

TAKING STOCK AND LOOKING AHEAD – IMPLEMENTING THE RESPONSIBILITY TO PROTECT

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1. Remarks at the Opening Session

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

1.1. Four canards about the responsibility to protect

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

¹ This was later confirmed by the positive statements of most small and developing countries at the General Assembly debate in late July 2009. See, for example, the summaries of the debate prepared by the Global Centre on the Responsibility to Protect, *Implementing the Responsibility to Protect The 2009 General Assembly Debate: An Assessment*, August 2009, available at http://globalr2p.org/media/pdf/GCR2P_General_Assembly_Debate_Assessment.pdf; and the International Coalition for the Responsibility to Protect, *Report on the General Assembly Plenary Debate on the Responsibility to Protect*, September 15, 2009, available at http://www.responsibilitytoprotect.org/ICRtoP%20Report-General_Assembly_Debate_on_the_Responsibility_to_Protect%20FINAL%2022_09.pdf. For the official records, see U.N. documents A/63/PV.97 of 23 July 2009, A/63/PV.98 and PV.99 of 24 July 2009, and A/63/PV.100 and 101 of 28 July 2009. For the statement of the Secretary-General introducing his report, see U.N. document A/63/PV.96 of 21 July 2009. For my statement, as Special Adviser, see <http://www.ipinst.org/news/general-announcement/98-ipsis-edward-luck-addresses-un-on-responsibility-to-protect.html>.

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

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

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

1.2. Tools and measures for implementing the responsibility to protect

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Remarks at the Closing Session

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

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

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

2.1. The added value of the responsibility to protect

A number of speakers, one way or another, asked “what is RtoP’s added value?”

- To me, the responsibility to protect, first and foremost, speaks to and helps clarify what we in the UN community stand for and seek to accomplish. It is, at its core, a reassertion of Charter-based rules and procedures. In both regards, the successful implementation of RtoP principles would do much to help restore the world body’s credibility and authority.
- Second, the Secretary-General’s report suggests a strategy, feasible path, and inventory of tools to help implement existing rights and humanitarian norms. This is a theme voiced in various ways here by Francis Deng, Mona Rishmawi, and Hansjoerg Strohmayer. In essence, the Secretary-General’s RtoP strategy aims to provide a route map from words to deeds and promise to practice that can be of some assistance to the larger human rights and humanitarian project of which RtoP is but one piece.
- Third, as I stressed at the outset, the responsibility to protect movement seeks to spur political will by linking public and parliamentary concerns to governmental and inter-governmental policymaking. It aims to affect the values and priorities of, and hence the choices made by, key officials in capitals and regional and global organizations.
- Fourth, RtoP acts to reinforce human rights and humanitarian imperatives by highlighting what can happen if abuses are not addressed in a timely and effective manner. RtoP’s focus on vulnerable groups – such as women, children, refugees, and internally displaced people – is particularly relevant here.

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

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

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

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

- A second dilemma was posed by Severine Autesserre’s insightful presentation. She worried that RtoP would become a doctrine embraced by global and regional actors, without trickling down to local actors who are critical to the success of conflict resolution efforts. Fair enough, but my hope is that RtoP could be where bottom-up meets top-down. In that regard, civil society could act as a transmission mechanism, a sort of conveyor belt between global principles and local populations and institutions. Historically, I believe, standards and values have had a way of reaching and influencing local behavior and expectations.
- Third, the UN system could face a parallel dilemma in terms of its traditional challenge of effectively and persuasively communicating headquarters doctrine to the field, as well as field experience to headquarters. The agenda for the Seminar in some ways anticipated this by moving from the generic to the specific, from the strategic to the operational and tactical. As the RtoP discussion moves from theory to practice, we have become acutely aware both of how hard it is to achieve RtoP goals and how much they are needed. Specific cases, after all, will largely define the form and substance of RtoP. The consideration of historical cases has also demonstrated that RtoP is not foreign or extraneous to well-established UN principles and practices. There is no radical departure here, whatever the most ardent enthusiasts and more entrenched opponents might claim. The cases presented at the Seminar also show how much the political and moral power of RtoP is needed as a rallying cry when support for effective action is hollow, weak, or absent.
- Fourth, it was asked, as well, whether the RtoP and protection of civilians agendas are compatible. Or, as some fear, would the inclusion of RtoP consideration or language prove distorting and distracting? The discussion here, in my view, suggests that, properly understood, the two agendas are mutually reinforcing. This question, however, needs further exploration, particularly in light of Austria’s Security Council Presidency in November.
- Fifth, and finally, is the fundamental dilemma that we have talked around but not confronted directly: are the difficulties inherent in RtoP implementation simply too hard to overcome? If that should prove so, then there will be no credible alternative to unilateral action in such cases. The public’s demand for action is not going away, but they want evidence of effective measures not just the façade of empathetic words and empty resolutions. Unfortunately, the gap between defining mandates in New York and providing the necessary resources and will on the ground persists across-the-board and not just in RtoP situations. The only way to discourage unilateral abuse of RtoP principles is to develop credible and sustainable multilateral alternatives. That is what this Seminar has been all about.

2.3. *Lessons and caveats*

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

- To begin, I'd like to build on something quite fundamental that Hans Winkler has just ably articulated. That is the centrality of the rule of law and of competent governance. Mass atrocity crimes, of course, epitomize lawlessness and the breakdown of governance and civil order. Respect for rule of law and good governance, on the other hand, can be important force multipliers for advancing both responsibility to protect and peacekeeping goals. They are, in fact, keystones for prevention and sustainability.
- Second, we have heard, in various ways and contexts, that pillar one on state responsibility remains the starting point and entryway to effective RtoP strategy and policy. As Alan Doss put it, at the end of the day the UN and the international community cannot substitute for the people of the Congo. It is their country. In my view, it is highly likely that resources and capacity will always be in short supply for the United Nations. Truly sustainable support is particularly hard to come by, as interest in a peacekeeping or peacebuilding operation is hard to sustain over time. So we are compelled to stress prevention and values. If local values are right and there is some degree of competence in governance, then modest external resources can go far. But even generous material and financial assistance cannot compensate for shortfalls in integrity and values among local authorities and the leadership of armed groups. We need to be modest about how much we can accomplish from the outside and never forget the "do no harm" rule.
- The third point is a modest one, but it comes up again and again in conversations such as this one. The traditional typology of inter-state versus intra-state or internal conflict is decidedly, and increasingly, unhelpful for thinking about RtoP challenges. Most conflicts these days – including the two featured here today – are transnational in scope. How many mass atrocities have failed to spill over borders or have not been fueled, in part, by the machinations of neighboring states or groups? This underscores, of course, the need to keep neighborhood perspectives in mind when thinking about how these traumas come about and how (and whether) they are eventually curbed. The neighbors may be part of the problem, part of the solution, or, often enough, both.
- Fourth, as our case studies have underscored, we need a differentiated understanding of the place of information (or intelligence) and of analysis and assessment in the fashioning of effective RtoP policies and practice. The need for these two functions and the balance between them are often quite different at headquarters and in the field. This is partly a matter of strategy versus tactics, as the latter are likely to be especially time sensitive. At headquarters, the key

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

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

2.4. Conclusion

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



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