

Overview of the United Nations Secretary-General Ban Ki-moon's Report on the Responsibility to Protect: *State Responsibility and Prevention*

I. Introduction and mandate

In August 2013 United Nations (UN) Secretary-General Ban Ki-moon published his fifth Report since 2009 on the Responsibility to Protect (RtoP, R2P), *The Responsibility to Protect: State Responsibility and Prevention*, in advance of the UN General Assembly informal interactive dialogue on the same subject expected to be held in early September 2013.

The Report notes that central to paragraphs 138 and 139 of the World Summit Outcome Document is the acknowledgement by all Member States that the primary responsibility to protect populations from genocide, war crimes, crimes against humanity, and ethnic cleansing, including their incitement, lies with the State. Recent and ongoing events, such as the ever-deteriorating crisis and civil war in Syria, illustrate the critical importance of early preventive action and the consequences that can arise should such action not be taken or fail. As such, the Secretary-General has focused his Report on the responsibility of States to protect their populations by developing the necessary national capacity to build societies resilient to atrocity crimes. The Report elaborates that building resilience reinforces sovereignty and increases prospects for peace and stability, and can be achieved through the development of appropriate legal frameworks, legitimate State structures, and institutions that prioritize respect of international human rights law and the rule of law. Additionally, the Report notes that this responsibility is consistent with existing international legal obligations found in international human rights, humanitarian, refugee, and customary law.

II. Methodology

The Report provides an overview of the consultation process undertaken, including the invitation for all Member States, regional and sub-regional organizations, and non-governmental organizations to submit their views on the measures available to increase national capacity to prevent atrocities, the challenges remaining for implementation, and examples of prevention in practice.

III. Risk Factors

The risk factors for armed conflict and atrocities overlap, as RtoP crimes are most likely to occur in armed conflict, and armed conflict can often lead to the commission of atrocity crimes. However, it is important to recall that **not all armed conflicts lead to atrocities, and not all RtoP crimes occur during a state of armed conflict**. As such, focusing exclusively on conflict prevention would overlook those atrocities committed outside of armed conflict. While there is much overlap between the crimes with regards to the specific prohibited acts, and thus the risk factors associated with their commission, **there are key distinctions between the four crimes and violations**¹: central to the crime of genocide is proving intent to “destroy in whole or in part”; war crimes only occur within the context of armed conflict or occupation; crimes against humanity are widespread and systematic in scale.

The Report notes that the six identified risk factors have been evident to varying degrees in situations where RtoP crimes were committed and as such, **no State can consider itself immune to the risk of atrocities**. Furthermore, these risk factors demonstrate that the commission of RtoP crimes is **not a single event, but rather the result of long-term processes**. It is important to recall that the presence of any of the below mentioned risk factors does not directly or inevitably cause RtoP crimes, however atrocities rarely occur in their absence.

1. A **history of discrimination or other human rights violations**, often on an ethnic, racial or religious basis against members of a particular group/population, is a risk factor for atrocities, particularly if the past has not been adequately addressed through accountability, reparations, security and judicial sector reform, or reconciliation. **Patterns of discrimination of particular communities** are a significant risk factor and may take many forms, including political, social, economic, or gender discrimination. Such discrimination becomes particularly concerning when it **coincides with patterns of exclusion**, which may serve to foster societal divisions and the perception of justifying violence against the targeted group.

¹ While not defined under international law as a distinct crime, ethnic cleansing is often a result of combined acts that could constitute the other RtoP crimes.

2. The **underlying motivation of actors** for targeting a community serves as a risk factor and may be demonstrated through exclusionary ideology, hate speech, and propaganda. Additionally, whether a state is providing open justification for these actions is a related indicator.
3. The **presence of armed groups and/or militias** and their capacity to commit atrocities, both through access to small arms and light weapons and/or their financial ability to support military operations, is often connected to the risk of RtoP crimes.
4. The risk for the commission of RtoP crimes may in part depend on the **circumstances or actions undertaken by actors to facilitate the perpetration of atrocities**, which can include actions such as strengthening the military and reducing diversity within the security sector, among others.
5. A **government's lack of preventive capacity** further heightens the risk of atrocities. Sources of such risk are associated with autocracies or governments that deny equal participation rights for all sectors of the population and access for civil society. The **absence or lack of credible judicial, human rights, and security sector institutions** is linked to this risk, and the ability of such institutions to function is further adversely affected when the rule of law is weakened.
6. The **commission of acts that could constitute elements of the RtoP crimes as defined in international law** functions as a risk factor for atrocities. Acts specific to the crime of genocide may include less obvious methods of destruction, and the evidence of intent, which, although often difficult to prove, may be able to be determined through propaganda, hate speech, or State policies, is a key risk factor for the crime. Intent can be further ascertained if actions are widespread and systematic in nature, as well as through an assessment of the weapons used during such acts.

Risk factors may be compounded by triggers or drivers, which can create permissive environments or allow for the rapid escalation of a crisis. **Contests for political power** may trigger RtoP crimes, especially in situations where there are doubts or concerns about the transparency or fairness of the process and/or when political groups are divided based on identity. Risk may increase when there are other ongoing crises, including in a neighboring state, or the existence of discrimination or inter-group tension. **Challenges for the prevention of RtoP crimes are greatest during situations of armed conflict, but this does not diminish a State's responsibility, nor excuse inaction in the face of atrocities.** As such, States must continue to abide by international norms and prioritize the protection of populations.

IV. Policy options for atrocity prevention

This section of the Report highlights the range of prevention measures available to governments, featuring over 40 examples of policy options as implemented by Member States. As the creation of an environment conducive to atrocities is a long-term process, there are multiple entry points for preventive action by the State. Such **action can focus on addressing structural factors**, such as root causes for conflict, and building the mechanisms necessary to prevent such crimes. Additionally, **States can undertake operational measures** to mitigate rising tensions, halt the imminent or ongoing commission of atrocities, and ensure accountability if crimes are committed. The Report also **recognizes that RtoP crimes affect men and women, and girls and boys differently**, as well as recalls UN Security Council Resolutions that **affirm the importance of combating sexual violence**, and ensuring the **full and equal participation of women in decision making and peace processes**.

Building national resilience

- The creation of a society based on non-discrimination can be strengthened by **ensuring constitutional protections**, as such arrangements can serve as vehicles for protecting human rights, especially for vulnerable communities, devolve government power, ensure diversity within administrative, civil service, and security bodies, and protect national concerns while having the potential to address political tensions.
- **Holding inclusive, fair, electoral processes** that involve the participation of all sectors of the population and meet international human rights standards can serve to manage social tensions and prevent violence. Critical to ensuring the integrity of electoral processes are both electoral management bodies, which must have the resources necessary to be impartial and effective, and civil society, which conducts monitoring and advocacy initiatives.
- Societies which foster **political pluralism through the diffusion and sharing of power**, as well as through the establishment of self-regulating political parties that promote national cohesion and participation rights for all, can promote peaceful co-existence and assist in creating resilience to atrocities.

- States can further strengthen their preventive capacities by **ensuring accountability for the commission of atrocities and ratifying, domesticating and implementing relevant legal instruments.**² Removal of **immunity, amnesty, and other statutory limitations** can deter the commission of atrocities by State actors.
- States can work to prevent a relapse into violence by **undertaking fair and inclusive transitional justice processes**, which can include both judicial and non-judicial mechanisms, that address root causes of conflict, provide access to justice, and ensure accountability, all of which serve to promote human rights, the rule of law, and confidence in the State.
- A **legitimate security sector reform process**, which is characterized by a range of markers, can decrease risk by controlling the means for committing atrocities and deterring misconduct or abuse.
- By undertaking **measures to increase actual or perceived equity in the distribution of resources**, States can promote economic development, thus addressing the risk factor of economic deprivation. Additionally, **measures to combat corruption**, which undermines the legitimacy of the State, can mitigate instability.
- **Developing or strengthening national institutions that are accountable to the population and are based on the rule of law, good governance, and democratic principles and values** contributes to creating an environment resilient to atrocities.

Promote and protect human rights

- States can improve their capacities to address underlying tensions by **establishing national infrastructure for the promotion and protection of human rights** that are based on legal frameworks consistent with international human rights law. Such mechanisms may promote and monitor the domestication of human rights standards through cooperation with UN treaty bodies and human rights mechanisms, as well as the Universal Periodic Review (UPR) process of the UN Human Rights Council. Additionally, ombudspersons may assist in the protection of human rights by investigating threats or violations of human rights.
- **Ensuring that civil society**, which should be active, diverse, and robust, **can operate freely and openly without fear of persecution or reprisals**, will assist in the prevention of atrocities by holding leaders accountable for respect of the rule of law and the inclusion of all sectors of the population in the decision making process.
- States can establish the legal and social environment necessary to **ensure freedom of the press, professionalism, and the maintenance of ethical standards** so as to provide the space for an independent or pluralistic media. In addition, it is important to **combat advocacy of hatred or incitement to discrimination, hostility or violence**.

Adopting targeted measures to prevent atrocity crimes

- There are a range of targeted measures that Member States can implement to prevent RtoP crimes, including the **designation of an atrocities prevention or RtoP focal point or the establishment of an inter-agency mechanism**, which may serve to coordinate efforts to mainstream and operationalize RtoP.
- States can work to detect, assess and respond to sources of tension or risks of atrocities through the **establishment of early warning mechanisms** that serve to identify situations of risk, monitor developments, make recommendations, and alert policy makers to ensure better planning and use of resources for early preventive action.
- States can consider **establishing processes to foster dialogue between the State and communities** to ensure open communication and trust building. Additionally, mechanisms at both the state and local levels to assess risk factors and root causes can support the early resolution of tensions. Civil society, including women's groups, should be included within these mechanisms.
- **Creating educational systems reflective of a society's diversity** that teach about **the causes, dynamics, and consequences of atrocities** will work to both change perceptions and behavior, and promote tolerance and the value of diversity.

² The Convention on the Prevention and Punishment of the Crime of Genocide; Covenant on Civil and Political Rights and its 1989 Second Optional Protocol; Covenant on Social, Economic and Cultural Rights; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Elimination of All Discrimination against Women; Convention on the Elimination of Racial Discrimination; Convention relating to the Status of Refugees and its 1967 Protocol; Convention on the Rights of the Child; the Rome Statute of the International Criminal Court and the Arms Trade Treaty.

- **Commemoration acts and memorials** can serve as elements of preventive action by instituting memory of past atrocities and promoting greater recognition and understanding of crimes. Additionally, by **empowering victims associations**, States can ensure that victims are part of the State's national conscience going forward.

Challenges

- While there are a range of policy options available for States to prevent RtoP crimes, many challenges remain for the implementation of the Responsibility to Protect, including:
 - **Garnering the political will and leadership to put the commitment to RtoP in practice**, in part due to the **challenge of demonstrating the added value of prevention**, which may not be immediately visible;
 - **Discerning which risk factors need to be addressed and the stages for action**, which is further confounded by the lack of capacity, expertise and understanding of the causes, dynamics, and severity of risk factors and crimes; and
 - Ensuring that **atrocity prevention is rooted in national efforts and international assistance**.

Building partnerships for prevention

- **Engaging in partnerships rooted in national atrocity prevention** with the UN, Member States, regional arrangements, and civil society can **provide states with technical assistance and resources** to help strengthen national capacities.

V. The way forward

The Report includes additional steps that Member States can consider to push forward national efforts to prevent atrocities, including: **appointing an atrocities prevention focal point or creating a national mechanism**, and allocating adequate resources to this process; **conducting a system wide assessment** of national risk and resilience using the Special Adviser on the Prevention of Genocide's Analysis Framework, the risk factors outlined in the Report, and tools created by civil society; **signing, ratifying, and implementing relevant international legal instruments**; **engaging with, supporting, and enhancing cooperation** with other Member States and regional arrangements; participating in **peer review processes**, including the UPR process, regional processes, and other options; forming partnerships with other Member States, regional arrangements, and civil society to enhance technical assistance and capacity building processes, as well as **engaging in lessons learned**; and **participating in discussions** at the national, regional, and international levels to advance RtoP and its implementation.

VI. Conclusion

The Report concludes by recalling both past and ongoing failures to prevent atrocities, particularly in the case of Syria, which serves as a tragic reminder of the consequences of the failure of the State and international community to prevent atrocities. The Report notes that the outlined measures are not completely new, with many States already implementing the policy options, even if not in the name of atrocities prevention. What is needed, however, is to ensure a concerted, comprehensive, and inclusive review of risks, capacity and actions that can be undertaken to strengthen prevention.

The Secretary-General indicates his intension to hold a **follow up meeting with Member States, regional arrangements, and civil society on the status of implementation of the Report's recommendations**. With regard to the **theme of next year's dialogue**, the Report includes the subject of **Pillar II, capacity building responsibilities of the international community, as an option**.