

The UN Security Council and the Responsibility to Protect



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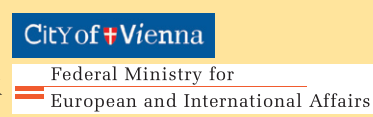
FAVORITA PAPERS 01/2010

# The UN Security Council and the Responsibility to Protect

Policy, Process, and Practice

39th IPI VIENNA SEMINAR

ISBN 978-3-902021-67-0



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

#### **39<sup>th</sup> IPI Vienna Seminar**

Diplomatic Academy of Vienna

Favorita Papers 01/2010

Edited by: Hans Winkler (DA), Terje Rød-Larsen (IPI), Christoph Mikulaschek (IPI)

ISBN 978-3-902021-67-0

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

## REPORT FROM THE 39<sup>th</sup> INTERNATIONAL PEACE INSTITUTE VIENNA SEMINAR ON PEACEMAKING AND PEACEKEEPING

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### 1. Introduction

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

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

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

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

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

<sup>4</sup> UN General Assembly Resolution 63/308 (September 14, 2009), UN Doc. A/RES/63/308.

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

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

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

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

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

<sup>7</sup> *Constitutive Act of the African Union*, adopted in Lomé, Togo, on July 11, 2000, Art. 4(h).

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

<sup>9</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001).



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

1. The responsibility of each individual state to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity, and their incitement.
2. The responsibility of the international community to encourage and help states to exercise this responsibility and to help states build capacity to protect their populations, as appropriate.
3. The responsibility of the international community to be prepared for collective action, in a timely and decisive manner in accordance with the UN Charter, on a case-by-case basis, and in cooperation with relevant regional organizations as appropriate, should the above preventive means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>14</sup> United Nations Secretary-General, *Implementing the Responsibility to Protect*, UN Doc. A/63/677, January 12, 2009, para. 61.

<sup>15</sup> United Nations Secretary-General, *Implementing the Responsibility to Protect*, UN Doc. A/63/677, January 12, 2009, para. 63; International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, paras. 6.29-6.30.

<sup>16</sup> UN Department of Public Information, *Secretary-General Defends, Clarifies “Responsibility to Protect” at Berlin Event on “Responsible Sovereignty: International Cooperation for a Changed World,”* UN Doc. SG/SM/11701, July 16, 2008.

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

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

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

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

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

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



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

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

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

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

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<sup>18</sup> United Nations Secretary-General, *Implementing the Responsibility to Protect*, UN Doc. A/63/677, January 12, 2009, para. 11(c); UN General Assembly Resolution 377 (V) (November 3, 1950), UN Doc. A/RES/377(V).

<sup>19</sup> UN General Assembly Resolution 63/308 (September 14, 2009), UN Doc. A/RES/63/308.

<sup>20</sup> UN General Assembly Resolution 60/180 (December 20, 2005), UN Doc. A/RES/60/180; UN Security Council Resolution 1645 (2005) (December 20, 2005), UN Doc. SC/RES/1645 (2005).

<sup>21</sup> United Nations Secretary-General, *Implementing the Responsibility to Protect*, UN Doc. A/63/677, January 12, 2009, para. 16.

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

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

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

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

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

### *4.2. Implementing assistance and capacity building by the international community*

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

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<sup>22</sup> See also, Christoph Mikulaschek, *Actualizing the Responsibility to Protect* (Muscatine, IO: The Stanley Foundation, 2008): at 27-28.

<sup>23</sup> See, e.g., Commission d'Enquête sur les événements survenus en République du Tchad du 28 janvier au 08 février 2008 et leurs conséquences, *Rapport*, July 31, 2008.

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

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

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

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<sup>24</sup> UN General Assembly Resolution 63/291 (June 30, 2009), UN Doc. A/RES/63/291; United Nations, "UN Mission's Contributions by Country," July 31, 2009, available at [www.un.org/Depts/dpko/dpko/contributors/2009/july09\\_4.pdf](http://www.un.org/Depts/dpko/dpko/contributors/2009/july09_4.pdf).

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

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

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<sup>25</sup> United Nations Secretary-General, *Implementing the Responsibility to Protect*, paras. 41-42.

<sup>26</sup> United Nations Secretary-General, *An Agenda for Peace: Preventive Diplomacy, Peacemaking, and Peace-keeping*, June 17, 1992, UN Doc. A/47/277-S/24111, paras. 28-32.

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

## 5. Early engagement and preventive diplomacy by the Security Council

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

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

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

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

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<sup>27</sup> Carnegie Commission on Preventing Deadly Conflict, "Preventing Deadly Conflict: Final Report," (Washington, DC: Carnegie Commission on Preventing Deadly Conflict, 1997).

<sup>28</sup> United Nations, Reports of Missions of the Security Council, available at <http://www.un.org/Docs/sc/missionreports.html> (accessed on October 7, 2009).

Forestière, and how the UN system could work with the government of Guinea to prevent conflict from spreading further.<sup>29</sup>

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

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

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

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

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

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



## 6. Early warning and assessment

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

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

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

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

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

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

*considerations and perspectives relating to RtoP into their ongoing reporting procedures to the extent that their mandates permit.*<sup>32</sup>

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

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

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

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

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

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<sup>32</sup> United Nations, *Annex to UN Secretary-General, Implementing the Responsibility to Protect*, para. 4.

<sup>33</sup> The International Humanitarian Fact-Finding Commission, established under article 90 of Additional Protocol I to the Geneva Conventions of 1949, could be another avenue for investigation. See Frits Kalshoven, "The International Humanitarian Fact-Finding Commission: A Sleeping Beauty?" *Humanitäres Völkerrecht – Informationsschriften* 4 (2002), available at [www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/5TLESB/\\$File/Frits%20Kalshoven%202.pdf](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/5TLESB/$File/Frits%20Kalshoven%202.pdf).

<sup>34</sup> See United Nations, *2005 World Summit Outcome*, UN Doc. A/RES/60/1, October 24, 2005, para. 138: "The international community should, as appropriate, [...] support the United Nations in establishing an early warning capability."

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

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

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

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<sup>35</sup> United Nations Secretary-General, *Annex to Implementing the Responsibility to Protect*, para. 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

### *7.1. Decisive collective action against mass atrocities*

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

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

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

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

<sup>43</sup> See Article 42 of the United Nations Charter, June 26, 1945.

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

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

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

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

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

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

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



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

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

### *7.2. Timely collective action against mass atrocities*

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

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

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

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

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

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

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

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

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

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

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<sup>48</sup> United Nations, *Report of the Panel on United Nations Peace Operations* [Brahimi Report], UN Doc. A/55/305-S/2000/809, August 17, 2000, para. 88.

<sup>49</sup> United Nations, "Contributors to United Nations Peacekeeping Operations: Monthly Summary of Contributions," June 30, 2009, available at [www.un.org/Depts/dpko/dpko/contributors/2009/june09\\_1.pdf](http://www.un.org/Depts/dpko/dpko/contributors/2009/june09_1.pdf).

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

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

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

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

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

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

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

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

### *8.1. Training peace operations*

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

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

### *8.2. Gathering information*

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

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<sup>50</sup> United Nations, "Monthly Summary of Military and Police Contribution to United Nations Operations," June 2009, available at [www.un.org/Depts/dpko/dpko/contributors/Yearly06.pdf](http://www.un.org/Depts/dpko/dpko/contributors/Yearly06.pdf).

<sup>51</sup> Ibid.

<sup>52</sup> Despite strong increases in recent years, only 70 percent of newly deployed police personnel currently receive predeployment training. United Nations, *Report of the Special Committee on Peacekeeping Operations and its Working Group: 2009 Substantive Session*, UN Doc. A/63/19, March 2009, para. 154.

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

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

### 8.3. Reaching out to the local population

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

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

### 8.4. Addressing logistical challenges

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

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

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<sup>53</sup> Center on International Cooperation (CIC), “Building on Brahimi: Peacekeeping in an Era of Strategic Uncertainty,” (New York: CIC, April 2009), p. 38.

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

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

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

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

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

#### *8.6. Making better use of standby high-readiness brigades*

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



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

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

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

## **9. The responsibility to protect and the protection of civilians**

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

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<sup>54</sup> African Union, *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, July 9, 2002, art. 13; African Union, *Policy Framework for the Establishment of the African Standby Force and the Military Staff Committee, Part I*, AU Doc. Exp/ASF-MS/2 (1), May 16, 2003, para. 1.6.

<sup>55</sup> United Nations, *Report of the African Union-United Nations Panel on Modalities for Support to African Union Peacekeeping Operations*, UN Doc. A/63/666-S/2008/813, December 31, 2008, para. 67.

<sup>56</sup> UN Security Council Resolution 1265 (September 17, 1999), UN Doc. S/RES/1265 (1999).

<sup>57</sup> *Ibid.*; UN Security Council Resolution 1296 (April 19, 2000), UN Doc. S/RES/1296 (2000); UN Security Council Resolution 1674 (April 28, 2006), UN Doc. S/RES/1674; UN Security Council Resolution 1738 (December 23, 2006), UN Doc. S/RES/1738.

Council has adopted a series of resolutions on the particular protection needs of children and women in armed conflict.<sup>58</sup>

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

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

### *9.1. Drafting clear civilian protection mandates*

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

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

<sup>59</sup> See Victoria K. Holt and Tobias C. Berkman, *The Impossible Mandate? Military Preparedness, the Responsibility to Protect and Modern Peace Operations* (Washington, DC: Stimson Center, 2006), available at [www.stimson.org/fopo/pdf/Complete\\_Document-TheImpossible\\_Mandate-Holt\\_Berkman.pdf](http://www.stimson.org/fopo/pdf/Complete_Document-TheImpossible_Mandate-Holt_Berkman.pdf), p. 43.

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

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

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

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

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

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

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

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

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

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

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

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

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

#### *9.5. The protection of children and women in armed conflict*

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

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<sup>61</sup> Hitoshi Nasu, “Operationalizing the ‘Responsibility to Protect’ and Conflict Prevention: Dilemmas of Civilian Protection in Armed Conflict,” *Journal of Conflict & Security Law* 2 (2009), p. 23.

<sup>62</sup> United Nations, “Brahimi Report,” p. xi; see also paras. 48-55.

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

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

## 10. Conclusion

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

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

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<sup>63</sup> Annex I and II of United Nations Secretary-General, *Children and Armed Conflict*, UN Doc. A/63/785 - S/2009/158, March 26, 2009.

<sup>64</sup> United Nations, *Options for Possible Actions by the CAAC Working Group of the Security Council ("toolkit")*, Addendum to the letter dated 8 September from the Permanent Representative of France to the United Nations addressed to the President of the Security Council, UN Doc. S/2006/724, September 11, 2006.

<sup>65</sup> Security Council Report, "Children and Armed Conflict," Cross-Cutting Report 1, 2009, available at [http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.1846403/k.49B3/Profile\\_Children\\_and\\_Armed\\_ConflictBR12\\_July\\_2006.htm](http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.1846403/k.49B3/Profile_Children_and_Armed_ConflictBR12_July_2006.htm), p. 3.

<sup>66</sup> *Ibid.*

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

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

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

## **FOTO**

Christoph Mikulaschek