



Implementing the Responsibility to Protect:

Asia-Pacific in the 2009 General Assembly Dialogue

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Contents

1.	Executive Summary	4
2.	The Responsibility to Protect	5
3.	<i>Implementing the Responsibility to Protect:</i> Background to the Dialogue	8
4.	Points of Consensus in the Asia-Pacific	10
5.	Challenges of Implementation in the Asia-Pacific	12
6.	Asia-Pacific Country Positions in Focus	17
	6.1 Australia	17
	6.2 China	17
	6.3 Democratic People's Republic of Korea	18
	6.4 Indonesia	19
	6.5 Japan	20
	6.6 Malaysia	21
	6.7 Myanmar	22
	6.8 New Zealand	22
	6.9 Papua New Guinea	23
	6.10 Philippines	23
	6.11 Singapore	24
	6.12 Solomon Islands	25
	6.13 South Korea	26
	6.14 Timor Leste	27
	6.15 Viet Nam	27
8.	Conclusion	29
9.	References	30



1. Executive Summary

In July 2009, the UN General Assembly held an Interactive Informal Dialogue and plenary session on the Responsibility to Protect (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.¹

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). Indeed, the region's constructive contribution to the GA debate on the R2P further substantiates the position of the Asia-Pacific Centre for the Responsibility to Protect that the Asia-Pacific region is highly receptive to the RtoP.

The challenge now – as many of the region's governments noted – is not to renegotiate RtoP but to identify ways to implement the principle. As a basis for thinking about pathways to implementation, this report analyses the comments made by the region's governments at the recent General Assembly debate. The report draws attention to each nation's respective position, and identifies both areas of regional consensus and areas that require more study and dialogue. In clarifying key commonalities and key challenges for implementing the RtoP in the Asia-Pacific region, the report provides insight into efforts which might facilitate a transition from conceptual discussions to policy and practice. This new focus on implementation affirms the resolve of the region to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and provides fertile ground for international, regional and national cooperation to that end.



2. The Responsibility to Protect

In the aftermath of the Second World War and the horrors of the Holocaust, the international community came together to declare 'never again'. Sadly, genocide and mass killing remained a feature of contemporary life. Atrocities have not been limited to one part of the world and have affected West and East, South and North. From the killing fields of Cambodia, to the genocide in Rwanda and the bloody civil war in Bosnia, the international community has all too often witnessed cases of conscience shocking inhumanity. Time and again, sovereign states and the international community failed to prevent genocide and mass killing and then failed to protect the victims from ongoing massacre. The nadir came in 1994, when the United Nations (UN) stood aside amidst the carnage of the Rwandan genocide. Nearly one million people were slaughtered in a little over three months. The failure to deal effectively with the aftermath helped trigger the war in neighbouring Democratic Republic of Congo (DRC) which claimed the lives of over two and a half million people, most of them civilians.² In 1999, an independent report commissioned by the UN Secretary-General, Kofi Annan, declared that: '[t]he failure by the United Nations to prevent, and subsequently, to stop the genocide in Rwanda was a failure by the United Nations as a whole. The fundamental failure was the lack of resources and political commitment devoted to developments in Rwanda and to the United Nations presence there. There was a persistent lack of political will by Member States to act, or to act with enough assertiveness'.³

The international community's response to this failure to protect has been multifaceted, spanning conceptual issues and practical matters. An important part of that response was the unanimous agreement to affirm the Responsibility to Protect (hereafter RtoP) concept at the largest ever gathering of heads of state and government, the 2005 World Summit. This concept had its roots in a number of initiatives developed in the 1990s and early twenty-first century. These include the rights and duties enumerated in the 2000 Constitutive Act of the African Union (Articles 4(h) and 4(g)), the concepts of 'human security', 'comprehensive security' and 'cooperative security' pioneered in the Asia-Pacific region, the notion of 'sovereignty as responsibility' developed in the 1990s by Francis Deng, the Special Representative of the UN Secretary-General on internally displaced persons and subsequently articulated by Secretaries-General Kofi Annan and Ban Ki-moon, and the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS).⁴

After several months of detailed consultation and negotiation carried out at the highest levels of government and the UN, world leaders unanimously adopted the RtoP at the UN World Summit in 2005. Paragraphs 138-140 of the Summit's Outcome Document 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 genocide, 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.

140. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.⁵

The following year, the UN Security Council unanimously reaffirmed ‘the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity’ in Resolution 1674 (2006) (para. 4). The Security Council also recalled its earlier reaffirmation of these provisions in the preamble of Resolution 1706 (2006) on the situation in Darfur (Sudan).

As agreed by UN Member States, the RtoP concept rests on three equally important and non-sequential pillars:

- First, the responsibility of the state to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement (para. 138).
- Second, the international community’s responsibility to assist the state to fulfill its responsibility to protect (para. 139).
- 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).⁶

It is important to emphasize that no single pillar is more important than the others and the RtoP is equally dependant on all three pillars. It should likewise be noted that, according to the agreement reached by heads of state and government, RtoP applies only to the four crimes and violations enumerated in the 2005 World Summit Outcome Document: genocide, war crimes, ethnic cleansing and crimes against humanity. These violations are well embedded in existing customary international law. It is clear, therefore, that RtoP applies only to a relatively narrow field of human security.⁷ Finally, it should be stressed that prevention is the single most important element of the RtoP. In the Outcome Document, Member States explicitly agreed that '[t]his responsibility [to protect] entails the prevention of such crimes' (para. 138) and identified four specific elements of prevention: (a) preventing the incitement of the four crimes (para. 138); (b) supporting the UN in establishing an early warning capability (para. 138); (c) assisting states under stress before crises and conflicts break out (para. 139); and (d) supporting the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide (para. 140).

In 2009, the UN Secretary-General presented his report on *Implementing the Responsibility to Protect*. The Secretary-General's report was presented to the UN General Assembly and discussed in an Interactive Informal Dialogue held in July 2009. Fifteen of the region's governments participated in the dialogue by making statements to the plenary session of the General Assembly (Australia, China, Democratic People's Republic of Korea, Indonesia, Japan, Malaysia, New Zealand, Myanmar, Philippines, Papua New Guinea, Republic of Korea, Singapore, Solomon Islands, Timor-Leste, and Vietnam).



3. Implementing the Responsibility to Protect: Background to the Dialogue

In his 2008 Berlin Address, the UN Secretary-General Ban Ki-moon conceded that ‘the responsibility to protect is a concept not yet a policy’. However, the appointment of Edward Luck as his Special Advisor and Francis Deng as his Special Representative on the Prevention of Genocide, and the release of his 2009 report entitled *Implementing the Responsibility to Protect*, have done a lot to set the tone and direction of the debate towards a focus on transitioning the RtoP from words to deeds. In the report, the Secretary-General outlined a strategy for advancing the agenda mandated at the 2005 World Summit based around the three pillars described earlier.

As the Secretary-General explained, he envisaged the General Assembly’s dialogue as an opportunity to affirm and fulfill the commitments made at the 2005 Summit, rather than as an invitation to renegotiate that agreement. The Secretary-General urged the General Assembly ‘to take the first step by considering carefully the strategy for implementing the responsibility to protect described in [his] report’. Specifically, he envisaged the debate as an opportunity for the General Assembly to welcome or take note of his report, to define the nature of the General Assembly’s continuing consideration of the RtoP, and to address ways of define and develop the partnership between states and the international community under pillar two of the RtoP. The Secretary-General also saw the debate as a forum for the General Assembly to consider whether and how to conduct periodic review of what member states have done to implement the responsibility to protect, and to determine how best to exercise oversight over the Secretariat’s efforts to implement the principle. In terms of setting out the first step towards implementation, the Secretary-General gave priority to the development of an early warning and assessment capacity at the UN and set out some preliminary ideas in the annex to his report focused on the establishment of a joint office for the prevention of genocide and the implementation of the RtoP.⁸

Immediately prior to the General Assembly dialogue, the President of the General Assembly (PGA) Father Miguel d’Escoto Brockmann, a former leftist *Sandinista* from Nicaragua, released a ‘concept paper’ on the RtoP. Rather than reflecting a balanced view of the General Assembly’s opinion, the ‘concept paper’ presented the PGA’s personal views including the claims that responsibility to protect arguments were used by European colonialists, that ‘the General Assembly is charged, in terms of its responsibility under the Charter to develop and elaborate a legal basis’ for the RtoP, that Security Council reform debates need to consider Charter amendment to be effective, and that the RtoP should never contemplate the use of force. Furthermore, on the issue of developing an early warning mechanism, the PGA argued that the RtoP concept and its legal basis required further elaboration prior to the UN Secretariat

taking further steps. A number of civil society groups viewed the PGA's 'concept paper' as undermining the Secretary-General's report as it drew the focus away from implementing the RtoP and questioned the degree to which the 2005 Summit had established a viable mandate based on consensus.

On 23 July 2009, the PGA held an 'informal interactive dialogue'. Because the panel featured three speakers who opposed the RtoP, some civil society groups were concerned that the discussion would undermine the chances of consensus in the main debate. However, Edward Luck, Special Advisor to the Secretary-General, took the opportunity to stress to the General Assembly that the mandate to implement the RtoP 'could not be clearer or come from a higher authority' and pointed out that the World Summit Outcome Document was unanimously adopted by the General Assembly in resolution 60/1 and was reaffirmed by the Security Council in resolution 1674 (2006). He emphasised that the General Assembly should not revert back to previous debates over humanitarian intervention, most of which had already been found wanting, or revoke the 'hard-won balance' negotiated in the 2005 Outcome Document. The formal plenary debate on 23, 24 and 28 July proved to be a great success with a large number of countries expressing their support for the debate and elaborating on the Secretary-General's recommendations. With 94 speakers representing 108 member states and two observer missions, the debate was one of the largest plenary debates of the 63rd Session of the General Assembly.

There was a large degree of consensus from states in the Asia-Pacific region. The majority of states welcomed the Secretary-General's report and a large number, including Indonesia, the Philippines, Republic of Korea, New Zealand, Australia, Singapore, Japan, China, Myanmar and the Solomon Islands, endorsed the view that the 2005 World Summit Outcome Document represented a benchmark of international consensus and that efforts should move towards operationalising that commitment. Most of the region's participants, including Indonesia, the Philippines, Republic of Korea, Singapore, Japan, China, Timor-Leste and Papua New Guinea also recognised the Secretary-General's three-pillar approach as an accurate and effective way of conceptualising the 2005 agreement. This helped produce a consensus resolution welcoming the debate and committing to move forward the dialogue about implementation. The remainder of this paper focuses on what was said by Asia-Pacific governments, noting points of consensus and areas that require further deliberation.



4. Points of Consensus in the Asia-Pacific

It is important to stress that 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 the RtoP and that there was no need to renegotiate that text. The challenge, they agreed, was to implement the RtoP, *not* renegotiate it. Indonesia, the Philippines, Republic of Korea, Singapore, Japan, China, Myanmar and the Solomon Islands all explicitly made this point, suggesting a broad and deep consensus. They also affirmed the Secretary-General's identification of the three pillars of the RtoP. As noted earlier, this entails: 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).⁹

Within this context, governments in the region were eager to stress five key points about the nature and scope of the RtoP, which ought to guide efforts to implement the principle.

First, *the RtoP lies first and foremost with the state*. As such, the principle should be understood as an ally of sovereignty (as suggested by the UN Secretary-General), and it does not—and should not—contravene the principle of non-interference. Moreover, as the Solomon Islands pointed out, it is important to stress that pillar two activities aimed at assisting states should always be undertaken in cooperation with the state concerned.

Second, *the measures related to RtoP's third pillar include more than simply coercion or the use of force*. Emphasis, Asia-Pacific governments agreed, should be placed on peaceful measures under Chapters VI and VIII of the UN Charter.

Third, governments stressed that *the RtoP applied only to the four specified crimes and their prevention* and not to other non-traditional security issues such as AIDS and natural disasters. Attempts to widen the scope of the RtoP, they agreed, would damage efforts to implement the principle.

Fourth, *the RtoP must be implemented and exercised in a manner consistent with international law and the UN Charter*. The Non-Aligned Movement, Republic of Korea and China all stressed that the RtoP must not be used to legitimise unilateral coercive

interference in the domestic affairs of states, with Singapore adding that the RtoP does not in itself create any additional legal obligations.

Fifth, the region's governments agreed that *the RtoP was a universal principle that should be applied equally and fairly in a non-selective fashion* – though there was some recognition that decisions about implementation should be taken on a case-by-case basis (the Philippines) and that potential inconsistency should not be a barrier to collective action in response to genocide and mass atrocities (New Zealand).

In addition to these substantive points – which reflect basic agreement with the core foundations of the RtoP – Asia-Pacific governments also voiced their commitment to the General Assembly continuing its consideration of the RtoP. The Philippines, for example, called for the General Assembly to play an 'active and substantive role' in implementing pillars two and three.

From this brief discussion, it is fair to conclude that the region's governments have reached a consensus on the nature and scope of the RtoP principle that is in tune with the UN Secretary-General's approach.

Points of Consensus in the Asia-Pacific

- The Responsibility to Protect rests first and foremost with the state.
- The Responsibility to Protect applies only to genocide, ethnic cleansing, crimes against humanity and war crimes and their prevention.
- The Responsibility to Protect must be implemented and exercised in a manner consistent with international law and the UN Charter.
- The Responsibility to Protect is a universal principle that should be applied equally and fairly in a non-selective manner.
- The measures related to pillar three of the Responsibility to Protect include more than simply coercion or the use of force.



5. Challenges of Implementation in the Asia-Pacific

The region's constructive contribution to the debate was not limited to simply reiterating support for past agreements. Instead, many of the governments that contributed to the debate made substantive suggestions to the question of how the principle should be implemented. Together, governments identified seven priority areas where work is needed to clarify the demands of the RtoP, to build a more detailed consensus, and to translate this into policy and action. These areas constitute priorities for policy dialogue and academic research on implementing the RtoP in the Asia-Pacific region for the next few years.

Before outlining the seven priority areas identified by the region's governments, it is worth noting an important point raised by the Philippines, that it is crucial that the implementation of the RtoP add value and not draw scarce resources away from other activities such as economic development and protection against natural disasters.

5.1 Early Warning

The UN Secretary-General called for the General Assembly to support the strengthening of the UN's capacity for early warning and analysis of impending episodes of genocide and mass atrocities through the establishment of a small joint office for the Special Representative for the Prevention of Genocide and the Special Adviser for the RtoP. The establishment of this office marks the next step in the implementation of the RtoP, as the UN Secretary-General's proposal was based on the specific commitment made by the General Assembly in 2005 that the international community should 'support the United Nations in establishing an early warning capability' (para. 138). The Secretary-General's proposal won support from a number of Asia-Pacific governments (such as Indonesia, Republic of Korea, New Zealand, the Solomon Islands and Papua New Guinea) but there remain some important concerns about the operationalisation of early warning within the UN system. China called for further deliberation in the General Assembly and Security Council about the need to create an early warning mechanism and noted that if such a mechanism was thought necessary, it should be predicated on some core principles. Other governments (Indonesia, Solomon Islands and Papua New Guinea) also contributed ideas along these lines, together producing a useful list of substantive points that the UN and regional arrangements should take account of when developing an early warning mechanism.

They are:

1. The mechanism should use only *high quality information and should ensure its neutrality and reliability*. One suggestion (from the Solomon Islands) was that

the UN should be involved in this process—this refers to an earlier suggestion that a UN early warning mechanism should base its assessment exclusively on information *already gathered* by UN agencies and departments that is freely available to others for scrutiny. Thus, Indonesia suggested that the focus should be on better analysis rather than just the collection of more information.

2. The joint office should *ensure the fairness and transparency of the assessment procedures*.
3. The joint office should contain *safeguards to prevent the politicisation* of early warning and encroachment of double-standards into its work.
4. The office should *work closely with regional and sub-regional partners*. One suggestion touted elsewhere is that regional and sub-regional partners take the lead in collating and assessing information and provide assessments to the UN.
5. The assessment process must *take account of local knowledge and experience*.

Taken together, these are perceptive, challenging and wholly constructive ideas that ought to be studied carefully and factored into the design of an early warning mechanism that could comprise the small joint office envisaged by the UN Secretary-General working with regional and sub-regional partners. Thus, although many governments remain skeptical about the merits of an early warning mechanism, their statements in the debate helpfully identify the specific concerns that need to be addressed by advocates.

5.2 Strengthen the Role of Regional Arrangements

The 2005 World Summit agreement included some specific, and some implied, pledges in terms of engaging regional and sub-regional arrangements in the implementation of the RtoP. Since 2005, many governments and civil society actors in the region have called for a stronger focus on the role of regional arrangements. Beyond reaffirming that regional arrangements should have a role, however, relatively little progress has been made in the Asia-Pacific region on defining what sort of role regional arrangements should fulfill. Once again, at the 2009 General Assembly debate, governments (especially Indonesia and the Philippines) reiterated the importance of engaging regional arrangements. This time, however, five specific areas of work were identified by governments from the Asia-Pacific region: (1) regional arrangements might establish peer review mechanisms to assist states (with their cooperation) in identifying and implementing their pillar one responsibilities; (2) with assistance from the UN, regional arrangements could provide assistance and support for national capacity-building; (3) regional arrangements could develop civilian capacities to assist states under stress when such assistance is requested; (4) regional arrangements could work with the UN on strengthening early warning and assessment; and (5) regional arrangements could provide a useful vehicle for region-to-region learning about the practices and capacities needed to implement the RtoP and for deepening regional partnership with the UN. Although these proposals were put forward by too few states to constitute a regional consensus, they mark a useful starting point for more detailed thinking about the role of regional arrangements. These potential roles require further study and elaboration in track 2 settings before being placed on the region's track 1 agenda.

5.3 Clarify the Role of the UN's Principal Organs, Especially the Security Council

Several governments called for clarification of the roles of the UN's principal organs and especially the role of the UN Security Council vis-à-vis the potential use of force. Indonesia and Republic of Korea called for the mainstreaming of the RtoP into the work of the UN's departments, programs and agencies – including humanitarian affairs, peacekeeping, peacebuilding and governance. Korea went one step further and endorsed a proposal that the Secretary-General be invited to give biennial implementation reports to the General Assembly. This would effectively give the Secretary-General a mandate to mainstream and implement the RtoP within the UN system whilst also providing a mechanism for the General Assembly to play an oversight role. It is also worth mentioning that the Solomon Islands called for the clarification of the potential role of the UN Peacebuilding Commission in the implementation of the RtoP.

By far the most controversial question relating to the role of the UN's Principal Organs relates to the role of the Security Council and the use of force. Governments in the region raised multiple concerns about this and it is clear that the question of the Security Council's role remains somewhat vexed – as is the question of who is most competent to clarify that role (some figures have called for the Security Council to establish a working group to look at this question, whilst the Secretary-General prefers to argue that the General Assembly should be the principal vehicle for debating all aspects of implementation). The region's concerns about the role of the Security Council coalesced around two general points: (1) the nature of the Council's responsibility; and (2) its procedures for determining what action to take in response to emergencies characterised by the commission of the four crimes associated with the RtoP.

In relation to the first question, Korea, New Zealand and Singapore argued that the Security Council has special responsibilities. As such, Korea and New Zealand argued that permanent members of the Security Council should refrain from using their veto when a state is manifestly failing in its RtoP, a position similar to that held by the 'S5' group of states, of which Singapore is a member. Singapore took this logic a step further and stressed that when the Security Council failed to act in a timely and decisive manner, it should become incumbent upon the General Assembly to take such measures it deems necessary and appropriate for the fulfillment of the RtoP.

The second key question revolves around the Council's procedures – particularly in relation to the use of force. There seems to be some support for the view that the Council should articulate policies, principles and rules to guide when coercive force is needed (Philippines) but the general tenor was that these should be aimed at *limiting* the Council's room for maneuver. In particular, China argued that it was important to stress that the Council is entrusted with the protection of 'international peace and security' and that it should only act when there is a breach of the (international) peace, a threat to the peace or an act of aggression. Situations that did not pass this test should not, in China's view, come before the Council. It is therefore clear that there is much more work to be done to clarify the proper role of the UN Security Council.

5.4 Clarify the Relationship Between the RtoP and Economic Development

Although many Western advocates of the RtoP continue to resist the idea that there is a connection between the RtoP and economic development, the evidence that there is,

is overwhelming.¹⁰ Economic inequality and underdevelopment can be demonstrably proven to be a key structural precondition for genocide and mass atrocities. That is not to say that inequality and underdevelopment make mass killing inevitable, just that it makes it much more likely. This point was underscored by many of the region's governments, which insisted that the root causes of conflict lay in poverty and economic underdevelopment (Korea, New Zealand, and Viet Nam). Although there is a broad regional consensus on the centrality of economic development to the prevention of genocide and mass atrocities, it is clear that much more work is needed to understand the precise contours of the relationship between the RtoP, the prevention of genocide and mass atrocities, and economic development and to develop a tangible strategy to address this issue. The region's governments made many suggestions at the recent General Assembly debate, but no consensus emerged. In terms of what can be done, New Zealand argued that multilateral development institutions are well placed to assist states with pillars 1 and 2 of the RtoP and called for the allocation of more resources to assist with capacity building. More specifically, Australia suggested that development assistance should focus on assisting states to build their own capacities for conflict prevention, whilst Viet Nam stressed the importance of education and public awareness-raising in remote and disadvantaged regions. Of course, this is a long way from a cohesive agenda or even a substantive list of issues for further inquiry but it is important for now to note the broad consensus that there is a relationship and that it requires further elaboration. That elaboration needs, however, to heed the powerful note of caution issued by Malaysia which is that there is a danger that the redirection of aid for RtoP-related capacity-building purposes might create further aid conditionalities and might undermine the authority of the state by strengthening civil society. Although not an insurmountable problem, it is important that these concerns are factored in to any consideration of the relationship between the RtoP and economic development.

5.5 Clarify Scope, Nature and Delivery Mode of Capacity-Building

Following immediately on from the discussion about the links between the RtoP and development is the issue of capacity-building. There is a deep and well-founded consensus in the region that capacity-building is the heart of the RtoP. In other words, first and foremost the RtoP is about the prevention of genocide and mass atrocities and the best path to prevention is building the capacity of states. Capacity-building is of course one element of economic development but it is seen as absolutely pivotal to the RtoP. Of course, programs of capacity-building will need to be tailored for each country's specific situation and so it is unlikely that an overarching strategy will be developed. At the 2009 General Assembly debate on the RtoP, the region's government voiced their broad agreement with the proposition that national capacity-building is a central part of the RtoP and focused their discussion upon two questions: (1) the appropriate scope of RtoP capacity-building; and (2) the appropriate mode of delivery.

In relation to the appropriate scope of capacity-building, Indonesia, Australia, the Philippines, Timor-Leste and Viet Nam made useful suggestions that provide a compelling and comprehensive list of appropriate areas: good governance and institution building, rule of law and support for the judicial sector, peacebuilding, conflict prevention – especially the building of civilian capacity for preventing the four RtoP crimes, strengthening civil society, technical assistance, mediation, and peacekeeping. Of these, there was most consensus around measures to build prevention capacity and rule of law capacity. Japan—the second largest donor to the UN—cautioned against an expansive approach to capacity-building, arguing that this

could overstretch the RtoP's second pillar. Instead, Japan called for a more narrow focus on the rule of law, security sector reform and the protection of human rights.

The second question related to capacity-building referred to its modalities. Indonesia called for the General Assembly to develop a clear strategy aimed at strengthening capacity-building programmes, a call echoed by New Zealand which argued that the UN should be given more resources in this area to ensure proper delivery and that capacity-building does not draw resources away from other programs. As noted earlier, regional arrangements clearly have a role to play as well and the Philippines argued that it was important that the UN provide tangible assistance to regional arrangements to help them build capacity and assist states. Finally, there was broad agreement that, as with all pillar 2 activities, capacity-building assistance should only be undertaken with the consent and cooperation of the state involved.

5.6 Clarify the Measures that States Might Take to Implement Pillar 1

Finally, there was a clear call for more study and dialogue about the measures that states might take to fulfill their pillar 1 responsibilities. Korea especially put forward a number of proposals for further consideration, including:

- Establish mechanisms for the *periodic review of pillar 1 implementation*.
- Ensure *effective mechanisms for handling domestic disputes* (clearly related to capacity-building).
- *Accession to relevant instruments* on human rights law, international humanitarian law, refugee law and the International Criminal Court.

Malaysia added that there was need for further clarity about the responsibility of states to prevent the incitement of the four RtoP-related crimes. To date, states across the world have been more reluctant to talk about pillar 1 responsibilities than those connected with pillars 2 and 3. A useful place to start might be to catalogue what states are already doing that contributes towards their pillar 1 responsibilities and then to engage in comparative analysis, and state-to-state and region-to-region learning processes.

Challenges of Implementation in the Asia-Pacific

- Build agreement around early warning
- Strengthen the role of regional arrangements
- Clarify the role of principal organs of the UN, particularly the Security Council
- Clarify the relationship between the RtoP and economic development
- Clarify the scope, nature and delivery mode of capacity-building
- Clarify the measures that states might take under pillar one of the RtoP



6. Asia-Pacific Countries in Focus

6.1 Australia

In its statement at the 2009 General Assembly debate on the RtoP, Australia demonstrated its strong commitment to the principle and its implementation. At the outset, Australia reaffirmed the commitment made at the 2005 World Summit and emphasised that the international community's task now is not to reinterpret, reconceptualise or renegotiate that agreement but to implement it. Australia welcomed the Secretary-General's report as providing useful ideas on how to translate the RtoP principle into practice. Australia also distinguished the current debate about protection from that of the 'now discredited notion of humanitarian intervention'. Australia gave strong support to the Secretary-General's three-pillar approach, emphasising the equality of each, as well as the Secretary-General's characterisation of the RtoP as 'narrow but deep', focused on the prevention of the four specific crimes but employing the wide array of instruments available to Member States, the UN system and regional and sub-regional arrangements. Australia argued that the essential operating principle for the RtoP must be that the international community responds to genocide and mass atrocities, although different tools might be used, from preventive diplomacy to targeted development or the use force, depending on the circumstances.

Australia gave particular attention to pillar two, drawing on its own efforts in implementing the RtoP. Australia highlighted its efforts in Timor-Leste to strengthen civil society institutions and promote human rights to help with reconciliation and peacebuilding, as well as its development of a deployable civilian police capacity to enable Australia to respond more effectively to emergencies in the region. These efforts are consistent with Australia's leadership role in the Regional Assistance Mission to the Solomon Islands (RAMSI), first deployed in 2003, and Australia's peacekeeping efforts in East Timor in 1999 and 2006. At the 2009 debate, Australia further emphasised its commitment to the RtoP by pointing to its support of the Global Centre, the Asia-Pacific Centre and the International (NGO) Coalition for the Responsibility to Protect as well as its establishment of a Responsibility to Protect Fund 'to advance the RtoP principle and support States to build capacity to protect civilians'.

6.2 China

China's statement at the 2009 General Assembly debate on the responsibility to protect was consistent with its supportive but cautious approach to the RtoP principle. At the outset, China emphasised the 'prudent description' given to the RtoP in the 2005 World Summit Outcome Document. China lent support to a narrow characterisation of the concept, as only applying to four serious international crimes, namely genocide, war crimes, ethnic cleansing and crimes against humanity, consistent with the Secretary-General's formulation. China expressed some concern, however, about the meaning

and the application of the concept and advocated further debate at the General Assembly to 'help Member States come to a clear understanding and seek further consensus'. On the question of the meaning and scope of RtoP, China expressed the view that 'no state should expand on the concept or make arbitrary interpretations'. It further emphasised that 'abuse of the concept should be avoided' and that 'it is necessary to prevent RtoP from becoming another version of humanitarian intervention'.

Consistent with the Secretary-General's report, China expressed the view that the government of a given state bears the primary responsibility to protect its citizens. China emphasised that this is in keeping with the principle of state sovereignty. It insisted, however, that 'the implementation of RtoP should not contravene the principle of state sovereignty and the principle of non-interference of internal affairs'. Thus, it argued that 'although the world has undergone complex and profound changes, the basic status of the purposes and principles of the UN Charter remain unchanged' and 'there must not be any wavering over the principles of respecting state sovereignty and non-interference of internal affairs'.

Where a crisis involving one of the crimes relating to the RtoP does emerge, China expressed the view that whilst it is the 'common aspiration and [a] legitimate demand on the international community' to ease and curtail the crisis, international action 'must strictly abide by the provisions of the UN Charter and respect the views of the government and regional organisations concerned'. China also stressed that crises be addressed within the UN framework, that all peaceful means be exhausted, and that unilateral implementation of the RtoP be prevented. These views are consistent with China's previous policy and practice.¹¹ China also addressed the role of the Security Council in emerging crises. China stressed that 'the Council must make its judgment and decisions in light of specific circumstances, and must act prudently'. Reiterating that the Council's responsibility under the UN Charter was carefully limited to 'the maintenance of international peace and security', China emphasised that 'the Council must consider RtoP in the broader context of maintaining international peace and security, and must guard against abusing the concept'.

Amidst a generally positive assessment of the RtoP and the Secretary-General's report, China also raised two notes of caution. First, it argued that 'states must refrain from using RtoP as a diplomatic tool to exert pressure on others', a position seemingly at odds with the Secretary-General's view that diplomacy might be used to remind states of their obligations. This gap may not be as wide as first appears, however, because the Secretary-General emphasised that the use of diplomacy and other means should be consistent with international law. Second, as noted earlier, China also expressed some caution about the establishment of an early warning and assessment capability. Thus, it called for the General Assembly and Security Council to study the matter further to determine whether such a capacity is appropriate. China also expressed particular concerns with such a capacity, including the need to ensure the neutrality and reliability of the information gathered, the fairness and transparency of the assessment procedures and provisions to prevent double standards or politicisation.

6.3 Democratic People's Republic of Korea

Unsurprisingly, given its appalling human rights record, the Democratic People's Republic of Korea (DPRK) expressed deep concern with respect to the RtoP. It argued basically that the RtoP infringed state sovereignty and reincarnated humanitarian intervention and other forms of coercive interference. In relation to the first point, the

DPRK questioned whether the RtoP was consistent with the principles of sovereignty, equality and non-interference. In connection with this, the DPRK expressed a cautious view towards pillar two, international assistance and capacity-building, arguing that whilst 'the international community can encourage and assist states in their efforts to fulfill their responsibility to protect their own people, it cannot act like a master in place of their governments'. In place of the RtoP, it argued that 'just international relations based on the principles of respect for sovereignty, equality and non-interference in others' internal affairs should be established with no further delay'.

In relation to the use of force, the DPRK disregarded the Secretary-General's distinction between the RtoP and 'humanitarian intervention', and instead argued that the RtoP is 'complicated and sensitive as it is based on the concept of 'humanitarian intervention' which was already rejected at the United Nations'. Thus, it argued that military attacks launched on the pretext of terms such as 'humanitarian intervention' and the 'war on terror' had infringed upon sovereignty, killing large numbers of innocent people. Pointing to Iraq and Afghanistan, the DPRK argued that intervention might not be as effective as envisaged by the RtoP and may cause even more serious human rights violations. With respect to pillar three, the DPRK suggested that many countries were concerned about the mobilisation of coercive measures such as the use of force within the RtoP framework.

Finally, the DPRK emphasised that the RtoP should be universally applied but that, at present, cases such as Afghanistan and Gaza 'cannot even be tabled at the Security Council because of the involvement of the superpower'.

6.4 Indonesia

Indonesia exhibited a commitment to implementing the RtoP and expressed particular interest in expanding on measures aimed at prevention. Indonesia emphasised that the task ahead was to implement the consensus reached at the 2005 World Summit and welcomed the Secretary-General's report for facilitating the General Assembly's deliberations aimed at this goal. Indonesia expressed strong support for the Secretary-General's three-pillar approach but in particular emphasised that 'prevention is key'.

Indonesia endorsed the Secretary-General's recommendations for strengthening the United Nations' early warning capacity. It suggested that this could be done in conjunction with regional and sub-regional partners as well as 'by heightening, consistent with their mandates, RtoP perspectives within existing and relevant UN departments, programmes and agencies'. Indonesia recognised that the challenge lies beyond the accumulation of information and indicated its openness to the Secretary-General's proposals to be submitted later this year.

In relation to pillar two, Indonesia lent support to the Secretary-General's recommendation that efforts be made to strengthen the capacity of Member States to meet the minimum criteria of good governance and the application of the rule of law. Indonesia advocated further discussion at the General Assembly regarding 'a comprehensive and clear strategy aimed at strengthening capacity-building programmes'. In connection to this, Indonesia welcomed a number of the possibilities raised by the Secretary-General, in particular action taken by regional or sub-regional organisations in promoting capacity-building and region-to-region learning processes.

In relation to pillar three, Indonesia emphasised the necessity of timely and decisive action within the UN Charter, 'as an option on the table should a State be manifestly failing in its obligation to protect'. In addition, Indonesia emphasised the wide range of non-coercive and non-violent responses under Chapters VII and VIII of the Charter that could be taken as part of pillar three.

Finally, Indonesia also expressed its openness to the Secretary-General's call for the General Assembly to engage in periodic review of Member States' progress in implementing the RtoP. Indicating its willingness to consider the proposal in more detail, Indonesia expressed the view that, 'in order to ensure a true added value of such an exercise...a clear and practical modality was needed', before debate on this initiative takes place.

6.5 Japan

Welcoming the Secretary-General's Report, Japan argued that the international community should work towards implementing and consolidating the 2005 World Summit Outcome Document rather than reopening the issues already agreed upon. In considering how to implement the RtoP, Japan reaffirmed its preference for diplomatic, humanitarian and peaceful means but acknowledged the use of force as a last resort, provided it is exercised in accordance with the provisions of the UN Charter including Chapter VII. Highlighting the need for a clear conception of the scope of the RtoP, Japan drew a distinction between (a) the RtoP, as concerned with how to help States to protect populations from the four most serious human rights violations, including timely and decisive response, and (b) human security, as focused on prevention and empowerment, though not the use of force.

In relation to pillar one, Japan endorsed the Secretary-General's point that the responsibility to protect populations lies first and foremost with the State. Japan then elaborated on the content of pillar one as including the establishment of good governance, the rule of law, functioning law-enforcement and justice systems. Japan lent support to the Secretary-General's call for States to become parties to the international human rights and humanitarian law instruments and the Rome Statute of the International Criminal Court and to implement these international instruments in domestic law. Drawing attention to the issue of non-state actors, Japan suggested that their non-compliance with international human rights and humanitarian laws should be addressed. Japan also lent support to the Secretary-General's assertion that human rights monitoring mechanisms, in particular the Human Rights Council's Universal Periodic Review mechanism, can play a key role in implementing the RtoP.

In relation to pillar two, Japan recognised the importance of early warning capability but did not elaborate on how such a capacity could be developed.

In relation to pillar three, where collective action is necessary to protect populations, Japan emphasised the importance of obtaining the consent of the host country and argued that 'the effort to obtain consent should be pursued to the fullest extent'. Where collective coercive action is contemplated without consent, Japan stressed that such action be taken through the Security Council, in accordance with the Charter, including Chapter VII. Japan called for each Council member to fulfill its responsibility entrusted by the entire membership but did not comment on the Secretary-General's appeal for permanent members of the Security Council to refrain from employing, or

threatening to employ, the veto in situations of clear manifest failure to meet RtoP obligations.

Finally, it is important to note that Japan expressed concern about the broad list of measures set out by the Secretary-General under pillar two. It suggested that pillar two might be overstretched. In its place, Japan advocated a focus on those measures which have a direct link with the RtoP as defined in the World Summit Outcome Document, including rule of law, security sector reform (military, police and judiciary) and the protection of human rights.

6.6 Malaysia

Malaysia reiterated its commitment to the RtoP but also raised a number of concerns with respect to its implementation. Malaysia argued that the international community has not yet reached consensus on the exact parameters of the RtoP.

In relation to pillar one, Malaysia emphasised that the commitment made at the 2005 World Summit, which recognised the obligations of a sovereign State, 'strengthened the principle of sovereignty...the bedrock of the United Nations'. Malaysia raised concern, however, that the RtoP concept is moving towards holding States liable for not preventing or circumventing the incitement of the four relevant crimes. Adopting a legalistic tone, Malaysia argued that 'it is only possible to hold an entity liable...in hindsight [and that] it will be difficult to hold a State responsible for not acting for a crime that has yet to be committed'. Malaysia suggested that the United Nations needed to resolve these 'seemingly illogical steps in what should be a natural progression from a particular thinking into a set of principles'. Malaysia's concern reflects its ongoing adherence to the non-interference principle.

In relation to pillar two, Malaysia expressed concern over the Secretary-General's recommendation that development assistance be sensitive both to conflict and the RtoP. Malaysia stressed that 'the economic well-being of a person is also an important facet of human protection' and that 'donor assistance should be rendered on the basis of the need of the recipient State'. It argued that the Secretary-General's recommendation may be misconstrued in its application and that a set of pre-determined criteria could result in assistance being used as additional, externally imposed conditionalities on aid. Thus, Malaysia argued that the calls to expand development assistance and focus such development assistance on strengthening the role of civil society in the decision making process introduced undesirable conditionality to development assistance.

Malaysia expressed some openness to the establishment of an early warning capability within the United Nations and lent support to further consultation on this matter but stressed that such consultation must be inclusive and transparent with primary inputs from Member States.

In relation to pillar three, Malaysia lent support to the Secretary-General's appeal to permanent members of the Security Council to refrain from employing, or threatening to employ, the veto in situations characterised by a clear manifest failure to protect populations from one of the four crimes. Malaysia argued that if we work towards the approach that the 'who' which will decide that RtoP should be invoked is the collective international community, then it does not make sense that the Security Council can thwart this decision by applying the veto.

6.7 Myanmar

Somewhat surprisingly, Myanmar welcomed the Secretary-General's report and argued that the General Assembly was the appropriate venue to discuss the implementation of the RtoP. Myanmar emphasised the consensus reached at the 2005 World Summit, in particular the international community's commitment to act to halt or prevent atrocities when a State is manifestly failing to protect its own citizens. Myanmar stressed that this commitment is a collective obligation and not a unilateral right to act. In terms of the scope of the RtoP, Myanmar stressed the importance of limiting it only to the four crimes. Myanmar supported the Secretary-General's appeal to move debate towards implementing the 2005 agreement but did not elaborate on specific recommendations.

6.8 New Zealand

New Zealand's statement demonstrated its firm commitment to the RtoP and its operationalisation. New Zealand emphasised that the RtoP is not new and is firmly based in existing international law, including international human rights and humanitarian law. New Zealand welcomed the proposals made in the Secretary-General's report and argued that given the clear mandate offered in the 2005 World Summit Outcome Document, current debate should focus on implementing the principle. New Zealand supported the Secretary-General's characterisation of the principle and commended the Secretary-General's report for its emphasis on prevention rather than intervention and assistance to states before the worst atrocities are allowed to occur. In relation to pillars one and two, New Zealand suggested that development institutions are well placed to assist, although to be effective they would need resources and support. It suggested that further attention should be paid to how the UN might assist States and regional institutions in their implementation of the RtoP.

New Zealand also emphasised that 'early warning, assistance, and prevention are key to credible implementation of the concept'. Furthermore, New Zealand advocated for the allocation of more resources for early warning and assessment.

In relation to pillar three, New Zealand presented a strong case in support of the Secretary-General's appeal to permanent members of the Security Council to refrain from employing, or threatening to employ, the veto in situations where the state is manifestly failing in its RtoP. However, New Zealand argued that structural changes to the Security Council should not be regarded as a prior condition for implementing the RtoP and that the way in which the Council functions was far more important. Reflecting on its own experience as a member of the Security Council in 1994 when the Council considered the situation in Rwanda, New Zealand argued that 'the problem was not powerful states eager to intervene' but rather that 'some permanent members resisted even recognising that genocide was occurring and blocked any deployment or additional personnel'. New Zealand underlined that 'it should never be said that the veto prevented action to deal with genocide, ethnic cleansing, widespread crimes against humanity or war crimes'. New Zealand also rebutted arguments that the RtoP principle might modify Charter provisions prohibiting the use of force.

In terms of the application of the RtoP, New Zealand acknowledged concerns that the RtoP might not be applied consistently but argued that this should not be a barrier to action.

6.9 Papua New Guinea

Papua New Guinea voiced its support for the RtoP principle and gave particular support to the development of an early warning system as envisaged by the Secretary-General. Papua New Guinea welcomed the Secretary-General's report and stressed that the task ahead is to implement the RtoP, rather than reinterpret or renegotiate the conclusions of the 2005 World Summit. Papua New Guinea underlined that the process of implementation demands diligent action from the UN Secretariat and the overall UN system. In terms of the scope of the RtoP, Papua New Guinea lent support to the Secretary-General's characterisation, arguing that discussion should be confined to the four crimes (genocide, ethnic cleansing, war crimes and crimes against humanity). Papua New Guinea also emphasised the key role that the General Assembly should play in giving 'serious consideration to all the reservations expressed in order to garner a broader consensus for RtoP' as well as 'delivering on the reality of its implementation'. Papua New Guinea also lent strong support to the Secretary-General's proposal to build early warning and assessment capacities. It argued that the sharing of best practices is critical to the establishment of an early warning system with a stronger and better monitoring mechanism. In connection to this, Papua New Guinea reinforced some of the Secretary-General's specific recommendations, including the use of local or indigenous knowledge as well as timely and sensitive information garnered from women's groups.

Papua New Guinea reinforced the logic of pillar one, that the responsibility to protect lies first and foremost with the individual State but stressed that this 'does not and should not preclude assistance being rendered in situations requiring genuine assistance'. Emphasising the relationship between pillar one and pillar two, Papua New Guinea expressed the view that international assistance should not be seen as abrogating sovereign responsibility but rather, as the Ambassador for Timor-Leste described it, as 'enhancing sovereignty'.

6.10 The Philippines

One of the most significant developments in the 2009 debate was the positive tone struck by the Philippines, which then agreed formally to join the 'Group of Friends' of the RtoP chaired by Canada and Rwanda.

The Philippines welcomed the Secretary-General's report, in particular its discussion on its mandate, the context and definition of its approach, the three-pillar approach and recommended prescriptions for the way forward. The Philippines argued that the report provided 'an environment to nurture and cultivate the RtoP principle towards its early maturity'. Reflecting on the World Summit Outcome Document, the Philippines emphasised that the RtoP principle is built on current international standards, rather than new binding norms. In connection with this, the Philippines stressed that 'collective action' envisaged in paragraph 139 is intended to be applied strictly in accordance with the UN Charter. The Philippines also asserted that the RtoP principle is unambiguous in its scope and applies only to the four enumerated crimes. Echoing the sentiments of the Secretary-General, the Philippines argued that current debate should work towards a 'fair, reasonable, responsible, responsive, effective and expeditious operationalisation of RtoP'.

The Philippines reaffirmed the logic of pillar one, that the responsibility to protect is first and foremost a matter of State responsibility and drew links with the intention of its own national Constitution. The Philippines then went on to elaborate on the content

of the pillar one obligation. The Philippines argued that it involves adherence to democratic principles, ideals and practices; protection and promotion of fundamental human rights, or dignity and worth of every human person; observance of the Rule of Law; an independent judiciary; good governance; and for the UN Member States, unconditional fidelity to the UN Charter and observance of the Universal Declaration of Human Rights.

In relation to pillars two and three, the Philippines argued that the General Assembly, the Security Council and the Secretary-General should each play an active and substantive role in implementing the RtoP. In particular, the Philippines emphasised the role of the General Assembly, as mandated in the World Summit Outcome Document, and warned that its role should not be diminished or diluted.

In relation to action taken under pillars two and three, the Philippines argued that the concept of the RtoP should be applied universally to all States but acknowledged that the manner of implementation would be on a case-by-case basis. The Philippines also emphasised the need for clearly defined time-frames and mandates to ensure more effective operations. Furthermore, the Philippines endorsed the Secretary-General's recommendation that international assistance and capacity-building focus on maximising the contributions from regional and sub-regional organisations. The Philippines reinforced the Secretary-General's argument that the United Nations should look to expand regional and sub-regional civilian capacities to prevent the commission of RtoP-related crimes and that region-to-region learning processes should be drawn upon. Importantly, however, the Philippines warned against the potential diversion of resources from areas such as development to cover RtoP-related activities.

In relation to pillar three, the Philippines called for further deliberations on the use of military force to enforce the RtoP. The Philippines argued that dialogue and peaceful persuasion, measures undertaken under Chapters VI and VIII of the UN Charter should take precedence over coercive measures. Where coercive force is applied in extreme situations, however, the Philippines highlighted the need for guiding policies, principles and rules.

6.11 Singapore

Singapore is a member of the 'Group of Friends' of the RtoP and used its statement at the 2009 General Assembly debate to reiterate its commitment to the principle and raise a number of issues with respect to its application and operationalisation. Whilst acknowledging that no new legal obligation was agreed to at the 2005 World Summit, Singapore highlighted the importance of the gap which world leaders acknowledged and then resolved to tackle. In this vein, Singapore argued that paragraphs 138 and 139 of the World Summit Outcome Document provided a mandate and that debate must move forward on the basis of open and frank discussion on the various issues raised in the Secretary-General's report, the President of the General Assembly's concept note and the statement made by Egypt, on behalf of the Non-Aligned Movement.

Singapore lent strong support to the Secretary-General's characterisation of the RtoP as the 'ally' of sovereignty rather than the 'adversary', arguing that 'the corollary to sovereignty is national responsibility and ownership'. It also highlighted the relationship between pillars one and two. Singapore argued that although all States should build strong domestic norms and institutions to protect their populations from heinous crimes

like genocide, the international community must also be prepared to support national efforts with resources and assistance.

In terms of applying the RtoP concept, Singapore argued that the concept of RtoP must be applied without political bias or hidden agendas. In terms of judging whether a government has manifestly failed in its responsibility to protect, Singapore argued that the decision must be made by the international community according to universal standards. Furthermore, drawing attention to cases where the RtoP concept has been misapplied, Singapore suggested that the General Assembly must continue its work to define clear parameters for the principle.

Reflecting on the Secretary-General's recommendations for operationalising the RtoP, Singapore lent support to the recommendations made in relation to pillar one and pillar two but emphasised continued concerns associated with pillar three, which will need to be discussed further. In particular, Singapore argued that the international community needed to consider further the relationship between the Security Council and the General Assembly. Reasoning that both organs have a key role to play in relation to the RtoP, Singapore went on to argue that if the General Assembly 'imbues the Security Council with the power to invoke RtoP to justify action, the Council must also commit to exercising fully this grave responsibility...without fear or favour'. This led Singapore to endorse the Secretary-General's appeal to permanent members of the Security Council to refrain from employing, or threatening to employ, the veto in situations where there is a clear manifest failure to protect.

6.12 Solomon Islands

The Solomon Islands expressed its support for the RtoP principle, but also highlighted some concerns about implementation. On a conceptual level, the Solomon Islands asserted that the RtoP should not be broadened to include non-state actors or other mechanisms not provided for under the UN Charter. The Solomon Islands also argued that it is necessary to define the concept against a multilateral structure and examine the RtoP concept in recently created bodies, such as the Peacebuilding Commission. The Solomon Islands reasoned that the Peacebuilding Commission should increase activities towards countries emerging from conflict in a 'water tight manner' to ensure that needed assistance is provided.

Reflecting on its own experience of civil strife in late 1998, the Solomon Islands paid particular attention to pillars two and three, and the international community's role in operationalising the RtoP. The Solomon Islands emphasised that speed is critical in international assistance, reinforcing the appropriateness of the international community's commitment to 'timely and decisive response' as expressed in paragraph 139 of the 2005 Outcome Document.

The Solomon Islands argued further that the time period for intervention should be matched against goals for phase-out. The Solomon Islands also emphasised the importance of Security Council reform and lent support to the Secretary-General's assertion that the permanent five members of the Security Council should refrain from using their veto power in RtoP-related situations. In the case of RAMSI, the mission benefited from the consent of the Solomon Islands government and the willingness of regional governments to respond decisively. There are other circumstances, however, which may require the international community to act in a 'timely and decisive manner' in accordance with Chapter VII of the UN Charter, without the consent of the host state as agreed in the World Summit Outcome Document. Particularly where regional

capacity is lacking, effective Security Council deliberations are crucial. In this connection, exercising the veto severely limits the international community's ability to respond to the situation in the best interests of the at-risk population.

Responding to the Secretary-General's proposal to establish an early warning system, the Solomon Islands express cautious support but argued that such a system would only work where there was cooperation with local communities in obtaining quality data.

6.13 The Republic of Korea

Korea reiterated that at the 2005 World Summit, the international community recognised both 'the fundamental obligation of Governments to protect their people from genocide, war crimes, ethnic cleansing, and crimes against humanity' as well as the international community's 'collective responsibility to protect people at risk of mass atrocities and crimes against humanity'. Korea stressed from the outset that implementation is the most pressing question and welcomed the Secretary-General's report as an 'opportunity to ensure common understanding on the RtoP and reach consensus on the overall direction of its implementation'.

Korea gave its full support to the Secretary-General's clarification on the nature of the RtoP, in particular:

- 1) That the *primary responsibility lies in the individual government*, while the international community bears the secondary responsibility;
- 2) RtoP is clearly *distinct from humanitarian intervention*;
- 3) The principle is *narrow in scope*, but calls for a deep response incorporating the deployment of preventive and protective instruments wielded by Member States, the UN system, and regional and sub-regional organisations and their civil society partners; and
- 4) 'In extreme situations, which necessitate timely and decisive collective responses, *what is most required is an early and flexible response to each situation, yet ultimately focused on saving lives*'.

Korea endorsed many of the ideas and formulations presented in the Secretary-General's Report including the 'three pillar' approach for implementing and operationalising the RtoP principle. In relation to pillar one, Korea reiterated the Secretary-General's call for Member States to pay special attention to domestic dispute mechanisms, respect for human rights and ratification and implementation of relevant international instruments on human rights, international humanitarian and refugee law, and the Rome Statute of the International Criminal Court.

Korea also endorsed the Secretary-General's call for Member States to engage in candid self-reflection, searching dialogue and periodic risk assessment and urged Member States to consider introducing criteria relating to the RtoP into regional peer review mechanisms.

In relation to pillar two, Korea welcomed the Secretary-General's emphasis on the need to give assistance to states, rather than just waiting for them to fail and lent support to the Secretary-General's view that international assistance can play a critical role particularly where the leadership is willing to implement its RtoP but lacks the capacity to do so. Korea also endorsed the Secretary-General's argument that building the capacities of regional and sub-regional organisations to assist states and

to deal with situations under stress within their respective regions would be a sound investment.

Finally, Korea encouraged further discussion about the Secretary-General's recommendation for the development of a standing or standby rapid response mechanism. It stressed, however, the need for a 'common strategy to assist states' implementation of RtoP' and stressed 'the need to mainstream the goals of RtoP into the broad activities of the UN system'.

6.14 Timor-Leste

In its first formal comment on the RtoP, Timor-Leste lent strong support to the principle and to the Secretary-General's three-pillar approach. In relation to pillar one, Timor-Leste reflected on its own experience of escalating ethnic and gang violence in 2006, which led to killings, the Prime Minister's resignation and the displacement of over 100,000 people. Timor-Leste underscored its own belief in the legal and moral obligation of individual states to protect their people and pointed out that the request for international assistance had been made jointly by the President, Prime Minister and President of Parliament. Timor-Leste emphasised that seeking help in such times was an exercise in responsible state sovereignty.

In relation to pillar two, as emphasised in the World Summit Outcome Document and Secretary-General's report, Timor-Leste gave strong support to the strategy of assisting states rather than waiting for them to fail. Reflecting again on its own experience, Timor-Leste highlighted the utility of international assistance directed at capacity and institution-building, technical assistance in judicial and security-sector reform and the rule of law, which helped to strengthen the government's capacity to restore order and confidence. In line with the Secretary-General's report, Timor-Leste urged urgent action with respect to capacity-building, early warning and assistance measures, arguing that although such measures are infinitely cheaper than the deployment of peace operations once a crisis has erupted, states have done little to act upon this fact.

In relation to pillar three, Timor-Leste unequivocally supported the Secretary-General's appeal that permanent members of the Security Council refrain from employing, or threatening to employ, the veto in situations where there is a manifest failure to protect.

6.15 Viet Nam

Viet Nam again voiced cautious support for the RtoP principle. Viet Nam welcomed the Secretary-General's report as well as the informal thematic discussion convened by the President of the General Assembly prior to formal debate. Viet Nam affirmed the World Summit Outcome Document of 2005 and emphasised that the international community need no longer debate the necessity of RtoP or its scope. Advocating that debate move towards rendering the Outcome Document operational, Viet Nam suggested that the Secretary-General's report represented an excellent ground for discussion.

In accord with paragraph 138 of the Outcome Document and the Secretary-General's report, Vietnam reiterated its view that the responsibility to protect is primarily concerned with the responsibility of individual States. Viet Nam also paid particular attention to pillar two and the international community's assistance role. Viet Nam

agreed with the Secretary-General's assertion that such assistance should take four distinct forms, namely political mediation, peacekeeping, provision of assistance and capacity-building. Such assistance, it maintained, should be based on engagement and cooperation with related states.

Viet Nam expressed some concern about the interpretation of paragraph 139 of the Outcome Document. It advocated a holistic interpretation, with equal emphasis given to all five qualifiers/components, namely the voluntary engagement of States, the application of timely and decisive collective action, the 'case by case basis', the conformity with the Charter, including Chapter VII, and cooperation with relevant regional organisations as appropriate. Viet Nam expressed some apprehension over the qualifier 'timely and decisive response', suggesting that further definition and clarification was needed to avoid confining action to coercive military force. Moreover, whereas the Secretary-General advocated the use of economic sanctions and referral to the International Criminal Court where appropriate in cases where states failed to prevent the incitement of the four RtoP crimes, Viet Nam cautioned that such measures should be 'carefully considered on the case-by-case basis, free from politicisation, selectivity and double standards'.

Viet Nam concluded on the point that prevention is the best way in which to protect populations and stressed the need to address the structural causes of conflict and social tension, for instance poverty and economic underdevelopment.



7. Conclusion

The 2009 debate in the UN General Assembly was remarkably fruitful. In many respects, the debate can be regarded as concluding an era of norm development and consensus building with respect to the responsibility to protect. After several phases of development, there is now a robust, well-defined and consensus-based definition of the RtoP. Crucially, there is widespread support for the RtoP in the Asia-Pacific, and deep agreement among regional governments on the principle's fundamentals.

The debate enabled individual nations within the Asia-Pacific to enunciate their particular stance on aspects of the RtoP. An analysis of these positions reveals strong points of consensus. There is agreement, for example, that the RtoP rests first and foremost with the State. It applies only to genocide, ethnic cleansing, crimes against humanity and war crimes. States agree that it must be implemented and exercised in a manner consistent with international law and the UN Charter, and that it is a universal principle that should be applied equally and fairly in a non-selective manner. Finally, there is agreement that pillar three of the RtoP encompasses more than simply coercion or the use of force. Collectively, agreement on these precepts of the RtoP represents a powerful level of consensus and offers great promise for the future implementation of the RtoP.

It must be acknowledged, however, that substantial challenges remain. The present report has identified six areas of priority in which further study and dialogue are required. The area of early warning – identified as the most important component of the RtoP – is a crucial one in which significant hurdles must be overcome. The role of regional arrangements with respect to the RtoP, and the relationship between the RtoP and economic development require further discussion and development. There also remains substantial work to clarify the role of the UN's principal organs – particularly the Security Council, to clarify the scope, nature and delivery mode of capacity-building, and to clarify the measures that states might take to operationalise pillar one of the RtoP.

That the discussion has moved to these practical questions of implementation, however, represents a substantial achievement itself. In a remarkably short period, the RtoP has developed and matured as a concept, supported not only in the Asia-Pacific region, but globally. Fundamentally, this reflects the strong commitment of states to the value of the RtoP – that is to preventing genocide and mass atrocities, to responding in a timely and decisive manner to their outbreak, and to helping nations rebuild in their aftermath. With this continued commitment to saving lives, the prospects for operationalisation of the Responsibility to Protect are very promising indeed.



8. References

¹ A/63/L80 Rev. 1./Add 1.

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³ *Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda*, S/1999/1257, 12 December 1999, p. 1.

⁴ See Francis Deng et al, *Sovereignty as Responsibility: Conflict Management in Africa* (Washington DC: The Brookings Institution Press, 1996); Pranee Thiparat (ed.), *The Quest for Human Security: The Next Phase of ASEAN?* (Bangkok: Institute of Security and International Studies, 2001); Sorpong Peou (ed.), *Human Security in East Asia: Challenges for Collaborative Action* (London: Routledge, 2009); International Commission on Intervention and State Sovereignty, *Responsibility to Protect* (Ottawa: IDRC, 2001).

⁵ A/60/L.1, 20 September 2005, paras. 138-140.

⁶ A/60/L.1, 20 September 2005, paras. 138-140. See *Report of the Secretary-General on Implementing the Responsibility to Protect*, A/63/677, 12 January 2009 (hereafter *Implementing the Responsibility to Protect*).

⁷ Edward Luck, Statement to the US Senate Foreign Relations Committee, 17 June 2008 and Asia-Pacific Centre for the Responsibility to Protect, 'Cyclone Nargis and the Responsibility to Protect', report, 16 May 2008.

⁸ *Implementing the Responsibility to Protect*.

⁹ A/60/L.1, 20 September 2005, paras. 138-140. See *Implementing the Responsibility to Protect*.

¹⁰ See Asia-Pacific Centre for the Responsibility to Protect, *Preventing Genocide and Mass Atrocities: Causes and Paths of Escalation*, 8 June 2009.

¹¹ Asia-Pacific Centre for the Responsibility to Protect, *China and the Responsibility to Protect*, December 2008.



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