The UN Security Council and the Responsibility to Protect

DA FAVORITA PAPERS 01/2010

FAVORITA PAPERS **01/2010**

The UN Security Council and the Responsibility to Protect

Policy, Process, and Practice

39th IPI VIENNA SEMINAR

IPI INTERNATIONAL PEACE INSTITUTE

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THE UN SECURITY COUNCIL AND THE RESPONSIBILITY TO PROTECT: POLICY, PROCESS, AND PRACTICE
39th IPI Vienna Seminar

Diplomatic Academy of Vienna
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PREFACE

MICHAEL HÄUPL
Mayor and Governor of Vienna

Austria is proud to host the Vienna based UN organisations and agencies (UNIDO, UNODC, IAEA amongst others) as well as several other important international organisations (like OPEC, OSCE e.a.). Therefore, Vienna has always been particularly committed to maintaining and intensifying international contacts.

The international organisations based in Vienna have fostered Austria's reputation as a hub for dialogue, encounters and multilateral diplomacy. People from all over the world have come to work at the Vienna International Centre, and today they enrich our city and contribute to Austria's cultural diversity.

If today Vienna is considered an international, open-minded metropolis at the heart of Europe, this is also due to the fact that we are the only United Nations Headquarters in the European Union. We are very proud to host the UN and the many other international organisations – and we are equally grateful for it.

Since 1970, the International Peace Institute (IPI) has been convening its annual Seminar on Peacemaking and Peacekeeping in Vienna. In the light of Austria's membership on the Security Council in 2009/10, the 39th IPI Vienna Seminar provides an excellent opportunity for an in-depth discussion of "The UN Security Council and the Responsibility to Protect".

Let me reassure you that we will continue to make every effort so that Vienna feels like home to all people who represent their organisations and countries here with such great commitment.

Federal Minister for European and International Affairs Michael Spindelegger
Foto: Hopi-Media

FOREWORD

MICHAEL SPINDELEGGER
Austrian Federal Minister for European and International Affairs

The annual International Peace Institute (IPI) Vienna Seminar on Peacemaking and Peacekeeping not only highlights the long-standing and productive partnership that exists between the IPI and Austria since 1970. Over the years it has become an institution itself, emerging from a small circle of practitioners and active peacekeepers into a widely recognized forum for the discussion of peace and security issues in a wider sense. Moreover, the Vienna Seminar is a clear manifestation of Austria's firm commitment to further promoting Vienna as a hub for dialogue and host of international organizations and to continuing our engagement in peacekeeping and peace-building efforts on the ground.

As an elected member of the United Nations Security Council in 2009/10 we seek to support the Council in exercising its primary responsibility for the maintenance of international peace and security. In an effort to contribute to the Council's work we dedicated this year's Vienna Seminar to the role of Security Council and the responsibility to protect populations from the scourge of genocide, war crimes, ethnic cleansing and crimes against humanity. Our purpose was to deepen the understanding of the concept of the Responsibility to Protect (RtoP) endorsed by Heads of States and Governments at the 2005 World Summit and to explore possible ways of its implementation. The deliberations in Vienna have clearly shown that the three-pillar strategy outlined in the Secretary-General's report of January 2009 – i.e. the primary responsibility of each individual state to protect its population from the aforementioned core crimes, the responsibility of the international community to help states to exercise this responsibility and the readiness for collective action in a timely and decisive manner should a state fail or be unwilling to protect its population – provides a solid framework for turning RtoP into a reality.

Let me seize this opportunity to express my deep gratitude to IPI President Terje Rød-Larsen and his committed staff for their efforts in preparing and successfully conducting the Seminar. I would also like to sincerely thank all speakers and participants who indeed made this exchange of views a very fruitful and instructive experience. My special thanks go to the National Defense Academy and the Diplomatic Academy of Vienna for their continued cooperation and hospitality over many years.

It is my hope that the contributions to the IPI Vienna Seminar 2009 contained in this publication will find many readers and facilitate further discussions on how to effectively implement the "Responsibility to Protect". And I am particularly grateful to the City of Vienna for her generous support that made this Favorita Paper possible.

INTRODUCTION

AMB. HANS WINKLER
Director, Diplomatic Academy of Vienna

We are proud to host the International Peace Institute Vienna Seminar on Peacemaking and Peacekeeping for many years now, organized by the International Peace Institute together with the National Defence Academy and the Diplomatic Academy of Vienna, in cooperation with the Austrian Ministry for European and International Affairs and the Austrian Ministry for Denfence.

How can we operationalize the 2005 endorsed "Responsibility to Protect" (RtoP) within the framework of the United Nations? That question gained momentum after Secretary-General Ban Ki-moon's January 2009 report on "Implementing the Responsibility to Protect". So we took the opportunity to discuss this issue at the 39th IPI Vienna Seminar, giving it the title "The United Nations Security Council and the Responsibility to Protect: Policy, Process, and Practice".

The conference took place with high-ranking participants that included academics from universities and research institutes, as well as practitioners from ministries, embassies and international organizations. Some excellent and representative presentations from participants of the Seminar are now published in this booklet.

In his report, Christoph Mikulaschek gives you a broad and at the same time in-depth overview of what RtoP is about – the concept, its three pillars, the role of UN bodies, the establishment of early warning mechanisms as well as recommendations. Ambassador Susan E. Rice's emotional remarks about the responsibility of the international community in protecting civilians endangered by conflict are followed by the address of the Austrian Foreign Minister Michael Spindelegger. Hon. Gareth Evans then looks back how the idea of the responsibility to protect evolved during the last decades, before looking forth to the chance the emerging new norm could give.

Again, a focus was given to peacekeeping missions in Africa: Ambassador Adonia Ayebare from the IPI presents a case study about peacemaking in Burundi, to prevent another genocide like in Rwanda. Mona Rishmawi describes the legal framework for human rights protection and focuses on the case of sexual and gender based violence in the DRC. In their case studies, Special Representative Alan Doss and Major-General Patrick Cammaert present the UN Mission in the Democratic Republic of the Congo (MONUC), its achievements and challenges. And Rima Salah writes about the United Nations Mission in the Central African Republic and Chad (MINURCAT) and how it implements the Responsibility to Protect.

We are also very proud to present a background paper as well as the conference paper of Edward C. Luck, who is not only the Vice President of the IPI, but was appointed Special Adviser to the UN Secretary-General. In that position, he prepared the already mentioned report 2009 and plays a key role in developing the conceptual, institutional,

and political dimensions of RtoP. So I can't imagine a more competent person for providing insight into the topic.

Last, but not least, I want to take this opportunity to thank our co-organizers for the excellent cooperation. My particular thanks go to the City of Vienna, that made the publication of this compendium possible. I hope that it will find many readers and contributes to the way of successfully and effectively implementing the RtoP concept.

Amb. Hans Winkler

39th International Peace Institute Vienna Seminar on Peacemaking and Peacekeeping

THE UN SECURITY COUNCIL AND THE RESPONSIBILITY TO PROTECT: POLICY, PROCESS, AND PRACTICE

June 14 – 16, 2009
Austrian National Defense Academy, Diplomatic Academy of Vienna

PROGRAM

Sunday, June 14

17:00 – 18:30 Opening Statements

Welcoming remarks:
Rita E. Hauser, Esq., Chair, International Peace Institute

General Raimund Schittenhelm, Commandant, Austrian National Defense Academy

Ambassador Hans Winkler, Director, Diplomatic Academy of Vienna

Introduction of the Speakers:
Ambassador Terje Rød-Larsen, President, International Peace Institute

Opening Dialogue:
Hon. Gareth Evans, President and CEO, International Crisis Group

Ambassador Ruhakana Rugunda, Permanent Representative of the Republic of Uganda to the United Nations

18:30 – 20:30 FEATURED ADDRESS, RECEPTION, AND DINNER

Featured Speaker:
Major-General Johann Pucher, National Security Policy Director, Austrian Federal Ministry of Defense and Sports

Monday, June 15

9:00 – 10:00 KEYNOTE ADDRESS

Introduction of the Speaker:
Ambassador Thomas Mayr-Harting, Permanent Representative of Austria to the United Nations

Speaker:
Ambassador Susan E. Rice, Permanent Representative of the United States to the United Nations

10:00 – 11:00 SESSION 1: TAKING STOCK AND LOOKING AHEAD – IMPLEMENTING THE RESPONSIBILITY TO PROTECT

Two years after the Responsibility to Protect was endorsed in paragraphs 138 and 139 of the 2005 World Summit Outcome, the United Nations used it for the first time as the overall framework for the international response to the crisis in Kenya in early 2008. A year later, in January 2009, the UN Secretary-General presented his report 'Implementing the Responsibility to Protect' to the General Assembly (A/63/677). The General Assembly is expected to discuss the steps ahead in operationalizing the Responsibility to Protect in the spring of 2009. Now it is time to consider the role of the Security Council as well.

Introduction of the Speaker:
Ambassador Hans Winkler, Director, Diplomatic Academy of Vienna

Speaker:
Dr. Edward C. Luck, Senior Vice President and Director of Studies, International Peace Institute; Special Adviser to the UN Secretary-General

11:15 – 12:45 SESSION 2: EARLY ENGAGEMENT AND PREVENTIVE DIPLOMACY BY THE UN SECURITY COUNCIL

The Responsibility to Protect seeks to help States to succeed in fulfilling their responsibility to protect populations rather than simply react when they fail. Public and confidential suasion and preventive diplomacy by a variety of actors within and outside of the UN system can help prevent genocide, war crimes, ethnic cleansing and crimes against humanity. The UN Security Council can play a crucial role in conveying the right messages to the right parties at the right time.

Chair:
Ambassador Thomas Mayr-Harting, Permanent Representative of Austria to the United Nations

Speakers:
Ambassador Dumisani S. Kumalo, Special Representative to the Great Lakes Region and Chief Director, Department of International Relations and Cooperation, Department of Foreign Affairs, South Africa; former Permanent Representative of South Africa to the United Nations

Ambassador Adonia Ayebare, Acting Director of the Africa Program, International Peace Institute

14:00 – 15:30 SESSION 3: EARLY WARNING AND ASSESSMENT

Ensuring that political decision-makers have timely, relevant, and reliable information and unbiased assessments is a precondition for effective prevention of, and response to, the perpetration of crimes and violations relating to the responsibility to protect. As asserted in paragraph 138 of the 2005 World Summit Outcome, the international community should "support the United Nations in establishing an early warning capability." The Secretary-General recently discussed this issue in the annex to his report on implementing the Responsibility to Protect.

Chair:
Ambassador Haile Menkerios, UN Assistant Secretary-General for Political Affairs

Speakers:
Dr. Francis M. Deng, Special Adviser to the UN Secretary-General for the Prevention of Genocide

Hon. Gareth Evans, President and CEO, International Crisis Group

Dr. Alice Ackermann, Senior Operational Adviser, Conflict Prevention Centre, Organization for Security and Co-operation in Europe (OSCE)

16:00 – 17:30 SESSION 4: THE RESPONSIBILITY TO PROTECT AND THE PROTECTION OF CIVILIANS

The Security Council now regularly calls on peacekeeping operations to "protect civilians under imminent threat of physical violence," often including robust protection tasks in mission mandates. The Council has also issued a number of thematic resolutions on the protection of civilians in armed conflict, including resolutions 1265 (1999), 1296 (2000), 1674 (2006), and 1738 (2006). In resolution 1612 (2005), it established a monitoring and reporting mechanism on children and armed conflict. In resolution 1820 (2008), the Council recognized that widespread and systematic sexual violence was a security problem that it should monitor. There are, concerns, however, that questions of doctrine,

capacity, and management should be addressed to make United Nations peace operations more effective at carrying out such protection mandates.

Chair:
Mr. Alan Doss, Special Representative of the UN Secretary-General to the Democratic Republic of the Congo

Speakers:
William G. O'Neill, Esq., Program Director, Conflict Prevention and Peace Forum, Social Science Research Council

Mona Rishmawi, Esq., Legal Adviser and Head of the Rule of Law and Democracy Unit, Office of the UN High Commissioner for Human Rights

Mr. Hansjoerg Strohmeyer, Chief, Policy Development, and Studies Branch, Office for the Coordination of Humanitarian Affairs (OCHA)

18:30 – 20:30 *Reception and Dinne rat the Ministry for European and International Affairs*

Welcoming Remarks:
Ambassador Johannes Kyrle, Secretary-General for Foreign Affairs, Federal Ministry for European and International Affairs

Tuesday, June 16

9:00 – 10:30 SESSION 5: TIMELY AND DECISIVE RESPONSE

Paragraph 139 of the Outcome Document calls for "timely and decisive" collective action when "national authorities are manifestly failing to protect their populations" from the four listed crimes and violations. Such collective action may involve the UN and/or regional and sub-regional organizations in the effort to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity in various ways. The Secretary-General's report calls for using the full range of measures under Chapters VI, VII, and VIII of the Charter, as needed, to insure "an early and flexible response tailored to the specific circumstances of each case."

Chair:
Ambassador Ruhakana Rugunda, Permanent Representative of the Republic of Uganda to the United Nations

Speakers:
Major-General Patrick Cammaert (Rtd), former UN Military Adviser and former Division Commander, MONUC

Paul Johnston, Director, International Security, Foreign and Commonwealth Office, United Kingdom

11:00 – 11:30 FEATURED ADDRESS

Introduction of the Speaker:
Ambassador Terje Rød-Larsen, President, International Peace Institute

Featured Speaker:
Hon. Michael Spindelegger, Austrian Minister for European and International Affairs

11:30 – 13:00 SESSION 6: MONUC AS A CASE STUDY IN MULTIDIMENSIONAL PEACEKEEPING IN COMPLEX EMERGENCIES

Chair:
Ambassador Adonia Ayebare, Acting Director, Africa Program, International Peace Institute

Speakers:
Mr. Alan Doss, Special Representative of the UN Secretary-General to the Democratic Republic of the Congo

Major-General Patrick Cammaert (Rtd), former UN Military Adviser and former Division Commander, MONUC

Dr. Severine Autesserre, Assistant Professor of Political Science, Barnard College, Columbia University

14:00 – 15:30 SESSION 7: MINURCAT AND EUFOR CHAD/RCA AS A CASE STUDY IN JOINT UN-REGIONAL MULTIDIMENSIONAL PEACEKEEPING

Chair:
Major-General Johann Pucher, National Security Policy Director, Austrian Federal Ministry of Defense and Sports

Speakers:
Dr. Rima Salah, Deputy Special Representative of the Secretary-General for the Central African Republic and Chad

Colonel Heinz Assmann, former National Contingent Commander of the Austrian Contingent EUFOR Tchad/RCA

16:00 – 17:30 SESSION 8: CONCLUSION AND WAY FORWARD – THE UN SECURITY COUNCIL AND THE RESPONSIBILITY TO PROTECT

Chair:
Ambassador Stefan Lehne, Political Director, Austrian Federal Ministry for European and International Affairs

Speakers:
Dr. Edward C. Luck, Senior Vice President and Director of Studies, International Peace Institute; Special Adviser to the UN Secretary-General

Ambassador Hans Winkler, Director, Diplomatic Academy of Vienna

WELCOMING REMARKS

GEN. RAIMUND SCHITTENHELM
Commandant, Austrian National Defence Academy

Your Excellencies,
Ladies and Gentlemen,

It is a great pleasure for me as Commandant of the Austrian National Defence Academy to welcome you at the occasion of the opening day of the 39th International Peace Institute Seminar 2009. This is already the fifth time that the beginning of the seminar takes place at the Defence Academy before the seminar will move to the location of our partner institution in organising this event, the Diplomatic Academy of Vienna.

In past seminars we dealt with the whole spectrum of peace operations, debating both their various preparation and deployment phases as well as different areas of operation, particularly in Africa. In this year's seminar, entitled "The UN Security Council and the Responsibility to Protect (R2P)", Africa will once again be given the focus of our attention through several case studies. In operationalizing the concept of R2P, "peacekeepers" in the broadest sense of the word can and will have to play a key role. A precondition for that are clear decisions by the UN Security Council and the use of appropriate tools.

Since 1960, more than 70,000 Austrian soldiers and civilians have participated in international peace operations. Currently, more than 1,300 soldiers are taking part in 13 missions abroad. Aside from UNDOF, where we have been engaged for over 30 years, we are contributing to EUFOR/CHAD, now MINURCAT, just to name two of those operations.

However, Austria and, in particular, the National Defence Academy, are not only engaged in co-organizing IPI Vienna Seminars or in training Senior Officers for fulfilling their task in peace support operations: we were equally glad to have had the opportunity to host the UN Senior Mission Leaders Course in May of this year. Austria's firm commitment and our efforts on various levels can also be seen in the light of enhancing our credibility as a strong partner in peace operations through our role as non-permanent member in the UN Security Council 2009 and 2010. Also in this respect, the deliberations and results of this year's IPI Seminar will be of great value to us.

Ladies and Gentlemen, kindly allow me to welcome you once more on the premises of the Austrian National Defence Academy. The excellent cooperation between the Austrian Ministry for European and International Affairs and the Austrian Ministry of Defence and Sports in supporting the three institutes convening this seminar – the International Peace Institute in New York as well as the Diplomatic Academy of Vienna and the National Defence Academy – have already become tradition – let us build upon excellent results in the past. I wish us all a good start into the 39th IPI Seminar 2009.

General Raimund Schittenhelm

INTRODUCTORY REMARKS

AMBASSADOR TERJE RØD-LARSEN
President, International Peace Institute

On behalf of the International Peace Institute (IPI), it is my great honor to welcome you to this year's Vienna Seminar entitled "The UN Security Council and The Responsibility to Protect: Policy, Process and Practice." We are very pleased to be back in Vienna together with our Austrian partners, the National Defence Academy, the Diplomatic Academy, the Ministry of European and International Affairs and the Ministry of Defence and Sports, to convene this thirty-ninth annual seminar and to continue our long-standing cooperation with the Government of Austria. Indeed, next year will mark a very special occasion – the fortieth anniversary of IPI as well as our fortieth year of collaboration with our Austrian partners. I very much look forward to this very special occasion, and to continuing the tradition of the annual IPI Vienna Seminar.

We meet today at a particularly important juncture when the United Nations and the international community has a significant opportunity to deliver on the promise to put an end to genocide, war crimes, ethnic cleansing and crimes against humanity, and to prevent another Rwanda and Darfur from ever taking place again. Indeed, almost four years ago, at the 2005 World Summit, Heads of States and Governments gathered to decide on bold steps to revitalize the work of the United Nations. They did not agree on many things. However, they did manage to unanimously adopt two detailed paragraphs, number 138 and 139, outlining the concept of the "Responsibility to Protect."

Since the 2005 consensus, the Responsibility to Protect has emerged on top of the agenda of the international community, and it has become a key priority for the UN and the Secretary-General. Indeed, it has been the subject of countless speeches, debates, and academic initiatives across the globe. It has even acquired the ultimate emblem of importance at the UN: its own distinct acronym - "RtoP."

In February 2008, the Secretary-General appointed Professor Edward Luck as his Special Adviser, in which capacity he primarily focuses on the implementation of the concept of RtoP. As you know, Ed is also the Senior Vice President for Research and Programs at IPI. And since his appointment, IPI has become somewhat of an institutional home for the concept, and a venue for the UN community to come together to discuss both the political and institutional dimensions of the concept.

While we have come far since the 2005 World Summit, there is a long way to go in order to implement the concept of RtoP. Indeed, little was done in 2006 and 2007 to turn the words of RtoP into doctrine, policy or practise.

This year's Vienna Seminar will therefore consider how to best move forward the RtoP agenda, and what steps the UN and the international community must take to effectively implement the concept. As you have seen from the agenda and the concept note, the Seminar will focus specifically on the role of the UN Security Council, and on the

instruments the Council has at its disposal for preventing RtoP crimes and for protecting populations from their ravages. We will explore this central question through a series of panels focusing on issues such as the Council's role in early engagement and preventive diplomacy, ways to strengthen early warning and assessment mechanisms, and steps to make United Nations peace operations more effective in protecting civilians. In order not to consider these challenges only in the abstract, we will look at them through the lens of two case studies, the Democratic Republic of the Congo and the role of MONUC, and the Central African Republic and Chad and the roles of MINURCAT and EUFOR.

We very much hope that our discussion on these challenges will be constructive and dynamic, and that it will assist in developing specific recommendations on how to develop the role of the Security Council in implementing RtoP. I very much look forward to engaging in a rich dialogue and to hearing the views and suggestions of all participants.

Let me finally take the opportunity to once again express my sincere gratitude to the staff of the National Defence Academy, the Diplomatic Academy, the Ministry of European and International Affairs, the Ministry of Defence and Sports, and IPI, for all their efforts in organizing this event. Let me also say a special word of thanks to General Raimund Schittenhelm, Ambassador Hans Winkler, and Ambassador Thomas Mayr-Harting, for their warm hospitality and for their valuable efforts in arranging this event. I would also like to seize this occasion to welcome and thank all our seminar experts in advance for their contributions, and to finally wish this seminar a great success. Thank you.

Amb. Terje Rød-Larsen

THE UNITED NATIONS SECURITY COUNCIL AND THE RESPONSIBILITY TO PROTECT: POLICY, PROCESS, AND PRACTICE

REPORT FROM THE 39th INTERNATIONAL PEACE INSTITUTE VIENNA SEMINAR ON PEACEMAKING AND PEACEKEEPING

CHRISTOPH MIKULASCHEK
Senior Policy Analyst, International Peace Institute

1. Introduction

How can the international community implement its responsibility to encourage and help states to exercise their responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity? What kind of collective action should the international community take if national authorities are manifestly failing to live up to their own protection responsibilities? Who should decide and who should take such collective action on behalf of the international community? And how does the responsibility to protect (RtoP) relate to the United Nations Security Council's primary responsibility for the maintenance of international peace and security?

These complex questions arise as member states of the United Nations are moving from the affirmation of the responsibility to protect to the implementation of this concept.[1] In 2005, the World Summit formally adopted RtoP at the highest level.[2] In resolutions 1674 (2006) on the protection of civilians in armed conflict and 1706 (2006) on the conflict in Darfur, the UN Security Council reaffirmed and recalled the provisions on RtoP, as laid-out in the World Summit Outcome Document. In January 2009, the Secretary-General presented his report on *Implementing the Responsibility to Protect* to the General Assembly, which discussed the next steps in operationalizing RtoP between July 21 and 29, 2009.[3] On September 14, 2009, the General Assembly adopted its first Resolution on the responsibility to protect by consensus.[4]

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[1] For an insider's account of the conceptual and political struggles over the development of RtoP, see Edward C. Luck, "Building a Norm: The Responsibility to Protect Experience," in Robert I. Rotberg (ed.), *Crimes Against Humanity: Identification, Prevention, and Prosecution* (Washington, D.C.: Brookings Institution Press, forthcoming in 2010).

[2] United Nations, *2005 World Summit Outcome,* UN Doc. A/RES/60/1, October 24, 2005, paras. 138, 139, and 140.

[3] UN Secretary-General, *Implementing the Responsibility to Protect*, UN Doc. A/63/677, January 12, 2009; United Nations, *Delegates Weigh Legal Merits of Responsibility to Protect Concept as General Assembly Concludes Debate*, UN Doc. GA/10850, July 28, 2009; United Nations, *More than 40 Delegates Express Strong Skepticism, Full Support as General Assembly Continues Debate on Responsibility to Protect*, UN Doc. GA/10849, July 24, 2009; United Nations, *Delegates Seek to End Global Paralysis in Face of Atrocities as General Assembly Holds Interactive Dialogue on Responsibility to Protect*, UN Doc. GA/10847, July 23, 2009; United Nations, *Never Forget Victims of Atrocities, Urges Secretary-General as He Opens Special General Assembly Session on Implementing Responsibility to Protect*, UN Doc. GA/10845, July 21, 2009.

[4] UN General Assembly Resolution 63/308 (September 14, 2009), UN Doc. A/RES/63/308.

This is, therefore, an opportune moment to consider the role of the Security Council in implementing the responsibility to protect. The International Peace Institute's thirty-ninth Vienna Seminar on Peacemaking and Peacekeeping was convened to discuss this issue.[5] The seminar was jointly hosted by the Austrian Federal Ministry of European and International Affairs, the Austrian Federal Ministry of Defence and Sports, the Diplomatic Academy of Vienna, the National Defence Academy, and IPI. It took place at the Diplomatic Academy of Vienna and the National Defence Academy on June 14-16, 2009. The goal was to collect views from practitioners and researchers to feed into the policy agendas of key organizations and states at a critical moment for the implementation of the responsibility to protect. This report will present a synthesis of the discussions at the conference, and it will summarize key recommendations made by participants during the thirty-ninth Vienna Seminar. All speakers' recommendations figure in italics in this report.

2. The concept and the politics of the responsibility to protect

The political origins of the responsibility to protect are in Africa. Six years before it was adopted by the UN General Assembly, the concept was endorsed in the *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security,* signed by the Economic Community of West African States (ECOWAS).[6] One year later, the Constitutive Act of the African Union established a "right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity."[7] The conceptual roots of RtoP can be found in the sovereignty as responsibility concept proposed by Donald Rothchild, Francis M. Deng, I. William Zartman, Sadikiel Kimaro, and Terrence Lyons.[8] The International Commission on Intervention and State Sovereignty coined the phrase Responsibility to Protect, and it defined it broadly as encompassing prevention, reaction, and rebuilding.[9] RtoP was also

[5] IPI had already devoted several international conferences and publications to the responsibility to protect. The latter include *Prevention of Genocide and Mass Atrocities and the Responsibility to Protect: Challenges for the UN and the International Community in the 21st Century*, Rapporteurs' Report (New York: International Peace Institute, the Office of the U.N. Special Adviser on the Prevention of Genocide, and the Centre for Conflict Resolution, University of Cape Town, South Africa, June 2008), *The Responsibilityt to Protect (RtoP) and Genocide Prevention in Africa*, Rapporteurs' Report (New York: International Peace Institute, the Office of the U.N. Special Adviser on the Prevention of Genocide, and InterAfrica Group, June 2009), and *Conflict Prevention and the Responsibility to Protect*, Blue Paper No. 7 (New York: International Peace Institute, 2009).

[6] ECOWAS *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security*, adopted in Lomé, Togo, on December 10, 1999. See also the SADC *Protocol on Politics, Defense and Security Cooperation*, adopted in Blantyre, Malawi, on August 14, 2001.

[7] *Constitutive Act of the African Union*, adopted in Lomé, Togo, on July 11, 2000, Art. 4(h).

[8] Donald Rothchild, Francis M. Deng, I. William Zartman, Sadikiel Kimaro and Terrence Lyons, *Sovereignty as Responsibility: Conflict Management in Africa* (Washington, DC: Brookings Institution, 1996).

[9] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001).

inspired by the debate on humanitarian intervention.[10] It is widely accepted that RtoP is more focused in scope (on four mass atrocity crimes), broader in its protection strategy (which consists of three pillars), and more restrictive on the use of force (only as a means of last resort) than the concept of humanitarian intervention. RtoP is a concept consisting of three mutually reinforcing pillars:[11]

1. The responsibility of each individual state to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity, and their incitement.

2. The responsibility of the international community to encourage and help states to exercise this responsibility and to help states build capacity to protect their populations, as appropriate.

3. The responsibility of the international community to be prepared for collective action, in a timely and decisive manner in accordance with the UN Charter, on a case-by-case basis, and in cooperation with relevant regional organizations as appropriate, should the above preventive means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.

All three pillars of the responsibility to protect reflect established international law, and any international engagement under pillars two and three has to be in accordance with the United Nations Charter. Conventional and customary international law obliges states to prevent and punish genocide, war crimes, ethnic cleansing, and crimes against humanity; and various intergovernmental mandates ask the UN High Commissioners for Human Rights and Refugees, as well as other UN bodies, to promote compliance with international human rights law and international humanitarian law by states and nonstate actors.

The added value of RtoP is not so much the novelty of international action to protect populations from mass atrocities, but rather the concept's value as an organizing principle that ties different normative strands together and that has broad popular appeal. It helps clarify what the United Nations stands for, and what it seeks to accomplish, when it engages in preventing or responding to situations of mass atrocities. Thus, it can provide an overarching rationale for the work of the organization in specific crisis situations, such as the postelection violence in Kenya or the final stages of the civil war in Sri Lanka.

[10] See, e.g., United Nations, Verbatim Records of the Plenary Meetings of the 54th Session of the General Assembly, September 14, 1999, to November 19, 1999, UN Docs. A/54/PV.1 through A/54/PV.59; Kofi Annan, "Two Concepts of Sovereignty", *The Economist*, 18 September 1999; Independent International Commission on Kosovo, *Kosovo Report* (New York: Oxford University Press, 2001).

[11] United Nations, Secretary-General defends, clarifies 'Responsibility to Protect' at Berlin event on 'Responsible Sovereignty: International Cooperation for a Changed World', UN Doc. SG/SM/11701, 15 July 2008; UN Secretary-General, *Implementing the Responsibility to Protect*, UN Doc. A/63/677, January 12, 2009, para. 11.

Moreover, the responsibility to protect adds collective responsibilities to individual rights, stressing that states and the international community are bound to work proactively to safeguard the basic human right to not be victimized in genocide, war crimes, ethnic cleansing, or crimes against humanity. Thereby, it provides a strategy for implementing human rights and international humanitarian law related to the prevention of mass atrocities.

Shining a light on the mirror image of individual rights, namely the responsibility of states and of the international community, may convey the need for action to national, regional, and global leaders when they face a looming mass atrocity. Assuming the responsibility to protect, and giving it doctrinal, policy, and institutional life at the national, regional, and international levels, may help summon the political will to take difficult decisions that could avert similar atrocities to those witnessed in Srebrenica, Rwanda, and elsewhere. Through the work of civil society, educational, and advocacy groups around the world, the popular movement for RtoP seeks to raise the political cost of failing to take action or blocking Security Council action in clear RtoP situations.

At the heart of RtoP lies the notion that the sovereignty of states does not only confer rights but also responsibilities.[12] Today, the notion that each state has a responsibility to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity enjoys near-universal acceptance. Indeed, no delegate denied this core responsibility during the July 2009 General Assembly debate on the Secretary-General's report. However, the consensus on the responsibility to protect was more broad than deep when the concept was adopted by the General Assembly in 2005. After slipping further thereafter, support for the implementation of RtoP finally regained momentum in the last two years, following the Secretary-General's appointment of a Special Adviser, Edward C. Luck, IPI's Senior Vice President, to develop the conceptual, institutional, and political dimensions of RtoP. The January 2009 report by the Secretary-General on the concept, prepared by Professor Luck following intensive consultations, was generally well-received by member states.[13]

Though skepticism about implementing RtoP remains among some member states, this appears to relate less to the basic principles of the responsibility to protect than to fears over how the concept might be applied in real crises. First, many states fear that RtoP could be abused by powerful states as justification for interventions that serve their political interests. This suspicion clearly indicates the need to root RtoP in the framework of the UN Charter, which bars unilateral military action except in self-defense. Proponents of RtoP argue that the existence and implementation of a multilateral framework for preventing and responding to mass atrocities unmasks the

[12] It is commonly believed that sovereignty concerns have been held largely by smaller developing countries that are potentially vulnerable to interventions from more militarily powerful developed countries. However, these concerns about territorial sovereignty have been matched by the worries of some larger developed countries that their decision-making sovereignty could be compromised by RtoP obligations to intervene to stop the commission of major atrocity crimes. See, for example, Edward C. Luck, "Sovereignty, Choice, and the Responsibility to Protect," *Global Responsibility to Protect*, vol. 1, no. 1 (2009), pp. 10-21.

[13] For a series of critiques and defenses of the Secretary-General's report by leading scholars, see *Global Responsibility to Protect*, vol. 2, no. 1 (2010).

procedural illegitimacy of unilateral "humanitarian" interventions. Thereby it may raise the political costs of unilateral use of force for alleged protection purposes.

Some states also fear that the responsibility to protect, though universal in theory, will be applied selectively in practice. Great powers and their allies may be able to use their leverage to prevent timely and decisive action by the Security Council in the event of their failure (or their friends' and allies') to protect their own populations. The veto power of the permanent Security Council members has indeed often been used to prevent international censure for illegal acts by great powers and their allies, and the veto could prove an obstacle to the uniform application of the third pillar of RtoP in all conflict areas. In his recent report, the Secretary-General urged the permanent members of the Security Council to refrain from employing or threatening to employ the veto in situations where states are manifestly failing to protect their populations, and to reach a mutual understanding to that effect.[14] It remains doubtful whether the permanent members of the Security Council will reach an understanding on not using the veto in situations involving genocide, war crimes, ethnic cleansing and crimes against humanity in the near future. However, the formal adoption of RtoP by the 2005 World Summit already raised the political costs of obstructing the delivery on this commitment by casting a veto that prevents timely and decisive collective action in the face of a mass atrocity situation. If a veto cast in the context of mass atrocities prevents the Council from living up to its responsibility to protect, the qualified majority of Council members could make use of the "uniting for peace" procedure so the General Assembly can take timely and decisive action.[15]

There is broad agreement that RtoP only applies to genocide, war crimes, ethnic cleansing, and crimes against humanity, and their incitement. *Advocates should resist the temptation to stretch the concept to include other instances of human rights violations or other sources of human suffering, such as climate change or natural disasters.* Turning the responsibility to protect into a broad defense of human rights or human security would dilute its conceptual clarity, make it more difficult to operationalize, and jeopardize political support by many UN member states.[16] With its narrow focus, RtoP insists that the four mass atrocity crimes are extraordinarily egregious, and that preventing and responding to them demands particular attention from civil society, national, regional, and international leaders.

[14] United Nations Secretary-General, *Implementing the Responsibility to Protect*, UN Doc. A/63/677, January 12, 2009, para. 61.
[15] United Nations Secretary-General, *Implementing the Responsibility to Protect*, UN Doc. A/63/677, January 12, 2009, para. 63; International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, paras. 6.29-6.30.
[16] UN Department of Public Information, *Secretary-General Defends, Clarifies "Responsibility to Protect" at Berlin Event on "Responsible Sovereignty: International Cooperation for a Changed World,"* UN Doc. SG/SM/11701, July 16, 2008.

3. The role of the Security Council and other United Nations bodies in implementing the responsibility to protect

The question which United Nations organs should take action on behalf of the international community to fulfill its responsibility to protect should be answered by reference to the United Nations Charter. The provisions of the Charter show that the implementation of different aspects of the responsibility to protect falls within the competencies of multiple United Nations bodies.

The Security Council can play a crucial role in the implementation of both the second and the third pillars of the responsibility to protect. Article 139 of the 2005 World Summit Outcome expresses the preparedness of the international community to take collective action through the Security Council, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In addition to coercive collective action, such as binding sanctions and the use of force, the Security Council can also resort to non-coercive means to afford protection to populations victimized by mass atrocities (pillar three of the responsibility to protect). It can do so by deploying peacekeeping operations with civilian protection mandates. By conducting investigations into past abuses, which project a shadow of sanctions against those responsible for mass atrocity crimes, it may also help prevent an escalation or repetition of mass atrocities. Finally, the Security Council can diplomatically engage the parties concerned under Chapter VI of the United Nations Charter to ensure the protection of populations suffering from mass atrocity crimes.

The Security Council may also take non-coercive action under Chapter VI to encourage states to exercise their responsibility to protect their population from genocide, war crimes, ethnic cleansing and crimes against humanity (pillar two). Similarly, the Security Council makes important contributions to the second pillar of the responsibility to protect when it mandates peace operations to support security sector reform, the establishment of effective judicial authorities, and disarmament, demobilization and reintegration processes in postconflict countries. Moreover, the Security Council's resolutions on children and armed conflict have created a sophisticated mechanism that monitors and seeks to influence the conduct of governments and insurgency groups related to children and armed conflict around the world.[17]

The Security Council does not require prior referral by any other United Nations organ to take collective action if it determines that a situation involving genocide, war crimes, ethnic cleansing and crimes against humanity constitutes a threat to international peace and security. At the same time, the Security Council may only take action in pursuit of the international community's responsibility to protect when a mass atrocity situation amounts to a present threat to international peace and security, or whose continuation is

[17] See UN Security Council Resolution 1612 (July 26, 2005), UN Doc. S/RES/1612 (2005); UN Security Council Resolution 1820 (June 19, 2008), UN Doc. S/RES/1820 (2008); UN Security Council Resolution 1882 (August 4, 2009), UN Doc. S/RES/1882 (2009); United Nations Secretary-General, *Children and armed conflict*, UN Doc. A/59/695–S/2005/72, February 9, 2005; United Nations Secretary-General, *Children and armed conflict*, UN Doc. A/63/785–S/2009/158, March 25, 2009.

likely to endanger the maintenance of international peace and security. When the Security Council fails to take collective action, in a timely and decisive manner, in response to the manifest failure by national authorities to protect their populations from mass atrocities, the General Assembly can consider appropriate measures, such as non-binding sanctions or the deployment of peace operations under the "Uniting for Peace" procedure.[18]

The General Assembly recently reaffirmed paragraphs 138 and 139 of the 2005 World Summit Outcome on the responsibility to protect, and it continues its consideration of the responsibility to protect.[19] It can move the process of implementing the responsibility to protect forward by asking and debating the right questions. The group of friends of the responsibility to protect is a diverse group of member states from all continents that contributes toward this objective. In addition, the General Assembly may also perform other functions related to the implementation of the responsibility to protect under articles 10 to 14 of the United Nations Charter.

The Peacebuilding Commission makes important contributions to the implementation of the second pillar of the responsibility to protect. In 2005, the Peacebuilding Commission was established by the General Assembly and the Security Council to support peace efforts in countries emerging from conflict.[20] Mass atrocities are more likely to occur in societies that recently experienced armed conflict than in other countries, and the aftermath of war is the period when the international community can mitigate risks of future mass atrocities most effectively. Thus, the Peacebuilding Commission is well positioned to assist states in confronting risks of future mass atrocities. The first two countries on the agenda of the Peacebuilding Commission, Burundi and Sierra Leone, are both afflicted with traumata from previous mass violence.

The human rights architecture of the United Nations can also play a crucial role in the implementation of pillar two of the responsibility to protect. For decades, the High Commissioner for Human Rights, the Special Rapporteurs and the human rights treaty bodies have advanced respect for human rights, which is an essential element of responsible sovereignty. The Human Rights Council has the potential of sharpening its focus as a forum for considering ways to encourage states to meet their obligations relating to the responsibility to protect, and to monitor, on a universal and apolitical basis, their performance in this regard.[21]

[18] United Nations Secretary-General, *Implementing the Responsibility to Protect*, UN Doc. A/63/677, January 12, 2009, para. 11(c); UN General Assembly Resolution 377 (V) (November 3, 1950), UN Doc. A/RES/377(V).
[19] UN General Assembly Resolution 63/308 (September 14, 2009), UN Doc. A/RES/63/308.
[20] UN General Assembly Resolution 60/180 (December 20, 2005), UN Doc. A/RES/60/180; UN Security Council Resolution 1645 (2005) (December 20, 2005), UN Doc. SC/RES/1645 (2005).
[21] United Nations Secretary-General, *Implementing the Responsibility to Protect*, UN Doc. A/63/677, January 12, 2009, para. 16.

4. Making societies more resistant to threats of genocide, war crimes, ethnic cleansing, and crimes against humanity

4.1. Implementing the sovereign responsibility of states to protect their populations

The sovereign responsibility of each state to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity is the conceptual starting point of the responsibility to protect and of all strategies for its implementation (pillar one). This fundamental fact is sometimes overlooked because much of the public debate on RtoP focuses on collective action in the face of a government's failure to protect its population.

One of the best ways to exercise the responsibility to protect is to prevent mass atrocities through effective action to alleviate their root causes. While it is difficult to generalize across these four crimes, it is possible to list some common factors that have frequently played a key role in the descent of a society into mass violence. These include poverty, youth unemployment, environmental pressures, poor governance, ethnic or religious discrimination, inequitable distribution of scarce resources, absence of rule of law, and weak state institutions.[22] Perhaps with the exception of war crimes, most mass atrocities were "in the making" for considerable time. The genocide in Rwanda, for instance, occurred against the backdrop of old ethnocentric divisive ideologies. Since attaining independence in 1960, Chad has seen recurrent violent conflict and political instability that have hindered the establishment of an effective government. Successive coups created a culture of violence that provided the background for the insurrectionist and criminal activities and interethnic clashes that erupted in eastern Chad in 2006. The armed conflict in Chad led to the perpetration of violations of international humanitarian law relating to the responsibility to protect.[23]

Early structural prevention can mitigate root causes before they lead to the perpetration of mass atrocities. The key objectives of structural prevention include sustainable economic development, good governance, and the rule of law. A crucial role in structural prevention falls to national and transnational civil society. Churches, mosques, synagogues, temples, independent media, grassroots associations, and schools can provide early warning, mediate local disputes, scrutinize their government's conduct, and make a given society more resistant to hate speech and propaganda in the hour of crisis.

4.2. Implementing assistance and capacity building by the international community

The international community has a responsibility to encourage and help states to protect their populations from mass atrocities (pillar two). The international human rights architecture has been making valuable contributions to this objective for several decades. Field presence by the Office of the High Commissioner for Human Rights and a

[22] See also, Christoph Mikulaschek, *Actualizing the Responsibility to Protect* (Muscatine, IO: The Stanley Foundation, 2008): at 27-28.
[23] See, e.g., Commission d'Enquête sur les événement survenus en République du Tchad du 28 janvier au 08 février 2008 et leurs conséquences, *Rapport*, July 31, 2008.

network of special *rapporteurs* and experts have long been tools to support national human rights institutions and to help national authorities resolve crises peacefully. Further empowering the international human rights architecture could help strengthen global norms that condemn mass atrocities, and assist states in building national capabilities for the protection of human rights and the prevention of crimes and violations relating to the responsibility to protect. Through balanced and credible action, the Human Rights Council can scrutinize human rights records around the world and cast a spotlight on the worst abuses. In the future, the Human Rights Council will hopefully be able to make a significant contribution to the implementation of the responsibility to protect.

In 2005, the Security Council and the General Assembly established the Peacebuilding Commission to support reconstruction and institution-building efforts in post-conflict countries. In recent years, the Security Council has routinely mandated multidimensional peace operations to assist the host government in strengthening the capacity of national authorities to secure human security. The United Nations Mission in the Democratic Republic of the Congo (MONUC) has been deployed for ten years, its mandate is one of the most comprehensive peacekeeping mandates ever, and it currently fields 18,700 blue helmets at an annual cost of $1.35 billion.[24] At the same time, MONUC understands the need to think about a long-term exit strategy that critically depends on building professional and accountable national sector institutions.

The work of the human rights component of the United Nations Mission in the Central African Republic and Chad (MINURCAT) in strengthening the capacity of Chadian authorities to protect their population exemplifies the crucial contribution of multidimensional peace operations to implementing pillar two of the responsibility to protect. MINURCAT monitors human rights violations, such as gender-based sexual violence and the recruitment of child soldiers, on a daily basis, and brings them to the attention of competent national authorities. It also provides support to the Ministry of Human Rights and Protection of Liberties in its effort to define a National Action Plan for Chad, keeps reminding the Chadian government of its international human rights obligations, and advocates the ratification of other international human rights instruments by Chad. MINURCAT also comprises a Judicial Advisory Unit that works with the Ministry of Justice to strengthen national judicial mechanisms, to facilitate access to justice for the entire population, including vulnerable groups such as internally displaced persons (IDPs), women, and children, and to harmonize traditional justice systems with international human rights standards. The Penitentiary Section of MINURCAT works toward humanizing Chadian prisons and supports the development of a professional cadre of prison officers. The United Nations International Police Officers of MINURCAT selected, trained, advised, and continue to support the 850 members of the new national humanitarian police component responsible for maintaining law and order in twelve refugee camps, IDP sites, and six key towns in neighboring areas.

[24] UN General Assembly Resolution 63/291 (June 30, 2009), UN Doc. A/RES/63/291; United Nations, "UN Mission's Contributions by Country," July 31, 2009, available at www.un.org/Depts/dpko/dpko/contributors/2009/july09_4.pdf.

When the Security Council mandates peace operations to support capacity building for national security sector institutions as well as to perform civilian protection tasks, it often presents peacekeepers with a dilemma: how should the UN mission react to abuses against civilians that are committed by elements within the national army and police service they are asked to support? In the Democratic Republic of the Congo (DRC), for instance, the army has absorbed numerous rebel groups in recent years, and its composition is a reflection of past peace agreements. When MONUC supports forward operations of the national armed forces that lead to abuses, the peace operation risks being accused of complicity in human rights violations. At the same time, MONUC's training and mentoring for the national army also helps strengthen professionalism and effective disciplinary measures. Ultimately, the objective of protecting civilians from imminent threat of physical violence should always take precedence for MONUC over the longer-term goal of training and supporting the Congolese armed forces. Accordingly, Security Council Resolution (UNSCR) 1856 of 2008 specifies that the protection of civilians shall be the first priority for MONUC. MONUC's leadership, as well as the recent Security Council mission to the DRC, spent considerable time pleading with the Congolese government not to retain commanders who are responsible for atrocities. *The Security Council and the Congolese government should establish a hybrid tribunal to prosecute those most responsible for systematic abuses to support the ability of national authorities to address the legacy of impunity for gender-based sexual violence.*

An additional way for the Security Council to assist governments in the exercise of their responsibility to protect is to authorize the preventive deployment of UN peacekeeping operations.[25] So far, the United Nations Protection Force (UNPROFOR) and the UN Preventive Deployment Force (UNPREDEP) in the Former Yugoslav Republic of Macedonia (FYROM) remain the only preventive peace operations deployed by the United Nations. At a time when other former Yugoslav republics suffered from protracted wars, UNPROFOR and UNPREDEP helped stabilize ethnic tensions in FYROM between 1992 and 1999. They were supported by a civilian mission of the Organization for Security and Co-operation in Europe (OSCE). The deployment of South African troops in Burundi, which also aimed to prevent armed conflict and mass atrocities, provides a more recent example of preventive peacekeeping. Even though preventive deployment already figured prominently in the 1992 *Agenda for Peace* report, the success of UNPROFOR and UNPREDEP in FYROM did not lead the Security Council to make more use of this preventive mechanism.[26] One reason could be that the notion of prevention does not convey the urgency needed to secure the deployment of blue helmets, which remain in short supply. The geographic location of Macedonia in the Balkans, combined with Europe's strong representation on the Council, may explain the exceptional willingness to deploy a preventive force in FYROM. Many states at risk of mass atrocities also resist the internationalization of the conflict, which might inadvertently legitimize rebel forces. Thus, the difficulty of securing host governments' consent for early deployments of blue helmets may be another reason why preventive UN peacekeeping remains an underutilized tool for

[25] United Nations Secretary-General, *Implementing the Responsibility to Protect*, paras. 41-42.
[26] United Nations Secretary-General, *An Agenda for Peace: Preventive Diplomacy, Peacemaking, and Peace-keeping*, June 17, 1992, UN Doc. A/47/277-S/24111, paras. 28-32.

bolstering a society's resistance to looming threats of genocide, war crimes, ethnic cleansing, and crimes against humanity.

5. Early engagement and preventive diplomacy by the Security Council

It is a well-known fact that successful crisis prevention takes a much lower human and financial toll than military action to respond to an escalating complex emergency.[27] The UN Charter provides the Council with a broad mandate for early engagement and preventive diplomacy. Under Article 34, the Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute. It may do so by undertaking a mission, establishing a commission of inquiry or a panel of experts, appointing a special *rapporteur*, analyzing the situation in the framework of an existing subsidiary organ, requesting that the Secretary-General conduct an inquiry, send a fact-finding mission, or appoint a special representative, and by obtaining briefings from UN officials and other experts. Articles 36 and 37 of the Charter authorize the Council to recommend terms of settlement or conflict resolution forums to the parties concerned.

The Security Council has affirmed its commitment to early preventive diplomacy in UNSCRs 1366 (2001) and 1625 (2005) and in several Presidential Statements. In the context of the conflict in Darfur, it created a commission of inquiry and followed its recommendation to refer the situation in this Sudanese province to the International Criminal Court. Since 1992, it has undertaken thirty-nine missions to countries undergoing or emerging from conflict, often communicating directly and confidentially with representatives of the government, other parties, and civil society representatives.[28]

At the same time, some of the Council's instruments for preventive diplomacy remain underutilized. *For example, the Council could invite the United Nations High Commissioner for Human Rights (UNHCR) for a briefing on the contribution of her office to the prevention of mass atrocity crimes in specific conflict areas. The Security Council could also solicit a briefing by Kofi Annan on his mediation in response to the post-election mass violence in Kenya in 2007 and 2008.* In light of the continuing potential of outbreaks of armed violence in Kenya, such an assessment would remain highly relevant.

The question of whether a specific situation with the potential to escalate into armed conflict should be added to the Security Council's agenda often proves highly controversial among Council members and other member states. *Sometimes, taking discrete action may be less contentious and more likely to enjoy the backing by all Security Council members.* In the context of its mission to West Africa in 2004, for instance, the Council visited Guinea, which was not on its agenda, to discuss how instability in neighboring Sierra Leone had affected the Guinean province of Guinea-

[27] Carnegie Commission on Preventing Deadly Conflict, "Preventing Deadly Conflict: Final Report," (Washington, DC: Carnegie Commission on Preventing Deadly Conflict, 1997).
[28] United Nations, Reports of Missions of the Security Council, available at http://www.un.org/Docs/sc/missionreports.html (accessed on October 7, 2009).

Forestière, and how the UN system could work with the government of Guinea to prevent conflict from spreading further.[29]

The Security Council's work on children and armed conflict and women, peace, and security constitutes an increasingly sophisticated framework for early engagement by the Council in deteriorating human protection crises. The monitoring mechanism established by UNSCR 1612 (2005) analyzes recruitment and use of child soldiers and other violations and abuses against children affected by armed conflict in all states, irrespective of whether the Council is seized of their situation or not.

In general, the Security Council could support the implementation of the responsibility to protect by being imaginative and forward-looking in its preventive engagement with actors in areas of potential concern. It should try to discern potential cases of future mass atrocities before they materialize, and take more comprehensive early action to mitigate such risks.

The Security Council should also seek closer cooperation on peacemaking with regional organizations. The peace process in Burundi offers a good example of how preventive diplomacy by regional and international actors can help prevent mass atrocities. In the mid-1990s, the political situation in Burundi appeared almost as bleak as it did in neighboring Rwanda before the genocide. It was the sustained engagement by regional and international actors that prevented the Burundian civil war and hate crimes from spiraling out of control. Julius Nyerere and Nelson Mandela served effectively as mediators for the Arusha peace process. Their efforts benefited from the support of various actors: The Organization for African Unity (OAU), the African Union (AU), and the UN deployed missions to Burundi. Regional governments were prepared to apply their leverage on recalcitrant parties when negotiations stalled, and nongovernmental mediators facilitated track-two negotiations. The Security Council and the broader international community provided sustained backing to the regional efforts to manage the conflict in Burundi.

The mediation support capabilities in the secretariats of the United Nations and of regional organizations should also intensify their cooperation. They could improve the exchange of best practices on mediation, training exchanges, and desk-to-desk dialogue. In 2006, the Policy Planning and Mediation Support Unit of the UN Department of Political Affairs (DPA) launched a series of consultations with its regional counterparts. The utility of this approach can be illustrated by one of the specific outcomes of a lessons-learned workshop jointly held with the OSCE.[30] After the seminar, OSCE decided to adopt the United Nations' practice of soliciting end-of-mission reports from heads of field missions and added oral debriefings to it. This practice was subsequently emulated by the European Union (EU). The further intensification of structured cooperation between secretariats can be facilitated by member states if they address the resource constraints of some organizations' mediation support units.

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[29] United Nations, *Report of the Security Council Mission to West Africa, 20-29 June 2004*, July 2, 2004, UN Doc. S/2004/525, para. 58.

[30] Miriam Fugfugosh, "Operationalizing Mediation Support: Lessons from Mediation Experiences in the OSCE area," *Geneva Papers* 3 (2008).

6. Early warning and assessment

Sound decision making on preventing and responding to mass atrocities requires accurate and timely reports on emergency situations and balanced assessments of the available information. Early-warning assessments should focus on the questions of when, where, and why mass atrocities may occur in the future, and on how preventive engagement can help avert them. Assessments feeding into decision making on international responses to ongoing mass violence should also provide a basis for the legal qualification of acts of violence and for the attribution of responsibility.

6.1. Gathering information for the effective prevention of mass atrocities and for a timely and decisive collective response to them

What kind of information is essential for detecting risks of mass atrocities before they materialize? First of all, early warning on the responsibility to protect needs to describe the underlying susceptibility of a country to descending into a situation of mass atrocities. Political, economic, social, legal, and military factors all affect a society's ability to withstand threats of mass atrocities. A history of armed conflict and mass violence indicates an elevated risk of future atrocities. Second, early-warning mechanisms need to provide information on the strength of institutional coping mechanisms in a society. These include credible judicial mechanisms and the rule of law, participatory government and independent and credible electoral commissions, as well as nonstate conflict-resolution fora and an active civil society. Finally, early warning critically depends on timely and credible information on current events, including data on trends in armed violence and on key stakeholders in the at-risk state and foreign actors.

Very specific information is needed to ascertain whether any party is committing genocide, war crimes, ethnic cleansing, or crimes against humanity, or inciting them. The definitions of these four crimes are complex, and each comprises at least ten different criminal acts. For instance, crimes against humanity can take the form of rape, killing, or forced disappearances committed as part of a widespread or systematic attack directed against any civilian population.[31] Specific information on the nature of atrocities, on the responsibility of individual leaders in the parties' command chain, and on national investigations and prosecutions of these acts is necessary to determine whether a state is fulfilling its responsibilities under international law, and whether the international community has a responsibility to take collective action.

Who is capable of providing this information? Above all, there is no substitute for analytical capabilities based in the country at risk, including UN officials, diplomats, independent media, nongovernmental organizations (NGOs) and think tanks such as the International Crisis Group. *To facilitate early warning of mass atrocities, UN departments, programs, agencies, and interagency networks should incorporate*

[31] *Rome Statute of the International Criminal Court*, UN Doc. A/CONF.183/9, July 17 1998, Art. 7; *Statute of the International Criminal Tribunal for the Former Yugoslavia*, Annex to UN Security Council Resolution 827 (May 25, 1993), UN Doc. S/RES/827, Art. 5.

considerations and perspectives relating to RtoP into their ongoing reporting procedures to the extent that their mandates permit.[32]

Independent, professional, and impartial inquiries can ascertain whether specific mass atrocities have been committed, as well as who bears responsibility for their perpetration. Such investigations can be conducted by experts in UN human rights mechanisms or by special *rapporteurs* and commissions of inquiry.[33] In the past, the Security Council availed itself of information available from human rights bodies of the UN, but it has not done so in recent years.

Gathering information on gender-based sexual violence is a particularly sensitive and difficult task. In any society, it is difficult to obtain testimonies from victims, and breaking the silence of women and girls is a major challenge for UN peace operations seeking to understand the dynamics of gender-based sexual violence. *Past experience teaches us that both the interviewer and the translator should have the same gender as the victim, and that interviews on abuse should be combined with medical support and psychological counseling. Moreover, some contingents in UN peace operations need to become more sensitive to the problem of gender-based sexual violence to become more effective in preventing, documenting, and responding to violence against women and girls.*

The United Nations Stabilization Mission in Haiti (MINUSTAH) dealt very effectively with the challenge of gathering information on criminal networks that once terrorized the Cité du Soleil in Port-au-Prince. In 2007, the UN peace operation managed to salvage the Cité du Soleil from the reign of these criminal gangs. This success was, in part, due to the excellent intelligence obtained by the mission, MINUSTAH's careful planning of the operation in Cité du Soleil in cooperation with the national police, and the support from the President of Haiti. MINUSTAH was the first UN peace operation to pay informers to gather information on a complex human security crisis.

6.2. Conducting an accurate, timely, and balanced assessment of situations potentially at risk of mass atrocities

Assessing the risk of mass atrocities in particular areas in an accurate, timely, and balanced manner presents a far greater challenge for the United Nations than does gathering information, which is often available in abundance. *Addressing present shortcomings in the way the UN evaluates information and conducts risk assessments should be a key concern in the process of implementing the responsibility to protect.*[34]

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[32] United Nations, *Annex* to UN Secretary-General, *Implementing the Responsibility to Protect*, para. 4.
[33] The International Humanitarian Fact-Finding Commission, established under article 90 of Additional Protocol I to the Geneva Conventions of 1949, could be another avenue for investigation. See Frits Kalshoven, "The International Humanitarian Fact-Finding Commission: A Sleeping Beauty?" *Humanitäres Völkerrecht – Informationsschriften* 4 (2002), available at www.icrc.org/Web/Eng/siteeng0.nsf/ htmlall/5TLESB/$File/Frits%20Kalshoven%202.pdf.
[34] See United Nations, *2005 World Summit Outcome,* UN Doc. A/RES/60/1, October 24, 2005, para. 138: "The international community should, as appropriate, […] support the United Nations in establishing an early warning capability."

Only a combination of human rights, humanitarian, political, security, economic, social, and development perspectives yields an understanding of the patterns of events that could lead to the perpetration of mass atrocity crimes.[35] At present, six main information conduits dealing with these topics exist inside the UN Secretariat. Too often, these information streams are stove-piped, and UN departments, agencies, funds and programs sometimes fail to exchange information with each other.

Early warning of possible RtoP crimes needs to draw from each of these channels to obtain a full picture of specific risks of a future mass atrocity crime. The best way to implement early warning for RtoP is not by establishing new reporting mechanisms specifically addressing genocide, war crimes, ethnic cleansing, and crimes against humanity, and their incitement. *Rather, the Secretariat's capability to assess all information available throughout the UN system and beyond should be strengthened. An early-warning focal point for mass atrocities could be located in the planned joint office of the Secretary-General's two Special Advisers, one on Genocide Prevention and the other focusing on the responsibility to protect.* The establishment of the early-warning focal point would require an increase in the resources allocated to their offices. It would provide risk assessments to the Secretary-General and, through him, to the Security Council or other inter-governmental bodies. As of this writing, the Special Adviser focusing on RtoP is preparing proposals for the utilization of a new or existing inter-departmental and inter-agency mechanism for posing policy options to the Secretary-General in emergency RtoP situations.

At times, multidimensional technical assessment missions have provided the Security Council with evaluations of specific civilian protection crises. For instance, the findings of the two assessment missions on the protection of civilians in refugee camps and IDP camps in Chad and the Central African Republic led the Security Council to deploy MINURCAT as a multidimensional peace operation with an explicit mandate to protect civilians in both countries.[36] *The Council can also establish groups of experts or a commission of inquiry to obtain in-depth assessments of human security crises. Both instruments have delivered very penetrating reports in recent years, and they could be utilized more often.*[37] The Secretary-General recently made a proposal to the Security Council to establish a commission of inquiry to investigate violations of international humanitarian law, particularly sexual violence, in Chad, the DRC, and Sudan.[38]

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[35] United Nations Secretary-General, *Annex* to *Implementing the Responsibility to Protect*, para. 1.

[36] See, United Nations Secretary-General, *Report of the Secretary-General on Chad and the Central African Republic Pursuant to Paragraphs 9(d) and 13 of Security Council Resolution 1706 (2006),* UN Doc. S/2006/1019, December 22, 2006.

[37] The Commission of Experts established pursuant to UNSCR 780 (1992) to investigate grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia; and the Commission of Experts established pursuant to UNSCR 935 (1994) to investigate serious violations of international humanitarian law and acts of genocide committed in the territory of Rwanda, constitute two additional examples of investigations into mass atrocities mandated by the Security Council.

[38] United Nations, *Report of the Secretary-General Pursuant to Security Council Resolution 1820,* UN Doc. S/2009/362, July 15, 2009, para. 56.

In the past, crucial information on material dangers was sometimes diluted as it was relayed through the chain of command inside the UN Secretariat, and it finally did not convey the appropriate sense of urgency to the Security Council. This was in part due to a misapplication of the Secretariat's culture of impartiality toward situations of mass atrocities. *The Secretary-General and the Council can mitigate the danger of self-censorship by Secretariat officials if they strongly signal that they want them to provide candid, accurate, and timely assessments of looming threats of mass atrocities.*

UN peace operations have developed sophisticated mechanisms for understanding the dynamics of violence, and for foreseeing and preventing outbreaks of armed conflict. MONUC has established a rapid-reaction cell that prepares a weekly assessment of likely risk areas where troops should be deployed preventively. This assessment brings together information from the mission, national authorities, and NGOs. The Joint Task Force on Minorities of the United Nations Mission in Kosovo (UNMIK) used to meet once a week to exchange information on places where violence may occur. It also discussed the tactics that would be most appropriate for prevention and response, such as installing checkpoints or shutting down a radio station that broadcast the names of ethnic Serbs in Pristina.

Some regional organizations have made strong progress in establishing early-warning mechanisms. For instance, the OSCE appointed a High Commissioner for National Minorities and a Representative on Freedom of the Media, and it created a twenty-four hour situation center. OSCE conducts fact-finding missions and issues preventive and confidential spot reports to all its fifty-six member states on incidents such as unusual military activities. The African Union, ECOWAS, the Southern African Development Community (SADC), and the Association of Southeast Asian Nations (ASEAN) have also established increasingly sophisticated early-warning mechanisms. The EU, for instance, has deployed a series of Conflict Prevention Assessment Missions to evaluate conflict risks in countries such as Fiji, Indonesia, and Nepal, and to propose conflict prevention strategies.[39] *The accuracy and timeliness of their assessments can be strengthened through more systematic and regular exchanges of information on imminent crises between the UN and regional and sub-regional organizations. Joint training programs on early-warning methodology and regular exchanges of staff from the situation centers could help regional organizations and the UN to further strengthen their early-warning capacity and expertise.*

Ultimately, even the best early-warning mechanisms and assessments cannot substitute for the lack of political will of national, regional, and international institutions to live up to their responsibility to protect before mass atrocities materialize. Too often, accurate assessments of genocide, war crimes, ethnic cleansing, crimes against humanity, and their incitement were available to the Security Council as well as in major capitals, but the missing ingredient for effective crisis prevention and timely and decisive collective response was political will among key decision makers.[40] As noted above, RtoP's

[39] Alice Ackermann, "The Idea and Practice of Conflict Prevention," *Journal of Peace Research* 30, no. 3 (2003): 339-347.

[40] See, for example, United Nations, *Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda,* UN Doc. S/1999/1257, December 15, 2009; William

biggest contribution may prove to be in raising the political costs of inaction or indifference in such cases.

7. Timely and decisive collective action against mass atrocities through the Security Council

As noted above, at the heart of the responsibility to protect lies the sovereign responsibility of each state to protect its own population from genocide, war crimes, ethnic cleansing, crimes against humanity, and their incitement. When a state is manifestly failing to fulfill this responsibility and preventive engagement by the international community cannot avert mass atrocities, the international community has the responsibility to take timely and decisive collective action.[41] Such a collective response to mass atrocities has to be in accordance with international law, and it should make use of the full range of measures under Chapters VI, VII, and VIII of the UN Charter, as appropriate, to ensure an early and flexible response tailored to the specific circumstances of each case. Military action to protect populations from mass atrocities is a measure of last resort, not first.[42] The Charter clearly states that only when the Security Council considers that peaceful means would be inadequate or have proved to be inadequate to resolve an unfolding emergency situation, should it resort to military action.[43]

How can these principles be translated into concrete action in specific mass atrocity situations? What does it mean for the Security Council to take timely and decisive action to respond to manifest failures by a state to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity?

7.1. Decisive collective action against mass atrocities

A decisive response by the international community to genocide, war crimes, ethnic cleansing, and crimes against humanity may consist of a wide variety of non-coercive or coercive measures. What these instruments and strategies have in common is that they should be used in a robust way. The concept of robustness is usually linked to the composition, equipment, and mandate of armed forces, but it also applies to political decision makers. In this context, political robustness means having a clear-sighted view of what it takes to influence the behavior of perpetrators of mass atrocities, to make clear choices on a strategy that holds the promise to successfully confront the worst abuses, and to avoid being intimidated by spoilers in the crisis region.

Ferroggiaro, ed., *The US and the Genocide in Rwanda 1994* (Washington, DC: National Security Archive, 2004), available at www.gwu.edu/~nsarchiv/index.html; Assemblée Nationale, Rapport d'information de la mission d'information de la Commission de la defense nationale et des forces armées et de la Commission des affaires étrangères sur les operations militaries menées par la France, d'autre pays et l'ONU au Rwanda entre 1990 et 1994, vol. 1, December 15, 1998.

[41] United Nations, *2005 World Summit Outcome*, UN Doc. A/RES/60/1, October 24, 2005, para. 139.

[42] United Nations, *Remarks by the Secretary-General to the General Assembly on the Responsibility to Protect*, UN Doc. SG/SM/12374, July 21, 2009.

[43] See Article 42 of the United Nations Charter, June 26, 1945.

When the Security Council takes collective action in response to a failure by national authorities to protect their population from mass atrocities, it needs a clear objective and a coherent strategy. The doctrine of RtoP, developed on the basis of the World Summit Outcome, offers guidance on both.[44] *Security Council members should seek consensus on objectives and strategy, and they should constantly scrutinize the match—or mismatch—between the Security Council's objectives and its strategy for attaining them. They should also closely monitor potential gaps between the Security Council's strategy and its implementation by UN peace operations, departments, and country offices.*[45]

The Secretary-General needs to ensure unity of purpose between the military command and the political leadership of a UN peace operation, and to secure agreement by all troop contributors on how to interpret the mission's mandate. He should work with UN programs, agencies and interagency frameworks to mainstream considerations related to RtoP in their response to a civilian-protection emergency.

For UN peace operations, decisive action in response to a failure by national authorities to protect their population from mass atrocities requires building up credibility vis-à-vis perpetrators of violations and potential spoilers. When the French foreign legion was deployed to Bunia in 2003 in the context of Operation Artemis, it quickly projected its serious commitment to civilian protection by killing two rebels in combat. When United Nations peacekeepers in the Sudan witnessed widespread looting in Abyei in 2008, they insisted that responding to such violations was not part of their mandate. Thereby they lost credibility among the local population and the warring factions. EUFOR Chad/RCA (the EU Force in Chad/Central African Republic) was also confronted with armed robberies against civilians. Its commanders concluded that the object and purpose of its civilian-protection mandate allowed the force to use its vehicles to drive up to criminals caught in the act, forcing them to flee and leave their loot behind. *Decisive action by peace operations means that they should internalize the object and purpose of the mandate.*

The timely imposition of sanctions constitutes another way for the international community to take decisive action against perpetrators of mass atrocity crimes. In recent years, sanctions have become increasingly sophisticated tools to compel leaders and states.[46] *The Security Council should consider the whole range of sanctions, including*

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[44] See United Nations Secretary-General, *Implementing the Responsibility to Protect*; United Nations, *Efforts of the United Nations System to Prevent Genocide and the Activities of the Special Adviser on the Prevention of Genocide,* UN Doc. A/HRC/10/30, February 18, 2009; United Nations, *Report of the Secretary-General on the Implementation of the Five Point Action Plan and the Activities of the Special Adviser on the Prevention of Genocide,* UN Doc. E/CN.4/2006/84, March 9, 2006.

[45] The recent establishment of an informal Security Council expert group on protection of civilians constitutes an improvement in this respect. The group has so far held four meetings focusing on the civilian-protection mandates of UNOCI, UNAMA, UNMIS, and UNAMID before the Security Council renewed these peace operations.

[46] See Thomas Biersteker *et al., Targeted Financial Sanctions: A Manual for the Design and Implementation. Contributions from the Interlaken Process* (Providence, R.I.: Thomas J. Watson Jr. Institute of International Studies, 2001); Michael Brzoska (ed.), *Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions: Results of the "Bonn-Berlin" Process.* (Bonn: Bonn International Center for Conversion, 2001); Peter Wallensteen, Carina Staibano and Mikael

diplomatic sanctions and targeted sanctions, such as on travel, financial transfers, luxury goods and arms, to discourage further violence and abuse and to send a timely warning of possibly tougher measures if mass atrocities persist. The General Assembly could also impose such sanctions under the "Uniting for Peace" procedure, although they would then not be legally binding. *Particular attention should be paid to restricting the flow of arms or police equipment, which could be misused by repressive regimes manifestly failing their responsibilities to protect their populations, or in situations where an ongoing conflict threatens to escalate into the perpetration of mass atrocity crimes.*[47]

Ultimately, the decisiveness of the international community's response to the failure by a state to protect its population from mass atrocities depends on the political will of the Security Council and its regional counterparts to make credible use of the incentives, deterrent power, and punishment capability available to the international community, and of all states to support the effort by supplying troops, police personnel, and financial resources.

7.2. Timely collective action against mass atrocities

A timely response to mass atrocities by the Security Council can prevent their further escalation and therefore avoids the need to take stronger action later. At the same time, robust action by the Security Council may sometimes lead to a perception of bias by one or several conflict parties and can therefore have negative short-term implications on ongoing peace negotiations. In practice, this dilemma sometimes leads to disagreement among Security Council members. Some members argue in favor of resorting to measures under Chapter VII of the Charter, while others plead for more negotiations and patience with recalcitrant conflict parties. In Darfur, for instance, such disagreements have resulted in considerable delays in decision making by the Security Council.

Even when the Security Council takes timely decisions in situations relevant to RtoP, the UN system sometimes faces major challenges in implementing these resolutions in a timely manner. For instance, MINURCAT is still struggling with a lack of logistic capabilities to fulfill its mandate two years following its establishment. Such delays in turning UNSCRs into effective action on the ground hamper the image of UN peace operations as effective and reliable providers of civilian protection.

Among the reasons for delays in the implementation of UNSCRs with implications for the responsibility to protect is the considerable difficulty of fielding enough troops for new peace operations. Almost ten years ago, the Panel on United Nations Peace Operations proposed that complex peacekeeping operations should fully deploy within ninety days of the adoption of a UNSCR, and that the mission headquarters should be

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Eriksson (eds.), *Making Targeted Sanctions Effective: Guidelines for the Implementation of UN Policy Options* (Uppsala: Uppsala University Department of Peace and Conflict Research, 2003).

[47] UN Secretary-General, *Implementing the Responsibility to Protect*, UN Doc. A/63/677, para. 58.

fully installed and functioning within fifteen days.[48] The establishment of MINURCAT, the AU/UN Hybrid Mission in Darfur (UNAMID), and the experience of regional peace operations such as EUFOR Chad/RCA and the AU Mission in Sudan (AMIS), show that these targets often remains elusive.

Some host countries, like the Sudan, are reluctant to receive peacekeepers, causing delays in their deployment. Moreover, the difficulty for the United Nations in fielding new peace operations in a timely manner is partly due to the fact that developed states remain hesitant to contribute troops and police forces to UN peace operations. Heavy participation from NATO and EU member states in the United Nations Interim Force in Lebanon (UNIFIL) is a notable exception in this regard. Among the top fifteen current troop contributors, Italy is the only member of the Organisation for Economic Co-operation and Development (OECD) and the G8.[49] In part, the armed forces of developed countries are currently overcommitted in Iraq, Afghanistan, and Bosnia, where they are deployed in missions that are not led, but authorized, by the United Nations. The operations in Afghanistan and Iraq are costly in human lives and public finances, and they strain popular support in developed troop-contributing countries for military deployments.

Many developed states seem to have less confidence in the command and control of the United Nations in robust peace operations than they do in regional frameworks such as the North Atlantic Treaty Organization (NATO). This became apparent when several European force contributors to EUFOR Chad/RCA withdrew when the mission was rehatted as MINURCAT's new military component. Part of the skepticism of troop contributors from NATO member states stems from the fact that they prefer detailed concepts of operation before they commit to participate. The UN develops a specific concept of operation much later in the mission planning process than does NATO, to the chagrin of some Western troop contributors.

7.3. Nurturing the political will for timely and decisive collective action against mass atrocities

Mass atrocity situations often generate strong popular support for international engagement to protect the victims, and the inability of the international community to protect victims gives rise to widely felt indignation in many parts of the world. At the same time, the knowledge of many politicians, journalists, and other opinion leaders about peacekeeping, humanitarian aid, capacity-building support, and civilian protection remains limited. While it is ultimately up to national parliamentarians to appropriate the funds for the work of the UN related to mass atrocities, and to authorize the deployment of national contingents for peace operations with civilian protection mandates, many of them do not have a clear picture of the rationale for such engagement in foreign lands. Thus, there is a gap between popular expectations for active engagement by the

[48] United Nations, *Report of the Panel on United Nations Peace Operations* [Brahimi Report], UN Doc. A/55/305-S/2000/809, August 17, 2000, para. 88.
[49] United Nations, "Contributors to United Nations Peacekeeping Operations: Monthly Summary of Contributions," June 30, 2009, available at www.un.org/Depts/dpko/dpko/contributors/2009/june09_1.pdf.

international community in preventing and ending mass atrocities, on the one hand, and popular knowledge of how these good intentions can be turned into concrete, sustainable, and effective action on the other.

More outreach by the secretariats of UN and regional organizations, other peacekeeping stakeholders, think tanks, and civil society could mitigate this information-and-expectations gap. For instance, opinion leaders and the interested public should be better informed about endemic gender-based sexual violence and its devastating psychological, health, and social impact in many conflict areas, as well as the remedies provided by peace operations with civilian-protection mandates. They should also become more familiar with the work on children and armed conflict performed by the Security Council, the Special Representative of the Secretary-General on Children and Armed Conflict, UN Children's Fund (UNICEF), Office for the Coordination of Humanitarian Affairs (OCHA), and many others.

Civil society groups, such as the Global Centre for the Responsibility to Protect, the International Coalition for the Responsibility to Protect, and the Asia-Pacific Centre for the Responsibility to Protect, are already playing a crucial role in narrowing the information-and-expectation gap on the implementation of RtoP. The Security Council could contribute to the same objective by holding more meetings with knowledgeable NGOs. Council members could step up their efforts to reach out to the interested public of their own countries to enhance public understanding of the responsibility to protect and the humanitarian work of the United Nations in general. For example, Australia has taken this effort further by creating a $2 million (US) fund to support RtoP research and educational efforts by scholars, educators, and non-governmental groups in the Asia-Pacific region and beyond.

Ultimately, a better understanding of RtoP among the interested public, journalists, parliamentarians, and other opinion leaders may generate stronger popular support for contributions by each state to the protection of populations at risk of mass atrocities in other countries. National governments will take into account popular support for the implementation of RtoP when they consider increasing development aid to fragile states, employing preventive diplomacy to avert human security crises, or contributing troops to UN peace operations with civilian-protection mandates. Thus, better outreach to the interested public and opinion-leaders around the world could make a contribution to nurturing the political will of the international community for timely and decisive engagement to avert mass atrocities.

8. The UN peacekeeping partnership and the implementation of the responsibility to protect

UN peace operations make valuable contributions to the implementation of pillars two and three of the responsibility to protect, by supporting fragile states in strengthening national capabilities in the security sector and the judiciary that can protect populations from mass atrocities, and by fulfilling civilian protection tasks themselves. As of June 2009, more than 93,000 troops, military observers, and police officers were deployed in

United Nations peace operations.[50] Over the past five years, the number of uniformed personnel in United Nations peace operations increased, on average, by more than 10 percent each year.[51]

In the context of the global economic crisis, questions arise as to whether this unprecedented growth of UN peace operations can be sustained in coming years. This makes it all the more important to focus on continuing ongoing efforts to further enhance their effectiveness. In the following areas, there is room for further improving the delivery of UN peace operations on their tasks: training, intelligence, outreach to local populations, logistics, restrictions by troop contributors for their contingent, and standby high-readiness forces.

8.1. Training peace operations

While troops, military observers, and police officers deployed to peace operations bring a wealth of professional experience to the area of operation, many do not receive sufficient mission-specific training prior to their deployment.[52] *Before they arrive in the area of operation, all uniformed personnel of UN peace operations should be prepared for the specific challenges of implementing the mission's mandate. In addition to each contingent's predeployment training, each commander in a mission should receive a handbook with guidelines for a series of scenarios he or she will likely confront in the field. Both the predeployment training and the handbook should focus on the most challenging and critical elements of a mission's mandate, such as the use of force in defense of a mandate and civilian protection.*

Contingents that are not well-trained for the challenges specific to robust peace operations often tend to focus on self-defense. This leads to inconsistencies in the way different parts of a mission interpret the mandate and the rules of engagement. Such divergent views can reduce the overall effectiveness of a mission in discharging its mandate. *By running scenario exercises, a force commander may be able to tease out such inconsistencies before they become apparent in the midst of a complex humanitarian emergency.*

8.2. Gathering information

Understandably, intelligence gathering by UN peace operations would raise concerns by many host countries. At the same time, a lack of information about specific security threats against a United Nations mission, such as new mines on patrolled roads, have frequently jeopardized the security of UN personnel. In addition, fulfilling civilian protection mandates requires timely information on potential threats against the population. For instance, in the summer of 2009 the Lord's Resistance Army (LRA)

[50] United Nations, "Monthly Summary of Military and Police Contribution to United Nations Operations," June 2009, available at www.un.org/Depts/dpko/dpko/contributors/Yearly06.pdf.
[51] Ibid.
[52] Despite strong increases in recent years, only 70 percent of newly deployed police personnel currently receive predeployment training. United Nations, *Report of the Special Committee on Peacekeeping Operations and its Working Group: 2009 Substantive Session*, UN Doc. A/63/19, March 2009, para. 154.

moved through an area of 60,000 square kilometers in the DRC, threatening vulnerable civilians along the way. Some member states would have the capacity to track the physical movement and listen into phone conversations of the LRA commanders. Yet, when MONUC approached the embassies of these states in Kinshasa with a list of phone numbers and a request for help, it did not elicit a positive response.

As an alternative to technical assistance by member states with appropriate capabilities, United Nations peace operations could be allowed to purchase tracking equipment that is available on the market when needed. Ultimately, missions do not need to establish genuine intelligence capabilities, but they need to improve their tactical intelligence and trend analysis. Earning the trust of the local population is a prerequisite for doing so. If communities afflicted by mass violence feel comfortable that the UN peace operation will afford protection to them, they may be more willing to provide information on military activities and abuses by spoilers such as the LRA.

8.3. Reaching out to the local population

Some peace operations still face challenges in their outreach to the host population. For instance, local parties opposed to the deployment of MINURCAT and EUFOR Chad/RCA spread gross misinformation about them at the time of their deployment. Spoilers in other conflicts have adopted similar strategies to turn communities against multilateral peace operations. Precautions to safeguard the security of UN staff and language barriers often restrict interaction between mission staff and the local population, thereby reinforcing misperceptions about "foreign occupiers in big white cars." The resulting distrust can hamper the effectiveness of a peace operation in affording civilian protection and in supporting capacity building by local authorities.

To mitigate this problem, UN missions should engage in an active dialogue with the host population at the national, regional, and local levels. Radio stations broadcasting in local languages can also help by reaching out to communities whose cooperation is crucial to the mission's success.

8.4. Addressing logistical challenges

The logistics system of the United Nations is designed for theaters with infrastructure, security, and local contracting partners, and they face challenges in keeping pace with the growing trend toward expeditionary deployment in areas such as the DRC, Sudan, and Chad, where the United Nations must bring in all materiel.[53] *The establishment of regional logistical hubs serving multiple United Nations missions could increase efficiency and flexibility while also reducing costs through economies of scale.*

The UN's lack of access to strategic airlift has often been a major problem for ensuring timely deployment of uniformed personnel and equipment of UN peace operations. For instance, UNAMID recently faced challenges in transporting a Nigerian contingent into the area of operation, until the United States offered to provide the necessary strategic

[53] Center on International Cooperation (CIC), "Building on Brahimi: Peacekeeping in an Era of Strategic Uncertainty," (New York: CIC, April 2009), p. 38.

airlift. A rather small number of states has strategic airlift capable of allowing timely deployment even in landlocked areas with poor infrastructure. Sometimes the UN faces considerable difficulties in convincing these states to put these capacities in the service of UN peacekeeping.

Regional peace operations often face even greater logistical challenges than does the United Nations. The EU, for instance, does not have an equivalent to the UN Department of Field Support, requiring each troop contributor to deal with the logistical challenges of its contingent. The lack of an integrated logistics system reinforces the need for a logistical lead nation in regional peace operations. In the European context, these lead nations have also provided an operational headquarters for the force. The lack of political will or the capabilities of potential lead nations has sometimes caused major delays in establishing regional peace operations. In the case of EUFOR Chad/RCA, it took five force-generation conferences to reach consensus on a logistical lead nation for the force.

8.5. Overcoming dual command structures and restrictions by troop contributors for their contingents

Despite the principle of unity of command in UN peacekeeping, parallel chains of command usually link troop contingents to their national headquarters. In addition, some contingents deploy under the condition that they remain in a specified area, such as in Abiej or Kinshasa. This practice can pose challenges to effective command and control by the United Nations.

Engaging troop contributing countries (TCCs) earlier and more substantively in the process of formulating mandates, concepts of operation, and rules of engagement, and consulting them before and after technical assessment missions, may help to avoid some restrictions by TCCs as well as the over-reliance on dual command structures. In case of large contingents with numerous restrictions by the TCC, the mission should establish a formalized liaison capability with the TCC. Some of the negative effects of troop contributor caveats on interoperability could be mitigated by seeking to deploy more UN peace operations that are homogeneous at the brigade level.

8.6. Making better use of standby high-readiness brigades

The past fifteen years have seen a multitude of initiatives to establish multilateral standby forces for peacekeeping. More than fifty different frameworks for deploying military and civilian capabilities exist just under the umbrellas of NATO and the EU. Many of these frameworks remain empty shells and have never been used. The Multinational Standby High Readiness Brigade for United Nations Operations (SHIRBRIG) was deployed to support UN peace operations in Ethiopia and Eritrea, Liberia, and Sudan. However, SHIRBRIG's increasing heterogeneity posed a challenge to its high-readiness status. Despite the increase in SHIRBRIG member states the standby brigade struggled with a chronic shortage of available forces. Consequently, SHIRBRIG was discontinued by its member states in June 2009. The loss of this capability, and of the doctrinal advances it had made over the thirteen years of its

existence, constitutes a significant setback for efforts to improve the readiness of UN peacekeeping.

The establishment of the EU's "battlegroups" marks the deepest integration process ever seen in the area of multilateral high-readiness capabilities. They attained full operational capability in 2007. Two battlegroups composed of approximately 1500 troops each can be deployed on short notice. However, the battlegroups have not been been deployed so far. Proposed missions in the Eastern DRC in the fall of 2008 and as a strategic reserve for EUFOR Chad/RCA did not attain the required approval by all EU member states. If the battlegroup mechanism remains underutilized, it may face a credibility crisis that could ultimately lead to its discontinuation. *The EU and UN should make use of the battlegroups as well-equipped high-readiness capabilities for short-term assignments in support of peace operations.*

The AU is in the process of establishing an African Standby Force, which is to consist of five subregional brigades ready for rapid deployment for the full specter of peace support missions.[54] The implementation of this plan currently faces considerable delays. *At this point, it might be advantageous for the AU to focus on operationalizing two brigades in western and eastern Africa and to postpone the establishment of the other forces. The UN should redouble its efforts to strengthen the African Standby Force, and it should seek to attain faster progress in implementing the AU-UN Ten-Year Capacity-Building Programme for the AU. The consolidation of various existing sources of capacity-building support to the African Union into a multidonor trust fund for peace and security and the provision of additional resources to such a fund could add momentum to the process of establishing the African Standby Force.*[55]

9. The responsibility to protect and the protection of civilians

2009 marks the tenth anniversary of the first UNSCR on the protection of civilians in armed conflict.[56] Over the past decade, the Council has laid out a comprehensive agenda on civilian protection in four thematic resolutions.[57] At this point, it almost routinely includes civilian-protection tasks in the mandates for new UN peace operations. The Secretary-General prepared seven reports on the protection of civilians in armed conflict, which together contained approximately 100 recommendations, many of which have been implemented by the Security Council. At the same time, the

[54] African Union, *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, July 9, 2002, art. 13; African Union, *Policy Framework for the Establishment of the African Standby Force and the Military Staff Committee, Part I,* AU Doc. Exp/ASF-MSC/2 (1), May 16, 2003, para. 1.6.
[55] United Nations, *Report of the African Union-United Nations Panel on Modalities for Support to African Union Peacekeeping Operations*, UN Doc. A/63/666-S/2008/813, December 31, 2008, para. 67.
[56] UN Security Council Resolution 1265 (September 17, 1999), UN Doc. S/RES/1265 (1999).
[57] Ibid.; UN Security Council Resolution 1296 (April 19, 2000), UN Doc. S/RES/1296 (2000); UN Security Council Resolution 1674 (April 28, 2006), UN Doc. S/RES/1674; UN Security Council Resolution 1738 (December 23, 2006), UN Doc. S/RES/1738.

Council has adopted a series of resolutions on the particular protection needs of children and women in armed conflict.[58]

This evolving civilian protection agenda of the United Nations includes, inter alia, ensuring compliance by warring factions with international humanitarian law, accountability for serious violations against civilians, unhindered humanitarian access to civilians in armed conflict, facilitation of humanitarian aid by UN peace operations, direct protection by UN peace operations, posttraumatic treatment, human rights monitoring, and advocacy. Peace operations fulfill some twenty-five different tasks related to civilian protection, ranging from demining, to stopping hate media, to the protection of safe corridors.[59]

In many theatres of armed conflict, the efforts by the United Nations to protect civilians from abuse are key elements of a timely and decisive response by the international community to mass atrocities. Further improving the delivery by UN peace operations on the protection of civilians in armed conflict requires a hard look at their mandates, doctrine, and capabilities.

9.1. Drafting clear civilian protection mandates

The Security Council needs to ensure that all civilian protection mandates for United Nations peace operations are clear, credible, and achievable. They should aim at clearly identifying the strategic objectives and the desired end-state, as well as the rationale underlying both. Complex mandates for multidimensional peace operations should also indicate whether the mission should prioritize civilian protection or other tasks.[60] However, the Security Council should refrain from providing detailed lists of tasks at the tactical level, for instance by requesting search operations. Mandates should spell out benchmarks, as appropriate, that allow monitoring and evaluating the progress achieved by the mission.

[58] On children and armed conflict: UN Security Council Resolution 1261 (August 30, 1999), UN Doc. S/RES/1261 (1999); UN Security Council Resolution 1314 (August 11, 2000), UN Doc. S/RES/1314 (2000); UN Security Council Resolution 1379 (November 20, 2001), UN Doc. S/RES/1379 (2001); UN Security Council Resolution 1460 (January 30, 2003), UN Doc. S/RES/1460 (2003); UN Security Council Resolution 1539 (April 22, 2004), UN Doc. S/RES/1539 (2004); UN Security Council Resolution 1612 (July 26, 2005), UN Doc. S/RES/1612 (2005); UN Security Council Resolution 1820 (June 19, 2008), UN Doc. S/RES/1820; UN Security Council Resolution 1882 (August 4, 2009), UN Doc. S/RES/1882; on women, peace, and security: UN Security Council Resolution 1325 (October 31, 2000), UN Doc. S/RES/1325; UN Security Council Resolution 1820 (October 19, 2008), UN Doc. S/RES/1820; UN Security Council Resolution 1888 (30 September 2009), UN Doc. S/RES/1888; UN Security Council Resolution 1889 (October 5, 2009), UN Doc. S/RES/1889.

[59] See Victoria K. Holt and Tobias C. Berkman, *The Impossible Mandate? Military Preparedness, the Responsibility to Protect and Modern Peace Operations* (Washington, DC: Stimson Center, 2006), available at www.stimson.org/fopo/pdf/Complete_ Document-TheImpossible_Mandate-Holt_Berkman.pdf , p. 43.

[60] See, for example, UN Security Council Resolution 1856 (December 22, 2008), UN Doc. S/RES/1856, para. 3, which lists the tasks of MONUC in the order of priority.

9.2. Emphasizing proximity and mobility of peace operations with civilian protection mandates

Security Council mandates to peace operations should not only be clear, credible, and achievable, but they should also be matched by appropriate resources. In practice, many UN peace operations are confronted with a mismatch between vast civilian protection tasks and the capabilities available to perform them. In Chad, Darfur, or the DRC the size, difficult terrain, and poor infrastructure of the country make it impossible for contemporary peace operations to afford protection to each individual.

Peace operations need to choose their civilian protection strategy accordingly. First, mobility allows peace operations to react quickly to civilian protection disasters and to move preemptively to areas of concern. Thus, troops and police personnel can show presence in large areas without being present in the whole area of operation at all times. For instance, EUFOR Chad/RCA deployed openly in different towns on market days to deter regular crime and assaults. Second, proximity is an indispensable ingredient for effective protection. It is attained through the use of mobile bases and frequent foot patrols, particularly at night. In expeditionary missions this approach to protection can pose considerable challenges for logistics support systems.

9.3. Civilian protection, enforcement action and the use of force

In the context of UN peace operations deployed in complex emergencies, the line between peacekeeping and enforcement is sometimes very thin. In parts of the Eastern DRC, the national armed forces and MONUC have effectively pushed the Rwandan Liberation Democratic Forces (FDLR) rebels out of certain areas where they used to perpetrate abuses against civilians. If Congolese armed forces and MONUC merely wait until the FDLR regroups and launches its next offensive campaign, they face the high risk of another civilian protection crisis involving mass atrocities.

In the Eastern DRC and elsewhere, the use of force by UN peace operations to dissuade and disarm rebel groups poses formidable challenges. First, it requires a robust mindset from the mission leadership and force contributors that is very hard to sustain beyond a few months in the context of UN peacekeeping. Second, the use of force by United Nations peace operations raises questions in the humanitarian community. Many providers of humanitarian assistance fear being associated with a peace operation that appears to be partial vis-à-vis the warring factions. Consequently, some humanitarian organizations even refuse convoys by UN peacekeepers for transports of food and medicine urgently needed by civilians in very dangerous environments.

In a situation of unfolding genocide, war crimes, ethnic cleansing, and crimes against humanity, UN peacekeeping may not always be the best way to restore civilian protection. When mass atrocities occur in a country where no UN peace operation is in place, establishing a mission from scratch could take too much time to ensure effective protection of the population. When no peace operation is in place, unfolding genocide, war crimes, ethnic cleansing, and crimes against humanity can only be quelled by the swift arrival of combat-ready brigades authorized by the Security Council but operating outside the chain of command of the United Nations. Such an enforcement operation

could be authorized as an emergency bridging operation that will only remain in place until the situation has improved to a point where a UN peace operation can take over.

When a United Nations peace operation is confronted with an escalation of the situation into mass atrocities, the rapid deployment of an enforcement mission alongside the peace operation may facilitate civilian protection. For instance, the Interim Emergency Multinational Force in Bunia, which was deployed in 2003 by the EU with prior authorization by the Security Council, succeeded in protecting IDPs and civilians in Bunia, in stabilizing the security situation in the area, and in enforcing the presence of MONUC in Ituri. Until the African Standby Force and the EU's battlegroups are fully operational and tested in the field, only a relatively small number of countries have the capacity to swiftly deploy a robust enforcement mission in a hostile environment.

9.4. The protection of civilians and the impartiality of peace operations

Impartiality, one of the founding principles of UN peacekeeping, "can be understood in two different ways: first, as the perception by the parties, the local population, and the international community; and second, as the commitment to objectively observe and respect the mandates as well as the principles of the United Nations Charter." [61] In recent years, the emphasis has shifted from the former definition to the latter, and there is broad agreement that impartiality must not lead UN peace operations to afford equal treatment to all parties when one of them is engaging in genocide, war crimes, ethnic cleansing, or crimes against humanity. This shift stems from the realization that "[n]o failure did more to damage the standing and credibility of United Nations peacekeeping in the 1990s than its reluctance to distinguish victim from aggressor."[62]

In practice, different stakeholders in United Nations peacekeeping continue to hold diverging views on the notion of impartiality. Sometimes, a more traditional understanding, which equates impartiality with neutrality vis-à-vis conflict parties irrespective of their behavior, is invoked as an excuse for inaction in the face of massive abuses of civilians. Attaining consensus among member states and within the United Nations Secretariat on an understanding of impartiality that values the observance of the mandates and the principles of the Charter over equidistance regarding the conflict parties requires a greater willingness by some stakeholders in United Nations peacekeeping to accept the risks of casualties on behalf of a civilian protection mandate.

9.5. The protection of children and women in armed conflict

Over the last decade, the Security Council has created innovative frameworks for the protection of two particularly vulnerable groups in armed conflict: children and women. The monitoring and reporting mechanism on children and armed conflict constitutes a remarkable novelty in the Council's repertoire. It has been set up in ten countries experiencing armed conflicts on the agenda of the Security Council as well as in four

[61] Hitoshi Nasu, "Operationalizing the 'Responsibility to Protect' and Conflict Prevention: Dilemmas of Civilian Protection in Armed Conflict," *Journal of Conflict & Security Law* 2 (2009), p. 23.
[62] United Nations, "Brahimi Report," p. xi; see also paras. 48-55.

other countries whose conflicts are not on the Council's agenda.[63] The Security Council's Working Group on Children and Armed Conflict agreed on a toolkit of twenty-six different actions it could take when armed groups are found to recruit children.[64] These responses are similar to those under pillars two and three of the responsibility to protect: capacity-building support, preventive diplomacy, monitoring, and collective action in the context of peace operations, sanctions regimes, and justice mechanisms. In recent years, armed groups have become increasingly willing to commit to action plans and to releasing children more readily, but implementation of such promises has not accelerated.[65] *When dealing with persistent violators, the Council should be prepared to make full use of the tool kit outlined by its working group. It could also use its missions to war-torn states more consistently to promote the protection of children in armed conflicts.*[66]

For far too long, members of the international community considered gender-based sexual violence a social or gender issue rather than a "hard" protection issue. During the last ten years, this attitude has shifted. The UN has adopted an increasingly comprehensive agenda promoting the prevention of, and protection from, sexual violence against women in armed conflicts, accountability for perpetrators and assistance to victims, and risk monitoring. *To maximize the impact of its efforts, member states should support the newly created position of the Special Representative of the Secretary-General on sexual violence in armed conflict so it can become a firm home for this issue at the United Nations. Among other things, this new post could serve as a repository of good practices and needs assessments.*

10. Conclusion

In implementing the responsibility to protect, states, regional organizations, and the United Nations should seek, above all, to strengthen the ability of each state to fulfill its responsibility to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity. There is broad agreement that effective prevention of mass atrocities (pillars one and two) trumps reaction to ongoing violence.

Still, the subsidiary responsibility of the international community to take collective action in case of a manifest failure by national authorities to protect their population is a key element of RtoP (pillar three). Sovereignty as responsibility, international assistance and capacity-building and timely and decisive response are mutually reinforcing elements of the same concept. The international community's pledge to take collective

[63] Annex I and II of United Nations Secretary-General, *Children and Armed Conflict*, UN Doc. A/63/785 - S/2009/158, March 26, 2009.
[64] United Nations, *Options for Possible Actions by the CAAC Working Group of the Security Council ("toolkit")*, Addendum to the letter dated 8 September from the Permanent Representative of France to the United Nations addressed to the President of the Security Council, UN Doc. S/2006/724, September 11, 2006.
[65] Security Council Report, "Children and Armed Conflict, " Cross-Cutting Report 1, 2009, available at http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.1846403/k.49B3/Profile_Children_and_Armed_ConflictBR12_July_2006.htm, p. 3.
[66] Ibid.

action against mass atrocities may deter those who conspire to perpetrate them. It can also provide a unifying rationale for the engagement of the UN system in complex humanitarian emergencies and it may help convey a sense of urgency to decision makers facing difficult decisions on responding to mass atrocities. Finally, the commitments by the international community in the 2005 World Summit Outcome are a standard against which to measure concrete action taken by the United Nations and its partners in the event of genocide, war crimes, ethnic cleansing, and crimes against humanity.

The Security Council should play a major role in the implementation of RtoP. In accordance with the Charter, it has the authority to authorize coercive action in response to a mass atrocity situation that it considers a threat to international peace and security. It also regularly mandates peace operations, under Chapter VII, to protect civilians against the worst abuses in armed conflict.

It is important to underline that the Council's role in implementing RtoP is not limited to taking collective action against mass atrocities (pillar three). The Council can also make important contributions to structural and operational prevention of genocide, war crimes, ethnic cleansing, and crimes against humanity (pillar two). It regularly mandates UN peace operations to support security sector reform and the establishment of effective judicial authorities in postconflict countries. By doing so, it strengthens the national protection capability of states that typically face a high risk of relapse into mass violence. When the Security Council mandates peace operations to support the disarmament, demobilization, and reintegration of former combatants it also nurtures the resilience of a society to risks of future mass atrocities. In addition, the Council can use effective preventive diplomacy to encourage states to fulfill their responsibility to protect as they confront a crisis. In each of these areas, the Security Council has made significant doctrinal advances over the last decade. It should build on this progress and ensure that its rhetoric is always matched by the necessary resources and political will to safeguard the protection of populations from mass atrocities.

Christoph Mikulaschek

KEYNOTE ADDRESS TO THE 39TH INTERNATIONAL PEACE INSTITUTE ON 15 JUNE 2009

AMBASSADOR SUSAN E. RICE
Permanent Representative of the United States of America to the United Nations

Thank you very much. It's an honor and a pleasure to be here, especially with so many of you who work with the UN system every day to try to protect civilians from harm. I'm particularly grateful to the Government of Austria for hosting me today, and to the International Peace Institute for its valuable work.

Colleagues, we have just drawn down the curtain on the bloodiest century in human history. That is why the United States is determined to work together with you and others to ensure that the 21st century takes a far lesser toll on civilians—on innocents who should be sheltered by the rule of law and the rules of war. I believe deeply that atrocities are not inevitable. They need not be part of the landscape of world politics—unless we let them be.

In recent years, our consciences have been seared by the horrors of Srebrenica, Rwanda, and Darfur. Today, we are challenged again by the desperate plight of civilians in such places as Somalia, the Democratic Republic of Congo, and Sri Lanka, among others.

My interest here is deep and, in part, personal. In 1994, I was serving on the National Security Council staff at the White House. That December, I visited Rwanda for the first time—just six months after the Ex-FAR and Interahamwe finished with their machetes, pangas, and guns. As long as I live, I will never forget the horror of walking through a churchyard and adjacent schoolyard where one of the massacres had occurred. Six months later, the decomposing bodies of those who had been so cruelly murdered still lay strewn around what should have been a place of peace. For me, the memory of stepping around those corpses will remain the most searing reminder imaginable of what we must all aim to prevent.

Last month, I visited Rwanda again with my colleagues on the UN Security Council, which was the first time for me in several years. We visited the phenomenally powerful Kigali Genocide Museum, which is the gravesite for some 250,000 victims. We spoke with survivors, with killers, with government officials, and many who are trying and, to an amazing extent, succeeding in overcoming the past. We were reminded of our shared responsibility for the international community's failure to act in the face of the last genocide of the 20th century. And I could not help but think of our collective failures that persist to this day.

Ever since the Holocaust, the world has often said, "Never again." In our hearts, I believe we mean it. But the undeniable fact is: we all have much more to do to give those words meaning and strength, to make them real.

Yet at the core of my being, I believe that our new century can and must be better than the last—more rooted in humane values, more committed to human rights. Much brave

work has already been done. The horrors of the 20th century have helped give rise to an important shift in our thinking about mass slaughter—and to a range of new tools to prevent and respond to it. The international community has started to create a new vocabulary for talking about genocide, war crimes, crimes against humanity, and ethnic cleansing. And it has started to craft a new way to stop them.

The Responsibility to Protect—or, as it has come to be known, R2P—represents an important step forward in the long historical struggle to save lives and guard the wellbeing of people endangered by conflict. It holds that states have responsibilities as well as interests—and that states have particularly vital duties to shield their own populations from the depraved and the murderous. This approach is bold. It is important. And the United States welcomes it.

We are not alone. All 192 UN member states adopted the Responsibility to Protect at the World Summit in 2005. The next year, the Security Council reaffirmed this commitment—and the related principle of protecting civilians—in Resolution 1674, and the Council has taken R2P at least partly into account in its actions on Sudan and the DRC.

The Responsibility to Protect is rooted in the principle that states have a fundamental responsibility to protect their populations from such atrocities as genocide, war crimes, crimes against humanity, and ethnic cleansing. It holds that other states, in turn, have a corollary responsibility to assist if a state cannot meet its fundamental responsibility to its citizens—or to take collective action if a state will not meet that fundamental responsibility. R2P enjoins us to mobilize a wide spectrum of policies and instruments, both as individual nations and as an international community. Only rarely, and only in extremis, does that include the use of force.

That is the principle. Turning it into practice will take resolve. The consensus reached in 2005 was—to be frank—more broad than deep. We have seen some erosion of will since then, and we may see more, particularly in an age of economic crisis, political jolts, and transnational threats.

So let me touch on a few key challenges that states of goodwill face in trying to save lives from those bent on mass slaughter, and then offer a few thoughts toward an agenda for common action. These challenges are real. But we can meet them if we work together and remain ever mindful of the stakes of failing to act.

First, we still face confusion and misunderstanding—willful or otherwise—about what the Responsibility to Protect is and is not.

To take just one example, some defended the war in Iraq by invoking the Responsibility to Protect, a tactic that still casts a shadow on efforts to deepen the consensus around the R2P concept. Some still conflate R2P with an unfettered right to intervention. It is not. In fact, the Responsibility to Protect asks us to mobilize a range of responses that have nothing to do with intervention.

Some have also suggested that the Responsibility to Protect is merely a preoccupation of the West. I believe our African colleagues would disagree, and rightly so. Let us remember that the African Union beat all of us to this principle. In 2000, its Constitutive Act invoked a concept of "non-indifference" in the face of grave crimes, and Article 4 of that Act authorized decisive AU action to put a halt to war crimes, genocide, and crimes against humanity. Let us also remember that the World Summit consensus on the Responsibility to Protect passed in very large part because of the determined advocacy of concerned African states. So let no one dare suggest that the most basic precepts of humanity and decency somehow belong to only one part of the globe.

We must also resist the temptation to apply the concept too widely, even when we are moved by other instances of human suffering. The Responsibility to Protect should be invoked only in truly grave cases. The power of R2P is precisely that it reminds us to act in the face of genocide, war crimes, crimes against humanity, and ethnic cleansing. The power of R2P is that it insists that especially egregious crimes demand braver and better behavior from all of us. This does not mean that we should be indifferent to the broad range of perils that threaten people's lives and welfare. It means merely that we have a particular responsibility to respond to the worst outrages.

Second, we should not wait for genocide, war crimes, crimes against humanity, or ethnic cleansing to occur before we act. The potential for mass atrocities is greatest amid war and civil strife. But genocide and mass killings are by no means a simple and inevitable consequence of conflict. The decision to use mere differences among groups as a license for atrocity or a path to power is precisely that: a craven decision, one consciously made by the wicked, the callous, and the cruel.

Third, humanitarian requirements will often jostle with other legitimate policy concerns. It does no good to pretend that priorities do not sometimes compete—and even where they do not, even where our values and our interests fall neatly in step together, the answers are not always obvious. Again, consider Sudan, where we simultaneously face the genocide in Darfur, the recent expulsion of critical international NGOs, a faltering North-South peace process, and the risk of new instability in various parts of the country. The urgency and complexity of the overall situation can distract us from addressing adequately any single imperative, and indeed, the reverse is also a risk.

The fourth challenge is the question of tactics. When mass atrocities erupt or loom, we must carefully weigh whether invoking the Responsibility to Protect will actually improve our chances of success. Will it make it easier to win over the cooperation we will need? Or will it drive potential partners away? There are no one-size-fits-all answers.

Consider Kenya in 2007-08, which is often called one of the first successful instances of R2P in action. Contested elections led to the rapid displacement of an estimated 600,000 people and to widespread abuse, rape, and murder, including the horrible death of 30 people who were burned alive inside a church.

The good news is that international action was swift. The African Union took an early lead, with two mediation initiatives—eventually led by former UN Secretary-General

Kofi Annan—that produced a power-sharing agreement just two months after the initial crisis began. In a consensus Presidential Statement, the UN Security Council endorsed the AU process and the invaluable operational support that Annan's efforts were receiving from the UN Secretariat.

But more troubling news is that the conditions that produced such a rapid response in Kenya were far from typical. And even in the Security Council, international unity did not come easily. It's worth noting that the Responsibility to Protect was explicitly not part of the debate in the Council—and colleagues who handled this issue in 2008 tell me that it was difficult even to build support for a Council vote of confidence in Annan's mission. Raising the R2P flag may be morally satisfying, but it can be politically fraught.

These, I would suggest, are some of the core challenges that make it harder to save civilians from mass atrocity. So how can we overcome them?

We are lucky to have the benefit of many efforts that help suggest the way ahead, including crucial work done by a wide array of NGOs and experts from around the globe, the Secretary-General's report, and the report of the Genocide Prevention Task Force, co-chaired by former Secretary of State Madeleine Albright and former Secretary of Defense William Cohen and jointly convened by the U.S. Holocaust Memorial Museum, the American Academy of Diplomacy, and the United States Institute of Peace. Let me touch on key elements that they raise.

Indeed, we must do more to prevent conflicts and reduce the risks that cause them. We know a good deal more today about how poverty, environmental pressures, poor governance, and state weakness raise the risk of civil conflict. But we have yet to act consistently to reduce these risks. We must renew our efforts to deploy new and existing tools to limit the likelihood that disputes will explode into mass violence. That means combating poverty, fighting discrimination, assuring that scarce resources are shared more equitably, better tapping alternative and renewable resources, strengthening the rule of law, and building more accountable and democratic institutions to thwart the abuse of power and limit the corrosive effects of corruption. We must recognize that development and security are inextricably linked. We must look anew at ways to support fragile states, particularly as they are rattled by global forces such as climate change and the financial crisis. And, as the Secretary-General's report notes, we must build up the institutions that make a society resilient in the hour of crisis: including communities, churches, mosques, synagogues, temples, schools, independent media, and strong civil society organizations.

In addition, we should sharpen and strengthen our instruments for conflict management, and hone them to cope specifically with mass atrocities. That means working with willing partners, including the United Nations, regional and sub-regional groups, development banks, donors, and nongovernmental organizations. It means making sure our tools are sturdy. It means garnering sufficient resources. And it means keeping our efforts coordinated and bound together with a unity of purpose that has too often been elusive.

Let me briefly discuss several of those instruments.

First are the linked questions of early warning, analysis, and decision-making. We must do more to ensure that a lack of information will never be a reason again for inaction. Working with governments, regional organizations, and NGO partners, we should strive to collect more, different, and better information about the risks and signs of mass violence—and then to share it. That data should also be analyzed with extra sensitivity to the potential for atrocity. And it should be channeled in real time to decision-makers who can do something about it.

But one significant caveat: history shows that slow policy responses to mass slaughter often stems from factors other than a genuine absence of information about what is unfolding. More often, policymakers knew a significant amount but were held back by competing policy priorities, limited knowledge of the country at risk, disincentives for speaking out, political concerns, and other factors.

Second, preventive diplomacy. The last twenty years and more have taught us that international mediation and diplomacy, backed by a readiness to use other tools, are among the most effective ways to prevent and halt violence. At the UN, innovations like mediation standby teams are an important start, but these teams remain underutilized and they need more resources. We still have too few mediators with the right skills ready to deploy in real time—and, I might add, far too few women. We need also greater surge capacity, closer cooperation among mediators, and better coordination between mediation and other tools of conflict management. And we need to redouble our efforts to forge the international unity it will take for mediation to succeed.

Third, peacekeeping. We greatly appreciate the courage and dedication shown by UN blue helmets around the world, but these brave men and women are often stretched up to—or beyond—their limits. We must make sure that peacekeepers have the help they need to prevent a fragile peace from breaking down, and we must invest in more effective and efficient peacekeeping that can protect civilians menaced by rebel bands and marauding gangs, whether in Haiti or the eastern DRC.

But UN peacekeepers—even better trained and equipped ones—are not always the right solution when innocents are in peril. Sometimes, an unfolding atrocity is so large or so fast that it can be quelled only by the swift arrival of combat-ready brigades or their equivalent—operating outside the UN chain of command, and not built from scratch as a UN peacekeeping force must be. Only a handful of countries have this capacity at the ready, and even fewer can or will guarantee a response when called upon. Such governments, and regional organizations including NATO and the European Union, must take a hard look at their will and capacity to quickly deploy—either to fill the gap before peacekeepers arrive, to reinforce them during a crisis, or to respond in cases where peacekeepers are not the right answer to begin with.
Through our Global Peace Operations Initiative, the United States has helped train and equip tens of thousands of peacekeepers, and we are working to improve peacekeepers' abilities to protect civilians from the imminent threat of violence.

Fourth, we must put the bite back in sanctions. We have increasingly sophisticated tools to compel states and leaders to abide by international laws and norms. Through the UN, we can freeze individuals' assets, ban international travel, restrict the flow of luxury goods and arms, and do much more to limit abusers' abilities to threaten others. But the Security Council often finds it difficult to overcome member states' reluctance to wield and fully implement sanctions on behalf of the victims of mass atrocities. I hope to be able to work with my Security Council colleagues to make better, smarter use of sanctions—not only to maintain global order or to halt proliferation but also to save innocent lives at immediate risk. Sanctions can be an effective, if not always a flexible, targeted instrument, and we must seek to strengthen them.

And, finally, peacebuilding. We still have much more to do to foster firm foundations for peace in societies that are trying to leave years of conflict behind them. Just because the killing stops does not mean it won't start again. The past decade has witnessed major innovations in peacebuilding, including the creation of the UN's Peacebuilding Commission, but we have much farther to go. We need more flexible development funds that arrive sooner; early investments in the core capacities of a struggling state; international support for national efforts to reinforce the rule of law, demobilize ex-combatants, and reform state security services. We need lasting support for victims of sexual violence and other human rights abuses, and an insistence that we not assume the job is done until the peace is secure.

The United States is committed as well to doing its part to strengthen the international human rights architecture, which will help establish global norms that abhor genocide and mass atrocities. The United States strongly supports the UN's network of Special Rapporteurs and Experts, which can provide invaluable information on unfolding calamities or potential ones. A more robust field presence from the Office of the UN High Commissioner for Human Rights is one tool to help build up national human rights institutions and help make a difference when a crisis erupts.

As you know, the United States will soon join the UN Human Rights Council. We will use that seat to push hard for balanced and credible action, to change the rules of the game, to scrutinize human rights records across the board, and to cast the spotlight on the world's worst abusers. In a crisis, the Council's ability to call special sessions—something too often abused in the past—can focus needed global attention and action on deteriorating human rights conditions.

To conclude, the Responsibility to Protect is a duty that I feel deeply. I believe we must be voices for action in the face of genocide and mass atrocities, even if we are lonely ones.

The world will never give us the quiet we might wish to gather our thoughts, weigh our options, and summon our nerve. Even as we speak, the ground is burning in all too many places. We must prepare for the likelihood that we will again face the worst impulses of human nature run riot, perhaps as soon as in days to come. And we must be ready.

We know there will be more perpetrators. We know there will be more victims. But we must work to ensure that there will also be more justice and fewer and fewer bystanders.

We all know the greatest obstacle to swift action in the face of sudden atrocity is, ultimately, political will. The hard truth is that stopping mass atrocities requires more than just the wisdom to see a way to save innocents from knives and the guns. It requires above all the courage and compassion to act. Together, let us all help one other to have and to act upon the courage of our convictions.

Amb. Susan E. Rice

FEATURED ADDRESS TO THE 39th INTERNATIONAL PEACE INSTITUTE VIENNA SEMINAR ON 16 JUNE 2009

MICHAEL SPINDELEGGER
Austrian Federal Minister for European and International Affairs

Excellencies,
Ladies and Gentlemen,

I am very pleased to address this year's Vienna Seminar on Peacemaking and Peacekeeping, organized by the International Peace Institute, the National Defence Academy and the Vienna Diplomatic Academy, in cooperation with the Federal Ministry of Defence and my Ministry. I would like to thank you all for participating in this important seminar.

The topic of this year's Vienna Seminar is very timely: The question of how to implement and operationalize the concept of the "Responsibility to Protect" is high on the agenda of the United Nations.

The promotion of the rule of law and the protection of civilians have long been a focus of Austria's work in the United Nations and have been guiding our work on the UN Security Council since the beginning of our membership. In most conflicts on the agenda of the Council, the civilian population bears the main burden; in particular women and children are often targeted and subject to horrifying abuse.

The main aim of the "Responsibility to Protect" is to protect civilian populations from future genocides and mass atrocities. Austria has been a strong advocate for the inclusion of the "Responsibility to Protect" in the 2005 World Summit Outcome document. The recent report of the Secretary-General provides a very clear framework for its implementation. Let me take the opportunity to thank the Special Adviser of the Secretary-General, Dr. Ed Luck, present here today, for all his work on this important report. Austria is looking forward to its discussion in the General Assembly.

At the heart of the concept of "Responsibility to Protect" is the clear understanding that the sovereignty of states implies important responsibilities, in particular the responsibility of each state to protect its own population from genocide, ethnic cleansing, war crimes and crimes against humanity.

The primary responsibility for the implementation of the "Responsibility to Protect" rests with individual states. The international community has a supplemental role: to assist states to live up to their responsibility, including through support to strengthening their own protection capacity. It is only in case of manifest failure of a state to protect its population from the perpetration of these core crimes that the international community has the responsibility to take appropriate collective measures in accordance with the UN Charter. For Austria, it is important that in the implementation of the "Responsibility to Protect" particular attention is given to preventing situations from escalating, through early warning and capacity building.

The key challenge is that States and the international community live up to their obligations under "Responsibility to Protect". The Secretary-General's report sets out the tools available to the international community to assist states in this regard. But also the Security Council as the principle UN body for the maintenance of international peace and security has an important role to play. The focus must be on saving lives through timely and decisive actions taken at national, regional and international level.

Many argued that the recent developments in Sri Lanka constituted a case of "Responsibility to Protect". In light of the serious implications for the civilian population, Austria, together with partners, has advocated for the Security Council to address the humanitarian situation there. As a result, the Council held several informal meetings on the humanitarian situation in Sri Lanka. Together with my colleagues from the United Kingdom and France, I participated personally in a meeting with the UN Office for the Coordination of Humanitarian Affairs and key NGOs on 11 May. Austria's primary concerns in seeking the Council's involvement were the protection of the civilian population; the need for compliance with international humanitarian law and the unhindered access for humanitarian organizations. These issues were also reflected in a press statement of the Council.

Closely related to "Responsibility to Protect" is the protection of civilians in armed conflict. Through several resolutions and presidential statements the Council has set up a comprehensive protection agenda with clear obligations of parties to conflict, a toolbox for Security Council action and guidance for peace-keeping and other political missions. This includes the compliance by parties to conflict with their obligations under international humanitarian law; unhindered access for humanitarian organizations to people in need, as well as accountability for serious violations against civilians.

The protection of civilians is an Austrian key priority. During our membership on the Security Council, we therefore aim:

1. First, to contribute to the strengthening and further development of the Council's protection agenda.
2. And second, to ensure that systematic attention to protection concerns is given in the daily deliberations of the Council. In this respect Austria welcomes the new informal expert group of the Council, which allows members of the Council to receive detailed information from humanitarian, human rights and other experts before the establishment or renewal of peacekeeping mandates.

I would like to use this opportunity to commend the Office for the Coordination of Humanitarian Affairs for its excellent work – as well as many other actors within the UN system who are working hard for the protection of civilians – some of whom are present here today.

Important progress has been made in recent years, for example with the establishment of a monitoring and reporting mechanism on serious child rights violations to protect children affected by armed conflict. Currently Austria is working with others to expand

this mechanism beyond the recruitment of child soldiers to include also other serious violations, in particular sexual and gender based violence.

Some progress has also been made to protect women and to better include them in peace processes. Resolution 1820 addresses the widespread sexual violence against women. The forthcoming report of the Secretary-General will address the questions of accountability and of assistance to survivors of such abuses.

At the same time, we are faced with several challenges in making the protection of civilians a reality on the ground. Let me mention two points to which I attach particular importance.

1. One is the question how to ensure better compliance of parties to conflict with international humanitarian law. This is a particular problem with many non-state actors. The debate on this issue held by the Security Council in January raised important issues on how to strengthen the universal legal framework, how to prevent violations, and how to ensure accountability by perpetrators. Austria will continue to work with others to strengthen the role of the Security Council in this regard.
2. Another challenge is how to enhance the protection of civilians through peace-keeping operations. In recent years, several peace-keeping missions – such as the UN Mission in the Democratic Republic of the Congo – have been mandated by the Council to ensure the physical protection of the civilian population. Its role to provide protection to refugees and internally displaced persons was a strong factor in Austria's decision to contribute troops to the EUFOR/Chad and MINURCAT. Austria has also contributed to the UN Study to analyse the experiences so far in the implementation of such protection mandates in peace operations. It is my hope that this will contribute to the overall reform efforts of UN peacekeeping. Our aim must be to have more effective and better resourced peacekeeping missions which are in a position to implement their protection mandates in a credible and consistent manner.

This year marks the 10th anniversary of the Security Council's first consideration of the protection of civilians in armed conflict. This anniversary provides us with a good opportunity to take stock and to reaffirm our commitment to protect civilians from the devastating effects of armed conflict.

We are therefore planning to organise an open debate of the Council on the occasion of the 10th anniversary in November. It is my intention to chair this important meeting personally and I hope that other colleagues on the Council will join. In this debate we will strive to identify concrete measures for addressing the current challenges in the protection of civilians and, thus, set the agenda for the coming years.

Let me conclude by welcoming you again here in Vienna. This Seminar is an important opportunity to discuss among experts and practitioners the many issues and challenges related to the "Responsibility to Protect" and to the protection of civilians. I am convinced that it will help us to identify concrete proposals and recommendations for

further strengthening the protection agenda of the Security Council. Thank you all for your commitment to this important cause.

Federal Minister for European and International Affairs Michael Spindelegger

TAKING STOCK AND LOOKING AHEAD – IMPLEMENTING THE RESPONSIBILITY TO PROTECT

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1. Remarks at the Opening Session

This Vienna Seminar comes at a critical juncture in the conceptual, political, and operational life of the responsibility to protect (RtoP). In January of 2009, the Secretary-General's report on *Implementing the Responsibility to Protect* (A/63/677) laid out the first comprehensive strategy for turning the promise of RtoP into practical action. Later this summer, the General Assembly will hold its first debate on RtoP, focusing on the ideas and proposals put forward by the Secretary-General. In November, with Austria in the chair, the Security Council will hold an important debate on the protection of civilians (POC). So this is a year with great opportunities for bringing the international community together on a common effort to curb mass atrocity crimes, which so deeply scarred the twentieth century, once and for all.

1.1. Four canards about the responsibility to protect

Before we can make further progress, however, we need to address four canards about the responsibility to protect. The first is that this is a North-South issue, pushed by developed countries and resisted by developing ones. Nothing could be further from the truth.[1] As the Secretary-General has repeatedly pointed out, this concept was born and raised in Africa well before the International Commission on Intervention and State Sovereignty – and its energetic co-chair, Gareth Evans, who is with us today – coined the phrase in 2001. The searing experience of the genocide in Rwanda, as well as atrocity crimes elsewhere on the continent, spurred first ECOWAS and then the African Union to make non-indifference a cardinal principle of African diplomacy in the 21st century, just as non-interference had been in the 20th.

[1] This was later confirmed by the positive statements of most small and developing countries at the General Assembly debate in late July 2009. See, for example, the summaries of the debate prepared by the Global Centre on the Responsibility to Protect, *Implementing the Responsibility to Protect The 2009 General Assembly Debate: An Assessment*, August 2009, available at http://globalr2p.org/media/pdf/GCR2P_General_Assembly_Debate_Assessment.pdf; and the International Coalition for the Responsibility to Protect, *Report on the General Assembly Plenary Debate on the Responsibility to Protect*, September 15, 2009, available at http://www.responsibilitytoprotect.org/ICRtoP%20Report-General_Assembly_Debate_on_the_Responsibility_to_Protect%20FINAL%209_22_09.pdf. For the official records, see U.N. documents A/63/PV.97of 23 July 2009, A/63/PV.98 and PV.99 of 24 July 2009, and A/63/PV.100 and 101 of 28 July 2009. For the statement of the Secretary-General introducing his report, see U.N. document A/63/PV.96 of 21 July 2009. For my statement, as Special Adviser, see http://www.ipinst.org/news/general-announcement/98-ipis-edward-luck-addresses-un-on-responsibility-to-protect.html.

Second, there are those – including some of its most passionate advocates – who would try to put the responsibility to protect label on all sorts of causes and concerns. The 2005 World Summit, however, was absolutely clear that this principle applies to four crimes – genocide, war crimes, ethnic cleansing, and crimes against humanity – only. That specificity about its scope is one of the reasons all the assembled heads of state and government could agree on the Summit's detailed RtoP provisions. The Secretary-General's approach, therefore, has been narrow but deep: narrow in terms of scope of application, deep in terms of the need to call on the whole spectrum of tools available under Chapters VI, VII, and VIII of the UN Charter to carry out the collective responsibilities for prevention and protection affirmed at the 2005 Summit.

The third canard – this one a favorite of critics with an ideological bent – is that RtoP is just a more polite word for humanitarian intervention. Yet the concept of the responsibility to protect was developed precisely to provide an alternative to the largely discredited notion of unilateral coercive intervention for humanitarian purposes. Military options are just one of many ways of going about meeting protection responsibilities, and the Secretary-General's RtoP strategy stresses the prevention of these crimes and, importantly, of their incitement. As he has said, it would be neither morally justifiable nor sound policy to restrict the international community's choices to responding after the bodies have begun to pile up and to using force or doing nothing. His strategy, moreover, stresses the need to act multilaterally under the proper legal authority of the United Nations and its Charter.

Fourth, it is sometimes claimed that the responsibility to protect is based on novel legal theories and standards. Yet it is founded on well-established canons of international law and adds no new legal obligations. It is, in fact, a political concept, not a legal one. We hope and expect that it will help to build popular, parliamentary, and political support for effective action to prevent and, if necessary, respond to the commission of such mass atrocities. In that way, it can help build the political will that Ambassador Rice rightly just commented has been too often missing in these situations. At the United Nations, we refer to it as a principle, concept, or standard, because, in our view, it has not yet achieved the status of a norm in the sense of having a binding legal quality. Rather than infringing on sovereignty, we believe that RtoP – and especially the Secretary-General's formula for advancing it – offers a way of helping states to meet the protection responsibilities that are inherent in the very notion of sovereignty.

1.2. Tools and measures for implementing the responsibility to protect

Turning to specific tools and measures that could be helpful to this end, let me be the first to admit – as the chief author of the Secretary-General's report – that we are far from having all the answers.[2] The responsibility to protect, at least in the form of strategy and policy, is still in its infancy. There is a lot we do not know about how to prevent such mass crimes. We are convinced that all three pillars of the Secretary-General's strategy – state responsibility, international assistance and capacity-building,

[2] For a scholarly debate about the Secretary-General's strategy, see *Global Responsibility to Protect*, vol. 2, no. 1 (2010, forthcoming).

and timely and decisive response – are of roughly equal importance and that to succeed will require pursuing all three with similar vigor and determination.

It is intriguing that two of the three major products of the 2005 Summit were the responsibility to protect and the Peacebuilding Commission (PBC). They have more in common than their birth date, however. Too often one round of atrocity crimes has led to another down the road in particularly troubled societies. In that regard, the UN's new peacebuilding architecture offers a promising portal through which to try to encourage the building of the kinds of institutions, processes, habits, and values that would make the reoccurrence of mass crimes less likely in places that have experienced such traumas. The PBC's selection of Sierra Leone and Burundi as its first places for focused effort is suggestive. Given the Security Council's role in co-parenting the PBC, this possibility would be worthy of some consideration at this Seminar.

More generally, the Secretary-General's report puts considerable emphasis on good and best practices, as well as on trans-regional learning networks for comparing notes on what has and has not worked and why. Presumably such networks would involve a creative mix of practitioners, policy analysts, NGOs, and scholars. As a first step, the Secretary-General has asked Francis Deng, as his Special Adviser on the Prevention of Genocide, and me, as his Special Adviser focusing on RtoP, to commission some independent case studies on aspects of these two mandates. We will be sure to compare results and lessons identified on these closely related subjects.

The strategy recognizes the value of regional and sub-regional institutions in meeting prevention and protection goals. For instance, in Kenya, the one place where the UN has exercised the responsibility to protect, the division of labor between regional and global efforts to stop the mounting violence in early 2008 worked quite well. The Charter, of course, contemplated the possibility of a partnership between the Security Council and regional arrangements long before this became almost standard operating procedure. Under Chapter VIII, Article 52(2), parties to a dispute are to try to achieve a pacific settlement locally and regionally before referring them to the Council. Article 53(1), of course, stipulates that regional enforcement action is to be undertaken only with the Council's authorization.

In my view, the Council has underutilized its Chapter VI tools for peaceful conflict resolution, which could be quite helpful in preventing the escalation of domestic violence in some cases. For example, Article 34 authorizes the Council to investigate any dispute or situation "which might lead to international friction or give rise to a dispute." There does not have to be a finding of an eminent threat to international peace and security. Likewise, under Article 36(1) the Council may "at any stage" of such a dispute "recommend appropriate procedures or methods of adjustment." When added to the recent Council practice of undertaking missions to places of particular interest or concern, these provisions suggest that the calming presence of the Council could be employed as a measure of deterrence and prevention in a range of circumstances.

In a somewhat unorthodox step, the Secretary-General's report suggests that some kinds of consent-based military measures could be considered under his second, assistance, pillar. Preventive deployments of peacekeepers – whether from the UN or a regional

body – can help to bring an element of stability to tense situations, as was the case in Burundi and in the Former Yugoslav Republic of Macedonia. Even coercive, Chapter VII, enforcement action could be taken under the second pillar if the goal is to assist a beleaguered government confronted by armed groups that control a portion of its territory and are committing RtoP crimes there. Sierra Leone's struggles with the RUF was a case in point.

According to paragraph 139 of the 2005 Summit Outcome Document, "When national authorities are manifestly failing to protect their populations" from the four specified crimes and peaceful means are inadequate, the Member States "are prepared to take collective action, in a timely and decisive manner, through the Security Council." As the Secretary-General has underscored, the key is an "early and flexible response tailored to the specific circumstances of each case." Given the complexity of these situations and the unique attributes of each case, the Council would have to avoid a cookie-cutter, one-size-fits-all approach to such acute protection challenges. As Ambassador Rice just noted, targeted sanctions might also be considered in some cases. Military options, moreover, would usually benefit from the utilization of a mix of civilian, police, and military assets in RtoP situations.

One thing is abundantly clear. Calibrating properly what kind of response would be most appropriate and likely to succeed at each time and place would demand early warning and a degree of nuance in assessment that is rarely achieved within the UN system. The Secretary-General's two Special Advisers – Francis Deng and myself – are currently weighing various ways of going about these analytically demanding tasks within the Secretariat. The first step, it has been decided, is to co-locate these two related mandates in a joint office. To the extent possible, we are seeking to develop common methodologies both for prevention and for early warning and assessment. The next step, framing policy options for the Secretary-General and, through him, for the inter-governmental organs, will demand new forms of collaboration among those UN departments and agencies that have operational capacities on the ground in places of concern. We are exploring the possibilities for establishing an inter-departmental and inter-agency mechanism for developing response options in emergency situations – something the UN currently lacks.

1.3. The roles of the General Assembly and the Security Council in implementing the responsibility to protect

Before closing, I'd like to make a few observations about the relative roles of the Security Council and General Assembly as we move forward. Obviously the Council will be a major player in the effort to implement RtoP, especially in specific situations where there is a clear danger of mass atrocity crimes being committed. Pointed questions have been raised by a number of Member States, as well as civil society, about selectivity and the use or threat of a veto in such situations. Some have tried to link RtoP implementation to Security Council reform. These questions are addressed in the Secretary-General's report, but the hard truth is that the way Member States and inter-governmental bodies anticipate and respond to the threat, incitement, and commitment of such horrific crimes remains largely a political matter. We were pleased, in that regard, when South Africa, led by its then Permanent Representative to the UN

Dumisani Kumalo, who is also with us today, called an Arria-formula meeting of the Council's Ad Hoc Working Group on Conflict Prevention and Resolution in Africa in December 2008 on RtoP in Africa. Though not an official meeting of the Council, it permitted me and several NGO leaders to discuss the Secretary-General's strategy and to get some early feedback from the members of the Council.

At the same time, we should take care not to minimize or dismiss the General Assembly's role in the evolution of RtoP from promise to practice. The 2005 Summit was essentially an extension of the Assembly, which then adopted its Outcome Document by consensus. The consideration of the development of international standards – whether of law or principle – belongs properly in the Assembly, because all 192 Member States should have their voices heard on such matters. Despite the Summit provisions, controversies continue to surround aspects of RtoP. There needs to be wider understanding of and greater clarity about what it means and how it can best be implemented, particularly regarding the third, response, pillar. We should welcome the opportunity to debate these issues fully, candidly, and transparently in the Assembly and beyond. For its part, the Assembly needs to decide how it will carry out its "continuing consideration" responsibilities. The Assembly, in select cases, could conceivably play a more active, even operational, role as well, through fact-finding, mediation, passage of a non-binding political resolution, or the dispatch of Chapter VI peacekeepers under a Uniting for Peace resolution. As the Council and Assembly begin to chart their respective places in RtoP implementation, it is essential that both observe their Charter-defined functions and prerogatives in a spirit of mutual respect and common endeavor.

Finally, let me end where I began, by underlining that the Secretary-General's report is no more than a down payment on the ongoing debate. It seeks to sharpen both the tools and the political will necessary for effective action. As Ambassador Rice put it, we do not need to raise the RtoP "flag" in every situation. But we do need to overcome any remaining trepidation about using the term in appropriate circumstances. In that regard, we very much anticipate that the debates of 2009 will put us back on the track of institutionalizing responsibility to protect in both national and international policymaking. We seek, quite simply, to mainstream these principles in our thinking and in our actions, just as broader human rights and humanitarian principles came to be accepted as commonplace over decades of concerted effort and effective advocacy.[3]

2. Remarks at the Closing Session

It would not be possible to do justice to the wide-ranging, intensive, and detailed conversation we have had here in a summary statement. Instead, I will address briefly some of the major themes and questions that appeared, again and again, in our discussions. These will include RtoP's added value, five dilemmas, five lessons and caveats, and some thoughts on where we go from here. At a number of points, I will

[3] It is noteworthy, in that regard, that the Assembly adopted a resolution on RtoP – its first – by consensus following the July 2009 debate. See General Assembly resolution 63/308 of 14 September 2009, UN Doc. A/RES/63/308.

refer to the comments of various participants, all of whom offered important insights and lessons learned.

2.1. The added value of the responsibility to protect

A number of speakers, one way or another, asked "what is RtoP's added value?"

- To me, the responsibility to protect, first and foremost, speaks to and helps clarify what we in the UN community stand for and seek to accomplish. It is, at its core, a reassertion of Charter-based rules and procedures. In both regards, the successful implementation of RtoP principles would do much to help restore the world body's credibility and authority.

- Second, the Secretary-General's report suggests a strategy, feasible path, and inventory of tools to help implement existing rights and humanitarian norms. This is a theme voiced in various ways here by Francis Deng, Mona Rishmawi, and Hansjoerg Strohmayer. In essence, the Secretary-General's RtoP strategy aims to provide a route map from words to deeds and promise to practice that can be of some assistance to the larger human rights and humanitarian project of which RtoP is but one piece.

- Third, as I stressed at the outset, the responsibility to protect movement seeks to spur political will by linking public and parliamentary concerns to governmental and inter-governmental policymaking. It aims to affect the values and priorities of, and hence the choices made by, key officials in capitals and regional and global organizations.

- Fourth, RtoP acts to reinforce human rights and humanitarian imperatives by highlighting what can happen if abuses are not addressed in a timely and effective manner. RtoP's focus on vulnerable groups – such as women, children, refugees, and internally displaced people – is particularly relevant here.

2.2. Conceptual and policy dilemmas related to the responsibility to protect

The Seminar has also been helpful, I believe, in drawing our attention to some critical conceptual and policy dilemmas that have not yet been fully resolved. Five of these come to mind at this point.

- One is whether there is an inherent tension between prevention and response. Should one be treated as more important than the other? How should we strike the most productive balance between them? In the Secretary-General's report, we concluded that we need both, that they are interdependent, and that we should not have to choose between them. People, however, sometimes forget that we need "robust" prevention as well as "robust" peacekeeping. In fact, the political, financial, and material obstacles to complex peacekeeping operations underline the importance of doing prevention right. This would be the best way to ease the demands for ever-larger and more complex peace operations. On

the other hand, an effective strategy must also be able to promise credible consequences for very bad behavior. Dissuasion and deterrence, in part, depend on the existence of the capacity and will to carry out a truly "timely and decisive" response.

- A second dilemma was posed by Severine Autesserre's insightful presentation. She worried that RtoP would become a doctrine embraced by global and regional actors, without trickling down to local actors who are critical to the success of conflict resolution efforts. Fair enough, but my hope is that RtoP could be where bottom-up meets top-down. In that regard, civil society could act as a transmission mechanism, a sort of conveyor belt between global principles and local populations and institutions. Historically, I believe, standards and values have had a way of reaching and influencing local behavior and expectations.

- Third, the UN system could face a parallel dilemma in terms of its traditional challenge of effectively and persuasively communicating headquarters doctrine to the field, as well as field experience to headquarters. The agenda for the Seminar in some ways anticipated this by moving from the generic to the specific, from the strategic to the operational and tactical. As the RtoP discussion moves from theory to practice, we have become acutely aware both of how hard it is to achieve RtoP goals and how much they are needed. Specific cases, after all, will largely define the form and substance of RtoP. The consideration of historical cases has also demonstrated that RtoP is not foreign or extraneous to well-established UN principles and practices. There is no radical departure here, whatever the most ardent enthusiasts and more entrenched opponents might claim. The cases presented at the Seminar also show how much the political and moral power of RtoP is needed as a rallying cry when support for effective action is hollow, weak, or absent.

- Fourth, it was asked, as well, whether the RtoP and protection of civilians agendas are compatible. Or, as some fear, would the inclusion of RtoP consideration or language prove distorting and distracting? The discussion here, in my view, suggests that, properly understood, the two agendas are mutually reinforcing. This question, however, needs further exploration, particularly in light of Austria's Security Council Presidency in November.

- Fifth, and finally, is the fundamental dilemma that we have talked around but not confronted directly: are the difficulties inherent in RtoP implementation simply too hard to overcome? If that should prove so, then there will be no credible alternative to unilateral action in such cases. The public's demand for action is not going away, but they want evidence of effective measures not just the façade of empathetic words and empty resolutions. Unfortunately, the gap between defining mandates in New York and providing the necessary resources and will on the ground persists across-the-board and not just in RtoP situations. The only way to discourage unilateral abuse of RtoP principles is to develop credible and sustainable multilateral alternatives. That is what this Seminar has been all about.

2.3. Lessons and caveats

Now, I'd like to turn to five lessons and caveats that I'll take away from the Seminar. Others may have drawn other points from our deliberations, but these struck me as particularly timely and relevant to my work.

- To begin, I'd like to build on something quite fundamental that Hans Winkler has just ably articulated. That is the centrality of the rule of law and of competent governance. Mass atrocity crimes, of course, epitomize lawlessness and the breakdown of governance and civil order. Respect for rule of law and good governance, on the other hand, can be important force multipliers for advancing both responsibility to protect and peacekeeping goals. They are, in fact, keystones for prevention and sustainability.

- Second, we have heard, in various ways and contexts, that pillar one on state responsibility remains the starting point and entryway to effective RtoP strategy and policy. As Alan Doss put it, at the end of the day the UN and the international community cannot substitute for the people of the Congo. It is their country. In my view, it is highly likely that resources and capacity will always be in short supply for the United Nations. Truly sustainable support is particularly hard to come by, as interest in a peacekeeping or peacebuilding operation is hard to sustain over time. So we are compelled to stress prevention and values. If local values are right and there is some degree of competence in governance, then modest external resources can go far. But even generous material and financial assistance cannot compensate for shortfalls in integrity and values among local authorities and the leadership of armed groups. We need to be modest about how much we can accomplish from the outside and never forget the "do no harm" rule.

- The third point is a modest one, but it comes up again and again in conversations such as this one. The traditional typology of inter-state versus intra-state or internal conflict is decidedly, and increasingly, unhelpful for thinking about RtoP challenges. Most conflicts these days – including the two featured here today – are transnational in scope. How many mass atrocities have failed to spill over borders or have not been fueled, in part, by the machinations of neighboring states or groups? This underscores, of course, the need to keep neighborhood perspectives in mind when thinking about how these traumas come about and how (and whether) they are eventually curbed. The neighbors may be part of the problem, part of the solution, or, often enough, both.

- Fourth, as our case studies have underscored, we need a differentiated understanding of the place of information (or intelligence) and of analysis and assessment in the fashioning of effective RtoP policies and practice. The need for these two functions and the balance between them are often quite different at headquarters and in the field. This is partly a matter of strategy versus tactics, as the latter are likely to be especially time sensitive. At headquarters, the key

to effective RtoP policy is more likely to be found in the assessment and analysis of information from multiple perspectives than in the provision of information per se. Implementation of RtoP policies in the field, on the other hand, is more likely to demand the specific, targeted, and timely delivery of information.

- Finally, it seems to me that there has been a tendency, even here, for our discussion to shift from prevention to peacekeeping and from the tools for prevention to the capacities for response. But do we really know how to do effective prevention? Surely we have some reasonably well-developed notions about factors that are or are not helpful. We lack, however, a nuanced understanding of what works where, when, and why. Part of the problem is that it is well neigh impossible to measure the results of preventive efforts and thus to make a persuasive case to policymakers, parliamentarians, funders, the media, and, ultimately, to publics. Likewise, we need more attention to and resources for the police, civilian, and local components of pillar three responses. It is just too easy – and to engrained – to think of RtoP as all about military intervention.

2.4. Conclusion

Let me close with a few words about where we go from here. Clearly, we need to continue to clarify what RtoP is and is not. Over time, people and policymakers need to get comfortable with the notion. As Paul Johnston put it, RtoP has become a useful "organizing concept." I would agree, as viewing a number of these issues and situations through an RtoP lens can yield analytical and strategic benefits. It can help us to understand both what is going on in some troubled societies and what we should be trying to achieve in them. Last year, Kofi Annan said that viewing his mediation efforts in Kenya through an RtoP lens had precisely that effect. The next step, of course, is to make RtoP sensible and cogent on an operational plane as well. It will be essential, as well, to pursue the consideration of RtoP in both the General Assembly and the Security Council. As I noted at the opening session, both bodies have much to bring to the table, as long as they observe the well-established division of labor and prerogatives between them on the basis of comparative advantage. Consideration of RtoP goals within the PBC should also be an early priority. Over time, consideration should be given as well to ways the Human Rights Council and ECOSOC could contribute to the development of RtoP principles and practices. How the balance of roles and responsibilities among these and other inter-governmental bodies is struck could help determine RtoP's future prospects. Austria can be most helpful in that regard. Already, the thoughtful way that Austria is addressing the place of RtoP in the larger protection of civilian debate in the Council is paying dividends. As a non-permanent member of the Security Council, it can help to build bridges between the Council and the Assembly. Moreover, we very much hope that loose coalitions of smaller countries from the North and the South will be in the vanguard of this Summer's Assembly debate on the responsibility to protect. By convening this Seminar, Austria has made it abundantly evident that it intends to play a productive role in advancing RtoP in the Council, in the Assembly, and on the ground in the months and years ahead.

Edward C. Luck

THE RESPONSIBILITY TO PROTECT: CONSOLIDATING THE NORM

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1. A very specific responsibility

The problem that the concept of the responsibility to protect was designed to address is a very specific and quite narrowly focused one. What should the international community do about the very worst things that human beings can do to each other, the mass atrocity crimes of genocide, ethnic cleansing, other crimes against humanity and war crimes? What should we do if and when we are confronted with the horror of another Cambodia, another Rwanda, and another Bosnia?

The responsibility to protect is not about conflict more generally, or human rights violations more generally, or human security more generally: it is not about solving all the world's problems, just one small sub-set of them. Around the world there are, at any given time, many situations of actual or potential conflict within or between states, which justify international attention and concern, to a greater or lesser extent, in the United Nations Security Council or elsewhere: the International Crisis Group reports each month on around 70 of them. And around the world at any given time there may be as many as 100 different human rights situations which may justify, to a greater or lesser extent, concern or attention in the UN Human Rights Council or elsewhere.

But the country situations which will properly justify concern on responsibility to protect grounds are many fewer than these, probably no more than 10-15 at any given time. They are countries where mass atrocity crimes are clearly being committed, here and now. They also include countries where such crimes seem to be imminently about to be committed, because all the early warning signs have been building to a crescendo. In addition, these are countries – which are a little harder to pin down, but still important – where there seems to be a serious risk that such crimes will be committed in the foreseeable future unless effective preventive action is taken, with that risk being evident on the basis of such factors as a history of such crimes in that country, the continuation or re-emergence of relevant internal tensions, and weak or struggling institutional capacity to keep a potentially explosive situation under control.

2. Mass atrocities and the international community after 1945

Until very recently there was no consensus at all on how the international community should respond to these situations. The prevailing notion was that it was no-one's business but their own if states murdered or forcibly displaced large numbers of their own citizens, or allowed atrocity crimes to be committed by one group against another on their soil. Even after World War II – with the creation of the UN and many new notional international human rights protections, including the Genocide Convention –

there was no generally accepted principle in law, morality or state practice to challenge that approach.

The state of mind that even massive atrocity crimes like those of the Cambodian killing fields were just not the rest of the world's business prevailed throughout the UN's first half-century of existence: Vietnam's invasion, which stopped the Khmer Rouge in its tracks, was universally attacked, not applauded; and Tanzania had to justify its overthrow of Uganda's Idi Amin by invoking 'self -defence', not any larger human-rights justification.

With the arrival of the 1990s, the break-up of various Cold War state structures, and the removal of some superpower constraints, conscience-shocking situations repeatedly arose, above all in the former Yugoslavia and in Africa. But old habits of non-intervention and the focus, to the exclusion of anything else, on Article 2(7) of the UN Charter died very hard. Even when situations cried out for some kind of response, and the international community did react through the UN, it was too often erratically, incompletely or counter-productively, as in the debacle of Somalia in 1993, the catastrophe of Rwandan genocide in 1994 and the almost unbelievable default in Srebrenica, Bosnia, just a year later, in 1995.

Things came to a head again with the new round of killing and ethnic cleansing starting in Kosovo in 1999. Most governments and commentators – though not all – accepted that the situation was deteriorating so rapidly and alarmingly that external military intervention was the only way to stop it. At the same time, the Security Council found itself unable to act in the face of a threatened veto by Russia. The action that was then taken, by a so-called coalition of the willing, was outside the authority of the Security Council, in a way that challenged the integrity of the whole international security system (just as did the invasion of Iraq four years later, in far less defensible circumstances).

3. The emergence of the responsibility to protect

Throughout the decade of the 1990s a fierce argument raged, not least in the UN General Assembly, with the trenches dug deep on both sides and the verbal missiles flying thick and fast. On the one hand, based largely in the global North, there were those who rallied to the cry of 'humanitarian intervention': the notion that there was a 'right to intervene' (*droit d'ingérence* in Bernard Kouchner's influential formulation) militarily, against the will of the government of the country in question, in these cases. On the other hand, those in the global South were much more inclined to take an absolute view of state sovereignty, understandably enough given that so many of them very proud of their newly won sovereign independence, very conscious of their fragility, all too conscious of the way in which they had been on the receiving end in the past of not very benign interventions from the imperial and colonial powers and not very keen to acknowledge the right of such powers to intervene again, whatever the circumstances.

This was the divide that cried out for a new consensual approach to be forged. And this was the divide which the new concept of the responsibility to protect was designed to

bridge. The core idea was first articulated in the report in 2001 of the International Commission on Intervention and State Sovereignty (ICISS), which I co-chaired with Mohamed Sahnoun, and has continued through to underlie the unanimous resolution of the General Assembly in 2005, adopting the Outcome Document of the 2005 World Summit.[1] And that core idea is a very simple one.

The issue is not the *'right'* of big states to do anything, including throwing their weight around militarily, but the *'responsibility'* of *all* states to protect their own people from atrocity crimes, and to assist others to do so by all appropriate means. The core responsibility is that of the individual sovereign state itself, and it is only if it is unable or unwilling to do so that the question arises of *other* states' responsibility to assist or engage in some way. The core theme is not intervention but *protection*: look at each issue as it arises from the perspective of the victims, the men being killed or about to be killed, the women being or being about to be raped, the children dying or about to die of starvation; and look at the responsibility in question as being above all a responsibility to *prevent*.

The question of *reaction* – through diplomatic pressure, through sanctions, through international criminal prosecutions and ultimately through military action – arises only if prevention has failed. And coercive military intervention, so far from being the heart and soul of the doctrine – as was the case with 'humanitarian intervention' – should be considered only as an absolute last resort, after a number of clearly defined criteria have been met, and the approval of the Security Council has been obtained.

There are no inherent or necessary double standards in any of this. The responsibility to protect is a universal doctrine of universal application. We all know that there are potential problems with the exercise of the veto by the permanent members of the Security Council, but that is a constraint that applies across the whole of the UN's peace and security role, and is in no way made worse by the embrace of the new norm. The whole point of the responsibility to protect is to open up a new universe of policy options, and to make the issue of coercion in any form only very rarely applicable.

The language of the World Summit Outcome Document did contain some changes as compared with the original proposals in the ICISS and the other reports which preceded the 2005 Summit from the High Level Panel[2] and the Secretary-General[3], but they were essentially presentational: the core underlying ideas remained unchanged. There was a tightening in the description of the conduct – or feared conduct – necessary to make a case one of RtoP concern, with the focus now on four specific categories of crime under international law, rather than 'serious harm' to populations more generally. And when it came to describing the nature of the response required, whereas the earlier documents cut the cake horizontally (into three layers: prevention, reaction and rebuilding), the

[1] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001); United Nations, *2005 World Summit Outcome,* UN Doc. A/RES/60/1, October 24, 2005, paras. 138, 139, and 140.
[2] A more secure world: our shared responsibility. Report of the High-level Panel on Threats, Challenges and Change, annex to the Note by the Secretary-General, UN Doc. A/59/565, December 2, 2004.
[3] In larger freedom: towards development, security and human rights for all, report of the Secretary-General, UN Doc. A/59/2005, March 21, 2005.

summit document sliced it vertically into three segments, emphasising, respectively: the role of the state itself, that of others to assist it and that of others to take appropriate action if it was 'manifestly failing' to prevent its own people suffering atrocities, with the emphasis in each case being primarily on prevention, but embracing reaction and rebuilding as well. But whichever way one slices it, it is the same cake. The 'four crimes and three pillars' of paragraphs 138 and 139 of the 2005 Outcome Document are described with great clarity in the Secretary-General's report now before us, and I would like to make it clear that I personally – although one of the primary authors of the original formulations – am completely comfortable with, and supportive of, this language and do not argue for amending it in any way.[4]

So in 2005, with the Outcome Document language unanimously adopted by more than 150 heads of state and government, we did achieve the long-dreamed international consensus. It was not a matter of the North pushing something down the throats of the South: there was strong support in the debate from many countries across the developing world, and from sub-Saharan Africa in particular, with many references to antecedents for the new principle in the Constitutive Act of the African Union (AU), and the AU's insistence that the real issue was not 'non-intervention' but 'non-indifference'. And there was certainly recognition that mass atrocity crimes had occurred as terribly in the North – most recently in the Balkans – as they ever had in the South: this was a universal problem demanding a universal solution.

The new language – with its fundamental conceptual shift from 'the right to intervene' to 'the responsibility to protect' – enabled us to find at last common ground on what had been for decades a hugely divisive issue, and for centuries a neglected one. Those who want to continue the debate wholly in terms of 'the right to intervene', and to rail against 'humanitarian intervention' as a continuing manifestation of the age-old tendency of the powerful to do as they like against the weak, are flogging a very dead horse. 'Humanitarian intervention' is dead; it is 'the responsibility to protect' that lives.

4. The substance and normative character of the responsibility to protect

I do not argue that the responsibility to protect can be properly described at this stage as a new rule of customary international law. That will depend on how comprehensively this new concept is implemented and applied in practice, as well as recognised in principle, in the years ahead. But I do argue that, with the weight behind it of a unanimous UN General Assembly resolution adopted at head of state and government level, the responsibility to protect can already be properly described as a new international norm: a new standard of behaviour, and a new guide to behaviour, for every state.

The task now – as the Secretary-General makes clear in his report, shortly to be debated in the UN General Assembly – is not to revisit or renegotiate the 2005 consensus, but to

[4] Implementing the Responsibility to Protect, report of the Secretary-General, UN Doc. A/63/677, January 12, 2009.

ensure that the responsibility to protect concept is properly and effectively implemented in practice.

The Secretary-General's report, superbly crafted by his Special Adviser Ed Luck, is an excellent description of the many different kinds of action that are relevant, under each of the three pillars: (1) if states are to meet their own responsibility to protect there own people; (2) if other states are to discharge their responsibility to assist those seeking help and support in achieving more effective protection; and (3) if other states are to respond in a 'timely and decisive fashion' if a state is 'manifestly failing', for whatever reason, to protect its own people.

The report recognizes that while many UN member states may be more comfortable focusing just on the first two pillars, which are about prevention rather than reaction, and by definition do not have any element at all of involuntary intervention or coercion, it is crucial – if we are to be really serious about ending mass atrocity crimes once and for all – that there be equal readiness to act under the third pillar if circumstances cry out for this. And that does not just mean 'sending in the Marines': it can mean, for example, diplomatic persuasion and pressure of the kind that was exercised so well by Kofi Annan in Kenya, the threat of international criminal prosecution, arms embargoes, targeted sanctions, or perhaps the jamming of hate radio stations.

The report also makes clear, as does the 2005 consensus resolution, that if coercive military force does seem the only way of stopping mass atrocity crimes, hat has to be done absolutely in compliance with the UN Charter, which means for most practical purposes by resolution of the Security Council under Chapter VII. Part of the unfinished business of 2005 is to reach agreement on the criteria for the use of force the Security Council should apply in deciding whether coercive military force is justified in any particular case. If the Security Council behaves erratically or disappointingly on these issues, as it sometimes has in the past, the task is not to find alternatives to the Security Council, or go round it, but to make the Security Council work better.

What does *not* need any further clarification is the Security Council's power to make such a decision. The suggestion sometimes made that, when atrocity crimes are being committed within the boundaries of a single state there cannot be a threat to "*international* peace and security", as Chapter VII of the UN Charter requires, is completely at odds not only with the Security Council's own practice, but also the very long chain of General Assembly resolutions from the 1960s to the late 1980s, describing the monstrous apartheid regime in South Africa as just that.

5. The General Assembly's consideration of the responsibility to protect

The debate about to be held in the General Assembly in July of 2009 will be an extremely important one, for at least three reasons. First, it will be an opportunity to clarify some of the conceptual misunderstandings which still continue to exist about the scope and limits of the responsibility to protect. We should not be disconcerted that it has taken some time for clarity and consensus to emerge about the precise scope and limits of the responsibility to protect: that is just the way the world works. There has

been argument, and a degree of confusion, as to how individual cases should be characterised, but the definitional lines are now becoming much clearer. For example the ongoing Darfur and Eastern Congo cases, the Kenya case of early 2008, and that of Sri Lanka this year, are on any view clear-cut responsibility to protect situations. By contrast Iraq in 2003 and Russia's intervention in Georgia 2008 were, on any objective view, *not* such cases. And the Burma/Myanmar cyclone case in 2008 was an initially ambiguous one which took time to clarify: the cyclone was not itself a responsibility-to-protect trigger, but if the inadequate military regime response had continued long enough to itself amount to a crime against humanity because of the reckless indifference to loss of life involved, then it would have been. All these distinctions seem to be much better understood and accepted than they were even just a year ago, but the UN debate will be an opportunity to clarify them further.

Secondly, the debate will be an excellent opportunity to explore in detail the range of policy options available to states under all three pillars, and the many institutional and resource-availability challenges which will have to be overcome if we are going to be able in practice to put in place effective preventive measures, effective reaction measures, and effective post-crisis rebuilding measures to ensure that underlying causes are addressed and the problem does not recur. We should not be too disconcerted if the necessary international response to even clear-cut responsibility to protect situations has been less effective than it could and should have been: that is another regrettable fact of international life. The lesson is not that the concept is irrelevant but that we have to do better in applying it in the future. Darfur is a case in point. Clearly the international response has been inadequate to resolve the situation, and it remains an appalling abdication of responsibility that there has been still no progress made on the key issue of supplying the 22 helicopters needed by the UNAMID peacekeeping force, when there are over 11,800 such aircraft in the global military inventory. But that said, international engagement has clearly improved since the worst horror period in 2003-04 and, for all the new problems that the ICC arrest warrant issued against President Bashir in March 2009 has produced, it does seem to be building up the pressure on the governing regime to improve its behaviour. And it remains misconceived to think that Darfur was ever a case for coercive military intervention: even if resources had been on offer, on any view this would have done more harm than good. The real question is how bad would the situation now be if there had been no international engagement at all, and no sense at all of any international responsibility to protect Darfur's suffering victims.

And third, and in many ways most important of all, this debate will be an opportunity, if it is approached in the right spirit, to build the foundations for the exercise of political will, which we all know is the ultimate critical ingredient. It is not enough just to have a common conceptual understanding of what we should all be doing, and the practical capacity ready and available to do it, as crucially important as these elements are. There must be the will to act as well. And now is the time to be looking forward, not backward, and building that will.

6. Conclusion

The bottom line challenge for all of us in this respect can be very simply stated. Whatever else we mess up in the conduct of our affairs, let us ensure that we never again mess up – as we have so terribly often in the past – when it comes to protecting people from mass atrocity crimes: genocide, ethnic cleansing, other major crimes against humanity and war crimes. Let us get to the point when another Cambodia, or Rwanda, or Bosnia or Darfur looms on the horizon, as it surely will, that our reflex response as an international community is not to say, as states have been saying for centuries, 'this is none of our business' but rather to accept immediately that it *is* the business of all of us, and have the debate only about who should do what, when and how.

And let us recognize, above all when we have these debates, that the crucial concern should not be national interest, or ideology, but our common humanity – our obligation simply as human beings not to stand by watching our fellow human beings suffering unbearable, unutterable horrors. That is what the responsibility to protect is all about, that is why it is so important that it be effectively implemented in practice, and that is why the forthcoming General Assembly debate must be about building on the consensus we have already, remarkably, achieved in 2005, looking not backwards, but forwards.

For all that remains to be done in meeting the remaining conceptual, institutional and political challenges that confront the new responsibility to protect norm, the achievement so far remains very significant indeed. We have seen in just a few short years a fundamental shift in attitudes on the scope and limits of state sovereignty. The notion that the state could do no wrong in dealing with its own people has meant that for centuries human rights catastrophes have gone unprevented, unchallenged and even unremarked. The emergence and consolidation of the new norm may not in itself guarantee that the world has seen the end of mass atrocity crimes once and for all. But it gives us a better chance of getting there than we have ever had before.

Hon. Gareth Edwards

REMARKS ON EARLY ENGAGEMENT AND PREVENTIVE DIPLOMACY BY THE UN SECURITY COUNCIL

AMBASSADOR THOMAS MAYR-HARTING
Permanent Representative of Austria to the United Nations

I am honoured to participate in this year's Vienna Seminar on Peacemaking and Peacekeeping, which will focus on the issue of "The UN Security Council and The Responsibility to Protect: Policy, Process and Practice". By organising this Seminar in continuation of our long-standing and successful cooperation with the International Peace Institute, Austria, as an elected Member of the Security Council, wishes to make a specific contribution to the current discussions at the United Nations on how to operationalise the concept of the responsibility to protect.

In this context, allow me to share a few thoughts as the Chair of Session 2 of the Seminar, looking at the topic of early engagement and preventive diplomacy by the UN Security Council. In the context of our discussions, the Security Council's role has often been seen as being limited to pillar three of the RtoP concept - the international community's collective response to situations where national authorities are failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. While the Council certainly has an important function in such cases – as envisaged in paragraph 139 of the 2005 World Summit Outcome – I believe that the Council's role in implementation of the responsibility to protect should be seen in a broader context and is not necessarily confined to authorising collective response in the last dramatic stage of a conflict. The concept of RtoP has a very important preventive dimension, by seeking to help States to protect their populations from the abovementioned crimes. In order to help prevent the perpetration of these crimes, efforts to strengthen the rule of law are of particular importance in stabilising post-conflict societies to prevent the re-emergence of conflicts and to build a sustainable peace. In our view, it is important to address the preventive dimension of RtoP from a rule of law perspective, which is a cross-cutting issue applying to all pillars.

We can think of a number of tools the Security Council might use to help prevent serious crimes and large-scale human rights violations. Possible courses of action could include requests to be briefed at an early stage on situations and issues of special concern, the publication of statements that reject acts of incitement and remind States of their obligations under paragraph 138 of the 2005 World Summit Outcome, the appointment of fact-finding missions to investigate alleged violations of international law and the preventive deployment of international military presences.

Some of the abovementioned tools have indeed been successfully deployed by the Council in the past – albeit without explicit reference to the responsibility to protect –

and I would refer those interested in reading more to the 2009 report of the Secretary-General on *Implementing the Responsibility to Protect*[5].

At the same time, we are also facing a number of challenges, which may impede the early engagement of the Council.

First, many of these tools can only be effectively applied if the relevant situation of concern is on the Council's agenda. In certain cases, situations involving the risk of the perpetration of crimes relating to RtoP may not be deemed by all Council Members to pose a "threat to international peace and security" and may therefore not be put on the Council's agenda. Does the Council then have to remain silent on the matter or are there ways and means for the Council to be effectively engaged even if a situation is not on its agenda? The "informal interactive dialogues" held by the Council on the situation in Sri Lanka in the first half of 2009, in view of the dramatic escalation of the armed conflict in that country, can be seen as a creative and groundbreaking development in this regard. Nevertheless, the question remains whether the current practice is satisfactory or whether Member States should start thinking of innovative ideas, such as the creation of new generic agenda items that would allow the Council to address relevant situations at an early stage. In this context, the case of Guinea is an interesting example, which was addressed under the generic agenda item of "Peace consolidation in West-Africa".

Second, even as regards situations which are on the Council's agenda, the Council has, unfortunately, often minimised or ignored the signs of looming mass atrocities. The acts of genocide in Rwanda and in Srebrenica are sad examples. The question arises of how the performance of the Council could be improved in that regard. Would it be useful for the Council to be more open to briefings by the United Nations High Commissioner for Human Rights and possibly also the Special Adviser on the Prevention of Genocide, as well as Special Rapporteurs with relevant mandates, on their assessments and contributions to the prevention of mass atrocities in specific conflict areas? Should the Council, in certain situations, remind the relevant actors more clearly of their personal criminal responsibility? In this context, another question that arises is whether the Council has the necessary tools to engage in confidential suasion in cases where this may promise better results than public statements.

These are just a few thoughts and questions in relation to early engagement and preventive diplomacy by the Security Council. I am looking forward to our discussions and remain confident that this year's Vienna Seminar will help to explore further the ways in which, and the extent to which, the Security Council can play a helpful role in operationalising the responsibility to protect in a comprehensive way.

[5] UN Secretary-General, *Implementing the Responsibility to Protect,* UN Doc. A/63/677, January 12, 2009, paras. 41- 42.

Amb. Thomas Mayr-Harting – UN Photo/Eskinder Debebe

PEACEMAKING IN BURUNDI – A CASE STUDY OF REGIONAL DIPLOMACY BACKED BY INTERNATIONAL PEACEKEEPING AND PEACEBUILDING

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1. Burundi at the brink of genocide (1993-1996)

Burundi has been a land of prolonged political violence since her independence in 1962. This has taken different forms ranging from military coups, targeted assassinations of prominent politicians, mass massacres, refugees, internal displacement and lack of meaningful development. From 1966 to 1993 the politics of the country were dominated by the military, which staged three successive coups. After the assassination of the first democratically elected president, who also was the country's first ethnic Hutu president, on October 21, 1993, unprecedented political violence broke out and led to the death of more than 300,000 people.

The violence in Burundi was overshadowed by the civil war in the neighboring Rwanda which has the same ethnic composition with the Hutu majority and minority Tutsi. It was only after the genocide in Rwanda in 1994 that the international community started to take the violence in Burundi seriously and actively sought to avoid 'another Rwanda'. Between 1993 and 1996, no other country in Africa received a comparable amount of attention from many conflict resolution and mediation experts. The actors ranged from the United Nations, the then Organization of African Unity and later the African Union, non-government organization and academics.

In 1993 and 1994, the risk of genocide in Burundi was almost as severe as it was in Rwanda where it materialized. Incitement to genocide was going on every day. The government at the time was unwilling to protect its population from the looming threat of mass atrocities. What made the difference in successfully preventing genocide in Burundi was the substantial and sustained engagement of the international community which sent the right messages to the right people at the right time. UN Secretary-General Boutros Boutros-Ghali appointed Ahmedou Ould-Abdallah as his Special Representative for Burundi, and the Security Council was seized of the situation in Burundi. At press conferences in Bujumbura, Ahmedou Ould-Abdallah clearly stated that incitement to mass atrocities was unacceptable. The Organization of African Unity prepared a military plan that provided for enforcement action and the disarmament of all armed groups and the government in case of an escalation of the situation. In 1996, the UN Department of Political Affairs conducted an inquiry into the mass violence in Burundi and reported to the Security Council that acts of genocide had been perpetrated by certain Burundian parties. The warring factions in Burundi understood the message of the international community: traumatized by the genocide in Rwanda, it would not accept another genocide in Burundi. Accordingly, an escalation of the situation into full-fledged genocide was avoided.

2. Julius Nyerere's facilitation of the Burundi peace process

The Burundi peace process is a case study where there has been coordination at a sub-regional, regional (Organization of African Unity and then the African Union) and the international level (United Nations and other players) to end a violent conflict. The Burundi peace process that began 15 years ago has gone through three main phases which displayed different political dynamics. This short paper will look at each phase and briefly explain its significance.

The first phase of the process began in November 1995 with the mediation by former Tanzanian President Julius Nyerere. The process of his selection as mediator is intriguing in the sense that he was appointed by regional heads of state acting under the auspices of the Great Lakes Regional Peace Initiative on Burundi commonly known as the regional initiative, and not by the Organization of African Unity or the United Nations. This was significant insofar as it signaled that, from the onset, the region was going to take the lead in the mediation process while the United Nations and the rest of the international community would play a supporting role.

Only when the former President of Tanzania Julius Nyerere was appointed mediator in May 1996 one single authority in the mediation process began to emerge. The United Nations' approach to the conflict in Burundi did not differ much from the strategy pursued by the OAU/AU and other regional peacemakers. Each of these actors perceived the conflict as political with ethnic connotations. This consensus on the definition of the cause of the conflict was crucial for devising a common mediation strategy. The two-track conflict management efforts had both political and military elements. The political track aimed at bringing together all political players to hammer out a political compromise, and the military track involved protection of key political players and demobilization sites.

President Nyerere's major success was to bring together 19 Burundian delegates representing diverse political parties for talks in the northern Tanzanian town of Arusha in 1998. The negotiators were drawn from the parties represented in the National Assembly, and they included both Tutsi and Hutu ethnic groups. It took the mediator three years of wide consultations both within and outside Burundi to determine the representation in the talks. President Nyerere adopted the strategy used by the United Nations that recognized the formal political parties which had participated in the 1993 elections as the major protagonists who should be included in the negotiations which would eventually lead to power sharing arrangements. The main weakness of this strategy was its failure to realize that the political and military terrain had changed significantly since 1993. The continued exclusion of Hutu-dominated armed groups like the now ruling Council for the defense of Democracy (CNDD) and the Forces for National Liberation (Palipehutu-FNL), which appealed to the Hutu majority's quest for resistance against what they considered a minority Tutsi ruling oligarchy, was a mistake. Thus, the war continued even after the talks began.

3. Nelson Mandela takes over

In December 1999, after the death of President Nyerere, the former President of South Africa Nelson Mandela succeeded him as facilitator of the Burundi peace process. The appointment of Mandela, an icon of the apartheid struggles in South Africa and the political equivalent of an international rock star, gave the Burundi peace process the much needed international spotlight and support. Mandela also changed the approach to the negotiations, adopting a more public and forceful position vis-à-vis the parties, and he also injected financial and diplomatic resources from the South African government into the peacemaking process. His efforts led to the signing of the Arusha Peace and Renconciliation Agreement on 28 August 2000. High-profile guests including UN Secretary-General Kofi Annan and eight heads of state attended the signing ceremony. However, the main armed groups CNDD-FDD and Palipehutu-FNL stayed away from the talks and violence continued.

The Arusha Agreement was a watershed accord since it directly addressed the issue of ethnicity in Burundi and devised a power-sharing arrangement that guaranteed security to the minority Tutsi and democracy to the majority Hutus. All subsequent cease-fire agreements between the government and the armed groups used the agreement as the basis for power-sharing.

4. Jacob Zuma as mediator

In early 2002 the then South African Deputy President Jacob Zuma replaced President Mandela as facilitator of the Burundi peace process. He continued reporting to the regional initiative as his predecessors had done. He was given the additional mandate to broker a cease-fire agreement between the transitional government and armed groups that were still fighting. Zuma's approach to mediation was different from the strategy pursued by both presidents Nyerere and Mandela in the sense that he was more discrete in his mediation efforts, and he also directly involved the African Union and the United Nation envoys to Burundi into the talks. He realized that the armed groups in Burundi were part of the web of armed groups spanning the entire Great Lakes region. Many violent actors in the region were being supported by some regional governments. For this reason he concluded that he needed support from the entire international community to achieve a sustainable solution to the armed conflict in Burundi.

Zuma also introduced another innovation to the mediation process. He formed a technical committee of intelligence officials from Uganda, Tanzania, and South Africa to provide him with strategic information on the motivation of the parties and the regional security dynamics that impacted on the talks. This committee could fulfill an early warning role within the mediator's team. Through the mediator's briefings of the Security Council its assessments of the situation in Burundi also informed the work of the United Nations. This committee was surprisingly popular with the Burundian government and the armed groups because of its perceived proximity to the mediator.

Zuma's main achievement was to bring the Council for the Defense of Democracy (CNDD-FDD), the largest armed group, into the talks. The inclusion of this armed

group in the talks changed the dynamics of the Burundi peace process. It created a real possibility of ending the civil war. In the early morning hours of 3 December 2002 a comprehensive cease-fire was signed.

The remaining challenge after ceasefire agreement was the absence of a credible peacekeeping force to supervise its implementation. The joint mission by Zuma and the Special Representative of the UN Secretary-General in Burundi to New York to lobby the UN Security Council led to the approval of the deployment of the United Nations Operation in Burundi (ONUB) which replaced the African Union-sanctioned African Mission in Burundi (AMIB). This was the first time the UN took over troops from another organization and gave them blue helmets or hats. Subsequently, this process has been replicated in Darfur in Sudan.

With the peacekeepers on the ground the two main challenges for the mediation team and the United Nations was organizing the elections and bringing the last rebel movement, the Palipehutu-FNL, into the talks. An electoral calendar was adopted which provided for a referendum on the new constitution on 28 February 2005 and called for local elections to be held in June 2005. A parliamentary election followed a month later. Both elections were declared free and fair by international observers, and both were won by the former rebel movement CNDD-FDD. Its leader Pierre Nkuruzinza was sworn in as new President of Burundi.

During the first phase of the peace process, the work of the three mediators was backed by the United Nations. The Security Council endorsed the agreements reached through the regional initiative, and the mediators appeared in the Council chamber for several briefings, sometimes together with the Special Representative of the UN Secretary-General. When the government expressed misgivings about one of the facilitators at the United Nations, the Council gave its full backing to the mediator.

5. The second phase of the peace process

The second phase of the peace process began in early 2006 when the Tanzanian government informed the regional initiative that the remaining rebel movement in Burundi, the Palipehutu-FNL, was ready to join the negotiations without preconditions. With this new development a new mediator, Charles Nqakula, the then South African Minister for Public Safety and Security, was appointed. He was given the mandate to offer to the Palipehutu-FNL ‘a soft landing’ by limiting himself to facilitating the negotiation of a cease-fire while at the same time avoiding to re-open the political issues the other parties had already agreed upon.

However, the Palipehutu-FNL wanted comprehensive negotiations and its leadership pointed out that the talks would not be limited to negotiating a ceasefire only. This demand caught the mediator and the International community by surprise, and a coordinated mechanism to pressurize the Palipehutu-FNL was put in place. The government of Burundi resented the Palipehutu-FNL’s push for the re-opening of political issues already settled in previous agreements because of the constitutional implications such new negotiations would have.

The Palipehutu-FNL's intransigence was overcome through combined pressure from the regional initiative, the African Union and the United Nations. A summit of the regional heads of states on December 4, 2008, in Bujumbura took landmark decisions that unblocked the process. The meeting was chaired by the President of Uganda Yoweri Museveni, and it included representatives of the United Nations, the African Union and the European Union. The Bujumbura Declaration obliged the Burundians to release all political prisoners and to make 33 posts in the government available to the Palipehutu-FNL to integrate its leadership into national institutions. The Palipehutu-FNL was called upon to change its name by dropping its ethnic designation, and to move its combatants to demobilization sites.

6. The third phase of the peace process

In 2006, Burundi became the first country on the agenda of the new Peacebuilding Commission, which became an actor in the peace process toward the end of the conflict. In their conversations with the conflict parties, the mediators could cite the engagement of the Peacebuilding Commission to convince the parties that the conclusion of an agreement will generate a peace dividend for their country. The Commission's decision to consider the situation in Burundi, based on the referral by the Security Council following the request by the government of Burundi, generated trust in Bujumbura that the United Nations had a compelling post-conflict strategy.

The work of the Peacebuilding Commission and the Peacebuilding Fund in Burundi have fostered the country's recovery from conflict and therefore have strengthened the country's ability to avoid a relapse into armed conflict or mass atrocities. Thus, the United Nations' peacebuilding efforts in Burundi have the effect of strengthening the capacity of state and society in Burundi to protect the population from genocide, war crimes, crimes against humanity and ethnic cleansing (pillar II of the responsibility to protect). This action complements the earlier regional diplomacy backed by the UN Security Council, which conceptually fit into the non-coercive measures under Chapter VIII of the UN Charter falling under pillar III of the responsibility to protect.

7. Conclusion

The Partnership for Peace in Burundi comprised of representatives of the regional initiative, the mediating country South Africa, the United Nations, the African Union, the European Union, France, Belgium, Norway, and the United States of America has been put in place. With Burundi moving into another election phase of the peace process in an atmosphere of relative peace, the international community is now faced with a real test case for sustaining peace in post-conflict situations through peacebuilding measures pursued through the UN Peacebuilding Commission and other frameworks to support Burundi's post-conflict recovery.

Amb. Adonia Ayebare

THE RESPONSIBILITY TO PROTECT AND PROTECTION OF CIVILIANS: THE HUMAN RIGHTS STORY

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In this short piece, I will argue that the responsibility to protect or "RtoP" can be useful as a concept if it can rally political support for human rights protection. I will start by describing the legal framework governing the concepts of protection and responsibility. I will then explore some practical implications of RtoP focusing on the case of sexual violence in the Democratic Republic of Congo (DRC), which I visited in April 2009.

1. The historical and legal framework

1.1. Protection and human rights

It has been recognized that human rights principles are a foundation of the concept of the responsibility to protect. This assertion was first made already in 2001 by the International Commission on Intervention and State Sovereignty, in its landmark report entitled *The Responsibility to Protect*.[1] The 2005 Summit Outcome Document, adopted by the General Assembly, offered RtoP as a way to address genocide, war crimes, ethnic cleansing and crimes against humanity.[2] The clear nexus between RtoP and human rights was also later made by the UN Secretary-General in his framing report to the General Assembly on implementing the responsibility to protect.[3]

The quest for protecting individuals from mass atrocities is as old as the UN Charter and the Universal Declaration of Human Rights. The Preamble of the Universal Declaration recalls that the disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind. Hence, the Declaration promises the advent of a world in which human beings shall enjoy not only freedom of speech and belief but also freedom from fear and want. The tool identified by the Declaration to achieve this goal is the protection of human rights through the rule of law.[4] The paragraphs articulating these particular notions were adopted unanimously as can be

[1] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), available at http://www.iciss.ca/pdf/Commission-Report.pdf (accessed on 25 January 2010).
[2] United Nations, *2005 World Summit Outcome,* UN Doc. A/RES/60/1, 24 October 2005, paras. 138, 139, and 140.
[3] Implementing the Responsibility to Protect, report of the Secretary-General, UN Doc. A/63/677, January 12, 2009.
[4] In the words of the Declaration "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law". See, General Assembly, Preambula of the Universal Declaration of Human Rights, resolution 217 A (III), 10 December 1948.

seen from the separate votes requested by Poland on each recital of the preamble and on each article of the Declaration before its adoption.[5]

At the time of its adoption, the Declaration however was not recognized as creating legal obligations.[6] Rather, it was considered "a first step".[7] The then President of the General Assembly explained that it "was not a convention by which States would be bound to carry out and give effect to the fundamental human rights; nor would it provide for enforcement; yet it was a step forward in a great evolutionary process."[8] Today, however, the Declaration is widely considered to have a customary law status, due to its huge influence over contemporary constitutional norms.[9]

Following the adoption of the Declaration, States focused on creating the legal framework for human rights protection. A legal framework consisting of declarations, treaties, and principles was established creating international human rights law emphasizing the duty of States to respect, protect and ensure rights.[10] Committees of experts have been established to assess the implementation of human rights treaty provisions by States Parties.

Since the 1980s, the United Nations intergovernmental system also established additional mechanisms to examine, monitor, advise and publicly report on the human rights situation in specific countries or territories, known as country mandates, or on major phenomena of human rights violations worldwide, known as thematic mandates. Through this system, independent experts are empowered by States to engage in a dialogue with governments, carry out missions, send urgent appeals regarding specific violations and advocate for institutional change. The work of these experts forms an early warning mechanism alerting the international community to violations that may intensify to a level that amount to genocide, war crimes and crimes against humanity.

The wars in the Balkans in the 1990s, nevertheless, highlighted the gaps in the UN system of protection, particularly the inability of the system to act rapidly to respond to human rights atrocities. As the 1993 World Conference for Human Rights was being organized, Amnesty International galvanized the human rights movement towards establishing a high commissioner for human rights. Amnesty International argued that there was a need for a personality in the UN system who has the authority and capacity

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[5] United Nations, *Yearbook of the United Nations, 1948-1949* (New York, United Nations: 1949): 534, available at http://www2.ohchr.org/english/issues/education/training/docs/UNYearbook.pdf (accessed on 25 January 2010).

[6] In fact, it was specifically stated by several delegates that it does not. See a summary of the discussion reproduced in the *Yearbook of the United Nations, 1948 -1949*: 524-537.

[7] *Yearbook of the United Nations, 1948 -1949*: 535.

[8] *Idem.*

[9] See, for instance, Antônio Augusto Cançado Trindade, "Universal Declaration of Human Rights", in *Audiovisual Library of International Law*, available at http://untreaty.un.org/cod/avl/ha/udhr/udhr.html (accessed 25 January 2010).

[10] These treaties cover civil, cultural, economic, political and social rights and deal with specific areas such as racial and gender discrimination, torture, and disappearances. In particular, nine core international treaties have been adopted creating binding obligations on States and regulating their policy and behavior in the area of human rights. Some of the treaties are supplemented by optional protocols addressing specific concerns.

to initiate action and to respond immediately to human rights crises and emergency situations.[11] Amnesty specified several examples of required action: the ability to initiate preventive and fact-finding missions and information gathering and to establish high-level contacts with relevant governments (and armed opposition groups as appropriate).[12] Following tense discussions, the World Conference recommended to the General Assembly to establish this position. [13]

In December 1993, the General Assembly established the position of a High Commissioner for Human Rights.[14] The Assembly entrusted the High Commissioner with the promotion and protection of all human rights and specifically empowered him or her to play an active role in preventing human rights violations, in removing obstacles standing in the face of the realization of human rights, and in engaging in dialogue with Governments on these issues.

The first High Commissioner of Human Rights, Mr. José Ayala-Lasso, assumed office on 5 April 1994 – only one day before the outbreak of genocide in Rwanda. As the violence was intensifying, he decided to establish the first independent human rights field presence under his mandate. This bold move was not without a price. On 4 February 1997, five human rights observers were killed in an ambush outside Kigali.

Since the Rwanda operation, establishing human rights field presences has become an integral part of protection strategies. The UN Security Council was also increasingly persuaded by the utility of human rights presences in the field. Today, most peace operations include a human rights component. The Office of the UN High Commissioner for Human Rights (UNOCHR) also pursued the opening of country and regional offices and placing human rights advisors in UN country teams. Today OHCHR has presences in 55 countries. These offices play an essential role in identifying human rights challenges and developing responses to them, including periodic public reporting on these violations.

Despite these multiple responses, a gap in actual protection remains continues to persist as a result of the reluctance of States to honor their human rights obligations. This is where RtoP can have an added value as an organizing concept stressing the responsibility of States to react to these violations. Let us now look at the concept of responsibility.

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[11] See Andrew Clapham, "*Creating the High Commissioner for Human Rights: The Outside Story*" 5 *European Journal of International Law*: 556-568 (1994).
[12] See Amnesty International, *United Nations High Commissioner for Human Rights –Time for Action*, AI Index IOR 41/35/93.
[13] See World Conference on Human Rights, Vienna Declaration and Programme of Action, 25 June 1993, UN Doc. A/CONF.157/23, para 18, available at http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/A.CONF.157.23.En?OpenDocument (accessed on 25 January 2010).
[14] UN General Assembly resolution 48/141, UN Doc. A/RES/48/141, 20 December 1993, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/ N94/012/56/PDF/N9401256.pdf?OpenElement (accessed on 25 January 2010).

1.2. The issue of responsibility

The original 2001 conception of RtoP grounds it in the obligations inherent in the notion of sovereignty, the responsibility of the Security Council under the UN Charter, the specific legal obligations under human rights and international humanitarian law, and the developing practice of states, regional organizations and the Security Council itself.[15]

Few doubt that genocide, war crimes, and crimes against humanity are human rights violations of extreme magnitude that invoke legal responsibility. They are also serious crimes of concern to the international community as a whole. The RtoP principles articulated in the 2005 World Summit Outcome Document pinpoint both the responsibility of States as well as the responsibility of the international community. Paragraph 138 of the Document emphasizes that each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Paragraph 139 asserts that the international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

This notion of added responsibility due to the magnitude of the acts is consistent with established legal principles. The scope of States' legal obligations with respect to crimes such as those covered by the RtoP concept has been considered by several authoritative bodies. These include the International Law Commission's (ILC) *Draft Articles on the Responsibility of States for Internationally Wrongful Acts*[16] and the General Assembly's *Basic Principles and Guidelines on the Right to a Remedy and Reparation For Victims of Gross Violations of Human Rights and Serious Violations of International Humanitarian Law.*[17] Human rights experts mandated by the Commission on Human Rights also elaborated the *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.*[18]

According to the ILC, the responsibility of States for wrongful acts includes the responsibility of cessation and non-repetition, reparation, and irrelevance of internal law. Reparations include compensation for the damage caused thereby, and satisfaction

[15] See International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), available at http://www.iciss.ca/pdf/Commission-Report.pdf (accessed on 25 January 2010).
[16] In resolution 56/83 adopted on 12 December 2001, the UN General Assembly "commended [the Draft Articles on the Responsibility of States for Internationally Wrongful Acts] to the attention of Governments without prejudice to the question of their future adoption or other appropriate action."
[17] UN General Assembly resolution 60/147, UN Doc. A/RES/60/147, 21 March 2006, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/ N0549642.pdf?OpenElement (accessed on 25 January 2010).
[18] See UN Commission on Human Rights, Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement (accessed on 25 January 2010).

through the acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.[19] There are additional consequences for States when serious breaches of obligations under peremptory norms of general international law are committed. These include in particular the duty on all States to cooperate to bring to an end through lawful means to any serious breach. Other States cannot recognize such act as lawful and cannot render aid or assistance in maintaining that situation. In addition, any State is entitled to invoke the responsibility of another State if the obligation breached is owed to the international community as a whole. There is also the possibility of lawful counter-measures, performed under strict conditions. These conditions include the requirement that the obligations for the protection of fundamental human rights are not affected.

The UN Principles on the Right to a Remedy and Reparation specifically clarify the scope of obligations in human rights terms. States are required to respect, ensure respect for, and implement international human rights law and international humanitarian law. The means to meet these obligations are also spelled out. They include a) the duty to prevent violations; b) the duty to investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible; c) the duty to provide the victims with equal and effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violation; and d) the duty to provide effective remedies to victims, including reparation.[20]

In addition to State responsibility, there is individual responsibility for these crimes. This responsibility has been mostly developed with the creation of the Ad Hoc Tribunals following the Second World War (Nuremberg and Tokyo) and more recently to prosecute crimes in the Former Yugoslavia, Rwanda, Sierra Leone and Cambodia. The most comprehensive articulation for addressing individual responsibility for international crimes is to be found in the 1998 Rome Statute for the International Criminal Court.[21] The crimes covered by the Rome Statute are precisely those crimes invoked by the concept of RtoP: genocide, war crimes and crimes against humanity.

The definition of the crime of genocide in the Rome Statute is taken from the 1949 Convention on the Prevention and Punishment of the Crime of Genocide, which was adopted by the General Assembly one day before adopting the Universal Declaration. The list of war crimes enumerated in the Statue is based on the 1949 four Geneva Conventions as well as customary humanitarian law. Importantly in this respect, the Statute clarifies, for the first time in a universal treaty, the category of war crimes committed in non-international armed conflict.

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[19] International Law Commission, Draft Articles on the Responsibility of States for Internationally Wrongful Acts, Part Two Chapter Two, in International Law Commission, *Yearbook of the International Law Commission, 2001*, UN Doc. A/CN.4/SER.A/2001 (Geneva: International Law Commission, 2001): vol. II, Part Two.

[20] Principle 3, see. General Assembly resolution (A/RES/60/147) dated 21 March 2006.

[21] United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9*, 17 July 1998, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N98/281/44/IMG/N9828144.pdf?OpenElement (accessed on 25 January 2010).

The Statute's elaboration, also for the first time in a universal international treaty, of the category of crimes against humanity is also significant. The listed acts address violations recognized in international human rights treaties, but are adapted to the requirements of individual criminal responsibility.[22] These acts include murder, enslavement, deportation, imprisonment or other severe deprivation of physical liberty, torture, rape, sexual slavery, other forms of sexual violence of comparable gravity, and enforced disappearances of persons when committed under certain circumstances described in the Statute.[23]

The 2005 Summit Outcome Document attaches RtoP also to ethnic cleansing. However, the International Court of Justice indicated in 2007 that in its view "the term 'ethnic cleansing' has no legal significance of its own".[24] Rather, it could be subordinated to genocide, crimes against humanity and war crimes.[25]

2. How do RtoP and human rights operationally link?

In order to better understand the operational nexus between human rights and RtoP, it would be instructive to take one type of human rights violation that also constitutes an RtoP crime, and to explore how these two closely intertwined principles can benefit the victims of violations. One example of such violations is sexual violence. Depending on the circumstances, sexual violence constitutes a human rights violation and can amount to a war crime, crime against humanity, even genocide.

2.1. The UN Security Council's framework for addressing sexual violence

For more than a decade, the UN Security Council has been developing a general framework for the protection of civilians in situations of armed conflict.[26] Since 2000, the Council also tried to specifically address the impact of war on women. Resolution 1325 (2000) was the first resolution passed by the Council on this topic. It was followed by others, including resolution 1820 (2008) and more recently resolution 1888 (2009).

Resolution 1888 (2009) was adopted by the Security Council on 30 September 2009. Although the term RtoP is not used, the resolution uses RtoP techniques, therefore offering a comprehensive approach to addressing sexual violence in times of conflict.

[22] For instance, in defining "torture" as a crime against humanity under the jurisdiction of the International Criminal Court in Article 7 of the Rome Statute for the International Criminal Court, the requirement of involvement of "public officials" in the UN Torture Convention is removed.
[23] See Article 7 of the Rome Statute for the International Criminal Court.
[24] International Court of Justice, Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), decision of 26 February 2007, paras. 187-188 and 190.
[25] *Idem*.
[26] See in particular Security Council resolutions 1265 (1999), 1296 (2000),1674 (2006) and 1738 (2006) on the protection of civilians in armed conflict.

Through resolution 1888 (2009), the Council recognizes that States bear the primary responsibility to respect and ensure the human rights of their citizens, as well as all individuals within their territory as provided for by relevant international law. It also recalls the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against civilians. In this regard, the Council notes with concern that only limited numbers of perpetrators of sexual violence have been brought to justice, while it also recognizes that in conflict and in post-conflict situations national justice systems may be significantly weakened. The Council also reaffirms that ending impunity is essential if a society in conflict or recovering from conflict is to come to terms with past abuses committed against civilians affected by armed conflict and to prevent future such abuses. It also draws attention to the full range of justice and reconciliation mechanisms to be considered, including national, international and "mixed" criminal courts and tribunals and truth and reconciliation commissions. It notes that such mechanisms can promote not only individual responsibility for serious crimes, but also peace, truth, reconciliation and the rights of the victims.

Resolution 1888 (2009) offers a good menu to translate RtoP into action and enhance the protection of victims of sexual violence. The suggested measures include the inclusion of specific provisions for the protection of women and children from rape and other sexual violence in the mandates of United Nations peacekeeping operations. The Council suggests that this may include the identification of women's protection advisers (WPAs) among gender advisers and human rights protection units. The Council also requests that the Secretary-General ensure more systematic reporting on incidents of trends, emerging patterns of attack, and early warning indicators of the use of sexual violence in armed conflict in all relevant reports to the Council. Furthermore, the Council encouraged the new Special Representatives of the Secretary-General on sexual violence, the Emergency Relief Coordinator, the High Commissioner for Human Rights, the Special Rapporteur on Violence against Women, and the Chairperson(s) of UN Action to provide, in coordination with the aforementioned Special Representative, additional briefings and documentation on sexual violence in armed conflict to the Council.

2.2. The example of sexual violence in the Democratic Republic of the Congo

Security Council resolution 1888 (2009) was adopted against the background of the Council's work addressing specific country situations where sexual violence is rampant, such as the conflict in the DRC. The Council's visit to the DRC and other African countries suffering from conflict in May 2009 and the meetings with victims of sexual violence influenced the thinking of its Members on this matter.[27]

I visited the DRC in April 2009 and was deeply troubled with what I saw. Despite some stability in parts of the country, the conflict raging in some regions continues to be

[27] See United Nations Department of Public Information, *Security Council Adopts Text Mandating Peacekeeping Missions to Protect Women, Girls From Sexual Violence in Armed Conflict*, UN Doc. SC/9753, 30 September 2009, available at http://www.un.org/News/Press/docs/2009/sc9753.doc.htm (accessed on 25 January 2010).

amongst the deadliest in the world with multiple actors committing atrocities including killings and rape. In addition to massive violations committed by the armed forces of the Government, Rwandan rebels, ethnic militias and deserters from the government army are participating in the conflict. Reprisal attacks against civilians by the armed groups are common. The DRC's natural resources are the fuel that keeps the conflict going. They are amongst the main reasons of why the killings, rape and forced displacement continue with impunity.

In addition to the millions of civilians already killed, hundreds of thousands of women and girls are victims of rape and sexual violence of extreme gravity. Even in parts of the country where there is relative stability, sexual violence has been endemic. This violence, frequently committed with great brutality, has been met with impunity. The severity of the violence often causes serious injuries to women's reproductive organs and trauma with social consequences. A main concern is the frequent occurrence of a health condition called vaginal fistula.[28] Medical complications for women with fistula can include infertility and miscarriages. The stigma associated with rape and other forms of sexual violence leads to women and girls being abandoned and rejected by their family and community.

Taking into account that rape and sexual violence of this magnitude constitute a war crime or a crime against humanity, these crimes should be prosecuted. Yet, there is a reigning climate of impunity. Although there is some commendable international and national effort to encourage and assist victims to pursue the legal and judicial actions, these efforts are not effective because of mounting structural problems.

Since 2006, some progress has been made in the legal protection and the prosecution of crimes of sexual violence as a result of the enactment of a national legislation banning these violations. Nevertheless, the situation continues to be severe because of the inability or unwillingness of law enforcement and the judicial authorities to take effective measures. With the limited number of police, judges, and prosecutors, the lack of basic means, such as adequate transport, combined with an inadequate road network, it is difficult for the legal and judicial systems to effectively address sexual violence. In the very few cases that were prosecuted, judgments were not enforced. There is also a serious issue of witness and victim protection. In some cases, perpetrators buy their way out of prison, in other cases the lack of secured prisons means that condemned individuals could just walk out. Moreover, very few of the reparations that were ordered by courts have been executed due to the lack of governmental resources and frequent insolvency of the perpetrators. Institutional inadequacy, including the high fees legally required for requesting the execution of judicial decisions regarding damages and interests, have contributed to the lack of execution of judgments and impaired their deterrent effect. Nevertheless, medical, psychological and legal assistance have been provided to some victims by NGOs and private actors.

Rape and sexual violence in the DRC is committed by both State and non-State actors. Some of the State armed forces and the police as well as some of the non-State

[28] This condition happens when the wall between a woman's vagina and the bladder and/or rectum tears. There is also the fistula caused by traumatic sexual violence.

perpetrators are known. Many of the perpetrators, however, are unknown. These include foreign armed militias operating in the DRC. In some situations it is possible to identify the perpetrators but there is a strong reluctance to do so for fear of reprisals or for other reasons. This situation begs the question of how a concept like RtoP benefits these victims.

3. How can the RtoP concept benefit victims of sexual violence in the DRC

There are several ways in which RtoP can help address violations such as those in the DRC. As we saw earlier, the concept of RTOP requires that the responsibility of the State, the protection of victims and the responsibility of the international community are all simultaneously addressed. This is particularly relevant when state structures are weak, as they are in the DRC.

It is clear from the framework discussed above that the government of the DRC has the duty to end impunity, to investigate these violations and to bring the perpetrators to justice. It is important to recall in this respect that the DRC is a State Party to the Rome Statute. However, the International Criminal Court will prosecute only a limited number of perpetrators. Due to the weakness of the national justice system that was described earlier additional help will be needed to ensure that concrete measures are taken to enhance accountability.[29] Different accountability options could be considered along the lines of the provisions of resolution 1888 (2009), including international and "mixed" criminal courts and tribunals.

Operational programs with international support are also needed to assist victims. In this respect, the Office of the High Commissioner for Human Rights is launching a project to strengthen assistance and support to victims of sexual violence in the DRC. An assessment panel of experts would be established to review how victims of sexual violence perceive and evaluate institutional responses by the different actors in the administration of justice to the crimes committed against them, with a particular focus on the adequacy of reparation, if any, they have received and additional measures that might be taken to support them.

There is also the issue of the responsibility of international organizations. This type of responsibility is particularly relevant when UN peacekeeping missions are given the dual mandate of protecting civilians and of supporting military operations. This challenge is particularly acute in the DRC where the largest UN peacekeeping operation in the world has been deployed with around 20,000 UN troops. Pursuant to Security Council resolutions, the UN troops are supporting around 100,000 soldiers from the DRC national army that are trying to eradicate armed groups.[30] The problem is that both the Congolese army and the militias are accused of widespread killings and rape. How

[29] Towards this end, *A Comprehensive Strategy and A Plan of Action* were developed by the United Nations and the Government of the DRC in 2008/2009 to strengthen prevention, protection and response to sexual violence.

[30] See, e.g., UN Security Council Resolution 1856 (2008), UN Doc. S/RES/1856 (2008), 22 December 2008, at OP 3.

to balance the mandate of protecting civilians with supporting local troops when the local armies are suspected of committing war crimes and crimes against humanity?

A concept like RtoP should help to clarify the framework, stressing that the protection of the human rights of civilians must be considered as paramount. In this respect, would it not be better to refer to the saying that prevention is better than cure? Tools such as vetting local military commanders to ensure that they are not suspected on international crimes become important. There is also the issue of women's protection advisers. These could help, particularly if their role includes advising the UN troops about how to enhance the protection of civilians from sexual violence.

Using RtoP as a framework can assist in clarifying the responsibility of non-state actors. It reminds us of the individual criminal responsibility for crimes committed by non-state actors. As was indicated earlier, the DRC's natural resources fuel the conflict, and they are amongst the underlying causes of the ongoing atrocities. It is therefore useful to clarify not only the responsibility of the rebels, but also the responsibility of those who trade with them. In this respect, Professor John Ruggie, the Special Representative of the UN Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises proposed a normative framework to address the responsibility of business actors. It comprises of three main components: the state duty to protect against human rights violations by or involving corporations; the corporate responsibility to respect human rights; and effective access to remedies.[31] Exploring how these concepts can apply to those who are complicit in the atrocities in the DRC may assist in removing the fuel that rages the conflict in the DRC.

4. Final remarks

In conclusion, I would like to state that at this point RtoP is a concept that can generate multiple responses. As the example of the DRC shows, this concept can be utilized to add clarity to the responsibility of various actors and to prioritize the protection of civilians from genocide, war crimes, and crimes against humanity. It is a powerful political tool with huge potential to rally support to ensure that human rights are protected when they are most at risk.

[31] See United Nations, Business and human rights: Towards operationalizing the "protect, respect and remedy" framework, report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, UN Doc. A/HRC/11/13, 22 April 2009.

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MONUC AND CIVILIAN PROTECTION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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Special Representative of the UN Secretary-General to the Democratic Republic of the Congo

1. Security Council resolution 1856 (2008)

UN Security Council Resolution 1856 (2008) stipulates that the Mission of the United Nations in the Democratic Republic of the Congo (MONUC), in close cooperation with the Government of the Democratic Republic of the Congo, shall:

- Ensure the protection of civilians, including humanitarian personnel, under imminent threat of physical violence, in particular violence emanating from any of the parties engaged in the conflict;
- Contribute to the improvement of the security conditions in which humanitarian assistance is provided, and assist in the voluntary return of refugees and internally displaced persons; and
- Carry out joint patrols with the national police and security forces to improve security in the event of civil disturbance.

The resolution also "emphasizes that the protection of civilians […] must be given priority in decisions about the use of available capacity and resources, over any of the other tasks […]". This means that the protection of civilians is explicitly established as an overriding priority in MONUC's mandate.

MONUC defines protection as all activities aimed at:

- Ensuring the safety and physical integrity of civilian populations, particularly children, women, and other vulnerable groups, including internally displaced persons (IDPs);
- Preventing the perpetration of war crimes, crimes against humanity, and other deliberated acts of violence against civilians;
- Securing humanitarian access; and
- Ensuring full respect for the rights of the individual, in accordance with relevant national and international human rights and humanitarian law.

2. Major protection concerns and challenges

MONUC is facing one of the most complex emergencies in Eastern and Northeastern DRC. In addition to the increasing number of IDPs – 1,7 Million in the Kivus and 200,000 in Province Orientale – key protection issues relate to widespread human rights violations in the course of attacks by foreign armed groups, notably the Democratic Forces for the Liberation of Rwanda (FDLR) and the Lord's Resistance Army (LRA),

and by remnants of Congolese armed groups, or due to acts of undisciplined soldiers of the armed forces of the DRC (FARDC).

The latter problem has become particularly acute since the fast-track integration of thousands of largely untrained and unruly National Congress for the Defence of the People (CNDP), the Coalition of Patriots in the Congolese Resistance (PARECO) and Mayi-Mayi into the army. The issue of these abuses is compounded by problems of supplies, irregular salaries, and the absence of garrisons of several tens of thousands of soldiers deployed in the Kivus. But this latest phase of integration is only the extension of an incremental process that has been going on since the end of the Sun City talks. The FARDC is still a conglomerate of more than 30 groups, which were never transformed into a structured and well-organised army, because security sector reform (SSR) has never started in earnest. The FARDC therefore has serious command-and-control problems, and elements of the FARDC as well as the police are responsible for exactions and human rights violations not only during crises and operations, but also during peace periods all over the country.

In the East, this situation is aggravated by two particular protection challenges: the wide-spread and appalling rate of sexual violence by all protagonists of the conflicts, and a dangerous ethnic dimension to the situation in some areas.

Abuses by both foreign and local armed groups, and rogue soldiers, include looting of civilian houses and health centers, illegal levying of taxes, rape, forced recruitment and forced labor, forced displacements, use of civilians as human shields, illegal executions and mutilations, and abductions of civilians. The latter has become a major concern in the Northern province Orientale, where we have seen alarming numbers of abductions by the LRA. The Office for the Coordination of Humanitarian Affairs (OCHA) estimates that up to 1,700 civilians were abducted by this armed group of Ugandan origin since September of 2008.

A serious dilemma arises when FARDC military operations, which are supported by MONUC in accordance with its mandate, lead to exactions and human rights violations committed by undisciplined soldiers of the national army. MONUC risks being accused of complicity. However, withdrawing MONUC's support to operations *Kimia* or *Rudia* would have far-reaching consequences; it would most likely aggravate the situation, possibly jeopardize these operations altogether, and lead to more human rights violations.

3. Practical activities, innovative measures, and challenges

Peacekeepers traditionally have observed ceasefires. As the need to operationalize protection is relatively new, a cultural shift in the organization is required to meet the new obligations. Implementation methods are still very much in the developmental stage. Criteria for when to intervene to protect must take into account the need for peacekeepers to posses *knowledge* of the dangers faced by civilians in a given situation, and of the peacekeepers' *capacity* to make a difference in that situation.

MONUC is improving its monitoring and analysis capabilities. Understanding how violations are committed and who the perpetrators are, regularly analyzing this information to determine trends and patterns, anticipating risks reducing the length of time during which people are exposed, and mitigating the worst effects of particularly risky scenarios, is crucial to success on protection of civilians. In this context, MONUC has created an early warning cell in the mission to ensure a close monitoring of the operations and their humanitarian fallout.

In 2009, MONUC has developed the Joint (civilian) Protection Teams (JPTs) to provide a new tool to assist in operationalizing the UN's protection obligations. The deployment of these teams has led to increased situational awareness thanks to better relations and communication with local communities and networks. The deployment of these JPTs, which include political affairs, civil affairs, disarmament, demobilization, repatriation, resettlement or reintegration, human rights and child protection staff, started during the escalation of violence between the FARDC and the CNDP late last year. The process of multi-disciplinary field missions was intensified after the joint FARDC-Rwandan Defence Forces (RDF) operations ("*Umoja wetu*") were launched on 20 January 2009 in North Kivu Province, followed by the joint FARDC-MONUC operations. The JPTs have carried out more than 30 multidisciplinary field missions in North Kivu, South Kivu and Province Orientale since March 2009.

The JPT experience has also helped create a better working relationship between MONUC troops, the local population, civil society organizations and their representatives. Access and humanitarian assistance to areas which, for long periods, have been inaccessible to humanitarian actors have been established. Inside MONUC, the JPTs have considerably improved the quantity and quality of exchanges between civilian sections and the military, and between the substantive sections themselves.

At the operational level, MONUC has developed the concept of "Mobile Operational Bases" (MoB) to spread out its presence in order to act as a dissuasive force against potential threats and to be closer to potential risk-areas and able to intervene more rapidly. Over 40 such MoBs or Company-strength bases have been established in North Kivu, and the South Kivu Brigade is currently building up its presence across the province, as operations against the FDLR are gaining pace.

But MONUC – or any other mission – does not have the operational capacity to position troops in every locality, given the size of the territory concerned, infrastructural gaps and security challenges. Therefore the mission must maintain its ability to intervene effectively in a focused manner and it has to avoid overstretching its forces. Logistic means – and in the context of Eastern and Northeastern Congo air-mobility – is absolutely critical to the mission rapid reaction capacity. This is currently the most serious constraint the mission is facing.

Finally, MONUC published a "Protection handbook for Peacekeepers" meant to be an essential tool for training of senior military and police staff at all levels.

4. Advocacy with the Government of the DRC and national security institutions

MONUC is a pilot peacekeeping mission with regards to adding civil protection priorities into military plans – not only our own, but also those of the FARDC. In the context of operations *Kimia* and *Rudia* against the FDLR and the LRA, MONUC has been lobbying with the FARDC to integrate civilian protection into the planning of the operations and to proceed with protective deployment before going into offensive operations. At the same time, MONUC has also intensified its own protective deployment.

Furthermore, MONUC has consistently lobbied with the FARDC and the Government of the DRC for the removal of serious human rights violators from command positions, and eventually from the army altogether. This remains still an uphill struggle. We continue to pressure the Government to accept systematic vetting, both for the police and the army, when elements are selected for training by MONUC or other international partners.

5. Protection of civilians before, during and after operations

Joint planning and contingency planning in accordance with international humanitarian law, human rights law and refugee law is conducted with the FARDC in the context of operations *Kimia* and *Rudia* against the remaining foreign armed groups in the DRC. Planning is done at the strategic and tactical levels, the latter at Joint Operations Centres (JOCs) established in Goma, Bukavu, and several forward locations at the brigade level. Building on existing planning tools (Protection Matrix), the planning includes the identification, in consultation with protection actors and local populations, of potential risk areas ("protection hot spots") and preventive deployment. In these areas, non-combatants are encouraged to leave exposed locations, normally on a short-term basis, to avoid that civilians are caught in the crossfire. If and when MONUC is participating in offensive operations, the mission takes the lead in establishing safety zones to protect civilians, in particular the most vulnerable (sick and aging persons, children, pregnant women and mothers with small children).

The deployment of the 2,875 additional troops authorized by Security Council resolution 1843 (2008) will enhance MONUC's capacities and allow the Force to cover more territories and to establish a reserve force for rapid intervention. However, the challenges concern primarily the question of how to use existing and expected capacities; how to adapt usual UN contingents' activities to have an impact on the protection of civilians; and how to be present where problems *will happen* rather than where problems have already happened.

MONUC also conducts joint patrols with the national police, before, during and after military operations in sensitive areas, including inside IDPs camps, in coordination with humanitarian actors and in particular with the UN High Commissioner for Refugees (UNHCR). We are also supporting, through the UN Security and Stabilization Support Strategy (UNSSSS), the deployment of police (PNC) and judicial administration in areas where security has been restored.

The use of military escorts is often considered by humanitarians as neither an inappropriate nor sustainable way of securing humanitarian access. It is suggested to open regular "windows of access" along specific stretches of key axes at specific times, according to humanitarian access needs. These would require creating security points and patrols according to a pre-agreed schedule, to be coordinated within the framework of existing coordination mechanisms (CPIA, Protection Cluster), and through CAS/CIMIC. Given MONUC's limited capacities, UNDSSS restrictions on UN agencies, and the disproportionate military effort necessary to secure a road, the use of escorts remains for the time being the preferable option.

6. Protection of victims, witnesses and human rights defenders

In conflict situation with serious human rights violations, those who are advocating for human rights and working for their respect and promotion are a vulnerable group of their own. They require specific attention and protection. MONUC has created a Protection Unit – the first of its kind in a peacekeeping operation - to respond to individual protection cases received by the United Nations Joint Human Rights Office (UNJHRO). Beyond the protection of targeted individuals, it aims at strengthening local capacities in protection, inter alia by supporting local initiatives and human rights groups. Eleven national protection officers have been deployed to the field to deal with protection cases and establish an informal network of local civil society partners for the protection of victims, witnesses and human rights defenders.

Alan Doss

MONUC as a Case Study in Multidimensional Peacekeeping in Complex Emergencies

MAJOR-GENERAL PATRICK CAMMAERT (RTD)
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1. Introduction

The debate on the UN Security Council and its responsibility to protect is an important one, and I hope that it helps clarifying policies, processes and practices. In this paper I will present the UN Mission in the Democratic Republic of the Congo (MONUC) as an example of a multidimensional peacekeeping operation in complex emergencies. I was directly involved in MONUC, in particular during my two and a half years as the UN Department of Peacekeeping Operations' Military Adviser from 2002 to 2005, and from 2005 to 2007 as General Officer Commanding the Eastern Division of MONUC. I continued to visit the Democratic Republic of the Congo (DRC) and MONUC after my retirement as a consultant. Thus, I have followed the developments in the DRC for the last couple of years, as well as the mission and its ups and downs. Protecting civilians under imminent threat in the DRC remains a daunting challenge. However, this paper will also focus on achievements and why I still believe that MONUC and the international community can make a difference in the DRC.

2. Progress and continuing challenges for MONUC

MONUC was established on 6 August 1999 pursuant to UN Security Council Resolution 1258[1] as an observer mission to monitor the implementation of the Cease Fire Agreement between the belligerent groups.[2] Following the signing of the All-Inclusive Peace Accord in 2002[3] the nature of the mission changed and MONUC became a multidimensional peacekeeping operation with a robust mandate. However, it has gone through dramatic crises with enormous humanitarian fall-out including the killing of hundreds of civilians in Kisangani in 2002, the Bunia crisis in 2003 the Bukavu crisis in 2004 and recently the action of renegade Laurent Nkunda that resulted in the displacement of hundreds of thousands of people.

[1] UN Security Council Resolution 1258 (1999) of 6 August 1999, UN Doc. S/RES/1258 (1999), available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/230/08/PDF/N9923008.pdf?OpenElement (accessed on 22 January 2010).

[2] Ceasefire Agreement on the conflict in the Democratic Republic of the Congo, signed in Lusaka (Zambia) on 10 July 1999, annex to the letter by the Permanent Representative of Zambia to the United Nations addressed to the President of the UN Security Council, UN Doc. S/1999/815, 23 July 1999, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/216/37/IMG/N9921637.pdf?OpenElement (accessed on 22 January 2010).

[3] Global and Inclusive Agreement on Transition in the Democratic Republic of the Congo, signed in Pretoria (South Africa) on 16 December 2002, available at http://peacemaker.unlb.org/ (accessed on 22 January 2010).

Significant progress has been made since MONUC's establishment almost ten years ago. It brought the ex-belligerents to the capital Kinshasa where they formed the Transitional Government. It supported the Government in organizing the first democratic elections in over thirty years - in a country of the size of Western Europe with literally no roads. The mission continues to support the elected Government, including in areas of rule of law, security sector reform (SSR) and human rights. By using force, it protected many civilians who were threatened by armed groups or even by elements of their own army. In Ituri District for example, as a result of forceful actions by MONUC, some 18,000 militias handed in their weapons and joined the disarmament, demobilization and reintegration (DDR) process. MONUC also managed in November and December 2006 to successfully contain Nkunda's attempts to expand his area of influence in the North Kivu Province by taking the town of Sake. However, extension of State authority remains a major challenge in the DRC.

In the course of 2008, MONUC underwent yet another major crisis, in the Kivus with Nkunda's troops expanding his influence in the province by force, threatening to take Goma, the capital of the North Kivu Province. This time the Mission was heavily criticized by the international media voicing concerns of the local population about MONUC failing to protect civilians under the threat of physical violence. The lack of a common interpretation of the mandate with regard to the use of force, differences of opinion on the Rules of Engagement (ROE) between contingents and the Mission, internally in the Military Component and the lack of political/military will to take strong action were at the basis of the problems. We are all familiar with the dramatic results: an enormous influx of internally displaced persons (IDPs), looting, rape and murder by both militias and members of the Congolese Armed Forces (FARDC). Not only the Mission suffered a loss of credibility, UN peacekeeping did as such.

The recent outbreak of violence was yet another clear reminder that the Congolese are not yet in a position to maintain security throughout the country despite the international community's investment in the strenuous peace process over the years. The Congolese security forces are not just incapable of defending the State and its authority. To date, the Congolese armed forces are an ill-disciplined, unorganized, untrained, unled, unfed or unpaid group. They themselves are a serious threat to the population, in particular to women and children. The Congolese Security Forces remain the single largest perpetrators of human rights violations. Impunity remains widespread for crimes committed by these elements. Efforts to end this culture of impunity remain an essential element in the peace process.

3. Successfully implementing MONUC's mandate

MONUC has 18,700 troops. Following last year's events in the DRC, the Security Council authorized 3,000 additional troops for MONUC in Resolution 1856 (2008).[4] It mandated the Mission – in a strong and exceptionally detailed resolution – to boost its operations. Whilst any additional resources for MONUC are commendable, the additional troops might also raise expectations. As a military I am inclined to say that not many battles have been won by sheer numbers; the quality of the troops might be equally important. Therefore, a thorough pre-deployment training for all UN troops, in particular for its commanders, on the mandate, its implementation and the Rules of Engagement is essential if the UN wants to have effective troops. Every peacekeeper should understand what a Chapter VII mandate entails. I have noticed that several troop contributing countries (TCCs) do not train their troops for scenarios that UN forces regularly face in robust Peacekeeping Operations – no wonder they sometimes are more focused on self-defense than to use force beyond self-defense. Furthermore, there is no simple military solution to the problems in the Eastern part of the DRC. Only significant political will by all stakeholders can bring sustainable peace to the troubled region.

There is a peace to keep in the DRC – the condition-sine-qua-non. Although hostilities continue to occur mainly in the Eastern part of the country and the extension of State Authority remains an issue for the Government, there is a legitimate democratically elected Government that still needs the support and the assistance of the international community. MONUC also has a robust mandate. The issue in my view is how to ensure that the mandate is interpreted and subsequently implemented. As you are aware, MONUC is mandated to support and coordinate operations with the FARDC. What does that mean: just major operations or any operation? In my view, this implies carrying out joint operations on UN terms only – the UN should not support the Congolese Armed Forces in operations that are ill-prepared and seem irresponsible or even dangerous. In 2006 I canceled several times joint operations with the FARDC in Ituri because they were ill prepared and had no chance on success. Defining the exact terms of this UN support would help to manage expectations of both the Government and the Security Council. MONUC is also mandated to protect civilians under imminent threat. Thus, supporting the Congolese Armed Forces and civilian protection are two core tasks. In which order are they to be fulfilled? Where does the priority lie? In my view, there should be no doubt. MONUC is an operation where all necessary means can be used to implement the mandate explicitly adopted under Chapter VII, and the protection of civilians under imminent threat should always have priority over supporting the FARDC.

MONUC's mandate to support the Congolese Army has evolved over time: Whilst in 2004, Security Council Resolution 1565 specifically mandated the Mission "*to support operations to disarm foreign combatants led by the FARDC*"[5], subsequent resolutions

[4] UN Security Council Resolution 1856 (2008) of 22 December 2008, UN Doc. S/RES/1856 (2008), available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/666/94/PDF/N0866694.pdf?OpenElement (accessed on 22 January 2010).

[5] UN Security Council Resolution 1565 (2004) of 1 October 2004, UN Doc. S/RES/1565 (2004), available at http://daccess-dds-

tasked MONUC "*to develop a joint concept of operations (CONOPS) with the FARDC* ", "*coordinate operations with the FARDC"* and "*support operations jointly planned and led by FARDC"*. It is worth noting that in all these resolutions the Security Council expressed concern about grave misbehavior and human rights violations by members of the Congolese Armed Forces.

In other words: On one hand, the Mission is mandated to support the FARDC, and on the other hand, it has the responsibility to protect the civilians from violence, including offences committed by the FARDC. Again, where does the priority lie? It is all about the interpretation of the mandate. Those commanders who do not want to take any action or risks will probably find a way to hide behind the formulation. However, let me assure you, the mandate is robust enough for those who are willing to take action and to make a difference through a transparent and firm dialogue with FARDC leadership and through decisive action on the ground.

MONUC is mandated to protect civilians from physical violence. The mandate in this regard has even become stronger: Whilst previous mandates seemed to limit this task to violence committed by foreign or Congolese armed groups, Security Council Resolution 1856 enables the Mission to take action to protect civilians from physical violence "by any party". The mandate is clear, however, I know from my own experience it remains a challenge for any commander to take on government forces with which they had been operating shoulder by shoulder the day before. However, decisive action is sometimes indispensible on the ground. However, operations that have the potential to clash between Host Government and UN have serious political implications and should be addressed by the UN Department of Peacekeeping Operations, the Secretary-General and the Security Council (for example, in case of Darfur and in Kinshasa in 2006).

4. Recommendations

MONUC has the mandate and the troops to be successful. The following list of possible courses of action and measures might contribute to improve the political/military situation in DRC. Above all, the Mission has to restore the credibility vis-à-vis the local population. Some adjustments with regard to the conduct of operations could be effective:

- Put less emphasis on operations with armoured personnel carriers (APCs) and increase foot patrols, including during nighttime. Enhance long-range, multiple day patrols to show the peacekeepers' presence, to ensure a secure environment and therefore protect civilians.

- Adjust rules and regulations on UN air operations with military aircraft to the more flexible Flight Safety regulations of the TCC. This would enable the Mission to conduct military operations by day and night and to take firmer action if necessary.

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ny.un.org/doc/UNDOC/GEN/N04/531/89/PDF/N0453189.pdf?OpenElement (accessed on 22 January 2010).

- The Mission should determine a 'baseline' to identify situations where MONUC will not support FARDC in order to avoid being accused of supporting human rights violations.

- There will be no sustainable peace in the DRC without security sector reform. Progress in this area has been slow. MONUC should intensify its efforts to this end and the international community should better coordinate its initiatives in order to support the Government in implementing SSR.

- Strengthen the accountability and integrity of the security system, including by fighting impunity. The international community should support the Government in taking action against the most serious perpetrators of gross human rights violations, including by the army and the police. In this regard, the arrest of Mr. Bosco Ntaganda could be an important signal for the population that the Government is willing to fight impunity. Mr. Ntaganda used to be General Nkunda's right hand and played an important role in the FARDC/Rwandan operations against the FDLR/Interahamwe supported by MONUC following the CNDP peace deal. This signal to the population would need to be followed by the establishment of effective internal disciplinary measures in the FARDC and external accountability mechanisms.

- Addressing the culture of impunity for the most horrendous offences will help to prevent future abuses. This should be done by removing at least the worst abusers, but also by instituting effective internal disciplinary measures and external accountability mechanisms that are essential to transforming the culture of normalisation of human rights violations within these institutions. In addition to contributing to building public confidence in the security system, which is essential for its proper functioning, these measures can also help to break down criminal networks that exist within the institutions, particularly those networks engaged in illicit natural resource extraction – notably in the East of the country, where they often collude with armed groups. Tackling criminal networks within the security system thus improves command and control, and strengthens democratic oversight.

- Intensify reintegration efforts for ex-combatants, who risk taking up weapons again and restart fighting. Procedures for Reintegration of the World Bank and UNDP should be streamlined and simplified. Rapid Employment Programs could further contribute to keeping ex-combatants off the street.

- The formulation of a peace building strategy seems to be another priority.

- Improve pre-deployment training of UN troops in particular with regard to the use of force/protect of civilians under immediate threat and Gender-Based Sexual Violence (GBSV).

- Finally, it is important for all in DPKO and in a mission to realize that in the view of the local population, and to a certain extent also of the international community, the UN military and police are deployed to protect civilians. When the local population flees, they run to the nearest UN compound. In Srebrenica, Adigrat, Abyei, Goma, or Rutshuru, they knock at the gates of UN compounds. They don't know about mandates. They only expect the UN to protect them from death and sexual violence. If the UN is deployed and fails to act or even to make an attempt to act, the result will be not only a loss of credibility and confidence in the mission but the international support in peacekeeping will be weakened.

- The willingness of UN leaders to act and react remains one of the major means for the UN to be effective. A mission can have the strongest mandate, robust ROE, well trained troops and equipment, if its commanders do not have the will or determination to take action, nothing much will happen.

Patrick Cammaert - UN Photo, Joao Castellano

MINURCAT'S ROLE IN SUPPORTING CHAD IN ATTAINING THE OBJECTIVES OF THE RESPONSIBILITY TO PROTECT

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It is said that following the 2005 World Summit outcome, despite detailed provisions for implementing the responsibility to protect, little was done in 2006 and 2007 to turn the words of responsibility to protect into doctrine, policy, or practice. We are gathered here today motivated by the Secretary General's initiative, who, concerned by this lack of movement, took concrete action towards operationalizing the responsibility to protect. It is my pleasure to present the United Nations Mission in the Central African Republic and Chad (MINURCAT) as a concrete example of how the United Nations can and has mobilized its organs to fulfill its responsibility to protect the people of Chad in need, and most importantly, to work in full conjunction with regional systems such as the European Union.

In this regard, and keeping in mind the recommendations of the Secretary General in his report titled "Implementing the responsibility to protect", I will elaborate on how MINURCAT is implementing the responsibility to protect via the three pillars described in the report.

1. The situation in Chad

Since its independence in 1960, Chad has faced recurrent violent conflict and political instability, which have hindered the emergence of strong State institutions and democratic governance in the country. Successive military coups have contributed to a culture of violence that is still prevailing in the country. In 2006 rebel and criminal activities as well as interethnic clashes increased in eastern Chad, with looting and pillaging. This brought the Government of Chad to the decision to declare in November 2006 a state of emergency in the eastern part of the country and a state of war with the Sudan, accusing it of providing support to the rebels. Despite signed agreements and continuous diplomatic efforts by intermediate countries, both countries have continuously failed to respect their commitments.

2. The UN Security Council's decision to deploy a UN Mission with a mandate to protect (pillars I and III)

In this context, after viewing the situation in Darfur in August 2006, the Security Council saw the need to address the issue through a more regional scope. Thus, it adopted resolution 1706 (2006) which provided for the possibility of establishing a multidimensional presence consisting of political, humanitarian, military and civilian police liaison officers in key locations in Chad, including internally displayed persons

(IDP) sites and refugee camps.[1] Concerned by the alarming situation and crisis in Darfur, the United Nations, under the Security Council's resolution, acted "timely and decisively" and within the framework of article 34 of the Charter by dispatching a multidisciplinary technical assessment mission to Chad and the Central African Republic to assess and report on the protection of refugee camps and internally displaced persons sites in Chad and on how to improve the security situation on the Chadian side of the border with Sudan. At the same time, the Government of Chad, despite political reservations out of the concern not to have Chad used as a rear base for a UN intervention in Darfur without the prior consent of Sudan assumed its responsibility to protect. In view of the clashes occurring in the east of Chad during November 2006, the Government of Chad called for a UN force along the borders with Sudan to effectively implement resolution 1706 (2006), to strengthen security in the area and ensure protection of refugees and internally displaced persons.

A continuously aggravated security situation was assessed by a second UN technical team mission still acting under article 34 of the Charter, showing evidence of rebel movements that destabilized the area and were aimed at overthrowing the Government. At the same time, the technical team found that the focus of the Chadian Army on addressing the rebel threats affected its ability to provide protection to the civilian population and to ensure the maintenance of law and order in the eastern part of the country. Some of the additional findings that further influenced the decision in favor of a UN mission, as well as its overall design and scope, were the incursions of Sudanese militia groups in eastern Chad; inter-community tensions and violence over scarce water and land sources; and Sudanese rebel groups operating and recruiting children and adults inside refugee camps at the border with Sudan.

Despite the final consent of the Government of Chad for the deployment of a UN mission in Chad to support the protection of refugees, IDPs and the civilian population, the option of a military component for the mission was put on hold. Parallel to this, international diplomacy and mediation provided by regional groups of states continued intensively in order to reconcile Chad and the Sudan by diplomatic and peaceful means and to commit them to refraining from supporting opposition groups against the other state's government. At the same time, the situation in Chad related to the protection of civilians was urgent as hostilities and ensuing criminality had forced humanitarian agencies to repeatedly evacuate staff from eastern Chad, shifting security to phase IV and, as a result, reducing humanitarian assistance to the 260,000 Sudanese refugees, 50,000 refugees from the Central African Republic (CAR), 166,000 IDPs as well as approximately 700,000 persons from the host population. Despite Chad's reservations, a preventive deployment of military forces to provide an overall security umbrella next to the police and civilian personnel was seen as an essential requirement to develop conditions of safety in which negotiations could continue, ensuring at the same time protection of civilians and preventing a possible spill-over of the Darfur crisis with possible consequences to Chad.

[1] UN Security Council resolution 1706 (2006) of 31 August 2006, UN Doc. S/RES/1706 (2006), available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/484/64/PDF/N0648464.pdf?OpenElement (accessed on 22 January 2010).

Intensive diplomatic efforts led to the agreement of a European force deployment. High-level diplomacy, the acceptance of the regional group to assume a responsibility to protect by providing the required means, and good cooperation between the civilian component of the UN mission and EU forces proved to be constructive and essential for today's United Nations mission in Chad which has an explicit mandate to provide protection and security to the population in need.

Under SC resolution 1778 (2007), the Security Council established a multidimensional presence in eastern Chad and in the north-eastern Central African Republic to help create security conditions conducive to voluntary, secure and sustainable return of refugees and IDPs.[2] It also established an explicit mandate of Security and Protection of Civilians, Human Rights and the Rule of Law. Acting under Chapter VII of the UN Charter, the Security Council authorized the European Union to deploy, for a period of one year, a military operation entrusted with the responsibility to protect civilians in danger, facilitate the delivery of humanitarian assistance and movement of humanitarian personnel. As the overall responsibility for physical protection was entrusted to our partners from the European Forces, I will further concentrate on the ways in which MINURCAT contributes to the protection of civilians under pillars I and II of the UN Secretary-General's report "Implementing the Responsibility to Protect".[3]

3. MINURCAT's contribution to Human Rights and Rule of Law (Pillars I and II)

Although continuous diplomatic efforts to bring the different opposition groups and governments to the negotiating table are ongoing, the UN recognized that that responsibility to protect is the primary obligation of the state itself. Thus, it assumed a supportive role to assist the state of Chad in fully meeting this responsibility. After the Security Council assessed the lack of the state's capacity to protect its population effectively as well as the presence of a threatening armed opposition that is also responsible for crimes and human rights violations, it decided to deploy a Human Rights component to help the state of Chad meet its responsibility to protect as described under pillar II. Under SC Resolutions 1612 (2005)[4] and 1820 (2008),[5] child recruitment and sexual and gender based violence constitute war crimes and crimes against humanity, and monitoring of these resolutions has been incorporated and underscored in MINURCAT's mandate. Child recruitment, sexual and gender-based violence, forced marriage, prolonged arrest and impunity are indeed few examples of

[2] UN Security Council resolution 1778 (2007) of 25 September 2007, UN Doc. S/RES/1778 (2007), available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/516/15/PDF/N0751615.pdf?OpenElement (accessed on 22 January, 2010).

[3] Implementing the responsibility to protect, report of the UN Secretary-General, UN Doc. A/63/677, 12 January 2009, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/206/10/PDF/N0920610.pdf?OpenElement (accessed on 22 January 2010).

[4] UN Security Council resolution 1612 (2005) of 26 July 2005, UN Doc. S/RES/1612 (2005), available at http://daccess-dds-ny.un.org/doc/UNDOC/ GEN/N05/439/59/PDF/N0543959.pdf?OpenElement (accessed on 22 January 2010).

[5] UN Security Council resolution 1820 (2008) of 19 June 2008, UN Doc. S/RES/1820 (2008), available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/ N08/391/44/PDF/N0839144.pdf?OpenElement (accessed on 22 January 2010).

human rights violations that MINURCAT is monitoring almost daily and that it brings to the attention of the competent authorities. At the same time, MINURCAT's Human Rights component, which is also reporting to the Office of the High Commissioner for Human Rights (OHCHR), is providing support to the Ministry of Human Rights and Protection of Liberties in its efforts to define a National Action Plan for Chad. The Human Rights component also works closely with the Government of Chad on the issue of their respect of international instruments for the protection and promotion of human rights. In addition, Human Rights Officers continue to advocate for the adoption of legal instruments that Chad has not signed or ratified yet.

3.1. Rule of Law

MINURCAT's contribution to the protection of rule of law is reinforced by the establishment of a new national humanitarian police component, the "Détachement Intégré de Sécurité/DIS", responsible for maintaining law and order in twelve refugee camps, IDP sites and six key towns in neighboring areas and for further assisting in securing humanitarian activities in Eastern Chad. This body of 850 staff has been selected, trained, and advised by the UN International Police Officers of MINURCAT, and it continues to be supported by them. In particular, it has received comprehensive training on human rights standards and sexual and gender-based violence from the Human Rights and Gender Unit, and women's and children's desks in the DIS commissariats are being incorporated and supported by the same units. The DIS officers inquire on crimes and offences, including sexual abuse that they witness or that is brought to their attention by human rights officers, and they ensure that correct action is taken concerning offenders.

3.2. Justice

Yet, progress in rule of law is incomplete, and could be undermined, if adequate attention is not placed on the other criminal justice institutions. A strong and well-functioning police service without a functioning judicial system or secure and humane prisons could contribute to human rights violations and jeopardize all efforts to assist the state in its responsibility to protect. In this regard, the effort to select, train, advise and support the Détachement intégré de sécurité (DIS) in eastern Chad has been matched by appropriately focused support to the judicial and prison system, as mandated by Security Council resolution 1778 (2007). To this end, MINURCAT also has a Judicial Advisory Unit that works in close cooperation with the UN Police (UNPOL) and the DIS to establish an approach for tracking cases of individuals detained by the DIS. It also helped ensure that the detainees' rights are respected in accordance with international standards and that cases progress as required under the Chadian law. In addition, the Justice Unit works with the Ministry of Justice, the UN system and development agencies in a coordinated, comprehensive, integrated and multidimensional way to support the Government of Chad's efforts towards the strengthening of judicial capacities, to facilitate access to justice for all, including IDP, refugee and the host population (with a special focus on vulnerable groups including women and children), and towards the harmonization of the traditional justice system with legal institutions, and the facilitation of the coordination of international aid in justice sector reform.

At the same time, the Penitentiary Section of MINURCAT works on the rehabilitation/ humanization of prisons, taking into account concerns such as gender and age, separating minors from adults but, most importantly, male from female. Thus, it ensures that no sexual offenses are committed inside the prisons. It further provides training, mentoring, capacity-building and support to key prisons in the east – including support for the development of a professional cadre of prison officers.

Last but not least, MINURCAT works at the grassroots level to strengthen local administrative and traditional authorities' capacity to solve intercommunity tensions through the promotion of intercommunity dialogue and to reinforce their presence in the eastern Chad by providing them with operational support through Quick Impact Projects.

4. Challenges

MINURCAT has indeed put in place all the provisions of the three pillars of the Secretary-General's report and the UN has acted in a "timely and decisive" manner according to the circumstances. Yet almost two years later from the decision to deploy the mission, MINURCAT is still struggling to establish itself and to achieve its goals in a timely manner. Although the UN has put together the multiple instruments available to the Council under Chapters VI, VII, and VIII of the Charter which were employed in different combinations according to timing and circumstances, MINURCAT continues to face many difficulties and challenges in implementing its mandate.

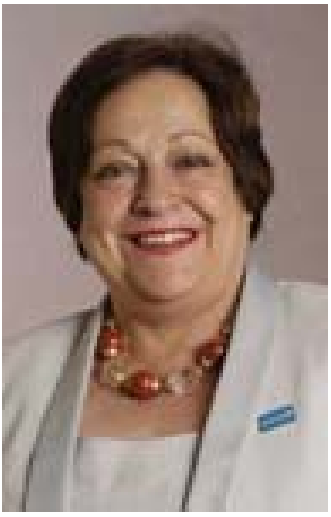
MINURCAT lacks the political strength in its mandate that would allow it to play a more substantive role in the ongoing negotiations and to exercise stronger pressure on Chadian authorities when required. Political will from Chadian authorities to assume their responsibility at full depth is still immature, prolonging a situation of instability and insecurity in the east. This makes the implementation of the mission's mandate more difficult to complete.

In addition, MINURCAT, despite the number of instruments provided by the Security Council to act in support of the responsibility to protect, still lacks the necessary logistical means to perform its duties. Despite the rapid decision-making on the deployment of a force, the establishment of the mission has been a lengthy process, which negatively affects the image of the UN as primary international actor that ensures protection and security for its peoples. SC mechanisms can be triggered quickly and followed up by timely and decisive action. However, if the mechanisms for implementation do not respond in the same way a gap is created that gives reasons for substantive criticism.

5. Conclusion

There is indeed space for improvement and proper synchronization of actions of the UN organs in order to provide a successful outcome. Early prevention has indeed been an area in which the UN has shown a need for improvement in the previous decade, as evidenced by examples that are still very vivid in our minds. During this decade, the UN has made significant steps to avoid such mistakes. Yet the success of early deployment will not bring the desired outcomes if it is not followed by "timely and decisive" and continuous technical support.

Let us all work in the coming decade to define the challenges that are still lingering, find ways to synchronize our actions, and strengthen political commitments to ensure that responsibility to protect becomes a duty for all. I would like also to thank the government of Austria for its contribution to MINURCAT, and the Diplomatic Academy of Vienna, the National Defense Academy and the International Peace Institute for this invitation.



Rima Salah - UN Photo

BACKGROUND PAPER FOR THE 39TH INTERNATIONAL PEACE INSTITUTE VIENNA SEMINAR ON PEACEMAKING AND PEACEKEEPING

EDWARD C. LUCK
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At the September 2005 World Summit, the assembled heads of state and government vowed to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, as well as from their incitement. While firmly based in existing international law, this enunciation of the "responsibility to protect" (RtoP) was widely heralded as an unprecedented step both because of the number of world leaders voicing it and because of the detailed provisions for implementing it contained in paragraphs 138 and 139 of the Summit's Outcome Document. Paragraph 138 called on the international community to "encourage and help States to exercise this responsibility," while 139 expressed the intention to help build state capacity in that regard and to assist states "which are under stress before crises and conflicts break out." Paragraph 139 spoke of using the whole range of tools under Chapters VI, VII, and VIII of the Charter to help protect populations from the four specified crimes and violations. "Should peaceful means be inadequate and national authorities are manifestly failing to protect their populations" from these four crimes and violations, it continued, "we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate." Paragraph 138 pledged support, as well, for establishing a UN early warning capability, while paragraph 139 asked the General Assembly "to continue consideration" of the concept.

Other than these two passing references to the Security Council and the General Assembly, the 2005 Outcome Document was silent on the prospective parts that the UN's six principal organs should play in implementing the responsibility to protect. The range of tasks enumerated, however, implied that much of the UN system, as well as its partners on the regional and sub-regional levels and in civil society, would be needed to advance the RtoP agenda. Nor had much thought been given to how paragraphs 138 and 139 could be refined into a coherent strategy capable of gaining the support of the Member States, the UN Secretariat, and publics alike. Little was done in 2006 and 2007 to begin to turn the words of RtoP into doctrine, policy, or practice.

Concerned about the lack of movement, the new UN Secretary-General, Ban Ki-moon, pledged to work toward operationalizing the responsibility to protect. To that end, he appointed Dr. Edward C. Luck, Senior Vice President and Director of Studies at the International Peace Institute (IPI) and Professor at Columbia University, to the new post of Special Adviser to the Secretary-General at the Assistant Secretary-General level.[1]

[1] The Secretary-General also appointed Dr. Francis M. Deng, the long-time Special Adviser on Internally Displaced People, to be his Special Adviser for the Prevention of Genocide, raising that post to the Under-Secretary-General level and making it a full-time position. Professors Deng and Luck have worked closely together in carrying out their related mandates, and the Secretary-General's approach to

He charged him with developing the conceptual, institutional, and political dimensions of RtoP. Following extensive consultations within the Secretariat and among the Member States, the resulting strategy is presented in the Secretary-General's report, "Implementing the Responsibility to Protect" (A/63/677). Prepared by Professor Luck, it was submitted to the General Assembly in January 2009 for debate in late spring 2009.

According to report, the responsibility to protect rests on three co-equal pillars: one, the protection responsibilities of the State; two, international assistance and capacity-building; and three, timely and decisive response. An annex to the report outlines ideas for strengthening the UN's early warning and assessment capacities that will be presented to the Assembly later in 2009. The Security Council could well play a role in the implementation of all three pillars, whether dealing with prevention or response. For example, under the first two pillars, the Council could conduct investigations under Article 34 of the Charter, encourage States (or armed groups) to live up to their core RtoP responsibilities, remind leaders of the end of impunity, discourage incitement, undertake consent-based preventive deployments as in the Former Yugoslav Republic of Macedonia, or assist States in gaining effective control over their territories, as in Sierra Leone, where armed groups were committing RtoP crimes. Working with the Peacebuilding Commission, the General Assembly, ECOSOC, the Secretariat, or other bodies and organizations, the Security Council could assist in efforts to rebuild the rule of law or undertake security sector reform in states emerging from conflict.

The Council would have a unique authority, however, to address the third, or response, pillar. As noted above, it should be underscored that the third pillar encompasses the whole range of Chapter VI, VII, and VIII measures, not just those coercive ones often associated with the narrower concept of humanitarian intervention. A common critique of the Council through the years, of course, has been that it has sometimes moved too readily to coercive measures under Chapter VII, while being insufficiently imaginative or overly reticent to utilize all of the preventive or pacific settlement tools available to it under Chapters VI and VIII. Under the Secretary-General's strategy, with its emphasis on the need for early and flexible response, tailored to the circumstances of each situation, the possibilities for preventive or pacific action under Chapters VI and VIII take on added importance. A premium could often be placed, as well, on collaboration with regional or other partners.

Given the Council's multiple roles in carrying out the RtoP mandate given by the 2005 Summit, it is remarkable how little serious attention they have received to date. On December 1, 2008, members of the Security Council had an opportunity to discuss the Secretary-General's approach at an Arria formula meeting – chaired by South Africa and devoted to RtoP in Africa – of the Ad Hoc Working Group on Conflict Prevention and Resolution in Africa. The Vienna Seminar, however, will be the first chance for an in-depth discussion of the Security Council's role in implementing the responsibility to

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RtoP draws on the important early work of Dr. Deng and his colleagues on "sovereignty as responsibility" in the 1990s. See Francis M. Deng, Sadikiel Kimaro, Terrence Lyons, Donald Rothschild, and I. William Zartman, *Sovereignty as Responsibility: Conflict Management in Africa* (Washington, D.C.: The Brookings Institution, 1996).

protect. The Seminar could well provide the basis for further consultations on RtoP by the Council in the future.

The Vienna Seminar will be designed to consider the whole spectrum of instruments at the Council's disposal for preventing RtoP crimes and for protecting populations from their ravages. It will view this toolkit both through analytical and generic eyes and through the lens of experience in two telling case studies (the Democratic Republic of the Congo (MONUC) and the Central African Republic and Chad (MINURCAT and EUFOR Chad (RCA)). It will open with a dialogue between two prominent speakers with distinct perspectives on RtoP the first evening. (Gareth Evans and Ruhakana Rugunda, the Ugandan Permanent Representative to the UN, will be invited.) The following morning, Professor Luck will lay out the aspects of the Secretary-General's report that are most relevant to the Security Council and respond to questions or concerns voiced by participants. The next four sessions will address core Council functions related to the implementation of RtoP principles: 1) early engagement and preventive diplomacy by the Council; 2) early warning and assessment; 3) the protection of civilians, including from systematic sexual violence; and 4) timely and decisive response. These generic discussions will be followed by sessions on the two case studies noted above in order to test the propositions and perspectives raised in the more generic discussions about prevention and protection functions against the actual experience trying to carry out these mandates in the DRC and Chad/RCA. A final wrap-up session will look at the way forward. In addition to these panel discussions, prominent policymakers, including US Permanent Representative to the UN Susan Rice, AU Chairperson Jean Ping, and UN Under-Secretary-General for Peacekeeping Operations Alain LeRoy, will be invited to give luncheon or dinner addresses.

The Seminar will serve several mutually-reinforcing purposes. One, it will be an opportunity for the first focused consideration of the ways in which the Security Council could contribute to the implementation of the RtoP commitments undertaken at the highest political level in 2005. Two, it will be a chance to explore the multiple instruments available to the Council under Chapters VI, VII, and VIII and how they might be employed in different combinations, depending on the timing and circumstances of each case. Three, it will serve to acquaint a wider circle of policymakers and policy shapers with the Secretary-General's strategy for implementing RtoP. Four, it will permit an assessment of how the provisions of the Outcome Document of the Secretary-General's report would apply to two outgoing and challenging peace operations in theatres where humanitarian principles have been severely tested. And five, the Seminar will provide the first opportunity for prominent policymakers to consider the next steps towards implementing the responsibility to protect following the Spring 2009 RtoP debate in the General Assembly.

THE AUTHORS

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Patrick Cammaert has had a distinguished military career both in The Netherlands with the Royal Netherlands Marine Corps and in the United Nations, serving in Cambodia (UNTAC), Bosnia/Herzegovina (UNPROFOR), Eritrea (UNMEE), and the DRC (MONUC), and as Military Advisor to the UN Department of Peace Keeping Operations (DPKO). Major-General Cammaert attended the Higher Command and Staff College and the Top Management Course at the Armed Forces War College in The Hague. He is a member of the board of the European Centre for Conflict Prevention (ECCP), a member of the Speakers Academy in the Netherlands, and a Senior Fellow at the Netherlands Defense Academy (NLDA). In 2008 he became member of the advisory board of the Mukomeze Foundation, which helps women and girls who survived rape and other forms of sexual violence in Rwanda. Major-General Cammaert was awarded the Carnegie-Wateler Peace Prize in 2008. Since his retirement, he has been an advocate with regard to issues such as leadership in crisis circumstances, international peace and security, civil-military cooperation in peace operations, peacekeeping, and security sector reform. Major-General Cammaert advises the senior management of DPKO, the UN Development Programme (UNDP), and UN Development Fund for Women (UNIFEM) on strategic planning issues, such as Integrated Training Development, the protection of civilians under immediate threat of physical violence, and gender-based sexual violence (GBSV) in armed conflict, which included carrying out fact-finding missions to several UN missions. He also advises the Dutch Government on strategic planning for peace support operations in Africa and Afghanistan.

Alan Doss is the Special Representative of the U.N. Secretary-General in the Democratic Republic of the Congo and Head of the UN peacekeeping mission (MONUC) with the rank of Under-Secretary-General. Immediately prior to this assignment, Mr. Doss was the Special Representative of the U.N. Secretary-General in

Liberia and Head of the UN peacekeeping mission (UNIMIL), also with the rank of Under-Secretary-General. Mr. Doss also served as the Principal Deputy Special Representative of the U.N. Secretary-General for Côte d'Ivoire, as Deputy Special Representative in the United Nations Mission in Sierra Leone (UNAMSIL), and concurrently as United Nations Humanitarian Coordinator and UNDP Representative in that country. Having spent his entire professional life in the service of the United Nations, Mr. Doss has held such positions as Director of the United Nations Development Group (UNDG), Director of the United Nations Development Program (UNDP) European Office in Geneva, UN Resident Coordinator and Regional Representative of the UNDP in Bangkok, Benin, and the Democratic Republic of the Congo. Other country assignments have included Niger and Kenya and at UNDP headquarters in New York, where he served in the Africa and Asia regional offices and in the Management bureau. Mr. Doss graduated from the London School of Economics.

Gareth Evans is the President Emeritus of the Brussels-based International Crisis Group. Between 2000 and 2009 he served as President and CEO of this independent global NGO working with some 140 full-time staff on five continents to prevent and resolve deadly conflict. He came to Crisis Group after 21 years in Australian politics, thirteen of them as a Cabinet Minister. As Foreign Minister (1988-96), he was best known internationally for his role in developing the UN peace plan for Cambodia, helping conclude the Chemical Weapons Convention, and helping initiate a new Asia Pacific regional economic and security architecture. He has written or edited nine books – most recently *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*, which was published in September 2008 – and has published over 100 journal articles and chapters on foreign relations, human rights and legal and constitutional reform. He was Co-Chair of the International Commission on Intervention and State Sovereignty (2001), and a member of the UN Secretary General's High Level Panel on Threats, Challenges and Change (2004), the Blix Commission on Weapons of Mass Destruction (2006), and the Zedillo International Task Force on Global Public Goods (2006). In June 2008, he was appointed to co-chair (with former Japanese Foreign Minister Yoriko Kawaguchi) the International Commission on Nuclear Non-Proliferation and Disarmament. He is also a member of the UN Secretary-General's Advisory Committee on Genocide Prevention.

Edward C. Luck is Senior Vice President for Research and Programs of the International Peace Institute. In February 2008, UN Secretary-General Ban Ki-moon appointed Professor Luck Special Adviser and Assistant Secretary-General, in which capacity he primarily focuses on developing the conceptual, institutional, and political dimensions of the responsibility to protect. He is currently on public service leave as Professor of Practice in International and Public Affairs of the School of International and Public Affairs, Columbia University, where he remains Director of the Center on International Organization. Before coming to Columbia in 2001, he was Founder and Executive Director of the Center for the Study of International Organization, a research center jointly established by the School of Law of New York University and the Woodrow Wilson School of Public and International Affairs of Princeton University. From 1995 to 1997, he played a key role in the UN reform process as a Senior Consultant to the Department of Administration and Management of the United Nations, as Staff Director of the General Assembly's Open-ended High-level Working Group on

the Strengthening of the United Nations System, and as an advisor to the President of the General Assembly, Razali Ismail, on his proposals for Security Council reform. From 1974 to 1994, Dr. Luck was with the United Nations Association of the USA (UNA-USA), serving from 1984-1994 as President and CEO. Professor Luck's most recent books include *The UN Security Council: Practice and Promise* (Routledge, 2006), *International Law and Organization: Closing the Compliance Gap*, co-edited with Michael W. Doyle (Rowman and Littlefield, 2004), and *Mixed Messages: American Politics and International Organization, 1919-1999* (Brookings, 1999). He holds a B.A. from Dartmouth College with High Distinction in International Relations and a series of graduate degrees from Columbia University, including an M.I.A. from the School of International Affairs, the Certificate of the Russian Institute, and M.A., M.Ph., and Ph.D. degrees in Political Science from the Graduate School of Arts and Sciences.

Thomas Mayr-Harting, the Permanent Representative of Austria to the United Nations, presented his credentials to Secretary General Ban Ki-moon on 9 December 2008. As of January 2009, he has also represented Austria on the Security Council. Prior to his current appointment, Ambassador Mayr-Harting served as Political Director (Director-General for Political Affairs) of the Foreign Ministry of Austria. He held that position since 2003, after completing a four-year term as Austrian Ambassador to Belgium and Head of the Austrian Mission to NATO. Until his departure for New York, Mr. Mayr-Harting also chaired the supervisory board of the Austrian Development Agency. Ambassador Mayr-Harting joined the Austrian diplomatic service in 1979. In the course of his career he served, inter alia, with the Austrian Mission to the European Communities in Brussels (1982–1986), the Austrian Embassy in Moscow (1986–1990), the Private Office of the Austrian Foreign Minister (1991–1995), and as Deputy Political Director and Director for Security Policy and Policy Planning (1995–1999). From 2002 to 2004, he also acted as Special Representative of the Austrian Foreign Minister for the Western Balkans.

Christoph Mikulaschek has been working as a Policy Analyst at the International Peace Institute in New York since 2007. His research focuses on the implementation of international norms and the role of international institutions in managing armed conflict. He is working on a multi-year study of compliance with United Nations Security Council resolutions in civil wars, which involves a quantitative and qualitative analysis of the extent of and variance in the implementation of Council decisions in twenty-five recent intrastate armed conflicts.
Before joining the International Peace Institute, Christoph Mikulaschek spent two years with the Vienna law firm Agstner & List, specializing in administrative, constitutional, and international law. In 2001 and 2002, Christoph Mikulaschek worked at the OSCE Kosovo Law Centre and managed and consulted two NGO peacebuilding projects in Kosovo. Between 1999 and 2000, he served at the National Defense Academy in Vienna, a research and training institute of the Austrian Ministry of Defense. Christoph Mikulaschek holds a law degree from the University of Vienna, with a specialization in public international law. As a Fulbright scholar, he obtained a Masters' degree in international affairs from Columbia University's School of International and Public Affairs, with a specialization in international security policy. Christoph Mikulaschek also received two graduate certificates (with distinction) in international

affairs and international law from the Université Paris II Panthéon Assas and the Institut des Hautes Etudes internationales in Paris.

Susan E. Rice serves as the U.S. Permanent Representative to the United Nations. She was unanimously confirmed to this Cabinet-rank position by the U.S. Senate on January 22, 2009.
From February 2007 through November 2008, Ambassador Rice served as a Senior Advisor for National Security Affairs on the Obama for America Campaign. She later served on the Advisory Board of the Obama-Biden Transition Team and as co-chair of its policy working group on national security. From 2002-2009, she was a Senior Fellow at the Brookings Institution, where she focused on U.S. foreign policy, transnational security threats, weak states, global poverty and development. From 1997 to 2001, Ambassador Rice was Assistant Secretary of State for African Affairs, formulating and implementing overall U.S. policy for 48 countries in sub-Saharan Africa, including political, economic, security and humanitarian issues. As Assistant Secretary, she oversaw the management of 43 U.S. Embassies and more than 5,000 U.S. Foreign Service and national employees. In 2000, Ambassador Rice was co-recipient of the White House's 2000 Samuel Nelson Drew Memorial Award for distinguished contributions to the formation of peaceful, cooperative relationships among states. From 1995-97, Ambassador Rice served at the White House as Special Assistant to President William J. Clinton and Senior Director for African Affairs at the National Security Council. She previously served as Director for International Organizations and Peacekeeping on the National Security Council staff from 1993 to 1995. Previously, Ambassador Rice was a management consultant with McKinsey and Company and also served on numerous boards, including the National Democratic Institute, the Partnership for Public Service and the U.S. Fund for UNICEF. Ambassador Rice received her M.Phil (Master's degree) and D.Phil. (Ph.D) in International Relations from New College, Oxford University, England, where she was a Rhodes Scholar. She was awarded the Chatham House-British International Studies Association Prize for the most distinguished doctoral dissertation in the United Kingdom in the field of International Relations. Ambassador Rice received her B.A. in History with honors from Stanford University, where she graduated junior Phi Beta Kappa and was a Truman Scholar.

Mona Rishmawi is the Legal Advisor of the Office of the UN High Commissioner for Human Rights (OHCHR) and the Head of OHCHR's Rule of Law and Democracy Unit. She was the Executive Director of the UN International Commission of Inquiry on Darfur, which was established by UN Security Council resolution 1564 of 18 September 2004. This inquiry led in March 2005 to the first referral of a situation by the UN Security Council to the International Criminal Court. Between 2000 and 2004, she was the Senior Adviser to two UN High Commissioners for Human Rights: Mary Robinson and Sérgio Vieira de Mello. Until the tragic bombing of the UN headquarters in Baghdad on 19 August 2003, she was the Senior Human Rights and Gender Advisor to Sérgio Vieira de Mello, in his capacity as the Special Representative of the UN Secretary-General in Iraq. Ms. Rishmawi also served as the UN Independent Expert on the Situation of Human Rights in Somalia from 1996 to 2000. From 1991 to 2000, she was the Director of the Centre for the Independence of Judges and Lawyers of the International Commission of Jurists (ICJ) (Geneva, Switzerland). During this period,

she followed closely the work of the UN Commission on Human Rights, the UN treaty bodies, and participated in the drafting of the Rome Statute for the International Criminal Court. Ms. Rishmawi practiced law from 1981 to 1991 and was among the core group of lawyers who established al-Haq, which became the leading human rights organization in the West Bank. She has a Masters of Law (LL.M.) from Columbia Law School.

Rima Salah of Jordan was appointed Deputy Special Representative of the Secretary-General of the United Nations Mission in the Central African Republic and Chad (MINURCAT) in 2008. Dr. Salah is responsible for the implementation and coordination of Mission activities, particularly in the areas of political/civil affairs, humanitarian assistance, human rights, judicial system and prison advisory, and gender and HIV/AIDS, overseeing the mission's staff, the majority of whom are located at headquarters in Abéché, as well as additional staff in regional field offices. She has served the United Nations for 20 years in increasingly senior positions in the United Nations Children's Fund (UNICEF). She recently served as UNICEF Deputy Executive Director in New York. Prior to this appointment, she worked as UNICEF Regional Director for West and Central Africa in Dakar, Senegal, where, among other achievements, she was responsible for the establishment of the United Nations office in Abéché. Earlier in her career, she served with UNICEF in Viet Nam, Burkina Faso, and Pakistan. Dr. Salah holds a doctorate in cultural anthropology from the State University of New York. She is fluent in English, French and Arabic.

Michael Spindelegger was appointed Austrian Federal Minister for European and International Affairs in December 2008. After graduating in Law from Vienna University, he was Assistant Lecturer at the Vienna University Institute of Criminal Law, served as civil servant for the Federal State of Lower Austria and worked for a number of companies. Starting in 1992, he was repeatedly elected Member of the Austrian Parliament and also served as Member of the European Parliament, Speaker on Foreign Affairs of the Austrian Peoples Party, Member of the Parliamentary Assembly of the Council of Europe and as Vice Chairman of the Austrian People's Party Parliamentary Group. In 2006, he was elected Second President of the Austrian National Council. Since 1998, Michael Spindelegger has also served as Chairman of the Employees' Association of the Austrian People's Party of Lower Austria.

IPI Vienna Seminar 2009

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