

Statement by Jennifer Welsh
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on the Responsibility to Protect
Thematic Panel Convened by the President of the General Assembly:
“From Commitment to Implementation: Ten Years of the
Responsibility to Protect”
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Ambassadors, Excellencies, fellow panelists, and ladies and gentleman

As the Special Adviser to the Secretary General, who has shown steadfast commitment to the development and implementation of the responsibility to protect, it is a pleasure and honour to address this event convened by the President of the General Assembly. My fellow panelists have had long and distinguished careers dedicated to international public service, and to addressing situations involving the gravest violations of human rights. Their presentations reflect that wisdom and normative commitment.

Paragraphs 138 and 139 of the 2005 Summit Outcome Document, which affirm a political commitment to protect populations from genocide, war crimes, crimes against humanity, and ethnic cleansing¹, were not designed to be merely diplomatic words or an expression of the lowest common denominator among Member States of the UN. With the failures of collective action represented by both Rwanda and Srebrenica in the backdrop, the heads of State and government aspired to something more - to close the gap between the existing legal responsibilities of states, which are clearly evident, in black in white, in international humanitarian and human rights law, and the reality of populations threatened with large scale and systematic violence.

¹ I use the term “atrocities crimes” exclusively to refer to the four acts specified in paragraph 138 of the 2005 World Summit Outcome. Genocide, war crimes and crimes against humanity are defined in international criminal law; ethnic cleansing, while not established as a distinct crime, includes acts that will regularly amount to one of the crimes, in particular genocide and crimes against humanity.

Indeed, that is what normative commitments are designed to do. Aspiration is at their very core. Yet experience also demonstrates that the normative ideas that have the greatest impact are those that do not stray too far from what member states, collectively, believe is legitimate. And so, with the more controversial case of the Kosovo War (which did not have Security Council authorization) also in the back of their minds, the diplomats and political leaders present at the World Summit hammered out a version of the responsibility to protect that would honour the letter and spirit of the UN Charter and serve as an ally, rather than adversary, of sovereignty.

A decade on, any evaluation of the responsibility to protect needs to assess its progress not just in terms of how close we are to meeting the aspiration – a world where atrocity crimes are prevented or minimized – but also in terms of how it has changed expectations. Moreover, that assessment should take place in relation to other related normative efforts. The principle of RtoP is still in the relatively early stages of what is a long and uneven journey. Some commentators seem to hold the responsibility to protect to an impossibly demanding standard in terms of both what it should have achieved, and by when.

When reflecting today, it is difficult not to begin with the obvious fact that atrocity crimes remain a feature of the 21st century landscape. In fact, in the past two years alone, acts that may constitute genocide, war crimes, ethnic cleansing and crimes against humanity occurred in the Central African Republic, the Democratic Republic of the Congo, the Democratic Republic of North Korea, Iraq, Libya, Nigeria, South Sudan, Sudan, Syria, and Yemen. The majority of these acts have been perpetrated by governments or by factions supported by governments. But the overall sense of crisis now confronted by the international community is heightened by the emergence of violent extremists who brazenly flout international humanitarian law and glorify their crimes. Taken together, these situations have created protection challenges of a monumental scale and produced widespread humanitarian crises, including the highest number of displaced persons since the end of the Second World War.

When we turn to the specific armed conflicts on our landscape, there is an alarming decline in respect for international humanitarian and human rights law on the part of states that have ratified relevant legal instruments, often in situations where national authorities argue that exceptional security threats or political crises justify abrogation from their legal obligations. The scale of civilian harm today is not the tragic but inevitable consequence of what happens in the ‘fog of war’, but rather the result of conscious choices made by warring sides.

It would be tempting to view these trends as proof of RtoP’s failure. But to do so is to blame the principle rather than those charged with upholding it. The responsibility to protect cannot, on its own, compel states to act – no political principle can do that. Nor can it dictate what specific actions the international community should take in any particular case; States and other actors must choose among an array of mechanisms. What it can do, however, is create political pressure around situations involving atrocity crimes and raise the political costs of inaction. It can also clarify existing legal obligations and provide a practical policy framework for states to implement effective measures for prevention and response.

On these measures, as my fellow panelists have outlined, the responsibility to protect has had significant impact. And the dark landscape I painted a few moments ago suggests that its relevance is as strong as it was a decade ago. The principle has helped to create a category of acts that are, by their very nature, issues of *international concern* by establishing a “floor of decency” beyond which states *themselves agree* that populations should not fall. This has changed and elevated expectations about what should occur when populations fall below that threshold, and galvanized an array of efforts – including research and policy development – to prevent the descent into systematic and widespread violence. This is worth celebrating today. We simply know more than we did a decade ago about why some societies descend into atrocity crime situations, while others do not.

This progress is often obscured by a singular focus on the issue of the use of force. To evaluate RtoP's success in terms of whether we see a consistent pattern of military intervention is to demand too little and too much. Too little, because there are many other tools and mechanisms that can be brought to bear to address situations featuring atrocity crimes. Assessing how the international community has responded to date, and how it could respond in future, requires analysis of these non-military means and the conditions under which they are effective. And too little, because - like all issue areas that touch on the use of coercive means - implementation of RtoP is profoundly shaped by the dynamics within, and unique structure of, the United Nations Security Council.

The intense debates we have seen in this chamber during successive interactive dialogues have brought into sharp relief why responsibility to protect was, and will remain, a demanding principle. It challenges states to make concrete decisions domestically – to enhance their ability to engage in risk assessments, to invest in the inhibitors to atrocity crimes, and to improve their ability to assist other states under stress. These imply real resources and real policy attention. But that is what is implied by the responsibility to protect. The principle also challenges us, at the international level, to honestly assess the barriers to collective action – which are not unique to the responsibility to protect but which are laid bare in cases where atrocity crimes have been committed or imminent. But we must do more than identify the reasons why collective action is not always mobilized. We must work tirelessly to address or minimize those factors – whether through changes to working methods, improvements in our diplomatic tool-box, more focused and sustained political leadership, or financial support for the mechanisms that have worked and can work. This too is our shared responsibility.

Ladies and gentlemen, we should not shy away from a principle because it is demanding. Instead, we should address past concerns that have been raised about its implementation, or lack of implementation, and creatively explore how we can do better. That is what many of those represented in this room have tried to do, and it is a task which I hope the General Assembly will continue to energetically pursue,

given its role as the body charged with developing the responsibility to protect.

As Secretary-General Ban ki-Moon has noted, RtoP “offers an alternative to indifference and fatalism” and constitutes a “milestone in transforming international concern about people facing mortal danger into meaningful response.”² It also does so in a way that respects and seeks to strengthen state sovereignty. Indeed, the principle is premised on the conviction that Member States enhance their sovereignty when they protect their populations from genocide, crimes against humanity, war crimes, and ethnic cleansing.

The challenges of atrocity crimes may be daunting and the human cost staggering, but we cannot lapse in thinking that the means to prevent or halt them are beyond our reach. The past decade of RtoP’s development has shown us that this is not the case. The next decade must build on these concrete advances, to deliver more effective protection for all populations.

Thank you.

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² Ban ki-Moon, Remarks to General Assembly Informal Interactive Dialogue on “A vital and enduring commitment: Implementing the responsibility to protect,” 8 September 2015.