



Implementing the Responsibility to Protect The 2009 General Assembly Debate: An Assessment

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EXECUTIVE SUMMARY

Overview

In July 2009, for the first time since the adoption of the 2005 World Summit Outcome Document, the UN General Assembly continued its consideration of the responsibility to protect (R2P) and its implications. On 21 July 2009, the UN Secretary-General Ban Ki-moon presented his report “Implementing the responsibility to protect” to the General Assembly. The President of the General Assembly then scheduled an “informal interactive dialogue” on 23 July, followed by a formal plenary debate on 23, 24 and 28 July.

In one of the largest plenary debates of the General Assembly’s 63rd session, 94 speakers took to the floor, in total representing 180 member states from every region and two observer missions. What emerged was a clear commitment from the vast majority of member states to the prevention and halting of atrocity crimes. Indeed, only four countries sought to roll back what heads of states had embraced. UN members from north and south were overwhelmingly positive about the doctrine, which many asserted spoke to the purposes of the organization and was a fundamental and important challenge for the 21st century.

Based on an analysis of the 94 statements, this report identifies the debate’s key themes, including areas of consensus and concern, and provides a region-by-region overview of member views.

Key themes from the debate

1. Areas of Consensus

With the exception of a handful of delegations, speakers affirmed that **2005 was not open for renegotiation**. States supported the Secretary-General’s view that R2P was an ally of sovereignty. At least two-thirds of the statements **spoke positively of the Secretary-General’s report**; more

than 40 explicitly welcomed it. Over 50 states endorsed his formulation of a **three pillar strategy** – state responsibility; assistance to states; and timely and decisive action by the international community. And there was unanimity on the importance of the first two pillars and the **fundamental obligation to prevent** mass atrocity crimes.

Member states were united on **restricting R2P's scope to the four crimes** of genocide, war crimes, ethnic cleansing and crimes against humanity. Many also stressed that R2P is grounded in the UN Charter, human rights treaties and, international humanitarian law.

Several member states were explicit that mass atrocities committed within a state's borders can be considered as **threats to international peace and security**. The vast majority of member states also acknowledged **Africa's pioneering role** in pressing for the shift from non-interference to non-indifference. Finally, a number of states saluted the crucial role of civil society.

2. Areas of Concern

Among the most common concern was that R2P should be implemented **without selectivity or double standards**, but as few member states noted, no principle had withstood the test of perfect application and that it would be wrong to conclude that because the international community might not act everywhere, it should therefore act nowhere.

Many criticized past **Security Council failure** to halt atrocities. Over 35 member states called for the Security Council's permanent five members to **refrain from using the veto** in R2P situations. A few also called for reform of the composition of the Council. A tiny minority argued progress on R2P should be conditional on Council reform. This view was explicitly rejected by others as an excuse to delay implementing R2P.

A handful of member states rejected the **use of coercive action** in any circumstance, whilst others suggested that the UN work first on pillars one and two of the R2P strategy. Yet far more states were of the view that, should other measures have failed, coercive action and even the use of force is warranted by the UN Charter to save lives.

Several states insisted that R2P would be misused to claim legitimacy for **unilateral action** but this view was roundly rejected by the majority, many of whom noted the World Summit Outcome Document ruled out unilateral intervention and called for collective action in conformity with the UN Charter.

Some governments asked under **what circumstances** would coercive action be considered and **who would decide** whether it should be taken. As one member state noted, each state had the power to set in motion most elements of R2P. Others stressed that the Charter was clear in the mandate given to the Security Council. Several states echoed the Secretary-General's call for consideration of the principles, rules and doctrine guiding the application of coercive force.

Most member states agreed that the General Assembly was the venue for dialogue on R2P. However, members disagreed about whether or not the **General Assembly should guide the Security Council** on when to act under Chapter VII. Most shared the Secretary-General's view that the UN Charter offered the best guide for divisions of labor among UN bodies.

A small number of skeptical states echoed the President of the General Assembly's view that the international community had to **first solve the problem of poverty and under-development** before seeking to prevent atrocities. Another small group were concerned that the membership not neglect the growing impact of non-state actors as the perpetrators of mass atrocity crimes.

3. Specific Measures

Many statements suggested specific measures to prevent mass atrocity crimes. Among them: the ratification of **human rights treaties**, the adoption of **accountability measures**, education and public awareness. States also stressed the need to strengthen the United Nations and regional organizations in their **early warning mechanisms, stand-by abilities, and mediation capacities** urging that more resources, time, attention and political will be devoted to these efforts. The **Peacebuilding Commission** was also cited as an important tool in preventing mass atrocities.

Conclusion

Despite the efforts by some — including the President of the General Assembly — to challenge the value of R2P and the membership's readiness to move forward on this agenda, there was near unanimity that the task ahead was to implement world leaders' commitment to make mass atrocities a thing of the past. The debate itself was an important step toward that goal.

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INTRODUCTION

In 2005, at the United Nations World Summit – the largest ever gathering of heads of state and government – UN member states accepted an individual and collective responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The agreement, laid out in the World Summit Outcome Document,¹ was adopted by the General Assembly (GA) in October 2005 in document A/RES/60/1, and subsequently affirmed by the UN Security Council in resolution 1674 of April 2006. In February 2008, Secretary-General Ban Ki-moon (SG) appointed Professor Edward C. Luck as a special adviser and charged him with conceptual development and consensus building. The result of that work, the Secretary-General's report, entitled "Implementing the responsibility to protect," was released on 30 January 2009.²

In paragraph 139 of the World Summit Outcome Document – the second of the three paragraphs that codify the commitments made by world leaders to prevent mass atrocity crimes – it expressly stipulated that the General Assembly continue consideration of the responsibility to protect and its implications. The first instance of the General Assembly's formal consideration of the responsibility to protect took place in a series of events, beginning on Tuesday 21 July, with the presentation by Secretary-General Ban Ki-moon of his report, followed on Thursday 23 July by a morning of "Informal Interactive Dialogue" organized by the President of the General Assembly (PGA) Fr. Miguel d'Escoto Brockmann, before a three-day plenary debate of the GA, ending on Tuesday 28 July.

SECTION ONE: OVERVIEW OF THE DEBATE

In a 21 July speech presenting his report to the membership, Secretary-General Ban Ki-moon spoke of his personal commitment to the cause of preventing mass atrocity crimes, and called on member states to deliver on the historic pledge world leaders made in 2005. He stressed key elements of his report before issuing a powerful entreaty to member states to "resist those who try to change the subject or turn our common effort to curb the worst atrocities in human history into a struggle over ideology, geography or economics." The Secretary-General reminded member states that "we can, and must, do better." And he warned the GA that the world's publics will "rightfully judge us harshly if we treat these deliberations as politics as usual."

The President of the General Assembly sought to frame the debate in a strikingly different manner through a "concept note" on R2P. The note called the agreement's legitimacy into question, asserting that the responsibility to protect is a "sovereign's obligation" rather than one which the international community had accepted, and maintaining that the Charter prohibits the Security Council from taking coercive measures to "alleviate suffering," as R2P calls upon it to do. The PGA also scheduled an "Interactive Informal Dialogue on the Responsibility to Protect" on the morning of 23 July, immediately prior to the GA debate. Four panelists

were asked to speak: Jean Bricmont, Professor of Physics at the Université Catholique de Louvain; Noam Chomsky, Professor Emeritus of Linguistics at the Massachusetts Institute of Technology; Gareth Evans, former Australian Foreign Minister and co-chair of the 2001 International Commission on Intervention and State Sovereignty and Ngugi Wa Thiong'o, an acclaimed Kenyan novelist and essayist.

In his opening remarks to a packed Trusteeship Council chamber, the PGA set out a view of the responsibility to protect which closely tracked the argument of the concept note, focusing on threats to state sovereignty rather than to individuals at risk of mass atrocities. While noting that he shared advocates' "sense of urgency," he asserted that "many of us hesitate to embrace this doctrine." Neither R2P nor any other such norm of international conduct could be applied fairly, he insisted, so long as "today's system" permits powerful countries to ignore elements of international law which they find inconvenient, "some great powers" resort to the use of force in violation of the Charter, and no means exist to "enforce accountability" upon such abusers. The PGA noted as well that the failure to act in previous crises stemmed from a lack of political will rather than from the absence of agreed-upon doctrine. The PGA suggested that member states should fix "our broken global economic system and architecture" in order to "prove that we are indeed prepared to build a better world." Following this speech, the Secretary-General's Special Adviser, Edward C. Luck, speaking on behalf of the Secretary-General, stressed that the single objective before the membership was to debate his report, and summoned member states to offer "candid, constructive and specific comments." He noted that the panelists of the debate "have the opportunity to shed light and dispel myths...the unwanted barnacles of another time and place."

In his remarks, Gareth Evans described the journey leading to the historic 2005 agreement which he characterized as a "long-dreamed-of consensus" on the relationship between the rights of sovereign states and their obligations to their populations made possible by "strong support" from states of the Global South, and especially those from sub-Saharan Africa. Noam Chomsky, a long-time critic of Western policy, spent much of his presentation discussing the doctrine of humanitarian intervention, which he characterized as the "cousin" of R2P, and which he said had been used by powerful states throughout history to justify intervention against the weak. Chomsky admonished states to "look back" to this history rather than forward, as the Secretary-General had bid them do. Following questions from the member states, Jean Bricmont offered a critique of US foreign policy. Ngugi wa Thiong'o talked powerfully about his feelings of impotence in the midst of the mass violence following the disputed Kenyan election in late 2007, and advocated the "implementation" of R2P; at the same time, he called for "long-term preventive measures that would make intervention unnecessary," above all in regard to economic development and social justice.

In response, Ghana, Chile and East Timor offered sharp challenges to the

PGA's characterization of the issue, with each unequivocally embracing R2P, and rejecting the blanket assertions of the supremacy of sovereignty. Ghana and Chile both asked the panelists about how they would advocate responding to the abuses of sovereignty by governments that violate the rights of their people and Timor-Leste asserted that it wanted to look forward and work for a world where no one suffered what the Timorese had endured, rather than backwards, as Noam Chomsky had admonished. Several states sounded more skeptical notes: Egypt insisted that the General Assembly must retain substantial authority over the actual implementation of R2P, while Morocco posed a series of probing questions: How will it be determined if mass atrocities have been committed? Who will decide, and by what criteria, that peaceful means have failed and coercive measures must be adopted?

In the debate proper – one of the largest debates of the 63rd session of the General Assembly – 94 speakers, in total representing 180 member states and two observer missions, took to the floor to express their views.³ This included 16 statements from sub-Saharan African member states, 19 from Asia-Pacific and 16 from Latin America and the Caribbean.⁴ Jamaica spoke as the representative of the 15 members of Community of Caribbean States (CARICOM), none of which spoke in their national capacity. From North America, both the US and Canada spoke. In addition to a statement read on their behalf by the Ambassador of Sweden, 20 European states and EU candidate countries spoke in their national capacities. Besides Croatia, the Former Yugoslav Republic of Macedonia, Turkey, Albania, Bosnia and Herzegovina and Montenegro, the Ukraine, the Republic of Moldova, Armenia and Georgia aligned themselves with the EU statement. India, Pakistan, Sri Lanka and Bangladesh were joined by Kazakhstan as states from south and central Asia speaking in the debate. Egypt read a statement on behalf of the 118 members of the Non-Aligned Movement (NAM), of which 43 also spoke in their national capacity. A significant number of the NAM members appeared to break with tradition by not explicitly aligning themselves with the NAM statement. Morocco and Algeria were the lone North African voices, while Jordan, Qatar, Iran and Israel were the Middle Eastern voices in the debate. The views of the observer missions of the Holy See and Palestine concluded the debate.

What emerged was a clear commitment from the vast majority of member states to be part of efforts to prevent and halt atrocity crimes and to make a reality of “Rwanda, never again.” In contrast to the views of the President of the General Assembly – expressed at both the outset and conclusion of the debate – that the membership was too deeply divided about core principles to implement the responsibility to protect, UN members themselves, from north and south, were overwhelmingly positive about the doctrine. Only four countries – Venezuela, Cuba, Sudan and Nicaragua – sought to roll back what heads of state had embraced. Instead, many members described the agreement as historic, with one member state after another asserting that R2P spoke to the purposes of the organization and was a fundamental and important challenge for the 21st century.

Still, some members, including Ecuador, Pakistan and Sudan, claimed that a lack of consensus precluded efforts to move forward on the most controversial aspect of the doctrine, coercive action to protect populations under what the SG's report had described as “Pillar Three” of the doctrine. Some, like Morocco and Peru, argued for a sequenced discussion inside the Assembly to build consensus. Still others expressed misgivings about possible abuses of the power of coercive action. Nevertheless, the majority of the speakers affirmed that it was necessary for the Security Council to be ready to take timely and decisive action to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, should their government be manifestly failing to do so. Twenty-seven members specifically affirmed the obligation to take such measures.

It was particularly striking to hear India, Indonesia, Japan, Brazil and South Africa – each major powers in their respective regions – on this question. In the months preceding the debate, each had been among those expressing concern that coercive action might ever be necessary or appropriate. Yet during the debate, all adopted a more positive tone. Indonesia's resounding support for all aspects – i.e., all pillars – of the doctrine and practical plan for implementation at the regional level was perhaps the landmark speech of the first day of debate. India accepted that coercive action might be necessary, while emphasizing that such decisions on measures under Chapter VII of the Charter should be taken, as the World Summit Outcome Document stipulates, on a case-by-case basis and only when peaceful means proved inadequate. Likewise Brazil accepted “pillar three” whilst emphasizing that it should be considered a truly exceptional course of action and a measure of last resort. Japan, stressing that the responsibility to protect should be “better understood, strongly supported and implemented properly,” stated explicitly that coercive action, including force, could be warranted if a state was failing to protect its population from such serious crimes.

A powerful aspect of the debate were the statements of countries which in recent generations had suffered large-scale violence, such as Bosnia Herzegovina, Chile, Croatia, Guatemala, Israel, Sierra Leone, the Solomon Islands, Timor-Leste, and Rwanda, each of whom issued a clarion call to the wider membership not to allow others to suffer their fate.

SECTION TWO: KEY THEMES FROM THE DEBATE

2.1 Key Areas of Consensus

2005 Agreement not for Renegotiation

As noted above, with the exception of a handful of delegations, speaker after speaker affirmed that the 2005 World Summit Outcome was not open for renegotiation. An important number of states, many of them from Africa, underlined that the task before the Assembly was to implement what heads of state had already agreed. China noted that R2P had

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been “prudently described” in the World Summit Outcome Document. Venezuela, Cuba, Sudan and Nicaragua were the few that dissented, arguing that the GA should continue to debate the specific paragraphs. Chile, in expressing its “firm commitment to R2P, whose solid foundations were established by the heads of State and Government...which cannot be selectively addressed or revised,” noted the “divergent positions with the members of NAM” on this point.

R2P as Ally of Sovereignty

Many member states, from Switzerland to Singapore, agreed with the Secretary-General that R2P was an ally of sovereignty. Ireland eschewed “false dichotomies” between the interest of the State and that of its population, and between the state and the international community. Chile said above everything else, the responsibility to protect was a call to states to deal with serious human rights issues from within. In noting that R2P should be seen as an ally and not a foe of sovereignty, the Philippines pointed out that such an understanding was mandated by its constitution, which expressly states that “Sovereignty resides in the people and all government authority emanates from them.” Colombia noted that the openness of states to scrutiny, including “constructive and objective” scrutiny on human rights by UN institutions, could strengthen the action of states. Ghana, challenging the idea that sovereignty may operate as a shield behind which mass violence could be inflicted on populations with impunity, asked if sovereignty was actually an instrument – not a privilege – that carried a heavy responsibility, and would be recognized as credible and legitimate only when it was exercised with due respect for fundamental human rights, dignity and an acceptance of the worth of the human person.

Legal Basis of R2P

While the PGA’s concept note cast doubt on the legal status of R2P, and argued specifically that use of coercive force under the doctrine would “compromise and weaken international humanitarian law,” many states stressed that the responsibility to protect is in fact grounded in international law. Statements by Argentina, India, the Philippines and New Zealand were among the 17, representing 59 member states, which did so.⁵ Brazil argued that R2P was not a “novel legal prescription” but rather “a powerful political call” for all states to abide by legal obligations already set forth in the Charter, in relevant human rights’ conventions, IHL and other instruments. Russia stated that in its view, the wording of the World Summit Outcome Document was clear and plain, and in line with the UN charter and other international legal standards. Benin’s statement went further, offering a detailed reading of the UN Charter to demonstrate that the Charter does in fact grant the Security Council the power to use coercive measures to protect populations from mass atrocity crimes. Several states, including Singapore as well as Nicaragua, asserted that R2P is not part of international law, or a legally binding commitment. But the majority view was reflected in the CARICOM statement: “Existing

international law bestows on all of us the responsibility to prevent the crime of genocide, war crimes, ethnic cleansing and other mass atrocities from befalling the peoples of the world. As we seek to move forward on R2P, let us also renew our commitments to these binding principles.”

Mass Atrocity Crimes as a Threat to International Peace and Security

The Charter authorizes the Security Council to take coercive action only against threats to international peace and security, and in the past critics of R2P have argued, both as a general matter of doctrine and in the face of specific crises, that mass atrocities committed within a state’s borders do not constitute such a threat. In the course of the debate, Benin, Costa Rica, Denmark, Liechtenstein, Lesotho and the EU were explicit that threats of mass atrocities can be considered threats to international peace and security. For its part, Qatar argued that it was “natural” that the notion of international security would expand to include the responsibility to protect and that solidarity with fellow human beings rose above political, economic and other concerns. Timor-Leste said the Security Council has a “moral and legal responsibility to give special attention to unfolding genocide and other high-visibility crimes relating to the responsibility to protect.”

Welcoming the Secretary-General’s Report

More than 40 member states explicitly stated that they welcomed the Secretary-General’s report, but in total, at least two thirds of the statements spoke positively of the SG’s report. In addition to this, in its statement, the Non-Aligned Movement used language somewhat more welcoming than it had at its earlier Tehran Summit, expressing appreciation of the Secretary-General’s report rather than simply “taking note” of it.

The “Three-Pillared” Strategy

Over 50 statement explicitly endorsed the Secretary-General’s three-pillar formulation of the World Summit commitment: The obligation of each state to protect its own people from mass atrocities; of all states to assist others in enhancing that capacity; and of the international community collectively to take timely and decisive measures to prevent or halt atrocities when the state in question is manifestly failing to do so.

There was unanimity on the importance of the first and second pillars, though Japan suggested that pillar two was “somewhat overstretched,” arguing that it was important to prioritize the measures to be considered as “core R2P issues” such as international assistance and building capacity in the rule of law, security sector reform (military, police and judiciary) and protection of human rights. Many member states, including Colombia, Nigeria and India, called for such capacity building. This was also emphasized in the statement of the Non-Aligned Movement, noting the language of the summit that called for assistance to those states which are under stress before crises and conflicts break out. CARICOM

called for “a much more coherent, focused and intensive approach” from the UN Secretariat, international agencies and institutions, “in building such capacity and facilitating the implementation of mandates.”

R2P Confined to Four Crimes

Affirming the Secretary-General’s formulation that the responsibility to protect doctrine must be “narrow, but deep,” member states were united on restricting its scope to the four crimes stipulated in the World Summit Outcome Document: genocide, war crimes, ethnic cleansing and crimes against humanity. France was a lone voice as it stated its intention to “remain attentive to ensure that natural disasters, combined with the deliberate action of a government that refuses to provide assistance to its population in distress or to ask the international community for aid, do not lead to a human tragedy that the international community could only watch helplessly.”

The Importance of Prevention

From Algeria to Vietnam, member states agreed on the fundamental obligation to prevent mass atrocity crimes. As the representative of Nigeria emphasized, prevention rather than intervention was the priority. Even the few member states that struck a skeptical tone, such as Pakistan and Venezuela, were more welcoming on this point. This suggested a clear avenue for action by the member states.

African Leadership

The vast majority of member states acknowledged Africa’s pioneering role in pressing for the shift from non-interference to non-indifference, thereby echoing the Secretary-General’s statement that R2P “emerged from the soil, spirit, experience and institutions of Africa.” African leadership in putting such words into action was acknowledged in the NAM statement, as well as in statements by France, Monaco, Kazakhstan, New Zealand, Singapore, South Korea, the United Kingdom and the United States, among others.

The Role of Civil Society

A number of states saluted the role of strong civil society sectors, whether in prevention efforts, as did Israel and the Czech Republic, or in fighting impunity and advancing R2P, in the words of Ghana. The Holy See noted the role of religious and community leaders in promoting R2P. Rwanda affirmed that it would continue to support and strengthen partnerships between civil society and government.

2.2 Concerns—and Responses to Them

Selectivity and Double Standards

Among the most commonly expressed concerns was that R2P should be

implemented consistently, that is, without selectivity or double standards. A few member states – Algeria, Democratic People’s Republic of Korea (DPRK), and Qatar – drew particular attention to what they saw as an inconsistent response to the bombardment of Gaza in January 2009, or Israel’s occupation of Palestine – a point made also by the Palestinian observer mission. While cautioning against selective application of R2P, the Ambassador of Chile stated that it would be morally and politically wrong to conclude that because the international community could not act everywhere, it should therefore act nowhere.

The Need for Security Council Reform and Restraint on the Veto

At the heart of such concerns was the frequent failure of the Security Council to take effective action; many states expressed frustrations about the conduct of the Council’s five permanent members (P5) and their right to the veto. Sudan, Singapore and South Africa were among those to point to the Council’s inaction as the crucial element in the failure to protect Rwandans, Darfuris or Bosnian Muslims, but many others expressed resentment and mistrust over what they deemed Council inconsistency.

However, looking to the future, Lesotho, the Netherlands and Norway were among those that noted that R2P exerted more pressure on the Security Council, bolstering Charter provisions that impose duties on the Council to maintain international peace and security. The Holy See articulated the view of many when it called upon the Security Council to make decisions in an open and inclusive manner, guided by the needs of the affected populations rather than the “whims of geopolitical power struggles.”

More than 35 member states, including South Korea, Liechtenstein, Lesotho, Costa Rica, Denmark, Italy, Malaysia, New Zealand, Rwanda, Solomon Islands, South Africa, Slovenia, Switzerland, Singapore, Timor-Leste and Norway, echoed the recommendation of the Secretary-General’s report for the P5 to refrain from employing the veto in situations where people are at risk of mass atrocity crimes. Bolivia called for the veto to be abolished.

Several states argued – as had the PGA – that the current composition of the Security Council permitted a small number of Western powers undue influence over Council decisions, including on the use of coercive measures pursuant to the responsibility to protect. India called for the Council’s permanent membership to be changed “to reflect contemporary realities and make them forces for peace and capable of acting against mass atrocities.” Sudan was alone in its explicit call for either the veto to be abolished or two permanent seats to be given to Africa. In one of the most cautious statements from sub-Saharan Africa, the Gambia proposed a “depoliticized R2P architecture” to bridge what it saw as “a deficit of trust” among member states on the way forward. A few states – such as the CARICOM – insisted that action on R2P could not move forward until there was Security Council reform. New Zealand decried this

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suggestion, arguing that it was far more important to reform the Council's working methods than its membership. Panama issued a powerful call not to use the absence of Security Council reform as an excuse to stop moving ahead in implementing R2P.

Unwarranted Use of Coercive Action

Concerns about coercive action were the central feature of the statements by those on the more skeptical end of the spectrum. Some argued that the General Assembly could only progress on action under the first two pillars. Pakistan insisted that while “everyone agreed with the first two pillars,” the third one resembled the “right of intervention”, which the GA had previously rejected. (No such vote had in fact been taken). Venezuela and Cuba also expressed this minority view, arguing that pillar three was in contravention of international law. Sudan argued that to challenge the cardinal principle of non-interference was to dissolve the glue of international relations which had held since the Treaty of Westphalia. In similar vein, Sri Lanka argued R2P “collides with the very basis of the Charter-based international system and rejected any action without the consent of the government concerned.” However, one or two others, such as Morocco and Peru, appeared to suggest a sequenced approach to the Assembly's consideration of different pillars as a constructive tactic to avoid stalling on implementation of R2P in the absence of total consensus among the membership.

By contrast, Ireland reaffirmed the view expressed in the Secretary-General's report that the third pillar consists of far more than military intervention, and includes such measures as mediation, enhancing international justice mechanisms, the imposition of financial and travel sanctions, restrictions on the flow of arms and peace enforcement missions under Chapter VII of the UN Charter.

Colombia was among those that argued that the World Summit agreement and the SG's report were clear that the UN Charter provided the necessary guidance for the implementation of pillar 3. And as the representative of Japan pointed out, if consent was not forthcoming and the most serious violations continued, collective action, including, if necessary, the use of force, had to be taken by the Security Council, according to the United Nations Charter, implying further discussion was not necessary. Timor-Leste argued it had a moral obligation to accept the third pillar and Benin argued that the responsibility to protect would not be credible without the third pillar, which should be considered a positive, persuasive tool and required international commitment to collective action.

R2P as a License for Unilateral Intervention

A skeptical minority – including Venezuela, North Korea, Iran and Pakistan – insisted that R2P was a license for the powerful to intervene unilaterally in a country. The NAM statement echoed the President of the General Assembly and several participants in the Interactive Thematic Dialogue

in their fear that the R2P would be misused by some to claim legitimacy for unilateral coercive measures or intervention in the internal affairs of states. Yet as Chile observed, “misuse of a concept does not invalidate it.” Sudan stated that R2P “equals humanitarian intervention.” But many more echoed the Secretary-General's report in noting that R2P was not synonymous with humanitarian intervention. Liechtenstein was among those that pointed out that paragraph 139 clearly excludes any form of unilateral action taken in contravention of the UN Charter, while South Korea argued that R2P is distinct from humanitarian intervention “since it is based on collective actions, in accordance with UN Charter” not unilateral ones.

Lack of Clarity on Triggers for Intervention

Pakistan raised a point made also by states as diverse as Switzerland, Sri Lanka and CARICOM: there is a need to address the threshold that would trigger R2P action. The CARICOM statement asked “At what stage and under which circumstances will the Security Council be authorized to take action under Chapter VII of the Charter, including authorizing the use of force?” Serbia asked what constituted a timely response and who decided the level of decisiveness. Switzerland also asked who would decide whether a situation constituted one of the four core crimes. The Philippines stipulated that the timeframe and mandate for any action under pillars two or three should be clearly defined. In a similar vein, the Solomon Islands noted the need for clear exit strategies for interventions. Chile offered a partial answer to some of these concerns by noting that the state itself had the power to set in motion most of the components of R2P. It had to be alert to the first signs of bigotry, intolerance and human rights violations that could lead to genocide or any of the other three major crimes involved in R2P.

Absence of Principles to Guide the Use of Force

While Ireland rightly noted that the R2P debate could not be “reduced to a myopic argument about military force,” the Philippines, Peru, South Korea, Switzerland, Rwanda, Sierra Leone, Swaziland, Serbia were among those who echoed the SG's suggestion that consideration of the principles, rules and doctrine guiding the application of coercive force could offer greater consistency and thus credibility, authority and effectiveness of the UN's application of the responsibility to protect.

Dissent on the Respective Roles of the General Assembly and Security Council

In line with one of the themes that had dogged discussion in the days running up to the debate, one of the areas of dissent was on the role to be played by the General Assembly and Security Council. As Egypt stated in the informal dialogue, “This debate should draw clearer lines between what the General Assembly and the Security Council should do for the protection of civilians.” The Non-Aligned Movement position ex-

pressed this as “pertinent questions about the role to be played by each of the principal organs within their respective institutional mandates and responsibilities in this regard.” Some member states expressed concern that R2P would grant additional authority to the Security Council, to the detriment of the General Assembly. Venezuela argued that any collective action should be authorized by the General Assembly, and Sudan asserted that giving the Council the obligation to carry out R2P measures would be tantamount to “giving the wolf the responsibility to adopt a lamb.” CARICOM asked if the Security Council would be subject to guidance from the General Assembly in cases where the Security Council acts under Chapter VII. By contrast, Singapore and France argued that, of all United Nations organs, the Council would be the one to respond to R2P situations. And Benin was adamant that it was up to the Security Council to determine whether action was necessary to stop serious crimes. South Korea echoed the Secretary-General’s position that the UN Charter offered the definitive guide on divisions of labor between the General Assembly and the Security Council.

Egypt, speaking for the NAM, noted that at the XV Summit of the movement held in Sharm el Sheikh in July 2009 the Heads of State and Government emphasized that in such instances where the Security Council has not fulfilled its primary responsibility for the maintenance of international peace and security, the General Assembly should take appropriate measures in accordance with the Charter to address the issue. Although the SG referred to the “Uniting for Peace” procedure,⁶ only Chile picked this up in their statement.

Many speakers affirmed the GA as the place for continuing dialogue on the responsibility to protect; the Philippines spoke for many in stating that the General Assembly should retain oversight of the implementation of the responsibility to protect. South Africa said that the General Assembly had to develop guidelines for response. Uruguay noted that in light of the importance of the issue and the commitment made, reports from the Secretariat should not be merely anticipated. The issue had to be actively addressed, and the Assembly should have its own mechanism to seek agreement on doing so. The Gambia suggested that the GA mandate a committee to make non-binding proposals to the General Assembly and Security Council on the application of R2P to a particular setting, including its view on the use or non-use of the veto. Indonesia and South Korea picked up on one of the Secretary-General’s ideas, namely that the General Assembly should conduct a periodic review of what member states have done to implement responsibility to protect.

First Address “Root Causes” of Mass Atrocities: Poverty and Under-Development

It was many of the most skeptical member states who suggested, as had the PGA, that the international community had to first solve the problem of poverty and under-development before seeking to prevent atrocities. Pakistan said situations leading to action based on R2P were often the

result of underdevelopment and poverty. Cuba blamed the lack of development aid. Iran highlighted what it called the “imperative of identifying and addressing wide range of economic and political root causes which underlie, or contribute to, mass atrocities” which, in its view included, “aggression and foreign occupation, foreign interferences and meddlings, poverty and underdevelopment and exclusion.” South Africa struck a different note, arguing that development could not be achieved without sustained security and political stability, which could be achieved in partnership. The Philippines suggested that UN resources to be used for R2P should not affect activities undertaken in the context of other legal mandates, such as development assistance. Ecuador and Malaysia expressed concern that the implementation of R2P should not engender new conditionalities to development assistance.

Lack of Clarity on the Application of R2P to Non-State Actors

Japan and Sierra Leone were among the few members to observe that non-state actors frequently perpetrated mass atrocity crimes. Both called for the membership to address what Japan considered the growing impact of such forces.

2.3 Specific measures

Among the many important dimensions of the debate was the emergence of agreement on some of the key measures that should be taken to prevent mass atrocity crimes.

National Obligations

In line with the universal acceptance of the first pillar of national responsibility to protect populations, a number of statements stressed the importance of good governance, the rule of law (Austria) and functioning law-enforcement and justice systems (Japan, Colombia) and the importance of states being parties to international human rights and humanitarian law instruments. South Korea, in a thoughtful list, also noted the importance of effective mechanisms for handling domestic disputes, candid self reflection, searching dialogue, and periodic risk assessment. The Holy See argued for national policies that fostered greater inclusion and protection of religious, racial and ethnic minorities. In its strongly supportive statement, Azerbaijan called upon states to end impunity by prosecuting those responsible for the most serious crimes. Similarly, Bolivia noted that there is no R2P with impunity. Japan, along with Botswana, Croatia, Jordan and Norway, stressed the importance of the International Criminal Court (ICC) and the Rome Statute, “because it identifies a responsibility of individual perpetrator(s) of the most serious crimes” and issued an important lament that only eleven countries had become states parties to the ICC since the agreement of the R2P in 2005. Japan urged non-members to accede to the Rome Statute and cooperate with the ICC.

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Education and Public Awareness

Vietnam and Israel both spoke of the importance of increasing education and public awareness to prevent mass atrocity crimes. Luxembourg also argued that training programs on human rights, mediation, conflict prevention, crisis management and good governance would be beneficial in the long term.

Early Warning

Azerbaijan and the United States shared the view that not enough was known about why mass atrocities occur – a factor that poses a challenge for effective early warning. Armenia, Israel and Chile were among those that noted some of the warning signs, to which governments themselves – as well as the international community – should be alert. South Korea, Netherlands, the EU, Indonesia, Guatemala, Papua New Guinea, the UK and the US were among those that called for strengthening early warning. In its intervention, the US expressed its support for, “effective UN human rights machinery,” including “more credible action from the Human Rights Council and timely information on unfolding and potential calamities from the Office of the High Commissioner for Human Rights and the network of Independent UN Rapporteurs and Experts.” Armenia devoted much of its presentation to the role of UN human rights instruments to offer early warning. Armenia was joined by Canada, Chile, Croatia, Liechtenstein, Slovenia, and South Korea in its emphasis on the key role of the Special Adviser on the Prevention of Genocide in this regard, with most of this group stressing the importance of also addressing and strengthening the role of the Secretary-General’s adviser on R2P.

China provided a note of caution, noting that the General Assembly and the Security Council had to study whether there was a need for an early warning mechanism, and Ecuador urged taking account of existing mechanisms. And some member states took the opportunity to express long-standing and familiar concerns about UN early warning efforts, questioning the source, nature and objectivity of the information that any early warning system would generate. Sri Lanka asked who would be collecting information, and how such parties would ensure that prejudice did not creep into analysis. By contrast, Timor-Leste, echoing the UK, urged the international community to “better accept the value to be found in improving and better coordinating our early warning efforts, our use of and receptivity to information,” and asserted that a more “cohesive and comprehensive UN approach to this” could only enhance collective prevention efforts.

Mediation

Mexico, South Africa, Vietnam, Ireland, South Korea, Luxembourg, Norway, and Hungary were among those that noted the importance of mediation, or suggested that it needed to be given more resources, attention, time and political will. The EU stressed the importance of building

local mediation capacities. Timor-Leste noted the valuable assistance it had received in building local mediation and conflict resolution capacities, echoing Ireland’s view of what could be helpful. The United States explicitly recognized the value of the UN’s mediation standby teams but called for these teams to be strengthened.

Standby Capacity

South Korea and New Zealand called for rapid reaction capacity. New Zealand hoped for more resources for rapid reaction, noting this required much work, while South Korea encouraged member states to consider proposals to build capacity, such as standing or standby rapid response mechanisms.

Regional Institutions

Among the 36 statements, representing roughly 60 states, that stressed the crucial role of regional institutions, Sierra Leone called for the “full and speedy implementation of General Assembly resolutions on the cooperation between the African Union and the United Nations’ arguing that this would enhance the implementation of the R2P principle. South Africa and Ghana called on the UN to be more active in its support to regional and sub regional organizations, such as the African Union. Ghana also cited the need to support the Economic Community of West African States (ECOWAS) in implementing the legally binding regional instruments they had adopted to combat the four crimes, as well as noting the value of the African Union Framework for Post-Conflict Reconstruction and Development. Sierra Leone felt that Africa’s Continental Early Warning Systems, the AU consultative Panel of the Wise, and the building of a 15-20,000 strong African Standby Force (ASF) are the most effective ways of enhancing the continent’s capacity to address African problems at the sub-regional level. The Gambia called for “an evolving relationship between the UN and the AU.” The EU pointed out that regional organizations have a multitude of instruments that are relevant, including capacity-building in areas of conflict prevention, development and human rights, good governance, rule of law and judicial and security sector reform. The Philippines called on the UN to consider building the civilian capacities of regional and sub-regional organizations to prevent the commission of crimes covered by R2P, as well as looking into the potential value of region-to-region learning processes and their adaptation to local conditions and cultures. South Korea urged states to consider introducing criteria relating to R2P into regional peer review mechanisms.

The Peacebuilding Commission

The role of the Peacebuilding Commission (PBC) was cited by a few member states, with Uruguay noting it could be better used, and the Solomon Islands calling for it to examine R2P. Luxembourg pointed out that the PBC had a role in prevention, and Nigeria noted the role of the African Union Framework for Post-Conflict Reconstruction and Develop-

ment as a complement to the PBC. Jordan called on the General Assembly to consider the role of the PBC – as well as the Human Rights Council and the Economic and Social Council – to make R2P more concrete.

SECTION THREE: REGIONAL ANALYSIS

3.1 Africa

On the second day of the debate, the important voices of sub-Saharan African member states started to be heard. Of the 16 in total that spoke, most spoke proudly of Africa's leadership in shifting from the norm of non-interference to that of non-indifference. Tanzania urged others to emulate the African position. Nigeria, like others, spoke of its national and regional experience confronting atrocities. The strength of South Africa's supportive contribution was a pleasant surprise, contrasting with more skeptical recent statements and stirring memories of its vital role in persuading member states in 2005 of the importance of agreeing to paragraphs 138 and 139 in the final outcome of the World Summit. South Africa also echoed Ghana in referring to the benefits of the African Peer Review Mechanism as an internal conflict resolution mechanism. Sierra Leone's presentation was among the most moving of the entire debate, as the representative spoke plaintively of the plight of a nursing mother whose limbs had been hacked off by the Revolutionary United Front (RUF) during its 11 year conflict, and who thanked the international community – notably ECOWAS, the African Union, the Commonwealth and the United Nations – for their timely intervention. This searing experience, its representative concluded, left them no choice but to join the campaign to ensure that others would never have to suffer as they had.

Algeria demonstrated that it had moved away from its position of opposition in 2005 in a statement that noted that the responsibility of protecting populations against the four grave crimes was at the centre of the African culture of peace, adding that the African Union had adopted this principle as a central tenet, in the form of the value of non-indifference. Egypt did not speak in its national capacity, having been vocal on the subject in the run up to the debate; it was left to the Gambia and Morocco to strike a more skeptical tone, with the Gambia criticizing the “paralysis of the international community and a deep mistrust of the UN system” due to past inaction. Given the two interventions from North African states, nearly half the African continent spoke. Notably, only 4 African member states explicitly declared that they aligned themselves with the NAM statement, despite the fact that all African members are in the NAM.

3.2 Asia and the Pacific

Of the 19 statements from Asia-Pacific states, alongside Indonesia's resounding support, noted above, many were strongly supportive, and some to a surprising degree. South Korea's firm endorsement of the SG's report and the need to move forward came as little surprise given its longstanding support. However, constructive statements from the

Philippines and Vietnam were less expected. Vietnam noted that with the adoption of the World Summit outcome document, states did not need to discuss whether R2P was necessary or struggle to define its scope. Similarly, in their statement, the Philippines argued that “Our leaders, haunted, tormented and tortured by the memory of the past in relation to genocide, war crimes, ethnic cleansing and crimes against humanity... left nothing vague on the scope or intent of R2P.” India's position was also far more constructive than its 2005 position and, as noted above, Japan's statement – which included its view of the distinction between R2P and human security – was a strikingly robust defense of the R2P concept. Bangladesh, long a supporter, adopted a slightly more cautious tone, but nonetheless accepted that action under all three pillars might be necessary, albeit placing characteristic emphasis on preferring peaceful means. And, as noted above, East Timor was emphatically supportive.

China declared that it was open to discussion of the application of R2P, though with familiar caveats: R2P cannot be used to place pressure on states because it remains a concept and lacks the force of international law; and ultimately, action can only be taken with the consent of the state involved. Myanmar, in a short statement, was restrained and even supportive in its view, agreeing with the Secretary-General that the Assembly consider proposals to fulfill the “collective obligation” of the 2005 commitment. Asia's most negative statements came from Malaysia, DPRK, Iran, Pakistan and Sri Lanka. Pakistan – with its most hostile aspects excluded from the published statement – was one of the harshest of the entire debate, rejecting any action that contravened principles of non-interference and non intervention and ruling out action under chapter VII of the UN Charter. Iran lambasted the international community for the “political manipulation of new and loose concepts,” while North Korea denounced what it characterized as military attacks launched on humanitarian pretenses.

Overall, the greatest positive shift in favor of R2P from 2005 appeared to come from this region.

3.3 Latin America and the Caribbean

26 out of 32 states in Latin America and the Caribbean participated in the debate, though 15 of them were represented by a single statement delivered by the Jamaican chair of the CARICOM group. Overall, the statements were in line with Latin America's role in 2005 as a region that had yielded some of the strongest advocates for R2P, including Argentina, Chile, Costa Rica, Guatemala, Mexico and Panama, as well as some of the staunchest opponents.

Cuba and Venezuela, along with Sri Lanka, were the only member states to argue that sovereignty remained sacrosanct, regardless of the actions of the government concerned.

Ecuador asserted that a sustained discussion was needed on the con-

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ceptual and operational aspects of the issue, notably because it appeared there was no political or practical agreement but said that nations must ensure that the three pillars were dealt with in a balanced way.

Colombia's statement was also revealing in its very constructive tone and content. It affirmed the seriousness of genocide, war crimes, ethnic cleansing and crimes against humanity and its commitment to the definitions of the 2005 World outcome document. The statement stressed that national capacity would have to be strengthened in order to achieve civilian protection, above all in such areas as the rule of law, development of norms to consolidate rights enjoyment and preservation of democratic institutions. It noted as well that international cooperation offered a positive contribution, notably in fulfilling obligations to confront transnational crime.

As noted above, Brazil's intervention was positive in tone, noting that the "political boundaries of R2P were clearly set in 2005 and we are not mandated to alter them," and expressing gratitude to the Secretary-General for his report. The statement acknowledged the usefulness of the three-pillar analysis. However, Brazil placed emphasis on the importance of the second pillar, and expressed some unease about assembling capacity for timely and decisive response.

A last minute statement from CARICOM was a surprise, since earlier indications had suggested that deliberations were still underway in capitals. Though broadly supportive and very strong on such questions as the legally binding obligations to prevent mass atrocity crimes, the statement nevertheless had some strikingly negative elements. While CARICOM accepted all three pillars (though insisting, as many did, that force be a last resort), it stipulated explicitly that "a reformed UN Security Council is an important precondition for the implementation of Pillar III."

3.4 The Middle East

Jordan continued the supportive position it had adopted since 2005, arguing that paragraphs 138 and 139 provide a firm political and moral foundation, welcoming the SG's report, including proposals on rapid reaction. Given the imperative to avoid the "dark events" of the past, Jordan added that it was ready to work to develop an action plan to implement R2P. Turkey called for "stick(ing) to the carefully drafted and balanced text" of the Summit Outcome Document, and called for the concept to be further defined and clarified to avoid misperceptions. Qatar struck a very supportive tone in its statement, but nonetheless highlighted how misuse or double standards would undermine such a noble concept, and thus sought to give greater authority over the use of R2P to the GA. Qatar also adopted the view that priority should be given to the protection of populations under occupation and "to states and populations that are subject to a foreign invasion that violates the sovereignty of those states." Israel placed particular emphasis on addressing the issue of incitement by "remembering the weight of words in carrying out those crimes. After all, they began in the minds of men."

Iran, as noted above, was highly skeptical. Its statement focused primarily on what it deemed the illegitimate use of force, castigating "any attempt to pseudo-legalize" the use of force on humanitarian grounds. It argued, as had the PGA, that it would be a "distortion of the truth to blame the principle of sovereignty for inaction" by the UN.

3.5 Eastern and Western Europe

One of the important aspects of the EU's intervention was the statement that it was not pressing for the doctrine to be expanded beyond the four sets of crimes and violations. The Netherlands and Luxembourg in particular reiterated this view in their national statements a counter to the lone, contrary French view (noted above).

Germany stressed the importance and innovation of providing assistance to others, i.e., "pillar two" action, arguing that the strong focus on cooperation and prevention was the main reason that many member states saw the emergence of the R2P concept as an opportunity. Such states understood that acceptance of responsibility gave them leverage to say "we do our part, now you do yours". Switzerland pointed out the distinction between the protection of civilians in armed conflict and R2P, noting that the protection of civilians agenda dealt with the entire set of civilian rights, not only the international crimes covered by R2P.

For its part, Russia stressed the importance of states exercising "self control" in protecting populations. The statement emphasized that the international community should help states first build their capacities, but was clear that timely reaction by the UN could help avoid massive loss of life and that international action should be taken when states were not in a position to protect their people.

SECTION FOUR: CONCLUSIONS

The debate concluded with the Holy See entreating member states to implement R2P as soon as possible, emphasizing the role of mediation and dialogue, and the Palestinian observer mission insisting that double standards in responding to grave violations of human rights – understood as failing to apply R2P to the Palestinian Territories – would inevitably raise questions about states' seriousness to prevent mass atrocity crimes.

From Algeria to South Africa, Uruguay to the United Kingdom, states asserted that neither they, nor the UN, could be indifferent in the face of people at risk of mass atrocity crimes in the 21st century. As noted above, the PGA's assertion that developing states were opposed to R2P, and his conclusion that the membership was not ready to realize R2P, contrasted starkly with the debate that had just concluded. This near-unanimity in repudiating the PGA's view was an important endorsement of the 2005 commitment of world leaders. It was a sign that the membership was not willing to be dominated by the skeptical voices of a few focused on their concerns about the norm rather than their belief that the

time had come to put an end to mass atrocities. The wish to act, and to be part of the collective enterprise of action called for in the SG's report, apparently proved stronger than both ideological objections and substantive reservations. In this regard, the membership rose to the challenge the SG had framed when he had abjured them to "resist those who try to change the subject," or to retreat into "politics as usual." For an institution often pictured as deeply divided against itself, and especially on North-South lines, this was an important, and profoundly welcome, outcome.

The United Kingdom statement captured the aspirations of many, inside and outside the UN, with its call for "an RtoP-culture" which it defined as "a culture of prevention that is as much about responsible sovereignty as it is international assistance. A culture that in the long-term will help us to prevent mass atrocities and reduce conflict and the cost of conflict. A culture that will help us to build an international system which is better equipped and more effective at preventing and responding to conflict. A culture which fosters our ability to reach consensus on timely and decisive action."

The July 2009 General Assembly debate on the responsibility to protect took a step toward spreading this culture across the globe.

ABOUT THE CENTRE

The Global Centre for the Responsibility to Protect was established in February 2008 as a catalyst to promote and apply the norm of the "responsibility to protect" populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. Through its programs, events and publications, the Centre is a resource and a forum for governments, international institutions and non-governmental organizations on prevention and early action to halt mass atrocities.

NOTES

¹The responsibility to protect is set forth in the World Summit Outcome Document, UN Doc. A/RES/60/1, as follows:

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, to help to 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 organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing 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.

²UN Doc. A/63/677. For additional information on the debate, see <http://globalr2p.org/resources/generalassembly.html>.

³Those member states that were NOT represented either in national statements or that of regional groups were: Kiribati, Belarus, El Salvador, Kyrgyzstan, Micronesia, Marshall Islands, Nauru, Palau, Samoa, Tajikistan, Tonga, Tuvalu.

⁴Costa Rica spoke jointly with Denmark.

⁵The 59 are comprised of 14 national statements, plus the 27 members of the European Union, the 15 members of the Caribbean Community (CARICOM) minus the 4 Europeans that spoke in their national capacity.

⁶Whereby the General Assembly can make recommendations for collective measures when it judges the Security Council fails to exercise its responsibility because of the lack of unanimity among its five permanent members. However, in such cases, Assembly decisions are not legally binding on the parties.