

## Overview of United Nations Secretary-General Ban Ki-moon's Report on the Responsibility to Protect: Timely and Decisive Response

### I. Genesis of the Responsibility to Protect

United Nations (UN) Secretary-General Ban Ki-moon published his fourth report since 2009 on the Responsibility to Protect (RtoP, R2P), *The Responsibility to Protect: Timely and Decisive Response* in advance of the UN General Assembly informal interactive dialogue on the same subject to take place on 5 September 2012.

In the Report, the Secretary-General recalls the foundations of the concept and the development of RtoP within the UN since its adoption at the 2005 World Summit, reminding that the norm was first articulated in response to the international community's past failures to protect populations from genocide, crimes against humanity, war crimes, and ethnic cleansing. The Report notes the three pillar framework established in the Secretary-General's 2009 Report, namely: the protection responsibilities of the state; international assistance and capacity-building; and timely and decisive response. It also reminded that the three pillars are non-sequential, of equal importance and that, without all three, the principle of the Responsibility to Protect would be incomplete.

In light of recent events and recognizing related concerns that have been raised by some Member States, the Secretary-General focuses his report on the broad range of measures available under the third pillar of RtoP, which articulates the responsibility of Member States to respond collectively in a timely and decisive manner when a State is manifestly failing to protect its population. The Report also elaborates on the implementation of these tools as well as the actors involved. The Report notes that while the prevention of these four crimes is far preferable, in cases in which preventive measures prove inadequate and the threat to populations remains imminent, timely and decisive measures are crucial. The Report underscores that prevention and response must be seen as closely connected. The Secretary-General notes that RtoP violations often stem from identity-related conflicts, and that the constructive management of diversity and of structural problems that can trigger atrocity crimes is necessary to protect populations.

### II. The Implementation Strategy

- RtoP is based on the fundamental principles of international law and includes a **broad spectrum of tools** under Chapter VI, VII and VIII of the UN Charter to **be implemented early and flexibly**, tailored to the circumstances of a country situation.
- In his discussion on the connections between prevention and response, the Secretary-General notes that the first two pillars of RtoP are often associated with prevention, and the third pillar, with response, but that, "the dividing lines are not so clear in practice" as **action under both pillars one and two may include elements of prevention and response**.
- The Report emphasizes that there are **never situations in which states do not have a responsibility to protect** their populations from mass atrocities. The question is therefore not whether RtoP applies to a situation, but rather how best to operationalize the norm and protect populations in different circumstances.
- The Report touches on the **interactive and mutually supportive relationship between the three pillars**. Third pillar response should help to lay the foundation for a state to reassume its protection obligations. Action under the second pillar is meant to reinforce the state's ability to protect its populations and lessen the likelihood that third pillar measures will be needed. In the long-term, third pillar tools will be required less and less often as states consistently protect their populations, at times with the help of the international community. Thus, **action taken under pillars two and three is intended to reinforce, not undermine, national sovereignty** as it helps governments ensure greater protection to their populations.
- UN peacekeeping missions, which require consent from the host state, are implemented under pillar II, and should be distinguished from action under the third pillar. These missions include a broad range of mechanisms to support State efforts toward the protection of civilians and, where mandated under Chapter VII, may include the use of force as a measure of last resort to protect civilians if they are threatened. Although peacekeepers may contribute to RtoP goals, **RtoP and the protection of civilians have distinct prerequisites and objectives, and must not be conflated**.

- In the Report, the Secretary-General outlines **five lessons learned** from experience to date:
  1. RtoP should be implemented consistently and uniformly, but as each situation is distinct, the methods and tools used should differ according to the specific circumstance.
  2. It is important to apply principles consistently in rhetoric and implementation so as to ensure international response does not result in charges of double standards and selectivity.
  3. Experience has shown the need to understand how the three pillars relate to and reinforce each other.
  4. An effective strategy to protect populations will likely include elements of prevention and response.
  5. Protection measures are most effective when the United Nations works in tandem with regional partners.

### III. Tools available for implementation

- The Report notes the many RtoP tools available under the UN Charter, including non-coercive responses under Chapters VI and VIII and coercive tools under Chapter VII, and highlights the preference to first address situations with peaceful measures. Actions under Chapter VI - as well as Chapter VIII, by regional and sub-regional arrangements - have been used in many cases when populations were threatened by RtoP crimes.
- Chapter VI provides a **wide range of non-coercive responses** to protect populations from mass atrocities including “negotiation, enquiry, mediation, conciliation, arbitration, and judicial settlement, resort to regional agencies or arrangements, or other peaceful means”. The Report notes that such activities can be undertaken by the Secretary-General in his “good offices” role or by regional arrangements, without the authorization of the Security Council.
- **Mediation and preventive diplomacy** are most effective when multiple actors work together, using their relative strengths and influence toward the common goal of protecting populations. Mediation and preventive diplomacy can also include the appointment of **eminent persons** or **special envoys** to initiate dialogue and prepare for local, regional or UN mediation efforts. The Report noted that the work of the Joint Special Envoy on Syria highlighted the importance of partnerships between the UN and regional organizations.
- **Public advocacy** has been used by UN officials and inter-governmental bodies to condemn mass atrocities and pressure States to comply with their responsibility to protect. **Public condemnation** as well as **the media** may also be used to counter hate propaganda used to incite atrocity crimes.
- **Fact-finding missions and commissions of inquiry** have been used to identify systematic violations of human rights law, highlight the root causes of violations, report on a State’s ability to deal with these violations, suggest ways to move forward, and produce a historical record. Such investigations can be established by the Security Council, the Secretary-General, and the Human Rights Council, which can appoint a **Special Rapporteur** to advise on a case. **UN Human Rights Treaty Bodies and parallel regional instruments and procedures** also help ensure accountability.
- **Monitoring and observer missions**, deployed by international and regional organizations with consent of the State under Chapter VI of the UN Charter, can be used to report and verify the situation on the ground and monitor threats, deterring atrocities through their presence.
- The **International Criminal Court (ICC)** works to end impunity for perpetrators of the most serious crimes. Threats of referral to the ICC may prevent these crimes, and the Court’s engagement contributes to the overall response to a case. The emergence of an international criminal justice system has positively influenced the development of RtoP.
- The Security Council is authorized to initiate **public reporting on crimes and violations against children in armed conflict**, including forced recruitment of children under 15 years of age, which is considered a war crime, and on **sexual violence in conflict** that may amount to genocide, crimes against humanity or war crimes.
- When a State does not respond to diplomatic and other peaceful means, the Security Council may authorize “timely and decisive” collective action under Articles 41 and 42 of the Charter, which can include **targeted sanctions**. Sanctions should be directed towards those responsible for atrocity crimes and have a minimal impact on the greater civilian population. The Report notes that sanctions are most effective in protecting populations when they are used as one tool within a broader strategy to respond to threats, and that the goals for sanctions need to be “clear, consistent and well articulated” so as not to detract from engagement between disputing parties and/or mediators.

- **Coercive military force** can be used in various forms to halt or prevent atrocity crimes – including multi-national forces sanctioned by the UN to establish security zones, the imposition of no-fly zones, and military presence for protection or deterrence purposes - but can only be authorized by the UN Security Council.
- The Report expands on the **role of other actors** within the United Nations:
  - In accordance with Chapter IV of the UN Charter, the *General Assembly* can make recommendations to the Security Council and/or Member States on principles regarding international peace and security, and bring “situations which are likely to endanger international peace and security” to the Security Council. The Report notes the specific example of Resolution 66/253 on the situation in Syria, adopted by the General Assembly, which condemned “widespread and systematic” human rights violations in Syria and called on the government to halt the violence and protect its populations.
  - The *Human Rights Council* can consider situations rapidly, adopt resolutions calling for follow-up measures, establish investigations of allegations of human rights violations, mandate the High Commissioner for Human Rights to assist or dialogue with disputing parties, and call for access of humanitarian workers or monitors. The Report also notes the Council’s Universal Periodic Review procedure, which obliges all Member States to undergo a review of their compliance with human rights obligations.
- The Report concludes this section by recalling that “timely and decisive” response must assess the potential of all available non-coercive and coercive measures taking into account the necessary authorization and key actors, and highlighting the need to respond early and effectively to reduce the need for the use of force. There is also a need to better understand the impact of incentives and disincentives in RtoP situations, and how to overcome resistance to non-coercive measures. It is important to understand the effectiveness of approaches under different circumstances, and coordinate and utilize the wide range of tools and partnerships more strategically.

#### IV. Partners available for implementation

- The Report notes that actors at the international, regional, national and local levels, including those who have protection obligations to their domestic populations and those who must respond timely and decisively when states manifestly fail, have a role in implementing RtoP, and that, “the integrity and credibility of the concept depends upon its full, faithful and consistent application.” The Report specifically highlighted the **General Assembly**, which through its continued consideration of RtoP, is crucial to ensure the full and consistent implementation of the norm over time.
- In addition to the **Human Rights Council**, the ten **United Nations treaty bodies of human rights conventions** contribute to documenting human rights violations by State parties to those conventions, and detect indicators of atrocity crimes. The **Office of the High Commissioner of Human Rights (OHCHR)**, the **UN Children’s Fund (UNICEF)**, and the **Office of the High Commissioner for Refugees (UNHCR)** also play a crucial role in the protection of vulnerable populations.
- **Individual States** can take diplomatic measures, including the imposition of sanctions, and appeal to regional arrangements of which they are a part as well as the Security Council to respond. States can also guarantee asylum to persons fleeing violence and refrain from refoulement of persons at risk.
- Chapter VIII of the Charter underlines the importance of working with **regional and sub-regional organizations** to protect populations, though no enforcement action may be taken without authorization by the Security Council. The Report notes Article 4h of the Constitutive Act of the African Union, which articulates the right of the Union to intervene in situations of genocide, war crimes and crimes against humanity.
- **Humanitarian organizations** provide protection to populations from atrocity crimes, but the Report reminds that these actors need the space to effectively protect populations and that their actions cannot substitute for “timely and decisive” political response to atrocity crimes.
- **National and international civil society organizations** can hold governments accountable for the protection of populations and galvanize support for the implementation of the norm. National civil society can provide early warning of situations on the ground, and through the use of new technology can allow for the dissemination of live information. **Private companies and businesses** may also provide economic incentives to states to protect their populations.
- **Individuals** are able to speak out against intolerance, discrimination and incitement and have the responsibility not to participate in the commission of RtoP crimes.

- The Report recalls that response to the four crimes is most effective when it is “tailored to individual circumstances, and calibrated appropriately”, and calls for further collaboration at the global, regional, and sub-regional levels to forge a common understanding and agree upon a viable strategy to protect populations from atrocity crimes.

## V. ‘Responsibility while Protecting’

- The Report recognizes that RtoP has been increasingly invoked in recent years, and with that comes the **need to better understand how to operationalize the norm** in a “manner that is responsible, sustainable, and effective”.
- The Secretary-General welcomes the Brazilian initiative on ‘Responsibility while Protecting’ for inviting constructive dialogue on the application of RtoP, underscoring Member States’ commitment to RtoP principles and implementation.
- **International actors must act responsibly in every stage of the implementation of RtoP.** Faulty or ill-informed analysis can hinder effective implementation of the norm. Responsible protection includes early and accurate identification and assessment of the threat as well as engagement and preventative action.
- In reflecting on the crisis in Libya in the Report, the Secretary-General recalls that the use of force was authorized by the Security Council after most Member States agreed that the series of peaceful measures had proved inadequate. He also recognizes the concerns of some Member States that non-coercive measures were not given adequate time to take effect and that the implementation of Security Council Resolution 1973 went beyond the given mandate. Going forward, **military actors must take all precautions to avoid civilian casualties**, in accordance with international law, as well as **investigate all possible violations of international law** committed in such contexts.
- The Report notes that though **the prevention of atrocity crimes through non-forcible measures is preferred, coercive tools must remain available** within our comprehensive response strategy and not be relegated to use only after all other measures have been tried and found to be inadequate. The Report states that an early and flexible response that considers all tools available within the UN Charter is favored to ensure the protection of populations.
- The Report highlights the **need for careful and timely assessment of situations, review of the likely consequences and consideration of the most effective response strategy.** It is crucial to learn from experience and improve implementation, but **disagreements about the past must not inhibit the determination to protect populations going forward.** ‘Responsibility while Protecting’ offers opportunities for dialogue to bridge differences and forge strategies.

## VI. Conclusion

The Report concludes by noting that RtoP has been widely accepted but that this does not mean that aspects of the norm’s implementation are free of controversy. It reminds that experience has shown that the international community has a range of non-coercive tools available under the third pillar. The use of force is a measure of last resort, but it is important to recognize the necessity of coercive tools in some situations, learn from past experiences and build a strategy to meet the shared goals of protecting populations.

The Secretary-General calls for continued dialogue on the responsibility to protect in the General Assembly, with this year’s informal interactive dialogue providing an opportunity to focus on our experience under the third pillar and its mutually supportive relationship between pillars one and two. He reminds that there is no template for responding to atrocity crimes, and that cooperation among Member States is crucial toward the successful implementation of RtoP.