

## Summary of the Report of the Secretary-General on “Implementing the Responsibility to Protect”

16 February 2009

### Report of the Secretary-General

On 30 January 2009, UN Secretary-General Ban Ki-moon has issued a report on [“Implementing the Responsibility to Protect”](#) (RtoP). The report is the first comprehensive UN document on the Responsibility to Protect, following Ban’s stated commitment to turn the concept into policy. The RtoP is derived from Paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility of States to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

It is expected that the UN General Assembly (GA) will formally take up the report in the first quarter of 2009. NGOs have begun preparing for the coming GA debate, which is expected to provide an opportunity to advance the implementation of RtoP, which was unanimously agreed to by Heads of State and governments at the 2005 World Summit.

The report, in addition to suggesting a “three-pillar approach” for the operationalization of RtoP, also draws attention to the role of early warning, and it makes suggestions for the way forward.

### Terminological Framework

One of the main strengths of the report is that it sets out a clear terminological framework for RtoP, highlighting that:

- The scope of RtoP has been defined in the 2005 World Summit Outcome Document as:
  - § The Responsibility to Protect is derived from the positive notion of “sovereignty as responsibility.” The concept does not undermine sovereignty, but reinforces it.
  - § RtoP is applied specifically and only to four crimes and violations, namely genocide, war crimes, ethnic cleansing and crimes against humanity.
  - § The “appropriate and necessary” response to such a situation includes a wide range of prevention and protection measures available to Member States, the UN, regional and sub-regional organizations, and civil society.
  - § The 2005 Summit recognized that early warning was a crucial element to prevent and protect, with the need for the UN to access and analyze information in a timely, reliable fashion. The report warns against failing to react to situations, or worse, to show patterns of selective reporting.
- The three pillars are of equal length and strength and there is no set sequence as to which pillar or measure should be used to ensure an early and flexible response.
- The Responsibility to Protect as defined in the 2005 Summit is anchored in the principles of international law.
- Reopening Paragraphs 138 and 139 would be counterproductive, and the next step that Member States and the UN ought to take is to operationalize RtoP.
- The Responsibility to Protect is not a “Western-driven” notion – the report underlines Article 4(h) of the African Union Constitutive Act and cites many examples of the leading role of African countries in this respect.

## ***Pillar One: The protection responsibilities of the State***

Pillar One stresses that States have the primary responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Pillar one, the Secretary General argues is the “bedrock” of the responsibility to protect.

To guarantee the implementation of the Summit Outcome document, the Secretary-General has recommended that States:

- Ensure that there are effective mechanisms for handling domestic disputes; foster respect among disparate groups and protecting the rights of women, youth and minorities.
- Support the work of the UN Human Rights Council as a forum to push States to meet their RtoP obligations. The Council’s Universal Periodic Review mechanism could be used to monitor States’ human rights performance in relation to RtoP.
- Become parties to and implement obligations of relevant international instruments on human rights, international humanitarian law and refugee law, as well as the Rome Statute of the International Criminal Court.
- Engage in a process of self-reflection to understand how RtoP principles are universal and can also be integrated into local values and standards.
- All societies should engage in a process of self-reflection to identify the risk factors that could lead to mass atrocity crimes. This could involve state-to-state learning processes through partnerships and peer review mechanisms.
- Ensure and/or facilitate the work of international and national organizations, particularly their efforts to strengthen local entities, such as: police, soldiers, the judiciary and legislators and those helping to oversee the implementation of human rights and humanitarian standards.
- Ensure individual approach (including reintegration of child soldiers, provided assistance to victims etc).
- Civil society and international organizations could facilitate the development of national and transnational network of survivors, to help them to share their experience, and therefore to prevent their reoccurrence or repletion elsewhere.

## ***Pillar Two: International assistance and capacity-building***

Pillar Two addresses the commitment of the international community to provide assistance to States in building capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are “under stress before crises and conflicts break out”.

The SG has broken this down into four possible forms:

1. encouraging States to meet their pillar one responsibilities;
2. helping States exercise their responsibilities;
3. building the capacity of States to protect their populations from mass atrocities;
4. assist States “under stress before crisis and conflict break out”.

Items 2, 3, and 4 will entail ‘mutual commitments and active partnerships between the international community and the State’. The SG points out that Pillar II measures are most likely to be used when political leadership is “weak, divided or uncertain”, rather than in situations where the State is determined to commit mass atrocity crimes.

Stressing the need for cooperation among various stakeholders (including Member States, regional and sub-regional bodies, civil societies and private sectors), Pillar Two draws on the “institutional strengths and comparative advantages of the United Nations system.”

Among the many proposals, the Secretary General recommends that States:

- Support UN and sub-regional organization mechanisms for dialogue, education and training on human rights and humanitarian standards.
- Promote region-to-region learning processes such as existing early warning and conflict prevention systems, facilitated by the UN, regional/sub-regional organizations and/or external donors.
- Support good offices and public diplomacy efforts of regional, sub-regional mechanisms and the UN.
- Help build the civilian capacities of regional and sub-regional organizations to alleviate instances of growing ethnic tension.
- Create a standing or standby rapid-response civilian and police capacity to address emergency situations (there are existing proposals from civil society and governments).
- Engage in preventive deployment through collective military assistance (or consent-based peacekeeping) to help the state address non-state actors' crimes relating to the RtoP to ensure a degree of stability and security on the ground.
- Encourage donors to support programs to advance capacities for prevention and protection from RtoP crimes. This will involve region-to-region, state-to-state and agency-to-agency learning on which strategies, doctrines and practices have worked best over time.
- States should strengthen their own security sectors to provide stability for all populations;
- Engage donor countries in increasing rule of law assistance to states. Again, region-to-region learning will prove valuable.
- Increase the involvement of the Peacebuilding Commission to assist States in fulfilling their Responsibility to Protect. The Peacebuilding Fund could provide funding for emergency situations.

### ***Pillar Three: Timely and decisive response***

Pillar Three focuses on the responsibility of international community to take timely and decisive action to prevent and halt genocide, ethnic cleansing, war crimes and crimes against humanity when a State is 'manifestly failing' to protect its populations. Responses under Pillar III would involve pacific measures under Chapter VI, collaboration with regional and sub-regional organizations under Ch. VIII, and coercive measures under Ch. VII (with Security Council authorization). The GA may also be involved in functions articulated in Article 10 to 14 and under the "Uniting for Peace" process.

Ban proposed a number of steps in implementing Pillar Three, to be undertaken by the United Nations (including the role of the Secretary-General, Security Council and General Assembly) and/or by regional or sub-regional arrangements. Proposed actions include:

- The Security Council and the General Assembly can appoint fact-finding missions to investigate and report on alleged violations of international law. The Human Rights Council may also deploy a fact-finding mission as well as appoint a special rapporteur to advise on the situation.
- Such missions could promote timely notice and messages to leaders on whether States fail to meet obligations relating to the Responsibility to Protect. This step will also enable information delivery and thus a timely response by the respected bodies, including by the General Assembly, Security Council, International Criminal Court, UN High Commissioner for Human Rights, UN High Commissioner for Refugees and the Special Adviser on the Prevention of Genocide.
- The international community can remind of the obligation to prevent the incitement of genocide, crimes against humanity, ethnic cleansing and war crimes, and remind that these acts could be referred to the International Criminal Court under the Rome Statute.

- Reminding world leaders “incitement to racial hatred is condemned by the International Convention on the Elimination of All Forms of Racial Discrimination”. Due to its explicit character, states can rely on the International Community in its efforts to discourage the incidents of racial discrimination.
- Promoting targeted diplomatic sanctions (i.e. travel, financial transfers, luxury goods and arms) and arms embargoes to ensure that Member States respect and act in accordance with the provisions of the World Summit Outcome document regarding RtoP. Civil society may also influence individual, public and private investors to withdraw foreign direct investment based on a country’s unacceptable behavior.
- Member States should consider “the principles, rules and doctrine that should guide the application of coercive force in extreme situations relating to the Responsibility to Protect’.
- The responsibility of the Secretary-General to provide members of the Security Council and General Assembly with information about potential RtoP situations and to ensure that they act in a “timely and decisive” manner.
- The importance for Security Council Members, in particularly the Permanent Five ‘to refrain from employing or threatening to employ the veto in situations of manifest failure to meet obligations relating to the Responsibility to Protect, as defined in paragraph 139 of the Summit Outcome, and to reach a mutual understanding to that effect”.
- The role for the General Assembly to monitor international peace and security, in collaboration between Headquarters and regional organizations. Under the “Uniting for Peace” initiative, the General Assembly may address peace and security issues, particularly, when the Security Council fails to exercise its responsibility due to lack of unanimity among its five permanent members.
- Continued consideration by Member States, the Security Council and the General Assembly towards developing a UN rapid-response military capacity to confront imminent or actual atrocity crimes.
- Global-regional collaboration, in ensuring increased and more effective collaboration between the UN and regional and sub-regional organizations, namely in capacity-sharing and early-warning capabilities.

## The Way Forward

The Secretary-General’s report urges the GA to begin consideration of the strategy for implementing the Responsibility to Protect.

Specifically, he recommended that the GA:

- Welcome or take note of the present report.
- Define its “continuing consideration” role as mandated in paragraph 139 of the 2005 World Summit Outcome.
- Address ways to define and develop the partnership between States and the international community, under Pillar Two on “international assistance and capacity building”, of the strategy outlined in the present report.
- Consider whether and, if so, how to conduct a periodic review of Member States’ actions to implement the Responsibility to Protect.
- Determine how best to exercise its oversight of the Secretariat’s efforts to implement the Responsibility to Protect. This could include annual or biannual reports from the SG for the next several years on the progress made towards implementation of the norm.

The proposal of the Secretary-General to create a new Joint Office headed by the Special Adviser on the Prevention of Genocide will be submitted to the GA later in 2009, only after the GA conducts its debate on the strategy put forward by this report to operationalize RtoP.

### *Background on Joint Office*

During the 2005 World Summit, Member States affirmed the close relationship between genocide prevention and the Responsibility to Protect by including genocide among major crimes and violations, and also by showing their support to the Special Adviser of the Secretary-General on the Prevention of Genocide (see [Paragraph 140 of the Summit Outcome document](#)).

In the 30 January 2009 report, the Secretary-General underlined the commonalities between the mandates of his Special Adviser on the Prevention of Genocide and his Special Adviser focusing on the Responsibility to Protect. According to Ban, “the work of the joint office will preserve and enhance existing arrangements, including for capacity-building and for gathering and analysis of information from the field”.

Ban has requested his Special Adviser, Edward Luck, and the Special Adviser on the Prevention of Genocide, Francis Deng, to continue their consultations with Member States and the President of the General Assembly on the outcomes of the report.

### Annex: Early Warning and Assessment

Throughout the report, Ban refers to the important role of early warning in implementing RtoP. He stresses a human-rights-based approach at the country- and international levels, building up the civilian capacities of regional and sub-regional organizations to prevent crimes and violations, and improving information sharing among members of the international community. Finally, Ban noted that:

- It is important to use available information, resources, particularly the knowledge of local partners, in the development of relevant strategies, as well as decision-making process.
- It is important to avoid creating new and/or redundant entities dealing with crime and violence-related issues. Instead, relevant organizations, departments and programs should “incorporate consideration and perspectives relating to the responsibility to protect into the ongoing activities and reporting procedures to the extent that their mandates permit”. This would enable the UN to anticipate situations likely to involve crimes and violations, as well as improve information-sharing and common analysis among the different programs and agencies.