

## EARLY WARNING, ASSESSMENT AND THE RESPONSIBILITY TO PROTECT

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To General Assembly Inter-active Dialogue,  
9 August, 2010.

1. Deep Appreciation to the Secretary-General for his report and to the President of the GA for convening the meeting.
2. Congratulation to the Secretary-General for his leadership on RTP and for his thoughtful statement opening the meeting.
3. Appreciation to Special Advisers Deng and Luck for their efforts.
4. The United Nations, its Member States, Organizations of the UN System, NGOs, and the broader UN constituency all have important **protection responsibilities** for upholding international norms on human rights universally. Within the framework of these protection responsibilities, world leaders, at the highest levels, have laid particular emphasis on the **responsibility to protect** in respect of genocide, ethnic cleansing, crimes against humanity, and war crimes. What the GA had done, in effect, was to place a special duty of care on the UN, its Member States, and all organs of society in respect of these offences. The RTP had been given the character of a peremptory norm of international law (*jus cogens*).
5. **Touching on protection responsibilities generally**, it needs to be borne in mind that Articles 55 and 56 of the UN Charter place individual and collective responsibilities on Member States for upholding human rights universally. These are legal responsibilities.
6. The Secretary-General has important preventive functions under Article 99 of the UN Charter. He uses his own judgment in deciding if, and when, to act.
7. The Security Council and the General Assembly have their responsibilities under the Charter. If violations of human rights threaten or breach international peace and security the Security Council is required to act. The GA has on different occasions declared that it would act against all situations of gross violations of human rights. (e.g. GA resolution 37/175). This is an issue of principle for the GA.
8. Prevention and protection are needed, in the first instance, at the national level. Regional and international actions are back-up actions. As a matter of policy, the emphasis should be on national prevention and protection. Every Member State must strive for an effective national protection system that includes prevention.
9. The UN Human Rights Council, in its Universal Periodic Review process, could render good service by focusing on the national protection systems of every country, including their arrangements to prevent gross violations of human rights. Its Special Procedures could help in this effort.
10. Information and assessment efforts should also target the national protection systems of Member States, in cooperation with them. The Special Advisers of the Secretary-General, in cooperation with the UN High Commissioner for Human Rights, could dialogue with National Human Rights Institutions on the enhancement of national protection and prevention. UNDP and the IBRD

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could help greatly. Early warning and assessment, in addition to regional, and international protection, should emphasise national protection.

11. **Moving on to the responsibility to protect as emphasised by the General Assembly**, there is good literature<sup>2</sup> and practice on prevention in respect of human rights situations. The urgent deployment of international or regional observers had been quite helpful in a number of situations (South Africa, 1992), and visiting missions (East Timor, post-referendum).
12. Five aspects could be signalled: the issue of principle, the political dimension, the need for confidence-building, the need for cooperation, and the centrality of national protection systems.
13. On the issue of principle, namely the GA's historic emphasis on protection, it could help for the Secretariat to prepare and publish a Note recapitulating past instances in which the GA had declared its own determination to act against all situations of gross violations of human rights. This would be a service to Member States in consolidating the practice of the GA on protection.
14. On the political dimension, it needed to be recognized that, in the light of the recent positions of great powers, the broad membership of the UN is cautious when it comes to the practical dimensions of the RTP. This is understandable. This is why a note articulating the practice of the GA on protection could be helpful in providing a basis for future discussions of when and how the UN could act to discharge the responsibility to protect.
15. In light of the political sensitivities of Member States, but keeping in mind the issue of principle, confidence-building and cooperation would be helpful.
16. There is room for confidence-building and cooperation in working with Governments on the strengthening of their national protection systems. A national protection system has six dimensions: constitutional, legislative, judicial, institutional (NHRIs), preventive and educational. Prevention arrangements are particularly important in multi-ethnic states.
17. Confidence-building and cooperation could be served by establishing a cross-regional Group of Friends of the SG on the Responsibility to Protect.
18. It could also assist to establish a mechanism to follow up on the implementation of the Convention against Genocide. It did not necessarily have to be a treaty body with functions similar to other UN human rights treaty bodies. It could be a group of experts that met periodically to discuss international cooperation for the implementation of the Genocide Convention and to provide its advice to the SG and the GA.
19. The two Special Advisers deserve the support of the GA because they are helping the GA to discharge its own protection responsibilities. It would be important to provide them with the resources they need to carry out their important functions.
20. The consideration of RTP in the future could build on the following foundations that seemed to have broad support in the GA:
  - The Membership is committed to universal human rights on the basis of international norms elaborated by the GA.
  - The Membership is against criminal gross violations of human rights.

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<sup>2</sup> Early-warning in International Law and Practice, Nijhoff, 1992; Conflict Prevention in Practice, Nijhoff, 1995; Preventive Diplomacy at the UN, Indiana UP, 2008; Preventive Human Rights Strategies, Routledge, 2010.

- The Membership wants UN actions to be based on international law, including the UN Charter.
  - The Membership sees the need for confidence-building and cooperation in dealing with the RTP.
  - The Membership respects the initiatives of the SG in appointing his Special Advisers and in arranging their office as he deems appropriate.
  - The Membership wishes to have a continuing dialogue on RTP.
21. It is an honour to participate in this dialogue. Having written the first draft of Agenda for Peace, it is heartening to see the GA continuing its efforts on prevention. Thank you.

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