

Optional Protocol to the Genocide Convention

Why is a Protocol to the Genocide Convention needed?

- The UN Security Council has repeatedly failed to take timely action to prevent genocide.
- To clarify ambiguity on the obligation to prevent genocide;
- To create a clear obligation to suppress genocide and protect civilians from it;
- To avoid paralysing legal debates prior to action;
- To insure lasting cooperation on risk assessment involving all signatories;
- To develop options for the suppression of genocide valid under the UN Charter.

How does the Protocol seek to clarify the duty to prevent genocide?

- By taking advantage of the multiplication of national, regional and multilateral prevention capacities, and insuring that all relevant actors collaborate together to share information;
- By clarifying roles that the UN General Assembly and Regional Organizations have in prevention.

How does the Protocol deal with the obligation to suppress genocide?

- The first step is an obligation to decide whether reported acts “could lead to genocide or constitute genocide”. The language used does not require the same burden of proof of a decision on whether acts already constitute genocide. The inclusion of early warning signs is to avoid the legal debates over genocide, and stress the necessity of active prevention.

What State obligations are triggered by a decision to prevent or stop genocide?

- Recommendations by the General Assembly or relevant Regional Organizations to prevent or stop genocide are legally binding on signatories if the Security Council fails to take effective action;
- To support UN budgetary contributions to Regional interventions to prevent or stop genocide;
- To support action by Regional Organizations to prevent or stop genocide;
- To review peacekeeping forces to insure they are capable of protecting civilians;
- To reject Mandates that exclude the use of force to protect civilians.

Does the Protocol mandate interventions using force to protect civilians?

- No, the decision remains political. See UN R2P as a guide for when to use force.

Does the Protocol contradict the UN Charter?

- The Protocol avoids creating any obligations that would contradict those under the UN Charter;
- The Security Council retains its primacy;
- General Assembly and Regional Organization recommendations on genocide are binding on signatories when the Security Council fails to act. This does not contradict any obligations in the UN Charter unless the Security Council passes a resolution pre-empting and contradicting those recommendations;
- Regional Organizations still need to be authorized to act by their Member States. They already have authority to act under UN Charter Chapter VIII. They could also be pre-authorized by the UN Security Council for enforcement action;
- All decisions in the UN and regional organizations are in harmony with UN law since 1950;
- All measures taken need to respect international law and the UN Charter.

Does the Protocol also mention the other crimes mentioned in the R2P: crimes against humanity, war crimes and ethnic cleansing?

- R2P was endorsed by all UNSC members in UNSC Resolution 1674;
- Yes, States have the right to grant Regional Organizations authority to intervene to prevent crimes against humanity, war crimes, and ethnic cleansing within their territories;
- Yes, crimes against humanity, war crimes, and ethnic cleansing are early warning signs of genocide and preventing them implements the consensus of the 2005 World Summit on R2P.

When should the UN Security Council give pre-authorization to act to Regional Organizations?

- Pre-authorization could remain narrow, and subject to review by the UNSC;
- Regional Organizations would be authorized when they can resolve regional problems.