship and the Leverhulme Visiting Scholarship.

International humanitarian law (IHL) has gained unprecedented attention especially in the recent two decades, in the context of the growing complexity of threats to global peace and security, and the difficulty of effectively addressing their consequences. The most salient among the concerns that have stirred the collective consciousness of the world community is the ever-increasing need to protect the civilian population in armed conflicts occurring both between and within states. The brutal violence used – by design or otherwise – by state and non-state parties has often resulted in debilitating effects on or the deaths of civilians, involving millions of women, children and men who had nothing to do with the ongoing conflicts. In the deliberations underway in the United Nations (UN) and other forums, an agreement on the means and mechanisms to be invoked for the protection of civilians during conflicts has not been achieved. Two dominant sets of views are evident in these deliberations. As opposed to those who advocate effective protective action by coercive means if necessary, some countries hold that such actions should be pragmatic and should not in any way breach the canons of international law. As to the latter perspective, it may be instructive to use as an illustration the approach of India – a country described in the 2012 *Human Rights Watch World Report* as the world's most populous democracy with a “vibrant media, active civil society and respected judiciary”, while simultaneously being associated with “significant human rights problems”.

The Indian approach is built on legal, ethical, political and policy considerations. India holds that the persecution of civilians is neither a recent phenomenon nor a malaise exclusive to the Third World.¹ Colonial wars and the wars in pursuit of imperial ambitions are a testimony to a history of scant respect for human lives in times of military campaigns. In the present scenario, however, it is not governments alone, but also warlords, terrorists, irregular forces, mercenaries and business interests who threaten the well-being of civilians. While in Western political theory human rights law is predicated on the paradigm of a repressive state and hapless individuals, India questions if armed militias can be labelled as hapless individuals, even if the label of non-state actors applies to them.

India condemns the use of oppressive violence in armed conflicts, regardless of who commits it, be it in Afghanistan, the Democratic Republic of the Congo (DRC), Iraq, Libya, Sri Lanka or Syria. Having done so, India's position on the issue of the protection of civilians in armed conflicts is governed by its basic conviction that solutions to problems should be sought within the framework of international law and in strict adherence to the principle of respect for the sovereignty of states. While highlighting that the protection of its population is the primary responsibility of each state, India concedes that the right of people to protest peacefully ought to be respected. At the same time, states cannot but take appropriate action when heavily armed militant groups resort to violence against state authority and infrastructure.

India rejects the rationale for demanding the right of access to populations affected by armed conflict. In terms of the Fourth Geneva Convention on the Protection of Civilian Persons in Times of War, it is argued, access may be denied if military necessity so requires. So to press for automatic access to civilians would be a violation of both IHL and the principle of the sovereignty of states.

India is wary of any coercive role by the international community in the exercise of the “Responsibility to Protect” (R2P). If a state is not in a position to protect its civilians from genocide, ethnic cleansing or crimes against humanity, India recognises that the international community through the UN Security Council has an obligation to provide technical assistance to those states in order to help build their institutions. However, India rejects military intervention as an obligation of the world community. In its view, the trigger for invocation of R2P cannot be human rights violations per se, since they occur everywhere, including in India and the U.S. The trigger has to be mass atrocities. Nonetheless, it is noted that unlike genocide, which has been defined by the 1948 Genocide Convention, common agreement has yet to be reached on what constitutes war crimes and crimes against humanity. Even the 1998 Rome Statute establishing the International Criminal Court cannot serve as a proper guide, because a large number of UN members, including India and three permanent members of the Security Council, are not party to it.

1 S/PV.3980, February 22nd 1999.

Also, the response of the international community and Security Council must be proportional to the threat, use appropriate methods, and be based on credible and verifiable information. In this connection, India refers to its "considerable unease about the manner in which the humanitarian imperative of protecting civilians has been interpreted". India criticises the NATO air strikes (although Security Council mandated) in 2011 for often failing to protect civilians in Libya in the process of bringing about a regime change in that country. There is no doubt that the intervention in Libya has given R2P a bad name. Understandably, responses to the Western proposals in the Security Council on the situation in Syria are mostly guided by what happened in Libya. To avoid such controversies, therefore, India demands that those who authorise action and those who act on the basis of such a mandate should be held accountable for any resulting unacceptable outcomes.² This stand aligns with the Brazilian idea of "Responsibility while Protecting" as a complement to R2P.

As one of the leading and long-standing contributors of military and police personnel to UN peace operations, India's stand has a strong peacekeeping angle.³ In its view, UN peacekeepers cannot and should not "protect everyone from everything". Furthermore, the Security Council's role does not end with the generation of mandates for the protection of civilians. The body that designs such mandates should be held accountable if unachievable mandates are generated out of political expediency, or if adequate resources are not made available. It must differentiate between threats that require a military response or a "rule of law" response. India has endorsed the findings of the independent study commissioned by the UN Department of Peacekeeping Operations in 2009 that the major responsibility for the inadequate protection of civilian populations should rest with the Security Council, which has been unable to develop a clear understanding of the nature and extent of the problem, and has not taken into account the experience and inputs of countries whose troops are actually on the ground.⁴ India believes that besides non-co-operation by the parties directly

concerned, the primary reason for deficiencies in the protection of civilians by peacekeepers is lack of adequate resources. The modest size (17,000) of the mission deployed in the DRC – a country equivalent in size to Western Europe – is an apt example in this regard. It is regrettable that several member states are unwilling to provide minimal resources, like military helicopters, to UN peacekeeping missions, many of which are mandated to protect civilians and are designed to strengthen the capacity of state institutions, but are all too willing to expend considerable resources on regime change in the name of protecting civilians.⁵

² S/PV.6532, Resumption 1, May 11th 2011.

³ UN Security Council, *Thematic Report No. 2*, July 20th 2011.

⁴ S/PV.2616, Resumption 1, November 11th 2009.

⁵ S/PV.6650, November 9th 2011.