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Vienna School of International Studies
École des Hautes Études Internationales de Vienne

**39th International Peace Institute Vienna Seminar on
Peacemaking and Peacekeeping**

in cooperation with

**The Austrian Ministry of Defense and Sports
The Austrian Federal Ministry for European and International Affairs**

Seminar

**THE UN SECURITY COUNCIL AND
THE RESPONSIBILITY TO PROTECT:
POLICY, PROCESS, AND PRACTICE**

**Vienna, Austria
June 14 – 16, 2009**

CONCEPT PAPER

At the September 2005 World Summit, the assembled heads of state and government vowed to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, as well as from their incitement. While firmly based in existing international law, this enunciation of the “responsibility to protect” (RtoP) was widely heralded as an unprecedented step both because of the number of world leaders voicing it and because of the detailed provisions for implementing it contained in paragraphs 138 and 139 of the Summit’s Outcome Document. Paragraph 138 called on the international community to “encourage and help States to exercise this responsibility,” while 139 expressed the intention to help build state capacity in that regard and to assist states “which are under stress before crises and conflicts break out.” Paragraph 139 spoke of using the whole range of tools under Chapters VI, VII, and VIII of the Charter to help protect populations from the four specified crimes and violations. “Should peaceful means be inadequate and national authorities are manifestly failing to protect their populations” from these four crimes and violations, it continued, “we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate.” Paragraph 138 pledged support, as well, for establishing a UN early warning capability, while paragraph 139 asked the General Assembly “to continue consideration” of the concept.

Other than these two passing references to the Security Council and the General Assembly, the 2005 Outcome Document was silent on the prospective parts that the UN’s six principal organs should play in implementing the responsibility to protect. The range of tasks enumerated, however, implied that much of the UN system, as well as its partners on the regional and sub-regional levels and in civil society, would be needed to advance the RtoP agenda. Nor

had much thought been given to how paragraphs 138 and 139 could be refined into a coherent strategy capable of gaining the support of the Member States, the UN Secretariat, and publics alike. Little was done in 2006 and 2007 to begin to turn the words of RtoP into doctrine, policy, or practice.

Concerned about the lack of movement, the new UN Secretary-General, Ban Ki-moon, pledged to work toward operationalizing the responsibility to protect. To that end, he appointed Dr. Edward C. Luck, Senior Vice President and Director of Studies at the International Peace Institute (IPI) and Professor at Columbia University, to the new post of Special Adviser to the Secretary-General at the Assistant Secretary-General level.¹ He charged him with developing the conceptual, institutional, and political dimensions of RtoP. Following extensive consultations within the Secretariat and among the Member States, the resulting strategy is presented in the Secretary-General's report, "Implementing the Responsibility to Protect" (A/63/677). Prepared by Professor Luck, it was submitted to the General Assembly in January 2009 for debate in late 2009.

According to report, the responsibility to protect rests on three co-equal pillars: one, the protection responsibilities of the State; two, international assistance and capacity-building; and three, timely and decisive response. An annex to the report outlines ideas for strengthening the UN's early warning and assessment capacities that will be presented to the Assembly later in 2009. The Security Council could well play a role in the implementation of all three pillars, whether dealing with prevention or response. For example, under the first two pillars, the

¹ The Secretary-General also appointed Dr. Francis M. Deng, the long-time Special Adviser on Internally Displaced People, to be his Special Adviser for the Prevention of Genocide, raising that post to the Under-Secretary-General level and making it a full-time position. Professors Deng and Luck have worked closely together in carrying out their related mandates, and the Secretary-General's approach to RtoP draws on the important early work of Dr. Deng and his colleagues on "sovereignty as responsibility" in the 1990s. See Francis M. Deng, Sadikiel Kimaro, Terrence Lyons, Donald Rothschild, and I. William Zartman, *Sovereignty as Responsibility: Conflict Management in Africa* (Washington, D.C.: The Brookings Institution, 1996).

Council could conduct investigations under Article 34 of the Charter, encourage States (or armed groups) to live up to their core RtoP responsibilities, remind leaders of the end of impunity, discourage incitement, undertake consent-based preventive deployments as in the Former Yugoslav Republic of Macedonia, or assist States in gaining effective control over their territories, as in Sierra Leone, where armed groups were committing RtoP crimes. Working with the Peacebuilding Commission, the General Assembly, ECOSOC, the Secretariat, or other bodies and organizations, the Security Council could assist in efforts to rebuild the rule of law or undertake security sector reform in states emerging from conflict.

The Council would have a unique authority, however, to address the third, or response, pillar. As noted above, it should be underscored that the third pillar encompasses the whole range of Chapter VI, VII, and VIII measures, not just those coercive ones often associated with the narrower concept of humanitarian intervention. A common critique of the Council through the years, of course, has been that it has sometimes moved too readily to coercive measures under Chapter VII, while being insufficiently imaginative or overly reticent to utilize all of the preventive or pacific settlement tools available to it under Chapters VI and VIII. Under the Secretary-General's strategy, with its emphasis on the need for early and flexible response, tailored to the circumstances of each situation, the possibilities for preventive or pacific action under Chapters VI and VIII take on added importance. A premium could often be placed, as well, on collaboration with regional or other partners.

Given the Council's multiple roles in carrying out the RtoP mandate given by the 2005 Summit, it is remarkable how little serious attention they have received to date. On December 1, 2008, members of the Security Council had an opportunity to discuss the Secretary-General's approach at an Arria formula meeting – chaired by South Africa and devoted to RtoP in Africa –

of the Ad Hoc Working Group on Conflict Prevention and Resolution in Africa. The Vienna Seminar, however, will be the first chance for an in-depth discussion of the Security Council's role in implementing the responsibility to protect. The Seminar could well provide the basis for further consultations on RtoP by the Council in the future.

The Vienna Seminar will be designed to consider the whole spectrum of instruments at the Council's disposal for preventing RtoP crimes and for protecting populations from their ravages. It will view this toolkit both through analytical and generic eyes and through the lens of experience in two telling case studies (the Democratic Republic of the Congo (MONUC) and the Central African Republic and Chad (MINURCAT and EUFOR Chad (RCA))). It will open with a dialogue between two prominent speakers with distinct perspectives on RtoP the first evening. (Gareth Evans and Ruhakana Rugunda, the Ugandan Permanent Representative to the UN, will be invited.) The following morning, Professor Luck will lay out the aspects of the Secretary-General's report that are most relevant to the Security Council and respond to questions or concerns voiced by participants. The next four sessions will address core Council functions related to the implementation of RtoP principles: 1) early engagement and preventive diplomacy by the Council; 2) early warning and assessment; 3) the protection of civilians, including from systematic sexual violence; and 4) timely and decisive response. These generic discussions will be followed by sessions on the two case studies noted above in order to test the propositions and perspectives raised in the more generic discussions about prevention and protection functions against the actual experience trying to carry out these mandates in the DRC and Chad/RCA. A final wrap-up session will look at the way forward. In addition to these panel discussions, prominent policymakers, including US Permanent Representative to the UN Susan Rice, AU

Chairperson Jean Ping, and UN Under-Secretary-General for Peacekeeping Operations Alain LeRoy, will be invited to give luncheon or dinner addresses.

The Seminar will serve several mutually-reinforcing purposes. One, it will be an opportunity for the first focused consideration of the ways in which the Security Council could contribute to the implementation of the RtoP commitments undertaken at the highest political level in 2005. Two, it will be a chance to explore the multiple instruments available to the Council under Chapters VI, VII, and VIII and how they might be employed in different combinations, depending on the timing and circumstances of each case. Three, it will serve to acquaint a wider circle of policymakers and policy shapers with the Secretary-General's strategy for implementing RtoP. Four, it will permit an assessment of how the provisions of the Outcome Document of the Secretary-General's report would apply to two outgoing and challenging peace operations in theatres where humanitarian principles have been severely tested. And five, the Seminar will provide the first opportunity for prominent policymakers to consider the next steps towards implementing the responsibility to protect following the 2009 RtoP debate in the General Assembly.