

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

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

## 1. The historical and legal framework

### 1.1. Protection and human rights

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

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

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<sup>1</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), available at <http://www.iciss.ca/pdf/Commission-Report.pdf> (accessed on 25 January 2010).

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

<sup>3</sup> Implementing the Responsibility to Protect, report of the Secretary-General, UN Doc. A/63/677, January 12, 2009.

<sup>4</sup> In the words of the Declaration “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”. See, General Assembly, Preamble of the Universal Declaration of Human Rights, resolution 217 A (III), 10 December 1948.

seen from the separate votes requested by Poland on each recital of the preamble and on each article of the Declaration before its adoption.<sup>5</sup>

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

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

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

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

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

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

<sup>7</sup> *Yearbook of the United Nations, 1948 -1949*: 535.

<sup>8</sup> *Idem*.

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

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

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

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

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

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

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

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<sup>11</sup> See Andrew Clapham, “*Creating the High Commissioner for Human Rights: The Outside Story*” 5 *European Journal of International Law*: 556-568 (1994).

<sup>12</sup> See Amnesty International, *United Nations High Commissioner for Human Rights –Time for Action*, AI Index IOR 41/35/93.

<sup>13</sup> See World Conference on Human Rights, Vienna Declaration and Programme of Action, 25 June 1993, UN Doc. A/CONF.157/23, para 18, available at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/A.CONF.157.23.En?OpenDocument) (accessed on 25 January 2010).

<sup>14</sup> UN General Assembly resolution 48/141, UN Doc. A/RES/48/141, 20 December 1993, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N94/012/56/PDF/N9401256.pdf?OpenElement> (accessed on 25 January 2010).

## 1.2. The issue of responsibility

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

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

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

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

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<sup>15</sup> See International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), available at <http://www.iciss.ca/pdf/Commission-Report.pdf> (accessed on 25 January 2010).

<sup>16</sup> In resolution 56/83 adopted on 12 December 2001, the UN General Assembly "commended [the Draft Articles on the Responsibility of States for Internationally Wrongful Acts] to the attention of Governments without prejudice to the question of their future adoption or other appropriate action."

<sup>17</sup> UN General Assembly resolution 60/147, UN Doc. A/RES/60/147, 21 March 2006, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement> (accessed on 25 January 2010).

<sup>18</sup> See UN Commission on Human Rights, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement> (accessed on 25 January 2010).

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

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

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

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

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

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

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

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

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

## **2. How do RtoP and human rights operationally link?**

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

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

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

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

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<sup>22</sup> For instance, in defining "torture" as a crime against humanity under the jurisdiction of the International Criminal Court in Article 7 of the Rome Statute for the International Criminal Court, the requirement of involvement of "public officials" in the UN Torture Convention is removed.

<sup>23</sup> See Article 7 of the Rome Statute for the International Criminal Court.

<sup>24</sup> International Court of Justice, Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), decision of 26 February 2007, paras. 187-188 and 190.

<sup>25</sup> *Idem*.

<sup>26</sup> See in particular Security Council resolutions 1265 (1999), 1296 (2000), 1674 (2006) and 1738 (2006) on the protection of civilians in armed conflict.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

#### **4. Final remarks**

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

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



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