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**INTERVENCIÓN DEL
REPRESENTANTE PERMANENTE DE CHILE ANTE LAS NACIONES UNIDAS**

EMBAJADOR SR. HERALDO MUÑOZ

**CON OCASIÓN DEL DEBATE DE LA ASAMBLEA GENERAL
SOBRE RESPONSABILIDAD DE PROTEGER**

ASAMBLEA GENERAL
NACIONES UNIDAS
NUEVA YORK, 23 DE JULIO DE 2009

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**STATEMENT BY THE
PERMANENT REPRESENTATIVE OF CHILE TO THE UNITED NATIONS**

AMBASSADOR HERALDO MUÑOZ

**ON OCCASION OF THE DEBATE OF THE GENERAL ASSEMBLY
ON RESPONSIBILITY TO PROTECT**

GENERAL ASSEMBLY
UNITED NATIONS
NEW YORK, 23 JULY OF 2009

Statement made by the Permanent Representative of Chile, Ambassador Heraldo Muñoz, on occasion of the debate of the General Assembly on Responsibility to Protect

Mr. President,

Thank you for convening this meeting. I will refer to some key aspects of the Secretary General's report titled "*Implementing the Responsibility to Protect*" which we welcome.

As a previous point, regarding the surprising references to ideological characters known for their animosity towards the UN in order to question the legal value of the Outcome Document of the 2005 World Summit, I, instead, prefer to cite distinguished jurist Ian Brownlie who in his volume Principles of Public International Law (4th edition) indicates that "*The Final Act or other statement of conclusions of a conference of states can be a form of multilateral treaty*" and, in any case, can be considered a source of international law. Moreover, the practice of political organs such as the GA, whose resolutions are not binding, have – according to Brownlie – "*considerable legal meaning*". It should be recalled that the Summit Outcome Document was adopted by the GA resolution A/RES/30/1.

Surely, this is not a legal-academic discussion, but a political debate, with moral connotations, about the practical and consensual implementation of the RtoP concept. My delegation expresses, in the context of the divergent positions existing within the members of NAM, our firm commitment to RtoP, whose solid foundations were established by the Heads of State and Government in paragraphs 138 and 139 of the 2005 Outcome Document and which cannot be selectively addressed or revised.

Mr. President

The Secretary General's report contributes significantly to turning RtoP into an *operational* concept.

The report fine-tunes the discussion on the concept in such a way that it can be summarized in one single phrase: *three pillars and four crimes*. The pillars are, first, the primacy of State responsibility; second, international assistance; and, third, a timely and decisive response. At the same time, the only four crimes comprised in RtoP are: genocide, war crimes, ethnic cleansing, and crimes against humanity, as well as the incitement of these crimes. In short, **not any humanitarian tragedy or human rights violations should activate the RtoP.**

The discussion of RtoP has been plagued by misperceptions and myths. There are those who visualize the concept limiting it to just one pillar (actually half of a pillar): that dealing with action through the UN Security Council under chapter VII.

But, above all, RtoP is a call addressed to States to deal with serious human rights issues "*from within*", and this apparently has not been fully understood. This is the first pillar of RtoP. **The Responsibility to Protect refers essentially to the State, which has the duty to protect its populations, whether nationals or not.**

The modern state assumed explicit responsibilities to protect its populations in the Geneva Conventions, dating back to 1864, in the UN Charter, and in the UN Universal Declaration of Human Rights, as well as in the various conventions dealing with the crime of genocide, forced

disappearances, torture and others. **In short, the state's responsibility to protect rests on long-standing obligations under international law.** This is the adequate interpretation of Article 2.7 of the Charter which led the UN to action, not without delay, against South Africa and its regime of apartheid.

The State itself has the power to set in motion most of the components of RtoP. The State should be alert to the first signs of bigotry, intolerance and human rights violations that could lead to genocide or any of the other three major crimes involved in RtoP. Only if the State is unable to cope with a humanitarian crisis, should the second pillar be made effective; in other words, the assistance of the international community to help States fulfill their Responsibility to Protect. Or rather assist those States *before* conflicts break out, thus playing "at best a complementary role" as the SG's report states. A preventive approach could include international mediation or good offices, as well as initiatives to promote reconciliation.

The third pillar of RtoP is the timely and decisive response by the international community. Evidently, the world leaders in the Summit Outcome were not thinking only about the use of force --which should always be considered a measure of last resort. Paragraph 139 in this regard is forceful but cautious.

Paragraph 139 refers to peaceful measures that could be undertaken following chapters VI and VIII of the Charter. For example, under article 34 of the Charter, the Security Council could just send a mission to investigate "any situation which might lead to international friction," as in mass atrocities that have provoked tensions with neighbors, trans-boundary violence, forced migrations, etc.

Non-peaceful collective action requires at least two operational conditions, namely the determination to take collective action *on a case-by-case basis* and only "*should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide...*" In such scenario, Member States "are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII..."

It is clear that the collective obligation is not to intervene, but rather to adopt whatever "timely and decisive" actions the international community deems appropriate, in accordance with the UN Charter. There is no automaticity, triggers, or implicit green lights for coercive action in what the world leaders agreed.

Regional organizations should play a larger role with regard to the third pillar of the Responsibility to Protect. In the Outcome Document regional organizations were given a role of cooperation with the UN. Because of geographical proximity, they are better placed to learn first about serious human rights violations. This is why, probably, in 2000 the Constitutive Act of the African Union, in Article 4 (b), declared "the right of the Union to intervene in a Member state pursuant to a decision of the Assembly in respect to grave circumstances, namely: war crimes, genocide, and crimes against humanity."

The GA was entrusted by world leaders with the task of continuing consideration of RtoP and its implications. One such consideration could be **the development of the second pillar; that is, to discuss a strategy or plan of action for the prevention of the four crimes, through cooperation with countries that so request it.**

Finally, it is necessary to reinsert the moral component into our discussion. International inaction is not acceptable as in the genocide in Rwanda in 1994 or Srebrenica in 1995. But **this is not an issue that solely concerns countries that have suffered humanitarian tragedies. That would be limiting the problem to a subcategory of countries. The challenge of humanitarian protection is a global one.** Raising our voices in the event of such crimes helps; but it is the bare minimum required. The international community must move from words to action, in the sensible and prudent way stated in the Secretary General's report, reconciling, as I have said, the *morality of legitimacy* with *international legality*.

Thank you, Mr. President.