

# ***The Responsibility to Protect: Towards a “Living Reality”***

Report written for the United Nations Association-UK

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The United Nations Association - UK (UNA-UK) is the UK's leading source of independent analysis on the UN, and a UK-wide grassroots movement. UNA-UK believes that a strong, credible and effective UN is essential if we are to build a safer, fairer and more sustainable world. We advocate strong government support for the UN and demonstrate why the UN matters to people everywhere.

UNA-UK's Responsibility to Protect Programme seeks to galvanise political support for R2P and foster understanding of the concept within the public domain. It aims to do this in four ways: consolidate a national R2P policy support network in the UK by engaging academics and civil society organisations in discussing government policy for mass atrocity prevention; build support for R2P within the UK Government, national and regional political parties by raising awareness of the principle; establish a greater international political constituency for R2P; and foster grassroots support in the UK through public outreach and advocacy.

For more information, visit <http://una.org.uk/content/r2p-detail>, or contact Alexandra Buskie, R2P Programme Officer, on [buskie@una.org.uk](mailto:buskie@una.org.uk) or 020 7766 3445.

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*“In 2011, history took a turn for the better. The responsibility to protect came of age; the principle was tested as never before. The results were uneven, but at the end of the day, tens of thousands of lives were saved. We gave hope to people long oppressed. In Libya, Côte d’Ivoire, South Sudan, Yemen and Syria, by our words and actions, we demonstrated that human protection is a defining purpose of the United Nations in the twenty-first century.”*

Ban Ki-moon, United Nations Secretary General,  
address to the Stanley Foundation Conference on the Responsibility to Protect,  
New York, 18 January 2012

## Executive summary

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Agreed by Heads of State and Government at the 2005 World Summit, the Responsibility to Protect (RtoP) principle has come a long way in a short space of time.<sup>1</sup> It holds the promise of a world free of genocide, war crimes, ethnic cleansing and crimes against humanity – as all UN Member States have recognised – and urges them to fulfil their responsibility to protect all populations from these crimes.

The principle was employed by the United Nations Security Council in response to crises in Darfur, Libya, Cote d'Ivoire, Yemen, South Sudan and Mali and by the United Nations Secretary-General and his senior officials in relation to these crises and those in the Democratic Republic of Congo (DRC), Kenya, Kyrgyzstan, Guinea, and Syria. Through RtoP, the international community has come to view emerging crises through the prisms of atrocity prevention and response – focusing on what the world can do to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

Inevitably, as the principle has come into widespread diplomatic use it has aroused controversy. But international debate has shifted in the past half decade. Where once UN Member States debated the merits of RtoP itself, now they debate its implementation in difficult and complex situations. This report analyses the emergence of RtoP, clarifies the principle's meaning and scope, and documents moves towards implementation both at the UN Headquarters and in the world's response to emerging crises. It joins the UN Secretary-General in concluding that RtoP is a principle whose time has come. Today, RtoP faces what the Secretary-General's former Special Adviser, Edward Luck, described as the 'risks of relevance'. The task ahead is to focus on the myriad challenges of implementation in order to navigate past these risks. The final part of the report identifies five critical challenges in this regard:

1. Deepening the engagement of Member States and Regional Arrangements;
2. Making prevention of the four crimes a living reality;
3. Mainstreaming RtoP goals across the UN system;
4. Learning lessons about the implementation of enforcement mandates;
5. Protecting the consensus.

It ends by suggesting ways in which governments, elected officials, and civil society groups might contribute to realising the goal of making the protection of populations from unconscionable acts of inhumanity a living reality.

<sup>1</sup> I prefer to use the 'RtoP' abbreviation adopted by the UN, rather than the more popularly used R2P. The UN adopted this acronym simply because 'R2P' did not translate meaningfully into the UN's other official languages. For example, in Spanish it is rendered 'R dos P', losing its intended meaning.

## Emergence of the Responsibility to Protect

Although the phrase ‘responsibility to protect’ was first coined only in 2001, the concept is the product of long-standing efforts to identify and define crimes that have ‘shocked the conscience of mankind’ and to protect populations from them. As the UN Secretary-General has argued, RtoP is a political concept based on existing international law. The story of the principle’s emergence therefore begins with international law.

In 1947, in the shadow of the Holocaust, the newly formed UN General Assembly approved the Genocide Convention, which prohibited the crime of genocide, created a universal responsibility to prevent that crime, and required the punishment of perpetrators.<sup>2</sup> In *Bosnia vs. Serbia* (2007), the International Court of Justice (ICJ) found that states have a legal responsibility to do what they can, within existing law, to prevent genocide. Specifically, the court found that states had a responsibility to take positive action to prevent genocide when they have prior knowledge about its likely commission and the capacity to influence the suspected would-be perpetrators.

The four Geneva Conventions (1949) and subsequent Protocols (1977) established the immunity of all non-combatants in armed conflicts, whether international or non-international, from the intentional use of force against them and required that Parties cooperate with one another to prevent violations of the law. In 1998, the Rome Statute of the International Criminal Court (ICC) extended some of these provisions to contexts outside of armed conflict under the rubric of ‘crimes against humanity’; whilst the International Criminal Tribunal for Yugoslavia (ICTY) confirmed that the practice of ‘ethnic cleansing’ constituted one such crime.

When states committed to the RtoP concept in 2005, therefore, they were effectively acknowledging the legal obligations that they already had and committing themselves to ensuring that this existing law be upheld everywhere, all the time.

During the 1990s, however, the gap between these international legal responsibilities and actual lived experience became glaringly obvious. Genocide in Rwanda and Srebrenica; mass killing and ethnic cleansing in Angola, Bosnia, Burundi, Croatia, East Timor, Kosovo, Liberia, Sierra Leone, Zaire/DRC; state repression in northern and southern Iraq; and acute state fragility and civil war leading to mass human suffering in Somalia exposed the hollowness of legal responsibilities in the face of governments and armed groups willing and able to use mass civilian suffering to achieve their objectives. The international community was initially ill-prepared to respond. UN peacekeepers recoiled in the face of the *genocidaires* in Rwanda and stood aside as Security Council mandated ‘safe areas’ collapsed in Bosnia. US forces were hounded out of Mogadishu, taking UN peacekeepers with them. Political and diplomatic efforts were insufficient to stop Angola’s slide back into war and the mass violence that greeted East Timor’s vote for independence. These, and other, crises exposed the weaknesses of the international community’s capacity and willingness to protect populations. They also created a global crisis of internal displacement, as up to twenty million people were forced from the homes but left unable to claim the protections afforded by International Refugee Law because they had not crossed international borders.

<sup>2</sup> The story behind the Genocide Convention is conveyed by Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2002).

Gradually, international agencies began to learn the lessons of these failures and to develop new concepts such as the 'protection of civilians' and 'sovereignty as responsibility'. The key developments included:

- *The crisis of internal displacement and sovereignty as responsibility:* Francis Deng and Roberta Cohen developed initial ideas about 'sovereignty as responsibility' in the context of the crisis of displacement in the mid-1990s. Deng was appointed as the UN Secretary-General's Special Representative on Internally Displaced Persons (IDPs) in 1993. Deng and Cohen developed the concept of sovereignty as responsibility as a diplomatic and moral tool to persuade states to allow IDPs access to humanitarian assistance and protect their human rights.<sup>3</sup> This concept rested on the idea that sovereignty entailed responsibilities as well as rights and that chief among those responsibilities was the state's duty to protect populations in its care. When states are unable to exercise this duty, they should request international assistance. If they do not, then they should be held accountable.<sup>4</sup> From this, RtoP derived its focus on 'responsibility', the notion that the primary responsibility to protect rests with the sovereign states, and the idea that the purpose of external action should be to assist states to fulfil their obligations and, failing that, to provide protection to vulnerable populations.
- *Regional initiatives:* A number of regional organisations adopted their own initiatives that contributed to the emergence of RtoP. Most notably, Article 4(H) of the Constitutive Act of the African Union (AU), adopted in 2000, gave the organisation a right to intervene in the affairs of its Member States in matters relating to genocide and crimes against humanity. The AU has also developed its own peacekeeping capacities and adopted a protection mandate in Darfur (2003). The EU established and deployed high readiness brigades in response to protection crises and in the mid-1990s the OSCE established its High Commissioner for National Minorities to assist states under stress. NATO also incorporated the protection of civilians into its crisis management work.<sup>5</sup>
- *Humanitarian protection:* Often caught on the frontline of emergencies caused by armed conflict, natural disasters and poverty, humanitarian relief agencies increasingly recognised the limits of traditional approaches that distributed aid on the basis of need and neutrality without regard for the underlying politics. Sometimes, this approach created the phenomenon of the 'well fed dead' – civilians given food, housing and medical relief by humanitarians only to be killed or displaced again by armed conflicts. Sometimes, humanitarians inadvertently made matters worse by aiding *genocidaires* and unwittingly providing bases for armed groups, as happened in eastern DRC after the Rwandan genocide.<sup>6</sup> In response, many humanitarian organisations, including Oxfam and CARE, adopted 'protection' as one of their core goals, promoting the idea that the protection of people from egregious crimes ought to be core business for humanitarians.<sup>7</sup> In addition, through the 1990s there was growing recognition of the negative impact that armed conflict could have on vulnerable groups such as children. This was signalled, in particular, by Graca Machel's landmark report on children in armed conflict, released in 1996.<sup>8</sup>
- *Peacekeeping:* High profile peacekeeping failures in Rwanda and Bosnia prompted fresh thinking about the protection roles and responsibilities of UN peacekeepers. In 2000, the UN's Panel on Peace Operations (so-called 'Brahimi report') argued that peacekeepers that witnessed violence against civilians should be 'presumed to be authorised to stop it, within their means'. Starting in 1999, with the UN Mission in Sierra Leone (UNAMSIL), the Security Council has with increasing regularity employed Chapter VII of the UN Charter to authorise peacekeepers to use 'all necessary means' to protect civilians. Today, most UN peacekeeping operations have a protection mandate.<sup>9</sup>
- *UN Security Council and the Protection of Civilians in Armed Conflict:* In 1998, at the request of Canada, which was then a non-permanent member, the Security Council requested a report from the Secretary-General on how the UN might improve the protection of civilians in armed conflict. The following year, it adopted Resolution 1265 expressing its 'willingness' to consider 'appropriate measures' in response to 'situations of armed conflict where civilians are being targeted or where humanitarian assistance to civilians is being deliberately obstructed'. Periodic reports of the Secretary-General on the protection of civilians in armed conflict have become a recurrent feature of the Council's work and through this it has, among other things, pledged to work towards an end to impunity, requested that Member States ratify key human rights treaties, adopted an *aide memoire*

3 See Roberta Cohen and Francis M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington, DC: The Brookings Institution, 1998).

4 Francis M. Deng, Sadikiel Kamaro, Terrence Lyons, Don Rothchild and I. William Zartman, *Sovereignty as Responsibility: Conflict Management in Africa* (Washington, DC: Brookings Institution, 1996), p. 1.

5 S. Neil MacFarlane and Yuen Foong, *Human Security and the UN* (Bloomington: Indiana University Press, 2006), p. 174.

6 Fiona Terry, *Condemned to Repeat? The Paradoxes of Humanitarian Aid* (Ithaca, NY: Cornell University Press, 2002).

7 For example, O'Callaghan and Pantuliano, *Protective Action*; Oxfam International, *Beyond the Headlines: An Agenda for Action to Protect Civilians in Neglected Conflicts* (Oxford: Oxfam GB for Oxfam International, 2003); OCHA, *Special Report: Civilian Protection in Armed Conflict* (New York: OCHA Integrated Regional Information Network, 2003).

8 Graca Machel, *The Impact of Armed Conflict on Children*, report for UNICEF, 1996.

9 See Victoria K. Holt and Tobias C. Berkman, *The Impossible Mandate? Military Preparedness, the Responsibility to Protect and Modern Peace Operations* (Washington, DC: Stimson Centre, 2006).

on protection, and demanded humanitarian access in crisis situations. More recently, the Council has twice reaffirmed RtoP in resolutions on the protection of civilians in armed conflict (Res. 1674 (2006); Res. 1894 (2009)).

These, and other, initiatives allowed the then UN Secretary-General, Kofi Annan, to declare in 1999 that 'state sovereignty, in its most basic sense, is being redefined ... States are now widely understood to be the servants of their people, not vice versa'.<sup>10</sup> This emerging conception of sovereignty, as entailing responsibilities, clashed however, with more traditional perceptions of the rights of states. Since 1945 at least, sovereignty had been commonly understood as entailing a right to non-interference, a right reflected in Article 2(7) of the UN Charter. This raised the difficult question of how the international community should respond to situations in which the state failed to protect its own population from conscience-shocking crimes or when the state itself was among the principal perpetrators of such crimes. These questions were brought into sharp focus by the crisis in Kosovo in 1998-1999. When international negotiations, sanctions and observers failed to stem the tide of violence, which included the systematic ethnic cleansing of Kosovar Albanians by Yugoslav government forces, NATO decided to intervene militarily despite not having a UN Security Council mandate to do so. The intervention triggered a major debate on the circumstances in which the use of force for human protection purposes might be justifiable, the intricacies of which were reflected in the findings of an international commission on the issue which found that NATO's actions were 'illegal but legitimate'.<sup>11</sup>

At issue was the relationship between the state and its own population, the credibility of the international community's commitment to very basic standards of human rights and the role of the UN in the twenty-first century. The dilemmas were succinctly set out by Kofi Annan in his 1999 Address to the General Assembly:

*To those for whom the greatest threat to the future of international order is the use of force in the absence of a Security Council mandate, one might ask ... in the context of Rwanda: If, in those dark days and hours leading up to the genocide, a coalition of States had been prepared to act in defence of the Tutsi population, but did not receive prompt Council authorisation, should such a coalition have stood aside and allowed the horror to unfold?*

*To those for whom the Kosovo action heralded a new era when States and groups of States can take military action outside the established mechanisms for enforcing international law, one might ask: Is there not a danger of such interventions undermining the imperfect, yet resilient, security system created after the Second World War, and of setting dangerous precedents for future interventions without a clear criterion to decide who might invoke these precedents and in what circumstances?<sup>12</sup>*

10 Kofi Annan, 'Two Concepts of Sovereignty', *Economist*, 18 September 1999.

11 Independent International Commission on Kosovo, *The Kosovo Report* (Oxford: Oxford University Press, 2000).

12 Kofi Annan, 'Annual Report to the UN General Assembly', 20 September 1999.

13 Quibbles about the under representation of some regions (such as South America, Africa, East Asia and the Middle East) aside, the most obvious imbalance with the Commission's composition was its gender bias. Of the twelve commissioners, only one was a woman. It is not surprising, therefore, that the ICISS was criticised as 'gender blind'. See Jennifer Bond and Laurel Sherret, *A Sight for Sore Eyes: Bringing Gender Vision to the Responsibility to Protect Framework*, United Nations International Research and Training Institute for the Advancement of Women, March 2006.

14 Kofi Annan, 'The Responsibility to Protect', address to the International Peace Academy, 15 February 2002, UN press release SG/SM/8125.

15 International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: IDRC, 2001).

It was in part to find answers to these questions that Canada decided to establish an International Commission on Intervention and State Sovereignty (ICISS) in 2000. The ICISS was chaired by former Australian foreign minister, Gareth Evans and Mohammed Sahnoun, a former Algerian diplomat who served the UN as special adviser on the Horn of Africa and Special Representative in Somalia and the Great Lakes of Africa. Ten other commissioners were drawn from Europe, North America, Russia, Africa, Southeast Asia, South Asia and Latin America.<sup>13</sup> The commission's report, entitled *Responsibility to Protect*, was released in December 2001 and endorsed by Annan, who described it as 'the most comprehensive and carefully thought-out response we have seen to date'.<sup>14</sup> The ICISS argued that states had a responsibility to protect their citizens from genocide, mass killing and ethnic cleansing and that, when states proved either unwilling or unable to fulfil this duty, residual responsibility was transferred to the international community. From this perspective, RtoP comprised three interrelated sets of responsibilities: to prevent, react and rebuild.<sup>15</sup> The Commission identified proposals designed to strengthen the international community's effectiveness in each of these areas, including a prevention toolkit, decision-making criteria for the use of force, and a hierarchy of international authority in situations where the Security Council was divided.

RtoP would not have enjoyed such a rapid rise without the endorsement of Kofi Annan and his decision, taken in the wake of the oil-for-food scandal, to summon a world summit to consider proposals for UN reform. In preparation for the summit, Annan commissioned a High Level

Panel to examine the challenges confronting the organisation and make recommendations as to how it might meet them. In its final report, the Panel (which included, amongst others, Gareth Evans and Lord Hannay of Chiswick – the latter a former UK Permanent Representative to the United Nations and former Chairman of the UNA-UK) endorsed ‘the emerging norm that there is a responsibility to protect’, supported the ICISS proposal for criteria to guide decisions about the use of force, and called for the permanent members of the Security Council to exercise restraint in their use of veto in situations involving large-scale violence against civilians.<sup>16</sup> Annan adopted most of these recommendations in his own blueprint for reform, *In Larger Freedom*.<sup>17</sup> This put RtoP squarely on the international agenda at the 2005 World Summit.

### Summary

RtoP emerged out of the failure to protect populations from genocide and mass atrocities in the 1990s. Developments in a range of fields – including peacekeeping, refugee and displacement work, humanitarian relief, international diplomacy, and regional action – in response to these failures focused international attention on the protection of human life in situations of conscience-shocking inhumanity. The crises in Rwanda and Kosovo exposed critical challenges relating to the political will to act (Rwanda) and the authority on which action may be taken (Kosovo). The ICISS was established in response to these challenges and its report coined the phrase ‘responsibility to protect’, developing earlier ideas about the state’s primary responsibility to protect its own population and the role of the international community when it fails to do so.

**“The crises in Rwanda and Kosovo exposed critical challenges relating to the political will to act (Rwanda) and the authority on which action may be taken (Kosovo)”**

<sup>16</sup> UN High Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, A/59/565, 2 December 2004, para. 203. On the issue of veto restraint see Ariela Blatter and Paul Williams, ‘The Responsibility not to Veto’, *Global Responsibility to Protect*, 3 (2) 2011.

<sup>17</sup> Kofi Annan, ‘In Larger Freedom: Towards Development, Security and Human Rights for All’, A/59/2005, 21 March 2005.

## Meaning and scope

RtoP was unanimously endorsed by the 2005 World Summit, the largest ever gathering of Heads of State and Government. The Summit's outcome document was later adopted as a General Assembly resolution. Paragraphs 138–140 of the World Summit's Outcome Document declared that:

*138. Each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.*

*139. 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 of the United Nations, to help protect populations from war crimes, ethnic cleansing and crimes against humanity. In this context, 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 organisations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity before crises and conflicts break out.*

*140. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.*

This commitment to RtoP has been reaffirmed twice by the UN Security Council (Resolutions 1674 (2006) and 1894 (2009) and the General Assembly committed itself to on going consideration of its implementation (A/RES/63/308). It is important to distinguish between the RtoP that governments have agreed to adopt and the ideas that helped shape it, including the proposals of the ICISS, mentioned earlier. There are seven key points to bear in mind in this regard:

1. RtoP is narrow in scope, but universal and enduring in its coverage. RtoP applies everywhere, all the time. In other words, all states have a permanent responsibility to protect their populations from the four crimes. As UN Secretary-General Ban Ki-moon pointed out in 2012, the question is never one of whether or not RtoP 'applies' – because this wrongly implies that there are situations in which states do not have a responsibility to protect their populations – but of how best to realise its goals in any given situation.<sup>18</sup> The principle is narrow, though, because it relates only to the four crimes identified in the 2005 World

<sup>18</sup> Ban Ki-moon, *Responsibility to Protect: Timely and Decisive Response*, Report of the Secretary-General, A/66/874-S/2012/578, 25 July 2012.

Summit Outcome Document: genocide, war crimes, ethnic cleansing and crimes against humanity, and to their prevention. RtoP does not relate directly to threats to human life stemming from natural disasters, diseases, armed conflict in general or non-democratic forms of government.<sup>19</sup>

2. States have a responsibility to protect all populations under their care, not just citizens or civilians in times of armed conflict. Paragraphs 138-139 specifically refer to populations and not citizens or civilians in armed conflict.
3. RtoP is based on well-established principles of international law. The crimes to which it relates are enumerated in international law. In addition, states already have legal obligations to prevent and punish genocide, war crimes and crimes against humanity; assist states to fulfil their obligations under international humanitarian law; and promote compliance with the law.<sup>20</sup> In addition, the World Summit Outcome Document is clear in stating that RtoP is to be implemented through the UN Charter. Nothing in the RtoP principle permits action outside the UN Charter.
4. The World Summit Outcome Document calls explicitly for the prevention of the four crimes and their incitement. As such, prevention is at the core of R2P, with other measures contemplated only when prevention fails or (in line with Article 42 of the UN Charter) is thought likely to fail by the UN Security Council.
5. Force may be used only when authorised by the UN Security Council and when other, peaceful, measures adopted under Chapters VI and VIII of the UN Charter are thought unlikely to succeed.
6. Member States declared their support for the mandate of the Special Adviser for the Prevention of Genocide. This mandate, approved in 2004, includes tasks directly related to early warning and assessment: (a) to collect existing information, in particular from within the UN system, relating to violations of human rights that could give rise, if nothing were done, to genocide; (b) to bring situations of concern to the Secretary-General and, through him, to the Security Council; (c) to make recommendations to the Security Council, through the Secretary-General, on actions to prevent or halt genocide; (d) to liaise with the UN system on activities for the prevention of genocide and to enhance the capacity of the UN system to analyse and manage relevant information.<sup>21</sup>
7. Member states made a specific commitment to strengthen the UN's capacity for early warning.<sup>22</sup>

19 Contrary to what some academics have claimed. See, for example, Robert Pape, 'When Duty Calls: A Pragmatic Standard of Humanitarian Intervention', *International Security*, 37 (1), 2012.

20 The crime of genocide is prohibited and signatories given a legal responsibility for prevention by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Responsibilities relating to War Crimes are set out principally in the four Geneva Conventions (1949) (principally articles 50/51/130/147 of the respective Conventions) and subsequent Protocol I (1977) to them (art. 11 (4), 85, 86). The Conventions require state parties to take action to promote compliance with the law. The commonly used legal definition of Crimes against Humanity is contained in Article 7 (1) of the Rome Statute of the International Criminal Court (1998). The Statute defines these crimes as any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: Murder; Extermination; Enslavement; Deportation or forcible transfer of population; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; Torture; Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity; Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognised as impermissible under international law; Enforced disappearance of persons; The crime of apartheid; Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. For acts to be considered crimes against humanity they must be more than isolated or sporadic abuses. Acts constitute crimes against humanity only when they are part of an established pattern of cruelty.

21 S/2004/567, annex.

22 *Implementing the Responsibility to Protect*, para. 10 (b-d).

## The UN Secretary-General's implementation strategy

**“Key to this diplomatic effort was Luck’s insistence on distinguishing what states had actually agreed in 2005 from the various other forms of RtoP circulating in academic and civil society circles”**

The UN Secretary-General, Ban Ki-moon has often spoken of his ‘deep and enduring’ personal commitment to RtoP.<sup>23</sup> In February 2008, the UN announced the appointment of Edward Luck as the Secretary-General’s Special Adviser on the RtoP with responsibility for the further conceptual, political and institutional development of the concept. Luck adopted a careful and consultative approach based on a forensic understanding of the 2005 agreement and deep engagement with Member States. Key to this diplomatic effort was Luck’s insistence on distinguishing what states had actually agreed in 2005 from the various other forms of RtoP circulating in academic and civil society circles.<sup>24</sup> The result was the 2009 report of the Secretary-General on *Implementing the Responsibility to Protect*, a landmark report that continues to guide thought and practice.

### *Implementing the Responsibility to Protect*

The Secretary-General’s first report on RtoP clarified the meaning and scope of the concept and set out a comprehensive strategy for its implementation. The Secretary-General argued that RtoP ‘is an ally of sovereignty, not an adversary’, that grows from the principle of sovereignty as responsibility rather than through the doctrine of humanitarian intervention.<sup>25</sup> As such, RtoP focuses on helping states to succeed, not just on reacting when they fail.

The Secretary-General set out a comprehensive strategy for implementing RtoP, adopting a ‘narrow but deep’ approach: narrow in its exclusive focus on the prevention of four crimes (genocide, war crimes, ethnic cleansing and crimes against humanity) and protection of populations from them, but deep in its ambition to employ all instruments available to the UN system, regional and sub-regional arrangements, Member States, and civil society. This strategy was organised around the idea that, as agreed by Member States in 2005, RtoP rests on three pillars. These pillars are non-sequential (one does not need to apply pillars one and two before moving to pillar three) and of equal importance. The whole edifice of RtoP would collapse if it were not supported by all three pillars.<sup>26</sup> The three pillars are:

#### **Pillar I: the primary responsibility of the state to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement.**<sup>27</sup>

The Secretary-General described this pillar as the ‘bedrock’ of RtoP which derives from sovereign responsibility itself and the international legal obligations that states already had (para. 138).<sup>28</sup> The Secretary-General recognised that although this commitment was unambiguous, the question of how states might best exercise their RtoP was more difficult to answer. As such, he called for more research on why some societies plunge into mass violence whilst others managed to escape this fate.<sup>29</sup> He also proposed a variety of additional measures:

- The UN Human Rights Council could encourage states to meet their RtoP obligations and the Council’s Universal Peer Review (UPR) mechanism could be utilised.<sup>30</sup>
- States should become parties to the relevant instruments of human rights law, international humanitarian law and refugee law, as well as to the Rome Statute of the International Criminal Court (ICC). They should also incorporate this law into domestic jurisdiction and implement it faithfully.<sup>31</sup>

23 First set out in his landmark ‘Berlin speech’ in 2008. Ban Ki-moon, ‘Responsible Sovereignty: International Cooperation for a Changed World’, SG/SM/11701, 15 July 2008.

24 The point was emphasised in one of Luck’s first publications on RtoP after assuming the role of special adviser. Edward C. Luck, ‘The Responsible Sovereign and the Responsibility to Protect’, *Annual Review of United Nations Affairs*, 2006/2007 (Oxford: Oxford University Press, 2007), pp. xxxv.

25 *Implementing the Responsibility to Protect*, para. 10(a).

26 *Ibid.*, para. 12.

27 World Summit Outcome Document, para. 138.

28 *Ibid.*, para. 11(a).

29 *ibid.*, paras. 15 and 22.

30 *Ibid.*, para. 16.

31 *Ibid.*, para. 17.

- States should assist the ICC and other international tribunals by, for example, locating and apprehending indictees.<sup>32</sup>
- RtoP principles should be localised into each culture and society so that they are owned and acted upon by communities.<sup>33</sup>
- States, even stable ones, should ensure that they have mechanisms in place to deal with bigotry, intolerance, racism and exclusion.<sup>34</sup>

**Pillar II: the international community's responsibility to assist and encourage states to fulfil their responsibility to protect, particularly by helping them to address the underlying causes of genocide and mass atrocities, build the capacity to prevent these crimes, and address problems before they escalate (paras. 138 and 139),<sup>35</sup>**

The Secretary-General identified four specific aspects of this Pillar II responsibility:<sup>36</sup>

- *Encouraging states to meet their pillar one responsibilities* (para. 138):
  - Those inciting or planning to commit the four crimes need to be made aware that they will be held to account.<sup>37</sup>
  - Incentives to encourage parties towards reconciliation.<sup>38</sup>
- *Helping states to exercise their responsibility:*
  - Security sector reform aimed at building and sustaining legitimate and effective security forces makes an important contribution to maintaining stability and provides states with the capacity to respond quickly and legitimately to emerging problems.<sup>39</sup>
- *Helping states build their capacity to protect:*
  - Targeted economic development assistance would assist in preventing the four crimes by reducing inequalities, improving education, giving the poor a stronger voice, and increasing political participation.<sup>40</sup>
  - International assistance should help states and societies to build the specific capacities they need prevent genocide and mass atrocities.<sup>41</sup>
- *Assisting states 'under stress before crises and conflicts break out':*
  - The UN and regional arrangements could build rapidly deployable civilian and police capacities to help countries under stress.<sup>42</sup>
  - Where relevant crimes are committed by non-state actors, international military assistance to the state may be an effective form of assistance.<sup>43</sup>

**Pillar III: the international community's responsibility to take timely and decisive action to protect populations from the four crimes through diplomatic, humanitarian and other peaceful means (principally in accordance with Chapters VI and VIII of the UN Charter) and, on a case-by-case basis, should peaceful means 'prove inadequate' and national authorities are manifestly failing to protect their populations, other more forceful means through Chapter VII of the UN Charter (para. 139).<sup>44</sup>**

The wording agreed by states in 2005 suggests that Pillar III comprises two steps. The first, set out in the opening sentence of paragraph 139 ('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 the four crimes), involves an on-going responsibility to use diplomatic, humanitarian and other peaceful means to protect populations. The paragraph's second sentence sets out a wider range of measures that may be used if two conditions are satisfied: (1) 'should peaceful means be inadequate' (in other words, judged inadequate by the Security Council in line with Article 42 of the Charter) and (2) 'national authorities are manifestly failing to protect their populations'. In these situations, it may be appropriate to take timely and decisive action through the Security Council, including enforcement measures under Chapter VII of the Charter.<sup>45</sup> The Secretary-General noted that military intervention was just one of the measures that might be used.

The Secretary-General suggested that permanent members of the Security Council should refrain from using their veto in situations of manifest failure and should act in good faith to reach a consensus in such cases.<sup>46</sup> He also stressed that the UN should strengthen its capacity for the rapid deployment of military personnel.<sup>47</sup> Finally, he suggested that the UN should strengthen its partnerships with regional and sub-regional arrangements to facilitate rapid cooperation.<sup>48</sup>

32 Ibid., para. 19.

33 Ibid., para. 20.

34 Ibid., para. 21.

35 World Summit Outcome Document, para. 139.

36 *Implementing the Responsibility to Protect*, para. 28.

37 Ibid., para. 32.

38 Ibid., para. 32.

39 Ibid., para. 46.

40 Ibid., para. 43.

41 Ibid., para. 44.

42 Ibid., paras. 38 and 39.

43 Ibid., para. 40.

44 A/60/L.1, 20 September 2005, paras. 138-140. See *Implementing the Responsibility to Protect*.

45 *Implementing the Responsibility to Protect*, para. 49.

46 Ibid., para. 61.

47 Ibid., para. 64.

48 Ibid., para. 65.

The Secretary-General concluded his first report on RtoP by calling for the establishment of a joint office that would merge the mandate of the Special Adviser for the Prevention of Genocide with that of his Special Adviser for RtoP. Reminding Member States that they had specifically pledged to 'support the United Nations in establishing an early warning capability' covering genocide, war crimes, ethnic cleansing and crimes against humanity, he proposed that UN entities incorporate RtoP 'considerations' into their own work and that a new *convening mechanism* be developed that would bring senior officials together in crisis situations to evaluate policy options and present advice to the Secretary-General.<sup>49</sup>

The subsequent informal interactive dialogue of the General Assembly vindicated the Secretary-General's strategy.<sup>50</sup> Ninety-four speakers, representing some 180 governments (including the Non-Aligned Movement) from every region participated.<sup>51</sup> Of those, only four (Cuba, Venezuela, Sudan and Nicaragua) called for renegotiation of the 2005 agreement. The others typically agreed with the Secretary-General's interpretation of RtoP's meaning and scope and welcomed his report.<sup>52</sup> The challenge, Member States agreed, was to implement R2P, *not* renegotiate it. Within this context, participating Asian, Latin American and sub-Saharan African states were eager to stress six key points, which ought to be understood as bedrocks of the global consensus on RtoP:

- RtoP is a universal principle that should be implemented equally and fairly in a non-selective fashion (early warning and assessment should be non-selective and non-political).<sup>53</sup>
- The responsibility to protect lies first and foremost with the state.<sup>54</sup>
- RtoP applies only to the four crimes (genocide, war crimes, ethnic cleansing and crimes against humanity) and their prevention.
- The principle must be implemented and exercised in a manner consistent with international law, especially the UN Charter.<sup>55</sup>
- Timely and decisive response (Pillar III) encompasses more than just coercion or the use of force.
- Prevention is the most important element of RtoP.<sup>56</sup>
- The General Assembly should be the primary vehicle for implementing RtoP through the UN.<sup>57</sup>

The General Assembly passed a resolution which acknowledged the Secretary-General's report, noted that the Assembly had engaged in a productive debate, and committed the Assembly to continuing its consideration of the matter.<sup>58</sup>

### Early warning, assessment and convening

The Secretary-General's proposals in relation to the establishment of a joint office for RtoP and genocide prevention were further developed in his 2010 report on *Early warning, assessment and the Responsibility to Protect*. Here, the Secretary-General observed that early warning was essential to facilitate the provision of assistance to states 'before conflicts break out', to identify which states are 'under stress' and to guide timely and decisive collective action, when necessary, through Chapters VI, VII and VIII of the UN Charter. He called for the incorporation of the work of his Special Adviser on RtoP into a new Joint Office for Genocide Prevention and RtoP that would, among other things, combine the existing early warning work of the Special Adviser for the Prevention of Genocide with an additional focus on the other three crimes covered by RtoP (war crimes, ethnic cleansing and crimes against humanity). Through this new office, 'the Special Advisers, based largely on information provided by, and in consultation with, other United Nations entities, conclude that a situation could result in genocide, war crimes, ethnic cleansing or crimes against humanity, [will] provide early warning to me and, through me, to the Security Council and other relevant intergovernmental organs'.<sup>59</sup>

The Secretary-General also developed his thinking on the establishment of a convening authority to bring together UN departments to discuss and evaluate policy options and provide advice to the Secretary-General in crisis situations. This was first raised in the Secretary-General's 2009 report on *Implementing the Responsibility to Protect*. There, he wrote:

49 Ibid., Annex, para. 5.

50 See Office of the President of the General Assembly, 'Concept Note on Responsibility to Protect Populations from Genocide, War Crimes, Ethnic Cleansing and Crimes Against Humanity', undated (July 2009); ICR2P, 'Report on the General Assembly Plenary Debate', p. 3; and Global Centre for the Responsibility to Protect, 'Implementing the Responsibility to Protect: The 2009 General Assembly Debate: An Assessment', August 2009, p. 3.

51 Including 51 statements from sub-Saharan Africa, the Asia-Pacific, Latin America and the Caribbean. Global Centre, 'Implementing', p 1.

52 The statement of the Non-Aligned Movement (NAM) is particularly instructive here. See Statement by Maged A. Abdelaziz, Permanent Representative of Egypt, on Behalf of the Non-Aligned Movement on Agenda Item 44 and 107: 'Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields; follow-up to the outcome of the Millennium Summit: report of the Secretary-General', New York, 23 July 2009. According to the Global Centre, 40 states explicitly welcomed the Secretary-General's report and over 50 endorsed his interpretation of R2P as involving three pillars. Global Centre, 'Implementing', p. 2. The NAM conveyed 'its appreciation' to the Secretary-General for his report.

53 See Statement of Hilario G. Davide Jr., Permanent Representative of the Philippines to the United Nations to the Thematic Debate on the Report of the Secretary-General on Implementing the Responsibility to Protect (A/63/677), New York, 23 July 2009 and Statement by Jim McLay, Permanent Representative of New Zealand to the United Nations to the United Nations, 17 July 2009.

54 E.g. see statement by Leslie K. Christian, Ambassador and Permanent Representative of Ghana to the United Nations on Agenda Items 44 and 107: 'Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields; follow-up to the outcome of the Millennium Summit: report of the Secretary-General', 23 July 2009 and Statement by Claudia Blum, Permanent Representative of Colombia to the United Nations, 23 July 2009.

*Information is a necessary but hardly sufficient condition for an effective collective response. How the available information is assessed matters a great deal in situations relating to the responsibility to protect, given the patterns of behaviour, action and intent involved in the four specified crimes and violations. Similarly, because the United Nations response could involve a mix of policy tools under Chapters VI, VII and/or VIII of the Charter, and because that mix should be reviewed and adjusted as events evolve on the ground, the decision-making process should be relatively broad-based, inclusive and flexible at both the Secretariat and intergovernmental levels. To ensure system-wide coherence in policymaking within the Secretariat, as well as an early and flexible response tailored to the needs of each situation, an inter-agency and interdepartmental mechanism will be utilised to consider policy options to be presented to me and, through me, to relevant intergovernmental bodies (Annex, para. 5).*

The Secretary-General returned to this theme the following year, providing more information about what he envisaged:

*If the situation persists, and if national authorities are manifestly failing to protect their populations from these crimes, I will invoke new internal procedures to expedite and regularise the process by which the United Nations considers its response and its recommendations to the appropriate intergovernmental body or bodies. In such cases, I will ask the Special Advisers to convene an urgent meeting of key Under-Secretaries-General to identify a range of multilateral policy options, whether by the United Nations or by Chapter VIII regional arrangements, for preventing such mass crimes and for protecting populations. Such an emergency meeting will be prepared through a working level process convened by the Special Advisers, and the results, including the pros and cons of each option, will be reported promptly to me or, should I choose, to the Policy Committee. This is without prejudice to the role of the relevant United Nations entities, acting within their mandates, to bring any situation to my attention and, through me, to the Security Council and other relevant intergovernmental organs.<sup>60</sup>*

The establishment of a new joint office was subsequently approved by the General Assembly's Fifth (Budget) Committee in December 2010. The Committee also affirmed the Office's mandate for early warning and assessment and its convening authority by approving a new P4 position to cover early warning and assessment functions and provide support for the emergency convening functions described in the Secretary-General's report.<sup>61</sup>

Since then, the Office for Genocide Prevention and RtoP (OGPRtoP) has developed and refined an analysis framework for early warning and assessment,<sup>62</sup> monitored emerging situations, and the Special Advisers have issued statements of concern about situations containing the risk of crimes and violations relating to RtoP and reminding national authorities about their own protection responsibilities. The Office has also begun to strengthen its ties with the rest of the UN system and to provide assistance to other departments where possible. In particular, it has established a network of focal points across the system and in 2012 assumed the responsibilities of co-chair of the UN Inter-Agency Framework Team for Coordination on Preventive Action.

55 Statement by Maged A. Abdelaziz, Permanent Representative of Egypt, on Behalf of the Non-Aligned Movement on Agenda Items 44 and 107: 'Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields; follow-up to the outcome of the Millennium Summit: report of the Secretary-General', New York, 23 July 2009.

56 See Global Centre for the Responsibility to Protect, 'Implementing', p. 6.

57 The Philippines, for example, called for the General Assembly to play an 'active and substantive role' in implementing the principle. Statement of Hilario G. Davide Jr., Permanent Representative of the Philippines to the United Nations to the Thematic Debate on the Report of the Secretary-General on Implementing the Responsibility to Protect (A/63/677), New York, 23 July 2009.

58 A/RES/63/308, 7 October 2009.

59 *Early Warning, Assessment and the Responsibility to Protect, Report of the Secretary-General*, A/64/864, 14 July 2010, para. 18.

60 *Ibid.*, para. 19.

61 A/63/864.

62 See: [www.un.org/en/preventgenocide/adviser/pdf/osapg\\_analysis\\_framework.pdf](http://www.un.org/en/preventgenocide/adviser/pdf/osapg_analysis_framework.pdf)

### *Regional arrangements*

The Secretary-General's third report on RtoP focused on the role of regional and sub-regional arrangements.<sup>63</sup> The report argued that regional and sub-regional arrangements had important roles to play in helping states implement RtoP and in supporting the UN's efforts. This, of course, is reflected in recent diplomatic practice where regional and sub-regional arrangements have played a significant role in preventing and responding to crises. Most notably, the African Union (AU) sponsored Kofi Annan's mediation efforts in Kenya (2008), leads peacekeeping efforts in Somalia and is a crucial partner in Darfur; the OSCE led international responses to communal violence in Kyrgyzstan; ECOWAS played a key diplomatic role in Cote d'Ivoire and Guinea and is at the fore of international responses to the crisis in Mali; NATO was the principal implementing partner of Security Council Resolution 1973 on Libya (2011), ASEAN has played a critical diplomatic role in relation to the situation of the Rohingya in Myanmar and the League of Arab States and Gulf Cooperation Council played critical roles in Libya, Yemen, and Syria.

Not surprisingly, therefore, the Secretary-General argued that regional and sub-regional arrangements could fulfil important functions in relation to all three of RtoP's pillars:

- Pillar I: by connecting global standards to local and national action and encouraging compliance; responding to displacement and refugee flows; providing good offices and mediation; supporting conflict prevention capacity; establishing regional norms; resolving existing conflicts; promoting justice and reducing impunity.
- Pillar II: by building civilian, policing and military capacity to respond to crises, developing mediation capacity, supporting security sector reform and strengthening the rule of law, sharing information for crisis analysis and early warning.
- Pillar III: sharing information; developing regional response doctrines; evaluating implementation of targeted sanctions; developing regional tools for cooperating with the ICC.

Each regional and sub-regional arrangement is different. They have different norms, capacities and interests, which makes it difficult to generalise about the roles they may play in implementing RtoP. In the ensuing informal interactive dialogue of the General Assembly, Member States shared the Secretary-General's belief in the centrality of regional and sub-regional arrangements and the need to strengthen partnerships with the UN.

### *Timely and decisive response*

The 'Arab Spring' uprisings and the post-election crisis in Cote d'Ivoire in 2010–2011 propelled RtoP to the forefront of international attention and placed the focus squarely on the principle's controversial third pillar. RtoP was explicitly used by the Security Council in its resolutions on Libya – Resolution 1970 (2011); Resolution 1973 (2011) – which first imposed a raft of targeted sanctions and embargoes and referred the situation to the ICC and then authorised the use of force to protect civilians and police a no-fly zone. The implementation of these resolutions by NATO and its partners, and the role of the United Nations Operation in Côte d'Ivoire (UNOCI) peacekeepers in the violent resolution of the conflict in Cote d'Ivoire, brought fresh urgency to questions about the implementation of Security Council resolutions and the emergence of a new concept – 'responsibility while protecting' – which was proposed by Brazil (see below).

In this context, the fourth report of the Secretary-General focused on the third pillar of RtoP. This report: (1) clarified the relationship between the three pillars, reiterating their mutual interdependence such that efforts under the first two pillars should reduce the need to exercise the third; (2) identified the tools available to the UN for timely and decisive response, demonstrating that there is much more to Pillar III than the use of force and that, as a general rule, the more coercive the measure is, the less likely it is to be employed; (3) identified the key partners in protection, noting the role played by humanitarian action, peacekeeping, regional arrangements and civil society; and (4) considered the concept of 'responsibility while protecting'.<sup>64</sup>

<sup>63</sup> Ban Ki-moon, *The Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect. Report of the Secretary-General*, A/65/877-S/2011/393, 28 June 2011.

<sup>64</sup> Ban Ki-moon, *Responsibility to Protect: Timely and Decisive Response*, A/66/874-S/2012/578, 25 July 2012.

The General Assembly's subsequent informal interactive dialogue provided further support for the concept of RtoP and the UN Secretary-General's strategy for implementation. Despite the highly controversial nature of the subject, Member States largely agreed with the Secretary-General's assessment that RtoP was a concept 'whose time has come', his view that nobody now doubts that states do indeed have a responsibility to protect, and belief that international debates have shifted from the question of 'whether' to implement RtoP to that of 'how' to. Member States also accepted the Secretary-General's view that RtoP applies everywhere and all the time.

Fifty-eight states, one regional arrangement and two civil society organisations participated in the dialogue. Despite controversies about the use of force, accountability, and concerns about the potential misuse of RtoP to justify 'regime change', no Member State called for the renegotiation of RtoP. Indeed, one of the Member States most critical of the use of force in Libya and Cote d'Ivoire in 2011, South Africa, insisted that there must be 'no going back' on what was agreed in 2005. Member States as diverse as Sri Lanka, Iran and Viet Nam voiced their acceptance of RtoP. With almost complete unanimity, states welcomed the Secretary-General's report and endorsed his view that whilst the third pillar of RtoP included much more than just the use of force or other coercive measures, enforcement measures – including military enforcement – remained an important aspect of the RtoP toolkit, to be used as a last resort.

The dialogue exposed some tough questions about the implementation of RtoP in the most difficult situations, especially with regards to the relationship between the three pillars of RtoP and their 'sequencing' and the need to ensure consistency in implementation. Perhaps aware that it will always be difficult to craft timely and decisive responses to the RtoP crimes and violations – because consensus on how best to act may sometimes be hard to achieve, the most effective policies are seldom obvious in the midst of the storm, and because the costs associated with response measures are often high and the payoffs uncertain – many Member States re-emphasised the primacy of preventing the four crimes. In so doing, they recognised that not only does successful prevention save lives, it also reduces the frequency with which the controversial third pillar might be called for.

### Summary

Implementation of RtoP within the UN has come a long way in a short space of time, though many significant challenges remain. Key achievements include:

1. Widening and deepening of the shared understanding of RtoP as agreed in paragraphs 138-140 of the World Summit Outcome Document and consensus on the principle. As the Secretary-General has argued, no-one now doubts that there is a responsibility to protect or disputes the concept's meaning and scope. The General Assembly exhibited the maturity of its commitment to RtoP in 2012 by welcoming a report of the Secretary-General on the principle's most controversial aspects.
2. International consensus on the Secretary-General's strategy for implementation. Member States accept the Secretary-General's 'three pillars' strategy for implementation and have endorsed its institutionalisation.
3. The establishment of a joint UN office for Genocide Prevention and RtoP with a mandate, among other things, for early warning and assessment and convening senior officials to provide coordinated advice in crisis situations.
4. The movement of debate about RtoP squarely onto questions of implementation. As Brazil has pointed out, the concept of 'responsibility whilst protecting' is a contribution to the debate about *implementing* RtoP not a critique of the principle itself. As well as being evident in the tone and direction of the General Assembly's dialogues on RtoP, this change is evident in the international community's response to crisis situations which are now typically focused on protection issues irrespective of whether consensus on the precise response is achieved.

**“Despite controversies about the use of force, accountability, and concerns about the potential misuse of RtoP to justify ‘regime change’, no Member State called for the renegotiation of RtoP”**

## RtoP in action

It is one thing to agree on an abstract principle, it is another thing entirely to agree on how to implement that principle in practice.

The incorporation of RtoP into practice got off to a relatively slow start. Between the passage of Security Council Resolution 1674, which reaffirmed RtoP, in 2006 and 2009, the Council referred to RtoP only once – in a preambular paragraph of Resolution 1706 (2006) on the situation in Darfur. Several Council members expressed concern (China abstained in the vote on Resolution 1706) about the diplomatic pressure brought to bear to secure this reaffirmation and subsequent resolutions on Darfur shied away from referring to RtoP.<sup>65</sup> Resistance to implementing RtoP was also evident in other UN bodies. For example, when the UN Human Rights Council's High-Level Mission to Darfur reported in 2007 that the government of Sudan was failing in its responsibility to protect Darfuris, the UN General Assembly's Arab Group and Asia Group as well as the Organisation of Islamic Conferences all questioned the report's legitimacy.<sup>66</sup> At the time, Darfur was often portrayed as a 'test case' for RtoP – the House of Commons Committee on International Development, for example, judged that 'if the responsibility to protect means anything, it ought to mean something in Darfur'.<sup>67</sup> It was a test RtoP was widely judged at the time to have failed.<sup>68</sup>

In the aftermath of the disputed 30 December 2007 elections in Kenya, ethnic and tribal violence resulted in the killing of some 1,500 people and the displacement 300,000 more. The international community responded with a coordinated diplomatic effort led by AU mediator Kofi Annan and supported by the Secretary-General and Security Council. Approaching the situation, 'in the RtoP prism', Annan persuaded the country's president, Mwai Kibaki and main opponent, Raila Odinga, to conclude a power-sharing agreement and rein in the mobs.<sup>69</sup> This diplomatic effort, couched squarely in RtoP terms, pulled the two leaders back from the brink and saved Kenya from a terrible fate. It also provided a tangible demonstration of RtoP's capacity to facilitate atrocity prevention through peaceful means.

In 2008, there were two attempts by Member States to use RtoP to legitimise actions for which it was not designed. In the wake of Myanmar's slow paced response to requests for humanitarian access after Cyclone Nargis in May, the French foreign minister Bernard Kouchner called for 'RtoP' to be applied to facilitate the delivery of aid without the government's consent. A few months later, in August, Russia claimed that its invasion of Georgia was justified on RtoP grounds as it aimed to prevent genocide in South Ossetia. The international community and the UN Secretariat rejected both claims. This helped to further clarify the limits of RtoP and persuade cautious Member States that the principle could not be used in an expansive way to justify unilateral coercion.

Arguably the worst moments for RtoP and the UN came later in 2008, and in the first half of 2009, in Sri Lanka. Government forces launched a major offensive in the Wanni region aimed at eliminating the Tamil Tigers (LTTE). Amidst reports of civilian casualties and war crimes, the UN Country Team decided to withdraw its staff and remained mute on potential violations of international human rights and humanitarian law by government forces. The fighting led to the death of approximately 40,000 civilians, the great majority as a result of government actions, and a UN investigation found that both parties might have committed war crimes.<sup>70</sup> In 2012,

65 See Sarah Teitt, 'Assessing Polemics, Principles and Practices: China and the Responsibility to Protect', *Global Responsibility to Protect*, 1 (2) 2009, pp. 220-1.

66 High Level Mission of the UN Human Rights Council (2007), Report of the High Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101, A/HRC/4/80, 7 March. For the ensuing debate, see A/HRC/5/6, 8 June 2007.

67 House of Commons Select Committee on International Development, *Darfur, Sudan, the Responsibility to Protect*, Fifth Report of Session 2004-5, Vol. 1, 16 March 2005, p. 19.

68 E.g. David Mepham, *Darfur: The Responsibility to Protect* (London: Institute for Public Policy Research, 2007) and Cristina Badescu and Linnea Bergholm, 'Responsibility to Protect and the Conflict in Darfur: The Big Let Down', *Security Dialogue*, 40 (3) 2009, pp. 287-309.

69 On Annan, see Roger Cohen, 'How Kofi Annan Rescued Kenya', *New York Review of Books*, 55 (13), 14 August 2008. On the UN Secretary-General, see statement attributable to the Spokesperson for the Secretary-General on the situation in Kenya, New York, 2 January 2008. Annan later described his role, and that of RtoP, in more detail in his memoir. See Kofi Annan, *Interventions: A Life in War and Peace* (New York: Penguin, 2012), pp. 189-202.

70 This casualty estimate comes from the Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, p. 41. For the Report's finding on credible allegations of war crimes, see p. iii.

an Internal Review Panel established by the Secretary-General to review the UN's actions concluded that the organisation had failed to adequately respond to the protection crisis in Sri Lanka in 2008–2009. Specifically, the Panel found that 'events in Sri Lanka mark a grave failure of the UN to adequately respond to early warnings and to the evolving situation during the final stages of the conflict and its aftermath, to the detriment of hundreds of thousands of civilians and in contradiction with the principles and responsibilities of the UN'.<sup>71</sup> It noted that 'when confronted by similar situations, the UN must be able to meet a much higher standard in fulfilling its protection and humanitarian responsibilities'.<sup>72</sup> The Panel judged that the UN was not prepared to take sufficient action to protect civilians caught up in the crisis and that UN officials made repeated trade offs between protection and human rights concerns on the one hand, and the perceived need to secure humanitarian access and maintain a cordial relationship with the Sri Lankan government on the other. These views echoed those of the former UN spokesman in Sri Lanka, Gordon Weiss, and external commentators such as James Traub.<sup>73</sup>

With the UN and its Member States seemingly hesitant to translate RtoP from 'words into deeds', few, if any, anticipated the role that the principle would play in the events of 2011. In March, the Security Council responded to violence in Libya, which included the commission of crimes against humanity and contained clear potential for more, by unanimously passing Resolution 1970. Passed under Chapter VII of the UN Charter, the resolution specifically referred to RtoP, demanded an immediate cessation of violence and the establishment of a political process, and imposed targeted sanctions and referred the situation to the ICC. When the Qaddafi regime failed to comply, the Council took the unprecedented step of authorising the use of force to protect civilians from imminent danger, enforce a no-fly zone, and enforce an arms embargo (Resolution 1973). This was the first time in its history that the Council had authorised the use of force against a functioning Member State for human protection purposes. A few days later, the Council unanimously adopted Resolution 1975 on Cote d'Ivoire. In a context of escalating post-election violence there, the Council declared Alassane Ouattara to be the country's president and authorised the use of force to protect the civilian population. These three resolutions, passed without a single negative vote, clearly demonstrated the Council's determination to act on its responsibility to protect populations, including through the use of force when necessary and possible. They signalled a new phase in the Council's history from which there could be no return.

However, some Member States criticised the manner in which these mandates were implemented. Critics complained that NATO (in Libya) and the UN (in Cote d'Ivoire) overstepped their Security Council mandates by contributing to the forcible change of regimes, that they used disproportionate force which increased the risks to the civilian populations and that they ignored or outright rejected opportunities for political dialogue. A number of countries, including Russia, India, and China went so far as to argue that regime change must never be part of the toolkit of responding to genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>74</sup> Subsequently, Russia in particular has argued that Libya coloured its thinking on Syria, pushing it to resist Western pressure on the al-Assad regime on the grounds that this might open the door to regime change.<sup>75</sup>

The vigorous debate over Cote d'Ivoire and Libya has not inhibited the Security Council from referring to RtoP in other contexts, however. Resolution 1996, adopted in July 2011, established a UN peace operation for South Sudan and called upon the international community to provide assistance to help the new government fulfil its responsibility to protect, in line with the principle's second pillar. Resolution 2014, adopted in October 2011, reminded the government of Yemen of its primary responsibility to protect its population. In its September 2011 Presidential Statement on preventive diplomacy, the Council again recalled the responsibility to protect. Most recently, Resolution 2085 (2012) on Mali authorised an international mission to, among other things, assist the government in fulfilling its responsibility to protect.

71 Report of the Internal Review Panel on the UN's Actions in Sri Lanka, November 2012, para. 80.

72 Ibid, para. 88.

73 Gordon Weiss, *The Cage: The Fight for Sri Lanka and the Last Days of the Tamil Tigers* (New York: Bellevue Literary Press, 2012) and James Traub, 'At Risk in Sri Lanka's War', *Washington Post*, 22 April 2009.

74 S/PV.6531, 10 May 2011.

75 See Jess Giffkins, 'Syria and the Responsibility to Protect', *Global Responsibility to Protect*, 4 (4), 2012.

## Actors and networks for implementation

In addition to the UN, the Secretary-General has identified important roles that regional and sub-regional arrangements, Member States, the business sector, civil society groups and individuals can play in the implementation of RtoP. Over the past few years, a number of different initiatives have been developed to harness the activism of these different groups, identify and build capacity for the prevention of RtoP crimes and protection of populations from them, and improve responses to the threat or commission of these crimes.

### Member states

A number of avenues have been developed to deepen the engagement of Member States beyond the annual informal interactive dialogue of the General Assembly on RtoP and the Security Council's open debates on the protection of civilians in armed conflict. Most prominent among these are the group of friends, the Focal Points initiative, and the Latin American Network for Genocide Prevention.

### Group of friends

Initially established by Canada to promote RtoP prior to its adoption by UN Member States in 2005, today the Group of Friends comprises around forty Member States (there is no formal 'membership' and attendance at meetings varies widely; the EU delegation to the UN also participates). It describes itself as 'an informal cross-regional group of UN member states that share a common interest in the responsibility to protect and advancing the norm within the UN system'.<sup>76</sup> Thus, the Group of Friends is primarily a network based around the permanent missions to the UN, and is designed to assist with the coordination of strategy at UN Headquarters in New York. Chaired by the Netherlands and Rwanda (since 2010), the Group of Friends meets four times a year at the level of Ambassador and meets occasionally at the working level to discuss matters related to the concept's political and conceptual development and situations of concern.<sup>77</sup> Meetings often focus on specific country situations or developments within the UN. The Group has coordinated diplomatic strategy on the inclusion of RtoP in Security Council statements and General Assembly deliberations and has coordinated support for the Secretary-General's proposals to the Fifth (Budget) Committee. The Group of Friends also work closely with the UN, inviting briefings from officials in the Department of Political Affairs and inviting the Special Advisers on Genocide Prevention and RtoP and the working level experts from the Office of Genocide Prevention and RtoP to meetings as a matter of routine. The co-chairs also participate in an on going informal dialogue with the UN's office.

<sup>76</sup> Statement by the Group of Friends on Responsibility to Protect on the situation in the Libyan Arab Jamahiriya, 25 February 2010.

<sup>77</sup> The Dutch Advisory Council on International Affairs advised that the Netherlands consider using the Group of Friends to advance quiet discussion about criteria for the use of force and other sensitive conceptual issues. See Advisory Council on International Affairs, *The Netherlands and the Responsibility to Protect: The Responsibility to Protect People from Mass Atrocities*, No. 70, June 2010, pp. 60-61.

### Focal points

The RtoP Focal Points initiative was launched in May 2011 by the governments of Denmark and Ghana (Australia and Costa Rica subsequently joined the facilitating group) and is administered by the Global Centre for RtoP based in New York. Thus far, twenty countries have appointed focal points and there have been two full gatherings in New York (2011 and 2012)

and a preparatory meeting hosted by the Stanley Foundation (2012).<sup>78</sup> It is envisaged that the focal points meetings will become regular annual events. Unsurprisingly, given different systems of government and bureaucratic cultures, there is no single template for the role of a national focal point or uniformity on where within the government a focal point should sit. At the most basic level, the focal point should be a senior official who is 'responsible for the promotion of RtoP at the national level' and for supporting 'international cooperation on the issue through participating in a global network'.<sup>79</sup> This could be understood as entailing simply the nomination of an individual as the government's lead official on RtoP matters. Another, more involved, understanding of the role is that, in addition to being the lead for extant diplomatic activities in the area, it should entail (1) the integration of atrocity prevention concerns into national policy (early warning and assessment, provision of atrocity-specific advice to other departments etc.) and (2) the capacity to convene departments and ministries to consider 'whole of government' responses to actual or imminent protection crises.<sup>80</sup> Another critical issue is whether the focal point should be primarily outwards looking (focused on prevention externally) or inwards looking (focused on domestic prevention).

The first meetings of the focal groups focused on identifying potential roles, the most appropriate location within government for the focal point (the Global Centre for RtoP proposed the Office of the Executive, the Foreign Ministry and the Home Affairs/Interior Ministry as potential hosts for the focal point, depending on the national context; some governments have appointed focal points within their permanent mission to the UN), and on sharing early experiences. One of the principal achievements in 2012 was an agreement to establish an international network of focal points. The 2012 preparatory meeting hosted by the Global Centre for RtoP and Stanley Foundation also identified some key lessons and insights that will guide future developments:

- Atrocity prevention requires that all states engage in a process of continuous self-reflection designed to identify and mitigate risk at home.
- The specific role and function of the focal point should be determined by national circumstances.
- Focal points should understand their own national system, have the capacity to work effectively within that system, and have sufficient authority to play a convening role.
- The RtoP focal points network should provide a 'support system for states committed to RtoP objectives'. Its core objective is to help create a 'community of commitment' that helps states implement RtoP's three pillars.
- The RtoP focal points network should promote education about RtoP.<sup>81</sup>

### United States – Atrocity Prevention Board

The Obama Administration has led the way in terms of incorporating atrocity prevention into national policy and the approach it has adopted might be considered a template that others might follow.<sup>82</sup> Its activism in this area was partly a product of earlier initiatives such as the Genocide Prevention Task Force, chaired by Madeleine Albright and William Cohen, and the Harvard University/Department of Defense (Peacekeeping and Stability Operations Institute) project on Mass Atrocity Response Operations, which produced a policy-planning handbook in 2012.<sup>83</sup> In 2010, President Obama appointed David Pressman as Director on War Crimes, Atrocities and the Protection of Civilians within the National Security Council. In April 2012, the President announced the establishment of an Atrocity Prevention Board (APB) charged with assisting the government in identifying and addressing atrocity threats and overseeing institutional reforms designed to make the US better able to respond. The APB includes representatives from the Departments of State, Defence, Treasury, Justice, and Homeland Security, as well as the Joint Staff, USAID, the US Mission to the UN, the Office of the Director of National Intelligence, the CIA, and the Office of the Vice-President. These officials will meet monthly at the level of Assistant Secretary (with individuals designated by name by the Principals), with a twice-yearly Deputies-level meeting and an annual Principals level meeting to review the Board's work. Among its specific early tasks are;

- Monitoring preparation of the first National Intelligence Estimate on the global risk of genocide and mass atrocities;

**“One of the principal achievements in 2012 was an agreement to establish an international network of focal points”**

78 At the time of writing countries with designated RtoP focal points were: Australia, Argentina, Belgium, Botswana, Costa Rica, Cote d'Ivoire, Czech Republic, Denmark, France, Germany, Ghana, Guatemala, Italy, Netherlands, Slovenia, Sweden, Switzerland, Uruguay, UK and the US.

79 Global Centre for the Responsibility to Protect, *National Focal Points: Recommendations*, p. 1.

80 *Ibid.*, p. 1.

81 Global Centre for the Responsibility to Protect / Stanley Foundation, 'Preparatory Workshop for the Second R2P Focal Points Meeting', Policy Memo, 12 March 2012.

82 For a detailed examination see Bruce W. Jentleson, 'The Obama Administration and R2P: Progress, Problems and Prospects', *Global Responsibility to Protect*, 4 (4) 2012, pp. 399-423.

83 Genocide Prevention Task Force, *Preventing Genocide: A Blueprint for US Policymakers* (Washington, DC: US Holocaust Memorial Museum, American Academy of Diplomacy and US Institute of Peace, 2008) and Dwight Raymond et al, *Mass Atrocity Prevention & Response Options: A Policy Planning Handbook* (Washington, DC: PKSOL, 2012).

- Working with the Director of National Intelligence to include information about the risk of genocide and mass atrocities in his intelligence estimates to Congress;
- Establishment of 'Alert Channels' to facilitate the supply of unreported information directly to the APB – if necessary, outside the usual chains of information flow.<sup>84</sup>

Although the realist scholar Stephen Walt complained that the APB would push the US towards more foreign entanglements, the first six months of the Board's life suggests that the larger challenge may be in mainstreaming its atrocity prevention goals within the relevant departments so that this 'top-down' approach succeeds in changing practice at the working level.<sup>85</sup> These concerns notwithstanding, US efforts to incorporate atrocity prevention into national policy provide a model that others might consider adapting to their own circumstances.

### *Latin American Network for Genocide and Mass Atrocities Prevention*

In April 2012, the Auschwitz Institute for Peace and Reconciliation (AIPR) established the Latin American Network for Genocide and Mass Atrocities Prevention in cooperation with Argentina's Ministry of Foreign Affairs and Ministry of Justice, Security and Human Rights. The Network has eighteen member governments<sup>86</sup> and 'was conceived as a capacity-building mechanism for the region, as well as a forum to support the development of more effective policy to prevent genocide and other mass atrocities'. Its members are expected to appoint a national focal point to 'coordinate policy and share information' with each other. The AIPR will develop a training curriculum that will be used, when approved by the member governments, to train selected officials on the prevention of genocide and mass atrocities.<sup>87</sup>

### *Civil society*

Civil society groups fulfil a number of critically important functions with respect to RtoP. Indeed, it is difficult to imagine that the concept would have travelled so far, so quickly, without the work of these organisations. Among other things, civil society groups have:

- Facilitated dialogue and consensus building;
- Raised awareness of RtoP through education, training and outreach;
- Introduced dialogue about RtoP to almost every part of the world;
- Contributed to RtoP's conceptual development through research and dialogue;
- Contributed to the strengthening of capacity for prevention;
- Advocated policy to ensure that governments deliver on their commitments;
- Monitored compliance with international legal obligations;
- Identified and monitored situations of risk;
- Facilitated community-based approaches to prevention and protection.

84 Documented in *The White House, Fact Sheet: A Comprehensive Strategy and New Tools to Prevent and Respond to Atrocities*, Office of the Press Secretary, 23 April 2012.

85 Stephen M. Walt, 'Is the Atrocity Prevention Board a Good Idea?', *Foreign Policy*, 24 April 2012. John Bradshaw complained that 'so far the APB has been a top-down initiative that lacks full acceptance by rank-and-file officials in the State Department and elsewhere'. See John Bradshaw, 'Converting Rhetoric into Reality on Atrocity Prevention', *Huffington Post*, 16 October 2012.

86 Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

87 Information and quotes from 'Auschwitz Institute Launches Network for Genocide Prevention', press release, 3 April 2012.

In this section, I will briefly examine the work of a handful of organisations that are specifically dedicated to working on RtoP. This is by no means an exhaustive list and other groups, such as the Stanley Foundation, Oxfam International, NUPI, the Kofi Annan International Peace Training Centre, the Centre for Non-Traditional Security, the International Peace Institute, the Oxford Institute for Ethics, Law and Armed Conflict (ELAC), Hans Seidel Foundation, South African Institute for International Affairs, Institute for Security Studies (South Africa), and the UN Associations of Canada, Denmark, Sweden, the UK and the US have done much to advance thinking and practice in the area.

*International Coalition on RtoP:* There has been an explosion of interest in RtoP among civil society groups and many of the key innovations and developments have come from this sector. It is important to acknowledge the important role played by civil society even prior to the adoption of RtoP in 2005. Soon after publication of the ICISS report, the World Federalist Movement-Institute for Global Policy (WFM-IGP) began work soliciting feedback and generating dialogue on the nascent concept. This project developed into the 'Responsibility to Protect—Engaging Civil Society' project led by WFM-IGP and Oxfam, which played an important role in the lead up to the 2005 agreement and immediately afterwards. In 2009, this project developed into

the International Coalition on RtoP, a civil society coalition comprising around 50 members (as of December 2012) – including the UNA-UK – and a New York-based secretariat managed by WFM-IGP. The coalition aims to deepen the global consensus on RtoP, push governments to strengthen their capacity to prevent and respond effectively to these crimes, build understanding of the principle, and mobilise NGOs to advocate for action to save lives threatened by one or more of the crimes. It has organised or partnered in events in every part of the world and has done much to extend dialogue and consensus on RtoP.

*Global Centre for RtoP:* Based in New York, the Global Centre aims to build understanding of RtoP, advocate action in relation to specific crises, recommend strategies for capacity-building and work with partners to ‘operationalise’ the concept. The Centre has a high profile advisory board, chaired by Gareth Evans and Mohammed Sahnoun (co-chairs of the ICISS) and network of patrons, which includes Kofi Annan, Jan Eliasson, and Desmond Tutu. The Centre’s work focuses on five areas: (1) facilitating dialogue through policy forums focusing on the role of emerging powers and regional organisations; (2) assessing and monitoring situations containing the risk of genocide, war crimes, ethnic cleansing and crimes against humanity (‘R2P Monitor’); (3) administering and supporting the RtoP focal points initiative described earlier; (4) hosting and supporting an annual ministerial meeting on RtoP; (5) engaging with the UN’s work on implementation of RtoP.

*Asia Pacific Centre for RtoP:* Based in Brisbane, Australia, and established in 2007, the Asia Pacific Centre remains the only regional centre dedicated exclusively to RtoP. The centre conducts research and policy outreach designed to extend and deepen consensus on RtoP in the Asia Pacific region. Thus far, its key contributions have been in supporting and co-chairing the successful Council for Security Cooperation in the Asia Pacific Study Group on RtoP, administering the Australian government’s RtoP fund, which supported RtoP initiatives in the Pacific, Southeast Asia and elsewhere, and engaging civil society groups and government officials in Indonesia, Cambodia, the Philippines, and Thailand. This included translating core documents into local languages. In its second phase, which will begin in 2013, the Centre will focus on four main areas: (1) the conceptual and doctrinal development of RtoP; (2) the prevention of mass sexual and gender-based violence; (3) a High Level Panel on RtoP and ASEAN; and (4) a programme of regional diplomacy and training.

*Task Force on the EU Prevention of Mass Atrocities:* In January 2012, the Foundation for the International Prevention of Genocide and Mass Atrocities established a task force chaired by professors Christoph Meyer (KCL) and Karen Smith (LSE) to contribute to the EU’s capacity to prevent mass atrocities by examining the organisation’s current capacities in that area and making proposals for their further strengthening. The key areas under consideration are: (1) early warning, intelligence and the verification of atrocities; (2) promoting security and human rights in countries under stress; (3) preventive diplomacy; (4) responding to atrocities; (5) international cooperation. The task force’s report is due in early 2013 and could be used to stimulate new thinking about steps that the EU could take to strengthen its capacity to prevent mass atrocities.

*Montreal Institute for Genocide and Human Rights Studies (MIGS):* Based at Concordia University in Montreal, MIGS has developed a number of programmes directly relevant to RtoP. Key members include Romeo Dallaire (force commander of the United Nations Assistance Mission for Rwanda (UNAMIR), 1993–1994, and currently a Canadian Senator), Frank Chalk (one of the pioneers of Genocide Studies), and Kyle Matthews. Its principal projects are: (1) Will to Intervene: a series of follow up studies focused on the political will of states to act to fulfil their responsibility to protect in situations of genocide and mass atrocities; (2) Genocide Prevention Group: providing research and support for the Canadian parliament’s genocide prevention group; (3) Media Monitoring: monitoring the media in twenty countries for signs connected to the risk of genocide and mass atrocities; (4) Life Stories: a collection of oral histories from genocide and atrocity survivors.

*Auschwitz Institute for Peace and Reconciliation (AIPR):*<sup>88</sup> Launched in 2008, the AIPR focuses on fostering research and training government officials in the prevention of genocide and mass atrocities. It achieves this mainly through a series of research workshops and training

88 For information on the organisations discussed here, visit the following websites, respectively: [www.responsibilitytoprotect.org](http://www.responsibilitytoprotect.org); [www.globalr2p.org](http://www.globalr2p.org); [www.r2pasiapacific.org](http://www.r2pasiapacific.org); [www.massatrocitiestaskforce.eu](http://www.massatrocitiestaskforce.eu); <http://migs.concordia.ca>; [www.auschwitzinstitute.org](http://www.auschwitzinstitute.org)

seminars held at the former Auschwitz concentration camp and elsewhere, but it has also been instrumental in establishing the Latin American Network for Genocide Prevention (above).

### Individuals

**“Although an under-developed field compared to that of Member States and civil society, there is a growing understanding that individuals can play a role in implementing RtoP”**

Although an under-developed field compared to that of Member States and civil society, there is a growing understanding that individuals can play a role in implementing RtoP. In his 2009 Report, the Secretary-General observed that: ‘one of the keys to preventing small crimes from becoming large ones, as well as to ending such affronts to human dignity altogether, is to foster individual responsibility. Even in the worst genocide, there are ordinary people who refuse to be complicit in the collective evil, who display the values, the independence and the will to say no to those who would plunge their societies into cauldrons of cruelty, injustice, hatred and violence. We need to do more to recognise their courage and to learn from their actions’.<sup>89</sup> After stepping down from his post, the Secretary-General’s first Special Adviser on RtoP, Edward Luck, indicated that he intended to dedicate his attention to this individual responsibility to protect, a sign that this might get more attention in coming years and months. A civil society group, *individual Responsibility to Protect*<sup>90</sup> was established to encourage individuals to pledge themselves to RtoP and generate ideas about how individuals might contribute.

### Summary

In addition to the UN and the work of regional and sub-regional arrangements, there has been a proliferation of networks and agencies working on RtoP, including several that work with Member States and many more that focus on civil society. The result of all this is heightened interaction and dialogue on critical issues, increased global awareness and shared understanding of RtoP, a greater recognition of different perspectives on the principle, and moves on a variety of fronts to translate RtoP into practice. The proliferation of mechanisms has raised concerns in some quarters about the potential for duplication and calls for more dialogue between initiatives. Careful thought is needed about the different yet complimentary roles of these initiatives. In particular, consideration may need to be given to the relationship between the focal points initiative and the Group of Friends, with emphasis perhaps being given to the latter’s role as a strategic supporter of RtoP and the former’s focus on atrocity prevention in national policy. Attention could also be paid to the relationship between the New York-led focal points initiative and other focal points-based initiatives, such as the Latin American network. In general terms, though, the proliferation of complimentary initiatives should be embraced and not regarded as a cause for concern because individual initiatives speak to specific needs, contexts and interests, the absence of hierarchy and hegemony contributes to flexibility, diversity and diffused ownership, and because the proliferation of initiatives demonstrates and deepens the world’s growing commitment to RtoP.

<sup>89</sup> *Implementing the Responsibility to Protect*, para. 59.

<sup>90</sup> Visit [www.ir2p.org](http://www.ir2p.org)

## Key challenges and recommendations: Confronting the risks of relevance

RtoP has become central to the way in which the international community perceives and responds to crises relating to genocide, war crimes, ethnic cleansing and crimes against humanity. This can be seen not just by looking at when the principle RtoP is directly invoked but also by noting that the protection of populations from atrocity crimes has become a core priority for the international community.<sup>91</sup> Today, the legitimacy of the United Nations rests largely on its capacity to protect people from atrocity crimes.<sup>92</sup> In the past few years, many UN entities have become actively engaged in RtoP issues, including the Security Council, the General Assembly, the Human Rights Council, the Office of the High Commissioner for Human Rights, the Office of Legal Affairs and, of course, the Joint Office for the Prevention of Genocide and RtoP.

Because there is no single blueprint for action that applies equally in every situation, RtoP has to be implemented on a case-by-case basis. As the principle has come into regular diplomatic use, it has inevitably inspired controversies and debates principally because Member States have sometimes disagreed on the most appropriate ways of protecting vulnerable populations. Debate amongst Member States is thus no longer primarily on the merits, content and scope of RtoP but on the most appropriate means of implementation. What RtoP is facing, therefore, is what Edward Luck has called ‘the risks of relevance’.<sup>93</sup> The principal challenge today is that of finding the most appropriate policies to realise RtoP’s goals in inherently difficult and complex situations and of building international consensus around them. This section identifies five key challenges that will have to be met if RtoP is to overcome these ‘risks of relevance’ and identifies pathways for moving forward.

### Deepening the engagement of Member States and Regional/Subregional Arrangements

The first, and perhaps most important, challenge is to deepen the engagement of Member States and regional and sub-regional arrangements with the implementation of RtoP.

The emergence and deepening of international consensus about RtoP was due, in no small part, to the detailed consultation with Member States undertaken by Edward Luck. Having established a global consensus on the value, meaning and scope of the principle, the challenge now is to move Member States’ consideration of RtoP from the rhetorical to the practical. In the past few years, a number of concerns have been expressed about the relative shallowness of the international community’s engagement with RtoP. On the one hand, this relates to on going conceptual, political and institutional engagement. In particular, there are concerns that the General Assembly’s principal mode of engagement (an annual day-long interactive dialogue in response to a Secretary-General’s report) is incapable of fostering detailed consideration of specific implementation matters or of contributing to the establishment of a concrete action plan for implementation. Similar concerns have been expressed in relation to the Group of Friends, the Focal Points Network and the Annual Ministerial Meeting. In addition, civil society actors and others continue to find that whilst Permanent Missions in New York may be well-versed on RtoP, within national capitals and public discourse there remain highly variable levels of understanding about RtoP, which facilitates the perpetuation of myths about the principle’s

<sup>91</sup> It was not always thus. I have recounted the recent history of civilian immunity in Alex J. Bellamy, *Massacres and Morality: Mass Atrocities in an Age of Civilian Immunity* (Oxford: Oxford University Press, 2012).

<sup>92</sup> Central thesis of Siobhan Wills, *Protecting Civilians* (Oxford: Oxford University Press, 2009).

<sup>93</sup> This was the title of a talk Luck gave at Princeton University, on 28 April 2011.

putative relationship with unauthorised armed intervention, regime change, Western hegemony and neo-colonialism. On the other hand, the 2012 Petrie Report on the UN's Actions in Sri Lanka found serious problems with the way in which the UN engaged with Member States in respect to a serious protection crisis, noting that the organisation failed to provide Member States with information about the threat to the civilian population and did little to engage interested Member States in policy development and advocacy.

Initiatives to inspire deeper engagement on the conceptual, political and institutional aspects of RtoP may include:

- The appointment of a new Special Adviser on RtoP within the Office on Genocide Prevention and RtoP. Among the Special Adviser's principal tasks would be on going engagement with Member States on the conceptual, political and institutional development of RtoP.
- The development of innovative ways of deepening Member States' engagement with, and consideration of, aspects of the Secretary-General's strategy for implementation. Potential elements include:
  - Increasing the time given to dialogue within the General Assembly. Some Member States have informally suggested that the annual dialogue should run over two-days; another that there should be two dialogue sessions each year – one focused on the Secretary-General's report and the other focused on a specific implementation matter.
  - Heightened working level engagement among Member States. One way of fostering more detailed consideration of specific matters is to increase working level activities among the Permanent Missions. Whilst the General Assembly contains its own mechanisms for achieving this effect, in the first instance it might be better to make use of informal convening opportunities provided by civil society bodies based in New York.
  - Articulation of detailed strategies and actionable items in areas where there is consensus among the Member States. Such areas may include modest items such as progress on strengthening RtoP-relevant partnerships with regional and sub-regional arrangements or more ambitious agendas such as the articulation of a strategy for preventing the four crimes.
- Deepening engagement with regional and sub-regional arrangements through training, capacity building, and information sharing. At the 2011 informal interactive dialogue of the General Assembly, a consensus emerged about the pivotal role of regional and sub-regional arrangements in the implementation of RtoP. This should inspire renewed focus on engaging with regional and sub-regional arrangements on practical matters relating to the implementation of RtoP. This might be the most practicable medium term approach for encouraging Member States to incorporate RtoP goals into their own practices and policies because working through regional and sub-regional arrangements helps to ensure the 'localisation' of RtoP into regional settings and creates communities of practice amongst officials that have experience of mutual cooperation.
- Renewed focus on the 'Group of Friends', directed towards encouraging the group to develop a programme of work and deepen its engagement with the UN. One potential option for the group may be to extend its working level activities.
- Continued progress on the national Focal Points initiative and annual ministerial meeting and exploration of ways of deepening these processes.
- Engaging national parliaments and parliamentarians on matters relating to RtoP. In October 2012, the Inter-Parliamentary Union held an interactive dialogue on RtoP. The speakers agreed that national parliaments had the potential to play a significant role in the development of RtoP, especially in relation to: communicating the principle and its significance to national publics; holding governments to account in relation to their own primary responsibility to protect; scrutinising foreign, defence, aid and trade policies through an 'RtoP lens'; and communicating concerns about RtoP and its implementation (whether raised by parliamentarians or the public) to national governments, the UN or other international bodies.<sup>94</sup> Despite the centrality of parliaments and parliamentarians – and their capacity to bridge the gaps between governments and publics – relatively little attention has been paid to this dimension.
- Deepening engagement with civil society. As observed earlier, civil society groups have played a number of critical roles in relation to the advancement of RtoP. Most notably, they have facilitated the widening and deepening of global engagement with, and support for,

94 Interactive Panel Discussion on 'The Responsibility to Protect: The Role of Parliaments in Safeguarding Civilians' Lives', 127th Inter-Parliamentary Union Assembly, Quebec, Canada, 23 October 2012.

the principle. If global support for RtoP is to be maintained it is imperative that this work continue and, if possible, be expanded.

In addition to strengthening engagement on the political, conceptual and institutional aspects of RtoP, the Petrie Report on the UN's actions in Sri Lanka found an urgent need to strengthen the way in which the UN engaged with Member States in crisis situations.

The provision of timely and accurate information about situations involving the potential commission of genocide, war crimes, ethnic cleansing and crimes against humanity can encourage Member States to become actively seized of the situation and can provide the basis for the development of response options. Civil society groups also reported that information sharing is critically important for building advocacy.<sup>95</sup> During the crisis in Sri Lanka, Member States, including non-permanent members of the Security Council, and some UN officials, including members of the Executive Office of the Secretary-General, complained that they received inadequate information about the situation. Some Member States and UN officials reported that at the peak of the crisis they were receiving almost no information from the UN and relied on reports from NGOs such as Human Rights Watch.

The failure to provide information reflected a broader absence of strategy on the part of the UN with regards to engaging Member States either to seek general support for the UN's action in Sri Lanka or their support for specific measures. This in part reflected differences of opinion within the Secretariat and in part judgments about the positions of Member States and the likelihood of unity in the Security Council and Human Rights Council. Echoing one of the central findings of the so-called Brahimi Report on UN peacekeeping, the Petrie Report concluded that the Secretariat's engagements with Member States, on Sri Lanka, 'were heavily influenced by what it perceived Member States wanted to hear, rather than by what Member States needed to know if they were to respond'.<sup>96</sup> Of course, this was itself partly attributable to the failure of Member States to give direction and purpose to the UN's engagement with Sri Lanka.<sup>97</sup>

The Petrie Report argued that early and full consensus among Member States is critical to improving protection in crisis situations. Whilst the UN Secretariat's capacity to help forge such a consensus is obviously limited, it could do more to ensure that Member States are provided with information about events on the ground and the parties' compliance with their legal obligations (there is evidence that information about atrocity crimes increases the pressure on Member States to take action)<sup>98</sup> and could also introduce new avenues for engaging with interested Member States.

In relation to *the provision of earlier and better information to Member States*, there is a clear imperative for the UN to collect and pass on information about the number and source of civilian casualties in any given situation involving armed conflict or one-sided violence, and to provide information and analysis about potential violations of international human rights and humanitarian law. It is the primary responsibility of the Office of the High Commissioner for Human Rights (OHCHR) to provide such information as it relates to gross violations of human rights, though the Office for Genocide Prevention and RtoP also has a mandate to collect information on human rights violations that might give rise to genocide or other crimes associated with RtoP. The collection and dissemination of basic information relating to civilian casualties ought to be made standard practice within the UN and a dual responsibility of OHCHR and Office for Genocide Prevention and RtoP. This should include the development and dissemination of a standard methodology for civilian casualty estimates.

95 Report of the Internal Review Panel on the UN's Actions in Sri Lanka, 2012, Annex III, para. 153.

96 *Ibid.*, para. 77.

97 *Ibid.*, para. 79.

98 One of the key findings in Bellamy, *Massacres and Morality*.

Generating, analysing and disseminating basic information about civilian casualties in a verifiable and systematic fashion would provide vital information to concerned Member States and help facilitate accurate media reporting on events. Whilst this in itself might encourage some Member States to develop policy responses and court consensus in the UN's political bodies, it may not be sufficient and is unlikely, by itself, to translate into political support for specific UN actions. Whilst recognising that the UN Secretariat has limited influence on decision-making in these political bodies, the Petrie Report argued that it should be more innovative in engaging Member States. Early and effective engagement is necessary in order to build political support for the UN. Irrespective of whether this is subsequently translated into timely and decisive political action through the Security Council or some other body, political support strengthens the UN's position in relation to recalcitrant parties. One option, proposed by the Panel, was the articulation of new models of engagement (such as limited low impact civilian political and human rights missions) that impact less upon the sovereignty concerns of Member States.

The Petrie Report also called specifically for the Secretary-General to 'use RtoP as a 'convening' initiative to invite Member States to receive and consider information on the human rights aspects of a relevant crisis situation'.<sup>99</sup> This is appropriate since Member States have committed both to the prevention of the four crimes and violations relating to RtoP and to responding to them in a 'timely and decisive manner'. The commitment of Member States to work through the UN to achieve these goals creates a mandate for the UN to keep Member States informed about situations that relate to these crimes and to facilitate discussion about options for pursuing RtoP's goals in a given situation. Where the situation involves the likely occurrence of one or more of the four crimes and violations associated with RtoP, this is a function that is best fulfilled by the Office for Genocide Prevention and RtoP, after consultation with other UN entities. In such situations, the office might facilitate the establishment of *ad hoc* and informal groups of interested states that may be prepared to receive informal briefings on particular situations, discuss policy options, and advocate for the adoption of certain courses of action.<sup>100</sup> Similarly, the UN might look to the Group of Friends of RtoP or the network of RtoP focal points as potential recipients of informal briefings about emerging and current situations and available policy options. Alternatively, it may choose to convene open briefings or private informal briefings with Member States as circumstances dictate.

Finally, the Petrie Report suggested that new technology be embraced to facilitate the briefing of Member States directly from the field. This could prove an exceptionally useful avenue, especially if it allows Member States to pose questions directly to officials in the field and to receive first-hand information in an informal setting.

### Mainstreaming RtoP into the work of the UN

In his 2009 report on *Implementing the Responsibility to Protect*, UN Secretary-General Ban Ki-moon called for the Responsibility to Protect (RtoP) principle to be 'mainstreamed' throughout the UN system. He wrote:

*'The United Nations and its range of agencies, funds and programmes have in place critical resources, activities and field operations that are already making important contributions to the elimination of these man-made scourges. They could do that much more effectively if goals relating to the responsibility to protect, including the protection of refugees and the internally displaced, were mainstreamed among their priorities, whether in the areas of human rights, humanitarian affairs, peacekeeping, peacebuilding, political affairs or development. Each of these areas of United Nations activity has much to bring to the common effort. The emphasis of the present report is therefore on forging a common strategy rather than on proposing costly new programmes or radically new approaches'.<sup>101</sup>*

By 'mainstreaming', the Secretary-General meant that goals related to RtoP (including the protection of refugees and the internally displaced) should be adopted as one of the priorities of the 'United Nations and its range of agencies, funds and programmes'. This should be done 'in the areas of human rights, humanitarian affairs, peacekeeping, peacebuilding, political affairs [and] development'. Thus, the aim of mainstreaming is not to create new programmes or

99 Report of the Internal Review Panel, para. 87 (e4).

100 Internal Review Panel on the UN's Actions in Sri Lanka, para. 85.

101 *Implementing the Responsibility to Protect*, para. 68.

bureaucracies, but to ensure that the UN's existing work contributes as effectively as possible to the achievement of RtoP's goals. Successful mainstreaming is vital because if RtoP is to become a 'living reality', then it must become part of the daily working practice of organisations that address security, human rights and humanitarian affairs.

Mainstreaming would add value to the UN's existing work and strengthen the organisation's capacity to prevent genocide, war crimes, ethnic cleansing and crimes against humanity, and their incitement, and protect vulnerable populations in four principal ways:

1. *Sharper analysis and better use of information already collected by the UN system.* Underlying risks and sources of imminent danger would be identified at an earlier stage, opening a space for the UN system to mobilise its resources and those of its partners to assist in their mitigation. Heightened sensitivity will also help UN entities identify any potential unintended consequences of their work that might heighten the risk of genocide and mass atrocities.
2. *Improved decision-making.* (1) By ensuring that as much relevant information as possible is passed from the field to UN Headquarters in a timely fashion; (2) by deepening the pool of information and range of relevant perspectives that can be brought to bear to inform decision-making; (3) by increasing the range of options that are available to decision-makers; (4) by facilitating cooperation between UN entities. Mainstreaming will also help identify gaps and new opportunities for partnership and collaboration that will allow individual entities to better pursue RtoP goals and those contained in their own mandates.
3. *More effective policy.* Mainstreaming will help to build institutional knowledge about which policies, programs or activities have positive effects in different sorts of situations, appropriate combinations of policies and those that are best avoided. This can be translated into improved training, which would, in turn, further strengthen the atrocity prevention lens and information sharing elements.
4. *Build on existing strengths.* Mainstreaming will help identify where the UN has particular strengths in relation to mass atrocity prevention and, where there are gaps, might require augmentation. The focus for mainstreaming should be on the preventive and protective effects of work that the UN already does.

**“Mainstreaming will help identify where the UN has particular strengths in relation to mass atrocity prevention and, where there are gaps, might require augmentation”**

The building blocks needed for mainstreaming have been established through the Office for Genocide Prevention and RtoP, the articulation of a framework of analysis to guide situational assessment, the convening of a UN system 'contact group' on RtoP, and the Office's participation in the UN Framework Team. In January 2012 the Secretary-General noted that he had advised his Special Adviser, Edward Luck, to 'lead a system-wide assessment of how the UN can best employ the tools given to us under the Charter – and specifically Chapters VI, VII, and VIII'.<sup>102</sup> However, there remain significant concerns within the UN system about the conceptual relationship between RtoP and other concepts and principles (such as 'protection of civilians', international humanitarian and human rights law, peacekeeping principles etc.), the principle's operational utility, and the relationship between RtoP and the UN's existing coordinating frameworks.<sup>103</sup>

The Secretary-General has implicitly identified three core principles that would go a long way towards responding to some of these concerns. First, mainstreaming of RtoP should be done in a manner consistent with existing principles and operating procedures. Second, it should be recognised that the UN system is already pursuing RtoP goals. Mainstreaming RtoP is not, therefore, concerned with establishing new programmes or layers of bureaucracy, but about understanding and augmenting the work already done by the UN system. Third, individual entities themselves should decide how best to mainstream RtoP goals into their work. The 2012 Internal Review of the UN's Actions in Sri Lanka added further fresh insights. It also helped open a pathway for the mainstreaming of RtoP through the establishment of a high-level committee led by Deputy-Secretary-General Jan Eliasson, which has been charged with reviewing the report's recommendations and proposing pathways to implementation. The implementation of these ideas within the UN system is the principal means through which the Secretary-General can build a lasting organisational legacy for RtoP within the UN system.

102 Ban Ki-moon, 'Address to the Stanley Foundation Conference on the Responsibility to Protect', Barclay Intercontinental Hotel, New York, 18 January 2012.

103 Some of these concerns are described in detail in Alex J. Bellamy, 'Mainstreaming the Responsibility to Protect in the United Nations', *Global Responsibility to Protect*, 5 (2) 2013.

### Making prevention a living reality

There have been many generic calls for a focus on the prevention of genocide and mass atrocities, and Member States of all stripes have repeatedly voiced their support for prevention. What is needed now is a shift from rhetoric to firm policies and strategies. A UN strategy for prevention might serve as a model that others, such as regional and subregional arrangements might use. Operationalising strategies for prevention, however, are notoriously difficult, especially within the UN context. Despite its rhetorical appeal, it is difficult to secure additional resources for prevention since success should mean that nothing happens. There are also major overlaps between prevention and other mandates and activities. As a result, prevention is difficult to delineate in practice.<sup>104</sup> Thus, whilst a strategy for prevention is urgently needed, such a strategy would need to be carefully thought through and implemented only after extensive consultation.

During the 2012 dialogue, three themes were highlighted in relation to prevention. First, the EU raised the question of how to deliver on the UN's commitment to prevention, especially the further development of early warning, assessment and action; mediation and dialogue; and preventive diplomacy. South Africa offered an answer by calling for an integrated strategy for prevention. Second, Nigeria raised questions about the strengthening of prevention partnerships between the UN and regional and sub-regional arrangements and the provision of capacity building assistance to the latter. Third, New Zealand raised the question of late-stage prevention and asked how resistance to determined international action might be overcome when the warning signs of imminent genocide and mass atrocities emerge.

Because it is central to RtoP and enjoys widespread support among Member States, the development of a strategy for prevention ought to become a priority for the UN Secretariat and a key aspect of the General Assembly's on going consideration of RtoP. A UN strategy for preventing the four crimes could entail eight core elements, each of which would of course require further consultation and elaboration:

1. A shared understanding of the factors that can increase the risk of genocide, war crimes, ethnic cleansing and crimes against humanity; factors that mitigate these risks; the instruments that are at the international community's disposal for addressing these issues; and the manner in which they might be used to support the building of relevant capacities.
2. Assessment of the work that the UN system, its partners and bilateral donors, already undertake which contributes to the mitigation of these risks; areas where there are gaps in the relevant capabilities (including capacity gaps and coordination gaps); and the development of a programme of work designed to close those gaps.
3. Refinement and use of the convening authority granted in 2010, which permits the Office on Genocide Prevention and RtoP to convene senior officials from across the UN system in order to develop policy advice for the Secretary-General in situations involving the risk of genocide, war crimes, ethnic cleansing or crimes against humanity. This authority provides a mechanism for ensuring coherent UN responses to emerging RtoP related crises, but has yet to be used, and has raised concerns within the system, about how it should be used and the bureaucratic arrangements underlying it. These concerns could be addressed by the development of detailed terms of reference in partnership with stakeholders to clarify how the convening authority ought to operate, and the establishment of a partnership between the Office on Genocide Prevention and RtoP and the OHCHR that would enable co-convening.
4. The mainstreaming of RtoP's prevention goals across the UN system (above).
5. The strengthening and regularising of assistance to Member States, in partnership with regional and sub-regional arrangements, bilateral donors and non-governmental actors, aimed at helping them achieve their primary responsibility to protect, as set out in the second pillar of RtoP.
6. The strengthening of the UN Secretariat's support for early decision-making and preventive action through (a) early warning and assessment, (b) impartial, consistent and transparent analysis of situations and policy options, (c) provision of information about the situation, (d) provision of other advice or support as requested.
7. The strengthening of partnerships between the UN and regional and sub-regional arrangements especially in relation to (a) strengthening the preventive capacity of regional and sub-regional arrangements; (b) the two-way sharing of analysis and assessment; and

<sup>104</sup> Writing on conflict prevention more generally, Edward Luck described this as the 'dilemma of comprehensiveness'. See Edward C. Luck, 'Prevention: Theory and Practice', in Fen Osler Hampson and David Malone (eds.), *From Reaction to Conflict Prevention: Opportunities for the UN System* (Boulder, CO: Lynne Rienner, 2001), p. 256.

- (c) the establishment of “anticipatory” relationships in advance of any crisis to facilitate the coordination of preventive action.
8. The development of a strategy for engaging in partnerships for prevention with civil society organisations.

An overall strategy along these lines might be set out in a future report of the Secretary-General on RtoP, with individual components developed in more detail either in subsequent reports or other forums. Because the whole strategy would aim to change the way in which the international community practices prevention in relation to the four RtoP crimes, periodic reports assessing progress made and issues yet to be resolved would be appropriate. Although this would be a large and difficult task, the support for prevention evident in the General Assembly suggests that the time is right to undertake it.

### Learning lessons from enforcement

Because there is no blueprint for how to implement RtoP in different situations, because every case is different and what works in one situation may be unlikely to in another, there is a need to learn from past experience to ensure that responses are individually tailored to the situation. Clearly, the debates sparked by the NATO-led intervention in Libya and UN/French use of force in Cote d'Ivoire in 2011 suggest an urgent need to learn lessons from those cases and contemplate new future practices. Bearing in mind, though, that these controversies have not prevented the Security Council from referring to RtoP, it seems clear that the criticism of what happened in Libya and Cote d'Ivoire was not directed at the principle itself but at the way in which it was implemented. What remains controversial is not RtoP, or even the idea that the international community should become involved in crises involving the commission or potential commission of genocide and mass atrocities, but rather the use of force.

Reflecting on the controversies over Libya and Cote d'Ivoire, the UN Secretary-General noted:

*This is a critical moment in the life of the Responsibility to Protect. In the six short years since its endorsement by the World Summit, this doctrine has gone from crawling to walking to running ... As my Special Adviser on these issues is fond of saying, the Responsibility to Protect faces the risks of relevance. However, I would far prefer the growing pains of an idea whose time has come to sterile debates about principles that are never put into practice. The world has seen too much of the latter and too little of the former.<sup>105</sup>*

One useful way of thinking about the lessons that need to be learnt in the wake of Libya and Cote d'Ivoire can be found in some aspects of the concept of ‘responsibility while protecting’ championed by Brazil. The concept was proposed first by Brazilian President Dilma Rousseff at the September 2011 plenary of the General Assembly. Towards the end of 2011, the Brazilian Permanent Mission to the UN circulated a note outlining the concept in more detail and co-hosted an informal dialogue in February 2012. The initiative was widely welcomed, including by the Secretary-General, for providing fresh ideas to stimulate discussion about how to implement those most controversial aspects of RtoP that relate to coercion and the use of force. There are three particularly important elements of this concept:

1. *Strengthen prevention* (see above). ‘Responsibility while protecting’ calls for a renewed focus on prevention. This is in keeping with RtoP, which includes a specific pledge to prevent the crimes of genocide, war crimes, ethnic cleansing and crimes against humanity. A stronger focus on prevention requires a ‘grand bargain’ between Member States. On the one hand, those in the West and elsewhere that occasionally champion intervention should commit to providing real resources to strengthen preventive capacities and facilitate the development of strategies for prevention. On the other hand, Member States that are sceptical about coercive intervention need to recognise that the best way of avoiding intervention is to prevent crises from erupting or escalating in the first place. Member States need to be willing to act earlier to address imminent crises and to allow the international community to respond earlier to crises through diplomatic, humanitarian and other peaceful means, as agreed in 2005. It makes no sense for Member States to

<sup>105</sup> UN Secretary-General, Ban Ki-moon, ‘Remarks at Breakfast Roundtable with Foreign Ministers on “Responsibility to Protect: Responding to Threats of Imminent Atrocities”’, UN Headquarters, 23 September 2011.

**“First, the UN Charter gives to the Security Council wide flexibility in terms of the actions it can take in pursuit of its primary responsibility for international peace and security and deliberately made the Council self-regulating”**

resist early action and then complain when situations get so bad that they require external intervention. Overall, though, it needs to be recognised that prevention and response are closely connected.

2. *Accountability.* Objections to the NATO-led intervention in Libya focused on the complaint that NATO exceeded its mandate by refusing to negotiate with the Qaddafi regime and by pursuing regime change and then failed to properly report its actions to the Security Council. This has led to calls for strengthened procedures to allow the Security Council to hold states that act on its mandate to account. However, although there is clear merit in the argument for stronger accountability, there are problems with Brazil’s initial proposal for special mechanisms to govern RtoP enforcement operations. First, the UN Charter gives to the Security Council wide flexibility in terms of the actions it can take in pursuit of its primary responsibility for international peace and security and deliberately made the Council self-regulating. This has allowed the Council to be innovative when it has needed to be and has helped the Council find consensus when that has proven difficult. New mechanisms would require a change to the Charter, which could have unintended negative consequences. Second, the Council’s responsibility covers international peace and security and not just RtoP cases. It would make no practical sense to have one set of rules for some Chapter VII resolutions and another set for others. Third, the UN has past bad experience with excessive political interference in military matters. The experience of the United Nations Protection Force (UNPROFOR) in Bosnia is testament to what can happen when the Security Council tries to micro-manage military operations. Fourth, excessive political requirements might inhibit states from implementing Council mandates by pushing them to the view that they cannot translate a resolution into a viable military strategy that they can sell to their publics. This would reduce implementation of Council mandates, weakening the Council’s credibility and legitimacy, and inhibiting protection.

These problems should not mean that nothing be done to improve accountability. Instead of a new layer of procedural rules, the Security Council should make use of the powers it already has by writing specific accountability measures into its resolutions. The Council has already developed a strong repertoire of accountability measures that might be appropriate. The challenge should be to inform non-permanent members especially about what these measures are and when they might be employed. Such measures include:

- *Sunset clauses* – authorisations could be time limited, forcing states acting on mandates to return to the Council for a renewal. This is standard practice for UN peacekeeping operations and helps build an accountability loop.
  - *Specific reporting requirements* – the Council can, and does, require reports from those acting on its mandates. In the case of Libya, Resolution 1973 required that implementing states report their activities to the Secretary-General. In future, the Council might also require that the Secretary-General brief it on these reports or demand that implementing states report directly to the Council.
  - *Specific limitations* – the Council might specifically rule out certain courses of action – for example, Resolution 1973 forbade the deployment of ground troops as an occupying force in Libya.
  - *Direct action* – the Council might directly mandate or require diplomatic activity, the dispatch of envoys or acceptance of negotiated agreements.
  - *Information gathering* – to supplement or replace reporting from implementing states, the Council might mandate its own fact-finding mission to gather information about the implementation of its mandates.
  - Pursuing this route to greater accountability would reduce the likelihood of unintended negative consequences, would allow the tailoring of accountability measures to individual circumstances and would make use of the Security Council’s existing authority under the UN Charter.
3. *Analysis and Assessment.* The third critically important aspect of Brazil’s ‘responsibility while protecting’ concept is its focus on the need for stronger analysis and assessment to drive decision-making on the best responses to situations of actual or imminent genocide and mass atrocities. The potential pitfall of the calls for judicious analysis is that the process

could be politicised and used as an excuse for inaction. To avoid this, the task should be given to the UN Secretariat – an independent service that works for all Member States. To facilitate this, the Security Council in particular should be encouraged to request and receive briefings from the Secretariat (whether formal and public, or informal and private) on emerging situations, and the options for action. The Secretariat, in turn, needs to be given the resources needed to provide in-depth analysis and assessment. In relation to the specific issue of genocide and mass atrocities, the Office for Genocide Prevention and RtoP would be the most appropriate vehicle within the Secretariat, though its limited size may make it necessary for the office to work with others (especially the Department of Political Affairs and OHCHR) to achieve this goal. Analysis should include detailed information about the situation and the relevant parties, the merits and demerits of different courses of action, the likely costs of various forms of coercive action, and the likely costs and effects of inaction. Much of this information is already generated within the UN system, so the task is primarily one of gathering and analysing existing information. This sort of analysis and assessment can only be provided if Member States ask for it, however. In the past, the UN Secretariat's willingness to provide briefings has far outstripped the willingness of Member States to receive them.

Together, these three propositions – a focus on prevention, strengthened accountability, and enhanced analysis and assessment – offer a realistic and useful way of learning the lessons of Libya and Cote d'Ivoire and improving the management of enforcement operations in ways that offer reassurance to Member States without diminishing operational capability.

### Protecting consensus and effectiveness

The fifth key challenge is to remain engaged in political, conceptual and institutional debates about the principle itself to ensure that whilst modifications are made where needed in order to improve effectiveness and act on lessons learnt, the substance of what was agreed in 2005 is protected. Among the contemporary challenges are:

- A tendency in some quarters to equate RtoP with protection of 'citizens' or 'civilians' from the four crimes rather than the broader term 'populations' agreed in 2005;
- A tendency to equate Pillar III exclusively with the use of force and overlook the fact that it specifically includes 'diplomatic, humanitarian and other peaceful means' under Chapters VI and VIII of the UN Charter, as well as non-military forms of coercion. There is also an associated tendency to suggest that force may be legitimate for RtoP purposes even without Security Council authorisation or host state consent;<sup>106</sup>
- An emerging argument advanced by some governments which holds that the three pillars of RtoP ought to be applied 'sequentially' such that enforcement may only be employed when other measures have been tried and failed. Not only is this inconsistent with what was agreed in 2005, it is also contrary to Article 42 of the UN Charter.<sup>107</sup> The idea was presented in Brazil's concept note on 'responsibility while protecting' (above) but at the 2012 General Assembly dialogue Brazil replaced the notion of 'chronological' sequencing with that of 'logical' sequencing – something that is in keeping with both the UN Charter and RtoP. Some other governments did not make this distinction, however;
- A tendency to conflate RtoP and the 'protection of civilians' agenda;
- Arguments that RtoP is a legal principle rather than a political agreement about implementing existing law;
- Arguments that try to expand RtoP beyond what was agreed in 2005 or that overlook key parts of what was agreed. Commonly overlooked parts of the 2005 agreement include the commitment to strengthen the UN's early warning capacity; the commitment to prevent incitement to genocide and mass atrocities; the specific inclusion of diplomatic, humanitarian and 'other peaceful' means under Pillar III; and the commitment to support the work of the Special Advisor on the Prevention of Genocide.
- Criticisms of 'inconsistent implementation' that conflate the inevitable inconsistency of political bodies (such as the Security Council) with that of the UN Secretariat or other such bodies.

106 For an examination of the issues see Tim Dunne and Nicholas J. Wheeler, 'Operationalising Protective Intervention: Alternative models of Authorisation', in W. Andy Knight and Frazer Egerton (eds.), *Routledge Handbook of the Responsibility to Protect* (London: Routledge, 2012), pp.87-102.

107 Article 42 reads: 'Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations'.

It is important that the 2005 agreement be explained, understood and protected as a common starting point for thought and practice about the protection of populations from genocide and mass atrocities.

## Next steps

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What might Member States and civil society do to support the implementation of RtoP and protect vulnerable populations from genocide and mass atrocities? This concluding section offers some general recommendations about the types of activities and policies that might contribute to the goal of implementing RtoP, which may serve as a guide for considering the contribution of individual Member States or organisations.

### Member States

The responsibility to protect lies first and foremost with Member States. Not only have states pledged to protect their own populations from genocide and mass atrocities, they have also committed themselves to helping and encouraging other states to fulfil their responsibilities and to taking ‘timely and decisive’ action when needed to protect populations. There are, of course, multiple paths that can lead states to fulfilment of their responsibilities and it is unlikely that any two states will adopt identical strategies and policies. This diversity should be embraced because it is imperative that RtoP’s goals are integrated *within* the values, norms, policies and strategies of states and made consistent with those factors. Nonetheless, there are certain generic steps that Member States ought to consider adopting to fulfil their commitment to RtoP.

First, *Member States should consider mainstreaming RtoP’s goals in their domestic and foreign policies.* As in the UN context, mainstreaming involves the incorporation of RtoP’s goals into existing activities, policies and programs. Although its precise character will change from country to country, there are at least two core generic elements:

- Promoting RtoP’s goals in relation to situations involving the actual or imminent commission of genocide and mass atrocities. Member States ought to support early action to prevent the escalation of crises into genocide, war crimes, ethnic cleansing and crimes against humanity and invite and encourage the provision of briefings, including informal briefings, by the UN Secretariat to the UN Security Council and/or other groups of interested states about situations of concern. Member States that consider themselves to be friends of RtoP could also continue to advocate the adoption of RtoP language in Security Council resolutions as this has been critically important to the political, conceptual and practical development of the principle.
- Appointing a national focal point for RtoP or strengthening the role of an already appointed focal point. As noted earlier, although their specific role differs from country to country, national focal points are intended to provide early warning and assessment, coordinate national responses to RtoP related crises, facilitate international cooperation and, where appropriate, lead national efforts fulfil state’s primary responsibility to protect. Where possible, focal points should also strive to cooperate with others through the focal points network. The work of the focal point might include considering the development of a national action plan for implementing RtoP through foreign, aid, and defence policies or a whole-of-government process for sharing information such as that envisaged by the Atrocity Prevention Board in the US.

Second, *Member States should support the political, conceptual and institutional development of the concept through the UN.* Member States should continue to support the work of the UN Office on Genocide Prevention and RtoP including by providing it with additional resources when needed. In light of the preceding analysis, specific areas that may require support include the appointment of a new Special Adviser on RtoP, supporting the provision of resources to the Office through the General Assembly's Fifth Committee, supporting the further development and use of early warning and assessment, encouraging the use and further development of the Secretary-General's convening authority, encouraging and supporting the annual report of the Secretary-General on implementation of RtoP, and encouraging and supporting the mainstreaming of RtoP across the UN system. More generally, they should continue to support the efforts of the UN Secretary-General to implement RtoP, engage positively in the annual interactive dialogue of the General Assembly, and explore and support ways of deepening the General Assembly's engagement.

Third, *Member States should encourage, and participate in, international engagement aimed at strengthening the world's capacity to prevent genocide and mass atrocities and protect vulnerable populations.* Whatever Member States think about individual policies or situations, they have agreed unanimously to work together to prevent genocide and mass atrocities and protect vulnerable populations. To that end, Member States that share the goals and aspirations of RtoP should play a proactive role in the Group of Friends of RtoP and provide assistance to the co-chairs in developing and implementing a work program for the group. They should also play an active role in the annual Ministerial Meeting on RtoP and explore ways of furthering its work and contribution to the implementation of RtoP.

Fourth, *Member States should explore ways in which regional and subregional arrangements might contribute to the achievement of RtoP goals.* As noted earlier, the 2005 agreement on RtoP included roles for regional and subregional arrangements. What is more, experience since 2005 teaches that protection is most effective when the UN and regional and subregional arrangements work closely together. Regional and subregional arrangements can play a number of particularly important roles, such as translating RtoP into regional settings by aligning it with shared regional norms and values, assisting states to build the capacity to fulfil RtoP, helping states to resolve problems before they have the chance to escalate, and providing assistance to the UN as well as other regional groupings. Each regional context is different. In Europe, member states should support and encourage the adoption of RtoP goals by the European Union in its common foreign, security and defence policies. They should also study the recommendations of the Task Force on the EU and implementation of RtoP mentioned earlier and work with others to identify pathways for implementing its recommendations. In Latin America, states should consider participating in the Latin American Network for Genocide Prevention and explore ways of strengthening that network as well as considering the role that the Organisation of American States might play, especially in the field of preventive diplomacy. In East Asia, governments should carefully study the recommendations of the Council for Security Cooperation in the Asia Pacific Study Group on RtoP which called, among other things, for the strengthening of regional capacities for early warning, preventive diplomacy, capacity building and responses.<sup>108</sup> In sub-Saharan Africa, there is an impressive array of institutional mechanisms through which to pursue RtoP goals but more work is needed to strengthen the capacity of these bodies to deploy and sustain the deployment of mediators, civilian experts, police officers and peacekeepers. Whatever the precise configuration of regional activities, there is little doubt that regional arrangements have an important role to play.

Fifth, *Member States should support the research, outreach and advocacy work of educational institutions and civil society organisations.* This report has recognised the important role of civil society organisations in informing people about RtoP and building support for the principle. In many regions of the world, enhanced engagement with RtoP, which has translated into wider and deeper support for the principle, was spurred by civil society. This represents a significant return on investment. If RtoP is to become a living reality, it is imperative that this work continues. The report has also identified significant gaps in knowledge, especially relating to lessons learnt from past experiences, the combinations of preventive activities that have proven most effective in the past, and the steps needed to build preventive and protective capacities. There is therefore need for empirical research on practical matters relating to the

<sup>108</sup> See the *Final Report of the Council for Security Cooperation in the Asia Pacific Study Group on the Responsibility to Protect, 2011.*

implementation of RtoP. Relatively modest support for such research could yield important advances in knowledge that will contribute to better policy and strategy.

### National parliaments

National parliaments play a crucial role as a conduit between publics and their governments. Parliamentarians are well-placed to communicate principles such as RtoP and issues surrounding its implementation to the wider public. They are also well-placed to channel concerns and questions from the public to the government. Parliamentarians also play a key role in holding governments to account and ensuring that their practice matches their international commitments. In addition, as the work of the Inter-Parliamentary Union shows, parliamentarians of different countries can cooperate directly with each other to achieve common goals associated with RtoP, for instance by sharing experiences on the constructive management of diversity, human and minority rights protection, conflict resolution and other activities that contribute to the prevention of violence and, ultimately, genocide and mass atrocities. However, until relatively recently parliaments have not been especially active in relation to RtoP. Whilst more research and dialogue is needed to identify and elucidate the precise role that parliaments and parliamentarians in each country might play, areas that are worth considering include:

- The facilitation of education, training and outreach activities to increase awareness and understanding of RtoP and its implementation.
- Holding governments to account in relation to the implementation of RtoP by asking questions about what the government is doing to support the principle and incorporate RtoP goals into national policy.
- Including RtoP considerations in the work of the parliamentary committee on foreign affairs.
- Parliamentary inquiries and studies into the steps that the government might take to implement RtoP.
- Offering support and encouragement to the work of civil society groups that research, educate, train, and advocate in relation to RtoP.

### Civil society

Civil society has played a crucially important role in raising awareness and understanding about RtoP and in building consensus. To give just one example, thanks primarily to the work of civil society, there have been consultations and dialogue about RtoP in the majority of countries in East Asia, including Cambodia, China, Indonesia, Japan, Malaysia, Mongolia, Singapore, South Korea, Thailand, Viet Nam, and the Philippines. This has helped to forge a wider consensus and deeper consensus on RtoP. For example, it was probably no coincidence that Viet Nam made its first (very positive) contribution to the General Assembly's deliberations on RtoP a few months after a consultation facilitated by the Asia Pacific Centre for RtoP was held there.

As RtoP becomes a central feature of diplomatic life, the work of civil society will become more important still. The capacity of the whole can be strengthened through coordinated work. As such, civil society organisations should consider supporting the International Coalition on RtoP described earlier. In addition, other areas to which they are uniquely placed to contribute include:

First, *awareness raising*. Civil society has already played a key role in raising awareness within the government, parliament and public about the problem of genocide and mass atrocities, its causes, consequences and potential remedies. It should continue to do so. This has tended to gain most traction in relation to specific situations (as in the case of the 'Save Darfur Coalition') but key anniversaries relating to the Holocaust and the genocides in Rwanda and Srebrenica can serve as catalysts for promoting public interest in the topic more generally.<sup>109</sup> Groups can also raise awareness within the government, parliament and public of RtoP, its basic concepts and issues surrounding its implementation.

***“Parliamentarians also play a key role in holding governments to account and ensuring that their practice matches their international commitments”***

<sup>109</sup> On the Save Darfur movement and the sources of its relative success see Rebecca Hamilton, *Fighting for Darfur: Public Action and the Struggle to Stop Genocide* (London: Palgrave, 2011).

Second, *training and educating*. The UN's Office on Genocide Prevention and RtoP has begun a training programme but it has limited capacity. Assisted by educational institutions, civil society organisations could encourage and, where appropriate, provide training on RtoP and genocide/mass atrocity prevention to government and non-governmental officials working in cognate areas.

Third, *informing and advocating*. Civil society organisations could continue to encourage states to deliver on their RtoP commitments in relation to specific protection crises. Lessons learnt from Sri Lanka and Syria, suggest that there are at least three important roles that civil society organisations could play, possibly with the support of research institutions. First, they could provide credible information about on going situations, including verified casualty estimates. Second, they could analyse and assess policy options and advocate measures to protect vulnerable populations. Third, they could support the work of the UN Secretary-General on the implementation of RtoP through advocacy and outreach.

Higher education and research institutions also have important roles to play. If they are to be taken seriously by policy makers, it is imperative that researchers move beyond conceptual and theoretical debates to focus on the generation of verifiable empirical knowledge about practical matters. Most obviously, they could develop the methodologies needed to support improved early warning, information gathering and casualty estimating. In addition, as noted earlier, more research is needed on the causes and prevention of genocide and mass atrocities, the combinations of preventive measures that have proved most effective in different contexts, and effective strategies for protection. Researchers could also assist by assessing the implementation of RtoP by individual governments and providing detailed advice as to how governments might fulfil their responsibilities given limited resources. Researchers, especially country-experts, are also well placed to provide detailed assessments of situations of concern and might begin to view crises through an RtoP lens to discern risk factors and potential sources of mitigation.

## Conclusion

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Born from a shared conviction that the international community must do better to protect populations from acts of conscience-shocking inhumanity, RtoP has come a long way in a very short space of time. Today, RtoP is central to the way in which the international community thinks about and responds to the problem of genocide and mass atrocities. The principle's short history shows this progress only too well. From Kenya to Libya, Yemen to South Sudan, RtoP has become a part of the diplomatic language and practical action used to respond to crises. It has sensitised the world to the problem of genocide and mass atrocities and focused international attention squarely on the protection needs of vulnerable populations. Though still in its infancy, RtoP has already contributed to better practice, enhanced protection, and more consideration of prevention. Careful consideration of the heated debates about how best to respond to situations in Cote d'Ivoire, Libya and Syria demonstrates that the world has moved on from the question of *whether* to accept and implement the RtoP to the question of *how* to realise protection goals in specific situations. RtoP has shown that it is not a precious vase to be left on the mantelpiece in mint theoretical condition, but a principle that can be used to good effect in the name of common humanity. Like a vase, though, a principle that is used in difficult circumstances is likely to be tarnished, scratched and cracked. These are the risks of relevance. The vase, and the principle, will need to be occasionally repaired and rebuilt.

Whilst in itself is a sign of very significant progress, the question of practical implementation in concrete situations is perhaps even more difficult and complex than the conceptual issue that preceded it. As the Secretary-General has repeatedly pointed out, there is no easy 'one-size-fits-all' solution to every crisis. Each situation is different and so must be the world's response. Sometimes, as in the case of Syria, effective responses will be made more difficult by complex local circumstances and profound disagreements among Member States. There is, of course, no silver bullet in situations like this. It is important that lessons are learnt from experience in situations such as Syria, Libya and Cote d'Ivoire and that performance is improved. Earlier, the report identified five critical challenges that will need to be addressed in the coming months and year: (1) Deepening the engagement of Member States and Regional Arrangements; (2) Making prevention of the four crimes a living reality; (3) Mainstreaming RtoP goals across the UN system; (4) Learning lessons about the implementation of enforcement mandates; (5) Protecting the consensus on RtoP. A variety of networks, institutions and processes have been established through which Member States, Civil Society groups, and others might work together to meet these challenges by strengthening their own contribution to RtoP and working with others, including the UN, regional and subregional arrangements and civil society.

RtoP has never been more relevant. But with relevance comes new challenges. How we meet these challenges will determine not only the future of RtoP. It will also determine the fate of those whose lives depend on protection from genocide, war crimes, ethnic cleansing and crimes against humanity. RtoP provides a way of finally delivering on the promise of 'Never Again'. It is our shared responsibility to ensure that it does.

