



Permanent Mission of
Malaysia
to the United Nations

STATEMENT BY MR. ZAINOL RAHIM ZAINUDDIN, CHARGE D'AFFAIRES OF THE PERMANENT MISSION OF MALAYSIA TO THE UNITED NATIONS AT THE GENERAL ASSEMBLY DEBATE ON THE RESPONSIBILITY TO PROTECT, NEW YORK 28 JULY 2009

Mr. President,

My delegation welcomes the opportunity to address the subject of Responsibility to Protect. We thank the Secretary General for his presentation on 21 July 2009 of Document A/63/677 on "Implementing the Responsibility to Protect", which has given us much food for thought. We note with interest the questions that were posed to the Secretary General, many of which echoes our own sentiment, and look forward to further engaging on this important subject. Malaysia aligns itself with the statement by the esteemed Permanent Representative of Egypt on behalf of the Non-Aligned Movement.

Mr. President,

2. As is often the case when dealing with a new concept, or trying to put some 'meat' onto an innovative and inherently good idea, the devil will be in the details. We must ensure that we do not thwart the good intentions behind the original formulation of the concept. At the same time, we have to ensure that in our eagerness to provide clarity and coherence to the concept, we do not load it with too many different aspects to it that it becomes a conflict in itself. The best concepts, we have found, are those which are precise and clear, encompassing but straightforward, and easily distinguishable from that of another.

3. When the world leaders came together in September of 2005, they agreed on an overarching concept using the obligations of a sovereign State. Thus, they strengthened the principle of sovereignty by making a State responsible for the protection of its population. In return for giving legitimate power to the State and its machinery, the safety of the population would be protected and guaranteed. This was nothing novel to the concept of statehood, and the obligations arising from it. In fact, the sovereignty of the state is the very bedrock of the United Nations.

4. However, now that the concept of Responsibility to Protect is being shaped, it seems that the concept goes one step further. States not only have the responsibility to protect its population, which is essentially a right, but it is also to be held liable for not preventing or circumventing the incitement of the crimes under the responsibility to protect.

5. On the surface of it, this seems to be above board and logical. But under international law, and criminal law, a crime would need to be committed in order for it to be a crime. But the way R2P seems to be formulated now is to prevent the occurrence of the crime, or the incitement to commit the crime. In reality, it is only possible to hold an entity liable of this extrapolated sense of 'negligence' or failure of due diligence, in *hindsight*. Unless we have a crystal ball which will tell us the future with absolute certainty, it will be difficult to hold a State responsible for not acting for a crime that has yet to be committed.

6. It is because of these seemingly 'illogical' steps in what should be a natural progression from a particular thinking into a set of principles, that the general membership of the United Nations needs to sit down and iron out the details of this principle of R2P. We know the principle well, and some of our academicians last Thursday were valiantly trying to explain that the Responsibility to Protect is not something which is new, but which has been around for a long time. But do we all know it to be the same thing, right down to the last tenet? Describing a principle is much like describing the wind – you know it, but you can never really pin down its description to a T.

Mr. President,

7. During the session with the Secretary General on 21 July 2009, our attention was drawn to the response made by the Secretary General on the early warning capability of the Organization, particularly where it relates to the Responsibility to Protect. We appreciate the Secretary General's candour in this matter, and hope that when consultations on the early warning capability are done, it will be done in an inclusive and transparent manner with primary inputs from Member States.

8. Collectively, we have not yet reached agreement on the exact parameters of R2P, including how we will conclusively decide when the Responsibility to Protect comes into being in any given situation. If we work towards the approach that the 'who' which will decide that R2P should be invoked is all of us, sitting collectively, then we still have to grapple with the question of what action should be taken. Since the Secretary General's report alludes to the premise that Chapter VII of the UN Charter should only be invoked only as a last resort, then – providing that all questions relating to R2P have been satisfactorily answered and we are in agreement that R2P should be invoked – it does not make sense that the Security Council can thwart this decision by applying the veto. In this regard, and with the caveat that the R2P has been crystallized in full technical colour, the P5 should be restrained from using the veto.

Mr. President,

9. While Malaysia is supportive of any well thought-out initiative which seeks to protect the sanctity of human lives, we believe that the economic well-being of a person is also an important facet of human protection. In this regard, Malaysia is concerned that the urging contained in the document, i.e. for donor countries to ensure that a State carries out its responsibility to protect, will be misconstrued in the implementation of it. Donor assistance should be rendered on the basis of the need of the recipient State, rather than by any set of pre-determined criteria which would result in that assistance is being used as a tool for political ambition.

10. Furthermore, by calling for the expansion of development assistance and then to earmark that assistance for strengthening the role of civil society in the decision making process seems almost as if introducing a conditionality where none existed before. Malaysia hopes that this was not the intent, and understands full well that concepts need to be fully clarified in the crystallization of it. We look forward to engaging with all concerned on this matter, for the benefit of our collective peoples.

Thank you.