RtoP at a Crossroads: Implementation, or Marginalization

Summary

It is not its aim – atrocity crimes prevention - that makes the responsibility to protect (RtoP) distinct. It is the way in which it should be achieved: through individual and collective action and by avoiding the costs of both inaction and inadequate action.

The adoption of RtoP, as articulated in paragraphs 138-140 of the World Summit Outcome Document (WSOD), was a landmark achievement: a concept that academics, humanitarian activists and visionary political leaders had argued for was transformed into a program of action, adopted by consensus by all Member States. This was important development because political commitments imply political accountability. Therefore, political accountability mechanisms can be used to ensure that commitments are met.

The central proposition in this paper is that RtoP's value depends on how far it serves its aim - to prevent atrocity crimes, namely genocide, war crimes, ethnic cleansing and crimes against humanity. Analyzing the impact of RtoP to date, this note argues that RtoP is at a crossroads: Its future lies in implementation, or marginalization. The states and institutions that committed themselves to RtoP will lose their credibility unless they take steps to ensure its effective implementation.

It is not viable to consider replacing RtoP with another concept; this would permit States to backtrack on vital normative and political commitments expressed in the WSOD. To direct the trajectory of RtoP away from marginalization and towards implementation, this note sets out a new agenda that has four core ingredients:

- The reinvigoration of multilateralism to better manage key global trends that shape the current context, including globalization, geopolitical changes, technological advances and migration. These trends should be harnessed to generate opportunities for RtoP's implementation;
- The establishment of effective early action mechanisms to respond to early warning analysis from international to local levels;
- Improved atrocity prevention across the UN system through strengthened accountability of the Security Council, the mobilization of existing human rights mechanisms, and an additional reform track within the Secretary-General's current reform agenda to permit better coordination of the currently fragmented sectors of human rights, rule of law, and the various protection mandates, including RtoP;
- Priority must be given to providing the proper mandate and authority for a UN coordinating body to oversee this vital agenda.

The Groups of Friends of RtoP in New York and Geneva should lead these efforts by example. The Secretary-General should closely cooperate with them, putting prevention in the heart of his overall prevention agenda.

Introduction

Although only recently articulated as the responsibility to protect[1], the historical roots of the RtoP principle are very deep.[2] That States should protect populations residing within their borders from atrocities - and also within the borders of other States - has not only been debated by moral philosophers and legal scholars, but has been put into practice. However, concerns about armed interventions have been expressed for just as long - concerns that, whatever their aim or humanitarian justification, such interventions could be (and often have been) misused to pursue national or regional objectives.[3]

It is, therefore, not its aim that makes the RtoP concept distinct: it is the way in which this aim should be achieved - in accordance with existing rules, through collective action and avoiding the humanitarian costs of both inaction and inadequate action.

The RtoP concept brings together relevant legal obligations[4] and a set of moral duties and principles aimed at atrocity prevention. Through the consensual commitment of world leaders to paragraphs 138-140 of the 2005 WSOD, those moral duties were translated into political commitments. This was an important development, because political commitments imply political accountability. Therefore, political accountability mechanisms can be used to ensure their fulfillment.

The adoption of RtoP as articulated in paragraphs 138-140 was thus a watershed, not because of the clarity of its articulation[5] but because of a change in its binding force. An interesting theoretical concept that some academics, humanitarian activists and visionary political leaders had argued for[6] was transformed into a program of action, politically binding for all Member States.

As defined in the Outcome document, RtoP is narrow, but deep. Firstly, it focuses on three crimes only, as defined by international law: genocide, war crimes and crimes against humanity, as well as ethnic cleansing (which in practice implies commission of acts that are elements of one of the three mentioned crimes). The wording of paragraphs 138 and 139 binds RtoP to the provisions of the UN Charter (including regarding the use of force). Secondly, it is also deep: it is applicable universally, without time limits, and encompasses a broad set of measures: from support for Member States to protect their populations from atrocity crimes, to the use of force when absolutely necessary. Finally, although it speaks about both the prevention of and reaction to atrocity crimes, its essence is

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[1] The name was coined in 2001 and the concept was globally endorsed in the 2005 World Summit Outcome Document, paras 138 and 139. The Secretary-General's annual thematic RtoP reports (especially the first one in 2009) and interactive dialogues in the General Assembly played a crucial role in its articulation through interpretation. My predecessors as RtoP mandate holders, Ed Luck and Jennifer Welsh, played an important role in this process.

[2] As early as the 17th century, Grotius systematically discussed the moral duty to intervene in a sovereign state to help victims.

[3] A very clear case for this are some justifications used by colonizing powers when carrying out massacres of native populations.

[4] These include obligations to prevent atrocity crimes and support others in doing so. For example, the Genocide Convention establishes an extraterritorial obligation of all states to prevent genocide (as confirmed in the ICJ decision identifying responsibility of Serbia for failure to prevent genocide in Srebrenica), and Common Article 1 of the 1949 Geneva Conventions obliges states not only to abide them, but to ensure respect for them in all circumstances. For additional examples, see SG's 2017 RtoP report (A/71/1016-S/2017/556), p.6.

[5] The wording of paragraphs 138 and 139 was a result of many compromises, which to a certain extent affected their content, clarity and consistency. But far more importantly, the Outcome document was finally adopted by consensus and the content of this consensus should be carefully safeguarded.

[6] In this context, special credit should be given to Secretary-General Kofi Annan, who pushed strongly for improvement of atrocity crimes prevention; Lloyd Axworthy, at the time Minister of Foreign Affairs of Canada, who commissioned a study; and Gareth Evans and Mohamed Sahnoun, who co-chaired the International Commission on Intervention and State Sovereignty (ICISS) that originally articulated the concept of RtoP in its report, as well as other members of the Commission and its support staff.

prevention: in fact, reaction to atrocity crimes is primarily aimed at preventing their further commission.[7]

More than fifteen years after RtoP's theoretical articulation, and twelve years since all Member States made a political commitment to RtoP, it is time for an assessment of its value. We should ask ourselves:

- How useful has the concept been so far?
- What is its current value?
- What is its potential and future?
- What are the challenges and opportunities in implementing RtoP?

An assessment of RtoP's value

A)   **RtoP and atrocity crimes trends**

So, what has the impact of RtoP been so far? Since 2005, RtoP has attracted a lot of attention.

- The articulation of paragraphs 138 and 139 have been reaffirmed by General Assembly and Security Council resolutions that repeat the same language.
- References to RtoP in UN documents have been numerous (over 50 Security Council and over 20 Human Rights Council resolutions).
- A post of Special Adviser on RtoP was established in 2008 (although on part time basis and at ASG level).
- Since 2009, the Secretary-General has submitted yearly thematic reports on RtoP (prepared by Special Advisers on RtoP), informing General Assembly debates/informal interactive dialogues (with one formal debate and eight informal interactive dialogues so far). These reports and dialogues have helped to clarify the concept and provided a general vision of its implementation.[8]
- Although there are some disagreements among States on certain aspects of RtoP's implementation (especially relating to the use of coercive measures under pillar three), the interactive dialogues have clearly demonstrated that most States support RtoP, prioritize prevention and welcome the Secretary-General's strategy for implementation.
- Furthermore, some States have introduced national mechanisms for atrocity crimes risk assessment and prevention, or formed cross regional or regional groups (including the Groups of Friends of RtoP in New York and Geneva; the Global Network of RtoP Focal Points; the Global Action Against Mass Atrocity Crimes initiative (GAAMAC); the Regional Committee on the Prevention and Punishment of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination of the International Conference on the Great Lakes

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[7] Unlike its original ICISS articulation, articulation of RtoP in paragraphs 138 and 139 unfortunately does not explicitly include the "responsibility to rebuild". However, successful prevention of potential future atrocities after intervention logically implies it. In my view, "responsibility to rebuild" should be interpreted as part of the obligation to provide assistance to post-conflict (and especially post-intervention) states that are under stress and in a risk of atrocity crimes.

[8] Especially important for articulation of the concept through interpretation of paragraphs 138 and 139 of the WSOD was the 2009 report of the Secretary-General on "Implementing the responsibility to protect", which introduced the three pillars structure of RtoP (A/63/ 677). Pillar one is the enduring responsibility of the State to protect its populations from atrocity crimes. Pillar two is the commitment of international community to assist states in meeting these obligations. Pillar three is the responsibility of Member States to respond collectively in a timely and decisive manner when a state is manifestly failing to provide such protection. These would include pacific measures and coercive ones if necessary (in accordance with the Charter, measures under Chapter VII must be authorized by the Security Council)

Region and national committees of its Member States; and the Latin American Network for Genocide and Mass Atrocity Prevention), which explicitly or implicitly serve to promote and mainstream RtoP, provide fora for exchanges of experiences and for mutual support in closing atrocity crimes prevention gaps.

- Civil society has embraced RtoP; some RtoP focused NGOs have been established (the Global Center for RtoP, International Coalition for the RtoP) and civil society actors have an important role in global or regional networks as members and/or by providing secretariat services.[9]
- RtoP has also attracted a lot of academic attention. Various existing atrocity crimes-related institutions incorporated RtoP in their work and some new institutions that focus specifically on RtoP have been established (the Asia Pacific Centre for RtoP, European Centre for RtoP). The number of academic courses that include or focus on RtoP, as well as dedicated books and articles, has been rapidly increasing.

Ultimately, however, RtoP's value depends on how far it serves its aim - to prevent the worst violations of human rights and international humanitarian law - namely genocide, war crimes, ethnic cleansing and crimes against humanity. Its added value should not be presumed, but demonstrated.

In assessing RtoP's impact, an atrocity prevention reality check based on available numbers and trends indicates quite disappointing results. Despite an increase in States expressing commitment to and institutionalization of RtoP, in recent years atrocity crimes have been on the rise. Lack of respect for some previously established norms of customary humanitarian law has been so widespread and flagrant that we are facing a threat of their potential "de-customizing". In response to some of the major crises of our times – including in Myanmar, Yemen and Syria -- there has been little concerted effort to prevent atrocity crimes, as other concerns were prioritized.

How did we get to this point? Starting in the mid-nineties, after decisive action was taken in reaction to protection failures in Rwanda and Bosnia, there was a period when atrocity crimes decreased, along with the number of conflicts and civilian casualties. Humanitarian law and international criminal law were finally getting teeth through the establishment of ad hoc tribunals and the International Criminal Court. By the end of the first decade of the twentieth century, however, we have moved to a period marked by negative trends.

These negative trends include an increase in the number of conflicts and resulting casualties,[10] including casualties due to unselective or deliberate attacks against civilians that may have constituted war crimes and - if widespread or systematic (which has increasingly been the case) - crimes against humanity.[11] These trends have contributed to the forced displacement of civilians on a massive scale - the numbers of refugees and internally displaced persons are the highest they have been since the end of the Second World War.[12]

If the true measure of the worth of RtoP is its contribution to the prevention of atrocity crimes, has RtoP failed? Should we turn to some other concept that would serve prevention of atrocity crimes better?

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[9] The Global Center for RtoP provides secretariat services to the Group of Friends of RtoP, and the Auschwitz Institute for Peace and Reconciliation to the Latin American Network for Genocide and Mass Atrocity Prevention.
[10] Since 2005, when RtoP has been endorsed, until 2015, civil wars almost tripled. Between 2011 and 2015 fatalities increased 600 percent (UN). According to the Uppsala Conflict Data Program (UCDP 2017), between 2010 and 2016 the number of major violent conflicts tripled. From a post-cold war low in 2005 (when RtoP was endorsed in the WSOD) to 2014, conflict related deaths increased tenfold. Between 2010 and 2016 alone, civilian deaths in violent conflicts doubled.
[11] Peacekeepers are also increasingly targeted. From 2016 to 2017, the number of peacekeeping casualties doubled.
[12] According to UNHCR, by the end of 2017 there were 65.6 million people forcefully displaced, 22.5 of them refugees.

B)   What is RtoP's current value?

Before deciding on whether to give RtoP up, it is necessary to at least briefly examine some elements relevant to its objective assessment.

- – What are the reasons for the increase in atrocity crimes?
- – Why did RtoP not produce better results by preventing them?
- – Would the international community have performed better in the absence of RtoP?
- – Does it have the potential to do so in the future? Would switching to some other concept promise better results?

To answer these crucial questions, it is important to consider social, economic, cultural and political factors that may have contributed to the increase in atrocity crimes.

Let me briefly mention some relevant negative developments: these include tensions and anxieties caused by unregulated globalization, changes in global power relations, the social impact of technological developments, climate change,[13] demographic trends and an increase in migration. These trends have had a negative impact on the overall social and political climate, affecting international cooperation and the willingness and ability of Member States to take action individually and collectively to prevent atrocity crimes.

- – The post-cold war romance is over. Divisions between key global and regional actors are the deepest they have been since the end of the cold war.
- – The global financial crisis cast a long shadow, reducing economic growth in many parts of the world, leading to greater unemployment and disillusionment. Youth unemployment in regions such as the Middle East are catastrophic. For the first time in living memory, future generations cannot expect a better standard of living than the current generation. Populations grow disenchanted with established elites and turn to populism and more extreme ideologies for answers.
- – The income gap within and among countries is widening and social cohesion and solidarity are in decline.[14]
- – The UN Security Council is often paralyzed. Compromises in the interests of the common good are being replaced by a zero-sum game approach.[15]
- – In times of uncertainty and stress, we are seeing a tendency towards authoritarianism in an increasing number of states. Democratic space is shrinking. Civil society and the media are under increasing pressure.
- – The commitment to liberal values, human rights, atrocity prevention, multilateralism and a positive-sum world order based on agreed rules and institutions is weakening.
- – Universal human rights values-based policies are being replaced by unrestricted national interests-based policies.
- – The leverage of the UN as a major forum for global dialogue and coordination is decreasing.[16] In our increasingly interdependent world, a lack of global coordination and weakening capacity to prevent negative global trends is dangerous.

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[13] Especially the links to drought and food insecurity, which trigger confrontations over scarce resources and trigger migration.

[14] Together with an increase in armed conflicts and climate change, this has contributed to a dramatic change in trends: after a period of prolonged decline, world hunger is on the rise.

[15] That does not apply only to the Security Council: in 2017, because of inability to reach consensus, the highest number of resolutions had to be adopted by vote in the UN Human Rights Council's history – 36 (32 per cent of all adopted texts).

[16] This perception can be supported by objective, quantitative indicators. After decades of expansion and budget growth, in recent years, the UN budget has been steadily shrinking.

– With governments confronting situations where they have fewer resources but greater demands placed on them, commitment to internationalism is in decline. The only solidarity that is strengthening is "negative solidarity": solidarity with one's own group in confronting other groups.

Even some otherwise positive trends may contribute to negative outcomes. The aspirations of more educated and better-informed populations in developing countries are increasing. Young people want a better life and they want it now, yet high levels of youth unemployment plague many societies. Demands for more civil, political, social, economic and cultural rights are becoming stronger.

Under this pressure, regimes are facing a dilemma as to whether to introduce reforms (which may undermine power and privileges of the ruling elites), or to increase repression. Unfortunately, they often resort to the latter. But they are mistaken if they believe that they can prosper without legitimacy. A suppressed uprising merely provides the raw materials for the next uprising: "Another spring". The underlying tumults will remain until either governments make the necessary reforms or find themselves unable to resist the popular will any more. Frustrations at lack of opportunity for peaceful change are strong incentives to either resort to violent means or look for a better life elsewhere.[17] As we saw with the Arab spring, peaceful protests can turn into violent conflicts. In such situations, radical elements of the opposition can take over a leading role, putting pro-democracy and human rights activists between a rock and a hard place.

In a number of countries, frustrated populations are looking for solutions to actual problems by trying to turn the clock of history back and return to conditions of an idealized past (from Salafism in the Islamic world, to isolationism, xenophobia and extreme nationalism in the West). Instead of solutions, this creates new problems.

– Frustrations at corruption and lack of rule of law, increased repression, a shortage of regular channels for political change and structural discrimination against identity based groups all provide a fertile breeding ground for violent extremism.
– Non-state armed groups have increasingly been involved in the commission of atrocity crimes.
– Lack of perspective, repression, instability and conflict contribute to increasing waves of migration and forced displacements.
– In developed countries, we are facing the ascendance of populist leaders who are cynically manipulating concerns about the effects of globalization, technological change and migration on quality of life and job opportunities, as well as cultural identity and security threats. These leaders offer quick fixes, proposing policies favouring unrestricted national interests, closing of national borders and rejection of diversity.
– A vicious circle has emerged between rising xenophobia in host countries and radicalization of immigrants.

These developments and trends have contributed to the increase in atrocity crimes and have negatively affected RtoP's implementation. In addition, the perceived shortcomings of the intervention in Libya in 2011,[18] the first in which the Security Council explicitly authorized the use of

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[17] And leave behind the 'hopelessness' of an unpromising future, Benedict XVI, Message for the 2013 Day of Migrants and Refugees.
[18] At first, intervention in Libya was perceived by many as a success in that it prevented the population of Benghazi from the regime's retaliation. However, the perception that NATO overstepped its Security Council protection of civilians' mandate and pushed for regime change, leaving the country in chaos in the aftermath of intervention, dramatically changed prevailing views.

force to protect populations from atrocity crimes committed by a government against its people, undermined the credibility of RtoP in the eyes of some states and provided ammunition to its hard-core opponents.

In this context, the approach to RtoP has in recent years been marked by a widening of the gap between commitments and reality. Expressions of commitment have continued but there has not been a conducive climate nor sufficient political will for its implementation. Most states still support RtoP[19] but there are some signs that the intensity of their support may have started stagnating.[20] Unless support is reinvigorated, RtoP will lose its political relevance and hence its capacity to shape action on atrocities prevention.

There is often a tension between norms/principles (be they legal, political or moral) and reality. Indeed, the very purpose of a norm is to change behavior. If states already prevented atrocity crimes, we would have no need of a principle telling them to do so. It is this critical tension between principle and practice that is the engine of positive change in world politics. However, the gap between expressed commitments to RtoP and the reality of atrocity crimes has become so wide that the very credibility of the institutions responsible for its implementation is at stake. If RtoP appears to be nothing but hollow rhetoric, and if those institutions that people look to for protection fail to deliver, they will lose its credibility and support. People will turn to other, more radical and dangerous, solutions. In my view, RtoP is currently at a crossroads and the future is either its implementation, or marginalization.

As for the question of whether RtoP should or could be replaced with some other concept, I do not think this is a viable option.

- What is clear from past practice is that that a deliberate, conscious, and concerted focus on atrocity prevention does tend to produce the best effects in practice. When the international community views a situation through the prism of RtoP and elects to prioritize atrocity prevention in its response, the results tend to be much better. Atrocity prevention falters when no dedicated approach is adopted or, worse, when other considerations are prioritized.[21]
- I firmly believe that today, given global divisions and reduced support for multilateralism, it would not be possible to obtain the consensus of global leaders (or State representatives in the General Assembly and Security Council) on any new tool nearly as powerful as RtoP as it is defined in paragraphs 138 and 139 of the WSOD.[22]
- By sticking to RtoP, we are preventing states from backtracking on their important, politically binding commitments.

Also, despite shortcomings in implementation, RtoP has demonstrated some important advantages.

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[19] The UNGA vote on inclusion of RtoP on the agenda of the GA's current session (A/72/250, para 93) is a good indicator: out of 151 Member States present and voting, 75 per cent voted for, 14 against and 11 abstained.

[20] For example, the number of RtoP Group of Friends members, States that have appointed focal points or countries that have introduced specific atrocity prevention mechanisms are still growing, but the pace is slowing down.

[21] One of the concluding lessons advanced by Alex J. Bellamy and Edward C. Luck, *Responsibility to Protect: Principle to Practice* (Cambridge: Polity, 2018 forthcoming).

[22] As far as other, already existing concepts/principles are concerned, there is some overlap (with the protection of civilians in armed conflict, for example), but they are different in scope and there is no expressed, universal political commitment to them, which is RtoP's great comparative advantage.

- It fits well within overall prevention and protection agendas.[23] It has led to greater attention being paid to the prevention of atrocity crimes.
- It has provided a useful framework for how the international community considers and should respond to atrocity crimes, helping to provoke and shape the debate in and around the UN and other organizations, and involve Member States and non-government actors.
- It provides a good balance between respect for state sovereignty and the need to protect populations when States are unable or unwilling to do so.
- It respects the UN Charter while expanding the scope of protection through the interpretation that in our increasingly interconnected world, atrocity crimes committed within borders of one state can be qualified as a threat to international peace and security. That opens the possibility for coercive measures to be used under chapter VII of the UN Charter to prevent atrocity crimes.
- It has commanded the consensus of the General Assembly and been reaffirmed by the Security Council and Human Rights Council.

The problems, where we have the, lie not in the RtoP principle itself but in its inadequate implementation. There is no reason to think that rejecting the principle would help the practice; there is every reason to think, however, that redoubling support for its implementation will help close the gap between principle and reality.

C)   The future of RtoP: Making prevention effective

We cannot turn the clock of history back. Globalization, geopolitical changes, technological advances, climate change and migration cannot be stopped, but they can and should be better managed. Better management of global developments requires a return to multilateralism and strengthening of global solidarity. There are already some early signs that these changes are taking place. The successful adoption of the Sustainable Development Goals (SDGs) and the Convention on Climate Change provide excellent examples of how we should move in other areas, including atrocity crimes prevention.

The mitigation of negative global trends, and the strengthening of multilateralism, human rights, rule of law and atrocity crimes prevention will be an interlinked process. In a future, more favorable context that is shaped by these processes, RtoP has an important role to play.

- The commission of atrocity crimes leads to an escalation of armed conflict, prolongs it and makes it more difficult to end.
- Atrocity crimes also have extremely negative effects on development and on post conflict reconciliation and recovery.
- Atrocity prevention should, therefore, be of common interest in the interdependent world. Preventing atrocity crimes is not only the right thing to do, it is also a rational choice. It requires investments but provides huge benefits.

The first case in which the Security Council used RtoP when authorizing the use of force to protect populations from their government (in Libya, SC Res. 1973), has been controversial in some respects. However, just as events in Srebrenica, Rwanda and Kosovo helped to shape the development of

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[23] This seems to be particularly relevant in the context of the SG's overall prevention platform and RtoP's potential contribution to it.

RtoP[24], its future should be shaped by the lessons learned not only from Libya, but also from the international community's response – or lack of it - to events in Myanmar, Sri Lanka and Syria.[25] Both action - whether authorized by the Security Council or not - and inaction come at a price. If Libya teaches us the costs of precipitate action; Myanmar, Sri Lanka and Syria teach us of the huge and unacceptable costs of inaction. However, based on lessons learned from all the examples mentioned, there is no doubt that the cost is lowest if preventive action is taken early on.

Libya should not be perceived as a nail in RtoP's coffin, but a painful learning experience.

- – First, whenever we can, we should not wait to act until the situation deteriorates to the point at which the use of force becomes necessary for the protection of populations.
- – Second, when force is used, the mandate should be precisely defined and its implementation closely monitored.[26]
- – Third, before considering the use of force, there is a responsibility to have a clear picture of how to restore sovereignty, including the sovereign responsibility of a state to protect populations on its territory from atrocity crimes, after the intervention. It is also imperative that the international community its responsibility to rebuild, in partnership with national authorities and civil society.

Will RtoP work in the future? It is, of course, a matter of political will. Like every other political principle, RtoP is not self-executing but relies on the decisions of states, societies and individuals. Peer pressure from Member States as well as from civil society, including academia, the media and NGOs, can influence political will.

The informal interactive dialogue in 2017, as well as its preparatory events, clearly indicated that most States support a shift from conceptual debate about RtoP towards practical operationalization. However, some States insist that as long as there is no consensus on all elements of the concept, there should be no implementation. This position seems to overlook that:

- – Some elements of the concept already constitute a legal obligation, as they are based on an existing framework of international law.
- – Consensus has been reached on many aspects of its implementation, especially related to pillars one and two.
- – The 2005 commitment to RtoP has been noted in subsequent resolutions of the General Assembly, Security Council and Human Rights Council.
- – The Security Council, when deciding to use coercive measures under Chapter VII (including when it concludes that atrocity crimes represent a threat to international peace and

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[24] Srebrenica and Rwanda by lack of action to prevent genocide, and Kosovo by intervention that was initially not endorsed by the Security Council and which was, in the words of the Independent International Commission on Kosovo, "illegal, but legitimate". Shaped by these experiences, RtoP is in Michael Doyle's words *license for* and *leash against* forcible intervention through setting up relevant standards (The Politics of Global Humanitarianism, RtoP before and after Libya, Alex Bellamy and Tim Dunn, The Oxford Handbook of Responsibility to Protect, p.674).

[25] It is interesting to note that in the cases of Rwanda, Srebrenica and Sri Lanka, major UN inquiries into the response of the international community were initiated, but have not yet been in the cases of Myanmar or Syria. The results of the first two inquiries mentioned paved the way for RtoP and the third to the Human Rights up Front initiative. I firmly believe that an inquiry into the international responses to the situations in Myanmar and Syria, as well as regular inquiries into other similar cases would help to improve atrocity prevention.

[26] See in this regard Columbia Global Policy Initiative "Responsibility While Protecting: Implementation and Future of the Responsibility to Protect", Conference Report, April 2015

security),[27] has the authority to take decisions that do not have the consensus of all Member States.

Therefore, the conceptual debate should continue focusing on contentious issues, but a major shift towards RtoP's implementation should not be delayed.[28] I believe that with the SG's 2017 RtoP report, this shift has already started.[29] The report rightly points out that accountability is key for RtoP's implementation. To overcome resistance and inertia, it is important to better use existing accountability mechanisms at all levels. In addition, some new specific mechanisms (such as parliamentary atrocity prevention committees or subcommittees) may be introduced.

D)   Challenges and opportunities in implementing RtoP

At the **global level**, we have recently witnessed an important move to implement one of the key recommendations of the 2017 report: RtoP has been put on the agenda of the General Assembly's current session (for the first time since 2009). [30] To further strengthen atrocity prevention, it should become a standing item on the General Assembly agenda, and reporting by the Secretary-General should be mandated. Furthermore, the Secretary-General could, in addition to thematic reporting, report on trends, challenges and opportunities in atrocity prevention on a yearly basis. In this context, he could also report on the implementation of recommendations of previous reports.

Despite the challenges in doing so, there is also scope for advancing RtoP within the UN Security Council. Through the UN Charter, Member States have conferred on the Security Council the primary responsibility for the maintenance of international peace and security (article 24, 1). The 2017 informal interactive dialogue, as well as its preparatory events, have clearly demonstrated that Member States expect that the Security Council be held accountable to those in whose name it acts: the overall UN membership.

–   Strengthening the accountability of the Security Council for its actions and inactions is fundamental, but difficult. The UN Charter conferred on the Council peace and security powers without clear mechanisms to hold it accountable to other Member States. This applies especially to the actions of its permanent members, whose special privileges continue, including the right to use their veto power no matter how other Member States assess their performance.
–   The Charter requirement that two thirds of Member States and all permanent members must support any change its provisions limits the possibility of introducing any new accountability mechanism. Fruitless debates on the reform of the Security Council have been dragging on for decades. This UN Charter's "evolutionary defect" is difficult to overcome,[31] but calls by the cross-regional Accountability, Coherence and Transparency Group (ACT) for the Security Council to adopt a voluntary code of conduct, and the French/Mexican proposal for suspension of the right to use the veto in situations where there is a risk of atrocity crimes, are both supported by most Member States and are useful in exercising pressure.

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[27] In an increasingly interdependent world, it is hard to imagine a situation when atrocity crimes would not threaten international peace and security.

[28] In fact, productive conceptual debate relies on constant input derived from practical experiences. Critical evaluation contributes much more to fine tuning of the concept and its operationalization than entirely academic debate.

[29] To confirm such a trend, it is crucial that 2018 report continues in the same direction.

[30] Yearly interactive dialogues have meanwhile been informal, with no official record.

[31] Of course the "evolutionary defect" is a much broader problem, negatively effecting the UN's overall ability to adapt to changes in its operating environment.

- A further important development that would provide for more accountability would be to organize regular open Security Council debates on atrocity crimes threats and the Council's role in their prevention. When the composition of the Security Council is favorable, it would be possible to get the necessary nine votes for the procedural decision to include in its agenda such an open debate..[32] The success of such a debate could pave the way to put the item on the agenda on a regular basis. Such debates would also create an opportunity to exert pressure for some criteria to be established (along the lines of those proposed by ICISS and the UN High Level Panel on Threats, Challenges and Change) for the authorization of the use of force and consistency in decision making.
- Also, as the Libyan case clearly demonstrated, every instance in which the Council authorizes the use of force must be preceded by a clear assessment of how, after intervention, a country will be supported and sovereignty restored. This "responsibility to rebuild" should also be discussed with the broader membership.

Human rights mechanisms, including the treaty bodies and special procedures mandate holders of the Human Rights Council, can also contribute more to atrocity crimes prevention. The Human Rights Council's Universal Periodic Review process has special potential for identifying atrocity prevention risks and mobilizing resources for atrocity crimes prevention and should urgently be put to better use.[33] An assessment of atrocity crimes risks and the measures and support required to close prevention gaps should be included in the reports preceding review, discussed during review and included in the UPR's recommendations. National RtoP focal points could play a role in this process. In implementing relevant recommendations, Member States under stress should be supported by other Member States, which UN country teams and field operations should facilitate.

At the level of the UN as an organization, atrocity prevention efforts need to be integrated in the work of entities dealing with all three pillars, and better coordinated. The inspirational Human Rights up Front initiative, set in motion by the previous Secretary-General,[34] if combined with pragmatic and operationally oriented reforms of the current Secretary-General aimed at strengthening the capacity of the Organization to deliver in areas of peace and security and development and focusing on prevention,[35] could help to bring about the necessary moral and operational strengthening of the UN.

- In addition to the current reform processes, there seems to be a need for an additional UN reform track that would bring closer together the fields of human rights, rule of law and the various protection mandates, including RtoP.
- Whoever oversees coordination of operational activities aimed at the prevention of atrocity crimes must have the adequate rank (USG) and full access to the Secretary-General and operational decision-making fora. Having a part time ASG-level Special Adviser on RtoP without systematic access to relevant information and key operational decision-making mechanisms (such as the Executive and Deputies' Committees), is a politically and historically conditioned anomaly, especially considering the current need to shift RtoP towards its implementation.

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[32] The President of the Council plays a significant role in shape its its thematic discussions. It is not uncommon for a member of the Group of Friends of RtoP to hold the presidency. Such a state should show leadership by calling for a thematic discussion on atrocity prevention.

[33] In 2017, the Office of Genocide Prevention and the Responsibility to Protect circulated a paper with practical proposals on how this could be done to all Permanent Missions in Geneva.

[34] Aimed at mobilizing cultural, organizational and political change and bringing all three UN pillars closer together to stand firmly for human rights and recommit to core values of the UN.

[35] It will not be easy. Even this rather dry and common sense-based reform package has been met with resistance by some Member States.

It will be necessary to improve mechanisms of early warning and their links to early action. In recent years, both quantitative methods of early warning (mostly based on correlation with certain indicators) and qualitative (mostly based on causality) have advanced. However, problems related to cooperation and information sharing persist.

For early action, we need lessons learned on what works best and in what kinds of situations, which should enable formulation of clear, down to earth and user-friendly guidelines for atrocity prevention practitioners. Once developed and after successful testing in real life situations, the Secretary-General can make implementation of these guidelines obligatory for the UN system. They should also be published, disseminated and discussed with Member States, regional organizations and civil society.

When there is more confidence that early responses will be effective in preventing atrocity crimes, there will be more willingness to invest in them. For example, for countries concerned about the impact of an influx of refugees it makes sense to invest in the measures that will serve to prevent what most often triggers them: the occurrence or fear of atrocity crimes.[36]

A system of atrocity prevention should rely on a process of continued monitoring, risk assessment and timely response that is appropriate to threats. Threats can only be eliminated by addressing root causes and strengthening the resilience of societies to periods of stress. Monitoring of human rights, atrocity risks and SDG implementation can all help to provide early indications of when societies may be on a wrong track. Such monitoring can also be helpful in identifying what remedial action should be taken.

Of course, structural prevention takes time.[37] Meanwhile, even if the explosive has not yet been removed, we can at least try to defuse detonators. We should closely monitor potential triggers that can serve as catalysts for atrocity crimes and act quickly and decisively. This will require the close collaboration of various actors: UN, regional organizations, Member States, local community networks and civil society actors, including NGOs, academia, religious leaders, elders, youth and women.

The UN should improve its capacity for early action. The timely deployment of light footprint missions that consist of a handful of political and human rights officers can sometimes reduce the need for heavy UN operations that are both expensive and sensitive for national sovereignty. Of course, their timely deployment requires not only a proactive UN Secretariat, but also a supportive Security Council.[38] Only if Member States understand that if they do not accept light footprint missions, heavy UN operations may be deployed, including under chapter VII if necessary, will they be sufficiently cooperative.

If all this is successfully implemented, will early prevention always be successful? Perhaps not always, but we would hopefully need to deploy peace keeping operations to protect civilians less often. When we do need to deploy them, strengthening their capacity to protect civilians in line with the Kigali Principles on the Protection of Civilians would contribute significantly to atrocity prevention.[39] It is also important that developed countries, in addition to financial resources, contribute more to peace keeping operations through training, equipment and troops.

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[36] The first reactions of the EU Commission when these ideas were presented to them have been very encouraging.
[37] As well as resources and a systematic approach. See more in the 2014 report of the Secretary-General on RtoP.
[38] Of course, the support of regional organizations as well as neighboring and other states that are influential is of utmost importance.
[39] Studies have shown that robust mandates and larger missions, in terms of budget and troops strength, have greater impact in terms of minimalizing civilian deaths.

Accountability mechanisms should also be activated at the **regional level**. Regional organisations can play a significant role - because of their proximity, they have a better understanding both of risks and appropriate measures that need to be taken to mitigate them. In addition, regional organisations are less affected by concerns and suspicions related to the negative aspects of globalization.

At the **national level**, States have an responsibility to prevent atrocity crimes that derives from legal obligations and political commitments. Support should be provided to States in need to help them close atrocity prevention gaps.

Parliaments have an important role to play in improving atrocity prevention.

- They should use their legislative, budgetary and oversight powers in this regard.
- Relevant international treaties should be ratified, and national legislation should criminalize atrocity crimes as well as their incitement.
- Sufficient resources should be allocated to structural as well as operational prevention, and early warning and early action mechanisms set in place.
- Parliaments can better use existing opportunities, such as the yearly reports of NHRI's and Ombudspersons, to discuss atrocity crimes threats and the prevention measures that are necessary.
- They can also establish special atrocity crimes prevention committees or subcommittees and insist that governments provide effective national atrocity prevention mechanisms.[40]

Some atrocity threats can be first identified and responded to at a **local level** and more resources should be allocated for that purpose. This should be done nationally, as well as with international support.

Successful RtoP operationalization requires mobilization of a broad coalition, including supportive Member States, multinational and regional organizations and civil society. It also requires a clear strategy and patience in taking sometimes small, but concrete and practical steps in the right direction. As Dag Hammarskjold said: "The future is the horizon, but it is also the first step we take tomorrow."

Members of the Group of Friends of RtoP in New York and Geneva should lead these efforts by example. They should be frank in their assessments of atrocity crimes risks and vulnerabilities in their own and other countries, and provide sufficient resources to close them. Whether in the General Assembly, the Human Rights Council or the Security Council, they should provide for atrocity prevention approaches in their analyses and promote early preventive action.

For example, they should lead initiatives to:

- Place RtoP permanently on the General Assembly agenda.
- Use the Universal Periodic Review to identify national atrocity prevention gaps and help to close them.
- Establish Genocide and other atrocity crimes prevention treaty body, reporting on prevention activities of the State parties.[41]
- Introduce regular Security Council open debates to discuss its role in atrocity crimes prevention and provide for its improved accountability.[42]

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[40] Reactions of parliamentarians to these proposals at the annual meeting of the network Parliamentarians for Global Action in Milan in November 2017 were very encouraging. Their Secretariat circulated to their members a practical guidance note for parliamentarians, prepared by the Office on Genocide Prevention and the Responsibility to Protect.
[41] That may require negotiating, adopting and ratifying an optional protocol to the Convention.

- Establish the Security Council's Atrocity Crimes Prevention Committee.

The Secretary-General should closely cooperate with them, putting atrocity prevention at the heart of his overall prevention agenda. This would require improvement of UN early warning and early action mechanisms.[43]

The RtoP mandate holder should have a much more operational role and should be:

- Tasked to set up an early warning information management system.
- Given access to all relevant information gathered by various parts of the UN system.
- Present at all key policy and operational decision-making fora, especially the Executive Committee, to provide for atrocity prevention lenses and advocacy.

Conclusion

The Responsibility to Protect is a powerful concept. Its application is universal, it is not time bound and it was consensually endorsed by world leaders at their greatest gathering. Since its unanimous endorsement by all Heads of state and government in 2005, commitment to RtoP has been repeatedly expressed, in numerous ways. RtoP has also to a certain degree been institutionalized, moving from an abstract concept towards actionable principle. However, in recent years, relevant global conditions for its implementation have considerably worsened and we have seen an increase in atrocity crimes.

There are strong grounds to argue that RtoP remains both relevant and useful. A range of factors have contributed to an environment in which all human rights and protection mandates, not just RtoP, are facing greater challenges. The increase in atrocity crimes is not the result of having the wrong tools for their prevention. RtoP did not fail: we did. In deteriorating conditions, we too often failed to implement it.

RtoP was, to a certain extent, compromised by the shortcomings of the intervention in Libya. Lessons should be learned, but we must move on. Both action and inaction (Sri Lanka, Syria, Myanmar) come at a price. However, there is no doubt that the price is the lowest if preventive action is taken before a situation deteriorates to the point when there is a need for use of force.

R2P should be preserved not only because of investments in its institutionalization, but because of its unparalleled potential as an atrocity prevention tool. Most significantly, Member States adopted RtoP unanimously and have repeatedly reaffirmed their commitment to it. They have also voiced support for the Secretary-General's strategy for its implementation, as set out in annual reports since 2009. Despite the current lack of consensus about some aspects of its implementation, it is unlikely that a suitable alternative could be negotiated (especially in current, more difficult circumstances).

In addition to existing legal atrocity prevention obligations, paragraphs 138 and 139 of the consensually adopted World Summit Outcome Document transform additional moral duties into politically binding commitments that provide for political accountability to deliver on them. Therefore, letting RtoP go would mean letting Member States renege on their commitments, and further negatively affect effort to prevent atrocity crimes.

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[42] Currently there are eight members of the Group of friends sitting in the Council. It should not be difficult to obtain the one additional vote necessary for such a procedural decision to be taken.
[43] The Secretary-General's 2018 RtoP report on "Prioritizing prevention: from early warning to early action" will address this issue.

R2P's development was demand driven. Since its endorsement, demand has increased, growing in parallel with the increase in atrocity crimes.

Atrocity crimes prevention is also a litmus test of the credibility of the UN: Member States, as well as the prevention platform of the Secretary General. The UN is judged more than anything else on how it prevents/responds to atrocity crimes. If we cannot even muster support for ending atrocity crimes, there's no hope of our achieving wider prevention agendas.

The experiences of practitioners and the results of research, including preliminary results of empirical research that I am leading,[44] clearly indicate that articulation of RtoP and the subsequent actions that were undertaken by States at different stages in potential or ongoing conflict cycles have contributed to fewer atrocity crimes being committed than expected, (the 2015 report of the Secretary-General on the responsibility to protect mentions Cote d'Ivoire, Guinea, Kenya and Kyrgyzstan).

R2P has not led so far to an overall numerical decrease in atrocity crimes, due to an increase in atrocity crimes risks and lack of implementation in practice. However, there are reasons to believe that it has the potential to do so in the future, when current unfavorable conditions change.

Waiting for circumstances to change before intensifying implementation of RtoP would be a mistake for the following reasons:

- We would miss the opportunity to immediately prevent some atrocity crimes.
- Intensifying implementation of RtoP can positively contribute to changing unfavorable circumstances.
- If RtoP remains stuck in conceptual debates, it may lose credibility.

I firmly believe that we should keep up our support for RtoP. However, our approach to it should change. To date, RtoP has been more conceptually debated than practically implemented. We need to shift the focus to implementation. We should act as persons of thought, and think as persons of action. Discussion of some controversial issues, especially on the use of coercive measures under Pillar III should continue, but this should not affect RtoP's implementation.[45]

For RtoP, therefore, the future is either its implementation, or marginalization. The Secretary-General's 2017 report on RtoP represents a major step in this direction. It focuses on prevention, addressing accountability for RtoP's implementation. It also provides clear, straightforward, practical recommendations. It is important for subsequent reports to follow the same direction.

Successful RtoP implementation requires mobilization of a broad coalition, including supportive Member States, global and regional organizations and civil society. It also requires a clear strategy and patience in taking sometimes small but concrete and practical steps in the right direction.

Members of the Group of Friends of RtoP in New York and Geneva should lead these efforts by example. They should be frank in their assessments of the risk of atrocity crimes in their own and other countries and provide sufficient resources to address them. Whether at the General Assembly, the Human Rights Council or the Security Council, they should include atrocity prevention approaches in their analyses and promote early preventive action.

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[44] During the first phase of the research, eight country situations have been studied to identify which measures work best to prevent atrocity crimes.

[45] To be productive, conceptual and operational debates should be based on critical evaluation of practical experiences.

The Secretary-General should closely cooperate with them, putting atrocity prevention at the heart of his overall prevention agenda. The mandate holder responsible for atrocity crimes prevention should have his ear as well as access to all relevant information and fora where crucial policy is decided and operational decisions are taken.