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RESPONSIBILITY TO PROTECT POPULATIONS FROM GENOCIDE, WAR
CRIMES, ETHNIC CLEANSING AND CRIMES AGAINST HUMANITY

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Nature of the Responsibility

1. Each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The first task is to be clear as to what the responsibility entails. At a minimum it should entail the following: (a) ensure that people under its jurisdiction are not subjected to genocide, war crimes, ethnic cleansing and crimes against humanity; (b) a state should take effective and credible measures to ensure that such things do not happen and (d) that when they do happen the state should punish those that perpetrate the atrocities.

2. To me the answer to what states should do to promote a world free of genocide, war crimes, ethnic cleansing and crime against humanity is ~~elegantly~~ ^{elegantly} answered for us by the United Nations Charter, which in its preamble proclaims one of the objectives of the United Nations as the promotion of human Rights in order to serve mankind from the scourges of war. Each of the evils we are trying to prevent is a violation of human rights.

Responsibility of international community

3. 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.
4. Encourage regional organizations to develop early warning systems to complement efforts at the international level.
5. The crucial question of when the events observed in a given country should be considered sufficient to trigger an international response is always going to be problematic. We are not dealing with an exact science. Given that this is never going to be an easy matter to resolve the best approach is to emphasize ^{the} promotion of human rights so that we do not have to come to a situation ~~which is likely to lead to genocide, war crimes, ethnic cleansing or crimes~~ ^{when} ~~against humanity and~~ we have to make that decision.

Early Warning Capability

6. This is critical in order to avoid the use of force which as we all know is expensive both in terms of resources and human life. It is also destructive in

terms of its impact on society. The Heads of State and Government have unambiguously pledged to “support the United Nations in establishing and early warning capability. Although the system faces many challenges, the field early warning has evolved significantly since its initial conceptualization and it has been integrated into the policies of ~~many~~^{the} organizations. *and Her organization*

It is accepted that

7. The international community has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means in accordance with Chapter VI and VII populations from genocide, war, crimes, ethnic cleansing and crimes against humanity.
8. Such peaceful and preventive measures, it should be noted are most likely to be effective if they are undertaken at an early point and are carefully targeted and calibrated. This in turn requires early warning and a differentiated assessment of the circumstances of each case.
9. Any early warning system to be effective should be generated by people and NGO organizations as they are close to the ground. This involves creating conditions where NGOs can play their role and complicate Government efforts. A free press is probably the best early warning system. *Many Sen had emphasized the role of free information in the prevention of genocide.*

Should trigger the attention of

10. Some of the key factors that ~~the international community should pay attention~~
~~to~~ are the following (a) people in leadership positions concentrated in 1 or a
set of ethnic groups with display of their ethnic attributes and hostility toward
other ethnic groups; (b) existence of ethnic based political tension; (c)
composition of the police and armed forces concentrated in 1 or a set of ethnic
groups with a policy of exclusion of others; (d) existence of private militias;
(e) types of weapons purchased by the armed forces as that may indicate for
whom the weapons are met for and (f) a history of human rights violations by
the police and armed forces. ~~All these conditions exist in situations where~~
~~there is no effective protection of human rights.~~

11. I think there is now consensus on a good early warning system. David
Nyheim's report prepared for the OECD indentified the following elements:
(1) based on the ground; (2) uses multiple sources of information; (3)
capitalizes on appropriate communication and information technology; (4)
provides regular reports and updates on conflict dynamics to key national and
international stake holders and (5) has a strong link to responders or response
mechanisms.

Early warning some of the problems

12. There is a perception that there is not sufficient focus or institutional resources for early warning and risk analysis at headquarters ^{into Nairobi} and that there was an ^{there is also a perception} institutional weakness in the analytical capacity of the United Nations ^{that}
13. Many would argue that the United Nations System does not lack relevant information. Nor is the gathering of information and assessment of information for the purpose of early warning a novel undertaking for the organization. Substantial progress has been made over the past decade in enhancing UN early warning capacities. ~~Actually there are several early warnings regarding potential collective violence.~~
14. Often the problem with early warning systems is not that there are no early warning systems, it is that early warnings are generally ignored and not followed by actions until after the catastrophe. E.g. the problems that led to violence after the 2007 Kenyan elections were identified in EAC/NEPAD Peer Review conducted on Kenya several months before the ²⁰⁰⁷ elections and nothing was done to address the problems identified in the report. Fighting and grievous human rights violations in Somalia were widely reported as early as 1988 yet provoked no regional or international response.

Additional Responses

15. There are things that can be done. In communities where there is potential for ethnic violence, it is important as part of the response to create an environment where calls for non-violence are heard and accepted by people even when politicians call for violence. This requires long term programs to create such environments by connecting people from different ethnic groups and enhancing inter-ethnic activities.

16. Another problem is that conflict analysis, including early warning has traditionally not included women's rights or gender perspectives. The consequences "when women are not included in early warning their opportunities to fully participate in conflict prevention and post-conflict reconstruction are limited and thus early warning systems risk failing to adequately predict or prevent conflict. Moreover gender-based indicators can provide a more complete understanding of the causes of conflict, and as result help develop more appropriate responses to mitigating or preventing it.

17. Another matter than needs addressing is that of who does what when a crisis is developing or develops. One of the reasons for failure of taking rapid actions to prevent the violence in crisis countries is the fact that often the question of who does what is unclear. ~~Without preparation and plan, it is difficult to take~~

~~the right action immediately.~~ ~~I think~~ It may be necessary to identify and allocate this responsibility to the UN agency dealing with response.

The key problem in responses

18. All said and done the key problem though is really why we find it hard to intervene to prevent conflicts. There is no shortage of early information out there for those that want to be informed. My experience working as Legal Adviser to the UN in East Timor in UNAMET in 1999 was that we had plenty of information that there was going to be violence after the referendum. We communicated this in our weekly reports to headquarters and mentioned the fears to visiting government officials from member states. Yet no action was ~~done~~ ^{taken} to prevent the violence. Why was there no action to prevent the violence?

19. The real problem is one of ~~a~~ political will. Early warning rarely leads to effective and timely response because of the lack of political will and some times obstructionist tendencies of regional organizations that almost always seem to want to shield member states. I think that Nick Grono in his article Early Warning and the Responsibility to Prevent conflict put it rightly when he observed that: "one of the reasons is that early warning is largely a technical exercise, while early response is a political exercise. Perhaps the most eloquent identification of this problem I have ever come across is in a ^{speech by the late first President of Tanzania Julius} Nyerere's gave in reaction to the Idi Amin crisis at an OAU heads of states meeting in 1975. He exploded with a blistering indictment of the OAU and his fellow presidents " *The whole of Africa, he declared cries out against atrocities of the colonial and racist states.. But when massacres, oppression,*

and torture are used against Africans in the independent states of Africa, there is no protest from anywhere in Africa. There is silence even when such crimes are perpetrated by or with the connivance of African governments and the leaders of African states.. The OAU never makes any protest or criticism at all. It is always silent. It is made to appear that Africans lose their right to protest against state-organized brutality on the day their country becomes independent.. the OAU acts like a trade union of the current heads of state and government, with solidarity reflected in silence, if not in open support for each other. “ (OAU, 1975)

20. Though justified, I think we must temper this reaction that early warning does not always lead to early action with the fact that as the Secretary General's report observes ~~in his report~~: “..it is also true that early action is highly unlikely without early warning.

21. This means that as we work on early warning systems we must work on building the political will to act. One of whose ^{essential} manifestations must be zero tolerance for human rights violations where ever they occur and regardless of identity of the perpetrator or the victim.