



Submission to the Committee on Human Rights and Humanitarian Aid of the German Bundestag

Hearing on “The Responsibility to Protect”

11 February 2009

What role could Germany play in further developing the responsibility to protect? What measures would Germany have to take in order to play a role in implementing the concept?

1. What is the responsibility to protect? Why is it important?

Rwanda’s genocide, massacres in Srebrenica, Cambodia’s killing fields, ethnic cleansing in Kosovo, the Holocaust: these experiences have seared humanity. So, in September 2005 at the UN World Summit, heads of state made a solemn promise that they would seek to prevent such atrocities. They stated that one of the fundamental obligations of governments is to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. They committed to support each other to deliver such protection, and, where a government is manifestly failing to fulfill its obligations, to take all necessary measures to protect people at risk of mass atrocity crimes.

The norm of the responsibility to protect populations from genocide, ethnic cleansing, war crimes and crimes against humanity (R2P) is based on existing commitments under international law.

At its core is a commitment to the *prevention* of mass atrocities, not intervention.

Paragraphs 138 and 139 of the World Summit Outcome document are explicit: that fulfilling R2P requires a range of measures. Those that characterize R2P as synonymous with military intervention misread the text and misinterpret the motive of those that pressed for the adoption of this norm.

Yet it is also clear: alongside the expression of governments’ intention to prevent mass atrocity crimes is the recognition that in the case of manifest failure by a national government to protect its population, sovereignty is not a shield, inaction is not an option.

2. The immediate challenge: preparing for a debate in the UN General Assembly

The Committee’s hearing occurs at a timely moment. Three years on from the 2005 UN World Summit, the UN is now considering a report of the UN Secretary-General Ban Ki-moon on implementing R2P.

It now appears inevitable that the report of the Secretary-General will trigger a debate within the UN General Assembly (GA). The Global Centre for the Responsibility to Protect (GCR2P) believes that such a debate should be seized as a positive opportunity: for UN member states to reaffirm their enduring commitment to see Rwanda never again; to share ideas and plans on how to implement R2P, and to identify the priority capacities that must be built if R2P is to move from rhetoric to reality.

That said, a GA debate brings risks.

R2P was adopted by consensus by the entire membership of the GA in 2005, but underpinning that is the strong and outspoken support of roughly 70 or so member states, coming from every continent of the globe. In addition to this, 5 years prior to the summit, all states of Africa included in the 4th article of the Constitutive Act of the African Union their commitment of 'non-indifference' to mass atrocity crimes, requiring the AU to act where states are failing to protect their people. This is an important reminder for those that claim that R2P is a northern concept.

However, among the UN membership are several outspoken opponents that have sought to challenge the 2005 consensus. Although they number only a dozen or so member states, these few are articulate, coordinate well with each other and some hold influential positions e.g. chair of the Non-Aligned Movement or the Group of 77. The dynamics of such groups in the UN are such that a few member states can be very influential if the large majority of the members do not speak up to counter views of the outspoken few, even when they do not reflect the position of members of the wider group.

A debate in the General Assembly offers a forum for these dissenters to make the case that R2P is not widely accepted, or that its application should be limited to building state capacity for long-term prevention. Any such outcome would undermine the 2005 consensus and diminish the political leverage of R2P in future situations where action is sought. There is also a risk that attempts will be made to press the GA to pass a resolution that includes language that modifies and weakens the language of paragraphs 138 and 139 of the World Summit Outcome document.

For these reasons, the Global Centre for the Responsibility to Protect believes that governments that are determined to make mass atrocities a thing of the past must now take action to prevent any roll back on the World Summit agreement and prepare for a constructive outcome to a debate in the General Assembly.

Thus an immediate priority for Germany is to demonstrate that it is an active and outspoken supporter of the prevention of mass atrocity crimes, to be part of efforts to rally support for R2P to ensure that the responsibility to protect agreement is not watered down before member states have a real chance to consolidate the norm in practice.

3. How a GA debate can be most constructive

GCR2P believes there are a number of aspects to the question of how a GA debate can be most constructive, including the content, outcome and timing of the debate.

On the question of **content**, the GCR2P believes the most constructive debate is one that is characterized by outspoken support for the R2P norm from governments from the north, south, east and west; where supporters share experiences and ideas on priority actions and capacities that are necessary to fulfill R2P. In particular, governments should spell out what they will do to fulfill their national obligation to protect their own populations, as well as practical proposals they have to fulfill their intention in paragraph 139 to build the capacity of others and, where national governments fail in

their obligations, the priority capacities required for a timely and decisive response. Germany will have a lot to contribute to a debate.

GCR2P does not believe that a resolution is a necessary outcome for the debate. However, if a consensus emerges that a resolution is necessary, GCR2P believes the most constructive outcome is a resolution solely focused on how the GA will review implementation of the 2005 World Summit agreement. Germany can be active in pushing for such an outcome, resisting efforts to renegotiate the 2005 agreement.

Rallying UN member states to articulate their support for R2P will require a coordinated process of outreach and advocacy by governments and NGOs in capitals and in New York. For this reason, we hope that a debate is not scheduled too soon - before the essential preparatory dialogue and engagement takes place. The German government and its diplomats have an urgent task to offer substantive plans and commitments to fulfill R2P and to rally others to speak up in the same way.

4. **From rhetoric to reality: implementing R2P**

The Global Centre believes that implementing R2P will require a number of steps. This includes:

(i) Political leadership

Fulfilling the responsibility to protect will require that governments set R2P and mass atrocity prevention as a national priority. This should include committing to global diplomacy to promote R2P. Parliamentarians will have a role to push the government to demonstrate such national and global leadership. Given its history, Germany should be seen as a champion of R2P.

(ii) Establishing a national action plan for the implementation of R2P

This requires assigning clear responsibility for leading such planning. Germany's experience with its action plan on civilian conflict prevention, resolution and post-conflict rebuilding, which recognizes the inter-ministerial, inter-departmental and cross-sectoral nature of the task, will be instructive, both for German and other governments' efforts to implement R2P.

Such a national plan should include:

- **Preparedness for early intervention/prevention.**

This requires **early warning systems** in place which are receptive both to information from the ground and other warning systems, such as UN mechanisms and sub-regional mechanisms; and connected to decision-makers to trigger action.

It also requires commitment to **bilateral prevention efforts**, including making funds available for crisis-prevention and response initiatives such as good offices, mediation, as well as ensuring that mass atrocity prevention is integrated into bilateral development assistance - not as conditionality but as a

conscious focus. In his report, UN Secretary-General Ban Ki-moon emphasizes support for enhancing the rule of law and addressing impunity, reforming security forces; and strengthening civil society in high-risk states by supporting economic and legal empowerment, citizen groups, and a free and responsible media.

Active multilateral preventive efforts include action at the **Human Rights Council**, where Germany should work with other key supporters of R2P to ensure that the Council is utilized not only for the peer review mechanism but also to address grave violations of human rights through the special procedures and special sessions, and to push back against efforts to eliminate country-specific resolutions.

And **within the EU**, preventive efforts could include consideration of how R2P elements might be factored into standards for EU Membership, greater integration into European Security Strategy, the adoption of general guidelines within the EU's human rights policy, as occurred with children in armed conflict,¹ as well as seeking more coordination among EU bodies on R2P initiatives.

- **Preparedness for timely and decisive response**

On the crucial question of readiness to mount an effective response to halt escalation to mass atrocity crimes where states are at risk of manifest failure, German planning should include **pressing the UN Security Council** to be more receptive to information of impending mass atrocities, to be more ready to use their tools for early response – such as Article 34 investigations - and take appropriate action before situations reach catastrophic levels.²

Germany should also continue its efforts to build and train civilian and police capacities, ensuring that they are trained for the specific work of protecting civilians from mass atrocities.

Another dimension is preparedness to employ targeted sanctions including targeted bans against alleged perpetrators of mass atrocity crimes, and sanctioning financial transactions and arms flows to those manifestly failing to protect populations from genocide, ethnic cleansing, war crimes and crimes against humanity.

Continued response capacity-building **support for regional and sub-regional organizations**, such as the African Union is also crucial. Germany should review existing commitments of support for the AU and other African regional institutions to establish how these can be best enhanced to contribute to efforts to halt mass atrocity crimes.

¹ <http://www.consilium.europa.eu/uedocs/cmsUpload/10019.en08.pdf>

² See presentation before the UN Security Council of the Global Centre for the Responsibility to Protect <http://globalr2p.org/pdf/related/WkgGrpConfctPrevAfr.pdf>

- **Countering impunity**

On the crucial aspect of **countering impunity for mass atrocity crimes**, Germany should press non-signatories to the Rome Statute to become parties to the Court and assist the ICC and other international tribunals in locating and apprehending those individuals accused of committing or inciting R2P crimes and violations.

- **Strengthening the R2P norm**

And in **further strengthening the norm**, Germany should be a powerful advocate of action in specific instances. This is core to Germany's commitment to 'Never Again.'

Germany should also press the UN Security Council agree principles on the use of force, to prevent misuse of the R2P norm, and press the permanent five members of the United Nations Security Council to agree on non-use of the veto in cases concerning genocide or mass atrocities.

5. Conclusion

In all of this, parliamentarians clearly have a crucial role to play, to press for such prioritization from the government, to call for the establishment of regular reporting so that they are able to provide oversight of national strategy, policy, planning, and response on upholding R2P and preventing mass atrocities.

Parliamentarians can also play a crucial role in perhaps the most important aspect of fulfilling R2P: being a force that contributes to political will. Here Germany, which eschews militarism, but is deeply shaped by its own sense of "never again," has a special role. It should be a determined global champion of the responsibility to protect, with insightful lessons to share with others, and as a force pushing for robust and timely action in the face of unspeakable acts.