



The Responsibility to Protect and the Protection of Civilians: Asia-Pacific in the UN Security Council

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The Asia-Pacific Centre for the Responsibility to Protect

The Asia-Pacific Centre for the Responsibility to Protect is an Associate of the Global Centre for the Responsibility to Protect. The Centre's mission is to advance the Responsibility to Protect principle within the Asia-Pacific Region and worldwide, and support the building of capacity to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

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December 2008: 'China and the Responsibility to Protect' Report

October 2008: 'Japan and the Republic of Korea on the Responsibility to Protect' Report

October 2008: Joint Submission to the Defence White Paper by the Asia-Pacific Centre for the Responsibility to Protect and act for peace

August 2008: 'ASEAN, Australia and the Responsibility to Protect', Joint Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade by the Asia-Pacific Centre for the Responsibility to Protect and act for peace

June 2008: The Responsibility to Protect and the Protection of Civilians: Asia-Pacific in the UN Security Council' Report

May 2008: 'Cyclone Nargis and the Responsibility to Protect' Report

March 2008: 'Program on the Protection of Civilians: Background and Scope' Report

February 2008: 'Preventing Mass Atrocities: Asian Perspectives on R2P' Conference Proceedings

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1. Executive Summary

In its earlier report on the position of Asia-Pacific governments in the Security Council's deliberations on the protection of civilians, the Centre found that with the exception of Myanmar, the region's governments were unanimous in their support for the Responsibility to Protect (R2P) as agreed by Member States at the 2005 World Summit and reaffirmed by the Security Council in 2006 (Resolution 1674). Governments emphasised the primary responsibility of each state to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity and the international community's responsibility to assist states in fulfilling their responsibility. They also acknowledged that in extreme situations other, more coercive, measures might be needed to protect populations from these four crimes and emphasised that such measures must be consistent with the United Nations Charter, as set out by the 2005 World Summit Outcome Document. The Centre detected a strong regional preference for consensual measures exercised through pillars one and two of the R2P and concern that the principle might be used to justify non-consensual intervention or a widening of interference in the domestic affairs of states.¹ To this end, governments in the Asia-Pacific region cautioned against expanding the application of R2P beyond the four crimes identified by the 2005 World Summit and tend to agree that coercive measures should only be contemplated when a crisis constitutes a threat to international peace and security.²

The purpose of this update brief is to set out the positions taken by Asia-Pacific governments at the most recent Security Council meeting on the protection of civilians and to examine their implications. The most recent meeting was dominated by the situation in the Middle East and reported attacks on the civilian population in the Gaza strip, and by the presentation of a new Aide-Memoire to guide protection practice and the Council's decision-making. In this context, Asia-Pacific governments chose to not specifically consider the R2P, though China and Viet Nam restated the primacy of the State's responsibility to protect its own population. However, governments identified several avenues for enhancing the Security Council's capacity to protect civilians in armed conflicts:

- A renewed focus on the primary responsibility of the state to protect population (pillar one), and a concerted effort to assist with capacity building (pillar two).

- A determined commitment to the scope of R2P agreed to at the 2005 World Summit and the view that R2P should be exercised in accordance with the UN Charter.
- Support for the updated Aide Memoire – in particular its inherent value for improving practice in the field.
- Calls for the adoption of a system-wide, multidimensional and integrated approach to protection whilst avoiding unnecessary replication and overlap.
- The expanding, strengthening, supporting UN peace operations in the implementation of protection mandates.
- A softening on the idea of establishing an informal expert group on the protection of civilians to systematically address relevant issues and the implementation of Resolution 1674

Whilst recognising that the R2P and protection of civilians agendas are overlapping but not synonymous, the report concludes by suggesting that the Security Council's most recent deliberations on the protection of civilians show that the Asia-Pacific region remains cautiously supportive of the R2P and highlights some avenues for implementing the principle.³



2. The Responsibility to Protect

Genocide, war crimes, ethnic cleansing and crimes against humanity are all too prevalent as the first decade of the twenty-first Century comes to a close. The fanciful belief that failures to protect civilians from mass atrocities is now a story of the twentieth century – of Rwanda and Srebrenica – is violently contradicted by the continued systematic violence against civilians today. In recent years, the international community has found common ground in the conviction that all states have a responsibility to protect their populations from these egregious abuses. Furthermore, that the international community must support states in meeting their responsibilities and, if the state manifestly fails, take appropriate measures to protect vulnerable populations.⁴

Since its genesis in the work of Francis Deng and others⁵ and subsequent development in the Canadian-sponsored International Commission on Intervention and State sovereignty (ICISS),⁶ the Responsibility to Protect (R2P) has travelled an extraordinary long way, in an unusually short space of time. Following extensive deliberations, the outcomes document of the 2005 United Nations World Summit captured the consensus reached by world leaders, unanimously adopting the R2P. Paragraphs 138-140 declared that:

138. Each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter of the United Nations, to help protect populations from war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organisations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide,

war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

UN Secretary-General, Ban Ki-moon, has made a strong commitment to the R2P and has stated that the above consensus rests on three pillars:

1. The responsibility of each state to protect its own population from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement.
2. The commitment of the international community to assist states in meeting these obligations.
3. The responsibility of United Nations Member States to respond in a timely and decisive manner, using Chapters VI (Pacific Settlement of Disputes), VII (Action with Respect to Threats to the Peace), and VIII (Regional Arrangements) of the UN Charter as appropriate, when a state is manifestly failing to provide such protection.

A year later, in 2006, the R2P was unanimously reaffirmed by the United Nations Security Council in Resolution 1674, which stated the Council's determination to protect civilians. The Secretary-General has vowed to 'operationalise' the R2P and translate the principle from 'words to deeds'. He indicated that his support for what he describes as the 'concept' of the R2P is 'deep and enduring' but recognised that it is not yet a policy or reality.

The Secretary-General also recognises the 'controversy and doubts' that the R2P generates.⁷ This reflects enduring misunderstandings surrounding the R2P. Despite the inclusion of R2P language in relation to the UN-AU hybrid peace operation in Darfur (UNAMID), as well as the labelling of the response to post-election violence in Kenya as the first instance of the R2P in practice, the principle's scope and meaning remains contested. On the one hand, some states and commentators continue to view the R2P as a threat to norms of non-intervention and sovereign equality; whilst on the other, some have argued that the consensus that emerged in 2005 constitutes a dilution of the principle, diminishing its deterrent value and reducing the principle to 'R2P-lite'.⁸ That being said, the Special Adviser to the UN Secretary-General argues that the R2P "represents the application of human security perspectives to a specific area of public policy that has long vexed publics and policymakers alike."⁹

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It is in this context that the Secretary-General recently submitted his report, 'Implementing the Responsibility to Protect', to the General Assembly.¹⁰ It is expected that this will be the basis for further debate on the R2P by the 63rd General Assembly. As such, the Security Council's January 2009 meeting on the Protection of Civilians in Armed Conflict provides the last opportunity to gauge the ideas and positions of Asia-Pacific governments prior to the General Assembly debate.



3. The Security Council's Thematic Interest in the Protection of Civilians

The Security Council's interest in civilian protection can be traced to April 1998, when Kofi Annan used a Council dialogue on armed conflict in Africa to identify the protection of civilians as a 'humanitarian imperative'.¹¹ At the suggestion of Canada, the Council adopted a Presidential Statement requesting that the Secretary-General submit a report on how the UN might improve the protection of civilians and committing to periodic Council reviews of the issue (12 February 1999). The Council informally agreed to hold two open debates (in June and December) on the protection of civilians each year.

In September 1999, the Council unanimously adopted the landmark Resolution 1265, which expressed its 'willingness' to 'respond to situations of armed conflict where civilians are being targeted or where humanitarian assistance to civilians is being deliberately obstructed' and committing it to consider adopting 'appropriate measures'. It also called on states to ratify key human rights treaties and prosecute those responsible for genocide, crimes against humanity and 'serious violations of international humanitarian law'. Finally, the Council expressed its willingness to explore how peacekeeping mandates might be reframed to better protect civilians.

In April 2000, Annan's report on civilian protection was greeted with a further British-sponsored resolution (Resolution 1296, 19 April 2000) focusing on operational matters designed to improve the capacity of UN peace operations to protect civilians. This avenue produced an *Aide Memoire* on civilian protection, issued as an annexe to a Security Council Presidential Statement (15 March 2002) and updated by the Office for the Coordination of Humanitarian Affairs (OCHA) in 2004.¹² The *Aide Memoire* identified a range of measures necessary to realize each of the Council's civilian protection objectives and five specific issues for consideration and action:

1. The provision of appropriate security arrangements.
2. Engagement in dialogue with belligerents.
3. Facilitation of delivery of humanitarian assistance.

4. Safety and security of humanitarian personnel.

5. Compliance with international legal obligations.

Shortly after the adoption of the R2P at the 2005 World Summit, the Secretary-General released a new report recommending that the Council endorse R2P and its commitment to provide protection to civilians in armed conflict, take measures to facilitate the delivery of humanitarian aid, continue to clarify the place of civilian protection in peacekeeping mandates and develop systems for monitoring compliance.¹³

Russia and two non-permanent members of the Security Council argued that it was premature to bring the Responsibility to Protect to the Security Council because the World Summit had merely committed the General Assembly to further deliberation on the concept.¹⁴ Chinese officials privately expressed sympathy for the view that the R2P should be discussed further by the General Assembly before being adopted by the Security Council but did not share the view that the principle had not been adopted by world leaders at the 2005 World Summit. China argued that 'all activities pertaining to protection' be performed with due respect for the Charter, affirmed the Council's 'primary responsibility' for peace and security and called for 'further comprehensive and in-depth discussions', noting that 'the outcome document went on to develop the concept at length, owing to the sensitivity and complexity of the issue'.¹⁵ Significantly, China did not insist that General Assembly deliberation was a necessary precursor to the affirmation of the R2P by the Security Council. China indicated that it would support the Security Council's endorsement of the R2P on the condition that it use language identical to that adopted by the World Summit.¹⁶ In the end, Chinese support was crucial to the Council adopting Resolution 1674 which reaffirmed the R2P and identified a number of measures that the Council could take to realize the principle

The three Council Resolutions (1265, 1296 and 1674) reveal the progressive establishment of a clear link between systematic breaches of International Humanitarian Law and threats to international peace and security.¹⁷ The fourth, and last, thematic Resolution on the Protection of Civilians constituted a return to implementation issues, such as the protection of journalists.¹⁸

At the Council's June 2007 debate on the protection of civilians, several states – including China – expressed grave concern with the R2P. Qatar cautioned against the 'exploitation' or 'abuse' of the principle. For its part, in response to pressure for it to act on the situation in Darfur, China seemed to harden its position in 2007 and imply that because there was no agreement about the nature of the R2P, the principle should not be used by the Security Council. 'At present', China argued, 'there are still differing understandings and interpretations of this concept among Member States. The Security Council should therefore refrain from

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invoking the concept of the responsibility to protect. Still less should the concept be misused. The Security Council should respect and support the General Assembly in continuing to discuss the concept in order to reach broad consensus.¹⁹

A few months later, Cuba, Sri Lanka, Iran, Sudan, Zimbabwe and Morocco began to argue that the UN had not adopted the Responsibility to Protect, in the context of the Secretary-General's decision to appoint Edward Luck as his Special Adviser. This, combined with the statements made in the June 2007 Security Council meeting, provoked concerns that the General Assembly was preparing to backtrack on the commitments made in 2005.

However, at the May 2008 meeting of the Security Council, Asia-Pacific governments indicated their firm support for the R2P and rejected the claim that the principle had not yet been agreed or adopted by the United Nations. In light of the debates that preceded the meeting, this represents a significant strengthening of regional support for the principle.²⁰

Although dominated by reaction to the violence and apparently indiscriminate attacks on civilians in Israel-Palestine, the January 2009 meeting on the Protection of Civilians (postponed from November 2008) provided further evidence of cautious support for the R2P. Indeed, in light of the support shown in the previous meeting, the statements here indicate the emergence of an enduring consensus on the principle.



4. Members of the Security Council

There are currently three Asia-Pacific members of the Security Council: China (permanent member), Japan (elected non-permanent member) and Viet Nam (elected non-permanent member).

5.1 China

China's address to the 2009 Security Council meeting on the protection of civilians simply restated its earlier position.²¹ Unlike in the previous meeting on this subject, China did not use the language of the R2P. However, it did refer to a collective 'duty to protect' in declaring that '[t]he grim reality tells us that the international community has a long way to go towards fulfilling its duty to protect civilians'.²² China also made a number of statements implicitly referring to the R2P principle. As in previous meetings, China reaffirmed its view that States had the primary responsibility to protect their populations and that the international community should focus on assisting them whilst being mindful to respect their sovereignty and territorial integrity. Thus, China insisted that:

The role of Governments in the protection of civilians should be respected and supported. Governments bear the primary responsibility for protecting their civilians. While the international community and external forces can provide constructive support, they must follow the provisions of the Charter, fully respecting the wishes and refraining from undermining the sovereignty and territorial integrity of the countries concerned, and even more so from forceful intervention.²³

This statement implicitly reaffirms China's support for the three pillars of the R2P, as defined by the Secretary-General, whilst re-emphasising the primacy of pillar one and the prerequisite that international activities be taken in accordance with the UN Charter. China's caution in relation to the international dimension of the protection of civilians was evident in two positions that it set out during the meeting. However, with each expression of caution came an opportunity for engagement on advancing the protection of civilians agenda.

First, China reiterated its rejection of an Office for the Coordination of Humanitarian Affairs (OCHA) proposal to establish a protection working group within the Council.²⁴ Reiterating a

stance first adopted in 2007, China insisted that ‘we are not in favour of establishing a Security Council working group on the question of civilians’.²⁵ However, China may be open to the creation of a less formal expert group to study the protection of civilians.

Second, China restated its view that the Security Council should remain focused on its core competencies dealing with and addressing matters of international peace and security. Thus, it maintained that: ‘...the Security Council should take prompt action within its spheres of competence to reduce and address the root causes of conflicts and mitigate the harm brought by armed conflicts to civilians’ whilst reminding the Council that its primary responsibility lay in the field of *international* peace and security.²⁶ Importantly, however, China also reiterated its belief that the wider UN system, international and local NGOs, and regional arrangements could play a critical in supporting and meeting protection needs in the field. Thus, alongside the Security Council’s primary responsibility for international peace and security, China argued that:

We expect the General Assembly and the Economic and Social Council to play bigger roles, and encourage international institutions, such as the United Nations Development Programme and the World Bank, and regional organizations, such as the African Union, to do their part to help the countries concerned with their economic development, settlement of conflicts and civilian protection. We also welcome a positive role for non-governmental organizations in this respect.²⁷

In summary, China’s position as set out in early 2009 emphasised continuity with its earlier stance. China cautiously supports the R2P, prioritising pillar one and insisting that any other measures undertaken in implementing the principle be consistent with the UN Charter. Although China reiterated its preference for a relatively narrow understanding of the Security Council’s jurisdiction, it acquiesced in the establishment of an expert-level group on the protection of civilians (a subtle change from its earlier rejection of a working group) and pointed to the range of other institutions that could be profitably engaged to perform other elements of the protection agenda.

5.2 Viet Nam

Viet Nam has been traditionally cautious in regard to the R2P, but has become more positively engaged with the principle since its election to the Security Council. This trend continued in the June 2009 meeting, where it used this meeting to implicitly restate its support for the principle, the primacy of pillar one and the role of international agencies in the provision of mediation, peacekeeping, humanitarian aid and development assistance. Thus,

Viet Nam argued that, 'while the primary responsibility for protecting civilians lies with States, the United Nations system can and should play its critical role by providing political mediation and peacekeeping operations, as well as by coordinating humanitarian and development assistance'.²⁸

Although not referring to the R2P by name, the underlying logic of its argument clearly echoes the principle as delineated in the 2005 World Summit Outcome Document. What is more, however, Viet Nam went on to identify three measures for strengthening the protection of civilians.

First, echoing the other Asia-Pacific members on the Council, Viet Nam pointed to the need for improved organisational integration across the UN agencies engaged in protection activities. Thus, Vietnam declared that: 'Coordination among United Nations bodies in the area of protection of civilians should be further enhanced, particularly between the Office for the Coordination of Humanitarian Affairs and the Office of the United Nations High Commissioner for Refugees, the Department of Peacekeeping Operations, the Special Representative of the Secretary-General for Children and Armed Conflict and all United Nations field missions'.²⁹

Second, and for the first time in these meetings, Viet Nam spoke about the need to better prepare for, and implement, peace operations with protection mandates, asserting its support for an 'expanded and strengthened mandate of protection of civilians for United Nations peacekeeping missions on the ground, and hence intensive training in this connection for them before their deployment'.³⁰

Third, in harmony with the other Asia-Pacific states, Viet Nam endorsed the adoption of the updated *Aide-Memoire* and emphasised its value for improving protection in practice.

On the question of establishing a Council working group, however, Viet Nam maintained a sceptical position, in line with China's. As in the previous meeting, Viet Nam affirmed its belief that, 'the establishment of any new mechanism within the Security Council should be carefully considered and studied in depth before a decision is made in order to avoid operational and institutional overlapping, as well as negative financial implications'.³¹ Nevertheless, again like China, Viet Nam may be open to considering the establishment of an expert-level group.

Together, these steps represent a significant development in Viet Nam's support for the principle and its readiness to engage in translating the R2P from principle to practice. This transition is prefaced on the view that the R2P is limited in scope and firmly anchored within the UN Charter.

5.3 Japan

Having assumed its place as a non-permanent member of the Council for the January 2009 meeting, Japan retained its preference for a focus on human security rather than the R2P per se. In line with this view, Japan insisted that ‘conflict prevention is the most effective and efficient means to protect civilians’.³² However, Japan did voice its commitment to a number of measures which reflect its support for the principle and indeed constitute steps in moving the R2P from words to deeds.

Japan has been a staunch supporter of the *Aide Memoire* on the Protection of Civilians and its periodic revisions which it sees as a vehicle for the enhanced implementation of civilian protection through its ‘practical applicability as a checklist for the Council’s consideration of establishing or extending the mandates of peacekeeping operations’.³³ Furthermore, Japan expressed its support for the OCHA/Department of Peacekeeping Operations joint independent study on the implementation of Security Council mandates on the protection of civilians and emphasised the value of ‘concrete recommendations’ produced by studies such as this in deepening the Council’s capacity in this area.³⁴ Japan also strongly supported the establishment of an expert group on the protection of civilians as a means of facilitating the ‘timely’ establishment and extension of mandates for peace operations.³⁵



5. Other Participating Member States

Three Member States from the Asia-Pacific region attended the meeting at the invitation of the President of the Council. They were Australia, Indonesia and Myanmar.

6.1 Australia

Australian support for the R2P is unambiguous and it used the 2009 meeting as an opportunity to further promote the implementation of R2P in a number of ways.

First, Australia identified the need to address challenges to the implementation of protection mandates in peace operations, citing the recent adjustment of the MONUC mandate and authorisation of additional capacity as recognition of the protection challenges in such situations. Furthermore, the representative detailed plans for a workshop on implementing civilian protection mandates, which was co-hosted with Uruguay and took place on 27 January in New York.

Second, Australia voiced its support for the Secretary-General's report on implementing the R2P and strengthening the 2005 consensus, stating that: '[w]e look forward to receiving the Secretary-General's report on the responsibility to protect in the coming days. We expect the report to contribute to a shared conceptual understanding of the principle that was agreed by our leaders at the 2005 World Summit and to a shared appreciation of what is required on the part of Member States and the United Nations to implement the principle'.³⁶

Third, the government of Australia emphasised the integral role of the Council with its unique authority for the implementation of the R2P. Thus, Australia noted that, '[w]hile implementation of the responsibility to protect requires action by a wide range of actors, the World Summit Outcome and the Charter of the United Nations give the Security Council a specific role to play in its implementation. To prevent mass atrocity crimes, the Council must ensure it uses the means at its disposal in timely and innovative ways'.³⁷ This is a solid reference to the third pillar of the R2P – that is, the responsibility of the international community to respond in a timely and decisive manner, in accordance with Chapters VI, VII, and VIII of the UN Charter as appropriate, when a state is manifestly failing to provide such protection. Australia proceeded to identify pathways for enhancing the efficacy of the Council

in this regard, highlighting the need to harness early warning information, more readily include cases of imminent emergency on the Council agenda, and increase preparedness for timely and decisive action.³⁸

Finally, Australia implored States to act in accordance with their self-declared responsibilities, stating that, 'Member States, of course, need to support such Council action'.³⁹

6.2 Indonesia

In the most recent meeting, as in the last, Indonesia refrained from mentioning the R2P explicitly. However, it is worth noting that Indonesia did comment on the principle at an 'Arria formula' meeting on R2P convened by South Africa on 1 December 2008. 'Arria formula' meetings provide an opportunity for the Security Council to meet informally with civil society groups. Indonesia argued that the focus should be placed squarely on pillars one and two of the R2P, urging that greater emphasis be placed on the exercising of the R2P by States rather than by the international community, adding that this would entail a stronger focus on enhancing the capacity of Member States to protect their populations. In line with its earlier statements on the issue, Indonesia also reiterated the importance of limiting the R2P to the four crimes specifically identified by the 2005 World Summit, expressly ruling out the principle's application to natural disasters. Finally, Indonesia restated its earlier view that the Council should apply the principle cautiously and consistently, using the full range of measures at its disposal.⁴⁰

Having completed its term as a non-permanent member of the Council at the end of 2008, Indonesia attended the 2009 meeting to reiterate its belief that 'more needs to be done to match decisions and declarations with reality', within the parameters set out at the Arria formula meeting.⁴¹ In particular, in light of the Gaza crisis, Indonesia noted that parties to conflict should take every precaution to spare civilians and humanitarian workers and facilities from the effects of hostilities. Echoing the line adopted by China, Indonesia insisted that whilst the Security Council had an important role to play in the protection of civilians, it was important to recognise the role of other agencies and actors and to develop a culture of protection across the board. In terms of the broad principles involved, Indonesia maintained that:

We wish to reiterate our belief that the protection of civilians should and must be based on the three pillars of the United Nations: human rights, security and development, which are closely interlinked. Efforts to protect civilians in armed

conflict situations will be rendered futile should we lose sight of that paramount perspective.⁴²

In terms of what this means in practice, Indonesia suggested that:

While the Council's work in the protection of civilians in armed conflict is critically important, it cannot succeed on its own in the absence of cooperation on the ground, and without other relevant regional and international organizations taking part. Building a culture of protection, through the engagement of United Nations agencies, regional and international humanitarian organizations and other relevant actors, is essential in order to raise awareness of civilian suffering and develop action plans to prevent further loss of life.⁴³

Indonesia also declared its support for the Council's adoption of the updated *Aide Memoire*.⁴⁴

Finally, whilst underscoring the importance of safe and unhindered access being granted to humanitarian personnel, it reiterated its view that humanitarian assistance should be depoliticised, insisting that it respect principles of humanity, neutrality, impartiality and independence.

Indonesia has therefore continued to support the principles underlying the R2P – that states have a primary responsibility to protect their populations and that in certain circumstances the international community should play a protection role using the range of the UN's authority and institutions. Moreover, like other governments in the region, Indonesia continues to exhibit a strong preference for emphasising the principle's first two pillars and remains cautious about the potential for coercive interference in the domestic affairs of states, including by the politicisation of humanitarian aid, and is flatly opposed to the expansion of R2P beyond the four crimes identified by the 2005 World Summit.

6.3 Myanmar

Whilst most of the region's states simply reiterated or updated previously held positions, Myanmar's position was significantly at odds with its earlier outright opposition to the R2P. The shift may be rhetorical and not indicate an actual change in policy, indeed it may represent little other than a self-interested attempt to restrict rebel groups' access to arms. However, it is certainly worth noting.

The link between Myanmar's new position and its internal insurgency problems was made apparent by the fact that in the first instance, Myanmar reiterated its concern '[t]he easy

availability of illicit small arms and light weapons exacerbates the situation',⁴⁵ and contented that a 'legally binding international instrument that prohibits the illicit trade in small arms and light weapons with non-State actors will go a long way to protect civilians in armed conflict'.⁴⁶ It proceeded to state its position that, 'the most effective way to protect civilians in armed conflict is to address the root causes and put an effective end to it'.⁴⁷ This recognition of an international dimension to protecting civilians at risk resonates somewhat with the second and third pillars of the R2P.

Surprisingly, Myanmar went on to maintain that:

The four thematic resolutions of the Security Council on the protection of civilians form an effective comprehensive framework for action in that area. It must be stressed that the implementation of the resolutions should be implemented in faithful conformity with the provisions of the Charter of the United Nations and while upholding and respecting the principles of humanity, neutrality, impartiality and independence. National sovereignty and territorial integrity should also be respected, in order to foster a spirit of cooperation and confidence-building for the promotion of durable peace and stability.⁴⁸

Given that the third of these resolutions (1674) includes the reaffirmation of the R2P as described in paragraphs 138 and 139 of the World Summit Outcome Document, Myanmar's recognition that these resolutions constitute the accepted framework for legitimate protection activities in line with the Charter represents a huge departure from its recent opposition to the R2P principle.⁴⁹

Myanmar's closing comments emphasised the international community's collective responsibility to improve the UN's protection regime, reiterating the centrality of the UN charter and relevant international law as the appropriate guidance. Thus, Myanmar concluded that:

The United Nations and the international community have a legal and moral obligation to work for durable peace. The principles enshrined in the Charter of the United Nations, the relevant Security Council resolutions...and the relevant international humanitarian and human rights law must be upheld in a balanced, non-discriminatory and transparent manner if we genuinely wish to protect civilian populations from armed conflict and promote peace and stability.⁵⁰

The assertion that the thematic resolutions of the Council on the protection of civilians represent the legitimate framework for action on protection, in accordance with the Charter and other principles of international law, potentially connotes an uncharacteristic thawing of

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Myanmar's attitude towards the R2P principle, though of course Myanmar's position comes with the usual caveats about deference to national sovereignty.



6. Conclusion

Asia-Pacific governments used the recent open Security Council deliberations on the Protection of Civilians to reaffirm their positions and tacitly maintain their cautious support for the Responsibility to Protect.

Although the debate was dominated by reaction to the violence and apparently indiscriminate attacks on civilians in Israel-Palestine, the January 2009 open meeting on the protection of civilians provided further evidence of a deepening consensus on the R2P. Indeed, in light of the support shown in the previous meeting, the statements here speak to an enduring consensus given that none of the region's governments have moved away from their earlier views.

The region's governments did not specifically refer to the R2P principle, however, their statements reflected the principle's purpose and intent and highlighted a number of important points that ought to inform the global effort to deepen consensus on the Responsibility to Protect and translate the principle from words into deeds.

- A renewed focus on the primary responsibility of the state to protect population (pillar one), and a concerted effort to assist with capacity building (pillar two).
- A determined commitment to the scope of R2P agreed to at the 2005 World Summit and the view that R2P should be exercised in accordance with the UN Charter.
- Support for the updated *Aide Memoire* – in particular its inherent value for improving practice in the field.
- Calls for the adoption of a system-wide, multidimensional and integrated approach to protection whilst avoiding unnecessary replication and overlap.
- The expanding, strengthening, supporting UN peace operations in the implementation of protection mandates.

- A softening on the idea of establishing an informal expert group on the protection of civilians to systematically address relevant issues and the implementation of Resolution 1674

It is crucial that these Asia-Pacific voices are taken seriously in global conversations about how to apply and advance the Responsibility to Protect and that the opportunities presented by this strengthening support for the principle are used as a foundation to begin deliberation on practical measures for preventing genocide, war crimes, ethnic cleansing and crimes against humanity and protecting vulnerable populations.



7. References

- ¹ On the pillars see Ban Ki-moon, *Implementing the Responsibility to Protect*, A/63/677, 12 January 2009.
- ² For more on this see Asia-Pacific Centre for the Responsibility to Protect reports on Korea and Japan, China, and Southeast Asia.
- ³ On the similarities and differences between R2P and the protection of civilians, see Global Centre for the Responsibility to Protect, 'The Relationship Between the Responsibility to Protect and the Protection of Civilians in Armed Conflict', *Policy Brief*, January 2009.
- ⁴ Asia-Pacific Centre for the Responsibility to Protect, *The Responsibility to Protect in Southeast Asia*, January 2009, p.6-7
- ⁵ Francis M. Deng et al., *Sovereignty as Responsibility: Conflict Management in Africa* (Washington, D.C.: Brookings Institution Press, 1996)
- ⁶ Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001)
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The Asia-Pacific Centre for the Responsibility to Protect is an Associate of the Global Centre for the Responsibility to Protect. The Centre's mission is to advance the Responsibility to Protect principle within the Asia-Pacific Region and worldwide, and support the building of capacity to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

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