5 From Promise to Practice: Implementing the Responsibility to Protect

Edward C. Luck

The implementation of the responsibility to protect (RtoP) is a work in progress. That is true in 2011. It is likely to be so in 2021 and 2031 as well. As a policy tool, not just an aspiration or standard, RtoP is in its infancy. In these formative years, choices are being made, both at the United Nations and in national capitals, that could profoundly shape the future development of this promising, perhaps even historic, concept. This chapter looks at the UN side of this development process over three critical years, from early 2008 to early 2011.

There can be no finality when it comes to the implementation of human rights, humanitarian, or human protection standards. There can be no ironclad assurances against slippage or backsliding, no guarantee against recidivism, no presumption that armed groups or new generations of national leaders will observe fully the commitments made by others. Progress toward implementation can, and should, be assessed from time to time, and place to place. But this should be done with the understanding that such judgments, while potentially helpful for gauging whether mid-course corrections are needed, cannot be considered to be conclusive. Progress—or the lack of it—can be fleeting. Results are likely to be uneven, whether they are measured thematically or situationally.

So strategies for implementing the responsibility to protect provisions of the Outcome Document from the 2005 World Summit—paragraphs 138, 139, and 140— have to be both long-term and to some extent self-renewing.[1] Those provisions, it

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[1] G.A. Res. 60/1, UN Doc. A/Res/60/1 (Sept. 15, 2005). Many authors understandably only look to paragraphs 138 and 139 for an account of the Summit's provisions on RtoP, as these contain the only explicit references to the concept. However, in this author's view, the inclusion of paragraph 140 on the work of the Secretary-General's Special Adviser on the Prevention of Genocide in the

should be recalled, did not come with detailed instructions or favorite recipes for implementation. Some provisions enjoyed fuller political support than did others. No doubt some of those who accepted these commitments regarded them as hortatory or aspirational, rather than as binding obligations that would be followed by strategies, doctrines, policies, procedures, and capacities for ensuring their fulfillment. Summit outcomes may make important contributions to soft or customary international law, but they are not, in themselves, binding hard law conventions. This caveat could usefully be born in mind when we turn to a consideration of the strategies and tactics that have guided the United Nations' implementation efforts to date. As the official appointed by Secretary-General Ban Ki-moon in February 2008 to spearhead the conceptual, political, and institutional/operational development of the responsibility to protect (RtoP), this author's account that follows may be more than a little subjective at points.[2]

I. ON THE NATURE OF IMPLEMENTATION

For the purposes of this paper, it would be helpful to clarify from the outset what we mean by "implement" and "implementation." The first Webster's definition is helpful in that regard because of its elegant simplicity: implement is "to carry out" or "fulfill;" especially "to give practical effect to and ensure of actual fulfillment by concrete measures."[3] Implementation, then, would be the process or act of fulfillment. Given the uncertainties noted above, the emphasis should be on the process more than on a single, conclusive act of fulfillment. It is a matter of advancement rather than attainment. In fact, in successful cases, there are likely to be multiple acts of fulfillment over time, each step decreasing the likelihood of slippage or the possibility that precipitating events could occur without notice and comment by civil society, government officials, neighboring countries, or international civil servants based in sub-regional, regional, or global institutions.
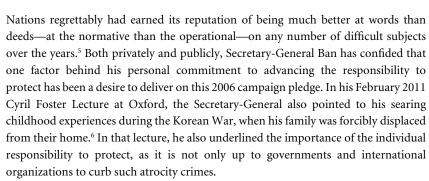
The Webster definition does not, of course, refer to "process," favoring more action-oriented words and phrases, such as "carry out," "give practical effect to," "ensure," and "concrete measures." So process is not enough. To meet the Webster standard, it should "give practical effect to" the words agreed at the 2005 World Summit. The purpose of the exercise, as the Secretary-General has often underscored, is to turn "words into deeds" and "promise into practice."[4] During his campaign to be appointed Secretary-General, he had stressed this core theme, in the recognition that the United

RtoP section of the Outcome Document should not be overlooked. As discussed below, this decision suggests that the assembled heads of state and government understood the operational value of integrating the world body's work on the two related mandates.

[2] See UN Docs. SG/A/1120 (Feb. 21, 2008), S/2007/722 and S/2007/721 (Dec. 7, 2007).

[3] Webster's SEVENTH New Collegiate Dictionary (G. & C. Merriam Company, 1967), at 419.

[4] Address by UN Secretary-General Ban Ki-moon, "Responsible Sovereignty: International Cooperation for a Changed World," UN Doc. SG/SM/11701 (Jul. 15, 2008), Report of the Secretary-General, Implementing the Responsibility to Protect, UN Doc. A/63/677 (Jan. 12, 2009), at 28, and "Remarks at a Stanley Foundation Conference on 'Implementing the Responsibility to Protect,'" Tarrytown, New York (January 15, 2010), www.stanleyfoundation.org/publications/policy_memo/SGresptoprotect15jan2010.pdf.

Nations regrettably had earned its reputation of being much better at words than deeds—at the normative than the operational—on any number of difficult subjects over the years.[5] Both privately and publicly, Secretary-General Ban has confided that one factor behind his personal commitment to advancing the responsibility to protect has been a desire to deliver on this 2006 campaign pledge. In his February 2011 Cyril Foster Lecture at Oxford, the Secretary-General also pointed to his searing childhood experiences during the Korean War, when his family was forcibly displaced from their home.[6] In that lecture, he also underlined the importance of the individual responsibility to protect, as it is not only up to governments and international organizations to curb such atrocity crimes.

At the same time, bold action is unlikely without parallel movement toward norm creation. And normative innovations at the United Nations do not come about without lots of talk, usually embedded in overlapping tiers of consultations and political processes. Attempts to gain the acceptance of all, or at least the vast majority, of the world body's 193 Member States on new normative standards are bound to be sustained, complex, and multi-dimensional. If it is to succeed, moreover, that process cannot end with the formal adoption of a particular principle. For all of the concerted conceptual and political work that led to the 2005 Summit agreement, that was only the beginning of the implementation process. The skilled and dedicated norm entrepreneurs who spearheaded that effort, particularly former United Nations Secretary-General Kofi Annan and the co-chairs of the International Commission on Intervention and State Sovereignty (ICISS),[7] former Foreign Minister of Australia Gareth Evans and former Foreign Minister of Algeria Mohammed Sahnoun, would be among the first to acknowledge how much work lies ahead.

Normative development is neither a phase of nor a precursor to the implementation process. Normative development should continue throughout the implementation struggle, accompanied by a continuous cycle of interactive feedback to inform and, if necessary, condition the way in which further implementation steps are carried out. Implementation is bound, to some extent, to be a learning-by-doing proposition. As this author has argued elsewhere, even sophisticated models of norm development, such as the classic one posited by Martha Finnemore and Kathryn Sikkink more than a dozen years ago, tend to be insufficiently dynamic and fluid in that regard.[8] Understandably, such models are prone to pay more attention to the visible tip of the iceberg than to what lies beneath the surface. They usually overvalue persuasion and

[5] Transcript, Address by Ban Ki-moon, Minister of Foreign Affairs and Trade, the Republic of Korea, "Restoring the Vitality of the United Nations" (May 31, 2006), http://www.cfr.org/publication/10833/restoring_the_vitality_of_the_united_nations_rush_transcript_federal_news_service_inc.html (accessed Jan. 24, 2011).

[6] UN Doc. SG/SM/13385 (February 2, 2011).

[7] Report of the International Commission on Intervention and State Sovereignty, THE RESPONSIBILITY TO PROTECT (Ottawa: International Development Research Centre, 2001).

[8] For the model, see Martha Finnemore and Kathryn Sikkink, *International Norm Dynamics and Political Change*, International Organization, 52, 4 (Autumn 1998), 887–917. For commentary on how it fits the development of the responsibility to protect, see Edward C. Luck, "Building a Norm: The Responsibility to Protect Experience," MASS ATROCITY CRIMES: PREVENTING FUTURE OUTRAGES (Robert I. Rotberg, ed., Brookings Institution Press 2010), 108–127.

undervalue listening.[9] Their assumptions about progress tend to be too linear and too unidirectional, as if these are marketing not political challenges. As discussed below, each forward step at the United Nations toward the implementation of RtoP has been met—predictably—with some form of pushback from those delegations that remain markedly uncomfortable with the concept. The good news, also documented below, is that their numbers remain small while the ranks of the supportive grow with each forward step.

The discussion below of the implementation steps to date addresses some of the primary conceptual, political, and operational challenges faced from early 2008 to early 2011. This tripartite division is more a matter of convenience than logic. Two caveats are in order at the outset. One, this is not a matter of sequencing, as if one could deal with one challenge at a time. In an ideal world, it would be more orderly to complete the conceptual and political work before addressing situation-specific operational matters. Events did not permit this, as the post-election violence in Kenya erupted while the Secretary-General's conceptual framework, as well as his wide-ranging implementation strategy, was still under construction. Likewise, the high interest of Member States and civil society in this work led to early, ongoing, and candid consultations with influential political actors of various stripes. Two, analytically the three challenges often looked like different aspects of the same thought process. For instance, the conceptual development of RtoP had to make sense in political and operational terms. Beautiful theories that had no chance of attracting wide political support or of being sustained through operational application had no place in such a practice-driven exercise. This chapter first addresses the conceptual and political pieces of the puzzle and then turns to the institutional and operational ones.

II. THE CONCEPTUAL AND POLITICAL CHALLENGES

The nexus between the conceptual and the political was all too evident when I started to work with the Secretary-General on moving the responsibility to protect from promise to practice in mid-2007, prior to my formal appointment as Special Adviser. It soon became apparent that not all Member States and not even all of the key players in the Secretariat shared the Secretary-General's enthusiasm for advancing the responsibility to protect. Conceptual confusion was a key explanation for the divergence of views. There was a wide range of perceptions and preferences concerning the scope and content of the concept, both among supporters and among detractors. These differences in understanding, moreover, were about core elements of the principle, not about shadings of interpretation or meaning. Clearly there was going to be little political convergence until something closer to conceptual clarity and coherence was achieved.

The phrase "responsibility to protect"—coined by the ICISS commission in 2001—had substantial appeal, both as a rallying cry and as a powerful reminder of the obligations that come with state sovereignty. But the words meant different things to different people. Whose responsibility was at the core of the concept: that of the state

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[9] It is striking, in that regard, how often the most influential figures in debates among the Member States at the UN are not the ones who give the most dynamic and compelling speeches. Sometimes more modest diplomats have a keener "sense of the house" and ultimately prove to be more persuasive, as well as less threatening to their colleagues.

to protect its people or that of the international community to respond effectively when it fails to do so? The 2005 Outcome Document appeared to embrace both perspectives, as any broad-based strategy would be inclined to do. But most supporters seemed to favor one perspective or the other. To some, RtoP was a more sophisticated and nuanced form of humanitarian intervention and hence should be judged by whether it would help to spur vigorous responses, particularly military ones, by the international community to atrocity crimes. To others—including this author—the key 2005 provision was the pledge by the heads of state and government to protect populations by preventing the four crimes—genocide, war crimes, ethnic cleansing, and crimes against humanity—and their incitement. From this perspective, the use of "protect" was a bit of a misnomer, since the Summit leaders stressed prevention as the key to protection. Some might have believed that it would have been more accurate to call the concept "the responsibility to prevent."

These differences in emphasis in some respects echoed the debate spurred by then Secretary-General Kofi Annan in the late 1990s on humanitarian intervention. He posed to the Member States the quandary of having to choose between legality and morality if the Security Council failed to authorize military intervention in extreme cases of violence against populations.[10] A number of Member States, including key developing countries, underscored in the debate following Annan's September 1999 statement to the General Assembly along these lines that they rejected the very premise of his dilemma.[11] To them, it represented little more than a benign facade for old-fashioned imperialist intervention by powerful northern countries in the global south. This premise was as divisive in 2007 as it had been eight years before. The Kofi Annan-inspired and Canadian-sponsored ICISS project had been intended to find a fresh way out of this political and conceptual dilemma. The creative and powerful result was the phrase "the responsibility to protect." Yet the opening sentence of the Commission's report declared that its subject was humanitarian intervention.[12] Much of the report was devoted to just war guidelines for the use of force and the very title of the Commission suggested that it would address the tensions between international intervention and state sovereignty—exactly the core point of contention in the Assembly in 1999. This ambiguity was not lost on skeptics. And it fostered divisions among supporters as well. Was RtoP supposed to be an antidote for humanitarian intervention or its re-emergence in more attractive attire?

Moreover, was the state to be seen primarily as the problem or the solution, the perpetrator or the protector? The 2001 ICISS report appeared to stress the former and the 2005 Summit the latter. In 2005, some ardent proponents of the 2001 version of

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[10] For a collection of his speeches on that theme, see THE QUESTION OF INTERVENTION: STATEMENTS BY THE SECRETARY-GENERAL (United Nations, December 1999).

[11] See UN GAOR, 54th Sess., 8th and 9th plen. mtgs., UN Docs. A/54/PV.8 and A/54/PV.9 (Sept, 22, 1999).

[12] The opening sentence of the Foreword reads: "This report is about the so-called 'right of humanitarian intervention': the question of when, if ever, it is appropriate for states to take coercive—and in particular military—actions against another state for the purpose of protecting people at risk in that other state." ICISS REPORT, op. cit., at vii.

RtoP labeled the Summit's repackaging "RtoP lite."[13] Others, including this author, found instead that a careful reading of the Outcome Document suggested that the Member States had actually added distinctions and nuances that would make RtoP a more useful and effective policy tool, as opposed to being relegated to the long list of good ideas that were never implemented. (These amendments to the ICISS approach are discussed in more depth below.) Tactically, if RtoP was all about generating an international response to abuses by the state, how far was its implementation going to proceed in the United Nations, the pre-eminent inter-state body? Had states been the only perpetrators of such crimes? Or had armed groups and terrorists also committed such crimes? Why should they be excused from responsibility and accountability for their actions in such cases?

Success, it is said, has many fathers (and mothers too), while failure is an orphan. So it may be a good sign that RtoP's lineage is so layered and so contested. On the humanitarian intervention side, Bernard Kouchner's pioneering advocacy of the duty (or right) to intervene (or interfere) in the 1980s was a seminal conceptual contribution.[14] Kofi Annan's statements of the late 1990s, noted above, built on this legacy and tested the notion of humanitarian intervention in a political and charter context. The ICISS report then made the critical conceptual advance of looking at the responsibility of the state in question as well as of the international community to respond in cases of state failure to protect. Its findings, in turn, relied heavily on the notion of sovereignty as responsibility, developed by Francis Deng and colleagues at the Brookings Institution when looking at African conflict in the mid-1990s.[15] Unfortunately, while the ICISS report devoted a short section to sovereignty as responsibility, it never cited the sources of the inspiration.[16] The genius of the ICISS report was its valiant effort to weave the two strands of divergent thought—humanitarian intervention and sovereignty as responsibility—into a single conceptual cloth with a catchy name. Though the concept has evolved and deepened since 2001, that remains a singular achievement.

Secretary-General Kofi Annan became a vocal proponent of RtoP, championing it in his report to the 2005 World Summit, just as his High-level Panel on Threats, Challenges and Change had the year before in its report.[17] Nevertheless, key Member States, especially from the Global South, were not convinced, judging from their comments in the Spring of 2005.[18] At that point, necessity became the mother of invention

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[13] See, for instance, Thomas G. Weiss, Humanitarian Intervention: Ideas in action (Massachusetts: Polity, 2008), at 117.

[14] Mario Bettati and Bernard Kouchner, Le devoir d'ingérence (Denoel 1987).

[15] Francis M. Deng, Sadikiel Kimaro, Terrence Lyons, Donald Rothschild, and I. William Zartman, Sovereignty as Responsibility: Conflict Management in Africa (The Brookings Institution 1996).

[16] ICISS report, op. cit., at 13.

[17] Report of the Secretary-General, In Larger Freedom: Towards Development, Security and Human Rights for All, UN Doc. A/59/2005 (Mar. 21, 2005), 34–35, ¶132, 135; Report of the Secretary-General's High-Level Panel on Threats, Challenges, and Change, A More Secure World: Our Shared Responsibility, UN Doc. A/59/565 (Dec. 4, 2004), at 65–66, ¶199–203.

[18] See the statement by Ambassador Maged Abdelaziz, UN GAOR, 59th Sess., 86th plen. mtg., UN Doc. A/59/PV.86 (Apr. 6, 2005) at 13 and the statement by the Chairman of the Coordinating Bureau of the Non-Aligned Movement, Ambassador Radzi Rahman, on behalf of the Non-Aligned Movement at the Informal Meeting of the Plenary of the General Assembly Concerning the Draft

or at least of adaptation. During that creative period in the conceptual evolution of RtoP, it became apparent that various actors, each for its own set of reasons, came to play distinct but largely complementary roles in the development of a politically and operationally workable concept. The ICISS process had the comparative advantage of being free from political responsibilities and constraints, though its composition was geographically diverse. So its work was relatively creative. But it also had the weakness of its strength: its ideas did not have to be tested through multilateral political processes. The same could be said of the High-level Panel. The Summit, of course, was quite the opposite: consumed and defined by high-level political horsetrading, it was not known for creativity. At the Summit, the sustained advocacy of Kofi Annan, the co-chairs of the ICISS Commission, and a handful of Member States, including Canada, came face-to-face with the tough questions and concerns being posed by recalcitrant Member States. Even this all-star team of norm entrepreneurs and their Member State partners had to listen to the concerns of the skeptics and modify their vision to accommodate the skeptics to some extent. In this author's view, at least, the product of the subsequent bargaining process was a stronger, not weaker, RtoP.

Perhaps the most important advance was to limit the scope of application of RtoP to a limited and coherent set of crimes. According to Jean Ping, now Chairman of the African Union Commission but President of the General Assembly in the critical months up to September 2005, it was the Permanent Representative of Pakistan, Munir Akram, who had stressed that such a discrete list would have to be agreed if there was to be any chance of bringing key developing countries on board.[19] The ICISS report, quite frankly, could have been more precise on this score. This would have made its recommendations sound less hortatory and more operational. The relative specificity of the Summit's version of RtoP—applying it only to genocide, war crimes, ethnic cleansing, and crimes against humanity—helps to explain why it has been able to assume a more operational and policy character than the more over-arching and generic concept of human security. If RtoP were to apply to the effects of natural disasters, climate change, or chronic under-development, it would be very difficult to carve out operational, bureaucratic, or policy space for it in the UN's crowded agenda. Looking across the expanse of the UN system, which entity or agency/program head could have assumed RtoP leadership if it had such a broad, crosscutting character? The turf problems could well have been endless.

A more expansive definition and scope for RtoP might well have encountered additional political hurdles as well. As Secretary-General Ban put it, "extending the principle to cover other calamities . . . would undermine the 2005 consensus and stretch the concept beyond recognition."[20] The agreed scope of RtoP was tested when Bernard Kouchner, then French Foreign Minister, and others, contended that the government of Myanmar's slow humanitarian response to Cyclone Nargis in

Outcome Document (Jun. 21, 2005), http://www.un.int/Malaysia/NAM/nam210605.html (accessed Jan. 24, 2011).

[19] Report by the International Peace Institute, the Office of the UN Special Adviser on the Prevention of Genocide, and the InterAfrica Group, THE RESPONSIBILITY TO PROTECT (RtoP) AND GENOCIDE PREVENTION IN AFRICA (International Peace Institute, June 2009), Annex II, at 11.

[20] Secretary-General Defends, Clarifies, "Responsibility to Protect" at Berlin Event, op. cit.

May 2008 constituted an RtoP situation (as discussed further below).[21] The negative reactions of many countries, including of those in the region, to assigning an RtoP label to such a situation appeared to confirm the advisability of maintaining the Secretary-General's narrow but deep approach.[22] In terms of early warning, assessment, and messaging, the grouping of these four crimes has worked well operationally, as well as conceptually and politically, because the other three crimes and violations can be precursors to genocide.

The Summit language added the responsibility to prevent the incitement of these crimes and violations, something missing from the ICISS report. This, too, has been very helpful to our efforts to implement RtoP in practice. Incitement is something one can usually see or hear, as mass crimes such as these generally require the mass mobilization of populations against particular minority groups within the society. The latter are both dehumanized and, frequently, accused of unfairly enjoying certain social or economic advantages not available to the majority of the population. Over the years, much of the work of the Secretary-General's Special Adviser on the Prevention of Genocide has revolved around trying to end incitement, as this is seen as one of the surest routes to the prevention of acts of genocide.

In another operationally helpful step, the Summit agreed that the responsibility to protect extends to all populations within the territory of the state. This would logically include refugees, the internally displaced, and immigrants, whether legal or illegal. Since these crimes are often identity-based, a point often made by Francis Deng, the Secretary-General's Special Adviser on the Prevention of Genocide, the more inclusive coverage matters. The ICISS Commission had been a little loose on this point as well, repeatedly referring to the need to protect "citizens" in its report.[23] The Outcome Document also put a bit more emphasis on the role of regional organizations in implementing RtoP than had the Commission. This, too, is a plus in making the concept operational, given the critical role that neighboring countries and transnational civil society groups can play in such situations. In general, the United Nations has become more accustomed and even dependent on working with regional and sub-regional partners on policy implementation on a host of subjects. As the Secretary-General's report for the 2011 informal interactive dialogue in the General Assembly underscores, this would appear to be the wave of the future for RtoP as well.[24]
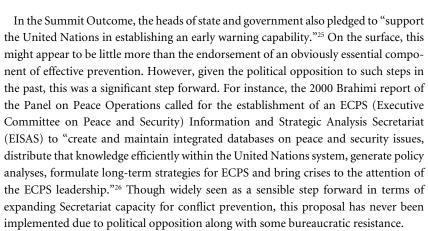
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[21] See, for example, the remarks of Bernard Kouchner, in *Myanmar Faces Pressure to Allow Major Aid Effort*, N.Y. TIMES, May 8, 2008; Lloyd Axworthy and Allan Rock, *Responsibility to Protect? Yes,* GLOBE AND MAIL, May 9, 2008; Ramesh Thakur, Should *The UN Invoke the Responsibility to Protect?*, GLOBE AND MAIL, May 8, 2008; Ivo Daalder and Paul Stares, *The UN's Responsibility to Protect*, I.H.T., May 13, 2008. For a balanced assessment, see Asia-Pacific Centre on the Responsibility to Protect, CYCLONE NARGIS AND THE RESPONSIBILITY TO PROTECT, MYANMAR/BURMA BRIEFING No. 2 (Brisbane, Australia, 2008).

[22] Secretary-General Defends, Clarifies, "Responsibility to Protect" at Berlin Event, op. cit.

[23] ICISS REPORT, op. cit., at viii, 13, 15–16, 34, 49, and 75.

[24] Report of the Secretary-General, THE ROLE OF REGIONAL AND SUBREGIONAL ARRANGEMENTS IN IMPLEMENTING THE RESPONSIBILITY TO PROTECT, UN Doc. A/65/877-S/2011/393 (June 28, 2011). To date, there has been relatively little scholarly or journalistic attention focused on what individual states, regional or sub-regional arrangements, or civil society groups are doing to implement the responsibility to protect. Such studies will be needed to

In the Summit Outcome, the heads of state and government also pledged to "support the United Nations in establishing an early warning capability."[25] On the surface, this might appear to be little more than the endorsement of an obviously essential component of effective prevention. However, given the political opposition to such steps in the past, this was a significant step forward. For instance, the 2000 Brahimi report of the Panel on Peace Operations called for the establishment of an ECPS (Executive Committee on Peace and Security) Information and Strategic Analysis Secretariat (EISAS) to "create and maintain integrated databases on peace and security issues, distribute that knowledge efficiently within the United Nations system, generate policy analyses, formulate long-term strategies for ECPS and bring crises to the attention of the ECPS leadership."[26] Though widely seen as a sensible step forward in terms of expanding Secretariat capacity for conflict prevention, this proposal has never been implemented due to political opposition along with some bureaucratic resistance.

The inclusion, in paragraph 140, of an unequivocal statement of support for the mission of the Special Adviser for the Prevention of Genocide had two positive effects in terms of implementing RtoP. Politically, it helped lay the groundwork for generating Member State support for the merger of the work of the two Special Advisers, something that is moving forward smartly, as discussed below. Conceptually, it acknowledged that genocide prevention was an essential part of the RtoP agenda and that looking at all four crimes and violations would be helpful for the world body's ongoing efforts to prevent genocide. It was an early recognition of the symbiotic relationship between these two mandates, something we now see in practice on a regular and consistent basis.[27]

In paragraph 139 of the Outcome Document, "the need for the General Assembly to continue consideration of the responsibility to protect" was asserted. Some Member States that remain unpersuaded about the value of RtoP suggest that this language implies that this is not yet a fully accepted concept and that it requires further conceptual development in the Assembly. Others see this phrase as a bid by the General Assembly to keep a prominent role in the implementation process that some fear will be dominated by the rival Security Council. A number of advocates have fretted that this provision is an invitation for trouble down the road. From the outset, my view has been, rather, that these words offer a prime opportunity to keep the question before the Member States as a whole, to give them a fuller sense of ownership of the concept, to identify and address areas of ambiguity, and to carry out the kind of interactive development of the concept and its implementation posited at the outset of this chapter. It would be a mistake, in this author's view, to allow RtoP to be wholly identified with or captured by either the Assembly or the Council. Each principal organ—including the Secretariat—has its comparative advantage in the division of labor. The Assembly has obvious advantages as a forum of the whole for normative development

supplement and complement the accounts of the struggles to implement RtoP at the United Nations and to give a fuller and truer picture of the process of its normative and operational development.

[25] UN Doc. A/RES/60/1, ¶138.

[26] UN Doc. S/2000/809 (Aug. 21, 2000) at xi, 12–13.

[27] In an August 2007 letter to the President of the Security Council, the Secretary-General noted that his two Special Advisers on these subjects would "share an office and support staff." UN Doc. S/2007/721 (Dec. 7, 2007).

The Development of the Responsibility to Protect Doctrine

and the building of broad political support, while the Council's discrete size, working methods, and powers make it a much readier operational player in specific crisis situations.

As discussed below, there is reason to believe that the scheduling of annual RtoP debates or dialogues in the General Assembly, each preceded by a report by the Secretary-General, is having just these effects: more understanding, more refinement of the concept, and more political support over time. Personally, it has provided additional chances to hear the views, concerns, and suggestions of the Member States. It has been a process of learning through listening, as well as through doing. Ironically, there is reason to believe that the first of these informal interactive dialogues, in July 2009, was convened by the president of the General Assembly in part to highlight the concerns of RtoP skeptics. However, it may well have served instead to rally supporters of the concept.[28]

Three other conceptual/political points, the first two flagged earlier, deserve further elaboration. The first is the decision to include non-state armed groups in the Secretary-General's approach to RtoP. The second is the scope of the RtoP toolkit and the role coercive military force plays in it. The third is the use of three pillars to define the Secretary-General's strategy and how they differ from the three elements of the ICISS approach.

Neither the ICISS report nor the Summit Outcome Document included non-state actors either as potential perpetrators of such crimes or as having RtoP responsibilities. Early RtoP formulations focused solely on the state. That seemed to me to be a substantial omission, and one out step with the times. The International Criminal Court (ICC) and regional tribunals had sought to hold individual actors—whether or not they were government officials—accountable for their gross violations of human rights and humanitarian standards. Groups such as the Revolutionary United Front (RUF) in Sierra Leone and the Lord's Resistance Army in the Great Lakes region of Africa had committed terrible atrocities. In the former case, international forces had been required to assist the government in resisting the RUF's advances and in returning order to the country. In Secretary-General Ban's words, it was a clear case of the international community acting "to help States succeed, not just to react once they have failed to meet their prevention and protection obligations."[29] It was a case that featured a coercive, Chapter VII, military intervention with the consent of the host government.[30] Such a scenario had not been addressed before either by RtoP supporters or opponents. In addition, a number of terrorist attacks against innocent civilians have caused sufficient loss of life to be considered RtoP cases. True, adopting such a

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[28] See the Global Centre on the Responsibility to Protect, IMPLEMENTING THE RESPONSIBILITY TO PROTECT: THE 2009 GENERAL ASSEMBLY DEBATE: AN ASSESSMENT, available at globalr2p.org/media/pdf/GCR2P General Assembly Debate Assessment.pdf and the International Coalition for the Responsibility to Protect (ICRtoP), REPORT ON THE GENERAL ASSEMBLY PLENARY DEBATE ON THE RESPONSIBILITY TO PROTECT, available at responsibilitytoprotect.org/ICRtoPGAdebate.pdf. For this author's statement at the outset of that dialogue, see http://www.ipinst.org/images/pdfs/luck_ga_statement23july2009.pdf (accessed Feb. 2011).

[29] Secretary-General Defends, Clarifies, "Responsibility to Protect" at Berlin Event, UN Doc. SG/SM/11701 (Jul. 15, 2008).

[30] Report of the Secretary-General, IMPLEMENTATING THE RESPONSIBILITY TO PROTECT, UN Doc. A/63/677 (Jan. 12, 2009), at 19, ¶42.

stance probably yielded some political benefits, but instead it was the compelling logic of such cases that led us to add this new wrinkle to what had been agreed in 2005. As expected, the Member States have been largely supportive of this amendment to the 2005 agreement.

The most tendentious dimension of RtoP in 2001, 2005, and 2011 remains the potential use of coercive force across borders and without consent in severe RtoP emergencies, as in Libya. The old debates over humanitarian intervention have been finessed and in some ways replaced by a more positive and forward-looking RtoP agenda, but they have not entirely disappeared. Nor should they. Both the 2005 Outcome Document and the subsequent strategy of Secretary-General Ban underscore that the organization of coercive force, if approved by the Security Council, cannot be ruled out. It should be an integral part of any broad-based and effective RtoP strategy at the United Nations. The question of where it fits in the RtoP toolkit, however, has been subject to considerable debate, even among supporters. Part of the conceptual problem, it seemed to me, was an overemphasis on military force as the centerpiece of RtoP. The ICISS report reinforced that message by focusing so much attention on the proposed guidelines for the use of force and on Security Council decision-making.

The problem, in other words, was less with seeing the military option as a piece of the puzzle than with treating it as the puzzle itself. Too little room was left for a serious consideration of the much wider range of policy tools available to the UN, especially under Chapters VI and VIII of the Charter. To me, one of the keys to effective policy-making is to keep as many options open for as long as possible in order to maintain flexibility in the face of changing and unpredictable circumstances. That is very much the course followed by Secretary-General Ban in enunciating his RtoP strategy. It was clear, as well, that historically there have been very few cases of military intervention for humanitarian purposes. Humanitarian intervention has existed far more in theory than in fact. So it would make little sense to base one's approach to implementing the responsibility to protect on the least likely scenario, especially if targeted, broad-based, and vigorous preventive efforts, including naming and shaming, have a chance of avoiding such difficult choices in the first place.

For me, one of the more challenging pieces of the conceptual puzzle was how to package the 2005 Outcome in a more compelling and coherent manner. As a negotiated text, it needed to be deconstructed to get a better sense of how the diverse pieces should relate to each other. The three elements of the ICISS report—the responsibility to prevent, the responsibility to respond, and the responsibility to rebuild—had not been employed by the Summit leaders. The exact reasons are not known, but it would appear that there was some discomfort that such a scenario might be geared to the use of force or sanctions in the response phase. This could be why a rebuilding phase would then be needed. The heads of state and government in 2005 apparently were more concerned with who decides, who has authority, and who has responsibility. Any international action would have to be in full conformity with the Charter, while the ICISS report is somewhat ambivalent about this when a robust response is needed.

In my view, the summit-level pledge at the outset of paragraph 138 of the Outcome Document—to protect by preventing the four crimes and violations and their incitement—should be taken very seriously and every effort should be devoted to reminding leaders of those obligations. Without widespread respect for this core provision, there would be little chance to make the rest of the package work. Moreover, it should

be stressed that these are ongoing responsibilities that cannot be sequenced or delegated.[31] This would become Pillar One of the Secretary-General's strategy.

At various points in paragraphs 138 and 139 there are references to assisting or helping states meet their RtoP responsibilities. For the UN system, this was a natural. So the concurrent and ongoing responsibility of the international community to help states protect their populations became Pillar Two. It was recognized this could include military assistance in some cases, though this would probably not be frequent. Two examples of military assistance were noted in the Secretary-General's report. One was the preventive deployment of peacekeepers, as in the Former Yugoslav Republic of Macedonia in the 1990s. A second possibility would be a Chapter VII military response with the consent of a government that is battling for control of its territory with armed groups that are committing one or more of the four atrocity crimes identified in the Outcome Document. The case of Sierra Leone is noted above.
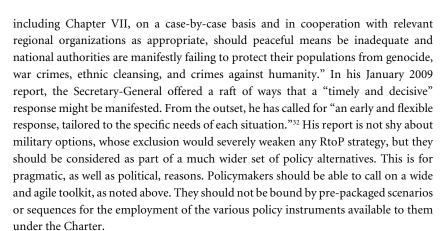
A more common application of the second pillar, however, would undoubtedly take the form of civilian or institutional capacity-building of one sort or another. At the world body, this entails mainstreaming an RtoP perspective in the work of a wide range of UN agencies, programs, funds, and departments, a process that is still in its early stages. But regional bodies, national governments, civil society, and the private sector could also be involved. The final sentence of paragraph 139 is suggestive about the preventive value of such efforts. "We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out." This would require either identifying states "under stress" and/or having them come forward to seek such assistance. Several states have already suggested that events in their past and/or their concerns about a repetition in the future would make themselves prime candidates for such capacity building and assistance. As this author has often noted, however, we are still in a learning stage about which kinds of capacity-building would be most helpful under which circumstances. No two situations are identical, so it would be counter-productive to try to devise and impose a rigid, global template that does not take into account the distinct needs, experiences, and characteristics of each society. This is likely to be both a top-down and bottom-up learning process for all concerned. Here, much more case specific research and analysis is needed.

The Third Pillar (response) is equally important. In 2005, the heads of state and government asserted that "we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter,

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[31] This distinction is not always observed. For example, in the 2010 U.S. National Security Strategy it is stated that in endorsing RtoP the United States has "recognized that the primary responsibility for preventing genocide and mass atrocity rests with sovereign governments, but that their responsibility passes to the broader international community when sovereign governments themselves commit genocide or mass atrocities, or when they prove unable or unwilling to take necessary action to prevent or respond to such crimes inside their borders." (Washington, D.C.: The White House, May 2010), at 48, http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf (accessed Feb. 2011). While it is most welcome that the United States would include RtoP in its national security strategy, it seems unhelpful to assume that states can shed their responsibilities by failing to meet them. These responsibilities, according to the Secretary-General's strategy and the pledges made at the 2005 Summit, are enduring ones.

including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity." In his January 2009 report, the Secretary-General offered a raft of ways that a "timely and decisive" response might be manifested. From the outset, he has called for "an early and flexible response, tailored to the specific needs of each situation."[32] His report is not shy about military options, whose exclusion would severely weaken any RtoP strategy, but they should be considered as part of a much wider set of policy alternatives. This is for pragmatic, as well as political, reasons. Policymakers should be able to call on a wide and agile toolkit, as noted above. They should not be bound by pre-packaged scenarios or sequences for the employment of the various policy instruments available to them under the Charter.

It may be useful for independent experts to weigh and pose various guidelines for Security Council decision-making, as the ICISS report did. This may provide a means for measuring and assessing the Council's performance. However, it should be recognized that the founders of the United Nations felt that the Council should act as a political body, unencumbered by guidelines or checklists beyond the purposes, principles, and provisions of the Charter.[33] They favored adaptability to changing circumstances over detailed rules or standards for the Council's choices. For over 65 years of practice, of course, the members of the Security Council have studiously avoided any such constraints on their collective decision-making process.

From the beginning of my work with the Secretary-General, it has been evident that some RtoP advocates see the first two pillars as central, while others favor the third. To me, each of the three is essential to a balanced and effective strategy. Using an architectural metaphor, if the three supporting pillars are of different lengths, then the whole RtoP edifice would lean one way or another, threatening to fall over. If the three pillars are of different strengths, then the structure could easily implode. Here, once again, the conceptual, political, and operational dimensions of RtoP's development converge.

III. THE INSTITUTIONAL AND OPERATIONAL CHALLENGES

We did not have the luxury of setting institutional and operational questions aside until the conceptual and political ones had been fully answered. Three sets of realities intruded on any illusions of being able to sequence the work. First, as discussed at the outset of the chapter, was the realization of the interdependent and interlocking nature of these various pieces of the puzzle. None could be properly addressed without reference to the others. Second, world events would not permit such an orderly and leisurely work plan. Neither the post-election violence in Kenya nor the claim that the slow response of Myanmar authorities to the ravages of Cyclone

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[32] Secretary-General Defends, Clarifies, "Responsibility to Protect" at Berlin Event, op. cit.

[33] Edward C. Luck, "A Council for All Seasons: The Creation of the Security Council and Its Relevance Today," THE UN SECURITY COUNCIL AND WAR: THE EVOLUTION OF THOUGHT AND PRACTICE SINCE 1945 (Vaughan Lowe, Adam Roberts, Jennifer Welsh, and Dominik Zaum, eds., Oxford University Press, 2008), 62–85.

Nargis constituted an RtoP situation could be ignored or left to another day. Third, the very act of appointing a Special Adviser on RtoP matters raised a number of acute institutional, as well as political, issues that had to be addressed early on.

In retrospect, the situations in Kenya and Myanmar appear like bookends that helped to shape and define the UN's early operational development of RtoP. There was no doubt that the world body would be heavily engaged in trying to prevent the post-election violence in Kenya in early 2008 from escalating. Among other factors, Nairobi was the UN's fourth capital, after New York, Geneva, and Vienna, and a major hub of international commercial and inter-governmental activity. From an RtoP perspective, both sides following the disputed election appeared to be inciting violence based on tribal identity as well as on political affiliation. It was a toxic combination. The scale and nature of the violence posed a real danger of widespread ethnic cleansing if it was allowed to fester and spread throughout the country.

On the other hand, the active efforts of the African Union, its chief mediator, former UN Secretary-General Kofi Annan, and major external powers, as well as the United Nations, to defuse the violence by forging a political deal offered some grounds for cautious optimism, as long as the violence was not allowed to swell out of control, hardening the political and identity-based battle lines. To me, this appeared to be a classic opportunity to apply RtoP principles in a preventive mode. Following a meeting of his Policy Committee—the closest thing to a UN system-wide cabinet— Secretary-General Ban decided that the world body would address the conflict from an RtoP perspective. Kofi Annan later declared that he also saw his ultimately successful mediation efforts through an RtoP lens.[34] This permitted the United Nations and the African Union, as well as other actors, to deliver directly and personally the same message to the leaders of both sides of the dispute: cease the incitement of atrocity crimes and restrain your supporters from committing such crimes, for impunity is not what it used to be and the international community, as well as your own people, will hold you accountable if further atrocities occur.[35] For whatever combination of reasons, these appeals and warnings among them, the incitement and violence ebbed and an uneasy political arrangement was achieved.

If the Kenyan case was suggestive of RtoP's preventive potential, the situation in Myanmar following Cyclone Nargis in May 2008, just a few months later, offered a note of caution about possible pressures to extend its scope beyond what had been agreed at the 2005 Summit. French Foreign Minister Kouchner urged the international community to treat the regime's refusal to permit most humanitarian groups into the country to assist the victims as an RtoP violation.[36] In doing so, he arguably echoed the spirit of the 2001 ICISS report. Gareth Evans, on the other hand, contended that it was premature to label it an RtoP situation, but that if the refusal to permit substantial assistance to reach those affected by the cycle persisted, then it could constitute a crime against
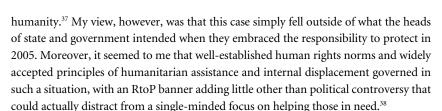
[34] Roger Cohen, *How Kofi Annan Rescued Kenya*, The New York Review of Books, vol. 55, no. 13 (August 14,2008).

[35] Statement attributable to the Spokesman for the Secretary-General on the Situation in Kenya (Jan. 11, 2008), http://www.un.org/apps/sg/sgstats.asp?nid=2947 (accessed Feb. 2011).

[36] Bernard Kouchner in Seth Mydans, *Myanmar Faces Pressure to Allow Major Aid Effort*, N.Y. Times, May 8, 2008.

humanity.[37] My view, however, was that this case simply fell outside of what the heads of state and government intended when they embraced the responsibility to protect in 2005. Moreover, it seemed to me that well-established human rights norms and widely accepted principles of humanitarian assistance and internal displacement governed in such a situation, with an RtoP banner adding little other than political controversy that could actually distract from a single-minded focus on helping those in need.[38]

As noted earlier, our nascent efforts to build political support for RtoP, especially in the developing world, would have been irreparably undermined if we had violated our "narrow but deep" rule at the first opportunity. This would have been doubly so if it had appeared that we were doing so at the behest of the Foreign Minister of one of the permanent members of the Security Council. A number of developing countries, it should be recalled, were deeply suspicious that RtoP principles would be captured and misused by powerful countries of the North as a device to justify intervention in the Global South. In the end, Foreign Minister Kouchner decided that this was not an RtoP situation after all and Secretary-General Ban Ki-moon was able to persuade the leaders of the Myanmar regime to open the door a crack to permit a somewhat larger influx of international assistance.[39] Some recent studies suggest that the people of Myanmar had developed their own capacities and techniques for self-protection, so that they were not entirely dependent on international assistance to try to hold down the loss of life from Cyclone Nargis.[40]

The spring of 2008 was also marked by an intensive effort to find common ground across the UN system on how to advance the RtoP agenda. If the Secretariat cannot present a united front on such potentially divisive issues, then the chances of gaining broad political support among the 192 Member States declines markedly. Disgruntled entities in the Secretariat are apt to form informal blocking coalitions with skeptical Member States in such cases. From a bureaucratic perspective, big new ideas, such as the responsibility to protect, can be threatening, especially if they come with wide backing from the public, NGOs, and, especially, the Secretary-General. RtoP's crosscutting nature, moreover, meant that its implementation could have programmatic and institutional implications for many aspects of the UN's work, from human rights, humanitarian affairs, political affairs, and legal affairs, to peacekeeping and peacebuilding.

[37] Gareth Evans, *Facing Up to Our Responsibilities*, THE GUARDIAN, May 12, 2008.

[38] See Edward C. Luck, testimony, "International Disaster Assistance: Policy Options," Subcommittee on International Development, Foreign Assistance, Economic Affairs and International Environmental Protection, Senate Committee on Foreign Relations (Jun. 17, 2008). See, also, Lloyd Axworthy and Allan Rock, Responsibility to Protect? Yes, GLOBE AND MAIL, May 9, 2008); Ramesh Thakur, Should the UN Invoke the Responsibility to Protect?, GLOBE AND MAIL, May 8, 2008); Ivo Daalder and Paul Stares, The UN's Responsibility to Protect, I.H.T, May 13, 2008. For a balanced account of the various positions on this crisis, see Asia-Pacific Centre on the Responsibility to Protect, CYCLONE NARGIS AND THE RESPONSIBILITY TO PROTECT, Myanmar/Burma Briefing No. 2 (Brisbane, Australia, 2008).

[39] Bernard Kouchner, LE MONDE, May 20, 2008. Briefing to the Security Council on Myanmar (Jul. 13, 2009), http://www.un.org/apps/sg/sgstats.asp?nid=3970 (accessed Feb. 2011)

[40] See, for example, Ashley South with Malin Perhult and Nils Carstensen, CONFLICT AND SURVIVAL: SELF-PROTECTION IN SOUTH-EAST BURMA, Asia Programme Paper ASP PP 2010/04 (London Chatham House, September 2010).

From the earliest discussions in the summer of 2007, it had been evident that the two Special Advisers on Genocide Prevention, Francis Deng, and on the responsibility to protect, this author, would need to work as much as possible as a team, given their overlapping and symbiotic, but distinct, mandates. Their work, in turn, would depend on close substantive and institutional relationships with the Office of the High Commissioner on Human Rights (OHCHR) and the Department of Political Affairs (DPA), as well as with the Office for the Coordination of Humanitarian Affairs (OCHA), the Department of Peacekeeping Operations (DPKO), and the Office of Legal Affairs (OLA). The implementation of the Second Pillar (assistance) would depend on the degree of buy-in of the United Nations Development Programme (UNDP) and other development and peacebuilding actors, including the Peacebuilding Support Office (PBSO), the World Bank, and many others inside and outside of the UN system. Also critical to implementing RtoP would be other entities mandated to address parts of the broader human protection agenda, such as UNICEF (the United Nations Children's Fund), the Special Representative for Children and Armed Conflict, the High Commissioner for Refugees (UNHCR), the Special Representative on Sexual Violence and Conflict, and others in this growing sector.[41]

In addition to scores of bilateral consultations with these entities, in the spring of 2008 I convened a Contact Group to explore the possibility of developing An Agreed Conceptual Framework for the Responsibility to Protect. To no one's surprise, it had become apparent that the UN Secretariat was every bit as susceptible to varying understandings of what RtoP was all about as had been the Member States, NGOs, independent experts, and scholars. Quite rightly, many of these groups felt that their ongoing work was already making significant contributions to protecting populations from the four atrocity crimes. A number of them had extensive presences in the field, along with sensitive relationships with host country governments and vulnerable populations. They needed assurances both that RtoP would bring added value and that voicing RtoP principles would do no harm. The effective operationalization of RtoP, moreover, would depend on early warning and assessment, things that would require access to information and analysis of local situations developed by the multiple UN entities with extensive field operations. The Office of the Special Adviser for the Prevention of Genocide had developed just such arrangements with most of these groups within the UN system, but adding an RtoP dimension would multiply the information and assessment needs of the Office.

Once there was systemwide agreement on a Conceptual Framework, operational arrangements could follow. After many weeks of intensive and instructive roundtable discussions and multiple drafts, agreement on a detailed Conceptual Framework was completed. This, in turn, provided a basis for me to draft the Secretary-General's first major statement on his vision of the responsibility to protect. Delivered in Berlin in mid-July 2008, it was well received by most Member States and NGOs, as well as by the Secretariat.[42] Many who heard or read the statement no doubt felt some sense

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[41] UN Doc. SG/SM/13385, op. cit.

[42] Secretary-General Defends, Clarifies, "Responsibility to Protect" at Berlin Event, op. cit. Berlin seemed an apt location for this initial address, as it served to remind people that mass atrocities can occur—and have occurred—in all regions of the world and in countries at different levels of economic and social development.

of ownership, as its key points reflected many months of consultation with all of these stakeholders. More consultations followed over the summer and fall of 2008, as I wove the main elements of the speech and the Agreed Conceptual Framework into the more elaborate form of the Secretary-General's report on *Implementing the Responsibility to Protect*, which was published in January 2009 after several rounds of comments from throughout the Secretariat.[43]

During the critical months before and after the publication of the report, roundtable meetings were convened by the Stanley Foundation, the International Peace Institute, the Global Centre on the Responsibility to Protect and the Mexican Foreign Ministry, the Permanent Missions of Canada and Rwanda to the United Nations, as co-chairs of the RtoP Friends Group, the Permanent Mission of Egypt to the United Nations, the Permanent Mission of Morocco to the United Nations, and the governments of Switzerland, Argentina, and Tanzania, among others.[44] Our goal was to be as open and inclusive in the process of consultations as possible, delivering identical messages to skeptics and advocates alike. We put a premium on consistency, even redundancy, in pursuing a "no surprises" approach to developing the political and operational dimensions of RtoP. It would be difficult to move the responsibility to protect from words to deeds if important stakeholders were still uncertain of the shape and scope of the concept. And we worked hard to refute the claims that RtoP threatened sovereignty or was a northern creation being forced on the Global South. As Secretary-General Ban put it, "the responsibility to protect has emerged from the soil, spirit, experience, and institutions of Africa." His report "seeks to situate the responsibility to protect squarely under the United Nations roof and within our Charter, where it belongs. By developing fully United Nations strategies, standards, and processes for implementing the responsibility to protect, we can discourage States or groups of States from misusing these principles for inappropriate purposes."[45]

The subsequent debate in the General Assembly in late July 2009 on the Secretary-General's report was lively, prolonged, and largely positive. It suggested both that we were on the right track and that a relative handful of Member States retained deep suspicions about the concept. In September the Assembly adopted, by consensus, a thin RtoP resolution that took note of the Secretary-General's report and called on the Assembly to continue its consideration of RtoP, as stipulated in paragraph 139.[46] The signal seemed to be that the operationalization of RtoP could continue, but cautiously and prudently—as it seemed wise to make haste slowly. There had been little criticism of the steps to establish a joint office on the prevention of genocide and the responsibility to protect, though no funding or posts had yet been sought from the General Assembly for that purpose. More discussion was needed within the Secretariat, in any case, on how the joint office would function and fit into existing structures in

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[43] Report of the Secretary-General, IMPLEMENTING THE RESPONSIBILITY TO PROTECT, op. cit.

[44] See, for example, ACTUALIZING THE RESPONSIBILITY TO PROTECT (Muscatine, Iowa: The Stanley Foundation, June 2008), http://www.stanleyfoundation.org/publications/report/UNND808.pdf (accessed Feb. 2011).

[45] Secretary-General, Upcoming Debate on Responsibility to Protect Not About History, But Character of the United Nations, Secretary-General Tells General Assembly, UN Doc. SG/SM/12374 (Jul. 21, 2009).

[46] G.A. Res. 63/308, UN Doc. A/Res/63/308 (Sept. 14, 2009).

emergency situations. If there was to be "timely and decisive" collective action when "national authorities are manifestly failing to protect their populations," as called for in paragraph 139, the early warning and information assessment functions of the joint office would have to be highly developed without confusing the crisis analysis being developed by other parts of the system at the same time. Following more rounds of high-level consultations within the Secretariat in the fall of 2009 and winter of 2010, the Policy Committee met to consider a series of proposals in late March 2010.

These discussions, the largely encouraging reactions to his 2009 report and the support for a UN RtoP early warning capability expressed in paragraph 138 of the 2005 Summit Outcome Document provided a strong basis for some innovative proposals on early warning and assessment by the Secretary-General. These were contained in his subsequent report on those aspects of his RtoP strategy that I drafted in preparation for an August 2010 informal interactive dialogue in the General Assembly.[47] The relatively succinct report laid out the mandate for the joint office and its early warning and assessment function, described some gaps in the world body's existing capacities that the joint office could help to fill, and explained new emergency procedures, as follows:

When the Special Advisers, based largely on information provided by, and in consultation with, other United Nations entities, conclude that a situation could result in genocide, war crimes, ethnic cleansing or crimes against humanity, they provide early warning to me and, through me, to the Security Council and other relevant intergovernmental organs. If the situation persists, and if national authorities are manifestly failing to protect their populations from these crimes, I will invoke new internal procedures to expedite and regularize the process by which the United Nations considers its response and its recommendations to the appropriate intergovernmental body or bodies. In such cases, I will ask the Special Advisers to convene an urgent meeting of key Under-Secretaries-General to identify a range of multilateral policy options, whether by the United Nations or by Chapter VIII regional arrangements, for preventing such mass crimes and for protecting populations. Such an emergency meeting will be prepared through a working level process convened by the Special Advisers, and the results, including the pros and cons of each option, will be reported promptly to me or, should I choose, to the Policy Committee. This is without prejudice to the role of the relevant United Nations entities, acting within their mandates, to bring any situation to my attention, and through me, to the Security Council and other relevant intergovernmental organs.

Such an emergency convening process, designed to present the Secretary-General with a range of policy options and the pros and cons of each course, is commonplace in national capitals. However, it had not existed previously in the UN system, which typically operates by consensus, setting aside policy differences before presenting group recommendations to the Secretary-General.
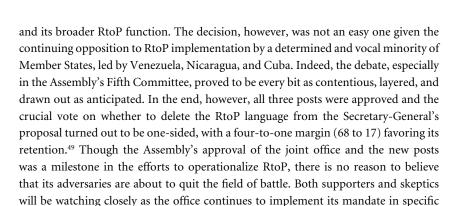
The generally upbeat tone of the General Assembly dialogue[48] led to a decision to finally approach the Assembly in the fall of 2010 for three new posts for the joint office

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[47] Report of the Secretary-General, Early Warning, Assessment, and the Responsibility to Protect, UN Doc. A/64/864 (Jul. 14, 2010).

[48] For summaries of the August 9, 2010, informal General Assembly interactive dialogue on "Early Warning, Assessment, and the Responsibility to Protect," see the International Coalition for

and its broader RtoP function. The decision, however, was not an easy one given the continuing opposition to RtoP implementation by a determined and vocal minority of Member States, led by Venezuela, Nicaragua, and Cuba. Indeed, the debate, especially in the Assembly's Fifth Committee, proved to be every bit as contentious, layered, and drawn out as anticipated. In the end, however, all three posts were approved and the crucial vote on whether to delete the RtoP language from the Secretary-General's proposal turned out to be one-sided, with a four-to-one margin (68 to 17) favoring its retention.[49] Though the Assembly's approval of the joint office and the new posts was a milestone in the efforts to operationalize RtoP, there is no reason to believe that its adversaries are about to quit the field of battle. Both supporters and skeptics will be watching closely as the office continues to implement its mandate in specific situations. It will have to prove itself through practice.

As of February 2011, the two Special Advisers have taken joint positions on Kenya, the Democratic Republic of the Congo, Kyrgyzstan, Guinea, Côte d'Ivoire, Sudan, and Libya among others. In some cases, they have sought to shape the messages of the Secretary-General and other top UN officials, so that they would include RtoP considerations, such as warnings about incitement, the targeting of minorities, and other provocative actions, as well as reminders about the new age of accountability.[50] We have issued joint statements in several of these cases.[51] The joint office staff has continued to monitor these and a number of other situations of potential concern. As this author told the General Assembly informal interactive dialogue in 2010, "our goal should be early understanding, not just early warning. We need to understand why certain things are happening, not just what is happening." Hence, "we need a moving picture, not a snapshot. . . . Assessment entails understanding the mosaic not the pieces, the pattern not a single act."[52] What is needed, therefore, is early engagement and early understanding, not just early warning.

Seen in this larger context, the work of the joint office is part of a much wider enterprise that encompasses local and transnational civil society, regional and local experts, field-based organizations and groups, regional and sub-regional organizations, governments, and colleagues throughout the UN system. Each partner has a distinct set of insights, experiences, and judgments that can be helpful in trying to

the Responsibility to Protect at www.responsibilitytoprotect.org/Summary%20of%20EW%20 dialogue%20on%209%20August%202010(2).pdf and the Global Centre for the Responsibility to Protect, see globalr2p.org/resources/(accessed Feb. 2011).

[49] There were, however, a large number of abstentions or absences, possibly because of the late hour or because many delegations objected to voting on substantive matters in the Fifth Committee, which is to address administrative and budgetary matters. For a useful account of the process, see the report of the Global Centre on the Responsibility to Protect, ACABQ AND FIFTH COMMITTEE NEGOTIATIONS ON THE JOINT OFFICE 2010, http://www.globalr2p.org/advocacy/index.php.

[50] UN Doc. SG/SM/13385, op. cit.

[51] To access the statements of the Special Advisers, see the website of the Office of the Special Adviser for the Prevention of Genocide, http://www.un.org/en/preventgenocide/adviser/statements.shtml (accessed Feb. 2011).

[52] Edward C. Luck, Special Adviser to the United Nations Secretary-General, General Assembly Informal Interactive Dialogue on Early Warning, Assessment, and the Responsibility to Protect (August 9, 2010), http://www.un.org/ga/president/64/thematic/responsibility/Luck.pdf (accessed Feb. 2011).

understand the unique dynamics of each society that may face a risk of atrocity crimes. Clearly, each situation has to be judged on its own merits and seen in the flow of its own history and internal dynamics. Modesty is in order in assuming the likely course of events in such cases. But it should not lead to timidity or undue hesitation on the part of the joint office, given its early warning and assessment responsibilities, as well as its strong preference for preventive action. Waiting can be a form of deciding, limiting options and potentially putting populations at risk.

At this early stage of implementing the responsibility to protect, there have been some encouraging signs, as well as several unanticipated challenges. On the plus side, the practice of RtoP to date in the cases cited above appears to be reinforcing rather than jeopardizing political support for the concept. It is our hope and expectation that the invocation of RtoP principles in appropriate situations will, over time, ease fears of its misuse and raise comfort levels across the board. On the other hand, a misjudgment on our part or evidence that our appeals are being ignored in difficult situations could undermine support for the larger RtoP enterprise. So far, this does not appear to be the case and there is reason to believe that the invocation of RtoP principles has had added value in the cases to date. But the final chapter has not been written in most of these situations and it remains to be seen whether RtoP has made much difference in a couple of the toughest and most stubborn cases, such as Darfur, the DRC, and Somalia. Within UN crisis deliberations, however, RtoP has gained a stronger foothold over the past year, as the need to prevent atrocity crimes and their incitement has become a regular feature of the decision-making process in the higher reaches of the Secretariat.

As expected, the Security Council has been cautious about employing precise RtoP language, usually preferring to use RtoP-like terminology instead. Important exceptions have been Security Council resolutions 1706 (2006) on Darfur and 1970 (2011) and 1973 (2011) on Libya.[53] While there was little opposition in the Council to the references to RtoP in the two resolutions on Libya, its association with the NATO-led use of force may have reinforced the belief of some members that the phrase "responsibility to protect" carries implications for their individual and collective obligation to respond robustly to situations where they would prefer a more cautious response.[54] Building bridges to the Council for a more focused interactive dialogue on the responsibility to protect has proven difficult, despite the encouraging progress along these lines with the General Assembly. In July 2011, the Assembly is expected to have an informal interactive dialogue on the regional and sub-regional dimensions of the Secretary-General's RtoP strategy, to be the subject of his next report. Given the prominent role of the Security Council in Chapter VIII of the Charter on regional arrangements, it would be awkward to limit that discussion to the Assembly alone. Despite the Council's caution toward RtoP, it should be acknowledged that it has

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[53] Also, in a thematic resolution on the protection of civilians in armed conflict (UN Doc. S/RES/16April 74, 28, 2006), the Security Council reaffirmed the provisions of paragraphs 138 and 139 of the Outcome Document.

[54] Even in 2005, John Bolton, then U.S. Permanent Representative to the United Nations, expressed such reservations at the World Summit. See Edward C. Luck, Sovereignty, Choice, and the Responsibility to Protect, Global Responsibility to Protect, 1, 1 (2009), 10–21.

made impressive strides over the past decade in championing and operationalizing the wider human protection agenda of which RtoP is a part.

Less expected have been several challenges that have arisen with the more frequent incorporation of RtoP considerations in Secretariat decision-making. One is the need to develop clearer distinctions between conflict prevention and atrocity prevention.[55] Though this is not always the case, atrocities frequently occur in situations of armed conflict. In some situations, as in Rwanda in 1993–1994, concerns over sustaining the conflict resolution process appeared to trump the voices warning of a pending genocide. In several recent cases, such as Kenya, Guinea, South Sudan, Côte d'Ivoire, and Libya, the two agendas appeared to be mutually reinforcing. But a better understanding is needed of how these efforts interact in different kinds of situations. A second, and not unrelated, challenge is messaging: who should say what, and when should they say it? The Secretary-General has a host of Special Representatives, Advisers, and Envoys. Some have situation-specific mandates and others thematic ones, like children and armed conflict, sexual violence and armed conflict, genocide prevention, and RtoP. The coordination and sequencing of messages can be a complicated business in an unfolding crisis.

A third operational challenge has been distinguishing between situations where there are egregious and chronic human rights violations and those where a sudden escalation to atrocity crimes could be imminent. Sometimes the very chronic nature of the violations may make sudden changes in the situation, either of a positive or negative sort, less likely. Such cases may be intolerable from a human rights perspective, yet not ready candidates for attention by the joint office. Finally, it may be easier to predict that atrocities are likely in a particular place than to predict precisely when and how they will occur. In more than one situation over the past year, the trend line was evident enough but it was impossible to know what would spark the violence or how quickly it would escalate. Instigators try not to advertise their plans in advance, of course, though sometimes an intensification of acts of incitement can provide the needed clues.

As noted earlier, efforts to build capacity and to help states succeed are still at an early phase, as is the parallel process of mainstreaming RtoP throughout the UN system. For all the political buy-in for the first two pillars of the Secretary-General's strategy, their actual operationalization will take considerable time. Paradoxically, for all the controversy about the Third Pillar (response), arguably its implementation has actually proceeded more rapidly. Most of the specific cases cited above are ones in which the national authorities either have manifestly failed to protect or appear to be on the brink of failing to do so. These are emergency situations. They might well benefit from assistance and capacity building over time, but the immediate need is to help them avoid an RtoP meltdown. Most of the work of the joint office in those specific cases has involved early warning, assessment, working with partners, messaging, and naming and shaming. This is the stuff of Chapters VI and VIII of the Charter, not Chapter VII. However, in several of these cases, the Security Council, the African Union, or others have imposed political and economic sanctions on one or more

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[55] This is raised in Edward C. Luck, The Responsibility to Protect: Growing Pains or Early Promise?, ETHICS AND INTERNATIONAL AFFAIRS, 24, 4 (Winter 2010), 349–365.

parties to the conflict. This has not been done only to advance RtoP principles, but atrocity prevention has become part of the rationale for their retention. In Côte d'Ivoire, ECOWAS has threatened to intervene militarily. In several of these situations, the UN has deployed peacekeepers, sometimes with a Chapter VII mandate. These factors, once again, underscore the need to have a fuller understanding of the relationship between conflict prevention and atrocity prevention. In the early thinking about RtoP, the scenarios seemed to assume that atrocity prevention was the only concern and that the UN and regional organizations were not already engaged on the ground in these situations. Instead, we are often finding that RtoP forms another layer of international engagement in already complex situations.

So the learning process regarding RtoP implementation continues. It is not going to be a quick or simple process. We are learning, to some extent, by doing. Hopefully it will not be a course of trial and error, but one in which positive lessons are absorbed about what works when and where. As noted earlier, it is already proving to be both a top-down and bottom-up process, in which the UN is only one of many players and partners. Taken day by day, the results are not likely to appear dramatic or decisive. But seen over time, we may find that RtoP has proven to be a more essential element and a more useful instrument of the world's peace, security, human rights, and humanitarian agendas far sooner than anyone would have had the right to expect, even from the Olympian heights of the 2005 Summit.