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

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1. Executive Summary

This update briefing sets out the positions taken by Asia-Pacific governments at the most recent Security Council open debate on the protection of civilians and examines their implications for the implementation of the Responsibility to Protect (RtoP), particularly in light of the recent General Assembly debate on the subject. Once again, in their statements Asia-Pacific governments made no explicit reference to the RtoP but governments identified a number of avenues for enhancing the Security Council’s capacity to protect civilians in armed conflicts, some of which can be understood as contributing to implementing the RtoP. Most significantly, the Council unanimously adopted Resolution 1894 which reaffirmed ‘the relevant provisions of the 2005 World Summit Outcome Document regarding the protection of civilians in armed conflict, including paragraphs 138 and 139 thereof regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This is the strongest and clearest language that the Council has yet used to reaffirm the RtoP.

Whilst recognising that the RtoP and protection of civilians agendas are distinct concepts, albeit with significant overlap, the report concludes by suggesting that the Security Council’s most recent deliberations on the protection of civilians indicates that the Asia-Pacific region remains cautiously supportive of the RtoP and continues to endorse protection strategies and operational concepts that can contribute to realising the principle. In light of the positive statements made by regional governments in the recent General Assembly debate on implementing the RtoP, the contributions herein suggest that regional consensus has become durable.
**Major developments since last update report**

**The Responsibility to Protect**

In July 2009, the UN General Assembly held an Interactive Informal Dialogue and plenary session on the RtoP. The dialogue provided the first opportunity for the UN membership as a whole to discuss implementation of the 2005 World Summit’s commitment to the RtoP and the UN Secretary-General’s report on the matter. Fifteen governments from the Asia-Pacific region, namely Indonesia, the Philippines, Korea, New Zealand, Australia, Singapore, Japan, China, Vietnam, Solomon Islands, Myanmar, Timor-Leste, DPRK, PNG and Malaysia, participated in the dialogue. This culminated in a resolution co-sponsored by, inter alia, Australia, Fiji, Singapore, Papua New Guinea, Republic of Korea, Timor-Leste and New Zealand that noted the Secretary-General’s report, observed the fruitfulness of the interactive dialogue, and committed the Assembly to further consideration of the RtoP.

According to the Global Centre for the Responsibility to Protect, one of the most significant aspects of the dialogue was the positive transformation of attitudes towards the RtoP within the Asia-Pacific region. Having previously been considered the region most opposed to the RtoP, the region now boasts near unanimity in its endorsement of the principle and the Secretary-General’s efforts towards its implementation (with the exception of North Korea).

The Asia-Pacific governments that contributed to the General Assembly debate agreed on all the main fundamentals about the RtoP. In particular, they welcomed the Secretary-General’s report and noted strongly that the 2005 World Summit represented the international consensus on RtoP and that there was no need to renegotiate that text. The challenge, they agreed, was to implement RtoP, not renegotiate it. Indonesia, the Philippines, South Korea, Singapore, Japan, China, Myanmar and the Solomon Islands all explicitly made this point, suggesting a broad and resilient consensus. They also affirmed the Secretary-General’s identification of the three pillars of the RtoP, which are: first, the responsibility of the state to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement; second, the international community’s responsibility to assist the state to fulfill its responsibility to protect; and third, in situations where a state has manifestly failed to protect its population from the four crimes, the international community’s responsibility to take timely and decisive action through peaceful diplomatic and humanitarian means and, if that fails, other more forceful means in a manner consistent with Chapters VI (peaceful measures), VII (enforcement measures) and VIII (regional arrangements) of the UN Charter (para. 139).
The Security Council's Thematic Interest in the Protection of Civilians

Since the Centre's last update report on the bi-annual Security Council open debates on the Protection of Civilians in Armed Conflict, two more ‘POC debates’ have taken place. The first was convened on 26 June 2009 and the most recent held on 11 November 2009 under the Presidency of Austria. These occurred either side of the General Assembly’s dialogue on Implementing the Responsibility to Protect mentioned above.

The Secretary-General’s 7th report on the Protection of Civilians in Armed Conflict was released on 29 May 2009 (S/2009/277). It recommended, inter alia, that the Council should:

- Call for strict compliance by parties to conflict and third States with their obligations to allow and facilitate: safe passage for civilians seeking to flee zones of fighting; the rapid and unimpeded passage of relief consignments, equipment and personnel, and encourage States to promote respect for humanitarian principles as well as consistently condemn and call for the immediate removal of impediments to humanitarian access that violate international humanitarian law
- Call upon parties to conflict to cooperate with humanitarian organizations in the establishment of de-conflicting arrangements in order to facilitate the delivery of assistance during hostilities;
- Encourage relevant parties to conclude and implement agreements to expedite the deployment of humanitarian personnel and assets.
- Mandate United Nations peacekeeping and other relevant missions to assist in creating conditions conducive to safe, timely and unimpeded humanitarian action;
- Apply targeted measures against individuals obstructing access to, or the distribution of, humanitarian assistance and refer grave and prolonged instances of the wilful impediment of relief supplies to the International Criminal Court.
- Condemn and call for immediate end to all attacks on humanitarian personnel and materiel as well as take measures against perpetrators.

Furthermore, as a result of the recommendation in the Secretary-General’s 6th report on the Protection of Civilians and subsequent discussions in the last thematic meeting, the Security Council Expert Group on the Protection of Civilians was established and held its inaugural meeting, convened by the UK, on 16 January 2009. The group constitutes an informal forum, bringing together Council Member States for transparent and timely consultation with OCHA on protection concerns. The remit of this group includes, inter alia, provision of the latest information on the status and extent of threats to civilian populations to the Council, particularly prior to consultations about peacekeeping mandate renewals. The group has met in connection with the mandate
renewals for the UN Mission in Côte d’Ivoire (UNOCI), the UN Assistance Mission in Afghanistan (UNAMA), the UN Mission in Sudan (UNMIS) the AU/UN Hybrid Operation in Darfur (UNAMID), and the UN Assistance Mission for Iraq (UNAMI). China has so far not participated in any of the meetings, but this is not regarded as a problem.\(^4\)

There have also been a number of Security Council resolutions referring to and calling for the protection of civilians. Particularly relevant being resolution 1888 on sexual violence (S/RES/1888 (30 September 2009)) which refers to tackling impunity and prosecuting those responsible for genocide, war crimes, crimes against humanity and other egregious crimes perpetrated against civilians; and resolution 1889 on women peace and security (S/RES/1889 (5 October 2009)) which identifies the specific protection needs of women and girls and strongly condemns violations of international law committed against women and girls both in situations of conflict and post-conflict.
Open Debate on POC in Armed Conflict - 11 November 2009

Resolution 1894

The most significant outcome of the Council’s latest open debate on the Protection of Civilians in Armed Conflict was UN Security Council Resolution 1894 (S/RES/1894(2009)). Co-sponsored by 31 member states, amongst them Japan, and unanimously adopted, the resolution is the fifth thematic resolution on the protection of civilians. According to the President of the Security Council, the resolution is aimed at addressing gaps in the protection work of the United Nations and sets out concrete measures to improve the protection of civilians.

Resolution 1894 reaffirmed the 2005 World Summit’s commitment to the RtoP in a preambular paragraph:

“Reaffirming the relevant provisions of the 2005 World Summit Outcome Document regarding the protection of civilians in armed conflict, including paragraphs 138 and 139 thereof regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity,”

The resolution went on to refer specifically to the four RtoP-related crimes:

“Recalling the inclusion of war crimes, crimes against humanity and genocide in the statutes of the ad hoc international criminal tribunals and the Rome Statute of the International Criminal Court, and emphasizing in this regard the principle of complementarity.”

These inclusions and developments reflect the deepening consensus around the 2005 agreement and a willingness to formalise these commitments in documents carrying the gravity of a Security Council resolution.

In addition to reaffirming RtoP, the Resolution also made a number of substantive demands and recommendations, including:

- Demanding that parties to armed conflict strictly comply with international humanitarian, human rights and refugee law – the three components of international law identified by the UN Secretary-General as most closely allied to RtoP.
- Urging that parties to armed conflict take all required measures to respect and protect the civilian population and meet its basic needs.
- Condemning indiscriminate and disproportionate attacks on civilians
- Reiterating its willingness to respond to armed conflicts where civilians are being targeted or aid to them being denied through consideration of the appropriate measures that are at the disposal of the Security Council.
- Calling on states to sign and ratify the relevant instruments of humanitarian, human rights and refugee law.
- Calling on parties to armed conflicts to seek the help of the United Nations.
- Pledged to upgrade its strategic oversight of peacekeeping operations mindful of the role they play in protecting civilians.
- Reaffirmed its commitment to giving peacekeeping operations protection of civilians mandates where appropriate and the need to provide comprehensive operational guidance.
- Emphasised the need for a comprehensive approach to facilitate the implementation of protection mandates through promoting economic growth, good governance, democracy, the rule of law and respect for human rights.
• Requested that the Secretary-General include more detailed and specific information about protection issues in his reports to the Council on country-specific situations.
• Requested another report from the Secretary-General in November 2010.
Members of the Security Council

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

China

China’s contribution to the debate reaffirmed themes articulated in its previous contributions in this forum. China restated its position that “The Security Council bears the primary responsibility for the maintenance of international peace and security” and noted that “…as such, it is duty bound to keep the protection of civilians in armed conflict on its agenda and to deal with it accordingly.” Furthermore, it proceeded to show support for increased attention to protection by the Security Council in stating that: “We urge parties to conflicts to comply with international humanitarian law and relevant resolutions of the Security Council and to protect the lives, property and legitimate rights and interests of civilians. We are in favour of strengthening the Council’s efforts in this regard.” Given the evolving notion of civilian suffering as constituting a threat to international peace and security and China’s historical position on this matter, this constitutes significant incremental progress and has clear relevance to the principles underpinning the RtoP.

In keeping with previous statements in these meetings, China’s statement mirrored the SG’s formulation for the RtoP, affirming that the state bears the primary responsibility to protect its populations (i.e. pillar 1) and that international assistance (i.e. pillar 2) should support the state in this endeavour, adding that such assistance must ‘comply with the provisions of the Charter of the United Nations, fully respect the will, sovereignty and territorial integrity of the country concerned, and refrain from forceful interference’. Within this context, China argued that the protection of civilians agenda should address the root causes of violence against civilians. For China, this means devoting greater attention to, and mobilising more resources for, conflict prevention especially through poverty reduction and economic development.

As with the majority of statements by Asia-Pacific governments in this meeting, China noted the importance of tackling impunity for those who target civilians, adding that national jurisdiction should come first and foremost but that “competent United Nations entities and international treaty bodies should continue to play their important roles.”

China’s representative also acknowledged that there had been significant development in the normative framework on the protection of civilians in the Security Council and that what is needed now is enhanced operationalisation and provision on the ground.

“The Council has adopted many resolutions and presidential statements on the protection of civilians in armed conflict. The priority for the next stage should be to push forward the effective implementation of these documents.”

China endorsed the inclusion of protection mandates in UN peacekeeping operations whilst making clear that this must remain contingent on three key conditions.

1. Only when feasible and necessary
2. Mandates should be decided on case-by-case basis – i.e. ‘a one-size-fits-all approach is not advisable’.
3. Protection mandates should be in accordance with the UN Charter and the principles of traditional peacekeeping: ‘established local consent, mission neutrality and the non-use of force except in self-defence’.

China also suggested that the best way to enhance protection was to ensure coordinated efforts and cooperation across and beyond the UN system, including the International Financial Institutions, regional organisations and non-governmental organisations.

Japan

Echoing China’s position, Japan’s address to the Council emphasised the need to build upon the Council’s commitment to the protection of civilians expressed through its past resolutions and presidential statements, noting that: ‘The most pressing task for us now is to determine how we can put those normative frameworks and standards into practice’. This echoes Japan’s contribution to the recent General Assembly debate on RtoP.

Japan urged all states to become parties to relevant international legal instruments, including the Rome Statute of the International Criminal Court (ICC) and reiterated the need to ensure compliance with the associated obligations. In unpacking these obligations, Japan implicitly utilised an RtoP prism, reiterating that first and foremost ‘States have a primary responsibility for protecting their citizens’. Echoing its position on the second pillar of RtoP, Japan pointed to the role of the international community in assisting struggling states, specifically through support to strengthen the rule of law, stating that, ‘It is essential that [States in armed conflict] strengthen their law enforcement institutions, promote security sector reform and establish the rule of law. The international community should support the efforts of those countries in their capacity-building’.

Japan’s statement went on to cite the obligations of the Security Council to be forthright and unambiguous in responding to ‘serious violations of international humanitarian and human rights law whenever they occur’ and emphasise that such action would constitute a major step in tackling impunity for perpetrators. It continued to endorse and support the use of targeted sanctions as a tool for leveraging compliance of both State and non-State groups with the relevant strands of international law.

Japan focused especially on the role of peacekeeping operations as an essential vehicle for providing protection in the field. The statement articulated a detailed vision of what is needed to improve the effectiveness of civilian protection in mission areas. In relation to mandates, Japan emphasised that they must be ‘realistic and feasible’ and their content must be clarified to Government and populations of host states if expectations are to be managed. Japan further requested that: ‘the Secretariat…formulate and develop an operational concept and guidelines on the protection of civilians’. The statement went on to highlight the need for a comprehensive and multidimensional strategy for the protection of civilians, explaining that:

A protection mandate needs to be implemented not only by a military component, but also by a civilian component, to deal with issues such as human rights violations.
and civil-military coordination. Therefore, each mission with a protection mandate needs to develop a comprehensive strategy.\textsuperscript{24}

Japan further noted that the shortfall in human, materiel and financial resources was a huge factor in ineffective civilian protection missions and asserted that it is: ‘…indispensable to consult very closely with troop-contributing countries, police-contributing countries, major finance-contributing countries and host countries in the early stages of mandate formulation’.\textsuperscript{25} Finally, Japan highlighted peacekeeper training as a key area, suggesting that: ‘In particular, we need to strengthen predeployment training, because the skills necessary for a protection mandate differ significantly from those required for other operations’.\textsuperscript{26}

Japan emphasised that all POC efforts, and the Council’s decisions on them, were reliant upon timely and reliable information on the ground and pointed to the recently created Security Council Expert Group on POC as a potential source of improvement in this area.\textsuperscript{27}

**Viet Nam**

Indicative of its increased engagement on the RtoP,\textsuperscript{28} more than any of the Asia-Pacific participants, Viet Nam couched its comments in RtoP language, reflecting the Secretary-General’s three-pillar formulation. First, it reiterated its steadfast position that: ‘…States bear the primary responsibility within their respective jurisdictions to protect their own populations’.\textsuperscript{29} Second, it noted that: ‘The United Nations, regional organizations and the international community have an important role to play in supporting and assisting Member States, particularly through political mediation and humanitarian assistance. In this connection, the engagement and cooperation with national Governments is vital.’\textsuperscript{30}

Like Japan, Viet Nam addressed the need to collect ‘accurate, timely and reliable information’ for effective decision-making and implementation in the field.\textsuperscript{31}

Viet Nam also emphasised the need for better coordination of protection of civilians.\textsuperscript{32} However, in keeping with its previous statements, Viet Nam cautioned against creating new capacities, instead recommending that the UN: ‘…make the best use of existing mechanisms, with a view to avoiding duplication, thus contributing to the best possible performance of the entire United Nations system.’\textsuperscript{33}

In closing, Viet Nam noted the importance of the newly adopted resolution 1894 and suggested that it represented the latest milestone in the Council’s thematic treatment of the protection of civilians.\textsuperscript{34}
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 the Republic of Korea.

Australia

After noting the adoption of Resolution 1894, Australia focused its comments on the need to enhance the ability of UN peacekeeping operations to achieve civilian protection mandates. The statement echoed a number of the recommendations put forward by Japan and others in relation to feasibility of mandates and the current gap between mandates and means. It further emphasised the urgent need for guidance and doctrine, claiming that this is a pre-requisite for identifying the necessary resources and training needs as well as supporting the development of holistic strategic planning and the capacities to measure progress in implementation.

Australia also highlighted the need to identify, capture and utilise lessons learned from field in this realm, noting the DPKO/OCHA’s recent release of an independently commissioned report on protection mandates in peacekeeping and upcoming workshops on civilian protection in peacekeeping as opportunities for this to take place.

Lastly, the Australians emphasised the need to develop a common understanding of what is expected of peacekeepers in relation to the protection of civilians.

Indonesia

Indonesia noted the decade of Council engagement on the protection of civilians and suggested that its resolutions and declarations constitute “a robust international normative framework” for the protection of civilians in armed conflict. Indonesia referred to two key areas that need addressing in order to strengthen protection, both of which have been discussed previously in relation to RtoP and form part of the Secretary-General’s implementation agenda:

1. The need to strengthen international assistance in building rule of law capacity in fragile and post-conflict states
2. The need to enhance the capabilities of peacekeeping operations to provide protection.

Indonesia argued that the insecurity faced by civilian populations stems from a ‘lack of compliance and accountability by parties to conflict with respect to their moral and legal obligation to protect civilians’. Indonesia went on to note that providing assistance to strengthen national rule of law capacities and the incorporation of related legal concepts in domestic legislation was crucial, stating that: “only through this avenue can we, the international community, prevent the emergence of atrocities committed against civilians.”

In relation to peacekeeping operations, Indonesia recognised their crucial role in providing protection to civilians on the ground but claimed that more should be done to improve the implementation of civilian protection mandates and better respond to...
conflict, particularly to prevent relapse into violence. It also noted with interest the recently released DPKO/OCHA study on civilian protection mandates in peacekeeping and recommended thorough discussions thereof.

Indonesia reiterated its view, aired in earlier discussions, that prevention is the best remedy, observing that a more effective measure for the protection of civilians is the prevention of conflict itself.

**Republic of Korea**

The Republic of Korea welcomed the adoption of Resolution 1894. In keeping with its long-standing commitment to both the protection of civilians and the RtoP, Korea reiterated the primary responsibility of the State to protect its populations. It continued by stating that as part of the international community’s duties, ‘peacekeepers also have the responsibility to support and provide security to people at risk’.

Korea went on to state its belief that ‘failure to address large-scale violence against civilians would seriously hurt the legitimacy and credibility of peacekeeping missions’. As with others, Korea went on to identify the centrality of clear, credible and achievable mandates for peacekeeping operations and stated that an ‘operational definition’ for the protection of civilians is a necessary precondition ‘for ensuring successful execution of civilian protection mandates’.

Korea’s statement reiterated its belief that tackling impunity for serious violations of international humanitarian and human rights law is at the core of protecting civilians from harm, citing the centrality of the International Criminal Court (ICC) when states failed in prosecuting perpetrators. The statement continued that ‘when it is clearly established that there is no escape for a violator, compliance with international humanitarian law will be enhanced’.

Korea commented that it regarded the denial of humanitarian access to civilians affected by armed conflict as a crime against humanity. It went on to reiterate the value of resolution 1894 as ‘an important step in addressing this issue’ of tackling impunity for egregious rights abuses including the denial of access.

Korea closed by highlighting the integral role of capacity-building in creating safe environments for populations emerging from conflict and encouraged the Council to further entrench issues of peacebuilding in discussions on POC. In this regard, it further suggested that ‘transitional justice mechanisms and the rule of law is fundamental in securing safety and security for civilians’.
2. Conclusion

Although none of the participants from the Asia-Pacific mentioned RtoP explicitly, many of their statements echoed RtoP’s fundamental principles and addressed protection of civilians issues through the prism of RtoP, referring to pillar’s one and two of the RtoP to reiterate the respective bearers of duties to protect civilians in armed conflict. On the whole, the statements of Asia-Pacific governments closely mirrored their previous contributions in these fora, and hence demonstrated a significant degree of consistency.

Asia-Pacific states proposed a range of pathways for enhancing capabilities and modalities for protecting civilians. Amongst these, five main themes recurred in the contributions from Asia-Pacific governments.

1. Enhancing the capacity of peacekeeping operations to implement protection mandates.
2. Tackling impunity and strengthening the rule of law.
3. The need for system-wide coordination to maximise protection.
4. The need for “timely and reliable information” from the field.
5. The importance of measuring progress and the impact of the protection of civilians agenda.

The major outcome of the meeting was the unanimous adoption of Security Council Resolution 1894 which reaffirmed the consensus reached on the RtoP at the 2005 World Summit.
3. Notes

1 For further details and analysis, see Asia-Pacific Centre for the Responsibility to Protect, *Implementing the Responsibility to Protect: Asia-Pacific in the UN General Assembly Dialogue*, October 2009.
2 A/63/L.80 Rev. 1/Add. 1.
3 A/60/L.1, 20 September 2005, paras. 138-140. See *Implementing the Responsibility to Protect*.
6 S/Res/1894, 11 November 2009, p.1
7 S/Res/1894, 11 November 2009, p.2
8 S/PV.6216, 11 November 2009, p.24
9 S/PV.6216, 11 November 2009, p.24
10 S/PV.6216, 11 November 2009, p.24
11 S/PV.6216, 11 November 2009, p.24
12 S/PV.6216, 11 November 2009, p.24
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32 S/PV.6216, 11 November 2009, p.22
33 S/PV.6216, 11 November 2009, p.22
34 S/PV.6216, 11 November 2009, p.22
35 S/PV.6216 (Resumption 1), 11 November 2009, p.5
36 S/PV.6216 (Resumption 1), 11 November 2009, p.6
37 S/PV.6216 (Resumption 1), 11 November 2009, p.6
38 S/PV.6216 (Resumption 1), 11 November 2009, p.6
39 S/PV.6216 (Resumption 1), 11 November 2009, p.6
40 S/PV.6216 (Resumption 1), 11 November 2009, p.34
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The Responsibility to Protect and the Protection of Civilians
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