## A Vital and Enduring Commitment: Implementing the Responsibility to Protect

### I.        Introduction

In August 2015, United Nations (UN) Secretary-General Ban Ki-moon released his seventh report on the Responsibility to Protect (RtoP, R2P), "*A vital and enduring commitment: implementing the responsibility to protect*". The report reiterated the commitment that States made a decade ago, i.e. to protect populations from genocide, war crimes, crimes against humanity and ethnic cleansing as articulated in paragraphs 138 and 139 of the 2005 World Summit Outcome Document. The report assessed the progression of the RtoP norm over the past ten years, identified core challenges and opportunities for implementation, and detailed six core priorities for the international community to undertake to more effectively fulfill RtoP.

Over the past decade, there have been situations in which the international community has responded proactively to the risk of atrocities and acted to prevent their recurrence, as well as cases where the international community ultimately failed to adequately protect populations. Through the discussion of the cases of Libya and Syria, the Secretary-General recognized the practical challenges that remain for RtoP's effective implementation. The international action taken in Libya highlights the need to better understand when and how force should be used as well as the necessity of long-term support.  In addition, the inability to effectively prevent and respond to the crisis in Syria has led some to criticize the norm's utility in catalyzing action, which has further contributed to misconceptions of RtoP as a coercive doctrine. Despite such issues, the Secretary-General stated that this "*should not shake our resolve to live up to the responsibilities*" agreed to in 2005. He noted that a cross-regional consensus has developed on the core framework of RtoP, one which encompasses the need to a) prioritize prevention; b) utilize all available diplomatic, political, and humanitarian tools; c) consider military force as a last resort and to be used only in accordance with the UN Charter.

### II.        The Implementation Imperative

The Secretary-General recognized that RtoP "*is at a turning point*" and brought attention to the need for a shift in focus away from the conceptual and towards the practical implementation of the norm.  The effects of atrocity crimes are deep and long-lasting and can impede good governance, economic development, and peace and reconciliation. Furthermore, the commission of such crimes and violations can represent a serious threat to international peace and security. Given the limited resources available to respond to all of the current crises, every actor must dedicate more energy into effective prevention and the cessation of mass atrocities.

### III.        Operationalizing the Three Pillars

Within the Secretary-General's overview of the ongoing efforts to operationalize each of the three pillars of RtoP, he highlighted a new resource titled the **Compendium of Practice**. This document, developed by the UN Special Adviser on RtoP, outlines best practices for the norm's implementation from submissions made by a wide range of actors.

#### Pillar I: The Protection Responsibilities of the State

Some Member States have become parties to and developed national actions to uphold the legal instruments relevant to genocide, war crimes, ethnic cleansing, and crimes against humanity, which the Secretary-General acknowledged as an encouraging step to upholding Pillar I.  However, the Secretary-General raised concern that there remain many Member States who are not party to these legal instruments.

Another concern is that while many Member States acknowledge their primary protection obligations, actions to build resilience have not been prioritized. Member States should ensure that their existing programs explicitly address atrocity

crime risks. Additionally, States should strive to implement policies and initiatives that build resilience by engaging in regional frameworks; strengthening and mobilizing early response mechanisms; fostering inter-communal dialogue; and valuing the role of women and local leaders. The Secretary-General also pointed  to the alarming withdrawal from the protection of human rights in some national contexts that may be experiencing exceptional challenges, such as terrorist threats, but he reiterated that, "*the responsibility to protect encompasses all populations in all circumstances and at all times.*"

An additional sign of progress is seen in almost a quarter of UN Member States now having **national focal points**, marking an increase in awareness and coordination on atrocities prevention and response within national policy. The Secretary-General noted the need for networks to become global in membership, and called on governments to empower focal points further with resources and institutional authority, in order to develop sustainable infrastructure for atrocities prevention and ensure long-lasting peace and security.

## Pillar II: International Assistance and Capacity-Building

The Secretary-General brought attention to the fact that the international community systematically under-invests in preventative measures, even though early engagement is more likely to be successful in encouraging States to uphold RtoP. The report called for an atrocity crime perspective to be integrated into conflict prevention, development, peacekeeping, and peacebuilding with four main shifts in focus.  **First**, actors should take into account the variety of contexts in which atrocity crimes occur. **Second**, risk analyses must focus on the threats facing particular populations as well as the opportunities, means, and motivations behind potential perpetrators. **Third,** support needs to be able to be adjusted on a case by case basis and coordinated so as to not exacerbate existing tensions. **Fourth,** ongoing crises necessitate continuous monitoring in order to observe any changes in conflict dynamics that may act as a catalyst for the commission of atrocity crimes.

The Secretary-General then outlined several different ways that a range of actors, such as individual Member States, the UN Security Council, the Peacebuilding Commission, and international human rights bodies, can enhance their capacity to fulfill Pillar II.  Such methods include **encouragement** through dialogue and preventive diplomacy; **capacity-building** aimed at creating "inhibitors" to mitigate the risk of atrocities; and **protection assistance** via strategic assessments, the use of the *Framework of Analysis on Atrocity Crimes* in peacekeeping, as well as cooperation to restrict access to small arms and light weapons. For more detail on these techniques, see the Secretary-General's 2014 report "*Fulfilling our Collective Responsibility*" and the ICRtoP's report summary.

## Pillar III: Timely and Decisive Response

While prevention of atrocity crimes is preferred, timely and decisive response to protect populations when a state is unwilling or unable remains essential for the full success of the norm. However, the lack of political will and cohesion within the international community to take action impedes the use of Pillar III, as do misperceptions that Pillar III action consists solely of the use of force. The Secretary-General acknowledged that non-military tools have contributed substantially in responding to the commission of atrocity crimes and stated clearly that "*the choice is not between inaction and the use of force.* " In addition, he noted that the use of force for protection may not always be a viable tool, as it often causes more harm than good.

The Secretary-General recommended the following five prerequisites to enable an early and flexible approach to implementing the norm's third pillar. **First**, the choice of tools must be well informed by timely and accurate knowledge of circumstances on the ground and the potential consequences of different measures so as to not cause further harm. **Second**, governments and other actors need to better understand which tools are most likely to be effective in varying conditions. **Third**, tools must be comprehensively implemented utilizing a range of measures, with full understanding of how such measures affect one another, and employed through the use of international, regional, and bilateral actors. **Fourth**, Security Council mandates for the use of military means must be clear, calibrated, and proportionate, ensuring responsible protection. The Council should also consider support for post-crisis peacebuilding as early as possible. **Fifth**, the international community must speak with one voice and as such, the Council should not continue to act in an inconsistent manner in situations facing atrocity crimes, which negatively affects the standing of RtoP.

ICRtoP

## IV.    New Challenges in Protection:

The Secretary-General discussed how contemporary conflict dynamics lead to two main challenges to the effective implementation of the responsibility to protect: responding to non-State armed groups that engage in atrocity crimes and adjusting to the impact of new technologies.

Non-State armed groups:   Non-State armed groups have embraced the use of the four crimes and violations in an unprecedented, brazen manner to strategically advance their objectives. As such, the international community must modify the way in which it prevents and responds to the commission of atrocities in the following four ways. **First**, early warning mechanisms need to reflect the various tactics of non-State armed groups and the conditions under which they are likely to commit atrocities. **Second**, there is opportunity for enhanced structural cooperation between counter-terrorism measures and atrocity prevention, given that violent extremism and terrorism are occurring in contexts at risk. **Third**, coercive measures should be implemented alongside comprehensive political strategies. Non-coercive pillar III tools tend to be less effective when applied to non-State armed groups due to their nature of not seeking international legitimacy. However, the temptation to resort to solely the use of force to combat these groups must be balanced with the urgency of each situation as well as the need for non-coercive tools that enable post-conflict peacebuilding to take place. **Fourth**, policymakers need to address the issues that arise when bringing the responsibility to protect closer to the counter-terrorism related agendas, as each hold distinct objectives and legal frameworks. Actors will need to ensure that measures taken to address non-State perpetrators are consistent with international human rights and humanitarian law.

New technologies: Widespread access to information and communication technologies is creating new forms of political action, which creates both challenges and opportunities for the protection of populations. New technologies allow for violent extremist ideology to spread far beyond what was once limited by geography and can facilitate the coordination of atrocity crimes. On the other hand, new technologies also create novel opportunities for prevention that enable actors to identify and respond to emerging risks at an earlier stage. It will be important to maximize the potential of new technologies to inform prevention strategies, while upholding the freedom of expression required for inclusive and open societies.

## V.    Priorities for the Next Decade:

The Secretary-General outlined the following six key priorities for implementing RtoP through swift, early, determined, and coordinated action at all levels.

1.    Demonstrating political commitment: The protection of populations must be elevated above political and strategic interests and this must be reflected through the concrete adaptation of existing tools, dedicated policy initiatives, reallocation of resources, and even institutional change. Member States should further implement mechanisms that establish atrocity crime response and prevention as a national priority. In order for deeper and consistent consideration of the principle, the Secretary-General called for the placement of RtoP on the formal agenda of the General Assembly.

2.    Investing in atrocity crime prevention: Three enduring challenges remain for atrocity prevention, which require additional investment at all levels to overcome. The first challenge is that early warning mechanisms remain disconnected from early action. Actors must work to identify atrocity crime risks, communicate policy options effectively, and ensure that adequate mechanisms and resources exist to act immediately. The second challenge is that prevention persists as the exception rather than the rule. The discussion of situations of concern must become more regular and actors must overcome the tendency to see RtoP as separate from other related activities and sectors. Third, there is no present analysis of which atrocity prevention tools work best and in what sequence; however, the Special Advisors on the Prevention of Genocide and RtoP are set to complete this by the end of 2016. Member States are also encouraged to engage in their own analysis.

3.    Ensuring more timely and decisive response: The first step to timely and decisive response is to recognize the range of tools available under Pillar III and then to make them more effective by understanding how they can work together. Given the Security Council's pertinent role in the maintenance of peace and security, the Secretary-General urged Permanent Members to, *"exercise restraint in the use of the veto in situations that include the commission of atrocity crimes and welcomes any effort designed to enhance the Security Council's ability to discharge its responsibilities."*  He also requested that if Permanent Members employ the veto they

ICRtoP

publicly explain why they chose to do so and offer an alternative solution. In addition, collective decision-making about the use of coercive tools for RtoP through the Security Council should be more inclusive and cooperative with a wider range of actors. Furthermore, mechanisms to report and review protection missions conducted by third parties should be developed to address concerns raised following the 2011 Libya intervention.

4. **Preventing the recurrence of atrocity crimes:** Little attention under RtoP has been paid to the recurrence of atrocity crimes thus far. The implementation of RtoP should be better integrated within peacebuilding efforts, as we have witnessed the negative consequences of such disconnect in situations like the Central African Republic. In addition, peacebuilding priorities need to reflect the particular challenges that societies recovering from atrocities face, especially regarding reconciliation and accountability. The role of the International Criminal Court is particularly important in holding perpetrators accountable and supporting national legal mechanisms. Additionally, RtoP must be recognized as an enduring obligation. The crisis in Libya stands as a stark example of the need for sustained international assistance after timely and decisive response to the commission of atrocity crimes.

5. **Enhancing regional action**: Regional organizations are often the most capable of providing effective assistance to States in their own region who struggle to protect populations and, in partnership with the UN and other international actors, have the opportunity to assume a greater role in atrocity prevention.

6. **Strengthening peer networks:** Focal point initiatives are key networks of RtoP expertise and should be supported by national strategies that include the following four elements: 1) an assessment of atrocity crime risks and sources of resilience, drawing on the *Framework of Analysis on Atrocity Crimes*; 2) identification of priorities for domestic and international action to inhibit atrocity crimes; 3) extensive training for relevant officials; 4) mobilization of resources and political support. In addition, focal points should cooperate more closely with civil society and the media, who can assist in advocating for accountability measures.

## VI.    Conclusion

The report concluded by reiterating that RtoP has made significant progress in a very short period of time; however, the primary objective for effective atrocity crime prevention has not been consistently reached. Therefore, the Secretary-General outlined the below actions for actors to take in order to meet the high expectations presented by RtoP.

**The Secretary-General** pledged that he will continue to use his offices to bring situations of imminent risk to the attention of the Security Council; engage in preventative diplomacy measures to encourage actors to fulfill their RtoP; enhance cooperation between the UN and regional organizations; implement the Human Rights Up Front Action Plan; and develop targeted recommendations to mainstream RtoP throughout the UN system. **The Security Council** is called on to act earlier; provide political backing for UN offices; employ the full range of measures available in a timely and decisive manner; and ensure that perpetrators are held accountable. **The Human Rights Council and the Peacebuilding Commission** are encouraged to systematically identify and address risk factors for atrocity crimes and focus on the specific support communities need after experiencing any of the four crimes and violations.

*Nationally*, **Member States** must make atrocity crime prevention and response a priority; undergo national risk assessments; and articulate a comprehensive strategy for domestic and foreign policy. In order to enhance national ability for atrocity prevention, focal point networks need to be expanded; responsive and flexible funding for preventative action must be connected to early warning mechanisms; and deliberations on best practices for atrocity crime prevention and response be regularly conducted. *Regionally*, **Member States** ought to share lessons learned and ensure that atrocity crime prevention and response is consistently embedded in discussions at regional institutions. *Internationally*, **Member States** need to provide military and civilian capabilities to UN peace operations that enable rapid and flexible response, ensure that post-conflict peacebuilding measures are tailored to atrocity crime risks, and work to expand efforts to prevent violent extremism and violence by non-State armed groups.

Secretary-General Ban Ki-moon concluded with an affirmation that the international community has the capacity to protect populations from the most heinous crimes, if only we act collectively and creatively. In his words, "*We must not shirk this responsibility, or act as though it is beyond our reach. Just as no State is immune to the risk of atrocity crimes, no State is absolved of its shared responsibility to protect.*"