

“Implementing the responsibility to protect”

Responding to the UN Secretary-General’s report on the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity

1. Introduction

In April 1994, thousands of Rwandan soldiers and armed militia went on a killing spree, aiming to murder all Tutsis and moderate Hutus in the country. In less than 90 days, between 800,000 and 1 million people were massacred, many killed by the blows of machetes, wielded by their neighbors. Hundreds of thousands of women were raped. Despite early warning that genocide was a real possibility—by the United Nations (UN) Special Rapporteur on extra-judicial and arbitrary killings in 1993, and by the UN’s own Force Commander Romeo Dallaire in January 1994 – the UN Security Council failed to act.

One year later, in July 1995, 8,000 Bosniak men and boys in the UN-declared safe haven in Srebrenica were massacred by units of the Serbian army.

Rwanda’s genocide, massacres in Srebrenica, Cambodia’s killing fields, ethnic cleansing in Kosovo, the Holocaust: these experiences - both their human toll and the political and institutional failures they represent - have seared humanity.

In September 2005 at the World Summit, the largest gathering of heads of state and government the world has seen, world leaders made a solemn promise that they would seek to prevent such atrocities. They stated that one of the fundamental obligations of governments is to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. They committed to supporting each other to deliver such protection, and, where a government is manifestly failing to fulfill its obligations, to take all necessary measures to protect people at risk of mass atrocity crimes.

In stating such obligations, the UN was following where the African Union (AU) had led. In 2000, the AU stated in its Constitutive Act that it would not be indifferent in the face of failure by an AU member to protect its population from genocide, war crimes and crimes

against humanity. Indeed, African member states were among others from the global south that played a key role in securing agreement on the 2005 World Summit Outcome Document.

In February 2008, Secretary-General Ban Ki-moon appointed Professor Edward Luck as a Special Adviser and tasked him with leading the preparation of a report on implementing this commitment of the responsibility to protect.

This report is now finalized. It will be the subject of a debate in the UN General Assembly (GA), as the GA seeks to fulfill the summit declaration on the need to continue consideration of R2P.

This note presents proposals to member states on how to respond to the Secretary-General’s report on implementing the responsibility to protect and urges them to ensure that the opportunity of a debate in the General Assembly is a truly constructive one in the effort to implement the vision set out by their heads of state in 2005.

2. The Secretary General’s vision

The report of the Secretary-General (SG) fleshes out in more detail the three-pillar approach that he articulated in his July 2008 speech in Berlin on responsible sovereignty. The SG stresses the importance of national obligations to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and offers examples of what can be done at the national level to fulfill the requirements of responsible sovereignty. He places particular emphasis on the examples of what UN member states and UN funds, programs and departments can do to assist governments to fulfill their R2P obligations – which he describes as the second pillar of R2P implementation. Where such early prevention fails, and people are at risk of mass atrocity crimes, the SG challenges governments to take the timely and decisive collective action that they

committed to do in 2005 – the third pillar of the R2P response. The report presents an overview of what the SG calls the gaps in “will, imagination and capacity” that must be filled to implement R2P. The SG is clear: member states will be assessed by their people and the people of the world in how they deliver on their responsibility to protect their own populations and how they uphold the commitment to take collective action through the UN when national governments fail and people are at risk from genocide, war crimes, ethnic cleansing or crimes against humanity.

The SG’s report also emphasizes that:

- R2P has a clearly delimited scope: The norm cannot be used to address all social ills but rather is narrowly focused on prevention of genocide, war crimes, ethnic cleansing and crimes against humanity.
- R2P is based on existing commitments under international law and does not detract from broader commitments under international humanitarian law, human rights and refugee law.
- R2P is not relevant solely for the south, or solely in conflict situations.
- R2P cannot be reduced to, and is not synonymous with military intervention, nor humanitarian intervention, describing why and how the doctrine is fundamentally different from this latter idea.
- Nothing about R2P implies any alteration to the established UN Charter provisions on the respective roles of the General Assembly, Security Council and others in peace, security, and the protection of populations.
- Early warning is a necessary step in preventing mass atrocities and that UN capacity in this regard - to receive information, ensure that it gets sent to the right people, and gets acted on - is essential to the implementation of the responsibility to protect.
- While prevention is at the heart of the doctrine, and while assistance to States to build their capacity to ensure their own responsibility to protect is crucial, when prevention fails the international community must respond in a

timely and decisive manner with a flexible response tailored to the situation in hand.

- Member states’ gaps in capacity, imagination and will are most “pronounced and damaging” - in the area of timely and decisive response--i.e. pillar 3.
- Notwithstanding the conceptual division of R2P into three pillars, in the real practice of mass atrocity prevention, there is no sequence to implementation, and member states should not seek to establish one. Rather decision-makers “must remain focused on saving lives through timely and decisive action.”
- R2P does not supplant established principles guiding the use of coercive action and of military force: collective action to use force should be taken through the Security Council in accordance with Chapter VII of the UN Charter. R2P does not provide justification for unilateral military action. As the SG said in his July 2008 speech in Berlin, “R2P does not alter the legal obligation of Member States to refrain from the use of force except in conformity with the Charter. Rather, it reinforces this obligation. By bolstering United Nations prevention, protection, response and rebuilding mechanisms, R2P seeks to enhance the rule of law and expand multilateral options.”
- In order to prevent the misuse of R2P and ensure a more consistent response to halting mass atrocity crimes, the Security Council could agree on principles, rules and doctrines for use of force and urge the five permanent members of the Security Council to withhold their veto in such instances of manifest failure.
- Furthermore, that member states concerned about the misuse of R2P should note that by fulfilling fundamental protection obligations and respecting core human rights, states will have far less reason to be concerned about unwelcome intervention from abroad, and that misuse will be further limited as the UN develops its strategy and standards on R2P.
- R2P is an ally of responsible sovereignty. As the SG says, “[T]he purpose of [R2P] is to build responsible sovereignty, not undermine it.” As

he adds, “[T]he protection of populations is a defining attribute of sovereignty and statehood in the twenty-first century.”

3. Debating the SG’s report in the UN General Assembly - How member states should respond

In his report, the SG suggests that UN member states consider his report on implementing R2P. He further suggests that the General Assembly focus attention on ways to define and develop the partnerships between States and the international community in delivering such assistance. He also emphasizes that the GA should decide how to monitor the implementation of the responsibility to protect by the UN Secretariat.

A debate in the General Assembly on the SG’s report now appears imminent. In this vital period of preparation for a debate, the Global Centre urges member states to prepare to declare their continuing support for the 2005 agreement made by heads of state, and to come to a debate ready to offer plans and ideas on how to implement R2P, including plans for implementing national obligations to protect populations, efforts to assist others and to build capacity for mass atrocity prevention, including the capacities required - in the UN and regional organizations - to deliver timely and decisive responses in settings where states are manifestly failing in their responsibilities to protect their populations from mass atrocity crimes.

A debate in the GA is a chance for member states to embrace the SG’s call for the implementation of R2P and to share their views on proposals and priorities for governments to implement their national responsibilities under R2P and to assist each other, as well as to stipulate what they need from the UN in this regard.

The Global Centre does not think that a resolution is a necessary outcome of a debate. What is essential is that the debate is a constructive opportunity for dialogue that brings greater clarity and commitment for member states on what they will do to implement the responsibility to protect, and that there is support for the SG’s report, ongoing UN efforts to implement of R2P and continued GA engagement.

4. Conclusion

There are some who have raised questions about what was agreed in 2005, arguing that the World Summit agreement of R2P does not add anything new to the existing state of international human rights or humanitarian law. Of course, the core underlying idea that states have an obligation to protect men, women, and children from the worst atrocities is well established through international human rights and humanitarian law. But with the advent of R2P, the international community accepted for the first time the collective responsibility to act should states fail to protect civilians from genocide, ethnic cleansing, war crimes or crimes against humanity. R2P imposes two obligations – the first upon each state individually, the second on the international community of states collectively. With the embrace of the responsibility to protect, a long and unresolved debate over whether to act became, instead, a discussion about how and when to act.

There are also member states that seek caveats on the agreement. All those that are serious about preventing mass atrocities should thwart any effort to renegotiate or roll back the 2005 agreement. The SG’s report is clear – the agreement is a good one, neither reaffirmation nor renegotiation of a text agreed by world leaders is necessary. No member state has argued against the need to curb abuses of this magnitude. As the SG says, “The task ahead is not to reinterpret or renegotiate the conclusions of the World Summit but to find ways of implementing its decisions in a fully faithful and consistent manner.” The issues to discuss are how to address gaps in will, imagination and capacity to make genocide, war crimes, ethnic cleansing and crimes against humanity, a thing of the past.