

## **The UN's Evolving Responsibility to Protect Civilians from Crimes of Atrocity**

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Thank you for the invitation to be here in this Seminar. As a member of the International Committee of Global Action to Prevent War, I have had the opportunity to participate in other debates about the UN Emergency Peace Service and the need to find ways to protect civilians from Crimes of atrocity. It is really a very difficult issue, that contains many dilemmas and at the same time is a priority, because we cannot accept that in the XXI Century, civilians are still deliberately targeted as a strategy of warfare and civilians continue to suffer from serious human rights violations.

### **What is the situation?**

**The highest numbers of reported direct civilian fatalities** in 2010 were reported to be found in Iraq, with an estimated 4,000 civilians dead, Pakistan, with 3,500 dead, Afghanistan, with 2,700 dead, and Somalia, with 2,000 dead.

- Following the pattern of 2009 figures, which indicated over 15,000 cases of rape in Democratic Republic of Congo, by mid-2010 a total of 7,685 new cases had been identified.

In Colombia, 2010 saw another wave of roughly 280,000 displaced people, continuing the trend of the two previous years.

**Last year, Sudan** had both the highest level overall of people remaining internally displaced – around 5 million – and with over 532,000 newly displaced – the highest number of people displaced by conflict in 2010.

- **Somalia had the highest displacement ratio**, with over 16 per cent of its

overall population remaining displaced, many who have been displaced for years.

- **Recruitment of child soldiers** was ongoing in at least 10 of the 18 conflict affected countries studied in this report. In Afghanistan, Central African Republic, Chad, Sudan, the Democratic Republic of Congo, Myanmar and Somalia, this practice was been reported in both governmental and non-state armed groups/forces

- **Afghanistan remained the most dangerous place for aid workers in 2010:** 29 workers were killed, while 71 were abducted. This corresponds to a 153 per cent increase over 2009, and is roughly eight times the 2008 figure.

**What is being done with these situations?.** What kind of responses have been given to the protection of civilians? Can International actors protect people from bombs, attacks, and blockades, especially when confronted with overwhelming force, as in Darfur, Tibet, Burma/Myanmar and the occupied Palestinian territory? What role should the international actors play in protecting conflict-affected populations and to what degree should they engage in the protection of civilians?.

I hope we could answer some of this questions in this seminar during these three days.

### **The concept of protection**

Protection is a combination of legal obligations and customary duties, and should be treated both as an objective and as a set of duties. Protection includes the need to prevent or put a stop to potential violations.

For comprehensive protection, there is a need for a global response, which addresses the political, legal, security and military enforcement aspects of the issue. These solutions should address the physical safety of civilians and the elimination of impunity. They will have to ensure that violators are prosecuted and humanitarian efforts are in place to save lives, alleviate suffering and preserve the

dignity of civilians.

The characteristics of civilians in need of protection have also changed as scenarios of armed conflict evolve. For example, increasingly, women and children have been compelled to arm themselves and engage in violence for their safety, inadvertently affecting their status as 'protected persons' under the Geneva Conventions.

Also, violent events other than armed conflict have generated more categories of persons in need, such as Internal Displaced Persons, rural-urban refugees, boundaries workers, etc.

I would like particularly to stress the protection of women. Women have specific protection needs in times of conflict. Recently, the differential impact of conflict in women and in men has been recognized by a number of UN Security Council resolutions, with UN resolution 1325 recognizing the impact of war women. UN resolutions 1820 (2008) and 1888 (2009) address issues related to sexual violence in times of war.

There are conceptual dilemmas in the way of understanding protection and the challenges of operationalizing protection. The consequences are that there isn't a consistent response to threats to civilians in the conflicts. An, in some situations, the way the international community decides who to prioritize, who to protect, is very arbitrary, as the recent Oxfam Report explains. For example, the Security Council did not discuss in 2010 – nor did it adopt any Resolution or a Presidential Statement – on ongoing armed conflicts in Colombia, Myanmar, the Philippines, or Yemen).

The first UN Presidential Statement on protection of civilians was in February 1999. This Statement recognized that large-scale human suffering can fuel conflict and has a potential impact on international peace and security. The international

community should act to protect civilian populations affected by conflict. While this recognition was important in placing the protection of civilians within the UNSC's mandate to maintain international peace and security, the UNSC should consider the protection of civilians based on the need to prevent harm to civilians, and not only because civilian suffering may cause more violence.

Some of the guidelines that have been produced by the UN include: UN Security Council resolutions 1820 (2008), 1888 (2009) and 1889 (2009) on women, peace and security; resolution 1882 (2009) on children and armed conflict; resolution 1894 (2009) on protection of civilians in armed conflict; the UN Security Council's Aide Memoire for the Consideration of Issues Pertaining to the Protection of Civilians in Armed Conflict (2004); and the Operational Concept on Protection of Civilians in UN Peacekeeping Operations (by the UN Department of Peacekeeping).

In addition to the preceding guidelines, many UN missions with the mandate for POC have developed their own operational guidelines aimed at achieving better protection through policies and mechanisms emphasizing coordination. These include the UN Mission in Sudan (UNMIS), the UN-African Union Mission in Darfur (UNAMID) and the UN Organization Stabilization Mission in the Democratic Republic of Congo (MONUC). These are three examples of bottom-up initiatives to meet operational challenges in the absence of clear strategic guidance.

The range of protection issues covered in the UNSC has included displacement, children affected by conflict, and the use of sexual and gender-based violence as a weapon of war. The most recent Security Council Resolution on the Protection of Civilians, UNSC Resolution 1894 (2009), calls for comprehensive and detailed information relating to the protection of civilians in armed conflict and for protection activities to be made a clear priority for peacekeeping missions for the protection of civilian mandates. However, more than a year after the Resolution was adopted, there have been only minimal advances in the area of improved reporting on

protection incidents, and translating protection mandates into effective protection of civilians on the ground remains a challenge.

The role of the UNSC, as an important international body involved in the protection of civilians: The UNSC holds its annual discussion on protection of civilians in armed conflict on the 10th May in New York, focusing on its activities in the world's most troubled areas, as well as looking at its own successes and failures regarding the protection of civilians in armed conflict.

In 2010, the Report of the Secretary-General on the protection of civilians in armed conflict stressed the need for a less selective approach by the UNSC to conflicts, including finding ways to address contexts not formally on its agenda.

Any action by the UNSC should correspond to the protection needs on the ground, be based on reliable information and analysis of threats to civilians, and should be designed to protect those civilians in greatest need.

The UNSC has a range of options to prevent and stop widespread violence against civilians in conflict zones:

- from mediation and diplomatic missions,
- -arms and trade embargoes,
- sanctions, setting up courts and tribunals,
- peacekeeping missions,
- to authorizing the use of military force.

The Security Council can also make important contributions to encouraging and helping states exercise their responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity (pillar two of of RtoP).

By mandating UN peace operations to support security and justice sector reforms, the Security Council fosters national protection capabilities in states emerging from conflict, which typically face a high risk of relapse into mass violence.

When the Security Council mandates peace operations to support the disarmament, demobilization, and reintegration of former combatants it also strengthens the fabric of a post conflict society.

By pursuing early engagement and preventive diplomacy the Security Council can encourage governments to address concerns and to mitigate risks before mass atrocities materialize.

Let me move on to the:

**Responsibility to protect:**

While the tension in international law between the principles of human rights promotion and non-intervention will subsist, the new responsibility to protect makes it clear that in cases of egregious abuse the principle of nonintervention is not absolute.

States do not have the right to kill their peoples without interference. It is important to note that the International community must implement its responsibility to protect first through diplomatic, humanitarian and other peaceful means, before considering the use of force.

Although the willingness of the Security Council to authorize force is often considered essential when confronting the threat of genocide or mass atrocity, a wide range of possible non-violent preventive measures exist, including preventive diplomacy, conciliation and mediation, in-country human rights monitoring or observation, peacebuilding assistance, international exposure, international pressure, aid conditionality, and consideration of sanctions or other countermeasures, as well as measures under International criminal law to punish and deter perpetrators. As recent cases have demonstrated all too clearly, military force is a very blunt instrument and may not have the effect its promoters intend.

The responsibility to protect covers not just genocide but also 'war crimes, ethnic cleansing and crimes against humanity'. The inclusion in the responsibility to

protect of other crimes under international law means that the scope of the responsibility to protect matches the subject-matter jurisdiction of the International Criminal Court, bringing the preventive and punitive regimes for International crimes in line with each other.

Regarding the implementation of preventive mechanisms, the most noteworthy developments have been the establishment of two new posts, the UN Special Adviser to the Secretary-General on the Prevention of Genocide (a position with direct access to the Security Council) in 2004, and the Independent Expert on Minority Issues, appointed by the UN High Commissioner for Human Rights in 2005.

### ***Impunity***

To be effective in the protection of civilians, the Security Council must consistently work to ensure accountability for perpetrators of war crimes, crimes against humanity and other gross violations of human rights. “The establishment of tribunals for the former Yugoslavia, Rwanda and elsewhere, as well as the referral of specific cases to the International Criminal Court, have helped to send an important signal that even in the ‘fog of war’ impunity is not assured,” The effect of impunity on both human rights and peace” was clearly documented in different armed conflicts.

Secretary-General Ban Ki-moon called for reinvigorated commitment by the Council, Member States, and the UN to the principles of international humanitarian law, human rights law and refugee law, laying out “five core challenges.” These are:

1. strengthened compliance by all parties with international law such as access to conflict zones;
2. More consistent engagement with non-State armed groups to ensure their compliance and safe access to populations;
3. Greater ability for peacekeeping missions to protect more effectively such as

by active policing of territory;

4. better care and safer protection to civilians in need;

Strategic guidelines and principles are required to coordinate responsibilities and interaction with other key actors. This requires clearer direction and policies from the UN Security Council and Secretariat. UN, should have a concerted effort to link the work of the UN Secretariat with its humanitarian agencies that have protection responsibilities, such as the UNHCR, United Nations Children's Fund (UNICEF) and the Office of the High Commissioner for Human Rights (OHCHR).

The role of UN should be:

1. To have a comprehensive and long-term protection plan;
2. the effectiveness and accessibility of existing mechanisms;
3. The support strategies for states to exercise their responsibility to protect their citizens.

UN still struggles to create robust early warning and preventive systems. It still struggles to adopt mandates that can adequately protect civilians and integrate the wisdom of troop contributing countries trying to conduct increasingly complex missions. It still struggles to get troops and related capacities into the field quickly enough to stop violence in its earliest stages and stabilize communities threatened with horrific crimes.

- Individual member states should actively work to protect civilians, making this a cornerstone of domestic and foreign policies, and should use mediation and diplomatic tools to prevent violence and intervene at the earliest stage of a foreseeable crisis;
- The UNSC should ensure that mechanisms exist, whether formal or informal, to inform them of grave protection of civilian violations and challenges in countries not on the UNSC agenda;

The UN Secretary-General should provide systematic and timely overall thematic

information about the threats faced by civilians and should put these considerations at the center of UNSC debates, including through expanding the agenda. The UN Secretary-General should include in their reports on country-specific situations more comprehensive and detailed information relating to the protection of civilians;

## **Recommendations to the UN Security Council**

At a global level, the UNSC must provide clear leadership in protecting civilians affected by conflict by acting consistently to protect civilians, particularly when the authorizing the use of force, ensuring that such authorization is based on a clear articulation of threats and risks to civilians, and indicating how the proposed actions will minimize and address such threats.

Seeking ways to formally or informally increase engagement of the UNSC with civil-society actors, particularly those from communities experiencing or at risk of war crimes, genocide, ethnic cleansing, and crimes against humanity.

Requesting all peacekeeping and political missions to systematically collect, aggregate, and analyze data relevant to the protection of civilians, including killings, displacements, rapes, forced recruitment, looting, and destruction of property, to ensure an accurate and timely assessment of the situation on the ground. In countries where there is no mission and a high risk for civilians exists, this task could be undertaken by an independent monitoring mechanism. This data should include analysis of how the situation is changing and the impact of efforts to protect civilians and prevent further violations.

- Developing indicators and criteria for reporting on protection of civilians and, to this end, linking up UN information with other organizations and NGOs working to establish international standards in reporting on civilian casualties and protection of civilians threats in conflicts.

Regional mechanisms, for example in the context of the African Union, might be more readily accepted by states than UN involvement and would certainly have the potential to facilitate preventive action and confidence-building measures at an early stage in situations of tension involving minorities

### **How should these recommendations be put into operationalized?**

1. Strengthen the regional institutions and their capabilities to play a relevant role in the protection of civilians.
2. UN Emergency Peace Service (UNEPS) should offer a range of options for the protection of civilians and prevent genocide. More information in: [www.gapw.org](http://www.gapw.org)
3. Having access to accurate information about people under Threat. It's a good example of a tool which identifies different situations in which people are under threat. It is an initiative of an International Minority Rights Group and it is specifically designed to identify the risk of genocide, mass killing or other systematic violent repression, unlike most other early warning tools, which focus solely on violent conflict. Its primary concentration is civilian protection. The overall measure is based on a collection of ten indicators. These include indicators of democracy or good governance, conflict indicators, indicators of group division or elite factionalization and the country credit risk classification, see the notes to the table.