

# The First Response: Peaceful Means in the Third Pillar of the Responsibility to Protect

Policy Analysis by Alex J. Bellamy



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The peaceful dimension of R2P's third pillar should be understood as the international community's default first response to the threat or commission of atrocity crimes.

## Key Points

- Properly understood, the third pillar of the Responsibility to Protect (R2P) has two components: (a) a generic and ongoing responsibility to use lawful and peaceful measures, consistent with Chapters VI and VIII of the UN Charter, to protect populations from atrocity crimes and, (b) when these measures are judged inadequate, a commitment to take “timely and decisive action” through the UN Security Council.
- The peaceful dimension of R2P’s third pillar should be understood as the international community’s default first response to the threat or commission of atrocity crimes.
- The range of potential peaceful tools, strategies, and policies to protect populations from atrocity crimes is vast. There is no single silver bullet among the measures, and the effectiveness of each is affected by a host of intervening variables and will therefore differ from case to case.
- This analysis focuses on the following tools and strategies associated with the peaceful application of pillar three. It assesses the utility of these measures, emphasizing their

limitations, the conditions that seem to make their use more effective, and the international community's capacity to employ them:

- Information gathering and reporting
  - Diplomacy and mediation
  - Public advocacy
  - Conciliation, arbitration, and judicial settlement
  - Human rights mechanisms
  - Humanitarian assistance and protection
  - Economic, political, and strategic inducements
  - Protection of refugees and displaced persons
  - Monitoring, observation, and verification
  - Unarmed civilian protection
  - Political support and peacebuilding
  - Consensual peacekeeping
- The international community's response to atrocity crimes should make full use of all available measures, operating through each of the most relevant actors simultaneously.
  - Early use of peaceful measures is not a soft and noncontroversial alternative to more robust measures. Peaceful measures can be controversial in their own right and hotly contested politically. They can sometimes be inadequate and should be understood as additional to the enforcement measures countenanced under Chapter VII of the UN Charter, not a substitute for them.
  - There is a chronic shortfall of capacity to implement the peaceful measures discussed in this analysis. Therefore, it concludes with recommendations for advancing the world's capacity to respond peacefully and effectively to atrocity crimes.





It is important to improve familiarity with the peaceful dimensions of R2P's third pillar not only because it opens up a range of practical steps that can be taken to protect populations from atrocity crimes but also because the international community is currently grappling with precisely these questions in relation to crises in the Middle East and sub-Saharan Africa.



# Introduction

Among the three pillars of R2P, the third is by far the most controversial because it is associated with the use of force and other coercive instruments to protect populations from atrocity crimes.<sup>2</sup> Such is the level of concern about the third pillar's coercive elements that its peaceful dimension remains obscure.<sup>3</sup> What might be called "Pillar 3a" of R2P refers to the use of "diplomatic, humanitarian and other peaceful means" to help to protect populations from atrocity crimes.<sup>4</sup> This is an important but not well understood component of R2P that is commonly overlooked by analysts who focus on the pillar's more coercive elements. Although this element of R2P has been described



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in successive reports of the UN secretary-general, the wider policy community still does not have a good understanding of the range of peaceful policies, tools, and strategies repeatedly

used to protect populations from atrocity crimes and the state of global capacity in this area.<sup>5</sup>

It is important to improve familiarity with the peaceful dimensions of R2P's third pillar not only because it opens up a range of practical steps that can be taken to protect populations from atrocity crimes but also because the international community is currently grappling with precisely these questions in relation to crises in the Middle East and sub-Saharan Africa. If, as experience suggests, coercive intervention to protect populations is a low-probability, high-risk phenomenon, it makes sense to pay more attention to the peaceful instruments that are more likely to be employed.<sup>6</sup> These instruments can be employed prior to the onset of a crisis, or during its earliest stages, and do not necessarily require prior authorization by the UN Security Council. Thus they offer opportunities for early and more consistent engagement, which in turn provides actors with greater knowledge about the specific context, which can then improve subsequent policy responses.

This policy analysis unpacks and assesses the peaceful dimensions of R2P's third pillar in four main stages. First, it clarifies the conceptual questions arising from paragraphs 138 and 139 of the 2005 *World Summit Outcome Document*. Second, it examines the different types of actors that might utilize peaceful means to protect populations. Third, it introduces some of the policies, tools, and strategies associated with the peaceful application of pillar three, focusing on 12 such approaches. Fourth, it assesses the utility of these measures, emphasizing their limitations, the conditions that seem to make their use more effective, and the international community's capacity to employ these measures. In the latter field, the analysis notes a significant gap between global needs and the international community's preparedness to meet those needs. It ends by offering some practical recommendations that might help to close these gaps and prompt the more effective use of peaceful pillar three instruments.

# The Peaceful Dimension of R2P's Third Pillar

The focus of this analysis is the peaceful dimension of R2P's third pillar. This third pillar is set out in paragraph 139 of the 2005 *World Summit Outcome Document*, which opens with the assertion, "The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity." As the UN secretary-general emphasized in 2009, this wording points to the fact that pillar three is "integral" to the overall strategy for fulfilling R2P. He observed that the wording revealed an intent for this aspect of R2P "to be an ongoing, generic responsibility that employs the kind of peaceful, pacific measures specified in Chapter VI and in Article 52, Chapter VIII" of the UN Charter.<sup>7</sup>

Subsequent parts of paragraph 139 emphasize that only when (a) peaceful means are inadequate and (b) the national authorities are "manifestly failing" to protect their population



All too often it is assumed both that the third pillar is synonymous with coercive action and that the condition of “manifest failing” applies to the pillar as a whole, rather than to the specific case of action under Chapter VII of the UN Charter.

from atrocity crimes should the wider range of measures covered by pillar three, relating to Chapter VII of the UN Charter, be utilized. (“Manifestly failing,” in this context, should be understood as an unfolding process [“failing”] rather than an end product [“failed”].) Decisions to mandate actions under Chapter VII should be taken by the UN Security Council “on a case-by-case” basis and in cooperation with relevant regional organizations when appropriate.

All too often, however, it is assumed both that the third pillar is synonymous with coercive action and that the condition of “manifestly failing” applies to the pillar as a whole, rather than to the specific case of action under Chapter VII of the UN Charter.<sup>8</sup> Besides their inaccuracy, these misconceptions have had the unfortunate effect of creating conceptual distance between R2P’s three pillars, obscuring the first component of R2P’s third pillar and, as a result, dissolving the important distinction between first response and last resort that was built into the R2P principle by its architects in 2005.

As conceived by member states in 2005, therefore, R2P’s third pillar has two components. First, the international community as a whole has a generic responsibility to use lawful and peaceful measures, consistent with Chapters VI and VIII of the UN Charter, to protect populations from atrocity crimes.<sup>9</sup> Second, when these measures are judged inadequate, the international community stands prepared to take “timely and decisive action” through the UN Security Council. The peaceful dimension of R2P’s third pillar should therefore be understood as the international community’s default first response to the threat or commission of atrocity crimes.

In terms of the transition from peaceful to enforcement measures, the language used by paragraph 139 of the World Summit document echoes that of Article 42 of the UN Charter, which grants to the UN Security Council authority to take military or other types of action in situations where peaceful measures “would be inadequate or have proved to be inadequate.” Some international lawyers have suggested that paragraph 139 sets a higher bar than Article 42 by requiring that peaceful means be *proven* inadequate, rather

than simply judged likely to be inadequate, before the Security Council resorts to enforcement measures.<sup>10</sup> But it is difficult to find support for this judgment either in the paragraph's text ("should peaceful means be inadequate" does not specify that proof of inadequacy is needed, only that the council make a judgment that they are inadequate) or the *travaux préparatoires* ("preparatory works") of the World Summit, which indicate no intention to amend the requirements of Article 42 for application with R2P.<sup>11</sup>

As a "generic" responsibility, owed by the whole international community to populations subjected to, or at risk of, atrocity crimes, the extent of this first element of pillar three is broad in at least three respects. First, a wide range of actors might be engaged in protection. Paragraph 139 speaks only of the "international community" in this regard, which may be taken as referring primarily to UN member states and regional arrangements but also might entail other actors, such as civil society organizations, the private sector, and individuals.<sup>12</sup> The agreement recommends that action be taken "through the UN," but, as shown below, Chapters VI and VIII of the UN Charter permit the involvement of a broad range of actors.

All members of the international community share in this collective responsibility, but the precise distribution of responsibility—always an uncertain calculus—shifts from case to case and over time. A useful rule of thumb was provided by the International Court of Justice in the *Bosnia vs. Serbia* (Srebrenica genocide) case where it judged that the scope of the legal responsibility to prevent genocide in any given case was conditioned by a government's foreknowledge of the risk of genocide and its capacity to influence the perpetrators. Thus particular states might be judged to have particular legal responsibilities in certain cases.<sup>13</sup> While this case specifically dealt with the legal responsibilities of states, actors beyond government institutions should also be considered to have moral responsibilities associated with their level of foreknowledge and capacity to influence events.

Second, the range of potential activities is broadly construed as "diplomatic, humanitarian and other peaceful means, in



accordance with Chapters VI and VIII of the Charter.” Articles 33 and 52 of the charter allow actors broad discretion on the choice of measures used. Moreover, use of the term “in accordance with” does not rule out the application of other elements of the UN Charter, including Chapter IV (relating to the General Assembly), Chapter X (relating to the Economic and Social Council, under which the UN’s human rights system operates), and Chapter XV (relating to the Secretariat, especially the secretary-general).

Third, the temporal scope for action is open-ended. No limit is placed on how soon into a crisis peaceful measures might be adopted to protect populations, giving rise to the secretary-general’s call for “early and flexible” responses.<sup>14</sup> Nor is there any limit to the duration of peaceful measures once adopted: the adoption of enforcement measures by the UN Security Council, for example, does not signal the exhaustion of peaceful measures. These measures could and should continue for as long as vulnerable populations are judged in need of protection by the international community.

The international community’s generic responsibility to protect populations from atrocity crimes—the first part of pillar three—is closely related to aspects of R2P’s second pillar (international encouragement and assistance). Indeed, in practice the two are likely to overlap often. R2P’s second pillar involves encouraging governments to comply with their responsibilities, helping them to build the capacity to protect, and assisting them when they are under stress. It is not difficult to see how, in some circumstances, pillar two measures to encourage compliance overlap with pillar three’s diplomatic measures to protect populations or how “assisting states under stress before a crisis breaks out” (paragraph 139, pillar two) can develop into the use of “diplomatic, humanitarian and other peaceful means” to protect populations. This underscores the importance of not treating R2P’s pillars as solitudes but as three overlapping components of a common whole. What matters, ultimately, is not whether international engagement is calibrated to sit within pillar two or three but whether it is effective in protecting populations from atrocity crimes and consistent with the UN Charter.



From experience it is known that protection efforts are most effective when different actors work together.

## Agents of Protection

This section examines the actors that can be engaged in the peaceful protection of populations from atrocity crimes. Also important in this regard is how these actors relate to one another and how they might be coordinated to increase the effectiveness of peaceful responses to atrocity crimes in the future. The range of actors with responsibilities to protect populations from atrocity can be thought of in four layers.

The principal bearers of responsibility are states, and the state that has the greatest responsibility to take early action to protect vulnerable populations is the one on whose territory the threat arises. Much of the focus, therefore, rests on measures designed to persuade states to refrain from committing atrocity crimes and/or to fulfil their protection responsibilities and strengthen measures designed to assist them in doing so. Ultimately, it is the state, and its leadership, that bears the principal responsibility to protect. It is important to emphasize that national leaders exercise a degree of choice in deciding which route they will follow.

When the UN General Assembly refers to the “international community” it means, primarily, the community of UN member states. Thus, the opening of paragraph 139 of

the *World Summit Outcome Document* relates primarily to the responsibility of states to help protect populations from atrocity crimes. States may act “through the United Nations,” but the United Nations is the vehicle for action, not the principal bearer of responsibility. The question of precisely which states bear most responsibility is one that has vexed moral philosophers, but as a simple rule of thumb one might suggest that states with knowledge of and influence over a particular situation bear more responsibility than those without these two resources.<sup>15</sup> In practice, these will always be fine-grained judgments that should not be allowed to obscure the fact that all governments have a responsibility to do what they can to protect populations by peaceful means. In other words, the general responsibility to protect never disappears, even when particular actors take the lead in responding to certain cases and with certain tools. Analysts need to sharpen their analytical tools to ascertain the extent to which all states are fulfilling their responsibility to protect populations by peaceful means.

How individual states should discharge their responsibility to protect populations in other countries depends on the situation at hand. But at least three different modes of action ought to be considered.

First, states often have some form of bilateral relationship with states affected by atrocity crimes, and these should be leveraged to support the protection of vulnerable communities from atrocity crimes. When atrocity crimes are committed or are imminent, governments should readjust their bilateral relationship with the affected state in order to better support R2P’s goals. For example, diplomatic relations can be leveraged, foreign aid and refugee policy utilized, and a range of other peaceful policies relating to trade, travel, and functional cooperation adjusted to support protection goals. But bilateral action can also be taken well in advance of risks becoming imminent. Diplomatic pressure and messaging can be brought to bear in response to the use of hate speech, incitement, or the targeting of particular minority groups.

Second, states participate in a range of informal or ad hoc groups that might be utilized to support protection goals. These can include informal “groups of friends” established to support peace processes or other goals or informal groupings of like-minded or regional states. These include the global network of national R2P focal points and the New York based Group of Friends of R2P. States can exploit these networks to coordinate and advocate for early and effective responses to atrocity crimes, apply peaceful pressure on potential or actual perpetrators, support conflict resolution, or leverage other ways of strengthening protection of vulnerable populations.

Third, most states are members of one or more international organizations, some of which (such as the United Nations) have specific responsibilities associated with R2P and others which have commitments to human rights or principles of non-indifference that support the goals of R2P. States should utilize these formal institutions as vehicles for the peaceful protection of populations. They should also take steps to ensure the proper implementation of the collective decisions made by these institutions in response to atrocity crimes.

In terms of the range of relevant actors for protecting populations by peaceful means, the United Nations sits close to the core because paragraph 139 of the *World Summit Outcome Document* refers specifically to action being taken “through” the United Nations (meaning its charter as much as the institution itself). Relevant UN actors include its principal organs (especially the Security Council, General Assembly, and Secretariat) and subsidiary bodies such as the Human Rights Council and Peacebuilding Commission.

As noted earlier, peaceful means also encompass actions not specifically mandated by the United Nations’ political bodies. This includes, for example, actions undertaken by the secretary-general (such as preventive diplomacy, fact finding and reporting, and the provision of good offices), those undertaken by other offices with relevant mandates (such as the special advisers on genocide prevention and R2P, the special representatives on the prevention of sexual violence and protection of internally displaced persons, and



the high commissioners on human rights and refugees), and those undertaken by departments, funds, and programs (such as the Office for the Coordination of Humanitarian Affairs [OCHA], Office of the High Commissioner for Human Rights [OHCHR], United Nations High Commissioner for Refugees [UNHCR], United Nations Development Programme [UNDP], United Nations Children's Fund [UNICEF]) under the terms of their own mandates. Under the UN Charter, many actions relating to Chapters VI and VIII can be undertaken by the secretary-general or by regional or subregional arrangements without the explicit authorization of the Security Council or General Assembly. Moreover, the charter places no limit on the range of actions that may be taken with the consent of the affected state.

The idea that the UN system as a whole has a fundamental responsibility to support the protection of populations from atrocity crimes that exists beyond any particular country-specific mandate was first broached by the secretary-general in his 2009 report on R2P where he called for the principle to be “mainstreamed”:

The United Nations and its range of agencies, funds and programs have in place critical resources, activities and field operations that are already making important contributions to the elimination of these man-made scourges. They could do that much more effectively if goals relating to the responsibility to protect, including the protection of refugees and the internally displaced, were mainstreamed among their priorities, whether in the areas of human rights, humanitarian affairs, peacekeeping, peacebuilding, political affairs or development.<sup>16</sup>

Since then, the general idea of R2P mainstreaming has been partially advanced under the rubric of Human Rights Up Front (HRUF), though this initiative's human rights focus is narrower than that required to implement R2P.<sup>17</sup> Framed in response to the organization's failure to protect Tamil civilians in the closing stages of Sri Lanka's civil war, HRUF calls for the UN system to prioritize human rights protection in all its endeavors. The UN





The relationship between R2P and humanitarian action is complex and challenging but also inescapable for at least two reasons: first, in its commitment to R2P, the World Summit referred specifically to “humanitarian” action as a part of the international community’s peaceful response to atrocity crimes; second, in practice humanitarians are often on the frontline of efforts to protect populations from atrocity crimes.

secretary-general's HRUF action aimed to achieve this goal through six types of action:

- Integrating human rights into the lifeblood of the United Nations so all staff understand their own and the organization's human rights obligations.
- Providing member states with candid information about peoples at risk of, or subject to, serious violations of human rights or humanitarian law.
- Ensuring coherent strategies of action on the ground.
- Clarifying and streamlining procedures to facilitate early, coordinated action.
- Strengthening the United Nations' human rights capacity.
- Developing a common UN system for information management on serious violations of human rights and humanitarian law.<sup>18</sup>

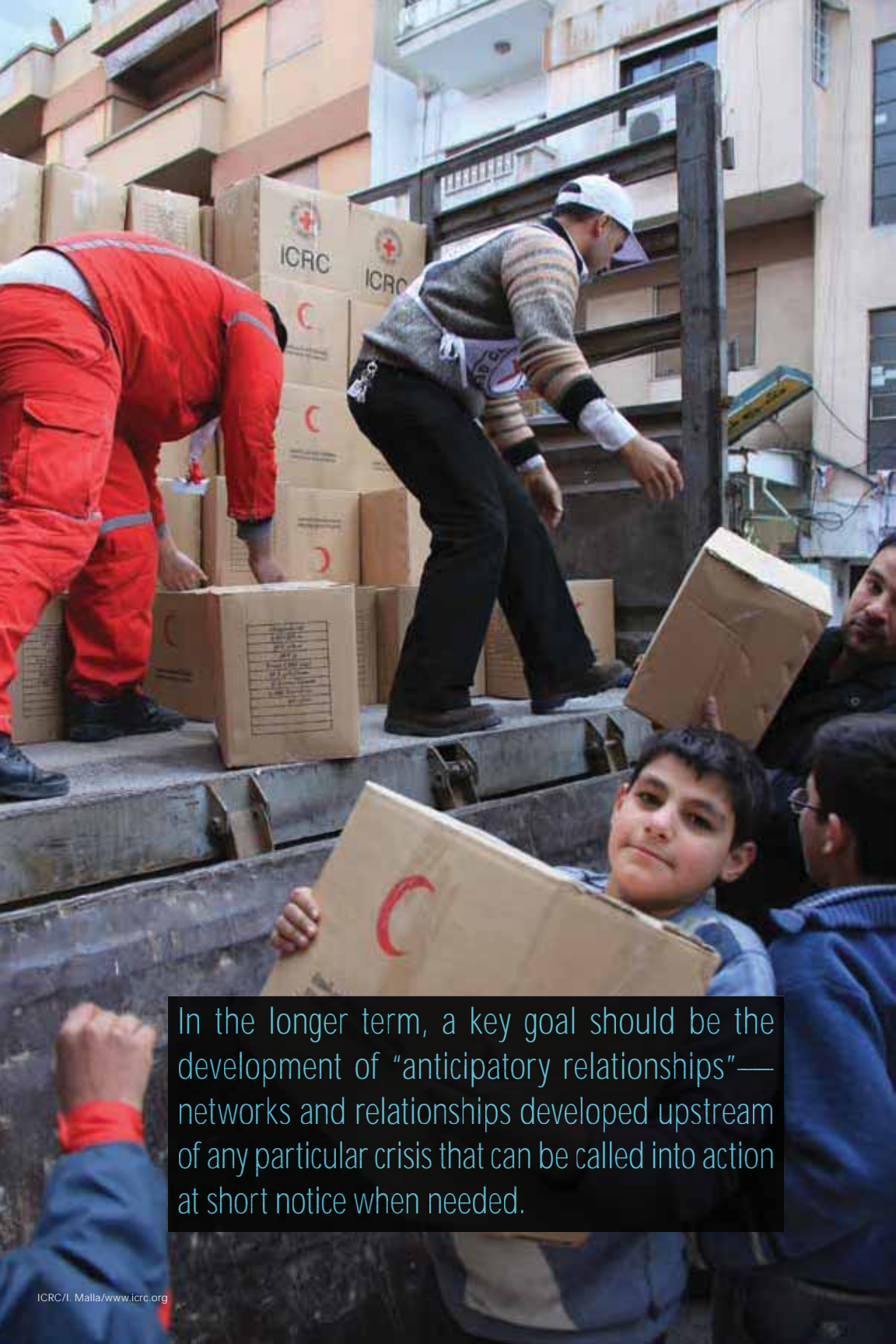
It is not difficult to see how this list of actions supports the use of peaceful means to protect populations from atrocity crimes. In practice the HRUF initiative has made some progress in terms of redressing some of the weaknesses evident in the United Nations' approach to atrocity prevention, albeit quietly and in a partial manner. Specifically, it has helped improve the coherence of the United Nations' response to some crises; improved working relations between the United Nations' political, humanitarian, and development arms; empowered early action by regional directors; and, through its senior action group, helped the organization identify and coordinate courses of early action.<sup>19</sup> Significantly, it has also led to the development of common criteria to be used across the UN system to assess situations and to elevate those where risks are high or intensifying.<sup>20</sup>

However, practice remains quite patchy, as does the degree of buy-in across the system, with the initiative relying heavily on

the OHCHR, while the engagement of other key departments (Department of Political Affairs, Department for Peacekeeping Operations) and agencies (UNDP) remains mixed. Moreover, there remains a disconnect between headquarters and the organization's field missions, where calls to implement HRUF raise more questions than they provide answers. These concerns notwithstanding, HRUF clearly signals that the UN system's protection responsibilities extend well beyond the implementation of specific mandates handed down by the Security Council. The UN system's role in protection beyond these specific mandates needs to be better understood and better utilized.

The next set of relevant actors are regional and subregional arrangements (hereafter "regional arrangements"). Experience from the first decade of R2P shows that protection efforts are most effective when individual states, the United Nations, and regional arrangements work together, as they did in Cote d'Ivoire in 2009. What is more, states from all regions agree that regional arrangements should play a critical role in implementing R2P. The precise role that regional arrangements play will differ from case to case depending on the situation, the global response, and the relevant regional capacities, normative settings, and levers of influence. It is important, nevertheless, to stress the benefits that accrue from engaging regional arrangements in implementing R2P. In particular, it helps foster regional ownership and ensures that the principle is localized in a manner consistent with existing regional norms, establishes pathways for cooperation between the United Nations and the region, awards regions a voice in the implementation of R2P, and enhances key national and regional capacities.

The *World Summit Outcome Document* specified a number of distinct roles for regional arrangements, several of which relate to the use of peaceful means to protect populations. They should (a) encourage and help states to fulfil their primary responsibility to protect (diplomacy), (b) support the United Nations in establishing an early warning capability (necessary for rapid responses), (c) help states build the capacity to protect their populations (this can involve immediate boosts to capacity in specifically targeted areas, such as law and



In the longer term, a key goal should be the development of “anticipatory relationships”—networks and relationships developed upstream of any particular crisis that can be called into action at short notice when needed.



order), (d) support the mission of the special adviser of the UN secretary-general on the prevention of genocide, (e) utilize peaceful measures under Chapter VIII of the UN Charter to protect populations, and (f) cooperate with the UN Security Council in the application of any measures that it adopts (including consensual measures).

The final set of actors encompasses the various nonstate actors that contribute to protection. These include international nongovernmental organizations (NGOs), domestic civil society groups, private sector actors, researchers and analysts, activists, and other individuals. In relation to diplomacy, international and domestic NGOs play significant roles by setting standards and holding governments to account. This includes not only governments in affected countries but also those in third-party states where NGOs can ask legitimate questions about what a government is doing to fulfill its responsibility to protect and propose ways it might do more. Sometimes, prominent individuals—acting unilaterally or as part of a broader group—can support efforts to encourage compliance with R2P and deter atrocity crimes.

Nonstate actors are also among the principal humanitarian agents whose work often means the difference between life and death. Indeed, some humanitarian agencies—such as the International Committee of the Red Cross, UNHCR, and UNICEF—are specifically mandated by international law to support protection. In the case of Darfur, humanitarian action had a profound effect in saving lives immediately at risk from atrocity crimes and other deprivations. So successful was the humanitarian response in 2003–4 that by 2005, the region's average mortality rate had fallen to prewar levels.<sup>21</sup>

Humanitarian agencies provide affected populations with both *in situ* life-sustaining support and viable opportunities to flee violence. The relationship between R2P and humanitarian action is complex and challenging but also inescapable for at least two reasons: (1) in its commitment to R2P, the World Summit referred specifically to “humanitarian” action as a part of the international community's peaceful response to atrocity crimes, and (2) in practice, humanitarians are often on the front

line of efforts to protect populations from atrocity crimes.<sup>22</sup> For example, ensuring humanitarian access has been one of the principal means by which the Security Council has tried to fulfil its responsibility to protect in Syria.

Finally, civil society groups, private sector actors, and prominent individuals, especially those within affected countries and regions, can also play significant roles in helping to protect communities and individuals on the ground and in dampening the tensions that can give rise to atrocity crimes. They can also, of course, sometimes have the opposite effect. As Edward Luck and Dana Luck have recently argued, “neither prevention nor the protection of vulnerable populations can be realized without individuals taking responsibility and assuming risk.”<sup>23</sup> They propose the advancement of an “individual Responsibility to Protect” perspective that aims at developing messages and policies tailored to influence a range of different types of individuals that play key roles in preventing—and perpetrating—atrocity crimes, including the vulnerable population, bystanders and inciters of violence, group and community leaders, national leaders, leaders of influential foreign countries, key officials and decision makers in international organizations, and survivors.<sup>24</sup>


Besides recognizing the sheer range of actors that can play a positive role by using peaceful means to protect populations, especially during the early stage of a crisis (a necessary prerequisite for the development of comprehensive strategies for protection), it is also important to understand the connective tissue that binds them and that can make the value of their collective endeavors greater than the sum of its parts. From experience it is known that protection efforts are most effective when different actors work together. While the United Nations and regional arrangements clearly have important roles to play both as actors in their own right and as coordinators of actions undertaken by a wider range of actors, the central roles these bodies play could be augmented by:

- The further utilization of the national R2P focal points network, the Group of Friends, and other regional networks.



- The strengthening of partnerships between the United Nations and regional arrangements by including specific provisions relating to cooperation in the fields of atrocity prevention and early response in their annual dialogue and in their partnership agreements.
- The further development and utilization of informal, multiactor networks dealing with specific crises.

In the longer term, a key goal should be the development of “anticipatory relationships”—networks and relationships developed upstream of any particular crisis that can be called into action at short notice when needed. An analytical challenge is to know more about which types of cooperation work best in different situations and how best to marshal the resources of different actors to respond effectively to escalating crises involving atrocity crimes.



Protecting populations from atrocity crimes requires action in at least three distinct areas: actions to persuade or deter perpetrators by increasing the perceived costs of committing atrocities relative to the costs of other courses of action; actions to make it more difficult for perpetrators to commit—and get away with—atrocity crimes; and actions to shelter vulnerable populations and protect them from harm.

## Tools, Strategies, and Policies

The range of potential peaceful tools, strategies, and policies to protect populations from atrocity crimes is vast. There is no single silver bullet among the measures, and the effectiveness of each is affected by a host of intervening variables and will therefore differ from case to case. Responses to atrocity crimes should make full use of all available measures, operating through each of the most relevant actors simultaneously. That is why cohering the responses of different agents—especially those of international and domestic actors—is so important, because it is by operating together that the various measures described here can have the best effect.

Protecting populations from atrocity crimes requires action in at least three distinct areas: (1) actions to persuade or deter perpetrators by increasing the perceived costs and other consequences of committing atrocities relative to other courses of action, (2) actions to make it more difficult for perpetrators to commit—and get away with—atrocity crimes, and (3) actions to shelter vulnerable populations and

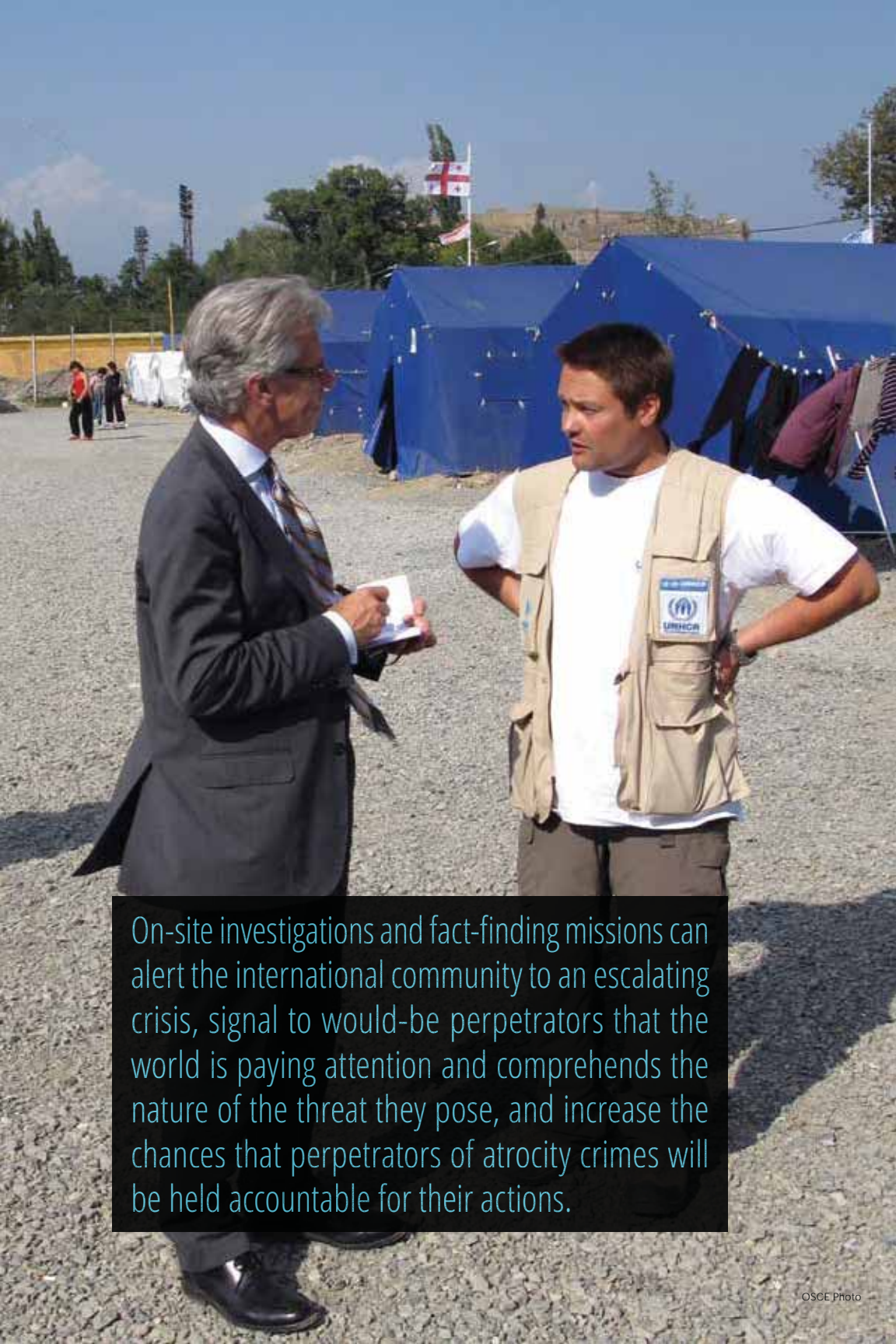
protect them from harm. There is a range of diplomatic, humanitarian, and other peaceful means that can contribute to these goals.

This chapter identifies 12 of the principal measures that might be adopted. Many can be utilized simultaneously, in one form or another, by different types of actors or by multiple actors simultaneously. Many of the measures described below do not require authorization by the United Nations' political bodies. Thus, in principle at least, there is nothing to stop willing states, organizations, and nonstate actors from vigorously pursuing several courses of action simultaneously, though good strategy might call for logical sequencing in some cases. While individually none of these measures is likely to end atrocity crimes, together they can make it more difficult and expensive for perpetrators to commit atrocities and improve the protection afforded to vulnerable populations. The 12 measures listed here are by no means a definitive collection of all available peaceful means, and they are listed in no particular order.

## 1. Information gathering and reporting

On-site investigations and fact-finding missions can play a number of important functions, not least the early identification of incitement and other preparations for atrocity crimes such as the mobilization of populations against particular groups, clarifying the nature of the violence in a particular situation, and gauging whether atrocity crimes are being committed and by whom. Such reporting can alert the international community to an escalating crisis, signal to would-be perpetrators that the world is paying attention and comprehends the nature of the threat they pose, and increase the chances that perpetrators of atrocity crimes will be held accountable for their actions. All this has the capacity to alter the balance of relative costs and benefits in the minds of the perpetrators and thus the potential to influence their actions.

As the UN secretary-general noted in 2009, under Article 34 of the charter, the Security Council “may investigate any



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dispute, or any situation which might lead to international friction or give rise to a dispute.” The General Assembly has similar powers under the provisions of Articles 11, 12, 13, and 14. Thus either the assembly or the council can appoint a fact-finding mission to investigate and report on alleged atrocity crimes, as the latter did in the case of Darfur. The UN Human Rights Council may also deploy fact-finding missions and commissions of inquiry, appoint special rapporteurs to advise on a situation, or refer a situation to existing special procedures. Several regional organizations have their own mechanisms for fact finding, for example, under the aegis of the Organization for Security Co-operation in Europe’s (OSCE) high commissioner for minorities or the African Union’s (AU) Peace and Security Council. Moreover, international NGOs such as Human Rights Watch and the International Crisis Group, and national entities such as the Syrian Human Rights Observatory also play a crucial role in reporting on alleged crimes. In addition, human rights peer-review mechanisms, such as the UN Human Rights Council’s Universal Periodic Review and the African Peer Review Mechanism offer individual states and civil society groups opportunities to raise questions about patterns of discrimination, incitement, and hate speech that might give rise to atrocity crimes and encourage states to adopt measures to address these problems.<sup>25</sup>

As the secretary-general observed in 2012, the UN Security Council has initiated its own universal, public reporting on crimes and violations against children in armed conflict (see Security Council Resolution 1612 [2005]) and on sexual violence in conflict (see Security Council Resolution 1960 [2010]). These modalities of regular reporting support R2P’s goals since forced recruitment of children under age 15 is widely considered a war crime while conflict-related sexual violence may amount to genocide, a crime against humanity, or a war crime depending on the context in which it is committed. In the future, the Security Council could consider adding universal public reporting of atrocity crimes to its repertoire.



## 2. Diplomacy and mediation

Diplomacy is one of the principal peaceful means referred to by R2P's third pillar. It was used to good effect to stem the tide of atrocity crimes in Kenya (2008), Guinea (2009–2010), and Kyrgyzstan (2010), among others. Diplomatic action can be undertaken by a wide range of actors, including under the auspices of the UN secretary-general's good offices, by envoys appointed by the United Nations' political bodies, by regional arrangements, ad hoc groupings, and individuals and—quite commonly—some combination of these. It can be undertaken quietly, through informal and discrete channels, or publicly. Each of these options has merits and problems. Quiet diplomacy, for example, is well-suited to persuading leaders to change course, remedy specific problems without losing face, or facilitate accommodations and compromises between different groups that would be more difficult to broker publicly. A useful first option, quiet diplomacy can sometimes be utilized to communicate the international community's understanding of the situation and resolve to respond decisively should a problem escalate.

Increasingly, diplomatic action involves the appointment of a prominent individual to act as mediator or as the special envoy of the UN secretary-general and/or a relevant regional organization. The main purposes of diplomacy in this context are to persuade political leaders to choose negotiation and peacemaking over atrocity crimes. Diplomacy tends to aim to remind leaders of their responsibilities and legal obligations (for example, their obligation under international humanitarian law to refrain from targeting civilians and permit humanitarian access), convey moral opprobrium toward atrocity crimes, signal the attentiveness of the international community, encourage restraint, mediate options for ending violence, promote conflict resolution, and determine the modalities for implementing a peace settlement. Diplomacy might also be used to offer incentives for compliant behavior or to negotiate specific arrangements for the protection of vulnerable populations, such as humanitarian access and security. In line with Security Council Resolution 1325 (2001),



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efforts should be made to ensure the equal representation of women in diplomatic processes and their empowerment as peacemakers.<sup>26</sup>

Through their public and private messaging, those engaged in crisis diplomacy translate the general standards of appropriate behavior identified by principles such as R2P into tailored context-specific requests or demands for particular courses of action, or demands that certain actions be avoided. Crisis diplomacy is critically important because words often matter in encouraging and persuading leaders to adopt or refrain from particular courses of action.

Public diplomacy can be used by a range of actors to shape the balance of costs and incentives confronting perpetrators of atrocity crimes. It can do so by calling upon leaders publicly to comply with their protection responsibilities, signaling expectations about appropriate behavior to their followers, and encouraging third parties to adopt concrete measures to increase the costs of atrocities and strengthen the protection of vulnerable populations. Over the past few years, the UN secretary-general, his special advisers on genocide prevention and R2P, and the UN high commissioner for human rights have all utilized R2P in their public advocacy, calling for the fulfillment of the commitments made by member states and compliance with international legal obligations. They have issued these statements in relation to situations in Côte d'Ivoire, Libya, Yemen, South Sudan, Sudan, Syria, and Iraq, among others. Such diplomacy carries particular weight when it is supported by political bodies such as the UN Security Council and UN General Assembly. Since 2011, the Security Council has referred to R2P in more than 30 resolutions, calling on governments in Libya, Syria, South Sudan, the Democratic Republic of the Congo (DRC), Côte d'Ivoire, Somalia, Yemen, Central African Republic (CAR), Mali, and Chad to fulfill their responsibility to protect.

The General Assembly has called on the governments of Syria and North Korea to fulfill their responsibility to protect. Regional bodies and prominent regional figures can also be influential in this regard. The use of R2P by former UN

Secretary General Kofi Annan to frame his diplomacy in Kenya is one such example; the use of the concept by Surin Pitsuwan, former minister of foreign affairs for Thailand and former secretary-general of the Association of Southeast Asian Nations (ASEAN), in his public diplomacy on the Rohingya crisis in Southeast Asia is another; the decision of Michael Kirby, former justice of the High Court of Australia, to use R2P to frame the UN Human Rights Council's Commission of Inquiry's report into human rights in North Korea is a third. Although public diplomacy by itself is unlikely to change behavior, combined with other measures it can help clarify expectations, exert peer pressure and moral suasion on potential perpetrators and influential third parties, shine a spotlight on atrocity crimes, and persuade others to use peaceful means to protect populations.

### 3. Public advocacy

Similar to public diplomacy, public advocacy refers to the work that nongovernmental actors do to try to persuade would-be perpetrators to alter course and the international community to take action. Public advocacy comes in a number of different forms and can be consequential. It might be used to raise awareness about situations of risk. Organizations such as Human Rights Watch, Amnesty International, and International Crisis Group provide detailed reports of human rights situations and other crises that could give rise to atrocity crimes. Likewise, the Global Centre for R2P monitors situations closely for the risk of atrocity crimes, recommends courses of action, and advocates strongly, with like-minded states, for their adoption. These organizations and others like them are sometimes the first to point to the patterns of incitement, hate speech, and systematic discrimination against particular groups that can give rise to atrocity crimes.

Nongovernment organizations also conduct detailed investigations into alleged atrocity crimes and play a key role in increasing awareness among states and publics about the commission of atrocities and in gathering the evidence needed to inform policy and shape the pursuit of accountability.



Myriad domestic organizations play often crucial roles in advocating for prevention and protection among government and other armed groups. For example, women's groups organize to protect women and girls from arbitrary arrest and sexual violence by lobbying local police stations, regional governments, and national capitals for action.

Nonstate advocacy groups might use this information to directly target the leaders thought responsible, or they might target influential third parties. Thus, for example, the Save Darfur campaign in the United States helped influence opinion among American decision makers, encouraging the United States to play a leading role in the search for peace in Darfur. This included persuading the administration to amend its thinking on the International Criminal Court and encouraging it to play what proved to be a pivotal role in persuading other countries to contribute forces for the African Union/UN Hybrid Operation in Darfur (UNAMID) peacekeeping mission deployed there.<sup>27</sup>

Closer to the ground, myriad domestic organizations play often crucial roles in advocating for prevention and protection among government and other armed groups. In Myanmar and the Philippines, for example, women's groups organize to protect women and girls from arbitrary arrest and sexual violence by lobbying local police stations, regional governments, and national capitals for action. Human rights defenders also play significant roles in investigating alleged abuses and campaigning for justice.

## 4. Conciliation, arbitration, and judicial settlement

A range of avenues can be provided to help parties resolve disputes peacefully. Some of these can be utilized under the auspices of the UN secretary-general's good offices or when specifically sanctioned by the UN Security Council or General Assembly. Others can be provided by regional mechanisms such as the AU's Panel of the Wise or those available in Europe through the OSCE and Council of Europe. Still others can be established in ad hoc form, with trusted third parties playing the role of mediator, as in the case of Malaysia's mediation role in the Mindanao crisis in the Philippines beginning in 2011. Nonstate actors, such as the Geneva-based Centre for Humanitarian Dialogue or the global Elders network, can also

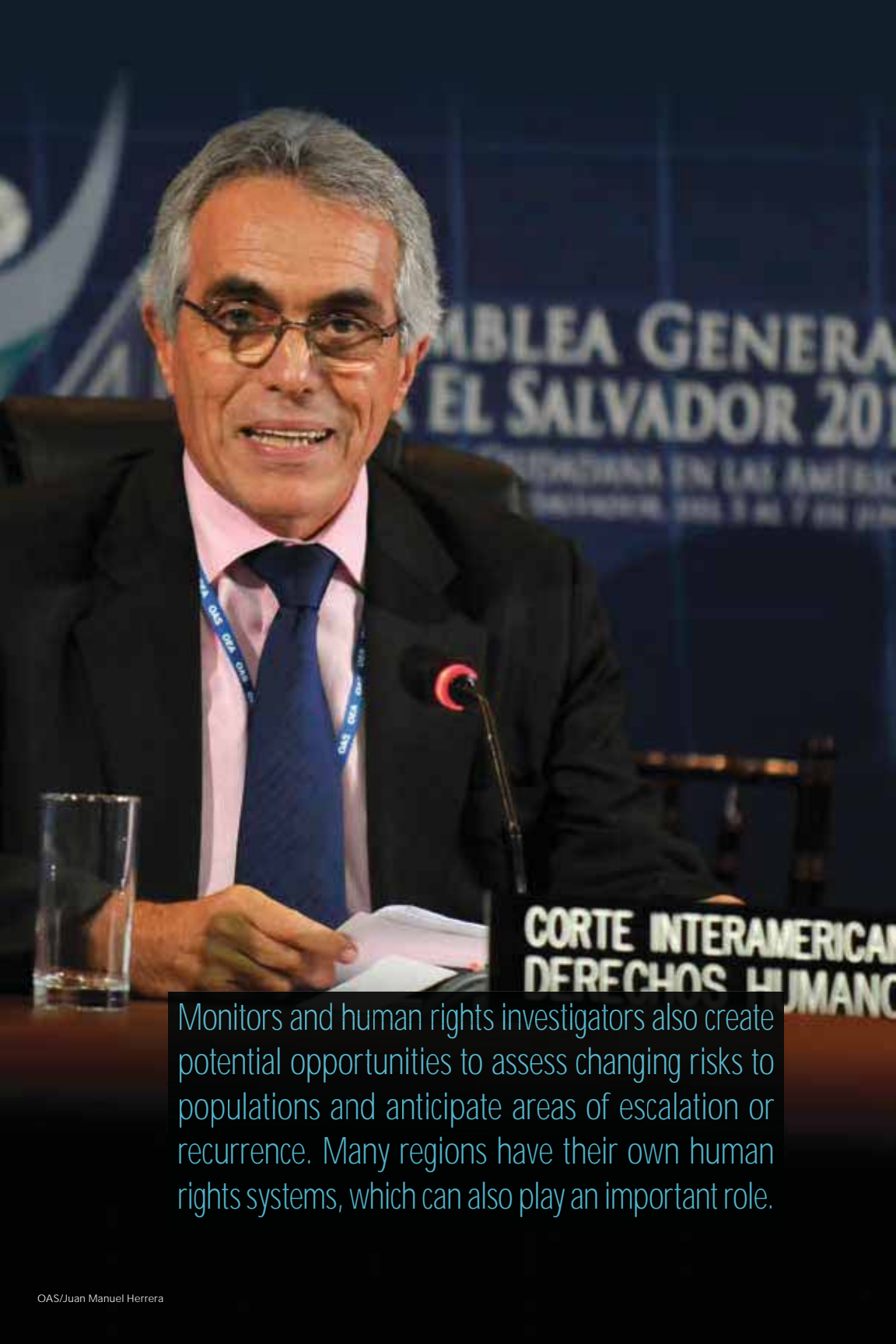


facilitate mediation. These measures are often developed on a case-by-case basis and continue to be refined through practice. They can be undertaken by any type of actor that is acceptable to, and trusted by, the parties and can be utilized without the explicit authorization of the Security Council or the General Assembly.<sup>28</sup> Local processes of mediation and negotiation—for example, to establish local cease fires, codes of conduct, or humanitarian corridors—can be established even in the absence of national or international processes.

Judicial forms of settlement are guided by their own constitutions and include mechanisms available through the International Court of Justice, which can hear disputes between states and issue advisory opinions, and the International Criminal Court, which can be utilized to investigate and prosecute alleged atrocity crimes. Several regions have their own arbitration courts, which could be used for this purpose should the parties consent.

## 5. Human rights mechanisms

Human rights mechanisms, including the United Nations' and those managed by regional organizations, can perform a variety of functions to support the peaceful protection of populations from atrocity crimes. Within the United Nations, the Human Rights Council is mandated with “promoting universal respect for the protection of all human rights and fundamental freedoms for all,” a mandate that clearly implies a role in implementing R2P when atrocities are perpetrated. Specifically, in response to atrocity crimes, the Human Rights Council can hold special sessions; adopt resolutions with follow-up measures; establish independent commissions of inquiry or fact-finding missions to investigate allegations of human rights violations; establish permanent offices to collect information about human rights violations, including atrocity crimes; authorize the OHCHR to provide assistance or engage in human rights dialogue with the relevant parties; authorize the deployment of human rights monitors; and call for compliance with international human rights law, humanitarian law, and basic principles such as humanitarian access. The



Monitors and human rights investigators also create potential opportunities to assess changing risks to populations and anticipate areas of escalation or recurrence. Many regions have their own human rights systems, which can also play an important role.

positioning of monitors and human rights investigators on the ground also creates potential opportunities (not yet realized) to assess changing risks to populations and anticipate areas of escalation or recurrence. As the UN secretary-general observed in 2012, “these initiatives can play a vital role in any comprehensive response” to atrocity crimes.<sup>29</sup>

Many regions have their own human rights systems, which can also play an important role. Latin America, for example, has an especially well developed regional system comprising a Commission on Human Rights and regional Court of Human Rights. The Latin American commission can receive and investigate individual petitions about alleged violations and resolve disputes; monitor the human rights of its member states and issue country-specific reports; conduct visits to evaluate human rights or investigate specific problems; issue recommendations about steps needed to protect human rights; request that states adopt “precautionary measures” to protect human rights in crises; and refer matters to the Latin American Court of Human Rights. Africa’s Commission on Human and Peoples’ Rights is somewhat narrower in scope and more focused on the promotion of human rights, but it, too, has the authority to mandate special rapporteurs or commissions to investigate human rights situations and to refer matters to the African Court of Human and Peoples’ Rights, which it did in the case of Libya in 2011. Elsewhere, Europe has human rights mechanisms associated with the European Union (European Court of Human Rights), the Council of Europe, and the OSCE, while in Southeast Asia, ASEAN has an Intergovernmental Commission on Human Rights charged with promoting and encouraging dialogue on human rights. Although it is among the weaker of the regional human rights institutions, it does have the authority to commission studies and report on thematic issues such as protection from atrocity crimes.

National human rights institutions and nationally based human rights defenders can also play significant roles in alerting others, nationally and internationally, to impending risks of atrocity crimes, collecting and disseminating information and analysis, holding governments and other armed groups to

account, utilizing national and regional means of legal redress to stem the tide of atrocity crimes and promote atrocity prevention, and acting as national conduits for cooperation with international agencies.

## 6. Humanitarian assistance and protection

Another form of peaceful response to atrocity crimes specifically named in the *World Summit Outcome Document* is humanitarian action. Humanitarian protection is concerned with preventing and mitigating the most damaging effects that armed conflict and one-sided violence have on civilian populations. It therefore involves the provision of the necessities of life (food, shelter, medicine, and means of earning a living) and freedom from impediments on those necessities.<sup>30</sup> Among other things, the satisfaction of needs requires support for local coping strategies and access to stricken populations. It also involves the prevention of displacement where possible and provision of safe routes for flight and arrival destinations when needed.<sup>31</sup> Allied to this, humanitarian diplomacy reinforces efforts to encourage and persuade state leaders and the leaders of nonstate armed groups to comply with their legal obligations under international humanitarian law, especially relating to their conduct, the protection of humanitarian workers, and granting of humanitarian access.<sup>32</sup>

It is well understood that humanitarian organizations such as UNHCR and NGOs like Oxfam can sometimes play a critical role in keeping people alive when populations are subjected to atrocity crimes. Indeed, the significant expansion of humanitarian aid in recent years is a key sign of very practical progress in civilian protection which, while usually taken as distinct from R2P, helps achieve the goals that are set by this principle. Thus, where there may be despair about the failure of international political bodies to find sufficient consensus to effectively protect civilians in imminent danger in places such as Syria and the CAR, it needs to be understood that agencies like the Red Cross and Red Crescent, Caritas, Oxfam, and Islamic Relief, and the United Nations' UNHCR, UNICEF, and World Food Programme work every day to protect

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civilians in their homes or wherever they have fled. Bluntly put, these agencies have an impact. For example, international humanitarians and their local partners protected around two million civilians displaced from their homes in the Darfur region of Sudan by mass atrocities committed by Sudanese government forces and their allies, the now notorious Janjaweed militia, in 2003–4. Indeed, so effective was the humanitarian response to the crisis in Darfur that by 2005, the region's mortality rate had fallen to prewar levels. When armed conflict and mass atrocities erupt, humanitarian agencies often provide the only international presence on the ground. This was certainly true of Darfur, as well as in Afghanistan several years earlier, where some NGOs such as Save the Children had maintained a presence despite years of Taliban rule, and in Tamil-populated areas of Sri Lanka.

In his 2012 report on R2P, the UN secretary-general observed, "As paragraph 139 of the World Summit Outcome highlighted, 'humanitarian' action plays a critical role in protecting populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Humanitarian agencies can help to protect populations and shield them from some of the worst effects of displacement. As such, humanitarian action is a critically important part of any 'timely and decisive' response."<sup>33</sup> The contribution of humanitarian action to the protection of populations from genocide and other atrocity crimes was not, however, without its challenges and problems. The secretary-general insisted that "humanitarian action must never be used as a substitute for political action" and implored that "it must also be understood that humanitarian action depends upon humanitarian space. To defend humanitarian space, the United Nations and the international community must respect the humanitarian principles of neutrality, independence, humanity and impartiality." When thinking about the relationship between humanitarian action and R2P, it is important to take these insights as a starting point and recognize that while humanitarian action contributes to the protection of populations from atrocity crimes, the nature of this relationship is complex and fraught with practical, ethical, and strategic challenges.<sup>34</sup>



Humanitarian organizations are often able to negotiate access to places where other actors fear to go or are unable to go. Save the Children operated inside Taliban-controlled Afghanistan. Médecins sans Frontières was able to operate in parts of rebel-controlled northern Mali that were inaccessible to the government and other international actors. Humanitarians can also negotiate safe corridors, safe areas, and temporary cessations of violence to facilitate the delivery of assistance to civilians. They enjoy this access and influence to the extent that governments and nonstate armed groups recognize that humanitarians pose no direct political threat and adhere to the humanitarian principles of impartiality, independence, and humanity. These principles create the humanitarian space in which these organizations work, though aid workers have paid a terrible personal price over the past decade as violent attacks on them have increased.<sup>35</sup> Another consideration is that in the past, the pursuit of humanitarian space has sometimes come at the expense of human rights, R2P, and atrocity-prevention messaging, as in the case of Sri Lanka in 2009, where the United Nations was almost silent in the face of grave violations of international humanitarian law because it feared that the government would restrict humanitarian access. An Internal Review Panel later concluded this to be “a grave failure of the UN to adequately respond to early warnings and to the evolving situation during the final stages of the conflict and its aftermath, to the detriment of hundreds of thousands of civilians and in contradiction with the principles and responsibilities of the UN.”<sup>36</sup>

## 7. Economic, political, and strategic inducements

The most commonly understood economic measures adopted in response to atrocity crimes are sanctions and embargoes aimed at increasing the costs associated with bad behavior and making it more difficult for perpetrators to achieve their goals. Sanctions and embargoes are a necessary, and sometimes highly effective, part of the enforcement repertoire that can be called upon by the UN Security Council. Less well understood,

and less commonly used, are inducements aimed at promoting and rewarding good behavior. These can come in economic form, but inducements can also be political or strategic in nature. Experience from diplomacy more broadly suggests that the employment of “carrots” can be quite effective, especially when accompanied with the prospect of “sticks” further down the road in the event of noncompliance. Notable examples of the successful use of inducements include the political and strategic concessions made by Germany to persuade Russia to acquiesce in its unification, the use of financial assistance to secure and maintain Middle Eastern support for the Camp David Accords, and the common use of economic inducements to persuade ex-combatants to participate in disarmament and demobilization programs. Inducements can be offered by different types of actors depending on the leverage they hold. However, it can prove politically and ethically difficult to offer inducements to groups thought responsible for perpetrating atrocity crimes, which is perhaps why—although they are a staple part of thinking about conflict prevention—inducements have not yet been fully incorporated into atrocity prevention.

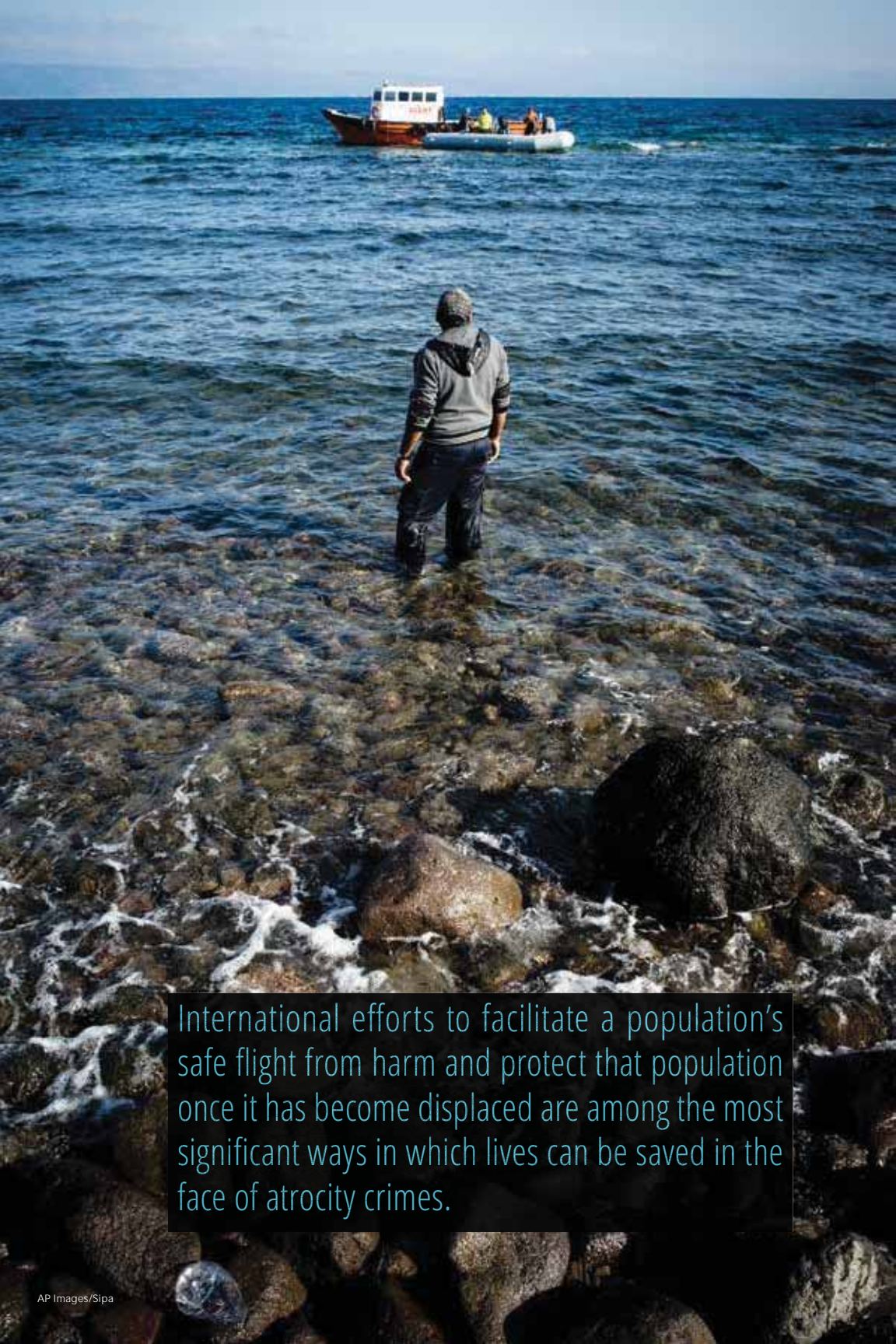
## 8. Protection of refugees and displaced persons

One of the principal determinants of the lethality of atrocity crimes is the capacity of the targeted population to flee from immediate harm.<sup>37</sup> The more a targeted group is able to find refuge from violence, the lower the number of casualties from direct violence is likely to be. The downside is that displacement increases exposure to indirect causes of harm and can sometimes place civilians at greater risk of atrocities, such as when internally displaced persons (IDP)/refugee camps become targets for attack. Therefore, international efforts to facilitate a population’s safe flight from harm and protect that population once it has become displaced are among the most significant ways that lives can be saved in the face of atrocity crimes.

Flight—leaving an area under threat to head for a second country, a safer region, or a camp administered by international agencies—is one of the most common and effective forms of immediate self-protection. Decisions about flight are rarely arbitrary. People typically flee to where they believe it will be safer, either because of familial or other relationships or because of the promise of assistance from national authorities or humanitarian agencies. Often, affected populations flee several times in search of safety. Although flight in the face of imminent danger is a good means of physical protection in the short term, as noted above those who flee are often left relatively unprotected in the longer term and are much more vulnerable to threats associated with deprivation. Most of the world's displaced are deprived the “essentials of life,” namely “shelter, food, medicine, education, community and a resource base for self-reliant livelihood.”<sup>38</sup> Indeed, mortality rates among IDPs are higher than among any other group, with the possible exception of those who stay behind to face the violence.<sup>39</sup> Refugee and IDP camps are often also subject to infiltration by armed groups and attack by armed groups from the outside.<sup>40</sup> Women and girls can also face particular protection challenges, including significant threats of sexual violence and exploitation.<sup>41</sup>

Compounding the obvious humanitarian problems associated with displacement is the political problem that IDPs remain under the nominal authority of the government that has either attacked them or manifestly failed to protect them.<sup>42</sup> These authorities and nonstate armed groups that control territory sometimes deny humanitarian agencies the access they need to protect displaced people, intensifying the challenge of operating in an insecure environment. Today, however, the world faces an unprecedented crisis of displacement caused by a combination of massive new humanitarian crises, such as that in Syria, caused in part by atrocity crimes and the international community's failure to find long-term resettlement places for those displaced by past crises.

The relationship between R2P and the protection of refugees was understood from the outset. Indeed, R2P itself grew out of earlier attempts to recast sovereignty in order to improve the



International efforts to facilitate a population's safe flight from harm and protect that population once it has become displaced are among the most significant ways in which lives can be saved in the face of atrocity crimes.



protection of IDPs.<sup>43</sup> The UN secretary-general has repeatedly argued that full implementation of international refugee law is among the steps that states ought to take in order to fulfill their responsibility to protect. In 2008, two of the world's leading thinkers on refugee protection, Brian Barbour and UNHCR's Brian Gorlick, argued that "there may be no easier way for the international community to meet its responsibility to protect than by providing asylum and other international protection on adequate terms."<sup>44</sup> Primarily, this involves simply the full and unimpeded implementation of the 1951 Convention on the Protection of Refugees and subsequent 1967 Protocol through the existing mechanisms, including UNHCR, already established to achieve that goal. *Asylum*—a term not often associated with R2P—ought to be a key element of the principle's repertoire of responses to atrocity crimes.<sup>45</sup> That is why, for example, the secretary-general's special adviser on R2P, Jennifer Welsh, has pointed out that Jordan acted to fulfil its responsibility to protect by accommodating Syrian refugees and was praised for doing so.<sup>46</sup>

Specific measures to support the protection of refugees who flee atrocity crimes that could be undertaken by states with the support of agencies such as the UNHCR and International Organization for Migration include (1) ensuring that neighboring states open their borders and make it as easy as possible for threatened people to seek asylum, (2) providing support to the receiving states to ensure that they are able to adequately house, shelter, and protect refugees, (3) relieving the burden on receiving states by facilitating the movement of refugees to third countries for temporary protection, (4) significantly expanding the availability of long-term protection and resettlement options to reduce the number of displaced people worldwide, (5) advocating strongly for the granting of asylum and protection to potential victims of atrocity crimes,<sup>47</sup> (6) ensuring that the unique protection needs of women and girls are addressed, and (7) improving understanding of the reasons why people are fleeing a particular situation in order to increase the amount of information available about atrocity crimes.<sup>48</sup> Beyond these, Barbour and Gorlick suggested a range of ways that R2P's first two pillars could be utilized to enhance upstream protections, such as through urging

states to prioritize the development of legal processes for the determination of an asylum seeker's status, measures to tackle the underlying protection needs of victims and the causes of displacement, and action to reduce statelessness.<sup>49</sup>

IDPs face a somewhat different set of issues because they do not fall under the purview of international refugee law. It was this gap in international law that prompted the development of the *Guiding Principles on Internal Displacement* based on the rights already owed to them under international human rights law.<sup>50</sup> Despite the different legal contexts, however, the basic notion is that the protection of IDPs ought to be central to any international response to atrocity crimes. Some of the relevant considerations were sketched out by Roberta Cohen, from the Brookings Institution, who worked with the UN secretary-general's special representative, Francis Deng, on the issue of internal displacement and the notion of sovereignty as responsibility. Adapted here to meet the challenge of responding to atrocity crimes, suggested steps include (1) ensuring that the protection of IDPs is integral to any comprehensive response to atrocity crimes, (2) supporting the adoption of early measures to prevent displacement as far as possible and establishment of mechanisms to deal with the long-term effects, and (3) promoting the implementation of the *Guiding Principles on Internal Displacement* as a core part of any comprehensive response to atrocity crimes.<sup>51</sup> In the longer term, these types of action require strengthening the international institutions needed to support the protection of IDPs when their own state struggles to do so.

## 9. Monitoring, observation, and verification

Monitoring, observer, and verification missions deployed by the United Nations, regional organizations, or other arrangements including individual states and nonstate actors provide another important vehicle for reporting and verifying information about atrocity crimes. Usually relatively small in





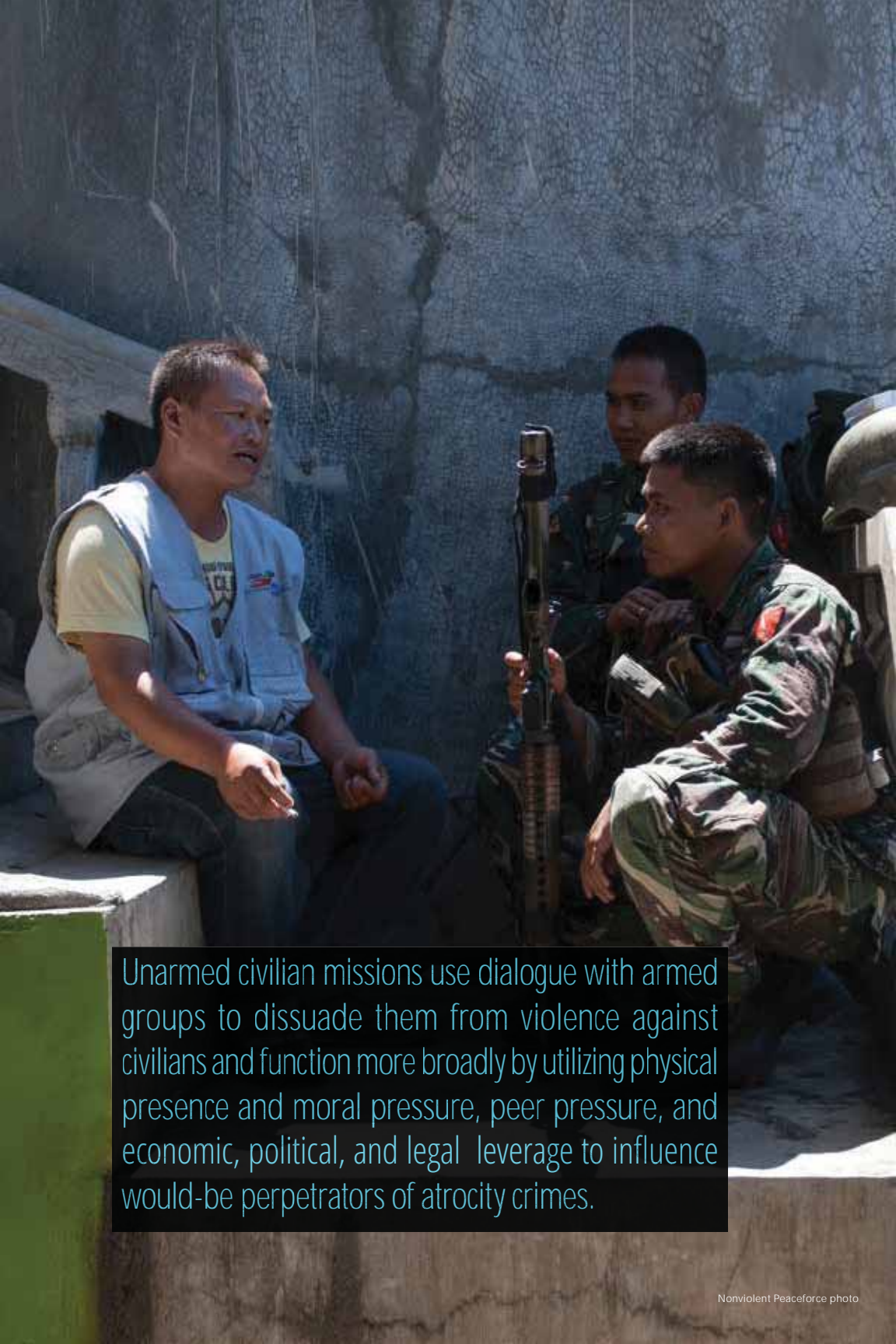
Usually relatively small in scale and comprising civilian staff, monitoring missions can help deter crimes by providing a limited degree of protection by presence, improving accountability and informing tailored policy responses.

scale and comprising civilian staff, these types of missions can help deter crimes by providing a limited degree of protection by presence, improving accountability and informing tailored policy responses. These missions tend to have specific functional mandates usually tied to the monitoring of a cease-fire agreement, compliance with human rights standards, or an election. Whatever their precise focus, such missions have three primary goals: (1) to collect information, (2) to verify that information, and (3) to utilize that information to support the mission's goals (be it the promotion of human rights or of a cease fire) through the facilitation of local processes such as confidence building, problem solving, conflict management and reconciliation, and communication of verified information to international decision makers. In addition, they can deter atrocity crimes through their very presence and capacity to bear witness.

These operations are frequently employed in response to atrocity crimes. For example, in 1998, the OSCE deployed the Kosovo Verification Mission to verify compliance with a provincewide cease fire and human rights obligations. The mission provided detailed reporting on cease-fire violations and investigated complaints of human rights abuse, compiling an extensive database. It also investigated and verified atrocity crimes. More recently, the United Nations' Supervision Mission in Syria was deployed in 2012 to monitor the cessation of violence and implementation of an interim plan agreed to by the parties. In addition to verifying that all sides were breaching their commitments, the mission investigated and verified alleged atrocity crimes. A subsequent joint mission of the United Nations and the Office for the Prohibition of Chemical Weapons oversaw the disarming of Syria's chemical weapons stockpile, reducing a significant source of threat to the civilian population.

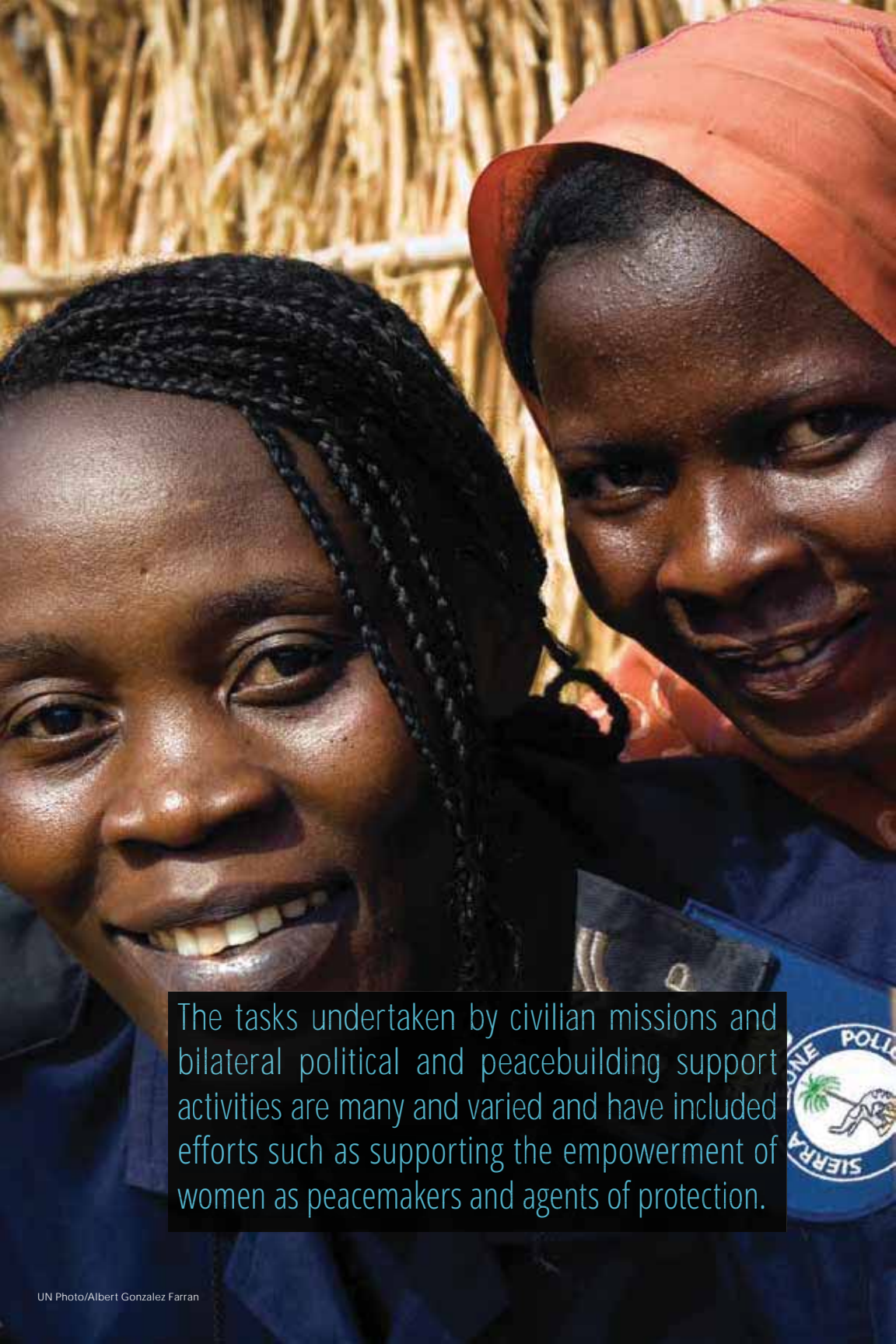
## 10. Unarmed civilian protection

Unarmed civilian protection involves the deployment of unarmed civilians into regions at risk of atrocity crimes with the express purpose of protecting populations through a combination of



Unarmed civilian missions use dialogue with armed groups to dissuade them from violence against civilians and function more broadly by utilizing physical presence and moral pressure, peer pressure, and economic, political, and legal leverage to influence would-be perpetrators of atrocity crimes.





The tasks undertaken by civilian missions and bilateral political and peacebuilding support activities are many and varied and have included efforts such as supporting the empowerment of women as peacemakers and agents of protection.

presence, persuasion, and capacity building. While this form of protection might be understood as a byproduct of monitoring, observation, or other civilian operations undertaken by the United Nations and regional organizations such as the OSCE and the European Union (EU), unarmed civilian protection is emerging as a field of activity in its own right, spearheaded by the NGO Nonviolent Peaceforce. Operating with the consent of the host government, Nonviolent Peaceforce has civilian protection missions deployed in Myanmar, the Philippines, South Sudan, and Ukraine and has also responded to the crisis in Syria. Its work focuses on using dialogue with armed groups to dissuade them from violence against civilians, but unarmed civilian protection more broadly functions by utilizing physical presence and moral pressure, peer pressure, and economic, political, and legal leverage to influence would-be perpetrators of atrocity crimes. The 2015 report of the High-Level Independent Panel on UN Peace Operations recognized the utility and importance of unarmed civilian protection, insisting that “unarmed strategies must be at the forefront of...efforts to protect civilians.”<sup>52</sup> Still at an early stage, the theory and practice of unarmed civilian protection opens up opportunities for strengthening the coordination of disparate strands of civilian work in areas such as mediation, observation, and capacity building.

## 11. Political support and peacebuilding

Political support and peacebuilding activities, which may in some cases be offered as missions in their own right and sometimes through bilateral arrangements, expand the scope for civilian engagement in crisis situations beyond the traditional domains of diplomacy, humanitarian action, and monitoring and observation. They emerged out of a recognition that on the one hand, the international community needed to think more strategically about transitioning out of peacekeeping operations, and on the other hand, because most of the world’s conflicts were political in nature, so, too, must be the international community’s response.<sup>53</sup> The development of political support and peacebuilding activities make it somewhat easier, and significantly less expensive, for



the international community to establish a ground presence at an earlier stage of a crisis. This potentially increases the international community's leverage over a situation, improves its deterrence capacity, supports conflict resolution and problem solving, and supports longer term capacity building and peacebuilding, which can reduce future threat.

The tasks undertaken by civilian missions and bilateral political and peacebuilding support activities are many and varied and have included (1) facilitating liaison with armed groups; (2) leading or facilitating conflict resolution by providing good offices and promoting and facilitating local and inclusive dialogue; (3) all the tasks undertaken by monitoring, observation, and verification missions; (4) coordinating international assistance to a government; (5) providing a range of technical assistance to the government in areas such as the development/reform of a constitution and parliamentary institutions, the organizing and overseeing of elections, building state institutions capable of addressing root causes of conflict, providing basic services, accelerating progress toward development and stimulating private investment, consolidating and strengthening public security and rule of law, planning a national census, building capacities for national dialogue and reconciliation, improving the provision of basic services, and strengthening local government and civil society; (6) developing and overseeing implementation of plans for the reintegration of former combatants; (7) promoting freedom of the press; (8) promoting and protecting human rights; (9) developing and implementing plans to protect women and children; (10) developing and implementing plans to protect children and youth; (11) promoting a culture of peace; (12) assisting measures to tackle the proliferation of small arms; (13) coordinating the delivery of humanitarian assistance; (14) coordinating comprehensive responses with relevant regional arrangements; (15) supporting the empowerment of women as peacemakers and agents of protection; and (16) ensuring that gender considerations inform all aspects of the international community's engagement. Naturally, behind each of these functional areas lies a significant number of tasks whose relevance depends on the specificities of each case.

These activities may be conducted by the United Nations, whether through a discrete mission or through bilateral country assistance agreements, or other agencies. The EU in Africa, for example, and Australia in the Pacific Islands region have provided extensive support of this type to countries on request. Moreover, bilateral support between states is quite common. In addition, nonstate actors can often play important roles here. For example, the Carter Center is one of several NGOs that provide expertise and technical support to states holding elections as well as monitor those elections.

## 12. Consensual peacekeeping

Peacekeeping is commonly understood as a consensual exercise designed to support and oversee a peace process at the invitation of the parties concerned. In relation to R2P, the United Nations' Department of Peacekeeping Operations has resolutely insisted that peacekeeping be understood as a second pillar activity, employed to support the state. Indeed, the UN secretary-general made this point emphatically in his 2012 report on R2P.

It is far from clear, however, why peacekeeping cannot also be construed as falling within the peaceful dimension of the third pillar as it often involves the use of consensual means to protect populations from atrocity crimes. In practice, as the secretary-general has also emphasized on several occasions, the distinction between the different pillars is quite blurry, since they overlap. Thus, for example, the mandate for the United Nations Mission in the Republic of South Sudan (UNMISS) comprises elements of pillars two (supporting the state to fulfill its protection responsibilities) and three (protecting civilians within its areas of operation). Several other United Nations and non-United Nations missions also cross this conceptual divide in practice, including the United Nations Operation in Cote d'Ivoire, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic, and the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA).

Thus, when peacekeeping is authorized under Chapters VI or in accordance with Chapter VIII of the UN Charter, or when it is deployed with the consent of the host state, it can be utilized to protect populations from atrocity crimes and therefore support peaceful protection. Moreover, as the secretary-general emphasized in his 2009 report, peacekeepers can also be deployed in advance of a crisis to prevent potential conflict and atrocity crimes, as they were in Macedonia in the early 1990s.<sup>54</sup>

Although peacekeeping must be used only in support of a political strategy and never as a substitute for it, most contemporary peacekeeping operations already perform tasks that support the protection goals of R2P. A recent study by the UN Office of Internal Oversight Services found that the preventive and political work of UN peacekeeping operations has “notable and positive results” for the protection of civilian populations. Thus, “civilians invariably attach high value to missions’ physical presence, which evidence suggests had a huge deterrent impact and avoided violence that otherwise would have occurred.... The value of such deterrence is unquantifiable but enormous.”<sup>55</sup> The support that peacekeeping can provide to R2P falls into three main categories.

First, missions help troubled states build the necessary capacity to protect their populations. Peacekeeping missions are often mandated to help states and societies build their own capacity to protect the populations. Thus, a wide range of civilian agencies are regularly mandated to support institution building and capacity development (while promoting local ownership). Most, if not all, contemporary peace operations include civilian experts with responsibility for supporting governments and communities to develop capacities in these areas. In addition to the support and assistance provided by peacekeepers themselves, operations are increasingly responsible for coordinating the range of multilateral and bilateral engagements in such capacity-building programming.

The civilian dimension of peacekeeping, and police components in particular, have become increasingly recognized as mission critical. The role of police in peace operations has evolved from passive observation of local police services to capacity



When peacekeeping is authorized under Chapters VI or in accordance with Chapter VIII of the UN Charter, or when it is deployed with the consent of the host state, it can be utilized to protect populations from atrocity crimes and therefore support peaceful protection.

building and a more intrusive reform, restructuring, and rebuilding function as part of rule of law and holistic security sector reform programming. International police advise and support indigenous police services as well as train and mentor them. They engage with transitional justice processes as well as detention, corrections, and rehabilitation needs, in addition to the more traditional policing roles. Building credible deterrence in the law and justice sector is also crucial to altering the political calculations/increasing the opportunity cost for rogue elements to commission and/or commit mass atrocity crimes. In addition, military assistance might be offered to help the state reform and professionalize its armed forces, including the provision of planning, logistics/resources, and oversight for disarmament and demobilization processes. Support is also provided to enhance civilian oversight mechanisms and strengthen a state's military capacity.

Second, peacekeeping operations can provide indirect protection to endangered civilian populations by supporting work in areas such as security sector reform and the rule of law that give rise to a more protective social environment. It is now commonplace for peacekeeping operations to include a variety of protection mandates focused on supporting the development of an environment conducive to protection. For example, understanding the extent of threats to civilians may require a nuanced appreciation of the prevalence of sexual and gender-based violence and strategies to address those specific risks. All components of peacekeeping operations have a role to play in monitoring and promoting basic standards of human rights and protection. This can make a significant contribution to restricting the ease with which rights abusers can operate and persevere. Moreover, international police contingents execute a range of tasks that can be understood to contribute to indirect protection through deterrence and confidence building. Through presence and patrols, peacekeepers can deter would-be perpetrators quite effectively.<sup>56</sup>

Third, peacekeeping operations can sometimes offer a degree of direct protection from harm.<sup>57</sup> Direct protection by military peacekeepers, typically in a reactive sense, can involve the interposition of troops between at-risk populations and the



armed elements that threaten them so as to deter attacks and be well situated to respond. This may include, for example, the deployment of forces to protect IDP/refugee camps from attack or the opening of UN bases to house civilians under threat. Peacekeepers can also restrict the activities of nonstate groups that threaten civilians and diminish their capacity to commit atrocity crimes by, among other things, limiting the supply of arms and financing, cooperating with local authorities to support the rule of law, and patrolling to restrict their mobility.



The political and material resources dedicated to supporting peaceful measures matter. It is one thing for the international community to pass resolutions and create mandates; it is another thing entirely for it to back those decisions with determined and well-resourced action.

# Assessing Peaceful Capacities

## Generic obstacles

While the peaceful measures outlined in the previous section can improve the protection of vulnerable populations from atrocity crimes and, in some cases, help resolve the disputes that give rise to atrocity crimes, it is important to understand their limits. These international efforts can improve protection where there is the local will and capacity by supporting local sources of resilience to atrocity crimes and changing the cost-benefit calculations of would-be perpetrators. But these actions cannot by themselves prevent determined armed groups from perpetrating atrocity crimes.<sup>58</sup> For instance, diplomacy and mediation work only if the parties to the conflict negotiate in good faith and follow through on their commitments; humanitarian action and refugee protection can save lives in the immediate term but cannot protect people from their immediate armed tormentors; monitoring and observation can deter atrocities by shining a light on them, but their effectiveness ultimately depends on the extent to which the

perpetrators care about their international reputation and the international community's willingness to impose consequences on those found responsible for atrocity crimes. Noncoercive measures to protect populations from atrocity crimes work best when they are applied early, yet mobilizing early action can be a particularly difficult business.

There are also structural obstacles to early action in response to atrocity crimes of the sort envisaged by the peaceful dimension of R2P's third pillar. Among these are the political costs associated with early action. Early action is deeply political and sometimes no less controversial than more-coercive responses to evident mass atrocity crimes. The sorts of engagement described in the previous section can entail a significant degree of intrusion into the domestic affairs of states, which is not likely to be always welcome.<sup>59</sup> States jealously guard their sovereign prerogatives and are sensitive about perceived incursions on their rights or criticisms of their conduct or domestic conditions.

In the UN context, individual states and their allies commonly object to being placed on the international agenda as a "country situation." Thus, they rarely invite assistance or look kindly upon external efforts to prevent atrocities and protect populations within their jurisdiction. It should not be assumed, therefore, that early peaceful action will always be less contentious than intervention in the later stages of a crisis.<sup>60</sup> The general unwillingness of states to recognize the possibility of atrocity crimes at home or to cooperate with international actors constitutes a significant barrier to peaceful protection.

At the same time, states with the knowledge and capacity to take action in the early phases of a crisis are generally reluctant to commit political or material resources until the scale of violence escalates. The issue here is not whether governments support R2P as a goal, but the depth of their support relative to other goals and the extent to which they are confident that the early investment of time and resources will deliver observable effects. Political and diplomatic capital is a finite resource, and the reality is that it is easier to mobilize states

to act when atrocity crimes are widespread and systematic than it is during the early stage of a crisis when atrocity crimes might be limited and sporadic.

These problems are compounded by the limited resources generally committed to peaceful protection, which is in turn compounded by the ongoing climate of financial austerity. Major donors to the United Nations have cut their own national budgets and have imposed austerity on their own populations. The United Nations also continues to cut its budget—by about 1 percent for 2014–15.<sup>61</sup> The secretary-general has asked the whole system to find savings, including through cuts to personnel and peaceful activities central to protection against atrocity crimes, such as the special political missions described earlier. Other research suggests that member states are close to their collective capacity to contribute peacekeepers and police for UN missions.<sup>62</sup>

The harsh reality is that in the near term, efforts to implement R2P will not be able to call upon significant new resources. What is more, although member states often manage to find resources to support new or expanded missions when necessary to respond to major crises involving atrocity crimes, concerns about resource limitations and overstretch play a role in shaping decisions about early action in marginal cases. According to Jean-Marie Guehenno, “the practical reality is that the immediate political and financial costs of prevention always trump the longer-term benefits. Why engage in a risky and complicated venture when there is no domestic political pressure to do so?”<sup>63</sup> Of course, the perceived costs of prevention might not “always” trump the benefits, but Guehenno is right to suggest that the odds are stacked against preventive action.

## Conditions for success

With these notes of caution in mind, it is possible, however, identify some factors whose presence seems to make peaceful approaches to protecting populations more effective.



**First**, the receptiveness of leaders on the ground matters. As Edward Luck argued recently, it helps if local, group, and national leaders “are willing to listen to international appeals and are concerned about how their reputations are likely to be affected by escalating violence.”<sup>64</sup> By themselves, peaceful measures are unlikely to dissuade leaders determined to commit atrocity crimes and willing to bear the costs. Thankfully, relatively few leaders go into a crisis situation expecting or wanting to commit atrocities, opening spaces for peaceful action and suasion to influence their judgment.

**Second**, the timing of peaceful action matters. When conflicts are so intense as to give rise to atrocity crimes, the window for effective peaceful action is already quite small. As violence escalates and parties resort to atrocities on a more widespread and systematic basis, that window closes almost entirely until either one party prevails or all the major parties recognize that they have reached a stalemate—a realization that can be many years in the coming. To have good practical effect, peaceful measures need to be mobilized in the early stages of a crisis.

**Third**, quantity sometimes has a quality all its own. Individually, none of the measures described in the previous section would be likely to protect populations from atrocity crimes and stem the tide of violence. What is needed is coordinated, multilevel, and simultaneous action by a range of actors, utilizing all of the appropriate instruments. When multiple parties are engaged in protective action, those activities work better when they are coordinated. Coordination reduces the capacity of perpetrators to go “forum shopping”—that is, prioritizing the international mechanisms that work best for them while buying time by exploiting ambiguities and gaps. Coordination also has a multiplier effect on individual actions. For example, the effect of determined private sector action to prevent election violence in Kenya in 2013 was multiplied by the fact that it was accompanied by bilateral diplomacy by influential states and concerted efforts by the United Nations and its partners. Because violence can be triggered and perpetrated at different levels, it is important that protective action occurs at a number of different levels too—ranging from international forums and the state leadership down to individual

localities. Not only is this necessary to deal with different sorts of threats, but top-down and bottom-up work can be mutually reinforcing. Finally, action needs to be simultaneous to some extent. While the logical sequencing of measures can prove useful, peaceful measures tend to have greatest effect when they are pursued simultaneously on a number of different fronts. For example, difficult negotiations can be assisted by reporting from the ground detailing atrocity crimes and risks because such reporting lets the parties know that the world is watching and provides an evidentiary basis on which to urge leaders to fulfill their responsibilities. These effects can be reinforced by the utilization of international human rights mechanisms. Likewise, global efforts can be amplified by regional efforts, which may be more consequential for leaders keen to preserve their reputation among their peers. The obverse might also be true in that global efforts might amplify efforts led by the region.

**Fourth**, the resilience of affected societies matters. A community's resilience to atrocity crimes can be found in many places, including within national institutions, faith-based groupings, civil society, the private sector, the media, traditional means of maintaining order and resolving disputes, and cultures of peace. Externally led peaceful action is more likely to have good effect when it can relate to and build upon existing sources of local resilience and resistance to atrocity crimes. Where institutions or civil society are weak, as, for example, they were in Libya under Muammar Qaddafi, societies are more prone toward fragmentation and order imposed by violence and less receptive to outside influence and support. Moreover, as Edward Luck observed, the prospects of making a positive difference increase where civil society and the private sector are receptive.<sup>65</sup>

**Fifth**, the political and material resources dedicated to supporting peaceful measures matter. It is one thing for the international community to pass resolutions and create mandates; it is another thing entirely for it to back those decisions with determined and well-resourced action. Given that the historical record of local compliance with international decisions and demands in cases of atrocity crimes is not good, careful attention needs to be paid to the capacities and resources

committed to ensuring compliance. Implementation matters and cannot be trusted to ad hoc or poorly resources arrangements.

**Sixth**, it matters whether the international community credibly signals an intention to escalate its response if necessary, including by imposing further costs on perpetrators and strengthening the physical protection of targeted groups. Most atrocity crimes occur because political or military leaders judge that they provide a means of securing an objective at a reasonable cost. Persuading leaders to change course involves convincing them either that their chances of success are limited or that the costs associated with committing atrocity crimes are prohibitive.<sup>66</sup> Part of doing that entails providing groups with peaceful ways of resolving their disputes and protecting their legitimate interests, through mediation, trust building, and conflict resolution. Part of shaping leaders' calculations involves persuading them that there is little to be gained by continuing down the path of atrocity crimes because the international community will step up its action in response to any increase in violence. Like most things, signaling credibility is most straightforward in the early stages of a crisis, and, once lost, credibility is difficult to recover. Where the international community fails to signal its resolve to escalate if necessary, peaceful measures are less likely to have good effect.

## Global capacity and commitment

Beyond the general constraints observed earlier, there are also specific capacity shortfalls that limit the international community's ability to utilize peaceful measures as extensively and effectively as it might. Some of these shortfalls paint a sobering picture of an international community that has not yet come close to matching its legal and political commitments with the resources necessary to achieve them.

Most notably:

- a. Despite recognition that local resilience and receptiveness are crucial to the early termination of crises, efforts to nurture these capacities remain ad hoc and limited. To be fair, some

countries have, sometimes with international support, established institutional frameworks to support peace. For example, the National Peace Council in Ghana and Tanzania's Inter-Religious Council of Peace provide national frameworks for anticipating and resolving intercommunal disputes. Following electoral-related violence in Kenya in 2007–8, a highly effective private sector alliance, the Kenya Private Sector Alliance, was developed to support conflict prevention. However, these efforts are patchy and not always supported with sufficient resource. As a result, resilience and receptiveness are often in short supply when atrocity crimes are committed.

- b. While there is broad agreement on the importance of diplomacy and mediation, the United Nations and other agencies confront significant shortfalls in resources. Most notably, some 30 percent of the UN Department of Political Affairs' budget and the totality of the department's Mediation Support Unit is supported by voluntary contributions rather than from the United Nations' main budget. As a result, financial support for diplomatic and other political efforts is volatile and insecure, making it difficult to sustain a cadre of deployable personnel with the necessary skills and experience. Funding for the United Nations' special political missions was significantly reduced by the 2014–15 budget cycle. This hinders the United Nations' capacity to recruit, train, and deploy political affairs and mediation experts. Moreover, progress toward the full and equal inclusion of women in peace processes, as mandated by Security Council Resolution 1325, has been very slow. More widely, the United Nations confronts a shortfall of qualified and experienced protection experts (including people qualified to serve as women protection advisers) who are able and willing to be deployed to dangerous zones at short notice.<sup>67</sup> Beyond the United Nations, relatively few regions have well developed and resourced capacities for diplomatic and political action: the EU and United States are well endowed in this area; the AU has an impressive range of mechanisms but patchy functional capacity; while in Latin America, the Middle East, and East Asia and the Pacific, regional capacity is much more limited.

- c. Diplomacy and public advocacy are selective, patchy, and often too late. Sometimes, diplomatic efforts and advocacy campaigns are comprehensive, supported by numerous actors. These can exert significant pressure on national elites. Diplomacy and public advocacy in support of conflict resolution in Kenya in 2008 and conflict prevention in 2013 proved highly effective. Other times, however, diplomacy and advocacy efforts either have little discernible effect (e.g., Syria), are marshaled too late to have good effect (e.g., Darfur), or are not marshaled effectively at all (e.g., Sri Lanka, CAR). Part of the problem stems from the fact that global responsibility for diplomacy/advocacy is diffused and capacity is relatively weak. Ideally, diplomatic efforts and public advocacy should involve both advocacy on specific crises and advocacy in support of R2P, prevention and civilian protection to sensitize leaders and publics in advance of specific crises, and requests for action.
- d. There is a significant gap between humanitarian need, the majority of which is today caused by armed conflicts associated with atrocity crimes, and the resources available to address it. This gap is growing to such an extent that concerns have been expressed about the sector's capacity to deal effectively with new crises. Globally, in 2014, only 52 percent of the Strategic Response Plan (SRP)—targeted toward the most vulnerable people in need of humanitarian assistance, based on national capacity, access, and security—identified by UN OCHA was funded, the largest gap ever recorded between needs and resources (by contrast, funding stood at 60 percent in 2013).<sup>68</sup> As a result, there were some significant shortfalls in the humanitarian resourcing provided to respond to major crises involving atrocity crimes. While South Sudan fared relatively well (74 percent of its SRP met), Iraq (61 percent), CAR (61 percent), Syria (54 percent), Yemen (54 percent), and Mali (50 percent) did less well. For some countries, such as DRC (40 percent) and Chad (34 percent), the gap reflected an acute shortfall of resources.
- e. The international community today confronts a chronic crisis of displacement. According to the UNHCR, with 59.5 million forcibly displaced persons, there are more



In total, some 86 percent of the world's refugees are housed in the developing world and some 25 percent in least-developed countries. The granting of asylum may be one of the most straightforward ways that states can fulfill their responsibility to protect, but the gap between demand and response is nothing short of a chasm, and one that is growing.



displaced persons today than at any point since the end of World War II. Of these, 19.5 million are refugees. In 2014, 126,800 refugees decided to return home, while between them some 26 countries offered permanent resettlement places to 105,200 refugees. More than two-thirds of those places were offered by one country: the United States. At that rate, assuming no new crises causing displacement, it would take more than 84 years to safely return or resettle all the world's refugees. With each year that passes, the gap between the number of refugees and the global capacity to safely return or resettle them is growing. Meanwhile, developed states are generally tightening their own refugee and immigration policies, making it more difficult for the forcibly displaced to find asylum while making front-line states shoulder the principal responsibility for housing them. In 2014, the principal host states were Turkey, Pakistan, Lebanon, Iran, Ethiopia, and Jordan—many of which have their own profound insecurities. In total, some 86 percent of the world's refugees are housed in the developing world and some 25 percent in least-developed countries.<sup>69</sup> The granting of asylum may be one of the most straightforward ways that states can fulfill their responsibility to protect, but the gap between demand and response is nothing short of a chasm, and one that is growing.

- f. According to the UNHCR, the crisis of internal displacement now exceeds the scale of the global refugee crisis. It reported that in 2014, there were 38.2 million internally displaced persons. The protection of IDPs has been an international priority for more than 20 years, yet the United Nations' special representative for IDP protection remains a part-time posting within the OHCHR with a very limited amount of staff support assigned to it. This places the special representative on a level similar to the office's other special rapporteurs focused on country and thematic issues, yet with responsibility for the protection needs of more than 38 million people. There is an obvious mismatch between the scale of the IDP protection crisis and that of the response.<sup>70</sup>
- g. The international community's capacity to deploy civilian expertise and capacity into regions affected by atrocity

crimes remains limited. Even where funding can be secured to deploy civilian personnel into crisis zones, it remains difficult for organizations to find individuals with the correct skills or experience to be effective, sometimes slowing the deployment process considerably. As a result, although civilian engagement has increased significantly in the past few years, civilian missions and offices are typically much smaller than their military counterparts. The problem stems from multiple sources, including a lack of investment in civilian deployments, the lack of training opportunities for civilians commensurate with those provided by the military, the lack of secure career paths for civilians with the necessary skills and expertise, and the fact that the deployment of civilians overseas means a net loss of domestic capacity. Initiatives such as CivCaP—a UN effort to strengthen civilian capacity—and efforts to train peacebuilders and other civilian personnel (such as those spearheaded by Costa Rica's University of Peace or the Rotary Foundation's Peace Fellows initiative) are welcome developments aimed at closing this gap.

Similar shortfalls are also evident in the nonstate sector. Nonstate groups engaged in practical mediation, diplomacy, and conflict resolution are also relatively few, small in size and footprint, and concentrated in the United States and Europe. Likewise, unarmed protection remains a little understood and utilized concept that commands relatively modest resources that are stretched quite thin. This suggests a need for civil society beyond the humanitarian sector to move its engagement with R2P and protection away from its predominant focus on advocacy and norm building and toward a more practical orientation.

- h. While local populations expect peacekeepers to protect them from atrocities, peacekeeping missions rarely have sufficient capacity to do so.<sup>71</sup> This capability gap is caused by a combination of demand-side and supply-side factors. On the demand side, host states are typically reluctant to consent to the intervention of a large and well-equipped peacekeeping force unless they calculate that it is in their interests to do so, which is rare. On the supply side, the UN

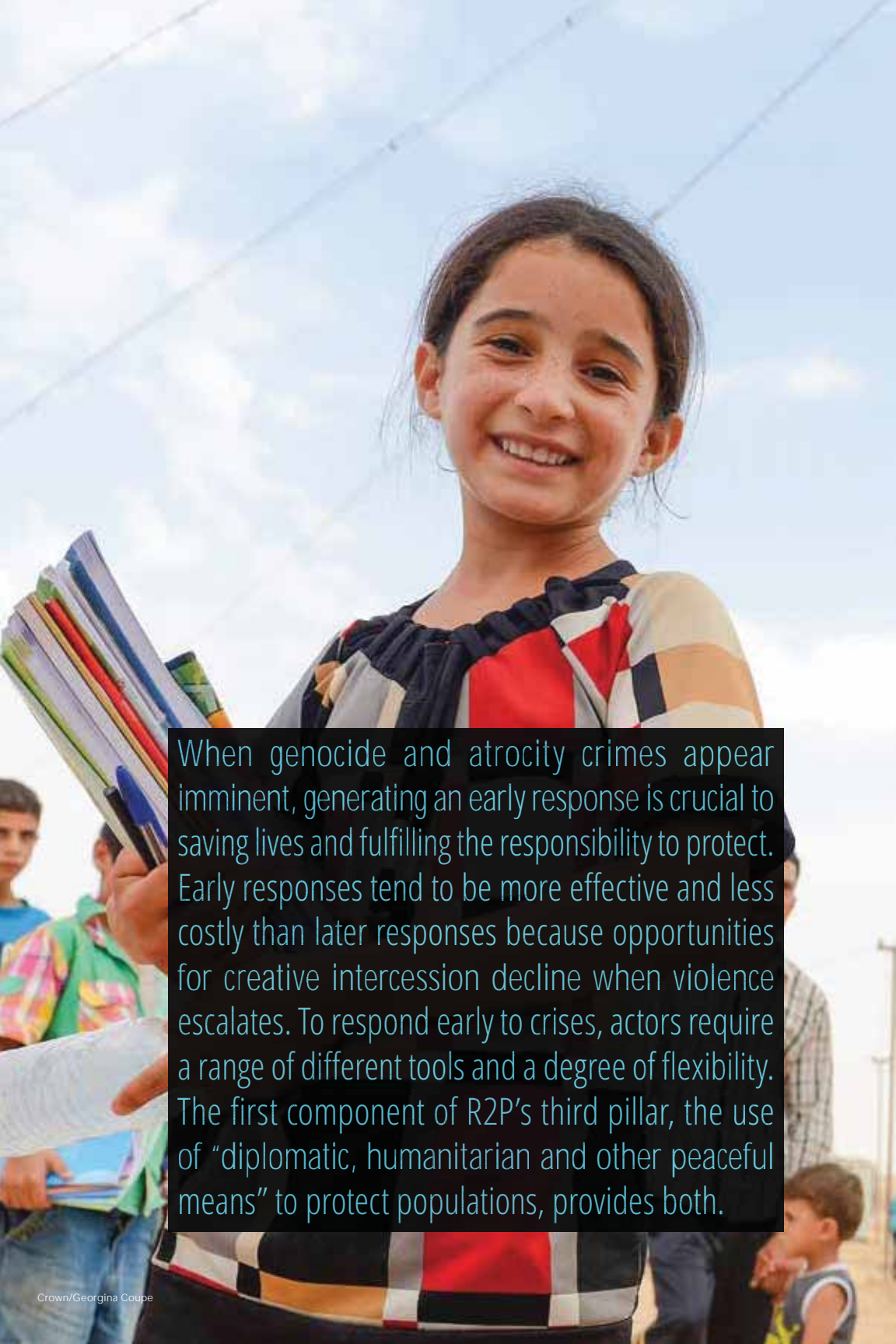
Security Council is reluctant to mandate, and fund, large peacekeeping operations, and troop-contributing countries are increasingly stretched. As a result, most operations do not have the capabilities needed to provide comprehensive protection to civilian populations. This is evident while applying two rules of thumb commonly used to calculate the necessary force size for civilian protection operations (based on assumptions that contingents are properly equipped and trained, and that they have adequate rules of engagement).<sup>72</sup> The first is based on the assumption that two to ten troops are required for every 1,000 inhabitants within the crisis zone. The second is based on the protection force being at least the size of the largest indigenous armed force. Based on these indicators, it is clear that the United Nations' peacekeeping operations remain significantly understaffed (see Table 1), barely making it to the minimum number of troops required.

Table 1: Ideal and Actual Size of Peacekeeping Operations With Civilian Protection Mandates

Region	Affected Pop.	Mission	Required Size Method 1	Required Size Method 2	Actual Size (July 2014)
Darfur, Sudan	c.6 million	UNAMID	12,000–60,000	40,000–45,000	15,362
South Sudan	c.8 million	UNMISS	16,000–80,000	40,000	11,389
Mali	c.6 million	MINUSMA	12,000–60,000	15,000–30,000	9,139

The problem confronted by UN peacekeeping is more acute than these figures suggest because the minimum rules of thumb relate to the number of soldiers deployed with relevant force enablers such as helicopters, ground transportation, weaponry, intelligence capabilities, communication assets, and hospital support. Rarely do UN peacekeepers have access to sufficient enablers. The result is that even relatively large peacekeeping missions are seldom able to provide protection throughout their area of operations or to respond quickly and effectively to emerging situations beyond their immediate areas of deployment.





When genocide and atrocity crimes appear imminent, generating an early response is crucial to saving lives and fulfilling the responsibility to protect. Early responses tend to be more effective and less costly than later responses because opportunities for creative intercession decline when violence escalates. To respond early to crises, actors require a range of different tools and a degree of flexibility. The first component of R2P's third pillar, the use of "diplomatic, humanitarian and other peaceful means" to protect populations, provides both.

## Conclusions and Recommendations

The third pillar of R2P is the most controversial and least understood element of the principle as a whole. Misunderstanding arises out of the fact that many commentators have focused exclusively on the pillar's coercive potential at the expense of its call for the international community to adopt peaceful measures to protect populations from atrocity crimes. The *World Summit Outcome Document* is clear in stating that more coercive measures should be adopted under Chapter VII of the UN Charter only (1) when peaceful means are inadequate and (2) the state is "manifestly failing" to protect its population. Before that, the international community should use "diplomatic, humanitarian and other peaceful means" to protect populations. If the international community can strengthen the effectiveness of these peaceful measures, it will reduce the frequency with which the UN Security Council is called upon to authorize more coercive measures.

When genocide and atrocity crimes appear imminent, generating an early response is crucial to saving lives and fulfilling the responsibility to protect. Early responses tend to

be more effective and less costly than later responses because opportunities for creative intercession decline when violence escalates. To respond early to crises, actors require a range of different tools and a degree of flexibility. The first component of R2P's third pillar, the use of "diplomatic, humanitarian and other peaceful means" to protect populations, provides both. It points to a broad range of actions that can be undertaken to persuade leaders to alter course, deter atrocity crimes, and protect vulnerable populations. Undertaken simultaneously, and backed by sufficient resources, such measures have the capacity to make a significant difference. Understanding this aspect of R2P is important, therefore, not just for the conceptual clarity it brings but also because it unlocks a wide range of strategies, policies, and tools that can be employed to protect populations at an early stage in a crisis.

Because these measures are peaceful in nature, they can be undertaken by a wide range of different actors, including the United Nations, regional and subregional organizations, individual states, civil society groups, private sector actors, and individuals. None of the tools identified here requires authorization by the UN Security Council, for example. Most receive their authority from the consent of the parties involved.

This policy analysis has identified 12 such tools, each with multiple subtypes, but this is by no means a definitive list. This repertoire of measures can—and should—be expanded and a repository of good practice established. This analysis has also, however, highlighted some of the structural obstacles to the effective use of peaceful means to protect populations. These remind us that the early use of peaceful measures is not a soft and noncontroversial alternative to more-robust measures. Peaceful measures can be controversial in their own right and hotly contested politically. There are also limits of what can be achieved: peaceful measures can influence, persuade, and cajole leaders and armed groups and even remove civilians from harm's way, but they cannot stand in the way of determined perpetrators. Therefore, it is important to underscore that these measures are additional to the enforcement measures countenanced under Chapter VII of the UN Charter, not a substitute for them.

The analysis has also identified a significant shortfall in the international community's capacity to utilize diplomatic, humanitarian, and other peaceful means to protect populations from atrocity crimes. There is a chronic shortfall of capacity almost across the board—a striking gap between what the world needs in order to protect populations peacefully and the resources it has committed to this goal. Without these resources, the international community will continue to struggle to take advantage of what opportunities there are to protect populations peacefully. Therefore, this policy analysis concludes with some recommendations for advancing the world's capacity to respond peacefully and effectively to atrocity crimes.

## For the United Nations and its member states

- The secretary-general should articulate a comprehensive strategy for the prevention of atrocity crimes and direct the UN system to its implementation. This could involve translating the strategy outlined by the secretary-general in *Implementing the Responsibility to Protect* (2009) into a set of actions designed to mainstream R2P and atrocity prevention into the daily work of the organization in a manner supportive of other initiatives such as HRUF.
- The United Nations' capacity for implementing R2P should be strengthened through the upgrading of the special adviser on R2P position to that of a full-time post, the reorganization of the roles of the special advisers on genocide prevention and R2P, and the strengthening of the joint office.<sup>73</sup> The special advisers must be active global advocates for atrocity prevention and early response.
- The engagement of member states with the implementation of R2P should be deepened by including it on the formal agenda of the General Assembly.

- The Security Council should consider issuing a resolution requesting the regular public reporting of atrocity crimes.
- The United Nations should appoint a full-time special representative for the protection of IDPs.
- The secretary-general and emergency relief coordinator should bring forward recommendations for strengthening humanitarian access in conflict-affected areas for consideration by the Security Council.
- As part of its ongoing consideration of the protection of civilians in armed conflict, the Security Council should request the systematic monitoring and reporting of humanitarian access issues, including attacks on humanitarian workers and protected sites.
- The General Assembly should agree to fund the Mediation Support Unit and Special Political Missions in full through assessed contributions.
- The United Nations should continue to strengthen its capacity to generate civilian capabilities.
- The secretary-general and UNHCR should convene a high-level panel to examine the current crisis of displacement and recommend steps that can be taken to better protect refugees and displaced populations.

## For regional organizations

- Regional organizations should examine whether they have the capacity to support diplomatic and political initiatives to resolve crises involving the threat or commission of atrocity crimes. Where needed, steps should be taken to build these capacities and make them available in times of crisis.
- Regional organizations should consider appointing their own focal points or envoys with responsibility for supporting early and peaceful engagement in emerging crises.



- Regional organizations should facilitate the expansion of civilian capacities to help states and societies respond to crises.
- Regional organizations should foster appropriate regional mechanisms to facilitate the rapid delivery of humanitarian assistance when needed.

## For individual governments

- Governments should appoint a national R2P focal point and assign that role an operational function to provide early warning and advise on the steps that the national government could take to utilize diplomatic, humanitarian, and other peaceful means to protect populations from atrocity crimes.
- Members of the Global Network of R2P Focal Points should explore how that network might be utilized to strengthen the use of peaceful means to protect populations and coordinate first responses to new crises.
- Governments should ensure that their own institutions and societies are resilient and receptive when it comes to atrocity prevention. They could do this by following the secretary-general's recommendations of conducting a national assessment of risk and resilience and applying the United Nations' risk-assessment framework to their own national context.
- Governments should understand that their refugee and immigration policies are related to their responsibility to protect populations from atrocity crimes. They should make it easier for those fleeing atrocity crimes to seek asylum, contribute more to global resettlement to make it a meaningful program, and furnish greater assistance to front-line states.
- Governments that support R2P should consider increasing their contributions of military, police, and

civilian personnel as well as specialized equipment to peacekeeping operations.

- Governments should consider ways to make it easier for civilian personnel to be trained and made available for international missions.
- Governments should strive to increase spending on development assistance and humanitarian aid. In particular, it is important that urgent appeals to support responses to major crises involving atrocity crimes receive the resources they require.
- Governments should encourage and support the strengthening of nonstate capacities to protect populations from atrocity crimes, such as through advocacy, mediation and conflict resolution, unarmed peacekeeping, and private sector prevention.

## For civil society, the private sector, researchers, and individuals

- It is imperative to supplement the state-centric approach to R2P with perspectives informed by the individual responsibility to protect.
- The performance of public advocacy for atrocity prevention should be reviewed with a view to developing guidelines, training materials, and coordination mechanisms to facilitate better public advocacy by nonstate organizations.
- Nonstate organizations and individuals should redouble their efforts to strengthen public advocacy to ensure that it is conducted earlier and is less selective.
- Nonstate actors and individuals should explore ways to increase the resources available for humanitarian assistance

and the protection of displaced populations in situations characterized by atrocity crimes.

- The concept of unarmed civilian protection should be developed, and partnerships between nonstate actors established, to significantly strengthen global capacity to deploy this type of mission. Nonstate groups working on atrocity prevention and protection should think carefully about the practical steps that could be taken to improve protection. A conference or report could be a useful catalyst.
- Analytical tools need to be developed to ascertain whether states and international organizations are faithfully discharging their responsibility to use peaceful means to protect populations from atrocity crimes.
- A systematic approach to lessons-learning is needed. Further systematic research is needed on what combinations of protection measures are more (or less) effective in different situations and on the factors that impact on effectiveness.
- The global capacity of nonstate actors to provide mediation, conflict resolution, and other forms of support to the protection of populations needs to be better understood. Where there are gaps in capacity, actors should work together to redress them.
- More should be done to identify nonstate groups working to protect populations in regions affected by atrocity crimes and provide them with the support they need.

## Endnotes

- <sup>1</sup> Thanks to Jennifer Welsh, Edward C. Luck, Sara E. Davies, Rachel Gerber, and Jai-Ayla Sutherland for insightful comments on an earlier draft of this analysis. All errors of fact and interpretation are the author's. Thanks to Keith Porter for the impetus and inspiration behind this analysis.
- <sup>2</sup> Understood as genocide, war crimes, ethnic cleansing, and crimes against humanity.
- <sup>3</sup> For example, a recent book on the third pillar overlooks its noncoercive elements entirely, the introduction identifying economic sanctions, international tribunals, and the use of force as the key elements of its "Operationalization." Daniel Fiott and Joachim Koops, eds., *The Responsibility to Protect and the Third Pillar* (London: Palgrave 2015), p. 1.
- <sup>4</sup> *World Summit Outcome Document*, A/RES/60/1, October 24, 2005, para. 139.
- <sup>5</sup> See Ban Ki-moon, *Implementing the Responsibility to Protect: Report of the Secretary-General*, A/63/677, January 12, 2009, and Ban Ki-moon, *Responsibility to Protect: Timely and Decisive Response: Report of the Secretary-General*, A/66/874-S/2012/578, July 25, 2012.
- <sup>6</sup> On the low probability of intervention, see Alex J. Bellamy, "When States Go Bad: The Termination of State Perpetrated Mass Killing," *Journal of Peace Research*, Vol. 52, No. 4, 2015, and Jean-Marie Guehenno, *The Fog of Peace: How International Engagement Can Stop of the Conflicts of the 21st Century* (Washington, DC: Brookings Institution, 2015).
- <sup>7</sup> Ban, *Implementing*, para. 49.
- <sup>8</sup> For example, Veronica Bilkova argues that the "third pillar...concerns

the timely and decisive response by the international community to the manifest failure of the territorial state to protect its population." "Unilateral Non-Forcible Measures and International Law," in Julia Hoffmann and Andre NollKaempner, eds., *Responsibility to Protect: From Principle to Practice* (Amsterdam: University of Amsterdam Press/Pallas, 2012), p. 291.

- <sup>9</sup> This consistency with the UN Charter is what is meant by the international community acting "through the United Nations" rather than action being limited only to that done through UN institutions. Articles 33 (Chapter VI) and 52 (Chapter VII) refer specifically to measures that might be taken individually or collectively by member states outside UN institutions.
- <sup>10</sup> Alex Conte, "The Responsibility to Protect and Syria," in Stuart Casey-Maslen, ed., *The War Report: Armed Conflict in 2013* (Oxford: Oxford University Press, 2013), p. 439.
- <sup>11</sup> This view was expressed by the secretary-general in 2009 in Ban, *Implementing*, para. 49n9.
- <sup>12</sup> This wider approach was adopted by the secretary-general in Ban Ki-moon, *Implementing*. Also see Edward C. Luck and Dana Luck, "The Individual Responsibility to Protect," in Sheri Rosenberg, Tibi Galis, and Alex Zucker, eds., *Reconstructing Atrocity Prevention* (Cambridge: Cambridge University Press 2015).
- <sup>13</sup> A point made well by Jennifer Welsh, "Who Should Act? Collective Responsibility and the Responsibility to Protect," in W. Andy Knight and Frazer Egerton, eds., *The Routledge Handbook of the Responsibility to Protect* (London: Routledge, 2012).
- <sup>14</sup> Ban, *Implementing*, para. 11(c).
- <sup>15</sup> "Influence" implies a capacity to be effectual. States may exert influence politically or by utilizing other types of state capacity.
- <sup>16</sup> Ban, *Implementing*, para. 68.
- <sup>17</sup> See Andrew Gilmour, "The Future of Human Rights: A View From the United Nations," *Ethics and International Affairs*, Vol. 28, No. 2, 2014. For an external assessment of HRUF, see Gerrit Kurtz, *With Courage and Coherence: The Human Rights Up Front Initiative of the United Nations*, Global Public Policy Institute, Policy Paper, July 2015.
- <sup>18</sup> See the United Nations' summary of HRUF at <http://www.un.org/sg/rightsupfront/doc/RuFAP-summary-General-Assembly.shtml>.
- <sup>19</sup> Kurtz, "Courage and Coherence," p. 27.
- <sup>20</sup> United Nations, *Framework of Analysis for Atrocity Crimes: A Tool for Prevention*, July 2014.
- <sup>21</sup> Julie Flint and Alex de Waal, *Darfur: A New History of a Long War* (London: Zed Books, 2008), pp. 172–3.
- <sup>22</sup> See the special issue on the theme edited by Hugo Slim, *Global Responsibility to Protect*, Vol. 6, No. 2, 2014.



- <sup>23</sup> Luck and Luck, "Individual Responsibility to Protect," draft, p. 1.
- <sup>24</sup> Ibid.
- <sup>25</sup> For a comparative review of the two mechanisms, see Edward R. McMahon, Kojo Busia, and Marta Ascherio, "Comparing Peer Reviews: The Universal Periodic Review of the UN Human Rights Council and the African Peer Review Mechanism," *African and Asian Studies*, Vol. 12, No. 3, 2013, pp. 266–289.
- <sup>26</sup> On the connections between R2P and the UN Security Council's "Women, Peace and Security Agenda," see Sara E. Davies, Zim Nwokora, Eli Stamnes, and Sarah Teitt, eds., *Responsibility to Protect and Women, Peace and Security: Aligning the Protection Agendas* (The Hague: Brill, 2013).
- <sup>27</sup> Rebecca Hamilton, *Fighting for Darfur: Public Action and the Struggle to Stop Genocide* (Oxford: St. Martin's Press, 2011).
- <sup>28</sup> Ban, *Responsibility to Protect: Timely and Decisive Response*, para. 22.
- <sup>29</sup> Ibid., para. 34.
- <sup>30</sup> Amelia Bookstein, "Beyond the Headlines: An Agenda for Action to Protect Civilians in Neglected Conflicts," *Humanitarian Exchange Magazine*, Issue 25, December 2003, p. 6.
- <sup>31</sup> Ibid., pp. 16–17.
- <sup>32</sup> For an excellent introduction to humanitarian diplomacy, see Larry Minear and Hazel Smith, eds., *Humanitarian Diplomacy: The Practitioners and Their Craft* (Tokyo: UN University Press, 2007).
- <sup>33</sup> Ban, *Responsibility to Protect: Timely and Decisive Response*, para. 44.
- <sup>34</sup> On which see John Holmes, "Responsibility to Protect: A Humanitarian Overview," *Global Responsibility to Protect*, Vol. 6, No. 2, 2014, pp. 126–145, and Edmund Cairns, "R2P and Humanitarian Action," *Global Responsibility to Protect*, Vol. 6, No. 2, pp. 146–161.
- <sup>35</sup> See the IRIN News dataset of attacks on aid workers at <http://newirin.irinnews.org/aid-worker-attacks-map-methodology/>.
- <sup>36</sup> *Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka*, November 2012, para. 80.
- <sup>37</sup> A key claim advanced in Benjamin Valentino, *Mass Killing and Genocide in the 20th Century* (Ithaca: Cornell University Press, 2005).
- <sup>38</sup> Francis M. Deng, "Divided Nations: The Paradox of National Protection," *The Annals of the American Academy of Political and Social Science*, Vol. 603, 2006, p. 218.
- <sup>39</sup> Roberta Cohen and Francis M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington, DC: Brookings Institution, 1998), p. 227.
- <sup>40</sup> See Mala Janmyr, *Protecting Civilians in Refugee Camps: Unable and Unwilling States, UNHCR and International Responsibility* (The Hague: Martinus Nijhoff, 2013), p. 122.

- <sup>41</sup> Documented throughout Janie L. Leatherman, *Sexual Violence and Armed Conflict* (Oxford: Polity, 2011).
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- <sup>44</sup> Brian Barbour and Brian Gorlick, "Embracing the Responsibility to Protect: A Repertoire of Measures Including Asylum for Potential Victims," *International Journal of Refugee Law*, Vol. 20, No. 4, 2008, p. 533.
- <sup>45</sup> See Sara E. Davies and Luke Glanville, eds., *Protecting the Displaced: Deepening the Responsibility to Protect* (The Hague: Martinus Nijhoff, 2010).
- <sup>46</sup> Jennifer Welsh, "Fortress Europe and the Responsibility to Protect: Framing the Issue," European Union Institute Forum, November 17–18, 2014, p. 3.
- <sup>47</sup> Barbour and Gorlick, "Embracing the Responsibility to Protect," p. 558.
- <sup>48</sup> Ibid.
- <sup>49</sup> Ibid., p. 565.
- <sup>50</sup> United Nations, *Guiding Principles on Internal Displacement*, June 2001.
- <sup>51</sup> The best regional example is the AU Convention for the Protection and Assistance of IDPs in Africa, 2009.
- <sup>52</sup> High-Level Independent Panel on UN Peace Operations, *Uniting Our Strengths for Peace: Politics, Partnership and People*, 2015, p. 23.
- <sup>53</sup> Guehenno, *Fog of Peace*.
- <sup>54</sup> Ban, *Implementing*, para. 41.
- <sup>55</sup> Office of Internal Oversight Services, *Evaluation of the Implementation and Results of Protection of Civilians Mandates in United Nations Peacekeeping Operations*, A/68/787, March 7, 2014, para. 68.
- <sup>56</sup> Lisa Hultman, "UN Peace Operations and Protection of Civilians: Cheap Talk or Norm Implementation?," *Journal of Peace Research*, Vol. 50, No. 1, 2013, pp. 59–73.
- <sup>57</sup> Charles Hunt and Alex J. Bellamy, "Mainstreaming the Responsibility to Protect in Peace Operations," *Civil Wars*, Vol. 3, No. 1, 2011, pp. 1–20.
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- <sup>61</sup> Michele Nichols, "UN General Assembly Approves \$5.5 Billion Budget for 2014/2015," Reuters, December 27, 2013, [www.reuters.com/article/2013/12/27/us-un-budget-idUSBRE9BQ0JX20131227](http://www.reuters.com/article/2013/12/27/us-un-budget-idUSBRE9BQ0JX20131227).
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- <sup>64</sup> Edward C. Luck, *The Responsibility to Protect at Ten: The Challenges Ahead*, Policy Analysis Brief, Stanley Foundation, June 2015, p. 6.
- <sup>65</sup> Ibid., p. 7.
- <sup>66</sup> Imposing costs is one of the key realms where "international actors should be effective." Scott Straus, *Making and Unmaking Nations: War, Leadership and Genocide in Modern Africa* (Ithaca: Cornell University Press, 2015), p. 328.
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When genocide and atrocity crimes appear imminent, generating an early response is crucial to saving lives and fulfilling the responsibility to protect.

Early responses tend to be more effective and less costly than later responses because opportunities for creative intercession decline when violence escalates.

To respond early to crises, actors require a range of different tools and a degree of flexibility.

The first component of R2P's third pillar, the use of "diplomatic, humanitarian and other peaceful means" to protect populations, provides both.



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