Concept Paper


on the


13-15 December 2007
Hotel Protea Stellenbosch, South Africa
Over the past two decades, norms relating to the protection of civilians have gained increasing acceptance in both policy and academic circles. Successive United Nations (UN) Secretaries-General have eloquently spoken of the responsibilities of states towards the populations within their territory and of the unacceptability of states hiding behind a veil of sovereignty as they abuse the very people they are obliged to protect. Member States apparently largely concur. The consensus Outcome Document from the September 2005 World Summit – the largest gathering of heads of state and government in history – endorsed the notion that both states and the international community, through the United Nations, have the responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity (see paragraphs 138 and 139 attached). In paragraph 138, the assembled states declared that “we accept that responsibility and will act in accordance with it.” In a more innovative step, the following paragraph details the responsibilities accepted by the international community to assist states in building their capacity for protection, to employ the peaceful instruments of Chapters VI and VIII of the UN Charter to help protect populations from these crimes, and, when “peaceful means be inadequate and national authorities manifestly fail to protect their populations,” “to take collective action, in a timely and decisive manner,” through the UN Security Council and the enforcement provisions of Chapter VII.

These normative developments, however, have not been matched by comparable progress on developing either international machinery or national will to insure that the well-publicized failures to protect of recent decades will not be repeated. Indeed, the sluggish and inadequate responses to the long unfolding events in Darfur speak more of lessons unlearned than learned. The historic pledges of the 2005 World Summit were followed by a deafening silence from top UN officials on how they should be implemented. Former UN Secretary-General Kofi Annan,
who had boldly put the more controversial matter of humanitarian intervention on the international agenda in 1998-99, seemed disinterested in its more layered and positive successor, the principle of the responsibility to protect (RtoP). Meanwhile, some developing countries, particularly in Africa and Asia, seem to be having second thoughts about the RtoP doctrine they so recently endorsed at the World Summit. The former has been particularly worrisome, as the Africa Union (AU), in its Constitutive Act (Article 4 (h)) of 2000, asserted “the 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,” five years before the UN acted.\(^1\) African support had been critical to gaining the inclusion of RtoP language in the Outcome Document, so slippage in political support there could have wider repercussions.

Even before succeeding Kofi Annan as UN Secretary-General in January 2007, Ban Ki-moon vowed to make the implementation of RtoP one of his highest priorities. His determination not to have his tenure blemished by the kinds of genocides and mass atrocities that had haunted his predecessor was, no doubt, reinforced by his early and moving trips to Darfur. He has referred to RtoP as a moral obligation, not just as a matter of doctrine and policy. From the outset, he has displayed a marked preference for deeds over words, often citing the need for the UN to move from promise to performance across the board. Here, it would appear, is a classic case of the UN (in this case the Member States) promising far more than it is (they are) prepared to deliver. At stake is the credibility and integrity of the world body, not to mention the lives and dignity of untold numbers of innocent civilians.

The new UN Secretary-General decided to take a series of steps to move this agenda forward. He upgraded the existing post of Special Adviser for the Prevention of Genocide to Under-Secretary-General level, made it a full-time position, and gave it a broader mandate and

new title: Special Representative for the Prevention of Genocide and Mass Atrocities (SRPGMA). The latter designation served both to encompass all four crimes included under the World Summit’s conception of RtoP and to underline that this was to be an action-oriented and global post, not just a headquarters advising one. He recruited the widely-respected Francis Deng, with a dozen years experience as the UN’s Special Representative on Internally Displaced Persons (IDPs) between 1992 and 2004, to the expanded post. In addition, the UN Secretary-General established a new position of Special Adviser on the Responsibility to Protect (SARP), at the Assistant Secretary-General level and on a part-time basis, to lead the efforts to achieve conceptual clarity, to build political support, and to propose ways of improving the performance of the UN and its partners on RtoP. For this task, he chose Edward Luck, a long-time student of UN affairs and adviser of the new UN Secretary-General during his campaign and the ensuing transition period. The Special Representative and Special Adviser, sharing an office suite and somewhat expanded staff, will work largely as a team in pursuing their dual mandates. The UN office’s research, analytical, and convening efforts will be complemented by those of the International Peace Academy (IPA), an independent policy research organization based in New York City where Professor Luck is Vice President and Director of Studies.

On 9 October 2007, the Special Adviser presented a paper recommending eight initial steps toward realizing his side of the mandate to the Policy Committee, the equivalent of the UN Secretary-General’s cabinet. These were readily adopted and the Special Representative and the Special Adviser are now embarking on a series of meetings and roundtables around the world to get the input of leading experts and practitioners. The Stellenbosch Roundtable in South Africa will be the first of these efforts, and its agenda is designed to derive lessons from past experience at preventing genocide and mass crimes – both positive and negative – that could inform the
search for ways to be better prepared for future protection emergencies of the scale of mass atrocities or genocide. The goals are three-fold: 1) to provide a historical foundation on which the substantive work of the new office can proceed; 2) to assemble a wide range of practical suggestions for how the performance, procedures, machinery, tools, and strategies employed by the UN and its partners can be sharpened; and 3) to engage practitioners, policymakers, and opinion leaders in an interactive dialogue on what the UN Secretary-General is seeking to achieve by operationalizing RtoP, on how his Special Representative and Special Adviser are approaching the key conceptual, doctrinal, and institutional issues, and on the prospective roles for the wide range of governmental, inter-governmental, and non-governmental players involved in the protection effort.

To encourage an intensive and free-flowing exchange of views, the participants will be limited to about 30 senior figures from the UN, regional organizations, governments, and civil society, most of them presenters on one of eleven panel sessions over a three-day period. Given the importance of the subject matter and the range of historical, policy, and institutional topics addressed, the organizers have decided to limit participation to those prepared for a deep immersion in these matters. To maximize the time for interchange, each panel will be limited to two presenters, who will be asked to hold their opening remarks to about 15 minutes each. They have been selected on the assumption that their distinct experiences have given them somewhat different views of how the historical cases have unfolded and of what lessons might be derived from them, but the organizers are not looking to promote debate for its own sake. Indeed, despite the distinct circumstances of each situation, it is hoped that some lessons of broader relevance can be gleaned across cases and that the discussion will feature comparative analysis from situation to situation, as well as an understanding of how international and institutional
responses have evolved over time. Presumably, considerable learning has already been going on. To ease comparative assessments, all of the speakers on the six historical panels will be asked to address the same set of questions (posed later in this Concept Paper).

As the attached agenda details, following welcoming remarks and a discussion of the twin mandates, there will be panel sessions on six cases of genocide and/or mass atrocities over the past two decades in Cambodia, Rwanda, Bosnia, Burundi, the Democratic Republic of the Congo (DRC), and Sudan’s Darfur region. While four of these have been in Africa, one was in Europe and another in Southeast Asia. This is a global phenomenon and participants will be drawn from around the world. To graphically underline the scope of the problem and the consequences of failed policy, a film on the Rwandan genocide, “Sometime in April,” will be shown the first evening. Drawing on these initial case-specific panels, the last four sessions will draw policy, doctrinal, procedural, and institutional lessons for the UN, regional and sub-regional arrangements, and civil society and national policies and pose specific recommendations for the way forward.

Over the past two years, since the World Summit, commentators and political figures have voiced starkly different perspectives on the scope and core content of RtoP. Some have wanted to apply it to problems as diverse as the scope of HIV/AIDS or the rights of indigenous peoples. The Special Representative and Special Adviser, however, are taking a more focused approach, based on the four crimes – genocide, war crimes, ethnic cleansing, and crimes against humanity – specified in the Outcome Document. Otherwise, there would be a real danger of following the path – so familiar to the UN – of stretching the principle until it loses conceptual coherence and policy and operational utility.
Much of the public debate, moreover, has revolved around questions of how and under what conditions and source of authorization military intervention might be contemplated for protection purposes. While, as noted above, the Outcome Document recognizes the possibility of Chapter VII coercive action through the UN Security Council when states “manifestly fail” to meet their protection responsibilities, it places much greater emphasis on preventive measures, including through capacity building in the state in question, and on non-coercive action under Chapters VI and VIII of the UN Charter. The public over-emphasis on the military dimension of RtoP and the under-emphasis on the prevention and capacity-building aspects have skewed the post-Summit discourse, permitting skeptics to cast the doctrine as a façade for interventions undertaken by the strong against the weak for other purposes. This tendency threatens to define the discourse in an inappropriate and divisive North-South context unrelated to the origins and purposes of the concept or to the language of the Outcome Document.

In addition to trying to facilitate system-wide coherence on the conception of RtoP, a task that is well underway, the Special Representative and Special Adviser will focus initially on indicators of potential or impending genocide or mass atrocities, on decisions points within problematic countries at which international attention might make a difference, on existing early warning capacities and processes in the UN system and on how these might be strengthened and better integrated, on communication and information flows and how the warning signs generated by the far-flung field operations of the UN, regional, and independent organizations are assessed and evaluated, on linkages between the UN and its partners on prevention, early warning, and analytical functions, and, importantly, on what steps governments, regional and sub-regional arrangements, and civil society groups have taken to prevent dangerous tendencies in some states and on how such capacities could both be strengthened and replicated elsewhere. The thrust of
this effort will be to find ways of helping states to succeed rather than only considering ways to react once they have failed. The latter is certainly deserving of sustained policy analysis as well, of course, but will largely be reserved until later stages of this dialogue and inquiry, not only for political reasons but also because the UN may have comparative advantages on the prevention, anticipation, and capacity-building side, which remains under-explored and only vaguely understood.

Given this general orientation, the organizers would urge the presenters on all the panels to give primary attention to innovative thinking on that side of the equation. Those presenting the historical cases are asked to address the following seven sets of questions:

- Were there specific things that the international community could have done to discourage or deter the destructive course at an early stage? Why were they not undertaken?

- Were there decisive points in the decision-making chain of the perpetrators – whether a government or armed group – where signaling or symbolic actions by the international community might have affected their calculation in a positive manner?

- Were there countervailing political forces, public institutions, or civil society activities that could have made more of a difference with some nurturing by external actors and institutions? If so, what were they and how could their efforts have been bolstered? Could negative public perceptions of outside interference have been minimized?

- What preventive steps were attempted and how did they fare? What obstacles did they face, such as access, resources, coordination, timing, follow-through, etc.?
• Would preventive capacity-building within the country in question have been an early option and, if so, what would it have looked like and where within the society would it have best been focused?
• Did the UN and its partners have workable early warning and information assessment procedures in place in this case and how did they work in practice? Were the results of decision-making by the UN Secretary-General, by the Security Council, or by individual or groups of Member States affected by early indicators of trouble ahead?
• In terms of lessons learned from this case for the UN and its partners, what best/worst practices would you flag? Based on this case, what would be your highest priority and/or most feasible recommendations to the UN Secretary-General?

The presentations and ensuing discussions will be under the Chatham House Rule: what is said can be relayed to others but not who said it. Speakers will not be required to have prepared texts or to submit discussion papers in advance, though either would be most welcome, as would be any specific recommendations in writing. There will be three rapporteurs, one from CCR, one from IPA, and one from the UN. They will prepare a draft report of the proceedings that is substantive, policy-oriented, and forward-looking, for review and joint publication by the co-convenors, CCR, IPA and the Office of the UN Special Representative for the Prevention of Genocide and Mass Atrocities. The report will be widely circulated throughout the UN community, to capitals, to think-tanks, universities, NGOs, and to the media. It will serve as a model for the reports to be produced and disseminated from the genocide prevention/RtoP roundtables to be convened in other parts of the world over the next year or two. IPA, CCR and the Office of the UN Special Representative for the Prevention of Genocide and Mass Atrocities, are considering the possibility of convening one or more follow-up events in New
York to bring the results of the Stellenbosch roundtable to the attention of key Member States and other players in the larger UN community.
Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity

Para. 138:

Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

Para. 139:

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are 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, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build 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.

---

2 World Summit Outcome Document, September 15, 2005, UN Document A/60/L.1