Elements for a possible EU Statement

Informal GA discussion on “Responsibility while protecting”
hosted by the Permanent Mission of Brazilia
in the presence of the Minister of External Relations Patriota

New York, 21 February 2012

• Express appreciation for the informal discussion that gives the EU an opportunity to reaffirm strong support to the Responsibility to Protect and its operationalisation. Also appreciate presence of FM Patriota as evidence of high-level Brazilian commitment. Welcome the additional elaboration of the rationale for the concept paper on the “responsibility while protecting” and the informative presentation of Special Adviser Ed Luck. The EU has examined the paper and already engaged informally at various levels, and we appreciate this opportunity for further discussion.

• This discussion is also very timely as we start preparing for the inter-active GA debate on the third pillar of RtoP in July this year, on the basis of a SG report. We are ready to listen to and discuss in an open and constructive manner any concerns about actions by the UN and the wider international community... At the same time it is important to keep in mind that the RtoP concept and the rules pertaining to the protection of civilians in armed conflict can both be relevant in a particular situation but that they are different and must not be confused.

• The EU considers the consensus on the RtoP concept as enshrined in the 2005 World Summit outcome document as the reference point for our efforts on making RtoP a reality on the ground. In this vein, the EU has been a vocal contributor to the GA debates on different aspects of RtoP as well as an active partner for the UN in the implementation of the concept both at global level and as regional organisation.

• Recall that it is indeed the responsibility of each individual State to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity just as it is our collective responsibility, to prevent and counter mass atrocities.

• The issues raised in the concept paper are best discussed in their wider context, namely the three pillars of RtoP, as to give due attention to their complexity and to maintain necessary flexibility. We fully agree that prevention is always the best option. RtoP should, first and foremost, be discharged through diplomatic, humanitarian and other measures, such as sharing of best practices and support to capacity building and other development activities.

• The three pillars are parallel and finely balanced, and SG reports in the past have underlined this. Just as there is no automatism to move from one pillar to the other, there can be neither a prioritization of action under one pillar over another, nor a chronological sequencing between them. We also recall that the international community, through the United Nations, has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, to help to protect populations.
Moreover, we attach great importance to recalling that pillar 3 of RtoP is more than military intervention as there are many other non-military coercive measures. These include sanctions and the involvement of the ICC which can be powerful tools to prevent and address the most serious human rights violations. We all have an obligation to consider such measures and make use of them in face of a government’s failure or unwillingness to exercise its responsibility.

If such peaceful means are inadequate and national authorities are manifestly failing to protect their populations, the international community must be prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate.

We believe that the 2005 concept has given a pertinent and comprehensive description of that scenario given that RtoP action would always take place in the existing framework of applicable international law. It was a wise decision not to set too detailed conditions for 3rd pillar action or to define a fix set of criteria or guidelines. In the face of the gravest situations nothing should prevent or delay the international community from responding.

After all, our collective commitment is and was to agree on ways to prevent and end gross and systematic violations of human rights. In cases such as the daily atrocities being committed against civilians in Syria, non-action has intolerable human costs.

Welcome that the concept before us recalls many important principles that are, of course, already part and parcel of an existing consensus and always frame the action of the international community, notably the need for strict abidance by the applicable international law, including the UN Charter and international humanitarian law, human rights law and refugee law.

The UN Security Council confirmed only recently, on 19 January, the importance of the promotion and strengthening of the rule of law in the maintenance of international peace and security. The framework for action on the basis of RtoP is well defined and includes, amongst other, the proportionality principle. International law also already provides for accountability mechanisms for the most serious crimes, including the ICC and other international or hybrid tribunals to which we are strongly committed.

Finally, the EU has always supported the need for transparency and monitoring of UN action. Given the existing reporting mechanisms in UN Security Council mandates, it would be helpful to have clarifications of the information gaps referred to in the paper, particularly taking into account the regular reports that the Secretary-General and Security Council members receive already and the need to avoid micro-management as the concept paper acknowledges.

Conclusion: Thank FM Patriota for having hosted this meeting. We trust that Special Adviser Luck will draw on this very timely and interesting exchange when preparing the SG report for the July debate for which today's meeting can provide very useful input.