



Protection of Civilians and the Responsibility to Protect: Perspectives and Precedents in the Asia-Pacific

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1. Executive Summary

Governments in the Asia-Pacific are often referred to as skeptics or spoilers in conversations about deepening and harnessing global consensus on the ‘Responsibility to Protect’ (R2P). This working paper argues that, on the contrary, there exists a broad constituency within the region for moving the principle from rhetoric to reality at the United Nations (UN). Based on contributions to Security Council debates on the protection of civilians in armed conflict (POC), regional states have been both receptive to and promoters of tangible measures to operationalise institutional mechanisms to prevent and halt mass atrocity crimes. Statements in the two most recent meetings are of particular significance given that they represent one of the last opportunities to gauge regional positions ahead of the forthcoming General Assembly debate on the R2P. In conclusion, I suggest that the Asia-Pacific region is much more receptive to the R2P principle than has hitherto been acknowledged. The first section of the working paper walks through the development of the R2P principle and the history of the UN Security Council’s thematic interest in POC. The subsequent section unpacks and clarifies the relationship between the R2P and POC. The paper then proceeds to analyse the contributions of Asia-Pacific states to the two lattermost Council debates on POC, emphasising the significance of these statements for the institutional future of the R2P at the UN, as well as normative traction and increased ownership of the R2P in and by the region. Finally, the paper concludes by recommending the way ahead if Asia-Pacific states are to remain constructive partners in moving the principle towards praxis.



2. Introduction

“Enshrined in all major moral, religious, and legal codes, and not specific to any particular culture or tradition, the protection of civilians is a human, political and legal imperative that recognizes the inherent dignity and worth of every human being. It is a cause that unites us all in the responsibility to protect civilians from abuse, to mitigate the impact of warfare and to alleviate their suffering.”¹

2.1 The Responsibility to Protect

Genocide, crimes against humanity, war crimes and ethnic cleansing 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.²

Since its genesis in the work of Francis Deng *et al*³ and subsequent development in the Canadian-sponsored *International Commission on Intervention and State sovereignty* (ICISS),⁴ 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.⁵ Paragraphs 138 and 139 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.

United Nations 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.

Secretary-General Ban 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. It should be noted that whilst many refer to the R2P as a doctrine or norm, and the Secretary-General himself refers to it as a 'concept', I will use the term 'principle' as I feel this better reflects the unanimous endorsement of the R2P by world leaders in the aforementioned paragraphs of the World Summit Outcome Document.

The Secretary-General also recognises the 'controversy and doubts' that the R2P generates.⁶ This reflects enduring misunderstandings surrounding the R2P. Despite the inclusion of R2P language in relation to the UN-AU hybrid peace operation in Darfur, 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'.⁷ 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."⁸

It is in this context that the Secretary-General submitted his report, 'Implementing the Responsibility to Protect' to the General Assembly in January this year.⁹ It is expected that this will be the basis for further debate by the 63rd General Assembly.

2.2 Protection of Civilians

Despite an overall reduction in the quantity of armed conflict across the globe, the character and victims of contemporary warfare have changed dramatically. Saliiently, the 2007 Human Security Brief affirmed that the targeting of civilians has become increasingly prevalent in the post-Cold War era.¹⁰ The reasons for this are not entirely straightforward, but involve a plethora of causal factors which are well documented elsewhere.¹¹

In this light, 'Protection of Civilians' (POC) has come to mean many things to many people. Often conflated with similar and overlapping concepts such as human security or humanitarian intervention, POC has its roots firmly in established and universal principles of international humanitarian law (IHL) as well as human rights and refugee law.¹²

In the midst of competing definitions, the concept of 'Civilian Protection' should be understood broadly as the full range of activities that intergovernmental organisations, countries, international and local NGOs, and individuals can pursue to advance the legal and physical protection of civilians.

Security Council framework for POC

The Security Council's thematic interest in civilian protection can be traced back to April 1998, when in a Council meeting on armed conflict in Africa, Secretary-General Kofi Annan identified the protection of civilians as a 'humanitarian imperative'.¹³ Following a Canadian proposal, the Council adopted a Presidential Statement requesting that the Secretary-General submit a report addressing how the UN might improve the protection of civilians and committing to periodic Council reviews of the issue.¹⁴ The Council informally agreed to hold two open debates each year (in June and December) on the 'protection of civilians in armed conflict'.

In September 1999, the Council unanimously adopted the landmark Resolution 1265, which expressed the Council's '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.¹⁵

In April 2000, the Secretary-General's report on civilian protection was followed by a British-sponsored resolution focusing on operational matters designed to improve the capacity of UN peace operations to protect civilians, also importantly emphasising "the need...to proceed on a case-by-case basis, taking into account the particular circumstances."¹⁶ This was the precursor for production of an *Aide Memoire* on civilian protection, promulgated as an annexe to a Security Council Presidential Statement¹⁷ and updated by the Office for the Coordination of Humanitarian Affairs (OCHA) in 2004 and most recently in 2009.¹⁸ 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.

2.3 Protection of Civilians & the Responsibility to Protect

In his address to the Security Council's inaugural open meeting on POC in December 2003, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Jan Egeland, suggested that in the absence of access to civilians in armed conflict and associated diminution of the humanitarian space necessary to render assistance, "we fail in our responsibility to protect."¹⁹ Since that time, the Council debates on POC have provided a forum for discussions about the R2P.

Conceptually, the R2P and POC are distinct but very closely linked. Put most simply, the former is a framework for realising the latter in the most egregious cases – i.e. prevention and protection from genocide, ethnic cleansing, crimes against humanity and war crimes. The whole POC agenda is substantially wider than that covered by R2P, whilst aspects of the preventive components of R2P extend beyond POC.

Shortly after the adoption of the R2P at the 2005 World Summit, the Secretary-General released a 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 mandates for peace operations and develop systems for monitoring compliance.²⁰

Russia and two non-permanent members of the Security Council argued that it was premature to bring the R2P to the Security Council because the World Summit had merely committed the General Assembly to further deliberation on the concept.²¹ However, amongst others, China indicated that it would support the Council's endorsement of the R2P provided that the language used was identical to that adopted by the World Summit.²² In 2006, the R2P was unanimously reaffirmed by the United Nations Security Council in Resolution 1674 which emphasised the Council's determination to protect civilians and identified a number of measures for its operationalisation.

These three thematic Security Council Resolutions (1265, 1296 and 1674) reveal the progressive establishment of a clear link between systematic breaches of IHL and threats to international peace and security.²³ The fourth, and last, thematic Resolution on POC constituted a return to implementation issues, such as the protection of journalists.²⁴

At the Council's June 2007 debate on POC, a number of states – including China – expressed their anxiety with the R2P. For example, Qatar warned against the 'exploitation' or 'abuse' of the principle. China appeared to harden its position and suggest that, in the absence of agreement on the nature of the R2P, the principle should not be used by the Security Council. China contended, 'there are still differing understandings and interpretations of this concept among Member States. The Security Council should therefore refrain from 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.¹²⁵

Subsequently, following the Secretary-General's decision to appoint Edward Luck as his Special Adviser, Cuba, Sri Lanka, Iran, Sudan, Zimbabwe and Morocco began to assert that the UN had not adopted the R2P. In light of the statements made in the June 2007 Council debate on POC, these events raised suspicions that the General Assembly was preparing to backtrack on the commitments made in 2005.

Since then, the Council has held two more thematic meetings on POC. What transpired at the May 2008 and January 2009²⁶ open debates has important implications for the strength of consensus and attempts to 'operationalise' the R2P within the UN. Importantly, these meetings provided the last opportunity to gauge the ideas and positions of Asia-Pacific governments prior to the General Assembly debate.

2.4. Asia-Pacific

Moving the R2P from words to deeds requires international consensus on the principle's meaning and scope, as well as the measures necessary to realise it. The Asia-Pacific represents a critical constituency for strengthening such a consensus for a number of reasons.

In large part due its recent colonial history, the Asia-Pacific (particularly Southeast Asia) is well-known for its aversion to any potential erosion of state sovereignty. The associated norms and policies of 'non-interference' and 'non-intervention' in the domestic affairs of states remain a central facet in the workings regional groupings and relations between states in the region.²⁷

However, despite distrust of external intervention, Asia-Pacific states have been very supportive of efforts to enhance the UN's capacities to protect vulnerable civilians through the thematic debates in the SC. In particular, states from the region have been consistent proponents of reform and increased resourcing for UN peace operations to conduct such tasks.

Perhaps most importantly, there has hitherto been little attempt to understand how governments in the region understand the R2P principle, where their concerns lay, and how these might be assuaged. Indeed, all too often, the region's governments are dismissed as R2P sceptics and spoilers.²⁸ It is therefore valuable to unpack the perspectives of Asia-Pacific states and ask what this means for the development and implementation of the R2P.



3. Security Council Open Debates on the Protection of Civilians in Armed Conflict – May 2008 & January 2009

At the 27 May 2008 meeting there were three members of the Security Council from the Asia-Pacific: permanent member, China; as well as elected non-permanent members, Indonesia and Viet Nam. By the most recent debate 14 January 2009, Indonesia's term had finished and Japan had joined the Council as an elected non-permanent member. In both cases other three additional states from the Asia-Pacific joined the meetings at the invitation of the President of the Council. Australia and Myanmar attended both meetings, joined by Japan in May 2008 and Indonesia in January 2009.

3.1 China

China's statement to the Security Council was particularly significant due to a departure from its previously stated position. In 2007, China argued that there was disagreement about the meaning of the R2P and that until this disagreement was resolved by the General Assembly, the Security Council should refrain from invoking the principle.

In this meeting, China argued that Resolution 1674 (2006) "constitutes the legal framework within which the Security Council may address" the issue of the protection of civilians in armed conflicts.²⁹ In Resolution 1674, it should be recalled, the Security Council endorsed the R2P as adopted by the 2005 World Summit.

China went on to dedicate a significant part of its statement to considering the R2P:

"...the role of national Governments in the protection of civilians should be respected and supported. The primary responsibility for the protection of civilians lies with national Governments. The international community and external forces can provide constructive help and support. However, they should provide this in compliance with the provisions of the Charter of the United Nations and in full respect for the will of the countries concerned. It should not undermine the sovereignty and territorial integrity of the countries concerned and, still less, intervene forcibly."

"...when discussing the protection of civilians in armed conflict, the Security Council should approach the concept of the responsibility to protect – and especially its application – with great prudence. The Final Document of the 2005 World Summit devoted a lengthy section to a very careful description of the responsibility to protect civilians from massacres, war crimes, genocide and crimes against humanity. It also indicated that the concept should be further considered by the General Assembly. Many members are currently deeply concerned about the concept of the responsibility to protect, and the relevant discussions should therefore be pursued in the United Nations. The Security Council is in no position to interpret or expand the concept of the responsibility to protect at will, much less to abuse it."³⁰

China went on to argue that the protection of civilians agenda should not rely solely on the Security Council but should involve the General Assembly, Economic and Social Council, Human Rights Council, United Nations Development Programme and regional organizations.

As such, China's contribution to the meeting indicated a deepening of support for the Responsibility to Protect. First, China reiterated its endorsement of the framework set out in the World Summit Outcome Document. Second, it identified Resolution 1674 – which reaffirms the R2P – as the 'legal framework' for the protection of civilians. Third, whilst noting the deep concerns held by some Member States, it argued that the R2P is 'carefully described' in the World Summit Outcome Document. Fourth, in calling for prudence in the *application* of the R2P, China agreed that implementing the principle is a legitimate concern and course of action of the Council. Finally, China specifically pointed to a range of institutions and regional organisations beyond the Security Council that may make a positive contribution to the protection of civilians, acting of course with due respect for the United Nations Charter.

In these five ways, China made a decisive and entirely constructive contribution to the discussion about how the international community might deliver on its promise to protect people from genocide, war crimes, ethnic cleansing and crimes against humanity. It suggests a strengthening and deepening of consensus about the principle's meaning and opens up the possibility of moving forward to deliberations on translating the principle from words into deeds.

Significantly, consensus on the R2P and agreement to begin work on translating the principle from rhetoric to reality depends fundamentally on the common understanding reached in the 2005 World Summit Outcome Document and China's view that the Security Council should not seek to expand or abuse the principle is a significant point that deserves to be emphasised. From China's perspective, any changes to the meaning of the R2P must be agreed by the General Assembly, presumably on a similar basis of unanimity with which the original principle was enunciated.

China's stance presents those who seek to advance the principle with a simple choice: use the 2005 World Summit Outcome Document as the definitive statement of the R2P and develop practical measures to deliver on the commitments plainly set out in the relevant paragraphs, or reopen a debate in the General Assembly about the proper meaning of the principle and suspend efforts to invoke it in practice.

China's address to the 2009 Security Council meeting on POC can be summarised as a restatement of its previous position. Unlike the previous meeting, 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."³¹ The Chinese representative did make a number of statements implicitly referring to the principle of the R2P.

China displayed a commitment to the need for integrated approaches to alleviating the suffering of civilians. However, it reiterated its position that the Council should remain focused on its core competencies dealing with and addressing matters of international peace and security.

"...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."³²

In connection to this, China retained its stance on the OCHA proposal to formalise a protection working group,³³ about which the representative declared “we are not in favour of establishing a Security Council working group on the question of civilians.”³⁴

Furthermore, China reaffirmed the position taken in previous meetings, stating 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.”³⁵

This repeats China’s full support for the three pillars of the R2P, as defined by the Secretary-General, whilst re-emphasising the prerequisite that all action must be in keeping with the UN Charter.

Similarly, China reiterated its belief that the wider UN system, international and local NGOs, and regional arrangements are critical in supporting and meeting protection responsibilities in the field.

“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.”³⁶

Finally, China emphasised its commitment to collective action in moving the R2P from rhetoric to reality by making “pragmatic and effective efforts to achieve more constructive results in the protection of civilians in armed conflict.”³⁷

Therefore, China’s contribution to the January 2009 POC debate constituted a reaffirmation of its support for the operationalisation of POC activities and with it the R2P based on the 2005 World Summit consensus.³⁸

3.2 Indonesia

Indonesia is a prominent member of ASEAN, the Non-Aligned Movement and the Group of 77. It has also established a track record of receptiveness to the R2P though it shares the concerns of other Non-Aligned/G-77 States about the potential for the principle to be abused or misapplied. This view was clearly expressed by President Susilo Bambang Yudhuyono at the 2005 World Summit. The President welcomed the principle but called for limits to when force might be used in its name. According to the President, “we need a consensus on the responsibility to protect people from genocide, ethnic cleansing and crimes against humanity. To this end, force should only be used when all other means have failed.”³⁹

There is also evidence of support for the R2P beyond the government of Indonesia. In 2009, an office of the *Asia-Pacific Centre for the Responsibility to Protect* will be

opened at the Centre for Security and Peace Studies at Gadjja Mada University in Yogyakarta.

Although Indonesia did not refer directly to the R2P, it used the principle's language to reaffirm the responsibilities endowed upon the Security Council, regional organisations and international community more broadly. Thus, in a clear reference to the commitments made at the 2005 World Summit and in Resolution 1674, Indonesia maintained that: "The [Security] Council has an imperative duty to stand for those who are defenceless and in need of protection in times of conflict." The representative continued, "It is our shared responsibility to alleviate the suffering of victims wherever and whenever it occurs."⁴⁰

In addition, Indonesia pointed to the role that regional organisations can play in enhancing the protection of civilians, especially by contributing to the prevention of war through the use of negotiation and dialogue. As Indonesia's Permanent Representative put it: "Regional organizations have an important role to play in the protection of civilians. It is important to remember that the best preventive medicine for war is fruitful negotiation and dialogue, which is often achieved by inviting the participation of regionally relevant players."⁴¹

Indonesia therefore plainly expressed its support for the basic idea underpinning the R2P – the international community, through the Security Council and regional organisations, has an imperative duty to protect the 'defenceless'.

Finally, Indonesia ended by calling for the United Nations to focus on "maintaining momentum by strengthening the efforts of the United Nation system" by Member States "working as a whole in a coordinated, coherent, comprehensive and cooperative manner" – strongly suggesting that it is ready to consider proposals for translating the R2P from 'words into deeds' through the United Nations peace and security architecture.

In the most recent meeting, as in the last, Indonesia refrained from mentioning the R2P explicitly. However, 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."⁴²

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."⁴³

In the latest meeting, Indonesia displayed its commitment to the undergirding facets of the R2P and demonstrated its willingness to support tangible action in order to meet the lofty rhetoric on POC.

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.”⁴⁴

Indonesia declared its support for the Council’s adoption of the updated *Aide Memoire*.⁴⁵

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 principles 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.

3.3 Viet Nam

Viet Nam is one of Southeast Asia’s staunchest defenders of the principle of non-interference and has been highly sceptical of the R2P, raising fears that it could join the group of states arguing that world leaders did not make a commitment to the principle at the World Summit in 2005. However, at the May 2008 Security Council meeting on POC, Viet Nam clearly indicated its support for the principle.

“Viet Nam’s view”, its Permanent Representative argued, is “that it is States that bear primary responsibility to protect their own civilians and to deal with violence against civilians as well as violations of international humanitarian law. In order to help States fulfil their responsibilities, the United Nations can help improve their national capacity, provide technical assistance and work with them to conduct other awareness-raising activities, for instance through training courses.”⁴⁶

Thus, Viet Nam indicated its endorsement for the first two pillars of the R2P principle: the responsibility of all states to protect their own citizens and the international community’s responsibility to encourage and enable the development of protective capacities in a cooperative fashion. Importantly, Viet Nam singled out the prevention and peaceful resolution of armed conflict as “the best way to protect civilians in armed conflict.”⁴⁷

In relation to those aspects of the principle that refer to the international community’s responsibility to protect endangered populations when the host state is manifestly

failing in its responsibilities (i.e. the responsibility to take a range of non-coercive measures and the Security Council's responsibility to consider the use of all means at its disposal), Viet Nam insisted that "the Security Council should consider the issue of the protection of civilians on a case-by-case basis and in line with the approach endorsed in previous relevant resolutions."⁴⁸ Chief among those relevant resolutions is Resolution 1674 which set out the Security Council's endorsement of the R2P.

In addition to this clear endorsement of the R2P envisioned by the 2005 World Summit, Viet Nam also indicated that it might be time to further consider proposals for operationalising the principle. The Vietnamese representative concluded his statement, by noting that:

"Bearing that in mind [the aforementioned statement on the principle], we hold that the creation and application of any international mechanism should be thoroughly studied with a view to ensuring its efficient, effective and sustainable performance without resulting in an unnecessary financial burden for States."⁴⁹

As a bare minimum, this statement points to Viet Nam's willingness to consider pertinent mechanisms for enacting the Security Council's commitment to the protection of civilians and the R2P. In addition to Viet Nam's support for the principle, this represents an important strengthening of consensus and clearly indicates that Viet Nam shares the majority view on the principle.

The caution evident in Viet Nam's contribution reaffirms the view that the emerging consensus on the R2P in the Asia-Pacific region is based upon a shared understanding of the principle as agreed at the 2005 World Summit. For Viet Nam, the authority of the Security Council and narrow application of the principle seem to be prerequisites for its decision to support the principle and open up the space for further discussion about translating the R2P from words into deeds.

Viet Nam used the latest meeting to implicitly restate its support for the principle, declaring 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."⁵⁰

This constitutes a robust endorsement for the R2P as delineated in the 2005 World Summit outcomes document. The Vietnamese representative proceeded to elaborate on concrete measures for operationalising POC and the R2P.

Firstly, echoing the other Asia-Pacific members of the Council, Viet Nam pointed to the need for improved organisational integration across the UN agencies engaged in protection activities. The representative 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."⁵¹

Secondly, and for the first time in these meetings, Viet Nam spoke to the need to deliver on preparations for, and implementation of, 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.”⁵²

Finally, 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.

Collectively, 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.

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.”⁵³

Placing the R2P firmly within the UN framework further buttresses the consensus held by the majority and represents something of a shift by Viet Nam from a receptive to a proactive posture.

3.4 Australia

Australia’s support for the R2P has deep roots and is well-known. It has spoken in favour of the principle at previous Security Council meetings on POC and in numerous fora including at the UN Human Rights Council. Australia was a founding donor to the *Global Centre for the Responsibility to Protect* and is home to the *Asia-Pacific Centre for the Responsibility to Protect*. It was no surprise, therefore, that Australia used the 2008 meeting to reiterate its enthusiastic support for the principle. What was significant, was that Australia’s championship was couched very clearly in terms of the agreement reached by world leaders at the 2005 World Summit and that Australia added a statement expressing support to Edward Luck, the Secretary-General’s special adviser.

Australia’s statement of support for the R2P presented a clear and unambiguous understanding of the principle stands for. As the Australian representative put it: “In 2005, world leaders recognized the responsibility we all share to protect vulnerable communities from genocide, war crimes, ethnic cleansing and crimes against humanity. While it is the primary role of States to protect their own populations from these evils, the international community has a responsibility to assist States to exercise that responsibility and, in appropriate circumstances, to take collective action, consistent with the [United Nations] Charter, to prevent such mass atrocity crimes.”⁵⁴

Australia also joined calls for the UN to begin work on converting the principle from ideas into actions, arguing that “[m]ore must be done to develop a practical approach for implementation of the responsibility to protect principle” before welcoming the appointment of Edward Luck and stating that “Australia looks forward to working with Member States to continue our consideration of the principle and to give effect to it in appropriate circumstances.”⁵⁵

The Australian representative used the 2009 meeting as an opportunity to further promote operationalising the R2P in a number of ways.

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

Second, Australia voiced its support for the Secretary-general's report on strengthening the 2005 consensus on, and clarifying measures for implementation of, the R2P; stating that: "We 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."⁵⁶

Third, the government of Australia emphasised the integral role of Council and the basis of its authority, contending that: "While 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."⁵⁷ 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. It 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 worrisome cases on the Council agenda and increase preparedness for timely and decisive action.⁵⁸

Finally, the representative for Australia implored fellow nations to act in accordance with their self-declared responsibilities, declaring that: "Member States, of course, need to support such Council action."⁵⁹

3.5 Japan

Japan has traditionally preferred to focus on human security rather than the R2P, in part because of its continuing unease about the potential deployment of military force. Nevertheless, Japan has consistently been a supporter of the R2P principle.

Japan's statement to the Security Council was entirely consistent with its traditional position on these matters. The Japanese representative chose to focus his remarks on the contribution that human security can make to the protection of civilians in armed conflict and made a point of distinguishing human security from the R2P on the grounds that the former rules out the use of force in every circumstance. Nonetheless, Japan identified Resolution 1674 as providing the mandate for on-going work on POC. The selection of this resolution rather than earlier resolutions (such as Security Council Resolution 1265) on the topic of civilian protection is significant because, as noted above, Resolution 1674 declares the Council's reaffirmation of the R2P.

Having assumed its place as a non-permanent member of the Council for the January 2009 meeting, Japan retained its preference to focus on human security rather than the R2P per se. However, the representative did voice Japan's 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 POC and its periodic revisions which it sees as a vehicle for enhanced implementation of POC by increasing its: "practical applicability as a checklist for the Council's consideration of establishing or extending the mandates of peacekeeping operations."⁶⁰

Furthermore, Japan expressed its support for the OCHA/DPKO joint independent study on the implementation of Security Council mandates on the protection of civilians and spoke to the value of 'concrete recommendations' in deepening the Council's capacity in this area.⁶¹

Japan proceeded to commend the inauguration of the expert group on POC as a means of substantiating the 'timely' establishment and extensions of mandates for peace operations.⁶²

The representative reiterated its belief that "conflict prevention is the most effective and efficient means to protect civilians."⁶³

3.6 Myanmar

Given the events and the political situation in Myanmar around the time of the May 2008 meeting, it is not surprising that Myanmar focused its remarks on rebutting international pressure for it to grant unfettered access to humanitarian organisations seeking to deliver assistance to the civilian victims of Cyclone Nargis.⁶⁴ Myanmar pointedly criticized both the United Nations Under-Secretary-General for Humanitarian Affairs and Member States that had referred to its failure to grant humanitarian access in their submissions to the meeting on the Protection of Civilians. 'I find it highly objectionable', Myanmar's representative argued, 'that some delegations have tried to use this debate to politicize a humanitarian issue caused by a natural disaster'.⁶⁵

However, at the January 2009 meeting with critical statements directed elsewhere, Myanmar made a significant deviation from its traditional stance in these debates.

In the first instance, Myanmar reiterated its attention to "[t]he easy availability of illicit small arms and light weapons exacerbates the situation",⁶⁶ 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."⁶⁷ 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."⁶⁸ This recognition of an international dimension to protecting civilians at risk resonates strongly with the second and third pillars of the R2P.

Surprisingly, the representative for Myanmar went on to say 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.”⁶⁹

Given that the third of these (1674) includes the reaffirmation of the R2P as described in paragraphs 138 and 139 of the World Summit outcomes 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 principle.⁷⁰

The representative’s closing comments emphasised the international community’s collective responsibility to improve the UN’s protection regimen, reiterating the centrality of the UN charter and relevant international law as the appropriate guidance. He 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.”⁷¹

The assertion that the thematic resolutions of the Council on POC represent the legitimate framework for action on POC, in accordance with the Charter and other principles of international law, connotes an uncharacteristic thawing of Myanmar’s attitude towards the R2P principle.



4. Summary

At the May 2008 meeting of the Security Council, Asia-Pacific governments indicated their firm support for the R2P and, in doing so, rejected the claim that the principle had not yet been agreed or adopted by the United Nations. In light of the debates that preceded this meeting, this represents a significant strengthening of regional support for the R2P. With the exception of Myanmar, regional states were unanimous in their support for the R2P as agreed by Member States at the 2005 World Summit and reaffirmed by the Security Council in Resolution 1674 of 2006. This helped illuminate a broad constituency of support for the principle in the Asia-Pacific region and a number of pathways to translating the R2P from words into deeds.

Asia-Pacific governments used the January 2009 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 statements made by the region's governments highlight a number of important points that ought to inform the global effort to deepen consensus on the R2P and translate the principle from words into deeds.

1. There is broad support for the Responsibility to Protect in the Asia-Pacific Region. Particularly a sustained focus on the primary responsibility of the state to protect population (pillar one), and a concerted effort to assist with capacity building (pillar two).

2. This consensus is dependent upon the shared understanding of the scope of the R2P agreed at the 2005 World Summit. In particular, the World Summit's agreement on the principle's scope (applying to genocide, war crimes, ethnic cleansing and crimes against humanity), meaning (the three pillars: (1) each state's responsibility to its own citizens; (2) the international community's responsibility to assist states to exercise their responsibility; (3) the responsibility of United Nations Member States to respond in a timely and decisive manner, under Chapters VI, VII, and VIII of the Charter as appropriate, when a state is manifestly failing to provide such protection), and the locus of authority for coercive measures (the UN Security Council).

3. At the present time, attempts to widen the scope, meaning or locus of authority would jeopardise this emerging consensus.

4. Asia-Pacific governments have indicated their readiness to begin dialogue on developing the practical measures necessary to translate the R2P from words to

deeds. They have identified three avenues in particular: developing mechanisms within the United Nations, enhancing the world's capacity to prevent attacks on civilians and engaging relevant regional organizations in these tasks.

Developing mechanisms within the United Nations.

Special Adviser to the UN Secretary-General, Edward Luck, is focusing his work on deepening international consensus on the R2P, clarifying the principle's relationship with international law and identifying avenues for translating the principle from words into deeds within the UN system. In light of the support shown by Asia-Pacific governments, the principle's advocates and concerned Member States should offer assistance to Professor Luck and engage in constructive dialogue on the latter two elements of his work especially. After the Special Adviser's recommendations have been accepted by the Secretary-General and presented to the UN membership, advocates and Member States should carefully study them and do whatever they can to support their implementation.

Preventing attacks on civilians

There was broad agreement among Asia-Pacific governments that prevention is the 'best medicine' when it comes to the protection of civilians in armed conflicts. Yet there remains little systematic understanding of what it takes to protect civilians under threat and the UN's 'culture of prevention' has not yet been translated into a tangible policy agenda. Advocates and concerned Member States should focus on developing a more systematic understanding of what it would take to improve the prevention of attacks on civilians and, in consultation with the UN membership, develop proposals for translating the Organization's commitment to a culture of prevention into a suite of reforms and behaviours that will improve the world's capacity to protect through prevention.

Engaging relevant regional organizations

Like other parts of the world, the Asia-Pacific region has a strong history of regionalism and it was therefore no surprise that the region's governments mentioned the positive role that regional organisations can play in preventing attacks on civilians, helping regional neighbours to exercise their responsibility to protect, and protecting vulnerable populations where necessary and consistent with the UN Charter. Much progress has been made on this within the European Union and African Union, but there remains much untapped potential for the role of regional organisations in many other parts of the world. The Asia-Pacific region is replete with regional organizations and arrangements such as ASEAN, ASEAN plus three, the ASEAN Regional Forum, APEC and the Pacific Islands Forum that are very well placed to play a leading role.

Advocates and concerned Member States should pay particular attention to the role that regional organisations can play in translating the principle into deeds within their region and the capacities these organizations and arrangements will require in order to make an effective contribution.

In addition to those described above, states from the region voiced their support for:

- 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



5. Conclusion

The evolving UN framework for action on POC, the updated *Aide Memoire*, and the establishment of an expert group have created the institutional space for systematic and sustained consideration of protection concerns, and with it laid firm foundations for the translation of the R2P from principle to practice.

It should be noted that these six nations do not speak for the region as a whole and sympathy for the R2P varies amongst governments of the Asia-Pacific. Nor is the Security Council the most representative or straight-talking forum upon which to base such analysis. Limited and temporary membership, in addition to the political manoeuvring that underpins these public statements, moderate the credence of what emanates therein and admittedly leaves statements open to interpretation. For a more comprehensive understanding of regional governments' positions, further research on debates in regional fora and a closer analysis of corollary contributions to peace operations would be elucidating. However, despite the limited scope of this analysis, the regional norms that these states stand for, combined with the *gravitas* of the Security Council in the development of POC policy and practice in the 21st Century, suggest that there is much to be educed from the positions of Asia-Pacific governments this forum.

The cardinal conclusion is that the Asia-Pacific region is much more receptive to the R2P principle than has hitherto been acknowledged. Whilst interpretations may differ and underlying agendas endure, regional states' repetitive and unambiguous reference to the operative paragraphs of the World Summit outcome document and the thematic Security Council resolutions on POC support this illation. However, the potential remains for governments in the region to adopt a more critical stance on both the principle and its application.⁷² For the truly global consensus captured in the 2005 World Summit outcomes document and subsequent reaffirmation of the R2P in SCR 1674 to sustain and become operational, Asia-Pacific governments and their regional organisations will need to be firmly on board. For this to transpire, the development and implementation of the R2P should proceed cautiously, inclusively and on the basis of consensus in the General Assembly. Importantly, ownership of the principle must be devolved such that the suspicions and priorities of governments in the region can be incorporated and accounted for sufficiently. It is vital that voices from the Asia-Pacific are taken seriously in global conversations about how to advance and apply the R2P.

In order to take advantage of this deepening consensus, it is imperative that advocates of the R2P support the principle as agreed by world leaders in 2005 and contribute to the movement of the principle from rhetoric to reality, words into deeds and, ultimately, a policy that can be put into practice. The pathways identified and supported by Asia-Pacific governments in these POC debates provide a sound point of departure and should be harnessed when forging the way ahead on practical measures for preventing genocide, war crimes, ethnic cleansing and crimes against humanity. Only then can Member States begin to fulfil their collective responsibility to protect civilians from the most egregious and unconscionable of crimes.

As Secretary-General Annan stated in his final report on POC:

“Progress must be measured not by what we declare, or recommend, or resolve to do, but by the impact of our declarations, recommendations and resolutions where and for whom it matters most – on the ground for millions of civilians who are at risk of, or whose lives are being torn apart by, the horrors and indignities of conflict.”⁷³



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