

Briefing on
“The Responsibility to Protect: Implications for International Peacekeeping Operations”
Committee on Foreign Affairs
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Statement
by
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Thank you, Mr. Chairman, for the opportunity to brief this distinguished Committee on the responsibility to protect and its implications for international peacekeeping operations. At the outset, let me express the standard caveat of an international civil servant briefing a Member State parliament. In accordance with past practice, my attendance today before the Committee is on a purely informal basis, and nothing in my oral remarks and written briefing statement should be understood to be a waiver, express or implied, of the privileges and immunities of the United Nations or its subsidiary organs under the 1946 Convention on the Privileges and Immunities of the United Nations.

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The Responsibility to Protect

Let me begin with a few words about the evolving concept of the responsibility to protect, commonly referred to by its RtoP or R2P acronym, and then turn to the implications of RtoP for international peacekeeping.

Four years ago, at the World Summit, the assembled heads of State and government agreed to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity and to prevent their incitement.² They agreed, as well, on the need for the international community to assist the State in fulfilling this responsibility to protect and to respond in a “timely and decisive manner,” under Charter rules and procedures, when national authorities are “manifestly failing” to meet their responsibility and peaceful means have proven “inadequate.”³ Subsequently, the Summit’s Outcome Document was adopted unanimously by the General Assembly and the Security Council affirmed its RtoP provisions.⁴

Earlier this year, United Nations Secretary-General Ban Ki-moon presented the General Assembly with a detailed plan for implementing this historic, unanimous, and unqualified commitment.⁵ Drawing on the provisions of the Outcome Document, the Secretary-General posits that RtoP rests on three co-equal pillars: 1) the protection responsibilities of the State; 2) international assistance and capacity-building; and 3) timely and decisive response.

Concerning the first pillar, the Secretary-General has stressed that neither the United Nations nor the international community at large have either the capacity or the desire to try to substitute for a State’s core responsibilities towards the population on its territory. We need to

² A/60/L.1, 20 September 2005, para. 138.

³ Ibid., paras. 138 and 139.

⁴ A/RES/60/1, 24 October 2005 and S/RES/1674, 28 April 2006, para. 4.

⁵ Report of the Secretary-General, *Implementing the Responsibility to Protect*, A/63/677, 12 January 2009.

do everything possible to encourage States to protect their people from such atrocity crimes. When they need assistance in building the institutions, legislation, social structures, education, and procedures to do so, we should not hesitate to provide such assistance, as detailed under the second pillar. Civil society and regional and sub-regional organizations may be important conduits for such capacity-building, and the Secretary-General's report talks of neighbors helping neighbors and of transnational networks for learning and for the transmission of good/best practices. Each of these dimensions was quite visible in the one case in which the United Nations has applied RtoP principles: in the post-election violence in Kenya in early 2008. Former UN Secretary-General Kofi Annan has commented that he also saw his mediation efforts there on behalf of the African Union (AU) through an RtoP prism.⁶ The United Nations has now decided to include RtoP principles in its approach to peace operations in the Democratic Republic of the Congo (DRC) as well.

The UN's recent "New Horizons" study notes that "many UN peacekeeping missions also serve as early peacebuilders." Likewise, "peacekeeping transition and exit strategies depend on countries providing for their own security, and the UN will need to find effective ways to support this goal through better rule of law and security sector reform (SSR) assistance."⁷ Just as conflict too often begets more conflict, atrocities have a way of laying the basis for further atrocities down the road. Scholars have long contended that the best predictor of genocide is past genocide. Here, the UN's new Peacebuilding Commission (PBC) – another key product of the 2005 Summit – could play a critical role. In the post-conflict, post-trauma period, the

⁶ Roger Cohen, "How Kofi Annan Rescued Kenya," *The New York Review of Books*, vol. 55, no 3 (August 14, 2008) and Remarks by United Nations Secretary-General Ban Ki-moon at the Summit Meeting of African Leaders in Nairobi, SG/SM/11908, 7 November 2008.

⁷ *A New Partnership Agenda: Charting a New Horizon for UN Peacekeeping* (United Nations: UN Department of Peacekeeping Operations and UN Department of Field Support, July 2009), p. 5.

international community tends to be the most engaged and thus has the most potential leverage for helping to foster those societal values and attitudes and those governmental and judicial structures, procedures, and institutions that would make a relapse less likely.

Like the 2005 Summit, the Secretary-General's plan for operationalizing RtoP emphasizes prevention. That is what the first two pillars are largely about. As the Secretary-General puts it, "our goal is to help States succeed, not just to react once they have failed to meet their prevention and protection obligations. It would be neither sound morality, nor wise policy, to limit the world's options to watching the slaughter of innocents or to sending in the marines."⁸ To no one's surprise, the just concluded General Assembly debate on the Secretary-General's RtoP proposals demonstrated a strong preference for such non-coercive and preventive measures.

Peace Operations and RtoP

In contemporary UN parlance, "peace operations" serves as an umbrella term to encompass the whole range of peacekeeping, peacebuilding, and, in extreme situations, peace enforcement missions. As noted above, the linkage between RtoP and post-conflict peacebuilding is widely understood and accepted. The choice of Burundi and Sierra Leone as the first two country situations to be addressed by the PBC underscored this connection.

Unfortunately, however, editorial writers and media pundits usually associate RtoP with the other end of the spectrum, i.e., with the coercive use of force to compel national authorities and/or armed groups to stop threatening or committing mass atrocity crimes. Perversely, that is the aspect of RtoP that is most contentious among UN Member States and least likely to be invoked, especially if the preventive and non-coercive aspects of the strategy succeed. Even the third – response – pillar involves a wide array of options under Chapters VI, VII, and VIII of the

⁸ Speech in Berlin, Germany, SG/SM/11701, 15 July 2008.

Charter, ranging from mediation and fact-finding and working with regional and sub-regional partners to references to international tribunals, sanctions, and other enforcement measures. In Côte d'Ivoire and Kenya, for example, timely quiet diplomacy led to the cessation of incendiary media that could have incited much greater domestic violence. The Security Council, under Article 34 of the Charter, can investigate any situation that “might lead to international friction or give rise to a dispute.” As the Secretary-General has underscored, what is needed is “early and flexible response, tailored to the specific needs of each situation.”⁹

As the title of this session rightly suggests, Mr. Chairman, the most urgent challenges, both conceptually and materially, are now to peacekeeping, not to its enforcement and peacebuilding cousins. Over the past decade, the Security Council has regularly assigned UN peacekeeping operations the additional task of protecting civilians (POC). This is at a time when attacks on civilians, including large-scale sexual violence, by rebel groups and government forces alike have become an almost commonplace feature of contemporary conflict. In a number of these theatres, peacekeepers are confronted by multiple armed groups, as national governments cannot control their territories. Clearly these are vastly more demanding situations than the more static and predictable ones assigned to inter-positional peacekeeping in earlier years. As the “New Horizons” study notes, POC mandates place an emphasis on “police, rule of law, human rights, and humanitarian actors.”¹⁰ These components – like the military ones – tend to be in short supply. Moreover, most national militaries “do not traditionally maintain proactive

⁹ Ibid.

¹⁰ *New Partnership Agenda: Charting a New Horizon for UN Peacekeeping*, op. cit., p. 20.

civilian protection doctrines, operating concepts or tactics beyond the requirements of international humanitarian law.”¹¹

At this point, Mr. Chairman, I need to make one more distinction. While POC and RtoP are related concepts, they are not identical. Protection of civilians is a broader and more generic term than RtoP, as the former can refer either to individual acts of protection or to broader protection policies. RtoP, on the other hand, refers only to the most egregious and large-scale abuses, i.e., genocide, war crimes, ethnic cleansing, and crimes against humanity. Such mass atrocities are at the extreme end of the POC spectrum. RtoP is a relatively new and still evolving concept, whose military dimensions are still subject both to some political contention and to further policy refinement. I will confine my comments, therefore, to the propositions that the Secretary-General has voiced in this regard.

In his *Implementing the Responsibility to Protect* report, Secretary-General Ban Ki-moon identifies three possible scenarios for the use of force to advance RtoP standards. The least likely and most extreme, as noted above, would be both coercive and without the consent of the government on whose territory it would take place. Under the third pillar, such a use could be envisioned if four conditions are met: 1) there is a determination by the United Nations Security Council that national authorities are “manifestly failing” to protect their populations from some of the four specified crimes; 2) peaceful means have proven inadequate; 3) the Security Council authorizes the use of force to protect the population; and 4) either regional/sub-regional organizations or Member States are prepared to provide the necessary forces, the lift to deploy them, and the logistics capabilities to sustain them. The first three conditions are specified in paragraph 139 of the 2005 Outcome Document. According to Article 53(1) of the Charter, enforcement action by regional arrangements requires the authorization of the Security Council.

¹¹ Ibid.

The two more likely scenarios, addressed by the Secretary-General under his second – assistance – pillar, paradoxically have received little public or official attention. One is a preventive deployment aimed at discouraging such violence against populations from occurring or from escalating. During the 1990s, the leadership of the former Yugoslav Republic of Macedonia welcomed the deployment of a UN peacekeeping force to forestall the eruption of the kind of mass violence that had engulfed several of its neighbors.¹² Similarly, with the consent of the government of Burundi, first South African, then African Union, and finally United Nations peacekeepers were deployed there to help keep the internal tensions and violence from reaching the genocidal proportions they did in neighboring Rwanda.

The third possibility is when the government is not the perpetrator of such crimes, but they are being carried out by an armed group that controls a portion of the country's territory. Such was the case in Sierra Leone, where the forces of the Revolutionary United Front (RUF) became infamous for their efforts to intimidate the people by, among other atrocities, severing the limbs of thousands of civilians. Again with government consent, United Nations and then British forces helped to resist the RUF attacks and then to defeat the rebels. The coercive use of force was required, but it was applied in defense of the State and for the protection of civilians from RtoP crimes. Similarly, in 2003 the European Union-led and Security Council-authorized Operation Artemis, again with government consent, helped the UN peacekeepers in the particularly violent Ituri province of the Democratic Republic of the Congo (DRC) transition to a more robust mandate.

In sum, Mr. Chairman, at a time of peacekeeping overstretch, when more is being asked of the blue helmets in more places than ever before, one could well query whether the

¹² From 1992 – 1999, the mix of military units and civilian police monitors under the United Nations Protection Force and the United Nations Preventive Deployment Force helped to bring a modicum of stability to the country.

responsibility to protect might prove to be the proverbial straw that broke the camel's back. Is it going to add one more layer of demands on the already overburdened military, police, and civilian personnel deployed by the UN in many of the world's most difficult theatres? There are several reasons to think not. One, RtoP emphasizes prevention. If it succeeds, then the demand for UN peace operations might actually decrease in some places. Two, it largely utilizes non-military means. Three, it occupies a rather narrow, though immensely important, segment of the POC spectrum. Four, most RtoP-type interventions in the past have been carried out by regional, not global, actors and there is no reason to assume a reversal of this pattern in the future. Five, the most demanding scenario – a coercive intervention against the will of the government of the country – is the least likely one. In such an extreme case, moreover, regional action, authorized by the Security Council, would be a more feasible route than enforcement action by the UN itself. The world body is also not well positioned to provide military assistance to a beleaguered government when rebel groups are the ones violating RtoP standards. It seems more feasible, on the other hand, to envision additional consent-based preventive deployments of UN peacekeepers down the road, as in the former Yugoslav Republic of Macedonia. Such missions, however, should not be as demanding as many of the UN's current assignments.

In conclusion, Mr. Chairman, I would like to commend you for convening this most timely discussion of the growing challenges to international peacekeeping and for including the responsibility to protect on your agenda. This relationship demands further reflection and your efforts to shed light on it are most appreciated. Thank you for your attention.