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The Responsibility to Protect in the Asia-Pacific Region: Consensus and the Challenges of Implementation

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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 question. Fifteen governments (Indonesia, Philippines, Korea, New Zealand, Australia, Singapore, Japan, China, Vietnam, Solomon Islands, Myanmar, Timor Leste, DPRK, PNG, and Malaysia) from the Asia-Pacific region participated in the dialogue which produced a resolution co-sponsored by Australia, Singapore, PNG 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 Asia-Pacific attitudes towards RtoP. Having once been caricatured as the region most hostile to RtoP, with the exception of North Korea, Asia-Pacific governments were unanimous in their endorsement of RtoP and the Secretary-General's efforts to implement it. The challenge now is not to renegotiate RtoP but to identify ways of implementing the principle. As a basis for thinking about pathways to implementation, this paper analyses the comments made by the region's government at the recent General Assembly debate in order to identify points of regional consensus and areas that require more study and dialogue.

Background

In July 2009, the UN General Assembly debated the responsibility to protect and its implications for the first time since the commitment made at the 2005 World Summit. On 21 July, UN Secretary-General, Ban Ki-moon presented his report, *Implementing the Responsibility to Protect* to the General Assembly. As the Secretary-General explained, he envisaged the dialogue as an opportunity to affirm and fulfill the commitments made at the 2005 Summit, rather than as an invitation to revisit that agreement. He then urged the General Assembly 'to take the first step by considering carefully the strategy for implementing the responsibility to protect described in [his] report'.² The following formal plenary session on 23, 24 and 28 July was a great success and saw 94 speakers representing 108 member states and two observer missions contribute to the debate, making it the largest plenary debate of the 63rd Session of the GA.

In the Asia-Pacific regional there was a large degree of consensus. The majority of states welcomed the Secretary-General's report and a large number, including Indonesia, the Philippines, 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. A large number of States also recognised the Secretary-

¹ A/63/L80 Rev. 1.

² *Report of the Secretary-General on Implementing the Responsibility to Protect* A/63/677, 12 January 2009 (hereafter *Implementing the Responsibility to Protect*)

General's three-pillar approach as an accurate and effective way of conceptualizing the 2005 agreement, including Indonesia, the Philippines, Korea, Singapore, Japan, China, Timor-Leste and Papua New Guinea. 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 government, noting points of consensus and areas that require further deliberation.

Consensus on the Principle

It is important to stress that the Asia-Pacific governments that contributed to the GA 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 is 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 deep consensus. They also affirmed the Secretary-General's identification of three pillars of RtoP, which my colleague Sarah outlined.³ Within this context, governments in the region were eager to stress five key points about the nature and scope of 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, which refers to timely and decisive responses to genocide, war crimes, ethnic cleansing and crimes against humanity, includes 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 Charter.

Third, governments stressed that 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 RtoP, they agreed, would damage efforts to implement the principle.

Fourth, RtoP must be implemented and exercised in a manner consistent with international law and the UN Charter. The Non-Aligned Movement, Korea and China all stressed that the RtoP must not be used to legitimize unilateral coercive interference in the domestic affairs of states, with Singapore adding that RtoP does not in itself create any additional legal obligations.

Fifth, the region's governments agreed that 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 RtoP (which have just been articulated by my colleague, Sarah Teitt), Asia-

³ *Implementing the Responsibility to Protect.*

Pacific governments also voiced their commitment to the General Assembly continuing its consideration of the RtoP, the Philippines for example calling 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 and that adopted by civil society actors such as the Asia-Pacific Centre for the Responsibility to Protect. However, 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 contributions to the question of how the principle should be implementing. Together, governments identified seven priority areas where work is needed to clarify the demands of RtoP, build a more detailed consensus, and translate this into policy and action. These areas, I want to suggest, should provide the agenda for academic research on implementing the RtoP in the Asia-Pacific region for the next few years.

Challenges of Implementation

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 critically important that the implementation of RtoP add value and not draw scarce resources away from other activities such as economic development and, we might add, protection against natural disasters.

Early Warning

As I noted earlier, 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 RtoP at the UN and the Secretary-General’s proposal was based on the specific commitment made by the General Assembly in 2005. In the 2005 World Summit agreement, states agreed 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, 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, 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 politicization 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 sceptical 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.

Strengthen Role of Regional Arrangements

As my colleague, Sarah Teitt, pointed out in her presentation, 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 RtoP. Since 2005, many governments and civil society actors in the region have called for a stronger focus on the role of regional arrangements but beyond reaffirming that regional arrangements should have a role, 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; (5) regional arrangements provide a useful vehicle for region-to-region learning about the practices and capacities needed to implement 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.

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 Korea called for the mainstreaming of RtoP into the work of the UN's departments, programmes 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 Peacebuilding Commission in the implementation of 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 characterized by the commission of the four crimes associated with 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 on the General Assembly to take such measures as it thinks are necessary and appropriate for the fulfillment of RtoP. The second key question revolves 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 manoeuvre. 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, threat to the peace or 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.

Clarify the Relationship Between RtoP and Economic Development

Although many Western advocates of RtoP continue to resist the idea that there is a connection between RtoP and economic development, the evidence that there is, is overwhelming. 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, Viet Nam). However, 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 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 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 RtoP and economic development.

Clarify Scope, Nature and Delivery Mode of Capacity-Building

Following immediately on from the discussion about the links between RtoP and development, we come to capacity-building. There is a deep and well-founded consensus in the region that capacity-building is the heart of RtoP. In other words, first and foremost 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 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 debate, the region's government voiced their broad agreement with the proposition that national capacity-building is a pivotal part of 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 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.

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 fulfil 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.

Conclusion

The Asia-Pacific Centre for RtoP has long argued that the Asia-Pacific region is highly receptive to RtoP. In terms of the development of RtoP, the 2009 General Assembly debate marks the end of one era and the beginning of another. The debate marks the end of an era of norm development and consensus-building. RtoP has been redefined several times over the years on the road to reaching the point of consensus found in 2005 and then elaborated and affirmed in 2009. We now have a robust, well-defined and consensus-based definition of RtoP and there is deep agreement among Asia-Pacific governments all the principle's fundamentals. The challenge for the new era—as both the UN Secretary-General and many of the region's governments identified—is to implement the principle. Success now will be judged not according to what states agreed, but by what they do and at the 2009 debate the region's governments together identified the core agenda for the next few years:

1. Early Warning
2. Strengthen Role of Regional Arrangements
3. Clarify the Role of the UN's Principal Organs, Especially the Security Council
4. Clarify the Relationship Between RtoP and Economic Development
5. Clarify Scope, Nature and Delivery Mode of Capacity-Building
6. Clarify the Measures that States Might Take to Implement Pillar 1

Many of these issues require further research and careful study and so this is a job for us all, not just our governments.